

The Localism Bill in London Policy Digest



Joanna Wilson

Introduction

The Localism Bill is due to complete its path to becoming a legislative Act in November, after a controversial course through the Parliamentary Houses. At the time of writing it runs over 400 pages containing 215 clauses, demonstrating the complexity of issues around localism, as well as the determination of the government to put this approach at the heart of its legislative agenda. The Coalition Government has committed itself to a new era of power dispersal to individuals, communities, and local government: the essence of building the Big Society.

Alongside the Bill there is a broader public service reform agenda and a new approach to economic development that are also underpinned by a commitment to Localism. The review of local government finance, the open public services white paper, the development of local enterprise partnerships and the recently revealed National Planning Policy Framework are all part of this broader shift.

So what are the implications of this Bill and the broader Localism agenda for the economic, social and physical regeneration of our Capital? This briefing paper will consider:

- the key principles of the Bill for built environment practitioners, and benefits and challenges therein
- what Localism will mean for London.

From Central to Local

What are the key policies of the Bill for local authorities and what are their implications?

1. General Power of Competence

This is a power that has long been sought by the local government community¹. Promised by the Conservatives in opposition², it provides a local authority with the same powers as an individual. Thus, no action will be beyond the power of local government, unless law specifically prevents it. This power has been presented as a fundamental shift in the freedom of local government and its relationship to the centre, and indeed is a power granted to no other public body.

However, opinion remains divided as to how much more freedom this will mean in reality, and whether the caveats in the Bill limit the power to such an extent that in reality the power is largely symbolic.

Benefits:

- Potentially an empowering move that could be particularly useful for authorities' efficiency programmes, including raising new forms of income through charging and trading, and the management of assets, whilst encouraging greater innovation and engagement with the private sector and other community groups.

¹ <http://www.lga.gov.uk/lga/aio/9763854>

² Conservative Party, 2009: *Control Shift: Returning Power to Local Communities*

- Potentially reduced legal costs as councils cannot be challenged on the grounds of *ultra vires*³.

Challenges:

- Little evidence so far that this is no more than a rebranding of the Well Being powers already at local authorities' disposal. Cases where the powers have been unexpectedly superseded, such as the LAML⁴ case, have undermined confidence in its utility.
- Unlikely to lead to less legal burden as there must still be clarity that action is not explicitly ruled out, and limits remain around taxation and borrowing.
- Secretary of State retains ultimate powers to set the conditions, leading many to claim this is actually a centralising power.

2. Housing reform

There are six chapters and 40 pages of the Bill focused on social housing, adding up to a complex package of reforms. The abolition of the regional tier of planning will mean an end to regionally planned targets, giving councils the ability to make informed choices on housing allocation and tenure regulations. Furthermore, all social housing rent money will remain in its locality rather than being centrally collected and redistributed.

Benefits:

- Looking at these reforms in isolation, they herald more efficient and locally determined housing services across the country. The limitations on social housing stock mean it should be allocated more fairly, with increased tenant mobility.

Challenges:

- Measures contained within the Bill represent only a partial picture of broader housing reform – alongside this, the Government made substantial cuts to housing benefit in the last budget. Also, how will the affordable rent model, which generates social housing funding through the reallocation of existing social housing, work in parallel to these reforms?
- While changes in tenure will not be mandatory for those that possess lifetime agreements, this could pose a problem in instances of estate renewal if tenants decide to choose the security of tenure over the refresh of their property.

Future of London will be looking into housing reform in more detail in a separate piece of work later in the year.

3. Community Infrastructure Levy

The Community Infrastructure Levy was created by the previous government and implemented in April 2010.

The Localism Bill broadens the scope of this policy. Local authorities can charge the tariff to developers, with the funds going directly towards local infrastructure projects, of which a meaningful proportion needs to be spent on the neighbourhood where the development took place.

³ *Ultra vires* means 'beyond the powers'. For more on how this impacts on local authorities see <http://www.practicalconveyancing.co.uk/content/view/7701/1135/>

⁴ London Authorities Mutual Limited – the case of 10 local authorities attempting to start this firm using Well Being powers went to the Court of Appeal, and was ultimately unsuccessful. For more details, download www.parliament.uk/briefing-papers/SN05687.pdf

CIL operates alongside the [New Homes Bonus](#), another incentive to embrace growth.

Benefits:

- Good incentive for communities to support development in their area, and to influence how development funds are spent.
- Implication that communities could draw on CIL to fund their own Right to Build or Right to Buy projects.
- More predictable charging schedule for developers, giving greater certainty of costs over the lifetime of developments, and a more stable revenue stream for local authorities. This could open up the opportunity to borrow against prospective CIL revenues.

Challenges:

- Bill has not quantified what a ‘meaningful’ proportion might be. Furthermore, it has widened the scope of CIL to include funding the maintenance of existing infrastructure, as well as the funding of new projects, potentially diluting its impact.
- As with Section 106, local authorities need to demonstrate a clear relationship of the project to the development – this could be challengeable and impact on its strategic use.
- Frequent alterations to this policy in its eighteen-month life mean that it is unclear exactly what the primary purpose of CIL now is in terms of local, sub-regional or regional infrastructure provision. In London, the Mayor’s implementation of CIL to fund Crossrail will, in the short term at least, limit the amount that London Boroughs can realistically charge at a local level.

