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Institute of Local Government Studies

# The World Will Be Your Oyster?

Perspectives from the Institute of Local Government Studies  
(INLOGOV) on The Localism Bill

February 2011

compiled and edited by  
John Raine and Catherine Staite  
Institute of Local Government Studies (INLOGOV)

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*I think it is reasonable that councils shouldn't use their new found freedom to saddle up the horses, arm their citizens and invade France. Apart from that, the world will be your oyster . . .* From the address of The Right Honourable Eric Pickles MP, Secretary of State for Communities and Local Government, to the Local Government Association Conference on 27 July, 2010.

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## The Localism Bill – introduction and overview

John W Raine

### Introduction

The Localism Bill has been presented by its sponsors, the Conservative and Liberal Democrat Coalition Government, as a key part of a wider programme to effect ‘a radical shift of power in the United Kingdom from the centralized state to local communities’ and ‘to move from *Big Government to Big Society*.<sup>1</sup>

As a set of proposed new statutes, the Bill covers wide and diverse ground. It provides various new freedoms for local authorities, but it also imposes some new requirements on them, as well as granting several additional powers to the Secretary of State (for Communities and Local Government).

Among the new freedoms it provides, the Bill proposes a new general power of competence for local authorities, it also heralds the end of the national code of conduct for councillors and the regime of the Standards Board for England, which is to be abolished, and instead proposes simply to make it a criminal offence for elected members to withhold or misrepresent a personal interest. It envisages the repeal of powers for ‘bin taxes’ introduced by the previous government, which enabled special charges and fines in relation to waste collection; and it frees councillors to campaign and to express their views on issues of local interest ahead of participating in formal decision-making on them, to date regarded as ‘predetermination’. It also allows local authorities to be able to decide their own governance arrangements (albeit subject to local referenda) in place of the standard cabinet model, which for more than a decade now has been required of all but the smallest authorities.<sup>2</sup>

On the other hand, the Bill places a number of new duties on local authorities and provides the Secretary of State with several new powers – notably, to initiate mayoral referendums in twelve English cities and to allow for referenda for mayoral elections in any other local authority area, It also requires local authorities to publish statements in relation to the pay of their senior staff (and for this to be a matter for formal consideration and approval annually by Councils).

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<sup>1</sup> HM Government (2010) *Decentralisation and the Localism Bill: an essential guide*, London: Department for Communities and Local Government, page 1.

<sup>2</sup> i.e. those with populations of less than 85,000.

Furthermore, it proposes new duties on all local authorities, including parish and town councils, to hold referenda on issues in response to petitions from at least 5% of the electorate (although these are proposed to be non-binding); and, perhaps more importantly, it requires referenda to be held (by billing authorities and precepting authorities) if their council tax requirements exceed a level determined as acceptable by the Secretary of State. It also requires local councils to draw up and publish lists of assets of potential community value and grants communities the right to bid for any of interest. Similarly, it empowers voluntary and community bodies, and employees of a principal authority or parish council, to bid to take over any local authority service that it is believed they can run better.

Furthermore, the Bill includes major provisions on planning and housing services. It proposes a number of significant changes to the current planning framework – providing for the much trailed abolition of regional spatial strategies (RSSs). It offers more flexibility to councils to react to the observations and conclusions of the inspectors conducting statutory examinations of their development plans; and in relation to major development schemes, it requires developers to engage in pre-application consultation. It establishes new reporting requirements in relation to local plans; it makes changes to the community infrastructure levy; and it empowers town and parish councils in the planning process by entitling them, or other such body designated as a neighbourhood forum, to require the local planning authority (LPA) to grant planning permission to a particular neighbourhood area, under a Neighbourhood Development Order, subject to a local referendum. It also proposes new powers to LPAs to decline retrospective planning applications once an enforcement order has been served, and introduces new ‘planning control orders’ to be made by a magistrates’ court in cases involving breaches of planning conditions. The Bill also responds to the Government’s pledge to abolish the Infrastructure Planning Committee, established by the preceding New Labour government and transfer responsibility for national infrastructure decisions to the Secretary of State.

On housing, the Bill envisages new powers for local authorities to handle existing tenants’ requests for transfers through separate rules and criteria from those for others (non-tenants). It offers greater flexibility for councils to develop their own housing allocations policies and allows councils to discharge their obligations towards homeless people via private sector tenancies (irrespective of the wishes of the prospective tenants). It also requires each council to produce a tenancy strategy (involving consultation with social landlords) and enables social landlords to introduce fixed tenancies of two or more years instead of for lifetime as at present and to restrict succession rights to spouses and partners. And it provides for the abolition of the Tenant Services Authority (another body only recently established under the previous government). Finally, there are a series of specific (and similar) provisions in relation to London, including the removal of limitations on the Greater London Authority’s general power, provision for more delegation of functions by Ministers to the Mayor of London,

and new powers in relation to financial assistance and discretionary relief from non-domestic rates.

### **Mixed messages?**

As this brief summary of just the main provisions suggests, this is indeed a multi-faceted Bill and one that addresses a range of quite diverse and specific issues across the spectrum of local public policy. It is also a Bill which, while involving significant devolution of powers and responsibilities, for example from principal local authorities to town and parish councils and to communities and citizens, and while freeing councils from several central government controls, as of course its title would suggest, also imposes a number of new requirements on local authorities and it provides the Secretary of State with a range of new powers over these and other local public bodies.

One key provision in the Bill – and one which contrives to represent the decentralisation of power while in practice probably being much more likely to ensure tighter central control, is that which requires billing and precepting authorities to hold referenda on council tax increases that are deemed (by the Secretary of State) to be excessive. Although the regime of council tax capping is to disappear, this new proposal seems likely to provide a similar strait jacket – the cost of organising a referendum alone is likely to be enough to deter most councils from seeking a mandate for spending above the level that the Secretary of State regards as acceptable.

More than this, however, the Bill offers little in the way of relief for local government from its longstanding financial dependence on central government, a circumstance that now stretches back three decades to the Thatcher government of the early 1980s. And this is perhaps surprising given the role of Liberal Democrats within the Coalition Government with their longstanding commitment to the idea of a local income tax as the best means for enhancing financial autonomy for local government (and as indeed was the recommendation of the Layfield Committee, back in 1976).<sup>3</sup>

### **The Bill in context**

It is, of course, possible that the details of the Localism Bill will yet be modified somewhat during its passage through Parliament and it remains to be seen what the final balance of new powers will look like and whether indeed the Localism Act will ultimately be more localist in character and implication than the Bill as it has initially been presented. In any event, however, it is clear that the impact and significance of the eventual powers will be largely shaped by the particular context within which implementation takes place. And for at least the next few years, certainly, this will be a context of severe financial constraint for local government and for the wider public

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<sup>3</sup> The Layfield Committee (1976) *Local Government Finance in Britain*, Report of an Inquiry, London: HMSO

sector. Indeed, many commentators have quickly downplayed the significance of the Localism Bill simply because the austere financial climate would seem to preclude most authorities from doing very much in the way of exploiting whatever freedoms and new opportunities for local action that its clauses might offer. Instead, the priority for most councils will be seeking ways of protecting frontline services and balancing budgets, which ironically, seems more likely to push authorities in the opposite direction from localism – and instead towards the more centralising and standardising initiatives of shared services, joint management arrangements, and mergers for the financial savings they seem likely to offer.

But perhaps that is to take too short-termist and too sceptical a view of what the Localism Bill represents. And certainly, whatever the constraints that current financial stringency creates, it is important to recognise the significance and extent of the Coalition Government's commitment to decentralisation, of which the Localism Bill is just one part. Moreover, this is not of course just a development of the current government. Indeed, movement in the direction of new localism, and indeed specifically towards neighbourhood level initiatives of the kind implied in this Bill, have their roots firmly in the community governance agendas of the previous government. Some of the language may have been changed – for example, the talk is now only of 'decentralisation' rather than also of 'double devolution' as previously, but the purpose and implications of the reforms are hardly different.

What is beginning to look rather different now is the wider policy landscape within which these initiatives are set – and particularly for local authorities, the dramatic announcement of the abolition of the Audit Commission, the scrapping of Comprehensive Area Assessment and of Local Area Agreements and the regime of centrally-driven targets, performance monitoring, assessment and inspection.

This wider landscape of decentralisation and change is usefully summarised in the short publication, *'Decentralisation and the Localism Bill: an essential guide'* (DCLG, 2010) published as an accompaniment to the Bill. Here the Deputy Prime Minister specifically points out in his Foreword, that the Localism Bill is just one part of a decentralisation process that will be on-going over the term of the government, but a part that *'...marks the beginning of a power shift away from central government to the people, families and communities of Britain...'* (p1). The publication also describes the Bill as *'...providing an enduring legislative foundation for a new decentralized Britain...'* (p.1)

The publication also emphasises that decentralisation is not an agenda that is simply confined to DCLG but one that has an impact across government (and for which a cross-governmental ministerial appointment has been specifically created). The particular significance of this publication, however, lies in its outlining of six *'essential actions'* that are proposed to bring about *'...the radical shift of power from the centralised state to local communities...'* (p. 2) and what it describes as the transition *'...from Big Government to Big Society...'*. These actions are defined as follows:

1. Lifting the burden of bureaucracy:
2. Empowering communities to do things their way
3. Increasing local control of public finance
4. Diversifying the supply of public services
5. Opening up government to public scrutiny
6. Strengthening accountability to local people.

### **In summary**

A key test for the Coalition Government, then, will be the extent to which these actions are indeed achieved. On its own, the Localism Bill might seem to offer, at best, limited prospects in this regard, though perhaps, if viewed in conjunction with other DCLG policy initiatives and with some of the priorities of other departments for example, in relation to Free Schools, directly elected Police and Crime Commissioners, the picture looks rather more promising. Especially relevant for local authorities in this wider context, of course, are the announcements to abolish Local Area Agreements, Comprehensive Area Assessment and, most dramatic of all, the Audit Commission – moves that certainly suggest something significant in relation to both Action 1 ('lifting the burden of bureaucracy') and Action 6 ('strengthening accountability to local people' rather than to the centre).

In its own terms, though, the Localism Bill seems, as indicated, something of a 'mixed bag'. While in some respects it offers advances on the localism agenda and frees local authorities from aspects of central control, in others it disappoints because it imposes new requirements and provides new powers for the Secretary of State. Moreover, while the accompanying political rhetoric has presented the Bill as charting new ground for communities and citizens, it is also surely fair to say that a significant amount of what has now been proposed is hardly different from the policy trajectory and pattern of developments that the previous government had latterly been pursuing. For the most part, the provisions reinforce and build on, rather than contradict, the policy path towards 'new localism' that has become steadily more prominent in recent years.

As also indicated, a key difficulty in assessing the significance and likely overall impact of the package of measures is its publication at a time of acute financial stress for the public sector, for local government, for community organizations and of course for communities and citizens also. For the present and immediate few years ahead, it seems unlikely that the new powers and freedoms that the Bill, if enacted, would afford to local authorities, at both principal and local council levels, will be much exploited in practice, not least because of the tight financial constraints that the Treasury and Secretary of State will continue to impose on local public spending. Rather than pushing the financial boundaries by exploiting the new general power of competence, as suggested earlier, councils' search for savings and efficiency gains is much more likely to push them towards larger organisational structures through shared services,

organisational mergers and so on, and with inevitable 'distancing' from local communities – and probably with reductions in numbers of councillors as well as staff. And even the welcome proposal to abolish council tax capping is itself to be 'capped' by the equally controlling proposal for referenda if councils seek to spend more than the Secretary of State determines.

Finally in all this, there remains a key question about how far the journey of decentralisation and localism goes and to what extent government and the public value 'localism', 'the government of difference' and 'post-code responsiveness' (rather than being concerned about 'post-code lotteries'). And is localism to be welcomed just for those public services where local needs clearly differ or where the notion of consumer/community choice seems relatively unproblematic, or might it extend into fields like public health provision or local justice where, in some contrast, the longstanding struggle has been for greater consistency, equality and equity in standards?

In time perhaps, the kind of decentralising developments which the Localism Bill (along with other governmental initiatives) now claims to advance – for example, for more referenda to help decide issues of local significance, for the establishment and empowerment of more neighbourhood forums to represent local communities, and for the devolution of more authority and control from town hall as well as from Whitehall, may indeed come to be regarded as having been highly significant in changing the public policy landscape for the better. Localism is after all 'in vogue' and this Bill is 'running with the tide'! But in the short-term at least, the outlook seems less promising and the combination of tight finances and the various ambiguous or contradictory policy positions within and around the pre-Christmas 'package, may leave more of us wondering than in wonder.

## Community rights to challenge and take over services and to buy public assets

Tony Bovaird

### Introduction and context

The 'Community Rights' agenda is potentially a highly innovative part of the Localism Bill, appearing to break radically with the centralist traditions of British public policy. It is, of course, not entirely new – indeed, part of the clever political calculation behind it builds on the reputation capital of the 'right to buy' which worked so well for the Thatcher administration a generation earlier in relation to council housing. Nor is it a surprise as a Coalition Government policy – it was signalled as part of the Conservative Party electoral manifesto as long ago as November 2009 and is fully in line with the Liberal Democrat tradition of 'community politics'.

While Labour have called into question the 'localist' credentials of parts of the Bill, such criticisms can hardly be made of the 'Community Right to Challenge' and the 'Community Right to Buy'. One has only to compare these provisions to the relatively weak 'community rights' reforms by Labour in its 2006 White Paper and subsequent Local Government and Public Involvement in Health Act, where one of the flagship policies, now largely forgotten, was the so-called 'Community Call to Action', derided even at the time as tangential to changing the power balance between the community and backbench councillors, on the one hand, and the council cabinet and bureaucracy on the other.

It is also important to reserve judgment until we see the final shape of the Act, as approved by Parliament and as implemented at local level. As the LGA<sup>4</sup> has commented, third sector organisations have already got the right to bid for the provision of public services (at least, if they pass certain vendor qualification tests), so that these new rights will only be meaningful if they are backed by a local government procurement system which, in practice, makes it easier for the third sector to bid successfully to make full use of its local expertise in providing the niche services for which it is especially appropriate.

Further, as Hazel Blears has commented<sup>5</sup>, if this Bill simply opens the door for more externalisation, so that large-scale commercial firms end up being the main gainers, and the potential of local niche providers is not realised, then it will not only be seen as an

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<sup>4</sup> LGA (2011), *Localism Bill, Second Reading Debate – LGA Briefing, 17 January 2011*. London: Local Government Association.

<sup>5</sup> [http://www.civilsociety.co.uk/governance/news/content/8086/localism\\_bill\\_passed\\_to\\_public\\_committee](http://www.civilsociety.co.uk/governance/news/content/8086/localism_bill_passed_to_public_committee)

act of trickery but may also result in significantly worse public services than were being delivered previously by the public sector.

## **The proposals**

### ***Community right to challenge and take over services***

This gives the right to voluntary and community groups, social enterprises, parish councils and groups of (at least two) council employees delivering a service, to challenge a council by expressing an interest in running or taking over any service for which they are responsible. The council must demonstrate that it has considered such a challenge and must respond to it. The form of this challenge is not laid down in the Bill, but ministers have indicated that they expect that it may trigger a new procurement exercise for that service, in which the challenging organisation could then make a bid, alongside others. The Government has presented this provision as part of its aim to mobilise the 'Big Society', making greater use of the potential of citizens and third sector organisations.

### ***Community right to buy assets***

Under the Bill, communities will be given the chance to develop bids and raise capital to buy council assets which come up for disposal on the open market. In order to further this right, local authorities will be required to maintain a list of public or private assets of community value, as nominated by their communities. Any asset on this list can only be sold (either as a freehold or as a long leasehold) after a moratorium period has passed, so that the community has sufficient time to put together a bid and find the finance to purchase the asset. The intention is to help local communities to save sites which they feel to be important, with the aim of contributing to tackling social need and building up resources in their neighbourhood.

## **Implications of Community Right to Challenge**

The Community Right to Challenge may indeed encourage a wider range of providers to consider bidding to run council-purchased services. For example, registered housing providers will have the opportunity to support their tenants in bidding to take over local services such as rubbish collection under the Community Right to Challenge. On many estates things like rubbish collection are a constant source of complaint and such a change might well be welcomed by many tenants seeking to improve their environment. While some social landlords will welcome this, those who are providing housing services on contract to the council may, of course, themselves be challenged by tenants, who would then have the opportunity to bid for some of these services<sup>6</sup>.

Moreover, the Bill has the potential to over-ride the rigidities of local geography. The decentralisation minister, Greg Clark, has said the bill will help charities serving 'virtual

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<sup>6</sup> [www.insidehousing.co.uk/need-to-know/legal/build-community-strength/6513154.article](http://www.insidehousing.co.uk/need-to-know/legal/build-community-strength/6513154.article)

communities' (e.g. people with disabilities) that cross council boundaries - they could challenge to provide services across bigger areas.<sup>7</sup> This would, of course, be administratively complex, unless the councils in question were already merging their procurement teams or working closely together – this is certainly happening in many parts of England but is still not the norm. Of course, if over-riding the rigidities of local geography were a major concern for the government, it might have gone much further – e.g. by giving all residents within half a mile of a local authority boundary the right to choose certain services from – or indeed even to register as a resident of - either local authority.

Interestingly, this version of the Community Right to Challenge is not the 'full challenge' which might have been included in the Bill – it appears to exclude groups which are NOT currently running the service, so that it will have much less impact in areas where councils have been slow to externalise services to the third sector. Moreover, it only includes services which the local authority is currently providing, not those which citizens consider they ought to provide, so that it will mean much less to councils which are already 'lean and mean' in the services they provide and will be most significant in councils where there is a large range of service provision. Clearly, there are political implications to this – this provision of the Bill is likely to be most challenging to Labour-controlled councils, particularly those which are having to introduce particularly serious spending cuts (i.e. much of the northern part of England), and may be rather nugatory in Conservative-controlled councils which have low levels of service and are being relatively protected by the grant settlement (i.e. much of the south-eastern part of England).

Indeed, in many respects the Bill does not go as far as it might. This means that it is being presented by some as 'the thin end of the wedge' for community involvement and for more localism in public services, which can later be built upon further. Meanwhile, others, such as the New Local Government Network, have called for a more radical approach, under which 'the right to challenge' would be opened up to apply to the whole public sector, including Whitehall departments and government agencies, e.g. the Work Programme and crime prevention programmes. Community bodies or local authorities could submit an expression of interest where they felt they were able to provide the service at a lower cost or higher quality. NLGN Director Simon Parker has commented: 'Ministers should not have one rule for councils and another for their own departments'.<sup>8</sup> NLGN also argues that the Bill only covers policy within CLG's remit, with a strong emphasis on planning and housing – it does nothing to integrate localism across the rest of public services in England. Current reform programmes in Health, DWP and Education do not appear to have localist principles at their heart – the Community Right to Challenge should be extended to all these areas, too.

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<sup>7</sup> [www.thirdsector.co.uk/channels/Governance/Article/1049403/Consultation-Localism-Bill-within-weeks](http://www.thirdsector.co.uk/channels/Governance/Article/1049403/Consultation-Localism-Bill-within-weeks)

<sup>8</sup> [www.publicnet.co.uk/news/2011/01/18/call-to-make-localism-bill-more-radical/](http://www.publicnet.co.uk/news/2011/01/18/call-to-make-localism-bill-more-radical/)

As in so many parts of the Bill, there are conditions attached to the 'local' nature of the Community Right to Challenge. In fact, the community may NOT have the right to challenge, as the Secretary of State may choose to exclude certain services. Moreover, the 'community bodies' which have the right to challenge are explained as anybody which carries on its activities primarily for the benefit of the community, but this may therefore exclude some organisations which, in spite of very active community intervention, have a core business which does not meet this criterion, e.g. many registered social landlords. As the Bill does not restrict the Community Right to Challenge to bodies which are set up in the area of the council concerned, it is also possible that bodies which are largely driven by interests in other council areas (even other parts of the country) may issue this challenge and seek to take over local services. While not necessarily a problem in itself, this rather undermines the description of 'Community Right to Challenge' – it might more appropriately be called a 'Third Sector and Public Sector Staff Right to Challenge'.

After the expression of interest, the council will be under a duty either to accept or reject it. Rejection can only be on limited grounds, set out in regulations made by the Secretary of State. The local authority will be required to consider whether the challenge, if successful, would promote or improve the social, economic or environmental well being of the authority's area. However, there is a clear potential here for conflict of interest, since a council is likely to consider that its current services and decisions are already promoting and improving the well being of the area.

While third sector organisations in the local area are likely to see themselves as well placed to make a bid to run these services, because of their close knowledge of local needs, opportunities and potential resources, there are current pressures on councils to decrease their procurement costs, e.g. by making contracts larger, increasing the length of contracts and passing on higher risks to contractors. The Government's Green Paper on *Modernising Commissioning*<sup>9</sup> hints at these pressures, all of which are likely to impose major disadvantages on small local third sector organisations seeking to bid to provide public services, but the Green Paper does not commit to taking any steps to counteract them, nor does the Localism Bill contain any provisions which would help. Moves toward more consolidated procurement would be likely to greatly weaken the importance of the Community Right to Challenge in practice.

The full implications of the Community Right to Challenge will only be evident when we see how councils choose to respond to community challenges and what guidance is given by the Secretary of State in relation to such responses. The Bill does not set out the conditions which will determine whether or not a procurement exercise is initiated, and this will be a critical factor in determining how much change is actually instigated by

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<sup>9</sup> Cabinet Office (2010), *Modernising Commissioning: Increasing the role of charities, social enterprises, mutuals and cooperatives in public service delivery*. London: Cabinet Office.

this provision of the Bill. Nor does the Bill entitle those making the challenge – e.g. residents, tenants or service users – to be involved in the design of any service specification which is put out to tender, which again blunts the intent behind this provision.

It may be that some councils will respond to community challenges by setting up a leaner version of a Best Value Review. This would enable the council to determine whether to market test the service or, if it is already externalised, how to tender it when the contract next becomes due. Such an approach would be thorough and would allow the third sector a full opportunity to bid to play a role in services – but it would, of course, be expensive.

Clearly, such a thorough approach is likely to be unusual. Where the council is not minded to externalise the service, the cards are stacked in its favour, even if the community challenge is well thought out and passionately pursued. The asymmetry of information means that would-be external bidders are relatively easy to fob off – as was clearly demonstrated under the Best Value regime. Where the council is open to externalisation, the procurement process will favour larger, well-resourced and experienced providers. This will put community groups, parent groups, user groups, etc. at a very significant disadvantage.

At the very least, the Bill will remove some barriers to civil society getting involved in service commissioning and delivery – getting onto the tender list for council services has often been a major barrier. However, the potential to bid successfully to run a service will clearly depend on the capacity of the third sector, which is quite patchy across services and across geographical areas.<sup>10</sup> The sector will therefore require support, advice and even, in some cases, significant financial investment – this is not a ‘resource-free’ initiative. Will the loss of funding, including seed funding, undermine the ability of voluntary and community groups to participate in this agenda – or will this agenda actually serve to rejuvenate community groups, as Eric Pickles has argued?

In particular, the government needs to consider the danger that cuts to advocacy and advice organisations and legal aid will seriously reduce the ability of marginalised and vulnerable people to use the new right to challenge. A joined up government would not give rights with one hand, and remove the means to use them with the other.

Part of the infrastructure which will be essential to making practical the right to challenge will involve appropriate risk management and insurance frameworks – Paul Emery of Zurich Municipal has cited a survey which suggested that twice as many people thought that councils should retain responsibility for delivering public services as thought that local people should have more responsibility for them and commented

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<sup>10</sup> Bovaird, T., Coleman, L., Hands, D., Hems, L., Muldoon, S., Taylor, S. and Costello, M. (2010), *Evaluation of ChangeUp: Summative Evaluation Report for Capacitybuilders*. London: Capacitybuilders.

that ‘... it’s highly unlikely that more people will come forward to run services, set up their own schools or volunteer with a local charity if they think that there will be some personal risk to them.’<sup>11</sup>

Moreover, there tends to be a ‘life cycle’ phenomenon in both service provision and in the level of activism and innovation displayed by third sector organisations. Consequently, we can expect that even enthusiastic and capable community groups and social enterprises that succeed in winning contracts for public service will eventually experience rocky times, as they seek to keep services in line with changing needs and aligned with an ever-changing constellation of other services, with which they need to join up. As Stuart Etherington has pointed out, local Compacts are likely to be particularly important in protecting the third sector when relationships between local government and communities don’t work out.

### **Implications of community right to buy assets**

The principles and potential benefits of community ownership and management of public sector assets were thoroughly analysed in the Quirk Review for CLG.<sup>12</sup> Since then, there has been a round of reviews in local government, usually in close liaison with the local third sector, to explore the potential for change. While welcome, these reviews have often been slow, cumbersome and short on action. It is therefore welcome that the government wishes to inject some more speed and dynamism into this process. However, the proposals in the Bill are disappointingly thin and do not address the three core issues. First, the importance of keeping distinct the ownership of public assets and the use of public assets has not been thought through. Second, this is a ‘small place’ Bill, not a ‘Total Place’ Bill – and the connections between these two agendas is almost invisible. Thirdly, there is little consideration of the role of community assets in the economic development/city competitiveness agenda, although this is meant to have a high priority in Treasury thinking about the role of the public sector.

The populist potential of this agenda is clear. Conservative shadow ministers for some years have campaigned for residents to have the right to take over post offices, libraries, swimming pools or pubs threatened with closure. There is no doubt about the public appeal of this argument, especially in a context where more than 5,000 post offices, 3,500 pubs and 200 public libraries have closed in the last decade or so. While some of these assets are publicly owned, some are privately owned, which hints at the potentially radical nature of these provisions.

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<sup>11</sup> [www.civilsociety.co.uk/governance/news/content/7949/localism\\_bill\\_will\\_remove\\_barriers\\_for\\_civil\\_society](http://www.civilsociety.co.uk/governance/news/content/7949/localism_bill_will_remove_barriers_for_civil_society).

<sup>12</sup> Quirk, Barry (2007), *Making assets work: The Quirk Review of community management and ownership of public assets*. London: Communities and Local Government.

