

The best-laid plans

Peter Kershaw examines the continued devolution of planning powers



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On 17 November 2015 Greg Clark, the Secretary of State for Communities and Local Government, confirmed in a written statement to the House of Commons that the government had reached landmark devolution agreements with local authorities in the Liverpool City Region and in the West Midlands.

Both these agreements will give local authority leaders far-reaching new powers and enable voters in each region to directly elect mayors in 2017. The directly elected mayors will then act as chair of their respective combined authorities, taking on significant new powers over strategic planning and control of multimillion-pound investment allocations as they try and realise the economic potential of their local areas.

Local enterprise partnerships have played a key role in the negotiation of both these agreements, as the government continues to negotiate bespoke devolution settlements on a place-by-place basis with key UK regions who make a compelling case for receiving new powers.

The announcements followed on from the establishment of the Greater Manchester Combined Authority in 2011, and in April 2014 other combined authorities were established in West Yorkshire and Sheffield. In October 2015 the Chancellor also signed devolution settlements for a North East Combined Authority and a Tees Valley Combined Authority. The authorities in Greater Manchester, Sheffield and West Yorkshire were additionally offered further powers via 'devolution deals' in late 2014 and early 2015 – illustrating that the government is prepared to devolve

more powers to the devolved regions in the years after their initial settlements if those regions are performing well.

A number of other areas have since discussed establishing combined authorities with the government, including Derbyshire and Nottinghamshire (a joint bid for two combined authorities). The option has also been raised in devolution prospectuses from Leicestershire; Hampshire and the Isle of Wight; Gloucestershire; Lincolnshire; North and East Yorkshire; Greater Essex; and Norfolk and Suffolk (jointly). Other areas may also be considering pursuing this option.

Neighbourhood planning has been on the rise since the introduction of the Localism Act in 2011

Political and planning powers have continued to shift to neighbourhoods and regions following the introduction of the Localism Act in 2011, which places a legal duty on local planning authorities to support and advise groups that wish to undertake neighbourhood planning.

These groups can include parish councils and groups of people (including residents, businesses and local councillors) who are designated as a 'neighbourhood forum'.

In summary, neighbourhood planning allows communities to prepare:

- neighbourhood development plans;
- neighbourhood development orders; and
- community right to build orders.

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Once a neighbourhood plan passes an independent inspection and a final stage of gaining the approval of a majority of voters in the neighbourhood, it comes into force. It then has the same legal status as a local plan – becoming an official development plan document which carries statutory weight. Neighbourhood plans are used to establish general planning policies for the development and use of land in a neighbourhood.

Neighbourhood development orders also come into force once they pass an independent inspection and a final stage of gaining the approval of a majority of voters in the neighbourhood. They can grant planning permission for major developments schemes, new houses, or a new shop or pub, or permit extensions of a certain size or scale across the whole neighbourhood area.

Community right to build orders give permission for small-scale, site-specific developments by a community group. Their preparation requires a slightly different process involving the formation of a constituted community group rather than a neighbourhood forum (and parish and town councils can also lead on the community right to build orders).

Local authorities must provide support to help people undertake neighbourhood planning and check that a plan or order meets certain minimum conditions.

On 25 April 2013 the government introduced incentives for communities to undertake neighbourhood planning. Through the Community Infrastructure Levy (Amendment) Regulations 2013 it ensured that areas with a neighbourhood plan in place would be able to receive 25% of the revenues from the community infrastructure levy (CIL) arising from the development that they proposed to accept. The money is paid directly to parish and town councils and can then be used to fund community projects. There are also disincentives for areas who charge a CIL but who do not have a neighbourhood plan in place – with their potential revenues from CIL being capped at only 15% of the revenue from the development they approve.

In the Housing and Planning Bill currently progressing through the

House of Commons, new proposals could also require local authorities to produce a report of the financial benefits associated with accepting a planning application, so that local communities can make better informed decisions when deciding whether to object to or support planning applications. This could potentially include an illustration of how much an area would stand to benefit from gains like CIL revenue and the new homes bonus.

There are currently at least 1,677 neighbourhood planning areas that have been set up and this is a

plans – even if that land is not allocated in the local plan.

