

December 2010

Localism Bill

A special report from London Communications Agency

Understanding the impact – 10 key questions for London

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So, at last, the Localism Bill is out – some 421 pages when you include the all important Schedules, making it one of the longest pieces of legislation ever put before Parliament. Coupled with last week's local government settlement, it makes for interesting and challenging reading which will have a significant implication nationally, and for London.

Rather than summarise the Bill, we have attempted to raise and address what we consider to be the 10 key questions which will determine its impact in London and have the potential to change the way London operates. We also set out some of the key reactions to the Bill to date.

The second reading for the Localism Bill takes place on Monday 17 January 2011 and it is worth remembering that the powers will only come into force at some point in late 2011 and for the Mayor's powers, probably in May 2012 – after the next Mayoral election.

We will be spending the next few weeks reviewing and considering these issues in more detail before releasing a further note in January. In early 2011, we will also be hosting seminar sessions here at London Communications Agency with Tony Travers, of the London School of Economics, to discuss further the implications of this Bill, the local government settlement and the cull of the Quangos.





Ten Questions on the Localism Bill for London

1. Will the Mayor use his powers to establish Mayoral Development Corporations?

Yes – he will without doubt, as he intends the Olympic Park Legacy Company (OPLC) to morph into the first of these and take forward the legacy development post-2012.

But we could see more, as he is allowed to establish MDCs anywhere he sees fit and for any purpose – a major addition to the GLA's development armoury. Nor do MDC Members have to be drawn from local authorities; any of them can be granted planning powers and have the right to do anything within the law which would further their objectives.

So these powers are significant, even if they appear to run counter to localism. In time we could potentially see a string of MDCs across the capital – which would not go down well with many boroughs. We understand that the Mayor is not yet making any plans for any further MDCs, but we can reasonably expect to see some others established during the next Mayoral term from 2012-2016, even if the power will be used sparingly.

2. Will economic development be better delivered now the LDA is going?

This is harder to answer. The Bill confirms what we knew already, that the LDA will be gone – with its remaining functions to be transferred directly to the GLA, we expect by the end of March 2012.

At the moment however, economic development is unlikely to be better delivered for the simple reason that there appears to be less money devoted to it especially when it comes to hard-to-reach groups and start ups. Only today, for example, has the funding for the newly merged super promotional agency for London – combining Think, Visit and Study London – been confirmed from April 2011.

3. How many new 'Neighbourhoods' could London end up with and what will their impact be?

The introduction of a new distinct local boundary defined as a 'Neighbourhood' is one of the key new elements of the localism agenda. Currently a Ward is the smallest democratic area in London and with 624 of them you could say we already have sufficient local level democracy.

However the Act will allow for the potential for a new, even smaller area of local democracy – a Neighbourhood. These are to be defined by local people themselves, who would then petition their local Council for the zone to be defined, and establish a Neighbourhood Forum as the key co-ordinating group and which would act as the Neighbourhood Planning Authority for certain (albeit limited) types of development. They would also would prepare their own 'Neighbourhood Development Plans'.

In the absence of detail about how all this would actually work, it is hard to understand the impact of state-sanctioned Neighbourhoods will have, but it will certainly have implications for the way a borough communicates at micro level and how Councillors interact with their electorate.



While neighbourhood planning could be a force for good, enabling local people to fast track a proposal through the planning process if it is well supported and a useful vehicle for developers to work with in order to gauge the feelings of local communities. However this may also be used by organised NIMBYs to oppose development.

It is also worth noting that we are likely to see the more organised, possibly more affluent, areas be the first to take advantage of these new powers.

4. How will the new list of Assets of Community Value effect development in London?

Once enacted, every borough will have to prepare an annual 'List of Assets of Community Value', which the community themselves will then have priority in taking over.

This could of course be used by groups seeking to stifle development, for example if a key building or open space within a development area were added to the register. We may well see local people campaigning for certain spaces and places to be on the register as a way of suppressing value and development potential, which could mean it will become harder to buy, sell and plan for development if a site is on the register? It may also make large scale land assembly more difficult as large sites in London tend to have some 'community asset' within it which may need to be re-provided in a different form to facilitate regeneration. This one looks set for some key local battles ahead.

If this Bill had been enacted in 2001 for example, we would have put money on the King's Cross Railways Lands Group setting up a Neighbourhood Forum, then preparing a Neighbourhood Development Plan, holding a referendum on the future of the site and seeking to get the site on the borough's list of community assets. Then they would have been able to draw up their own plan for the area and try to get a Neighbourhood Development Order for the scheme they wanted.

