

Committee: Borough Plan Advisory Committee

Date: 19 January 2011

Agenda item: 4

Wards: All

Subject: Localism Bill

Lead officer: James McGinlay, Head of Sustainable Communities

Lead member: Councillor Andrew Judge, Cabinet Member for Environmental Sustainability and Regeneration

Forward Plan reference number: N/A

Contact officer:

Urgent report: The legal requirements for Access to Information have not been met. The Chair has approved the urgent submission of this item for the following reason: To enable Members to be kept up to date on this matter.

Recommendations:

- A. That Members note the contents of the report and consider items for subsequent reports to the Borough Plan Advisory Committee
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The Localism Bill had its first reading in Parliament on 13th December 2010. It seeks to devolve greater decision making on issues such as planning and housing to councils and local communities. The Bill is timetabled for a second reading on 17th January 2011 and is likely to be subject to further changes. The Bill is an amendment Bill and so there are many references to other Acts which makes it complicated to read. It sets out the framework for changes; detail will follow in secondary legislation and policy.
- 1.2. This report focuses on Part 5: Planning, in particular Chapter 3 Neighbourhood Planning, including some of the emerging implications for Merton. A summary of the main planning issues contained in the Bill includes:
- LDF system to continue
 - Neighbourhood Plans can set out more development than LDF plans but not less
 - New duties and role for councils to facilitate and administer Neighbourhood Plans/Orders
 - Costs associated with new duties but as yet no details of funding sources. Regulations associated with the Bill (not yet published) will set out more details on the implementation.
- 1.3. A summary of the main elements of the Bill is set out in Appendix A as a report to the Merton Partnership meeting of 18 January 2011.

2 DETAILS

2.1. The Bill is divided into two sections; *Volume I* contains the Clauses. *Volume II* contains the Schedules to the Bill. There are also *Explanatory Notes* prepared by the Government to explain the purpose of the Bill. A full list of contents is available at Appendix B of this report.

Localism Bill Part 5: Planning

2.2 Part 5 of the Bill sets out changes to planning; in particular procedural items relating to plans and strategies, Community Infrastructure Levy, introducing neighbourhood planning, consultation relating to planning permissions, enforcement and nationally significant infrastructure projects.

2.3 Chapter 3 of Part 5 deals with neighbourhood planning. While much of the detail relating to implementation is yet to come, the main impacts of the Bill on planning are:

- LDF system will continue, but is referred to as the 'local plan' and is described as strategic – details yet to emerge
- Greater freedoms for councils to set Community Infrastructure Levy (CIL) charges. A proportion of CIL funds to be passed to the neighbourhoods where development has taken place
- Introduction of a new tier of planning - Neighbourhood Development Plans and Orders (this is discussed in more detail below). Council will play a role in developing Neighbourhood Plans/Orders including technical support, management and some costs
- Funding for councils not clear but provision is made for financial assistance
- Replacement of Infrastructure Planning Commission with fast-track system for major infrastructure projects
- New enforcement powers
- Duty on developers to carry out pre-application consultation and take account of responses
- Abolition of pre-determination rule so councillors can be clear about their views and voting intentions
- Outside London, the abolition of Regional Spatial Strategies.

Current planning system

2.4 The LDF system remains, however the term 'local plan' is being used by the government to replace jargon like Core Strategy and LDF. Local plans (LDF) become the tier above Neighbourhood Plans and are presented as having a strategic role, but both tiers will form part of the 'local development plan'. The relationship between LDF documents which aren't of a strategic level, for example Area Action Plans, and Neighbourhood Plans is not clear; officers it may be an advantage to councils to have their local development documents in place so they can provide a framework for Neighbourhood Plans.

- 2.5 Local plan (LDF) documents will still be subject to examination, and plans still have to be 'sound', but the Inspector's report will not be binding. Local authorities can suggest changes during an Examination and withdraw plans before adoption without applying to government. There are changes to timetabling (LDS) and monitoring (AMR) procedures with more freedom for local authorities, but both documents still have to be produced.

