



**Neighbourhood Planning: National Strategy for 'Bottom Up'  
Governance**

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**Introduction**

Where to build houses is arguably one of many sensitive issues faced by neighbourhoods. There is broad consensus that the housing crisis needs to be addressed (Brooker, 2017), however, the reality of where the new homes are to be located is contentious, not only due to infrastructure concerns but also, because of parochialism, for example, in the guise of spatial attachment. The NIMBY ('Not In My Back Yard') and 'build absolutely nothing anywhere near anything' (BANANA) mentality has been commonplace within many neighbourhoods. In 2010, in part to address concerns over housing shortages, the Conservative-Liberal Democrat coalition government's concept of building a 'Big Society' sought to devolve power from central government to promote greater local and community engagement in specific policy areas, one of which was empowering communities to 'shape their place'.<sup>[1]</sup>

The Localism Act (LA) 2011 granted citizens increased decision-making powers with respect to planning and, as a consequence, the concept of 'local' has adopted a politically and legally significant meaning which is expressed through the idea of 'Localism'. Localism embraces the notion that individuals share not only a geographical or spatial connection, but that, within a defined area, they share socio-economic and legal relationships which bind them together. This developing strategy of local democracy and devolution utilises bottom-up stakeholder and network participation in the form of the neighbourhood planning paradigm. In particular, the devolution of power with respect to planning has the objective of reducing the governance gap between decision-makers and recipients of planning decisions through the creation of sense of ownership in the decision-making process.

Three principles underpin Localism within planning and which this article will consider. Firstly, wider participation through the use of local stakeholders and networks that is intended to inject input legitimacy in to the decision-making process. Secondly, increased transparency of planning decisions, not just through wider participation, but through the output legitimacy of planning decisions that is derived from the use of local referenda. Thirdly, improved accountability of planning arising from this 'ownership' of the planning process by those affected. However, with respect to these principles it would be inaccurate to conclude that they have all been adequately addressed.

The potential weakness of this form of decision-making is that it has the capacity to create a patchwork of regulatory units in which stakeholders pursue a diverse range of interests that may have a direct bearing on *their* lives, but which may not necessarily take account of what could be defined as the broader 'national interest' as expressed by the National Planning Policy Framework (NPPF) (DCLG, 2012). Experience shows that local communities display what can be described as 'space attachment' (colloquially referred to as NIMBYism) and do not see the 'bigger picture'. Localism could therefore be said to have created what may be termed as 'spatial sovereignty' through neighbourhood planning, whereby the political process of referenda endorses the specific and often narrow socio-economic and environmental objectives of those concerned.

This paper will examine how neighbourhood planning, as an evolving concept of local governance, bypasses traditional political and decision-making structures and institutions that have governed the planning process and is enfranchising local communities to take control of planning and development in their area. The paper will draw upon the experience of the revised planning methodology introduced by the LA 2011 and consider its impact on the

delivery of broader policy objectives covering land use policy and, in particular, sustainable development.

### **Background leading to the change in regulatory governance planning**

The Town and Country Planning Act (TCPA) 1947 has shaped housing development over the decades, through the transfer of the right to develop land from the individual landowner and placing it within state control. State intervention in building homes was perceived as necessary due to a wide range of factors, *inter alia*, the increased provision of modern housing. However, since the 1980s there has been a steady decline in house building, and factors leading to this are multifarious and illustrate the lack of coherent policy, over many years, which has failed to address housing shortages. The housing policy has been 'privatised' through policies such as 'Right to Buy' and this private sector approach to addressing housing needs continues to this day. Today, land not only provides a place to live, but as a finite resource has become a valuable asset subject to market forces of supply and demand where owning a house is not just a place to live, but one which is an investment and where the focus is on its financial value making the building of both affordable homes and social housing less attractive for developers. By contrast, the development of second homes, in desirable areas, is more attractive for developers, but is becoming increasingly unpopular with residents living in the neighbourhood where the development is proposed.<sup>[2]</sup>

