

Localism 2.0?

Lucy McDonnell considers the successes and limitations of the Localism Act changes, and the ways the system may change again

The 2011 Localism Act swept away regional planning and was intended to bring in a new way of looking at the planning system, with an emphasis on giving communities control of the development within their area as well as new freedoms and flexibilities for local authorities. The Planning White Paper suggests wider scale changes to the way in which the system works, and again focuses on the way in which local people can have their say.

Neighbourhood watch

Neighbourhood plans were a major feature of the planning system introduced by the Localism Act. These allow a parish council, or specially constituted neighbourhood forum, to establish a plan for their local area, provided that it is in general conformity with the Local Plan. The success of neighbourhood plans has been mixed. While the thousandth neighbourhood plan was approved in February this year, so far take-up has been strongly concentrated in the least deprived areas. Data from 2018 shows that while the 20% least deprived areas produced nearly 35% of made neighbourhood plans, the most deprived 20% of areas produced fewer than 3% (figures from Lichfields, see *reference point* boxout). In addition, London has relatively few neighbourhood plans – in February 2020, 116 out of a total of 2,837 applications were in London, versus 562 in the South East, and 549 in the South West.

These figures are not surprising given the time commitment and, often, cost and expertise required to produce a neighbourhood plan. While over 2,600 communities have started the process since 2011, only 1,000 plans have been passed at referendum according to the August 2020 White Paper. With many neighbourhood plans taking several years to be drafted, consulted upon, examined, voted on at a referendum and made by the local planning authority, it seems that neighbourhood planning is more likely to be successful in areas with existing, committed parish councils, who have the infrastructure in place to pursue the neighbourhood planning process.



*Lucy McDonnell is
a senior associate at
Dentons*

By way of contrast, in other areas without parish councils, and ideally retired town planners or related professionals available to help, it is likely to be considerably more difficult to constitute a forum and obtain a neighbourhood area designation, even before the neighbourhood planning process itself begins. The final independent research report to the Ministry of Housing, Communities and Local Government into

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the impacts of neighbourhood planning in England, published in May this year by the University of Reading, found that all the local planning authorities with no neighbourhood planning activity were urban.

The report suggested a number of areas for further work to address this, including the uneven take-up of neighbourhood planning. This includes reforming funding arrangements to make them more equitable, introducing better training for neighbourhood plan participants, and encouraging local planning authorities to better support neighbourhood plan communities.

Reinvention

The Secretary of State's introduction to the White Paper notes that:

... [w]hile the current system excludes residents who don't have the time to contribute to the lengthy and complex planning process, local democracy and accountability will now be enhanced by technology and transparency.

The switch to a zonal planning approach – growth, renewal and protection – is beyond the scope of this article, but if Local Plans are simplified (or the complexity is redistributed) in the way envisaged, there is less for neighbourhood plans to do. The White Paper praises neighbourhood planning and suggests retaining it, but also calls for it to be 'more focused to reflect [...] proposals for Local Plans'. Proposal 9 of the White Paper sets out to retain neighbourhood plans as an 'important means of community input', and suggests that the government is interested in looking at how the process could be adapted to allow plans to come forward for even smaller areas, and potentially individual streets.

One area where the White Paper does envisage a potential role is in setting design codes for development locally. While this may be attractive to neighbourhood planning groups, it is likely to be challenging for community groups to prepare design codes to an appropriate standard, and may set unrealistic expectations about the type of development which can viably be provided.

Virtual signalling

The White Paper provides an additional method for communities to have more say over development in their area, via enhanced democracy at the plan-making stage. The White Paper asks that local planning authorities ‘radically and profoundly re-invent the ambition, depth and breadth’ of Local Plan consultation. While it remains to be seen what that would really mean, it demonstrates the government’s ambition to focus community engagement and opportunities

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for people to have a say about the development of their area at this stage. As part of this, the White Paper suggests a shift from ‘a process based on documents to a process driven by data’, with community engagement supported by digital tools, with members of the public able to comment on proposals via social media and smartphones.

The White Paper’s move to more digital engagement suggests a lighter touch, and a potentially more accessible form of community engagement. While it is a major undertaking to draft a neighbourhood plan and take it through the whole process, it would comparatively be much easier to review and comment on Local Plan proposals for a local area.

