New clause 22 - Revocation of planning permission

Planning and Compulsory Purchase (Re-committed) Bill – in a Public Bill Committee at 4:15 pm on 16th October 2003
(/pbc/2002-03/Planning_and_Compulsory_Purchase_%28Re-committed%29_Bill/04-0_2003-10-16a.8.0?d=2003-10-16)
.

'.In the principal Act there shall be inserted—

''Revocation of planning permission

75A. Where planning permission is granted for any development and—

(a) there has been a material inaccuracy in the information provided in the application for that permission; or

(b) there is evidence that the applicant has sought deliberately to mislead the planning authority;

the planning authority may revoke the grant of planning permission.''.'.—[Mr. Andrew Turner.]

Brought up, and read the First time.

Link to this item

In context
(/pbc/2002-03/Planning_and_Compulsory_Purchase_%28Re-committed%29_Bill/04-0_2003-10-16a.8.0#g9.1)
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(Citation: Planning and Compulsory Purchase (Re-committed) Bill Deb, 16 October 2003, c170)

Andrew Turner

Vice-Chair, Conservative Party

I beg to move, That the clause *(/glossary/?gl=98)* be read a Second time.

Link to this speech

In context

(/pbc/2002-03/Planning_and_Compulsory_Purchase_%28Re-committed%29_Bill/04-0_2003-10-16a.8.0#g9.2)

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(Citation: Planning and Compulsory Purchase (Re-committed) Bill Deb, 16 October 2003, c170)

Mr Alan Hurst

Labour, Braintree

With this it will be convenient to take the following: New clause *(/glossary/?gl=98)* 34—Compensation for revocation of planning permission etc.—

'(1) Section 107 of the principal Act (Compensation where planning permission revoked or modified) is amended as follows.

(2) After section 107(3)(b) of that Act there is inserted—

''(c) any decision where planning permission is revoked or modified where it can also be demonstrated that information provided as part of or by the applicant in support of the application for the planning permission which is the subject of revoction or modification was materially inaccurate.''.

Link to this speech

In context

(/pbc/2002-03/Planning_and_Compulsory_Purchase_%28Re-committed%29_Bill/04-0_2003-10-16a.8.0#g9.3)

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Andrew Turner

Vice-Chair, Conservative Party

I am grateful to you, Mr. Hurst, for grouping the two new clauses together. They were tabled with the same point in mind: if material inaccuracy is found in the information provided to obtain planning permission, planning permission may be revoked. I discovered after tabling the first new clause *(/glossary/?gl=98)* that it would not exclude the local authority from the requirement to pay compensation for the revocation of planning permission, so I tabled the second new clause. I hope that the second new clause excludes the local authority from the requirement to pay compensation.

There is always a debate about the accuracy of information put before planning committees. My hon. Friend the Member for Chipping Barnet *(https://en.wikipedia.org/wiki/Chipping_Barnet)*, who has great experience of such matters, agrees with that. For as long as I have been involved in politics, which is almost as long as him, I have had to represent either local residents or constituents in planning matters. Although I have tried to avoid as many planning matters as possible —that advice is given to us all once we are elected here—I regularly find myself drawn back in.

My greatest objection is when the process does not appear to have been handled fairly. In particular, people complain that there is nothing to stop someone putting forward inaccurate drawings or statements to the planning committee or, indeed, to a public inquiry. It can be argued that they are gaining pecuniary advantage by deception and have therefore committed a criminal act, but one must demonstrate that they did so knowingly, and even that does not revoke the planning permission.

I want to illustrate that point by referring to a house in Yarmouth in my constituency *(/glossary/?gl=169)*, which is situated on

a road of Victorian semi-detached villas. The developer proposed to build a matching but detached villa—if that is possible—on a site, which had been previously occupied by a bungalow, between the northernmost house and a scout hut. The developer submitted a picture of the villa with dimensions and a streetscape without dimensions.

