



# Action with Communities in Rural England

## **ACRE Localism Bill Commentary: Neighbourhood Planning**

The Localism Bill is currently in committee, having had its second reading at the end of January. Progress with the Bill can be followed at <http://services.parliament.uk/bills/2010-11/localism.html>.

The Localism Bill's proposals on **neighbourhood planning** will provide a statutory framework through which Community Led Plans can achieve their aspirations. However, in trying to devise legislation that helps communities to do this, the Localism Bill has struggled to provide simple and affordable mechanisms for delivery. Furthermore, crucial elements are reserved to the Secretary of State so the mechanisms can be more fully debated – debate in which ACRE is closely involved.

Communities will have control of the timetable, since the neighbourhood planning process takes place outside the Local Development Framework (LDF) structures. This is a step forward, given the length of time it takes to develop a good Community Led Plan and the narrow windows of opportunity presented by LDF timetables. However, will communities feel in control given the complexity, the cost implications to both the local authority and the community and the reliance on a local authority to respond positively?

ACRE has produced a separate briefing paper on what the Localism Bill actually says about neighbourhood planning. This ACRE commentary explores some of the difficulties and issues raised by ACRE and others concerning the Bill's provisions, which are summarised below:

1. Designating **Neighbourhood Forums and Neighbourhood Areas** in unparished areas – a recipe for organic development or neighbourhood warfare?
2. Moribund parish councils – do **parish councils** deserve their favoured status in this legislation?
3. Inclusion and equalities – is this a recipe for favouring the most **articulate communities** and the most articulate voices in the community?
4. 'Rewards for growth' and **overcoming NIMBYism** – will it work?
5. Top-down and bottom up – what does '**in conformity with strategic policies in the local plan**' actually mean and who will decide on the definition of 'strategic'?
6. How to **build the capacity of communities** to participate in neighbourhood planning and will local authorities be willing to bear the cost?
7. Good and bad democracy – how do **referenda** match up as a demonstration of community support?
8. Single issue or **holistic Neighbourhood Plans** – do it quickly or do it well.
9. The world after exception sites - **retaining affordable housing** to meet local needs.
10. Integrating Right to Build and Neighbourhood Plans – **making it make sense to communities**.

## 1. Unparished areas – Neighbourhood Forums and Neighbourhood Areas

In an unparished area, the local authority must formally designate a 'Neighbourhood Forum' and also designate the Neighbourhood Area in question. Once designated, no other community organisation can challenge the neighbourhood forum status for a period of 5 years. These proposals have come under strong scrutiny, given the low test of conditions for a qualifying body in terms of inclusion and accountability to the community.

Furthermore, the local authority appears to be able to subsequently amend the neighbourhood area even after a Neighbourhood Plan has been developed and a neighbourhood development order adopted. The intention is clearly to work towards having a local authority area completely covered by non-overlapping neighbourhood areas, each of whom has a designated forum and a Neighbourhood Plan. In the meantime, it is open to any qualifying organisation with a minimum of legitimacy in the relevant neighbourhood to 'claim the ground' whilst the ground constantly changes around them. This is considered to be one of the weakest areas of the proposals on neighbourhood planning, since the formal designation of forum and area must be completed before any Neighbourhood Plan can be submitted.

## 2. Parished areas: the preferred position of parish and town councils

This contrasts with the position in parished areas, which, in the main, encompass rural communities. This means that, whereas rural communities could move directly to neighbourhood planning, unparished urban areas may lag behind. This has been viewed as disadvantaging unparished areas, but ACRE argues that this is not a valid reason to alter the privileged position offered to parish councils. Rural communities have lobbied hard for the principles of the Localism Bill to be implemented to overcome shortcomings in current planning legislation, and it is quite possible that they can provide the test bed for the later stages of the Neighbourhood Plan process, to the advantage of all.

Some national organisations have suggested that favouring parish councils as qualifying organisations will **disadvantage those communities whose parish council is 'moribund'**. They suggest that any community group should be able to prepare and submit a Neighbourhood Plan, or that preference is only given to parish councils if they have quality status. ACRE disagrees, since it is essential that parish and town councils are party to any Neighbourhood Plan.

ACRE believes that, as with Community Led Planning, any group should be able to initiate the development of a Neighbourhood Plan. However, before it progresses too far, involvement of the parish council is a necessity, since the latter has influence over use of local sources of finance and the democratic legitimacy required for local advocacy and connections with external bodies. Furthermore, acting in isolation from the parish council can lead to later conflict. A referendum is likely to exacerbate this conflict and produce long lasting stalemate in the community.

ACRE considers that, where differences of opinion between the parish council and the group leading on the plan become evident, it should be the role of external facilitators and the local authority to encourage their resolution. Ultimately, if divisions persist, it could revitalise the democratic process at the next parish election, which may be considered a positive outcome.