5. How often will local referenda be used in London, and to what effect?

This is a big change to local democracy. Subject to certain provisions, these proposed referenda would be automatically triggered by a petition to a local authority signed by just 5% of a population within a designated area. These areas must be based on existing boundaries – which in London for example would mean a ward or group of wards.

5% is a very low threshold indeed. Using the latest population figures by borough, the average ward population in London is 12,300. So 5% of this is 615 people. Of course some boroughs vary significantly – the threshold average is 470 people in Kensington & Chelsea, but 815 in Barnet.

Either way it would be fairly easy to gather this number of signatories, especially if done so electronically, which the Bill makes provision for.

So we could see a raft of local referenda in London, probably heavily organised by political parties. In some cases this could throw up significant challenges for boroughs, especially where a ward is dominated by, for example, a large number of people from one social, religious or political background. Could we see referenda to ban, for example, drinking in an area?



It will be just as interesting then to see what Councils do with the result. The outcomes of referenda are not in fact binding on Councils – they merely need to ‘have regard to them’ in decision-making.

6. Who are the likely winners and losers in London?

Well the Mayor appears to have done quite well. He will have his broad powers around MDCs, which are a useful stick. He will also have fewer strategies to prepare – the group of six environmental strategies will become one.

He gets the Homes and Communities Agency’s functions in London, as expected, and the LDA functions become a part of his GLA. However, he will have less money for both housing and local economic functions, and he has already announced his intention to freeze the GLA precept again in 2011.

There is also nothing in the Bill about delegating to him the Royal Parks or about the abolition of the Metropolitan Police Authority – proposals that were set out soon after the General Election in May. The former, we understand, is stuck due to rows over park funding.

At a neighbourhood level, active residents are likely to be winners, particularly if they are already well organised and well resourced. They may soon be able to declare that their neighbourhood Groups are “statutory”. They may therefore demand more from the boroughs – in terms of resources, recognition and attention – and seek to challenge more and more decisions by the boroughs, ultimately going as far as the High Court. Will this therefore affect the way judicial reviews are carried out?

The big squeeze in all this appears to be on the boroughs. Whilst they will be able to use TIFs (see below), at a time when their central government grant is cut and when their ability to raise council taxes is constrained, they face the prospect of MDCs if they don’t perform and local groups demanding more of everything. At least they have been granted the power of competence at last and don’t have to set up Standards Committees!

For developers it is a mixed bag. There is no presumption in favour of sustainable development in the Bill, although it is referenced in CLG’s 2011-15 business plan. At the same time there is no third party right of appeal included either. However it is a fact that most developers are undoubtedly wary of the impact of localism.

7. How will councillors interpret the amended regulations on pre-determination?

Local Councillors – and indeed the Mayor – will as a result of this Bill have much more freedom to express opinions on local or other issues on which they subsequently may need to make a decision. The important difference is that under this Bill they will now be able to do this without prejudging any future decision or challenge.

The biggest impact will be on planning. On the one hand this should lead to greater clarity in the process and certainly clear up a grey area where developers today are often uncertain about how to engage planning committee members and local ward councillors.



Developers may actually welcome this as it will enable them to understand the positions of key councillors early in the process and adapt their consultation and plans as necessary.

On the other hand it opens up the possibility of a member of the planning committee actively and vehemently campaigning against a local development – for example during consultation and before the design is finalised – and then voting on that same scheme at committee. The current rules prevent this situation arising as committee members are, in theory, supposed to remain completely impartial in advance of voting on a proposed development.

8. Will Tax Increment Finance schemes become widely used to fund infrastructure development – and where might we see this in London?

The Bill introduces TIFs for the first time – allowing local authorities to issue a bond to fund up front investment, on the back of future tax revenues generated as a result of that investment.

The one example of this in London which is being pushed forward is to fund the Northern Line extension to Battersea Power Station with an additional stop at Nine Elms. However, at £500-700m, it would be the largest such TIF yet attempted anywhere in the world – so quite an ambitious first use.

Of more interest perhaps would be smaller scale, town centre improvements or transport infrastructure and so we might perhaps expect one or two of these getting the ball rolling in parts of London in 2012-13. Potentially this could help Councils bring forward major plans without an over-dependence on Central Government funding – although the Secretary of State would need to approve each use.