The proposed development was marked as being of the same height as all the other villas in the road on the second drawing, so the neighbours were happy. Had the second drawing been to scale—the planning department at the Isle of Wight council also failed to produce a scale drawing—it would have been discovered that the new development was 9 ft higher than the existing villas. A careful examination of a scale drawing would also have revealed that the new house was set back significantly further than the existing villas.

The result was that people lost light and complained. However, there were no objections when the application was granted. When the development took place, the residents and Yarmouth town council were greatly upset at how the house stood out in the street, dominated the streetscape, overlooked other houses and was generally out of place. They said, ''We would have objected had we not been shown this misleading plan.'' I asked the local authority what it could do about it, and all it could have done about it—had it not been for the fact that the developer went on to build it even higher than specified in his scaled drawing—was write to the Royal Institute of British Architects *(https://en.wikipedia.org/wiki/Royal_Institute_of_British_Architects)*, of which the architect was a member, and criticised him for putting in a misleading plan. Of course, not all architects are members of RIBA *(https://en.wikipedia.org/wiki/RIBA)*, or at least not all those who design houses are.

That is a perfect example—minor but important—of a misleading statement knowingly or negligently made to the planning committee. There are similar records of statements made before inquiries where promises are made and expressions are given of how a building is going to be used or has been used, as a consequence of which planning permission is granted. That is clearly wrong. There is no remedy; I believe there should be a remedy, and my proposals are the remedy.

Link to this speech

In context

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Alan Whitehead

Labour, Southampton, Test

I intend to make something slightly more extensive than an intervention *(/glossary/?gl=39)*, but that is essentially what it is. Does the hon. Member for Isle of Wight consider the following to be an example of misleading information? Activities have been carried out on a site over a period of time such that the owner of a site who has obtained planning permission has started to develop that site, has laid foundations on it, but then appears to have no intention of completing the site. He could then have a completion notice served upon him after a long period of time. He makes a rather disingenuous protestation that he could go and build what was supposed to be put on the site in the first place, but after a long period of time that may not be relevant.

I have in mind a case that my hon. Friend the Member for The Wrekin *(https://en.wikipedia.org/wiki/The_Wrekin)* (Peter Bradley *(https://en.wikipedia.org/wiki/Peter_Bradley)*) raised on

Second Reading *(/glossary/?gl=24)*. He referred planning permission given for the building of a new pub in his constituency *(/glossary/?gl=169)* a long time ago. The nature of the land around it did not turn out as originally intended, but the people who had permission to build the pub put the foundations down and let the ground go derelict for a long period of time. When the local authority eventually got round to asking them to put in a completion notice, they said they would build the original 1960s pub along the lines of the original design, when there were not houses or other things around the plot. That was clearly disingenuous due to the effluxion of time. The discovery of great-crested newts on the site eventually persuaded the owner of the land not to go ahead with that plan, but that is another story.

The matter in hand is whether there are more complex issues relating to the misleading of a planning authority than the case outlined by the hon. Member for Isle of Wight. He may consider that his proposals cover the broader issues, which I suggest cause planning authorities some difficulties in the way that I have described.

Link to this speech

In context

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Mr Matthew Green

Liberal Democrat, Ludlow

Again, the hon. Member for Isle of Wight has highlighted a problem. The new clauses are not the way to deal with the problem, partly because new clause *(/glossary/?gl=98)* 22 does not set out any procedure by which someone might set out to seek revocation of planning permission.

I want to add yet another scenario in which misleading information might play a part in planning applications. In rural areas such as my own constituency *(/glossary/?gl=169)*, people often have to seek retrospective planning approval for activities that they claim to have carried out on a site for years—for example, the storage of heavy goods vehicles. If they can show evidence that they have been doing that for 10 years, they can obtain planning permission for it. Such situations come up more regularly than one might imagine. Those activities, which take place in farm yards but are something other than agricultural activities, are, in many cases, entirely genuine. In order to prove the case, statements are sought from other local residents, friends and so on, who say, ''We've seen Mr. Smith park his lorry there for the past 15 years.'' In effect, planning permission is granted on the back of statements.

