

**BRIEFING to the House of Lords**

**THE LOCALISM BILL AND  
NEIGHBOURHOOD  
PLANNING**

**BDOR Limited July 2011**

## 1. INTRODUCTION

*This paper comments solely on the neighbourhood planning aspects of the Localism Bill and directly related issues.*

1.1. This Briefing is different, perhaps unique. That is because it is based on over 25 years experience at all levels and on all aspects of what is now called 'localism' in planning. It is also based on the findings from what we believe to be the only multi-party research undertaken since the Bill was published; research (by ourselves) that is unusual in that it sought the latest opinions and ideas of many key groups and sectors from across the country: communities, planners, developers, elected members, consultants, NGOs and business and professional bodies. **This briefing is the very opposite of single interest lobbying.**

1.2. This briefing does not promote any particular viewpoint, although it is based on the idea – shared with the Coalition - that in the past **the voice of local communities in all aspects of the planning process has not been adequately or properly sought, listened to or valued and this needs to be rectified.** This idea is central to the Localism Bill and has been supported in principle by all those spoken to during the recent research work. It is therefore crucial to state here that there is a high level of support for the aims and aspiration for the role of communities in planning that underpins the Bill.

1.3. However, because of our own long experience, reinforced in a remarkably strong and consistent manner by both community representatives and professionals contacted during the research, this Briefing highlights some issues which we believe need to be brought to the attention of the House as a matter of urgency.

1.4. Section 2 in this Briefing draws together the key points that we, also on behalf of others, consider need to be taken into account. Given that this Briefing does not come from any nationally recognised body (hence its independence) Section 3 outlines our 'pedigree' in making the comments and the nature of the research study from which a number of comments are drawn. There are many points of detail in the Bill at present that require comment so Sections 4 and 5 of this Briefing cover these as fully but also as briefly as possible in terms of Practice to Date (Section 4) and Proposals for the Future (Section 5). Section 5 also includes a number of practical suggestions for how to deal with some of the issues raised. The final Section – 6 – is a fuller version of the key points summarised in Section 2.

## 2. KEY POINTS

2.1. To repeat, the ambition and intent of the Localism Bill in terms of the role of local communities is extremely widely supported and we ourselves support it fully. However, the totally consistent view from all sides, and from ourselves based on our own experience, is that, in terms of practical detail:

- there is little in the Bill which could not be achieved, and probably achieved better, more speedily and more cost-effectively, by the full and careful use of approaches that already exist;
- there are aspects of the Bill which, if implemented as currently described, could damage much of the good localism work already completed and underway, and some aspects are completely unworkable;
- the time and resources being spent during a period of national financial constraint are likely to be highly disproportionate to any benefit gained unless they link into and build on previous and well established good practice.

The second point above explains why Section 5 includes some practical suggestions, from ourselves as well as from others, for how to resolve some of the problem areas listed later. That

still leaves some, however, for which nobody appears able to offer any practical suggestions and some which are seen by all to be inappropriate even in principle.

2.2. The work on which these conclusions are based, especially from the research, provides wide-ranging and consistent evidence; something that is noticeably absent in all the material supporting the Bill and which cannot, as anyone with experience of community projects would say, be provided through the current waves of 'Frontrunner' projects in time to inform the final version of the Bill. Furthermore, the government's own Impact Assessment of the proposals signally failed to test properly the option of making best use of what exists at present. Almost nothing of what follows in the first part of section 4 about past practice was properly evaluated in what was in effect the 'do nothing' option.

2.3. The original Bill emerged very speedily and was not prefaced with the usual Green or White Papers, nor was there any period of genuine dialogue and consultation on its ideas – a significant anachronism given that collaborative working is a central principle of the Bill! At the very least there is now a need for an NHS-style 'pause' in the progress of the Bill to allow this debate to take place and for the widely and genuinely endorsed ambitions behind it to be supported with practical and implementable details that draw from the best of previous and current practice.

### **3. THE SOURCE OF THESE ARGUMENTS**

3.1. BDOR Limited, notably Jeff Bishop (Director), have been at the leading edge of innovative work on community engagement and community-led planning – ie. localism – for over 25 years. We have a strong pedigree for this work and a considerable national and international reputation. These central themes of our work have been advanced through policy-related research for government and others, training and capacity building work for a wide range of groups, and many practical projects, several now quoted nationally as 'models of good practice'. Of particular relevance BDOR have:

- devised (for the Countryside Commission) Village Design Statements, produced guidance, undertaken training and supported numerous Statements in the UK as well exporting the approach to other countries;
- contributed to the development of Parish Plans, Market Town Plans and Town Design Statements and supported several in specific places;
- developed the groundwork for what became Concept Statements, one of the few genuinely collaborative methods of approaching the development of sites (always including the local community);
- produced the only guidance yet published collaboratively between central government, the Planning Officers' Society and the Housebuilders Federation ('Lifting the Quality');
- undertaken two major research projects for central government that underpinned the significant pro-involvement changes in the 2004 Planning and Compulsory Purchase Act;
- designed and managed innovative engagement approaches on many large and small projects across the country, and with great success in terms of securing wide support.

