

**LOCALISM
BILL**

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The much heralded and awaited Localism Bill, a key element of the government's "big society", has now been laid before Parliament by Eric Pickles (Secretary of State for Communities and Local Government). It is described by the Government as containing:

"...a radical package of reforms that will devolve greater power and freedoms to councils and neighbourhoods, establish powerful new rights for communities, revolutionise the planning system, and give communities control over housing decisions."

Insofar as reforms of the planning system are concerned, the principal changes are summarised below. Although the Bill sets out the provisions of the new legislation, much of the detail is expected to follow in the form of secondary legislation, statutory instruments, etc. As yet, no timeframe has been provided for this.

1. Abolition of Regional Strategies

The Bill will enact the commitment made back in May 2010, and subsequently overturned by the Courts, to abolish Regional Strategies (RSS).

Ministers believe imposed Regional Strategies did not work effectively, and that the target-driven approach to development was undemocratic and added unnecessary bureaucracy to the planning system. The new system will address this by providing communities with more responsibility for meeting local development needs, and the government will encourage this by other initiatives, e.g. the New Homes Bonus

Saved **Structure Plan policies** are also to be revoked.

2. Community Infrastructure Levy

The Bill introduces **three changes** to the Community Infrastructure Levy:

- a. It includes provisions to make regulations **requiring some of these funds to be passed to neighbourhoods where the development has taken place.**
- b. It makes it clear that funds **can be spent on the ongoing costs of infrastructure, as well as the initial capital costs of new infrastructure.**
- c. It gives local authorities **greater control over setting their charging levels** – while independent examiners will still consider whether the charging schedule is unreasonable, it will be for the authority to decide how to make it reasonable.

3. LDF Process Reform

Planning Inspectors will continue to be required to assess development plan documents (DPDs) at a public examination (EiP), and LPAs will only be able to adopt

plans judged **'sound'** by the Inspector. But Inspectors will now **only be able to suggest changes if requested by LPAs**. In addition, the Inspector's decision will **no longer be binding** on the LPA.

LPAs will be able to suggest changes during the examination and withdraw DPDs before their adoption, without seeking clearance from central Government.

LPAs will have to publish up to date information direct to the public on what DPDs they are preparing, while central government powers to direct changes will be more limited.

4. Neighbourhood Planning

The Bill will introduce **new rights for communities to shape their local areas**. This is two-fold:

- a. The making of **Neighbourhood Development Orders (NDOs)** by LPAs at the request of qualifying bodies (such as a Parish Council or a neighbourhood forum). **An NDO can in effect grant planning permission in relation to a particular neighbourhood area** (as designated by the LPA) **for development specified in the order or for development of any class specified in the order**. This may be subject to condition(s), which could include obtaining prior approval from the LPA. **LPAs could also confer their powers in this regard to Parish Councils who would effectively become the decision-making authority**. A particular type of NDO specifically referred to in the Bill is a **'Community Right to Build Order' (CRBO)**. Such an order **needs to be proposed by a community organisation and will grant planning permission for specified development in relation to a specified site in the specified neighbourhood area** subject to certain limits.
- b. The making of **Neighbourhood Development Plans (NDPs)** by LPAs **at the request of qualifying bodies, which would set out policies in relation to the development and use of land in a particular neighbourhood area**. Importantly, an NDP **will become part of the statutory development plan**.

In both situations, **decisions will be governed by referenda**, and more than half of those voting in a referendum must vote in favour. Financial provisions will be introduced in due course to cover these new duties conferred on LPAs.

5. Duty to Co-operate

There will be a specific duty imposed on LPAs and public bodies to co-operate with each other. This is intended to ensure strategic working once RSS are formally abolished.

6. Pre-Application Consultation

The Bill will introduce a new requirement for **prospective developers to consult local communities before submitting planning applications** and to have regard to any advice given by LPAs about local good practice. At this stage, there is no information as to the size of development or threshold that this provision refers to.

