



Campaign to Protect  
Rural England

## **LOCALISM BILL BRIEFING**

**15 December 2010**

At over 200 clauses and a further 24 schedules the Localism Bill covers a lot of ground. As well as taking forward the Government's reforms on planning the Bill will reform social housing, elements of local government, the control the Mayor has in London and give communities more rights.

This briefing gives an initial overview of aspects of the Part 5 of the Bill, which covers planning. It is also important to remember that this legislation is only part of the mechanism for reforming the planning system. The National Planning Policy Framework, which we expect to be published for consultation in 2011, will also be vitally important for the future of the planning system.

### **An overview**

#### Plans and strategies

As expected, Regional Strategies and the duty to prepare them, will be abolished. In response to concerns raised about the future of spatial planning following the abolition of the regional tier the Bill introduces a Duty to Cooperate for local authorities, and any other person or organisation involved in planning for sustainable development. In the absence of sub-national strategic planning this Duty to Cooperate will be extremely important for enabling a holistic spatial planning process. The inclusion of a clear definition of sustainable development, however, would make interpretation and implementation of this part of the Bill much simpler.

Inspectors will no longer be able to make modifications to local plans when they are submitted for examination. The plan will either be approved, or returned to the relevant local authority for modifications to be made. At the local authority's request, the inspector may recommend modifications. CPRE has long had concerns that the Inspector's ability to change plans undermined the community participation involved in developing the draft plans. We are therefore pleased that alterations will be the responsibility of local authorities, but that they will still be able to consult with Inspectors on the content of these changes.

#### Neighbourhood planning

Neighbourhood planning will have two elements; Neighbourhood Plans, and Neighbourhood Development Orders (NDOs). Where they exist, Parish Councils will be able to initiate both Plans and NDOs. Where Parish Councils do not exist, any group of people working for the social, economic and environmental good of an area may apply to the relevant local council to be designated a Neighbourhood Forum. The Forum must then apply to the local council to designate their area as a Neighbourhood Area. The Forum will then have the same neighbourhood planning powers in their Neighbourhood Area as Parish Councils will in their Parishes.

Neighbourhood Development Orders (NDOs) will automatically grant planning permission to certain types, or classes of development within the area specified. Neighbourhood Plans will be proposed in the same way as orders, but will be policy based.

NDOs and Plans will be proposed and adopted in the same way. First, the Forum or Parish Council must submit a draft to the relevant local authority. The local authority will check the proposal conforms with basic conditions. If successful at this stage, it will be subject to

independent examination. The examiner will not be able to make changes, but will be able to recommend that it should be modified before adoption. Following a successful examination, the NDO or Plan will be subject to a referendum of at least the eligible residents of the area covered by the Plan or NDO, and if the local authority sees fit a wider electorate. If the referendum achieves a basic majority in favour of the Plan or NDO, then it must be adopted by the relevant local authority.

The Community Right to Build will be a special type of NDO, that will be able to prescribe particular developments which will be subject to the Order. Further, subject to conditions community organisations other than Forums and Parish Councils will be eligible to propose Community Right to Build Orders.

A number of types of development will not be eligible for inclusion in NDOs. These include Nationally Significant Infrastructure Projects, development beyond designated thresholds, and development that would require Environmental Impact Assessment.

CPRE has enthusiastically welcomed the Government's moves to get local people more involved with planning. We are pleased that while seeking to achieve this, the Government has recognised the importance of strategic planning, by excluding certain types of high impact development, such as waste provision, from the neighbourhood planning process, and requiring that NDOs and Neighbourhood Plans are in broad agreement with national planning policy and local strategic policies. This will be critical for ensuring that important designations such as Green Belts and National Parks are adequately protected.

CPRE has always held reservations about Local Development Orders, however, as they allow the proper public scrutiny of proposed development to be bypassed. While the current implementation proposals for the Community Right to Build are much improved from those originally announced in July 2010, therefore, we believe that the inclusion of these within a broader Neighbourhood Development Order scheme could still pose a threat to the countryside. We support the proposals for Neighbourhood Plans, and particularly that these will be included as part of the Development Plan. CPRE would therefore rather see the objectives of NDOs achieved through robust Neighbourhood Plans.

### Consultation

This section of the Bill amends the Town and Country Planning Act 1990 to try and place more emphasis on pre-application consultation. The Bill introduces a requirement for those intending to submit very large planning applications to consult local communities before submitting them. The Bill requires developers to then have regard to views expressed through the pre-application consultation process before submitting their application.

We are supportive of the Government's intention to enable local people to have more of a say over proposed developments at an earlier stage, rather than only when proposals have been submitted. This echoes the process required by the Infrastructure Planning Commission which front loads consultation to try and ensure people are involved when they still have a real change to influence proposals. The Bill does not however define 'very large', thresholds will be set in a Development Order.

### Enforcement

CPRE can welcome, in principle, many of the proposed reforms relating to enforcement issues, as they respond directly to many of our long-held concerns on the general workings of enforcement. These include:

- giving powers to local authorities to decline to determine retrospective planning applications related to matters specified in an Enforcement Notice without a subsequent right of appeal for the applicant;
- removing the general ground of appeal against an Enforcement Notice, if the notice has been issued between the time a related application was made and before the time limit for appealing the application expires;
- Planning Enforcement Orders, providing a similar power to injunction in cases where there has been a 'concealed' breach of planning control (this appears to have been developed in response to the widely reported enforcement case of a mansion concealed in straw bale in the Green Belt near Redhill in Surrey);
- additional powers in connection with unauthorised advertisements including 'removal notices' for supporting structures (particularly the trailers in fields highlighted in a 2005 CPRE campaign) and 'action notices' to clear surfaces; and
- increased fines for Breach of Condition Notices.

A possible concern for CPRE, however, may lie in the introduction of 3-year immunity against enforcement in relation to advertisements and protected trees. We believe that the current rules on time-limited immunity from general planning enforcement should be removed.

### Nationally Significant Infrastructure Projects

The Bill proposes to abolish the Infrastructure Planning Commission and pass its decision-making functions on nationally significant infrastructure projects to the Secretary of State. This is a change CPRE can support, as our position has always been that major planning decisions should be made by a democratically accountable Minister or local authority.

The Bill also slightly amends the Planning Act 2008 in relation to National Policy Statements (NPS). It is proposed that the Secretary of State will not be able to adopt a NPS if the House of Commons resolves that the statement should not be taken forward. This is in line with Conservative pledge to make NPSs subject to a vote in Parliament, though it will remain at Parliament's discretion as to how it treats NPSs. It will also no longer be possible to adopt as an NPS a policy statement (such as the Aviation White Paper) which predates the passage of the Planning Act 2008. CPRE will take a close interest in how Parliament decides to engage in the NPS process. The change on older statements is one that we campaigned for during the passage of the 2008 Act and strongly welcome.

### **What the Bill does not include**

#### Appeals

Despite pre-election pledges by both governing parties, third party or public rights of appeal against decisions to grant planning permission have not been included in the Bill. CPRE believes that such rights are a necessary adjunct to the range of proposed 'community rights' that permeate the Bill. A limited community right to appeal, accompanied by the introduction of restrictions on the existing blanket right of appeal for developers, could give real teeth to the community rights to plan, build and challenge in the Bill.