



## **London First Brief: Localism Bill: Neighbourhood Planning**

### **Introduction**

This brief covers in detail the new concept of neighbourhood planning, with commentary by London First on its likely impact for London.

Neighbourhood planning represents a key tenet of the Government's ambition to decentralise power from Whitehall and give more responsibility to councils and particularly communities over decisions that directly affect their area. There are three main parts to neighbourhood planning: 1) the plan itself; 2) a neighbourhood development order, which is an order that can grant planning permission for development or any class of development and; 3) a community right to build order which is a particular type of community development order granting planning permission for a specified development.

The level at which neighbourhood planning operates, as the name suggests, is truly local. It is intended that parish councils or community organisations take the lead in neighbourhood planning, although the local planning authority will still have a significant role to play in offering advice, support and helping to regulate the regime. Whether or not neighbourhood planning proves to be a success will depend on the appetite of communities to get deeply involved in the planning process, something that has not happened to date, and the willingness of somebody, presumably the community, to finance the whole process from start to finish. Our commentary on neighbourhood planning from a London perspective [in italics] is followed by a summary of key details of the Bill.

Two separate briefs have also been produced covering a [summary of the Bill in general and what it means for London](#) and another [brief focusing on the planning and development aspects of the Bill](#).

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## Commentary

*Prior to the publication of the Bill, it was argued by some that neighbourhood planning could prove to be another weapon in the armoury of the anti-development army, and that the extra burden of producing a neighbourhood plan will only serve to slow down the planning process in general and further consume the depleting resources of local planning authorities. The provisions in the Bill suggest that the latter remains a big concern but that the former perhaps less so than originally anticipated.*

*It remains hard to see exactly where there is a popular call for neighbourhood planning to be introduced. Local planning authorities already have a poor record in producing development plan documents so anything which distracts from this process, such as having to support a community group developing a different plan, does seem unfortunate. With significant cuts having already been made to the resources of many local planning authorities and more likely to occur in 2011, there has to be serious doubt about the ability of local planning authorities to engage effectively with neighbourhood planning, and of the ability of an average community group to finance the process of developing a plan.*

*In theory, allowing for community development orders and community right to build orders is a positive step which could help to deliver more development with greater ease than would otherwise have been the case. This is particularly true for rural areas. However, was a whole new bureaucratic addition to the existing cumbersome planning system really required to implement these changes? Why, for instance, couldn't neighbourhood plans, community development orders and community right to build orders simply be incorporated into existing development documents? So, for example, when a local planning authority is putting together its core strategy and associated documents it could approach the community for ideas with regard their neighbourhoods. If community groups wanted to take up this offer they could.*

*As suggested, it seems that the worst fears of the development community have been abated with regard to neighbourhood planning and its ability to halt development per se. There appears to be suitable protection within the provisions of the Bill to prevent outlandish plans being brought forward – in this respect the provision in schedule 10 is particularly helpful as it requires a neighbourhood development order to have regard to national policies, to be in conformity with strategic policies in the development plan and that it does not breach any EU obligations.*

*It is unlikely that neighbourhood planning will have a greater or lesser impact in London than it will have elsewhere in the country. That said if boroughs are particularly keen to facilitate neighbourhood planning and if London proves to have a more active set of community groups that are well financed than elsewhere, neighbourhood plans could become a permanent fixture of the planning system in the capital.*

## Detail

### Part 5 Planning: Chapter 3 Neighbourhood Planning

#### Charges for meeting costs relating to neighbourhood planning (clause 97)

- Regulations may allow local planning authorities to charge for the costs incurred in the course of work associated with neighbourhood planning.

#### Financial assistance in relation to neighbourhood planning (clause 100)

- The Secretary of State may provide financial assistance to those who are promoting or assisting the promotion of a neighbourhood development order or a neighbourhood development plan.

### Schedule 9 Neighbourhood Planning: Part 1 Neighbourhood development orders

The following sections are amendments to the Town and Country Planning Act 1990.

#### Neighbourhood development orders (section 61E)

- A “qualifying body” – in this instance a parish council or an organisation designated as a neighbourhood forum (see definition below in 61F) – may initiate the process for requiring a local planning authority to create a development order.
- A neighbourhood development order grants planning permission in a particular neighbourhood area (see definition below in 61G) for development specified in the order or development of any class specified in the order.
- The order must be independently examined.
- The order is brought about by way of a referendum and approved if half of those who voted in the referendum voted in favour of the order.
- A local planning authority does not have to implement the development order if it considers that the order would breach any EU obligations or Convention Rights (Human Rights Act 1998). In these instances, regulations may provide, *inter alia*, for:
  - The holding of an examination;
  - The payment of the examiner by the local planning authority;
  - The award of costs by the examiner; and
  - The nature of the consultation and participation of the public.

#### Authorisation to act in relation to neighbourhood areas (section 61F)

- Parish councils are authorised to act in relation to a neighbourhood area if the area is wholly or partly in the parish council area.
- If a neighbourhood area also covers an area in another parish council, by agreement, this area can also become part of the neighbourhood area.

- With regard to a neighbourhood development order, an organisation can act in relation to a neighbourhood area if it is designated as a neighbourhood forum by the local planning authority.
- An organisation can only be designated as a neighbourhood forum if the local planning authority is satisfied that the following conditions have been met:
  - The organisation is ‘established for the express purpose of furthering the social, economic and environmental well-being of individuals living, or wanting to live, in an area that consist of or includes the neighbourhood area concerned’;
  - The membership of the organisation is open to people living or wanting to live in the area concerned;
  - There are at least three members of the organisation and they live in the area concerned; and
  - The organisation has a written constitution.
- There can only be one neighbourhood forum per neighbourhood area.
- The designation of an organisation as a neighbourhood forum cannot subsequently be withdrawn by the local planning authority. The designation lasts for five years.

