



Campaign to Protect  
Rural England  
South East

## The Localism Act

### Localism? Whose Localism?

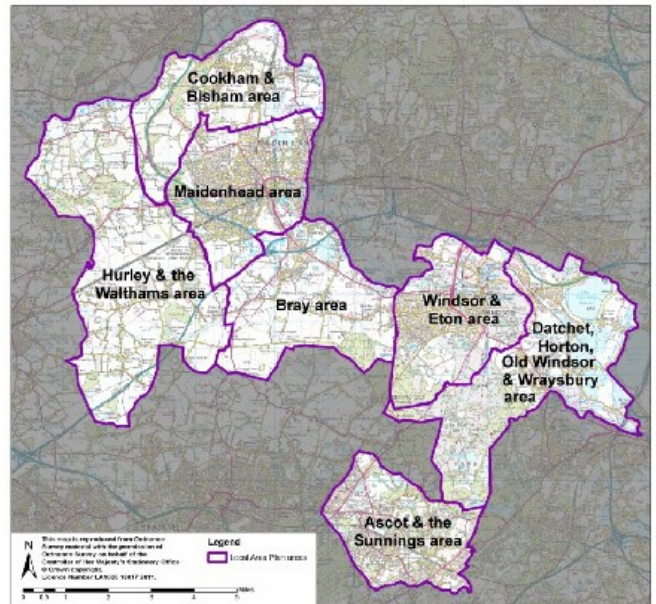
*Is this Act really about localism? It certainly gives communities new powers and it mercifully sweeps away the complexities of the regional tier of planning. But none of this amounts to culture change, either in communities or councils, or in the attitude of major developers to communities & consultation.*

*There is every a danger that we are set to continue in the same broken cycle of too many councils and developers too often consulting and not listening. There is certainly a risk that communities will to bust a gut drawing up plans that prove to matter barely a jot in the end. There is a lingering fear that a remote Planning Inspectorate and barely informed Secretaries of State will continue to make inconsistent decisions that override local wishes. And too many local authorities are convinced that the whole localism venture will drown in a sea of community apathy.*

*A bleak survey by the National Trust a few months ago found that only 4% of people are interested in getting involved in neighbourhood planning. This concurs with what we know from campaigning—that only a minority of people get actively involved with the spadework. In contrast to this gloomy view, a project in Kent reported that the parish councils involved are keen to develop a neighbourhood plan. And some local authorities are grasping community participation with enthusiasm (for example, Windsor & Maidenhead, see above right).*

*The challenge is that legislation will not change culture and will not in itself create new ways of working and thinking. But it can inspire change. For all the limitations of the Localism Act, and for all our concerns about the National Planning Policy Framework, we are on the dawn of a new era in planning. We report below on the handful of communities that are trying to get to grips with the new regime even before it is up and running. Their experiences will be vital to the success of the localism project as a whole.*

*The time for arguing about the new planning regime is all but over. It is time to stop worrying about the new rules and to find ways of making this work for the localities that we and our supporters live in. Neighbourhood plans will be what we and communities make of them. It is essential that communities grasp the nettle quickly and do not wait to be spoon-fed, guided and controlled by the local authority. We at CPRE and other rural minded groups have a major role in instigating local action, pushing the boundaries of what can be done with neighbourhood plans and in sharing best practice. We may not have achieved all that we wanted in the new regime, but now is the time to show that we can craft successful plans with the tools that we have been given.*



Windsor and Maidenhead neighbourhood areas

### 1. Localism: The State of Play

Earlier this month MPs accepted all the amendments to the Localism Bill made in the House of Lords without debate. The Act duly received Royal Assent on 15 November.

◆ Full Act: <http://bit.ly/tqKfpi>.

The full Act takes some digesting but you can read about all of relevance to CPRE below. It will be the spring before the main changes come into effect alongside the National Planning Policy Framework. We can look forward to 1 April 2012 as the date on which the biggest changes to planning legislation since 1948 come into force.

### 2. New Rights for Communities

The Localism Act introduces new permissive rights for local communities (residents and businesses) to prepare a neighbourhood plan, instigate neighbourhood development orders and exercise community rights to build, buy and challenge.

