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Housing and Neighbourhood Development Plans: An Initial Assessment of Opportunities and Impact of the Localism Act 2011 in England.

ABSTRACT

The Localism Act 2011 created an opportunity for local communities to form Neighbourhood Forums and to prepare their own Neighbourhood Development Plans in urban and rural areas in England. Initial reactions suggested that, rather than leading to the development of more housing, these initiatives would confirm all the stereotypes of local residents blocking unwanted development in their defined neighbourhoods. However, neighbourhood plans need to be in general conformity with the Core Strategies of higher-tier plans and have to undergo an examination by an independent person appointed by government. This paper discusses the role and purpose of neighbourhood plans and the evidence base on which they are founded. It then reviews the ways in which housing strategies and evidence of need are reflected in a sample of plans which have been adopted to date. It concludes with an assessment of the broader impact of neighbourhood plans on the planning process.

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Introduction

The creation of the Coalition Government in the UK after the general election in 2010 resulted in a commitment to reorganise the planning system in England and to attempt to achieve two (possibly conflicting) objectives. The Government's aims were to centralise, reinforce, or in some cases relax, controls on some aspects in order to promote more development, while also devolving other powers down to the local community level. This was at a time of extreme financial austerity following the economic recession and crisis of the banks in 2007-08 which particularly affected Europe and the USA (see for example Glinavos, 2014). The initial statement, *Our Programme for Government*, set out the second objective thus:

The government believes it is time for a fundamental shift of power from Westminster to people. We will promote decentralisation and democratic engagement and we will end the era of top-down government by giving new powers to local councils, communities, neighbourhoods and individuals. (Cabinet Office, 2010, 11).

In pursuing these dual objectives the government instituted a series of often ad hoc changes to many policy areas within the context of a severe reduction in public spending. For example, in the Comprehensive Spending Review of 2010 local government revenue spending was cut by 26% up to 2015 and capital spending by 45% (Clarke and Cochrane, 2013, 12). In the field of planning, one of the first acts of the Secretary of State was to issue a letter revoking regional spatial strategies (DCLG, 2010), introduced under the Labour Government in 2004. One of the key functions of these strategies was to provide housing targets for local authorities. This abolition was subsequently formalised in the Localism Act (HM Government, 2011), whereby a 'duty to co-operate' between local authorities was included, for example in meeting their housing needs through negotiation with adjoining councils.

The growing shortage of both affordable and open market housing, particularly in London and the South East, is reflected in rapidly escalating house prices and private sector rents. The number of dwellings constructed reached a low point in 2009 and by 2012 the number of completions at 115,600 units in England was about half the estimate for the number of new homes needed. Detailed advice on how to increase the supply of housing was issued to local authorities through the National Planning Policy Framework (NPPF) (DCLG, 2012a, 12-14). Two particular provisions in this document required local authorities to 'objectively assess needs for market and affordable housing' and to extend previous requirements to 'identify five years' supply of specific deliverable sites' and 'with an additional buffer of 5%' (DCLG, 2012a, 12). In order to provide a further incentive to encourage house building, the New Homes Bonus was introduced in February 2011, whereby local authorities are paid a grant for each additional unit constructed over a period of six years at a total estimated cost of over £1 billion (DCLG, 2011a).

On the face of it these policy changes represented a continuation of the top-down, centralising approaches of previous governments, while at the same time Ministers asserted the primacy of local-decision-making (Hambleton, 2011). They also reaffirmed the significance of the neighbourhood as a focus for planning and service delivery (Kearns and Parkinson, 2001; Bailey and Pill, 2011). To this end, a series of provisions incorporated in the Localism Act were designed to 'empower communities', 'increase local control of public finance' and 'to strengthen accountability to local people' (Clarke and Cochrane, 2013, 19). Key elements of this legislation are the provisions relating to the establishment of neighbourhood forums and the right of local representatives to prepare neighbourhood development plans. This followed on from the unfunded and ill-defined commitment to promote the 'Big Society'; an idea designed to fill the void of the shrinking state sector in a period of financial austerity (Kisby, 2010).

As previously noted, the commitment to localism was enshrined in the Coalition Government's original agreement (Cabinet Office, 2010), but also reflected past initiatives towards greater community participation being debated by the previous Labour Government. Concepts such as double devolution had been raised by David Miliband when Communities Minister in proposing 'the double devolution of power from the central government to local government, and from local government to citizens and communities' (Miliband, 2006), but were never fully implemented. A later White Paper (DCLG 2008) sought to make local government more accountable and to empower citizens and communities to play a bigger role in decision-making at the local level. A number of recommendations had been implemented by the time of the 2010 General Election but draft legislation was abandoned before the general election of May 2010. The Coalition Government's recognition of the need for decentralisation therefore drew on both previous initiatives and potentially conflicting political philosophies. As Clarke and Cochrane note 'A set of overlapping and contradictory political meanings clusters around the notion of localism' (2013, 10).