This appeal is all the stronger when it is suggested, as in a Daily Mail article in 2009 at the time of the launch of this Conservative policy, that the community right to buy would also give parents' associations, church groups or other non-profit voluntary groups 'the power to bid to take over playgrounds, parks, sports fields and even schools if they believe local authorities that run them are performing badly' and that such groups will have 'first refusal on buying public assets that are being closed down and the right to a fair price if they do'.<sup>13</sup> However, it has not been easy to give effect to such promises and the Bill falls short in this respect. It may therefore disappoint and even antagonise community groups which it had hoped to get on-side.

In terms of the detail of the Bill, it is fascinating to see that a 'Localism' Bill is so rich in new powers for the Secretary of State. As the LGA (2011) has pointed out, this section of the Bill includes ten powers for the Secretary of State to make regulations, including on how long assets stay on the list, how owners of assets should be notified, and on what constitutes a 'land of community value'. The LGA goes on to argue that these decisions should, in the spirit of localism, be made at the local level, not by the Secretary of State, so they should be deleted from the Bill.

#### ***Ownership v. management of public assets***

There is now little dissent from the notion that public assets will often be more cost-effectively managed when the management is vested in the community in which they are located. However, there is much more debate about whether ownership should also be vested in the voluntary and community organisations which do the management. On the one hand is a set of arguments that asset ownership increases both the power and stability of a third sector organisation, and is likely to increase the incentives to use the assets well. Moreover, it has a symbolic effect in giving communities a sense of ownership in their place. On the other side, there is a contrary argument that there is a danger that community organizations may not be open and inclusive in giving access to the assets they take over, using them simply to meet their own (relatively narrow) purposes.

Even more worrying, as in the case of the Community Right to Challenge, there are implications from the 'life cycle' phenomenon which tends to characterise the vitality of third sector organisations and also the condition and functionality of assets. We can expect that even highly enthusiastic and capable community groups, may lose energy, become exclusive in their attitude to community use or find that the assets in question become of limited functional value or too expensive to maintain. Consequently, there is a strong argument for ownership NOT to be vested in a specific third sector organisation. Given that public sector organisations have also had an unimpressive record in sharing and maintaining public assets, a more radical approach is needed, which combines pressure for more intense use of assets with a more coherent pursuit of

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<sup>13</sup> [www.dailymail.co.uk/news/article-1229428/Tories-offer-residents-community-right-buy.html#ixzz1BPtO1cyh](http://www.dailymail.co.uk/news/article-1229428/Tories-offer-residents-community-right-buy.html#ixzz1BPtO1cyh)

the overall public interest, rather than the interest of one specific organisation, whether in public or third sector.

***'Small Place' v. 'Total Place'***

'Total Place' as a concept may have disappeared, to be replaced by the vague and uninspiring concept of 'community budgets', but the notion of integrating all public interventions in one place is still alive and well, according to the government. However, one would not get this impression from the Localism Bill. In particular, the proposals for the Community Right to Buy are likely to lead to much greater fragmentation of public assets and make it significantly harder to implement a long-term coherent asset strategy for an area.

A more appropriate approach, more consistent with the overall purpose of the Localism Bill, would be to vest all public assets within a local authority area (either at upper or lower tier level) in a Community Trust, to be managed locally under a Board of Trustees elected by local people. This proposal, which was made in the Birmingham Total Place reports to HM Treasury in early 2010, would be likely to result in a much more coherent and intensive use of public assets in each area and open up assets to all community groups who could make a proper case to have access to them, without running the risk of ossifying the ownership of assets in organisations which later turn out to be inappropriate.

Moreover, it is important to ask: 'The Community Right to Buy for whom?' Where the asset is owned by a local authority that is strapped for cash and not maintaining it properly, a major registered social landlord in the area might well encourage tenants to exercise the 'Community Right to Buy'. The RSL would be the major beneficiary of the deal, if it became the manager of the asset and could reflect the improved state of the asset in its housing rents. This could lead to the capture of public value for special interests on a grand scale.

Moreover, as with the Community Right to Challenge, there has been a failure of nerve on the government's part. During the debate on the Second Reading of the Bill in Parliament, Conservative MP for Dover, Charlie Elphicke, challenged the government to extend the Community Right to Buy even further, so that it covered not only local authority assets but also central government assets in their area. He gave the example of the port of Dover and suggested that people in other constituencies might want to buy their forests and other such community assets. Having ignored this possibility in drafting the bill, the government backtracked and promised to consider this suggestion. Again, the alternative of a national Community Trust for nationally important assets, supervised by elected Trustees, in which all public sector assets could be vested, and then leased out to government agencies at an economic rent, does not appear to have been considered

***Economic development and city competitiveness roles of public assets***

Given the emphasis by this government on economic development, as instanced by their scramble to get Local Enterprise Partnerships up and running, it is surprising that the implications of the Community Right to Buy for city competitiveness has not been considered.

The government has emphasised from the moment of taking office that its central task is deficit reduction. However, debt alone is not a significant economic indicator - it has to be seen in the context of the assets which can be offset against that debt. In the UK, public sector assets, as valued under resource accounting protocols, offset well over half of the public debt, and most of those assets are in local government and local public agencies, located in the major UK cities. Targeted investment in those assets during the next five years is likely to speed up the growth of the UK private sector, while under-investment in those assets may damage long-term UK growth prospects. Putting in place a framework where future asset investment by the public sector is unlikely to occur, because those assets can subsequently be taken over by community groups for purposes over which the public sector will ultimately have little control, seems high risk and a prime example of unthinking short-termism, which is likely to undermine the government's overall strategy.

## More localism means more empowered communities?

Robert Dalziel

### Introduction

The Conservative and Liberal Democrat coalition government's Localism Bill, published on 13 December 2010, is a bulky and formidable document. It includes details on the ways that the delegation of power to communities and increased involvement of citizens in decision-making, on issues that affect them or the place where they live, will be achieved. The Bill, in large part, builds on community involvement and empowerment policies that were introduced by the New Labour Government, as part of a new brand of 'third way' politics that sought to deal with worst excesses of a relatively unfettered free market. The purpose of this focus on collective action at the local level was to deal with complex social problems.<sup>14</sup> The Bill will have significant implications for the development of the type of 'Big Society' that David Cameron, the Prime Minister, described at a meeting held in Liverpool on 19 July 2010.<sup>15</sup> At the same time, the Coalition Government is committed to having a much smaller role for the state in the provision of services at a national and local level.

Meanwhile, there is the dominance of a relatively laissez-faire, free market political mindset to contend with at national government level. Nevertheless, in recent times there has been a significant upsurge in protests against the impacts of global financial crisis on ordinary people's lives in the United Kingdom (2008), Greece (2008), Iceland (2009), Ireland (2009) and France (2010). A key issue for decentralisation and localism is the extent to which the Government's views of community and community empowerment reflect the real interests of citizens and can be achieved at a time when massive cuts in public expenditure are impacting adversely on communities and ordinary people's lives. Some of the significant pressures that disproportionately affect people on lower incomes include a rise in Value Added Tax (VAT) from 17.5 to 20 per cent and higher food, utility and petrol costs combined with Retail Price Index (RPI)

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<sup>14</sup> Partnership and collaborative working are key components of the third way politics developed by the sociologist Anthony Giddens that were adopted by New Labour and focus on trying to deal effectively with the inefficiencies of bureaucracy and the inequity of some market solutions to social problems (Giddens, A, (1998) *The Third Way: the Renewal of Social Democracy*, Polity Press).

<sup>15</sup> The prime minister said groups should be able to run post offices, libraries, transport services and shape housing projects. These schemes and others in the future would represent "the biggest, most dramatic redistribution of power from elites in Whitehall to the man and woman on the street". There were plans to encourage more volunteering and use funds from dormant bank accounts to enable voluntary and community sector organizations to take control of running public services.

inflation running at 4.7 per cent and wages that are not rising at all or by considerably less than inflation. In such circumstances, talk of decentralisation, localism and community empowerment will ring hollow in many communities and neighbourhoods amongst an increasing number of citizens who find it difficult to make ends meet never mind participate in civic life.

Ultimately, much of the Government's rhetoric on decentralisation and localism might simply be about how communities and citizens can get involved in helping to run services at the local level, rather than about influencing how institutions work and enable or constrain opportunities for community and citizen development and prosperity. As Chomsky (1997, p.91) says '*Freedom without opportunity is the devil's gift, and the refusal to provide such opportunities is criminal*'.<sup>16</sup> The Bill proposes a range of new freedoms or powers that will allow communities and citizens to challenge local authority policies and plans for services and an area (see Chapter 2). There does not seem to be much scope for communities to challenge and change well established overarching economic and social structures that cause a large number of citizens to experience disadvantage in society. Central government and other powerful stakeholders are likely to retain and even increase the power that they have to determine high level strategic economic and social policy. Meanwhile, many communities and citizens will continue to be adversely affected by high levels of unemployment (especially youth and long term), increased levels of income inequality and child poverty, insufficient social mobility, and the inadequate provision of suitable opportunities to get involved in civic life and challenge or change established values, beliefs and ways of working.

Given the economic and social circumstances that have been described, what will the future hold for the Localism Bill and community empowerment? There is a strong possibility that progress will be made in helping relatively resource rich communities and citizens get more involved in political life and influencing what happens in an area whilst many disadvantaged communities and citizens become more disadvantaged as a result of the uneven effects of massive public spending cuts. At the same time, a question arises about the extent to which voluntary and community sector organizations can fill any gaps in service provision at the local level when the resources that they receive from central and local government are declining? The following sections examine what the Bill says about communities and their empowerment, the possibilities for successful implementation of community empowerment policy, some of the key factors that could hinder community empowerment and some views on a more radical approach that would help translate the rhetoric on decentralisation and localism into genuine community and citizen empowerment on the ground.

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<sup>16</sup> Chomsky, N. (1999) *Profit Over People*, New York: Seven Stories Press, p. 91-92.

### **Community empowerment: what the Bill says**

The Localism Bill contains a number of specific details about community empowerment. In Chapter One of the Bill it is proposed that local referenda will give citizens, councillors and councils the power to instigate a local referendum on any local issue. Although these referenda will be non-binding, local authorities and other public authorities will be required to take the outcomes into account in decision making. In Chapter Two it is proposed that citizens are given the right to veto excessive council tax rises. This would mean that any local, police or fire authorities and larger parishes setting an increase above a threshold proposed by the Secretary of State and approved by the House of Commons would trigger a referendum of all registered electors in their area. In Chapter Three a community right to challenge is outlined, which would enable voluntary and community organisations or groups, parish councils and public sector employees delivering a service to express an interest in running a local authority service. Where it accepts an expression of interest, the local authority must carry out a procurement exercise for that service. Finally, in Chapter Four, details about a community right to buy are set out which provides an opportunity for local community groups to bid to buy buildings or land which are listed, by the local authority, as assets of community value (see Chapter 2).

### **Possibilities and potential pitfalls**

Conversations about decentralisation, localism and community empowerment must take account of the reality of an increasingly globalised world where the activities of nations and corporations are becoming ever more intimately and intricately interconnected. Importantly, in this globalised world there can still be a place for the type of 'big' national government that provides a strong lead in helping to create an environment in which communities and citizens are better protected from the worst effects of financial crisis and economic downturn and are effectively involved in helping to determine what happens in an area. Many communities and citizens will welcome the opportunity to question a proposed rise in council tax and even prevent it from happening. Certainly the issue of council tax levels and how they are calculated are often the subject of much controversy and extensively reported on by the local and sometimes national media (albeit frequently in superficial and overly inflammatory ways). In turn, communities and citizens could use the right to challenge the local authority over the way that services are developed and delivered and to push for change in the way that they are provided in the future. At the same time, a wide range of voluntary and community-based organizations could have more influence over the way that services are procured and delivered and have the capacity to provide more services themselves. Alternatively, if communities are able to put pressure on a local authority to hold a referendum on an important issue that affects citizens this might help them to demonstrate their feelings through the number of citizens voting in favour or against. Finally, the community right to buy has the potential to open up new opportunities for communities to take control of different types of community facility in an area and run them in ways that more closely meet the needs of local citizens.

However, there are too many communities and citizens that lack the resources and capacity needed to get more involved in local debates and politics. A failure to recognise the implications of this state of affairs for the success of proposed involvement initiatives is reflected in the Localism Bill. It is a weakness that means it will be difficult for the Bill, when enacted, to succeed in delivering key aspects of the community empowerment agenda. For example, the absence of any in-depth consideration of the ways in which different structural factors impact positively or negatively on opportunities to build community capacity and improve citizen's involvement in civic life, does not bode well for significant and sustainable community empowerment.

Analysis of income inequality and poverty in countries belonging to the Organisation for Economic Cooperation and Development (OECD) in 2008 shows that the UK is performing badly on measures of equality. The wage gap between the richest and poorest has widened by 20 per cent since 1985 and 39 per cent of the increase in income over a ten year period has gone to the top income decile with the whole of the lower half of income distribution getting only a fifth of the extra income generated.<sup>17</sup> Meanwhile, levels of 'deep' poverty, (the number of persons living on incomes below 40 per cent of the median – less than £195 per week in April 2009), rose from 4.9 million in 1996/7 to 5.8 million in 2008/09.<sup>18</sup> Unemployment was more than 500,000 higher in 2009/10 than 2008/09 with rates among young adults (under 25) up from 14 per cent in 1997 to almost 20 per cent in first half of 2010. In total 13.1 million people were living in low income households in 2008/09 and child poverty had been above 15 per cent in every year since 1982 with a total of 2.9 million children living in poverty in 2006-07.<sup>19</sup>

In 2011, and for a number of years thereafter, there are likely to be adverse impacts on levels of service provision and citizens' quality of life in many areas caused by the 2008 global financial crisis, subsequent public spending cuts, and increases in the cost of living. A New Local Government Network (NLGN) analysis shows that the most deprived areas have been hit hardest by the coalition government's finance settlement for local government in 2010/11. For example, the severely disadvantaged boroughs of Hackney, Tower Hamlets, and Newham take the maximum cut of 8.9 per cent in their budgets whilst the much more prosperous boroughs of Richmond upon Thames and Windsor and Maidenhead get cuts of 1 per cent in their budgets.<sup>20</sup> At the same time, voluntary sector organization leaders are extremely worried about the future with 42 per cent of respondents to a National Council for Voluntary Organizations (NCVO) survey reporting

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<sup>17</sup> *Growing Unequal? Income Distribution and Poverty in OECD Countries*, OECD Publishing, 2008.

<sup>18</sup> Parekh, A., MacInnes, T., and Kenway, P. (2010) *Monitoring Poverty and Social Exclusion 2010*, Joseph Rowntree Foundation.

<sup>19</sup> Ibid.

<sup>20</sup> New Local Government Network (NLGN) „Poorest areas hit hardest by finance settlement', December 13, 2010, accessed at: [www.nlgn.org.uk/public/2010/poorest-areas-hit-hardest-by-finance-settlement](http://www.nlgn.org.uk/public/2010/poorest-areas-hit-hardest-by-finance-settlement)

that the financial situation for their organization had worsened in 2010 and 69 per cent saying that the financial situation for their organization was likely to worsen.<sup>21</sup> Such comments do not bode well for the sector's capacity to fill an increasing number of gaps in service provision created by cuts in public spending or their ability to help disadvantaged communities make a contribution to civic life in the way that they might want to.

### **A more radical option**

It is possible to envisage a much more radical take on community empowerment than the one which is promoted in the Localism Bill – largely a traditional type of community empowerment that mainly focuses on improving services and citizen involvement in local decision making on issues that affect them or the area in which they live. However, community empowerment could include capacity building that enables citizens to obtain the power, resources, and information that is needed to transform pivotal relationships between central government and communities. In particular, communities could have not only new freedoms to challenge policy but real opportunities to get involved in the formulation of high level strategic policy on a wide range of matters including finance, taxation, housing, employment, health, and welfare. In such a situation, radical and sustainable community empowerment would be about much more than simply increased involvement in organising referenda, taking over control of facilities, and running services. A government can use various tactics of persuasion and reward to obtain backing for its policies and maintain important aspects the status quo including dominant values and beliefs.<sup>22</sup> Nevertheless, it is possible to believe that places can be changed so that every community is freed from the often devastating impacts that living on a low income, long term unemployment, substandard housing conditions, educational under-achievement, and poor health have on citizens' quality of life. To achieve this type of change, community empowerment needs to be much less about central government efforts to find new ways to accommodate conflict and dissent that limits their impact on established institutions and ways of working and more about dismantling the barriers that prevent effective local action to transform communities and citizens lives.

A more radical option for community empowerment would involve changing enduring features of a dominant culture of government that make it difficult for communities and citizens to develop effective capacity to express their views and challenge the policies or decisions of powerful institutions and organisations. For example, work could be done to deal with the problem of central government creating community empowerment opportunities that are heavily prescribed by its own priorities, rather than by community priorities. Too often responsibilities for choosing from a limited range of

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<sup>21</sup> National Council for Voluntary Organisations (NCVO) „Charity forecast survey', December 2010, accessed at: [www.ncvo-vol.org.uk/charity-forecast-survey](http://www.ncvo-vol.org.uk/charity-forecast-survey)

<sup>22</sup> Foucault, M. (1978) „Governmentality', in Burchell, G., Gordon, C. and Miller, P. (eds) (1991) *The Foucault Effect: Studies in Governmentality*, Harvester Wheatsheaf.

central government approved options, are given to communities and citizens, whilst real power and control over financial and strategic policy matters is retained at the centre.<sup>23</sup> Power can also operate in subtle or even invisible ways. There can be latent conflict between the interests of those exercising power and the real interests of those they exclude.<sup>24</sup> It is the political and social context in which power operates that determines whether particular practices continue to be privileged over others<sup>25</sup> and the extent to which citizens embrace (or not) dominant institutional ideas and ways of working.<sup>26</sup> What is needed is some new and robust set of mechanisms that allow communities and citizens to more easily challenge institutions, ideologies and pre-conceived notions of what is impractical or unworkable.

What is absent in much of the central government literature on community empowerment is any in-depth discussion of the role of institutions and structures in influencing or determining the type of top-down and bottom-up relations that exist between central government and communities. For example there are the unwritten institutional rules that underpin the operation of the game<sup>27</sup>, and the institutionalisation of conflict that involves the unspoken adoption of key assumptions<sup>28</sup> about what values and beliefs are important and relevant and how different types of knowledge and experience should be acknowledged and influential. The legitimacy of other forms of pressure on government including petitions, lawful demonstrations, boycotts, withholding rent or tax and strikes is sometimes overlooked or downplayed in new governance structures.<sup>29</sup> There is a need to reflect on the desirability of creating more opportunities for real autonomous community and citizen action.<sup>30</sup>

### **And finally ...**

In essence, truly transformative community empowerment policies will have to find constructive ways to respond to an upwelling of anger and protest against the worsening situation that already disadvantaged communities will find themselves in over the next few years. Shulamith Firestone said that '*Power however it has evolved, whatever its origins, will not be given up without a struggle.*'<sup>31</sup> In time it will be possible to assess the extent to which the Localism Bill has helped communities and citizens to

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<sup>23</sup> Taylor, M. (2007) 'Community Participation in the Real World: Opportunities and Pitfalls in New Governance Spaces', *Urban Studies*, Vol.44, No.2, pp.297-317.

<sup>24</sup> Lukes, S. (1974) *Power: A Radical View*, Basingstoke: The Macmillan Press Ltd.

<sup>25</sup> Clegg, S.R. (1989) *Frameworks of Power*, London: Sage Publications Ltd.

<sup>26</sup> Althusser, L. (1971) 'Ideology and Ideological State Apparatuses', in Althusser, L. (Ed.), *Lenin and Philosophy and other Essays*, New York: Monthly Review Press.

<sup>27</sup> Taylor, M. (2003) *Public Policy in the Community*, Basingstoke: Palgrave

<sup>28</sup> Westergaard, J. and Resler, H. (1975) 'Class in a capitalist society', London: Heinemann Educational.

<sup>29</sup> Della-Porta, D. and Diani, M. (1999) 'Social Movements: An Introduction', Oxford: Blackwell.

<sup>30</sup> Mouffe, C. (2005) *On the political*, London: Routledge.

<sup>31</sup> Firestone, S. (1970) *The Dialectics of Sex: The Case for Feminist Revolution*, New York: Morrow Quill Paperbacks.

gain the capacity and resources that they need to sustain a successful campaign that changes institutions and delivers real power and control over what happens in their area.

## **'Localism' – a better future for parish and town councils or a hostage to fortune?**

**Ian Briggs**

### **Introduction**

The Localism Bill draws together some of the policy themes pursued by both the Conservative and Liberal Democrat parties prior to the 2010 general election. Much has been made of the Conservative notion of the 'Big Society' – a phrase reminiscent of the 1970's 'small government' political philosophy promoted by Osbourne and Gaebler<sup>32</sup> in the USA and actively pursued by President Reagan and followed, to some extent, in the UK by the Thatcher government. Thatcher's minister for local government and the environment, Nicholas Ridley encapsulated this approach in his famous but often misquoted critique of local government as a 'body that meets once a year to open the tenders and then has a good lunch' reflecting the desire to remove burdensome and expensive bureaucracy from local services.

There is a place within this overarching policy for the parish and town council. Often overlooked as part of the wider fabric of local democracy, the parish and town council is often characterised as 'parish pump' politics, as portrayed in the Vicar of Dibley. There are, in fact, more than five hundred town and parish councils in England and it would be unfair to characterise them all as small and lacking in democratic significance. However, the electoral and democratic standards which are required of higher tier local government in the UK are not always manifest in town and parish councils. Not all parish councillors are elected. Many are simply co opted by existing parish councillors and even where there are elections, in many areas, local parish councillors are returned unopposed.

Town and parish councils fall into four broad types:

- The larger town council that has taken on significant service delivery and local decision making processes from higher tier local authorities
- The active and fully elected town or parish council
- The active but unelected town and parish council
- The moribund town or parish council, where there is no active council in operation.

### **What is the potential for parish and town councils in the localism agenda?**

Because parish and town councils are less than heterogeneous, it is likely that the opportunities presented by the localism agenda will be received differently by each type

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<sup>32</sup> Osbourne.D. and Gaebler,T, *Reinventing Government* 1992 Adison-Wesley Publishing.

of council. The local nature of town and parish councils is a great strength but it can also be a weakness. Parish councils can be very introspective and focus only upon a narrow range of local issues. At worst, some parish councils can be obsessed with a small number of local issues and see no role for themselves in the wider strategic issues which have an impact on their residents. There is certainly anecdotal evidence to suggest that many parish and town councils tend to deal with the most apparent and urgent issues as their priorities and find it harder to have a strategic view.

However, there are examples where parish councils do play a role, in partnership with other tiers, in more strategic issues. For example, it is not unusual for many parish and town councils, especially those that have attained 'Quality Council' status to have a role in local planning decisions. In many cases there is a concordat between the principal planning authority and the parish council that devolved decisions on local planning will usually be taken at the parish council level and supported by the district council.

For the most advanced of parish and town councils the Localism Bill may provide opportunities to engage with local communities in a way that few have achieved to date. Indeed many of the more engaged local parish and town councils will see 'localism' as vindication of their ambitions to represent their communities in a way that they perceive higher tier councils are unable to do. But if the higher tier councils have found it hard to represent communities it may be that is because of the diverse nature of those communities. Also, the lack of resources at all levels of local government means there is a risk that the localism agenda will create expectations in smaller communities that cannot be satisfied. Having a stronger local voice does not mean that new facilities and capital investment will necessarily follow.

### **New localism and engagement with the public**

Parish and town councils meet monthly and for many this is the only formal business that the parish undertakes. For some, working parties and delegated sub groups meet more frequently. However, although town and parish councils are close to the community it does not always follow that they are better engaged with the public. Engagement with the public can be limited for many parish and town councils. Their agendas usually call for representations from members of the public but few local residents tend to turn up to council meetings in many places unless there is a locally emotive issue on the agenda.

Since 2003 many town and parish councils, as part of the Quality Council initiative, have produced a Parish Plan, setting out local priorities. However, few parish councils undertake comprehensive community surveys because of the expense and the level of expertise required. Parish and town councils are required to have an annual parish meeting which does provide an opportunity for the community to come together to debate local issues and priorities but it may not be well attended and may be dominated by a small group of local residents focusing on a particular local issue. The experience of

the local policing PACT meetings, - 'police and community together', is that the same few issues dominate, such as nuisance behaviour on the part of young people, speeding motorists and littering. Rarely does a more strategic view of priorities emerge.

Many parish and town councillors are not themselves well informed about the levels of responsibility and division of accountabilities of other authorities and service providers. Although need for effective parish and town councils has never been greater than under the localism agenda, real capacity to deal with complex issues and to engage effectively with communities is lacking for many town and parish councils. They have been so much of a 'Cinderella' in local democracy that research into their role and functions and the impact they have on communities is sparse. Therefore any assumption that local public engagement will be enhanced through a revitalisation of local democracy may be something that appeals to policy makers but in practice may be very difficult to achieve.

### **Democratic representation and parish and town councils**

Parish and town elections are usually held at the same time as those for higher tier authorities and this has increased the turnout for elections for parish councils. However, as parish and town councils have powers to co opt when required and because of the non party and usually non political nature of the parish and town council, few councillors are elected upon a political ticket. In many larger town councils, however, the politics tend to be more overt and councillors are more likely to be divided upon party political lines.

If the local representative role is to become more important then we need to be careful about the ethical behaviour standards of those representatives. The experience of the Standards Board, which had to deal with large numbers of complaints about parish and town councillors, often made by their fellow councillors, was that many were trivial or even vexatious.<sup>33</sup> However, the Localism Bill removes the requirement to have a code of practice and the Standards Board is being abolished (see Chapter 9). What new checks and balances will be in place to ensure that town and parish council members act ethically?

### **Local land and housing trusts and other forms of local action**

One key issue in the Localism Bill is the 'open door' for local groups to take responsibility for maintaining locally important services (see Chapter 2). Much is made of the closure of local shops, post offices and pubs that are the lifeblood of many local communities. However, few parish and town councils are currently taking active steps to assume

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<sup>33</sup> Macauley, M and Lawton, A. 2006. „Changing the Standards? Assessing the Impact of the Committee for Standards in Public Life on Local Government in England', *Parliamentary Affairs*. Vol 59 (3). 474-490

responsibility for such local services. It can be argued that for most town and parish councils the risks of taking them on outweigh the benefits.

