Localism Bill

House of Lords
Second Reading

7 June 2011

1. Civic Voice is the new national charity for the civic movement. We champion and support a network of hundreds of volunteer-led and community based civic societies and other groups across England who work to make the places where everyone lives more attractive, enjoyable and distinctive and to promote civic pride. We have been joined by over 275 civic societies with c71,000 individual members in our first year. Civic society volunteers are the most numerous participants in the planning system and this briefing is informed by their practical experience and local outlook.

2. Civic Voice warmly welcomes the fundamental intention behind the Localism Bill to deliver a "power shift" to local communities. This principle needs to guide debate on the draft legislation. Communities have had things "done to them" for too long and their knowledge and expertise has been undervalued. We recognise some of this power shift is challenging for local authorities and the professions and it requires a different way of thinking and working with communities. People expect more and want actively to shape the future of their neighbourhood. We relish the opportunity for communities to take the lead in shaping the quality of the places where we all live. Our support for key aspects of the Bill on neighbourhood planning and the community right to buy is evident in DCLG's press releases which include quotes from Civic Voice. We have featured in DCLG's video on neighbourhood planning and our interview with Minister Greg Clark MP on the Localism Bill is also on DCLG's website.

3. The context for the Bill is important. It provides some of the "hardware" necessary to deliver a power shift to communities. Yet, in many ways, it is the "software" of support, guidance and resources (intellectual and financial) made available to a community that is the most important. The Bill will be stillborn if communities are not able to realise the opportunities and take advantage of the new rights it establishes or fail to be supported by the culture change in government and the professions which will be needed. There is too little effort and insufficient resource going into this aspect of localism. We are also concerned by the risk of the Government's "pro growth" economic strategy misunderstanding the role of the planning system and distorting the role of neighbourhood plans by giving too strong a role for business (especially Schedule 9, 2, 61F 5(a)(ii)). This also extends to the far-reaching and distorting impact of Clause 124 requiring local authorities to consider "*local finance considerations*" when determining all planning applications.

4. This briefing focuses on the provisions in Part 5 for planning and the proposed "community right to buy" in Chapter 4 of Part 4 of the Bill. We also welcome the proposed general power of competence for local authorities and the provisions for local referendums and a community right to challenge to deliver services in Chapter 4. We also raise some issues which are not yet in the Bill, such as planning protection for local services and the need for safeguards against development granted permission which cuts across an agreed local or neighbourhood plan. We also ask Peers to consider whether the cumulative effect of all the changes made by the Government will improve the position for communities or dilute the Bill's effectiveness overall.

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PART 4 – COMMUNITY EMPOWERMENT

Chapter 4 – Assets of community value (the "community right to buy")

We welcome the provisions to give communities rights to identify public and private assets of community value in their area and bid to take on responsibility for them if there is a proposal for them to be sold. Too many communities are losing the buildings and services that bind them together. They need these safeguards to ensure community assets don't disappear for the lack of awareness of their value and to provide civic societies and other local groups with the time and capacity needed to develop viable proposals to save them.

We are concerned, however, that the provisions will not be effective unless they result in a higher proportion of successful bids from communities than would currently be the case. Indeed, there is a risk that the new rights may simply raise expectations but not alter the end result and fail to stem the loss of valued assets. Our primary concern is the need to recognise the social value of assets and introduce a presumption in favour of disposal to a community with a viable proposal. Communities will also need much more support and access to capital to make a success of these new rights than currently envisaged.

We believe the Bill should be strengthened in the following ways:

- Confirm that anyone with an interest in the area may nominate an asset for "listing" because of its community value – this process needs to be as open as possible
- Require local authorities to publish the policy and criteria guiding their decisions on whether to "list" assets nominated to them as being of community value – it is important that these decision are transparently made
- Recognise the "cultural" as well as "*social, economic or environmental wellbeing or interests of the local community*" in considering whether an asset is of community value – this will clarify the value of key cultural assets such as theatres
- Recognise the potential as well as existing community value of assets when making "listing" decisions – this is essential to ensure derelict, vacant and underused buildings and land are brought to life for communities
- Exempt any asset in commercial use which has been "listed" for its community value from the proposed extension of permitted development rights (via amendment to the Use Classes Order) to allow its conversion to residential use without the need for a planning application – this will avoid two areas of Government policy conflicting with each other where residential conversion of a "listed" asset results in irreversible physical and economic changes in the value of the asset without recourse to any public decision
- Introduce rights of appeal against the decisions by a local authority (a) not to "list" a community asset which is in its own ownership; and (b) to dispose of its own assets other than to the community – it is not appropriate for a local authority to act as judge and jury in deciding on the merits of its own assets and provision can be made to avoid vexatious appeals
- Clarify that an owner may only successfully appeal against the decision to "list" an asset as being of community value because of a factual error and may not query the judgement of the local authority in relation to its community value or level of community support
- Provide for a minimum window of opportunity of 6 months and give local authorities discretion to extend this to 12 months – a 6 month window will be too short for an effective business plan and funding to be secured in many instances and where reasonable steps are taken by the community this should be recognised

- Introduce a presumption to dispose to the local community where a viable proposal is forthcoming, backed by recognition of the "social value" of the asset in the assessment of "best consideration" – otherwise communities will go through the process only to continue to find the asset is lost to the highest bidder on economic grounds and communities in growth areas with high property and land values will be excluded

- Change some of the key terminology – what is being offered is a "right to bid" and not a "right to buy"; and there is scope for confusion over preparing a "list" of assets of community value when the term "list" is in common parlance for already established processes for statutory "listing" and preparing "local lists" of buildings and structures of historic significance – this runs the risk of causing confusion and unhelpfully raising expectations about the strength of the safeguards offered.

Communities will also need access to capital funding and a range of practical support, including business planning, market research, consultation, negotiation, dealing with statutory consents (planning, highways, heritage etc.), project formulation, writing funding bids, project management, setting up local trusts or other management bodies, recruitment, etc. It is unclear who is to provide such support and how is it to be funded?

PART 5 – PLANNING

Civic Voice believes the planning system has untapped potential to engage people in becoming more actively involved in their community as well as managing land use change and development for the widest public good. It combines vision with necessary regulation and already plays a critical part in protecting and improving the quality of our cities, towns and villages. We believe this needs to be strengthened and supported through improved opportunities for public engagement, selective extension of planning controls (not deregulation) and stronger safeguards against abuse. This needs to be further supported by action to remove the mystique, jargon and complexity of planning vocabulary and processes which act as a deterrent to community engagement. The value of effective planning in the public interest also needs strong defence against vested interests who seek to weaken safeguards or promote exceptions to bypass the system.

The original Bill made important steps towards this goal and needs to go further. We are concerned, however, that a number of the changes made in the Commons will diminish the freedom for communities to exercise their rights to neighbourhood planning, deter them from getting involved and distort the purposes of planning inappropriately in favour of business interests and financial considerations.

Chapter 1 – Plans and Strategies

<u>Regional Strategies</u> – We welcome abolition of regional strategies (except in London) in Clause 94 – these have proved too remote from community interests and imposed inappropriate policies and development on local areas.

<u>Duty to co-operate</u> – We welcome the strengthened duty in Clause 95, support measures to strengthen it further and look forward to greater clarity about the Government's definition of "sustainable development".

<u>Inspector's role on Local Plans</u> – We welcome the provisions in Clause 97 that Inspector's recommendations on Local Plans are not binding but there is still a requirement for a Plan to be considered "sound" before adoption.

Chapter 2 – Community Infrastructure Levy

We welcome the proposed changes to the Community Infrastructure Levy to ensure a "meaningful proportion" goes direct to communities (Clause 100) and await further details of the safeguards that will be put in place to ensure communities gain access to the funds they require.

Chapter 3 – Neighbourhood Planning

We warmly welcome the provisions giving communities new rights to prepare neighbourhood plans for their area. This is fundamental to the "*power shift*" envisaged by the Bill and with the right support could liberate the knowledge and expertise locked up in communities and too often ignored by local councils. Local communities care deeply about their area and know it better than anyone. A number of civic societies are already talking with their local councils and parish or town councils about the role they can play in leading or contributing to a neighbourhood plan.

The success of these measures depends on the process becoming no more complicated and local communities being given the independent support and advice needed to take advantage of the new rights. Otherwise, there is a risk that the Government's ambitions for 20%-60% of the country having a neighbourhood plan in the next decade will not be met and they will largely come forward in rural areas and areas of development pressure where the development industry or landowners fund the process. The availability of independent support to neighbourhoods is especially important in these areas to ensure public confidence in the integrity of the process.

