

# Localism Bill Briefing Note

December 2010

After some delay and much anticipation, the Localism Bill is finally here. At some 207 Clauses and 24 Schedules in length, it covers topics as diverse as the pay accountability of top Council officials, to the delivery of national infrastructure. Accompanied by the 'Decentralisation and the Localism Bill: An Essential Guide', the Bill aims to give power back to people and communities, taking us on a journey from 'Big Government' to the 'Big Society'.

This update focuses on the planning aspects of the Bill. In terms of Planning, the legislation is intended to have significant effects on the *"philosophy behind local planning, moving away from a system of imposition from above to one with participation and involvement its heart"*.

## Regional Strategy

As expected, clauses to revoke the Regional Strategies are included. These are slightly different to those published by the Government in the wake of its defeat in the recent *Cala Homes* case. However, they are to the same effect, and will result in the revocation of regional strategies and regional spatial strategies.

## Neighbourhoods

The idea of the "Neighbourhood" is a key concept in the localism agenda. It will be open to any 'qualifying body' to apply to the local authority to designate a 'neighbourhood area'. A qualifying body can be either a Parish Council or any other body capable of representing a neighbourhood. Local authorities can refuse or modify any request for a designation application, so it is very much within their powers as to whether neighbourhood areas are created.

When a neighbourhood area is designated, Neighbourhood Plans and Neighbourhood Development Orders can be introduced.

(a) 'Neighbourhood Plans' are stated to be a means for local people to formulate their own plans for their area. The plans are to be produced by members of a designated local neighbourhood and will be subject to a degree of independent review. However, final approval will be via a local referendum. The true extent and capability of these plans is not explained in the Bill, and we are promised Government guidance. There are some important limitations on neighbourhood plans contained in the Bill. They are not to replace or frustrate existing Local Plans, must accord with national planning laws and guidance and will not be capable of being used to prevent national infrastructure projects such as transport schemes or new nuclear power stations.

(b) 'Neighbourhood Development Orders' are of a similar nature in their production. They can be used to allow certain types of development specified within the NDO to go ahead without the need to obtain a specific planning permission. The Government see NDOs being used for small scale residential developments such as; conservatories, loft conversions and extensions and domestic wind turbines.

Given the wide definition of 'qualifying body', these powers may be available to a wide range of groups, which alongside community forums and Parish Councils, could potentially include, for example, gypsy and traveller communities. To kick-start Neighbourhood Planning, Neighbourhood Planning Vanguard areas are being sought by the Government to bring forward the first neighbourhood plans, with a grant of up to £20,000 towards the cost of the plan and orders within each neighbourhood.

## Community consultation

Developers will have to engage with the local community prior to submission of applications for certain types of development. Details on the nature of community consultation and the types of development involved will be specified in secondary legislation.

## Planning Enforcement

LPAs will be able to seek a 'Planning Enforcement Order' from a Magistrates Court allowing them to take enforcement action against a breach of planning control irrespective of when the breach of planning may have occurred. This provision appears to have been included in direct response to recent high profile court cases involving the clandestine construction of dwellings in the countryside. Although it is directed at cases involving "concealment", the wording of the provisions are very wide and may well result in cases which would previously have been considered immune finding themselves subject to proceedings. These provisions will need to be looked at closely to ensure they are not employing a sledgehammer to crack a nut, resulting in excessive enforcement powers.

## Appeals

There had been concern that proposals in the Conservatives pre-election planning green paper to introduce a third party right of appeal would be included in the Bill. There are no such rights contained in the Bill, nor have any of the other proposed changes to the appeal system be included.

*continued overleaf*

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX  
Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400  
Chancery Exchange, 10 Funnival Street, London EC4A 1AB  
Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7685 1266  
[www.burges-salmon.com](http://www.burges-salmon.com)



Burges Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is regulated by the Solicitors Regulation Authority. A list of members, all of whom are solicitors, may be inspected at our registered office: One Glass Wharf, Bristol BS2 0ZX.

## Community Infrastructure Levy

The Community Infrastructure Levy has made an apparent return from the dead. An initiative of the previous Government, the Bill proposes certain changes to the system. Neighbourhoods will be able to retain funds from development that has taken place in their area, and local authorities will be able to apply funds towards the on ongoing costs of infrastructure as well as initial capital costs. Local authorities will also be given greater control over the setting of CIL charging levels.

From April 2014, CIL will be the only means available to local authorities to secure funding for certain types of infrastructure, as it will no longer be possible to use section 106 Agreements for this purpose. Any work done by local authorities to bring in a CIL charging schedule in respect of the previous proposals will not apply to the amended CIL regime, and will need to be redone.

Although not included in the Bill, the Government has already announced it is to "incentivise planning", with the introduction of the New Homes Bonus and the Business Rates Bonus. These will allow local authorities and neighbourhood areas to retain council tax and business rate income generated by new development in their area for a period of 6 years. Central government will also provide the same level of funding, effectively doubling the value of the bonus.

## Infrastructure Planning

As set out in the Conservative green paper, Open Source Planning, the Infrastructure Planning Commission is to be abolished and replaced by a special consents unit within the Planning Inspectorate, to be known as the Major Infrastructure Planning Unit (MIPU). MIPU will consider applications for Nationally Significant Infrastructure Projects (NSIPs) such as new nuclear power stations and major transport infrastructure. MIPU will make recommendations on NSIP applications, with the final decision remaining with the Secretary of State. Existing applications made to the IPC up to the date of the new legislation coming into effect will continue to be approved there.

## General power of competence

The "General Power of Competence" is described as giving local authorities the same powers that as an individual generally has, i.e. they will be entitled to do anything that is not specifically prohibited. Previous attempts to introduce similar powers were frustrated in the Courts, with local authorities unwilling to make

decisions without a clear legal authority for doing so. The Government hope this new freedom will lead to local authorities branching out into areas such as banking and property development.

Local authorities and public bodies will be placed under a statutory duty to cooperate in the planning of sustainable development. This obligation has been introduced to ensure strategic working between agencies following the abolition of regional planning. However, the Bill does not contain any sanction for those who do not comply with the obligation.

## Councillors

Clarification of predetermination and bias are a feature of the Bill. Councillors will be allowed to be "very clear and discuss freely their view and voting intention and publicise their views as they see fit". Expressing a view on a planning application will not amount to predetermination. However, Councillors must still be prepared to listen to all arguments and evidence before making their decision.

The Standards Board is to be abolished and in its place under this Bill, if a Councillor fails to disclose or misrepresents any interest (financial or otherwise), he may be subject to a fine of up to £5,000 on summary conviction.

## Next Steps

A second reading of the Bill is timetabled for January 2011. The Government hope to bring the Bill into force during the course of 2011, although that may be overly ambitious given the range of matters covered. The Bill is likely to be extensively debated and amended during its passage through Parliament, and it is safe to assume that what appears on the statute book will not be in the same terms as the current Bill.

## Contacts



**Gary Soloman**

**Partner**

Tel: 0117 902 2791

Email: [gary.soloman@burges-salmon.com](mailto:gary.soloman@burges-salmon.com)



**Craig Whelton**

**Associate**

Tel: 0117 902 2790

Email: [craig.whelton@burges-salmon.com](mailto:craig.whelton@burges-salmon.com)