

# A Survival Guide to Localism and the Planning System

**Landscape Institute**

16th January 2012

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## Introduction

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# Introduction

- **Course Aims**
  - To provide an overview of the proposed changes with a review of the practical realities of their implementation
  - Focusing throughout on the impacts for landscape architects
  - Answer questions

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# Introduction

- **Contents**
  - Localism Act Overview
  - National and Local Policy
  - Neighbourhood Planning
  - New Enforcement Provisions
  - Other Matters - CIL, New Homes Bonus, Local Finance Considerations, Consultation, NSIPs & Pre-determination
  - Conclusion & Questions

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## Localism Act 2011

- Received Royal Assent on 15th November 2011
- Part 6 relates to Planning, which has 7 Chapters
  - 1 Plans and strategies
  - 2 Community Infrastructure Levy
  - 3 Neighbourhood planning
  - 4 Consultation
  - 5 Enforcement
  - 6 Nationally significant infrastructure projects
  - 7 Other planning matters

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## Localism Act 2011

- Coming into force in stages:
  - On 15<sup>th</sup> November 2011
  - On 15<sup>th</sup> January 2012
  - (Mostly) by Order of Secretary of State (aimed to be largely by April 2012)
- Much is subject to regulations and guidance that are yet to be published

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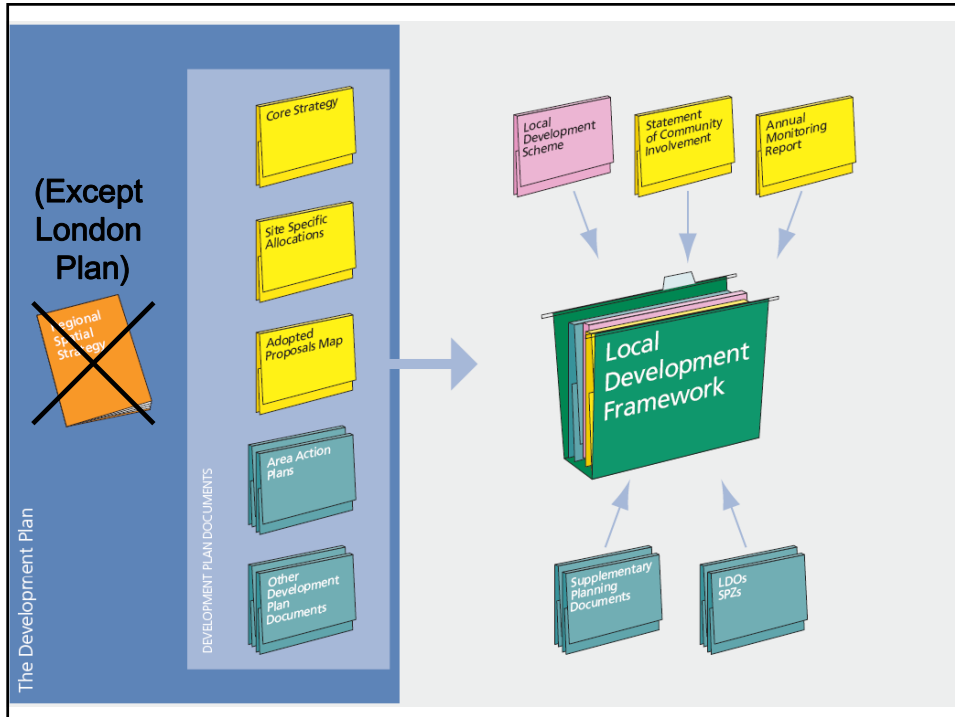
## National and Local Policy

- **Regional Spatial Strategies**
  - 6 Jul 2010 RSSs revoked
  - 10 Nov 2010 RSSs re-established after a successful challenge by CALA Homes
  - 10 Nov 2010 Chief Planner Letter – intention to abolish remains still a material consideration
  - 27 May 2011 Court of Appeal support High Court decision that intention to abolish is material, but clarified only relevant to development control decisions

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- **Regional Spatial Strategies (the Bill)**
  - Section 109 (in force)
  - Power for SOS to make orders:
    - Abolishing RSSs (except the London Plan)
    - Revoking SoS 'Saving Directions' for Structure Plans
  - Strategic Environmental Assessment (SEA)

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• **Life after Regional Spatial Strategies**