The promotion of localism was at least partly a reflection of the Conservative Party's commitment to the parish councils of the shires, which tend seek greater influence over planning decisions, and the Liberal Democrat adherence to pavement politics and self-help in urban areas. Until 2011 the main commitment to decentralisation was represented by civil parish councils which were most evident in rural areas (although these can be called urban or city councils in larger settlements) (Gallent and Robinson, 2012). They were first established under the Local Government Act of 1894 although district and unitary authorities can now designate civil parish councils under the Local Government and Rating Act 1997. Since 2008 the power to create new parishes and parish councils, to alter parish boundaries, to dissolve parish councils and to abolish parishes has been devolved to district, unitary and London Borough councils. This is progressed through a 'community governance review'. Civil parish councils can also seek approval from the local authority to prepare a neighbourhood plan.

Rather than building on the well-tried model of the civil parish council, the Localism Act makes provision for the setting up of neighbourhood forums in both urban and rural areas where no parish council exists. The local authority in each case is given powers to designate appropriate neighbourhood areas and to approve the formation of a neighbourhood forum. The legislation stipulates that each forum should have a minimum of 21 members drawn from those who live or work in the area, with the addition of elected members from higher tier authorities. The main power given to approved neighbourhood forums is the right to prepare their own neighbourhood development plan. In addition, forums can seek approval for a Neighbourhood Development Order which enables them to approve certain kinds of development in all or part of their area. Community Right to Build Orders enable certain kinds of development, for example housing, to proceed without further approval from the local authority (Locality, n.d.). In addition, a Community Right to Bid enables communities to apply to designate 'assets of community value' (DCLG, 2012c).

The preparation of the neighbourhood development plan involves the collection and assimilation of an evidence base for the plan area and requires large amounts of community participation and consultation with limited support from the local authority (Burton, 2014). It must be in general conformity with the strategic policies of one or more higher level statutory plans, it must be subject to detailed examination by an appointed person, and must be approved by more than 50 per cent of those casting a vote in the designated area. It is at this level that the implementation of housing policies becomes particularly contentious since residents often enter into the process of neighbourhood planning in order to exert greater influence over the location, type and design of new housing developments, only to find that they have far less autonomy than originally envisaged because of the need to conform with core strategies and central government policy directives. One of the most significant questions arising from the early years of neighbourhood plan preparation is how far a neighbourhood plans can strike a balance between accommodating further housing development as required in the legislation and being overly 'protectionist' (Turley, 2014).

This paper will focus on the progress to date in the preparation of neighbourhood plans and particularly on how housing policies have been incorporated. It is divided into three parts. The first will briefly explain the intentions underlying neighbourhood planning and progress to date; the second will identify two types of neighbourhood plans and will discuss the ways in which housing policies have been incorporated to reflect different planning contexts. The final section will discuss the broader implications for the planning system as a whole and draw out some wider conclusions.

The paper is based on a variety of published and unpublished sources. Information on a number of plans and their progress towards adoption was obtained largely from websites and the planning press. In addition informal interviews were carried out with consultants, council officers and residents involved in forums and parish councils. As it is only three years since the Localism Act was passed and two years since the Regulations (DCLG, 2012b) were published, the findings and conclusions presented here are qualified at this stage as a comprehensive evaluation has yet to be undertaken into the longer-term impact of neighbourhood plans on the quality and quantity of housing development. The neighbourhood plans discussed here have been selected to be broadly representative of urban and rural areas, to reflect different approaches to housing policy and because they offer interesting insights into the workings of the planning system at the local level.

Preparation of Neighbourhood Plans

The provisions of the Localism Act represent a considerable departure from previous changes to the planning system in that they depend on the voluntary contribution of local representatives in forming forums and preparing plans. However, some parish councils have used their resources to pay planning consultants to advise on the preparation of the plan. A limited financial contribution (up to £9000) towards plan preparation can be applied for from the Department of Communities and Local Government (DCLG) and the local authority has a 'duty to support' the plan making process through the provision of technical information and advice.