For more on Community Infrastructure Levy, see [this Future of London policy briefing](#).

From Local to Community

Community engagement reforms comprise a significant part of the Bill, with some key shifts of power from local authorities to parishes and neighbourhoods. But how effective will they be at enabling communities to have a greater say in the development of their neighbourhoods?

4. Neighbourhood Plans

Although many organisations and councils would say that community-led planning has been happening for decades, the Bill puts this on a stronger legislative footing, creating formal bodies such as Neighbourhood Forums. Numerous relatively empowered communities are already preparing plans, in addition to the seventeen council-led ‘vanguard’ projects underway across the country.

Benefits:

- Citizens will be encouraged and enabled to take on a more effective voice in community decision-making
- New groups can work together to improve their communities, while taking lessons from existing community-led planning.

Challenges:

- Communities with the capacity to take advantage of Neighbourhood Plans are likely to be limited, potentially widening the gap between areas of regeneration and areas of deprivation.

- Neighbourhood intentions have been watered down: a forum can now consist of workers in an area rather than residents. The eight ‘Business Neighbourhood Frontrunners’ announced by Greg Clark in May emphasise business-led Neighbourhood Planning⁵.
- On submission, plans will be examined for conformity to existing tiers of planning regulation in that area. It is not clear what the procedure will be if they are shown not to align. Government will be keen that the pro-development NFFP leads the way – how will they work together?
- Section 130 of the Planning section states that authorities will have to take material considerations into account when considering new developments. This will lead to more development that could threaten Neighbourhood Plans with different priorities.
- On the other hand, communities could use Neighbourhood Plans to express an anti-development response to their area, causing missed opportunities for crucial development.

5. Right to Challenge

A call for communities – be they voluntary bodies, charities or parish councils – to express an interest to run a public service currently run by a local authority. (It excludes services currently ran by another public body, such as the NHS.)

Benefits:

- Opportunity for community bodies to state their case to run services that may have been done so unsatisfactorily before, potentially driving up service quality.
- This may also provide the opportunity to save costs, as well as encourage local responsibility and participation.

Challenges:

- Unclear how the procurement process will play out if an expression is successful. It is unlikely that the body that called for a reform of their refuse collection or social services will be the same one to deliver it – how will they be able to compete with the private sector financially? For this to work, the procurement process needs to take the imbalance between public and private sectors into account – otherwise it is merely symbolic of change.
- Splintering of services could generate a difficult environment for local authorities to manage local services strategically. Joining up across local services has always been a challenge – this could fragment and disaggregate local services further, leading to more inefficiency and a worse experience for citizens.
- Public services are a necessity that Government cannot afford to see decline in any borough. Mandatory minimum standards of provision exist to prevent this, which are ultimately the authority’s responsibility. There is a danger that this will dilute lines of accountability, undermining the ability of local political representatives to hold service deliverers to account.

6. Assets of Community Value

Another chance for community groups to take responsibility from the local authority; in this case, vacant freehold assets. Local authorities will be expected to prepare lists of available properties, at which point community groups will be given six weeks to prepare a bid for any listed property. This will find favour with communities that have previously fought for a building, only for it to be lost to development anyway.

⁵ See <http://www.communities.gov.uk/news/corporate/1904834>

Benefits

- Empowering opportunity for communities to work together to breathe new life into a piece of local heritage and reanimate streets and wider areas.
- Communities can lever in private sector contributions to help maintain assets, enabling businesses and communities to work together for mutual benefit.
- Potential for communities to use CIL funds to take on an asset.

Challenges:

- In order to make a competitive bid, communities will need to produce a sufficient funding package, and it remains to be seen how feasible this is.
- Furthermore, if the price of the asset is low enough to be viable for a community, does this call into question the condition and general suitability of the building/land?
- Contribution of business funds, while making a bid possible, could influence the community's original purpose of securing the asset and create long-term challenges around how it is controlled and operated. Larger businesses could effectively entrench themselves within an area, potentially having an adverse impact on smaller businesses within the local economy.
- In terms of the use of CIL funding for an asset purchase, it is arguable that what enables the community effectively disables the local authority, by reducing the size of the funds available for wider community projects.
- Lack of clarity about situations where there is insufficient capacity within the local community to take the assets on, or sustainable planning for situations where the community cannot maintain the asset in the long term.

7. Local Referendums

Communities will have the ability to call referendums on local issues such as council tax raises if a sufficient challenge is proved through local petition.

Benefits:

- Gives communities a voice on issues that are important to them, and another means to hold local authorities to account.

Challenges:

- Referendums are costly procedures. It is not clear who would foot the bill.
- They also take time – local authorities could potentially spend a great deal of time administrating referendums, reducing their capacity.
- This part of the Bill has been amended – referendums are now discretionary. Does this render them obsolete?

8. Right to Build

Community groups will no longer need a traditional planning application to build something in their neighbourhood. Building projects could include affordable housing or local facilities. To ensure that the plans are democratic, communities will need to put it to public vote at a referendum.

