

LOCALISM ACT : HOUSING AND PLANNING PROVISIONS

Joint report of the Deputy Chief Executive and the Executive Director of Health, Housing and Adult Services

Strategic Priorities: SP1: Prosperous City; SP5: Attractive and Inclusive City.

Cross Cutting Priorities: Sustainability; Creating Inclusive Communities; Housing.

Corporate Improvement Objectives: CIO1: Delivering Customer focused services, CIO3: Efficient and Effective Council, CIO4: Improving Partnership working to deliver 'one city'.

1 PURPOSE OF THE REPORT

- 1.1 This report provides information to the members of the Scrutiny Committee in relation to the 'Localism Act 2011' specifically on the details of the Planning and Housing provisions within 'the Act' and the consequences for their implementation in Sunderland.

2 BACKGROUND

- 2.1 The Localism Bill was introduced to Parliament on 13 December 2010 and received Royal Assent on 15 November 2011. However, the majority of the provisions within the Act have not taken immediate effect. The publication of secondary legislation and regulations will be required in due course in order to bring the provisions into force at a future date.
- 2.2 The Localism Act seeks to give effect to the Government's ambitions to decentralise power away from Whitehall and back into the hands of local councils, communities and individuals to act on local priorities.
- 2.3 The Localism Act includes five key measures that underpin the Government's approach to decentralisation which are :
- community rights;
 - neighbourhood planning;
 - housing;
 - general power of competence; and
 - empowering cities and other local areas.
- 2.4 Part 6 chapters 1 to 7 cover the Planning provisions within the Act and Part 7 chapters 1 to 6 cover the Housing provisions within the Act.

3 KEY AIMS AND OBJECTIVES OF THE ACT

- 3.1 The Localism Act looks to devolve decision-making powers from Whitehall to communities and their local democratically-elected representatives.
- 3.2 It contains a wide range of measures to devolve more powers to councils and neighbourhoods and give local communities greater control over local decisions like planning and housing matters amongst others.
- 3.3 A summary of the main planning and housing related changes in the Act are as follows and further detail is provided in the report :
- **Planning** – including the abolition of Regional Spatial Strategies, the use of the Community Infrastructure Levy, new powers for neighbourhood planning, and new rules for nationally-significant infrastructure projects.
 - **Housing** – including powers to discharge homelessness duties, tenure reform for social housing, abolition of the Housing Revenue Account subsidy, reform of housing finance and the regulation of social housing.

4. PLANNING PROVISIONS

Plans and Strategies – Part 6 chapter 1

- 4.1 Section 109 of the Act will enable the Government to achieve the objective of revoking Regional Spatial Strategies (RSS). In July 2010, the Government announced the revocation of RSS but this was subsequently challenged and overruled through a series of High Court judgments. Separate orders are to be laid before Parliament to formally revoke these Strategies and this is expected in Spring 2012.
- 4.2 Section 110 introduces a ‘duty to cooperate’ in relation to planning. The ‘duty’ requires local authorities and other public bodies to work together on strategic planning issues. Plans will be tested by an independent Inspector and councils must provide evidence that they have complied with this duty.
- 4.3 All policy setting documents within the Local Development Framework (LDF) are subject to an ‘examination’ before an independent Inspector who will test the soundness of the plan. Under the new provisions the Inspector’s recommendations will no longer be binding on the local authority to accept.

Community Infrastructure Levy (CIL) – Part 6 chapter 2

- 4.4 The Community Infrastructure Levy is effectively a roof tax which councils can charge on development. Section 115 amends the existing legislation to explicitly require that such levy charges do not make development economically unviable. The applicant would be required to pay a pre-set (and non-negotiable) charge to the council for the delivery of the infrastructure such as roads, schools, parks, etc (which need not be in the same location as the development itself). The Act also gives the

Government the power to require that a 'meaningful proportion' of the monies accrued from the levy goes directly to the neighbourhoods where development takes place. Regulations are awaited to clarify the amount of levy monitoring and who would or could receive the payments, etc.