The two routes to the preparation of neighbourhood plan both require a submission of the proposed neighbourhood area to the local planning authority for designation. The first is for existing civil parish or town councils to initiate the process, as discussed above. The second is for groups of at least 21 residents to submit a defined area for neighbourhood designation by the local authority. It is at the discretion of the local authority to designate neighbourhoods as *business neighbourhoods* where the land uses are predominately in business use. After the boundaries have been approved, neighbourhoods can apply for approval as a fully constituted neighbourhood forum. Full public consultation and engagement is a requirement at all stages. Once this procedure has been completed both types of representative body can begin to prepare a neighbourhood plan.

The scope and content of neighbourhood plans are effectively limited by the need to meet the following ‘basic conditions’ as set out in the amended Town & Country Planning Act, 1990:

- They must be appropriate and have regard to the National Planning Policy Framework;
- They must contribute to the achievement of sustainable development;
- They must be in general conformity with the strategic policies in the development plan for the local area;
- They must be compatible with human rights requirements;
- They must be compatible with EU environmental obligations (Locality, 2012, 2014)

Full consultation with interested parties is required at each stage of plan preparation and the ‘presumption in favour of sustainable development’ set out in the NPPF (DCLG, 2012a, 3) must be maintained throughout. The NPPF specifies that ‘neighbourhood plans should not promote less development than set out in the Local Plan or undermine its strategic policies’ (DCLG, 2012a, 44). The online Planning Practice Guidance offers the following advice on drafting policies in the neighbourhood plan:

How should the policies in a neighbourhood plan be drafted?

A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.

Can a neighbourhood plan allocate sites for development?

A neighbourhood plan can allocate sites for development. A qualifying body should carry out an appraisal of options and an assessment of individual sites against clearly identified criteria. (DCLG, 2014a)

The draft plan is submitted to the local authority which arranges for an independent examination to be held by a Planning Inspector or person of similar standing. The plan must be accompanied by other supporting documents, such as a consultation statement and where necessary, a Strategic Environmental Assessment and sustainability appraisal (DCLG, 2014b). After the hearing, the independent Examiner prepares a report and may recommend alterations and deletions in order for the plan to meet the ‘basic conditions’ outlined above. The Examiner also determines whether the plan should proceed to referendum. In most areas this will be a referendum of local residents but if the area is designated a business neighbourhood, a second ballot of local businesses is held. In both cases more than 50% need to vote in favour of the plan for it to be adopted as part of the statutory local plan.

Progress towards adoption of neighbourhood plans is gaining momentum and (by October 2014) 1228 neighbourhood organisations have applied for designation and wished to proceed with neighbourhood plans. Of these, 931 plans have been designated, 85 have been submitted, 34 have been to referendum, 27 have been formally adopted or ‘made’ (*PlanningResource*, 2014a). Approximately a third of active neighbourhood organisations are based in the South East of England (Parker et al., 2014, 10).

In summary, the provisions of the Act determine that local representatives should take the lead in preparing neighbourhood plans. These should be evidence-based, clear and unambiguous, propose no less development than stipulated in higher level plans and be in general conformity with the core strategies of the relevant local plan. They then must undergo a rigorous examination process before they can be adopted as part of the statutory plan. The areas which are most advanced in the process of adopting a neighbourhood plan tend to be small towns and villages in rural or semi-rural areas which already have town or parish councils with considerable experience of planning issues. On the other hand, there are some urban areas where there is great interest in neighbourhood planning such as the City of Westminster in London, for example, which had 21 designated areas or applications for approval of neighbourhood status in the pipeline in April 2014. In a few cases local businesses have taken the lead as in the example of Central Milton Keynes (CMK Alliance, 2013). The following section draws on a sample of the 27 plans which have completed their passage through to statutory status.

Housing Priorities in the Neighbourhood Planning Process

Although proscribed by government legislation and advice, a degree of flexibility remains about how housing policies are addressed in neighbourhood plans. The key variables are first the housing priorities of the area and the extent of vacant sites potentially suitable for housing development. The second factor is the currency, status and specificity of the higher level local plan and the extent they set out housing targets for specific localities. In order to be acceptable, neighbourhood plans need to both reflect local priorities and, where necessary, make provision to meet sufficient new housing to ensure the plan is in general conformity and meets the ‘sustainable development’ test outlined above. However, many local authorities have had to revise their housing targets in response to the abolition of Regional Spatial Strategies and to meet the new requirements of the NPPF. As local plans have been withdrawn or revised, it is not surprising that this has led to challenges against housing policies in neighbourhood plans when the guidance from a higher level statutory plan is uncertain or absent. As a recent review by consultants Nathaniel Lichfield & Partners concluded:

A review of the 109 Local Plans that have been examined or submitted for examination since the NPPF was introduced confirms that the key reason Plans have stalled is the policy requirement to meet objectively assessed needs, with the housing target remaining the key battleground at

examinations. Just over half of Plans propose less housing than had been proposed by former Regional Strategies, but a third of sound plans end up having to increase their target to pass examination. Half of the plans submitted for examination since the NPPF have experienced delays. Progress of many plans has stalled as LPAs take stock of their evidence base before proceeding with the rigorous examination process. The number of Plans being withdrawn has increased in 2013/14 compared to 2012/13. (NLP, 2014, 1)

In particular, the NPPF stipulates that an objective evidence base should be prepared in order to assess housing need and land availability. Thus local authorities are required to prepare both a Strategic Housing Market Assessment and a Strategic Housing Land Availability Assessment (DCLG, 2012a, 38-39). The extent to which these identifies need for all types of housing and land availability in particular neighbourhoods constitutes a major source of evidence in preparing the neighbourhood plan. At least two different approaches towards housing policy can be identified from a sample of neighbourhood plans adopted to date. These are summarised in Table 1.

INSERT TABLE 1 AROUND HERE

Type 1

The first type, those covering larger urban areas such as Winsford, Tattenhall and Thame, reviewed alternative sites and identified suitable locations in order to meet prescribed housing targets. The Thame plan, for example, is divided into three sections. The first sets out a vision for Thame, the second defines the policies to support the overall vision and the third provides site specific housing allocation policies (Thame Town Council, 2013). All three plans identify sufficient sites to meet housing needs, although in some cases smaller sites are favoured which together provided for the required total of housing units. This is well illustrated by the Tattenhall Plan which overwhelmingly favoured small sites:

Proposals involving up to 30 homes will be allowed within or immediately adjacent to the built-up part of Tattenhall village over the period 2010 to 2030; Smaller scale development of exception sites will be allowed within the hamlets of Gatesheath and Newton-by-Tattenhall over the period 2010 to 2030.

Exceptions will be made where additional housing development involves the redevelopment of brownfield land (subject to its environmental value), the conversion of existing buildings or affordable housing-led 'exceptions' schemes. 'Exceptions' schemes will be allowed to contain an element of 'enabling' market housing, but no more than 30% in any individual scheme. (Tattenhall & District Parish Council, 2012, 13)

In the case of Tattenhall and Winsford neighbourhoods in the Cheshire West and Chester District Council (CWACC) area, legal appeals temporarily suspended the examination stage until the courts issued a decision. In Winsford the CWACC emerging local plan required a minimum of 21,000 homes by 2030 of which at least 3150 should be provided in Winsford. The draft neighbourhood plan duly identified 24 sites to accommodate 3300 dwellings. A developer had submitted an application to build 184 housing units in Winsford but this was refused because it was considered premature since it predated the adoption of the Core Strategy. The site in question was not identified for housing in the draft neighbourhood plan so was unlikely to be approved. When the examination began the developer requested that it be suspended until another case concerning the Tattenhall neighbourhood plan had been determined by the courts. In this case three national housebuilders (Taylor Wimpey, Barratt Homes and Wainhomes) argued that the neighbourhood plan could not be approved until the local plan had been adopted as the former had to be in general conformity with the latter. The Winsford Examiner agreed to an adjournment in January 2014 and the examination did not resume until May 2014.

The question of whether a neighbourhood plan can be prepared before a full and evidence-based housing strategy has been adopted in the local plan has given rise to several legal challenges. The issue of prematurity was at least partially resolved when the DCLG issued further guidance in March 2014 suggesting that both tiers of plans could be progressed simultaneously. The National Planning Guidance stated:

Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:

- the emerging neighbourhood plan
- the emerging Local Plan
- the adopted development plan

with appropriate regard to national policy and guidance.

The local planning authority should take a proactive and positive approach, working collaboratively with a qualifying body particularly sharing evidence and seeking to resolve any issues to ensure the draft neighbourhood plan has the greatest chance of success at independent examination. (DCLG, 2014a)

This proved a satisfactory resolution since in practice housing needs assessments are constantly changing and local plans take a long time to adopt and are also undergoing regular review. If this policy had appeared sooner it might have made the case of the Dawlish plan easier to resolve. The Dawlish Parish Neighbourhood Plan (Dawlish Parish Council, 2012) was one of 17 DCLG

‘frontrunners’ which was prepared before the Regulations were published in order ‘to be a non-statutory, informal, community planning document forming part of the evidence base that will be material to and will help to inform the future planning of Dawlish through the Teignbridge Core Strategy’ (Balch, 2012, 3). It was found to be non-compliant in May 2012, the Examiner argued, largely because it could not be in conformity with the higher tier Core Strategy which had not yet emerged. As ACRE noted:

