

The Localism Bill – planning policies



The Localism Bill is a key element in the development of planning policies by the coalition Government but the Bill as currently drafted raises important questions in relation to the co-ordination and direction of Government policy. This Bill which is currently going through parliament is a major initiative but has to be read in the context of the as yet undeclared National Planning Framework, the still embryonic role of the new Local Enterprise Partnerships and need to clarify detail on the New Homes Bonus scheme.

This is a major piece of framework legislation but Nick Raynsford noted in the House of Commons that the much of the force of the legislation stems from “amendment to other legislation” and “will be supplemented by regulations”. The full impact of this measure may not be evident for some time. It should be noted that Nick Raynsford sits on the parliamentary sub-committee which is examining this new Bill.

The article below summarises some of the main points of interest to those in the construction industry by noting matters raised in the House of Commons during the second reading of the Bill.

The Localism and Decentralisation Bill

This large, two volume Bill which has 401 pages, 201 clauses, and 24 schedules strives to create a framework for major changes in relation to: planning, national infrastructure projects, local control of finance, the promotion of the diversity of the supply of public services, changes to social tenancy arrangements and in creating rights for communities to direct development. The Bill also has provisions which seek to alter the ways in which local authorities work. This involves setting up elected mayors; allowing councils to revert back to committee systems and; removing the prohibitions on councillors commenting on developments within their neighbourhoods.

The Bill will give councils a “general power of competence” under which local authorities will have the power to do anything apart from that which is specifically prohibited. Stewart Jackson (Conservative) stated that this “general power of competence will give local authorities autonomy by unlocking accelerated development zones, tax increment financing, asset-backed vehicles and real estate investment trusts”.

In a bid to move away from a “top- down” approach, regional spatial plans and housing targets are abandoned, to be replaced by local incentives for councils to encourage new building. There are powers for communities to bypass the planning process where there is more than 80% support for a development. Local referendums are another innovation along with new powers to help local groups buy community assets which councils would otherwise sell.

In introducing the Localism Bill, the Secretary of State Eric Pickles said that the declared aim of the Localism Bill is to decentralise and disperse power. Yet paradoxically the Localism Bill also gives ministers about 100 new powers, such as the right to decide what would constitute an excessive rise in council tax.

Local mayors

In twelve English cities the revitalisation of local power will be spear-headed by elected mayors. As the mayoral referendums will not take place until 2012, council leaders for these cities can act as “shadow mayors” until confirmation of the posts. This move has been heavily criticised by Caroline Flint the shadow Local Government Secretary.

As a major piece of framework legislation, it is not yet clear how new measures such as local referenda will work in practice. In the commons debate it was noted that aside from two specific issues (on elected mayors and on council tax rises), the referendums on offer are purely advisory and non-binding. As David Lammy (Labour) noted the ability for local people as well as individual councillors to initiate local referendums already exists.

Barry Gardiner (Labour) said that delays of up to 12 months in even holding a referendum on planning issues “will introduce a new blight of delay into the process. Such delays can be fatal to major development plans, yet a referendum could be triggered by just 5% of the local population.”

As the Deputy Prime Minister has said “power without money is meaningless” and in this respect, those aspects of the Bill which allow for increases in local revenue (e.g. through the allocation of a proportion of the Community Infrastructure Levy) are interesting. The Bill, however, also allows local residents the power to veto council tax rises above a certain threshold and provides for a discount in business rates.

Planning reforms

By far the most significant section of the new Bill in relation to construction relates to Part Five of the Bill which deals with planning. This provides for the abolition of regional planning strategies, establishes a new right to build (whereby “communities” can permit development without the need for planning applications) and sets out a new duty for local authorities and public bodies to co-operate with each other.

The changes proposed would hand some of the planning responsibilities currently exercised by councils over to new officially-recognised 'neighbourhood groups' in a bid to cut back on red tape. In theory, this could result in residents gaining the power to approve or reject proposals for new housing developments, schools and other public buildings in their areas - with incentives for communities which agree to new homes being built.

In terms of protesting development proposals the Commons debate revealed that many MPs are concerned. Simon Hughes (LIB DEM) said that “we must not allow local decisions to be hijacked by a vocal minority with the qualities, the education or the ability to run their own campaign”. Peter Aldous (Conservative) put forward the view that “for neighbourhood planning to be successful, there is a need for capacity building in neighbourhoods and for communities to have access to advice, training and funding.” Some MPs (e.g Hazel Blears Labour) deplored the ending of “Planning Aid” which occurred in March.

Business interests

Peter Aldous also wanted clarification that neighbourhood plans will also apply to business districts as well as residential areas. Caroline Flint (Labour) questioned how parish plans might work in relation to neighbourhood development plans. She also questioned the implications for councils in relation to the additional responsibilities which will be expected of planning officers and others who service the local neighbourhood plans.

One of the curious elements of the Bill is that another plank of the decentralization drive, the new Local Enterprise Partnerships, are unmentioned in the new legislation.