Neighbourhood Planning – Part 6 chapter 3

4.5 Section 116 introduces a number of opportunities for local communities to engage in addressing planning issues at a neighbourhood level. The Act introduces a new right for Parish and Town councils and 'neighbourhood forums'¹ to initiate a process to develop :

- Neighbourhood Development Orders, which can extend the existing permitted development rights of occupiers to undertake further levels of development without the need for planning permission (such as loft conversions, extensions, changes of use) over and above what is already classed as permitted development as laid out within the Town and Country Planning (General Permitted Development Order 1995).
- Neighbourhood Development Plans, which can propose more development than is set out in the council's LDF, but will not be able to constrain development set out in the LDF. Upon approval, such Plans would form part of the council's statutory development plan for that neighbourhood and planning applications would have to be considered against the Neighbourhood Development Plan.
- Community Right to Build Orders would allow local people to hold a referendum to approve small local developments (up to 20 dwellings), without the need to go through the normal requirement for planning permission. This should come into force in April 2012.

4.6 Neighbourhood development plans and the two Orders must go through a process of independent examination and must comply with other relevant policies including national planning policy and the LDF. At the end of the process, a council must adopt these documents if more than half of those voting through a referendum are in favour of the Plan or the Orders.

4.7 The council must give appropriate advice and assistance to facilitate the development of neighbourhood development plans or Orders. The council will be expected to provide financial assistance to fund the examination and the referendums.

Consultation – Part 6 chapter 4

4.8 Section 122 introduces a new requirement for developers to consult local communities before submitting planning applications for certain developments in order to give people a chance to have a say when there

¹ Where no Parish or town council exists, 'neighbourhood forums' proposed by that community must be formally designated by the council and must meet a number of key criteria specified in legislation. Councils will also have powers to de-designate forums. A 'neighbourhood' can also include a business area if the area is wholly or predominantly business in nature.

is still genuine scope for changes to be made. The section imposes a further duty for the applicant to take account of responses received from the consultation.

Enforcement – Part 6 chapter 5

- 4.9 Sections 123 to 127 strengthen Local Authority powers to tackle abuses of the planning system, such as deliberately concealing new developments and giving the council the power to decline to determine a retrospective planning application if granting such an application would constitute a breach of planning control as specified in an enforcement notice.

Nationally significant infrastructure projects – Part 6 chapter 6

- 4.10 Sections 128 to 142 abolish the Infrastructure Planning Commission, which was created in 2008 to determine nationally significant infrastructure projects (such as major offshore windfarms and nuclear power stations). This decision making power has now been conferred to a new Major Infrastructure Planning Unit which will be part of the Planning Inspectorate. Parliament would make the final planning decision based on recommendations of this new unit.

Other planning matters – Part 6 chapter 7

- 4.11 Section 143 now provides that local financial considerations for the local authority (such as the receipt of New Homes Bonus or other grant/ financial assistance by the Government to the authority and payments due under the CIL arising from a development proposal) will be classed as material planning considerations when determining planning applications. Whilst the development plan remains the formal starting point in the determination of any planning application, other material planning considerations can also be taken into account and may justify a departure from the development plan.
- 4.12 Beyond the Planning provisions within Chapter 6 of the Act, Section 25 is also relevant to the planning process. It makes clear that it is proper for Councillors to play an active part in local discussions prior to the formal determination of a planning application. The key point is for Members to ensure by their conduct or statements that they have still retained an open mind on the ultimate determination of a planning application.

5 HOUSING PROVISIONS

Allocations and Homelessness - Part 7 chapter 1

- 5.1 Sections 145, 146 and 147 make reforms to the legislation on the allocation of social housing under Part 6 of the Housing Act 1996 (the 1996 Act). This provides the Council with the power to determine who can be allocated housing.
- 5.2 Section 148 enables councils to fully discharge the main homelessness duty to secure accommodation with an offer of suitable accommodation from a private sector landlord, without requiring the applicant's agreement. Tenancies must be for a minimum fixed term of 12 months.

- 5.3 Section 149 provides that the main homelessness duty will be reapplied regardless of whether the applicant has a priority need for accommodation, if the applicant becomes unintentionally homeless again within 2 years of accepting a private sector offer, and re-applies to the Council for accommodation.

