



Report author: Kathryn Holloway
2478076

Report of: Director of City Development

Report to: Executive Board

Date: 4 January 2012

Subject: Neighbourhood Planning - consultation response to the Government's draft regulations for reform

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):	All Wards	
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

Summary of main issues

1. The Government is consulting on the draft regulations governing the process for establishing neighbourhood areas and forums, the requirements of Community Right to Build and the preparations of Neighbourhood Plans and Neighbourhood Development Orders. The Consultation opened on 13th October and closes on 5th January 2012. This report sets out the City Council's proposed response.

2. The key issues and questions relevant to Leeds are based around the following points:
 - The identification and designation of neighbourhood areas and Neighbourhood Forums (non-Parished areas)
 - The 'Duty to Support' communities.
 - Leeds to finance 'light touch' examinations and referendums in the production of Neighbourhood Plans and adopting Neighbourhood Plans as statutory Development Plan Documents.
 - Neighbourhood development orders/ community right to build.

3. Neighbourhood Planning in Leeds is in the very early stages. A broad background to the issues around Neighbourhood Planning and the identification of four pilot areas under the DCLG Neighbourhood Planning Frontrunner grant scheme was set out in a previous report "Developing a response to Neighbourhood Planning in Leeds"

presented to Executive Board on 2nd November 2011. This report duplicates some of the key issues but focuses on the issues in the DCLG consultation document on the draft Regulations.

4. Most of the reforms around Neighbourhood Planning are welcomed in giving greater flexibility and involvement in planning to the local community. However, there are concerns and uncertainties on a number of points that are raised in this report.

Recommendations

Executive Board is recommended to:

- 1 Note the contents of this report (in association with the previous background information in the executive Board report, 2nd November).
- 2 Approve the response to the Government's proposals for reform of Neighbourhood Planning; Community Right to Build and Neighbourhood Development Orders as set out in section 3 of this report and in the questionnaire attached at Appendix 1 and submit to DCLG before 5th January 2012.
- 3 Agree that this report be circulated to Town and Parish Councils for information.

Purpose of this Report

- 1.1 The Government recently published a consultation paper on the draft regulations for Neighbourhood Planning (13th October 2011) which includes the general principles of setting minimum requirements; ensure consistency across the country; engender trust; minimise the burden on communities and Local Planning Authorities; provide local flexibility and meeting EU environmental and human rights legislation.
- 1.2 The introduction of Neighbourhood Planning arises directly from the Localism Bill now enacted (15th November 2011) which was subject to considerable debate and amendment as it progressed through Parliament. The previous report to Executive Board (2nd November 2011) sets out the context and background of Neighbourhood Planning and suggested that the Council will need to develop a response to Neighbourhood Planning in Leeds and review its position in the light of emerging regulations.
- 1.3 The Government consultation runs until 5th January 2012. This report sets out our suggested response to the consultation on the draft Regulations. The main purpose of this report is for Executive Board members to consider and agree the City Council's response. Please note that due to the 5th January deadline this report is not eligible for call-in.

2.0 Background information

What is Neighbourhood Planning?

- 2.1 The Government sees Neighbourhood Planning as central to its decentralisation, Localism and Big Society agenda which aims to ensure that local people have the opportunity to shape and influence planning in the areas they live and work and have more reasons to say "yes" to sustainable development, supporting economic and housing growth. The fundamental principle of Neighbourhood Planning is that the plans are community-led with support from the Local Authority.
- 2.2 Neighbourhood Plans can set out policies for the development and use of land within a particular neighbourhood. For example, it could indicate where new shops, offices, or homes should go, which green space should be protected or created and where new pedestrian walkways should be created. Plans could include local design standards such as the type of materials, scale and character that must be used for any new property. A neighbourhood plan would be subject to an independent "light-touch" examination (paid for by the local authority). The examiner would approve or reject a plan by considering whether it is in accordance with national planning policy and the local plan.

If the plan passes this conformity stage, the examiner will recommend a local referendum. The local authority will then be responsible for organising and paying for this. The neighbourhood plan needs to gain 50% or more support from those voting in the referendum. If the plan is successful in gaining over half the votes the local authority, must adopt the plan and it will form part of the statutory local planning framework, and any future planning applications for that area should be compliant with its contents.

The governments approach to Neighbourhood Planning aims to provide an effective and transparent system which inspires communities to get involved and influence development. The regulations aim to ensure that the system works, is legally robust and that there is a level of consistency across the country.

The Government has also produced a short guide "*An introduction to Neighbourhood Planning*", 13th October 2011 which provides an easy to read introduction to neighbourhood planning and the key elements, including what neighbourhood planning is; why it matters and how it will work and provides information about the sources of advice and support for communities interested in doing neighbourhood planning.

3.0 Main issues

- 3.1 The Draft Regulations on Neighbourhood Planning, Neighbourhood Development orders and Community Right to Build propose "Minimum information requirements" to allow Local Planning Authorities the flexibility to adapt and devise their own procedures. Whilst this flexibility is welcomed there are a number of concerns and key issues that are flagged up in this report and picked up in more detail in our Response to DCLG (see Appendix 1). The main issues are highlighted below:

