

The World Will Be Your Oyster?

Reflections on The Localism Act 2011

Chapter Nine

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The provisions of the Localism Act can, in broad terms, be divided into two groups: those which will affect the way councils operate, and those which are about giving enhanced powers to neighbourhood or community organisations. The first group includes the general power of competence, continuation of standards committees, clarified rules on declarations of interest, directly elected mayors, scrutiny, and above all the opportunity to return to the committee system or other ways in which a council might be governed, including hybrids. To this can be added numerous minor clarifications, including the prohibition of bi-weekly bin collections – though most would argue that this is the antithesis of localism.

This chapter is about the second group of changes in the Localism Act, which will give powers to communities, including powers to bid to take over local services (the Community Right to Challenge), to buy assets of importance to local communities (the Community Right to Bid) or to construct buildings that will be of community benefit. Above all, town or parish councils, or where there are no parishes, Neighbourhood Forums created by local residents, will be able to influence the processes of land use planning, and in some circumstances to grant planning permissions.

Civil parishes vary hugely. According to the National Association of Local Councils, there are approximately 8,500 town or parish councils in England. No-one knows precisely how many, because many are defunct or too small to function effectively. Some have parish meetings, where any residents can attend, but no elections. Most parishes with fewer than 1000 residents, and many with fewer than 2000, find it hard to do more than employ a part-time clerk and to maintain an office that opens for a few hours each week, to maintain a village hall and to comment on planning applications as they arise. At the other extreme are the town councils, many of which were Urban District Councils before 1974; some of these have histories continuous since the middle ages (and associated mayors, robes, regalia and historic rooms). 680 “quality parishes” have gone through an accreditation process which requires them to have elections, audited accounts, meetings at least six times a year, a qualified clerk, a website or regular newsletter and to be involved in community activity, e.g. in the production of parish or village plans. These are the parishes which will be most equipped to make use of the new powers available under the Act.

Large parts of the country, including most of London and the large conurbations, and significant areas elsewhere, are not divided into civil parishes. Here new powers will be available to neighbourhood forums. The original Bill would have allowed a group as small as three residents to create a Forum. It was radically revised in the House of Lords, and a Neighbourhood Forum is now required to have at least 21 local residents as members. Membership will also be open to businesses which operate locally and to those who work in them and to elected councillors who represent any part of their area. They will be recognised by their local district council, after a period of consultation in which any other groups interesting in registering a neighbourhood forum in all or part of the area will have a chance to make counter-proposals (those registered at a particular dwelling must be represented by just one Forum). These rules will encourage existing neighbourhood forums, residents' associations or groups of residents' associations, or local conservation societies to apply.

Thus the capacity to respond to the new opportunities will be patchy. Towns or parishes with quality status will have few problems, as will non-parished areas with active neighbourhood organisations. But in many places the capacity will be limited, or non-existent, and areas between existing neighbourhood forums, or where there are very weak parishes, will miss out. Smaller parishes will have incentives to merge into larger ones. District councils with areas that are not as yet parished might be wise to propose boundaries which they would be minded to accept, in advance of specific proposals, and thereby ensure that, eventually, all of their areas are covered. In the even longer term, these neighbourhood forums might use legislation passed in 2003 to create new parishes - in effect, to convert themselves into parish councils.

The most significant new power is the ability to influence the planning process. Parishes and neighbourhood forums will be able to create Neighbourhood Development Plans. If these are judged as "sound" by an independent inspector, which means that they must meet basic requirements such as not running counter to national policies or to policies in local plans approved for district councils, and then passed by a local referendum (or two referenda if the area includes a business district, the second just for the businesses in the area) then the district councils will be required to approve them. Where a plan has impact on nearby areas, the district council may require an extended boundary for the referendum.