The Examiner rejected the plan on the basis that it was put together before the local plan/ core strategy had been finalised by Teignbridge District Council. This was because the provision for housing growth specified in the neighbourhood plan could not be based on an objective assessment of housing requirements. In other words, the Examiner’s interpretation of legislation and regulations is that only local authority planning departments can determine the baseline need for housing growth, against which neighbourhood plans must be assessed. The Examiner also noted several other limitations associated with the neighbourhood plan, including the lack of:

- a clear audit trail demonstrating how decisions about the development specified were made;
- ‘soundness’;
- a Strategic Environmental Assessment/ Sustainability appraisal. (ACRE, 2012)

Although never intended for final adoption, the Dawlish Parish Plan provided some salutary lessons for other areas. It became clear that the plan had to meet the same criteria as a statutory local plan in terms of viability, sustainability and should be based on an objective assessment of housing need carried out by the local authority, and not on purely local assessments of need. It would also need to satisfy the requirements in the NPPF and undergo full strategic environmental assessment. It later became apparent that these tests would be downgraded: Neighbourhood plans would not be tested for ‘soundness’ but only if they met the ‘basic conditions’. In addition, different local conditions might give rise to different kinds of plans. Some might focus on meeting housing needs on a site by site basis whereas others might provide broad policy statements or depend on the application of the higher tier plan for guidance when sites come up for development.

In response to the guidance provided in March 2014, the Winsford examination reopened after two months’ delay, although the Tattenhall examination remained suspended as a judicial review was in progress in relation to the development of three sites. However, in the case of the Winslow neighbourhood plan in Buckinghamshire, a developer, Gladman Developments, challenged the status of the plan after the Vale of Aylesbury’s Core Strategy and housing policies were found to be ‘unsound’ and the whole plan was withdrawn. The Examiner confirmed that the examination would

be suspended until the Tattenhall case had been determined (*PlanningResource*, 2014b) but later agreed to resume in May 2014 on the basis of the revised DCLG guidance quoted above.

It was reported On 16 May 2014 that the judicial review by the three house builders in relation to the Tattenhall Plan had been rejected and the postponement of the adoption of the plan was lifted. It was reported:

Neighbourhood planning consultant Tony Burton said the decision was ‘a shot in the arm for neighbourhood planning’. He said: ‘It sends a signal that the burgeoning neighbourhood planning movement is not to be stifled by vested interests and legal challenges.’ (*PlanningResource*, 2014c)

The Winslow plan allocates five sites for 455 new homes up to 2031. Gladman Developments sought a judicial review in the High Court against Aylesbury Vale District Council’s decision to allow the neighbourhood plan to proceed to a referendum. Gladman had two outstanding appeals against refusal of planning permission for a total of 311 homes in the plan area but on sites not currently allocated for housing. On 22 July 2014 the legal challenge was dismissed by the High Court and the referendum was held on 24 July where 98% voted in favour on a 60% turnout (*PlanningResource*, 2014d). In Uppingham in Rutland County Council a developer, owning a site in the plan area but not allocated for housing, lodged an appeal at the Examination on the grounds that the plan did not comply with the SEA directive. This was overruled by the Examiner (McGurk, 2014) but the company sought a judicial review in July 2014 preventing the referendum taking place.

Type 2

The second type of plan relates to those which provide general housing policies which will apply to any sites which are proposed for development, often called infill or windfall sites, during the plan period. These policies typically relate to the need for affordable housing, local occupancy conditions, housing for old people and live/work units. A good example is Kirdford parish in West Sussex (Kirdford Parish Council, 2014) which proposes a minimum of 61 units over the plan period. Much of the plan is taken up with detailed criteria for defining local occupancy conditions. The parish is establishing a ‘Housing Register to track demand for affordable housing in the Parish area’ as part of the evidence base. However, as the Register was not in existence at the time of the examination the Examiner determined that the local occupancy condition could not apply to market housing and that specification of the need for live/work units was not supported by evidence (Cheesley, 2014, 12-15).

A second example is the Exeter St. James neighbourhood plan, which covers a largely urban mixed residential area close to the city centre (Exeter St James Forum, 2013). The plan is mainly focussed on environmental quality and is made up of a series of projects relating to open space, gardens and community facilities. Housing policy is largely represented as a question of controlling houses in

multiple-occupation and limiting the provision of student housing. Infill sites receive a brief mention in that ‘The community will support the development of such sites for affordable homes for local people or good quality private residential development’ (2014, 30).