Underpinning the current change in the planning framework is a shift away from top-down governance, characterised as being prescriptive, slow, target led with a 'one size fits all' mantra, to one where the emphasis is on a more inclusive form of governance involving wider participation and dialogue within local communities. More specifically, it seeks a coordinated method of addressing national planning policy guidelines through local consensus building and the promotion of self-organised collaboration. This form of participatory democracy aims to give individuals, community groups' and local networks increased autonomy over land use in their locality. It reinforces the message of land in the neighbourhood being a shared resource and that local inhabitants are key stakeholders in this shared resource (Bradley, 2017; Bogusz, 2015). Thus, Localism and neighbourhood planning are intended to remove the leash of state control, redress market failure and enable what can be defined as a more 'market correcting' approach to house building in which local communities are key stakeholders. The consequence of this is a transfer of competence from the formal political structures and institutions of local authorities, accountable for their decisions through regular elections, to the devolved processes of neighbourhood planning which uses potentially 'once and for all' referendums to determine planning policy.

### **National planning policy – making it palatable**

The distinctive feature of this bottom-up governance process has been the shift away from the reliance on centralised state control, to formulation and delivery of policy at the local micro level, within the parameters of the NPPF. Specifically, this governance technique embraces and indeed relies upon bottom-up engagement at the micro level by which individuals, communities, civil society and networks organise themselves, in order to determine the most appropriate use of land in their community, and which derive output legitimacy through endorsement by the community through local referenda.

At the heart of the NPPF lies the goal of sustainable development which involves the balancing of interdependent and competing economic, social and environmental policy

**objectives.** Thus, neighbourhood planning and the NPPF, which are intended to be mutually dependent objectives can, on occasions, find themselves to be competing. Notwithstanding the principles that underpin localism, the NPPF cannot be considered as an abstract goal and the constituent parts, in the form of neighbourhoods and local authorities, are expected to contribute and deliver macro level economic policy of sustainable economic growth and boosting competitiveness, a key pillar of which is to be achieved through increased housebuilding (HM Treasury and Department for Business Information & Skills, 2011; DCLG, 2012, para 18).

The NPPF, **together with devolved governance**, aims to provide a paradigm for a transparent, inclusive and an accountable means by which local people can make decisions on where and what to build, in order to avoid, *inter alia*, speculative developments where there is no community coordination or involvement. Though the NPPF may be regarded as generally successful in terms of overall policy ambition, it is apparent that it has not dealt with the practicalities of increasing housing supply at a pace that the market demands. In recognition of this shortcoming of the NPPF, and in an attempt to address the ‘broken housing market’ the government published a White Paper (DCLGa, 2017) which proposes to further streamline the NPPF planning process with the clear target of increasing housing supply, for example, the pledge of building 300,000 new homes per year in the Autumn 2017 Budget Statement (Williams and Pickard, 2017). In order to provide a more coherent and focused approach to housing supply the government further stated the need to build homes ‘in right places’ (DCLGb, 2017). However, this raises the possibility of conflict with and within local communities who may decide through local referenda that their neighbourhood is ‘*not* the right place’ to build.

At the meso level, the NPPF requires the local authority to set out an up-to-date strategic vision for housing supply in its Local Plan, taking into account the potential opportunities and the needs of the area, the provision of suitable sites and deliverability for housing supply.<sup>[3]</sup> Initially, this strategic vision was set for a five year term, but where there is an adopted up-to-date neighbourhood plan the term has been reduced to three years of demonstrable housing supply (DCLG, 2016). **Even at the micro level, the NPPF has a prominent role whereby in the preparation of the NP, the NPPF ‘must’ be taken into account so as not to inhibit the delivery of sustainable development.**

The advantage of bottom-up governance is that it can and has been used effectively as an alternative to ‘hard law’ in highly politicised areas in order to reconcile micro and macro objectives (Bogusz, 1999). Significantly, in the context of planning policy bottom-up governance deflects the political nature of building development away from the macro and meso levels and places it firmly within the micro local level, in favour of collective agreement on land use policy in the neighbourhood. Moreover, it seeks to address the problem of the disconnected and disengaged citizen, a frequent post-war criticism of planning policy and practice, thereby refocussing the building development on local community needs and priorities as opposed to developments being led by national targets and/or developers. By giving citizens a more formal role within the public law process, local people may influence, not just how private property is to be used, more significantly it offers them a distinctive conduit to become direct stakeholders in their community. Through the use of community action and neighbourhood planning, local people can ‘shape the place’, in deciding where new homes, shops and offices should be built, purchase assets of community value when, the asset, in the form of a building or open space valued by the community comes up for sale or change of ownership, because they ‘know best’. This in turn creates a new dynamic of

‘spatial sovereignty’ which leads to the creation of a neighbourhood development plan<sup>[4]</sup> or development order, which is then legitimised through the local referendum and adopted or ‘made’ by the local planning authority. The status of this adopted neighbourhood plan or order will have the same statutory weight as the Local Plan. By neighbourhoods exerting their spatial sovereignty in this manner there is genuine scope for divergence with the aims and objectives of the NPPF.