It is not that I want to stop that approach. In many cases, those people have genuine rights to planning permission. However, I understand that in a minority of cases people write deliberately misleading statements on behalf of applicants. It is very difficult to prove in the long run, but we can surmise that there must be at least a few such cases. Nevertheless, planning permission may have been granted. If someone proves at a later date that the statements were entirely wrong, nothing can be done to revoke the permission. I can envisage other situations in which that may happen. I would like to see included in the Bill something to prevent people from making misleading statements that are then used in planning applications. I believe that it is not even against the law to write a statement saying, ''Mr. Smith has parked five lorries there for the past 20 years,'' and use

it to gain planning permission. The person would be committing no offence, as far as I can tell, even though the statement may result in serious financial gain for someone else.

I urge the Minister *(/glossary/?gl=35)* to consider the issue. I do not believe that it arises that often, but it clearly does arise. We have now heard of three different cases in which misleading information might be provided for planning applications.

Link to this speech

Sir Sydney Chapman

Conservative, Chipping Barnet

4:30 pm, 16th October 2003

I have served on many Committees, but never have I served on one in which an hon. Friend—in this case, my hon. Friend the Member for Isle of Wight—has introduced a quartet of issues that resonate with the public to such a great extent. I congratulate my hon. Friend on raising the four issues that we have discussed: high hedges, despoiling the landscape, road signs and furniture, and deliberately misleading drawings or failure to develop in the way for which permission has been given. The last is a very real issue that causes a great deal of anger among people who suffer as a result.

My hon. Friend was right to say that not all architects are members of RIBA *(https://en.wikipedia.org/wiki/RIBA)*. If they are, they can call themselves chartered architects. However, they may belong to other organisations. Indeed, one can be a registered architect without paying a subscription to, and joining, RIBA. I take this opportunity to say that I forgot to declare two more inverted interests. I am an honorary fellow of the Institute of Architects and Surveyors *(https://en.wikipedia.org/wiki/Institute_of_Architects_and_Surveyors)* and an honorary fellow and past president of the Faculty of Building.

The hon. Member for Ludlow is on to a good point. I believe that I am right in saying that, generally, in town planning law, one can establish existing use after four years. Anyway, the hon. Gentleman made his point very well.

I wish to ask my hon. Friend the Member for Isle of Wight one question. It touches on the root of the difficulty of enacting his new clause *(/glossary/?gl=98)*. What is a material inaccuracy? He gave us an example of a building 9 ft higher than it should have been. Without doubt, that is a material inaccuracy, but in other cases, there will often be a problem deciding what is one. In different situations, the amounts will be relative or the measurements different.

I want to remind the Committee of what I believe to be the four most frequent causes of anger, as I have discovered in my constituency *(/glossary/?gl=169)*—which I have now had the privilege of representing for a 25th year. The first is what I call the parapet, where contrary to what the plans suggest the eaves or ridge of a building are 15 in higher than indicated. That can cut out the right to light. We talked about the importance of that earlier. The second, which is probably the most frequent because the most difficult to detect, is where the ground levels shown on the plans are inaccurate. I ask the Minister *(/glossary/?gl=35)* to consider whether it would be good if ground levels, when given on a plan, had to be related to a fixed point on a neighbouring building. That would ensure the greater likelihood of accuracy and provide a focus point if the original plans were not carried out during the development. One could then go back and say that the builder had not built according

to the plans. Quite often, plans are indistinct rather than exact. I am sorry if that point is rather technical, but it is important.

The third cause of anger that I have found relates to inaccuracy in the building that has been proposed and is being built, where the wrong height is given in relation to the next building. Again, that returns to my previous point. It might be thought that the eaves would be no higher than those of the next-door building, but then the building turns out to be a foot or so higher. The final cause of anger is where the drawings show that the proposed building is a certain distance from the boundary or curtilage of the property when it is in fact much nearer. The next-door neighbour thinks that because their gable is 4 ft from the boundary wall, the other building will be 4 ft from the other side but it turns out that the builders propose to put it 2 ft 6 in away. I am sorry not to talk in metric terms. Those are the real problems.