In all cases the Examiner has considerable powers to ensure the plan is in general conformity with higher level plans. This can often raise technical and legal issues beyond the capabilities of well-intentioned, but amateur volunteers, leading to rejection or substantial changes in wording. Thus a process which starts as the mobilisation of a local community can easily be caught up in issues of considerable complexity. At Slaugham in Mid-Sussex District Council the Examiner refused permission for the plan to proceed to a referendum on the grounds that both the Strategic Environmental Assessment and evidence base for the housing targets were inadequate. In fact, the housing policy strongly favoured at least 50% provision of affordable housing and 130 homes were to be built in the plan period but some of the sites identified were in an environmentally protected area (AONB). Substantial revision of the plan will be needed before it can be reconsidered.

On the other hand the Ascot, Sunninghill and Sunningdale neighbourhood plan (ASSSG, 2014) was prepared without specific housing numbers at a time when the local authority had not identified housing targets in its local plan. In this case the Examiner concluded in his report in January 2013:

There is no legislative requirement for neighbourhood plans to set their own housing numbers, to allocate land for development – or to cease progress until such matters are determined by the development plan. The general approach to housing taken by the Neighbourhood Plan does not seek to address housing numbers, but does recognise opportunities for development, alongside aspirations and major constraints. Given the emerging status of the Royal Borough of Windsor and Maidenhead Local Plan, I find this to be a sensible and pragmatic approach. (McGurk, 2013, 16)

Over the past two years the examination process has gradually become clearer not least through some of the Examiners’ reports and legal challenges discussed here. In most neighbourhood plans published to date housing has proved particularly problematic since a variety of often conflicting requirements need to be met. The first issue is ‘prematurity’ which raises the question: can detailed housing policies for particular sites be set out in the neighbourhood plan when the broader strategy in the local plan has not been finalised or is under review? Moreover, how far can the wishes of local residents in relation to the number, size and affordability of housing be integrated with the broader, strategic requirements at the local authority level and are local priorities reflected in an ‘objective assessment of need’? Finally, questions relating to the evidence necessary to demonstrate viability and sustainability as set out in the NPPF. It is thus evident that neighbourhood plans have to accommodate higher level policies on housing in order to meet the strict tests in the legislation. All of this calls into question the

extent to which localism ‘gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need’ (DCLG, 2012a, 43)

The Implications of Localism for the Planning System

It is still early in the process to draw definitive conclusions about the introduction of neighbourhood forums and plans and to date no full-scale evaluation has been commissioned by DCLG, yet some initial findings are beginning to emerge. These are discussed under the following headings: voluntarism and the selection of neighbourhoods; housing and the complexities of plan preparation and examination; and impact on local governance.

Voluntarism and the selection of neighbourhoods

A fundamental principle underlying the provisions of the Localism Act is that local communities are given the right to seek designation and to set up neighbourhood forums. In rural areas many parish councils already exist and these also have the right to seek approval to prepare neighbourhood plans. Thus the procedure is voluntaristic in that each area can choose whether or not it seeks designation. If an application is made it has to be considered by the local authority. The result has been that the more organised and active communities in rural, and less often urban areas, have tended to be the first to engage with the localism legislation. Many parish councils have also had access to additional resources which have enabled them to employ planning consultants to prepare their neighbourhood plans, as in the cases of Winsford and Exeter St. James, or have drawn on the support of third sector organisations such as Locality. Conversely, the more deprived urban areas have not been aware of the legislation or have lacked the organisational capability to take advantage of it. Moreover, the resource contribution and support from central government and local authorities remains limited in both funding and technical advice.

The desire of local communities to exert more influence over planning decisions may be legitimate but it has raised a number of difficulties in the designation process. The self-designation of ‘communities’ and ‘neighbourhoods’ can be problematic and even civil parishes may be based on historic boundaries of limited relevance to planning strategies. In some cases, different communities may lay claim to, and seek to dominate, different geographical areas. There is very little guidance on the membership and constitution of neighbourhood forums and this can give rise to conflicts of interest between residents and local businesses, particularly where a business neighbourhood has been designated. As Dias (2013) and others note, consensus is not guaranteed in a period of ‘post-politics’. Again, it is the duty of the local authority to approve the neighbourhood boundaries, the proposed constitution of the forum and to manage the referendum. It is the responsibility of the forum to

promote community consultation at each stage to ensure the plan is representative and supported at the referendum.

Housing and the complexities of plan preparation and examination

The process of neighbourhood plan preparation and adoption has given rise to a number of barriers and challenges which have already been alluded to. The main point here is that, rather than simplifying the planning process, the legislation introduces an additional layer of plans so that in London, for example, there could be three tiers: the London Plan, the borough local plan and the neighbourhood plan. Since all are required to be in general conformity with the higher tier, there are many opportunities for inconsistencies and questions of priority to creep in. These will no doubt emerge over time as appeals are heard into particular developments which have been refused planning permission.