- Section 110 (in force) inserts section 33A into PCPA 2004: **Duty to co-operate** - local planning authorities and other bodies in the preparation of DPDs where there would be a significant impact on at least 2 planning areas or where the documents relate to 'county matters'
- Evidence of compliance will be required at examination stage
- Aim from CLG is "less top down targets and controls" in favour of "more incentives and rewards"
- The need for an up-to-date five year supply of deliverable sites remains (PPS3 & draft NPPF)

- **Streamlining of Local Plans Process**

- **Section 111 amends section 15 of PCPA 2004: Local Development Schemes (15th January 2012)**

- Removes requirement for approval of Secretary of State (or Mayor of London)
- SOS (or Mayor) may only direct that scheme be amended “for the purpose of ensuring effective coverage”.
- Requires LPAs to publish up-to-date information direct to the public including compliance with their timetable

- **Section 113 amends section 35 of PCPA 2004: Local development monitoring reports (15th January 2012)**

- Published for a period “authority considers appropriate in the interests of transparency” (at least annually) to the public not SoS (replaces AMR)

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- **Section 112: Adoption and withdrawal of DPDs (came into force on 15<sup>th</sup> January 2012)**

- Express obligation for Inspectors to recommend adoption of DPD where reasonable to conclude it is ‘sound’
- LPA power to request recommendations from Inspector to make DPD sound
- Inspectors recommendations are not binding (except that LPA cannot adopt unsound DPDs)
- LPA can make non-material changes before adoption
- LPA can withdraw DPD at any time before its adoption

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- **National Planning Policy Framework**

- Not part of the Localism Act 2011
- Aim from CLG is “less planning policy, complexity and ambiguity”
- Consolidates existing policy statements, circulars and guidance documents into a single document (58 pages)
- Consultation ended 17<sup>th</sup> October 2011
- Further consultation?
- Aim for adoption April 2012
- PINS Advice Note

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- **The ‘presumption in favour of sustainable development’**

- Local planning authorities should:
  - prepare Local Plans on the basis that objectively assessed development needs should be met, and with sufficient flexibility to respond to rapid shifts in demand or other economic changes
  - approve development proposals that accord with statutory plans without delay; and
  - grant permission where the plan is absent, silent, indeterminate or where relevant policies are out of date.
- All of these policies should apply unless the adverse impacts of allowing development would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

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- **National Planning Policy Framework**

- Green Belt – developed sites
- Green Infrastructure
- Local Green Space designations
- Rural exception site policy removed
- Protection of community facilities
- Brownfield housing target removed
- Office development removed from 'Town Centre First' policy
- Maximum non-residential car parking standards removed
- LPAs to identify additional 20% of deliverable housing sites
- National minimum affordable housing site size removed (15 units)

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## National and Local Policy

- **Conclusions**

- RSSs abolished (along with 'saved' Structure Plans)
- PPS3 5 year housing supply remains
- Duty to co-operate on strategic planning
- LDS and annual monitoring to public not SoS
- More flexibility to LPAs in DPD process
- NPPF and presumption in favour of sustainable development

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# National and Local Policy

## Questions



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# Neighbourhood Planning

- Neighbourhood Development Plans (NDPs)
- Neighbourhood Development Orders (NDOs)
- Community Right to Build Orders (CRBOs)
  
- Adopted by LPAs for a Neighbourhood Area on the initiative of Parish Councils or Neighbourhood Forums

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- **Key messages from CLG**
  - **Local plans are here to stay**
    - Guide and deliver development that meets the needs of the local area, including housing land allocations and strategic development
  - **Neighbourhood plans follow local plans**
    - Neighbourhood plans must be in line with these strategic policies and will not be able to block any new strategic development
  - **Use the right tool for the job**
    - Use the most appropriate form of plan to achieve the required outcomes
  - **Neighbourhood plans are permissive**
    - The new suite of neighbourhood planning tools are about enabling development, not stopping it

- **Neighbourhood Development Plans (NDPs)**
  - Set out policies in relation to the development and use of land in a Neighbourhood Area
  - Only one per Neighbourhood Area
  - Precise form to be set by regulations

- **Neighbourhood Development Orders (NDOs)**

- Essentially a Local Development Order
- Grants planning permission either with or without conditions
- May apply to all or part of a Neighbourhood Area
- Precise form to be set by regulations
- Regulations may allow Parish Councils to choose to determine NDO conditions applications
- More than one per Neighbourhood Area, but only one submitted for adoption at a time

