



Action with Communities in Rural England

ACRE Briefing: Summary of the Localism Bill

February 2011

This briefing covers a number of proposals relevant to rural community action in the Localism Bill, published in December 2010 and currently progressing through the Public Bill Committee after its second reading in late January. The Bill includes a wide range of measures that aim to give more power to local authorities but also more power to individual communities to determine how development takes place in their locality.

Details of the proposals in the Bill on Neighbourhood Plans, the Community Right to Build and Assets of Community Value are covered in a suite of separate ACRE briefings. In this document we summarise these, as well as other proposals in the Bill, and highlight issues and concerns raised by ACRE and others.

It is also worth noting that government is considering the kind of support required to help communities to use the new 'Rights' in the Localism Bill. As their current consultation on the Right to Buy: Assets of Community Value states: ***'We have also considered what sort of support may be required to help communities use the Community Right to Buy and the other powers conferred on them through the Localism Bill. In particular, there will be important links to be made between the Community Right to Buy and other community rights, such as the new Neighbourhood Planning, Community Right to Build, and Community Right to Challenge proposals in the Localism Bill and it is important that communities understand how these can fit together.'***

This briefing covers the following elements of the Localism Bill:

- Neighbourhood Plans (see separate ACRE briefing)
- Community Right to Build (see separate ACRE briefing)
- National Policy Planning Framework
- Community Right to Buy – known in the Bill as 'Assets of community value' (see separate ACRE briefing and note the CLG current consultation)
- Community Right to Challenge (note CLG consultation)
- Community Infrastructure Levy
- Strengthening of Enforcement Action
- Pre-application discussions with communities
- Future amendments to Parish Poll regulation

Neighbourhood Plans

A community will be able to come together, via their parish or town council in a parished area, to develop a plan which, if it succeeds at an independent examination, must be put to a public referendum in the relevant neighbourhood area. If it receives approval via a simple majority of the vote, the proposals can be adopted through a **neighbourhood development order**. This gives the spatial planning elements of the neighbourhood plan a statutory basis within the local development documents. The process for generating the neighbourhood development order is outlined in a separate ACRE briefing. An order can include conditions about how any subsequent development is agreed to – it can specify whether full planning permission is required and who is allowed to authorise it. Parish and town councils could take on responsibility for agreeing resulting planning applications.

Community Right to Build Order

The Right to Build will allow a local community to bring forward a small-scale development for one or more purposes including new homes, businesses and community facilities, but it must be small scale in comparison to the size of settlement. The Bill requires that a **community organisation** (existing or new) takes on this role but its constitution and purpose must relate to furthering the social, economic and environmental well-being of residents in the area in which the site is located. The community can work with other partners or go it alone by taking ownership of the site through, for instance, setting up a Community Land Trust. Further restrictions may be prescribed at a later date, including disposal of assets and any profits resulting from the development.

The designation of a Right to Build site is through a **Neighbourhood Development Order**, with similar provisions and process as required under a Neighbourhood Plan proposal, but with some crucial differences. At the moment, there is no clarity about the potential relationship between Community Right to Buy and a Neighbourhood Plan covering the same area.

National Policy Planning Framework

This is the simplified framework which governs how local authorities will, in future, develop local plans. Many national organisations are advocating for a very simple presumption in favour of sustainable development. Most wish for this to be stated in terms which require an appropriate balance to be achieved between economic growth, social benefit and environmental protection and sustainability. There is currently no direct requirement in the Bill to ensure neighbourhood plans adopt sustainable development principles, but should communities spend time developing a plan that does not meet a sustainable development test, it will probably be picked up at the independent examination stage. We believe it is better for this requirement to be made clear to communities upfront, whether in secondary legislation or guidance on neighbourhood plans.

Assets of Community Value

Previously known as the **Right to Buy**, the Assets of Community Value¹ proposal simply allows a community, group or individual to 'list' a site as delivering a valuable service or public facility. It contains no presumption of first refusal to buy the site being given to the community if the site comes up for sale, nor any moves towards compulsory purchase. However, it delays any possibility of immediate disposal of the site which may prevent a community acquiring it.

The local authority is required to hold a list of assets nominated by the community where an application to list has gone through the process prescribed in the Bill. It excludes assets of potential community value and only considers the current or past use of the site.

Much of the detail of the Assets of Community Value proposal is still to be prescribed in secondary legislation, and, in preparation for this, Communities and Local Government have issued a **consultation document**², open to responses until 3 May 2011.

Community Right to Challenge

The Bill proposes a process whereby any civil society organisation or parish and town council or employees of the service provider can challenge a public service provider by submitting an 'Expression of Interest' in delivering the service. The process is that the public service provider must then undertake a full commissioning exercise. Social value is one of the aspects that can be included in an assessment of any bid that results. ACRE believes that where local services could be devolved to parish councils or community groups, it may be easier to negotiate an agency agreement outside the provisions of the Bill, rather than risk a competitive process that involves significant time and expense.

Concerns in the national civil society sector are around:

- The potential for a community to raise an expression of interest, only to see the service eventually transferred through the commissioning process to an alternative provider, possibly a larger organisation operating over a wider field, or even a private sector organisation.
- Will pre-qualification requirements prevent small-scale community-led delivery and will tenders be advertised as open or restricted?
- Confusion between employee takeovers of services and community commissioning, both of which can mount a challenge.
- Will service users be consulted over which supplier should be commissioned?

Communities and Local Government have issued a consultation document³ on the Right to Challenge, open to responses until 3 May 2011.

¹ <http://www.publications.parliament.uk/pa/cm201011/cmbills/126/11126.i-v.html> Chapter 4 page 51

² <http://www.communities.gov.uk/publications/localgovernment/righttobuyconsultation>

³ <http://www.communities.gov.uk/publications/localgovernment/righttochallengeconsultation>

Community Infrastructure Levy – the Bill proposes that a proportion of the fees payable by developers through the Community Infrastructure Levy should be transferred to third parties that are responsible for providing infrastructure to support the development. This includes ensuring communities should receive some benefit from CIL to support provision of local facilities.

Strengthening of **enforcement action** is proposed, as are measures to reduce the prevalence of retrospective planning permissions.

Pre-application discussions – under the Bill, developers must publicise their intention of submitting a planning application, invite comments and give due consideration to them in finalising their application. This means that communities will get an opportunity to negotiate directly with developers prior to any planning application being submitted. However, a threshold on the minimum size of development that would trigger this may put this out of reach for most rural communities other than those in a high growth area.

Parish Polls – the current low threshold for a small number of residents to require a parish poll is covered under a section of the Bill which enables the Secretary of State to bring forward amendments to the current procedure at a future date. This includes a potential future decision by of the Secretary of State that the cost of parish polls is met from central funds.

The Bill also puts into effect measures already announced by government, including:

- **Abolition of regional strategies**
- **Abolition of the Duty to Promote Democracy**
- **Abolition of the National Infrastructure Planning Commission**