#### Meaning of “neighbourhood area” (section 61G)

- A “neighbourhood area” has to be designated in accordance with the procedures listed above.
- If an application for designation is made by a parish council it must cover some or all of the area covered by the council.
- If an application for designation is made by a neighbourhood forum it must not include part of or the whole of a parish council area.
- If a local planning authority refuses an application for designation it must provide reasons for doing so.
- Regulations may make provisions about the designation process covering a variety of issues such as consultation and participation of the public and the circumstances in which a local planning authority can decline an application for designation.

#### Provision that may be made by the neighbourhood development order (section 61H)

- A neighbourhood development order cannot grant planning permission for “excluded development” (see definition below in 61I) or where planning permission has already been granted.

#### Meaning of “excluded development” (section 61I)

- There are a number of “excluded developments” such as a development that falls under the nationally significant infrastructure project regime.

#### Permission granted by neighbourhood development orders (section 61J)

- Planning permission granted under a neighbourhood development order may be granted unconditionally or with conditions.

- The conditions that can be specified include:
  - The need to obtain the approval of the local planning authority who made the order; and
  - The period by which applications for approval to the local planning authority should be made.

#### Revocation or modification of neighbourhood development orders (section 61K)

- The Secretary of State may revoke a neighbourhood development order.
- A local planning authority, with the permission of the Secretary of State, may revoke a neighbourhood development order, but only with the consent of the qualifying body that initiated the order, if the qualifying body is still authorised to act in relation to the order in the relevant area.
- In both instances, reasons must be given for the revocation.
- Regulations may be made with regard to revoking an order and may specify, *inter alia*:
  - The holding of an examination in relation to the revocation of the order; and
  - The consultation with and participation of the public in relation to the revocation of the order.

#### Legal challenges in relation to neighbourhood development orders (section 61L)

- A legal challenge to a neighbourhood development order can only be made by judicial review within six weeks of the order being published.

### **Schedule 9 Neighbourhood Planning: Part 2 Neighbourhood Development Plans**

The following sections are amendments to The Planning and Compulsory Purchase Act 2004.

#### Meaning of “neighbourhood development plan” (section 38A)

- A “neighbourhood development plan” ‘sets out policies...in relation to the development and use of land in a particular neighbourhood specified in the plan’.
- Schedule 4B (process for making a neighbourhood development order) applies to neighbourhood development plans as well.
- The same provisions that apply in relation to the establishment of a neighbourhood development order (as summarised in the last three bullet points in neighbourhood development orders (section 61E) above) also apply to the establishment of a neighbourhood development plan - i.e. the provision for independent examination and for holding a referendum etc.

#### Provision that may be made by neighbourhood development plans (section 38B)

- The Secretary of State may provide regulations that:
  - Restrict what the plan can require with regard to use of land;

- Require plans to include matters proscribed in the regulations; and
- Determine the form of the plan.

#### Supplementary provisions (section 38C)

- The following provisions (as summarised above – note sections 61M and N are not summarised in this brief) also apply to neighbourhood development plans:
  - Section 61F;
  - Section 61K;
  - Section 61L;
  - Section 61M; and
  - Section 61N.

### **Schedule 10 Process for making of neighbourhood development orders**

*The schedule is to be inserted in schedule 4B of the Town and Country Planning Act 1990. It lays out the logistical process that must be undertaken for making a neighbourhood development order and has not been summarised in this brief. One point of interest, however, within this schedule is the criteria for approving the order, which is as follows:*

- A neighbourhood development order will only be approved by an independent examiner if, *inter alia*, the order has:
  - Had regard to national policies and guidance issued by the Secretary of State;
  - The order is in general conformity with the strategic policies contained in the development plan for the area of the authority; and
  - The order does not breach any EU obligations.

### **Schedule 11 Neighbourhood Planning: Community Right To Build Orders**

*The following schedule is inserted as Schedule 4C to the Town and Country Planning Act 1990.*

#### Introduction

- “Community right to build order” is a particular type of community development order.
- The provisions of the Localism Bill that apply to community development orders also apply to the community right to build order (subject to some differences outlined in schedule 4C).

#### Meaning of “community right to build order”

- An order is a community right to build order if:
  - It is made by a community organisation;
  - If it grants planning permission for a specific development in a specific site in a neighbourhood area;
  - The specified development does not exceed proscribed limits.

### Meaning of “community organisation”

- A community organisation is a body which is:
  - Established ‘for the express purpose of furthering the social, economic and environmental well-being of individuals living, or wanting to live, in a particular area; and
  - Meets other criteria that may be proscribed such as the distribution of profits from the body and the membership of the body, for example.

### Development likely to have significant effects on environment etc

- A local planning authority must decline an application for a community right to build order if:
  - The development is likely to have significant effects on the environment (Annex 2 to the Environmental Impact Assessment directive); or
  - The development is likely to have significant effects on a qualifying European site (Offshore Marine Conservation Regulations 2007 or Conservation of Habitats and Species Regulations 2010).

### Examination of proposals for community right to build order etc

- The same rules that apply for the examination of a community development order apply to the community right to build order except that if an examiner’s report recommends that the draft order be refused, the local planning authority must refuse the order.

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