Resources

- 3.2 There is concern that Local Planning Authorities are being asked to speedily produce up to date local plans, in our case the Leeds Core Strategy and Site Allocations DPD which will provide the context for the production of Neighbourhood Plans at a time when there is considerable pressure on staffing and finance. Without further resources this strategic priority will severely constrain LCC's ability to meet the "duty of support" in providing technical advice to those communities that are expressing an interest in progressing a Neighbourhood Plan. To date Leeds has had interest from twenty groups, but this is expected to grow. Additional staff resources will be needed to progress and deliver the Core Strategy and Site Allocations Development Plan Document work programme priorities and simultaneously provide time and resources to Neighbourhood Planning as well as other planning work. The production of Neighbourhood Plans will require technical input from across the Council's departments through the "duty to support". This will primarily include Planning Policy, Planning Services and Sustainable Design (SDU) but could also include Highways; Drainage; Parks & Countryside; Regeneration; Asset Management; Legal; Finance; Policy and Performance (Census and demographics) etc as well as a range of external stakeholders such as the police, NHS.
- 3.3 Additional funding will be required for the examination and referenda. Section 4 of this report highlights some of the anticipated costings associated with examination and referenda. Further, there will be the time and cost implications associated with advertising and adopting documents.
- 3.4 The Council will need to establish a clear protocol and methodology setting out how Leeds will assist communities and what we can provide by way of technical assistance. This needs to manage communities expectations in a manner that does not stifle community interest or enthusiasm, but does not impact negatively on the progress of the statutory planning functions and work programme priorities and

ensures compatibility with the Core Strategy, site allocations document and wider City Council programmes.

- 3.5 As an example of the level of staff resources Neighbourhood Planning could involve, one of the pilot areas that was put forward in the 2nd November 2011 Executive Board Report (still awaiting a response from DCLG) is well established and under way with collecting community views. This group has already approached the council requesting data on a number of issues, including population change (going back 50 years) and associated changes such as average house prices, social housing numbers and stock turnover; implemented planning permissions, including the total numbers of affordable housing and specialised housing (elderly) along with an update on the retail health check for the town centre.
- 3.6 For each Neighbourhood Plan area, similar data requests are likely to require bespoke data analysis which is time consuming. Particularly where the request will involve the input of other directorates and sections, such as the GIS team for mapping work. Whilst the authority provides a lot of data on the web we are getting more requests to provide data analysis.
- 3.7 Though the Government are providing some grant aid for organisations that have a key role in assisting and training community groups the skill set needed for communities to lead on complex planning documents could be quite demanding and should not be underestimated. Preparation could take longer than Government anticipates. Best practice in Leeds on the preparation of Village and Neighbourhood Design Statements (which are seen to be less complex documents that can take on average 2 years to adopt as supplementary planning guidance. This is without the examination and referendum requirements.
- 3.8 The regulations, as currently drafted, will require the Local Planning Authority (LPA) to publish notification of the application for the designation of Neighbourhood Areas and where Parish and Town councils do not exist the designation of Neighbourhood Forums. The guidance suggests that LPAs will only have to deal with one area designation at a time on a first come first serve basis.
- 3.9 Leeds has had considerable interest in the production of Neighbourhood Planning and out of our 31 Parish and Town Councils we have had 16 expressions of initial interest in pursuing a Neighbourhood Plan and an additional six areas representing inner urban areas. There are likely to be significant further interests from organisations wishing to pursue a community plan.
- 3.10 The Government's emphasis on the production of Neighbourhood Plans is that they must be community-led. However, the regulations will require that Leeds City Council publishes notification of the application for the Neighbourhood Forum on its website along with a statement of any other application(s) for the relevant neighbourhood area (within 28 days of publishing the first application). The Council will need to consider how it manages this process once the regulations are in force.
- 3.11 Once a Neighbourhood Plan is adopted it becomes part of the statutory planning process and it will be for the Council to implement, monitor and enforce the neighbourhood area's plans and proposals. This will have ongoing implications in

terms of time and resources for officers in Planning and Sustainable Development in particular.

- 3.12 The organisation and the costs of the Neighbourhood Planning examination process and referenda will need to be covered by the Local Planning Authority and these cost are not insubstantial. These are covered below.

Examinations and Referendums

- 3.12 Neighbourhood Plans are aimed to be documents that carry real weight in the determination of development and land use proposals for an area and as such will be adopted as Development Plan Documents and carry legal status. The process of an independent examination is an important element in the process. The regulations anticipate that Neighbourhood Plan examinations will be “light- touch” and as such the draft regulations are minimal in setting out what is expected, leaving it to Local Planning Authorities to “best decide how to undertake this activity”.
- 3.13 The appointment of an inspector from PINS can charge over £1k/day. The normal rule is 4 days writing up time for every day of a hearing. The CLG impact assessment suggests examination costs of £5-8k. In practice, Inspectors costs start before the examination, as they are appointed on submission to do preparatory work. If the Inspector decides to undertake the examination in public then additional costs will rise (room hire costs etc).
- 3.14 The Government believes it will be for the examiner to decide when to hold public hearings and therefore the Regulations do not attempt to prescribe the criteria which will determine if a hearing should be held. A reserved power is to be available in case experience shows that public hearings are not happening when they should. Where an examiner decides that matters be dealt with in writing with no public hearing then in these circumstance the costs will be greatly reduced. However this raises questions in regard to what rights of appeal land owners; agents and developers and others have in regard to putting forward alternatives and evidence as part of a “lighter-touch” inquiry process.

Referendums

- 3.15 Throughout the process of Neighbourhood Planning the emphasis is on the community being in the driving seat of planning their area. A referendum at the end of the process would ensure that the community has the final say on whether a neighbourhood plan or development order or community right to build order comes into force in their area. The arrangements for referendums are not included in the draft regulations and therefore there are a number of uncertainties about this part of Neighbourhood Planning at this stage.
- 3.16 Clearly the local costs of referendums will vary depending on the size of the area concerned and whether it can be linked to local elections. The CLG impact assessment offers some indicative costs of £1.50/head or around £7k per ward.

