

Subject:	Localism Act – Planning Implications		
Date of Meeting:	2 February 2012		
Report of:	Strategic Director, Place		
Contact Officer:	Name:	Helen Gregory	Tel: 29-2293
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Key Decision:	No		
Ward(s) affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 The Localism Bill was introduced to Parliament on 13 December 2010, and was given Royal Assent on 15 November 2011. Different parts of the Act will come into effect at different times. In many cases, the Government will need to set out further details. The government has indicated that the Planning reforms including the changes to planning enforcement rules will come into effect April 2012.
- 1.2 This report updates the Cabinet Member for Planning, Employment, Economy & Regeneration on how planning aspects of the Localism Act are beginning to be implemented and the relationship of the draft National Planning Policy Framework to the Localism Act. A regular update has been presented on the Localism Bill at previous PEER CMM meetings.

2. RECOMMENDATIONS:

- 2.1 That the Cabinet Member for Planning, Employment, Economy & Regeneration notes the update in relation to the planning aspects of the Localism Act, how aspects of the Act are being implemented and areas of particular interest for future reports.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 Much of the planning provisions in the Localism Act require secondary legislation and guidance. The Budget Reforms published in March 2011 set out further reforms to the planning system outside those set out in the Act. The government whilst still maintaining its commitment to local communities having a greater say in planning, expects:
- All bodies involved in planning to prioritise growth and jobs.
 - The default answer to development to be 'yes' – through new presumption in favour of sustainable development.
- 3.2 Over the last six months a considerable number of consultation documents have been published by the government which provide further detail on planning aspects of the Localism Act. The government also published the draft National

Planning Policy Framework (NPPF) which seeks to consolidate and streamline existing government planning policy statements.

- 3.3 The government received 14,000 replies to the consultation on the draft NPPF. There were three main areas of concern over the draft NPPF:
- the need to redefine sustainable development;
 - the need to clarify the government's stance on the established "brownfield first" principle; and
 - the need to put in place transitional arrangements for councils to adapt to the reforms.

The Government is committed to the publication of a final version of the NPPF framework by 31 March 2012, but intends to do so well ahead of that time. The government has indicated that it will put in place transitional arrangements to cover the period between the NPPF coming into force and new local plans being adopted. It is understood that a 'fast-track' process for local authorities to prove that their local plans are in line with the provisions in the NPPF is being considered. For Brighton & Hove these transitional arrangements will need to clarify whether the fast track process would apply to the 2005 adopted Local Plan or if the Council publishes a draft of its new City Plan in March 2012, in conformity with the final NPPF, whether this document could be given significant weight in assessing planning proposals even though it has not as a whole been tested for soundness.

- 3.4 Consultation has also taken place on allowing certain land use class changes to be exempt from the need for planning permission (such as the conversion of commercial premises to residential) as well as changes to the Use Class Order. Reports setting out the council's response to these consultations were taken to the 7 July and 15 September PEER CMM. There are concerns that some of the potential changes proposed could undermine a local authority's ability to plan positively for economic growth, jobs, housing and better social equality. The Employment Policy Option Paper for the City Plan which was recently out for consultation has looked at the potential impact these changes could have on employment land and the proposed approach to identify Central Brighton as the city's prime office area would enable the council to put back controls on changes of use through the use of other planning tools such as an Article 4 Direction if necessary. The government is still considering the responses to the consultations but there is a suggestion that any proposals are now likely to come forward through the NPPF, rather than secondary legislation, and be less ambitious.
- 3.5 These reforms place a greater emphasis on the need for an up to date Plan to be in place to guide development decisions. They highlight a potential tension likely to arise between local people having their say in how their area should change and develop and the need to accord with the government's pro-growth agenda.