Social Housing : Tenure reform - Part 7 chapter 2

- 5.4 Section 150 places a new duty on local authorities to publish a tenancy strategy. The strategy should set out, in high-level terms, the matters that all registered providers of social housing operating within the local authority area should take account of when developing their own tenancy and allocations policies.
- 5.5 Section 151 sets out the procedure that local authorities must follow when preparing the tenancy strategy or making changes. There is also an obligation for the Councils to consult registered providers on a draft of the strategy.
- 5.6 Section 152 provides that the Secretary of State may direct the social housing regulator to set a standard on tenure.
- 5.7 Section 153 requires that the Council, as the local housing authority, when formulating its homelessness strategy, must have regard to its current allocations scheme and tenancy strategy.

Housing Finance – Part 7 chapter 3

- 5.8 Sections 167 to 175 and Schedule 15 provide for a new system of council housing finance. The Housing Revenue Account subsidy system will end and Local Authorities that operate a Housing Revenue Account will keep all of their rental income and use it to support their own housing stock. (Not relevant for Sunderland City Council due to stock transfer).

Housing Mobility - Part 7 chapter 4

- 5.9 Sections 176 and 177 provide assistance for tenants of registered providers in relation to mutual exchanges and assisting tenants into owner occupation. (Not relevant for Sunderland City Council due to stock transfer).

Regulation of Social Housing - Part 7 chapter 5

- 5.10 Section 178 introduces Schedule 16 which abolishes the Office for Tenants and Social Landlords (known as the Tenant Services Authority) and transfers the regulation of social housing to the Homes and Communities Agency through the creation of a regulation committee of that body.

Other matters - Part 7 chapter 6 – Housing Ombudsman

- 5.11 Sections 181 and 182 provide for the creation of a unified service for investigating complaints about the provision of social housing. These sections extend the Housing Ombudsman's remit to cover all local authorities in their capacity as registered providers or managers of housing services while removing these matters from the jurisdiction of the Local Government Ombudsman.

6 IMPLICATIONS OF THE LOCALISM ACT 2011 FOR SUNDERLAND

Planning and Housing provisions

- 6.1 Government sees the planning system playing a central role in delivering a strong economy and providing for attractive and sustainable environments. Government is therefore committed to reforming the planning system so that it actively encourages growth (both in housing delivery and economic development) whilst giving local people greater influence in the process than ever before.
- 6.2 In tandem with the Localism Act, the Government has also sought to streamline national planning policies which influence the Local Development Framework (LDF) content and the decisions made in the determination of planning applications.
- 6.3 The Draft National Planning Policy Framework (published in July 2011), seeks to consolidate over 1,000 pages of themed policy statements into a single document. When taken in conjunction with the terms of the Localism Act, it raises a number of implications for how the City will discharge its statutory land use planning functions.
- 6.4 The over-riding housing policy objective is to create a system in which social landlords are able to manage their stock more flexibly to meet the local housing needs and aspirations of their tenants and prospective tenants more effectively. Common standards between registered providers in Sunderland would ensure that this works effectively and consistently.

Plans and Strategies

- 6.5 The Act will, in due course, completely abolish Regional Spatial Strategies (RSS) and replace them in the definition of the development plan with a new tier of plan, the Neighbourhood Plan (drawn up at the community level). The loss of regional / intra regional planning co-ordination will be replaced by the 'Duty to Cooperate' with other local authorities to maximise the effectiveness of LDFs (to require them to take on-board important cross-boundary planning issues). Sunderland's emerging LDF must still legally conform to the RSS until the latter is abolished.

Community Infrastructure Levy (CIL)

- 6.6 The Council will need to establish a CIL Charging Schedule. A prerequisite will be an adopted LDF Core Strategy which sets the growth ambitions and consequent infrastructure requirements for the city.
- 6.7 Critical to the CIL will be a clear understanding of the economic viability proposed development sites to ensure they are able to absorb the additional CIL financial burdens whilst still retaining a reasonable profit margin for the developer. It is proposed to produce the CIL Charging Schedule alongside the Core Strategy and this is programmed for adoption in January 2014.