Implementation & Monitoring

- 3.17 The Localism Act provides the power and right for communities to produce their own Neighbourhood Plan for their area allowing communities to have a say on where they think new houses, business and greenspace should go and what they should look like provided that this is in general conformity to national planning policy and the Local Plan and other legal requirements. Guidance needs to provide greater clarity that Neighbourhood Planning is only one part of a wider toolkit for local communities to get involved in planning and that areas not producing a plan are not seen to be vulnerable to development pressures or at a disadvantage.
- 3.18 The guidance must be clear on the requirements of the preparation, consultation and evidence needed to progress a Neighbourhood Plan in a manageable way that communities can work with. It will be essential that Local Planning Authorities work closely with communities at the beginning of the process in order to provide clarity on the statutory requirements and “general conformity issues”. The publication of best practice and our own pilot schemes within Leeds will help to enable capacity building and build upon the skills needed for community groups to take the lead in the preparation of what could be quite complex plans and Neighbourhood Development orders.
- 3.19 Clarification is needed on the constitutional and representative arrangements for setting up and running a Neighbourhood Forum and the Council’s response to DCLG seeks further information in regard to how planning powers are to be assigned, managed, enforced and if necessary removed from Neighbourhood Forums and Parish/Town Councils.
- 3.20 In deciding Neighbourhood Areas there is no discussion within the guidance or the Regulation on how to respond to cross boundary issues where one community might be affected by proposals in an adjoining area. For example traffic impacts or major retail proposals. Although the draft regulations allow for an inspector to recommend extending an area for the purposes of a referendum to ensure that all those that may be affected can have a right to vote, this may disproportionately sway the results and may be too late in the process for communities to feel that they have had any real involvement in the process of a plan that could have most impact on them.

Neighbourhood Development Orders and Community Right to Build

- 3.21 Neighbourhood Development Orders (NDOs) are designed to allocate specific areas where certain types of development will be permitted without planning permission. Such development could include certain types of household extensions, shop fronts and ‘green energy’ proposals. NDOs can apply to all or part of an area and can form part of a neighbourhood plan. Community Right to Build (CRtB) provides local community groups (with a minimum of 5 unrelated members) who live in a particular area, the opportunity and power to deliver local development that provides benefits to the local community in perpetuity. The development will not need to meet traditional planning application requirements.
- 3.22 Both NDOs and CRtB must meet certain criteria, which are still to be determined in further regulations to be issued by the Secretary of State, but this will include a

number of statutory restrictions on their scope. An independent check must be carried out to ensure that the NDO does not breach any EU obligations, or rights under the European Convention of Human Rights. They both have to receive majority support via a local referendum and NDOs.

- 3.23 The regulations require that applications for NDOs and CRtB are submitted to the Local Planning Authority who will then publish in such a manner as it considers appropriate to bring the application to the attention of people who live, work or carry out business in the area to which the application relates and it will be for the Local Planning Authority to decide on whether the order is acceptable or not. There will need to be clear procedures and governance arrangements established in Leeds to undertake this work.
- 3.24 Concern is expressed that the community groups that are entitled to put forward CRtB orders may not necessarily be affiliated with a designated Neighbourhood Forum or Parish/Town council and conflicts may arise between a smaller group interest and the wider local proposals in a Neighbourhood Plan.
- 3.25 The implementation of Neighbourhood Development Orders may encourage growth away from areas that do not have NDOs in place. This is a potential disadvantage to those communities that can not afford to progress Neighbourhood Plans or NDOs yet may be areas that most need to new development to meet, for example, the need for new housing and schools.
- 3.26 The Council's response (see Appendix 1) is also seeking clarity from DCLG on the issue of how appeals from landowners or developers could be dealt with for both NDOs and CRtB orders.

Community Right to Buy and Right to Challenge

- 3.27 Leeds already has a strong track record of community ownership of assets and the council are responding to expressions of interest and is making the procurement and commissioning process more accessible for community organisations.
- 3.28 The Council's response to DCLG (See Appendix 1) seeks clarity on what facilities and services communities can express an interest needs to be provided as expressions of interest will automatically trigger the procurement processes and it needs to be made clear that expressing an interest does not guarantee that communities can find the funding within the timescales. Community Right to Buy and the Right to Challenge will raise local communities expectations in terms of bidding for community assets and involve the Council in additional time and expense in determining the best future use for an asset.
- 3.29 It is likely that the number of requests for asset transfer will increase and this will impact on the Councils capital receipt program and ability to raise revenue from the sale of buildings/land. There is the potential conflict with competing Leeds City Council priorities .I.e. should the asset be sold to raise a capital receipt rather than going to a Community use and the receipt being invested in other Council projects.