There are a growing number of successful cases of local land and development trusts taking on the management of local services and in many cases town and parish councils have played a key role in their success. However, such trusts do potentially take some of these key activities out of direct democratic control and questions must be asked about whether this is ultimately desirable. Although the bill clearly targets and encourages local control of local services it is not as yet clear what role is intended for parish and town councils. Some of the larger town councils potentially have both the resources and the capacity to encourage the establishment of such trusts but questions remain over the ability of smaller, less active parishes to take on such a role.

### **Parish and town councils and economies of scale in provision**

For some years there has been a question over how effectively certain local services have been provided when general rules of economic provision have been applied. If the gross budget of many parish and town councils is significantly less than £100,000 and many cases much lower, are local communities getting the best value for money for many services such as grounds maintenance and grass cutting? Some town and parish councils have learned that joined up budgeting and procurement can deliver significant savings but to date few have sought to work in this way. Taking on a client management role may well be too burdensome for most parish clerks.

### **Parish councils and higher tier authorities**

Perhaps one of the remaining questions to be answered in the localism agenda is the ways that relationships should work between higher tier councils and parish and town councils. Some district and unitary councils seem to work exceptionally well with their parishes, but there are also well documented cases of poor relationships between parishes and higher tier councils. The differences that sometimes exist between parish and town councils and district and county councils are more surprising when you consider that, in many cases, councillors sit sometimes not just on the county and the district but also on their local parish council. It is not unusual to find that where parish councillors are elected that they stand on different political tickets at the most local level, usually, but not exclusively as independents. This can lead to tensions within party groups especially where parish councils have the responsibility for planning approvals and in local social housing allocations. On the plus side local councillors can engage differently with issues when sitting as non aligned local community representatives and can add strategic arguments and perspectives to issues that otherwise might be considered to be highly parochial. Nowhere in the Localism Bill is this difference of interest referred to but if local engagement is to be fully exploited, then many councils at district and county level will have to rethink their approaches to local parish and town councils. All this begs the question where are the resources going to come from? In

some localities that are heavily parished, the burden on higher tier councils to engage in an appropriate way with town and parish councils will have to be carefully worked through. There will also be a need to invest in councillor development for local parish and town councils to an extent that has not hitherto been seen as necessary.

### **Localism, regionalism and the role of parish and town councils**

From the start of 2010 and the election of the Coalition Government we have seen a rapid dismantling of many regional and sub regional bodies and their roles either subsumed into national government or passed down to local authorities. This may increase the numbers of those who are consulted on regional issues but from the perspective of the parish and town council there is a question about how skilled and well resourced they are in using their voice. An example of this may be the ongoing debate about the proposed high speed rail route through the Chilterns and the West Midlands to Birmingham. Recent experience suggests that many town and parish councils along the proposed route are being to work with the many pressure groups opposing the development. The National Association of Local Councils, NALC, the national body representing many but not all parish and town councils, has worked with some effect to coordinate the roles of the parish councils but such issues as HS2 highlight the need for more effective interconnectivity between parishes.

### **Conclusion**

It is impossible to think of the Localism Bill and its associated intentions for radically reforming public services without considering the role of town and parish councils. The lack of community interest, in many localities, in democratic representation at the most local level means there are some very important issues to be addressed. One such issue is the capacity of the average town or parish council to take on what could be a significantly expanded role. There are over 60.000 local parish and town councillors in England and their skills, experience and behaviours vary significantly. For many who are content with their current role, expanding it could be a step too far, unless of course there is real investment in capacity building at the most local level. If the 'Big Society' and localism are to become a reality then parish and town councils need to explore the potential of taking on new roles.

Below are some questions that town and parish councils may find it useful to explore.

### **Key questions for town and parish councils on localism,**

- Does the parish council operate on a scale that is economic? Is the parish council large enough to be economically viable as a service provider?
- Is the ambition of the local parish council sufficient to attract parish councillors who have the capacity to see strategic issues?

- Is the locality distinct enough to have a voice that is sufficiently differentiated from the wider district and county?
- How strong is the democratic mandate of the parish council? Are councillors able and prepared to be the voice of the locality?
- Is the parish council able to think and act strategically, as well as responding to more immediate but minor issues?
- Does the parish council have the capacity to respond to complex policy issues which have an impact on their area?
- How will issues of ethics and behaviour, e.g. declaration of personal interests, be addressed in a way which is appropriate to enhanced powers?
- What capacity and mechanisms exist to enable parish and town councils to work in partnership to achieve efficiencies and what performance management standards are in place to ensure value for money especially where there is no cap on parish and town council precepts?

**Neighbourhood governance:  
an opportunity missed?**

**Helen Sullivan**

**Introduction**

Those interested in the potential of neighbourhood governance to improve local democratic governance, by supporting more 'bottom up' involvement and decision making and countering the highly centralised system of local government in England, will have been attracted by the Government's promotion of the Localism Bill which emphasised its commitment to citizen empowerment and localised decision making through a programme of decentralisation. The six 'essential actions' underpinning the Bill and associated with securing decentralisation and 'the Big Society' are complementary to a commitment to neighbourhood governance: lifting the burden of bureaucracy; empowering communities to do things their way; increasing local control of public finance; diversifying the supply of public services; opening up government to public scrutiny; and strengthening accountability to local people. In addition the Government tackles head on some of the myths about decentralization that grew up under the New Labour administrations, in particular countering the lazy assertion of decentralisation as generating a 'postcode lottery' in service provision by highlighting the ways in which more localised decision making can generate more informed and appropriate local services – diversity being a conscious choice rather than an unfortunate consequence.

However the detail of the Localism Bill provides much less comfort for supporters of neighbourhood governance. To be sure there is one very significant provision in relation to development planning where the Bill promises to empower parish councils, or neighbourhood forums in unparished areas, to grant approval for all but the very large or controversial applications within their areas.<sup>34</sup> Locally generated plans, if approved by a majority voting in a referendum, cannot be varied by the relevant county or district councils. This is a key proposal which has already generated much discussion (see Chapter 10). But beyond this the Localism Bill has very little to say about neighbourhoods and neighbourhood governance. Instead the Bill makes repeated reference to 'citizens' 'communities' and 'people', although none of these terms is used with any precision, which is odd given the ambitious claims for the Bill presaging a

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<sup>34</sup> This is to be achieved by giving them the power to pass a Neighbourhood Development Order approving a development, which the local Planning Authority (e.g. the District Council) will be obliged to accept, unless there are very clear reasons for not so doing. If a Neighbourhood Development Order is rejected, there is a right of appeal not to the District or County Council but to an individual who must be acceptable both to the applicant and the council.

future of 'self-government'. One justification for this lack of precision may be that in our complex and diverse society, any strategies will need to be plural ones, recognising the fact that people inhabit and identify with numerous communities of place, identity and interest. However the Bill does not make this simple acknowledgement. Another explanation may be that the multiplicity of terms used belies a particular Government attachment to the idea of citizens as individuals – as tax payers and/or service users – rather than as members of broader communities. This might explain both the negative focus of some of the elements of the Bill e.g. vetoing excessive council tax rises, and the emphasis on referenda as mechanisms for expressing citizenship. However the Bill does contain important proposals which are focused on collective expressions of local citizenship, whether through the 'community right to challenge' or the 'community right to buy', though again no indication is given of what constitutes a 'community' in either case. (See Chapter 2)

Beyond the questions of who the Bill is aimed at and whether or not it matters, there is a broader question of the extent to which the proposals in the Bill really do add up to the kind of shift in power to citizens, communities and/or neighbourhoods that is suggested in the headlines. It could be argued that beyond the proposals for neighbourhood planning, some of the more significant proposals for self-government are contained in other Bills or policy documents, and indeed several are referred to in the supporting material that accompanies the Localism Bill<sup>35</sup> including 'free schools', the new right to provide afforded to public servants, commissioning at the point of need, and place based budgeting. What is of concern in this chapter is the extent to which an explicit focus on neighbourhoods and neighbourhood governance might generate a more coherent framework for designing new institutional arrangements that can embrace all of the relevant policies and services and offer a more robust foundation to support self-government.

### **Why neighbourhoods matter**

The neighbourhood has emerged as an important component of contemporary multi-level and multi actor governance and evidence from Europe suggests that the ideas and practice of neighbourhood governance are now firmly embedded in public policy systems<sup>36</sup>. Neighbourhoods represent several distinct, though linked, policy aspirations: for urban revitalisation, service improvement and democratic renewal. Their close proximity to citizens suggests a potential to generate new opportunities for citizens to participate directly in the co-production of particular policy outcomes that matter to them through networks created by the state for the purpose of improved system

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<sup>35</sup> Decentralisation and the Localism Bill – an essential guide (2010) HM Government

<sup>36</sup> Atkinson, R and Carmichael, L (2007) „Neighbourhood as a new focus for action in West European states' in Smith, I., Lepine, E. and M. Taylor eds. *Disadvantaged by where you live?* Bristol, Policy Press, pp 43-64

effectiveness or (less often) via citizen led networks operating outside conventional political systems and structures. (See Chapter 3)

Neighbourhoods are not 'objective' entities, but they do share certain key characteristics. According to Lowndes and Sullivan<sup>37</sup> neighbourhoods:

- Support or shape the development of individual and collective identities;
- Facilitate connections and interactions with others;
- Fulfill basic needs such as shopping, health care, housing and education;
- Are sources of predictable encounters;
- Have geographic boundaries, the meaning and value of which are socially constructed.

Neighbourhoods may be sources of considerable value for citizens providing a sense of identity, and security as well as offering access to services and decision making. However for many, neighbourhoods are not that significant – their sense of identity and their particular service needs may be met by employment related networks or faith communities, both of which are likely to be located at town or city level. Importantly, for some citizens neighbourhoods may in fact be sources of insecurity and conflict, factors including poverty, disability or discrimination contributing to neighbourhoods being experienced as 'prisons'. The potential of neighbourhood governance to contribute to democratic local governance will be contingent on whether and how particular neighbourhoods are valued by citizens and communities.

### **Principles of neighbourhood governance**

Lowndes and Sullivan define neighbourhood governance as arrangements for 'collective decision-making and/or public service delivery at the sub-local level'<sup>38</sup>. They identify four distinct rationales for proposing neighbourhood governance, each containing distinct principles for democratic engagement, service provision and local leadership, a combination of which have informed successive government's proposals since the 1970s.

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<sup>37</sup> Lowndes, V and Sullivan, H (2008) 'How low can you go? Rationales and challenges for neighbourhood governance', *Public Administration*, Vol 86, No 1. P54

<sup>38</sup> *Ibid* p 56

Table 1. Forms of neighbourhood governance: four ideal-types<sup>39</sup>.

	<b>Neighbourhood empowerment</b>	<b>Neighbourhood partnership</b>	<b>Neighbourhood government</b>	<b>Neighbourhood management</b>
<b>Primary rationale</b>	Civic	Social	Political	Economic
<b>Key objectives</b>	Active citizens and cohesive communities	Citizen well-being and regeneration	Responsive and accountable decision-making	More effective local service delivery
<b>Democratic device</b>	Participatory democracy	Stakeholder democracy	Representative democracy	Market democracy
<b>Citizen role</b>	Citizen: voice	Partner: loyalty	Elector: vote	Consumer: choice
<b>Leadership role</b>	Animateur, enabler	Broker, chair	Councillor, mini-mayor	Entrepreneur, director
<b>Institutional forms</b>	Forums, Co-production	Service board, multi-actor partnership	Town councils, area committees	Contracts, charters

The *civic rationale* identifies opportunities for direct citizen participation and community involvement, and distils the insights of classical political theorists like Mill, Rousseau and Tocqueville<sup>40</sup>. Neighbourhood units are physically more accessible to citizens and also contain fewer citizens, making direct participation more feasible as it is easier to distribute information about opportunities for participation and to communicate with citizens about options and outcomes. Citizens have incentives to engage because it is at the neighbourhood level that they consume many of the most important public services, and experience the issues most likely to mobilise them. This provides a platform for empowerment, which aims to increase the citizen ‘voice’ by developing forms of participatory democracy. However empowerment may go beyond allowing citizens to exercise ‘voice and choice’<sup>41</sup>. Neighbourhoods may also be a space within which members of the public ‘co-produce’ policy and services in and around existing political frameworks. This implies a much more active role for citizens, one which Bang and Sørensen<sup>42</sup> characterise as the ‘everyday maker’ - someone working for community

<sup>39</sup> Lowndes, V and Sullivan, H (2008) *op cit* p 62

<sup>40</sup> J. S. Mill (1974) *On Liberty*, Penguin (first published 1859); J.J. Rousseau (1973) *The Social Contract and other Discourses*, Dent (first published 1762); A. de Tocqueville (1946) *Democracy in America*, OUP (first published 1835).

<sup>41</sup> Hirschman, A. 1970. *Exit, Voice and Loyalty*. Cambridge, MA: Harvard University Press.

<sup>42</sup> Bang, H.P. and E. Sørensen. 1999. „The EM: A New Challenge to Democratic Governance’, *Administrative Theory and Praxis*, 21, 3, 325–42.

well-being but doing so outside established political constructions of citizenship and not confined by ideas that the state may communicate about what it is to be 'empowered'.

Controversially perhaps, neighbourhoods are also more likely to encapsulate homogenous communities and to be characterised by shared values, beliefs and goals. Community cohesion is more likely to emerge as a result of voluntary compliance to informal norms, reducing the costs associated with official enforcement. A key requirement of leadership is to enable all citizens and communities to participate; including involving traditionally marginalised or excluded groups.

The principles and the proposals in the Localism Bill tend to align with the civic rationale, particularly through the focus on citizen voice in decision making and the potential for 'co-production' through the 'community right to challenge' and the 'community right to buy'. However the Bill does not acknowledge the challenges of exclusion and marginalisation that can exist within in neighbourhoods and which may hamper the empowerment of all community members. The Bill is also silent on the issue of leadership, specifically the potential role of local councillors as leaders and mediators of different communities' interests and aspirations. Lastly the Bill makes no acknowledgment of the fact that citizens and communities may choose to work outside of state sanctioned structures and processes and may see their role as working in opposition to resist the kind of 'empowerment' that is being proposed.

The *social rationale* points to the possibility of a citizen-centred approach to governance, building on the work of Fabians like GDH Cole and contemporary commentators like John Stewart and Dick Atkinson<sup>43</sup>. A neighbourhood focus enables governance to be observed from the standpoint of the citizen rather than the politician or the professional - and to design services and decision-making accordingly. Of particular importance is the opportunity to observe how local action may be better 'joined-up' to provide a more integrated approach to citizen well-being. Neighbourhood arrangements offer a reconsideration of public service design around 'life episodes' or the 'life-course' rather than professional demarcations, open up decision making to very local collaboration between citizens and providers and offer ways of viewing and addressing 'wicked' policy challenges (like security and safety) that may otherwise be overlooked.

This rationale supports a form of stakeholder democracy in which members have different kinds of mandate and legitimacy – a source of strength and conflict<sup>44</sup> (Hirst,

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<sup>43</sup> G. D. H. Cole (1960) 'Democracy face to face with hugeness' in *Essays in Social Theory*, Macmillan; D. Atkinson (1994) *The Common Sense of Community*, DEMOS; J. Stewart (2000) *The Nature of Local Government*, Macmillan

<sup>44</sup> Hirst, P. 1994. *Associative Democracy. New Forms of Economic and Social Governance*, Cambridge: Polity Press; Lowndes, V. and H. Sullivan. 2004. 'Local Partnerships and Public Participation', *Local Government Studies*, 30, 2, 51–73

1994; Lowndes and Sullivan, 2004). The public is one of the stakeholders, linked to the governance process through a relationship of 'loyalty' in which stakeholders expect each other to conduct themselves reliably and honestly. The key leadership roles are those of broker who brings stakeholders together, and the chair who facilitates collective decision-making and arbitrates in the absence of consensus.

The Localism Bill says very little that accords directly with this rationale, but the references in the accompanying documentation to place-based budgeting and commissioning at the point of need echo the social rationale's emphasis on integration and joining-up. The potential value of exploring 'life-episodes' and 'wicked issues' from the perspective of the neighbourhood offer a different dimension to how to consider 'place' and to determine what is the appropriate 'point of need' in commissioning terms.

The *political rationale* focuses on improvements in the accessibility, responsiveness and accountability of neighbourhood based decision-making, drawing on arguments made by Plato and continuously updated ever since<sup>45</sup>. With direct experience and knowledge of the issues at stake, citizens are able to make informed inputs into policy-making. Neighbourhood leaders are more likely to be known to citizens and they have more opportunities to communicate with them on an ongoing basis and to monitor governance outcomes. Their proximity means that they are more likely to be responsive to citizen views and citizens are better able to hold leaders and service-deliverers to account because their deliberations and actions are more visible, as are the consequences of their decision-making.

The political rationale is part of an attempt to restore trust in government. It focuses on enhancing the representative role of councillors as local leaders by establishing an ongoing dialogue with constituents, advocating for their community, and scrutinising the work of the local authority and other service providers on their behalf.

The Localism Bill's focus on improving accountability to local people can be aligned with the political rationale. However the contents of the Bill refer to the role of local councillors hardly at all and certainly not in relation to their role in and around the neighbourhood, nor to accountability being practiced at the neighbourhood level. Where neighbourhood accountability is addressed it is in the radical proposals for neighbourhood planning which seek to offer new powers to existing neighbourhood bodies e.g. parish councils and to facilitating the creation of new ones e.g. neighbourhood forums. No attention is paid to how the existing body of local authority councillors will engage with these new or newly empowered institutions. In addition the Bill introduces new proposals designed to enhance accountability that focus on local

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<sup>45</sup> R. Dahl (1998) *On Democracy*, Yale University Press; R. Dahl and E. Tufte (1973) *Size and Democracy*, Stanford University Press

government and on the police service but which also neglect to consider the likely impact on local authority councillors (and have no neighbourhood dimension).

The *economic rationale* stresses efficiency and effectiveness gains of neighbourhood service delivery. Neighbourhood units are better able to identify and limit waste in organisational processes; they are also better placed to identify diverse citizen needs and provide appropriate services. Neighbourhood governance can exploit economies of scope – the benefits of ‘bundling’ services and functions) – in a world in which traditional economies of scale may be reducing in significance with the advent of e-government and a mixed economy of provision. Small units of governance are potentially more efficient than larger ones (according to the Tiebout hypothesis) because of the increased transparency of the tax/service deal and the greater possibilities for exit.<sup>46</sup> Neighbourhood government is, in short, more susceptible to market-style forms of ‘bottom-up accountability’.

The economic rationale offers a kind of market democracy in which the citizen as consumer is able to influence what services are provided and to whom. While most neighbourhoods are not able to take advantage of the operation of full market democracy, in which consumers may choose to take their ‘business’ elsewhere the prospects for neighbourhood management have been enhanced by new technologies that allow for backroom functions to be carried out at a central base and by externalisation which can allow neighbourhood managers to commission services to suit local needs from providers who operate on a much larger scale.

The community right to challenge and to buy could be located under this rationale as could the new right to provide afforded to public servants and the provision of ‘free schools’. However without complementary changes to the way in which local government works and in a context of significant reductions in local government funding it is difficult to see how far this rationale can be realised.

### **Designing neighbourhood governance**

Situating a commitment to localism explicitly within a neighbourhood governance framework, rather than one that refers variously to citizens, communities and neighbourhoods, draws attention to the importance of institutional design and to the design choices that need to be made to achieve particular governance purposes. Lowndes and Sullivan derive four ‘ideal types’ of neighbourhood governance from the rationales outlined above (see table 1). Ideal types clarify the scope for, and dimensions of, choice in governance arrangements including matters of leadership and citizen roles and the kinds of resources that might be needed to develop each role. As real-life

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<sup>46</sup> P. John, K Dowding and S Biggs (1995) ‘Residential mobility in London: a micro test of the behavioural assumptions of the Tiebout model’, *British Journal of Political Science*, Vol. 25, pp 379-397

arrangements are more likely to be combinations of different features, a consideration of ideal types enables designers to contemplate the challenges and tensions associated with the application of hybrid designs.

In addition there are several key challenges that any neighbourhood governance system needs to acknowledge and respond to. The first concerns the amount of power and control neighbourhoods have over decisions. To date neighbourhoods have been afforded relatively little power over services and resources, instead offered the opportunity to influence service priorities within certain set parameters and/or able to make decisions over relatively small amounts of local spending. The limited amount of power and control afforded to neighbourhoods has often acted to depress the level of citizen participation and further alienated communities whose expectations had been raised.<sup>47</sup> The proposals for neighbourhood planning represent a significant increase in the power and control afforded to certain communities, shifting the balance of away from the local to the sub-local level.

This shift highlights another longstanding challenge to neighbourhood governance, that of the quality of available neighbourhood representatives and leaders. The pool of available representatives is inevitably smaller than that from which local or national representatives are drawn. This means that the range of skills and experience is likely to be less, which may impact on the capacity of representatives to lead and on the capacity of citizens and communities to mobilise campaigns and hold their representatives to account. Absence of media interest in neighbourhood activities further limits scrutiny of these.

The limits of competence may be compounded by the limits of citizen homogeneity within neighbourhoods and the challenges this poses for community cohesion, particularly in a society in which diversity is increasing. The idea of neighbourhood governance rests heavily upon the notion of shared values and identities. However, the smaller and more homogenous the unit of governance, the easier it is for elites to dominate, and the harder it is for diverging views to be expressed and accommodated. No community is ever entirely homogenous, but those who identify themselves as 'different' (or are identified as such by others) may be especially isolated within a neighbourhood setting where associations and groups may reflect the dominant interests. When conflict does break out at the neighbourhood level, it can be particularly acrimonious. Experiments in the 1980s with neighbourhood decentralisation in multi-ethnic areas provided evidence of the marginalisation of minorities, most notably in the London Borough of Tower Hamlets.<sup>48</sup> Defensiveness and insularity may

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<sup>47</sup> Barnes M, Newman J and H Sullivan (2007) *Power, Participation and Political Renewal*, Bristol, Policy Press

<sup>48</sup> Lowndes V and G Stoker (1992a) 'An evaluation of neighbourhood decentralisation, parts 1 and 2', *Policy and Politics*, Vol. 20, No.1/2, pp 47-61, pp 143-152; H. Sullivan, A. Root, D. Moran and M Smith (2001) *Area committees and neighbourhood management*, LGIU/JRF

result in neighbourhoods being unable to establish links across community boundaries despite a strong internal coherence. The need to negotiate cohesion, diversity and pluralism is a significant challenge not acknowledged at all in the Localism Bill.

Devolution to neighbourhoods implies increased differentiation in public service delivery across areas, something which is promoted in the Localism Bill with its emphasis on diversity of local choice and of public service supply. However the Bill does not address two potential challenges associated with devolution to neighbourhoods. The first concerns the consequence of an increased differentiation of resources and services on neighbourhoods that are not equal in resources capacity and support to begin with – the risk that neighbourhood governance could compound what the political scientist L J Sharpe calls the ‘geography of inequity’, and militate against the redistribution of resources between areas<sup>49</sup>. Self reliance in terms of human, social and economic capital is very problematic for those neighbourhoods that lack these forms of capital. Second, as neighbourhoods develop their diversity in service provision, this will generate variation in both the range and quality of local services from neighbourhood to neighbourhood, a feature that will be intensified should neighbourhoods gain revenue raising powers. While the Government has rightly asserted the value of ‘local choice’ to counter claims about ‘postcode lotteries’, it has not addressed itself at all to the implications for equity and social justice resulting from this stance.

## **Conclusion**

The Localism Bill represents something of a missed opportunity for neighbourhood governance. The Bill’s multiple foci on citizens, communities, groups and neighbourhoods suggests that neighbourhoods are one among many options for devolved power and influence. While this may encourage a diversity of response there is a risk that the failure to provide a coherent framework within which to operationalise neighbourhood governance will act to undermine the impact of the radical proposals for neighbourhood planning because the latter appear disconnected from other aspects of neighbourhood governance. A more coherent commitment to neighbourhood governance would also allow for other proposals such as ‘community right to buy’ and ‘to challenge’ to be located within an institution that could support and develop proposals as well as mediate competing claims and disputes.

One defence of the Bill is that in keeping with the Government’s commitment to localism it is non-prescriptive, offering options and opportunities rather than frameworks to follow. Setting aside the Government’s preparedness to prescribe over a host of ‘local’ issues from chief executive’s pay to the frequency of refuse collection, the Bill’s failure to offer a clearer steer on how it understands the respective roles of citizens, communities, neighbourhoods, localities and the centre, means that there is no

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<sup>49</sup> L. J. Sharpe (1970) ‘Theories and values of local government’, *Political Studies*, Vol 18 no 2, pp 153-174; D. Walker (2002) *In praise of centralism. A critique of the new localism*, Catalyst

articulation of how different elements may connect together as part of a wider system of governance. The Bill is also silent on the implications of moving towards greater devolution – particularly with regard to community cohesion, equity and social justice. Again this may be argued to be in keeping with the Government's localist agenda but the potential changes to the central-local settlement implied by the contents of the Bill call for a rearticulation of how these issues will be considered.

**Acknowledgement:** This chapter builds on ideas developed and published in collaboration with Vivien Lowndes.

**General Power of Competence:  
just what local government always wanted and needed, or another damp legislative  
squib?**

**Steve Rogers and Catherine Staite**

**Introduction**

The Localism Bill was published in December 2010 – almost exactly 11 years after the 1999 Local Government Bill. The very first chapter of the Localism Bill contains a proposal to provide local government with a ‘general power of competence’ – traditionally something of a holy grail for all promoters and defenders of local government in the UK – be they parliamentarians, local councillors, officials, academics or think tankers.

What local government really needs, such people have argued, is a general power of competence such as that found in a number of other European countries – especially those that ascribe high value to the role of local government within society.