Although I have now retired as a member of the Royal Institute of British Architects *(https://en.wikipedia.org/wiki/Royal_Institute_of_British_Architects)*, I should like to assure my hon. Friend that whenever someone writes to that prestigious institute complaining about the architect who has drawn up the papers, if it is an architect—it does not have to be, architects have no monopoly—RIBA takes the complaint very seriously indeed.

Link to this speech

In context

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(Citation: Planning and Compulsory Purchase (Re-committed) Bill Deb, 16 October 2003, c173)

Geoffrey Clifton-Brown

Shadow Spokesperson (Communities and Local Government)

I have heard what other Members have had to say, which is always a useful starting point. I congratulate my hon. Friend the Member for Isle of Wight, who has raised in his quartet of new clauses, as my hon. Friend the Member for Chipping Barnet *(https://en.wikipedia.org/wiki/Chipping_Barnet)* said, yet another issue of real relevance to the planning system today. It will become increasingly relevant and important as the increasing sophistication of the use of computer-aided designs makes it possible to produce plans and models that can have misleading interpretations.

My hon. Friend the Member for Chipping Barnet, with his considerable experience, has raised some interesting points. In the technical jargon, there should be a datum point on every single plan to avoid the problem with levels. If we had a datum point that linked the proposed development to an existing point, whether it were a trig point or some other level or immovable point on another building or road, everyone would be able to see precisely where the new building was being built.

In practice, misleading plans are presented to the local planning authority, which is usually swamped with applications. If an experienced officer had enough time, he would probably spot almost all the misleading points and ask for further information, but officers are under such pressure that they cannot ask for that. There is a problem that needs to be dealt with; the question is how.

I refer my hon. Friend and the Minister *(/glossary/?gl=35)* to section 97 of the principal Act—the Town and Country Planning Act 1990 *(https://en.wikipedia.org/wiki/Town_and_Country_Planning_Act_1990)*—which deals specifically with the power to revoke or modify planning permissions.

Link to this speech

In context

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Yvette Cooper

Parliamentary Under-Secretary (Office of the Deputy Prime Minister) (Regeneration and Regional Developement)

Where?

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Geoffrey Clifton-Brown

Shadow Spokesperson (Communities and Local Government)

Section 97 of the 1990 Act, which the Minister *(/glossary/?gl=35)* has in front of her.

The problem with section 97 is that it deals with developments that have not started. My hon. Friend's scenario involves a development that is more than part complete when it has become plainly obvious that there has been a misleading statement on the plan because the building is too high, for example. At that point, it is often difficult to do anything about it, particularly if the planning application was based on the evidence presented and nobody has made a mistake.

A simple amendment *(/glossary/?gl=114)* to section 97 might state that, if there were misleading information, the local planning authority would have the power to revoke such an application. Sections 98, 99 and 100 would provide the Secretary of State *(/glossary/?gl=23)* and the planning authorities with all the appeal powers. That seems to be the ideal way to deal with the problem. I hope that the Minister will seriously examine it and state whether the Government would be sympathetic in their consideration of an appropriate amendment on Report.

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(Citation: Planning and Compulsory Purchase (Re-committed) Bill Deb, 16 October 2003, c175)

Yvette Cooper

Parliamentary Under-Secretary (Office of the Deputy Prime Minister) (Regeneration and Regional Developement)

New clause *(/glossary/?gl=98)* 22 would allow a local planning authority to revoke a planning permission where there is evidence to suggest either that the information provided in support of the application was materially inaccurate or that the applicant had deliberately sought to mislead.

New clause 34 provides that no compensation under section 107 of the principal Act would be payable where the application was revoked or modified and it could be demonstrated that the information provided in support of the application was materially inaccurate.