Neighbourhood Development Plans

- 2.6 Community bodies called Neighbourhood Forums (designated by the local planning authority) will be allowed to prepare Neighbourhood Plans. The basic criteria for Neighbourhood Forums are that they should have at least three residents as members, be open to all residents and have a constitution. There can only be one Neighbourhood Forum per area for five years and no overlap of boundary. Not all areas will want a Neighbourhood Plan and there is no statutory requirement, only a 'right' to prepare one.
- 2.7 Neighbourhood Plans must specify the plan period, may not include provision about excluded development, and may not relate to more than one neighbourhood area. Neighbourhood plans can go beyond local authority policies on development but cannot accommodate less than the local plan (e.g. housing targets). Local planning authorities will play a key role in designating neighbourhood areas.
- 2.8 Further details on Neighbourhood Plans will be published in secondary legislation (Regulations), including restrictions and requirements, format, referendum and adoption procedures.

Neighbourhood Development Orders (NDO)

- 2.9 Neighbourhood Development Orders (NDO) are mini-General Permitted Development Orders (GPDO) which grant planning permission in relation to a particular neighbourhood area for specific classes of development. A Neighbourhood Development Order requires support from more than 50% of voters in a referendum. NDOs must be in general conformity with policies elsewhere; in Merton's case the LDF and the London Plan. Local authorities must adopt the NDO if "more than half of those voting in a referendum ... have voted in favour of the order".
- 2.10 Community Right to Build Orders are a particular type of NDO where a development is brought forward by a community group itself; it is subject to specific safeguards and gaining 50% of the vote in a referendum.
- 2.11 Further details on Neighbourhood Development Orders will be published in secondary legislation (Regulations), which are expected to include consultation, referendum and independent examination procedures.

2.12 The council's responsibilities for neighbourhood planning will include:

- Adjudicating on and designating the boundary of neighbourhood areas
- Designating and advising Neighbourhood Forums,
- Providing technical support, expertise and resources
- Validating neighbourhood plans and ensuring compliance
- Paying for and undertaking the referendum on neighbourhood plans
- Choosing a 'suitable person' to conduct the examination
- Funding the examination
- Adopting the plan.

2.13 The government has put forward a ten step guide to adopting neighbourhood plans/orders which shows the council's responsibility at different stages – see Appendix C.

2.14 While the detail is yet to emerge, it is possible that the role of the council will become more like a consultant to Neighbourhood Forums in preparing Neighbourhood Plans/Orders; providing supporting data and information, advising on issues of policy, facilitating consultations and referendums, and potentially bidding for funding.

Funding, including Community Infrastructure Levy

2.15 These new duties will obviously have an impact on resources and budgets for councils. While the Localism Bill does include clauses on funding, further detail of which costs can be recouped will be set out in Regulations. Clause 97 of the Bill states that funding for neighbourhood planning will come from those developments that gain permission through being part of a Neighbourhood Development Order. The Bill also provides for financial assistance to be made available to community groups preparing a Neighbourhood Plan/Order. It is not clear if councils can bid for a proportion of this funding to assist in costs arising from facilitating and administering the Neighbourhood Plan process or what other sources of funding will be available.

2.16 Clause 97 of the Localism Bill gives the Secretary of State the power to set out in regulations the details of a charging mechanism to help LPAs recoup some of their costs of putting neighbourhood plans/orders into place - including the costs of the examination and the referendum.

2.17 The clauses also give some key headline elements that the Regulations *must* secure (e.g. that charges will apply to development granted consent by a Neighbourhood Development Order, charges become payable at the commencement of development and charges are payable to Local Planning Authorities) and some that the Regulations *might include* (e.g. a requirement for a charging document setting out the charges that may apply).