3.2. This considerable and wide experience provides part of the grounding for the points made in this briefing. However, we were also commissioned early in 2011 to undertake a study:

*"... to contribute to the unfolding government policy on localism by reviewing the effectiveness of community involvement in neighbourhood planning in the area of Parish Plans and Village Design Statements."*

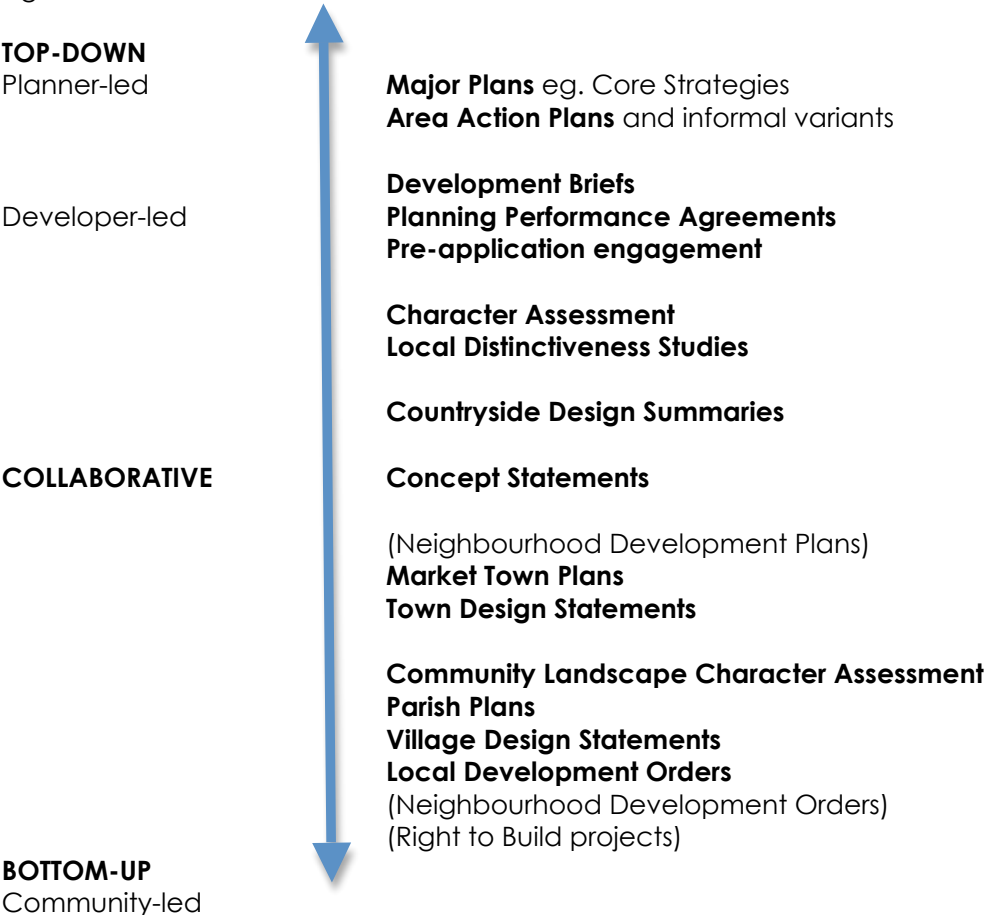
3.3. This project was undertaken through desk study of published material, interviews with practitioners and professional bodies and a workshop that included a representative of DCLG. This therefore drew on the experience and views of a number of community activists,

planning officers, elected members (District/Unitary and Parish/Town), Rural Community Council staff, private developers, staff from an AONB, planning/development consultants, staff from NGOs and others. This covered from the highly pressured south east to some more disadvantaged areas, from urban fringe to remote rural areas. Because the focus was on methods such as Parish Plans used almost exclusively in rural areas, the study only looked briefly at urban situations and at broader planning issues. However, BDOR's wider experience has enabled those perspectives to be addressed in what follows. (This Briefing does not include any references. These are all included in the above research paper.)

**4. PRACTICE TO DATE**

4.1. Figure 1. below brings together a list, by no means exhaustive, of methods or opportunities for a local community voice to be properly heard in planning and development processes. It uses a well-known model in terms of initiatives being top-down, ie. initiated and led by the planning authority (for plans) or by a developer (for projects), or bottom-up, ie. initiated and led by the community. Those towards the middle are more genuinely collaborative, involving all parties on an equal footing. Those in bold text are from existing and recent practice, those in brackets are as suggested in the Localism Bill.

Figure 1.



4.2. Some aspects of consultation have been incorporated within planning law since the 1948 Act. However, since the 2004 Act far more thorough community involvement in those activities in the upper part of the diagram is now either a mandatory requirement – eg. for a formal plan, an integral part of the process – eg. for Planning Performance Agreements, or is actively ‘encouraged’ – eg. pre-application engagement by developers (public as well as private). This applies all across the country, to both urban and rural settings.