Plans and Strategies

- 3.6 **The system of Regional Strategies is to be abolished.** With regard to the revocation of the South East Plan, a 12-week consultation on the eight strategic environmental assessments into the decision to revoke the eight regional

strategies must be completed before orders can be laid in Parliament to revoke the plan. Brighton & Hove City Council is now required to set local housing targets within the City Plan. A new local housing target will still need to be 'evidence based' and meet the requirements of the draft NPPF. This requires local authorities to meet their development needs in full. Various key parts of evidence have been commissioned and completed to inform the Housing Targets and Housing Delivery Policy Option Paper which was recently out for consultation. This includes the 2010 Strategic Housing Land Availability Assessment update and the 2011 Housing Requirements Study.

3.7 A new duty to co-operate between councils and other key partners in relation to the planning of sustainable development is introduced. This duty requires constructive engagement by prescribed bodies, or individuals, in the preparation of development plan and other local development documents and in relation to other activities that support the planning of development. This duty extends to bodies beyond local authorities and will be subject to government guidance. The draft National Planning Policy Framework has provided some further clarity on the form this could take. An initial meeting with neighbouring planning authorities has occurred to discuss the implications of the duty to cooperate. However it is considered that there will need to be a more formalised and strategic arrangement to ensure that potentially difficult issues such as unmet housing needs can be discussed and resolved. This may be resolved by publishing joint Local Strategy Statements covering jointly agreed approaches by a number of adjoining authorities.

3.8 The binding nature of Inspector's Reports on development plan documents is removed. The proposed changes allow greater flexibility for councils to react to statutory examination of their development plans such as being able to suggest changes during the examination and withdraw development plan documents before their adoption, without seeking clearance from central Government. However a plan document is still required to meet the prescribed test of soundness in order to be adopted.

3.9 There are some minor changes in the role of the Secretary of State in directing changes to local development schemes (the work programming document for the Local Development Framework) and removal of the need to submit the Annual Monitoring Report to the Secretary of State. These provisions will come into effect 15 January 2011 so the council's Annual Monitoring Report for financial year 2010/11 will need to be sent to the Secretary of State by 31 December 2011.

Neighbourhood planning

3.10 The Act incorporates a system of planning policy and development orders at "neighbourhood area" level. Amendments to the Bill have increased the minimum membership of forums from 3 to 21 members and allow business-led neighbourhood forums to be set up. Further amendments ensure that both resident and business-led neighbourhood fora will have the same powers and same overall purposes. The amendment stated that a neighbourhood forum can be set up on the condition that it is for "the express purpose of promoting or improving the social, economic and environmental well-being of an area ...

whether or not it is also established for the express purpose of promoting the carrying on of trades, professions or other businesses".

- 3.11 A Neighbourhood Development Plan can set proposals for the development and use of land within the designated neighbourhood area but it does not give planning permission. The Act does not prescribe the content of the Neighbourhood Development Plan but it must be compatible with national planning policy and guidance, the adopted local development plan and EU directives (eg Habitats Directives) and the European Convention on Human Rights obligations. A Neighbourhood Development Plan can promote more but not less development than the adopted local development plan
- 3.12 The Council, as a pilot project, has been providing advice and guidance to Rottingdean Parish Council regarding its intention to prepare a neighbourhood plan. Experience so far indicates that whilst there is the desire for neighbourhoods to collectively set out their aspirations for their area they require significant technical support and guidance to produce a robust planning document.
- 3.13 The government has recently published 'Neighbourhood planning regulations: Consultation' which seeks to add more clarity to the process of preparing neighbourhood plans and a report setting out the council's proposed response is on the agenda of this PEER CMM. There are concerns with the lack of government resources being made available for neighbourhood forums to undertake the necessary work to prepare their plan; the cost for local authorities to undertake its duties in relation to forum designation, the draft neighbourhood plan (providing expertise and advice to neighbourhood planning groups); and organising examination and referenda to test support for the neighbourhood plan. However, the government has recently indicated that it is considering providing direct funding for communities to undertake neighbourhood planning.
- 3.14 The Local Development Team has also been involved in discussions with the Communities Team regarding the role neighbourhood planning and fora will play with regard to the issues of Neighbourhood Councils in the local context.