2.18 Clause 100 allows the Secretary of State to consider giving financial assistance directly to communities in addition to funding local authorities for their neighbourhood planning functions. The DCLG say that this clause allows a

flexible approach to the provision of financial support as the exact mechanisms for support and advice to communities undertaking neighbourhood planning has not yet been determined.

- 2.19 For communities, the government has advertised a £3 million funding pot - *Supporting Communities and Neighbourhoods in Planning* - available from 1 April 2011 intended to help “community organisations to engage with the planning system”. Details of purpose, selection and eligibility criteria can be found here:
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1807639.pdf>
- 2.20 Via an announcement on 18 November 2010 and the Localism Bill, the Government has confirmed that the Community Infrastructure Levy (CIL) will be continued with some modifications. These include a requirement to pass a proportion of the funds raised to local neighbourhoods and greater flexibility for Charging Authorities over some aspects of the process. Amended CIL regulations are expected to be published in April 2011.
- It will be mandatory for “neighbourhoods” to be given a meaningful proportion of CIL revenues. The definition of “a meaningful proportion” is still to be clarified via changes to Regulations. CIL monies for the neighbourhoods are to be passed to them – i.e. not spent by councils on their behalf.
 - Local authorities will now be able to decide their own payment deadlines (including payment by instalments). If they don’t, then a standard 60 day payment requirement will apply.
 - The minimum threshold for payments in kind (made via transfer of land) will be removed so even very small in-kind land transfers can count as meeting CIL liabilities. These changes will be included in the amended CIL Regulations.
 - Inspectors acting on behalf of the Secretary of State in their role as examiners of proposed CIL Charging Schedules can’t reject a charging schedule except for an error in law that can’t be corrected. Councils can accept Inspectors’ suggested changes or make their own to address the shortcomings of their schedules without having to go back to the Inspector.
 - Amendments to the Planning Act 2008 and associated Regulations to allow for the expenditure of CIL revenue on future ongoing costs associated with the capital infrastructure projects funded by CIL – details to follow in the CIL Regulations.
- 2.21 CIL charges are to cover the whole of a local authority area but can have differential charging rates (by area or use type) across the area. The setting of those rates must have a sound basis in viability terms so as not to prevent otherwise acceptable development coming forward.
- 2.22 Before CIL can be charged, a local authority must produce a CIL Charging Schedule supported by infrastructure planning in the LDF and viability testing. London boroughs must take into account the Mayor’s CIL when assessing viability on schemes.

- 2.23 A CIL Charging Schedule would require adoption by the Council after examination in public. Inspectors will be required to hold an examination of charging schedules for local authorities but their recommendations will not be mandatory unless it relates to an error in law.
- 2.24 Prior to the release of the new CIL Regulations (due April 2011) and the extent and timing of the Mayor of London's CIL Charging Schedule (dates currently unknown), Merton officers will be gathering evidence to support infrastructure planning and a CIL charging schedule, with a view to asking Members to consider initial approaches to CIL charging in summer 2011, and producing a draft charging schedule for Members to consider in winter 2011.

Development control

- 2.25 While the government are seeking a move away from development control aspects of planning to focus on plan-making, the Bill introduces a new requirement for prospective developers to consult local communities before submitting applications for very large developments. This is already standard advice from most local planning authorities (including Merton) to applicants for large or complex developments; the Localism Bill would make it mandatory.
- 2.26 No formal thresholds have been published, although informal discussions with government through the RTPI suggest this will apply to large scale developments of 10,000 sq.m commercial floorspace and 200 or more residential units.