Neighbourhood planning is therefore advancing at pace and – with it – a shifting of power is taking place away from Whitehall and into the hands of local communities and local councils at all levels. With this change coming hand-in-hand with increasing devolution to the regions, a noteworthy shift of power is taking place in planning, which all stakeholders need to be aware of as new threats to and opportunities for their projects emerge from the shifting landscape.

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substantial increase from this time last year. It is further evidence of the growing emphasis the government is placing on localism and neighbourhood planning and on 20 November 2015 the government also published ‘Neighbourhood Planning and Local Planning Service Redesign and Capacity Building: Pilot Programme for Local Authorities’, which announced that a pot of £600,000 resource grant funding is being made available in the 2015-16 financial year to be awarded to a series of pilot local authorities, to help them:

- better support neighbourhood planning by piloting ways of making neighbourhood planning an integral part of their planning service;
- identify ways of involving or delegating planning decisions to neighbourhood planning groups; or
- make changes to their service to ensure that they have an up-to-date local plan in place by 2017.

In the government’s November 2015 Autumn Statement it was additionally stated that the government will ensure that local communities can allocate land for housing through neighbourhood

The Planning Minister Brandon Lewis helpfully set out in oral evidence to the Department for Communities and Local Government Select Committee in the Planning and Productivity Inquiry where developers are likely to win and lose the hearts and minds of local communities, when he emphasised that:

We all know we want to see more housing in this country. If you want to see more housing, either as a politician, as a local community or as a developer, the easiest way to do that is to have the community more accepting of development, and communities are accepting of good-quality development of an appropriate type in an appropriate place.

Effective stakeholder engagement is now the key to successful planning and placemaking

With the rise in neighbourhood planning looking set to pick up pace again in the current Parliament, the importance of proper engagement with local communities cannot be understated. The government thinks it is not only right that developers show willingness to engage early with local residents, but that it also makes perfect sense for developers to take the opportunity to identify

potential problems early and to work towards creating successful and innovative schemes that offer great value to communities and developers alike.

It is therefore going to be more important than ever for developers to try and engage in the neighbourhood plan-making process in any areas where they are likely to look to develop in the future – and developers will need to genuinely engage with

The government has shifted planning power to regions and neighbourhoods in the interests of localism and to help give developers and communities the chance to engage with one another in the interests of positive planning and to try and help solve the country's housing crisis. The government therefore expects communities and developers to play their part in participating and engaging with each other in the new system. They expect developers to talk to communities

the ability to appeal against unviable section 106 agreements to 2018.

- Starter homes: the government will amend planning policy to ensure the release of unused and previously undeveloped commercial, retail and industrial land for starter homes, and support regeneration of previously developed brownfield sites in the green belt by allowing them to be developed in the same way as brownfield sites elsewhere (providing it delivers starter homes). This will be subject to local consultation, such as through neighbourhood plans.
- SME house builders: the government will halve the length of the planning guarantee and amend planning policy to support small sites, while ensuring protection for existing gardens. The £1bn Builders' Finance Fund will also be extended to 2020-21.
- Local plans: the government will bring forward proposals for a delivery test on local authorities, to ensure delivery against the homes set out in local plans within a reasonable timeframe.
- Neighbourhood plans: the government will ensure that local communities can allocate land for housing through neighbourhood plans, even if that land is not allocated in the local plan.
- Planning conditions: the government will review the operation of the deemed discharge of planning conditions.
- Quality of decision-making: to support decision-making, in line with local plans and the principles in the National Planning Policy Framework (NPPF), the government will bring forward proposals to strengthen the performance regime by lowering the threshold for the quality of decisions to 10% of all major decisions overturned on appeal. Wider circumstances, such as the status of the local plan and whether appeals relate to this, will be taken into account.

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communities to demonstrate their positive credentials at an early stage, in order to more easily justify that their long-term involvement in the development of a community will be beneficial and genuine.

If public consultation is exercised correctly developers can help to reduce objections to their planning proposals later down the line and, through fostering good relations with residents and communities early on, can avoid there being mistrust and a lack of transparency between themselves and the local community.

As a local resident recently said to me:

This piece of land in the village is like Grandma's wedding ring – we will only support it being handed over to whom we feel we can genuinely entrust it to.

