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PLANNING & ENVIRONMENTAL BRIEF

THE LOCALISM BILL - A NEW DAWN? OR A PAROCHIAL CHARTER?

Yet another government is seeking to make radical changes to the way the planning system operates in the UK. Will the changes announced in December make it fairer, faster and more efficient? Many commentators will recall this phraseology when the previous Government was introducing the new Local Development Framework system in 2004.

Well in terms of the years that have passed since then, this ideal has proved wholly false since only 10% - 20% of local planning authorities have Core Strategies in place which have passed the "soundness" test. Without the impending introduction of new elements to the planning system in the Localism Bill there is already a great deal of uncertainty, inconsistency and under-resourcing of planning authorities around the UK.

So if you are a medium-sized housing developer, and you have a site for 50 houses, a percentage of which are to be affordable, and you can demonstrate that there is a clear need for housing in the area, will you feel any more confident that your application for planning permission will be successful following the implementation of the processes set out in the Localism Bill?

Will the planning application be dealt with more efficiently and expertly and will the

increased input of local neighbourhood forums/consultation result in further delay and rejection?

This must be seen against the back-drop of the current large-scale reduction in local authority spending power which will impact on the number of planning officers. In addition there is likely to be a hiatus as the new planning system set out in the Localism Bill is brought into effect in the next 18 months. Good news - or further frustration?

As we all know, the construction industry in the UK is on its knees and many companies now have ceased to exist. Many governments in times of recession, including the coalition Government, seek to promote major infrastructure and transport projects to provide some stimulus to the economy and provide an impetus to economic recovery. Again it must be questioned whether the ideals set out in the Localism Bill will actually encourage this sort of activity.

How is the Localism Bill going to improve matters from a planning perspective for businesses, because ultimately it is business, especially the private sector, that the coalition Government highlights as the vehicle which will bring the UK out of recession.

Looking at the Localism Bill purely from a planning perspective a number of elements should be noted:

- The Bill is short on detail and as usual with such legislation in recent years we will have to wait the detail by way of regulation. This is especially evident in relation to the concept of Neighbourhood Plans and Development Orders and, we will have to await further detail on how the concept of Neighbourhood Planning will be achieved practically and fairly.
- The main elements of the current unsatisfactory Local Development Framework process will remain in place.

“How is the Localism Bill going to improve matters from a planning perspective for businesses?”

The key planning elements within the Localism Bill are the following:

- Abolition of Regional Spatial Strategies (“RSS”)
- Community Infrastructure Levy
- Local Plan reform
- Neighbourhood Planning
- Community right to build
- Duty to co-operate
- Pre-application consultation
- Enforcement
- Nationally Significant Infrastructure Projects

The rest of this article will comment on the abolition of RSS, pre-application consultation and then focus on the more revolutionary aspect of Neighbourhood Planning.

The mechanism for the abolition of RSS is set out in the Bill. Readers will be aware of the recent Cala Homes case in the courts which sought to provide guidance following Eric Pickles’ rather blunt approach to abolition. Following moves to abolish RSS in recent months the issue of housing numbers in the regions has been thrown into the air and has caused yet further uncertainty for planning authorities and developers. Housing numbers will now have to be determined by each local planning authority. It must be questioned what place there is for strategic planning policy decisions and clearly a vacuum will now exist. A great deal of inconsistency will be created around the country. Local planning authorities will need to determine their own requirements for various types of development but there will still need to be co-operation across adjoining borders.

Turning to pre-application consultation in the Bill, this sets out to introduce a new requirement for prospective developers to consult local communities before submitting planning applications for very large developments. The intention being to give local people more chance to comment on proposed developments and influence the proposal. The Bill will place a requirement on developers to demonstrate that they have taken on board matters raised in consultation.

The most challenging feature of the Bill is ‘Neighbourhood Planning’. The Bill introduces a new right for communities to shape their local areas. Neighbourhood Plans which have been adopted will enable communities to permit identified types of development in full or in outline without the need for planning applications by way of Neighbourhood Development Orders.

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Schedule 9 of the Bill sets out more detail of the Government’s proposals for Neighbourhood Planning. It is important to notice that the wording of this schedule leaves a lot to be desired and a great deal of clarification and regulation will be needed to ensure that this new process is brought into effect in a practical and fair manner.

In terms of Neighbourhood Development Orders and Neighbourhood Development

Plans, the Bill will allow any “qualifying body” the right to seek a Neighbourhood Development Order which will effectively grant planning permission for full or outline schemes in its area. The Bill defines “qualifying bodies” as organisations such as “parish councils or an organisation or body designated as a neighbourhood forum” and authorised by a local planning authority.

As part of the new process a Neighbourhood Development Order or a Neighbourhood Development Plan may include the “qualifying bodies” guiding principles for development in its area. This will be subject to independent examination and also to a referendum of local people within that area.