Housing targets and policies have been a particular topic of dispute both at local and neighbourhood plan levels. The abolition of regional spatial strategies by the incoming Coalition Government meant that core strategies had to be revised and in a number of cases draft local plans were withdrawn and had to be reviewed. At the neighbourhood level a legal challenge against the Tattenhall neighbourhood plan caused a temporary postponement of the Winsford plan examination. Others have been rejected because Examiners have identified inconsistencies in the evidence base or with higher level plans. What is now clear is that both local plans and neighbourhood plans need to be based on an objective assessment of housing need and can no longer rely on targets allocated in the now defunct regional spatial strategies. On the other hand, housing targets and site allocations do not need to be included in neighbourhood plans if the forum or parish is willing to allow local authorities to decide each application on its merits and in relation to the local development plan. Indeed, recent legal decisions suggest that the courts are taking a lenient view towards local housing policy as represented in neighbourhood plans. In the recent decision in the Tattenhall case the High Court found that the 30-dwelling limit on each site was reasonable in the light of the NPPF and that the Examiner could reasonably apply a 'lighter touch' than the local plan requirement for 'soundness' which an Inspector would require. As the Queen's Counsel representing the local authority observed:

This judgement will encourage neighbourhood plan promoters. It limits the SEA (strategic environmental assessment) burden and suggests that the need for approval in a referendum is relevant when deciding what alternatives to explore. It confirms that examination of neighbourhood plans is less rigorous than is required for local plans and that examiners can apply a 'lighter touch'. (Carter, 2014).

Whether the greater flexibility accorded to neighbourhood plans in relation to housing policy was what the government intended is not certain. Yet it does appear that Examiners and the courts are

acknowledging that local communities that have prepared plans which have been approved by referenda should carry considerable weight, while also being in general conformity with higher level Core Strategies. For example, in October 2013 the Tattenhall Plan was approved by a 96% vote in favour in the referendum, demonstrating exceptional local support. The initial evidence suggests that the introduction of neighbourhood plans will do very little to increase the supply of housing nationally but may give local communities a sense that they have slightly more control over the type, mix and location of new housing development than before the Localism Act was introduced. The Department for Communities and Local Government has recently announced that they will be screening housing appeals in neighbourhood plan areas and will be selectively ‘recovering’ those for over 10 housing units for Ministerial decision (House of Commons, 2014). Recovering in this context means the Secretary of State will make the final decision after the case has been considered by an Inspector at appeal. This may well be a case of increased centralisation in order to promote localism.

Impact on local governance

The impact of neighbourhood forums and plans is perhaps the least understood aspect of the legislation and the outcome in many areas may not be apparent for some years. As a broad generalisation, these opportunities have tended to attract a minority of active members of local communities which may have experience of community participation from previous initiatives. The input from residents has to be considerable in that, throughout the process, extensive efforts need to be made to consult and engage the local community. Indeed, one of the tests of acceptability of the neighbourhood plan is the extent and breadth of coverage of community consultation, confirmed by positive approval in the referendum on the plan itself. To date, no plan has been rejected, the level of turnout has varied between 16 and 60% and the approval rate can be up to 98%.

Although some neighbourhoods have put a great deal of effort into mobilising their communities, it is possible that once the initial enthusiasm passes the forums (and parish councils) will tend to be dominated by those with time and middle class professional skills. Depending on local circumstances, these forums will either become a minority player which is marginalised by the local authority, or in certain circumstances, a key local stakeholder which is able to exert considerable power over local authority decision making in its area. This will be the case where the forum is given a high level of credibility by the local authority because it is considered fully representative of its area or where the forum can exert political influence in, say, a marginal ward.

A further development which may boost the influence of some forums and parishes is that they will have access to some of the income derived from the introduction of the Community Infrastructure Levy (CIL) as soon as the neighbourhood plan is adopted. The CIL is a standard tariff of payments made by developers for planning applications, such as housing. This has yet to come into effect in many areas but over time will generate a substantial income in areas undergoing development or

redevelopment but much less in rural areas. Neighbourhoods with a forum or parish council will receive 25% of the CIL generated from their area if they have a neighbourhood plan, or 15% if they do not. Parishes will receive the CIL income direct whereas with forums it will be the local authority which will retain the income but use it in consultation with the forum (Boles, 2013).