Benefits:

- Removal of costly planning procedures will save time and money for all concerned.

Challenges:

- Discretionary element to community-led referendums weakens this power - authorities will not necessarily have to act on communities' wishes.

Beyond the Bill

The Coalition Government has established a number of other locally-driven reforms that, whilst not in the Bill, could have dramatic consequences on local economies:

- **Local Government Resource Review** – contains measures such as local business rate retention – enabling local authorities to keep and invest funds generated from business rates in their areas so as to incentivise local business growth. While this will benefit some areas that collect a high proportion of business rates, removing the redistributive element could drive an even wider gap between areas of regeneration and deprivation.
- **Open Public Services White Paper** – published in July, this sets out the Government's vision for community-led public services reform. It reiterates much of the Bill, such as the Community Right to Challenge, suggesting that public services should be controlled by and directly accountable to local communities. This means widening the number of service providers to include the voluntary and private sectors.
- **Flexibility of using commercial premises for residential development** – increased flexibility is understandably popular with the private sector. Questions remain as to whether this will lead to an increase in low quality housing, and what measures will ensure that residents' needs are met.

Localism and London

London is a global city. It has a governance structure separate to the rest of the country, major economic responsibilities and unique planning challenges. Can Localism reforms fit into this complex picture?

Governance

The Governance picture of London is complex, comprising both regional and local government bodies, as well as a number of other quasi autonomous bodies and institutions. Furthermore, London features a wide range of neighbourhood, community and voluntary organisations that perform various services across the Capital.

Despite a broader move away from regional devolution across the UK, London's regional tier is stronger than ever. The GLA is London's strategic regional authority, and its democratically elected Mayor has executive control of most aspects of London's development. The London Assembly has powers of scrutiny over the Mayor and GLA. One tier below are London's 32 local authorities, many of which are effective and ambitious, and have a long history of both working together, and working independently. They also have a history of good community engagement that would now be coined 'localism'. These different tiers of accountability and decision-making already mean a complex process for development and regeneration. Applying the government's localism to this governance structure will require careful planning and a holistic vision.

With a population approaching eight million, London is a diverse and unequal society. Its strong voluntary sector comprises numerous organisations focused on the social, educational and cultural well-being of the city. Together with an economically powerful private sector, the result is a complex regional community on a grand scale. However, it is debatable that these various sections of London's society have been able to work together effectively and fairly – some voices are louder than others at present. The Bill needs to democratise these interrelationships, allowing for transfers of responsibility and enabling collaboration.

Planning

Neighbourhood Plans in London risk being undermined by two higher tiers of planning control. The new regeneration directorate in City Hall will review all housing and regeneration decisions being led by the Mayor's office. This is another shift of power counter to the Localism brand, but aiming to increase democratic accountability.

London has an inflated housing market and a shortage of affordable housing. Now that the Mayor's Office has absorbed many of the responsibilities previously held by the HCA, is there any room for local housing reforms? This comes on top of the already powerful London Plan that guides planning decisions at a regional level. Furthermore, planning reforms in the shape of the National Planning Policy Framework (NPPF) will alter the planning landscape centrally.

Economic Development

Economic Development policy is still led by GLA at a regional level despite reforms. This is reinforced by Mayoral Development Corporations and pan-London Local Enterprise Partnership arrangements. Given London's unique economic footprint, and its importance as an economic driver within the UK, this is probably sensible. However, there are local economic priorities where it makes sense for greater local leadership. London remains a city of huge economic disparity and it is not clear if the measures contained within the Localism Bill will provide solutions for local areas that have experienced long-term unemployment, or in those places with aspirations of stimulating local enterprise. Furthermore, other issues such as the relocalisation of business rates could play a key role in driving the economic growth of London.

Conclusion

Overall, there are issues concerning how certain aspects of the Bill will work in conjunction with other policies and regulations, both existing and new, in order to deliver the best results for London. There is also uncertainty as to the potential impact that some of the proposals, particularly those around community empowerment will have. Questions arising include:

- Will the General Power of Competence increase local authorities' capacity to act independently?
- How will Localist housing reforms work within the broader housing agenda?
- What will be the scope of CIL? Will it become a tool that communities can use for smaller projects?
- How will communities be enabled to take advantage of Neighbourhood Plans, Community Right to Build and Assets of Community Value?
- Are the referendum reforms still valuable following amendments?
- How will the Bill fit in with aspects of other Government papers, such as business rates retention, flexibility of use class and the pro-development stance of the National Planning Policy Framework?

There are also specific questions around how Localism will be applied to London, with its myriad governance structures, its various and diverse communities, and its role as the economic heartbeat of the UK.

This paper introduces the broader Localism programme of work that Future of London will conduct over the coming months. The programme will include events, seminars and round table discussions with the programme steering group, other experts and practitioners. These will inform a number of written outputs throughout, culminating in a final report.

Future of London
6th Floor, Palestra
197 Blackfriars Road
Southwark
London SE1 8AA

www.futureoflondon.org.uk

© Future of London 2011 Ltd
Future of London 2011 Ltd is a company limited by guarantee registered in England (No. 7575624)