

EAST HERTS COUNCIL

LOCAL DEVELOPMENT FRAMEWORK EXECUTIVE PANEL – 7 JULY 2011

REPORT BY EXECUTIVE MEMBER FOR PLANNING POLICY AND ECONOMIC DEVELOPMENT

EAST HERTS LOCAL DEVELOPMENT FRAMEWORK: LOCALISM AND NEIGHBOURHOOD PLANNING

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- To provide Members with an initial briefing on the key elements of the Localism Bill and its likely implications for planning policy in East Herts.

<u>RECOMMENDATION FOR EXECUTIVE: to commend to Council that:</u>	
(A)	priority be given to progressing the Local Development Framework (LDF) as quickly as possible in order to provide an effective strategic planning policy framework for the new tier of neighbourhood planning; and
(B)	communities wait, before they do any substantive work on neighbourhood plans, until the Localism Bill has received Royal Assent later this year, so that there is more certainty about the neighbourhood planning process and the Council is in a better position to support and advise

1.0 Background

1.1 The Localism Bill was presented to Parliament on 13 December 2010. The Bill is currently being debated and is not expected to receive Royal Assent until late in 2011, with enactment in Spring 2012.

1.2 The Bill will devolve greater powers to Councils and neighbourhoods and give local communities more control over housing and planning decisions.

1.3 On 8 March 2011 the Executive considered a report on the Localism Bill, entitled 'Localism Bill – East Herts Council Leading the Way'. The report provided a brief overview of the key proposals contained in the Localism Bill and highlighted how the Council is already responding to some of the proposed changes.

2.0 Report

2.1 This report specifically considers the likely implications of the Localism Bill on planning policy in East Herts.

2.2 In summary, the planning and regeneration provisions of the Bill will:

1. Abolish Regional Spatial Strategies.
2. Streamline national planning policy guidance through the introduction of a new National Planning Policy Framework (NPPF).
3. Provide for neighbourhood plans, which would be approved if they receive support from more than 50% of the votes cast in a referendum.
4. Provide for Neighbourhood Development Orders and Community Right to Build Orders to allow communities to approve development without requiring normal planning consent.
5. Amend the Community Infrastructure Levy, which allows Councils to charge developers to pay for infrastructure; some of the revenue will be available for the local community.
6. Require prospective developers to consult local communities before submitting planning applications for large developments.
7. Abolish the Infrastructure Planning Commission and return to a position where the Secretary of State takes the final decision on major infrastructure proposals of national importance.

This report considers items 1-5 above.

2.3 In addition to the above provisions, the Budget 2011 saw the launch of the Government's 'Plan for Growth' (HM Treasury, March 2011) which includes:

- A new presumption in favour of sustainable development, so that the default answer to development is 'yes';
- The introduction of new powers so that businesses are able to bring forward neighbourhood plans and neighbourhood development orders; and

- 21 new Enterprise Zones, to focus growth in specific parts of the UK.

Revocation of Regional Spatial Strategies (RSS)

- 2.4 The Localism Bill will remove the primary legislation which sets the basis for Regional Spatial Strategies, including the East of England Plan.
- 2.5 Regional Spatial Strategies were first revoked by the Government on 6 July 2010 but were subsequently re-established on 10 November 2010 after a successful challenge by housebuilder CALA homes. Following this, the Government advised that it is for local planning authorities to decide what weight to give to the intention to abolish regional strategies. However, a more recent decision in the High Court (May 2011) has confirmed that the Government's intention to revoke regional strategies may only be worthy of being given weight in very few cases in which the proposed abolition of regional strategies will be relevant. Moreover, the intention to abolish should not be a factor in the plan-making process. Thus, in terms of the East Herts Local Development Framework (LDF), the provisions of the East of England Plan remain in place until the Localism Bill is enacted and a Strategic Environmental Assessment (SEA) of its revocation is completed.

National Planning Policy Framework (NPPF)

- 2.6 The Government has made it clear that, with the exception of nationally important projects, planning should be a local matter. The role of central Government is to determine and define environmental, economic and social priorities for the country and design a planning system which helps ensure a pattern of development that matches these priorities and local aspiration. This role is currently fulfilled through legislation, and through the suite of planning policy guidance notes (PPG's) and minerals policy guidance notes (MPG's), and more recently planning policy statements (PPS's) and minerals policy statements (MPS's).
- 2.7 These documents, which run to over 1,000 pages, currently set out central Government policy on various aspects of development and land use, and local planning authorities must have regard to them when drawing up their LDF's. They are also often relevant to making decisions on planning applications. They cover broad policy themes such as climate change, housing, renewable

energy, flood risk and green belt, and also procedural matters such as how to compile local development plans.