4.0 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The consultation on the draft regulations for reform on Neighbourhood Planning has been subject to national public consultation since 13th October and the deadline for representations is 5th January 2012.
- 4.1.2 The Government's consultation is open to any one to respond. At the Parish and Town Council seminar held on 17th October 2011 Leeds city council officers opened up the opportunity for comments to be submitted to the Council for a joint response. This opportunity was also given to the Leeds Planning and Development Forum held on 18th October. The closing date for responding to officers was held until the 25th November. No comments were received and therefore the opinions put forward in the report are those made by officers.
- 4.1.2 As discussed at Section 1.2, a report on 'Developing a response to Neighbourhood Planning in Leeds' was considered by Executive Board on 2nd November 2011. This set out the context of Neighbourhood Planning in Leeds.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 Bringing forward Neighbourhood Planning in Leeds is seen to be a beneficial mechanism to help promote equality and engagement in planning which would be improved if the government recognises the Council's concerns for those communities that have little or no funding or skills to bring this forward.
- 4.2.2 The Government's proposed changes to the Regulations may have some potential implications for equality and diversity, and cohesion and integration, particularly around the provision of Community Right to Build and Neighbourhood Development Orders that may bring forward affordable housing. There is also the concern that inner city areas with high ethnic populations and disadvantaged residents and which are not covered by an existing Parish or Town Council may not possess the resources and skills required to prepare their own proposals and advocate the case for investment in their communities.
- 4.2.3 The Council will ensure that whichever proposals in the Government's consultation document become the final Regulations, that decisions and priorities enacted by the Council will be in the interests of equality and diversity.
- 4.2.4 The preparation of Neighbourhood Plans will require input from a wide range of partners alongside the Local Planning Authority, including Area Committees; Asset Management; Finance; Legal; infrastructure providers and statutory consultees and partners, businesses and developers as appropriate.
- 4.2.5 A high level of community consultation and engagement will be required in order to prove that all sections of the local community have been involved in the neighbourhood planning process. It appears that local authorities would make this judgement through an Equality Impact Assessment.
- 4.2.6 In preparing this report due regard has been had to equality and diversity issues and a screening assessment has been carried out. This considered potential

consequences, but could not suggest any particular action(s) until such time as the Regulations are published. The Council will ensure that whichever proposals in the Government's consultation document become the final Regulations, that decisions and priorities enacted by the Council will be in the interests of equality and diversity.

4.3 Council Policies and City Priorities

- 4.3.1 Some Neighbourhood Plans are already in progress in some areas and interest in starting the process is incredibly high. In particular the Council has submitted bids to the DCLG Front runner pilot grant scheme to seek funding support for four pilot areas across the City.
- 4.3.2 Until the final regulations emerge and further best practice guidance is available, there is much uncertainty about the details of the process of Neighbourhood Planning which is confusing for the community, members and officers. What is certain is that the process of Neighbourhood Planning should not be seen to hold up the process of delivering the Core Strategy or Site Allocations DPDs which will set the context for Neighbourhood Plans and will be key in determining the "general conformity" of Neighbourhood Plans.
- 4.3.3 A neighbourhood plan would form part of the statutory planning policy framework and as such would be a material planning consideration when determining planning applications. Designating neighbourhood planning powers to parish and town councils may require a strengthening of existing governance arrangements. Designated neighbourhood forums would have to have a constitution but it is unclear what status they would have. This issue has implications for a number of our city and cross council priorities across areas such as regeneration, housing growth, consultation and engagement and locality working.
- 4.3.4 The proposed changes set out in the draft regulations broadly reflect Council policies and city priorities in that they have an increased emphasis on community engagement and localism and an intent to increase the amount of community infrastructure, including affordable housing.

4.4 Resources and Value for Money

- 4.4.1 There are clear resourcing costs and constraints in terms of the work needed to set up Neighbourhood Planning in Leeds, including the technical work involved in the duty to support communities, the costs of examination and potential organisation and costs associated with referendums. However, the government appears to recognise that costs will be incurred and the Localism Act established that the Secretary of State may make regulations for the "imposition of charges for the purposes of meeting expenses incurred (or expected to be incurred) by Local Planning Authorities in, or in connection with, the exercise of their Neighbourhood Planning functions". It is not clear what the government's intentions are in this regard and this position will need to be made clear, particularly at this time of extreme financial pressure and shortage of planning officers and the loss of the Housing and Planning Delivery Grant.
- 4.4.2 It is difficult to be precise about the scale of costs likely to arise from Neighbourhood Planning. The CLG has set out a range of possible costs for

examinations £30-40k; and referendums printing £1.5k. This does not include any assessment of in-house staff resource costs nor does it include any arrangements that may be needed to set in place for governance procedures or addressing the longer term monitoring.

- 4.4.3 For an authority the size and complexity of Leeds it can reasonably be assumed that costs will be at the upper end, if not beyond, indicative national averages depending on the number of Neighbourhood Plans and Neighbourhood Development and Community Right to Build Orders coming forward.
- 4.4.4 If early progress is to be made on the four pilot areas and the Council is successful in its bid for the CLG Front Runner pilot grant funding of £20k/pilot then some of the costs covering examination and referendums will be provided for. Although this would leave the communities themselves to fund plan preparation. However, no decision has been made on exactly how this money will be spent if the council is successful in its bid.
- 4.4.5 It is envisaged that the majority of costs (apart from staff resources) for the Local Planning Authority (examinations and referendums), associated with the four pilot areas and any other areas wishing to progress a Neighbourhood Plan are most likely to fall in the 2013/14 period and onwards. For areas wishing to propose a Neighbourhood Development Order or a Community Right to Build Order these could come forward sooner (after the final Regulations are published) and costs could be incurred in 2012/2013 onwards.
- 4.4.6 The implementation of Neighbourhood Planning will need to have clear references to CIL and the Infrastructure Delivery Plan in Leeds as community aspirations arising from community priorities should influence the “meaningful proportion” of CIL (see separate Report to executive Board on “The Community Infrastructure Levy”, 10th December). The Council’s recommended responses to the Government’s consultation document on CIL recognises that neighbourhood funds have a very important role to play in mitigating the local impacts of development and allowing communities to set their own priorities but that this must be replaced against strategic needs.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 Once the Government adopts the Regulations the situation will become clearer as regards the detail and will enable a better understanding in Leeds of how neighbourhood Planning and Neighbourhood Development Orders and Community Right to Build Orders can progress.
- 4.5.2 The Council will be responsible for ensuring a Neighbourhood Plan has been produced in line with the relevant National and Local policy and legislation and will be required to arrange for an external examination of any proposed plans and organise the local referendums. There will be a need to fully assess the legal implications of Neighbourhood Planning at an appropriate time.
- 4.5.3 With regard to the pilots proposed, given that the necessary legislation relating to Neighbourhood Planning is not yet in place, the advice from CLG is that councils will need to operate within the restraints of the current system for producing