We welcome the Government amendments in the Commons that:

- *Provide for neighbourhood planning across local authority boundaries* (Schedule 9, 2, 61H) – it is essential that the new rights for neighbourhood planning respond to the community view of the boundary of their neighbourhood and are not constrained by unfortunate local authority boundaries which obstruct this – Crystal Palace in south London, for example, spans five London Boroughs

- *Safeguard conservation areas and the setting of listed buildings* (e.g. Schedule 10, 8 2(c)) - these are designations of national not just local significance and so their contribution as planning considerations should not be disregarded as a matter of principle by neighbourhood planning (which was the original effect of the Bill before amendment).

We believe the Bill needs to be further amended to:

- *Strengthen local councils responsibilities to co-operate with neighbourhood planning* – we are concerned that some councils will only grudgingly support neighbourhood planning and adopt a de minimis approach that is not helped by the weak requirement to give *"advice and assistance"* (Schedule 10, 2, 3) – all councils should additionally be required to "*co-operate*" with neighbourhood forums and town/parish councils undertaking plans.

We strongly object to the late Government amendments which:

- *Introduce a blatant business bias into neighbourhood planning* (Schedule 9, 2, 61F 5(a)(ii)) – we believe business has a vital role to play in supporting neighbourhood planning and providing practical advice to communities. We are particularly keen to see stronger support for local business which contributes most to the community. It is not appropriate, for "*promoting business*" to be a sole purpose of neighbourhood planning as is permitted by the Bill. There are already provisions for bodies undertaking neighbourhood planning to be concerned for the *"social, economic and environmental wellbeing"* of those living in the area. Making the promotion of business a sole purpose for neighbourhood plans skews the purposes of planning and double counts economic interests which are already addressed by a need to consider economic well being. Even the most exclusively commercial business park has important social and environmental considerations which should be addressed. An alternative approach would recognise the social, economic and environmental well being of those "working" in an area as well as those "living" there

- *Introduce "local finance considerations" into planning decisions* (Clause 124) – this hastily introduced clause fundamentally changes the basis on which all planning applications are determined by local authorities by giving special status to the financial implications of development which benefits from a Government grant or generates a financial contribution through the Community Infrastructure Levy. This will place finance above all other "material considerations", including social and environmental well being. It would be a profound change with far reaching consequences for the integrity of the planning system and public confidence in its decisions

Chapter 4 – Consultation before applying for planning permission

Effective involvement of the local community at the earliest stage of preparing a development proposal is essential and still all too rare. The provisions in Clause 107 are a welcome recognition of the problem but their effectiveness will depend on the threshold to be established in Regulations. The Government is consulting on these and its proposals fall woefully short of what is required and would only apply the provisions to 300 - 600 of the largest planning applications each year.

The Localism Bill needs to improve the opportunities for communities to make a difference locally and not just provide a safety net below which developer practice does not fall. We urge the Government to strengthen the proposals in three ways:

- Make a significant reduction in the proposed national thresholds to ensure a meaningful proportion of planning applications benefit from pre-application consultation - our preferred option would be to align pre-application consultation with the existing procedures for "major development" in which the public must be notified and neighbours informed. This would set the threshold at 10 or more dwellings (or a site area of over 0.5 ha) and 1,000 sq m or more of gross floorspace for business and industry (or a site area of 1 ha or more). We would also wish to see provision for significant changes of use and to address developments exceeding 20m in height above ground level. If there is provision for local authorities to introduce lower thresholds where the circumstances require it then we would support a higher national threshold of 2,500 sq m for all retail and leisure development

- Embrace the spirit of localism by making provision for local authorities to introduce lower thresholds where relevant to their context

- Use the pre-application consultation process to identify departure and other potentially controversial applications to encourage earlier engagement ahead of the design phase and make provision for mediation where appropriate.

Chapter 5 - Enforcement

A chain is only as strong as its weakest link and there are too many instances where the planning system is being bypassed and unauthorised development is proceeding without enforcement action being taken. This not only damages the local environment but also discourages people from getting involved in community activity. Such development ranges from unauthorised variations to planning permissions, unfulfilled planning obligations, illegal advertising or development taking place without reference to the local planning authority. There is no effective recourse for the local community. Breaching planning controls is not a criminal offence; local authorities are under no duty to take enforcement action, however serious the breach; and the Ombudsman can only address procedural errors and has limited sanctions.