Enforcement

- 2.27 The Bill seeks to amend the Town and Country Planning Act 1990 in a number of ways:
- Local authorities will be given a new power to decline to determine retrospective planning applications where the development proposed is already the subject of an enforcement notice.
 - Those appealing in respect of enforcement notices will not be able to appeal on the basis that planning permission ought to be granted for the development subject of the enforcement notice where a planning application remains undetermined by the local planning authority and the enforcement notice was issued after the planning application was made.
 - Local authorities will be able to apply to the magistrates' court for a new type of order called a 'planning enforcement order'. If this is granted, the planning authority has one year to take enforcement action in respect of the breach, even if the time period for taking enforcement action may have expired during that year.
 - Fines for breaches of planning conditions in England (although not in Wales) will be higher.
 - Local authorities will be given a new power to remove and dispose of 'display structures'. These are hoardings and other similar structures designed or used for the purpose of displaying advertisements which have not been granted advertisement consent. There is a new process involved prior to exercise of this power involving service of a 'removal notice'.

- Local authorities will be given a new power to deal with the display of unauthorised advertisements displayed on surfaces including buildings, walls, fences, plant and apparatus. There is a new process involved where an 'action notice' is served on the owner or occupier of the land upon which the surface is situated.
- Local authorities will be given a new power to deal with unauthorised signs on surfaces that are visible to the public and considered to be either detrimental to amenity or offensive.

2.28 The new powers relating to advertisements carry with them the ability for the local authority to take action and charge the landowner for the removal costs.

3 ALTERNATIVE OPTIONS

3.1. None for the purposes of this report

4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1. None for the purposes of this report.

5 TIMETABLE

5.1. The Localism Bill was presented to Parliament on 13 December 2010. This is known as First Reading and there was no debate on the Bill at this stage.

5.2. This Bill will be on the Order Paper for a Second Reading debate on 17 January 2011.

5.3. Details on the progress of the Bill can be found here (Parliament website: <http://services.parliament.uk/bills/2010-11/localism.html>)

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1. None for the purposes of this report – subsequent reports will be prepared as the Bill becomes an Act of Parliament with associated Regulations.

7 LEGAL AND STATUTORY IMPLICATIONS

7.1. None for the purposes of this report – subsequent reports will be prepared as the Bill becomes an Act of Parliament with associated Regulations.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1. None for the purposes of this report – subsequent reports will be prepared as the Bill becomes an Act of Parliament with associated Regulations.

9 CRIME AND DISORDER IMPLICATIONS

9.1. None for the purposes of this report.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. None for the purposes of this report

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Report to Merton Partnership (18/1/10) – “Localism and Decentralisation Bill – A Summary”

12 BACKGROUND PAPERS

- 12.1 Full text of the Localism Bill (link to Parliament website:
<http://services.parliament.uk/bills/2010-11/localism/documents.html>)
- 12.2 Explanatory notes for the Localism Bill (link to PDF held on the Parliament website:
<http://www.publications.parliament.uk/pa/cm201011/cmbills/126/en/2011126en.pdf>
- 12.3 Decentralisation and Localism Bill - An Essential Guide (DCLG website):
<http://www.communities.gov.uk/publications/localgovernment/decentralisationguide>

APPENDIX A – BOROUGH PLAN ADVISORY COMMITTEE

Merton Partnership	1	18 January 2011
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SUBJECT: Localism and Decentralisation Bill – A Summary

LEAD CONTACT: Kate Martyn

POSITION: Head of Policy, Partnerships and Communities

ORGANISATION: Merton Council

RECOMMENDATIONS:

- That the Partnership notes the provisions of the Localism and Decentralisation Bill, as detailed below.

1. EXECUTIVE SUMMARY AND PURPOSE OF REPORT

- 1.1 The Localism and Decentralisation Bill began its journey through Parliament on 13 December and is expected to receive Royal Assent in autumn 2011.
- 1.2 Most, if not all, of the Bill's provisions had been heavily publicised in the months following the May election as it contains many of the flagship policies from the Coalition Agreement. It covers a wide remit from 'people power' elements to significant reform of social housing and planning policy.
- 1.3 The Bill has the potential to have a huge impact on local authorities and the communities they serve. Whilst the biggest impact in terms of preparing for and implementing the changes will be felt by the council there are some areas which may have a direct effect on the work of other Partnership agencies, for example Merton Priory Homes in relation to social housing and MVSC in relation to some of the rights given to community groups.
- 1.4 This paper summarises the Bill's main proposals and gives an indication of which Merton Partnership agencies and services are likely to be affected by these.