9. Will the legal requirement to consult change the behaviour of developers?

The requirement for pre-application consultation has been getting stronger over the years, but the Bill now makes it a legal requirement for major schemes. In London all major developers already do this as a matter of course, although some are better and more co-ordinated at it than others.

The real impact of this will probably be a legal duty to set out the impact of pre-application consultation on a submitted scheme. Here the phrase “have regard for responses” will be tested – perhaps even in Court.

What we may see therefore, especially on contentious sites, is more collaboration between the developer and public on design early on in the process, although this has its own risks.

10. Will local authorities get any extra income?

Well the answer is both yes and no, and not all in one go, and not all easily. The Bill does not quite impose a limit on council tax rises, though of course there will be a freeze subsidised by a one-off grant across virtually all authorities in 2011.



There is also the mechanism to trigger a borough-wide referendum on Council Tax levels from 2012 onwards if they go above a certain level, so there is a heavy disincentive for rises above 2 to 3 per cent.

Given this, together with the impact of the budget cuts, local authorities will have some of the toughest political decisions to make for decades. The boroughs can expect further details to come out on both the New Homes Bonus (which starts in 2011-12) and the ability to retain business rates on new commercial development.

Under the new Bill's proposals, councils will keep 100% of any new local tax generated for a six-year period and they can also get some additional income through the planning process, with the Community Infrastructure Levy also coming into force.

Section Two: Reaction

Here are some choice quotes from a wide range of relevant private, public and third sector organisations in reaction to the Localism Bill, giving some insight into the kinds of issues which will be strongly debated as it goes forward through its various stages in the Houses of Parliament.

A. Headline Reaction

Mayor Jules Pipe, Chair of London Councils:

"London's local government has a history of demonstrating its ambition and capacity for taking on new powers to help improve the quality of life for residents.

"While continuing to argue for that devolution to go further, we will take these proposals forward positively with the Mayor and our own local communities to ensure we secure the best possible outcome for Londoners."

Liz Peace, British Property Federation Chief Executive:

"We support the broad objectives of the Localism Bill. As one of the most centralised countries in Europe a good dose of localism is needed to redress the balance. But the government has to perform a delicate balancing act between promoting greater community engagement and unleashing nimbyist tendencies that could hold back economic growth."

"It is essential that neighbourhood plans do not simply add another level of bureaucracy. The neighbourhood plan pilot schemes planned by Government whilst the Bill is going through will be crucial in finding solutions to these issues."

Kate Henderson, Town and Country Planning Association Chief Executive:

"Collaborative neighbourhood planning, so that more people can be involved in the process of shaping the places in which they live and work, is an opportunity to be grasped. However the TCPA recognises that implementing such an ideal to be a meaningful choice will require communities to have intellectual as well as financial support."



"The 'duty to cooperate' set out in the Localism Bill to encourage and enable local authorities and public bodies to come together on issues that cross local government boundaries, offers the potential for a strategic planning framework in large areas where collaborative strategies are needed. However, co-operation once embarked upon will need to be monitored and mechanisms for mediation between partners will also have to be made available if necessary."

David Orr, National Housing Federation Chief Executive:

"The Government's announcement today that the threshold for approving community right to build schemes will be reduced to a simple majority of 51% is a great victory for common sense.

"We believe very few, if any, schemes, would have been approved under the previous threshold of 75%. Winning a simple majority of votes will give community organisations and housing associations a greater chance of getting affordable homes built for local people.

"The Government must now ensure that new neighbourhood and local plans set out how each community will accept its fair share of new homes, including specific numbers of homes and land suitable for development. In the meantime, the Government should immediately introduce the proposed presumption in favour of sustainable development to ensure much-needed new homes are delivered."

Dr Adam Marshall, British Chambers of Commerce Director of Policy and External Affairs:

"Everyone agrees that the planning system must be made simpler and faster for businesses seeking to develop new sites or expand existing premises, wherever they are in the country. New incentives to encourage councils to promote business growth are a step in the right direction. Yet some of the proposals in the Bill could have unintended consequences – with local businesses' growth plans shackled or stifled at the hands of an agitated few.

"Businesses have deep concerns about the planning proposals in the Localism Bill. They also face a period of uncertainty as new rules are implemented. This could stop both small and large-scale investments during 2011, which should be a year for growth.

"We will work constructively with the Government to try to address these concerns – but will also campaign to ensure that NIMBYism does not stifle the private-sector growth that is needed to create jobs and prosperity in all our communities.