Encouraging new building

Labour opponents of the Bill say that the proposed reforms of the planning system do not sufficiently encourage new building. Indeed the common refrain from the opposition back benches was that these proposed changes were taking place against savage public sector spending cutbacks. Caroline Flint said in the Commons “A planning system which is devoid of any obligations to provide for the future rather than protect the present is destined to fail”. There has also been concern that such radical changes bring uncertainty and also a lack of clarity that could result in delays in constructing new buildings.

One power which has been lauded by proponents of the Bill is the Community Right to Buy. Labour MPs in the debate on the Bill have however pointed out that there is no “right of first refusal, no right to a fair price and no help for communities seeking to save local assets” (Caroline Flint).

One issue which is causing particular concern is the meaning of the duty for local authorities to co-operate where issues have an impact beyond the boundary of an individual authority. What happens if local authorities do not co-operate?

Definitions

This Bill has the potential to radically change the existing system, particularly in relation to building new homes. There are also important provisions in the Bill reforming social housing provision. As new housing starts are at

worryingly low levels, this is an important issue but many aspects of the Bill are very vague.

One of the crucial issues revolves around the definition of “Neighbourhood”. It was noted that the explanatory notes to the Bill merely say that “in many cases these areas follow the boundaries of existing parishes for which there is a parish council” but how does such reasoning apply to less well established inner city areas.

Noting the emphasis on the concept of “neighbourhoods” throughout the Bill, Nick Raynsford suggested that this might imply a commitment to neighbourhood decision making, or to devolution to a local authority or in London to the Mayor but what happens if these bodies come into conflict. He cites the clauses 168 and 169 in the Bill which allow the Mayor of London to designate any area of London as a mayoral development corporation which will take over the local authority’s planning powers. Even when the mayor consults on any development plans, he does not have to act on the views of the consultees. Nick Raynsford says that the above example highlights the inherent tension between what might be “competing views of localism”.

The Bill states that where there are no parish or town councils, the local authority will be responsible for designating the formation of a Neighbourhood Forum – the basic criteria being that they should have at least three residents as members, be open to all residents and have a constitution. George Hollingberry (Conservative) asked “What is a Neighbourhood Forum? Who is in it? Who do they represent? Is it based on geography, is it a political group or is it a religious group?” He also questioned the meaning of the term “local area”. “At the moment a local area could be as small as a single street”. The final point he raised was in relation to a local referendum questioning the fact that as currently drafted there are no turnout restrictions. That would mean “where a small street has only 150 qualifying members, only 20 or 30 people might need to turn out to approve a neighbourhood development order”.

Many of the proponents of the Bill among Conservative MPs cite local fears of “over-development”. In the absence of housing targets, reconciling local perceptions of development with housing needs (particularly in economic buoyant areas) may not be easy.

Context

Many MPs noted that the Bill was being enacted against a climate of low building starts. Alok Sharma (Conservative) noted that under the previous Conservative Government, between 1979 and 1996, an average of 171,000 homes was built every year in England. Between 1997 and 2009 this dropped to only 145,000 each year.

Not included

Alan Whitehead (Labour) noted that the Bill as it stands “provides for no financial devolution away from the current system of considerable centralism as regards council tax raising and the Secretary of State has the power to change any figures that the local authority come up with in the way it defines council tax”.

He also stated that the Bill tended to reduce decision making for planning to one of two types – the neighbourhood decision and the national decision “with nothing in between”. He added that “the truth about localism is that decisions do not always have to be taken at the lowest level but they have to be taken at an appropriate level”. He reiterated what many opposition MPs said in stressing the need for effective co-operation measures to take place between local authorities.

Barry Gardiner (Labour) also wanted the Bill to include a presumption in favour of sustainable development within the national planning framework.

Alan Whitehead (Labour) stated that “at the very least we should ensure that this Bill is not enacted until a national planning framework is in place and the national planning statements have been discussed and sorted out by this House. The Bill must sit in a proper framework that means that local, regional and national planning must work together for the benefit of the people who stand to gain most at local level.”

Perhaps surprisingly, the absence of a third party right of appeal did not feature particularly prominently. Nicky Morgan (Conservative) noted this fact but only in the context of an effort to cut down the number of planning appeals. She did however applaud clause 102 of the Bill which requires developers to consult local communities before submitting planning applications for certain developments.

One particular omission in the Bill is any mention of local enterprise partnerships (LEPs), a point noted by both Caroline Flint (Labour) and Gordon Marsden (Labour). The latter noted that the Federation of Small Businesses (FSB) was disappointed at this omission in the Bill. The FSB have stated that they feel LEPs have “significant potential” but that “would be enhanced if the partnerships were given basic start up funding alongside statutory recognition of their basic roles in specific areas.”

Conclusion

David Ward (Lib Dem) said that in relation to this Bill, “it is possible that those on both sides of the house are right and wrong, in that some communities will flourish and fly with new-found freedoms and rights, while others without resources, leadership capacity and social capital may be left untouched and probably further behind”.