### Status of the NPPF: law or policy guidance

One key issue which has been raised relates to the legal status of the NPPF and its relationship with local plans when determining the prescriptiveness of the policy, which could impact on the interpretative approach at the micro level. In *Suffolk Coastal District Council v Hopkins Homes* and *Richborough Estates v Cheshire East Borough Council* [2017] UKSC 37 Lord Carnwath sought to calm the nerves of planners and developers alike by reiterating the status of NPPF as no more than ‘guidance’ and should not be treated as akin to a statute. In this sense, the Supreme Court is taking functional approach whereby the strategic aims and objectives are outlined within a framework and this in turn informs the policy direction of the local plans. Therefore, it is the local plan that acquires a legal status because it is made under the statutory process and which the courts will, according to Lord Carnwath, be required to endorse subject to any procedural deficiencies that may have occurred during the formulation of that plan.

The Supreme Court considered that the scope of ‘relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing’ as required by paragraph 49 of the NPPF. In effect, this provides the legal parameters for the validity of the local plan and as long it has been correctly formulated the courts should not interfere. Moreover, ‘relevant policies for’ was interpreted narrowly by the Supreme Court with Lord Carnwath using the ordinary sense of the expression such that this provision only applies to housing supply policies and not to the wider policies which can affect housing supply. Lord Carnwath strongly advised to avoid being legalistic in interpreting the NPPF, and that the courts should respect the specialist planning inspectors, and to start from the presumption that they understand the policy framework correctly. This places the decision making on the application of the NPPF back in the realms of planning inspectors, with developers perhaps needing to set out a stronger case for their planning applications. Furthermore, the earlier Supreme Court case *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 endorses this interpretative status of the local plan (referred to in the judgment as the statutory development plan), where although it has legal effects, the development plans provide statements of policy to be interpreted objectively, read within the proper context and the application of which will depend upon the exercise of judgment given the set of facts.

These cases have reinforced the interpretative nature and status of both the NPPF and the Local Plan. Arguably this in turn can lead to the conclusion that although NPs can have legal effects, they too are not statutory texts are statements of policy and provide guidance as to the delivery of sustainable development within the local area. The following section explores the paradigm of neighbourhood planning and to what extent it has been successful in creating an effective form of governance and decision-making process for local planning decisions which has legitimacy.



**The Neighbourhood Planning Paradigm**

This governance process draws together stakeholders and networks whose purpose is to find a solution to a local planning need within a framework laid out by the LA 2011 and Neighbourhood Planning Act 2017. In this context, NPs should be considered as an integral part of addressing the deficit between housing demand and housing supply, and are a significant part of a broader agenda of ‘spatial deregulation’ the purpose of which is to liberalise access to land for the housebuilders (Archer and Cole, 2014). Localism has become a way of managing land use policy and draws upon some of the regulatory certainty offered by the public law and political institutions, while integrating individual participation that is a characteristic of the private law. Localism has therefore created a new political and legal architecture within the planning process which exhibits the key characteristics of ‘bottom-up’ governance.

The formal political legitimacy mandate, and nexus with traditional local democracy, is recognised through the qualifying body, for example, a town or parish council, the latter being the lowest tier of local government. In the event that there is no elected parish or town council, then a self-determined network of at least 21 members, with the aim of ‘promoting or improving the social, economic and environmental well-being of an area that consists of or includes the neighbourhood area concerned’ can formally be recognised as a ‘neighbourhood forum’ (s.61F TCPA 1990). Though a neighbourhood forum has no formal direct democratic mandate it does provide a rudimentary form of representation (Davoudi and Cowie, 2013, 563). Overall, it is this matrix of political actors that is intended to provide a broader representative legitimacy for the expression of spatial sovereignty that is communicated through the NP and, at least, ostensibly, suggests that neighbourhood planning includes a formal process of political accountability.