4.3. Although the emphasis of the Localism Bill is on devolution down the spectrum to give greater power and influence to community-led approaches, the upper levels are included and commented on here because some of the government critique of current practice focused on what was deemed to be failure at these upper levels.

4.4. It also needs to be pointed out that, with very few exceptions, those activities at the lower level of the diagram, notably the highly community-led ones such as Parish Plans and Village Design Statements, have been used generally across only rural areas. Urban examples and genuinely collaborative approaches remain rare.

4.5. Given the Localism Bill's emphasis on a shift to reinforcing the lower levels of the spectrum, we start by drawing out points about these that have a particular bearing on what is covered in Section 5. (Further details on each approach are in the supporting research report.) Parish and Market Town Plans are perhaps the nearest one gets to Neighbourhood Development Plans as proposed in the Bill. It is however crucial to point out that they do not and should not (though some try to) address core land use issues, focusing instead on health, leisure, education, transport, environment, social cohesion etc. (some of which do of course have land use implications). This is a key point when looking ahead to the Localism Bill proposals

4.6. Such plans - almost 50% of Parish/Town Council areas now have them - have been extensively researched and the conclusions have been that the most effective are those that have:

- been developed by a group linked to but not tied solely to the Parish/Town Council;
- been developed with a high level of community engagement;
- been supported by the local authority and guided by staff from the local Rural Community Council;
- built community capacity and
- ended with achievable if challenging action lists for themselves and for others (eg. local or health authority).

Those communities that have 'gone it alone', where the plan has been produced by a small coterie of people, where the action list has been nothing more than an unachievable 'wish-list' or where the conclusions are all about stopping development, have been far less successful. It is also important to add that Market Town Plans are often produced as much if not more by consultants as by the local community, although always with a very high level of engagement and eventual wide-ranging support.

4.7. Community-led Design Statements (Village or Town) have also been developed by many rural communities (almost 700 to date). They focus entirely on design, ie, how developments might look, and should not include anything directly about what development might happen where (though again some try to do this). Many have been formally adopted by planning authorities as Supplementary Planning Documents (or Guidance pre-2004) so bringing the clout of the planning system into play. As with Parish/Town Plans, research shows that the most effective statements have:

- been produced by groups largely independent of the Parish/Town Council,
- been developed through innovative and extensive engagement,
- covered the key issues outlined in national guidance and
- included practical design guidelines.

Although planners have usually supported design statements, most Rural Community Councils have, however, felt unable to support them because design is seen as a specialist technical issue. The reasons for reduced success with design statements echoes that for Parish/Town Plans as in 4.6. above, with the added caution that statements are usually supported by

policy planners but are too often not then adequately backed up by development control planners.

4.8. The amount of time and effort put in by communities to Plans and Statements has been shown to be considerable – perhaps several thousand hours for a Parish Plan. Nevertheless there was a significant hiatus across the country when the 2004 Act laid down more requirements for Supplementary Planning Documents, especially the need to undertake Sustainability Appraisal. This caused real anger and ‘downing of tools’ across the country because of the extra time required and the need to access specialist advice.

4.9. This Briefing is not the place to elaborate on all of the approaches shown in the earlier diagram, and community-led plans and design statements are the most fully researched area. Community Landscape Character Assessment might be thought of as another strand of design statement work and has proved its value where used. Concept Statements – the only explicitly collaborative approach in the list - focus on linking strategic planning to development management and, where used, have also been highly successful in securing widely supported projects.

4.10. The only other approaches warranting a brief mention here are the two at the top of the diagram. Despite the vigorously promoted requirements in the 2004 planning Act about community involvement in plan-making, the (previous) government's own research suggests that there is much to do to actually fulfill the Act's ambitions, though enough good examples exist to suggest that this can be done far better. Pre-application engagement is also poorly supported or pushed at national levels and yet, once again, there are some very powerful examples of how good engagement work can result, as it did in one case, in “staggeringly few objections”.

## **5. PROPOSALS FOR THE FUTURE**

5.1. Once again, the comments we make here are drawn from our own experience, that of others and the recently completed research study. However, we need to note again that the latter study focused mainly on rural areas. Commentary on the urban context is therefore not so robustly or topically evidence-based.

5.2. In addition, although we are commenting here on the Localism Bill, debate on its content cannot be separated from issues and proposals raised in other settings, notably the Local Growth White Paper (eg, regarding the New Homes Bonus), the recent Budget announcements (eg. encouraging businesses to lead on Neighbourhood Development Plans) and ministerial announcements (eg. to make financial issues a material consideration in planning decisions). These may not be formally part of the Localism Bill but, to everybody beyond government, they are a key and inseparable part of the debate.