development plan documents (DPDs) and local development orders. This is different in some significant respects to that anticipated for neighbourhood planning. For example, there is no requirement for a referendum as part of the process, and the examination requirements are also different. The legal requirements for taking DPDs through to adoption are also proposed to change (a consultation on draft regulations has recently closed), in addition to the introduction of new regulations for neighbourhood planning. Given this 'transitional legal framework', legal advice will be required both in the early stages of any pilots as part of any project plan and at key points through the life of the pilot to ensure that the appropriate legal framework is being complied with in order to deliver their anticipated aims.

4.5.4 Due to the 5th January 2012 deadline for responding to the DCLG consultation on the draft neighbourhood planning regulations this report is not eligible for call-in.

4.6 Risk Management

4.6.1 There is a high risk that Neighbourhood Planning is led in areas where there is a strong desire to block development and will attract those people who are already engaged in the planning system and also more likely to engage with the new process and powers available to them to further pursue their interests and wider community voices may be lost. There is concern expressed in the Councils response that there needs to be clarity on the representation of Neighbourhood Planning forums and the controls the Local Planning Authority may have on governance arrangements, as there may be inappropriate power given to people who are not appointed or removable through any democratic process.

4.6.2 If the Council does not develop an overall approach to Neighbourhood Planning council resources may become less focused and interrupt the council priorities of preparing the Core Strategy and Site Allocations DPD. There is also the concern that the more affluent areas will be able to progress sooner, leaving other areas behind. In order to manage this risk it is recommended that officers continue to work on establishing a clear protocol for the delivery and implementation of Neighbourhood Planning.

5.0 Conclusion

5.1 The concept of Neighbourhood Planning as envisaged in the Localism Bill is to give local communities the opportunity to influence the future development of places where they live. However, generally neighbourhood plans are envisaged to be pro-development and will also need to reflect the strategic vision and especially housing targets for the city. Neighbourhood planning builds upon a strong track record in Leeds of working with communities on local planning documents, it aligns with our locality working agenda and has the potential to help us to deliver a number of our strategic priorities. However, alongside these opportunities there are a number of important risks including the potential resources required to respond to this from across the authority including planning, referenda and legal as well as the fact that the legislation is still being amended and will be supplemented by further regulations and guidance.

5.2 Neighbourhood planning is extremely high on the agenda with national and local debate and there is significant interest and concern within communities, parish and

town councils and elected members surrounding all aspects of the planning reform agenda. There is therefore an urgent need to develop the council's response to neighbourhood planning and the proposed pilots will help to do this.

- 5.3 Most of the proposed reforms around Neighbourhood Planning, Neighbourhood Development Orders and Community Right to Build as set out in the draft regulations can be supported for the reasons set out in this report but there are still a number of uncertainties around outstanding details to be subject to further consultation and draft regulations.

6 Recommendations

6.1 Executive Board is recommended to:

1. Note the contents of this report (in association with the previous background information in the executive Board report, 2nd November).
2. Approve the response to the Government's proposals for reform of Neighbourhood Planning; Community Right to Build and Neighbourhood Development Orders as set out in section 3 of this report and in the questionnaire attached at Appendix 1 and submit to DCLG before 5th January 2012.
3. Agree that this report be circulated to Town and Parish Councils for information.

7.0 Background Documents

7.1 'Neighbourhood Planning Regulations' Consultation, October 2011

7.2 Executive Board Report "Developing a Response to Neighbourhood Planning in Leeds, 2nd November 2011.

7.3 EDCI Screening Form

8.0 Appendices

8.1 Appendix 1 - Questionnaire response to 'Neighbourhood Planning draft regulations'

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Response form

Proposals for new neighbourhood planning regulations Consultation

We are seeking your views on the following questions on the Government's proposed approach to new regulations on neighbourhood planning. **If possible, we would be grateful if you could please respond by email.**

Email responses to: neighbourhoodplanning@communities.gsi.gov.uk

Alternatively, we would be happy to receive responses by post.

Written responses to:

Neighbourhood Planning Regulations Consultation
Communities and Local Government
Zone 1/J1
Eland House
Bressenden Place
London
SW1E 5DU

(a) About you

(i) Your details

Name:	Kathryn Holloway
Position (if applicable):	Senior Planner
Name of organisation (if applicable):	Leeds City Council
Address:	2 Rossington Street, Leeds LS2 8HD
Email Address:	Kathryn.Holloway@leeds.gov.uk
Telephone number:	(0113) 2478076

(ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

- Organisational response
- Personal views

(iii) Please tick the one box which best describes you or your organisation:

- Private developer or house builder
- Housing association
- Land owner
- Voluntary sector or charitable organisation
- Business
- Community organisation
- Parish council
- Local government (i.e. district, borough, county, unitary, etc.)
- National Park
- Other public body (please state)
- Other (please state)

(iv) Please tick the one box which best describes which viewpoint you are representing:

- Rural
- Urban

(b) Consultation questions

Question 1:

Do you agree that the proposed approach is workable and proportionate, and strikes the right balance between standardising the approach for neighbourhood planning and providing for local flexibility on:

a) designating neighbourhood areas

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Explanation/Comment:

Existing Parish and Town Councils are considered to be more straight forward in regard to establishing boundaries for designated Neighbourhood areas. Although some of the parish/town boundaries in Leeds cover larger areas than would normally be associated with a neighbourhood, the constituency of the groups and the boundaries are already established. For inner areas and those areas not covered by a parish/town council the setting of boundaries could create some friction between neighborhoods where there are significant cross boundary issues.

