

THE LOCALISM BILL – A briefing for WASF Members

We are very grateful to Mr John Walker, Operational Director, Development and Planning at Westminster City Council, for allowing us to use his briefing notes on the Localism Bill. As the Bill is currently going through Parliament, revisions will be made, but this briefing is based on the initial submission.

Introduction

A significant part of the Localism Bill is directed towards the planning system. The Government acknowledges the built environment impacts on everyone and there is an expectation that much of the Government's agenda for the Big Society can be delivered through the planning process. Whilst the Bill will change as it goes through Parliament, the following highlights the headline planning issues and what the implications might be for Westminster.

Neighbourhood Forums, Plans and Development Orders

What is proposed

The Government wants to empower local residents to take over the running of council services and in particular, give them powers to allow development in a number of different ways.

Neighbourhood Forums

'**Neighbourhood forums**' must be designated by the local authority. A 'neighbourhood area' is an area that a parish council or a body which is *or is capable of being defined as a 'neighbourhood forum' has asked to be designated as such by the local authority*".

The neighbourhood forum must

- further the social, economic and environmental well-being
- be open to new members, have at least three members living in the area concerned
- have a written constitution.
- Only one forum for a geographical area
- No overlap.
- Designations last for 5 years.
- Must be accepted by more than half of those voting

Implications for Westminster Residents

These forums are likely to fragment opinion amongst Westminster residents. There is a danger some pro-development residents will apply and diminish the role of residents and ward councillors. It is likely more than one organisation will apply to be a Neighbourhood Forum for some of the areas and the Council will have the unenviable task of deciding which group to choose. Some groups might want to apply for Parish Council status, however, this will create an extra tax burden for residents and, as with most Parishes, voters are likely to only vote for their official conservative, labour, Lib Dem candidate. Local residents are unlikely to be elected into the Parish defeating the object of forming a Parish Council.

Neighbourhood Development Plans

The Neighbourhood Development Plan (NDP) will be

- Community led
- Drawn up by a Parish council or neighbourhood forum
- Must be adopted by the local authority as part of the development plan.
- Subject to further regulations which will follow later

NDPs will set out policies in relation to development and the use of land in their neighbourhood

- NDPs must be compliant with the strategic policies in the local development plan, and EU and national law and guidance.
- Must be submitted to an examiner for approval – written reps only.
- Subject to a referendum.

Implications for Westminster Residents

The Government has made it clear the plans should be pro development. Many residents will see this as an opportunity to restrict unpopular and disruptive development such as basement excavations, however it would seem only those promoted developments are likely to be successful. The resource implications will be significant in the preparation and arranging of referendums for these plans.

Neighbourhood Development Orders (NDO)

- NDO's will empower residents to effectively grant planning permission in their neighbourhood by making certain alterations, new buildings, changes of use etc permitted development.
- Initiated by parish council or neighbourhood forum who must submit a draft order to the Council.
- NDOs grant permission unconditionally or subject to conditions or limitations
- Must be submitted to an examiner for approval – written reps only.
- Subjected to a referendum run by the Council – simple majority
- Must be compliant with strategic plan, and EU and national law and guidance.

NDO's must be adopted by the local authority if passed.

Implications for Westminster Residents

Some developers will see this as an opportunity to bypass our conservation standards and criteria for high quality design. The Act specifically omits conservation and listed building considerations. It will also omit the need for wider section 106 benefits residents may benefit from in the locality. Again there will be significant resource implications for the Council. There is nothing that prevents groups from pursuing an NDO even if there is little or no chance of obtaining a majority in a referendum. Residents may get tired of referendums but if they do not come out and vote unpopular NDOs may get passed via a handful of votes.

Community Right to Build (CRBO)

CRBOs are similar to but take precedence over NDOs.

