

LOCALISM ACT 2011

EXPLANATORY NOTES

COMMENTARY

Part 6: Planning

Chapter 3: Neighbourhood Planning

Section 116: Neighbourhood planning

263. **Section 116** gives effect to Schedule 9 – Part 1 of which amends the Town and Country Planning Act 1990 by inserting a number of new sections in to it - and Schedules 10 and 11 which insert two Schedules (Schedules 4B and 4C) into that Act. These new provisions will allow for planning permission to be granted through neighbourhood development orders – including a category of such orders to be known as “Community Right to Build Orders”. Part 2 of Schedule 9 amends the Planning and Compulsory Purchase Act 2004 to make provision in that Act on a new category of development plan – neighbourhood development plans. These plans and orders will be made by local planning authorities on the initiative of parish councils or neighbourhood forums.

Schedule 9 Part 1: Neighbourhood Development Orders

264. **Part 1** of Schedule 9 inserts a number of new sections into the Town and Country Planning Act 1990 relating to neighbourhood development orders (a number of which will also apply in relation to neighbourhood development plans because of new section 38C of the Planning and Compulsory Purchase Act 2004 – which is inserted by paragraph 7 of the Schedule).

New section 61E: Neighbourhood Development Orders

265. New section 61E empowers either a parish council or a neighbourhood forum (as “qualifying bodies”) to initiate the process for making a neighbourhood development order. It also places a duty on local planning authorities to make a neighbourhood development order as soon as reasonably practicable, if there is a referendum vote in favour of the order in each applicable referendum under new Schedule 4B. This is except in the narrow circumstances in which the authority considers that making the order would be incompatible with any EU obligation (a term which is defined in Schedule 1 to the European Communities Act 1972) or any of the rights under the European Convention on Human Rights which are referred to in section 1 of the Human Rights Act 1998. New section 61E(5) empowers, but does not require, the local planning authority to make a neighbourhood development order if there is a referendum vote in favour of the order in one of the referendums (but not the other) held in a business neighbourhood area designated under new section 61H (where there are two applicable referendums – one of residents and one of non-domestic rate payers). The new section also confers powers on the Secretary of State to make regulations about the procedure to be followed by a local planning authority where it intends to refuse to make a neighbourhood development order despite a “yes” vote in a referendum. For example, requirements to consult before making a final decision could be imposed, as well as

requirements for the local planning authority to give notice that they propose to refuse to make an order.

New section 61F: Authorisation to act in relation to neighbourhood areas

266. New section 61F (which will also apply in relation to neighbourhood development plans) sets out the circumstances in which qualifying bodies are authorised to bring forward proposals for neighbourhood development orders. In relation to any neighbourhood area (see new section 61G) which has a parish council, only a parish council (all or part of whose area is within the neighbourhood area) may make proposals for a plan or order. These proposals must be made with the consent of any other parish council for the area and proposals must be made one at a time (see new sections 61F(1), (2) and (10)). In relation to neighbourhood areas without a parish council, only a person or body which has been designated as a “neighbourhood forum” for the particular neighbourhood area by the local planning authority may bring forward proposals (see new section 61F(3) to (7)). The conditions that must be met by an organisation seeking to be designated as a neighbourhood forum are set out in subsection new section 61F(5), though regulations may either add to those conditions or specify other categories of organisations that can become neighbourhood forums. Existing residents associations or civic groups may become neighbourhood forums. New section 61F(7) requires local planning authorities to have regard to the desirability of designating forums which meet certain criteria relating to the membership and purpose of the forum. New section 61F(8) empowers a local planning authority to withdraw a forum’s designation in certain circumstances.

New section 61G: Meaning of “neighbourhood area”

267. New section 61G provides for a system under which local planning authorities are to designate neighbourhood areas, where they have received an application for an area to be designated as such either from a parish council or a body that could potentially be a neighbourhood forum. “Neighbourhood areas” are the areas that neighbourhood development plans and orders can be made in respect of. It is expected that in many cases these areas will follow the boundaries of existing parishes for which there is a parish council (see new section 61G(4)). This is unless the local planning authority concerned considers that some other area is more suitable for the purposes of neighbourhood planning.

New section 61H: Neighbourhood areas designated as business areas

268. New section 61H requires a local planning authority in designating neighbourhood areas (under new section 61G) to consider whether they should designate the area as a “business area”. This is an area which they consider is wholly or predominantly business in nature (see new section 61H(3)). Regulations can be used to add criteria to be used by an authority in determining whether an area is a business area.