Through developers demonstrating that they have had a genuine interest in developing a local area in a positive, thoughtful and engaging manner, they will also be well positioned in future appeals to illustrate to the Planning Inspectorate that they have actively engaged in the neighbourhood plan-making process for that area. This is likely to be a particularly strong argument to make, especially in areas where there has been a particularly low community turnout in the neighbourhood plan-making process.

rather than submitting applications out of the blue, and they expect communities to listen carefully to what developers have proposed instead of automatically opposing developments as their default position without having fully looked into the proposals and how they might benefit the local community.

Communities and developers therefore take great risks if they fail to grasp these new opportunities by blindly forging ahead with their own interests without proper engagement. There is now a very clear and present danger to their interests if they are not constructively engaged in the new planning system.

Supply-side economic reforms in the government's joint Spending Review and Autumn Statement

On 25 November 2015 the government also published its joint Spending Review and Autumn Statement, where significant supply-side reforms to the economy were unveiled, including confirmation that there are continuing plans to devolve more power to more regions.

The supply-side economic reforms announced included a raft of measures that will have a direct impact on planning and can be summarised under the following categories:

- Section 106: the government will bring forward proposals for a more standardised approach to viability assessments, and extend

- The government plans to deliver more than 400,000 affordable housing starts by 2020-21:
 - 200,000 starter homes which will be sold at a 20% discount compared to market value to young first-time buyers, with a £2.3bn fund to support the delivery of up to 60,000 of these, in addition to those delivered through reform of the planning system. House builders can now apply to make their developments starter homes.
 - 135,000 Help to Buy homes: shared ownership homes, which will allow more people to buy a share in their home and buy more shares over time, as they can afford to. The scheme will be open to all households earning less than £80,000 outside London and £90,000 in London, and will relax and remove previous restrictions such as local authorities' rights to set additional eligibility criteria.
 - 10,000 homes that will allow a tenant to save for a deposit while they rent. This will be in addition to 50,000 affordable homes from existing commitments.
 - At least 8,000 specialist homes for older people and people with disabilities.
- There are further plans to accelerate housing supply:
 - supporting the availability of appropriate land for housing, including by releasing public sector land with capacity for 160,000 homes, representing a more than 50% increase on the government's record in the last Parliament;
 - offering £2.3bn in loans to help regenerate large council estates and invest in infrastructure needed for major housing developments; and
 - investing £310m to deliver the first new garden city in

nearly 100 years, at Ebbsfleet. This is part of a wider £700m programme of regeneration at Barking Riverside, Brent Cross, Northstowe and Bicester Garden Town. Together these will support up to 60,000 new homes.

- There are also plans to sell £4.5bn worth of government land and property, creating space for more than 160,000 new homes, and

On 15 December 2015 the Communities and Local Government Select Committee announced that it was holding an inquiry into the government's national planning policy consultation. The committee is seeking evidence from interested parties on the following points:

- the proposals in the government's NPPF consultation affecting green belt land;

Developers will need to genuinely engage with communities to demonstrate their positive credentials at an early stage.

implementing a new commercial approach to land and property management.

The first major changes to the National Planning Policy Framework are expected in 2016

Following the supply-side economic reforms set out in the government's joint Autumn Spending Review, on 7 December 2015 the Department for Communities and Local Government subsequently launched a consultation on the first ever major proposed changes to the NPPF.

The consultation covers:

- broadening the definition of affordable housing to expand the range of low-cost housing opportunities;
- increasing the density of development around commuter hubs to make more efficient use of land in suitable locations;
- supporting sustainable new settlements, development on brownfield land and small sites, and delivery of housing agreed in local plans;
- supporting delivery of starter homes; and
- transitional arrangements.

- the consequences of the proposed changes to the definition of affordable housing;
- the implications of the proposed housing delivery test;
- the effects of the proposals for commercial land and developments to be used for housing; and
- the impact of other proposals in the consultation.

Clive Betts MP, the chair of the Communities and Local Government Committee, stated that:

The Government's consultation represents the first changes to the National Planning Policy Framework (NPPF). As a Committee, we want to examine the proposed changes to the Green Belt, the definition of affordable housing, and the impact on local decision-making from proposed measures such as the housing delivery test.

The Department for Communities and Local Government will be reflecting on the submissions put forward by interested parties to the government's NPPF consultation before commenting further on future changes to the NPPF. ■