Neighbourhood Planning Issues

- 6.8 Further regulations are expected on neighbourhood planning. But for the present time, it remains unclear as to how potential differences between the various planning documents will be managed. For example, the local planning authority's own evidence (e.g. need, viability, delivery and sustainability) may justify restraint in an area, whilst the Neighbourhood Development Plan could seek to promote more development. Conversely, the drive to create a Neighbourhood Development Plan could raise expectations within that local community that they will have the power to restrict certain types of development which is set out in the LDF. This will not be possible. Furthermore, the Act specifically excludes certain types of development such as waste, minerals, or windfarms creating over 50MW from the neighbourhood planning process.
- 6.9 Neighbourhood Development Plans will, upon adoption, form part of the Council's development plan for that particular area and will take priority over the authority's own LDF. The practical consequence will in taking planning decisions, the local planning authority will only be able to override the provisions in the Neighbourhood Development Plan if material considerations support such a course.
- 6.10 Neighbourhood Development Plans can in theory be proposed at any point by a Parish Council or neighbourhood forum. Future regulations are expected to clarify what powers and the Council will have to approve to such proposals and what responsibilities Councils will have for taking on the financial liability of funding the examination and any subsequent referendum².
- 6.11 Neighbourhood Plans should not in theory require significant professional involvement from the Council. However, it is feared that significant local authority input will be required to enable the delivery of such plans, for example in supporting the need to comply with EU obligations around the completion of formal sustainability appraisals. This could result in considerable unplanned costs to the Council.
- 6.12 With specific regard to the use of Neighbourhood Development Orders and the Community Right to Build Orders (it is not yet clear how these would work in practice). There is some concern about how neighbourhoods would be able to practically discharge and enforce these Orders, such as dealing with planning guidance, representations opposed to developments, statutory consultees and agreeing Section 106 Agreements and or the Community Infrastructure Levy.

Consultation

- 6.13 Pre-application consultation has long been endorsed and promoted by Sunderland City Council. It allows for consensus to be reached on

² Scope remains within the Act for Local Authorities to recover such expenses though it remains unclear who exactly will pay.

controversial issues before proposals are finalised. Many objections can be resolved before a planning application is submitted.

- 6.14 During such consultations, local ward members would be entitled to express preliminary views on the merits of a planning application (either in support or against), prior to a formal decision being made provided that there is evidence that the Member does not have a closed mind on the application. The key test is how the statements or conduct would be perceived by a "fair minded and informed observer". Member training and workshops are shortly to be arranged by the Planning and Environment Service to advise Members on the practical implications of the predisposition and predetermination rules.

Enforcement

- 6.15 It has never been a criminal offence to undertake development without planning consent. Criminal liability is only triggered on failure to comply with the terms of an enforcement notice. The new provisions are to be broadly welcomed though given that additional regulations are awaited, it remains unclear how they would take effect when applied in specific circumstances.

Nationally Significant Infrastructure Projects

- 6.16 The effect of handing back the final planning decision on major projects to the Secretary of State is at this stage difficult to predict. Government is firmly of the view that decisions on major infrastructure applications should be made by Ministers.

Allocations and Homelessness

- 6.17 The government is currently consulting on new draft statutory guidance for social housing allocations for local authorities in England. The new guidance is intended to assist authorities to take advantage of the provisions in the Localism Act 2011 which give local authorities the freedom to manage their own housing waiting lists, and make it easier for them to move existing social tenants to more suitable accommodation. It also encourages authorities to make use of the existing flexibilities within the allocation legislation to ensure that social homes go to people who need and deserve them the most.
- 6.18 The Act will allow the local authority to restrict access to the statutory allocation scheme, and to exclude existing social housing tenants unless they have reasonable preference (that is priority housing groups).
- 6.19 There are no plans to make any changes to the existing statutory 'reasonable preference' categories which determine who has priority for social housing.
- 6.20 This will mean that Sunderland City Council's recently revised allocations policy will need to be further reviewed and work carried out with Members and all social housing providers in Sunderland to agree whether new local eligibility criteria are required, and if so what they would be.

- 6.21 With respect to homelessness it is expected that the amendments to the Homelessness Code of Guidance will be implemented in either May or June 2012. There will be two fundamental changes:
- The ability to discharge a homelessness duty by the offer of a 12 month tenancy in the private rented sector.
 - A re-application duty if someone re-applies to the Council within a two year period who had received an offer of a property in the private rented sector.
- 6.22 These changes will require further consideration to decide whether the Council adopts a policy on discharging the homeless duty in the private rented sector and the Homelessness Strategy and Action Plan will need to be reviewed and any subsequent changes will need to link in to the Council's Tenancy Strategy and Allocation Policy.