However, there remains a question of how much impact individuals will have by being more easily able to access and comment on Local Plan proposals. Neighbourhood plans allow a community to set out a framework for the development of their area, and to drive that process. By commenting on the development plan proposed by the local planning authority, communities will still be governed by the Local Plan process run by the local planning authority. There is also a question about how much difference the digital measures will actually make. Documents are already available online, and comments can be submitted via a council’s website or email. Local Plans are subject to extensive consultation, and where proposals may be more accessible pursuant to measures specified by the White Paper, the process is likely to be similar.

Streamlining

The White Paper proposes to streamline the plan programme and content. Development management policies will be set out at a national level, while site and area-specific guidance, including classifying land as growth, renewal and protect areas, will be specified in Local Plans, informed by more community involvement. In combination with this, the White Paper aims to streamline consultation on individual planning applications, on the basis that engagement at the planning application stage is perceived to add to delays and allows a small number of voices, which may not be from that area, to shape decisions.

This is double-edged – deeper, earlier engagement at a formative stage is usually welcomed. Far less involvement in specific schemes is a corollary of that, which has led to significant

political resistance to the proposed shift. In particular, this may be an issue where planning applications do not fit neatly within the development envisaged in the Local Plan, or where applications come forward ahead of the Local Plan process.

A potential wider conflict within the White Paper between local democracy and a more centralised approach to development management is also applicable to neighbourhood plans. While their role in allowing communities to shape local development is supported, the White Paper states that the government:

... will want to consider whether their content should become more focused to reflect our proposals for Local Plans.

This raises questions about the balance between local and central decision-making under the proposals, and how meaningful a choice local people will have over the development within their area. Where a Local Plan has designated land use, and development management is covered by national policy, the scope for neighbourhood plans may be considerably reduced.

Community Infrastructure Levy – neighbourhood share

A particular tool available to neighbourhood plans under the current regime is their ability to share in Community Infrastructure Levy (or CIL) if they fall within an area where CIL is in force.

In practice, the impact of the neighbourhood share on CIL is fairly limited. To date, only parish councils can actually receive the funds, meaning areas without a parish council – where a neighbourhood forum has been set up to make a neighbourhood plan – miss out on the

Community Infrastructure Levy – neighbourhood share

Under regulation 59A of the Community Infrastructure Levy Regulations 2010, the charging authority must pass a certain percentage of CIL receipts to the parish council in which a development is taking place:

- where a neighbourhood plan is in place or a neighbourhood development order has been made, 25% with no annual limit; and
- otherwise, 15% capped at £100/dwelling (indexed for inflation), paid each year.

If there is no parish council, the charging authority will retain the levy receipts but should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding.

The parish council must use the CIL receipts passed to it to support the development of the parish council's area by funding the provision, improvement, replacement, operation or maintenance of infrastructure; or anything else that is concerned with addressing the demands that development places on the area.

neighbourhood share of CIL. While limited information is available, it also appears that the sums paid to parish councils are limited; for example, in 2018/19 Elmbridge Borough Council received £3,058,000 of CIL, of which £13,000 was paid to Claygate Parish Council, less than 0.5% (see the *Community Infrastructure Levy Annual Monitoring Report 2018-19*). In contrast, South Downs received total CIL receipts of £1,094,367.65 in 2018/19, of which £114,757.08 was paid to parish councils, a little over 10% of CIL receipts (see the *Infrastructure Business Plan 2019 (including the Annual Infrastructure Funding Statement)*).

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The White Paper proposes that the neighbourhood share should be kept in a situation where CIL is replaced by 'Infrastructure Levy', maintaining the position of those parish councils with neighbourhood plans in place which currently benefit from the distribution of the neighbourhood share of CIL.

The White Paper emphasises the importance of there being a strong link between where development occurs and where funding is spent. In line with the White Paper's emphasis on greater consultation and local say, it states that the government is interested in enhancing community engagement, including via digital innovation. This commitment to the neighbourhood share is demonstrated by the government encouraging local planning authorities to consider making up the shortfall between the 15% usually distributed to parish councils and the 25% distributed where a neighbourhood plan is in place, and where the progress of neighbourhood plans has been slowed by the coronavirus pandemic.