- 2.8 The Government believes, however, that the current suite of planning policy statements and guidance notes is too centralist in its approach, and too long and cumbersome for Councils and developers to use effectively. Therefore, the Government proposes to produce a simple national planning policy framework setting out their priorities for the planning system in England in a single, concise document covering all major forms of development proposals handled by local authorities. All the national planning policies set out in PPG's, MPG's, PPS's and MPS's will be integrated into a single document.
- 2.9 It is anticipated that the National Planning Policy Framework will set broad economic, environmental and social priorities and how they relate to each other, but will ensure that the majority of planning decisions are made at the local level. The framework will also set out a basis for economic growth, a presumption in favour of sustainable development, as well as any further policy needed to establish and implement neighbourhood plans.

Neighbourhood Planning

- 2.10 A key component of the Bill introduces a new tier of spatial planning - namely neighbourhood planning. The Government anticipates that neighbourhood planning will allow people to come together either through a Parish Council or neighbourhood forum and say where they think new houses, businesses and shops should go, and what they should look like.
- 2.11 A neighbourhood plan should be established within the context of a local planning authority's LDF and within the parameters defined in national planning policy. It is anticipated that a neighbourhood plan will comprise a policy element and a development order element.
- 2.12 Policies within a neighbourhood plan could cover:
- Planning objectives for the neighbourhood
 - The broad planning context (e.g. transport connections), local facilities and services
 - Key neighbourhood projects and infrastructure priorities
 - Development management policies
 - Site specific policies

- 2.13 A neighbourhood development order would directly grant planning permission for certain specified kinds of developments within the neighbourhood area. Permission could be full or outline, and could have conditions attached. It could be site specific or an order that could grant more generalised development rights across the neighbourhood area.
- 2.14 One of the Government's principle objectives for neighbourhood planning is to increase the rate of growth of housing and economic growth in England. Coupled with a system of financial incentives (see below), it is anticipated that neighbourhood planning will achieve this by enabling communities to be more involved in the design and location of development that takes place in their area.
- 2.15 However, in order to guarantee that neighbourhood planning will not lead to a lower rate of growth, a neighbourhood plan will only be able to advocate an equal or greater quantity of growth in housing or economic development than is established in the LDF.
- 2.16 The Localism Bill will therefore require that neighbourhood plans are in 'general conformity' with the strategic elements of the LDF. The strategic elements will in due course be defined through the new national planning policy framework (see above) and it is anticipated that the definition will include the scale (and broad location) of housing and economic development growth within the development plan area.
- 2.17 A neighbourhood plan can set out the nature of the development that is anticipated and, where a development proposal is shown to be in conformity with that neighbourhood development order, planning permission is automatically granted without the need for a planning application.

Duties on Local Authorities

- 2.18 There will be new duties on local authorities to:
- Confirm the status of a proposed neighbourhood forum
 - Confirm the geographical area of the proposed neighbourhood plan
 - Provide expertise and advice to neighbourhood forums or parish councils
 - Hold referendums

- Adopt neighbourhood plans where all requirements have been met

2.19 In East Herts neighbourhood plans and neighbourhood development orders will be undertaken by Town/Parish Councils. It is only in areas without parishes that neighbourhood forums would need to be established. More recently, following the Budget 2011 the Government has also stated in its 'Plan for Growth' that it will enable businesses to bring forward neighbourhood plans and neighbourhood development orders.

2.20 Where the promoters of a neighbourhood plan are able to demonstrate that they have adequate local support for the proposed plan, the local planning authority will have a duty to provide advice or assistance on, for example, good practice in plan making and conformity with national and local policy. They will also have a duty to provide practical support, such as helping with community engagement.

2.21 The Government estimates that an average neighbourhood plan will cost between £17,000 and £63,000. However, there will be no duty on the local planning authority to provide financial assistance (but it may do so if it chooses). Costs will therefore have to be met by the promoters of the neighbourhood plan. Developers will also be required to pay a fee upon completion of a development given permission under a development order, and in the initial years there will be some initial financial support from central Government.