It is not therefore surprising that the Local Government Group almost immediately gave approval to this provision in the Localism Bill – ‘We strongly support the Government’s decision to set out in legislation a broad and clear general power of competence which we have lobbied for. The power means local councils and Fire and Rescue Authorities will be able to respond to local issues and priorities ambitiously, confident in their legal footing.’<sup>50</sup>

**What is a General Power of Competence?**

The General Power of Competence (GPC) is set out in sections 1 to 6 of the bill. The Government’s declared aim is to give local authorities the legal reassurance and confidence to innovate, drive down costs and deliver more efficient services. The GPC gives local authorities the power to do anything that an individual could lawfully do, anywhere, with or without charge, for any purpose, anywhere in the UK or elsewhere. However, the bill also specifies some boundaries to the power which may be imposed by statute, statutory instrument or by an order made by the Secretary of State. Such an order may apply to some or all local authorities and would have to be consulted on before being laid before Parliament. Charging for statutory services and making a profit on charged for services will not be within the GPC and such commercial services will only be able to be provided through a company. The GPC replaces the common law ‘ultra vires’ rule under which local authorities can only do those things which legislation

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<sup>50</sup> LG Group On the Day Briefing, 13/12/2010

allows.<sup>51</sup>

### **Why have a General Power of Competence?**

Localism has been a consistent theme of the discourse on local government for many years and the GPC has been seen by local government as an important element of localism because it changes the balance of power between central and local government.<sup>52</sup> Responses to the proposed new power have been mixed. Some have been positive. Alex Thompson of Localis<sup>53</sup> welcomed the Localism Bill and the GPC as a 'seismic shift' in the relationship between local and central government. He acknowledged that the GPC comes at a time when local authorities' ability to act is constrained by the recent financial settlement and also by the tendency for Whitehall to interfere or micromanage locally based initiatives such as Total Place<sup>54</sup> and Community Budgets.

The GPC will enable local authorities to develop new services, such as estate agency, insurance or banking and to invest in new technologies. It will also strengthen the position of local authorities within the wider public sector and possibly encourage closer collaboration and pooling of budgets with partner agencies wishing to exploit the GPC to achieve their own objectives.<sup>55</sup>

The GPC does look promising. It cannot be dismissed without careful consideration. But – haven't we been here before? The 1999 Bill, and subsequently the 2000 Local Government Act, provided local councils (but not Fire and Rescue Authorities) with a 'Power of Well-being' 'to promote the economic, social and environmental well-being of their area'. Not quite a power of general competence, but something that was intended to be quite close to it.

The 2000 Act introduced a 'new' role for local government – that of 'Community Leadership'. This expansive role was intended to encourage local authorities to be more outward-looking and more involved in *all* the needs and concerns of the local area. Local authorities were no longer expected to be creatures of narrowly interpreted statute – they were expected to be concerned with all aspects of the social, economic and environmental wellbeing of the area and its people. The general concept of that role, although not very clearly defined, was taken up with enthusiasm by a number of local authorities who saw it as a welcome change from the painful recent reductions in the role and powers of local government. The new role, it was argued, needed a new

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<sup>51</sup> Chandler J.A. *Explaining Local Government: local government in Britain since 1800*, 2007.

<sup>52</sup> *Going Nuclear? A General Power of Competence and what it could mean for local communities*, NLGN 2010.

<sup>53</sup> [www.localis.org](http://www.localis.org)

<sup>54</sup> *Problem, purpose, power, knowledge, time and space: Total Place final research report*, Keith Grint Warwick Business School.

<sup>55</sup> [www.nlgn.org.uk](http://www.nlgn.org.uk) The Decentralisation and Localism Bill Pre-publication Briefing 13<sup>th</sup> December 2010.

general power – a Power of Well-being. It was linked to the new legislative duty, which implemented the role of community leadership, to prepare Community Strategies. These strategies, to be prepared with the direct involvement of partners and the community, were for the promotion and improvement of the social, economic and environmental well-being of their areas.

As in 2010, the 1999 provision of a broad, general power was given strong support from the world of local government. For example, even some of the normally cautious and reticent lawyers involved in local government were encouraged to describe the power as ‘Heavenly Freedom’. ‘For many years we have argued for a new power of general competence for councils so that they can implement innovative schemes without the constant fear of auditor intervention. Finally we have something along those lines’.<sup>56</sup>

The power was not utilised as effectively as it might have been for a number of reasons, including that; ‘... local government is so distracted [by the introduction of new structures, best value and other aspects of the modernisation agenda] that it is not using the well-being power, ...’.<sup>57</sup> It became submerged by the importance attached to changing the political structures and decision-making processes and the implementation of Best Value. Best Value did not encourage local authorities to be adventurous and innovative in their approach. It did the opposite – encouraging local authorities to ‘play it safe’. The form of the legal power was of considerable complexity – being a combination of apparently wide discretion together with a list of exceptions and a power of veto by the Secretary of State, not unlike the GPC proposed in the Localism Bill.

INLOGOV, together with the Cities Research Centre, University of West of England, were commissioned by the government (DETR) to undertake an evaluation of the take-up and implementation of the Power of Well-being. We found that awareness and understanding of the Power was extremely variable in local authorities but that it had increased over the four years of the research. However, awareness and understanding amongst partners and in the community remained very low. We also found only a slight broadening in the use of the Power (starting from a relatively low base) although there was evidence of more widespread consideration of the use of the Power.<sup>58</sup>

We may conclude that the Power of Wellbeing was nowhere near as significant as had been initially anticipated. Not quite a damp squib but certainly a piece of legislation in a minor key – only obtaining a major key in a small number of locations where it was used extensively.

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<sup>56</sup> LGC, 17/12/1999, p14.

<sup>57</sup> *How the Local Government Act is Working. Report of the Transport, Government and the Regions.*

<sup>58</sup> *Formative Evaluation of the take-up and Implementation of the Well Being Power, 2003 – 2007. Final Report 2007.*

Like the wellbeing power, the ‘Central Local Concordat 2007’<sup>59</sup>, which was intended to establish better rules of engagement between central and local government, did not deliver as much as was hoped. There is no evidence that it was ever taken seriously by central government. In the same year, ‘Strong and Prosperous Communities’ and the Local Government and Public Involvement in Health Act both also ostensibly heralded a new relationship between central and local government. The reality, as experienced by local government was target driven centralism. The ‘freedoms and flexibilities’ offered to better performing councils have not always been delivered because the underlying relationship between central and local government has remained one of control and dependence. LAAs may have helped achieve better outcomes and made it easier for local government to work effectively with partners but the relationship between central and local government remained very top down and controlling. For example, the standard central government response to local delivery failures has been to intervene.

If the Power of Well-being, the Concordat and other previous efforts to reframe the relationship between central and local government and to give local authorities more freedom to act have failed to live up to their early promise, might that not also happen to a General Power of Competence, unless the underlying relationship between central and local government changes significantly? That relationship has a complex history characterised by unfulfilled expectations and frustration on both sides which have led to deep mistrust on the part of local government. George Jones<sup>60</sup>, in his evidence to the Political and Constitutional Reform Committee commented that we ‘can’t rely on the present culture, attitudes and laws for protecting what should be the proper relationship between central and local government.’

The relationships between central and local government operate in a number of domains; financial, political and inter-personal. The financial relationship is characterised by dependency because of centralisation and the fact that three quarters of local government funding is from central government and only a quarter is raised locally. The political relationships are complex because although national party policies influence local policy in councils led by the same party they are resisted (to some extent – if only in rhetoric) by councils of opposing parties. The political and inter-personal meet in the relationships between ministers, MPs and councillors as well as in the relationships between chief officers and senior civil servants. The habit of the current Secretary of State and his ministers of issuing critical pronouncements about the salaries of local government chief executives, which have been set by councils, most of which are led by Conservatives or Liberal Democrats, shows how complex and difficult these relationships can become.

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<sup>59</sup> [www.lga.gov.uk](http://www.lga.gov.uk)

<sup>60</sup> Oral evidence to Political and Constitutional Reform Committee.  
[www.parliament.gov.uk/committees](http://www.parliament.gov.uk/committees)

The relationship and the balance of power between central and local government has exercised local authorities, academics and other commentators, for many years. Jones and Travers<sup>61</sup> argued ‘ministers and civil servants have, in effect, played God with British local government’, citing 150 Acts passed since 1979 which had significant implications for local government. They also commented on the attitudes of civil servants to local government: ‘the mundane nature of many local services appears to encourage (at least some) civil servants to believe that they possess Rolls Royce minds, while local government officers have motor cyclists’ minds’. Politicians currently reflect that lack of understanding of the nature and complexity of senior local government officer roles by numerous derogatory comments and recent calls to combine the function of the proposed new mayors with those of chief executives.<sup>62</sup>

The Lyons Enquiry<sup>63</sup> argued for a ‘rebalancing of responsibilities between individual and family, local community and national government with a stronger ‘place-shaping’ role for local authorities, working closely with partners’. Sir Michael Lyons is now asking - is what the Bill is offering really localism? His test for localism includes even-handedness between what is expected of locally run and centrally run services.<sup>64</sup>

Professor George Jones, in his evidence to the Political and Constitutional Reform Committee, remarked that ‘the Secretary of State says ‘localism, localism, localism’ at the same time he seems to think he knows best what the level of council tax should be. He will know whether it is excessive or not, and then insist on a referendum. He seems to know how local authorities should conduct refuse collection. He seems to know about how they should inform their citizens about their activities’.

Sir Jeremy Beacham also highlights the dissonance between the proposed GPC and the continuing micromanagement commentary from CLG, for example, on frequency of bin collection and local authority management arrangements.<sup>65</sup>

Chris Leslie argues<sup>66</sup> that local government has improved in terms of efficiency and overall performance over the last 10 years but is not being rewarded. Instead he describes a ‘tragedy of dashed expectations’. He identifies central government’s ability to resist tabloid pressure to intervene when things go wrong as a vital sign of localism. He highlights six key yardsticks for measuring the extent to which localism is a reality, including; the extent of ministerial control, the same standards for Whitehall and local government and the extent of local authorities’ forward planning capability. Given that

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<sup>61</sup> Jones G and Travers T (1996) Central government perceptions of local government. In Pratchett and Wilson eds. *Local Democracy and Local Government*, Basingstoke: Macmillan.

<sup>62</sup> LGC, 13<sup>th</sup> January 2011.

<sup>63</sup> *National Prosperity, Local Choice and Civic Engagement*, CLG 2006.

<sup>64</sup> LGCPlus.com/5023316.

<sup>65</sup> LGC 8<sup>th</sup> June 2010.

<sup>66</sup> www.lga.gov.uk LGA Knowledge December 2010.

the Secretary of State can still over-ride the GPC and also the contrast between the duty on local authorities to publish expenditure over £500 and on central government departments, with the exception of CLG, over £25000, and that the current method of allocating resources to local authorities undermines their forward planning capabilities, it could be argued that the Localism Bill fails those tests.

Some actions taken by the Coalition are seen as helpful by local government, for example, the abolition of Comprehensive Area Assessments, a reduction in amount of money which is ring fenced and the transfer of power over spatial planning from Regional Development Agencies to local authorities. However, swapping control by targetry for control through financial constraint and relentless micro-management will not result in local authorities feeling more empowered and it may undermine the aims of the GPC. The proposals in the Bill include moving power to local authorities and also to citizens and communities so we are now seeing a confusing mixture of 'old localism' (devolution of power by central government to local government) and 'new localism' (devolution of power by central and local government to citizens and communities).<sup>67</sup> (See Chapter 13)

#### **What difference will the General Power of Competence make?**

The GPC will give local authorities more power to act than they currently have. However, as the experience of the wellbeing power shows, local authorities' own perceptions of and their confidence in their freedom to act and the way in which the legislation is interpreted are as important as the provisions of the legislation itself. Those perceptions are shaped by past experiences and current relationships between central and local government. Shifting the 'burden of proof' in favour of local government's freedom to act will be widely welcomed, although much depends on how the legislation is interpreted both by local authorities and by the courts. The LAML experience highlights the risk that local authorities may embark on new ventures under the GPC and then find, when their actions are tested in court, that the power is interpreted narrowly.<sup>68</sup>

#### **What will help and hinder success?**

The GPC has major implications for relationship between central and local government. If GPC is perceived by councils as a mechanism which will support flexibility and creativity to increase revenue or deliver better services and outcomes it may improve the relationship between central and local government. However, if it is understood to mean 'you can do what you like as long as we agree' then local government may disengage and the use of the power in order to innovate will be limited.

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<sup>67</sup> *Local government in the United Kingdom* Wilson W and Game C, 2006 Palgrave Macmillan.

<sup>68</sup> APSE LAML- as assessment of the judgement 2009.

The GPC may also be used by local authorities in their roles as community leaders and place shapers to reduce the costs of public services by harnessing local creativity and energy to tackle, collectively and cooperatively, the endemic problems which fuel demand for and dependency on services. The Total Place pilots gave us some useful and varied examples of how positive change could be achieved.<sup>69</sup> However, learning from the pilots and parallel projects also highlighted the barrier which central control of budgets poses to the ability of local partners to tackle complex and expensive social and service issues.<sup>70</sup>

The financial settlement for 2011/12 is creating major challenges for local government which may well impact on their ability to make best use of the GPC. However, at a time when local authority funding is being significantly reduced, the GPC gives an important message about the ability of councils to do what is right locally, including – promoting enterprise, establishing joint vehicles and trading. Income generation is an obvious way of mitigating the impact of the cuts but the restriction on making a profit, notwithstanding the current freedom for councils to generate income from new sources, for example, by charging for MOTs, will cause some problems.

We also need to learn lessons from the past to avoid creating similar circumstances as those which led to lack of effective use of the wellbeing power. Legislation can have both an instrumental and a symbolic importance. Our research found this to be the case with the wellbeing power. There was narrow interpretation of that power, as a legal instrument for achieving local aspirations in the absence of other more specific powers – its instrumental value. And there was a wider, symbolic value. The symbolic value was derived from the way in which the wellbeing power, together with a variety of other contextual factors, contributed to a culture of empowerment and innovation in support of the community leadership role. We must now ask whether the current Government is developing, or intends to develop a culture of empowerment as part of a wider policy and legislative context within which the General Power of Competence will be perceived as having both instrumental and symbolic importance.

The Political and Constitutional Reform Committee is currently exploring the case for the codification of relationships between central and local government. Their recommendations may help to shape a more balanced relationship for the future, which may, in turn, help to support effective use of the GPC.

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<sup>69</sup> Total Place: a whole area approach to public services HM Treasury 2010.

<sup>70</sup> *Problem, purpose, power, knowledge, time and space: Total Place final research report*, Keith Grint Warwick Business School 2010.

## **Governance arrangements and their implications for overview and scrutiny**

**John Cade**

### **Introduction**

As much trailed and anticipated, the Bill provides for all forms of local government that so decide to return to a committee system. Until this new millennium the committee system had been the bedrock of how local authorities took their collective decisions.

From the time central government started taking an interest in local government through the Municipal Corporation Act of 1835 and the subsequent Acts of Parliament that created County Councils, District Councils, London Boroughs, Parish Councils and finally Metropolitan Borough Councils, councils in the UK were governed by committees of elected Councillors. There is, therefore, a longstanding track record of many councils successfully working through a committee system.

Thus, the Local Government Act 2000, which effectively ended the committee system was revolutionary. But it did not come out of the blue. For, whilst there were many enthusiastic defenders of the committee system it also had critics who argued that it entrenched departmental interests and was clumsy, time consuming and slow, until in 1990 the Audit Commission argued that “we can’t go on meeting like this”. (Somewhat ironic, given now the position of that body.)

The reality now, however, is that many members, local authority officers and a new generation of the public have no experience of how the committee system worked. They are dependent upon the recollections of others and as with all such reminiscing some might be a bit too nostalgic.

The Bill requires that all authorities operate governance arrangements in one of three forms:

- Executive arrangements (either Leader, Cabinet and Scrutiny or Executive Mayor, Cabinet and Scrutiny)
- A Committee system
- Another prescribed arrangement as approved by the Secretary of State

The process for changing governance arrangements is a two stage one. First there needs to be a resolution of Full Council, following which changes can be made immediately following the next relevant election.

This would seem to suggest, that, subject to the Bill receiving Royal Assent before the end of the year, the earliest changes could be made would be as follows:

- Non-Metropolitan Districts            May 2012
- Counties                                    May 2013
- London Boroughs                    May 2014
- Metropolitan Districts                May 2012 or May 2014

The situation for those authorities which elect by thirds is not specified in the Bill – the earlier date assumes that the change can be made after a single election; the later date assumes that it requires all councillors to have been elected on the basis that government would be by committees.

Once a change has been made it will be locked in for a fair period of time. There are two ways to call for a change. There can be a change in governance arrangements either through a resolution or referendum. Where a change has been made through resolution, another resolution for a change may not be made within the next five years. If the change has been brought about through a referendum another change cannot happen within the next ten years. Another important point to bear in mind is, if a local authority has moved its governance arrangements through a referendum, the subsequent change must also be through a referendum.

This does not encourage piloting. It makes it all the more important that a thorough assessment is made before embarking on change. It is very likely that there will be divided opinions amongst councillors on this matter. Some may be unwilling to see existing decision making powers changed, whilst others currently excluded from the decision making process, albeit from the same political party in control, might see this as an opportunity to readdress the balance. It is also likely that chief executives will have strong views on these matters, typically being more in favour of fewer rather than larger numbers of members being involved in taking decisions. In these circumstances some external and independent advice could prove very helpful.

### **Implications**

Having provided an overall context this paper now focuses on the implications for Overview and Scrutiny. Whilst acknowledging that scrutiny undoubtedly has had a chequered history, sometimes being tepid or even non-existent, there are also plenty of examples, where given the right organisational culture and environment, Overview and Scrutiny has been able to make real and lasting contributions to the improvement agenda of local authorities and their partners.

The Bill sets out to consolidate previous scrutiny legislation and regulations, (although provisions relating to crime and disorder remain in the Police and Justice Act 2006 and health provisions remain in the NHS Act 2006). It replaces the relevant provisions in the 2000 Act in full. This consolidation of the patchwork of legislation on Overview and

Scrutiny is undoubtedly helpful for local authorities and their partners, making it easier to understand its scope .

However, having seemingly set out its stall for the continuing importance of scrutiny, the Bill then introduces a demarcation line according to whether a local authority opts for Executive arrangements or Committee arrangements.

If an Authority settles on Executive arrangements these MUST include provision for the appointment of at least one scrutiny committee. The rest of the provisions concerning scrutiny will then apply. But if an Authority settles on a committee system it MAY have one or more scrutiny committees.

Whilst there is the retention of health, community safety and flood risk management scrutiny powers for all councils, the implication is that all other aspects of current scrutiny arrangements are discretionary.

## **Two reflections**

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### ***Health scrutiny***

The Bill contains provision for local authorities to continue to have a role in scrutinising the work of health authorities. In the consultation stage leading up to the Bill there were proposals to merge local authority scrutiny functions into Health and Wellbeing Boards. A number of bodies like the Centre for Public Scrutiny, the Unitary and County Scrutiny Network as well as INLOGOV pointed out that, given that it was almost certain that senior executive members and officers would be appointed to these Boards, the scope for scrutiny would be limited. It would also be very difficult for the proverbial person on the Clapham omnibus to see such a Board being independent and impartial. Bluntly, the proposals were flawed.

It has been heartening that these representations have been listened to and what we now have is the continuing opportunity for scrutiny to contribute to the work of the NHS. It is this focus on the difference between executive and scrutiny powers (which Parliament is very clear about in its own arrangements for Select Committees) that should inform all the other elements of the Bill.

### ***Designated scrutiny officer***

Within that part of the Bill which addresses scrutiny matters for those authorities opting for executive arrangements it specifies that all local authorities, other than a district council for an area for which there is a county council, must designate one of its officers to discharge the function of:

- Promoting the role of authorities' of O&S committee(s)
- Providing support to O&S committee(s)

- Providing support and guidance to “Members, Members of the Executive and Officers of the Authority”

Furthermore in stating that this Officer should not be the Head of Paid Service, Monitoring Officer, or Section 151 Officer and placing it in this category suggests that it is envisaged that this role should be at a senior level.

Our view is whether or not a council chooses to conduct its affairs through committees; it should properly resource a capacity to undertake scrutiny. For committees, or for that matter cabinets (and cabinets are, in the last resort, just single party committees, dealing with detailed and complex agendas) there is no substitute for the analysis of an issue or service in depth which scrutiny is properly placed to do and where an input from non-executive Members can bring out choices and alternatives that otherwise might never see the light of day.

#### **In sum**

The Government explains its purpose as wanting to increase transparency and also give local authorities the choice in deciding their appropriate governance arrangements. The Bill still provides for local authorities operating Executive arrangements to have scrutiny committees and designated scrutiny officers. For local authorities that choose to operate a committee system, they will have the flexibility to decide the appropriate arrangements (including having a scrutiny committee) that will enable local people and their elected Members to hold their Councils to account.

But overall, it is surely not the intention of the Bill at a time when the Coalition is placing greater emphasis on transparency and local scrutiny for it to give the impression that it is intentionally watering down the scope for scrutiny by those authorities who opt for committee governance arrangements.

**Elected mayors: a double U-turn,  
but still no answers**

**Chris Game**

**The ministerial double U-turn**

Communities Secretary, Eric Pickles, may not be that light on his feet, but you can't fault his timing. If you're going to execute a tricky double U-turn, make sure yours is overshadowed by more media-appealing ones happening elsewhere. Both Wayne Rooney and Carlos Tevez swore allegiance to, walked out on, then profitably rejoined their respective Manchester football clubs, all in the space of a few days. By comparison, DCLG ministers' autumnal double U-turn over the degree to which they were going to impose directly elected mayors on England's largest provincial cities was hardly, as it were, premier league. Still, it was embarrassing, as a swift recap confirms – and as appeared to be confirmed too by the fact that the policy the Prime Minister probably sees as the centrepiece of the Localism Bill went totally unmentioned in the Secretary of State's Written Ministerial Statement officially summarising the Bill's contents.

David Cameron, like Tony Blair before him, seems genuinely committed to the idea of directly elected mayors, and for probably not dissimilar reasons. Both see it as a way of recruiting into civic life business entrepreneurs too busy and important to participate, like their Victorian predecessors, in the collective leadership and government of their towns and cities. The Conservative Leader invited Michael Bloomberg, billionaire businessman, philanthropist and (unpaid) New York City Mayor, to the party's 2007 Conference and tried to enthuse the not totally convinced delegates: "I believe it's time in our big cities for elected mayors, so people have one person to blame if it goes wrong and to praise if it goes right: great civic leadership that we heard from Mike Bloomberg in his great speech on Sunday."

Mr. Cameron then conceived his plan for requiring mayoral referendums to be held in each of England's 12 largest cities outside London, which went into the party's 2009 localism policy paper, *Control Shift* (p.21 – emphasis in the original)<sup>71</sup>:

"In our biggest cities, there is a strong case for new powers being placed in the hands of a single accountable individual – an elected Mayor who can provide the city with strong leadership ... Where mayors have been chosen, the system has

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<sup>71</sup> Conservative Party (2009) *Control Shift: Returning Power to Local Communities – Policy Green Paper No.9* (London: Conservative Party).

proved generally popular. Even if there is considerable appetite for changing the incumbent, in most cases there is very little appetite for abolishing the post of mayor ... However, the experience of the current situation, whereby communities are required to choose a mayoral system for their area, is that vested interests can act as a powerful blocking force for local change.

“We will legislate to hold a referendum in England’s twelve largest cities on having an elected mayor. In these cities, a mayoral system will be established unless voters reject that change.”

The Conservative manifesto contained the pledge in slightly less detail (p.76), and it then appeared in the Coalition’s *Programme for Government* (p.12)<sup>72</sup>:

“We will create directly elected mayors in the 12 largest English cities, subject to confirmatory referendums and full scrutiny by elected councillors.”

There being no further clarification in the Queen’s Speech summary of the proposed Bill, a semantic debate kicked off – prompted by suspicions similar to those raised over the possible distinction between the Government’s general power of competence and the LGA’s power of general competence. Here, we knew what was meant by ‘full scrutiny’, even if some questioned the likelihood of its being achieved. But ‘subject to confirmatory referendums’ – what was that about? Previously, the referendums came first, and mayoral systems were established only *after* a confirmatory vote. This new formula, though, could be taken to mean that the referendums would be not so much a public consultation as a public verdict on a system that, now in operation, could be argued to be too disruptive and expensive to reverse – much as was claimed, indeed, by pro-Marketeers in the 1975 referendum on Britain’s continued membership of the Common Market. So, was this the Coalition’s way of announcing a U-turn?

Apparently, yes – for at a fringe event at the October Conservative Party conference, Local Government Minister, Bob Neill, described how confirmatory referendums would work in practice<sup>73</sup>: “[The question will be] we have set up these things, do you want to stick with them?” Asked if that would mean existing council leaders being made mayors, he replied: “That would seem the easiest way of doing things, yes.” Not much ambiguity there, it seemed, and certainly not to the existing leaders in the 12 cities in question, most of whom, and most of whose parties – with one important exception – are opposed in principle to directly elected mayors, and even more so to their being ‘foisted’ on their councils, as the local media liked to call it.

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<sup>72</sup> Conservative Party (2010) *Invitation to Join the Government of Britain – Conservative Party Manifesto* (London: Conservative Party).

<sup>73</sup> LGC, 4 October, 2010

The exception is *Leicester*, whose council took advantage of having delayed until almost the proverbial last minute its consultation and decision on a preferred model of governance, required under the 2007 Local Government and Public Involvement in Health Act. While ministers were planning the nature and timing of their confirmatory referendums, Leicester's Labour group voted to change from a Leader and Cabinet Executive to a Mayor and Cabinet and thereby avoid a referendum, and its cost, altogether. It was not an uncontroversial decision, but the necessary special Council meetings were called and the public were consulted – with 344 of those responding preferring the Leader/Cabinet model and 357 an elected Mayor. It was hardly a conclusive response from a potential electorate of over 200,000, but it did at least narrowly support the policy of the Labour administration. The Mayoral model was therefore adopted, and what will be the first Mayoral election in a major English provincial city will take place on 5 May 2011.

Leicester apart, the Local Government Minister's declaration drew a more or less concerted outcry from the big cities, reinforcing the reservation that DCLG civil servants were known to have towards the changed method of proceeding – and it looked as if the Government was going to back down. A 'New Clause 20' was inserted by ministers into the Parliamentary Voting System and Constituencies Bill, Schedule 2 of which would allow the referendum on the Alternative Vote (AV) for the House of Commons to be combined in England with local parish and mayoral elections *and local government referendums* on 5 May 2011. As far as elected mayors were concerned, the new clause was to prove a complete red herring, but at the time it was taken to suggest a timetable in which referendums would be held in May 2011, followed where relevant by full mayoral elections in May 2012.

