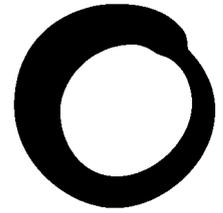


November 2011



**Friends of
the Earth**

Briefing

Planning in the Localism Act: Explained

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The Localism Act 2011 explained:

What is the Localism Act 2011?

The Government published the Localism Bill in December 2010. It received Royal Assent on the 15th of November 2011.

The Localism Act contains a new power of competence for local government, new neighbourhood plans and development orders, and a new duty to co-operate. Our concern is that these proposals fail to ensure that planning delivers on sustainable development and climate change mitigation and adaptation, fails to provide a right to be heard in neighbourhood planning, and doesn't adequately consider equalities.

What is the power of competence?

This is a new power for local authorities to enable them to do more in their role. However, the power of competence is not specifically linked to delivering on sustainable development which is a concern. In this section of the Act powers are given to the Secretary of State which are disproportionate and amounts to the changing of legislation without proper parliamentary process.

What are Neighbourhood Plans?

Neighbourhood Plans are created by Parish Councils where they exist or by Neighbourhood Forums, which are new organisations set up by the Act. These set out "policies in relation to the development and use of land" in the area covered by the plan or order. The Secretary of State will publish guidance about what should be in the plan. The draft Neighbourhood Planning regulations are out for consultation until the 5th January 2012.

What are Neighbourhood Development Orders?

Neighbourhood Development Orders set out types of development which are approved for the whole or part of the area covered by the Order. It can also say how certain developments should happen in different circumstances. Development that is excluded are county matters, major infrastructure projects, and waste. Planning permission can be granted by the order unconditionally or subject to conditions which are specified in the order.

What are Neighbourhood Forums?

The local authority designates an organisation or body as a neighbourhood forum. It can be designated if it means the following conditions (61F, 5(a))

- it is established for the express purpose of promoting or improving the social, economic and environmental well-being of an area that consists of or includes the neighbourhood area concerned
- its membership is open to people who live in the neighbourhood area concerned, people who work there (whether for businesses carried on there or otherwise), and elected members.
- its membership includes a minimum of 21 people each of whom either lives or works or is an elected member.
- it has a written constitution.

It can also have the express purpose of promotion of business interests. The local authority can also designate existing organisations as Neighbourhood Forums if they think they meet the conditions. The designation only lasts for 5 years, but can be withdrawn earlier if the local authority feels that the Forum is no longer meeting conditions.

There can only be one Forum in an area, and the local authority is in charge of making sure that Forums and Parish Councils don't overlap. Local authorities can also designate existing organisations as Neighbourhood Forums, but they have to meet "prescribed conditions" which are not defined.

How are Neighbourhood Plans/Development Orders approved?

Neighbourhood Plans/Development Orders are accepted if they pass a referendum by the local authority. The legislation says that a local authority to whom the proposal for a neighbourhood development order is made must approve it if "more than half of those voting have voted in favour of the order" (Schedule 9, Part 1, 61E 4(a)) as long as the order is not in breach of European obligations or the Human Rights Act.

The 'independent' examiner checks the plan to ensure that it is in line with the local development framework, and that it has had regard to national planning guidance. This examiner is not the Planning Inspectorate.

How is development approved in areas where there are Neighbourhood Forums or Parish Councils engaged in planning?

Where there is a Neighbourhood Development Order, it may permit development of certain types, sometimes with conditions attached, in which case. Some Orders may provide for the Parish Council of that area to approve the applications that come forward.

In areas where Neighbourhood Plans have been approved, the decision-making on applications is still part of the local planning authority (local council's) role.

What rights to be involved are there?

There is currently no right to be heard in the examination of Neighbourhood Plans or Development Orders.

Within the process itself, the Secretary of State has reserved the right to issue guidance on the following areas with regard to process:

- Giving notice and publicity
- Information and documents that will be made public
- Reasonable charges for anything provided as a result of the regulations
- Consultation and participation by the public
- Making and the consideration of representations including when they need to be made

It is up to the examiner as to whether hearings are held on specific issues and whether cross-examination takes place. The default process is for the neighbourhood development plan or order to be examined through written submissions.

What is the duty to co-operate?

This is a "replacement" of the regional strategies. There is acceptance that there needs to be some co-ordination at sub-national level between local authorities, but the duty to co-operate in the Bill is very weak, and will only apply to public bodies. Friends of the Earth recommends changes so that the duty to co-operate involves the right bodies, and specifically helps to deliver on climate change mitigation and adaptation, amongst other issues, and has a spatial outline.

How does it work at the moment?

The Local Development Framework has a process to follow, which includes consultation on an issues and options stage, followed by a draft plan consultation and objection stage, with an inquiry into the plan where there is a clear right to be heard if requested.

The draft national planning policy framework has removed 95% of existing guidance, and introduced a presumption in favour of development. Without adopted core strategies, local authorities will only have the national planning policy framework to guide development.

Friends of the Earth's recommendations:

- The purpose of planning is to deliver sustainable development based on the five principles of the UK Sustainable Development Strategy 2005. This should be clearly set out in the National Planning Policy Framework, alongside strong policies to protect town centres, avoid development in flood risk areas, restore biodiversity and protect urban green space, and recycle brownfield land as a priority.
- People must have a meaningful right to be heard in the planning process to ensure good decision-making. Regulations and guidance must support this approach.
- Planning is essential for the UK to meet the challenge of climate change. National planning policy must promote development that ensures energy efficiency in building and the development of renewable energy resources.
- There must be an assessment of the equality impacts of Neighbourhood plans and Neighbourhood Forums should be given guidance on understanding equality provisions in the same way as they apply to Parish Councils.

Empowering people locally means that we need to address:

- **Rights:** by ensuring that all planning documents contain a right to be heard in their inquiry/examination, and that some decisions on applications can be subject to a third party right of appeal.
- **Equality:** ensuring that planning considers the equality impacts of policies and development management.
- **Information:** by requiring all information and meetings of the Neighbourhood Fora and Parish Councils to be made publicly available.

Moving to a low carbon Britain means that we need to address:

- **Sustainable Development:** by ensuring that all plans are subject to a strengthened legal duty to deliver sustainable development as defined in the UK SD strategy 2005.
- **Climate change:** by ensuring that plans and policies specifically taken together aim to mitigate and adapt for climate change.

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