Once approved by the district council, their provisions will become "material considerations" in the determination of planning applications. Most quality parishes already have parish plans (strictly this is a non-mandatory requirement for recognition as a quality parish, but in practice most have them). So do some active neighbourhood forums, while others have made inputs into district council local plans and often have campaigning objectives for local sites or streetscenes. Most of these, and the work that has already gone into them, will be convertible into neighbourhood development plans. For those which need more work, a small cottage industry has grown up, using approaches such as "Planning for Real" to

ascertain the desires and aspirations of local residents, and the feasibility of those desires. The new legislation will require district councils to provide technical advice to parish councils or neighbourhood forums that want to create plans, but not financial support.

It will also be possible for parish councils or neighbourhood forums to apply for Neighbourhood Development Orders that will permit them to grant planning permissions for some categories of development, likely to be relatively uncontentious (similar to present powers for “permitted development” – planning permissions for un-contentious cases are already delegated to parish councils by some districts, e.g. South Somerset). The procedures to be followed are similar to those for Neighbourhood Plans, involving a referendum or referenda, and, as with Neighbourhood Plans, district councils will be required to include them in their Local Planning Frameworks.

Many neighbourhood plans are likely to allocate minimal areas of land for new housing. If a developer subsequently applies to build on land not allocated for housing in the neighbourhood plan, the district council, in deciding the application, or a planning inspector (if the application is refused and the developer appeals) will put the neighbourhood plan alongside other material considerations, one of which may well be the need for more housing in the area. So whether local groups will achieve some of their most dearly held objectives will depend on how the planning inspectors balance these different material considerations. There could also be conflicts where local plans do not include sites allocated for supermarkets, but supermarket companies think that there is a demand for their services. Similar considerations will apply to proposals for various “non-conforming uses” which villages and suburbs are most unlikely to want – scrapyards, incinerators, waste transfer stations, travellers sites, bail hostels, children’s homes, etc – but which have to be located somewhere (but sometimes in places where local communities are least organised to object).

Much will depend on the final drafting of the National Planning Policy Framework, which, highly condensed, will replace the detailed guidance hitherto laid out in the 30 or so Planning Policy Statements on a range of the key issues involving land use, and a variety of other guidance notes. The draft of the NPPF includes requirements that plans and local policies support “sustainable development”, and the forward by the Minister emphasises that “development means growth”. As the text of the draft puts it: “Every effort should be made to identify and meet the housing, business, and other development needs of an area, and respond positively to wider opportunities for growth.” It goes on to require that “Decision-takers at every level should assume that the default answer to development proposals is ‘yes’, except where this would compromise the key sustainable development principles set out in this Framework” (although there are elements of this kind of pressure already in the planning system). How such decentralised planning will influence some of the key choices which will affect carbon use and transport modes is far from clear (e.g. the desirability of siting developments near important public transport nodes such as railway stations, away

from flood plains, or in locations very difficult to service by bus). Many developers may be expected to propose schemes that are heavily dependent on travel by car. The commitment to encourage employment close to where people live would favour industrial parks or estates, warehouse developments, and access roads which may also not be desired by local residents.

Infrastructure projects of national importance will be fast-tracked under a centralised regime, not likely to take over much cognisance of local objections. This will also take preference over Neighbourhood Plans.

Neighbourhood Plans are likely to provide support for high quality architecture and materials, playing fields, allotments, traffic calming, and perhaps restrictions on building heights and preservation of views, and in practice all these could prove difficult to sustain. If local residents and local businesses go to the trouble of preparing plans, and subsequently find that when push comes to shove they have very limited influence, they are going to be extremely unhappy and disillusioned with the process.

The Localism Act will require local authorities to maintain lists of assets which are of value in the community – village halls, leisure centres, libraries, but also pubs, post offices, sports fields (it will be interesting to see if schools are included, as logically they should be). If these assets are put up for sale, the local authority must be notified, and the community given a chance to raise money to purchase them. The detailed mechanism will be set out in regulations. Local groups will also be able to start building “new homes, businesses, shops, playgrounds or meeting halls” without the need for planning permission, but again only after this is approved in a referendum (has anyone considered the costs of all these referenda? Surely a hurdle unless they can all be taken together on the same day as local council elections). The proposal gives no indication as to how these groups will find the resources to buy the necessary land, but the ability of a local community to assemble to purchase significant assets must be very limited. In most cases it will probably be cheaper, and simpler, to get a traditional planning permission than to conduct a referendum.