Social Housing : Tenure reform

- 6.23 The over-riding objective is to create a system where registered providers are able to use greater freedoms to manage their stock effectively, and meet the housing needs and aspirations of tenants. This approach requires local authorities to prepare and publish a Tenancy Strategy and registered providers in Sunderland will have to have regard to it with respect to :-
- The kinds of tenancies providers should grant;
 - When and why they grant tenancies for a fixed term and the length of those tenancies;
 - The circumstances under which they will grant tenancies of a particular type;
 - The circumstances under which a tenancy may or may not be reissued at the end of the fixed term, in the same property or in a different property.
- 6.24 In Sunderland, a Tenancy Strategy is being developed in Sunderland. Consultation with registered providers and all Members is planned for Spring 2012, with the aim of seeking approval by November 2012.

7 CONSIDERATIONS FOR THE FUTURE

- 7.1 The Act introduces a number of changes to the local decision making process and how some local services will be delivered in the future and we await further clarification from Government.
- 7.2 As regards planning matters, only when final National Planning Policy Framework, transitional arrangements and the associated regulations are issued can the Council accurately assess how all of these new powers will be applied in practice.
- 7.3 Local authorities, will now be responsible for identifying their own future housing requirements. Combined with the Localism Act's 'duty to cooperate', the Council will need to provide a substantial level of analysis and evidence,

including how it will work on housing and employment requirements with neighbouring local authorities.

- 7.4 It remains to be seen how, in practice, Councils will work to secure appropriate and accurate housing and employment forecasts in the context of a positive attitude to development; how the Council will work with all local communities; how the Council will work with neighbouring authorities; what variations in methods and evidence will occur so questions of consistency in approach will come to the fore.
- 7.5 Given the importance attached to the North East Local Enterprise Partnership (NELEP) in coordinating and encouraging regional growth further clarification is required as to NELEP's role in the context of the overall 'duty to co-operate'.
- 7.6 The Act introduces a provision which places a duty on the Council to pass a 'meaningful proportion of funds to communities where development has taken place which will allow them to spend these funds on local priorities. The question of what level of funding should be set aside, who will receive it, and on what and where in the community it will be spent remain to be answered.
- 7.7 In relation to the Community Infrastructure Levy one topic for further clarification is the use of CIL funding to deliver affordable homes, and if so, how this will be used alongside Section 106 agreements, New Homes Bonus funding, mainstream funding, Affordable Homes Programme 2011-2015; and if it was used in this way would this be to the detriment of infrastructure projects.
- 7.8 In relation to community consultation the Localism Act could create the potential for a challenge where local communities may take the view that insufficient regard has been paid to the process of consultation and its outcome.
- 7.9 If the discharge of the homelessness duty by the offer of a 12 month tenancy in the private rented sector occurs then the issue of an accredited or non-accredited landlord might occur as may the type, location, suitability and condition of the property.
- 7.10 The Act also has implications for Sunderland City Council's allocations policy which will require modifications and work regards eligibility criteria.
- 7.11 The Tenancy Strategy will require detailed negotiation with all registered providers around the type, length and re-issuing of tenancies.

8 RECOMMENDATIONS

- 8.1 Scrutiny committee Members are requested to note the contents of the report and consider the implications for the Council and City.

9 BACKGROUND PAPERS

- 9.1 Planning and Highways Committee Report 3 December 2010 – Planning Reform Update.
- 9.2 EMT Initial Briefing Note 14th December 2010 - Localism Bill 2010 -2011.
- 9.3 EMT Report: 15th February 2011 - The Localism Bill and the implications for Sunderland.
- 9.4 Sunderland City Council 16th February 2011 - Localism Bill: Submission to the Public Bill Committee.
- 9.5 Planning and Highways Committee Report 11 October 2011 – Draft National Planning Policy Framework : Response to Consultation.
- 9.6 EMT Report: 31st January 2012 – Outline of the Localism Act 2011.

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