### 3. Inclusion and equalities in drawing up a Neighbourhood Plan

National comment has focused on how best to ensure the proposals are not a **charter for articulate sections of the community** to drive forward their agendas. As it stands, the only test of general community support is the very final stage – a referendum of all the electorate within the boundaries of the area covered by the Neighbourhood Plan. ACRE believes this is far too late, and at a stage where significant time and cost has been expended on the local authority assessment and the independent examination. The solution is to tackle lack of inclusion during the Neighbourhood Plan development process and this relies on the quality of the capacity-building within the community. Community Led Planning experience shows that it is possible, through a variety of consultation methods, to involve sections of the community that would otherwise not participate in vast public meetings or formal consultations.

### 4. Rewards for growth and overcoming NIMBYism

Government believes that offering communities more opportunity to determine the future for their area will ultimately lead to greater acceptance of the benefits that development can bring to a community. In this way, **they hope to meet national housing needs identified at a strategic level without imposing targets**. ACRE can demonstrate that this belief has some basis, given research into the outcomes of Community Led Plans in terms of positive attitudes on housing development. However, attitudinal change will rely on the quality of the process and the support available to the community. In particular, it will be crucial for sufficient attention to be paid to the quality of the ‘collaborative democracy’ elements of the process of developing a Neighbourhood Plan, if the government’s aspirations are to be realised. The requirement of a referendum is a potential barrier, given that it is those that are least likely to participate in the development of the plan who are most likely to turn out to vote against it when they hear what is being put forward.

### 5. Top-down versus bottom-up: strategic decisions versus neighbourhood aspirations

Government wants to avoid Neighbourhood Plans becoming a NIMBY charter and giving communities a **‘Right to Block’** unwanted development. The Bill stipulates that a Neighbourhood Plan must be **‘in conformity’ with strategic policies within the local plan** and, at the moment, this test only comes into effect AFTER the proposals are developed, approved by the local authority and sent for independent examination. Unfortunately, there is no definition of ‘strategic policies’ at the current time, so it has inevitably become one of the most hotly debated measures reserved for later clarification by the Secretary of State. The definition could be prescribed in later regulation, or could be devolved to local authorities.

To clarify its importance, if every local plan policy is counted as strategic, a community cannot proceed with a proposal that conflicts with the existing local plan (which may be considerably out of date) whether or not the local planning authority agree with the community. However, if only elements such as overall housing growth numbers for the area are counted as strategic, a community could successfully divert unwanted growth to other communities less able to mount a neighbourhood planning exercise. ACRE and the Rural Coalition are backing an amendment that, where the community and the local planning authority are in agreement on a proposal, the examiner should not reject a draft neighbourhood development order on the grounds of ‘lack of conformity’.

## 6. Building the capacity of communities to participate in neighbourhood planning

Communities and Local Government (CLG) has ceased its funding of Planning Aid to give advice to communities and neighbourhoods on planning matters. Instead, CLG is aiming to grant fund organisations that come forward to offer ways of supporting communities to participate more directly in the planning system<sup>1</sup>. Importantly, CLG acknowledges the support required is for effective community engagement and access to specialist advice on, for instance, acquiring and managing community assets, rather than just technical input on planning matters.

Given what a successful Neighbourhood Plan should contain, and the hurdles it may have to pass to be adopted, ACRE believes there are additional activities or aspects to be undertaken by any 'support provider' to achieve the community's aspirations:

- Challenge to the community leaders engaged in a Neighbourhood Plan process to ensure that options are adequately tested as to cost and impact, that engagement in the community is inclusive and that there is a degree of realism in what is envisaged
- Ensuring early and continuous engagement with the relevant local planning department and any relevant public service provider to test out options and potential
- Engagement with relevant landowners or site-owners to ascertain whether a community proposal will be opposed and/or whether it is achievable in financial terms.

All these will be familiar to those currently involved in Community Led Planning and rural housing enabling.

## 7. Good and bad democracy – referenda as a demonstration of community support

The Bill currently requires a Neighbourhood Plan to go through, in turn, the process of acceptance by the local planning authority, independent examination and then a formal referendum of the electorate in the relevant area. ACRE considers that many communities that attempt to adopt a more positive planning attitude to the sustainability of their community may be thwarted at the final stage by failure at a referendum.

Many communities have already seen plans for a local affordable housing scheme seriously delayed or prevented by a last minute village green application, or their community project to improve local facilities countered by a parish poll. This provides a strong indication that good plans, developed with full community involvement, may come up against last minute opposition mounted often, but not always, by residents with neighbouring property.

ACRE considers that **referenda are likely to generate local conflict** right at the end of a longer term process of neighbourhood planning in which each and every resident has the opportunity to become involved and where significant public money, community funding and individual resident's time has been expended. Where a Neighbourhood Plan proposal can demonstrate high levels of

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<sup>1</sup> Supporting Communities and Neighbourhoods in Planning prospectus  
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1807639.pdf>

involvement and debate AND has been supported by the local authority AND approved at independent examination, then we believe that a referendum is unnecessary.