There is a series of technical problems with the two new clauses and how they interrelate. I will not address that, as I recognise that the aim of the hon. Member for Isle of Wight is not to produce a technically perfect proposal, but to raise the issues. I want to deal not with the impact of the new clauses, but, instead, with the points that he makes, which are interesting.

Section 97 of the 1990 Act provides the local planning authority with the power to revoke a planning permission when it considers it expedient to do so. If a local planning authority found that there had been a material inaccuracy or an attempt to mislead in the planning application and it considered it expedient to do so, it could revoke on that account. It already has the powers to revoke the planning permission. There is, however, the attached issue of compensation.

Link to this speech

In context

(/pbc/2002-03/Planning_and_Compulsory_Purchase_%28Re-committed%29_Bill/04-0_2003-10-16a.8.0#g9.11)

Individually *(/pbc/2002-03/Planning_and_Compulsory_Purchase_%28Re-committed%29_Bill/04-0_2003-10-16a.9.11)*

Geoffrey Clifton-Brown

Shadow Spokesperson (Communities and Local Government)

4:45 pm, 16th October 2003

Before the Minister *(/glossary/?gl=35)* goes on to compensation, as I stated in my opening remarks it is not the only issue in section 97. Section 97(3), which is material and worthy of consideration, states:

''The power conferred by that section may be exercised—

(a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;

(b) where the permission relates to a change of the use of any land, at any time before the change has taken place.''

The provision is intended to be used to revoke planning permission before any material development has started. As my hon. Friend the Member for Isle of Wight has indicated, often in cases that involve materially misleading local planning authorities the development has been materially started or completed. Section 97 is probably the correct vehicle to deal with the problem, but it would probably need a new subsection.

Link to this speech

Yvette Cooper

Parliamentary Under-Secretary (Office of the Deputy Prime Minister) (Regeneration and Regional Developement)

This matter raises broader issues—my hon. Friend the Member for Southampton, Test *(https://en.wikipedia.org/wiki/Southampton,_Test)* (Dr. Whitehead) also raised such matters—involving what happens when development is not completed or things take place later. I am not sure that there is an obvious amendment *(/glossary/?gl=114)* to section 97 that would deal with the matter simply. I am happy to consider the point that the hon. Gentleman has raised, but I suspect that it may raise broader issues.

The power in section 97 allows planning permission to be revoked, but it also involves compensation. If gaining planning permission involved a series of deceptions, it would be possible for a local planning authority to apply to the court to quash its decision to grant permission on the ground of deception. That may be an alternative avenue.

The question of alternative routes and the consequences for compensation is interesting. I am happy to consider whether there should be circumstances in which compensation should not be paid because of wilful deception, although we should recognise that that would be fraught with all kinds of other complexities. Members have raised potential difficulties with deciding when there has been wilful deception and when somebody has simply made an honest mistake.

Link to this speech

In context

(/pbc/2002-03/Planning_and_Compulsory_Purchase_%28Re-committed%29_Bill/04-0_2003-10-16a.8.0#g9.13)

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(Citation: Planning and Compulsory Purchase (Re-committed) Bill Deb, 16 October 2003, c176)

Mr Matthew Green

Liberal Democrat, Ludlow

Some people are the equivalent of witnesses when planning permission is sought. The inspectorate relies on statements about use over time. I have read inspectors' decisions. They hang on the word of old Mr. Jones who said, ''Yes, that's been going on there for ages.'' In a court, if such a person gave information that was deliberately misleading or if they lied, whether they gave evidence verbally or submitted it, they could be held in contempt of court. That is not the case with planning. There is no similar comeback and nothing forewarns people that they need to make an accurate statement. Could something be done in that area?