This is intended to give local people **a strengthened opportunity to comment on proposed developments which may have an impact on them**, and to collaborate on issues such as design at an early stage, when they still have a real chance to influence proposals before they are finalised.

Developers will be required to have regard to any opinions raised during this consultation when deciding whether to make any changes before submitting their planning applications.

7. Enforcement & Advertisement Control

A new power is to be introduced which will allow LPAs to **decline to determine a retrospective planning application** in relation to development the subject of an enforcement notice.

In respect of concealed breaches of planning control, **LPAs will be able to apply to the Magistrates' Court for a Planning Enforcement Order which lasts for one year**, irrespective of whether the 4 year/ 10 year time limits (contained within Section 171B of the Town and Country Planning Act 1990) have expired or not.

Stronger powers are also to be introduced in respect of the control of advertisements, principally:

- a. LPAs will be able to remove and dispose of any structure, including moveable structures, in their area which is used for the display of unauthorised advertisements, and then recover their expenses, if after the serving of a **Removal Notice** the structure is not removed within the specified period.
- b. LPAs will be able to serve an **Action Notice** on the owner/occupier of a surface such as a building or a wall (dwellinghouses are exempt) where there is a persistent problem with the display of unauthorised advertisements. These powers will allow LPAs to carry out the measures stipulated in the action notice themselves and recover their costs.

There will be a right of appeal to the Magistrates' Court against an Action Notice.

8. Nationally Significant Infrastructure Projects & National Policy Statements

The Infrastructure Planning Commission is to be abolished and powers transferred to

the Secretary of State. Although not specifically referred to in the Bill, it is understood that nationally significant infrastructure projects will be handled by a specialist unit, the Major Infrastructure Planning Unit, within the Planning Inspectorate.

Parliamentary approval of **National Policy Statements (NPSs)** will be required before they can be designated.

9. Predetermination

The Localism Bill will alter the predetermination rules. Once the section of the Bill comes into force, if a decision-maker, such as a Planning Committee member, indicates what view he/she may make on a matter and the matter is relevant to the decision, it is not considered that he/she has had a closed mind. This becomes relevant if there is an allegation of bias or predetermination, or otherwise, in respect of the validity of a decision.

10. List of Assets of Community Value

A local authority will have a **duty to maintain a list of land (including buildings, parts of buildings and structures) in its area that is land of community value, which will be known as its list of assets of community value.** In addition, a Local Authority must also maintain a list of land in its area that has been nominated by an unsuccessful community nomination, which will be known as its list of land nominated by unsuccessful community nominations. Such land will remain on the list for a period of 5 years.

This land can include privately-owned land.

An owner of land included in a local authority's list of assets of community value **must not enter into a relevant disposal of the land unless certain conditions are met, such as notifying the Authority of his/her wish to enter into a disposal of the land.**

At this stage, it is unclear as to the implications on owners of their land/buildings being included in the lists but, in any event, this is understood to act as a constraint on what owners will/will not be able to do in respect of their property assets.

11. Tenancy Strategies

A local housing authority **will have a duty to prepare and publish a tenancy strategy, in conjunction with the registered providers of social housing in its district, within 12 months of the relevant section of the Bill coming into force.** This strategy will set out the matters to which the registered providers of social housing are to have regard in formulating policies relating to the kinds of tenancies they grant, the circumstances in which they will grant a tenancy of a particular kind, where they grant tenancies for a term certain, the lengths of the terms, and the circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy.

A local housing authority must have regard to its tenancy strategy in exercising its housing management functions.

12. Miscellaneous Provisions

There appears to be **no** provision within the Bill in relation to:

- a. **The introduction of a national presumption in favour of sustainable development;** or
- b. **A fundamental reform and streamlining of national planning policy and guidance in the form of a national planning framework.**

It is clear that the Localism Bill will have many implications for the current planning system and participants in that. If you would like to discuss the Coalition Government's proposed changes and how these may affect you/your future development projects, please contact us.

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