5.3. The first comment to make is not about the Bill as such as about the manner of its development, since this is clearly influencing many of the comments we have heard over recent months. The origins of what is in the Bill lie in the Conservative Party pre-election Green Paper “Open Source Planning”. In that paper it was stated that: “local people ... will be able to specify what kind of development and use of land they want to see in their area.” This was taken up very vigorously by communities around the country and, we are told, repeated regularly by local people to their local authority planning officers. The Bill now makes clear that any Neighbourhood Development Plan must be “in general conformity” with higher level, strategic plans. It is difficult to overestimate the disappointment, and in some cases anger, that this has produced. Some of the few comments that can be quoted in a public paper include “conned” and “duped”. This is not to suggest that either stance is right but the dramatic raising of what then proved to be false expectations has seriously damaged community confidence in the whole Bill. People are now commonly saying “why bother?”.

5.4. We have stated already that much of the aims and ambition behind the Bill have widespread support. During the research study, at a workshop that drew together a very varied group, including a representative of DCLG, people agreed what they considered to be the potential benefits that localism could bring. These were, in their own words:

- Addition to the toolbox of options
- Formal status in the planning system
- Potential to bring in urban community-led planning in a serious way
- Bringing the development industry and communities together
- Ward councillors will also have a different role to play
- Could lead to 'richer' local plans
- Raise awareness of planning and planners
- Developers may fund the plans
- Strengthen portfolios of Parish and Town Councils
- Prompt good plan-making
- Motivation through Community Infrastructure Levy etc - potential value

5.5. Most of what follows, however, covers what are seen by us and all others as the most important weaknesses of the Bill; weaknesses that could prejudice the delivery of the workshop outcomes just noted. Text in bold and italics is our own suggestions of what might improve the Bill and the procedures generally, occasionally also some comments on when and why improvement is not possible and proposals are clearly inappropriate.

## **5.6. Strategic Issues**

5.6.1. Neighbourhood Development Plans (NDPs) must be "in general conformity" with any higher level plans. Where a Core Strategy and other Development Plan Documents (DPDs) are already complete and adopted, any policies (eg. allocations) will now be fixed and a community must work within them (though they can apparently seek more development). This is already causing serious concern given that some Core Strategies were based on Regional Spatial Strategy figures. For many, plan review will be seen to be coming far too late.

5.6.2. Where the Core Strategy or other DPD is still in preparation, there may seem to be an opportunity for local communities to engage and ensure a plan with which they are happy to be 'in conformity'. However, and despite the government's critique, neither the Bill nor other ministerial announcements offer any comfort about improving the generally low standards of engagement in plan-making; that aspect is not mentioned at all in the Bill.

***The standards for involvement/engagement in plan-making urgently need to be reviewed and updated. They also need to be enforced, which requires more robust guidance to the Planning Inspectorate as well as to local authorities. There is now ample, proven experience of how to do this properly and effectively in terms of securing improved local community support.***

5.6.3. For those authorities where a post-election (2010) decision was taken to defer or restart the Core Strategy, a good opportunity for local people to engage genuinely in plan-making might now seem to exist but, at the same time, elected members feel pressured since the recent budget announcements to move ahead very quickly to avoid opportunistic planning applications securing approval on appeal.

***In order to re-establish confidence in the system it is important to clarify again for communities as well as local authorities that the preparation of sound and widely supported plans is the overarching priority, and that there will be no lessening of standards on assessing projects that reach application stage while a plan is being prepared and solely because it is not yet adopted.***

5.6.4. All of our work since the Bill was published has shown that, in rural areas, with the exception of a few communities seeking a small amount of affordable housing (preferably without any market housing component), all others had hoped – wrongly as it now turns out – that NDPs would provide them with an opportunity to resist any or all development. Those taking this position are also most commonly from wealthier, more professionalised and engaged communities. (This may explain the sudden rise in candidates putting themselves forward successfully at recent local authority and Town/Parish Council elections on a strong anti-development ticket.)

***Despite the above, we know of, indeed we ourselves have delivered, thorough engagement processes with local communities that have resulted not just in genuine acceptance of development but even enthusiastic acceptance of more development than originally planned. However, the key is the standard of the engagement, which makes the complete lack of comment on or requirements for this in the Bill even more alarming (also see 5.7.10.).***

5.6.5. Everybody we have spoken to, from whatever group or sector, was also dismissive of the suggestion that incentives such as the New Homes Bonus would have any positive impact on these prevailing attitudes. It is generally believed that this would, if anything, reward the more wealthy communities; ie. it is a regressive policy.

5.6.6. From general experience, the above attitudes also prevail in more wealthy urban communities, creating a dramatic and widening contrast with those in more disadvantaged urban areas where further development, not just for housing but also for employment and other uses, is often being sought and sought urgently. This is causing serious concern amongst planning officers and elected members because the ability of a community to require support from their local planners can undermine carefully considered workload priorities that give greater value to communities in real need (who may not even know about Localism).

