



## London First Brief: Localism Bill

### Introduction

The Localism Bill was published on 13 December 2010. The Bill covers a number of policy areas in relation to planning, housing, regeneration and local governance all brought together under the banners of “localism” and “decentralisation”.

There is much for London to welcome in the Bill. The Mayor and the GLA have been given greater power and control over a number of planning and development issues, most notably through the establishment of a Mayoral Development Corporation. Other changes to local governance arrangements (which are applicable across the country), such as the introduction of local referendums and the right of a community to express an interest in providing a service run by a local authority, will have significant ramifications for boroughs and communities across London.

This brief does not cover every clause contained within the Bill or every point made in a clause. Instead, it summarises the key planning and developments aspects of the Bill, providing a commentary [in italics] on the significance of the changes, particularly for London.

It is anticipated that the Bill will subject to significant Parliamentary scrutiny with a large number of amendments made to the Bill before it becomes an Act. Many of the provisions within the Bill are enabling measures and will require secondary legislation to implement the detail. London First will be working closely with Parliamentarians and relevant stakeholders, such as the GLA, as the Bill progress through Parliament to ensure that London’s interests are fully represented.

Two separate briefs have also been produced providing a [summary of the Bill in general and what it means for London](#) and about the [introduction of “neighbourhood planning”](#).

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## Detail

### Part 1 Local Government: Chapter 4 Predetermination

#### Prior indications of view on a matter not to amount to predetermination (clause 13)

- A decision-maker is not considered to have a closed mind on a matter (i.e. a predetermined view on a matter) because they had previously expressed a view on the matter, and the matter is relevant to the decision.

*This has particularly relevance to planning applications and could help to create a more transparent system and encourage councillors to engage more pro-actively with developers during the application process. Inevitably, with such freedom, it could also potentially allow councillors to express their hostility towards new development with greater vigour.*

### Part 4 Community Empowerment: Chapter 1 Local Referendums

#### Clauses 39-55

- Providing that one of the following conditions is met, in principle, a local authority must hold a referendum (this applies to boroughs and the GLA):
  - The local authority receives a petition signed by 5% of local government electors in that electoral area (a London borough, ward or GLA constituency area). The Secretary of State has the power to change the required percentage.
  - A request for a referendum is also made by a member (elected councillor) of the local authority area. Members of the GLA cannot make a request.
- A local authority can decide to proceed with a referendum even if the required percentage of voters has not signed the petition.
- A local authority can decide to turn down the application for a referendum if:
  - Action to promote or oppose the referendum is illegal;
  - The local authority doesn't think that the question relates to a "local matter" (defined as a matter which relates to the 'economic, social or environmental well-being' of the area or has a particular connection with that area);
  - The application is vexatious or abusive; or
  - The Secretary of State decides to intervene
- The result of the referendum is not binding on the local authority, and where the local authority decides not to put into effect the result of the referendum, it must state its reason(s) for not doing so.

*There are a number of caveats in these clauses to prevent a proliferation of wasteful referendums being brought forward, and ultimately the result of the referendum is not binding on the local authority. This should allay concerns about potential abuse of the system, which could help to force through change in a local area if there is sufficient support for the measure. It should be noted that it is seemingly within the power of a community or an elected council member to hold a referendum in relation to planning and development*

issues, an unpopular planning application for example. How this relates to the quasi-judicial functions of a planning committee will have to be monitored.

## **Part 4 Community Empowerment: Chapter 3 Community Right to Challenge**

### Clauses 66-70

- A relevant authority must consider ‘an expression of interest’ from a voluntary or community body (not for profit) to run or assist in providing a relevant service on behalf of the authority. The Secretary of State can specify in regulations local services that this does not apply to.
- In London, an expression of interest can only be made to a borough (not the Mayor), although regulations will allow the Secretary of State to specify other bodies on persons that the expression could apply to.
- If the expression of interest is accepted a procurement exercise must be undertaken for the provision of the service.
- The basis upon which an expression of interest can be rejected will be specified by regulations.