This scenario was certainly not contradicted when the Secretary of State made clear that it was apparently Mr Neill who had misunderstood the Government's policy, not the rest of us. Answering questions in the Commons, Mr Pickles replied first to Diana Johnson, Labour MP for Kingston upon Hull North<sup>74</sup>:

"The hon. Lady is mistaking this Government's position with that of the previous one, who would often impose things on local people. She seems to be suggesting that we would somehow impose mayors on those 12 cities, but of course we will not. That is completely out of the question. The proposals will be subject to referendums. Once we know the views of the people in those 12 cities, we will move on to the election of a mayor if people vote for that."

Later, in reply to Mary Glendon, Labour MP for North Tyneside, the Secretary of State became almost agitated in his insistence (col. 1125):

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<sup>74</sup> HC Debate, 21 October, col. 1117

“Perhaps the hon. Lady should have paid a little more attention to the earlier question, when I ruled out the possibility that we would be imposing mayors. This will be subject to a referendum. It was the Labour Party that imposed forms of government on local government without consultation and without listening. This Government have learned the lesson; we will follow the will of the people.”

### **The people choose – after the Minister orders**

Read the Government’s own Directgov website, and at first glance nothing has changed:

“The government proposes to allow 12 English cities to have executive mayors from 2012, subject to referendums and full scrutiny by elected councillors. Ultimately, it will be for local people in each city to decide whether to have an elected mayor.”

But then you see that ‘ultimately’. In this context it could be simply describing the previous practice, with the people voting first on whether they wish their city to be one of those allowed to have an executive mayor. Or it could be an ‘ultimately’ with a temporal element to it, whereby the people get the last say and are the last to get a say. It is, of course, the latter. Bob Neill’s interpretation was right. Imposing mayors was not completely out of the question after all:

“This section [9N] gives the Secretary of State the power by order to provide that on the relevant date a specified local authority shall cease operating its existing form of governance arrangements and start operating a mayor and cabinet executive. It also makes provision for the creation of a ‘shadow’ mayor ... and sets out who the ‘shadow’ mayor will be.”<sup>75</sup>

That is imposition. More to the point was what was completely out of the answer – which proved to be about the most important issue of all: the much-rumoured substantial new powers that elected mayors would have at their disposal. It was all very tantalising

“Section 9HF provides that the Secretary of State may by order make provision to confer a local public service function on the elected mayor of a specified local authority... Section 9HG provides for elected mayors to apply to the Secretary of State to confer local public service functions on them.”<sup>76</sup>

But not a hint of what such functions might be.

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<sup>75</sup> House of Commons, 2010, para. 126

<sup>76</sup> House of Commons, 2010, paras. 94-5

The Localism Bill introduced a three-stage process that will now apply to the twelve big cities with the exception of Leicester:

- *Stage 1:* Following Royal Assent – probably sometime in the summer – the Government will make an Order, whereby the council leaders for Birmingham, Bradford, Bristol, Coventry, Leeds, Liverpool, Manchester, Newcastle upon Tyne, Nottingham, Sheffield and Wakefield will become *shadow mayors*, and be given the powers available to existing council mayors.
- *Stage 2:* On the same day as the May 2012 local elections, these cities and any other area that calls for a mayor will hold *mayoral referendums*.
- *Stage 3:* On the same day as the May 2013 local (mainly county council) elections, the cities and any other areas that voted ‘Yes’ in their referendums will hold *mayoral elections*, using the Supplementary Vote system that is used for all existing mayors. Mayors will be elected for four-year terms and, according to the DCLG briefing, will “have the status and power to make their city a success, details of which will be further explained *during the course of the parliamentary process*” (emphasis added).

Table 1 indicates who the shadow mayors would be, if nothing changed in the period before the Localism Bill receives Royal Assent – a huge assumption, given that some of these councils are within a by-election of a change of control as they stand (e.g. Leeds, Sheffield), and that all, both metropolitan boroughs and unitaries, face elections in May. Few of the prospective shadows seem thrilled by their impending status change, which in the circumstances is understandable – because their status is about the only thing that will change between May 2011 and May 2013.

As will be argued in the latter part of this chapter, a major reason for the generally low-key impact of elected mayors, outside London, is that under the existing legislation mayors and their authorities have essentially the same powers as executive committees and non-mayoral authorities. This will continue to be the case until any mayors are elected in their own right in 2013. In the meantime, the shadow mayoral authorities will have no additional powers, and it seems unlikely that the shadow mayors themselves, lacking the defining mandate and personal authority of having been elected by ‘the people’, rather than by their party colleagues, would choose significantly to change existing practices in relation, for instance, to cabinet appointments and executive decision-making. The shadow arrangements, therefore, are unappealing, but what, for most, is more objectionable, is the policy itself.

Table 1: The 12 cities, their current leaders and prospective shadow mayors

	<b>Current control</b>	<b>Current Leader</b>	<b>Leader's party</b>	<b>Composition of cabinet/executive</b>
Birmingham	Con/LD	Mike Whitby	Con	Con 6, LD 4
Coventry	Lab	John Mutton	Lab	Lab
Bradford	Lab minority	Ian Greenwood	Lab	Lab
Bristol	LD minority	Barbara Janke	LD	LD
Leeds	Lab minority	Keith Wakefield	Lab	Lab + Gr/C/LD
<i>Leicester</i>	<i>Lab</i>	<i>Veejay Patel</i>	<i>Lab</i>	<i>Lab</i>
Liverpool	Lab	Joe Anderson	Lab	Lab
Manchester	Lab	Sir Richard Leese	Lab	Lab
Newcastle	LD	David Faulkner	LD	LD + Lab
Nottingham	Lab	Jon Collins	Lab	Lab
Sheffield	LD minority	Paul Scriven	LD	LD
Wakefield	Lab	Peter Box	Lab	Lab

*Note: Leicester is italicised for the reasons indicated in the text*

In Birmingham, Mike Whitby is a long-standing opponent of elected mayors, who has already had to listen to his party leaders suggesting not only that a directly elected mayor would give Birmingham the same international status as Chicago or Barcelona, but that “a candidate from outside the existing political machine” might be best suited to the role. In Coventry, John Mutton’s strongest motivation in standing may well be to stop local MP and Gordon Brown’s former Defence Secretary, Bob Ainsworth, from furthering his lately discovered interest in the city’s local government. Ian Greenwood argues that a city as socially, culturally and economically diverse as Bradford requires collective, not individual, leadership, and notes that the legislation was already in place to allow a referendum if the people of Bradford wanted one, but they don’t. In Sheffield and Newcastle upon Tyne, both major parties, the Liberal Democrats and Labour, are opposed, and in Nottingham Labour’s Jon Collins informed the *Nottingham Post* that “it’s a stupid policy; it was stupid when Labour proposed it, it’s stupid now. Having an elected dictator is not the best way forward”.

Bristol has changed leaders more frequently than most councils in recent years, and, perhaps partly as a result, the city’s recent public consultation produced a strong majority in favour of an elected mayor, but the council and Barbara Janke herself are opposed. Leeds’ public consultation – equally small-scale and unscientific, it should be emphasised – also showed a small majority in favour of an elected mayor, but the

Leader, the slightly confusingly named Keith Wakefield, has told colleagues that he would rather resign than be turned overnight into a mayor. Meanwhile, *in* Wakefield, Peter Box claims that there is “an understanding between parties in this council that there is no support here for elected mayors”.

There is a concern too in Yorkshire about the potentially distracting and divisive implications of there being possibly three elected mayors in the 11-authority, county-wide Leeds City Region Partnership. Liverpool’s Joe Anderson goes further, proposing that any elected mayor should run the whole Liverpool City Region, while in Manchester, with the new Greater Manchester Combined Authority already promised more powers over transport, housing, economic development, skills and job creation, a debate over the merits of a city mayor must run the risk of seeming something of a sideshow.

### **What went wrong last time?**

New Labour’s attempt in 2000-02 to persuade councils to adopt the strong mayoral models of political leadership that it felt were supremely capable of driving change and improvement in local government failed badly and predictably. The extent of the failure was described in the 2006 White Paper, *Strong and Prosperous Communities*<sup>77</sup> (DCLG, 2006, p.55):

“Only 12 local authorities ... introduced the strongest leadership model, an elected mayor. Four out of five councils ... opted for the leader and cabinet model ... Of these councils, only a relatively small number give the leader authority to act alone. Rather, they act collectively with other cabinet members, whom the leader often does not have the power to select.”

How typical! When local authorities were offered the opportunity by ministers to choose something for themselves, they chose the wrong options. So, as set out in the White Paper and then the 2007 Local Government and Public Involvement in Health Act, they would have to go back and do it again, with an even more restricted range of options. It was a characteristic reaction by a government that could not bring itself to admit that the outcome that it found so unsatisfactory resulted to a significant degree from its own policy mismanagement.

The task that the government had set for itself – to get as many authorities as possible to adopt an elected mayoral model of political management – was difficult, but by no

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<sup>77</sup> DCLG (Department for Communities and Local Government) (2006) *Strong and Prosperous Communities: The Local Government White Paper*, Cm 6939-1 (London: The Stationery Office).

means impossible. Most councillors were never going to enthuse about either the executive/non-executive split in principle or elected mayors in particular. Why should they? They were being asked to give up a situation in which the council leader was elected by and answerable to them, for something called overview and scrutiny, which, whatever it might turn into, seemed a poor substitute for being an actual policy-maker. The public, however, were different. True, few of them knew much about the committee system, and even less about alternative systems that might replace it. On the other hand, they were instinctively attracted to the idea of the leader of their council being elected by them, rather than by a small group of party cronies. They were influenceable.

It was a situation from which there ought to have emerged far more than a dozen mayors, including at least two or three from the present 12 big cities that could have served as role models for others. The failure of the Government to achieve this kind of result was attributable to a list of errors of commission and omission almost too numerous to detail<sup>78</sup>, but they include:

- Failing to commission any systematic evaluation of political management systems – including differing kinds of mayoral systems – in other countries and how they operated in practice;
- Reversing its initial idea of local authorities volunteering to test out a whole range of executive-based decision-making models – including directly and indirectly elected mayors – in time-limited experiments, thereby enabling them to opt for the one they felt would suit their needs best.
- Failing to run any serious public awareness and information campaign, to build on the strong (75%) basic support for the idea of a council leader being “chosen at an election in which everyone in the town/city can vote” (Game, 2003, p.18).
- Failing to give mayors significant powers over and above those of the executive committee in a Leader/cabinet authority.
- Failing to meet one of the public’s major concerns by making some provision, as in numerous other countries, for the recall of mayors within their four-year term of office.
- Restricting principal councils’ choice of executive models to just three, two of which were based on a directly elected mayor, *and then* requiring councils to consult their electors and establish their views on each of these options in a fair and balanced way – so that the consultation could be treated and the result reported as if it were a ‘first-past-the-post’ election.

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<sup>78</sup> Game, C. (2003) „Elected Mayors: More Distraction than Attraction?’ *Public Policy and Administration*, 18:1, pp.13-28.

- Ministerial refusal to intervene in cases – particularly of big city councils – where either the consultation process was plainly inadequate and/or the preferences of electors were misrepresented in the council’s recommendation to the minister.

### **A big ask**

Thinking back to the red herring of the ‘New Clause 20’, there were in fact plenty of sound reasons not to hold mayoral referendums on 5 May 2011, given all the other votes due to take place on that day. But inevitably the reason that cynics seized on was that David Cameron, anticipating a Conservative thrashing in local elections, felt there would be a good chance of losing most, if not all, of the mayoral referendums, opposed as they are likely to be by most councillors, most parties, and a fair proportion of party activists. Is he right? Is his task today as tough in its way as his predecessors managed to make theirs a decade ago?

Some things certainly are much the same as they were then. Neither councillors nor the public are strikingly better informed about alternative political management systems – or even, in some cases, of the extent of variation possible within the present system. Apart from residents in mayoral authorities, few members of the public know very much about mayors beyond Ken and Boris, the Hartlepool monkey, and maybe the troubles in Doncaster and Stoke. What evidence-based analysis there has been suggests that ‘England’s elected mayors have performed rather well’<sup>79</sup>(Stevens, 2010): that mayors have led to more visibility, accountability and engagement in their localities, with the potential for a more dynamic approach to driving economic development locally<sup>80</sup>. None of this, however, is going to sway referendums. Virtually all media reports on the subject refer to city councils possibly being led by ‘Boris-style’ mayors – but in apparent ignorance of the major differences in the respective offices, rather than as a proposal for their being given city-regional responsibilities. The public still worry about concentrating what seems like enormous political and spending power in the hands of one irremovable individual. But it seems that there is still an underlying, if reduced, plurality of support for the broad principle of elected mayors. The most recent national opinion poll on the topic, by Ipsos MORI for the New Local Government Network in May 2008, showed, after excluding ‘Don’t knows’, 43 per cent in favour of their council having a directly elected mayor and 33 per cent opposed.

David Cameron’s problem is that there is even less perceptible appetite for change than there was ten years ago, among either the public or the city councils, and, as noted above, considerably more resistance, much of it well-founded. A major incentive is required both to shift the views of the current leaders and to persuade the public that a

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<sup>79</sup> Stevens, A. (2010) ‘England’s elected mayors have performed rather well’, *City Mayors*, 21 January - <http://www.citymayors.com/government/uk-elected-mayors-2010.html>.

<sup>80</sup> Dhillon, K. (ed.) (2006) *Mayors Making a Difference* (London: NLGN).

'Yes' vote in the referendum will actually change something. That incentive is obviously the promised additional powers that are so conspicuously absent from the Bill at present – apart, that is, from the highly contentious provision [Section 9HA] for an elected mayor to take on the head of paid service role of the Chief Executive.

As for substantive 'public service functions', there has been endless talk about what they might be: tax-raising powers; strategic responsibility for transport, policing and economic development; powers to tackle poverty and cut benefit bills. One of the most comprehensive lists is that in a recent New Local Government Network publication, *New Model Mayors*, which makes the case for graduated suites of additional powers for city-regional mayors and all other elected mayors<sup>81</sup>. They include:

- The financial flexibility to balance their budget over the final 3 years of a term, instead of being limited by in-year balancing;
- The power to introduce a supplementary business rate of up to + or – 4p, with any extra funds raised to be spent of economic development within the locality, as deemed best by the mayor.
- Ability to appoint or dismiss Chief Executive – with the council having an advisory role.
- The automatic right to chair or appoint the chair of the Local Strategic Partnership.
- Similar transport powers to those of the Mayor of London, with a say in local transport provision within the authority's boundaries through chairing or nominating the chair of the local transport body.
- Power of appointment for the position of Primary Care Trust Chief Executive, and alignment of PCT priorities with Mayoral health priorities.
- Responsibility, powers and funding for 14-19 and adult skills.
- Formation of a statutory Employment and Skills Board, chaired by the Mayor or Mayoral representative, to devise strategy.

Hope and Wanduragala argue that a devolutionary prospectus along these lines is needed, if councils are going to be incentivised to support a mayoral model and electors are going to be incentivised to vote for one - which presents at least two big problems. First, if and when it does produce some such prospectus, it will raise the obvious question of why a self-styled localist government wouldn't want its virtues and benefits to be shared by all authorities – especially as there has never been any explanation of what it is that makes the chosen 12 particularly suited to a mayoral form of governance. Second, the Government's 3-stage process means that, whatever happens, none of these powers will be exercised by the shadow city mayors, and the May 2012 referendums will therefore take place without voters having had any first-hand experience of the difference they may make. Voters' decisions become a toss-up

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<sup>81</sup> Hope, N. and Wanduragala, N. (2010) *New Model Mayors: Democracy, Devolution and Direction* (London: NLGN).

between the things that worry them about elected mayors – that they cannot be removed by a resolution of the council, that a two-thirds majority is required to overturn their budget proposals – against a promise of something intangible being better sometime in the future. It may prove, in modern parlance, rather a big ask.

## **Standards and codes of conduct**

**Philip Whiteman**

### **Introduction**

The 'standards regime' has had an uncomfortable history in local government with critics commenting upon the number of unsubstantiated complaints being made against councils, the bureaucratic burdens of Standards for England – the strategic regulator and the requirement for a judicial adjudicator of serious cases – the First Tribunal. Whilst not directly related to the principles of localism, the Coalition Government has incorporated wide-ranging provisions to reform the standards regime into the bill. At a glance the Localism Bill proposes to remove statutory requirements and mandated institutions by:

- abolishing the strategic regulator, Standards for England (although this will be included in different legislation and not the Localism Bill);
- abolishing of the national code of conduct for local authority members and making them voluntary;
- removing the obligation on local authorities to maintain standards committees and make them voluntary;
- removing the obligation for standards committees to be chaired by independent people;
- removing the power for standards committees to sanction aberrant behaviour.

The Bill proposes to retain and introduce new mechanisms for upholding standards for councillors by:

- requiring monitoring officers to maintain and a register of interests for elected and co-opted members
- making failure to declare interests a breach of criminal law.

### **Overturning a history of standards codes**

The coalition government's Localism Bill sets out to reverse the New Labour Government's centralising tendency to regulate local authorities, but it is worth remembering that codes for councillor conduct were in existence a long time before the Local Government Act 2000 – which is often wrongly regarded as the catalyst for the introduction of standards and codes of conduct to local government. There is a risk that the removal of the statutory requirement for codes of conduct may be the proverbial, 'throwing the baby out with the bath water'. Government may have conflated the perceived problems of the regulatory burden created by the existing regime with the necessity to uphold local standards.

The Code of Conduct can be traced back to a voluntary National Code of Local Government introduced in 1975 which subsequently became a statutory requirement in 1989<sup>82</sup>. Later in the 1990s, the interest in local government standards of behaviour was included in the work of the Nolan Committee investigations on the standards of politicians in public life. Following Nolan, the New Labour Government acted quickly (perhaps too quickly) to reinforce local government standards through the introduction of a new ethical framework which went far beyond the national codes of 1975 and 1989. Part III of the Local Government Act 2000 was arguably the most extensive framework for standards of conduct for any group of public office holders in the UK<sup>83</sup>. As well as establishing a statutory requirement for independently chaired local standards committees to oversee the framework, it also introduced a strategic regulator – the Standards Board for England and a quasi-judicial organisation for sanctioning serious infringements – the Adjudication Panel (later to be merged with equivalent tribunal bodies into the ‘First Tribunal’).

Considering the long history of the Code and the requirement to quell poor standards in public life by councillors, the Government and councils need to approach further reform cautiously. After all, there was a long history of corruption and poor practice, sometimes considered endemic, within local government. Given the number of elected members, perhaps this was not as widespread as might have been expected, and certainly improved in recent decades<sup>84</sup>. Codes of conduct have been a significant feature in reducing the incidence of improper behaviour. Whilst in recent years local government may not have suffered repeats of the Poulson scandal of the 1970s, where the investigations unmasked serious instances of bribery and corruption, the risk of councillor misconduct certainly still remains. The codes of conduct, whether in the pre or post 2000 form, have remained a vital tool for dealing with errant behaviours. It is easy to cite high profile cases in the past, including the spectacular case of Lady Porter, who as Leader of Westminster City Council, was found to have been gerrymandering the sale of council houses to bolster support for the ruling Conservatives. There was also the so-called ‘Donnygate Scandal’ of the 1990s which involved corrupt behaviour amongst Doncaster councillors. Codes of conduct have also made an important contribution to the restoration of acceptable councillor behaviour where authorities had suffered very poor and disruptive member-officer relations – most notably in Doncaster, Walsall and Bromsgrove councils. While more recent proven cases of member misconduct are less easily recalled, with comparatively few making national headlines, the number has not been insignificant. During 2008/9, for example, some 41 per cent

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<sup>82</sup> *The Local Government and Housing Act 1989* s.31 gave statutory status to the National Code of Local Government Conduct

<sup>83</sup> Committee for Standards in Public Life 1997, *Third report on the Committee for Standards in Public Life: Getting the Balance Right Implementing Standards of Conduct in Public Life*. Cmnd 6407. The Stationary Office.

<sup>84</sup> Chandler, J. 2009. *Local Government Today*. 4<sup>th</sup> Ed. Manchester University Press.

(66 cases) of complaints to standards committees for local investigation resulted in a judgement that a councillor had indeed been in breach of the code.<sup>85</sup>

Evidently there is a need for some form of code to be in place at the level of principal councils, but its application amongst local parish and town councils is more questionable and possibly less appropriate. Bearing in mind the limited scale of town and parish council activities, the costs and benefits of a standards regime at that level are questionable. This point of view was strongly made in a paper published by Michael Macauley and Alan Lawton in 2006, who commented that, 'the first, and perhaps most contentious problem, is one of scope rather than content.'<sup>86</sup> They critically challenged whether the application of the Code of Conduct was entirely appropriate for such small units of local government. Typically, many of the complaints made against parish and town councillors were regarded as trivial and, at their very worst, vexatious. The complaints arising from the local tier have often been too problematic and time consuming for those agencies dealing with referrals, including the national Standards Board for England prior to its reform into the similarly titled, Standards for England. Monitoring officers and standards committees for principal councils have also found themselves becoming immersed in a plethora of comparatively minor issues of behaviour at the parish/town level, much of which has been both unwanted and unwarranting of action.

### **Standards committees**

Under the 2000 Act, the primary responsibility for ensuring ethical standards rests with the principal local authority. Each authority must have a code of conduct, appoint a monitoring officer and a local standards committee, which must be chaired by, and contain, at least three independently co-opted members. A duty is also placed upon the chief executive and monitoring officer of the council to advise members on ethical matters. Apart from the role of monitoring officer, these statutory requirements are to be withdrawn under the provisions of the Localism Bill.

Currently, the standards committee of each council (which must be chaired by an independent member) is responsible for receiving allegations and deciding whether any action needs to be taken. Action may take the form of an investigation by the local monitoring officer, investigation by Standards for England, or some other form of action such as mediation or training. Standards committees must then report periodically to Standards for England.

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<sup>85</sup> Standards for England. 2009. *Local Standards: National Perspectives*. Annual Review. SFE: Manchester.

<sup>86</sup> Macauley, M & Lawton, A. 2006. 'Changing the Standards? Assessing the Impact of the Committee for Standards in Public Life on Local Government in England', *Parliamentary Affairs*. Vol 59(3). 474-490

The proposals to reform this model are mixed. On the positive side, local authorities will be liberated from the centralised regime of Standards for England. Each authority can follow the existing code, replace it with a new version or abolish it entirely. The thrust of the proposal clearly follows the localist agenda and, as such, may seem to represent a welcome departure from the inflexibility of a national code. Indeed, the development of local voluntary codes may make councillors more conscious of their responsibilities for their own good conduct.

The Coalition Government's proposals certainly allow greater flexibility at the local level and saved local authority standards committees from the inflexibilities of a regulated national standards code and regime. However, at a time when public confidence in politicians has been badly damaged by the expenses saga, the removal of the mandatory requirement for co-opted and independent members on standards committees may seem a curious and regressive step.

#### **The ability to take action – ‘a sledge hammer to crack a nut?’**

The proposal to restrict the powers of standards committees may be a cause for concern. In addition to advising councils on standards of behaviour and ensuring high standards, the current law allows for committees to investigate and determine infringements of the code. If an infringement is found to have occurred, then the committee has a range of sanctions available, ranging from warnings to restrictions on members' activities for up to six months. More serious penalties may be imposed by the First Tribunal. The removal of these sanctions raises critical problems under the proposed arrangements:

- The standards committee may censure but not sanction a member. Whilst censure may induce shame in a member, it does not necessarily guarantee a change in behaviour;
- By removing the power of sanction, it may reduce the likelihood of a councillor co-operating with an investigation into an alleged infringement. The councillor may calculate that if he or she does not co-operate and that a criminal investigation is unlikely, the matter may be dropped;
- The removal of the power of sanction effectively takes away the more constructive sanctions for minor infringements that can be addressed by mediation between parties, by training or by a letter of apology.

Whilst the Government's proposals may reduce the role of standards committees (some might say to 'toothless tigers') in terms of dealing with complaints, the committees may still have an important contribution to make towards the good governance of an authority. Standards for England have identified through a number of commissioned case studies that the role of committees does indeed improve member conduct and

behaviours.<sup>87</sup> The committees also allow for constructive thought and reflection on good governance which may not otherwise happen within the council's decision-making structures. The outright abolition of a council's standards committee and, with it, the involvement of independent members, may also achieve little for an authority's public reputation at a time when confidence in politicians is low. Here it is worth noting Skelcher and Snape's comments about a standards committee forming an important part of the 'overall approach to the authority's governance and the way this influences behaviour. The process emphasises risk assessment and prevention rather than cure. The wider interpretation sees a relationship between standards of conduct and transparency and the openness in decision-making'.<sup>88</sup>

### **Criminalisation and non-criminal activities**

The abolition of Standards for England as regulator and First Tribunal as the adjudicator for serious cases and appeals has been proposed to simplify the process through application of criminal law. This in effect codifies as criminal any instances in which a member fails to disclose an interest and then continues to take part in council business related to that agenda. This proposal raises a number of interesting issues that need to be closely considered.

One of the criticisms of the standards regime has been the reporting of councillors for political gain by an opposing group, whether there is any substance in the accusation or not. This has often been a tactic used by opponents in the run-up to an election and was particularly problematic for the Standards Board for England prior to the 2007 reforms. The Crown Prosecution Service will now assume responsibility for alleged infringements but will need to consider carefully whether there is sufficient evidence in the cases brought to its attention or whether it is sufficiently in the public interest to pursue prosecutions.

Criminalisation only covers disclosure and registration of member's interests. The new legislation does not include other forms of infringement traditionally associated with the code. Leaving standards committees without the ability to sanction errant councillors risks creating a vacuum in the many cases of misbehaviour that routinely arise, such as:

- Not treating others with respect;
- Bringing the authority into disrepute;
- Bullying any person;
- Intimidating somebody involved in a complaint procedure;
- Using the authority's resources for a political purpose;

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<sup>87</sup> Case studies on good practice can be found on the Standards for England website.

<sup>88</sup> Skelcher, C & Snape, S. 2000. *Political Executives and the New Ethical Framework*. IDeA/DETR.p1

- Compromising the impartiality of somebody who works for the authority;
- Breaching the authority's equality rules.

These are all problems that most authorities have faced at some time in the past, yet the new legislation does not adequately state how members may expect to be sanctioned in such instances in the future<sup>89</sup>.

