

Planning,  
Development &  
Regeneration briefing



## The Localism Act: impacts and opportunities

December 2011



# A major transfer of power

The Coalition Government's plans to devolve decision-making powers to local authorities and communities took a major step forward on 15 November 2011, when the Localism Bill received Royal Assent.

The Act introduces significant changes to local democracy and accountability and represents a fundamental shift in the way that local decisions are made and local services delivered. The 'general power of competence' gives local authorities the legal capacity to do anything that an individual can do – providing it does not break the law. The Act also grants a range of new freedoms and flexibilities to local authorities, communities and businesses, resulting in greater opportunity to initiate and participate in local planning and change.

The passing of the Act helps to crystallise the Government's policy agenda, and we hope it will mark the beginning of the end of a long period of uncertainty which has held local authorities and developers back from progressing with the delivery of development and infrastructure.

In the coming weeks and months the measures in the Localism Act will begin to come into effect, and most are expected

to be in place by April 2012. There are, however, a number of areas which require further clarification from Government. For example we await the final National Planning Policy Framework, transitional arrangements and associated regulations before we can accurately assess how all of these new powers will be applied in practice.

In this briefing paper we set out our analysis of the powers passed down in the Act which we believe will have the greatest impact from a planning, development and regeneration perspective.



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# From regional to local

The Localism Act paves the way for the abolition of the Regional Spatial Strategies (RSSs). It provides the basis for the Secretary of State to revoke the whole or any part of a Regional Strategy.

The revocation of the regional strategies and the removal of the top-down housing and employment creation targets that underpin most existing development plans and those still under preparation represents a fundamental shift of approach for the planning system.

Local authorities will now be responsible for identifying their own future housing requirements. Combined with the Localism Act's 'duty to cooperate', there is a clear direction that individual authorities will need to provide a substantial level of analysis and evidence, including how they will work on housing and employment requirements with neighbouring authorities. It remains to be seen how, in practice, local authorities will now work to derive appropriate housing and employment forecasts; how they will work with local communities and with neighbouring authorities; and what variations in methods and evidence will result from this.

Where existing local development frameworks (or former local plans) rely on a RSS to provide the policy basis for their current housing or employment targets, there is a danger of a policy vacuum being created. If RSS targets are removed and a new plan is at a very early stage in drafting then careful consideration will need to be given to the weight that can be attached to the evidence base underpinning its housing or employment figures. In order to maintain a five year housing land supply, as existing PPS3 and the draft National Planning Policy Framework anticipate, there needs to be an effective target against which to monitor housing delivery and therefore the necessary land supply.

Greater clarity is needed regarding the timing of the abolition of RSSs once the consultations on the various regional Environmental Reports have concluded in January 2012. Details are provided at the end of this document.



## Pushing the boundaries

The Localism Act has significantly strengthened the wording of the duty to cooperate provisions from those set out in the original Localism Bill, making this duty a legal requirement for local authorities and other public bodies.

The duty attempts to fill the void left after the regional spatial strategies are revoked. It is intended to ensure that a strategic approach is maintained on matters such as infrastructure provision, housing distribution, environmental effects, water and waste planning.

The duty to cooperate delivers a requirement, for local authorities and other public bodies to work positively together. Critically, the Act sets out the need for the duty to cooperate to be an ongoing process rather than something where authorities come together over single issues or specific matters. It envisages a fundamental change in the network and

relationships between authorities and, if taken forward in a positive manner, will be a powerful driver for joint planning and investment decisions at a sub-regional level.

Given the importance attached to Local Enterprise Partnerships (LEPs) in coordinating and encouraging regional growth, it would be helpful to have further clarification as to their role in the context of the overall duty to cooperate.

## Grassroots planning

Neighbourhood planning is a key component of the Government's desire to include communities in the planning process and have a say in the type and location of development in their area.

Neighbourhood plans can be led by existing town and parish councils or by newly conceived neighbourhood forums.

During the passage from Bill to Act, a number of changes were made, notably the Act enables the creation of business-led neighbourhood plans. The criteria for a neighbourhood forum

to draw up a neighbourhood plan were also strengthened by the requirement for a written constitution and a minimum number of people.

Neighbourhood Plans must be in line with local and national planning policy and they are also subject to a Sustainability Appraisal, an independent examination, and be ratified by a community referendum before they can be adopted.

While local authorities will be required to provide technical support and advice to communities as they draw up their plans, the rigorous standards required could pose a potential barrier to groups that have insufficient access to funding or technical skills.

It remains to be seen how many communities are able to get these plans off the ground, and in our view a number of areas need to be clarified or further guidance provided:

- Model examples of what a neighbourhood plan looks like and contains would be useful, along with best practice guidance for neighbourhood forums and planning practitioners – for example to take into account viability and feasibility.
- Further clarity is required on how far a neighbourhood plan can proceed in the absence of a recent local planning document or evidence base.
- Guidance on the role of developers or other private sector interests in sponsoring neighbourhood plans is required. For example, Planning Performance Agreements provide a model for funding processes
- The funding regime for organisational support for neighbourhood forums, plan making, design and the democratic process will need to be clarified.