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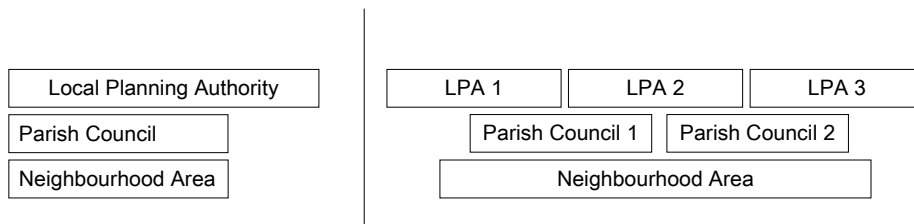
- **Community Right to Build Orders (CRBOs)**

- Special type of NDO (same procedures)
- Community led site specific development
- Proposed by a 'Community Organisation' (purpose of furthering the social, economic and environmental well-being in the area)
- Grants permission for a specified site
- Subject to limits to be set in regulations

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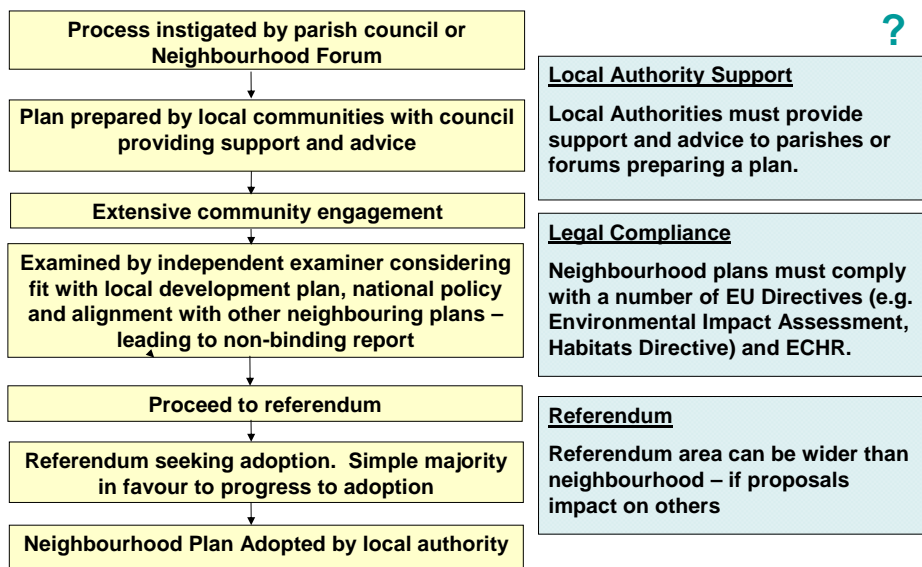
• **Neighbourhood Areas (NAs)**

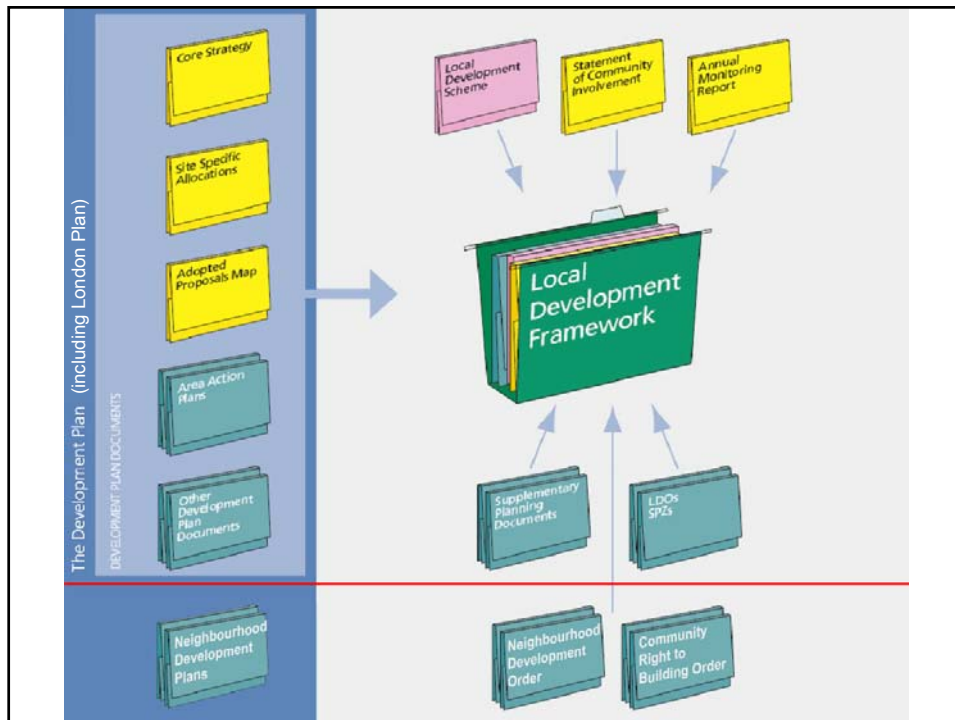
- Designated by LPA following request from Parish Council/Neighbourhood Forum
- NAs can't overlap, but can cross borough boundaries



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**How is the Neighbourhood Plan prepared** ?