It may be that the 'non-criminal' acts cited above will be overseen by the Local Government Ombudsman for Maladministration. In September 2010, the Secretary of State for Communities and Local Government, Eric Pickles MP, stated that, "an empowered Local Government Ombudsman will investigate incompetence on behalf local people"<sup>90</sup>. However, the Bill does not in fact allow for such powers and it remains unclear whether this is a change of intention on the part of the Government. Should the Government seek such a transfer, there remains a very real possibility of the Ombudsman becoming overwhelmed with complaints about local government standards, in much the same way as the former Standards Board for England. Government may wish to consider retaining the investigatory and sanctioning role of standards committees specifically in order to filter our minor or vexatious complaints and to reduce the potential burden on the Ombudsman.

## **Conclusion**

The Standards Regime over the last decade has been problematic and it is quite understandable why the Coalition Government has been so critical. Over-regulation by quangos and local standards committees which were often inundated by frivolous complaints, especially from the parish level, were problems that certainly needed to be resolved. However, as highlighted within this narrative, many of their reforms have gone beyond addressing those immediate concerns and can be regarded as shaking the whole standards process to the core. There is a very real risk that the proposals outlined within the Localism Bill will undermine the many benefits to local government of the standards regime, specifically the promotion of good governance and confidence that all councillors will act in an acceptable way at the local level. The standards regime is not simply a mechanism for punishing errant councillors, it has also been a means of promoting a culture of ethical behaviour. There is a very real risk that if enacted into legislation, the Government will undermine the principles set out by Lord Nolan on standards in public life.

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<sup>89</sup> Types of infringement can be found in the Standards for England Annual Review 2009.

<sup>90</sup> CLG. 2010. *Stunnell Corrupt Councillors will go to Court not Standards Committees*. Press Release. Department for Communities and Local Government. 20<sup>th</sup> September.

## **Development planning and housing**

**Andrew Coulson**

### **Introduction**

The Localism Bill proposes a shift of power away from Local Planning Authorities (district councils in two tier areas, unitaries elsewhere) to town or parish councils, or, in unparished areas, to neighbourhood forums set up by groups of residents. They will have the power to approve Neighbourhood Development Plans. If these are approved by an independent examiner and in a local referendum, the local planning authority will be obliged to put them into effect within a short space of time.

Parishes and neighbourhood forums will also be able to pass Neighbourhood Development Orders granting planning permissions in their areas, once the wording has been considered in an “examination” (which may or may not include sessions in public) and agreed in a local referendum. The examination will be carried out by an individual approved by, but independent of, both the Local Planning Authority and the parish or neighbourhood forum. Much of the detail of how this will work is dependent on subsidiary legislation.

Where a local asset is on the market, a parish Council or neighbourhood forum will have preferential rights to purchase it and use it for community activity. Where they want building to take place, a Community Right to Build Order will enable them to approve this without the need for separate planning permission.

There are provisions for the costs of this “neighbourhood planning” to be met from charges levied on developers who are granted planning permissions under these arrangements. Local Planning Authorities will be required to provide technical and administrative support for parish councils and neighbourhood forums, and to assist with the costs of public examinations and referenda.

Responsibilities for major infrastructure projects, or projects with impact on the environment, will stay with local authorities or be taken on directly by the Department.

The Bill removes the framework of Regional Planning Guidance introduced in 2004. However – without the need for new legislation – the Government has promised to codify its planning guidance documents, and, in so far as this provides clear prescriptive guidance on major infrastructure programmes, this may well cover much of the policy guidance that was a feature of regional strategies – though without specific targets,

such as those introduced under the previous Labour government for housebuilding.<sup>91</sup> Overall, the Government will gain new powers.

The Bill includes proposals to strengthen the sanctions against those who build without planning permission, put up advertisements without permission, or permit graffiti to remain on their properties. If a planning refusal is overturned on appeal, it will be returned to the planning authority to work out the subsequent detail, rather than this being resolved by the inspector who decides the appeal. A developer proposing a major planning application will have to conduct consultation on the details before making a submission.

New tenants allocated social housing by councils or housing association will no longer necessarily have secure tenancies – their need for social housing will be reviewed after five years. And obligations to house the homeless will be reduced – thus a homeless family will receive just one offer of accommodation deemed to be suitable for them “in the opinion of the council”. Ceilings proposed (in separate legislation) for housing benefit will price claimants out of expensive areas, especially in South East England – forcing councils to accommodate them in areas far away, disrupting employment, education and family support networks.<sup>92</sup> (See Chapter 12)

### **Spatial planning and development management**

Development Management (formerly known as development control) is not the most fundamental part of the Bill – since that would presumably be the strategic aspects of planning – but it is the most local, and will have the most immediate effect on communities.

Development Management is an exercise of power – the power to give an owner<sup>93</sup> of land or property permission to extend or develop it, or to find a new use for it, or build something completely new. This power is constrained – because other people living near will not want to lose their views, or be overlooked, or unable to park their cars, or suffer the nuisances of noise, smells or other disruptions to their lives. They also want to live in places that look good, but also where the buildings function well in terms of access, safety, and running costs (especially for energy and water). There is a natural tendency to fear the worst – which is why there are objectors to all but the most routine of planning applications. There are also wider interests – preservation and enhancement of the quality of the environment, a need to protect as much open countryside as possible, but also to find the least disruptive sites for activities which no-one really

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<sup>91</sup> *Planning paperwork to be radically cut back to help communities drive development*, press release, Department of Communities and Local Government, 21 December 2010

<sup>92</sup> The Government has delayed some of these provisions till the end of 2011.

<sup>93</sup> The power is given in general terms, not to a specific property owner. But unless the owner or organisation that owns the land agrees, a third party cannot use the power.

wants near where they live – manufacturing industry, waste processing plants, bail hostels, or the route of a high-speed railway, to take but a few.

Many planning decisions<sup>94</sup> have highly significant commercial consequences – as when land in agricultural uses becomes available for housing, a barn is converted, or a former factory site gets approval to be developed as a supermarket. Many of the most interesting recent developments in cities have involved conversions from former mills or factories to housing or offices, or from offices to hotels or flats, or various mixed uses.

The complicated situations outlined above mean that there are three important half-hidden aspects of planning, which involve skilled professional planners. The first is *mediation*, or compromise, where a developer meets the objectors half way, and modifies a plan to lessen its impact. The second is a commercial buy-off, undertaken under Section 106 of the Town and Country Planning Act 1990, where a developer agrees to defray the costs imposed on the community by a new development (by paying for extra school places, play areas, road improvements, public transport infrastructure such as re-opened railway stations, buildings for community use – sometimes drainage or flood control infrastructure.) The third is to give legally clear precision to both developers and public about what is being permitted in any specific case, and enforceable sanctions against anyone not complying. A Development Control Committee, and the officers advising it, will endeavour to produce a solution which allows development to take place while protecting the interests of the wider public. If the legal drafting is not clear, comprehensive and well-informed, then a developer or property-owner will be able to ignore whatever obligations have been agreed.

Given the above, it is not surprising that planning often appears to be a secretive process dominated by professionals and interpretations of rules, from which the public can easily feel excluded.

The public is frequently placed in a position of responding to the proposals of a developer who takes the initiative to propose a new use for a piece of land or a building, can afford to hire specialist expertise to maximise the prospects of success, and can make concessions which can buy off parts of any opposition. There is a presumption in favour of development, in that a proposal in accord with the relevant development plans will normally be approved. But there are limits to this: “use classes” make it hard to change the broad uses of land (unless other “material considerations” can be brought into play), and a complex set of national and local rules is designed to prevent one developer undermining the value created by another (e.g. to prevent “overlooking”, or keep open the possibility of one day widening a road). The British way of managing this

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<sup>94</sup> The formal language refers to these as *development management* decisions: see <http://www.communities.gov.uk/planningandbuilding/planningsystem/>. The wider system is described, in PPS 12, as *local spatial planning*: see <http://www.communities.gov.uk/documents/planningandbuilding/pdf/pps12lsp.pdf>

has been both local (decisions taken by Development Control Committees, taking careful note of the advice of local professional planning officers) and centralised (if a proposal is rejected, and the developer appeals, the decision is made on the basis of reports prepared by planning inspectors, centrally employed). The system allows a degree of local discretion, while the Secretary of State retains the ultimate power to “call in” an application, and take the decision centrally.

It is seldom that alternative proposals for completely different land uses can be considered seriously. And for objectors to succeed in persuading a Development Control Committee to reject an application, the case against has to be presented appropriately, with an understanding of the law, and awareness of relevant precedents. Local residents are often unaware of their rights, or how best to present their case – hence the value of Planning Aid, which gives free advice on planning matters to individuals.<sup>95</sup>

To influence land use and the built environment in their areas ahead of planning applications from developers, local residents need to get their views enshrined in the Local Development Framework which, under the 2004 Planning and Compulsory Purchase Act replaced the “structure plan” or “unitary development plan” for the area. The Local Development Framework, along with guidance documents from the Secretary of State, sets out the matters that can be taken into account in determining a planning application. It is a collection of documents, created by the local planning authority but approved by the Secretary of State, which set out the broad policies to be followed in the area, but also specify how key sites should be treated. It includes Area Action Plans for small areas, such as a village, a suburb with a local centre, and planning briefs for areas subject to redevelopment. These plans are prepared by council officers, on the basis of extensive consultation with local interested parties, councillors, business interests, and organisations. To develop local plans at this level of detail is, however, time-consuming and expensive – and the speed at which they have been prepared and approved has been disappointing.

Many villages, parishes, and some smaller areas have less formal village plans or local plans. These are often prepared quite quickly, involving residents and volunteers, using techniques such as ‘planning for real’ which enable participants to indicate what they would like and where they would like it to be. In planning terms, these will be taken into account by a Development Control Committee, but are less binding than documents in the local planning framework.<sup>96</sup>

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<sup>95</sup> The Government intends to discontinue its grant to Planning Aid. This is surprising at a time of systemic change, when the need for information will be at its highest. Planning Aid also has an excellent reputation in arranging mediation and compromise in planning disputes.

<sup>96</sup> PPS 12, para.6.2 is very cautious: “The process of planning at urban community or parish level can bring wide benefits in terms of deepening community involvement and increasing a sense of belonging and of ownership of policy. However where communities or developers wish to use the statutory planning process (ie SPDs) as part of their approach, they should work with the local planning authority from the outset. Developers and communities should not expect to prepare plans independently from the LPA and then have them adopted as SPD. Parishes and urban

## Housing targets

Much of the debate about planning arises because of the difficulties in finding the space to house Britain's growing population.

The former Labour government got into difficulties with its proposals for house-building. Projections based on the 2001 population census suggested that the population of England and Wales will rise from 52m in 2003 to 57m in 2026. Over the same period, the average number of people per household will decline from 2.3 in 2003 to 2.1 in 2026, as the population ages, with older people staying longer in their homes, and more people choosing to live alone. The projections suggest that there will be more than 5m extra households to be housed by 2026.<sup>97</sup>

With many people choosing to move out of cities, the greatest pressures are on villages or small towns within commuting distances of cities, especially in London and the South East of England. However, many households do not have the wherewithal for commercial borrowing to purchase houses – they depend on subsidies to the capital value of houses built, or subsidised rents, or support from the state through housing benefit, which, with fewer council houses and more claimants in private accommodation, and housing associations struggling to meet their targets for new building, was one of the fastest rising components of the welfare state. The Government thus faced three related problems – a need for more homes in total, a need for more social and affordable homes for the less well off, and a need to cap or reduce payments for housing benefit.

Central to its response was increasing the numbers of new homes.<sup>98</sup> It ruled out building in the green belts, other than in very special circumstances. The land for the new homes would therefore either be agricultural land not designated as green belt or national park, or “brownfield sites”, and as luck has it, there are areas of former industrial land in most cities on which houses can be built. The definition of “brownfield land” also included low density suburbs, where a single large house and garden can be replaced by a block of flats. In order to get more units on the available land, the government favoured high densities – a move away from the “garden city” standards of the interwar

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communities should not however regard the statutory planning approach as the only option open to them: other forms of community planning may be more appropriate. Local planning authorities should pay close attention to the contents of non statutory parish and community plans as part of their community involvement.”

<sup>97</sup> Figures from Dave King, Anglia Ruskin University, slides 4 and 5 of his presentation at an LSE Social Policy seminar on 26 January 2007 on “Technical Aspects of the DCLG 2003-based Household Projections”, [http://www2.lse.ac.uk/socialPolicy/BSPS/pdfs/King\\_Jan07.pdf](http://www2.lse.ac.uk/socialPolicy/BSPS/pdfs/King_Jan07.pdf) accessed 27-12-2010

<sup>98</sup> The drive for this came from *Towards a Strong Urban Renaissance*, the 1999 report of the Urban Task Force chaired by Richard Rogers, with its concept of the “compact city”, and the benefits from getting people living in the centres of cities such as Manchester or Birmingham – or failing that in high density suburban locations close to railway stations or other fast transport links.

years where 8 houses per hectare was not uncommon, to minimum levels of 30 dwelling units per hectare, targets of 70 dwelling units per hectare, and much higher densities in some high pressure situations (Tower Hamlets – where most developments were high rise flats - achieved an average of 254 units per hectare in 2008 <sup>99</sup>). The London Plan included specific density targets related to levels of public transport accessibility and car parking standards.<sup>100</sup> Higher densities should have made it economic for a significant proportion of these new houses to be “affordable”. – either. build for rent, at rents no more than 80% of market rents, in the majority of cases with some support from the Homes and Communities Agency, or sold below commercial price to families who would not be able to afford mortgages at full commercial values. The London Plan required that on all but very small sites

50% of the new dwellings should be affordable. Many other areas introduced similar, but less draconian, requirements.

The targets for new dwelling units were disaggregated to regional level, and then the councils in each region were asked to accept numbers of new houses that would add up to the targets and to relate these to large brownfield sites or other areas of land. It was an achievement to (almost) get figures agreed for this. But it was highly unpopular where people did not want large numbers of new homes added to their towns or villages, or preferred traditional low density developments to higher densities including social or affordable homes.<sup>101</sup>. The Localism Bill removes these targets and the attendant pressures.

The immediate impact of the announcement was to bring many new housing developments to a halt – so much so that at least one house-builder (Cala Homes) won a judicial review against the government to the effect that its announcement had arbitrarily altered the rules on which they were operating ahead of the primary legislation – though the Government immediately acted to reassert its position ahead of the Bill becoming law.

The Government argues that the long term impact will be that more houses will be built than would have otherwise been built, as house-builders negotiate with parish councils or neighbourhood forums, and offer to provide infrastructure in return for their

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<sup>99</sup> “Housing Density in England Grows”, Local Government Chronicle 1 June 2009, <http://www.lgcplus.com/housing-density-in-england-grows/5002193.article> accessed 27-12-2010

<sup>100</sup> The 2004 London Plan includes targets for dwellings per hectare and habitable rooms per dwelling ranging from 35 dwelling units per hectare in suburban locations with poor public transport links to over 400 dwelling units per hectare for urban locations with good public transport links. See the London Plan Table 3A.2 and Chapter 3. The revised plan proposed by Boris Johnson gives less weight to these densities.

<sup>101</sup> <http://www.regen.net/news/ByDiscipline/Policy-and-Politics/1009442/Councils-alter-housing-plans-Pickles-letter/>. For a particular case, see South Oxfordshire <http://www.southoxon.gov.uk/ccm/content/cmt/press-releases/november/council-to-fight-proposals-for-housing-in-the-green-belt-and-didcot.en>

permissions to build. There will also be financial incentives – the New Homes Bonus – for councils that build many new homes.

A village or town that can identify a large area of land for new housing may be transformed under this process. But how many will willingly embrace such radical changes? And how many can do it without building into the green belts? And if the outcome is families forced to share houses with their parents, or homeless, for how long will the government stand aside? Time will tell whether these provisions deliver the numbers required.

A likely outcome is a rejection of many planning applications, particularly larger proposals for house-building. This is even more likely for applications which include substantial proportions of social housing. If this is the case, the demographic issues which almost engulfed the previous government will remain unresolved. It is improbable that purely market-based policies will deliver the dwelling units that are needed, especially in smaller towns and villages, but also in some urban areas. The combination of insufficient new housing with cuts and ceilings in housing benefit is likely to lead to increased numbers with no roof over their heads, resorting to begging or crime for survival.

A second outcome, given the pressures the new system will impose, is that there will be developments approved that do not conform to good standards of design, have insufficient parking, inadequate sustainability, and are visually intrusive. There will also be approvals which make larger scale developments in the future more difficult. There are likely to be particular difficulties where there are listed buildings and conservation areas (there is little on these in the Bill, but they require specialist expertise and judgements, and the consequence of one or two breaches in what has been agreed can easily be the collapse of a whole scheme for preserving the character of a building or an area). All these are likely to be the subject of widespread publicity which risks bringing the whole system into disrepute.

Thirdly, there will be conflict between district and county councils and parishes, and between unitary councils and neighbourhood forums. District councils will be required to prepare large numbers of neighbourhood plans, but will not have the staff to do this effectively or quickly. They will be promoting projects, such as incinerators or children's homes, which the local groups do not want in their areas.

Fourthly, there will be a rash of standards issues in both parish councils and neighbourhood forums – where individuals are accused of using local knowledge or friendships for personal advantage. The powers in another part of the Bill that will give these groups preferential access to “assets of community value” will exacerbate these risks.

### **The risks of too much localism**

There are obvious potential benefits in local decision-making. The people who live in an area understand its problems, have views on how things could be improved, and if their views become reality, they will have an incentive, and therefore commitment, to make them succeed. They will therefore give time, police the detail of agreements, and do all that they can to make their areas pleasant places to live and to work.

Decentralisation may be to one of three kinds of institution. It may be to *town or parish councils* (or in Wales to community councils) which are independent local authorities, with their own elections, revenue raising powers (through a precept on council tax), and legal framework. Or it may be to neighbourhood forums which are part of the voluntary sector: organisations set up by residents in a neighbourhood to pursue its interests. They run elections to their boards, usually informally (e.g. at Annual General Meetings) and get grant aid when they can. The third form of decentralisation is to area committees comprising the councillors elected to represent small parts of the area of a council, who may be given powers under the Local Government Act 2000 to run services in those areas. These are governed by local government law on finance, standards, accountability, etc.

Local institutions are not necessarily committed to change – at times they may be doggedly opposed to it. They may also struggle to recruit competent members. Some are faction riven – between one end of a village and the other, one extended family and another, long-standing residents and incomers, one racial grouping and others. Their resources are often minimal – most parish councils employ only a part-time clerk – and hence their capacity to undertake in-depth work is limited. There is a potential for conflict between decentralised local bodies and the larger councils that deliver services in the area. It is difficult to maintain high standards of probity when elections are often not contested and financial reporting basic.

Parish councils have the advantage of a statutory framework, the ability to raise their own money through the precept (though for a small parish the sums are small and there is no matching government grant), and legal and other advice through the National Association of Local Councils and the county associations.

Neighbourhood forums raise more fundamental issues, and the Localism Bill, as drafted, gives little indication of the criteria that a council should use to approve a neighbourhood forum for planning purposes (this is left for later guidance). Like parish councils, the best are very well run and transparent. But there have been many problems. The turn-out for their elections is often derisory, and there is very limited oversight of ballots. Many residents are hardly aware that they exist. Their keeping of records and accounts may leave much to be desired, leading to the potential for corruption. They may be created by, or taken over by, a faction or racial group in an area. They may be well run when created, but find it difficult to sustain enthusiasm over time, especially if key volunteers get full time jobs. With, in most cases, no sources of

income other than grants from local authorities, they will be very vulnerable to the blandishments of developers.

Area committees have the great advantage of close relationships with principal councils, and access to their staffing and finance. They may avoid the conflicts which easily arise between principal councils and parish councils or neighbourhood forums. They are a means of using the mandates of councillors elected to represent a ward – and expected to give local leadership. They are a neglected potential resource – not mentioned at all in the Localism Bill.

It is possible that the greatly enhanced powers proposed for parish councils and neighbourhood forums, and the attendant publicity, will lead to more contested elections, more employment of staff, and more openness. Conversely, they could reinforce some of the most reactionary forces in both urban and rural areas, and in some urban areas place power in the hands of non-representative groups.

In order to make decentralisation work, especially to neighbourhood forums, the Government will have to introduce a wide range of guidance. The more this guidance becomes prescriptive, the more it risks undermining the essential simplicity of the transfer of power to local people.

There are particular problems with Development Management. The new system is predicated on parish councils working effectively, or neighbourhood forums being able to operate as local councils. The more organised parishes and neighbourhood forums such as the Balsall Heath Forum in Birmingham demonstrate what is possible (although also that relationships between council and neighbourhood forum may be strained, especially if the council funds the neighbourhood forum, and the forum opposes the council on local matters). They are, however, very dependent on the time, energy and abilities of volunteers, including councillors. There is no particular reason a part-time parish council clerk should be a specialist in development control. It is inevitable that, in some places, there will be bad decisions. It is not difficult to approve a well prepared application in accord with a local plan; it is much harder to turn one down, and win any resulting appeal, on the grounds that the quality of the architecture is poor, or the proposal does not fit in with the surroundings, or will create problems of parking or access, or there are potential difficulties in relation to drainage or flooding. The new system gives plenty of leverage to developers. It will only take a few planning howlers for the government of the day, of whatever party, to find it necessary to intervene and gradually reassert control.

### **A better future?**

The Local Development Framework system, introduced in with Planning and Compulsory Purchase Act 2004, has proved to be over-complex and very slow – not the

simplified planning system that was promised at the time. A review and reshaping and a more general consolidation of planning law, is timely.

It makes good sense to give local people more influence over the built environment around where they live, both as individuals and through organisations which represent them, provided this is done in a manner which ensure openness and accountability and guards, as far as possible, against corruption.

This process must recognise that there are national interests as well as local, that it is seldom possible to satisfy everyone with an interest in a proposal for development, and that if the legal drafting of agreements is not clear and comprehensive those agreements may not be honoured. This is a specialist process – which is why planning is a profession and planning law a specialist area.

It also needs to recognise the need for formal consultation processes (little is said about this in the sections of the bill relating to neighbourhood planning), for mediation, and for the need to judgement to be brought to bear when there are conflicting interests. Difficult planning decisions are always, in the last resort, political, which is why a politician, the Secretary of State, has the last word, and why committees of politicians make the necessary judgements.

It may be that the former government's intent to impose housing targets was over-mechanical and top down. It may be that not all the new households will be housed in new buildings – existing buildings may be sub-divided, empty or underused homes brought into use, more young people may continue living with their parents, etc. What is not in doubt is that there is a shortage now of affordable homes, and that if more homes are not built there will be continuing inflationary pressure on house prices, and it will be ever harder for young people to get started on the housing ladder. So how well does the bill as drafted deal with these issues?

It is certainly a comprehensive review, and it will go farther when the government takes up its commitment to consolidate the national planning guidance – the Planning Policy Statements and Planning Policy Guidance – into a single document, as has been done in Scotland.<sup>102</sup> This, however, cannot be done over night. Much will depend on how much detail is included, the extent to which it becomes itself a spatial plan showing how growth will be accommodated, what guidance it gives over inequality and social deprivation, and how it relates to the proposals for handling infrastructure projects of national importance, set out in Chapter 6 of the Bill, and how it deals with national needs for water, energy and telecommunications infrastructure.

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<sup>102</sup> “Planning paperwork to be radically cut back to help communities drive development”. Press release, Department of Communities and Local Government, 21 December 2010

It also attempts to give local people more control over the physical environment in their areas. Whether it succeeds depends on two factors: 1) the arrangements governing the involvement of parish councils and neighbourhood forums in the preparation of Neighbourhood Development Plans and Orders, and 2) clarity over the continuing role of local planning authorities, especially district councils.

As drafted, the first of these is very dependent on yet to be produced regulations and guidance. This will need to specify, in considerable detail, the levels of competence that a parish council or neighbourhood forum would have to demonstrate for it to be handed effective power to determine planning applications. Otherwise, there is real danger that these are insufficiently transparent in their workings, insufficiently accountable, and professionally incompetent. And when scandals emerge involving individuals involved in making planning decisions, the Government will have to shoulder the blame. When the Bill is considered in Parliament it would be good use of time for MPs to focus attention on these sections (Schedules 9 and 10).

The Bill as it stands underestimates or underplays the contributions of district council development control committees and officers. Many of the councillors are personally committed to the planning process, and to getting the best possible environment for their areas. They visit the sites of large numbers of planning applications, and are in an informed position when, in committee, they hear the opposing views of developers and objectors. They are often in a position to mediate, by proposing additional conditions, modifications, or checks. This kind of voluntary work should be seen as a positive contribution, supporting the paid officers who provide technical advice which enables the members' views to be expressed in the most effective manner.

The Bill would be on safer territory if, instead of effectively handing over power, it enhanced the powers of parish councils and neighbourhood forums, while leaving the main decision making at the district level – as for example in South Somerset where applications that are not opposed by district council officers are delegated to the parishes. In particular, the local planning authorities need to have clear powers not to approve local plans and planning briefs that are insufficiently detailed and will not promote good design and a range of national policies. The staff time and cost involved in preparing local plans should not be underestimated.<sup>103</sup> They will also be the mechanism by which proposals for national infrastructure projects, or projects of local importance, are found sites even when the people living there would rather not have them.

The drafting appears to assume that much district council involvement in planning is nit-picking, delaying, or counter-productive. But unnecessary delays were mitigated by the introduction in 2002 of a best value target and later a national performance indicator to determine at least 60% of major applications within 13 weeks, and 65% of non-major

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<sup>103</sup> £30,000 is a conservative estimate of the cost of preparing a local plan.

planning applications within eight weeks.<sup>104</sup> There may, of course, be good reasons for delays, as when documents submitted are unclear or incomplete. Straightforward decisions can, and often are, delegated to officers.

The proposals – in different legislation - on homelessness and housing benefit run a real risk of creating much greater numbers of entirely destitute people who do not qualify for any form of financial support, or a roof over their heads.

The Bill assumes that the national targets for new dwelling units will be met by developers and housing associations responding to the various incentives available and persuading local people to accept more housing. This is a leap of faith, and may well prove unfounded.

