

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

22 February 2011

Report of the Director of Planning, Transport and Leisure

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision

1 THE LOCALISM BILL – PLANNING ASPECTS

Summary

The Localism Bill proposes far reaching changes for local communities and the organisations that serve them. The Bill covers a very wide range of changes for Local Government functions and services. This report highlights some of the key and fundamental changes proposed to the town and country planning system that will be likely to affect the way services are delivered.

1.1 Introduction

1.1.1 At the January meeting of Cabinet a report was considered providing an overview of the contents of the Localism Bill and in doing so proposed that reports on various elements of the Bill would be made to appropriate Advisory Boards. This report covers the proposed changes to the planning system outlined in the Bill.

1.1.2 The fundamental thrust of this proposed new legislation is to significantly decentralise power and decision making away from Government to local authorities and in particular to local communities and to provide those local communities with the ability to make decisions or influence decisions of their local authority.

1.1.3 Decisions about our towns, villages and countryside, how these are protected and how they grow both at a strategic level and at the very local street level are almost always of great interest to communities and individual members of the public who are affected. It is no surprise therefore that changes to the town and country planning system are very much embedded in the new Bill. The following paragraphs briefly summarise the proposed changes, make some observations and in some places put forward some constructive comments that might usefully be submitted to those in Government as the Bill proceeds through the current committee stages.

1.2 Regional Spatial Strategies (RSS)

- 1.2.1 This regional level element of the Statutory Development Plan is to be abolished and replaced with a duty to cooperate in relation to the planning of Sustainable Development. In place of the regional top-down specification of new housing targets, local authorities will be given more freedom to identify their own levels of housing need and provision. This is to be incentivised through initiatives such as the New Homes Bonus and new arrangements for channelling the Community Infrastructure Levy into local investment.
- 1.2.2 It is anticipated that the South East Plan will be revoked as one of the first elements of the Localism Act probably early next year. The Government sees a degree of more flexible non prescriptive strategic planning being achieved through Local Economic Partnerships, but more particularly through greater cooperation between local authorities and local communities in relation to the planning of sustainable development. It will be noted that the term 'sustainable development' is used often in the Bill but it is not clear how that is defined or how the implied presumption in favour of sustainable development will be expected to be delivered in practice and weighed in the balance of all planning considerations.
- 1.2.3 In the meantime there has been significant activity, mainly through the Courts, as far as the RSSs are concerned. The Secretary of State's original decision to abolish that tier of planning was the subject of a successful legal challenge. However, in a subsequent Court of Appeal case it has been held that the Secretary of State's letter of intent to abolish RSS is a material consideration for planning authorities and planning inspectors to take into account. Consequently, the weight to be given to policies of the RSS is reduced to a degree, although to what extent will be a matter of local determination depending on the case and the currency of Local Development Frameworks.

1.3 Local Development Frameworks/Local Plans

- 1.3.1 The Bill introduces a number of measures to increase flexibility and streamline the process of the preparation of the Local Plans/Local Development Frameworks (LDF) by local authorities. Some largely administrative functions such as the submission to the Secretary of State of the Annual Monitoring Report and the Local Development Scheme of programmed forward planning work will no longer be necessary, but they still have to be produced and published.
- 1.3.2 Whilst planning inspectors will continue to assess local plans at a Public Examination, they will only be able to suggest changes at the request of the Council. So whilst Councils will only be able to adopt plans judged to be sound by the Inspector, the Inspector's Report itself will no longer be binding and Councils will be able to suggest changes during the examination process. In fact this is what always tended to happen in practice with most binding recommendations relating to matters commended by the Council.