# The power of cities

The Coalition Agreement made a commitment to creating directly elected mayors in the 12 largest English cities outside London – and the Localism Act sets out the powers for local areas to do so.

Following Royal Assent, secondary legislation will be laid in Parliament which, if approved, will provide for these cities to hold mayoral referendums in May 2012 - other than Leicester which has recently elected a mayor. If a city votes in favour of a mayor at its referendum – then that city will rapidly hold its first election for mayor. Mayors would be elected for four year terms.

We have long advocated the merits of a city regional approach to economic growth. The 'general powers of competence' along with the specific new powers to establish locally elected mayors embodied in the Act, clear the way for locally elected mayors to demonstrate civic leadership - facilitating city regions to reach their full economic potential.



The powers in the Localism Act will give many regional cities a greater voice in the first instance, but also the ability to generate resources and potentially rebalance the disparities in regional growth. These powers will manifest themselves in different ways depending on the locality but the ability of local authorities to leverage public funding in order to generate private capital for inward

investment is a significant opportunity. This could provide a much-needed boost to locally-determined initiatives for regeneration and development.

A consultation on elected mayors is currently underway, further details are included at the end of this briefing.

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# Distributing community infrastructure funds

The approach to the allocation of CIL funds has been amended significantly during the parliamentary process.

The Act now introduces provisions (Section 115) to allow Ministers to lay regulations which place a duty on charging authorities to pass a 'meaningful proportion of funds' to communities where development has taken place which will allow them to spend these funds on anything they please, as long as it serves to meet the future needs of development.

The current consultation invites views on what this proportion might be. This is a challenging question and a number of factors need to be weighed up, including:

- Who should spend these funds where there are no parish councils in the area?
- What capacity do resource constrained parish councils have to administer and spend these funds?
- A set percentage approach could allocate significant levels of funds in localities where large schemes are brought forward, so is the application of a cap appropriate?

Our principal concern is the need to ensure that funds are directed to where they are most needed to enable development to take place, rather than into the general local authority budget.

Details of the current CIL consultation are listed at the end of this briefing.

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## Should CIL deliver affordable housing?

The current consultation also examines whether or not affordable housing could be included as part of CIL contributions.

Affordable housing is often one of the key factors affecting the viability of a potential development site, and many see it as a part of the 'local infrastructure' that needs to be delivered and therefore falls into CIL. There are a number of arguments both for and against approaching the funding of affordable housing in this way.

There is only a finite amount of revenue that can be derived from a single development without making a scheme unviable. CIL plans initially envisaged that Section 106 arrangements would still exist in tandem enabling the provision of elements not covered by CIL- namely affordable housing requirements. This arrangement would allow affordable housing to be negotiated separately.

If affordable housing was included within CIL this could have a number of impacts:

- It could divert funds away from the delivery of necessary infrastructure.
- A flat CIL charge incorporating affordable housing may provide more certainty – but could also render sites

much less viable if the ability to negotiate affordable housing contributions could no longer be undertaken as a separate process.

- There would need to be sufficient levels of transparency around the flow of payments from a local authority to any partner procured to build the housing.

It is a complex undertaking for local authorities to accurately set CIL tariffs. Setting tariffs too high could make development unviable. Keeping affordable housing provision separate from CIL would leave room for negotiation that could be important in ensuring a visible scheme in marginal circumstances.

Overall, local authorities need to look more holistically at their overall infrastructure and housing requirements and create a model where these are funded using a mix of funding streams including CIL, Section 106, New Homes Bonus, Localised Business Rates, Tax Increment Finance, the 'Growing Places Fund', and even elements of Council Tax. Together these sources could be knitted together to develop a strategic approach that optimises the deliverability of acceptable development.

# Infrastructure planning

The Act provides for the abolition of the Infrastructure Planning Commission, and its replacement with the Major Infrastructure Planning Unit in the Planning Inspectorate.

The key change is that all final decisions on major infrastructure applications will be made by the Secretary of State, rather than an unelected Panel or Commissioner.

The Act retains a duty to determine within a defined period, but allowing for three months for the Unit to report and a further three months for the Secretary of State's decision - twice the amount of time the IPC is presently bound to deliver its own decisions.

The retention of the IPC's function is to be welcomed, and in our view democratic accountability for decisions should enhance confidence in the system; but at what is a critical time for delivering major infrastructure not least in the energy sector, it will be essential that seamless transition can be achieved.

Critical as ever will be the transitional arrangements, which are yet to be fully confirmed. Applications are expected to be received by the new Unit from April 2012, but what is already a complex and relatively new process will doubtless suffer some teething problems as the shift to the Inspectorate occurs.

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## Expressing a view

Rules regarding pre-determination were originally put in place to ensure that councillors entering discussions around planning applications did so with an open mind.

Government expressed concern that these rules were being interpreted in a way which has meant that councillors cannot express their views on local concerns because of a perceived danger of being accused of bias or worse, a fear of legal challenge.