***It is unacceptable in democratic terms that well prepared, professionalised and probably less needy communities can have an automatic call on limited authority resources at the expense of those in real need. Approaches need to be developed to manage this more equitably.***

## **5.7. Neighbourhood Development Plans**

5.7.1. This is the topic that has generated by far the most comment since the Localism Bill was published and is therefore covered more fully here.

### **NDP Content and Status**

5.7.2. We commented above on the uncertainty about what a Neighbourhood Development Plan (NDP) might or might not include or cover given that it must be “in general conformity” with plans higher up. There are varying views on this but coverage would appear to include issues around (for example) road safety, footpath improvement, design (and perhaps density) of housing and provision of recreational facilities. This is valuable but it is unclear whether a NDP can actually make policy on these rather than (as in good Town/Parish Plans) provide evidence for and make arguments for particular solutions, ie, can it designate a site for an open space or lay down a policy on proportions of affordable housing? The likely answer is that a NDP is unlikely to be able to create anything called policy on such issues. One sceptical interviewee during the research wondered if this was merely an “invitation to play the lead role in arranging the chairs on the deck of the Titanic”!

5.7.3. One of the most serious concerns from local communities (especially those with forms of plan already in place) is that a NDP, if it is a formal, statutory document, will probably only be able to cover those issues that are clearly about land use or which have obvious spatial

implications. The concern is about what would then happen to the many traditional community-led plan issues that are more about social or economic aspects and which are therefore not clearly, or perhaps very minimally, spatial. There is a proven history in community-led planning of a strong and understandable (If not entirely correct) focus by communities on getting in some way into the planning system because it is believed that this is the only way for their plans to make any real difference. There is a real worry that issues that cannot be included in a NDP may therefore suffer from a 'planning glare effect' and be devalued or simply never addressed.

***Though it is correct for guidance to follow the Bill/Act, there is an urgent need to clarify the position on both the points above. A general explanation should be given of the type of issues and aspects that would normally be determined by a NDP, and of how or whether non-spatial aspects can be included in a NDP (and how they might be dealt with if not).***

#### **Who Does NDPs?**

5.7.4. The Bill takes it as read that any existing Parish or Town Council would automatically pre-qualify to be a NDP-making body. Given the number of empty Parish Council seats, the number of uncontested seats, the often poor record of some in terms of engaging the wider community and the poor public perception of some, this automatic pre-qualification has been queried by many. (This issue is less true for Town Councils.) At the same time, some believe that the challenge and opportunity of producing a NDP will help to revitalise and improve practice amongst Parish and Town Councils.

***There is an easy if partial answer to this point. There is already a national system for recognising 'Quality Councils' (Parish or Town) which reach certain standards in democracy, procedures, accountability etc. Though some remain sceptical as to the value of this, it is a system that could now, given the formal status of NDPs, be significantly strengthened.***

5.7.5. There is not enough space here to debate properly the problems those who drafted the Bill have got themselves into over who should be a plan-making body in urban, ie. non-parished areas. The shift from a cabal of 3 (none of whom needed to live in the neighbourhood) to a group of 21 from varying different sectors, and the criteria for how to determine a group's legitimacy, accountability and procedures are all regarded by most as positive but clearly inadequate improvements. Far more would need to be done to ensure that any neighbourhood group was genuinely able to operate on behalf of its community.

***A strengthened version of Quality Councils could also be applied to what are now termed Neighbourhood Forums. However, by focusing on the issue of who constitutes a group (or how many) the Bill misses the point that 21 is no better than 3 if those 21 fail to engage their community properly in NDP preparation. The most important factor for the effectiveness of any plan-making group, once properly constituted, is its procedures, especially on engagement (see 5.7.10. below).***

5.7.6. Recent announcements have suggested that, in certain places such as town centres or industrial areas, businesses (alone or together), landowners and developers could either become the plan-making bodies or fund the plan-making processes. The general response to this has been negative because of fears about manipulation of process and results for narrow commercial benefit.

***We have no queries with this idea in principle, in fact we have proved on our own projects that it is not an issue, provided that all the proper procedures are followed in terms of engagement, evidence collection, argued conclusions etc., at which point, in good collaborative planning terms, it ceases to be relevant who initiated and who paid (again see 5.7.10. below).***

## **Areas for NDPs and Who Decides?**

5.7.7. People in rural areas have pointed out that there are few issues which relate to a single parish or town, that some key issues cover large areas and therefore that an appropriate geographic area for a NDP, or to address specific issues, might be two or more parishes together. In fact some respondents regarded this pressure for parishes to work together as a good thing. This is also relevant in complex urban areas, so offering only two rigid plan formats in the future system can only make it more difficult to deal with issues that are smaller than district-wide but larger than neighbourhood/parish.