Conclusions

The legislation relating to neighbourhood forums and neighbourhood plans has been in existence since 2011 and there is growing interest from both civil parish councils and forums in the potential benefits. The resources attached to it are limited, but guidance available to communities and local government is growing thanks to organisations such as Locality. In addition, the voluntaristic nature of the process has meant that it has been taken up by rural and semi-rural areas with active parish councils or community groups and has had a very limited impact on the more deprived urban areas. In the period under review here (2011-14) the majority of plans have been prepared by already existing civil parish councils in small towns or rural areas where the planning and housing issues are relatively straightforward. There is emerging evidence that neighbourhood plans are making provision for equivalent amounts of housing as indicated in higher level plans, although there is more emphasis on the location, mix, affordability, local occupancy and design. Recent cases suggest that the Secretary of State is upholding neighbourhood planning policies at appeal (for example, by refusing an appeal at Broughton Astley for 111 houses on a site not allocated in the neighbourhood plan) and is willing to 'recover' contentious cases for his own decision. Thus it is often the house builders who have been disadvantaged, as in the cases of Tattenhall and Winslow, where their sites were not identified as potential housing sites in the relevant neighbourhood plans.

The process of establishing a neighbourhood and preparing a plan can appear slow and bureaucratic with substantial influence being exerted at each stage by the local authority and the Examiner. While the process does offer a limited opportunity for local determination, at the same time amendments to the planning system through the NPPF and related regulations have shifted the balance towards 'viability', sustainability and approving almost all development unless there are exceptional reasons to refuse it. Thus the shift towards neo-liberalism in planning has been more marked since 2010 than in any period since the 1980s. Localism, therefore, might offer feint prospects for self-determination but only as part of a system of 'spatial planning' which itself has been undergoing a process of change and adaptation to post-recession economic circumstances. As Haughton and Allmendinger (2013) conclude:

If localism means anything then it should allow for a range of approaches to exist alongside more traditional regulatory models of planning, including varieties of spatial planning. So rather than vanquishing it, Localism could yet prove to be the saviour of spatial planning by allowing the

broad approach that it represents to evolve and adapt to meet the demands of different places and circumstances. (2013, 4).

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Table 1. Comparison of Housing Objectives in a Sample of Neighbourhood Development Plans

| Location | Type/approximate population | Level of detail on housing | Estimated total new housing allocated in plan period | % turnout at referendum | % voting in favour | Date 'made' by LA | comments |
|--------------------------|-----------------------------|--|--|-------------------------|--------------------|----------------------------|---|
| TYPE 1 | | | | | | | |
| Thame, Oxfordshire | small town 11561 | Detailed site analysis and proposals | 775 | 40 | 76 | July 2013 | |
| Tattenhall, Cheshire | village 2079 | Detailed policies with limited development in nearby settlements | 155 | 52 | 96 | June 2014 | Judicial review dismissed in May 2014. Policy limiting sites to no more than 30 units upheld by High Court. |
| Uppingham, Rutland | small town 4500 | Site analysis but emphasis on design and landscape quality | 160 | 26 | 90 | - | Judicial review lodged against the plan. To be heard November 2014 |
| Winsford, Cheshire | town 30,500 | Detailed general policy and for sites, options reviewed | 3362 | 16 | 69 | referendum in October 2014 | Examination postponed as a result of Tattenhall judicial review |
| Winslow, Buckinghamshire | small town 4,400 | 5 sites providing 455 units up to 2031 | 455 | 60 | 98 | September 2014 | Judicial review rejected in July 2014 against 2 sites not included in NDP. |
| TYPE 2 | | | | | | | |
| Kirdford, West Sussex | village c. 900 | Mainly general policies with limited policy on sites | 61 | 44 | 95 | June 2014 | About a third of the area is in the South Downs National Park |
| | urban | Broad | unspecified | 21 | 92 | July 2013 | |

| | | | | | | | | |
|---|-------|------------------------------|--|-----------------|----|----|---------------|---|
| Exeter James | St | c.6000 | brush with a focus on projects | ed | | | | |
| Dawlish, Devon | | small town c. 13,000 | Mainly a list of community projects, very limited discussion of housing | 900 | - | - | n/a | Found to be 'unsound' by the Examiner and prepared before Regulations published for consultation purposes |
| Upper Cumbria | Eden, | 17 rural parishes 5300 | Emphasis on provision of affordable and pensioner housing to meet local needs | 545 | 34 | 90 | April 2013 | The first neighbourho od plan to be made. |
| Ascot, Sunninghill and Sunningdale, Berkshire | | two parishes c.12,500 | General policies and site analysis but no target figures provided. Developme nt briefs required for each site >10 units | unspecifi ed | 24 | 91 | April 2014 | 66% of area in green belt |