The clarifications set out in the Localism Act address this matter, making it clear that local councillors can play an active part in local discussions, without the fear of legal challenge. People can elect their councillor confident in the knowledge that they will be able to act on the issues they care about and may have campaigned upon.



This is an important change but it does put the onus on local authorities to draw up their own codes of practice to ensure that effective safeguards are available to deal with any unacceptable behaviour by councillors.

## Role of local finance

The Localism Act addresses the issue of financial matters being material considerations in the grant of a planning application.

The Act revises Section 70 of the Town and Country Planning Act, 1990 (which deals with the general considerations of the determination of planning applications) to confirm that the regard to be had to any particular matter (including financial considerations), or the weight to be attached to any such consideration does not in any way alter the requirements of Section 70 in reaching a planning application decision.

Effectively, the Localism Act identifies that local financial considerations may be a material consideration to a planning application. Where financial matters are considered, local authorities will need to ensure appropriate transparency and clarify how that financial consideration has impacted on the decision, and why.

# Consulting communities

Pre-application consultation has long been seen as a positive process and a key part of progressing schemes and getting communities involved, and this is reinforced by the requirements of the Localism Act.

Overall, as they will only apply to developments above a certain threshold, the implications for many schemes could be minimal, as larger schemes already undertake extensive consultation as a matter of course. However, the thresholds and how they are to apply to proposed developments are yet to be set out in the regulations.

The main difference under the Localism Act is likely to be the way in which consultation is managed and undertaken. It must be to a high standard, transparent and applicants

now have a duty to take account of the responses. In keeping with the devolution of power to local people, the move will place a greater emphasis on Statements of Community Involvement but could also create greater potential for challenge where local communities may take the view that insufficient regard has been paid to the process of consultation and its outcome.



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# Localism in London



The Localism Act passes greater powers over housing and regeneration to local democratically elected representatives in London.

Much of this transfer of power - including the responsibilities of the London Development Agency being passed to the Mayor of London - is already well underway.

We see this as a positive step, allowing for decisions regarding regeneration and economic development to be made by a democratically elected representative with a substantial mandate, creating greater potential to effect change on the ground.

This transfer of powers should also, in theory, streamline the decision-making process at a regional level in London, and could eradicate some of the tensions which arose between the two separate organisations.

We welcome the retention of the Regional Spatial Strategy for London – the London Plan. This ensures a strong policy context to guide borough planning policy and neighbourhood planning.

# Opportunities

The full impact of the Localism Act will not be felt immediately, but from a planning and development perspective, there are some clear opportunities:

- The transfer of powers to local authorities and the creation of new structures and streamlined processes to support these powers will allow local authorities to take greater control of their own destiny in terms of driving sub-regional growth and development.
- Communities, including local businesses, will have the opportunity to take a more active role in the planning process and influence the type of development in their areas. Importantly, there is a role for private sector interests to engage in this process.

- The Act gives appropriate material weight to financial viability and economic considerations in planning decisions. It finds the right balance between economic benefits and social and environmental factors.

It remains to be seen how local authorities will interpret and implement these powers. Government will need to consider how local councillors and community representatives are educated and supported to enable them to optimise the opportunities to drive new development and regional growth.

Government also needs to give some indication of how it intends to monitor and measure the future effectiveness of these new powers, and how they are being used to successfully achieve the objectives of Localism.

“Government will need to consider how councillors and community representatives are educated, to enable them to optimise the opportunities to drive local and regional growth.”

GVA is the largest independently owned commercial property advisor. GVA's Planning, Development and Regeneration division consists of over 120 property professionals specialising in planning, development consultancy, viability and compulsory purchase, regeneration, economic and financial consulting across 12 regional offices in the UK.

# Consultations

## National Planning Policy Framework

The consultation closed on 17 October, 13,700 responses were received by Government. Government has indicated that transitional arrangements will be put in place before the final version of the NPPF is published in early 2012.

## Consultation: Community Infrastructure Levy: Detailed proposals and draft regulations for reform

This consultation seeks views on the detailed implementation of the Government's proposals, including on the draft regulations, for the reform of the Community Infrastructure Levy.

**Opened: 10 October 2011**  
**Closes: 30 December 2011**

## Consultation: What can a mayor do for your city?

A consultation paper seeking views on the Government's proposed approach for giving powers to any mayors elected in our 12 largest cities.

**Opened: 1 November 2011**  
**Closes: 2 January 2012**

## Consultation: Neighbourhood planning regulations

The Localism Bill leaves various procedural and technical requirements of the neighbourhood planning system to regulations. This consultation seeks views on whether the proposed neighbourhood planning regulations are fit for purpose.

**Opened: 13 October 2011**  
**Closes: 5 January 2012**

## Consultation: Environmental reports on the revocation of regional plans for: South West, East Midlands, East of England, North East of England, North West of England, West Midlands, South East, and Yorkshire and Humber.

**Opened: 20 October 2011**  
**Closes: 20 January 2012**

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