If this happens, the Government will have little alternative but to follow the logic of the Urban Task Force and to promote the creation of new towns, villages or suburbs with high density developments close to existing or new public transport nodes (e.g. reopened stations). This is how London grew in the nineteenth century – people could live some distance from their place of work but still reach it quickly and safely by rail or fast bus. If employment uses can be created at the same time, in offices or factories, so much the better.<sup>105</sup>

**Key issues to be resolved:**

1. The legislation needs to spell out much more clearly the role of Local Planning Authorities and to give them clear powers not to approve Neighbourhood Development Orders or Neighbourhood Development Plans which are not well founded, and do not deal with all the issues relevant in a particular situation.
2. A strong quality check is needed before power is handed to Neighbourhood Forums – something along the lines of the Quality Parish scheme for parish and town councils.
3. Other forms of decentralisation should be explored, especially the delegation of most development management decisions to parishes in South Somerset, and the potential generally of Area Committees under the Local Government Act 2000.
4. The Bill needs to reflect much more awareness of resources. The proposals here will put immense strain on local planning officers at a time when their numbers are being cut.

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<sup>104</sup> Department of Communities and Local Government, Planning Applications: December Quarter 2009 (March 2010), <http://www.communities.gov.uk/documents/statistics/pdf/1520845.pdf>

<sup>105</sup> Much as is being built now in the Thames Gateway, at Ashford and along the M11 corridor.

5. Democracy does not come cheap – especially referenda, consultation exercises, examinations in public.
6. The public need specialist help and advice. The charity Planning Aid has provided this helpfully and cost-effectively. The Government should re-consider its decision not to support Planning Aid.
7. There is big money involved in planning, and the legislation therefore needs to be specific in how probity will be ensured at all stages. In particular if developers are able to negotiate with parish councils or neighbourhood forums (e.g. creating a local shop, or a by-pass) in return for planning permissions, there is a danger not only of bad decisions but of corruption. Local Planning Authorities should have a final say into what is included – or how money is spent under the Community Infrastructure Fund if this replaces Section 105 Agreements.
8. In terms of housing, the government should not move away for the commitment to build as many units as possible on brownfield land, to increase densities where this does not unduly alter the character of an area for the worse, and above all to ensure that developments include as large a proportion as possible of affordable housing, especially in London and the South East.
9. The legislation needs much more awareness of the conflicts that are inevitable consequences of any move to localism – between parish and principal council, developers and those who object to their proposals, those who want to preserve our inherited environment and those who want it to grow and change. Planning is therefore about education, mediation, meetings of minds, political and technical judgements, and often the courage to endorse the new and unknown. The consequences of bad decisions stay with communities for years. The danger of not taking decisions will be ossification, decline, and continued shortages of houses, especially those suited to families that want to get started on the housing ladder.

## Local economic development and local enterprise partnerships

Gill Bentley

### Introduction

The delayed Localism Bill has been eagerly awaited by the local economic development community, not least because it was thought that the Bill would shed light on the many 'known unknowns' about Local Enterprise Partnerships (LEPs) and turn them into 'known knows'<sup>106</sup>. So far, 24 LEPs have been approved, but the Bill does not tell us any more about LEPs than we already knew. From this point of view, the Bill is disappointing, but this is because there was the high expectation that the Bill would define the powers of LEPs and their operation. It does not, and this should have been no surprise because, it must be said, the Decentralisation Minister, Greg Clark, had said that LEPs were not to be defined in legislation<sup>107</sup>. Thus, rather what the Bill does is to set out general powers of competence and governance arrangements for local authorities and a number of other general provisions which could apply to economic development. In so doing so however it does confirm the Government's drive towards the localism agenda and in relation to LEPs, in so far that local economic development policy is to reflect local needs and that there will be freedom from central government interference in regard to the way LEPs are set up and run. There is more to be said however about the implications for the economic development function in the underlying principles of the Bill, as set out in 'Six Actions of Decentralisation' in the Essential Guide to the Bill<sup>108</sup>. These are: 1) Lift the burden of bureaucracy; 2) Empower communities to do things their way; 3) Increase local control of public finances; 4) Diversify the supply of public services; 5) Open up government to public scrutiny and; 6) Strengthen accountability to local people.

We can look at the role and function, the membership and governance of LEPs, as well as budget provisions, in the light of these principles and can assess the extent of decentralisation in relation to LEPs. There is not much. While LEPs appear localist, with the regional tier of economic development and governance being swept away, many economic development functions which the LEPs need to take on locally are being re-centralised. Though the Government attests to shifting control and power down to local government and local communities, as part of its 'Big Society' programme, LEPs

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<sup>106</sup>Ward, M (2010) The Future for Local Economic Development, Presentation to CLES [Centre for Local Economic Strategies] Summit at Manchester University, 13 July 2010

<sup>107</sup> HM Government (2010b) Local growth: realising every place's potential [Cm 7961], The Stationary Office

<sup>108</sup> HM Government (2010a) Decentralisation and the Localism Bill: an essential guide London: DCLG

represent nothing of the kind<sup>109</sup>. Attracting inward investment, sector leadership, business support and innovation and access to funds are to be handled nationally while regional strategies are to be abandoned altogether. The new partnerships will be left with such weighty matters as planning, housing, local infrastructure and business startups. Local government is being cast adrift in this process to find its own way with regard to economic development as, unlike earlier legislation relating to the Regional Development Agencies, the Bill does not set out a specific duty for local authorities or LEPs to secure the economic development of their locality. At the same time, LEPs are being charged with fulfilment of this agenda, without specific powers or funding, but with guidance instead coming through endless Ministerial announcements and in the Local Growth White Paper<sup>110</sup>.

### **Role and function of LEPs**

The intention to establish LEPs was announced in the Queen's speech and was set out in the May 2010 proposal for the *Decentralisation and Localism Bill* (DCLG, 2010). LEPs are "joint local authority-business bodies brought forward by local authorities themselves to promote local economic development"<sup>111</sup>. Equal representation is envisaged for local government and business with the chair to be a prominent local business person. LEPs promise decentralisation and all the more so given that the Regional Development Agencies are to be abolished in 2012. The new Coalition Government is fiercely anti-regionalist<sup>112</sup>. Eric Pickles, Minister for Communities and Local Government has said that the whole concept of 'regional economies' is a non-starter and that [regions represent] arbitrary dividing lines across the country for bureaucratic convenience<sup>113</sup>. Accordingly, Clause 89 of the Bill provides for the abolition of the regional planning tier, by enabling the repeal of Part 5 of the *Local Democracy, Economic Development and Construction Act 2009*<sup>114</sup> and the revocation of all existing Regional Strategies. This enables the removal of all Regional Strategies and the bodies responsible for maintaining those strategies – the Leaders' Boards and Regional Development Agencies. As part of this, Regional Spatial Strategies will disappear as do all other regional based strategies, as well as the machinery for the governance of regional economic development, regeneration and planning, including the Government Offices for the Regions. Only London retains GLA (the Greater London Development Authority), which absorbed the LDA (London Development Agency), this on the grounds that, unlike the

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<sup>109</sup> Conservative Party (2009) Control Shift: Returning Power to Local Communities. Responsibility Agenda Policy Green Paper No.9

<sup>110</sup> HM Government (2010b) Local growth: realising every place's potential [Cm 7961], The Stationary Office

<sup>111</sup> HMG [HM Government] (2010c) The Coalition: our programme for government London: Cabinet Office

<sup>112</sup> Bentley, Gill, Bailey, David and Shutt, John (2010) From RDAs to LEPs: A New Localism? Case Examples of West Midlands and Yorkshire, *Local Economy*, 25: 7, pp535-557

<sup>113</sup> Pickles E (2010) Eric Pickles MP: How we rebuild our local economy Posted on 10 September 2010 [http://conservativehome.blogs.com/localgovernment/eric\\_pickles\\_mp/](http://conservativehome.blogs.com/localgovernment/eric_pickles_mp/)

<sup>114</sup> See <http://www.legislation.gov.uk/ukpga/2009/20/contents> (last accessed 11/01/11)

other RDAs, it is democratically accountable through the elected Mayor. Part 7, Chapter 2 of the Bill also makes provision for a Mayoral Development Corporation to be set up for the purposes of securing regeneration of designated areas within Greater London<sup>115</sup>. The Bill also allows for other cities to opt for elected Mayors (see Chapter 8); we may see cities rushing to do this, as it may in due course allow them to emulate London and to set up a Mayoral Development Corporation.

What is significant about all this is that it sweeps away the strategic approach to economic development which had been developing under the previous Labour Government, leading to the Sub-National Review of Economic Development<sup>116</sup> and where policy coherence was sought from centre through the region to the local via public service agreements and nested strategies. It is clear that the new Government seeks a different approach; one with no central control and no direction, which makes it feel like a 'free for all'. But, it is in line with the principles of the Bill, in 'lifting the burden of bureaucracy' and 'empowering communities to do things their way'<sup>117</sup>. The government has scrapped public service agreements and is minimising the target setting and monitoring processes, which the RDAs and other agencies were expected to undertake. LEPs' work is not expected to be subject to such rigorous monitoring procedures, presumably, this lifting the burden of bureaucracy. Secondly, the general power of competence contained in the Bill would seem to free up LEPs to do what they want to do to achieve local economic growth (see Chapter 6). Indeed, government has not specified precisely what LEPs should do. The trouble is that the top of the list of issues in the LEPs proposals that were submitted to Government was skills and it is clear that this function is to rest with central government, as are the functions noted above, the attraction of inward investment, sector leadership, business support, innovation and access to funds. These are being taken up to national government level to the Department of Business, Innovation and Skills. So, LEPs cannot do all the things they would like to do.

### **Membership and governance of LEPs**

LEPs bring the economic development function down to the local rather than regional level authorities. One of the six actions of decentralisation as outlined in the DCLG guidelines to the Bill is to strengthen accountability to local people. However, LEPs are to be private sector led, rather like the old Training and Enterprise Councils, which had a

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<sup>115</sup> Localism Bill, Explanatory Notes

<sup>116</sup> HMT, DEBERR, DCLG (2007) Review of sub-national economic development and regeneration London: HMSO

<sup>117</sup> DCLG [Department of Communities and Local Government] (2010a) Local Enterprise Partnerships (Cable-Pickles letter) <http://www.communities.gov.uk/documents/localgovernment/pdf/1626854.pdf> (last accessed 22 November, 2010)

high proportion of private sector members; some of the LEP proposals were not approved by the Minister because the private sector was not seen to be sufficiently involved in the LEP. Given this, LEPs are hardly democratically accountable. Moreover, in relation to accountability issues, it is not clear from Ministers nor is it clear from the Bill whether LEPs are to have a legal status or whether a LEP is to be something like an expert executive board. The Bill does not specify, unlike the Local Democracy Act 2009 did for the RDAs and Economic Prosperity Boards, the constitution of the LEPs. The Government has indicated, however, that LEPs will have to have a legal status if they are to handle community assets or funding. LEPs would also have to be legally incorporated in order to distribute EU funding were they to take over this role from the RDAs. However, it appears in any case that this is not going to happen. European funding is to be administered centrally but by the European Teams from the RDAs.

It is also not clear whether, and this is something that could have been covered in the Bill, the LEPs are to have staff or whether they will commission local authorities to carry out the economic development functions. This is again unlike the 2009 Local Democracy Act which set out quite clearly what the arrangements were for the discharge of duties. Furthermore, given that LEPs cover several local authority areas, while Clause 90 of the Bill provides for a duty on local authorities and other bodies to cooperate with each other in relation to planning sustainable development it is not clear whether this would apply to economic development. This would all seem to suggest that LEPs are not going to be accountable to local people through normal democratic local government channels, let alone through any other means. Part 4, Chapter 1 of the Bill allows for the provision of referendums on local issues but it is not clear whether this applies to matters that LEPs will deal with. It is difficult not to conclude that this would all seem to run counter to the idea of local control.

### **Budget provision for LEPs**

The question in regard to the decentralisation embodied in LEPs in relation to finance is: do LEPs offer the opportunity for greater local control over public finances? The answer is no. The Bill only sets out a power for local residents to approve or veto excessive council tax rises, but this is a more general power and does not directly relate to LEPs or only in so far as LEPs might draw on local authority resources via council tax and this, in consequence, leads to an excessive rise in council tax which becomes subject to veto. This question in relation to LEPs in any case is somewhat academic, because while LEPs have an economic development role, they will have no funds to fulfil that role. Thus, LEPs do not directly offer the opportunity for greater local control over public finances. Mark Prisk, Minister of State for Business and Enterprise in BIS, has in fact made it clear that '[w]e have to get away from this idea that economic development is all about funding from Whitehall'<sup>118</sup>. In accordance with this, there is no direct funding from

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<sup>118</sup> Townsend S (2010) Minister: LEPs could get renewal cash through Whitehall contracts, Regen.net, 19 October 2010

Central Government for LEPs and, unlike the provisions of the 2009 Act for *Local Democracy, Economic Development and Construction*, the Localism Bill does not set out any provision for funds for economic development for LEPs or local authorities.

It is therefore not at all clear how LEPs are to be funded, where the funds for economic development projects are to come from and whether the LEPs are to have any role in disbursing funds for business development as the RDAs and Business Links have been doing. No ministerial pronouncements have been made on funding for LEPs other than to the effect that government money will not be available for the running costs of LEPs. However, the Prime Minister announced on the 6<sup>th</sup> January 2011, the launch of a £4 million fund aimed at boosting the capacity of LEPs over a four-year spending review period. This Capacity Fund is intended to provide small amounts of cash to help LEP chairs but only to pay for analytic work to assess the economic circumstances of its local area<sup>119</sup>. Once again the money is not available to fund LEPs' day-to-day administrative costs. This means that LEPs will have to rely on the resources of their members, local authorities, the private sector and other agencies and bodies that make up a LEP; it makes the LEP seem more like a charity rather than an executive body with the responsibility for securing the economic development of a locality. LEPs may have access to council tax funds through local authorities, to fund economic development as well as access to community assets, in particular land, the latter which the Bill suggests a list of which will have to be compiled. There have been some ministerial announcements that Councils will be able to retain business rates which might then be used for economic development.

On the question of funds for economic development projects to secure the growth and development of businesses, a Ministerial announcement suggests that LEPs could receive funding for regeneration projects through winning government contracts. At a Select Committee meeting in October 2010 Mark Prisk said that individual Whitehall departments could choose to make funding available for specific LEP-led projects "through contractual arrangements". The Minister also said that LEPs would have the opportunity to become "Whitehall's delivery partners" on the ground. This makes LEPs look even less localist than they were intended to be.

Funding for economic development projects however is to be made available, through the ironically named Regional Growth Fund (RGF). Lord Heseltine and Sir Ian Wrigglesworth have been travelling round the country to explain that the £1.4 billion fund over a 3 year period is available to support private sector growth and development in areas that are affected by public sector job loss, the result of the public expenditure cuts that are to be made, following the outcome of the Comprehensive Spending

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<http://www.regen.net/bulletins/Regen-Daily-Bulletin/News/1035887/Minister-LEPs-renewal-cash-Whitehall-contracts/?DCMP=EMC-Regen%20Daily%20Bulletin>

<sup>119</sup> Townsend S (2011) Cameron unveils £4m LEPs capacity fund, Regen.net, 6 January 2011

<http://www.regen.net/bulletins/Regen-Daily-Bulletin/News/1048129/Cameron-unveils-4m-LEPs-capacity-fund/?DCMP=EMC-Regen%20Daily%20Bulletin>

Review. But the questions again are: are LEPs to get these funds; are LEPs to disburse these funds or are they to be involved in the decisions on who is to get RGF? The Bill has nothing to say about this and as for meeting any criterion with regard to decentralisation, it has been made clear that LEPs role in relation to RGF is minimal. The Communities Secretary Eric Pickles has said that the partnerships will, in any case, have less autonomy over managing and allocating grants than RDAs. In respect of RGF, it has been made clear that the LEPs will not be responsible for nor will get RGF to use for projects. Moreover, the public sector cannot bid for RGF and nor can it be used for public sector projects. However, LEPs may advise Ministers on project bids, but with the final decision being made by Lord Heseltine and Sir Ian Wrigglesworth, in turn guided by a Ministerial Team. So much for localism.

### **Conclusions**

This has been a brief review of what the Localism Bill means for local economic development and the newly set up Local Enterprise Partnerships. In truth, the Bill does not, as we might have expected, set out the statutory requirements for LEPs and local economic development. It was made clear however in the Local Growth White Paper and by the Minister, that LEPs were not to be defined in legislation. The Bill therefore does not turn the 'known unknowns' about Local Enterprise Partnerships into 'known knowns'. As regards the principles underlying the Bill in the 'six actions of decentralisation', the provisions for LEPs are wanting. The Bill does provide for the complete abolition of all regional strategies and regional institutions for the governance of economic development, regeneration and planning. Unlike planning, as discussed in Chapter 10 of this publication, there are no major reforms proposed for the economic development function contained in the Bill. The localism is evident in the proposals for community involvement in planning and for Neighbourhood Planning as these would seem to empower local communities and strengthen accountability to local people. However, in the case of LEPs and local economic development, the abolition of the regional development agencies might meet the criterion of lifting the burden of bureaucracy, but LEPs do not appear to empower communities to do things their way or increase local control of public finances, or even strengthen accountability to local people. Unless of course the lack of any clear statutory requirements in relation to LEPs in the Bill means that in a Brave New World of the Big Society, the world is to be our oyster, as the rule book is out of the window and we can make it up as we go along. In this sense, LEPs allow communities to do things their way; that is, until the Ministerial announcements make it clear that it is to be done how government wants it done.

## The Localism Bill and Reform of Social Housing

David Mullins

### Introduction

This chapter explores the implications of the draft Localism Bill and related reforms being planned by the Conservative led Coalition Government for the future of social housing. It should be read in conjunction with Chapter 10 which refers to on the linked provisions of the draft Bill for spatial planning and Development Management in relation to housing.

Social housing provides a home for almost five million households in the UK. It is important for the localism agenda because of who it houses, the focus of provision on local neighbourhoods and as an example of the outsourcing of state services to third sector organisations. The sector has contracted by over a quarter since its peak in 1979 when it accounted for nearly a third of all households, including some people from the highest income decile. Now it caters much more exclusively for low-income groups. Rationing of access has tended to leave those with least bargaining power and choice in the least desirable housing. Recent policy debate has focused on the links between worklessness and social housing and the exclusion of long-term renters from asset based welfare. The positive role historically played by secure and decent quality rented housing has tended to be given less emphasis. The wider role played by housing providers in building sustainable communities, for example in employment and training and financial inclusion work and by investing in neighbourhood facilities; has been emphasised by the sector.<sup>120</sup> An audit by the National Housing Federation in 2006/7 identified £435 million of investment by housing associations in neighbourhood services and facilities.<sup>121</sup>

Over the past 20 years there has been a dramatic change in the structure of the sector as the management and/or ownership of some 2.5 million council homes has been transferred to housing associations and arms length bodies. In the process, more than 300 new social landlord organisations have been established.<sup>122</sup> As the market share of third sector provision of social housing has grown, so too have the organisations

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<sup>120</sup> Mullins D (2010) Housing Associations. Third Sector Research Centre Working Paper 16. <http://www.tsrc.ac.uk/Publications/tabid/500/Default.aspx>

<sup>121</sup> National Housing Federation (2008) *The scale and scope of housing associations activity beyond housing*; London, NHF.

<sup>122</sup> Pawson, H. & Mullins, D. (2010) *After Council Housing: Britain's New Social Landlords*; Basingstoke: Palgrave Macmillan

involved, with the largest managing over 50,000 homes and operating across over 100 local authority areas. The nature of this expansion process has created tensions between local accountability and control, and these have been accentuated by 'funding and regulatory structures that have placed distance between associations and the communities they serve'.<sup>123</sup>

This chapter covers three main topics:

- The Big Picture: Reform of Social Housing under the Conservative-led Coalition, Comprehensive Spending Review (CSR), Housing Consultation paper<sup>124</sup> and Draft Localism Bill)
- The Relevance of Localism Principles to the social housing sector : The six principles of localism and social housing
- Competing logics within the reform package: localism and communities or scale economies and markets?

The chapter argues that the social housing provisions of the Localism Bill are diverse in nature but have more to do with deficit reduction than localism and can be directly traced through from provision in the CSR to a discussion paper on reform of social housing, the main enabling changes being enacted in the Bill. On the other hand the underlying principles of localism, as set out in the DCLG Guide to the Bill<sup>125</sup>, are highly relevant to social and if applied through detailed and specific policy initiatives could produce a reversal of the long term dominance of scale and efficiency over local accountability and control in the sector.

### **The big picture of social housing reform**

The draft Localism Bill is the third in a set of policy announcements with considerable consequences for the future of the social housing sector. The Bill itself follows hard on the heels of the CSR and a consultation paper on social housing, some of the directions of which the Bill seeks to enact. While some commentators have gone so far as to declare 'the end of social housing'<sup>126</sup>; it is clear that at minimum these changes will provide an important further shift for the sector, consumers and providers of social housing. As this chapter goes on to discuss, it is questionable how much this change will be in the direction of greater local accountability and control, or indeed how different the direction will be to that outlined above which has seen comprehensive restructuring of the sector over the past thirty years. But before embarking on this discussion we review the main provisions of the three announcements, starting with the CSR which set

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<sup>123</sup> Leach, M. (2010) *Living in the Future: The progressive housing association*; London: ResPublica (p.7).

<sup>124</sup> DCLG (2010a) *Local decisions: a fairer future for social housing*'.

<sup>125</sup> DCLG (2010b) *Decentralisation and the Localism Bill: an essential guide*. HM Government.

<sup>126</sup> Inside Housing, Cover Story October 29<sup>th</sup> 2010.

the context for most of the new Government's policies, given the scale of deficit reduction aimed for.

### **The Comprehensive Spending Review**

Capital spending on housing has long proved vulnerable to decisions on overall public spending. Public housing investment was one of the biggest casualties of the cuts in spending following the IMF intervention in 1975 and again one of the few areas of real public expenditure reduction under Margaret Thatcher's government. Explanations for this vulnerability range from the uncertain status of housing as a 'wobbly pillar' of the welfare state, the preference for cutting capital over revenue and staff costs, and economic arguments favouring consumer subsidies (such as housing benefit) to enable consumers to choose between providers (including private sector landlords), rather than producer subsidies (growing the social housing sector).

So it came as no surprise that, as part of the Coalition Government's deficit reduction programme of £83 billion cuts announced in October 2010, the housing capital programme bore a disproportionate share a key target for cuts. Overall reductions were between 60% and 75% from the previous comprehensive spending review when the previous Labour Government had announced a record affordable housing programme of £8.4 billion over three years. The equivalent 2010 CSR announcement was for a £4.5 billion programme for affordable rented homes over a four year period, around £2.3 billion of which was already committed, leaving £2.2 billion new funding which was to be used in a new way (see below). The abolition of Regional Spatial Strategies (see Chapters 10 and 11) was also expected to impact on provision of social housing through 'planning gain' which had become an increasingly important mechanism for new affordable homes prior to the recession. If the abolition of targets led to lower housing approvals this would have a knock-on effect on affordable housing supply through planning gain.

There was a further £2 billion to enable existing social housing to meet the decent homes standards, but Arms Length Management Organisations (ALMOs) learned that only 90% of the required investment would be funded. Regeneration funding was also reduced, most significantly by the abolition of the Regional Development Agencies (RDAs) and in housing by the ending of the Housing Market Renewal Areas programme which had originally been set up in 2003 to fund long term revival of failing housing markets in nine areas. Other major area based initiatives such as New Deal for Communities had already ended leaving regeneration schemes much more dependent on cross-subsidy based schemes and in turn dependent on economic recovery. The new Regional Growth Fund (see Chapter 11) of £1.4 billion would be on a much smaller scale than the RDAs and more focused on promoting private sector growth in areas previously dependent on public sector jobs, making housing related investment less likely, although proposals for carbon reduction retro-fitting of housing were candidates for some LEP packages.

It was not so much the scale of the capital spending cuts in the CSR that seemed likely to set a new direction for social housing but two major accompanying changes. First, attempts to control the growth in personal housing subsidies through the Department of Work and Pensions (DWP) funded housing benefit system. Second, the creation of a new investment framework for spending the reduced capital funding allocated to new affordable housing. Superficially these new policies appeared to be moving in precisely opposite directions, with the former seeking to keep down private sector rents and thereby reduce housing benefit expenditure and the latter to increase social housing rents towards the market, thereby increasing benefit spend.

The CSR announcement allocated £100 million for empty homes and in a commitment to 'protect the vulnerable'<sup>127</sup> pronounced that homelessness grant of £400 million had been protected and that reductions in Supporting People had been minimised (with £6.5 million promised over four years) and that Disabled Facilities grant had been protected. The Supporting People announcement was in fact a cut of 12% in real terms, and both of the latter budgets would no longer be ring fenced reflecting principles of devolved decision making. Tensions with these principles were apparent in sector comments that 'there is a high risk that Supporting People funding in many areas will get lost in this large and complex funding pot'.<sup>128</sup>

### **Consultation paper**

The social housing Consultation Paper spelt out more of the thinking behind the directions signalled by the CSR and anticipated some of the legislative change that would be included in the draft Localism Bill prior to the end of the consultation period in January 2011. It proposed changes to increase flexibility in the types of tenure offered to social and affordable housing tenants, to give local authorities greater flexibility in social housing allocations (to reduce the requirement to register new housing applicants while promoting greater mobility for social housing tenants), to enable authorities to meet homelessness duties by arranging suitable private tenancies, and to reform social housing regulation and council housing finance.

In setting out the 'case for reform' the paper depicted social housing as too often acting as '*a block on mobility and aspiration*' rather than '*a springboard to help individuals to make a better life for themselves*' (p.5). Building on the previous Government's concerns about links between social housing tenure and worklessness, the paper stated that '*In 2008/9 only 49% of social rented tenants of working age were in work, down from 71% in 1981*' (p.12). This combined with arguments about equity and efficiency, of better off households clogging up social housing, to support the view that in the context of growing waiting lists for social housing '*it is no longer right that the Government should*

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<sup>127</sup> Communicated to the sector in an email letter from Housing Minister, Grant Shapps, October 20, 2010.

<sup>128</sup> Impact of Comprehensive Spending Review on housing. NHF Briefing November 6<sup>th</sup> 2010.