One positive point for developers to note is that Neighbourhood Development Orders and Neighbourhood Development Plans must be tested and measured against national policy and Local Development Framework

policies. This will mean that such Orders or Plans before adoption, must demonstrate a certain level of professionalism and expertise, and conform to certain planning norms. A parish council or “neighbourhood forum” will not be able to introduce a Plan or Order that seeks to put in place unusual or draconian requirements for development. Within the process of adoption of an Order or Plan the Bill introduces the concept of a “referendum” of local residents in the area.

Under the proposal process of a “referendum” if more than 50% of eligible voters vote for such an Order or Plan then a local planning authority is obliged to confirm the relevant Order or Plan. This highlights a major concern. Only 5% of eligible voters in an area are required to trigger a “referendum”. If only 10 people vote and 6 are in favour then the Order or Plan must be adopted. Very low turnouts occur in local elections. Therefore there is a real danger that only those with an ‘axe to grind’ will bother to get involved.

Concerns immediately spring to mind - how will such referendum’s be conducted? Is it to be treated like a local council election? How is it to be promoted? Who is going to organise such promotion and pay for the campaign to inform and lobby people in the area? Will people be able to lobby and campaign against a proposed Order or Plan?

In terms of a parish council or other qualifying body, it does stretch the imagination for many of us at this time whether we can see a parish council coming forward with development proposals and professional plans. The immediate image of the “Vicar of Dibley” and the parish council meeting springs to mind. Will there be the required input from the community of a significant level to drive forward this new planning process?

How are Neighbourhoods going to be defined, and who is going to get involved? Who or what organisation will get involved? Is an ordinary working householder really interested in getting involved after a full day’s work? Will the householder have sufficient information to allow him to make an informed and reasonable decision in relation

to new development or, as currently experienced, will he or she be sufficiently committed to understanding or appreciating the employment and housing needs in a locality. The new concept of Localism will require government support, local communities will need to be provided with the tools and support necessary to develop the new system. The new system will need dynamic, well-intentioned members of the local community who are sufficiently skilled to develop Neighbourhood Plans and Orders.

The commentary to the Bill dealing with Neighbourhood Planning indicates that this new process will “lift the burden of centralised controls and give neighbourhoods and local areas the flexibility to innovate, be creative, access new resources and control their own futures”. However the concept of referendums and enhanced pre-consultation requirements does cause many to claim vigorously that this new process will again become the vehicle for individual self-interest.

“The immediate image of the “Vicar of Dibley” and the parish council meeting springs to mind.”



It must be questioned who will be the individuals who will become interested in driving parish councils or qualifying bodies/neighbourhood forums in terms of such Orders or Plans.

Ultimately the quiet, fair-minded and reasonable majority of the population will need to step up to the mark and get involved in the planning process. This concept is a radical change and causes a great many commentators worry for the future.

This concern is emphasised by the online Planning Daily Bulletin of 30 November 2010 which indicated that “the percentage of people who would welcome more houses in their neighbourhood has fallen according to a UGov survey”.

Other recent surveys which queried people’s attitude to development in their local area indicate levels as high as 86% against! Only time will tell whether the new concept of Neighbourhood Planning and Development orders will be taken up by well-meaning parish councils or forums!

If not then this does bring increased focus and reliance on under-resourced local planning authorities.

Ultimately it is early days and the wording of this Bill and the detail of the legislation will be debated in Parliament. It will no doubt be subject to a number of amendments. The detailed regulations which will allow the development and construction industry to fully understand how this process will be

implemented will only come forward over the coming months. Unfortunately the development industry will be subject to further delays and uncertainty until the new powers are implemented. Together with the recent sweeping spending cuts at Government and local level, this does not bode well for the development industry in the short term.

COMMUNITY INFRASTRUCTURE LEVY THE COALITION APPROACH - AN OVERVIEW

The Community Infrastructure Levy Regulations came into force in April 2010. The future of the Community Infrastructure Levy (CIL) before the election was far from certain with suggestions that it may be scrapped. Then followed months of eerie silence. It has recently been announced that CIL is here to stay, albeit subject to minor reform. The announcement was made by Greg Clark, Decentralisation Minister, which was followed by the publication of a revised “overview” of CIL.

By way of a refresher CIL is levy that local authorities can charge developers in respect of new development in their area. It will continue to exist alongside s106

agreements, which will continue to exist for site specific issues and contributions, and is intended to create a fairer system. Developers will be able to identify, from the outset, the potential liabilities attracted by their development. Charges will be based upon square metreage of new development.

The Government will require the levy to be spent on new infrastructure, as opposed to remedying existing deficiencies, but a proportion of the money will be required to be allocated to a neighbourhood so that they may manage, for themselves, the impact of any new development.





Greg Clark said “too little of the benefits of development go to local communities, and our ambition is to correct that with a reformed levy under genuine local control. Neighbourhoods will get a direct cut of the cash paid by developers to councils - to spend how they wish to benefit the community, from parks and schools to roads, playgrounds and cycle paths.”