It is often characteristic of bottom-up forms of governance that participation is by no means obligatory and involvement tends to be characterised by self-interested stakeholders and networks (Layard, 2012). In the context of the protection of *their* spatial sovereignty this gives rise to the involvement of the ‘activist volunteer’ whose participation under the auspices of the legal framework of neighbourhood planning has regularised their contribution and given communities a voice. There is the potential to encourage ‘protectionism’ amongst local communities who may wish to protect their spatial sovereignty and are empowered through the use of the planning process to pursue their individual neighbourhood developmental priorities. This has led to the creation of the local ‘citizen-planner’ (Brownhill, 2017, 33), who is capable of undertaking a range of tasks as part of the neighbourhood planning process, for example, devising a robust analysis of the local area or building the evidence base and organising the public consultation. This supersedes the role previously within the exclusive domain of local institutions.

The empowerment of the local people, giving them an opportunity to ‘shape the place’, is not without its problems. It would be wrong to suggest that this form of governance assumes that all the individuals within communities are sufficiently motivated to become involved in the process. This activity requires commitment, time and a willingness to learn about planning, and there is a tendency for certain a ‘type’ of individual to be involved, usually articulate and

well-resourced (Brookfield, 2017). By contrast, it is less likely that disadvantaged and deprived communities will engage in this process unless sufficient support is provided. Added to this, local individuals who constitute membership of the self-determining body are, arguably politically unaccountable. They may only represent a fraction of the community and this potentially undermines the representative democracy and legitimacy of neighbourhood planning.

### **What does neighbourhood planning mean for traditional institutions of local democracy?**

The role of locally elected institutions has transformed from one of primary strategic planner and decision maker, to a catalyst role of providing support and advice, checking that the NP is in compliance with the process, appointing the independent examiner prior to the plan proceeding to referendum, and organising the referendum. The independent examiner, though appointed by the Local Authority is done so with the agreement of the qualifying body. The examiner's remit is narrow in that it focuses on the procedural compliance of the NP with national policy, legal obligations under EU and human rights legislation, NPPF and the Local Plan.

The recommendation of whether the NP goes to referendum rests with independent examiner, and where modifications or a recommendation not to proceed to referendum reasons are provided. This regulatory space provides for a system of checks and balances to ensure that at every stage transparency and accountability of decision-making is evident which Lord Carnwath in paragraph 59 of his judgment *Suffolk Coastal District Council* considered to be conclusive for the plan's legitimacy. Perhaps, most importantly, neighbourhood planning, while maintaining principles of transparency and accountability has dislodged traditional planning processes, changed the relationship between the governed and those who are governing and replaced them with a new mode of governance that embraces direct participatory democracy – through the use of local referendums – as a means of legitimising neighbourhood planning decisions. This has changed the local state planning system to one that exhibits greater characteristics of a market based approach to planning where local citizens have increased control over their local assets.

By the beginning of 2017, there were over 2000 NPs in production and more than 270 which have been approved by referendum, contributing to land use regulation for over 8 million people (Brownhill and Bradley, 2017). From these statistics it may be argued that neighbourhood planning injects a potentially successful element in to the planning process which goes beyond basic public and private legal relationships, but this is not without its consequences. Progress has been slow, and neighbourhood planning has certainly not addressed the housing need, and it must be borne in mind that not all neighbourhoods are involved in planning and speculative housing developments can still take place. Local residents are encouraged to participate in planning decisions, not just for legal-political reasons, but because they have an attachment with 'their place' or a sense of community. This emotional connection with the neighbourhood, which is difficult to define and quantify must now also be reconciled with the formalities of planning and has become an important constituent part of neighbourhood planning decisions (Clarke and Cochrane, 2013; Davoudi and Madanipour, 2015). Thus, where neighbourhood planning differs from previous incarnations of community engagement is that it has established clear boundaries for the

integration of participatory democracy into the strategic plan-making of the local authority and which coexists with the established systems of representative democracy.