More importantly, a referendum may ultimately be counterproductive to government's aims of building the Big Society. The referendum process is costly and adversarial rather than collaborative. Evidence shows how the internal conflict that can result, regardless of the outcome, is long lasting and destructive to the community<sup>2</sup>. If the vote fails to achieve the 50% of the turnout required for adoption, then those who were willing to volunteer their time to produce the Neighbourhood Plan will suffer disenchantment and be unlikely to offer to help any community initiative in the future. Far from reinvigorating local interest in the democratic process, it is more likely to destroy it.

## 8. Single issue Neighbourhood Plan content

Secondary legislation or guidance on creating a Neighbourhood Plan will be required, but has not yet been developed. However, government statements imply that a plan could focus on a single issue within the community. ACRE believes this will lead to piecemeal planning in a neighbourhood area and duplication of a costly process if revisions of a neighbourhood development order for the area are sought at a later date.

ACRE's view is that a Neighbourhood Plan must be constructed so that it develops an **integrated vision** for the community that has considered the impact of proposals across their neighbourhood. The independent examiner will, in any case, assess the Neighbourhood Plan against sustainable development principles as defined in the future **National Policy Planning Framework** and we believe this requirement may go some way to preventing approval of single issue plans.

Requiring an integrated vision may take longer to achieve, but is ultimately a saving in cost and time for both the community and the local authority. If there are immediate site-specific opportunities or needs that arise, the **Community Right to Build** and **Assets of Community Value** measures would be available and more appropriate for the community to use.

## 9. Retention of affordable housing within rural communities

In many ways, the Localism Bill builds on the process of exception sites in rural areas, whereby, in smaller communities a site which provides affordable housing only can be approved as an exception to local plan policies. Crucially, when such sites are given permission, accompanying conditions allow the housing to be targeted at those with a strong local connection (regardless of the local plan generic housing allocation policy). A restriction can also be placed on the housing so that the householders' **right to buy the property** cannot be exercised. This is referred to in the Bill as the restriction of the **right of enfranchisement**. Shared ownership schemes often allow an occupier to increase the proportion of the property they own, but this is subject to a specified ceiling.

As it stands, a restriction on **enfranchisement rights** applies to Community Right to Build sites in the Bill, but is not referred to under Neighbourhood Plans and ACRE believes this needs to be amended. However, it could be easily solved by appropriate resolution of the following issue.

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<sup>2</sup> ACRE (2010) The Right to Build and Parish Polls: <http://www.acre.org.uk/our-work/community-led-planning/Policy/CLP+briefings/CLP+briefings>

## 10. Integrating Right to Build and Neighbourhood Plans

A community's acceptance of more development often relies on the degree of confidence local people have that the development will benefit the existing community. The Bill would allow sites to come forward to meet that need either through a Neighbourhood Plan or through a Community Right to Build. However, in contrast to the exception site policies, such sites can include open market housing and small scale employment sites as well as community facilities and amenity space – in fact anything identified by the community as underpinning its long term sustainability. The role of open market housing is important, given that the reduction in housing grant for affordable housing development is now constrained, and this could provide an element of cross-subsidy to achieve a development where the rents are affordable by local people.

At the moment, the process of adopting a neighbourhood development order applies to both a Neighbourhood Plan and a Community Right to Build site ie:

- Submission of the draft order
- Assessment by the local planning authority
- Submission and assessment by the independent examiner
- Referendum of the electorate in the area designated by the examiner/local authority

However, **different conditions and assessment criteria** apply.

A draft neighbourhood development order resulting from a Neighbourhood Plan in a parished area must be submitted by the relevant **parish council**. It may be for part of their parish (useful when a parish covers more than one settlement) or cover more than one parish (with the agreement of the other parish councils concerned). The draft neighbourhood development order for a Community Right to Build site must be submitted by a suitable **community organisation** (from which, for instance, a Community Land Trust may emerge and where an asset lock can be applied).

There is a rather confused section of the Bill which implies that a community cannot submit two neighbourhood development orders at the same time i.e. '*a local planning authority may decline to consider a proposal for a community right to build order or other neighbourhood development order if... another proposal has been made for a community right to build order or other neighbourhood development order*'.

In addition, the criteria applied to a Neighbourhood Plan submission ('in conformity' with the strategic policies in a local plan) does **not** apply to Right to Build sites – the checks undertaken on the latter are about over-riding environmental constraints and Human Rights legislation. Government has subsequently indicated that Community Right to Build sites would also have to conform to Green Belt policies.

So, if a community wishes to take advantage of creating a Right to Build site within a wider Neighbourhood Plan to improve its overall sustainability, it currently could not achieve this via a single neighbourhood development order, given the mismatch in criteria. We have recently been assured by Communities and Local Government officials that better integration of the two measures is what they are now seeking, but as it stands, that is not supported by the Localism Bill.