New section 61I: Neighbourhood areas in areas of two or more local planning authorities

269. New section 61I allows for neighbourhood areas to be designated which cross local planning authority boundaries. It also provides the Secretary of State with regulation-making powers to adapt the provisions in the Act relating to neighbourhood planning to ensure the appropriate operation of neighbourhood planning in such areas. For example, regulations could specify that local planning authorities must consult each other before deciding whether to approve a plan or order for referendum or that they may only take such a decision when acting jointly through a committee.

New section 61J: Provision that may be made by neighbourhood development order

270. New section 61J places restrictions on the contents of neighbourhood development orders (for example, they cannot relate to more than one neighbourhood area). In addition, it permits orders to grant either site-specific planning permission(s) or to grant planning permissions that relate to all or part of a neighbourhood area – for example, planning permission to build extensions to existing buildings.

New section 61K: Meaning of excluded development

271. New section 61K sets out a number of descriptions of development (“excluded development”) which neighbourhood development orders or plans cannot relate to (because of new section 61J). For example, paragraph (a) has the effect to exclude mining-related development.

New section 61L: Permission granted by neighbourhood development orders

272. New section 61L allows neighbourhood development orders to give planning permission either with or without conditions. Regulation-making powers allow for parish councils to be given the option of determining decisions on conditions within neighbourhood development orders.

New section 61M: Revocation or modification of neighbourhood development orders

273. New section 61M allows for the Secretary of State and a local planning authority (with the consent of the Secretary of State) to revoke a neighbourhood development order and allows regulations to be made prescribing actions to be taken in relation to the revocation of an order. New section 61M also allows a local planning authority to modify a neighbourhood development order to correct errors.

New section 61N: Legal challenge in relation to neighbourhood development orders

274. New section 61N sets out the conditions for legal challenges in relation to decisions on neighbourhood development orders, requiring that challenges are filed within 6 weeks of the decision being published.

New section 61O: Guidance

275. New section 61O requires local planning authorities to have regard to any guidance issued by the Secretary of State relating to neighbourhood development orders.

New section 61P: Provision as to the making of certain decisions by local planning authorities

276. New section 61P provides power to regulate the decision-making of local planning authorities in relation to neighbourhood development orders. Provision might be made, for example, as to whether or to what extent decisions may be delegated to officers or committees or prescribe that decisions need to be taken by the executive or by a majority of those members present at the meeting of an authority.

New section 61Q: Community right to build orders

277. New section 61Q makes provision for a particular type of neighbourhood development order - a “community right to build order”. Details of the provisions are set out in Schedule 4C to the Town and Country Planning Act 1990 inserted by Schedule 11 to the Localism Act (see below).

Schedule 9 Part 2: Neighbourhood development plans

278. **Part 2** of Schedule 9 amends the Planning and Compulsory Purchase Act 2004 to empower parish councils and neighbourhood forums to propose neighbourhood development plans. Unlike neighbourhood development orders, these do not give planning permissions but instead set out policies in relation to the development and use of land in all or part of a defined neighbourhood area (see new section 38A(2)).
279. The amendments to section 38 of the Planning and Compulsory Purchase Act 2004 made by paragraph 6 of Schedule 9 mean that neighbourhood development plans, once they are made, will become part of the development plan for an area. Consequently, by virtue of section 38(6) of that Act certain decisions will need to be made in accordance with neighbourhood development plans unless material considerations indicate otherwise. Such decisions include decisions on applications for the grant of planning permission and appeals against the refusal of such applications.
280. New section 38A (inserted by paragraph 7 of Schedule 9) requires local planning authorities to make a neighbourhood development plan if there is a referendum vote in favour of the order in each applicable referendum under Schedule 4B. As with neighbourhood development orders, there are narrow circumstances in which a local planning authority may refuse here – for example, where the authority considers that making the plan would be incompatible with any EU obligation. As with neighbourhood development orders, new section 38A(5) empowers, but does not require, the local planning authority to make a neighbourhood development plan if there is a referendum vote in favour of the plan in one of the applicable referendums (but not the other) held in a business neighbourhood area designated under new section 61H (where there are two applicable referendums – one of residents and one of non-domestic rate payers).
281. New section 38B deals with the form and contents of neighbourhood development plans, requiring, for example, that they must specify the period for which they are to have effect and that they cannot relate to the classes of excluded development set out in new section 61K of the Town and Country Planning Act 1990 – such as development falling within Annex 1 of the Environmental Impact Assessment Directive (Council Directive [85/337/EEC](#)). This section also specifies that only one neighbourhood development plan may be made for each neighbourhood area. A regulation-making power is provided (new section 38B(4)) which enables provision to be made, for example, on whether any maps need to be incorporated into a plan to show the extent of a policy and to what scale those maps should be.
282. New section 38C applies new provisions which are to be inserted into the Town and Country Planning Act 1990 on neighbourhood development orders to neighbourhood development plans (as if they were orders but with the necessary modification). Therefore, the provisions on revocation and modification of orders in new section 61M apply in relation to plans (though this does not need to be done by order – see new section 38C(3)), as do those on legal challenges by judicial review (new section 61N). Similarly, because of new section 38C(5) the provision in Schedule 10 (described below) will not only apply in relation to the making of neighbourhood development orders, but plans as well.