- CRBOs are initiated by “*community organisations*” and grant planning permission for development on a specified site
- A community organisation must have at least half its members living in the neighbourhood area concerned. But their application may refer to a site anywhere in the local authority’s boundaries
- Subject to an Independent Inspector’s Report
- The local authority tests compatibility with UK and EU legislation.
- Referendum. The local authority sets the area of the referendum, can be just the parish or whole district or somewhere in between.
- Simple majority in favour
- Referendum would be paid for by the local authority.

Implications for Westminster Residents

Again some developers will see this as an opportunity to bypass our conservation and design standards. Similarly we lose the ability to secure community Section106 benefits. Likewise there will be significant resource implications for the Council and there is nothing that prevents groups from pursuing an CRBOs even if there is little or no chance of obtaining a majority in a referendum, however the Council and the taxpayer will have to pay for them.

Royal Parks – Transfer to the GLA

What is proposed

The Government wants to transfer the management of the eight Royal Parks to the Greater London Authority (GLA). This provision is not currently in the Localism Bill but the intention is to add this clause as an amendment.

The provisions will include

1. The London Assembly are to hold the actions of the Mayor to account and will have the power to summon officials and seek information.
2. The Secretary of State can intervene if national interest might be compromised.
3. National ceremonial occasions must always be given priority over local matters or other events.
4. Park Regulations such as hours of opening, littering, climbing trees, lighting fires, damaging property and keeping control of animals would be subject to confirmation from the Secretary of State for Culture, Media and Sport.
5. A Parks Board will be established to manage the Parks. The Chair will be appointed by the Mayor of London. Members appointed by the Mayor are likely to include representatives from the London Boroughs and a Member appointed by or on behalf of the Sovereign.
6. The natural and built features must be maintained to a high standard.
7. The GLA must consult widely on any major changes to the Royal Parks.
8. Quiet recreation by the public remains the parks’ primary use

9. The transfer will not take place until post 2012 to minimise disruption to the Olympic and Paralympic Games.
10. The level of funding the GLA will receive from the Government will be agreed at the outset but is subject to future spending reviews.

The Royal Parks Agency also manages other assets such as Victoria Tower Gardens, Grosvenor Square Garden and Brompton Cemetery. Further details will be announced later.

Implications for Westminster Residents

There are serious implications for Westminster residents. With no guarantee that current grant funding will remain in future years, there will be pressure to hold more events to raise finances. The focus will be to hold the events in Hyde Park/Regents Park because the other parks don't raise the same income levels. Board members will naturally want to protect their own park they represent so it is highly likely they will agree the funding should come from events in Hyde Park and outvote the Westminster representative. The Mayor has consistently ignored advice regarding the overuse of Trafalgar Square for events without the benefit of planning permission and it is likely the same will apply to the running of the Royal Parks. Under the Government's Localism agenda the parks should switch to the control of the relevant local authority where there is true local accountability.

Predetermination and Closed Minds

What is proposed

The Government wishes to encourage members to come forward and engage in redevelopment proposals without the risk of being debarred from making the decision when the application comes to a planning committee. The Bill states

"A decision maker is not to be taken to have had, or appeared to have had, a closed mind when making the decision just because

- a) *The decision maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might in relation to a matter and*
- b) *The matter was relevant to the decision"*

Implications for Westminster Residents

The clause is welcomed and cements the Westminster view that members need to be engaged to represent residents' views throughout the development management process. However the wording in the Bill is weak, indicates that there may be circumstances where members will have closed minds but fails to clarify where this would apply.

Duty to Hold a Referendum

What is proposed

The Government wants to force local authorities to hold referendums over anything they are responsible for. Should voters agree the motion in the referendum there is an obligation to consider and respond to the motion.

A Referendum must be held if

1. A Petition is received – with 5% of electorate in relevant area (SOS can amend)
or
2. All or a majority of ward members make the request (GLA members excluded)

Local Authorities can only turn down a request if

1. Contravenes law
2. Not a local matter or relevant to the Council
3. It relates to matter specified by a SOS Order
4. The Petition is vexatious or abusive

The Referendum must be held

- At least 2 months after receipt
- within 12 months of receipt
- There is a duty to publicise the referendum

Post Referendum Result

The Local Authority must take into consideration the result of the referendum and decide on what steps to take. If the local Authority decides no steps need to be taken they must give reasons why.

