The Localism Act

From Bill to Act: changes in the Localism landscape

The Localism Bill has today (15 November) gained Royal Assent and become the Localism Act. We thought it might be helpful to summarise the key planning aspects, and highlight the changes that have taken place throughout the parliamentary process.

We've come a long way since the 206 clause Localism Bill was published just over a year ago, and the future of planning looks quite different. The Localism Bill and the creation of the National Planning Policy Framework heralded a new era, but it soon became clear that the finer details needed a little more work.

All of the provisions discussed below come into force immediately unless otherwise marked.

Local referenda

The original wording of the bill contained plans for an obligation to be placed on local authorities to hold a referendum on local issues where there is strong demand through a local petition.

Throughout the parliamentary process, concerns and anxieties were raised over these provisions, particularly about the potential expense involved. The BPF also voiced strong concerns about the implications of holding referenda on planning issues. The upshot of all this pressure was that the Government .gave way and dropped the proposals for local referenda from the Bill.

Although the general power to trigger a referendum has been scrapped, the requirement to hold referenda on some particular subjects covered in the rest of the bill (such as those related to neighbourhood planning) still stand.

Assets of community value (Part 5, Chapter 3)

Section 87 - 99

The Bill sets out provisions for designating 'assets of community value' - assets which are seen as of particular importance to local communities. As first published in the Bill these provisions were pretty vague, but there has since been consultation on the detail and there is now greater clarity, at least on some aspects..

The Act requires local authority to maintain a list of land assets nominated by the community that are considered to be of community value. The actual current use of the building/land must further the social wellbeing or social interests of the local community, and it must be realistic to think that this can continue (albeit in another form). In addition, there will also be a list maintained of assets that have been nominated by the community, but refused by the local authority. Once an asset is placed on the list, the owner cannot dispose of it unless they have notified the local authority in writing and complied with specific time restrictions. Depending on the further detail, this could cause unwanted delays and confusion. Those

able to register assets of community value will be limited to voluntary or community bodies with a local connection.

Through discussions with CLG and our detailed consultation response, we have secured various exemptions. These include the exemption from listing of assets that form part of a larger estate which is to be disposed of as a going concern.

The full moratorium period of delay before the disposal of a listed asset can take place will be six months, if a community group shows interest. If no community group registers an interest then the disposal will only be delayed by just six weeks. The post-disposal protection period - in which if there were to be another disposal there would be no need for such a moratorium period - is to be 18 months.

Abolition of regional strategies (Part 6, Chapter 1)

Section 109

The regional strategies are abolished under this clause.

Duty to co-operate in relation to planning of sustainable development (Part 6, chapter 1)

Section 110

This creates a legal duty for local authorities and statutory bodies to co-operate in the planning of sustainable development, both through the creation of plans and other strategic planning activities. This is one of the ways in which some degree of strategic planning may be maintained.

The provisions in the Act relating to the duty to co-operate have been strengthened in comparison to their original incarnation. The bodies bound by the duty to co-operate are set out in regulations (also consulted upon this year), and are will include Local Authorities, Local Enterprise Partnerships and English Heritage (amongst others). The scope of the activities subject to the duty to co-operate has been broadened too, to include any activity that is in support of plan making or infrastructure planning.

Adoption and withdrawal of Development Plan Documents (Part 6, Chapter 1)

Section 112

In an amendment to the Planning and Compulsory Purchase Act 2004, the requirement for local authorities to have to amend their plans as a result of inspectors' objections has been relaxed. The Planning Inspectorate can, therefore, no longer rewrite Local Plans. If a plan is judged to be 'sound', it must be adopted. However, local authorities can still invite inspectors to suggest changes to their plans if they so wish.

These provisions will come into force two months after the date of Royal Assent.

Community Infrastructure Levy (CIL) (Part 6, Chapter 2)

Section 114

Local authorities are to have greater control over setting their charging schedules, but they will still be examined independently for unreasonableness.

This provision comes into effect the day after the Bill is passed.

Section 115

The provisions concerning CIL have been amended significantly during the parliamentary process.

The Act introduces provisions to allow Ministers to lay regulations which place a duty on charging authorities (local authorities) to pass a "meaningful proportion" of the funds raised to neighbourhoods where development has taken place. This is intended to act as a positive incentive to local communities to accept sustainable development. This slice of the total levy will be passed to a local council (parish) or held by the local authority if there is no lower body for it to be passed to.