**Neighbourhood plans.** This is the ‘big idea’ in the Act. Every neighbourhood is set to have its own plan for sustainability, growth and developments—should the community wish it. If they do not develop a neighbourhood plan, then the district local plan (formerly the core strategy) will apply. Where there is no local plan the National Planning Policy Framework will rule supreme. There remain two major concerns:

- ◆ To what extent can communities develop plans that are more useful than current design statements and village plans, given that the neighbourhood plan must conform to the local authority’s local plan, including delivering minimum housing numbers?
- ◆ How willing are communities and local authorities to constructively engage in the process? A National Trust poll in September found that 70% of people said they were not very likely or not at all likely to get involved in their neighbourhood plan. Only 4% said they were very likely to get involved (Guardian: <http://bit.ly/sqmObe>).

The government is consulting on neighbourhood planning regulations (closing 5 January: <http://bit.ly/tDex3i>).

**Neighbourhood development orders** will implement the detailed planning aspects of neighbourhood plans.

**Community right to build.** Local community groups will be encouraged to sponsor developments that benefit of their community, including housing, local shops and community facilities. If supported by a local referendum, schemes will bypass the usual requirements of the planning system. It will not be known to what extent these schemes can override green belt and other rules, until the final version of the NPPF is published. The government plans launch an advisory service to support communities using the right to build powers.

**Community right to buy.** Local communities will have the right to bid for, and take over, community assets and facilities that are threatened with closure, including shops, pubs, community centres, and libraries. A list of buildings and land that are valued by the local community will be kept by local councils and updated by members of the community. If assets on the list come up for sale, communities will be given extra time to prepare a bid to take them over. The definition of land or buildings of community value is now defined in the Act: its principal use must be for social wellbeing and social interests, including cultural, recreational and sporting interests.

**Community right to challenge.** The Act also introduces a Community Right to Challenge, allowing communities the right of challenge to run local services which are being privatised or closed.

### 3. Neighbourhood Plans

**Neighbourhoods.** Neighbourhood plan areas covers will be designated by a local planning authority, but the application for designation will come from the relevant community. The local authority must publicise its intention to designate an area and give six weeks for responses. Designation will be a fairly straightforward process in rural parishes and small towns (legally a town council is civic parish). The parish boundary will define the neighbourhood and the parish council will develop the neighbourhood plan. It is also open to parishes to group together to develop a single plan (for example, Ascot and Sunninghill and Sunningdale parishes are working on a single plan: <http://bit.ly/rVN3Gu> & above right). On the edges of towns, the definition of areas may prove more complicated, for example where a business park lies in an adjacent parish. Neighbourhood areas cannot overlap. Outside parished areas, planning authorities will decide on the leadership and extent of neighbourhood forums. These must have at least 21 members who live and work locally. All forums must pass a 'wellbeing test' and be "established for the express purpose of promoting or improving the social, economic and environmental wellbeing of [a] neighbourhood".

**Business areas.** Only local authorities can designate a neighbourhood area as a 'business area' and only if the area is "wholly or predominantly business in nature". It is expected that business led forums will take the lead in developing the neighbourhood plan for these areas (this is currently being trialled in Central Milton Keynes: <http://bit.ly/tVQJyZ>). But business led plans cannot concentrate solely on economic issues and the forum must meet the wellbeing test.

## Environment (4)

### The Big Questions

The Government is pushing for sustainable growth wherever possible, and we know that our area will be expected to provide new homes and create new jobs. The exact number of homes we must provide is as yet unknown. If we fail to decide locally where they should be located and what they should look like these decisions will be made by other people outside our area, such as the Council or Government Planning Inspectors.

The Plan will be based on evidence, with local opinion at its heart. By answering the following four questions you can help decide how to deal with new homes and development.

Q1. What type of homes should we be providing?



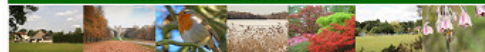
Q2. Where should new homes go?



Q3. What do you most value about our local built environment?



Q4. What do you most value about our local natural environment?