Community right to build

- 3.15 **As part of neighbourhood planning, the Act gives groups of local people the power to deliver the development that their local community want.** A community organisation, formed by members of the local community, will be able to bring forward development proposals which, providing they meet minimum criteria and can demonstrate local support through a referendum, will be able to go ahead without requiring a separate traditional planning application. The Government has indicated it will also fund sources of help and advice for communities who want to bring forward development under the community right to build.

Community Infrastructure Levy (CIL)

- 3.16 **The Act provides greater flexibility for local authorities to adopt the Community Infrastructure Levy (CIL).** At the 3 November 2011 meeting the Cabinet Member for Planning, Employment, Economy & Regeneration approved the production of a Community infrastructure Levy charging schedule for Brighton

& Hove and that this be brought forward for consultation alongside the production of the City Plan with a view to adopting the charging schedule as council policy. The Government considers there is still a legitimate role for development specific Section 106 agreements either to enable a local planning authority to be confident that the specific consequences of development can be mitigated or where small scale infrastructure requirements have arisen after the CIL charging schedule was adopted.

- 3.17 Recently published government consultation (Community Infrastructure Levy: Detailed proposals and draft regulations for reform - Consultation) has provided further clarification on CIL and how it can be spent such as a proportion can be spent by authorities (on behalf of neighbourhoods) on infrastructure and/ or anything else to address demands that development places on their area. The consultation is also seeking views on implementing 'Neighbourhood Funds' and allowing CIL to be used for affordable housing. A report setting out the council's proposed response is due to be considered by this PEER CMM.
- 3.18 However there are concerns that if a 'meaningful proportion' of CIL revenues are to be directed locally that this will reduce funds available for 'strategic infrastructure'. In Brighton & Hove, the general need for affordable housing is such that it could in reality absorb all CIL receipts and therefore seriously reduce options to deliver other provision such as sports, recreation and other local community needs.

Other provisions in the Act

- 3.19 **Pre-application consultation** - the Act introduces a duty on developers to consult on development proposals with specified people before they make a planning application. This formalises a requirement that the council has been seeking with major planning applications and is welcomed, particularly the need for applicants to be clear with their supporting documentation how the results of the consultation have been taken into account. The description of which developments the requirement will apply to will be set in secondary legislation although the government was indicating in a consultation document in February 2011 a potential threshold of 200 residential units or site areas of 4 ha or more or other developments which would provide 10,000 square metres or more of new floorspace, or with a site area of two hectares or more.
- 3.20 **Enforcement** – the Act strengthens enforcement powers through creating a "**planning enforcement order**" (PEO), new rights for local authorities to decline to determine retrospective applications when a corresponding enforcement notice appeal is outstanding and increased penalties for non-compliance with Breach of Condition Notice and an extension of time limit for prosecuting advertisement and certain tree offences as well as increasing powers for the removal of illegal advertisements and graffiti and prevention of fly-posting. However serious concerns were raised in the council's response to the draft NPPF to the absence in the draft document of any explicit reference to enforcement as an important part of implementing the plan and decisions and maintaining the quality of the environment.
- 3.21 **Local Finance Considerations**- The Act allows financial considerations, such as the New Homes Bonus and the Community Infrastructure Levy, as

considerations which may be taken into account in relation to planning applications but only where they are material to the particular application being considered. This was considered a controversial amendment to the Localism Bill and raised concerns that this would lead to questions around the probity of decision making. A subsequent amendment sought to ensure that the local finance clause would not alter "whether under subsection (2) of section 70 of the Town and Country Planning Act 1990 regard is to be had to any particular consideration", or "the weight to be given to any consideration to which regard is had under that subsection". However concerns have still been expressed by the RTPI and planning lawyers nationally over this amended clause.

- 3.22 **National significant Infrastructure Projects** - The Bill abolishes the Infrastructure Planning Commission (IPC) and transfers decision-making on nationally significant infrastructure projects to the Secretary of State. A new Major Infrastructure Planning Unit within the planning inspectorate will be established to examine applications and report and make recommendations to Ministers. Transitional arrangements were announced by the government in March 2011.