The provisions for permitting local community organisations to bid for services were modified during the passing of the legislation. Powers to take initiative and force a council to run a procurement process will be open not just to parish councils or neighbourhood forums, but to local cooperatives, amenity groups, or groups of local authority workers. However, these powers will not apply if the council has subcontracted the relevant service to an external supplier, other than in the time period when a contract is up for renewal (so not much joy for a village that wants to dispose of its own refuse if this is being done by a private provider under a 25 year Private Finance Initiative (PFI) contract). In practice, most district and many county councils have been well disposed to parish councils that wanted to take over basic services, such as cutting the grass on a council-owned village green, or maintaining

the local toilets, and this type of local negotiated agreement may often be more productive than the rather pugnacious provisions of the Act.

There is thus a dichotomy running through the legislation, between the desire to release local initiative and get local buy-in and ownership of proposals and national considerations like the need to find the land for more house-building, to get the economies of scale which come from large projects and shared services, and the need for national standards. The elephant in the room is the reduction in local authority budgets, which will mean that there is even less money available to provide basic services and very little at all to take discretionary initiatives, however entrepreneurial and imaginative they are. There is a certain naivety in many of the proposals, along the lines that if there is sufficient talking everyone in an area will agree over what needs to be built (the African village theory of land use planning), that money can be found for desirable developments, that developers are generally benign and will not have to be forced into maintaining high standards of access roads, house sizes, energy conservation, or the designs and finishes of buildings. There are times when all these apply. But if there are no sanctions when they do not apply, we may expect many decisions which in the long run all concerned will come to regret.

There is also a very distorted view of the planning process, which seems to be based on the assumption that all developers are paragons of virtue, committed to job creation and good quality design and all planning regimes negative and reactionary, dedicated to stopping development. The reality is often very different. Not only do developers have resources to promote their ideas, and sometimes to offer concessions in return for development, but they also have the advantage of holding the initiative – they make proposals and everyone else can only react - and in such circumstances it is very hard to produce viable alternatives. Many developers are cowboys, who will cut any corners they can to get a development through, such as registering a planning application with incomplete or very inadequate documentation, resisting requirements clearly stated in local policies (such as requirements to include a proportion of social and affordable housing in their developments), make the smallest contribution to the Community Infrastructure Levy (CIL), and use the cheapest materials. Councils and council officers, need to have the courage and the resources, to turn down unsatisfactory developments, especially those with poor quality design and then, if necessary, to fight the developers through the appeals process, on behalf of their communities. It is also very misleading to think that most councils do not want to create employment; indeed for most councillors unemployment, and especially youth unemployment, is one of their foremost local issues. That does not mean that they should not try and negotiate to minimise the impact, and maximise the quality, of whatever employment-creating development is under consideration (and to have a robust view of employment creation, considering jobs likely to be lost consequent on a development such as a supermarket, as well as jobs the developer claims will be created).

Taken as a whole, the community empowerment parts of the Act are therefore a curate's egg - good in parts. They will encourage the creation of new Neighbourhood Forums and perhaps new parishes and parish councils, and challenge them to do more in their communities. It may well produce some creative thinking about land use, and initiatives that can be taken in local areas. But it will not be a revolution in terms of service delivery. Most planning will continue much it would have done otherwise. Parishes who want to take over services, or buildings, may find existing arrangements easier to work than the new ones. Self-build housing is a good aspiration, but there is nothing here to deal with the present constraint on it, the high price of building land. And above all it is new legislation that will favour the already organised areas, where community leaders have plenty of time to put into community initiatives. The hard-pressed areas, where the needs are greatest, will not find it easy to meet the demands of the legislation and thereby benefit from the opportunities it offers.

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