***There needs to be far more flexibility, as in the current system, to enable work to be done, and, if necessary, plans of some sort to be made, for areas at varying sizes as appropriate for the different issues being advanced. The proposed system of either district-wide local plan or neighbourhood plan is far too blunt to deal with all the appropriate intermediate geographic levels at which plans are best developed.***

5.7.8. Just as there is confusion, even cynicism, about who might lead on a NDP in urban areas, so there is universal confusion about how, or whether it is even possible, to properly define neighbourhoods in urban areas or to define them in a way that communities support and which provides potentially comprehensive coverage. Centres of neighbourhoods might just about be definable but boundaries are not and modern patterns of movement and access to services and facilities make the very idea of neighbourhood definition in urban areas debatable, as many already argue and research evidence has shown.

***This issue is insoluble and without any agreed approach the very principle of urban NDPs is fatally undermined because there are no remotely agreed ways of defining urban communities and neighbourhoods. As with the point above about flexibility, there need to be ways (as we are already discussing with an authority) of working with a range of community representatives to ensure appropriate scales and consultees for different urban issues.***

5.7.9. During the research project, planners were asked which areas/communities might never think of proceeding with NDPs. The answer was always that it would be those with poor or no proper community groups (or moribund Parish Councils), the more disadvantaged areas and precisely those where the planners would most wish to place their efforts. The Bill contains no guidance at all on how NDP areas might be selected in a way that would provide coherent coverage that relates to the needs of an area as a whole or of specific neighbourhoods. As stated in 5.6.6. above, since planners could be formally required to respond to requests to advance NDPs by allocating time to them, there is a real concern that the result would be considerable professional time and resource being given to those who least need it.

## **Engagement and Evidence**

5.7.10. This is perhaps the pivotal point, as is clear from the number of times we have inked other points to it. Given the expressed concerns by government about not properly hearing community voices in plan-making, there is considerable astonishment that, as a very bottom line, the standards set in Statements of Community Involvement have not also been applied to the preparation of NDPs. In fact there appear to be no engagement standards at all for NDPs.

***This is a fundamental omission and needs to be dealt with as a matter of real urgency. Much of the engagement practice on community-led plans is ahead of that for major plans, so the best of it could and should provide a template for improving standards on all plan-making. (This would of course help to reinforce the related point in 5.6.2. above.) While having some support for the government's approach of resisting top-down specification, the complete absence of anything that makes clear that thorough engagement is absolutely essential to a***

**successful NDP is, as stated, a fundamental omission and its resolution cannot be left just to subsequent guidance.**

5.7.11. A minor but illustrative point here is that engagement is supposed to also include people who 'want to live' in a neighbourhood. As experts in engagement we can say with absolute confidence that nobody knows how to do this.

**This has no place in a supposedly practical Bill and should be removed.**

5.7.12. The traditional Parish/Town Plan evidence base is seen by planners to be poor by planning system standards where the key question is always 'will it stand up to legal challenge?'. It seems clear that the type, amount and rigour of evidence required for something that would become a statutory plan will need to be far more than that generated to date and we have already commented (4.8. above) on the way that the relatively minimally increased demands post the 2004 Act led to cessation of a lot of activity on community-led plans.

5.7.13. Given the need for a community to have access to technical skills in planning, the general feeling is that any successful NDP can only be produced through a genuinely collaborative, and probably equally loaded, process between a community and planning professionals, which in turn raises an issue about resources and skills (see later).

### **Procedures**

5.7.14. For local people in particular, but also for planners and others, the hope had been that the Bill would simplify procedures, reduce bureaucracy and instigate a far speedier process. There has therefore been entirely negative reaction to the horrendously complex basic set of procedural stages necessary to complete a NDP. That includes the following for an urban, non-parished community:

1. Defining the Neighbourhood
2. Applying to be a Neighbourhood Forum
3. (Local authority advertising and assessment before agreement to plan preparation)
4. (Scoping undertaken to assess the need for an Environmental Impact Assessment)
5. Undertaking pre-application consultation/assessment
6. Local Authority Duty to Support
7. (Completion of full Environmental Impact Assessment if needed)
8. Submitting draft plan/order for independent examination
9. Local authority validation check
10. Independent examination
11. Examiner's Report
12. Referendum on (modified) plan/order
13. Adoption by Local Authority

Those in brackets are the subject of very recent amendments and only serve to reinforce the bureaucratic complexity of the suggested process.

**This is worryingly disproportionate and it will be important not just to simplify it but to ensure that any final procedure does not draw precious and limited resources away from substantive plan-making work.**

5.7.15. Having commented earlier on the declining level of community confidence in what is now being proposed, we can add that this confidence has also been eroded by the proposal that examination of a NDP will be "light touch". While understanding the reasons behind this, the message it sends to communities, once again, is that their NDP will have little status compared to other planning documents.