*require every social tenancy to be for life, regardless of the particular circumstances'* (p.5). A more flexible approach was proposed in which the continuing need of tenants for their housing would be reviewed periodically; although it was stressed that any changes would apply to new tenants only and existing rights would be protected. Flexibility was also proposed to deal with the tensions arising from keeping large numbers of households on waiting lists with little chance of getting a home. Housing authorities would have the flexibility to manage the waiting list by no longer being required to register applicants with low levels of housing need. On the other hand they were expected to use greater flexibility on transfers to enable moves for tenants with low levels of housing need and to make better use of the stock. Furthermore councils could meet their homelessness duties through suitable private rented dwellings. This proposed policy would extend the previous Government's direction but crucially the applicant's agreement would no longer be required provided the accommodation was suitable. Interaction with proposals to stem the rise in the housing benefit budget will be important to consider; particularly in high rent London Boroughs where authorities are reportedly planning large scale out of Borough placements due to the limited local private rented stock within eligible benefit levels.

These proposals for greater flexibility were presented as being about localism, enabling housing authorities and social landlords to make decisions about the best use of their housing stock to meet local housing needs. They could equally be presented as being about national housing demand and supply management (cutting waiting lists, recycling existing stock and substituting private rental supply) , and supporting the directions of change required by the deficit reduction strategy which had driven the CSR.

Changes to regulation, following from the decision to abolish the Tenant Services Authority (TSA), fit more clearly within the localism agenda. In the place of external consumer regulation and inspection, the paper proposes more local delivery, an enhanced role for tenant panels, local councillors and MPs to enable tenants to hold landlords to account and press for better services. Alongside the abolition of the TSA was the decision to remove funding for the National Tenants' Voice that had been established to consult and engage tenants at the national policy level. This is consistent with the move towards a more local focus for the consumer protection aspects of housing but does raise questions about accountability of large national landlords. However, in order to maintain lender confidence and to ensure value for money for the taxpayer, the paper proposes continued financial regulation through transfer of these functions to the Homes and Communities Agency.

Changes to finance of council housing apply to those authorities still holding stock and are far reaching, ending the well established Housing Revenue Account system by a one off settlement payment between local authorities and central government. Authorities would then be able to plan the management of these assets on a long term basis creating greater similarities with stock transfer landlords operating in the housing association sector.

## Localism Bill

The social housing provisions set out in Part 6 of the Localism Bill largely reflect the agenda for social housing developed through the CSR and consultation paper discussed above. The Bill uses the term 'registered providers' to refer to non-local authority social landlords, most of whom are housing associations.

- *Tenure* Chapter 2 of the draft Bill provides for new style flexible tenancies outlined in the discussion paper and for local authorities to prepare and publish tenancy strategies to which local registered providers should have regard.
- *Allocations* Chapter 1 reasserts the centrally imposed exclusions on eligibility and reasonable preference categories and introduces the greater flexibility for authorities to exclude new applicants and ending the requirement to consider tenants and new applicants on the same basis.
- *Mobility* Chapter 4 provides for standards to be set for registered providers on methods to assist tenants to exchange tenancies. This is linked to the intention to set standards for home swap providers and for all registered providers to make use of home swap services.
- *Homelessness* Chapter 1 introduces the ability to meet homelessness duty by making a suitable private rented sector offer.
- *Regulation* Chapter 5 abolishes the Tenant Services Authority and transfers financial regulation to the Homes and Communities Agency.
- *Tenant complaints* Chapter 6 enhances the role of the Tenants' Ombudsman and requires complaints to the Tenants' Ombudsman to be referred by a 'designated person' who may be an MP, local councillor or designated tenant panel, recognised by a social landlord for this purpose.
- *Council housing finance* Chapter 3 provides for the abolition of HRA subsidy and the calculation of settlement payments for each stock holding authority.

In addition there are provisions in Part 7 for the *Greater London Authority* to take on wider powers in relation to housing investment from the Homes and Communities Agency and in place of the abolished London Development Agency. This represents the most devolved arrangements for social and affordable housing development in the country. Related changes to the *Planning and regeneration framework* affecting social housing in Part 5 of the Bill include the abolition of regional spatial strategies, introduction of neighbourhood plans and neighbourhood development orders, community right to build, new homes bonus and reform of the community infrastructure levy and are covered in Chapter 10 on Development Management. In relation to *home ownership*, Part 6 Chapter 6 abolishes the requirement of the Housing Act 2004 for Home Information Packs.

In summary, the reforms of social housing outlined above and enshrined in the draft Localism Bill have a degree of coherence:

- *First and foremost as a means of addressing the deficit reduction aims* underlying the CSR by demand and supply management and moving to a new investment framework requiring significantly lower levels of grant per home procured.
- *Second as a move away from regionalism* (especially regional spatial strategies and regional development agencies) and *elements of top down regulation* (such as the consumer protection role of the TSA).
- *Third as a means of selective retention (and in some cases extension) of central controls and incentives* (e.g. reasonable preference criteria for housing allocations, exclusions of people from abroad from housing registers),
- *Fourth in 'nudging' local agents towards cost reduction* (this theme of creating incentive structures that favour lower costs or fewer funded local services runs through other sections of the Bill).
- *Fifth as a move towards markets and the private sector* and a further blurring of the boundaries between social and private sector organisations (PRS and homelessness, caps to benefits, rents converge towards market levels, reduced grants for social housing, leading to commercial asset management approaches and higher levels of private debt).

On the other hand, the Bill risks the impression of incoherence because it covers a fairly diverse range of aims and initiatives, some of which are likely to have conflicting impacts. For example, the increased use of the private rented sector in meeting homelessness duties is likely to increase housing benefit expenditure by increasing the number of claimants and the size of claim compared with traditional social housing. Similarly the increased mobility implicit in periodic reviews of tenancies and enhanced transfer and home swap activity may run counter to the aim of developing the kinds of local capacity required to build social solidarity and the 'Big Society'. The increased churn and social polarisation resulting from housing benefit and social housing reforms will almost certainly make this harder to achieve.

Perhaps surprisingly, given its overall theme, the draft Bill contains no new provisions for tenants within the social housing sector to enhance their role in self-management or local control of services of parts of landlord organisations<sup>129</sup>. Although, Part 5 does include provisions for community referenda on new housing and community right to build (see Chapter 2). While not included in the Bill itself Ministers envisage requiring councils to help local authority tenants' groups form housing associations to take over the ownership of their estates.<sup>130</sup> However, in relation to large scale national housing associations the mechanisms for tenants to take control rather than power being devolved to them remain quite limited.

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<sup>129</sup> This apparent lacuna may reflect the existence of provisions such as the tenants' right to manage for local authority tenants which has led to the development of a successful, but small scale tenant management organisations sector, and the existence of a community gateway tenant led model for stock transfer.

<sup>130</sup> Brown, C. (2011) New laws could see homes transferred to residents; *Inside Housing* 7 January

### **Six actions of localism - relevance to social housing**

The above leads us to question the extent to which the social housing provisions of the Bill can be seen as having a coherent approach in relation to localism. This question can best be addressed with reference to the DCLG's accompanying essential guide to the Decentralisation and Localism Bill.<sup>131</sup> The six actions of decentralisation set out in the guide provide an enticing agenda for reform of public services and one that has considerable relevance to the social housing sector.

The *burden of bureaucracy* is certainly recognisable in the social housing sector, not just compliance burden with the complex regulatory web that has been woven around housing associations and their activities over the past 30 years, but also in the increasingly centralised structures adopted by larger associations to manage their business and services. For example opportunities to develop strong local partnering arrangements to maximise local economic impact are often hampered by cumbersome centralised procurement strategies that remove local autonomy. While the present government's reforms will remove many of the targets and regulations, key areas of central control will remain, particularly in relation to national development packages seeking the keenest numbers of new homes per £ of grant. It remains to be seen whether the strong competitive signals sent by the new investment framework will allow associations to remain locally responsive.

*Empowering communities* to do things their way remains an aspiration for many community based housing associations. Neighbourhood planning and community asset management are the bread and butter of such associations, but can conflict with corporate strategies in larger associations. If surpluses and asset capacity are to be used to offer the keenest development deals how much capacity will remain to work with residents and third sector partners on community investment activities?

*Increasing local financial control* could reverse the tide of centralisation in the finance and regulation of social housing. Local influence over new development was increased somewhat in the final days of the old investment framework by Local Investment Plans jointly commissioned by the Homes and Communities Agency and local authorities. However, now the much reduced scale of funding in any local area and the focus of the new framework on national packages by large associations seems likely to emasculate local control once again. Moreover, the removal of ring fences, for example around Supporting People budgets, is already proving difficult for housing services that need support funding to deliver.

Housing associations have long been among the biggest winners from initiatives to *diversify supply of public services*. However, this experience has also brought important lessons. On the one hand housing associations have sometimes been seen as lacking

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<sup>131</sup> op cit (DCLG, 2010b).

legitimacy, distant from voluntary sector and former localist identities.<sup>132</sup> Instead of being answerable to elected councillors, housing managers are overseen by a management board whose primary responsibility is to the organization itself, rather than to any broader constituency. At its starkest, stock transfer to housing associations has been seen as replacing publicly accountable bodies with quasi-private landlords, remote from communities, insulated from local opinion and 'in hock' to private lenders<sup>133</sup>. On the other hand there have been positive experiences where associations have moved beyond paying lip service to their slogan 'In Business For Neighbourhoods'<sup>134</sup> and taken part in groupings such as PlaceShapers<sup>135</sup> and projects such as 'Close Neighbours' to enhance neighbourhood responsiveness<sup>136</sup> and create the conditions for sustainable ways of providing citizen-led services. These conditions include supporting other local organisations, building capacity, competence and markets to trade services with one another. While associations may choose to outsource work to local groups, a weakness of the Localism Bill framework may be that there is no mechanism for large and less responsive landlords to in turn be broken open as 'big, giant state monopolies'<sup>137</sup> have already been.

*Opening up to public scrutiny* is perhaps the most weakly specified of the five actions. As set out in the guide it appears to be a recipe for public access to vast quantities of raw data on the minutiae, such as spending down to the last £500, at a time when funding for benchmarking and meaningful analysis of data has been decimated by the 'bonfire of the quangos'. An emphasis on costs rather than benefits reinforces the bias towards local reduction of services, for example by publishing CEO pay levels. Some housing associations have a good track record of producing community information, and being open to dialogue but the tradition of community led governance is only weakly established in the sector and the role of resident led scrutiny was just developing at the death of the TSA regulation regime.

*Strengthening local accountability* touches in the Achilles heel of the housing associations sector's successful upscaling experience. Seemingly growth has been at the expense of 'focusing on the local people and places to which they owe their first allegiance'<sup>138</sup> and the incentive structures on which this growth was founded. Alternatives might include community based ownership structures and a greater say for local residents in setting local priorities. Neighbourhood plans and local referenda for affordable housing schemes could reinforce such re-democratisation. It will be

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<sup>132</sup> Purkis, A. (2010) *Housing Associations in England and the Future of Voluntary Organisations*; London, Baring Foundation.

<sup>133</sup> Glynn, S. (2007) 'But we already have community ownership: Making council housing work' in Cumbers, A. & Whittam, G. (Eds) *Reclaiming the economy: Alternatives to market fundamentalism in Scotland*; Glasgow: Scottish Left Review Press.

<sup>134</sup> National Housing Federation (2003) *In Business for Neighbourhoods*; London: NHF.

<sup>135</sup> <http://www.placeshapers.org/>

<sup>136</sup> Mullins, D. (2010b) What can we learn from the Close Neighbours project? (pp571-580) In Di Giulio (ed) *Improving the Quality of Suburban Building Stock. Cost Action TU06701*, European Science Foundation and University of Malta.

<sup>137</sup> DCLG 2010b op cit. p. 9.

<sup>138</sup> DCLG 2010b op cit (p.11)

interesting to see how authorities reach decisions with housing association partners and residents on the relative priority of new homes, improving existing stock and community investment. Under the new investment framework new homes will partly be financed by the outcomes of local tenure strategies and exposure of existing properties to near market rents when relet.

### **Competing logics: which way now for the social housing sector?**

Our consideration of the six actions of decentralisation in the context of the housing sector has highlighted some of the competing logics that have become embedded within the sector and which will affect the implementation of some of specific provisions within the draft Bill. In particular the competing logics faced by large housing associations between scale and efficiency and cost reduction on the one hand and local accountability on the other (Mullins, 2006) will if anything be amplified by their engagement with some of these provisions.

One area where the tension between localism and cost reduction is particularly apparent is in the new framework for housing investment. While the opportunity to charge rents of up to 80% of market levels on new development and a portion of existing properties when they are relet was presented as a flexibility it has rapidly become a baseline assumption as it has become clear that grant per property is likely to be less than half that under the old framework. Furthermore, recognition that rent differences between social and 80% of market will be significant only in London and parts of the South have led to the need to consider a range of ways to reduce grant. A key focus of sector responses<sup>139</sup> has been to secure additional borrowing by more commercial portfolio approaches to asset management; by selective sales of vacant properties and changes of tenure and rent levels to fit local markets. The potential tension between portfolio asset management by large housing associations working across many authorities and individual local authority partners is apparent from the recognition that *'in reality new supply would will not always be possible or desirable in the areas of income generation'*.<sup>140</sup>

On the other hand the chapter has argued that the underlying principles of localism, as set out in the DCLG Guide to the Bill, are highly relevant to the social housing sector and if applied through detailed and specific policy initiatives could produce a reversal of the long term dominance of scale and efficiency over local accountability and control in the sector. A key area where this could develop is in new forms of engagement between local authorities and housing associations for example in local agreements on co-

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<sup>139</sup> National Housing Federation, 2011, *Radical Reform: Real Flexibility. Delivering the new investment framework*. London, National Housing Federation.

Lupton, M Jones M and Davies A. (2011) *Appreciating Assets*. Coventry, Chartered Institute of Housing and Savills.

<sup>140</sup> NHF, 2011 op cit p.7.

ordination, land and planning roles, local policies on rents and tenure balance and approaches to allocations required under the Localism Bill. However, developing such agreements *'may require a mature recognition of shared objectives/values as well as differences'*.<sup>141</sup> Further opportunities arise outside of the housing development realm through opportunities for neighbourhood based housing associations in the reform of local public service delivery. Here a direct link between localism and cost reduction is made by opportunities for pooling of approaches to the budgeting and delivery of a wide range of local services. Building on Total Place ideas, the Coalition's community budgeting concept provides opportunities for relatively well-resourced locally-based housing associations to harness their assets and local relationships, to support local social enterprise and possibly becoming 'the front door' for all local public services.<sup>142</sup> This could lead to *'a long term vision for social landlords at the heart of their communities...key partners in the establishment of the Big Society'*.<sup>143</sup>

In practice it seems likely that the CSR led drivers of the Bill's main provisions, particularly in relation to new homes, will produce more of the same. The social housing sector faces a future of corporate control and flexible asset management by the larger development led housing associations on the one hand and local control and partnership and community accountability for assets on the other. More than ever the drivers established by the CSR and Localism Bill will require social landlords to make strategic choices on the balance between these futures.

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<sup>141</sup> Lupton et al 2011op cit (p.20).

<sup>142</sup> Kemp R (2011) Brave new world; *Inside Housing* January 7 p. 13.

<sup>143</sup> Leach M (2010) *Living in the Future: The Progressive Housing Association*. P. 1).

## **Reflections on the Localism Bill**

**George Jones and John Stewart**

While the Localism Bill contains a limited number of proposals that sustain localism it has serious weaknesses as an expression of localism. The main defect is that the Government's approach does not recognise that the main barriers to the development of localism lie in central government itself and that localism will not develop its potential unless there is fundamental change in the working of central government. Those barriers are reflected and reinforced in the Bill because its development has been conditioned by the dominant centralist culture of central government with the result that the Bill could as well have been called the Centralism Bill.

A further significant weakness of the Bill is that the Government's policies involve both decentralisation to local authorities and decentralisation to local communities and citizens, but it has failed to face up adequately to the relationship between these two approaches.

### **Localism and centralism in the Bill**

Some proposals in the Bill give expression to localism and decentralisation to local authorities, but they are set within a framework that remains centralist, an almost inevitable result of a system of central government dominated by the culture of centralism. Examples of localism include the proposed general power of competence, which we hope will overcome the restrictions placed by the courts on the powers of well-being. The provisions placing the responsibility for maintaining standards of conduct on local authorities rather than on the external Standards Board show confidence in local authorities and localism. Centralism is directly challenged by the repeal of the elaborate provisions in the Local Democracy, Economic Development and Construction Act 2009, specifying in great detail how local authorities should deal with petitions, a classic example of centralism, which assumed that those in central government, who did not have to deal with local petitions, knew better how to deal with them than those who have to deal with them in practice.

While there are other examples of localism in the Bill, centralism is more powerful. The Secretary of State will decide whether the expenditure proposed by an authority is excessive and a local referendum is held. The Secretary of State has indicated that twelve large cities must hold referendums on elected mayors even though their councils have not decided to hold one, and their citizens have not sought one even though only 5% of the electorate have to sign a petition to secure one. This centralist proposal sits uneasily with the localism provision allowing authorities to reintroduce the committee

system. Generally there is no suggestion that the plethora of regulations and guidance on political structures will be eliminated or even significantly reduced. Alteration of a local authority's internal political structures is even excluded from the general power of competence. One would expect a competent authority to be able to determine its own internal political arrangements.

The legislation gives the Secretary of State the right, once the Act has been passed, to appoint by order the Leader of the authority as shadow mayor with all the powers of the mayor except for the ill-thought-out new powers enabling the mayor to act as chief executive. The Secretary of State's powers can be exercised even before any mayoral referendum has been held. If enacted, the Bill will give the Secretary of State power to make this critical council appointment himself rather than the local authority or the electorate, even if it is against the wishes of the authority, thereby giving a firm rebuff to localism.

Centralism pervades the legislation even when covering localism proposals. The Bill requires that local authorities should consider any petition for a referendum by 5% of the electorate. Local authorities can reject the petition but only on limited or technical grounds. The Bill however gives the Secretary of State power to specify by order additional criteria for rejection, although the local authority cannot apply its own additional criteria. Centralism trumps localism.

Local authorities must consider whether an expression of interest by a community group, in providing one or more of its services, would promote or improve social, economic and environmental well-being. But it can be rejected only on grounds to be specified by the Secretary of State by regulation. Localism is again controlled by centralism.

The Secretary of State will define community value in the bureaucratic procedures proposed for local authorities in compiling lists of local assets of community value, although what is of community value should be a matter to be determined locally rather than at the centre.

These examples are only a few of the powers being given to the Secretary of State. The LGA has calculated there are at least 142 order and regulation-making provisions, in addition to the 405 pages in the Act, with its 208 clauses and 25 schedules. One foresees the forthcoming Act being accompanied by panoply of regulations and orders, as well as by almost endless pages of guidance, as the centre seeks to determine what should be done locally, rather than the local authority which knows local conditions and is accountable locally. It is ironic that a Localism Bill contains so many means by which central government can prescribe how local authority powers are to be used, their procedures developed and criteria to be applied by them.

It is as if central government knows no other way to act than through command and control enforcing detailed prescription. Yet localism will develop only if centralism in the culture and processes of central government is effectively challenged. The Bill shows that, far from being so challenged, these attitudes and practices have deeply influenced the so-called Localism Bill. One must hope that, through scrutiny in the legislative process, the powers to make orders and regulations will be largely eliminated so that it becomes a real Localism Bill. But more is required if centralism is to be challenged and localism fully developed.

### **A challenge to centralism**

Centralism pervades central government in forming its attitudes and determining its procedures and practices. It draws strength from the culture of the various departments of central government, which do not trust local authorities to run their own affairs and know no other way to deal with them than through regulation and detailed guidance designed to ensure they act in ways determined by the centre. Departmental attitudes are reinforced by ministers who have their own views as to how local authorities should act and wish to require them to act in that way. There are plenty of examples even in the Department of Communities and Local Government sponsoring the Bill. The Secretary of State thinks that all authorities should publish details of the salaries of senior staff and of any expenditure over £500 and therefore sees it as right to require them to do so in the Localism Bill. These duties may be sensible for authorities, but it should be for local authorities to decide, as localism suggests. The centralism implicit in the accepted ministerial role is well illustrated by the letter sent by Bob Neill, a junior CLG minister, to all Leaders informing them they should provide an effective refuse collection even in difficult circumstances, as if they did not already know that and many of them were being successful in doing so. Ministers believe they must act even when localism means matters should be left to local authorities to deal with. One suspects that at times localism is seen by both ministers and departments as giving freedom to local authorities to do what central government wants.

Past experience suggests that ministerial words calling for localism do not translate into localism in practice because of the dominance of centralism in central government. Michael Heseltine, the Secretary of State in 1979, announced a bonfire of 300 controls, but the centralist culture remained unchallenged and over time new controls were introduced, more than replacing those abolished. The Labour government often set out policies for decentralization to local authorities but the reality was detailed control in targets, inspection, prescriptions and guidance. There is no better illustration of this approach than the at least twelve regulations, five directions and nearly two hundred pages of guidance specifying exactly how local authorities should introduce new political structures, virtually all of which will remain in force after the Localism Bill becomes law.

The Bill shows centralism is a powerful influence even in the Department of Communities and Local Government. In other departments the culture of centralism is even stronger. Unless challenged the culture of centralism will prevent localism becoming more than words from a Minister or in a White Paper as has happened in the past. If the Government wants, as it asserts, to see localism developed in practice, it must recognise the need for changes in the attitudes and practice of the departments of central government. Words by themselves will not be sufficient. Measures are required to entrench localism.

We have given evidence to three select-committee inquiries arguing for changes to bring about a new pattern of central-local relations through a semi-constitutional statute giving statutory expression to the principles of localism. Whitehall departments recognise statutes more readily than words that carry no legal weight.

A statute is not enough to secure change. Procedures for monitoring and enforcement are needed. There should be a unit in the very centre of government – probably in the Cabinet Office - to monitor the operation of the principles set out in the statute, ensuring its application by departments. Even more important would be a joint committee of the two Houses of Parliament with responsibility for monitoring central-local relations in accordance with the principles, reporting to parliament both annually and on specific proposals. Similar recommendations were put forward by the CLG Select Committee in its 2009 report *The Balance of Power: Central and Local* but were neglected by the then government. The need for these proposals gains urgency from the need to ensure that the Government's commitment to localism informs the culture and practice of central government in all departments. Without such changes localism will remain a topic more spoken about than acted on. The weakness of the Government's approach to localism is that it has not recognised the need for a change in the centralism entrenched in the workings of central government itself.

### **Decentralisation to communities and to local authorities**

As well as decentralisation to local authorities the Government's localism policies involve decentralisation to communities. The Government has not clarified the relationship between these two approaches to decentralization although it appears it sees the relationship being determined by detailed regulation rather than by local authorities working with communities. Nick Boles, an influential Conservative MP, has recognized in his recent book *Which Way's Up?* the role of local authorities in working with communities, arguing "...local communities should be given the power and the freedom to take charge of their own destinies, and that, to do so, they need strong and independent local government, representing the wishes of local people and trying out new ways of working that make life better for them..." (pages xviii –xix). He recognises that community empowerment requires strong local government and presumably not national control and regulations as in the Localism Bill.

There are many issues to be faced in decentralization to communities. What is a community? Is decentralisation about only communities of place or does it include those of background, interest and need as well? What if more than one group claims to be the sole expression of the community? Is the community group genuinely representative of the community? How are transparency and open government ensured in community groups? How is the community group accountable to the community? How far should the community group be bound by the policies of the authority? How are financial accountability, legal requirements and probity ensured? What is the role of the local authority in determining these issues?

Problems could arise if these issues are not resolved as decentralisation to communities develops. Unrepresentative community groups could arise, dominated by a few individuals and sectional interests. There could be little accountability of groups to local people. Early enthusiasm in the community could be eroded by time. Individuals sustaining the group could leave the area. The requirements for open government could be ignored. Financial irregularities could occur, even financial scandals. Conflicts may arise between the local authority and community groups, unless the relationship is clear, close and productive of a shared understanding. While disagreements are inevitable the danger is they can lead to sustained conflicts which could undermine not merely localism but the aspirations of the Big Society.

The Government should face the issue of how decentralisation to communities relates to decentralisation to local authorities, and recognise this relationship cannot be dealt with by national regulations that control the relationship through national rules and procedures. The difficulties can be resolved only by placing responsibility for involving and empowering communities on local authorities that understand local communities and can work with them in resolving all the issues raised.

The local authority and communities are linked together in shared concerns for local areas. Local authorities can resolve these issues with community groups provided they act with enthusiasm seeing community involvement and empowerment as strengthening local government and local democracy. Only with a readiness by the local authority to work closely with communities can a balance can be found between the need for a flexible approach to community involvement and empowerment and local policies to ensure full representation of and accountability to the community, financial and legal probity and an awareness of authority-wide policies. This balance is likely to be more easily achieved in working with parish councils in rural areas and urban equivalents, but there must be scope for other forms of community groups which can give expression to these same requirements.

### **A neglected essential element**

There is a huge gap in the Bill. A Localism Bill that lived up to its name would have dealt with the financing of local government. Centralism will prevail as long as local

authorities are so massively dependent for their resources on central government. They become supplicants for funding from central government rather than engaging in a dialogue with their citizens about local priorities. A genuine Localism Bill would give legislative authority to the decentralisation of local taxation, so that local authorities draw the bulk of their resources from their own voters with taxes whose rates they determine.

### **Conclusion**

The Government's policies for localism are to be welcomed in principle but should be criticised in practice. While the Bill contains a limited number of proposals for localism, they are set in a centralist framework based on the attitudes and practice dominant in the workings of central government. Centralism dominates localism in the Bill and the need for change in central government is not even recognised. Rather, centralism is entrenched by the many new powers, regulations and orders proposed.

In addition there is a lack of clarity as to the relationship between decentralisation to local authorities and decentralisation to communities that can be resolved only at local level rather than by nationally-imposed decisions embedded in regulations.

Much remains to be done to make localism a reality, especially decentralisation of local-government financing. Localism will not develop unless central government itself changes, yet there is no sign in the Bill that such change is likely. The Bill is drafted in a way that suggests the principle put forward by Nick Boles that decentralisation to communities depends on strong and independent local government has not even been recognised. Rather, the Bill as presently drafted, sees local-authority relations with communities as requiring detailed controls, which far from strengthening local government would weaken it. Central government apparently knows no other way to act in local affairs than through command and control expressed in regulation, guidance and detailed prescription. In the Bill it acts in the way it has acted for many years. If localism is to develop central government has to learn new ways.

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