Scope of a Neighbourhood Plan

2.22 Certain categories of development are more appropriately planned at a higher spatial scale than a neighbourhood and would therefore be excluded from a neighbourhood plan. These could include, for example:

- Large scale housing and economic development
- Nationally significant infrastructure projects

Independent Examination

2.23 There will be a 'light touch' examination of the plan, undertaken by a 'qualified person'. Where the examination shows that the plan is not consistent with the strategic elements of the LDF, legal requirements or national policy, then the local planning authority

will not be obliged to carry out a referendum to adopt the plan. The plan would therefore not have any statutory status.

- 2.24 Where the examination shows that the plan is in conformity, the local authority will be legally required to hold a referendum. Where the plan receives the support of more than 50% of voters at the referendum, the local authority will be required to adopt the plan and bring it into effect. It is anticipated that the costs of running a local referendum will be £7,000.

Community Right to Build

- 2.25 As part of neighbourhood planning, the Bill will also give groups of local people the ability to bring forward developments where the benefit of development will be retained by the community, through a streamlined neighbourhood planning process (a Community Right to Build Order). This will be a special kind of neighbourhood development order and will be subject to similar (although less rigorous) requirements as a neighbourhood development order in respect of legal and policy provisions, independent examination and referendum. Referendum costs are expected to be split 50:50 between the community group and the local authority (i.e. £7,000 split 50:50).
- 2.26 Community groups could use this to bring forward small scale developments that have local backing, even where the local authority is opposed. Community Right to Build will apply in all areas, urban and rural, but is most likely to be relevant to rural areas, where for example communities seek additional affordable housing or shops/facilities to support rural life. Schemes eligible to use the streamlined neighbourhood planning process will be limited in size and should not be able to exceed 10% of existing development over a ten year period.

Financial Incentives - New Homes Bonus and Community Infrastructure Levy

- 2.27 As currently envisaged, the incentives package includes the following elements, which will be received by the local planning authority:
- New Homes Bonus (where the Government will match the council tax raised from new homes for the first six years after that home is built with an additional amount for affordable

homes. The bonus will also apply to any empty properties brought back into use).

- Community Infrastructure Levy (which will be levied on all development comprising over 100 square metres gross internal floorspace or involving the creation of additional dwellings even when that is below 100 square metres).

2.28 The Bill introduces three changes to the Community Infrastructure Levy. Firstly, the Bill includes provisions to make regulations requiring some of these funds to be passed to neighbourhoods where the development has taken place. Secondly, it makes clear that funds can be spent on the ongoing costs of infrastructure, as well as the initial costs of new infrastructure. Lastly, it gives local authorities greater control over setting their charging levels, through a local 'charging schedule'.

2.29 Further detail on the New Homes Bonus and Community Infrastructure Levy can be found under **Agenda Item 8.**

What should East Herts Council be doing?

2.30 Whilst there has been much debate about neighbourhood planning, it is not yet entirely clear how this will work in practice. The Government is currently undertaking further work to test some of the key principles, outcomes, costs and processes of the proposed neighbourhood planning reforms, and this in turn may refine how neighbourhood plans are expected to be done.

2.31 What we do know, however, is that neighbourhood planning will be additional to – and not a replacement for – the existing planning system. Greg Clark, Minister for Decentralisation, in a recent interview has made it clear that:

“The primacy of the local plan [LDF] is absolute, which itself has to conform with national policy. Any plan drawn up by a group of local people that didn't conform to the strategic aspects of the local plan would have no standing in the planning system at all.”

Planning Magazine, 11 February 2011, page 20

2.32 In fact the Minister has gone so far to say that the new arrangements would reinforce the importance of existing LDF's:

“Throughout all the proposed changes, the importance of high-quality, well-designed local plans [LDF's] is a constant. If anything, they will matter more.

“They will set the wider context for neighbourhood plans. It is important for people to have the opportunity to express their ambitions for their very local area, but it's also important that those ambitions are consistent with the needs and ambitions of the residents of the wider area.

“So those authorities who have complete or well-developed plans should continue to use them, and those who do not should look to make swift progress as a matter of urgency.”

