



THE LOCALISM BILL **2010**

Regeneration Scrutiny and Performance Panel

Thursday 17th March 2011

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Walsall Council



What's in the Bill?

Over 200 clauses covering a wide range of matters, including:

- 'New freedoms and flexibility for local government'
- 'New rights and powers for communities'
- 'Reform to ensure that decisions about housing are taken locally'
- 'Reform to make the planning system clearer, more democratic and more effective'



What's Not in the Bill?

- On the **Economy / Local Growth**
 - Nothing on the Role of Local Enterprise Partnerships.
- On **Planning**
 - No Third Party Rights of Appeal.
Government Ministers envisage more community satisfaction as earlier community engagement will overcome objections.
 - No 'presumption in favour of sustainable development' – to come in national policy statement.



‘New freedoms and flexibility for local government’

- General power of competence - giving local authorities the legal capacity to do anything that an individual can do that is not specifically banned by other laws.
- The right for Councillors to speak out ahead of determinations, without this being classed as pre-determination or bias.
- Directly elected mayors – in the 12 largest cities
- Ability to return to the Committee System
- Changes to make small business rate relief automatic.
- Ministers able to require that local authorities contribute to any fine passed down to the UK by the European Union (LGA View – *“These clauses are unfair, unworkable, dangerous and unconstitutional.”*)



‘New rights and powers for communities’

- ‘Community Right to Challenge’ - require local authorities to consider a bid made by a local body (including parish councils and voluntary or community bodies) to provide a local public service and undertake a procurement exercise if appropriate.
- ‘Community Right to Bid’ - require local authorities to maintain a list of local assets of community value as nominated by the community. Any asset on the list can only be sold after a moratorium period has passed, allowing the community sufficient time to pull together a bid to purchase the asset.
- Local referendums - give local people the right to suggest votes on any local issue that they think is important. Local authorities and other public bodies will be required to take the outcome into account as they make their decisions.
- Council Tax Referendums - new requirements for local authorities to hold referendums in the event that their proposed council tax increase is deemed to be excessive based on regulations from the Secretary of State.



‘Reform to ensure that decisions about housing are taken locally’

- Allow local authorities to reduce waiting list by deciding who qualifies for social housing. For example only keeping those in high/priority need.
- Social housing providers will be able to issue shorter, fixed term tenancies instead of tenancies for life. Tenancies will start being offered for a minimum two year period.
- The government will be investigating a national mobility scheme to help people move around the country.
- Local authorities will be able offer private sector accommodation instead of social housing to meet homelessness duty.



Impact of the Housing Changes

- People with medium/low level housing need may be excluded from the list. There will be a need to increase housing advice and involvement with the private rented sector to meet this unmet need.
- Shorter tenancies mean that there will be greater turn over of property and more opportunities for those who remain on the list to be re-housed. However, where do those who move out go and what will be the impact on local communities of constant change?
- National mobility scheme funding has not been identified so those seeking to move for work and/or education will still struggle.
- The Local Authority will need to continue to work with the private rented sector to ensure the quality of accommodation and management remains at a high level to ensure housing choice.



'Reform to make the planning system clearer, more democratic and more effective'

Plans and Strategies

- In July 2010 the Secretary of State announced Regional Strategies were revoked. The Courts ruled he could only do that by legislation and the Regional Strategy remains part of the development plan. They have now ruled that the Bill announcing the proposed abolition is a material planning consideration. Weight is for decision makers.
- The Bill proposes the abolition of Regional Strategies. This will mean the removal of regional housing targets (Walsall's are already in Core Strategy), but also the 'urban renaissance' strategy in the West Midlands.
- Strategic planning to be based on 'duty to co-operate' with adjoining authorities on development plan documents and planning proposals. How will this ensure cross-boundary and strategic issues can be properly addressed, especially where there is disagreement?
- Local Development Frameworks (the 'Local Plan') to remain.



Neighbourhood Planning

An extra tier in the planning hierarchy comprising

- Neighbourhood Development Orders
- Community Right to Build Orders
- Neighbourhood Development Plans

These are intended to give power to local neighbourhoods at their request to approve Development at a local rather than LPA level.

Details on Neighbourhood Planning – and on Enforcement – are set out in an Appendix.



Community Infrastructure Levy (CIL)

- CIL introduced by previous government and provided Councils with the ability to introduce tariff charges for infrastructure requirements arising out of development.
- This government has retained CIL and is to make amendments to existing regulations. CIL will be the mechanism for wider infrastructure delivery and by 2014 will replace 106s other than for single site obligations and affordable housing.
- A proportion of monies due under CIL may have to go to local neighbourhoods or other authorities or bodies and be under their control to spend on projects in their area and will not on the face of it be under LPA control – we will have to see how this will work.