*These clauses are at the heart of the government’s “big society” – allowing community groups to provide services that have previously been run by local authorities. In London, this will only apply to the boroughs as presumably the services provided by the Mayor are too strategic. The rationale by which a borough could, for example, reject an expression of interest is, as yet, unclear and will have to be clarified via regulations (this lack of detail might be of concern to Parliamentarians as the Bill is scrutinised).*

## **Part 4 Community Empowerment: Chapter 4 Assets of Community Value**

### Clauses 71-88

- Local authorities must maintain a list of community assets – land that is of value to the community. In London, this only applies to the boroughs (not the Mayor, although the Secretary of State may specify in regulations a change to this).
- It will be up to the local authority to decide (through regulations) what constitutes value to the community.
- Land can be nominated by the community or by the local authority (or other bodies or persons as specified in local regulations) for inclusion on the list.
- The asset stays on the list for five years (or a period of time specified by the local authority).
- A review of the listing can be requested if land has been nominated.
- Local authorities must maintain a list of unsuccessful community nominations.
- If land is placed on the list it cannot be sold without the following conditions being met:
  - The local authority is informed of the sale;
  - An interim moratorium period has ended without receiving a community interest group request to be treated as a bidder for the land; or
  - The full moratorium period has ended; and

- The ‘protected period’ as determined by the local authority – the ending of the interim or full moratorium period – has ended.

*These clauses are opaque, especially those relating to the definition of what constitutes “community value” – a subjective concept. Whilst it is important that communities can protect local assets that they value, much greater detail is required about this process to offer reassurance that this process won’t be subverted to become a tool used to frustrate development proposals by groups who are opposed to development per se.*

## **Part 5 Planning: Chapter 1 Plans and Strategies**

### Abolition of regional strategies (clause 89)

- The abolition of regional strategies is confirmed (except for the London Plan).

### Duty to co-operate in relation to planning of sustainable development (clause 90)

- Requires a local planning authority or body involved with the planning process to co-operate in the following:
  - Preparation of development plan documents;
  - Preparation of other local development documents; and
  - Other activities that support the planning of development as it relates to, in particular, sustainable development in connection with strategic infrastructure.
- The Secretary of State may issue guidance on how to comply with the duty to co-operate.

*This new duty should theoretically help to improve engagement in the planning system, particularly in relation to obtaining timely responses from statutory and non statutory consultees. However, in practice, whether this really does make a difference will come down to the strength of the guidance issued by the Secretary of State. For example, will there be any repercussions for not co-operating in a timely manner?*

### Local development schemes (clause 91)

- Local Development Schemes (LDS) which set out a local planning authority’s plans for the production of their development plan documents will no longer have to be approved by the Secretary of State.
- The Secretary of State and Mayor of London will still be able to direct amendments to the LDS but only to ensure “effective courage” of development plan documents in an authority’s area.

### Adoption and withdrawal of development plan document (clause 92)

- When examining a development plan document, an independent examiner must recommend adoption or non-adoption of the document, and in both instances give reasons for the decision.

- If asked by the local planning authority, the examiner must recommend modifications to the plan so that it is ‘sound’ (i.e. can be adopted).
- If the examiner recommends adoption of the plan, the local planning authority can either adopt the plan or adopt it with modifications “that do not materially affect the policies set out in it”.
- If the examiner recommends non-adoption of the plan, the local planning authority can adopt the plan with the main modifications (as suggested by the examiner) or with the main modifications and “additional modifications if the additional modifications do not materially affect the policies that would be set out in the document if it was adopted with the main modifications but no other modifications”.
- The Secretary of State has the power to withdraw a local development plan document submitted by a local planning authority prior to its adoption.

*The status of the report issued by an independent examiner of a development plan document has changed. The recommendations in the examiner’s report are no longer binding on the local planning authority. If the document is declared unsound by the examiner, the local planning authority must invite the examiner to suggest modifications. This change has weakened the power of the examiner, but local authorities have not been given carte blanche to decide on the soundness of planning documents. Another check on the power of the local planning authority in this respect is that it is assumed that local plans will still have to be in conformity with national planning policy (and in London, the London Plan), although this has not been made expressly clear in the Bill, but may be clarified in a new national planning policy framework.*

## **Part 5 Planning: Chapter 2 Community Infrastructure Levy**

### Community Infrastructure Levy: approval of charging schedules (clause 94)

- Charging authorities are to be given greater scope in determining what constitutes appropriate evidence in the preparation of a charging schedule. Regulations will determine the exact nature of the scope that is provided by this clause.
- The charging schedule will still be subject to an independent examination where the following rules apply:
  - The examiner must reject the draft charging schedule if it does not comply with the drafting regulations and this cannot be remedied through modifications;
  - Where the drafting regulations have not been complied with but modifications could remedy this, the examiner must make recommendations as to how this can be rectified; and
  - The charging authority cannot adopt a charging schedule without the recommendation of the examiner to do so.

### Use of the Community Infrastructure Levy (clause 95)

- In addition to capital expenditure, CIL money can now also be spent on ongoing revenue payments associated with the infrastructure.
- CIL money will now be allowed to be transferred to a person other than the charging authority – i.e. the community. Regulations will specify more detail about this.