### Ascot, Sunninghill & Sunningdale consultation exhibit

The **neighbourhood plan** will deal planning matters, and a range of other matters of the community wish it. It has the potential to become a village plan, design statement and mini-local plan rolled into one. The plan can be detailed or general depending on what local people want, though many local authorities are likely to encourage a degree of conformity. Each stage of the process must be publicised and six weeks allowed for consultation, including with statutory consultees and neighbourhood religious, community and voluntary bodies. The internet is set to play a major role in publicity. Thame in Oxfordshire with a population of 11,000, for example, has set up a Facebook page which has already attracted 2,500 likes (<http://on.fb.me/vMsR83>; see also the report on its recent community planning event <http://bit.ly/v0BSMj>). It is expected that neighbourhood plans will establish general planning policies for the development and use of land, including where new homes and offices should be built, and what they should look like. The plan will be time limited & it is for the community to determine period for which it applies (but we might expect pressure from planning authorities to conform with their local plan cycle).

**Neighbourhood development orders** (NDOs) are optional and grant planning permission for specific developments. Permission can be full or outline; have conditions attached; and be time limited. It can be site specific or grant more generalised development rights across the neighbourhood. The Act allows NDOs to "make different provision for different cases or circumstances", giving a degree of flexibility to meet changing circumstances. But the NDOs cannot grant permission for: 'county matters', for example waste and minerals; for developments that are subject to EU environmental directives; or for nationally significant infrastructure projects. Whether a development meets the conditions of the NDO, and therefore gains planning permission, will normally be determined by the planning authority but a parish council can adopt this right, except where it owns the land in question. NDOs can only be contested by judicial review and only if a claim is made within six weeks of publication.

**Examination.** Draft neighbourhood plans and development orders will be submitted to an independent examination by a qualified assessor appointed by the local authority with the agreement of the neighbourhood forum or parish council. It is expected that examination will normally be by written representation but public hearings are permitted. The examination report will not be binding except in the case of community right to build orders (below). In validating the plan, the examiner must ensure that it contributes to sustainable development; takes into account:

- ◆ conservation areas, listed buildings and their settings; features of special architectural or historic interest
- ◆ conforms to the National Planning Policy Framework
- ◆ has “general conformity with the strategic policies contained in the development plan”, where it exists.

There is no requirement to take into account landscapes or environmental assets, except where they are covered by the local plan, national policy or legislation. The examiner cannot order a rewrite of a or neighbourhood plan the NDO, or impose conditions, but can recommend:

- ◆ a referendum
- ◆ modifications followed by a referendum
- ◆ rejection.

A local authority can insist on modifications to the neighbourhood plan or order to comply with the examiner’s recommendations but it can also dissent from the examiner’s view.

**Referendum.** If the plan receives the support of more than 50% of voters at a referendum, the local authority is required to adopt it into the local planning framework. Where the NDO is rejected in a referendum, it cannot be resubmitted for consideration within two years, unless there has been a change in national planning policy. The examiner can rule that a referendum is broadened beyond the neighbourhood area, leading to the possibility, for example, that villages in the hinterland of a market town could have a vote on the town plan. Where the neighbourhood area has also been designated a ‘business area’, business rate payers will also vote in a separate referendum. Where the plan or order is only approved by one or the two referenda, it is up to the local authority to decide whether to adopt it.

A **community right to build order** is “a practical example of people power” according to the government. Technically, it is a particular type of neighbourhood development order, which can be put forward by any community organisation that passes the wellbeing test, and has more than half of members living in the neighbourhood area. Any income generated from the development must be for the community, not the members of the organisation. The community right to build order can be developed independently of the neighbourhood development order but the local authority can block the order:

- ◆ if it duplicates or overlaps with the neighbourhood development order, though orders do not have to conform with the local plan.
- ◆ if it has significant effects on the environment by virtue of its nature, size or location, or breaches EU environmental regulations.

The community right to build order then follows the same process of examination, referendum and adoption, or rejection, as neighbourhood plans & NDOs.

## 4. Pilot neighbourhood plans

One in four (77) local authorities and 126 communities are engaged with the Neighbourhood Planning Front Runners pilot (map of pilots: <http://bit.ly/vKmGGS>). Only 50 of the pilots are in areas which already have a core strategy in place, or will have by April 2012. Of the rest, 42 of the local authorities anticipate completing their local plan by the end of 2012, and the remaining 34 will not have a local plan in place until 2013 at the earliest. The pilots therefore offer considerable scope for examining to what extent neighbourhood plan can influence emerging local plans, rather simply echo them.