5.7.16. Perhaps the most vigorous and negative responses, coming from all sides, have been about the proposal that any NDP, once it has cleared examination, must go to a referendum. Two aspects are of concern and we share these fully and could offer a number of salutary and worrying examples. First, in terms of referenda in principle, the little experience that there has been at local level suggests that they can be extremely socially divisive and militate against people playing a role – as they should – in the all-important, front-loaded engagement work that ought to be a key part of the plan preparation stage (but see 5.7.10. above). Secondly, there is a belief that the suggestion in the Bill that a local authority or inspector could require a referendum to cover a broader area than that on which the NDP is based would make the whole process unworkable. This means that any parish or urban neighbourhood plan that mentioned secondary schooling would have to be tested across a far wider area, and possibly across a whole county or city if that plan mentioned traffic and transport issues. There have also been recent amendments about the voting procedures when a NDP is initiated or led by local businesses, ie, that two referenda should be run and that the local authority should decide between them if they generate different results. This has already attracted comments such as "disgraceful" and "laughable" and we can only agree.

***A far more positive solution to this problem emerges easily if one goes back to the aim behind referenda: to ensure some form of democratic legitimacy for any NDP (or NDO etc.). The far better way to do this is to ensure rigorous and robust standards of engagement (not just of local communities) in community plan-making, require a report of this to be submitted for examination with the plan itself and for the examiner to decide whether the case for community support is or is not sound. This has become familiar and proven practice on some strategic plans and projects and would have the added benefits of (a) re-establishing community confidence in the status of their own plans and (b) encouraging more people to engage early and fully, exactly as Open Source Planning proposes. Should an examiner find that the plan is not sound in engagement terms then some form of referendum might be appropriate.***

5.7.17. We can also add the point that we almost always try to engage young people – the future generation – in community planning work (as do others). Those young people will not be able to vote in the subsequent referendum for their area; as key players, tomorrow's generation will be completely disenfranchised!

### **Neighbourhood Development Orders**

5.7.18. There has been far less commentary on this. Concerns have been raised that a Neighbourhood Development Order (NDO) can be secured without any need to prepare a NDP, that a NDO is likely to cover only very minor issues (eg. none that might have highways implications) and also that, if a community is in effect giving itself permission, what scope or process is there for anybody to challenge this decision? In fact the one example of an NDO (in fact a Local Development Order under existing legislation) set up since the Bill was launched was developed with the Council only because a good quality Parish Plan and Village Design Statement were in place and the content includes only extensions at the front of properties, additions to the roof at the front and porches up to 5 square metres.

### **Right to Build**

5.7.19. Again this has been commented on less but questions have arisen about the likely scale of such projects, whether or not they would be acceptable and appropriate within normal planning criteria, about the fact that many will have implications (highways, environmental impact, transport etc.) that require quite high levels of technical skill in developing and appraising projects and about the opportunity for local or wider challenge. Despite this, the general view is that there is scope to take forward small and clearly local

projects built on a robust evidence base (eg. a good community-led plan) and in the context of something like a Design Statement.

### **Pre-application engagement**

5.7.20. Although 'Open Source Planning' made bold statements about ensuring in-depth "collaboration in design" on all planning applications – which we fully support - the latest suggestion is that pre-application engagement should only be formally required on schemes of over 200 houses or 10,000 square metres. Those we have talked to about this have all suggested that this limit is far too high.

***In commercial terms, pre-application engagement on small projects is probably more valuable for developers than it is on large projects, especially as smaller developers tend to also be more local and can gain from showing attention to local issues. The threshold should be reduced to 10/12 houses and 1,000 square metres as these are commonly used current thresholds for other aspects of applications.***

### **Other Recent Announcements**

5.7.21. There is serious concern about the proposal that councils will be enabled and encouraged to auction off public sector land pre-approved with planning permission. While supporting the principle of maximising the use of publically owned land, people have quoted, and we ourselves know of, examples where cash-strapped local authority estates departments have attempted to dispose of land with projects in clear contradiction of adopted planning policies. The view is that the pressures to do this can only increase at the expense of good planning decisions.

5.7.22. Similar arguments apply to the proposal that developers could convert empty office blocks, warehouses and business parks into housing without change of use permission. This too is seen as having some merit, but if left as open as the ministerial statement suggests, would be challenging to good planning.

***Both of the above may have merits but they need to be advanced with far clearer conditions about basic planning acceptability.***

5.7.23. It is also difficult to express successfully the anger and disbelief, which we share, about the suggestion that financial issues (eg. the availability of the New Homes Bonus) should become a material consideration in determining planning applications. There is now official recognition in the Republic of Ireland of how such processes dramatically damaged the independence and reputation of the planning system and, as is also recognised there, their environment has suffered appallingly.

5.7.24. Procedures already exist, for example in relation to community benefits packages linked to wind power schemes, whereby financial issues can be brought into the equation at project development stages but kept very clearly out of decision-making on the appropriateness of a planning application.

***The established processes as used on wind power (and other) projects should still stand and be elaborated for wider use. Planning permissions must not be bought.***

## **5.8. Resources and Skills**

5.8.1. People are generally aware that local authorities would be required to provide resources to help communities with Plans, Orders etc. but all are unclear as to what this might mean. Most planning officers spoken to suggested that they might be able to cope with one

or two NDPs or Orders or Right to Build projects per year but that would still be a considerable challenge amidst other priorities (see 5.6.6. above) and at a time of diminishing resources.