Planning Portal, 27 January 2011

- 2.33 More recently the Government, in its ‘Plan for Growth’, has reiterated the importance of having an up-to-date Core Strategy.
- 2.34 What is very clear then is that the Council should progress with its Core Strategy as quickly as possible, so as to provide an effective strategic planning policy framework for neighbourhood planning. The current anticipated timetable for production of the Core Strategy is:
- Preferred Options Preparation – Summer/Autumn/Winter 2011
 - Preferred Options Consultation – Spring 2012
 - Submission Preparation – Summer 2012
 - Submission Participation – Autumn 2012
 - Independent Examination – Winter 2012
 - Adoption – Spring 2013
- 2.35 This is not to say that communities should not start thinking about whether or not they want to do a neighbourhood plan. Rather the next few months should be seen as an opportunity, giving communities time to consider what they might want to do. It is however, not recommended that communities do any substantive work before the Localism Bill receives the Royal Assent later this year. By this time the new National Planning Policy Framework should have been published, including further policy needed to establish and implement neighbourhood plans, and the Council will have progressed further with its Core Strategy, which is necessary to provide a context for any neighbourhood plan produced.

Conclusion

- 2.36 Whilst the devolution of power to communities through neighbourhood planning may be positive, it is by no means clear

that the Localism Bill as currently drafted will achieve this aim. Detail is lacking both on how either local authorities or local communities can practically respond to the Bill.

2.37 Clarity is also needed to enable the general public to manage their expectations of what the Bill means in practice. Without clarification there could be a clear unintended consequence that communities feel less engaged and empowered through the creation of a system that does not work effectively.

3.0 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Decentralisation and the Localism Bill: an essential guide (DCLG December 2010)

<http://www.communities.gov.uk/publications/localgovernment/decentralisationguide>

A plain English guide to the Localism Bill (DCLG January 2011)

<http://www.communities.gov.uk/publications/localgovernment/localismplainenglishguide>

Localism Bill: neighbourhood plans and community right to build: impact assessment (DCLG January 2011)

<http://www.communities.gov.uk/publications/localgovernment/localismneighbourhoodplans>

Localism Bill – East Herts Council Leading the Way, Report by Leader of the Council, 8 March 2011

<http://e-services.eastherts.gov.uk/moderngov/mgConvert2PDF.aspx?ID=5262>

Plan for Growth (HM Treasury March 2011)

http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf

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ESSENTIAL REFERENCE PAPER 'A'

<p>Contribution to the Council's Corporate Priorities/ Objectives (delete as appropriate):</p>	<p>Promoting prosperity and well-being; providing access and opportunities <i>Enhance the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.</i></p> <p>Pride in East Herts <i>Improve standards of the built neighbourhood and environmental management in our towns and villages.</i></p> <p>Shaping now, shaping the future <i>Safeguard and enhance our unique mix of rural and urban communities, ensuring sustainable, economic and social opportunities including the continuation of effective development control and other measures.</i></p> <p>Leading the way, working together <i>Deliver responsible community leadership that engages with our partners and the public.</i></p>
<p>Consultation:</p>	<p>Internal consultation has taken place with the Executive Member for Planning Policy and Transport; Director of Neighbourhood Services; Director of Customer and Community Services; Head of Planning and Building Control; and the Council's Planning Policy Team.</p>
<p>Legal:</p>	<p>It remains a statutory duty under the Planning and Compulsory Purchase Act 2004 that the Council produces and keeps up to date a sound and robust Development Plan for the District.</p>
<p>Financial:</p>	<p>Implementing the Localism Bill will be potentially resource intensive, in financial and staffing terms for the Council, as well as for town/parish councils.</p> <p>It is anticipated that the Council will be responsible for 50% of costs associated with a referendum on Community Right to Build Order (estimated to be £3,500 per referendum). It is not clear whether or not the Council will be responsible for costs associated with a referendum on a Neighbourhood Plan/Order (estimated to be £7,000 per referendum).</p>

	<p>Whilst there will be no duty on the Council to provide financial assistance to those communities that wish to do a Neighbourhood Plan, it may do so if it chooses.</p>
Human Resource:	<p>The impact of the Localism Bill will be managed using existing Planning Policy Team staff resources.</p>
Risk Management:	<p>It is a statutory requirement for the Council to prepare and keep up-to-date its Development Plan.</p> <p>Clarity is also needed to enable the general public to manage their expectations of what the Localism Bill means in practice. Without resolution there could be a clear unintended consequence that communities feel less engaged and empowered through the creation of a system that does not work effectively.</p>