Implications for Westminster Residents

The threshold of 5% of the electorate is extremely low. There is a very strong chance Councils will be swamped in requests for referendums which will be costly. Not only can a few residents use this tool to lobby the Council, it also has the potential for some residents to pressure Ward Councillors to use it to bypass the need for a petition.

Some residents might use this to block or hold back the consideration of planning applications by seeking referendums on planning policy matters and demand they should not be determined until the result of the referendum is held. However the Government is unlikely to allow this abuse of the referendum system. Planning policy matters are already the subject of extensive public consultation and public examinations and may therefore be excluded from this part of the bill.

The threshold for seeking referendums should be increased to avoid their abuse and limit the costs of holding to many.

Assets of Community Value

What is proposed

The Government wants to give the opportunity for local communities to buy local assets such as village pubs and post offices.

The Local Authority must maintain a list of land in its area that is of community value

- for 5 years
- Further regulations to be made giving details

Nominations can be made by

- Parish
- Person specified in the new regulations
- Authority must accept the nomination

There will be a moratorium on disposing of listed land until

- Local Authority has been notified in writing by the owner
- A written request is not received by an interested party as a potential bidder during the protected period
- The Local Authority must publicise the request

Implications for Westminster Residents

It is anticipated the regulations will permit any resident or community group to identify assets. Residents may well want to list most shops, many popular restaurants and bars. Most Council facilities such as nurseries will be put on the list. This will slow down business transactions and will cause delays but it does nothing to protect the community use because the owner has no obligation to sell it to community. The maintenance of the list and notification procedure will have resource implications for planning.

Abolition of Regional Strategies and Plan Making Reform

What is proposed

It has been known for some time the Government wants to abolish regional strategies and empower Local Authorities to set their own housing targets. Local Development Schemes will no longer be required to be submitted to the Mayor and the independent examiner's roles in plan making will be reduced. The duty to make annual monitoring report will be also removed.

Implications for Westminster Residents

The London Plan, which sets housing targets, is not being abolished so there is no impact on Westminster or residents. The other reports will still need to be produced to put on the Council Website so there are no savings for the Council.

Duty to Co-operate in relation to planning sustainable development

What is proposed

The Government wants to ensure Local Authorities not only co-operate with the Localism Agenda but promote sustainable development.

A duty will be placed on Local Planning Authorities to prepare

- Development Plan Documents
- Local Development Documents
- Other activities that support the planning of development so far as relating to sustainable development.

The Act requires the Council to engage “*constructively, actively and on an ongoing basis*”

Implications for Westminster Residents

Whilst this is useful for residents because the Council will be duty bound to help in the formation of Neighbourhood forums, plans and Development Orders, it should be noted it has significant resource implications for the Council. The downside is developers may see this as a way of forcing the Council to support and help on unpopular developments, and make the officers wary of telling them a scheme is unacceptable in principle.

Community Infrastructure Levy (CIL)

What is proposed

CIL will be retained but a proportion of the CIL Levy will go to the neighbourhood in which it was raised, allowing those most directly affected by development benefit from it. This clause will not apply to the Mayor's CIL.

Implications for Westminster Residents

Whilst residents will welcome the receipt of a proportion of CIL, there is no detail yet over how this is to be administered and what happens if residents disagree over how to spend it. The Mayor has recently announced his CIL Levy which is set at £50 a square metre of additional floorspace to pay for CrossRail. It is likely to have a major impact on the viability of schemes in Westminster and it will significantly reduce the amount the Council can raise in its own CIL and section 106 benefits. Residents will lose a significant part of the section 106 benefits that currently accrue within the vicinity of a development and

gain nothing from the Mayor's CIL. It is unfair that none of the Mayor's CIL will go to the neighbourhood.