2. DETAILS

2.1 Rights for residents to buy and run local services

Provision	Agency/service likely to be affected
<p>A community ‘right to challenge’ to help different groups run local services if they want to. Voluntary groups, social enterprises, parish councils and others will be able to express an interest in taking over council-run services - the local authority will have to consider it. It could prompt a bidding exercise in which the group could then compete. The challenge may trigger a procurement exercise for that service in line with the relevant procedure, which the challenging organisation could then bid in, alongside others. The right is part of the Government’s aim to create a Big Society.</p>	<p>Merton Council MVSC</p>
<p>A community right to buy to make it easier for pubs, shops and libraries put up for sale to be bought by a community group. Locals will be able to place certain buildings on a ‘most wanted’ list and if they are put up for sale, they would have to be given time to develop a bid and raise the money.</p>	<p>Merton Council</p>

2.2 Power of competence

Provision	Agency/service likely to be affected
<p>The Bill hands councils a general power of competence - the right to do ‘anything apart from that which is specifically prohibited’, something the Government says will let them run services ‘free from Whitehall diktat’ and help them ‘innovate and work together with others to drive down costs’.</p>	<p>Merton Council</p>
<p>The Bill also extends a power to fire and rescue authorities to do:</p> <ul style="list-style-type: none"> a) anything it considers appropriate for the fulfilling of its statutory responsibilities; b) anything it considers appropriate for purposes incidental to its statutory responsibilities (however indirectly incidental that might be); or c) anything it considers to be connected with (a) or (b). 	<p>LFEPA</p>

2.3 Planning and development

Provision	Agency/service likely to be affected
Abolition of regional strategies and housing targets.	Merton Council
Neighbourhood plans will become the new building blocks of the planning system. The idea is that 'neighbourhood forums' come together to decide where new shops, offices or homes should go and what green spaces to protect - which is then voted on by local people in local referendums. They will be able to define those developments which should have automatic planning permission.	Merton Council
A community right to build will give local communities the power to take forward development in their area without the need to apply for planning permission, subject to meeting certain safeguards and securing 50% support of the community through a referendum.	Merton Council
The Bill will stop the Planning Inspectorate being able to make changes to local plans, which guide development in areas. Instead the inspector will assess plans and will have to judge them 'sound' before they can be adopted - but will only suggest changes at the request of the local authority.	Merton Council
Changes to the community infrastructure levy - including ensuring some money goes directly to the neighbourhood where developments have been built, so it can be spent on local facilities such as cycle paths or playgrounds if needed.	Merton Council

2.4 Social housing

Provision	Agency/service likely to be affected
Greater freedom for councils to decide who goes on their waiting lists.	Merton Council
Councils will be able to offer new social housing tenants shorter, fixed-term tenancies - ending the right to a council house for life.	Merton Council Merton Priory Homes
Plans to make it easier for tenants to move to other social housing and for an internet-based 'national home swap scheme' allowing tenants to see properties with tenants looking to exchange homes.	Merton Council Merton Priory Homes

Changes to the homelessness duty will mean councils can offer people private sector accommodation instead of being obliged to offer social housing.	Merton Council
Changes to the regulatory system for social housing including the abolition of the Tenant Services Authority and changes to the ombudsman regime for social housing complaints.	Merton Council Merton Priory Homes
The Bill also changes the financing of council housing - councils will be able to keep rental income to spend on maintaining homes.	Merton Council Merton Priory Homes

2.5 Waste

Provision	Agency/service likely to be affected
The Bill confirms the government's intention not to take forward 'pay as you throw' charges for household waste. It repeals measures in the Climate Change Act 2008 that would have allowed up to five pilot schemes in England.	Merton Council