The involvement of the public in the planning process can therefore be identified as a significant step away from local citizens merely having a consultative role in the planning application process, to one which includes the right initiate policy and to make decisions about the future development of the local area. It may be argued that when coming to such decisions local communities are more heavily influenced by *their* emotional requirement and protection of *their* spatial sovereignty than by the need to build houses, creating scope for conflict with the overall objectives of the NPPF. However, this ‘empowerment’ is not limitless, but rather it is constrained by the policy remit in the NPPF where it ‘must’ be taken into account in preparing the NP to ensure with compliance with the basic conditions to proceed to referendum. This reinforces the message of promoting sustainable development, and to positively to work towards solutions in compliance with the NPPF and the Local Plan, rather than NIMBYism.

This proactive public engagement has led to an identifiable shift of the power base from the local planning authority to neighbourhoods. The local planning authority’s role has taken on an additional of a facilitator, with an obligation to provide support and advice to qualifying bodies, verifying the proper legal process following the making of the draft NP, organising independent examination of the plan and organising referenda. However, the jury remains out on the question of whether this form of decision-making can be considered any more legitimate than the former planning regime? Proponents of neighbourhood planning would argue that the local nature of decision-making and the use of referenda have two advantages. Firstly, it is argued that neighbourhood planning creates a local consensus with respect to the planning decision. Participation in the decision-making process by local stakeholders and networks may be considered to provide the necessary input legitimacy into the planning process. Yet, referendums, which are the source of output legitimacy for the planning decision are characterised by low turn outs (DCLGc, 2017) and neighbourhood planning arguably favours those who are activist, articulate and well-resourced, questioning whether a genuine local consensus has been created.

Secondly, supporters of neighbourhood planning argue that the stakeholder involvement and the opportunity for referenda addresses, notwithstanding the low turnout, the democratic deficit of limited participation which had hitherto existed within the planning system. Previously, public participation and involvement in planning matters had been limited to consultation with local people who did not assume any form of direct responsibility for the ultimate decision which was left to elected representatives. That is not to say, that there was no conduit for public representation, elected councillors sit on planning committees, but critics would point to an identifiable disconnect between the local planning process and actual engagement by local people. For example, while public consultation may have helped to identify and take local concerns into account, only material planning considerations would have a direct impact on the grant or refusal to grant of planning permission.

Despite the criticisms, and especially that of limited voter participation, neighbourhood planning is not without ‘bite’ especially as it can acquire the same legal status as the Local Plan, in circumstances when it has been approved by over 50% of the local people including businesses in the neighbourhood who have participated in a local referendum (and subject to compatibility with EU obligations and human rights legislation).<sup>[5]</sup> Added to this, the s.1 of the Neighbourhood Planning Act (NPA) 2017 raises the importance of advanced draft plans



near adoption, but which have not yet been subject to a local referendum, such that the local authority is under a *duty* to consider the NP 'so far as material to the [planning] application'. This statutory provision elevates the draft NP to a higher status, though the extent to which the local planning authority will subsequently take the plan into consideration is unclear as there are no sanctions in the event the NP is not considered.

### Potential conflicts with neighbourhood planning and national planning policy

Overall, the 2017 Act further cements the legal status of those NPs which have been approved by local referenda and in circumstances where the Local Plan has not been made by the local authority thereby reinforcing the overarching fundamental value of output legitimacy. On one level, these statutory developments, with respect to referendums, are an acknowledgment of the time and effort spent on these plans by 'volunteers' in the neighbourhood which should not be usurped, unless there are specific material considerations which affect the status of the plan. Perhaps more significantly, these legislative developments further entrench the core objective of localism which is to shift power from the state to local citizens notwithstanding that the use of referenda and simple majorities, and, low voter turnout, are used to make potentially controversial and divisive planning decisions. Crucially, local referenda can also be used for the endorsement of place protective policies primarily driven by the emotional attachment to an area which local people may feel. To address concerns that neighbourhood planning might result in place-protective policies, the government limited the planning powers available to community groups and warned that promoting less development is not an option. NPs should contribute to the achievement of sustainable development and 'plan positively to support local development' especially housing development (DCLG, 2012, sections 15–16). Whilst this is predominantly the case, however, as already noted, NPs which may not favour such developments can, in certain circumstances, be adopted by local authorities. This raises not only questions of accountability for the decision taken, but also reinforces the local community's spatial sovereignty and creates a potential for conflict between neighbourhood planning and the broader objectives of the NPPF.