We warmly welcome the provisions for stronger enforcement which help address some key issues and strengthen the hand of local planning authorities working on behalf of their communities. These could be improved in two areas:

Retrospective planning permission (Clause 108) – The provisions enabling local councils to prevent appeals against enforcement notices on the grounds that planning permission ought to have been granted are very welcome. This is a long overdue closing of a serious loophole. We would extend the provisions so that local authorities have the power to regularise all development. For example they could have the power to require a retrospective planning application to be submitted as an alternative to taking enforcement action. This would reduce unnecessary delays and costs in taking enforcement action where the developer is not willing to submit a planning application. It would also help ensure that all development in an area is either authorised or is having enforcement action taken against it and so avoid the current situation where unauthorised development is simply ignored.

Unauthorised advertisements and defacement (Clause 111) – We welcome extension of the provisions to strengthen local councils' hands in taking action against the scourge of illegal advertising and defacement of property that can sap civic pride. This largely extends powers that have previously only been available to councils in London. We note that the provisions are, however, more complex than those in the London Local Authorities Act 1995.

We are concerned the proposed measures:

- limit action to *"persistent"* advertisements (which will inhibit local councils nipping issues in the bud)
- require notices to be displayed and not just served (which will provide further opportunities for abuse)
- appear to introduce a right of appeal to the Magistrates Court against action relating to both advertisements and graffiti on the grounds that it is not detrimental to amenity (when legal precedent is that the courts are not an appropriate place to make judgements on amenity).

Chapter 6 – Nationally significant infrastructure projects

Abolition of the Infrastructure Planning Commission (Clause 112) – We welcome this abolition and the provisions for the Secretary of State to determine major infrastructure projects and for them to be managed through the Planning Inspectorate.

MISSING PROVISIONS

There are two important omissions from the Bill.

Sovereign development plans – safeguards and appeal rights

If communities are to invest significant time, effort and emotional commitment in neighbourhood planning then it can't be right that a planning application which cuts across everything that has been agreed can be granted by the local planning authority with no right of redress on the planning issues which are raised.

One option would be to bar any departure applications from being submitted and require agreement to be secured for the plan to be amended first. This would also be an incentive to produce a neighbourhood plan. We can see some practical problems with this option and there may be cases where everyone can reach agreement about the merits of the proposed development and the application process would be preferable to a plan amendment.

We support, therefore, a need to restrict the right of developers to appeal against refusal for departure applications and to introduce a carefully defined community right of appeal against such "departure applications" if a local authority grants permission.

The number of departure applications are small (only 0.15% of the six million planning applications in the last decade were departures) and these safeguards are essential if communities are to feel the investment of time and effort into preparing plans is worth it.

A community right of appeal would also improve the quality of local authority decision making as reasons for granting as well as refusing permission would have to be clearly expressed. Only those who objected to the planning application would be eligible to appeal and local authorities are already required to identify departure applications for the purposes of deciding on the level of publicity to be given. A community right of appeal might even be combined with the removal of the Secretary of State's call in powers on the grounds that a more active civil society will ensure all relevant applications are subjected to necessary scrutiny, including through exercising a community right of appeal.

Protecting local services

The importance of a diverse range of local shops and services was identified as one of the most important contributors to what makes places enjoyable and people proud to live there in the results of Civic Voice's Love Local survey (www.civicvoice.org.uk/campaigns/love-local) in 2010. This also identified the loss of independent shops as one of the main things at risk.

Civic Voice believes the planning system should play a more supportive role in protecting essential local shops and services and giving communities more of a say over what happens in their High Streets and street corners. Currently a local butcher or greengrocer can become another multinational coffee shop without the need to apply for planning permission. We support a change to the Use Classes Order which introduces a new category of essential shops – such as bakers, greengrocers and butchers – and services – such as pubs and post offices - or makes them *sui generis* by placing them outside the use classes altogether. This means that express planning consent would be needed to change use.

We welcome the Private Members Bill introduced by Nigel Adams MP and widely supported in Early Day Motion 1009 and hope its provisions can be included in the final legislation.