*It is hard to assess what impact the changes made to CIL will have until the first charging schedules emerge and are put into use. Charging authorities have been given greater scope to determine what evidence is relevant to production of their charging schedule, although the exact scope of this power is to be set out in more detail through regulations. Allowing CIL to be spent on revenue as well as capital expenditure will clearly help with the ongoing maintenance of the infrastructure, but could also add a further burden to an already full sack of items that CIL money is supposed to make a contribution towards. Passing on CIL money to community groups raises a number of questions, such as what constitutes a community group and who decides the appropriateness of the use that a community group puts the CIL money to? Again, the regulations will have to clear this up. It is worth noting that in London, it is likely that the Mayoral CIL will be exempt from having to pass money onto community groups.*

## **Part 5 Planning: Chapter 3 Neighbourhood Planning**

**We have produced a separate detailed brief focusing specifically on [neighbourhood planning](#).**

## **Part 5 Planning: Chapter 4 Consultation**

### Consultation before applying for planning permission (clause 102)

- If a proposed development falls within a description specified by a development order a pre-application consultation must be undertaken (in accordance with regulations and any advice that is given by a local planning authority).
- If the proposed development is submitted as an application, the applicant must demonstrate how they have complied with the pre-application consultation rules and how they have addressed responses received as a result of the consultation.

*Despite the increasing frequency and professionalism with which experienced developers undertake community consultation, and the existence of policy in this area already, the Government has decided to legislate to make pre-application consultation compulsory. In press statements the Government has suggested that such consultation will only be applicable to large scale developments, but this is not made clear in the Bill.*

## **Part 5 Planning: Chapter 6 Nationally Significant Infrastructure Projects**

### Abolition of Infrastructure Planning Commission (clauses 107)

- The Infrastructure Planning Commission is abolished.
- Schedule 13 transfers the functions of the IPC to the Secretary of State including the power to approve an application.

### National policy statements (clause 109)

- The ability of Parliament to scrutinise NPSs has been increased, allowing for the House of Commons to require the NPS to be approved by resolution of the House prior to its adoption.

*Plans to “democratise” the regime for dealing with nationally significant infrastructure projects are confirmed with the abolition of the Infrastructure Planning Commission and the establishment of a Major Infrastructure Planning Unit within the Planning Inspectorate. The Secretary of State will now ultimately be responsible for determining applications, and a further hurdle has been introduced for National Policy Statements to jump over before they can be formally adopted – they will now require the approval of the House of Commons. Seemingly, these changes should not make a fundamental difference to the original system introduced by the Labour government, including the speed of the determination process. Although, the fact that Ministers will now take the final decision on applications will test this assumption.*

## **Part 7 London: Chapter 1 Housing And Regeneration Functions**

### Removal of limitations on Greater London Authority’s general power (clause 157)

- The prohibition on the Greater London Authority (GLA) incurring expenses for providing housing or others services has been removed.
- The GLA will also be allowed to incur expenditure with regard to sponsoring Academies (schools) or facilitating their sponsorship.

### New housing and regeneration functions of the Authority (clause 158)

- The GLA have been given a whole raft of new powers of which the following are the most significant:
  - The acquisition of land through compulsory purchase for the purposes of housing and regeneration (with approval of the Secretary of State);
  - The powers previously exercised by the Homes and Communities Agency in London with regard to housing and regeneration;
  - The GLA cannot dispose of land held for housing or regeneration for ‘less than best consideration which can be reasonably obtained’ (unless the Secretary of State specifies otherwise); and
  - The GLA will have the same power in relation to the property, rights, liabilities or undertaking as an urban development corporation.

### Transfer of property of Homes and Communities Agency etc (clause 161)

- Provides the Secretary of State with the power to transfer the property, rights and liabilities of the HCA to the GLA, a functional body, the Secretary of State, London borough or Common Council of the City of London.

### Abolition of London Development Agency and transfer of its property etc (clause 162)

- The London Development Agency (LDA) is abolished.
- Allows the Secretary of State to transfer the property, rights and liabilities of the LDA to the GLA, a functional body, the Secretary of State, London borough and the Common Council of the City of London. However, the Mayor of London must be consulted first.

### Mayor's economic development strategy for London (clause 163)

- The Mayor (instead of the LDA) is to prepare an economic development strategy for London.
- The strategy, amongst other topics, will cover:
  - Promoting business efficiency, investment and competitiveness in Greater London;
  - Promoting employment in Greater London; and
  - Enhancing the development of skills relevant to employment in Greater London.
- In developing the strategy the Mayor must consult those who represent employers and employees in Greater London.
- The Secretary of State may provide guidance for the Mayor (to which the Mayor must have regard) about the topics covered in the strategy and issues to consider when preparing or revising the strategy.
- The Secretary of State may direct the Mayor to make revisions to the strategy in certain circumstances.