5.8.2. A number of people have commented to us that the time and resource demands would make it impossible for communities to do something like a NDP. That was based in part on the negative experience from the post-2004 period when the need for considerable extra time and specialist technical input effectively stopped community-led planning across the country. The general feeling is that the amount of community effort involved to prepare something like a NDP would be up to 5 times as much as for a Parish Plan or Village Design Statement, ie. potentially up to many thousand hours of voluntary time.

5.8.3. Rural Community Council (RCC) staff who had played such a key role for years on Parish Plans are concerned that the shift to an emphasis on land use/spatial plans rather than the broader community plan format of previous community-led plans would make it difficult for them to give support unless they had access to, or themselves could fund, a planning professional. This exposed a generic weakness in what is currently available to support communities. While RCCs offer considerable community development expertise, they do not generally feel able to cope with the more detailed and statutory process demands of NDPs etc. (as illustrated by the caution about RCCs supporting Design Statements). Planning officers, by contrast, feel strong on detailed planning issues but are concerned about the greater demands on and skills for community development that work on NDPs etc. would require.

***From our perspective, and as others have stated to us, this all makes the dramatic reduction in funding for Planning Aid, the only organisation that offers both community and technical skills, incomprehensible. This should be rectified. Further training in 'collaborative planning' is also required as a matter of urgency for all involved.***

## 6. CONCLUSIONS

6.1. The spectrum introduced in Section 3 is already remarkably full without the addition of the Localism Bill proposals. Practice on all of the approaches listed (and there are several other not included there) is still sometimes extremely poor but it is also sometimes extremely good in all senses. Assuming that all existing approaches could be delivered to consistently higher standards than is the norm at present, the key question being asked by many, ourselves included, is '**what it is that the Localism Bill actually adds to this repertoire?**'. Several points can be made:

- In terms of engagement with strategic plan-making, ie. what will now be called the Local Plan, the answer is that nothing at all will be added; it is simply not addressed.
- In terms of various intermediate levels that all believe to be necessary and which have been shown to have great value (some Area Action Plans for example), there is again a complete vacuum; the choice is whole authority area or neighbourhood level only. This is the very opposite of good collaborative planning.
- At the neighbourhood (parish or town) level the only significant addition made by Neighbourhood Development Plans is to permit some as yet rather undefined but certainly tightly constrained amount of policy to be determined by local communities (as long as it is 'in conformity' with the Local Plan).
- At the very local level Neighbourhood Development Orders do not appear to add anything that is not already possible through Local Development Orders.
- Right to Build projects are certainly one other small but genuine addition, although again the circumstances in which they might proceed will almost certainly be very limited.

6.2. This is clearly overwhelming negative. There are, however, some positive points to be made:

- Many people appear to value the fact that local communities would, for the first time, have a full legal right to have their voice heard in the shaping of policy for their areas.
- This extra right could help to revitalise moribund Parish or Town Councils and trigger more structured community organisation in urban areas.
- It is possible that the general shifts generated by the Bill would lead to more genuine forms of community involvement in plan making and pre-application engagement.
- We and others also support, with cautions, the idea of a Community Right to Build.

6.3. So, if what is in the Bill will not add much, what effects might it have on practice to date? There are, as outlined in Section 4, many significant, even insuperable, practical problems with delivering NDPs etc. in terms of how to:

- agree suitable plan-making bodies;
- agree neighbourhood boundaries;
- generate challenge-proof evidence;
- negotiate a long and complex process;
- undertake (though this is never mentioned) thorough community engagement;
- prepare for and support an examination and
- negotiate a referendum.

6.4. What is more, there is a prevailing view, which we share, that all the practical problems will if anything reduce rather than increase the current level of activity around all the many forms of community-led planning. In our own view, it could discredit the whole principle and put practice back many years.

6.5. The Bill is also, of course, emerging at a time of considerable financial restraint, not only in the public sector. If there is so very little that the Bill will add, some things that will be extremely difficult to put into practice and some things that might actually damage practice, one has to ask whether this is all good value for money.

6.6. To return to some opening statements, however, there is remarkable widespread support for the aims of the Bill in terms of giving local communities a clearer, stronger, more consistent voice in all aspects of plan-making, if alongside others in – as ‘Open Source Planning’ argues as one of its main strands – a *genuinely collaborative way*. We too support this on the basis of our long and proven experience.

6.7. This is why we believe, and others support us in this, that there now needs to be some form of pause to consider what is covered in this Briefing (and no doubt other points as well on other aspects of the Bill not covered here). After all, as David Cameron said on 14<sup>th</sup> June, “... *I think people respect a government that feels it is strong enough to say, hold on, we haven't got every element right, we're not taking enough people with us ... I think it is a sign of strength to pause, to change, to improve ...*”

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<sup>i</sup> The study was undertaken for the Campaign to Protect Rural England Gloucestershire Branch. The study report is available at: [info@bdor.co.uk](mailto:info@bdor.co.uk)