



Client Briefing

LOCALISM ACT 2011: WHAT YOU NEED TO KNOW

December 2011

The Localism Act received Royal Assent on 15 November 2011 and puts into practice the Coalition Government's decentralisation agenda, which aims to "...end the era of top down government by giving new powers to local councils, communities, neighbourhoods and individuals." (*The Coalition: Our Programme for Government*; 20 May 2010).

The Act introduces wide ranging reforms to local government and the planning system. A number of the key changes to the planning system are summarised below:

ABOLITION OF REGIONAL STRATEGIES

The Act enables the Secretary of State to revoke regional strategies and repeal the earlier legislation which incorporated regional strategies into the definition of the development plan in section 38(6) of the Planning and Compulsory Purchase Act 2004. The Act also provides for the revocation of saved structure plan policies. Once these provisions come into force, the regional tier of planning policy will be removed in its entirety and policy will thereafter be either national or local. These provisions will be implemented by Regulations. It is unclear at present whether there will be any transitional provisions and whether local planning authorities will be required to include provision for housing numbers and renewables targets in local development plans going forward.

DUTY TO COOPERATE

A new approach to planning at the 'larger than local' level is introduced by a duty to co-operate. This requires county councils, local planning authorities and other bodies prescribed by the Secretary of State to work together on the planning of sustainable development. This duty is intended to facilitate cooperation between local authorities on proposals that cross local authority boundaries such as roads and trams, minerals and waste and larger development schemes. If following independent examination it is deemed that a local authority has not complied with its duty to cooperate in the plan making process then this may result in the plan not being adopted.

NEIGHBOURHOOD PLANNING

A key plank of the Government's localism agenda is neighbourhood planning. The Act introduces Neighbourhood Development Plans (NDPs), Neighbourhood Development Orders (NDOs) and, one specific form of NDO, the Community Right to Build Order. These provisions are intended to allow communities to influence the future of the places where they live or work and can be simple or detailed. These tools are not intended to allow neighbourhood groups to block potential development in their area, rather they are intended to be used to influence the type and design of that development.

NDPs and NDOs can be made by a qualifying "neighbourhood group". This is a parish council or town council or a "neighbourhood forum" in those areas which do not have parish or town councils. For a community group to be able to call itself a "neighbourhood forum" it must meet some basic standards. For example, it must have at least 21 members and be open to new members and the local planning authority must consider that it is sufficiently representative of the local community. Businesses can also participate in neighbourhood planning and local authorities can designate an area as a "business neighbourhood".

A Neighbourhood Development Plan (NDP) is a plan which sets out policies (rather than granting permission) in relation to the development and use of land in a particular neighbourhood area.

A Neighbourhood Development Order (NDO) is an order which grants planning permission (unconditionally or subject to conditions) either site-specifically or in relation to a particular neighbourhood area specified in the order for a type or class of development specified in the order. The effect of the NDO will be to allow the development specified in the order to go ahead without the developer having to apply for separate planning permission.

A Community Right to Build Order (CRTBO) is an order made pursuant to a proposal made by a community organisation and which grants planning permission for a specified development on a specified site within the neighbourhood development area.

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The Coalition: Our Programme for Government; 20 May 2010



Once a neighbourhood plan or order has been prepared, it must be submitted by the local planning authority to an independent examiner for review. The local council will organise a referendum on any plan or order that meets the basic standards. Anyone living in the neighbourhood area and who is registered to vote in local elections is entitled to vote in the referendum. In certain circumstances, for example, where the proposals in one neighbourhood plan have significant implications for other people nearby, people from other neighbourhoods may be able to vote too. Business ratepayers will be able to vote in a referendum to approve neighbourhood plans in a business neighbourhood.

If more than 50% of those voting in a referendum vote in favour of the plan or order then the local planning authority must make the NDO/NDP. The NDP will form part of the local development plan and the local authority must have regard to it in planning decisions affecting that area.

ASSETS OF COMMUNITY VALUE

The Act contains provisions to allow community groups to bid for “assets of community value” (such as public houses or libraries) if they come up for sale.

WHAT DOES THIS MEAN FOR ME?

For developers and landowners: When looking at sites for development, find out if there is a neighbourhood forum in place and what its objectives are and whether the site is designated as an “asset of community value”. Developers or landowners may want to set up their own neighbourhood forum or join an existing one to influence the planning of that area.

For local authorities: Greater autonomy and less interference from central government but it is unclear at present where the funding for facilitating neighbourhood planning will come from.

FINANCIAL CONSIDERATIONS AS A MATERIAL CONSIDERATION IN PLANNING DECISIONS

A controversial provision of the Act is the introduction of local finance considerations as a material consideration which the local planning authority must have regard to in determining planning applications.

The government justified the inclusion of this provision on the basis that it did not change the law and merely confirmed the current legal position which allows section 106 payments to be material to planning decisions where they make an otherwise unacceptable application acceptable in planning terms. However, the Royal Town Planning Institute had called for the clause to be withdrawn or significantly amended amidst concern that the inclusion of a specified statutory material consideration could be seen to water down the primacy of the development plan and lead to uncertainty and to legal challenge.

DUTY TO CONSULT PRIOR TO SUBMITTING CERTAIN PLANNING APPLICATIONS

The Act introduces a new duty for applicants to consult local communities before submitting a planning application for certain types of development. This duty to consult before submitting an application is already in place for Nationally Significant Infrastructure Projects and this provision merely codifies existing good practice. It will be crucial for applicants to ensure that they comply with these provisions to avoid unnecessary delay and to minimise the risk of legal challenge.

NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

The Act abolishes the Infrastructure Planning Commission (IPC) which was set up by the last government to determine Nationally Significant Infrastructure Projects (NSIPs). The IPC will be incorporated into the Planning Inspectorate as the Major Infrastructure Planning Unit. The decision as to whether or not a Development Consent Order is granted will be made by the Secretary of State.

The Act also allows for the National Policy Statements underpinning NSIPs to be subject to a parliamentary vote.

IMPLEMENTATION

The majority of the provisions in the Act will be implemented by secondary legislation and are expected to come into force on 6 April 2012.

PLANNING: THE FUTURE

Together with the draft **National Planning Policy Framework** (NPPF) with its presumption in favour of sustainable development, these reforms form a key part of the Government's localism agenda. The Act presents opportunities for communities to engage in the planning process to shape the places in which they live and work and for local authorities to have greater autonomy with less interference from central government. It remains to be seen whether the freedom from regional targets and a broadly defined presumption in favour of sustainable development will lead to more development being brought forward more quickly or whether the uncertainty will lead to delay as there is a rise in appeals and legal challenge proceedings.

Until the publication of the final NPPF and the Regulations to enact the detail in the Act, it is difficult to assess the likely effectiveness of the new regime. What is clear is that we face a period of uncertainty as stakeholders grapple with the new mechanisms introduced to the planning process and the removal of policy at regional level. There is a risk that development stalls while the system tries to catch up with the changes introduced, failing to deliver the much needed economic growth. However, those who are able to seize the opportunities presented by the new order stand to reap the rewards.

FURTHER INFORMATION

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