

# THE LOCALISM ACT 2011

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## SUMMARY

This briefing highlights the provisions and implications within the new Localism Act as it applies to housing developers including:

- the abolition of regional spatial strategies;
- the reiteration of a “duty to cooperate” by local authorities;
- a new duty to consult local communities on all developments over a certain size;
- a controversial requirement to take financial matters into consideration when approving planning applications; and
- the provision of further detail on the operational aspects of neighbourhood plans.

## CONTACTS

For more information, please speak to one of Winckworth Sherwood’s specialist planning team.



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The Localism Act 2011 (the Act) was given Royal Assent on Tuesday 15 November 2011. Whilst most of the provisions of the Act are not yet in force – most are expected to come into force either in January 2012 or April 2012 – there are some provisions that take immediate effect, for example, local authorities’ “duty to cooperate”.

The Act has been subject to some amendments as it has passed through its various legislative stages but there have been no substantive changes to any of the key concepts such as neighbourhood planning and the community right to buy.

The success of the Localism Act will depend on how it is applied. As always, the devil will be in the detail of the plethora of Regulations that will be issued over the coming months, including the much anticipated changes to the Draft National Planning Policy Framework.

## IMPLICATIONS FOR DEVELOPERS

### RSSs

Section 109 provides for the abolition of regional spatial strategies (RSSs) via an Order of the Secretary of State.

In accordance with the Cala Judgments that preceded Royal Assent to the Localism Act, the Secretary of State will not make the order to revoke RSSs until he has considered the environmental effects of doing so. This consultation ends in January 2012. We expect to see an Order early in the New Year. Until then RSSs remain in force, but the weight to be attached to them is a matter of discretion.

### THE DUTY TO COOPERATE

Local authorities are already subject to the “duty to cooperate” regarding planning sustainable development. Section 110 inserts a new Section 33A “Town and Country Planning Act 1990” which states that local planning authorities and others have a duty “to engage constructively, actively and on an ongoing basis” with communities on the preparation of development plans; other local development documents; and other activities supporting development planning. Local authorities should now be generating draft policy documents which deal with such strategic matters.

### PRE-APPLICATION CONSULTATION

The new legal requirements on pre-application consultation are set out in Section 122 of the Act. This places a new legal duty on developers to consult local communities on certain planning applications above a certain size. The duty does not apply to all planning applications. It is presently proposed that the threshold level will be:

- 200 residential units (4 hectares) or more; or
- developments of 10,000 square metres, or more, of new floor space (2 hectares).

*Local planning authorities and others have a duty “to engage constructively, actively and on an ongoing basis” with communities.*

Developers should not underestimate the implications of this duty. It includes publishing the details of the application in a manner that would reasonably bring the application to the attention of the majority of the persons living in or occupying premises in the vicinity of the application site.

Developers must have regard to community responses when finalising schemes. They must submit a statement with their planning application to show that they have consulted with the community and taken responses into account. This will be considered by the Local Planning Authority when determining the planning application.

### **ARE FINANCIAL MATTERS A MATERIAL CONSIDERATION?**

There was much debate and consternation regarding the amendments to section 70 of the TCPA 1990. Section 70 details the grounds on which an application should be considered. The concern related to the possibility that material considerations could include “*any local finance considerations, so far as material to the application*” - which could be given more weight in planning decisions and a concern that planning permissions could then be bought or sold.

An amendment was tabled in the Lords and this has now been accepted in the Act (see Section 143(5)). The Government believes that the amendment and the new reference to local finance considerations does not affect the weight to be given to any particular consideration – on the grounds that apportioning weight remains a matter for the decision maker.

That said, financial considerations could include grants or other financial assistance from the Government (e.g. New Homes Bonus or CIL). As previously stated they will all be material considerations that have to be weighed up by the decision maker.

However, the clause remains controversial and many think it will lead to judicial review challenges.

### **NEIGHBOURHOOD PLANS**

There is no real change to the concept of neighbourhood plans but the Regulations introduce how they will operate in practice.

The Neighbourhood Planning (England) Regulations 2012 are currently out for consultation with a view to bringing the relevant Sections of the Localism Act into force in April 2012.

Detailed provisions of the draft regulations cover:

- information requirements;
- publicity and consultation;
- time limits;
- local authority decision making;
- independent examination; and
- referendums.

There has been criticism of the draft Regulations. A referendum could be tied in with another election up to six months either side of the referendum's proposed date. This would undoubtedly mean that any momentum behind neighbourhood planning could be lost. No doubt community groups will lobby hard on this provision in the consultation response to the Regulations.

*There is a new legal duty on developers to consult local communities on certain planning applications above a certain size.*

The Act provides that a neighbourhood plan can be drawn up by a town or parish council, or in areas where no such body exists, an organisation or body designated as a Neighbourhood Forum. Forums must have a membership of at least 21 individuals living or working in the area.

Neither the Act nor the Regulations currently set out the time limits for the Council to consider the designation of a body as a Neighbourhood Forum.

Those in favour of Localism have said that the absence of time limits could allow Councils less keen on neighbourhood planning policies to obstruct the process. The Government wants a “light touch” approach in neighbourhood planning and will leave it to Councils to agree the process. We wait to see how this issue is resolved.

Once the parish / town Council or Neighbourhood Forum has been designated, they can prepare the neighbourhood plan and submit it for an independent examination. If found to be sound, a referendum will be held to enable the community to decide if the plan should come into force. If there is a 51% majority in favour then the Council must make the plan and adopt it as soon as possible. Plans will be important as the Act states that, if there is a conflict between the neighbourhood plan and any other plan, an application must be considered in favour of the former.

Organisations or bodies that apply to be a Neighbourhood Forum must comply with certain conditions i.e. that they are established for the express purpose of promoting or improving the social, economic and environmental well being of an area.

The Act states that the Council will have the power to designate neighbourhood areas as business areas only if they consider the area to be wholly or predominantly devoted to business, although it will be possible to have both a business and residential Neighbourhood Forum, which the Council will count separately to secure the 51% majority in a referendum.

### **WHAT CAN YOU DO NOW?**

You must either start or continue to engage in commenting on the Regulations that are out for consultation now and those published over the coming months. Localism is here to stay and consultation, neighbourhood plans and forums will become increasingly important over the next 6 - 12 months as groups and neighbourhoods start to utilise the provisions in the Act.