Region	Pilots
East	16
East Midlands	14
London	8
North East	4
North West	13
South East	25
South West	24
West Midlands	22
Yorkshire & Humber	0



One of the more sophisticated neighbourhood plan consultations is being piloted by Maldon District Council in Essex, in conjunction with Moat Housing Association and Henley Management College. The *It's time to Neighbourhood Plan* project promises “geographically based on-line Interactive Engagement Mechanisms”. Despite the jargon it looks a promising tool, though it may only be financially viable for larger urban areas (<http://bit.ly/srGKXY>).



## 5. Larger than Local Planning

**Regional Strategies.** The Localism Act frees planning from the yoke of Regional Spatial Strategies (RSS), especially housing and renewable energy targets (except in London, where the London Plan is retained). However, nearly half of local authorities are likely to have adopted core strategies incorporating RSS housing targets by the time the RSS are abolished.

**Duty to cooperate.** Local authorities will have a duty to cooperate with neighbouring authorities on planning sustainable development, including cooperation with county councils and Local Enterprise Partnerships (LEPs). This must be conducted “constructively, actively and on an ongoing basis”. Local authorities must cooperate on the preparation of development plan documents, other local development documents and marine plans where there are strategic issues between districts and counties, or neighbouring districts are involved. ‘Strategic’ is defined as being:

- ◆ significant developments, including infrastructure, that overlap between two neighbouring authorities
- ◆ or a development for which the county rather than the planning authority has responsibility.

A local authority cannot adopt a local plan if it has failed in its duty of cooperation.

**Infrastructure.** The Infrastructure Planning Commission (IPC) will be abolished and replaced by the Major Infrastructure Planning Unit within the Planning Inspectorate from 1 April 2012. On the same date, Sir Michael Pitt, Chair of the IPC, will become Chief Executive of the Planning Inspectorate. The current cadre of Commissioners on the IPC will continue with the new body until September 2014. Final decisions on Nationally Significant Infrastructure Projects (NSIPs), however, will be made by the relevant Secretary of State, not by the Commissioners.

**National Policy Statements** will remain in place.

**Policy Planning Statements and Guidance** notes are expected to be abolished on 1 April 2012 and replaced by the controversial National Planning Policy Framework.

## 6. Local Authorities

**Mayors.** The Localism Act gives powers for election of Mayors for a four year term. Plans for creating shadow mayors until the elections have been dropped. The Act allows for creation of Mayoral Development Corporations, but only in London. On a visit to the South West, Greg Clark said the government would hold a referendum on whether to elect a mayor in the eleven largest English cities outside London next May, ignoring an earlier call by the Institute for Government for delayed staged elections (Taunton People: <http://bit.ly/sAEXt>; IfG: <http://bit.ly/vJxpHg>). Clark also said the devolution of powers will not be not restricted to cities, hinting that areas like Cornwall could take on greater powers that may pave the way for a Cornish Assembly (TI Cornwall: <http://bit.ly/tT6TpB>).

### The 11 new mayoral cities

Birmingham, Leeds, Bristol, Sheffield, Bradford, Liverpool, Manchester, Wakefield, Coventry, Nottingham, Newcastle.

**Power of competence.** The Act gives councils a new general power of competence which is broadly defined as: “a local authority has power to do anything that individuals generally may do”. Councils are now free to do anything, provided they do not break other laws, even when it is “not for the benefit of the authority, its area or persons resident or present in its area”. This includes acting commercially through a dedicated company or cooperative. The New Local Government Network suggested that these commercial activities might include providing banking, estate agency or

insurance services but the government told the Communities and Local Government Committee that the “it is not for government to say how councils might use the power” of competence (<http://bit.ly/ty1Htl>). The new power also applies to Fire and Rescue Authorities, Integrated Transport Authorities, Passenger Transport Executives, Combined Authorities and Economic Prosperity Boards.