4. CONSULTATION

- 4.1 A regular update has been presented on the Bill at previous PEER CMM meetings.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The costs of preparation and examination of development plans (the City Plan) will be met from within the existing Planning Strategy and Projects revenue budget. The issue of neighbourhood planning introduces a number of new costs and savings on local authorities, not all of which have been quantified yet. In the Impact Assessment accompanying the Localism Bill, the Government indicated that the quantified cost of each neighbourhood plan was at least £17,000 (holding an examination and referendum). However, there are still the unquantified costs relating to the Officer time needed in respect of geographically defining neighbourhoods in their area, and providing expertise and advice to neighbourhood planning groups.

Finance Officer Consulted: Karen Brookshaw Date: 25/11/11

Legal Implications:

- 5.2 The report describes the main planning provisions contained in the Localism Act and comments thereon. The majority of the Act is yet to come into force and, as the report points out, it is expected that the planning provisions will come into effect in April 2012. In addition, secondary legislation will be required to give further detail to a number of the Act's provisions, for example, those concerning neighbourhood planning.

Lawyer Consulted: Hilary Woodward Date: 24/11/11

Equalities Implications:

- 5.3 The Localism Bill was accompanied by various Impact Assessments. The Localism Bill: local plan reform Impact Assessment indicated that an equalities impact assessment initial screening had been completed and there was considered to be no adverse equalities impact. An equalities impact assessment was been prepared alongside the Localism Bill; neighbourhood plans and community right to buy Impact Assessment and identified a number of potential equalities impacts. The Impact Assessment suggested that safeguards are in place to minimise the adverse equalities impacts. These include the independent examination (which will assess compliance with legal requirements), the need for plans to be in conformity with strategic elements of local plans, and the requirement for popular support to be demonstrated through a referendum.

Sustainability Implications:

- 5.4 Contributing to the delivery of sustainable development remains a duty placed on local authorities by planning legislation. However the definition of sustainable development to be set out in the National Planning Policy Framework may well be altered to reflect the significant concerns raised during consultation on the draft framework. The environmental sustainability implications of the introduction of neighbourhood plans will be those resulting from the potential increased amount of development that is considered by the government to be the outcome of neighbourhood plans/ community right to buy. The government's impact assessment suggests that the scale of these impacts will be directly related to the extent to which the policy is successful in promoting housing and economic growth. But in practice, such impacts will still be the subject of national guidance which seeks to minimise their scale, such as Environmental Impact Assessments and Strategic Environmental Assessments as well as the need for neighbourhood plans to be in conformity with local plans.

Crime & Disorder Implications:

- 5.5 There are no direct crime and disorder implications considered to arise through the enactment of the Localism Bill. These matters will be addressed through the development plan for the city and where relevant neighbourhood plans seek to address crime and disorder issues.

Risk and Opportunity Management Implications:

- 5.6 None identified.

Public Health Implications:

- 5.7 There are no direct public health implications considered to arise through the enactment of the Localism Bill. The City Plan will address the healthy planning agenda through a city wide healthy city policy. A previous version of the Core Strategy was subject to an Equality and Health Impact Assessment.

Corporate / Citywide Implications:

5.8 The City Plan will be a significant factor in steering development in the city for the next 20 years. It will contribute to delivering plans and strategies across the city council directorates, along with the Sustainable Community Strategy. It will also help to deliver city-wide strategies of public and voluntary sector partners. The City Plan will set the policy context for neighbourhood plans.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

6.1 There are no alternative options. Once the planning provisions of the Localism Act come into effect the council is required to prepare plans in accordance with the provisions in the Act.

7. REASONS FOR REPORT RECOMMENDATIONS

7.1 This report updates the Cabinet Member for Planning, Employment, Economy & Regeneration on how planning aspects of the Localism Act are beginning to be implemented.

SUPPORTING DOCUMENTATION

Appendices

None

Documents in Members' Rooms

None

Background Documents

None