In *R (on the application of RLT Built Environment Ltd) v Cornwall Council* [2016] EWHC 2817 the High Court was faced with precisely this conflict. The claimant developer sought judicial review of the local planning authority's decision to hold a referendum on the St Ives NP, which contained a residency requirement limiting second home ownership arguing that, this restriction was incompatible with Article 8 of the European Convention on Human Rights (ECHR) and did not comply with the Strategic Environmental Assessment (SEA) Directive.<sup>[6]</sup> At the time, there was an emerging Local Plan and the NP had been prepared in accordance with its proposed allocation of new homes. The NP was attempting to address the perceived problem of uncontrolled growth of properties used as second or holiday homes, and in doing so, new open market housing was to be subject to a 'principal residence' requirement.

The court rejected the claimant's argument that by increasing the number of dwellings to accommodate local housing needs was an 'obvious' and 'reasonable alternative' to having a restriction on second homes, on the basis that the Directive imposes a procedural obligation to consider the potential environmental effects of the NP, and in this case, there was nothing to suggest building more dwellings could be environmentally-neutral or better. The court confirmed that the St Ives NP aim of delivering a 'wide choice of homes' met the sustainable

development requirement under the NPPF, despite the fact that the overall effect of the NP was to reduce the proportion of second homes being built.

The ECHR Article 8 challenge (right to respect private and family life) was dismissed by the Court, on the basis that that while it was grounded on a theoretical possibility of a future breach by a home owner who is subject to the restriction, the Article 8 right may be interfered with if it is proportionate response to achieving the legitimate policy objective of ‘economic social wellbeing of the country’. Furthermore, given that a wide margin of appreciation is given to legitimate aims, and that the Examiner concluded that ‘the policy contributed to sustainable development’, the potential infringement of Article 8 was proportionate. This suggests that a public policy of ‘sustainable development’, arguably narrowly defined in this instance, was a value that provided sufficient justification to depart from the principles of Article 8 and override the national policy objective of increasing the housing stock, growth and competitiveness.

However, while this judgment may strike a victory for localism and neighbourhood planning it is not without difficulty, not least as the judgment appears to accept that the NP can, *de facto*, become the Local Plan, notwithstanding the statutory constraint that the NP must be in ‘general conformity’ with the ‘strategic policies’ of the Local Plan (para.8 Sch 4B TCPA 1990). Yet identifying a local authority’s strategic policy will not necessarily be an easy task, largely because the strategic policy must be included within the up-to-date Local Plan. As the judgment in *RLT Built Environment Ltd v Cornwall Council* illustrates, with the support of the Local Authority, the not permitting the building of homes by the St Ives Neighbourhood Plan, on the grounds that they may be predominantly used as second homes is as legitimate a strategic policy for a local authority to pursue as one which may prioritise the building of affordable homes.

The statutory and NPPF emphasis on the NPs ‘general conformity’ with the Local Plan suggests that the Local Plan would normally have been adopted prior to the NP, but recent figures show that around 60% of the local planning authorities do not have a sound and adopted Local Plan (Lichfields, 2017). Where local authorities have not as yet adopted an up-to-date Local Plan, the status of the neighbourhood plan which has been successfully passed at referendum stage and made by the local authority has been questioned. For example, in *DLA Delivery v Lewes District Council* [2017] EWCA Civ 58 the Court of Appeal held that despite the absence of an up-to-date Local Plan, the NP *will* form part of the local development plan for the area, and thus strategic policies within that NP will have statutory weight. This fortifies the commitment towards recognising the legitimacy of the NP, but this is arguably at odds with the sequence of developing the plans envisaged by the government.

The judgment in *DLA Delivery* reinforces the status of the NP but this may not be without difficulties. There is a danger that the NP will become out-of-date once the Local Plan has been adopted, thereby undermining the efforts of those involved as well as democratic decision-making evidenced through local referendum. Though the NP can be modified and brought up-to-date to ensure ‘conformity’ with the Local Plans ‘strategic policies’ it requires a considerable amount of continued effort and commitment from the community volunteers to continue with this process. Added to this there is a potential tension between the emerging Local Plan and the adopted NP where the two may not necessarily be policy compatible, and priority is given to the latest approved, adopted or published plan which can relegate the NP to being out-of-date.