The regulations do not explain how neighborhoods' should work across boundaries. The guidance should address cross boundary issues where one community might be affected by an adjoining area's proposals. For example traffic impacts or those arising from major retail proposals. Although it is recognised that an inspector can recommend extending an area for the purposes of a referendum to ensure that all those that may be affected can have a right to vote (see examination below) this may disproportionately sway the results and may be too late in the process for communities to feel that they have had real involvement in the process that could have most impact on them.

b) designating neighbourhood forums

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Explanation/Comment:

Clarification is required on the constitutional and representative arrangements for setting up and running a Neighbourhood Forum. Concern is raised also that the powers given to some communities may provide inappropriate powers to people who are not appointed or accountable through any democratic process.

There is some concern that the period of notification suggested in the draft regulations for a Neighbourhood Forum (28 days for alternatives to come forward) and the 6 week notification period for the designation of a neighbourhood area do not necessarily complement each other. It is considered more than likely that the application for the designation of a neighbourhood area and a neighbourhood forum will come in hand in hand and therefore there needs to be clarity on the process of determination.

However, it is welcomed that the Local Planning Authority will have the flexibility to devise and adapt the minimum requirements to be set out in the regulations in order to devise our own procedures, but greater clarity should be provided on how planning powers are to be assigned, managed, enforced and if necessary removed from Neighbourhood Forums as well as Parish/Town Councils.

c) Community Right to Build organisations

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Explanation/Comment:

Concern is expressed that the community groups that are entitled to put forward Community Right to Build orders (minimum of 5 un-related individuals) may not necessarily be affiliated with, or represent a designated Neighbourhood Forum or Parish/Town council area, and conflicts may arise between what is proposed through a smaller group with an interest in a particular site and the wider local proposals through the Neighbourhood Plan. Although the use of Local Referendums and the submission for LPA approval should remove these concerns, greater clarity on what can come forward and what issues need to be addressed through a CRtB should be set out.

Clarity needs to be provided on the minimum criteria to ensure that what is built takes account of the potential impacts and constraints. It is also uncertain as to whether the regulations will provide clarity on how any conditions or S106 requirements may be dealt with and enforced and what part the Local Planning Authority will play in guiding the process and potentially being involved in monitoring and enforcement when the council won't be receiving the traditional planning fee for these schemes. How will the LPA be notified of the schemes?

Clarity is also sought on the issue of how appeals will be dealt with (by whom and within what context). What is the role of the Local Planning Authority?

d) preparing the neighbourhood plan

- | | |
|----------------------------|-------------------------------------|
| Strongly agree | <input type="checkbox"/> |
| Agree | <input checked="" type="checkbox"/> |
| Neither agree nor disagree | <input type="checkbox"/> |
| Disagree | <input type="checkbox"/> |
| Strongly disagree | <input type="checkbox"/> |

Explanation/Comment:

Guidance needs to recognise that Neighbourhood Planning is only one part of a wider toolkit for local communities to get involved in planning and that areas not producing a plan are not seen as being vulnerable to development pressures or at a disadvantage. The guidance must be clear on the requirements of the preparation, consultation and evidence needed to progress a Neighbourhood Plan in a manageable way that communities can work with. It will be essential that Local Planning Authorities work closely with communities at the beginning of the process in order to provide clarity on the statutory requirements and “general conformity issues”.

There is concern that LPA's are being asked to speedily produce up to date local plans which will provide the context to the production of Neighbourhood Plans in a time of reduced staff numbers and this could conflict with our ability to have a duty of support in providing technical advice to those communities that are expressing an interest in progressing a Neighbourhood Plan. There are serious concerns about the staff resources needed to progress and deliver the Core Strategy and Site Allocations Development Plan Document work programme priorities and being able to provide time and resources to Neighbourhood Planning in addition to the costs of the Inquiry and referenda.

To date Leeds City Council has had interest from 16 Parish/Town Councils and 4 community Groups and potentially one business led interest group wishing to prepare a Neighbourhood Plan for their areas. There is a potential that the rest of the 31 Parish/Town Councils will wish over time to prepare a Neighbourhood Plan and there are an untold number of community groups covering the rest of Leeds that may wish to form a Neighbourhood Forum.

The Council will need to establish a clear protocol and methodology setting out how we aim to be able to assist and what we can provide in way of technical assistance. This needs to manage communities expectations in a manner that does not stifle community interest or enthusiasm, but does not impact negatively on the progress of the statutory planning functions and work programme priorities.

As an example of the level of staff resources Neighbourhood Planning could involve, one of the areas, undertaking a Neighbourhood Plan in Leeds, which is already well established and under way in collecting community views have already approach the council requesting data on a number of issues, including population change (going back 50 years) and associated changes such as average house prices, social housing numbers and stock turnover; implemented planning permissions, including the total numbers of affordable housing and specialised housing (elderly) along with an update on the retail health check for the town centre. For each Neighbourhood Plan area, similar data requests are likely to require bespoke data analysis which is resource intensive and time consuming. Particularly where the request will involve the input of other directorates and sections. Whilst the authority provides a lot of data on the web we are getting more requests to provide data analysis. It is rare that the larger consultants would ask for this as they usually know how to use the data, but for smaller consultants and community groups that do not have the skills to do the analysis themselves is a real problem, furthermore we would want to avoid the risk that the information could be misinterpreted which would subsequently raise additional questions, and increase officer time spent in dealing with enquiries.

