

Planning reforms under the Localism Bill (clauses 89 to 120)

The proposals in relation to planning are aimed at decentralising planning as far as possible to local areas and communities with the expectation that economic regeneration will be most efficiently encouraged at that level.

1. Plans and strategies

- 1.1 The system of Regional Strategies is to be abolished. This will enable Brighton & Hove City Council to develop deliverable local housing targets rather than work to imposed regional housing targets.
- 1.2 A new duty to co-operate between councils and other key partners in relation to the planning of sustainable development is introduced. This requires constructive engagement by prescribed bodies, or individuals, in the preparation of development plan and other local development documents and in relation to other activities that support the planning of development, for example through the Local Economic Partnership. This duty extends to bodies beyond local authorities and will be subject to government guidance.
- 1.3 The regime for developing local authorities' planning policies is amended to remove the binding nature of Inspectors' Reports on development. The proposed changes allow greater flexibility for councils to react to statutory examination of their development plans. Local authorities will be able to suggest changes during the examination and withdraw development plan documents before their adoption, without seeking clearance from Government.
- 1.4 There are changes to the role of the Secretary of State in directing changes to local development schemes (the work programming document for the Local Development Framework). Changes – through Planning Inspectors - will now only be permitted for the very restricted purpose of “ensuring effective coverage of the authority’s area by the development plan documents”.

2. Pre-application consultation

- 2.1 The Bill introduces a duty on developers to consult on development proposals with specified people before they make a planning application. Developers will also need to publicise the proposals to "the majority of those in the vicinity of the relevant land". Regulations will set out the categories of development to which this will apply but it is understood that it will concern larger developments only. There will be a requirement for developers to take into account the results of the consultation and be able to demonstrate this.
- 2.2 This formalises a requirement that Brighton & Hove CC has been seeking with major planning applications and is welcomed, particularly the need for applicants to be clear with their supporting documentation how the results of the consultation have been taken into account.

3. Neighbourhood planning

- 3.1 The Bill incorporates a system of planning policy and development orders at “neighbourhood area” level. The neighbourhood areas will be designated by local authorities upon application by the local parish council or, where there is no such council, a community based “neighbourhood forum”. In order to become a neighbourhood forum, an organisation or body will need to seek designation by the local authority and would need to satisfy criteria relating to its social, economic and environmental aims and local membership (including for example that there must be at least three members with a written constitution). Only one forum will be allowed in an area, with no overlapping.

Neighbourhood Development Plans

- 3.2 The Parish Council or neighbourhood forum will be able to prepare a Neighbourhood Development Plan (NDP) for the approved neighbourhood area which will set proposals for development and use of the land in the area. This will require the local planning authority to support that preparation process and organise the process of its examination and adoption.
- 3.3 A process of independent examination of the plan is proposed to check that the proposed plan is in “general conformity with the strategic development policies contained in the development plan for the area”. If the proposed plan gets through this stage of examination, it will be put to a local referendum and approved if over 50% of those voting are in favour. The plan cannot relate to certain types of excluded development, for example major development or development that requires an environmental impact assessment. An approved NDP will become part of the statutory development plan.

Neighbourhood Development Orders

- 3.4 In addition, neighbourhood bodies will be able to make a Neighbourhood Development Order (NDO) granting planning permission in advance for development. This could be for specific developments or specific types of development (similar to permission granted by General Permitted Development Order) and could be subject to conditions. NDOs are subject to examination similar to a local plan inquiry, although the presumption is that this will be done by written representations only. As with Neighbourhood Development Plans, if it is to go ahead the NDO must be approved in a referendum which can be just the voters on the neighbourhood area or the local authority can extend it to neighbouring areas as it sees fit.

Community Right to Build Orders

- 3.5 The Bill also creates a Community Right to Build Order (CRBO) as a particular type of Neighbourhood Development Order. For these orders, “community organisations” will be able to apply for planning permission for specified development in relation to a particular site within the neighbourhood area. The community organisation must be a corporate body established for the express purpose of furthering the social, economic and environmental well-being of individuals living, or wanting to live, in a particular area. More than half of the

members of the community organisation must live in the neighbourhood area and there will be examination and referendum provisions similar to the NDP and NDO provisions. It will be necessary to await further guidance from the Government to understand how CRBO's will be used and the distinction between them and more general NDOs. At this stage it is understood that:-

- CROBOs will be restricted to small scale site-specific development;
- There will be no restriction on the number of promoting "community organisations" in a particular area (unlike a neighbourhood forum);
- Measures will be included to ensure resulting assets will remain in the community.

3.6 The neighbourhood planning proposals will require detailed regulations and guidance on the procedures and application of other planning legislation to these orders. At this stage concerns have been raised regarding how to define neighbourhood areas and in ensuring accountability. Regulations will also cover charging by local planning authorities and other financial assistance in relation to neighbourhood planning.

4. Community Infrastructure Levy

4.1 The Bill provides greater flexibility for local authorities to adopt the Community Infrastructure Levy (CIL). CIL is an optional tariff that local authorities can impose when granting planning permission to spend on infrastructure. The Bill clarifies that CIL can be used for ongoing operational and maintenance costs of infrastructure. Whilst independent examination of CIL charging schedules will still be required, the Bill restricts the power of the examiner and allows more flexibility for local authorities to amend their schedule to comply with examiner's proposed modifications.

4.2 The Bill also introduces a mechanism for CIL contributions to be passed onto third parties. The Government has indicated that this will be used to pass funds onto neighbourhoods and Regulations will specify the circumstances in which this will occur and how contributions will need to be managed. Community groups could for example spend the money locally on the facilities they want, either by contributing to larger projects funded by the council, or funding smaller local projects like park improvements, playgrounds and cycle paths.

5. Enforcement

5.1 Several high-profile cases have underlined the difficulty of enforcing against planning breaches when a developer intentionally conceals the true form of a development from a local authority. In the Bill, the Government has tackled this by creating a new concept of "planning enforcement order" (PEO). A PEO from a magistrates court will allow a local authority to take enforcement action against a planning breach even if the standard time limits for planning breaches have already expired. In order to obtain a PEO, the court would need to be persuaded that:-

- there has been an "apparent breach" of planning control (at any time);
- any person has contributed to concealing it; and

- the court considers it "just" to make the order.
- 5.2 The authority must seek the PEO within 6 months of becoming aware of the apparent breach and, if it is granted, then has a year to commence enforcement action (in the normal way).
- 5.3 The Bill also creates a new right for local authorities to decline to determine retrospective applications when a corresponding enforcement notice appeal is outstanding. This is intended to curtail the practice of defending enforcement action and making a new application at the same time – local authorities will not now need to consider the new application.
- 5.4 There are increased penalties for non-compliance with Breach of Condition Notice and an extension of time limit for prosecuting advertisement and certain tree offences as well as increasing powers for the removal of illegal advertisements and graffiti and prevention of fly-posting.

6. Nationally Significant Infrastructure Projects

- 6.1 The Bill abolishes the Infrastructure Planning Commission (IPC) and transfers decision-making on nationally significant infrastructure projects to the Secretary of State. A new Major Infrastructure Planning Unit within the planning inspectorate will be established to examine applications and report and make recommendations to Ministers. The provisions provide that the Secretary of State will be tied to the same timescales for examination and decision-making as apply currently to the IPC under the Planning Act 2008.
- 6.2 In addition, the Bill introduces a new requirement for Parliamentary approval of National Policy Statements. There is also the proposal to streamline existing planning policy statements within a national planning policy framework.