*There are no surprises in this area as the LDA, like the other Regional Development Agencies (RDAs), is abolished. Some of its powers and functions will be transferred to the GLA, along with the powers of the HCA in London. It will now be up to the GLA to drive forward the strategic housing and regeneration vision in London and these new powers will help the GLA to achieve this. Although not covered in the Bill, there are discussions underway about establishing a Local Enterprise Partnership (LEP) – the replacement for RDAs – in London, the composition of which should become clearer as the year progresses.*

## **Part 7 London: Chapter 2 Mayoral Development Corporations**

### Designation of Mayoral development areas (clause 168)

- The Mayor can designate any area within Greater London as a Mayoral development area provided that the Mayor has:
  - consulted with:
    - the London Assembly;
    - the Assembly member for each constituency in which the development area falls;
    - the MP for each constituency in which the development area falls;
    - each borough that the development area is in;
    - the City of London if the development area is within the City;

- the sub-treasurer of Inner Temple and the under treasurer of Middle Temple if the development area is within their respective areas; and
  - any other person the Mayor wishes to consult
- had regard to comments made by the consultees; and
- if comments are made by the London Assembly and the Mayor disagrees with them, the Mayor publishes the reasons why.
- Separate pieces of land can be in one Mayoral development area.

#### Transfers of property etc to a Mayoral development corporation (clause 171)

- The Secretary of State can transfer property, rights and liabilities of a person to an MDC providing that a proper consultation has been undertaken with, amongst others, the Mayor, London borough and the Olympic Delivery Authority.

#### Object and powers (clause 172)

- The object of the MDC is to secure the regeneration of its area.
- The MDC can do anything that it considers appropriate to achieve this objective.

#### Functions in relation to Town and Country Planning (clause 173)

- The Mayor can designate that the MDC is to be the local planning authority for that area providing that a consultation has been undertaken with those bodies listed as above in clause 168, and that the Mayor follows the same procedures with regard to comments received from consultees.

#### Powers in relation to infrastructure (clause 176)

- An MDC can provide infrastructure and facilitate the provision of infrastructure.
- For the purposes of the MDC “infrastructure” means the following:
  - Water, electricity, gas, telecommunications, sewerage or other services;
  - Roads or other transport facilities;
  - Retail or other business facilities;
  - Health, educational, employment or training facilities;
  - Social, religious or recreational facilities;
  - Cremation or burial facilities; and
  - Community facilities.

#### Powers in relation to land (clause 177)

- An MDC may regenerate or develop land, bring about the more effective use of land and provide buildings or other land. It may also facilitate these actions as well.

#### Acquisition of land (clause 178)

- An MDC can acquire land in its area or elsewhere.

- An MDC can acquire land through compulsory purchase if authorised by the Secretary of State.
- In London, the Mayor must agree to the compulsory purchase of land before a request is made to the Secretary of State for permission.

#### Financial assistance (clause 184)

- An MDC, with the consent of the Mayor, can provide financial assistance in the form of:
  - grants;
  - loans;
  - guarantee or indemnity;
  - investment; or
  - incurring expenditure for the benefit of the person assisted.

#### Powers in relation to discretionary relief from non-domestic rates (clause 185)

- Provided that a proper consultation process is followed, the Mayor can decide to apply relief from non-domestic rates in the MDC area.

*The raft of provisions relating to the creation of a Mayoral Development Corporation and its powers is good news for London. If the MDC is to be a success in London it will need to utilise the full range of powers it has at its disposal, particularly in relation to funding. It is anticipated that further details about the MDC in London will emerge as the Localism Bill makes its way through Parliament.*

#### The London Environment Strategy (clause 195)

- In London, the Mayor is to publish a “London Environment Strategy” which will incorporate the following topics:
  - Biodiversity;
  - Municipal waste management;
  - Climate change mitigation and energy;
  - Air quality; and
  - Ambient noise.

*This is a welcome measure which draws together a number of statutory strategies which were previously published separately. The Mayor will have to ensure that he carries the support of at least two thirds of the London Assembly with regard to these statutory strategies as the Assembly will have the power to reject them (see below).*

#### London Assembly’s power to reject draft strategies (clause 199)

- The Assembly has the power to reject a draft strategy of the Mayor’s if two thirds of the Assembly votes to reject the draft strategy.

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