"Companies tell us that they remain opposed to returning full control over business rates to local councils. As the Government gears up to review the business rates system early next year, we will oppose any move to give councils greater rate-raising powers without the full consent of the local business community. A year for growth would be stifled if businesses were forced to shoulder unfair and undemocratic tax rises to offset cuts in local council spending."



Stephen Robertson, British Retail Consortium Director General:

"Compulsory business ballots are a major victory for the BRC on behalf of vulnerable retailers big and small. It would be fundamentally undemocratic to put extra taxes on local businesses without establishing their views first and assessing the potential impact on jobs."

Sir Christopher Kelly, Committee on Standards in Public Life Chairman:

"The proposals go well beyond the abolition of Standards for England. They involve the abolition of the national code of conduct for local authority members and remove the obligation on local authorities to maintain standards committees, chaired by independent people, to monitor standards and sanction aberrant behaviour. In future it appears that the only way of sanctioning poor behaviour between elections will be the criminal law or appeals to the ombudsman where someone's interests are directly affected by a decision."

Fiona Howie, Campaign to Protect Rural England Head of Planning:

"Getting communities more involved in shaping the future of where they live and work is vital. Many rural communities have been doing some form of neighbourhood planning for many years. We are pleased that provisions in the Bill should mean that their efforts will be given more weight. It is encouraging too that the Bill contains stronger powers to tackle intrusive outdoor advertising. "

"People care deeply about where they live and, in the past, many have questioned the practicality and desirability of very high levels of development being forced on them. Rather than branding them NIMBYs, local councils and developers should engage with these concerns. We hope the new system will ensure that we get better decisions about the quality of development and when and where it should take place."

Michael Gallimore Head of Planning at Hogan Lovells:

"There will be significant relief that some proposals trailed in Open Source Planning are not in the bill – third party rights of appeal, curtailment of appellants' right to appeal and payments to local objectors to remove opposition to development proposals. The Government has seen sense on all of these issues. The requirement for pre-application consultation for significant developments could be far-reaching in practice. It opens up potential for developers to have to collaborate with third parties on the design of a proposed development and to show that their views have been taken into account. The requirement could potentially go far beyond consultation."

Simon Ricketts, SJ Berwin Planning Partner:

"A referendum on local issues can be called by at least five per cent of the local electorate and the local authority must consider what actions to take in response. One can imagine how this will be sought to be used by objectors in relation to particularly contentious planning issues. There is no definition yet of what types of assets might be considered to fall within this category. Any constraint in relation to land owned by the private sector would be extremely contentious."



B. Enforcement Measures

Daniel Farrand, Mishcon de Reya Head of Planning:

"The ability to decline to determine applications while an enforcement notice is in force will be seen by many as a sensible move but may have unforeseen consequences for redevelopment of sites subject to historic enforcement notices which still have teeth. Far more worrying is the new planning enforcement order allowing magistrates to permit enforcement where the council has only recently discovered a breach.

"The test on concealment is drafted far too widely. The magistrates' requirement to consider justice in all the circumstances before granting an order in no way gives sufficient certainty to advise buyers where there is a historic breach of planning control or where compliance with planning cannot be fully established."

C. Consultation Commitment

Karen Cooksley, Field Fisher Waterhouse Partner and Head of Planning and Regeneration:

"It is most unfortunate that such a flagship piece of legislation which has been so long and anxiously awaited has not been presented in a comprehensive manner. Developers, local authorities and the public will have to work out on a piecemeal basis how the new system is intended to operate and affects their interests.

"The enhanced statutory liabilities to consult the public will impose a much stricter obligation on developers, who will need to alter the manner in which they engage. If the new requirements become law and developers do not consult properly they will imperil their chances of securing planning permissions and risk judicial challenge. We could be looking at litigation to rival the cases brought in relation to environmental impact assessment."

Chris Bowes, DLA piper Planning Partner:

"The coalition government says that this is not a nimby charter, but it is clear that developers will have to invest even greater resources in community consultation to persuade residents of the merits of their proposals. It is not clear how less well represented communities will not become the target of bad neighbour uses and how they will be protected through the new system."

D. Neighbourhood Planning

Claire Dutch, Hogan Lovells Partner:

"The bill is somewhat vague on what constitutes a neighbourhood. It could be a few streets or larger than a parish council area. The neighbourhood forum which puts forward a proposal needs only three local residents and the local authority must make a development order if only half of the votes under a referendum are in favour of the development. This is a pretty low threshold and reaffirms the government's commitment to putting power in the hands of the people."