**Governance.** The Standards Board has been abolished and standards for councillors will be set locally. Councillors will now be free to engage in pre-application discussions with developers, communities and objectors without subsequently being prevented from voting or expressing their views on the application in committee. Councils will be able to abandon the Cabinet system of governance and return to the committee system if they wish but the cheque will require a local referendum.

**Referenda.** The power for local communities to trigger a referendum was removed in the Lords. Referenda are retained for council tax, right-to-build, neighbourhood planning and changes to council governance (Out-Law: <http://bit.ly/uj5Svw>). The British Retail Consortium cheered, arguing that local referenda would cause delays to retail developments and consumers anyway shaped the environment they live in (FBT: <http://bit.ly/tGVAVy>). The Association of Convenience Stores said: “Communities still won’t be able to prevent the proliferation of clone towns, or Tesco Express stores opening” (Grocer: <http://bit.ly/vPHbpF>).

**EU fines.** Responsibility for paying EU fines for exceeding air pollution limits, and breaches of waste, services and procurement rules can be passed to local authorities under the Act. The LGA said the bill might be £1.2 billion (Guardian: <http://bit.ly/v6tTNg>; Independent: <http://ind.pn/v2IPgF>; LGA: <http://bit.ly/u9Vcbu>).

**Councils ill prepared for community rights.** A survey by the Local Government Information Unit and insurer Zurich Municipal found that councils are risk adverse and unprepared for the increase in community involvement anticipated under the Localism Act. Despite the fact that only one in five councils has formally assessed the community’s appetite for greater involvement, officers are sceptical about how willing and able communities are to take on the delivery of services or to manage assets. Almost two-thirds (64%) think the capacity of the community sector in managing services or assets is ‘low’ or ‘very low’, and 66% said communities would be either unmotivated or very unmotivated to take on such responsibilities. Over half of all respondents said that the community right to buy was ‘not at all important’, or ‘not very important’. Just under half reported the same for right to challenge and of ‘mutuals and cooperatives’ (Guardian: <http://bit.ly/sUAZkn>; <http://bit.ly/vjA4KK>; Report: <http://bit.ly/rzC9YA>).

## 7. Developers

**Duty to Consult.** The Act puts a clear obligation on developers to carry out consultation with local communities prior to submitting planning applications for major development schemes. They must show how they have consulted with local people within their planning application, what comments they have received, and how they have taken the comments into account. Secondary legislation is set to specify that that this duty will be applied to:

- ♦ residential developments of over 200 units, or on a site area of four hectares or more
- ♦ non-residential developments providing 10,000 square metres of new floor space or with a site area of two hectares or more.

Writing in the Huffington Post, Ben Goddard said: “Developers must develop a new set of communication and persuasion skills... businesses will need to react and deploy sophisticated campaign techniques - targeting local voters, building local coalitions and winning the argument in the voting booth” (<http://huff.to/uwxil4>).

## 8. Incentives for Development

**Community Infrastructure Levy.** Developer contributions will be secured through the Community Infrastructure Levy (CIL) which was introduced in 2010 but is only just coming into use. Newark and Sherwood, Redwood, and Shropshire will be the first authorities to introduce the CIL during the next few weeks. Local authorities cannot set the CIL at level that makes “development of the area economically unviable”. The government is consulting on a requirement for charging authorities (with the exception of the Mayor of London) to ‘allocate a meaningful proportion of levy revenues raised in each neighbourhood back to that neighbourhood’ (closing 30 December: <http://bit.ly/rK3axs>). The minimum ‘meaningful proportion’ will be determined after the consultation and there will be a per household cap aimed at ensuring that rural parish councils can not receive large sums from big developments in their area. This cash will go to the parish or town council or, where these do not exist, the receipts will be retained by the local authority which will consult on how to spend the money. The income must be spent on building or maintaining infrastructure, but not to resolve an existing infrastructure deficit. The use of Section 106 “planning gain” agreements is expected to be phased out for all developments except affordable housing.

The **New Homes Bonus** commenced in April 2011 and is intended to incentivise building. It matches funds the additional council tax raised for new homes and properties brought back into use, with an additional amount for affordable homes, for the following six years. In 2011/12, the Bonus will pay out £200 million, rising to well over £1 billion in the new few years (local authorities spend nearly £120 million of public funds annually).