1.4 Community Infrastructure Levy (CIL)

- 1.4.1 The Bill introduces some changes in respect to CIL which is already subject to published Regulations. The CIL provisions in the Bill allow local authorities to set charges that developers must pay when bringing forward new development in order to contribute to new infrastructure. The proposals introduce three changes. Firstly, proposals for funds to be used within neighbourhoods where the development has taken place (although this will be subject to much further guidance and clarification through regulations following the enactment of the Bill). Secondly, that funds can be spent on ongoing maintenance costs and thirdly, there is greater local control over setting the charging levels. Whilst such charges will need to be set through a Charging Schedule supported by an Infrastructure Plan which would need to be publicly examined, the binding nature of the inspector's recommendation will be relaxed to enable the local authority to alter its charges.
- 1.4.2 Much greater clarity is needed on this through guidance in order to understand the mechanisms for expenditure of CIL. In any event, the Borough Council, in common with most other authorities, will need to put in place work to prepare an Infrastructure Plan before it can be in a position to establish a levy. In the meantime of course we continue to successfully use section 106 agreements to provide for necessary infrastructure in relation to development, but our ability to do this will be constrained after 2014 by the CIL Regulations.

1.5 Large Developments

- 1.5.1 The promoters of large developments (initially housing developments of 200 units or more or 10,000sqm of new floorspace in other uses) will be required to undertake early pre-application consultation with local people to enable them to comment or collaborate on design before plans are finalised. Developers will also need to have regard to the Council's advice on local good practice and to any responses received before submitting a planning application.
- 1.5.2 To a significant degree, with major schemes, this process already takes place and for the most part the Council are involved in such discussions. The main change is that it will now become a statutory requirement and applicants will need to demonstrate that they have duly observed this process, although it is not clear how this is to be judged to be satisfactory and what the penalty is if it is not.

1.6 Neighbourhood Planning

- 1.6.1 Potentially the most far reaching aspects of the Bill as far as planning is concerned, are the various proposals for neighbourhood planning.
- 1.6.2 The Bill makes provision that any 'qualifying body', which could be a town or parish council or a body designated as one of the new Neighbourhood Forums (see below), will be entitled to initiate a process for the purpose of requiring the

local planning authority to adopt a Neighbourhood Development Plan (NDP) and/or a Neighbourhood Development Order (NDO).

- 1.6.3 A Neighbourhood Development Plan may set out policies and proposals in relation to the development and use of land in a neighbourhood, whilst a Neighbourhood Development Order will be able to grant planning permission (in full or outline) in relation to a particular neighbourhood area and for specified classes of development. The effect of that would be that planning permission would be granted for those specified classes of development and no further permission would be required from the Local Planning Authority.
- 1.6.4 Both NDPs and NDOs must be prepared in line with national policy, the presumption in favour of sustainable development and, importantly, the strategic elements of the Local Authority's Local Plan/LDF.
- 1.6.5 Both NDPs and NDOs will also be required to go through a public examination process and if the inspector is satisfied that the Plan or Order is sound it must be then be the subject of a local referendum which, it is expected, will need to demonstrate that 50% of those who vote are in support of the final neighbourhood plan.
- 1.6.6 A 'qualifying body' for these purposes is a parish council or where there is no parish council, a neighbourhood forum. Such a forum has to be designated by the local planning authority if an application by an organisation has been made and:
- it is an organisation established through the express purpose of furthering the social, economic and environmental wellbeing of an area;
 - the membership is open to individuals living in or wanting to live in the neighbourhood;
 - it has at least three members;
 - and a written constitution.
- 1.6.7 A 'neighbourhood area' is either the whole or part of the parish as identified by a parish council or, where there is no parish, as specified by a neighbourhood forum. Neighbourhood areas must not overlap. The planning authority must publish a map showing all areas so designated.
- 1.6.8 Clearly these proposed changes to the planning system represent a major shift in decision making towards local communities. Whilst the Bill sets out various procedures that must be put in place there remains a significant lack of clarity as to the precise form and content that neighbourhood development plans must follow. For example regulations and guidance must surely be needed to give some assistance to both local authorities and communities as to the level of evidential material that might be expected to support such plans. Similarly, it is not clear from the provisions of the Bill what level of justification will be required to

support a Neighbourhood Development Order and whether such an Order can be made independently or only following the successful preparation of a Neighbourhood Development Plan. These seem to be very important matters that require greater clarity.