The potential conflict that lies here relates to, firstly, the processes by which the NP and the Local Plans are prepared and scrutinised, and secondly, compliance with the national planning policy. On the issue of scrutiny, the NP must comply with the 'basic conditions' to proceed to referendum (s.38A Planning and Compulsory Purchase Act 2004), and not to the more demanding test of 'soundness' as required for the Local Plan (para.182 NPPF) together with the local authorities legal 'duty to cooperate' (s.110 LA 2011). Added to this the NPA 2017 now elevates the status of a draft post-examination NP whereby the local authority has a 'duty to have regard' to the NP so far as material to the determination of the planning application (s.1 NPA 2017). Post-referendum NPs, i.e. prior to being made by the local authority, will now form part of the Local Plan, unless the local authority decides not to make the plan (s.3 NPA 2017). The difficulty with this is that the NP can effectively 'leap frog' over the Local Plan (which may not exist or is emerging) and become the main strategic policy for planning in the area. Moreover, the court endorses the practice the NP can be adopted by the local authority notwithstanding that the referendum on the plan saw 846 'yes' votes and 102 'no' votes on a minority 49% turnout.

What the judgment in *DLA Delivery* illustrates is an underlying tension that exists within the governance framework for neighbourhood planning; namely, should the NP, shrouded with its output legitimacy of a local referenda (albeit on a potentially low turnout) be able to set the local policy agenda on issues such as housing numbers in the neighbourhood which might be thought to be more properly the domain of the local plan drawn up by the elected representatives? This is difficult to answer, not least because it is questionable whether neighbourhood planning is as consensual or rational as its proponents may argue. For example, perhaps in recognition of a NIMBYism culture, communities have been offered incentives to plan for and/or accept new developments. The introduction of the New Homes Bonus in 2011 is intended to offer direct financial incentives or compensation for development. Under the New Homes Bonus central government matches the Council Tax raised from new households for six years and this additional funding can be used to reduce Council Tax or provide more funding to services. However, the connection between local development and revenue going to and controlled by the local authority is arguably too remote from local communities, and it is questionable whether such financial incentives materially influences communities to accept new developments. When it comes to protection of their spatial sovereignty, communities are not necessarily that easily appeased.

The introduction of neighbourhood planning and its focus on output legitimacy is intended to address the antagonism that had existed in local planning. This raises one further question of to what extent neighbourhood planning exhibits sufficiently robust and effective mechanism for accountability, especially in circumstances, such as those in the cases of *RLT Built Environment* and *DLA Delivery*, where the local authorities in question had not formulated any local plans and subsequently adopted the NP which had only been approved by a minority of the electorate? The criticism that can be levelled at this, at least in these cases, is that the NPs which have been adopted by popular referendum and have become planning policy, applicable to the wider local authority, are primarily expressions of place attachment that may relate to a specific neighbourhood and its individual characteristics, and do not necessarily reflect the broader make-up or socio-economic ambitions of the local authority area.

The expressions may have been collated from views which have emerged through a process of stakeholder consultation and engagement, but they may also be amended and magnified by local residents in neighbourhood working groups prior to being submitted for inspection and

consultation. Parker identifies that in many instances such plans are amended and drafted into planning policy by a neighbourhood steering group, often with assistance from local authority planners or planning consultants (Parker et al., 2014). This raises the real possibility, considered in the next section, of whether the LA 2011, and its attempt to improve public participation in the planning process, has achieved this at the expense of effective accountability.

**Accountability**

Neighbourhood planning has provided an alternative path for participatory democracy, individuals and local communities are empowered to make decisions with statutory weight about their local area. However, Localism does not grant a *carte blanche* approach towards neighbourhood planning and a role for the democratically elected local authority remains. Public law obligations continue to be imposed upon local authorities who remain legally accountable to ensure compatibility with national policy and European obligations. Crucially local authorities must not promote less development than that set out in the Local Plan or undermine the NPPF’s strategic priorities.

Notwithstanding the public law obligations, the local authority’s involvement in planning has evolved from one of setting and implementing planning policy, to additionally having a supportive role for the NP process. Accountability in this context is more complex with responsibility for delivery neighbourhood planning shared by a range of actors and institutions. To take local authorities, they are managing the delivery of a process in which they are not necessarily the primary decision makers, but still have to ensure that the outcome complies with broader regulatory and policy objectives. The independent examiner, who forms an integral part of the accountability process, though appointed by the local authority is done so with the agreement of the qualifying body which has drawn up the NP. Moreover, the examiner’s remit is narrow in that it focuses on the procedural compliance of the NP with national policy, legal obligations under EU and human rights legislation, NPPF and also the local plan. The recommendation of whether the NP goes to referendum rests solely with independent examiner, not the local authority.