## 9. Housing

The Act introduces major changes to the social housing sector. They allow social landlords to issue fixed term tenancies and charge market rents. The government has also just issued its housing strategy for England, which we will examine in our regular eBulletin next week.

### About the CPRE South East eBulletin

The CPRE South East eBulletin is usually issued monthly. We cover planning and environmental news with a relevance to the remit of CPRE. Any views expressed are those of the editor and contributors, not of any part of CPRE. Our audience is CPRE and its friends. Please feel free to circulate this eBulletin.

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## 10. Further Information

**Government.** The Full Act: <http://bit.ly/tqKfpi>. The government has also issued a revised ‘Plain English Guide’ but this is little more than political tub thumping for the Act (<http://bit.ly/t5Q9Md>).

**Guides.** The Royal Institute of British Architects (RIBA) has issued two useful guides (<http://bit.ly/vWYSgs>):

- ♦ **Neighbourhood plans.** The guide declares: “Architects will play a significant role in assisting neighbourhood planning to realise quality development. Their specific skills of analysis, interpretation and visioning of place are vitally needed, especially in a context where many people are suspicious of change and nervous about the type of new housing or development that might be built.” Among the case studies is work with 12 parish councils in Kent to formulate a response to the draft Maidstone Core Strategy (see: <http://bit.ly/v5c2bm>) and Caterham Barracks, Surrey.
- ♦ **Community engagement.** “Localism requires a shift to partnership approaches with local people, requiring new skills in building effective dialogue and developing a shared understanding of places, their challenges and their potential.” The report calls for greater participatory design practice to engage local people and building users in the design process. It contains a very useful summary of the methods and challenges of community engagement. Case studies include Graylingwell Park in West Sussex.

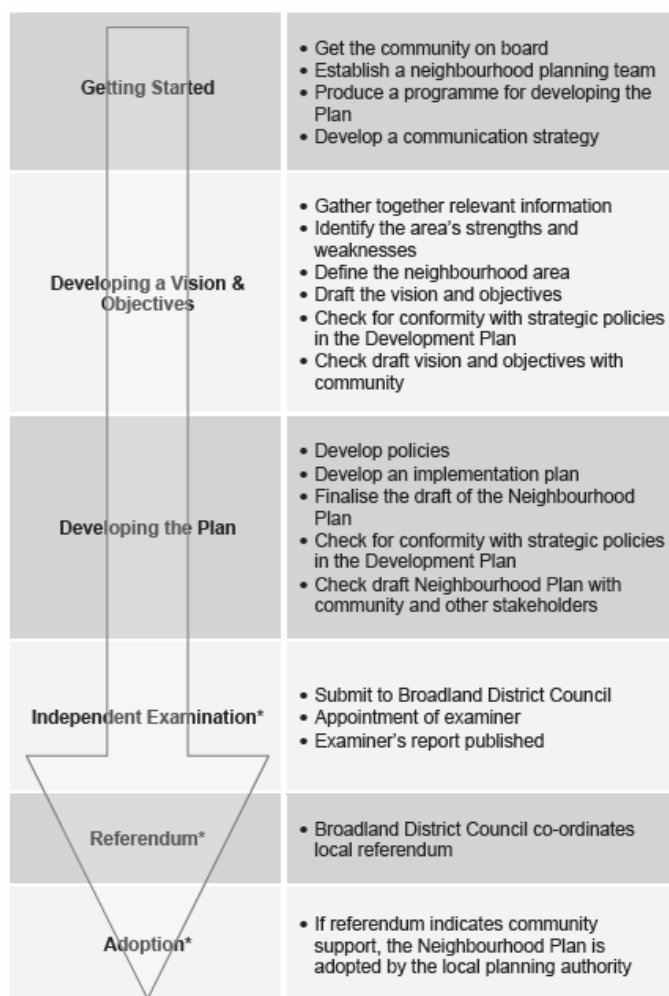


Fig. 1 – Typical process for producing a Neighbourhood Plan. Stages marked with an asterisk are statutory.

Broadland guide to neighbourhood plans (<http://bit.ly/tnVOFW>)