The Regulations and guidance on Neighbourhood Planning focuses on the process being community led, but there is a concern expressed in Leeds that communities on their own will not have the capacity to bring forward a Neighbourhood Plan. Similar

concerns are expressed in regard to the potential disparity between the more affluent communities who may be able to afford professional advisors and more deprived communities where the pressure to provide new homes is greatest.

Although the Government are providing grants and funding to organisations that have a key role in assisting and training community groups the skill set needed for communities to led on complex planning documents could be quite demanding and should not be underestimated. Nor should the time it takes be underestimated. Best practice in Leeds on the preparation of Village and Neighbourhood Design Statements that can take on average 2 years to adopt as supplementary planning guidance. This is without the examination and referendum requirements.

There is concern that the messages about Neighbourhood Planning are too simplistic and there needs to be greater clarity about the role of Neighbourhood Plans supporting the Government s growth agenda and not restricting development. It is understood that some of the areas that have expressed interest in preparing a Neighbourhood Plan in Leeds, did so on the mistaken understanding that they could control and restrict further housing growth and development in their neighbourhoods. There may have been concern that without a Neighbourhood Plan in place they would be left vulnerable to developers seeking to build in the Green Belt given the draft NPPF and the presumption in favour of sustainable development.

Whilst the empowerment and provision of a planning tool to enable those communities that wish to pursue a Neighbourhood Plan is broadly welcomed, Leeds has concerns that the guidance on the production of a Neighbourhood Plan is too simplistic and that the bottom-up approach advocated by Localism is actually quite constrained by the top-down conformity of the Local Plan. This needs to be made much clearer. There has also been concern expressed to date by Leeds in it's response on the draft National Planning Policy Framework that the NPPF reforms provides conflict between Localism and the governments growth agenda.

There is certainly a need to provide guidance on the interim arrangements and transition between the NPPF and the adoption of Core Strategies.

e) preparing the neighbourhood development order

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Explanation/Comment:

The regulations will need to clarify the relationship between Neighbourhood Planning and Neighbourhood development orders. Unlike Community Right to Build the inference is that only Neighbourhood Forums and Parish/Town Councils have the ability and power to formulate a Neighbourhood Development Order.

There will need to be clear procedures and governance arrangements established in Leeds to undertake this work. The Local Planning Authority will also have the right to revoke or modify an order which is welcomed but in itself will require staff resources from planners and lawyers.

Clarity needs to be provided on the minimum criteria to ensure that what is to be built has full consideration of the potential impacts and constraints. It is also uncertain as to whether the regulations will provide clarity on how any conditions or S106 requirements may be dealt with and enforced and what part the Local Planning Authority will play in guiding the process and potentially being involved in monitoring and enforcement when the council won't be receiving the traditional planning fee for these schemes.

f) preparing the Community Right to Build order

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Explanation/Comment:

Concern is expressed that the community groups that are entitled to put forward Community Right to Build orders may not necessarily be affiliated to a designated Neighbourhood Forum or Parish/Town council, and conflicts may arise between what is proposed through a smaller group interest for a particular site, than the wider local proposals through the Neighbourhood Plan. A process for dealing with these potential conflicts needs to be established.

Clarity needs to be provided on the minimum criteria to ensure that what is to be built through Community Right to Build has full consideration of the potential impacts and constraints. It is also uncertain as to whether the regulations will provide clarity on how any conditions or S106 requirements may be dealt with and enforced and what part the Local Planning Authority will play in guiding the process and potentially being involved in monitoring and enforcement when the council won't be receiving the traditional planning fee for these schemes. How will the LPA be notified of any conditions and S106 requirements?

Clarity on the issue of how appeals could be dealt should be provided. The role of the Local Planning Authority needs to be made clearer in this regard.

g) Community Right to Build disapplication of enfranchisement

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Explanation/Comment:

h) independent examination

- Strongly agree
- Agree

Neither agree nor disagree

Disagree

Strongly disagree

Explanation/Comment:

The organisation and the costs of the Neighbourhood Planning examination process will need to be covered by the Local Planning Authority and these cost are not insubstantial. The appointment of an inspector from PINS can charge over £1k/day. The normal rule is 4 days writing up time for every day of a hearing. So even for a “light-touch” hearing based on a single day the costs could come to over £5k. The CLG impact assessment suggests examination costs of £5-8k. In practice, Inspectors costs start before the examination, as they are appointed on submission to do preparatory work. If the inspector decides to hold a public hearing additional costs will arise.

It is understood that it is obligatory to appoint a PINS inspector, but it may be more appropriate to appoint a suitable person which could bring the costs down and clarity is sought on this point.

i) referendum

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Explanation/Comment:

The arrangements for referendums are not included in the draft regulations and therefore there are a number of uncertainties about this part of neighbourhood Planning.