- 1.6.9 Local authorities, in the main district councils, have a duty to cooperate in the preparation of NDPs and NDOs. On the one hand this is an excellent opportunity to plan collaboratively and for the Borough Council to provide local leadership for local communities in shaping the places where they live and work. From a practical point of view, however, without further clarity on content and evidence required, it is very difficult to judge the desire and capacity of Parish Councils and Neighbourhood Forums to prepare such plans or the staff and financial resources that will be needed to support this new system by the Council.
- 1.6.10 Perhaps the most important point is how the Bill and in particular the comments of Ministers and senior civil servants have portrayed the purpose of NDPs. The NDPs will be part of the statutory development plan and prepared within the context of LDFs/Local Plans prepared by planning authorities. However, it has been made clear by Ministers and senior government officials that NDPs must promote more and not less development than in the LDF/Local Plan. Whilst the opportunity to have more influence on their area has been welcomed by some local communities, there is at least anecdotal evidence that this is being seen as an opportunity to prevent future change and development rather than foster and promote it, which seems to be at odds with the aim of the new planning system proposals. In many areas it seems that this will require a change in how traditionally many communities have viewed new development and a more positive response to the future development needs of communities in terms of housing, employment and other matters.
- 1.6.11 It seems likely that the onus will be on local planning authorities to ensure that the new system is properly managed, in the widest sense of the word, and that may require some review of the skills that we have at our disposal.
- 1.6.12 If there is an appetite for properly constructed NDPs and the formulation of NDOs then there will be a considerable need for parishes and neighbourhood forums to obtain professional advice. This is likely to present some significant cost implications for those Parishes or Neighbourhood Forums wishing to pursue NDPs as the majority of costs in terms of evidential work in the plan preparation will for them to meet. The prescribed functions of the Local Planning Authority are to do with the public examination and the subsequent referendum, although it seems most likely that some Forums will look to the Borough Council for more assistance. It is understood that the Secretary of State may make regulations providing for authorities to make charges for the purposes of meeting expenses in connection with the neighbourhood planning functions and this in turn may require us to change the way we charge and account for staff resources.

1.6.13 The Board will see that there is much clarity to be sought on how the process of NDPs and NDOs will be practically implemented. There are also perceived tensions between the way local communities are viewing these new initiatives and what the expectation of government actually is. Depending upon the outcome of these factors, there could be significant resource implications for Neighbourhood Forums and the Council in moving forward. It is intended that these matters can be aired at the forthcoming meeting of the Parish Partnership Panel which will start the process of dialogue with our own local communities in Tonbridge and Malling about these new and very different approaches to planning.

1.7 Community Right to Build (CRBO)

1.7.1 The Community Right to Build Orders proposed within the Bill are a particular type of Neighbourhood Development Order. The process of preparing and processing a CRBO is the same as an NDO, the main difference being that a CRBO is for specific development on a specific site and the process has been adapted to make it more proportionate for smaller scale community led schemes that are envisaged to take advantage of this route. Communities will have to identify suitable land, sources of finance and secure support for their proposals but it is not clear whether there are any limitations on the type of development that can take advantage of this process. Nevertheless, it is conceivable that for example small affordable housing schemes, community buildings or local shops and service development could be covered by a CRBO.

1.7.2 The basis of this new 'right' aims to tackle the perceived lack of development coming forward in rural areas where it is believed that planning authorities are resistant to development and consequently restrict expansion despite local communities themselves expressing a wish to see new housing and other facilities built. It is right to say, however, that our experience is that it is unlikely to be the borough council itself standing in the way of local desire for development. Rather, it is more likely to be the influence of other parties within a local community that might seek to resist such proposals coming forward.

1.8 Planning Enforcement

1.8.1 The Government also proposes reforms to planning enforcement to tackle perceived abuses such as making deliberately misleading planning applications and running retrospective planning applications and enforcement appeals simultaneously. There are two important strands to the proposals in the Bill.

- Where the time for enforcement action has expired but it is believed there has been concealment, the authority will be then be able to apply to the magistrate's court for a **Planning Enforcement Order**. If concealment is proven this will allow the planning authority a further year to take enforcement action. This provision is designed to deal with some celebrated cases where it has been proved that unauthorised development has taken place and has been purposefully concealed from public view.

Members may recall the infamous case of the house behind a hay stack in Surrey.