Accountability within localism is therefore a different species to the political accountability of traditional local democracy and arises from the process itself and encompasses both participation and transparency. Transparency is secured through community engagement channelled locally, for example, public meetings, the use of social media and the creation of dedicated website, leafleting and notices in local shops, and publicising events on local radio and newspapers. This ‘open’ process of voluntary networking lends itself to consensus building within the neighbourhood, and in turn informs the development and creation of the NP and creates the sense of community ownership. These deliberations and actions are more visible to citizens, as are the consequences of their decision making. Arguably, this makes neighbourhood planning more accountable to a smaller group of citizens who are physically closer to the citizens who will be affected by the decision. But what does this mean for accountability within local democracy?

Neighbourhood planning has displaced the processes of representative democracy, at least in the context of planning policy and utilises direct democracy, in the form of referenda as the

means of taking decisions. Yet, local democracy has, for some time, faced accountability concerns. For example, the democratic deficit of representative democracy that is most apparent in parish councils, with their frequently uncontested elections, and co-opted, rather than elected members has undermined the accountability of local authorities themselves who have been responsible for planning decisions. By taking this out of their hands and giving neighbourhoods the power of self-determination over their spatial sovereignty, it could be argued that this has revitalised local democracy as well making the planning process more accountable through improved participation.

### Concluding Remarks

Localism, in the form of neighbourhood planning, has arguably challenged the political and legal orthodoxies of planning policy which were rooted in state control. Although the local referendum has a wider reach there are inevitable issues relating to low voter turnout which cast doubt on the legitimacy of this process. Yet, for all its faults, this form of local governance is here to stay and will no doubt continue to develop, though within the constrained remit of sustainable development. Localism provides an alternative form of citizen engagement and democratic legitimation which goes beyond the traditional forms of participatory democracy, and recognises that other paths of democratic law-making are possible.

The neighbourhood paradigm alters the perception of building development, where the NPPF demands a pro-development stance, and offers local people the opportunity to become stakeholders in their community and be involved in a consensus building programme which will benefit the community, not only terms of sustainability, but also in terms of resilience. However, reconciling the competing ambitions of the various stakeholders remains challenging and in the context of the governments ambitious house building policies Localism must continue to adapt both politically and legally to address the challenges ahead.

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<sup>[1]</sup> This concept of Big Society has been considered in various forms over the years as a political idea that encompasses some form restructuring of the state's relationship with its citizens and/or civil society. Politically in more recent times, last 30 years or so, governments have sought to adopt a bi-lateral approach to provision of services, encouraging the notion of shared responsibility and community.

<sup>[2]</sup> See *R (on the application of RLT Built Environment Ltd) v Cornwall Council* [2016] EWHC 2817 (Admin)

<sup>[3]</sup> 15 local authorities failed to provide a local plan under the requirements of the Planning and Compulsory Purchase 2004 as of 16 November 2017, available at: <https://www.gov.uk/government/publications/local-plan-intervention-secretary-of-state-letter-to-15-local-authorities> (accessed 21 November 2017).

<sup>[4]</sup> Hereinafter referred to as the neighbourhood plan (NP).

<sup>[5]</sup> Localism Act 2011 Sch 9 para7.

<sup>[6]</sup> Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, [2001] OJ L 197/30.

## Cases from England and Wales

*DLA Delivery v Lewes District Council* [2017] EWCA Civ 58

*R (on the application of RLT Built Environment Ltd) v Cornwall Council* [2016] EWHC 2817

*Suffolk Coastal District Council v Hopkins Homes* and *Richborough Estates v Cheshire East Borough Council* [2017] UKSC 37

*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759

## UK Primary Legislation

Town and Country Planning Act 1947

Town and Country Planning Act 1990

Localism Act 2011

Neighbourhood Planning Act 2017

Planning and Compulsory Purchase Act 2004

## European Union Legislation

Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment [2001] OJ L 197/30

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