- **Planning and Compulsory Purchase Act 2004 - s38**
  - (5) *If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the **conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.** [proposed change underlined]*
  - (6) *If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the **determination must be made in accordance with the plan unless material considerations indicate otherwise.***
- Primary position of the 'Development Plan' remains (of which NDOs form part)
- Most recent document continues to take precedence (which may well be an NDO)

- **Exclusions from NDPs and NDOs**
  - Mineral development
  - Waste development
  - Public highway works
  - 'EIA development'
  - Nationally Significant Infrastructure Projects
  - Others may be prescribed by regulations

- **NDP & NDO Examination**
  - Generally written representations
  - CLG 'light touch'
- **Assesses 'Basic Conditions' relating to:**
  - National Policies
  - Strategic policies in development plan (general conformity)
  - Complies with EU law/obligations
  - Conditions to be set out in regulations
  - NDOs only
    - special regard to listed buildings & conservation areas
    - contributes to the achievement of sustainable development

# Neighbourhood Planning

- **Conclusions**
  - Initiated by Parish/Area Forum but adopted by LPA
  - Must follow local plans/national policy are permissive
  - NDPs will be part of Statutory 'Development Plan'
  - NDOs are essentially Local Development Orders
  - CRBO special type of NDO for community led site specific development

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# Neighbourhood Planning

Questions



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## New Enforcement Provisions

- Section 123 (once in force) will provide:
  - Power to decline to determine retrospective planning applications if an enforcement notice has been issued in relation to any part of the ‘development’
  - If a retrospective planning application has been made, but an enforcement notice has been issued before target date, no appeal against the enforcement notice under ground (a) is permitted
  - Planning permission can only be granted when allowing enforcement appeals under ground (a) and only ground (a) appeals result in a deemed planning application

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- Background to concealed breaches
  - Fidler – ‘the straw bales case’
    - High Court supported Inspector’s findings that straw bales formed part of the building operation, the intention was always to remove them. As a result, substantial completion did not occur until they were removed.
  - Beesley – the house that looks like a barn
    - Supreme Court ruled 1) building was always a dwelling, so no **change** of use had occurred and therefore the 10 year, not 4 year, rule applies; and, 2) even if immune Mr Beesley’s conduct of positive deception took him outside the scope of immunity.

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- **Section 124 (once in force) will provide a new power where breaches were partially or fully concealed**
  - Within 6 months of evidence of the apparent breach coming to their attention, LPAs can apply to Magistrates Court for a 'Planning Enforcement Order'
  - If granted an Enforcement Notice can be served within 12 months
  - Court must be satisfied, on the balance of probabilities, that the apparent breach, or any of the matters constituting the apparent breach, has (to any extent) been deliberately concealed by any person or persons, and the court considers it just to make the order having regard to all the circumstances

- **Impact on Lawful Development Certificates**
  - Time to take enforcement action has not expired if:
    - Time for applying for a 'Planning Enforcement Order' has not expired
    - Application for a 'Planning Enforcement Order' has neither been decided nor withdrawn
    - A 'Planning Enforcement Order' has been made and the 12 month period to take enforcement action has not expired

- **Assurance as regards prosecution for person served with enforcement notice**
  - Section 125 (once in force) - LPA may send a letter with, or after serving, an enforcement notice advising parties (such as freeholders) that "in the circumstances as they appear to the authority" they are not at risk of prosecution (or only at risk in relation to parts of the notice)
  - Cannot prosecute if in force
  - Can be withdrawn (with notice)

- **Increased BCN fine and additional time for enforcement (Section 126 once in force)**
  - Increased fine for failure to comply with a Breach of Condition Notice (BCN) from £1,000 to £2,500
  - Enforcement of advert and tree offences time limit extended to 6 months from discovery of offence (provided no more than 3 years since it occurred)

