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THE LOCALISM BILL – A SUMMARY

Like accountants after the budget, many planning and lobbying consultants were burning the midnight oil last week in order to produce their first impressions of the Localism Bill. Now that the dust has settled somewhat, we have produced our own thoughts on the Bill and its implications for planning.

The Bill is split into 8 parts and a total of 207 clauses, plus 24 schedules, much of which deals with non-planning matters, such as fire and rescue authorities, EU fines and non-domestic rates, none of which need concern us further here.

Those matters which will concern us, should they make it all the way through to the Bill's eventual enactment, possibly in 2012, can be split into four main areas:

- Predetermination by decision-makers
- Community empowerment
- Assets of community value
- Planning

The headlines of these are summarised below:

Predetermination by decision makers

One of the key frustrations with the present system of local government member accountability is the inability of members of Planning Committees to engage fully with applicants or the local community in relation to a planning application for fear of being thought to have pre-judged the application. This can often mean members having to leave the committee chamber when the application is discussed.

Clause 13 of the Bill would allow sensible discussion of matters (not just planning applications) between members and others, without prejudicing or pre-determining the final decision of the relevant decision-makers. This appears to be entirely logical and very welcome. It should mean that members can engage more fully and transparently and can, hopefully, arrive at better informed and more considered conclusions.



Community Empowerment

Part 4 of the Bill provides powers for local communities (or at least those who are on the electoral roll) to petition for a local referendum on a range of issues. 5% of the local electorate will need to sign such a petition, although this threshold can be amended by the Secretary of State and local authorities will be able to accept petitions as valid even if less than 5% have signed the petition.

Communities will also be able to challenge decisions made by their local authority on matters such as rises in Council Tax and the delivery of local services, although such challenges must be via Parish Councils or some other recognised organisation. Whether the planning service itself can be so challenged is not yet clear.

How these referendums and challenges will be financed and what happens if a local authority decides to take no action after a referendum has taken place is not yet clear. Perhaps clarity will creep into the process as the bill passes through Parliament on its way to final enactment. Or not.

Assets of Community Value

Clause 71 of the Bill will require all local authorities to maintain a list of buildings or land in its area of community value. What actually constitutes community value will be for the local authority to determine. Land can be nominated by the community via the Parish or other local Council. It seems that Local Authorities will be required to produce regulations setting out how it will be determined and whether or not land or buildings is of “community value”.

So far, so what? However, clause 79 provides that the owner of any buildings or land which appear on such lists must not dispose of the land unless notice is first served on the local authority, allowing any “community interest group” an opportunity to be treated as a potential bidder for that land.

This raises very significant concerns. It is not difficult to envisage a list of buildings and land of community value which is so widely defined that it includes all listed buildings (ie buildings of historic or other heritage interest), buildings in conservation areas, buildings with large gardens, private woodland, plus any areas of open space (which may or may not already be protected by development plan policies).

This clause may be the Government’s way of making it easier for local groups to (temporarily) protect their cherished open spaces from development without the expense and time needed in seeking to have the



land designated as a town or village green through the Commons Act 2006. Naturally, residential and other developers may have a different take on the proposed designation.

If the Bill is enacted in anything close to its present form, the process of buying and selling some land and property will be made even more tortuous, uncertain and expensive than at present.

Planning

Part 5 of the Bill, which deals with planning, contains some 32 clauses, within seven chapters and some 46 pages.

The abolition of regional strategies has been well rehearsed and, despite the legal challenges, will almost certainly happen when the Bill is enacted. The weight which can be given to regional policies in the interim period would appear likely to reduce as the parliamentary passage proceeds.

It appears that the local development framework system of development plans will continue, although Planning Inspectors will, once again, only be able to recommend changes to Core Strategies and other plans, rather than require them, as is presently the case.

Perhaps the biggest innovation in the Bill, at least in theory, is the promotion of neighbourhood planning, which means planning by neighbourhoods, rather than for neighbourhoods. The Bill gives the local communities the right to produce neighbourhood plans, and development orders which may include new or additional clauses of permitted development. How such plans and orders would be resourced or put in place is not yet detailed, but there would seem to be a role here for developers to work with local communities to develop residential or mixed use schemes which would deliver community benefits to counterbalance much of the normal resistance to such schemes.

Whilst funding for neighbourhood planning may be available from the Secretary of State, it is not yet clear how local neighbourhoods would be able to provide the level of planning knowledge necessary to formulate robust plans and development schemes. With reducing levels of staffing for local planning departments and the confirmed need to press on with Local Development Framework documents, there may well be a role for private sector planning consultancies in this brave new world.



Pre-application consultation with local communities on major development schemes would be made compulsory under the Bill, as would the need to take into account the outcomes of such consultation. As the majority of developers are doing this already, to a lesser or greater degree, this seems to break no new ground.

The Bill also seeks to prevent or discourage perceived abuses of the planning system via its enforcement provisions. A new power would be given to local planning authorities to decline to determine retrospective applications on land to which an enforcement notice applies. Furthermore, in cases where the authority considers that a person has deliberately concealed a breach of planning controls, it can apply to the magistrate's court for an enforcement order which would have the effect of extending the time in which enforcement action can be taken, beyond the current four or ten year period.

This is clearly a major step for local authorities to take and the evidential basis for such action would need to be extremely robust. In practice, such action should only be taken rarely, but this aspect of the Bill will need to be followed very closely.

Conclusions

The Localism Bill will no doubt take some twists and turns in its passage through Parliament in the coming months, but it seems likely that much of its substance will pass into law in due course. As ever, much of the devil will be in the detail of associated regulations and some of the rougher edges will be smoothed, not least to make the eventual act workable. The introduction of neighbourhood planning will be perhaps the major challenge to communities and the planning world and will require the learning of new skills by planners (both in local government and the private sector).

We at Steven Abbott Associates LLP will monitor the passage of the bill and will alert our clients to the key developments in 2011.



If you have any queries on this summary or the Bill itself, please contact Richard Percy.

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