Changes will also be proposed to the way in which council’s can set their charges. Currently any changes required by an examiner (as part of the LDF process) in respect of a council’s proposed levy rates would be binding. Provision is made in the Localism Bill to limit the binding nature of an examiner’s requirements. Local authorities will control how to bring the levy into effect.

The Government also proposes changes to the arrangements for payment of the levy. At present the levy is payable from the date on which a “chargeable development” is commenced. Where the levy charge is over £10,000 payment can be made by way of instalments. Changes will allow flexibility to councils to determine their own levy payment deadlines and whether to offer the option of paying by instalments.

In certain circumstances councils can accept “in-kind payments”, for example a transfer of land (which must be able to facilitate the provision of infrastructure). Changes will be introduced to remove the current limit of £50,000 on any “in-kind payments”.

The new Localism Bill confirms some of the

specific mechanisms for implementing the new levy and allow some receipts from the levy to be transferred directly to “neighbourhoods”. The new Bill also makes provision for the levy to be spent on on-going costs of infrastructure and limited construction costs.

This bulletin summarises complicated issues and should not be relied upon in relation to specific matters. You are advised to take legal advice on particular problems and we will be happy to assist.

Iain Johnston

Partner

Head of Planning and Environmental

T: 0870 763 1231

E: iain.johnston@martineau-uk.com



INTRODUCING OUR HS2 ADVISORY TEAM



Iain Johnston
Partner
Head of Planning & Environmental
0870 763 1231
iain.johnston@martineau-uk.com



James Spreckley
Partner
0870 763 1672
james.spreckley@martineau-uk.com



Lesley Davis
Partner
0870 763 1427
lesley.davis@martineau-uk.com



Hugh Carslake
Partner
0870 763 1486
hugh.carslake@martineau-uk.com



Quentin Butler
Partner
0870 763 1484
quentin.butler@martineau-uk.com

The team can provide advice on a range of issues including:

- ▮ the statutory procedures and mechanisms to make representations /objections to the Governments proposed Hybrid Bill
- ▮ advising commercial organisations and property owners on the impact of the project, the relevant CPO powers and tactical measures to ensure compensation for land or property taken by the project is maximised
- ▮ preparing objections for clients and representing clients interests at any Select Committee hearings into the proposed Hybrid Bill

- ▮ dealing with property transactions and transfers including relevant tax planning
- ▮ handling CPO claims for clients with the acquiring authority references to the Lands Tribunal and providing advice on legal issues in relation to compensation
- ▮ handling claims for clients under the Government’s Exceptional Hardship Scheme.

Contact any of the team to see how they can help.



Other News

Kathy Toon, Gerard Whitehouse, Terry Dickson, and Sara Johal have recently joined the Property Group.

Kathy Toon joins the Property Group as a Partner from Clarke Wilmott. Kathy has particular expertise in the retail sector and was previously Head of UK Retail Property at DLA. She also acts for investors and developers.

Gerard has joined as a Consultant and has many years experience of the commercial property market. He acts for a variety of residential and other developers, owner managed businesses, and high net worth individuals and has excellent contacts especially across Coventry and Warwickshire.

Terry joins as an Associate and brings with him vast amounts of experience in areas of asset management, landlord and tenant, sales and acquisitions. His clients include an international insurer, developers, investors, and a rugby club.

Sara Johal has joined our London Office as an Assistant Solicitor.



Kathy Toon
Partner
T: 0870 763 1459
E: kathy.toon@martineau-uk.com



Terry Dickson
Associate
T: 0870 763 1443
E: terry.dickson@martineau-uk.com



Gerard Whitehouse
Consultant
T: 0870 763 1498
E: gerard.whitehouse@martineau-uk.com



Sara Johal
Solicitor
T: 0870 763 1203
E: sara.johal@martineau-uk.com

Planning & Environmental Bulletin is no substitute for taking advice before reaching a decision on your individual problems. For further information about issues raised, please contact a member of the Planning & Environmental Team:

Iain Johnston - Partner
Planning & Environmental
T: 44(0)870 763 1231
E: iain.johnston@martineau-uk.com

Clive Read - Partner
Property/Planning
T: 44(0)870 763 1439
E: clive.read@martineau-uk.com

Luke Plimmer - Associate
Planning
T: 44(0)870 763 1428
E: luke.plimmer@martineau-uk.com

Rebecca Brennan - Solicitor
Planning
T: 44(0)870 763 1388
E: rebecca.brennan@martineau-uk.com





iPRT Group

Intelligent Transport Planning Solutions

Tel 0845 47 48 851

Fax 0871 900 7432

Email info@iprtgroup.com

Web www.iprtgroup.com

Offices Newcastle upon Tyne, Leeds, Manchester,
Birmingham, London, Edinburgh