More 'Reform to make the planning system clearer, more democratic and more effective'

- Requirement on developers to consult communities before submitting very large planning applications
- Nationally significant infrastructure projects to be considered by Ministers instead of the Infrastructure Planning Commission, which is to be abolished.



What will all this Cost the Council?

- Possible direct impacts on funding and on costs.
- Possible procurement costs.
- Possible costs re asset disposals.
- Costs of referenda.
- Costs of dealing with new housing requirements.
- Planning
 - Costs of loss of Regional Strategy and of duty to co-operate
 - Duty to support Neighbourhood Forums (but not financially).
 - Must pay for examinations and referenda. Regulations proposed to allow costs to be recouped.
 - ‘Swings and roundabouts’ re enforcement.
 - Opportunities but also risks re CIL.
- Costs of understanding and managing change



Where to next?

- The Bill is going through Committee stage of House of Commons. Envisaged this stage completed by 10th March. Then onwards to the House of Lords.
- The details are likely to change.
- The Government has indicated it wants the Act come on to the Statute Book by the end of the year and in force in 2012. If this timetable is met then 2012 is going to be a period of potentially significant change for local authorities.
- Need to look at financial and other implications, the need to build capacity in the community, the possibility of referenda and changes to the constitution.
- An authority that is clear about its own strategy is likely to be best-placed to respond.



Any Questions?



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Appendix



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How is Neighbourhood Planning Supposed to Work?

- Neighbourhood groups e.g. a residents association can request LPA to designate them as a Neighbourhood Forum. No duty on Councils to seek out applications for this. The LPA must give reasons for refusing to designate a group.
- Neighbourhood Forum needs to be set up for express purpose of furthering social, economic and environmental well being of individuals living or wanting to live in an area. Must be at least 3 members of the body who live in the area (quite a low threshold) and there must be a written constitution.
- Designations will last for 5 years.
- Can only be 1 neighbourhood forum per area. Cannot overlap.
- Regulations will be issued/guidance given on the designation of neighbourhood area.
- NOTE: Some development such as development requiring Environmental Impact Assessment is excluded from being in Neighbourhood Development Orders.



How does a Neighbourhood Development Order get Approved?

- Neighbourhood Development Order grants permission for specified development or class of development in specified area; may grant conditional or unconditional planning permission.
- Draft Order and application is submitted to the LPA and goes to an independent examiner for assessment. If examiner gives the seal of approval report comes back to the LPA who will need to organise a referendum if it accepts the findings in the report.
- Referendum will be of the electorate in the neighbourhood area the subject of the referendum and a 50% “Yes Vote” will be needed for the Order to go through. The LPA can extend the area if appropriate to other areas.
- Guidance/Regulations will come forward about the framing of the question for the referendum and the conduct of it.
- Very limited grounds for a Council not to go forward to a referendum e.g. that the Order conflicts with Human Rights or a conflict with EU Directives.



Community Right to Build

A scheme brought forward by a community organisation seeking a neighbourhood development order giving it a Community Right to Build a specified site in the specified neighbourhood area.

- A community organisation will be a company established for the social, economic and environmental well being of persons living or wanting to live in a particular area and which meets other conditions in relation to its constitution or establishment as may be prescribed. At the time the proposal for a Community Right to Build is made more than half of the members of the organisation must live in the neighbourhood area.
- Regulations will be made to deal with how such companies may operate.
- Community Right to Build must also go through independent examination and referendum if approved by the LPA.



Neighbourhood Development Plans

- Neighbourhood Forums can also seek to have made Neighbourhood Development Plans. These can set out policies (*“however expressed”*) to govern development in neighbourhoods.
- The same process for making the Plan would apply as in the making of a Neighbourhood Development Order i.e. examination of plans and Referendum needs to take place.



How Does Neighbourhood Planning Fit with the Development Plan?

- The Neighbourhood Development Order, The Community Right to Build, the Neighbourhood Plan must all be in general conformity with the “*strategic policies*” contained in the development plan for the area.
- Not in the Bill but Ministers have indicated that more, but not less, development can be included than is contained in the development plan.



Enforcement

- May decline to determine a retrospective planning application where it would grant permission for development the subject of an enforcement notice.
- No appeal against an Enforcement Notice seeking deemed consent if the Enforcement Notice issued after the making of an application for planning permission but before the end of the appeal period to appeal.
- New power to go to Magistrates' Court where concealed breach of planning control is immune from enforcement. LPA can seek a Planning Enforcement Order – gives LPA 6 months from when evidence of apparent breach of control to go to Court. Then gets 1 year to issue enforcement proceedings. Opens up enforcement action potentially after long period of breach – plenty of room for legal argument in the Magistrates' Court.
- New powers any advertisement enforcement and tree preservation prosecutions.
- There are also new powers about the removal of unauthorised advertisements and defacement of premises.