Consultation on Major Schemes

What is proposed

The Government will impose a pre-application consultation requirement for major developments. Owners will have to engage with the community and there will be a duty to take into account any responses.

Implications for Westminster Residents

Pre- application engagement is already encouraged in Westminster and the proposal welcomed. However most small developments are submitted without any consultation with the community and many result in objections being lodged when they should be resolved prior to making an application. Basement extensions are a good example where residents would benefit from early engagement. The provision to consult on major schemes should be expanded to include all development.

Planning Enforcement

What is proposed

The Government will strengthen enforcement powers including new measures which will stop owners from concealing development so they can later reveal the works once the period for taking enforcement action has expired.

Full or Concealed Breaches (PEOs)

Local Planning Authorities will be empowered to apply to the Magistrates Court for a Planning Enforcement Order (PEO). The PEO must be issued "*within the 6 months beginning with the date on which the evidence of the apparent breach of planning control sufficient in the opinion of the LPA to justify the application came to the authority's knowledge*"

The Council can then take enforcement action within the year which starts 22 days after securing the PEO. Action can be taken whether the 4 or 10 year rule has passed.

Increase of fines

For example Breach of Conditions will be raised from £1000 to £2500

Advertisements

Prosecution for unauthorised advertisements will be limited to 3 years.

Defacement of Premises

New powers to remove structures – eg trailer adverts

A Removal Notice must be serviced first which gives the Council additional powers to

- Obliterate Signs by a time specified in the Notice
- Post Boxes or Pouch Box
- Bus Shelter Signs
- Street Furniture Signs

There is a right of Appeal on the grounds the sign is neither detrimental to the amenity of the area or that it is non-offensive. Statutory Undertakers can serve a counter notice within 28 days specifying alternative measures which in their opinion will have the same effect as the Action Notice.

Persistent problems of unauthorised Adverts

There will be new powers to issue an Action Notice to prevent or reduce the frequency of the advert.

- Dwellinghouses excluded.
- There is a right of Appeal – on grounds “*that there is no problem*” with the display of advertisement.

Implications for Westminster Residents

The additional enforcement powers are welcomed. However the limit to taking prosecution action on advertisements to three years is a backward step and some of the wording in the bill such as “*that there is no problem*” needs rewriting.

The Infrastructure Planning Commission (IPC)

What is proposed

The Infrastructure Planning Commission will be abolished. Its functions will transfer to PINs and the Secretary of State who will make the final decision on applications. National Policy Statements can only be designated or amended following approval by the House of Commons.

Implications for Westminster Residents

There will be very few schemes in Westminster that will be handled by the IPC. The changes are welcomed.

The GLA

What is proposed

The Government wants to strengthen the role of the Mayor. Measures include

- Mayor to publish an Economic Development Strategy
- Promoting business efficiency investment and competitiveness
- CPO powers for housing and regeneration purposes
- Mayoral Development Corporations

Mayoral Development Corporations (MDC)

The Mayor can designate an MDC which may '*do anything it considers appropriate to secure regeneration*'

- The only role for boroughs is as consultees on certain aspects such as designation of an MDC and making the MDC the local planning authority.
- The Mayor has to have regard to their comments but can choose not to accept them.
- MDC to comprise 6 Members to be appointed by the Mayor.
- There is no requirement to include borough representation.

Implications for Westminster Residents

Whilst the idea of an MDC is directed towards the Olympic legacy work in East London it could extend to anywhere. The Mayor could take over any part of Westminster and cut the City Council and local residents out of the planning of the area. Whilst it is not thought this would happen with the existing Mayor, the previous Mayor, who is standing for election next year, could use this new power to take over the planning of areas such as the east end of Oxford Street, Victoria and parts of Paddington.

Overall the Localism Bill will have significant changes on how the planning system works in Westminster. There are many groups lobbying the Government; for example, it is known that businesses are asking for rights to make Neighbourhood Plans and CRTBO's.

The Bill will change as it goes through Parliament.

20/05/2011