Brian Greenwood, Osborne Clarke Head of Planning:

"Although one has to admire Government's dogged determination to leave its stamp on the planning system seemingly regardless of the consequences, this may be an interference too far. The Bill runs the serious risk of taking one step forward for the so-called good of the community and two steps back at the cost of genuine development need.

"Neighbourhood plans will bring to an abrupt halt the already stuttering housing building industry. Changes to the local plan system will merely encourage challenge and dissension and the community right to build will set councils and communities against one another. This is precisely the sort of legislation the economy did not need."

Stewart Baseley, Home Builders Federation Executive Chairman:

"The localism proposals provide a real chance for people to develop their communities for the better and house builders will work with them to build the homes communities and families want. More homes will mean more money for local facilities and services and will enable young people to live in the communities where they grew up.

"The government and councils need to join us in educating communities of the severity of the housing crisis and the benefits of new homes."

Anna Watson, Friends of the Earth Planning Campaigner:

"If localism is to thrive more must be done to allow people to participate fairly in the planning process – these government plans could create a postcode lottery, two-tier planning system, where cash-strapped communities struggle to make their voices heard.

"And these proposed planning reforms are far too flimsy to ensure the UK builds the strong, low-carbon and wildlife-rich future that the government has promised. If ministers are serious about being the greenest government ever they must ensure councils favour developments that help slash UK emissions and create new green jobs – and strongly encourage them to reject schemes that damage our environment."

Hank Dittmar, Prince's Foundation for the Built Environment Chief Executive:

"We are thoroughly supportive of the principles of community engagement and localism in planning and development, giving local people control over the decisions that affect their communities. The Prince's Foundation has long been an exponent of localism and community involvement through our enquiry by design methodology.

"And whilst the new plans will undoubtedly be a challenge for the communities, developers and local authorities used to an adversarial system, it is a challenge we look forward to helping them meet."



Ruth Reed, Royal Institute of British Architects President:

"The Localism Bill will spark a profound shift in the way England is governed and presents real challenges for all those involved in designing and planning new development. Localism could be a powerful means of engaging local communities more positively in the development process, but this will be uncharted territory and it will require a real commitment from councils and professions, including architects, to make it work across the country."

"To genuinely empower local people and give real teeth to localism, it will be essential that local communities are provided with the tools and support that are necessary to deliver. While we see architects playing a key role in the neighbourhood planning process and would urge our members to get involved, the onus will be on local government to ensure that the new system is properly resourced and that communities have access to the right expertise. Given the local government budget cuts announced yesterday, we are very concerned that this might not happen."

Simon Prescott, Barton Willmore Partner:

"The pressure will be on local authorities, who will need to think imaginatively about how they can resource the proposed changes in a time of unprecedented cuts to council funding. Planning departments must focus on the delivery of much needed new development to ensure funding from the New Homes Bonus can help fill the funding gap."

"In many instances, councils will be looking to developers to undertake the technical and masterplanning work to demonstrate the benefits of new development to their communities."

"The effectiveness of a new system often depends on the detailed drafting of secondary legislation. It is going to be critically important that the duty to prepare local plans on the basis of a sound evidence base is retained and the presumption in favour of sustainable development is given real teeth."

Peter Weatherhead, DTZ Director of Development Consulting:

"Communities still need development and, importantly, they need the right type of development, which delivers key housing, employment and services. The government's drive to empower neighbourhoods relies on dynamic, well intentioned members of the local community who are sufficiently skilled to develop neighbourhood plans and determine applications in the context of an existing local planning framework."

"However, there are serious doubts over whether local communities will possess the skills required to produce a neighbourhood plan capable of delivering the necessary development."

Rob Lucas, Turley Associates Chief Executive:

"The bill is high on principle with neighbourhoods creating their own plans and granting development consents. It is unsurprisingly low on the detail of how this is to be achieved practically and fairly. The stated intention of this planning reform is to achieve more not less development. Whether it will or not may well



turn on the willingness of communities and developers to open their minds to new ways of working; and the attractiveness of the financial incentives soon to be on offer.

"The way in which development is to be promoted in the future will undoubtedly change. In some areas partnerships between neighbourhood, a development provider and local authority may hit the mark and work for the benefit of all. This cannot, however, be relied upon as communities are much more used to saying no and we will need to backstop mechanisms if the country is to be housed and economic development delivered alongside essential infrastructure."

END

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