Schedule 10: Process for Making of Neighbourhood Development Orders

283. Schedule 10 of the Localism Act makes further provisions about making neighbourhood development orders and plans by inserting a new Schedule 4B into the Town and Country Planning Act 1990.
284. Paragraph 1 of Schedule 4B makes provision in connection with proposals to local planning authorities for neighbourhood development orders or plans. It allows the Secretary of State to prescribe the form of any such proposals in regulations and to require that other documents and information must accompany them. In addition, the Secretary of State may set minimum standards for the documentation which needs

to be submitted along with proposal for plans or orders. These standards, as well as requirements set out in regulations under this paragraph, would be mandatory – i.e. a failure to meet them would result in an application being rejected – see paragraph 6(2) of Schedule 4B.

285. Paragraph 2 of Schedule 4B allows a qualifying body to withdraw its proposals for a plan or order at any time before the local planning authority makes a decision on the examiner's recommendations. Because of paragraph 7 each draft plan and order will be subject to examination by an independent person who will report back to the local planning authority recommending either that the plan or order is refused or put to a referendum (with or without modifications). Paragraph 2 also provides for what happens to proposals made by a qualifying body or designated neighbourhood forum whose designation is withdrawn – with submission to independent examination being the key point in making the decision as to whether proposals should be seen as valid (see paragraph 2(2) and 2(3)).
286. Paragraph 3 of Schedule 4B places a duty on local planning authorities to provide advice and assistance to qualifying bodies in developing proposals for plans or orders. This support could involve providing technical advice on how to draw up an order or plan or facilitating consultations with the public on proposals. There is no requirement here on local planning authorities to provide financial assistance.
287. Paragraphs 4 to 6 of Schedule 4B set out the arrangements for neighbourhood development orders and plans before they are submitted to independent examination. Paragraph 4 allows the Secretary of State to prescribe further requirements in regulations that must be complied with before proposals are submitted to a local planning authority. Paragraph 4(3) specifically requires the Secretary of State to use his or her regulation-making powers to prescribe consultation requirements which must be complied with before a neighbourhood planning proposal can be submitted to a local planning authority, including the requirement to submit a statement about the consultation carried out. Again, a failure to comply with these requirements will be a ground upon which a local planning authority is to reject an application. The regulations may make provision on procedural matters, for example, about notifying people or bodies and about consultation with and participation by the public.
288. Paragraph 5 of Schedule 4B allows a local planning authority to decline repeat proposals. These are proposals which are similar to other ones which have been made up to two years previously and which were refused by a local planning authority or which did not get sufficient votes in a referendum.
289. Paragraph 6 of Schedule 4B sets out matters which the local planning authorities must be satisfied with before proposals for a plan or order can be submitted to independent examination. This includes checking whether the body making the application is a qualified applicant – i.e. a parish council or designated neighbourhood forum, and that the application meets the requirements set out in legislation and regulations, including the requirement for a consultation statement under paragraph 4 (see paragraph 6(2)(d)). The local planning authority must notify the applicant whether or not the proposals will be submitted for examination and, if not, the reasons for refusing it.
290. Paragraphs 7 to 11 of Schedule 4B set out the arrangements for the independent examination of proposed orders and plans.
291. Paragraph 7 of Schedule 4B empowers the local planning authority to appoint an examiner, but only with the agreement of the parish council or neighbourhood forum. The Secretary of State may appoint an examiner if no agreement can be reached. The paragraph also requires that the examiner is independent of the body making the proposals and the local planning authority, and that he or she must not have any interest in land affected by the proposals and must have appropriate qualifications and experience.