It is interesting to note that in the debate in Lords before the enactment of the Localism Bill, Baroness Hanham appeared to be suggesting that where the Local Planning Authority agree that a Neighbourhood Plan conforms to the local plan then a referendum will not be necessary. As it is a pre-condition that neighbourhood plans are in “general conformity” this would greatly reduce the need for referenda. This discussion is not reflected in the published consultation material but it is important that clarity is provided about the status of Baroness Hanham’s comments.

j) making the plan or order

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Explanation/Comment:

k) revoking or modifying the plan

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Explanation/Comment:

The power for Local Planning Authorities to modify a plan or revoke it seems appropriate and sensible. Clarity should be provided for when this may be appropriate so that the communities understand the reasons for LPA's need to make alteration. There are issues around monitoring and enforcement that are not picked up here, as it for the LPA to make and publish the amendments, but in order to do this, monitoring will need to be undertaken of the policies in each Neighbourhood Plan. As stated early in regard to the powers of appointing a Neighbourhood Forum, there needs to be clarification on the constitutional arrangements for setting up and running a Neighbourhood Forum and how planning powers are to be assigned, managed, enforced and if necessary removed from Neighbourhood Forums. This needs to equally apply to Parish/Town Councils.

l) parish councils deciding conditions

- Strongly agree
- Agree

- Neither agree nor disagree
- Disagree
- Strongly disagree

Explanation/Comment:

Clarity needs be given on the constitutional arrangements for setting up and running a Neighbourhood Plan/ Neighbourhood Development Order/ Community Right to Build Order and how the planning powers are to be assigned, managed and enforced and if necessary removed.

It is considered that there will be considerable training needs to enable Parish Members and Neighbourhood Forums to take the lead on establishing conditions and in appropriate circumstances S106 requirements. It is not clear how Neighbourhood Forums fit within this point.

The regulations state that the Parish Council has 28 days to determine whether they will be making the decision. If they chose not to, or fail to notify the Local Planning Authority within that 28day period they will not then be entitled to make a decision and it is assumed that the decision powers falls back to the Local Planning Authority. This could add considerable delay to the determination of an application under a NDO, which is supposed to be a simplification of the process and could lead to criticism of the Local Planning Authority.

Question 2:

Our proposition is that where possible referendums should be combined with other elections that are within three months (before or after) of the date the referendum could be held. We would welcome your views on whether this should be a longer period, for example six months.

- Three months
- Six months
- A different period

Explanation/Comment:

Clearly the local costs of referendums will vary depending on the size of the area concerned and whether it can be linked to local elections. Leeds City Council agrees that for cost savings to be made it may be best to combine with local elections, but there may be concern that local communities will see the period of six months or more as an unnecessary delay in the production process of a Neighbourhood Plan and the council could be criticized for losing local momentum if the period is more than six months.

The regulations do not currently provide any detail on when a referendum should be held and it is considered unnecessary for the regulations to be specific on the timing of holding a referendum, leaving it to the Local Authority and community to decide on the most appropriate course.

Question 3:

The Bill is introducing a range of new community rights alongside neighbourhood planning – for example the Community Right to Buy and the Right to Challenge. To help communities make the most of this opportunity, we are considering what support measures could be made available. We are looking at how we could support people in communities, as well as local authorities, other public bodies, and private businesses to understand what each right can and cannot do, how they can be used together, and what further support could be made available for groups wanting to use them.

We would welcome your views on what support could usefully be provided and what form that support should take.

Explanation/Comment:

Leeds already has a strong track record of community ownership of assets and the council are starting to respond to expressions of interest which links to work already underway to make procurement and the commissioning process more accessible.

Clarity on what facilities and services communities can express an interest needs to be provided. Expressions of interest will automatically trigger complex procurement processes and it needs to be made clear that expressing an interest does not guarantee that communities can find the funding within the timescales. Leeds City Council have examples where the transfer of assets becomes a very long drawn out process with local community and political support for a community project but no funding and /or business case and in the meantime buildings deteriorate and the costs to look after the buildings are a drain on Council resources.

Community Right to Buy and the Right to Challenge will raise local communities expectations in terms of maintaining community assets and involve the Council in additional time and expense in determining the best future use for an asset. Being community requests, they do also tend to involve a level of emotion/aspiration that may not take on the reality or responsibility of taking on such an asset . This all takes time and resources to deal with.

Concern is expressed over the potential that this could lead to the fragmentation of services with some sectors of the community effectively cheery-picking parts and making it difficult for the council to deliver and run the rest. This could result in increased costs and uncertainty in regard to accountability and responsibility.

Query whether there is fairness in the approach between different sector's ability to apply and undertake this right. Some sectors will clearly need assistance.

Where private assets are involved, the owner has the right of appeal and if they incur loss the Council will have to pay compensation. This places additional financial pressure on the Council. It is also likely that the number of requests for asset transfer will increase and this will impact on the Councils capital receipt program and ability to raise revenue from the sale of buildings/land. There is the potential conflict with competing Leeds City Council priorities .I.e. should the asset be sold to raise a capital receipt rather than going to a Community use and the receipt being invested in other Council projects.

Question 4:

Do you have any other comments on the proposals?

(Please begin with relevant regulation number and continue on a separate page if necessary)

Explanation/Comment:

The Regulations seek to remove barriers and provide new tools to assist bottom-up plan making for neighbourhood and local communities but there are a number of 'barriers' in regards to the skills and experience needed. The Government should not underestimate the value being placed on the amount of volunteer time and commitment needed by communities to undertake and run these new powers.

There is inequality between those areas that can afford to undertake the new tools available to them, and there is the potential that those communities that are less affluent and do not have existing groups in place (most likely inner urban areas) are immediately at a disadvantage and there will be associated time delays whilst these areas seek the necessary funding.

Neighbourhood Planning will have clear links to Community Infrastructure Levy/S106 agreements and this needs to be made clear. It is clear in the consultation document that those communities that support new growth should see the benefits but this must be balanced against strategic infrastructure needs. The Council has provided comment on this in response to the CIL consultation.

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