A current consultation invites views on what the "meaningful proportion" should be. It may even be left for each individual local authority to decide. Neighbourhoods will be allowed to spend this money on anything they please, as long as it serves to meet future the needs of future development.

These provisions will come into force two months after the date of Royal Assent.

Neighbourhood planning (Part 6, Chapter 3)

Section 116 - 121 and Schedule 9 - 12

The Localism Act introduces provisions for neighbourhood planning. These would enable the creation of neighbourhood forums which, subject to authorisation by the local authority, could prepare a plan for their neighbourhood. Such plans would have to be in conformity with the local plan but, once adopted (which would involve a local referendum) would become the principal plan for the neighbourhood. In parished areas the power to prepare a neighbourhood plan would rest with the parish or town council.

The neighbourhood planning provisions as originally set out in the Bill have changed greatly over the last year.

As originally drafted, the Bill treated all neighbourhoods as though they were largely residential in character. Working closely with Government and the British Chambers of Commerce, we helped to shape new provisions in the Bill that would allow greater business involvement in neighbourhood planning in all areas, but would give business a special role in neighbourhoods that were largely commercial in character. Amendments introduced to the Bill now allow businesses to play a leading role in the setting up of neighbourhood forums and the development of neighbourhood plans. In designating a neighbourhood a local authority will have to decide whether it should be specifically designated as a 'business neighbourhood'.

We're delighted that our hard work paid off, and that the Act now allows businesses to work with residents to create plans for their area.

Many had commented that the provisions in the Bill as published last year effectively allowed three men in a pub to draw up a plan for an area that none of them live in. Through the Parliamentary process, this has been strengthened, and now, in order to be considered a neighbourhood forum, the group must:

- be established for the express purpose of promoting or improving the social, economic and environmental wellbeing of an area that consists of or includes the neighbourhood area concerned (whether or not it is also established for the express purpose of promoting the carrying on of trades, professions or other businesses in such an area),

- ensure that its membership is open to individuals who live in the neighbourhood area concerned, individuals who work there (whether for businesses carried on there or otherwise), and individuals who are elected members of a county council, district council or London borough council any of whose area falls within the neighbourhood area concerned,

- contain a minimum of 21 individuals each of whom lives in the neighbourhood area concerned, works there (whether for a business carried on there or otherwise), or is an elected member of a county council, district council or London borough council any of whose area falls within the neighbourhood area concerned,

- have a written constitution.

The provisions, as amended, now give business ratepayers a vote in the referendums that will be held to approve neighbourhood plans in business neighbourhoods. Within business neighbourhoods separate referendums will be held for residents and businesses. If both referendums approve the plan, it will be automatically adopted. If both oppose it, the plan would not be adopted. If there is a split vote, the local authority would seek to resolve differences.

The Act also introduces the concept of neighbourhood development orders which will allow local communities to permit the development they want to see – in full or in outline – without the need for planning permission. To take effect such orders need to be approved by over half of those voting in a referendum. Various types of development that are excluded from neighbourhood development orders, including county matters, waste infrastructure, nationally significant infrastructure matters, prescribed development or development in a prescribed area.

Pre-application consultation (Part 6, Chapter 4)

Section 122

This stipulates that for certain types of development an applicant for planning permission must publicise the application in such a manner as to reasonably bring it to the attention of the majority of persons who live in, or otherwise occupy the vicinity of the land. The applicant has to have regard to any responses to this consultation.

The description of which developments the requirement will apply to will be set in secondary legislation. Earlier in the year, CLG suggested in a consultation that applications for residential development which could provide 200 or more new residential units, or (where the number of residential units to be constructed is not specified) with a site area of 4 hectares or more; and other developments which would provide 10,000 square metres or more of new floorspace, or with a site area of two hectares or more would be required to go through more rigorous pre-application consultation processes.

In our response to the consultation, we stressed the need for any additional requirements should be proportionate, and we await the secondary legislation giving further details.

Abolition of the Infrastructure Planning Commission (IPC) (Part 6, Chapter 6)

Section 128

This clause abolishes the IPC and vests power in the Secretary of State instead.

Local Finance Considerations (Part 6, Chapter 7)

Section 142

The oft discussed clause serves to clarify the Government's position on local finance considerations. It seeks to spell out more clearly the current law, which is that where local financial considerations are material to a planning application they should be taken into account in the determination of that planning application.

This provision will come into force two months after the date of Royal Assent.

For more information, please contact Ghislaine Trehearne (gtrehearne@bpf.org.uk).