- **Adverts, flyposting and graffiti (Section 127 once in force)**
  - Replaces powers applying in London only with provisions that apply throughout England
    - Direct action powers (with cost recovery) after serving/displaying a removal notice
    - Serve notices requiring owners to take specified preventative measures

- **Proceeds of Crime Act 2002 (POCA)**
  - London Borough of Hounslow
    - Two properties extended & converted to 7 flats in total without planning permission
    - Retrospective permission refused
    - Enforcement Notice Served
    - Notice not complied with – committing an offence
    - Court action under Proceeds of Crime Act 2002
    - Court held financially benefited from his offences in the sum of £186,680 and a confiscation order was made for the full amount

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- East Hertfordshire District Council
  - Car Park for Bishop Stortford Football Club
  - Later used as park & ride for Stansted airport
  - Mr Del Basso and Mr Goodwin each fined £20,000 for breach of an Enforcement Notice
  - Breach continued
  - Further prosecution, including POCA
  - Confiscation Order made for £760,000

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## New Enforcement Provisions

- **Conclusions**
  - Limits scope of retrospective applications and ground (a) appeals
  - Planning Enforcement Order where breaches concealed, implications for LDCs and property transactions
  - Increased fines for BCNs and more time for tree enforcement
  - POCA adding extra 'teeth' to planning enforcement

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## New Enforcement Provisions

Questions



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## Other Matters

- **Community Infrastructure Levy (CIL)**
  - Came into force April 2010
  - ‘Charging Schedules’ being produced
    - Subject to examination and approval
  - Threshold 100 square metres or 1 dwelling
  - Due on commencement of ‘chargeable development’
  - Surcharges, CIL Stop Notice, seizure of assets & ultimately committal to prison

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- **Changes to CIL**
  - **Section 114 (once in force) will provide:**
    - Examiner will now consider whether LPA has met Charging Schedule ‘drafting requirements’ including evidence base
    - Recommendations of examiner not binding, as per Inspectors considering DPDs
  - **Section 115 (once in force) will provide:**
    - Confirmation that CIL may be spent on the ongoing costs of providing infrastructure
    - Powers for regulations to require LPAs to pass funds to other bodies to spend on infrastructure

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- **New Homes Bonus**

- Bonus commenced in April 2011
- Will match fund additional council tax raised from new homes (with an additional amount for affordable homes) for the following six years
- “Is not intended to encourage housing development which would otherwise be inappropriate in planning terms”

- **Section 143 (15th January 2012)**

- Requires LPAs to have regard to “any local finance considerations, so far as material to the application” when considering planning applications (Lords amendment – clarifies does not alter weight to be attached to any consideration)

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- **Pre-application Consultation**

- Section 122 (inserts section 61W into TCPA 1990) requires developers to consult local communities before submitting planning applications for certain developments and to consider making changes in light of responses
- Further, an account of the consultation must accompany applications in order to make them valid
- Currently proposed thresholds:
  - 200 dwellings or sites exceeding 4ha
  - 10,000 square metres or sites exceeding 2ha

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- **Nationally Significant Infrastructure Projects (NSIPs)**

- Infrastructure Planning Commission (IPC) abolished
- Planning Inspectors to make recommendations to SoS who makes ultimate decision (as per call-in)
- Greater scrutiny of National Policy Statements (NPS) through requirement of House of Commons approval
  - Energy (Overarching, Fossil Fuels, Renewables, Oil/Gas, Electricity & Nuclear)
  - Transport (Ports, Networks & Aviation)
  - Water, waste water and waste (Water Supply, Hazardous Waste & Waste Water Treatment)

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- **Pre-determination**

- **Section 25** (15<sup>th</sup> January 2012) provides that decision-makers (including Planning Committee members) are not to be taken to have had a closed mind when making a decision just because they have previously indicated what view they took on the matter

- **Local Referendums**

- Removed from the Bill in House of Lords

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## Other Matters

- **Conclusions**

- CIL is here/coming – it will impact on viability
- New Homes Bonus – ‘carrot’ for LPAs / communities
- Section 143 – some suggest this amounts to ‘buying planning permissions’
- Pre-application requirements – but likely to be 200+ dwellings
- NSIPs decision returns to SoS
- Pre-determination – greater flexibility for Councillors

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## Other Matters

Questions



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## Overall Conclusions

- Localism Bill Progress
- National and Local Policy
- Neighbourhood Planning
- New Enforcement Provisions
- Other Matters

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## Questions



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