



Reaction to Localism Bill: lawyers

Huw Morris, PlanningResource, 15 December 2010

Reaction from leading planning lawyers including Hogan Lovells, Mishcon de Reya and SJ Berwin.

[Reaction from planning consultants](#)
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Hogan Lovells head of planning Michael Gallimore said: "There will be significant relief that some proposals trailed in Open Source Planning are not in the bill - third party rights of appeal, curtailment of appellants' right to appeal and payments to local objectors to remove opposition to development proposals. The Government has seen sense on all of these issues. The requirement for pre-application consultation for significant developments could be far-reaching in practice. It opens up potential for developers to have to collaborate with third parties on the design of a proposed development and to show that their views have been taken into account. The requirement could potentially go far beyond consultation."

Frances Robinson, a solicitor specialising in planning at Beachcroft LLP, said: "The proposed changes are based on the ideological concept of shifting power down to local people. The concern of those in the development industry is that greater involvement tends to slow things down rather than speed things up and that it will lead to a reduction in development. To succeed it will require local people to embrace the idea of development and encourage it in a way that they have not had to before. In that sense the bill is an experimental concept which will require a considerable change in mindset away from the general resistance against development."

Community rights

SJ Berwin planning partner Simon Ricketts noted: "A referendum on local issues can be called by at least five per cent of the local electorate and the local authority must consider what actions to take in response. One can imagine how this will be sought to be used by objectors in relation to particularly contentious planning issues." On the community right to buy, he added: "There is no definition yet of what types of assets might be considered to fall within this category. Any constraint in relation to land owned by the private sector would be extremely contentious."

SNR Denton partner David Cox said: "Where a relevant disposal of land included in a list is proposed, a moratorium is imposed in which community interest groups can seek and raise funding and ask to be treated as potential bidders. It is not a new form of compulsory purchase, but interesting questions arise about the degree to which a connection with a community must be shown as a way of stopping abuse, the effect of inclusion on land values and transactions and the relationship with the planning system."

Enforcement measures

Daniel Farrand, head of planning at Mishcon de Reya, commented on the bill's enforcement provisions: "The ability to decline to determine applications while an enforcement notice is in force will be seen by many as a sensible move but may have unforeseen consequences for redevelopment of sites subject to historic enforcement notices which still have teeth. Far more worrying is the new planning enforcement order allowing magistrates to permit enforcement where the council has only recently discovered a breach.

"The test on concealment is drafted far too widely. The magistrates' requirement to consider justice in all the circumstances before granting an order in no way gives sufficient certainty to advise buyers where there is a historic breach of planning control or where compliance with planning cannot be fully established."

Ricketts agreed: "We will need to watch with care to make sure that there is no mission creep in the interpretation of 'concealment'. The current enforcement deadlines provide purchasers and funders with an element of certainty which should not be lost."

Consultation commitment

Karen Cooksley, partner and head of planning and regeneration, Field Fisher Waterhouse, said: "It is most unfortunate that such a flagship piece of legislation which has been so long and anxiously awaited has not been presented in a comprehensive manner. Developers, local authorities and the public will have to work out on a piecemeal basis how the new system is intended to operate and affects their interests.

"The enhanced statutory liabilities to consult the public will impose a much stricter obligation on developers, who will need to alter the manner in which they engage. If the new requirements become law and developers do not consult properly they will imperil their chances of securing planning permissions and risk judicial challenge. We could be looking at litigation to rival the cases brought in relation to environmental impact assessment."

Chris Bowes, planning partner at DLA piper, said: "The coalition government says that this is not a nimby charter, but it is clear that developers will have to invest even greater resources in community consultation to persuade residents of the merits of their proposals. It is not clear how less well represented communities will not become the target of bad neighbour uses and how they will be protected through the new system."

Neighbourhood planning

Lawyers expect the fine detail of neighbourhood plans and neighbourhood development orders (NDOs) will take some time to develop.

Farrand said: "The process for testing neighbourhood plans and NDOs gives planning authorities more control than some feared before being subject to the local referendum. As always the regulations made later will be key to ensuring the system is workable in practice. The load on already stretched councils to set up neighbourhood forums, process orders and plans and arrange referendums will be heavy."

Gallimore agreed: "The requirement for neighbourhood plans to be produced at the instigation of local groups and the requirement for plans to be subject to an independent examination is going to have significant resource implications for local authorities."

Hogan Lovells partner Claire Dutch continued: "The bill is somewhat vague on what constitutes a neighbourhood. It could be a few streets or larger than a parish council area. The neighbourhood forum which puts forward a proposal needs only three local residents and the local authority must make a development order if only half of the votes under a referendum are in favour of the development. This is a pretty low threshold and reaffirms the government's commitment to putting power in the hands of the people."

Brian Greenwood, head of planning at Osborne Clarke, said: "Although one has to admire Government's dogged determination to leave its stamp on the planning system seemingly regardless of the consequences, this may be an interference too far. The Bill runs the serious risk of taking one step forward for the so-called good of the community and two steps back at the cost of genuine development need."

"Neighbourhood plans will bring to an abrupt halt the already stuttering housing building industry. Changes to the local plan system will merely encourage challenge and dissension and the community right to build will set councils and communities against one another. This is precisely the sort of legislation the economy did not need."

Dutch concluded: "Whatever the result of the ongoing court match between the government and Cala Homes, the likelihood is that regional spatial strategies will no longer exist by this time next year. This, coupled with the proposed curtailing of national planning policy, will certainly result in a vacuum in policy at both the national and regional level."