Assets of Community Value – 'protect' designation?

Assets of Community Value (ACVs) have been a well-publicised and widely-used feature of the Localism Act change. A community group or parish council can nominate land or a building as an asset of community value, which if successful, means that before it is sold or a long lease granted, community groups must be given a period in which to make a bid to purchase it. ACV status may also be a material consideration on a planning application for a change of use.

In particular, pubs captured the imagination of many community groups, constituting approximately half of all ACVs. The government also gave ACV pubs an additional layer of protection by removing permitted development rights from pubs nominated or added to the list of ACVs, so that planning permission would be required for them to change use or be demolished. The written ministerial statement by Kris Hopkins on 26 January 2015 announcing the changes welcomed the large number of pubs nominated, and 'urge[d] communities to consider which pubs they wish to see protected before they are at risk'.

ACVs are not explicitly mentioned in the White Paper. However, the introduction of a 'protect' designation by which Local Plans can designate land in the White Paper links to

this desire to give communities control over the development of land or buildings they hold dear.

While ACV legislation focuses on giving the community a right to bid on land or buildings when they are put up for sale, the assets nominated suggest that it is also used by communities who wish to restrict changes of use, development or redevelopment. For example, a number

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of professional football club grounds have been listed, presumably without any real prospect of them being bought by the community in the event they are put up for sale. Government guidance is that a local planning authority 'may' treat ACV status as a material planning consideration, and therefore the impact of being listed as an ACV on applications for redevelopment will vary from case to case.

The 'protect' designation perhaps feeds into this desire for communities to designate properties which are important to them, and limit the extent to which they can be changed. While it remains to be seen how it would work in practice, the possible ability of members of the public to submit a request for land, buildings or a wider area to be placed in the 'protect' category at the plan-making stage would make it easier for communities to protect what is important to them. This would have the benefit of enshrining that status within the planning system, rather than as for ACVs, using legislation aimed at giving the community a right to bid. A Local Plan designation to 'protect' that property would likely afford a greater degree of protection on any application for redevelopment or change of use than ACV status.

Localism vs centralised approach

One of the key themes of the Planning White Paper is accessibility; seeking meaningful engagement from communities on the planning decisions that will impact them, and providing that the communities where development takes place benefit from funding which is spent in accordance with their priorities. The methods the White Paper proposes are based on the increased use of technology, and front-loading of consultation to the plan-making stage, providing for consultation on planning applications themselves to be streamlined (although limited detail of this streamlined process is provided). The move from a more document and paper-based system to one which is standardised, more user-friendly and digitally-available will be attractive to some people, allowing a lighter-touch involvement in local decisions than the commitment required to, for example, join a neighbourhood plan committee.

However, questions remain about whether there is an inherent conflict within the White Paper between localism and a more centralised approach to planning. While the

White Paper emphasises that local planning authorities should seek out radical and innovative ways of consulting on their Local Plan proposals, it also suggests that development management policies could be prepared on a national level, reducing the freedom of Local Plans to make their own policies. Although wider consultation at the plan-making stage may be welcome, communities may be less keen if streamlined consultation on applications appears to limit their ability to have their say on planning applications within their local area. It also remains to be seen whether this enhanced consultation at an early stage will effectively deal with the concerns of communities who may otherwise seek to prepare a neighbourhood plan or nominate a property as an asset of community value, and how these mechanisms of the Localism Act would fit within the White Paper regime. ■

Reference point

Community Infrastructure Levy Annual Monitoring Report 2018-19, Elmbridge Borough Council (undated), pg 1

Impacts of Neighbourhood Planning in England, Final Report to the Ministry of Housing, Communities and Local Government, University of Reading (May 2020)

Infrastructure Business Plan 2019 (including the Annual Infrastructure Funding Statement), South Downs National Park Authority (November 2019), pp. 4-6

Local Choices? Housing Delivery Through Neighbourhood Plans, Figure 4, Lichfields (May 2018)

Planning for the Future, White Paper, 6 August 2020

The Ministry of Housing, Communities and Local Government's key neighbourhood planning database – www.neighbourhoodplanning.org/toolkits-and-guidance/key-neighbourhood-planning-data/