Link to this speech

In context

(/pbc/2002-03/Planning_and_Compulsory_Purchase_%28Re-committed%29_Bill/04-0_2003-10-16a.8.0#g9.14)

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(Citation: Planning and Compulsory Purchase (Re-committed) Bill Deb, 16 October 2003, c176)

Yvette Cooper

Parliamentary Under-Secretary (Office of the Deputy Prime Minister) (Regeneration and Regional Developement)

That is another interesting question. The material that needs to be submitted may involve certificates and to put false information on a certificate is an offence. Under the planning system, it is also open to inspectors to take evidence on oath. So, there are ways that such provision can be made, but I recognise that the point is interesting. I will consider the matters that Members have raised.

I ask the hon. Member for Isle of Wight to withdraw the new clause *(/glossary/?gl=98)*, although he has raised interesting issues. There is already a power to revoke planning permission. I am happy to consider compensation and deception further, although there

is also a court route in some cases. I will also consider the concerns relating to retrospective matters, which were raised by the hon. Member for Cotswold.

Link to this speech

In context

(/pbc/2002-03/Planning_and_Compulsory_Purchase_%28Re-committed%29_Bill/04-0_2003-10-16a.8.0#g9.15)

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Andrew Turner

Vice-Chair, Conservative Party

I thank the Minister *(/glossary/?gl=35)* for her response. I was intrigued by the quartet that my hon. Friend the Member for Chipping Barnet *(https://en.wikipedia.org/wiki/Chipping_Barnet)* listed—not the quartet of proposals, but that of problems—because two of them are covered in the case that I quoted. Another, the ground levels on the plan, was relevant to the development of both Inglewood, an old people's home in Totland in my constituency *(/glossary/?gl=169)*, and Carisbrooke Park, a huge housing development undertaken by Persimmon Homes *(https://en.wikipedia.org/wiki/Persimmon_Homes)*, which seems to be incapable of providing an accurate plan of what it intends to do.

Every time that company gets something wrong, it applies for a modification. It has put in a series of amendments, making it impossible for local people to tell what is going on. Again the Minister nods; I am glad of that understanding. While I am about it, I understand that no one is allowed to take copies of the plan that has been submitted to the planning authority to check it on the ground because, the planning authority tells me, the applicant has the copyright of the plan so the authority cannot make copies for objectors to take away. Thank you, Mr. Hurst, for allowing me to make that aside.

Link to this speech

In context *(/pbc/2002-03/Planning_and_Compulsory_Purchase_%28Re-committed%29_Bill/04-0_2003-10-16a.8.0#g9.16)*

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(Citation: Planning and Compulsory Purchase (Re-committed) Bill Deb, 16 October 2003, c177)

Sir Sydney Chapman

Conservative, Chipping Barnet

My hon. Friend makes a valid and important point. I put it to him that if that is the case—and it is, as the copyright belongs to the applicant—there is all the more reason for the local planning authority to take action and to take measurements on the site to establish what has been developed.

Link to this speech

In context *(/pbc/2002-03/Planning_and_Compulsory_Purchase_%28Re-committed%29_Bill/04-0_2003-10-16a.8.0#g9.17)*

Individually *(/pbc/2002-03/Planning_and_Compulsory_Purchase_%28Re-committed%29_Bill/04-0_2003-10-16a.9.17)*

Andrew Turner

Vice-Chair, Conservative Party

Indeed. I thank my hon. Friend for that. In the case of the development in Yarmouth, the planning authority found out that the height of the building was intended, and was not merely a mistake, only because it was eventually able to secure a copy of the plans by illicit means from the people who made the timber frame for it. There are serious questions to be addressed about wilful misleading and negligent misleading.

I am glad that the Minister *(/glossary/?gl=35)* is prepared to consider the issues of compensation, deception and section 97, which have been referred to. I hope that she will do all in her power to ensure that it is not necessary for people to go to court over such matters at an early stage. I am sure that she will agree that it is far better if there is an administrative remedy. With that, I am happy to beg to ask leave to withdraw the motion.

Motion and clause *(/glossary/?gl=98)*, by leave, withdrawn.

Link to this speech