- If an Enforcement Notice is served, the planning authority can **decline to determine a retrospective planning application** for the same development. This new provision seems to address those cases where it should be clear to the local planning authority that planning permission would not be granted and therefore an enforcement notice should be served at the outset. The authority should not then need to deal with a retrospective application in those circumstances. Of course there will still remain circumstances where enforcement investigations have taken place but a notice has not been served on expediency grounds where it will remain appropriate for a retrospective application to be considered.

1.8.2 Whilst any strengthening of planning enforcement procedures is welcomed, these provisions do not go far enough in addressing the main frustrations that local authorities have experienced in cases of unauthorised development. In particular cases where, on the face of it, enforcement notice action might not be justified but where nevertheless there is local concern that unauthorised development has taken place. In order to seek to address those particular issues, the Borough Council has made representations to Ministers and senior civil servants on some new proposals and at **Annex 1** a note is attached which we have put to Government and which it is proposed to promote again as the Bill passes through its committee stage.

1.9 Nationally Significant Infrastructure Projects

1.9.1 Final decisions on projects of national interest are to be transferred from the Infrastructure Planning Commission to the Secretary of State. The Bill also proposes a streamlining of processes allied to the new method of decision making. The aim is a more efficient democratically legitimate system for fast tracking major infrastructure projects.

1.9.2 The Planning Act of 2008 provided for the publication of national planning statements across a range of infrastructure projects including energy, transport, water and waste. National planning statements are to be retained but new arrangements will require their Parliamentary approval. A separate report on national planning statements is included on this agenda.

1.10 Other Matters

1.10.1 It is notable that the Bill makes no specific reference to gypsies and travellers. The timetable for the review of Circular 01/2006, which governs this area of planning policy, is still unclear although the Secretary of State has issued a letter of intent to review the circular and that intention has now attracted some weight in decisions on some planning and enforcement appeals.

1.10.2 Member should also be aware of a further provision in the Bill described as the **Community Right to Buy – Assets of Community Value**. The essential provisions are made in the Bill for arrangements for lists of assets of community value to be held by local authorities and for procedures designed to help community groups save facilities that are under threat. A further 60 page consultation document on this initiative was published as recently as mid February and officers are currently considering its implications. At first glance whilst this seems to make provisions for registers of community assets to be prepared and publicised, it does not appear to change the planning regime in respect of the possible loss of such assets as pubs, shops and post offices nor does it seem to offer any financial incentive for local communities. This matter will be reported to Members in due course.

1.11 Legal Implications

1.11.1 The Bill has had its second reading and is currently going through the Committee stages. It is expected that changes will occur before its intended enactment at the end of this year or early in 2012.

1.12 Financial and Value for Money Considerations

1.12.1 There are none directly related to this report although there is considerable uncertainty about the resource requirement that may arise depending on the formal approach to Neighbourhood Planning.

1.13 Risk Assessment

1.13.1 The risk inherent in any emerging legislation is a degree of uncertainty until subsequent regulations are published. This looks to be very true of the Localism Bill. In particular the issues raised in this report about neighbourhood planning give rise to uncertainty both in terms of the level of expectation of local communities and the potential resource requirements on the Borough Council.

1.14 Equality Impact Assessment

1.14.1 See 'Screening for equality impacts' table at end of report

1.15 Policy Considerations

1.15.1 Local Development Framework.

1.16 Recommendations

1.16.1 The planning content of the Localism Bill **BE NOTED**.

1.16.2 The Director of Planning, Transport and Leisure **BE REQUESTED** to forward this report to the Local Members of Parliament.

1.16.3 The Director of Planning, Transport and Leisure **BE REQUESTED** to forward the reports together with specific concerns in respect of Neighbourhood Planning and Enforcement aspects of the Bill, as covered in the report, to the Clerk to the Localism Public Bill Committee.

Background papers:

contact: Steve Humphrey

The Localism Bill 2010

Steve Humphrey

Director of Planning, Transport and Leisure

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	NO	The Borough Council seeks more clarity and detail in order to enable Neighbourhood Forums to be clear about their opportunities.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	Yes	See a) above. The outcome of this is outside of the Council's direct control.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.