292. Paragraph 8 of Schedule 4B lists the matters that the examiner must consider in their examination of the proposed plan or order. These include whether the plan or order is appropriate having regard to national policy, whether it contributes to the achievement of sustainable development, whether it is in general conformity with the strategic policies in the local development plan and whether the order is compatible with EU obligations. There is also a basic condition relating only to orders (see new section 38C(5)(d) of the Planning and Compulsory Purchase Act 2004) relating to the appropriateness of an order having regard to considerations relating to listed buildings and conservation areas (paragraph 8(2)(b) and (c) and (3) to (5) of Schedule 4B). The examiner is not able to consider any matter that doesn't fall within the list of matters in paragraph 8(1) of the Schedule (apart from compatibility with the Convention rights, as defined in the Human Rights Act 1988). The examiner will also consider whether the referendum area should extend beyond the neighbourhood area to which the draft order or plan relates. The paragraph also provides a power to require the examiner to consider such matters as are prescribed in regulations - for example, taking into account an environmental statement which meets the requirements of the Environmental Impact Assessment Directive.
293. Paragraph 9 of Schedule 4B prescribes the general rule that the examination will take the form of consideration of written representations but allows for oral representations. The examiner is required to hold a hearing where they consider oral representations are needed to ensure adequate examination of an issue or to ensure people get a fair chance to put their case. Where there are to be oral representations, the paragraph sets out those bodies who are entitled to be heard, including the parish council or neighbourhood forum promoting the plan or order and the local planning authority. The Secretary of State is given power to prescribe by regulation additional persons who will be entitled to make oral representations at any hearing held into a neighbourhood plan or order. For example, it may be appropriate to permit certain statutory parties to provide oral evidence on a particular issue where they have relevant expertise.
294. Paragraph 10 of Schedule 4B sets out how the examiner must report on proposals for an order or plan, including recommendations on whether the proposals should be put to referendum, or whether any modifications are needed so that the proposals can go to referendum, and whether the referendum area should be extended beyond the neighbourhood area. It may be appropriate to extend the referendum beyond the neighbourhood area to which a plan or order relates if, for example, proposals include development close to the boundary of a neighbourhood area which would have impacts on an adjoining area. The examiner will be obliged to give reasons for recommending a particular course of action and to provide a summary of his or her main findings.
295. Paragraph 11 of Schedule 4B gives the Secretary of State the power to make regulations in connection with the independent examination and sets out examples of what provision can be made. For example, regulations may require that notice is given of the time and place of an examination and how that is given and may regulate the procedure at an examination.
296. Paragraph 12 of Schedule 4B sets out the issues to be considered by the local planning authority, following an independent examination, in deciding whether or not a proposed plan or order should be put to a referendum (or referendums in the case of a designated business area) and whether or not the proposed plan or order should be modified. These considerations include the recommendations of the examiner and like the examiner, for example, whether the proposals are appropriate having regard to national policy, whether they are in general conformity with the strategic policies of the local development plan and whether the referendum (or referendums in the case of a business area) should extend beyond the neighbourhood area to which the plan or order relates. The Secretary of State is given power to prescribe matters other than the recommendations in the report that the local planning authority must take into account. This is to ensure that relevant material is considered by the local planning authority before it reaches a decision on a draft order or plan.

297. Paragraph 13 of Schedule 4B provides for the situation where the local planning authority proposes to make a decision that differs from that recommended by the examiner because of new evidence, a new fact or a different view taken by the authority in relation to a particular fact. In such a case, the local planning authority may decide to refer the issue to independent examination. The Secretary of State is given power to make regulations relating to this independent examination. But in any event, in such circumstances the local planning authority is obliged to invite representations on what they propose from such persons as are prescribed in regulations and, by implication, take these into account before reaching a final view.
298. A referendum must be held on a plan or order once it is approved by the local planning authority (with or without modifications) under paragraph 12 of Schedule 4B. Paragraph 14 of Schedule 4B sets out provision in relation to such referendums, including who is responsible for holding the referendum (see paragraph 14(2)), who is entitled to vote in them and which local authorities are responsible for making arrangements for them. Paragraph 15 of Schedule 4B sets out provision in relation to additional referendums held in a designated “business area” (see new section 61H), including who is entitled to vote. The provisions about additional referendums do not apply to community right to build orders, on which only residents will have a vote in a referendum (see paragraph 10(6) of Schedule 4C inserted by Schedule 11). The Secretary of State is given the power to make provision in regulations about referendums, including additional referendums, under paragraph 16 of Schedule 4B – such as about how they are to be conducted (e.g. how postal voting can occur) or to impose duties on local authorities to publicise the time and place of a referendum. Before making these regulations, the Electoral Commission must be consulted by the Secretary of State.

Schedule 11: Neighbourhood Planning: Community Right to Build Orders

299. **Schedule 11** inserts a new Schedule 4C to the Town and Country Planning Act 1990 which makes special provision about a particular type of neighbourhood development order called a community right to build order providing for community-led site-specific development. It gives a power for community organisations to apply for such an order to be made and sets out how the provisions in respect of neighbourhood development orders should apply to such an application. Schedule 4C sets out powers to disapply or modify certain enfranchisement rights in relation to land the development of which is authorised by a community right to build order.