2.6 Council tax and business rates

Provision	Agency/service likely to be affected
Local authorities will be able to grant discretionary business rate discounts. The Bill will make small business tax breaks easier take advantage of, give affected businesses a greater say in rate supplements and cancel certain backdated business rates including port taxes.	Merton Council
Residents' will have a right to veto council tax rises. Councils, police and fire authorities which propose an increase in council tax beyond the ceiling set by government would automatically face a referendum of all registered voters in their area.	Merton Council

2.7 Council management and accountability

Provision	Agency/service likely to be affected
People will be able to trigger referendums on any local issue. The results will not be binding - but local authorities will have to consider them when making decisions.	Merton Council
Councillors will no longer be prevented from voting on campaign issues.	Merton Council
Directly elected mayors in 12 cities. Council leaders would become 'shadow mayors' once the Bill has become law (autumn 2011), with all the mayors' powers. There would then be a referendum in May 2012 on whether areas want a mayor.	Not applicable to London authorities
Abolition of the Standards Board.	Merton Council
Councils will be able to revert to being run by committees - instead of by a mayor and cabinet.	Merton Council
Councils will be required to approve and publish annually at Full Council a senior pay policy statement which they will be required to follow when setting senior pay. This relates to 'chief officers'.	Merton Council

2.8 London-specific provisions

Provision	Agency/service likely to be affected
The Bill hands more powers over housing, economic development, regeneration and the Olympic legacy to the mayor and boroughs.	Merton Council
The London Development Agency is being abolished - instead the mayor will be directly accountable for its roles in managing EU funding and regeneration.	
The mayor will be able to create 'mayoral development corporations' to 'focus regeneration efforts'.	
The boroughs will get more control over local planning decisions while the mayor will be limited to the largest planning applications.	Merton Council
The London Assembly will be able to reject the mayor's policies with a two-thirds majority.	

Next steps

- 2.9 Further reports will be brought to the Partnership and Executive Board as and when necessary.

3. CONSULTATION UNDERTAKEN

None

4. APPENDICES

None

5. BACKGROUND PAPERS

- Full text of Bill:
<http://www.publications.parliament.uk/pa/cm201011/cmbills/126/11126.i-v.html>
- Progress of the Bill: <http://services.parliament.uk/bills/2010-11/localism.html>
- Decentralisation and Localism Bill - An Essential Guide:
<http://www.communities.gov.uk/publications/localgovernment/decentralisationguide>

6. OFFICER CONTACTS

- Joanna Richards, Policy and Partnerships Officer (tel: 020 8545 4161; email: joanna.richards@merton.gov.uk)

Appendix B

Contents of the Localism Bill

Part 1: Local Government

1. General powers of authorities
2. Fire and rescue authorities
3. Governance
4. Predetermination
5. Standards
6. Pay accountability
7. Miscellaneous appeals

Part 2: EU fines

Part 3: Non-domestic rates etc

Part 4: Community empowerment

1. Local referendums
2. Council tax
3. Community right to challenge
4. Assets of community value

Part 5: Planning

1. Plans and strategies
2. Community Infrastructure Levy
3. Neighbourhood planning
4. Consultation
5. Enforcement
6. Nationally significant infrastructure projects
7. Other planning matters

Part 6: Housing

1. Allocation and homelessness
2. Social housing: tenure reform
3. Housing finance
4. Housing mobility
5. Regulation of social housing
6. Other housing matters

Part 7: London

1. Housing and regeneration functions
2. Mayoral development corporations
3. Greater London Authority governance

Part 8: General

Appendix C

Ten steps for neighbourhood planning (from the Planning Inspectorate)

1. Defining the Neighbourhood
2. Applying to be a Neighbourhood Forum
3. Undertaking pre-application consultation/assessment
4. Local Authority Duty to Support
5. Submit draft plan/order for independent examination
6. Local Authority Validation Check
7. Independent examination – written representations the norm
8. Examiner's Report
9. Referendum on (modified) plan/order
10. Adoption by Local Authority – part of development plan