



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**

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Name of organisation (if applicable):	Brighton & Hove City Council
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(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 (officers' response. Please note however, formal Cabinet Member endorsement is to be sought at the 2 February 2012 Cabinet Member Meeting [CMM]. Formal approval was to be sought at the CMM scheduled for 22 December 2011, however, the meeting needed to be cancelled so formal approval prior to submission has not been possible. Respective notification will be submitted accordingly)

(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

General Response Comments:

Key issues:

- Brighton & Hove City Council welcomes any process which increases neighbourhood engagement and helps to ensure weight is given to the collective view of a neighbourhood on the future land use /changes in their area. Indeed this council is supporting the setting up of Neighbourhood Councils (which could serve as forums) in order to help give neighbourhoods greater control in their areas. The general principle behind these new procedures is therefore welcome, however, there is significant concern over the introduction of new duties upon local authorities at a time of significant public sector austerity measures.
- In respect of local authorities : greater clarity is sought in respect of the minimum requirements that these proposals place on local authorities in order to help manage expectations and to enable appropriate consideration to the resourcing of these duties and proposals. The full resource implications of these duties should be thoroughly assessed and a clear indication of how this will be funded should be provided as soon as possible so that this can be taken into account by local authorities when considering how they are to make the necessary unprecedented cuts over the next two years. It is important that the extra costs incurred by local authorities are fully met eg printing, publicising, administering and reporting responses, holding examinations, referendums etc. The success of these proposals depend fundamentally on what resources are to be made available to facilitate these procedures and appropriate regard given to the need for trained knowledgeable staff to carry out the core work rather than assuming this can be undertaken by non professional/unskilled staff employed or volunteering on a temporary basis as and when needed. Indeed additional staff may need to be employed within local plan teams to be able to handle neighbourhood planning responsibilities.
- In respect of neighbourhoods : there is insufficient detail and clarity provided in the Regulations on how a local community will produce a robust planning document. This is a particular concern in relation to the links between the neighbourhood forums and local authorities and the need for equalities. The 'workability' of these proposals depends on how they are managed and supported by Government in order to ensure they provide the benefits envisaged. The expectations placed on neighbourhoods by the requirements

set out in the Localism Act are high if they are to be genuinely community-led. The new system does not just facilitate neighbourhoods to set out their collective vision and aspirations for their area it requires this to be done in a manner that meets planning legislation and requirements. Neighbourhood forums and/or community right to build organisations therefore have to have ready access to sufficient support to appropriately guide them on the necessary planning procedures to ensure plans and orders can be validated by local authorities. Without appropriate planning support validation will not be forthcoming which introduces the potential to damage relations between local authorities and the communities they serve and also lead to neighbourhoods disengaging with the planning system.

- A concern is raised that the Regulations for Neighbourhood Planning are being published in two to three parts (eg separated from these regulations are the powers on charges that local planning authorities can levy on development and the requirements necessary to ensure compatibility with the EU Regulations). This will lead to unnecessary complexity in understanding the Regulations covering Neighbourhood Planning and is counter to the stated aim of the government to consolidate national planning policy and Regulations.

Other issues:

- In view that this consultation relates to a process which seeks to give greater powers to local communities and neighbourhood engagement it is disappointing not all the necessary information has been presented or presented in a manner to provide clarity to the general public except those with a legal/planning background. The full proposals are unclear indeed some are contained in the Localism Act (the full content of which only became clear midway through this consultation), some are confusingly amended sections of previous Acts, some are to be contained in the emerging National Planning Policy Guidance and some are yet to be addressed/ consulted upon. The ability to consider the implications and provide a comprehensive response is considered to be compromised by the current lack of certainty the full extent of the emerging planning reforms and public sector resources. It would therefore be inappropriate to fast track these regulations until the full implications are understood.
- Whilst supported, it is considered the measures to increase Neighbourhood's to have more control over what happens in their area and to have delegated budgets should not in general replace but compliment and add to Local Authority services which benefit from economies of scale and are provided by a range of relevant professional and skilled staff who have to have regard to key strategic infrastructure requirements.

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:

- Processes that help people come together and to identify with an area and promotes a sense of place and ownership of an area are welcomed and supported. Such processes can help social integration and help to maintain and build communities.
- Whilst not explicit within these Regulations the proposal that neighbourhood areas should not overlap is supported because this should avoid differing proposals coming forward on the same piece of land. The allowance for neighbourhood planning areas to cross two or more local planning authority boundaries is also supported, indeed, there are a number of potential neighbourhood areas which lie within Brighton & Hove City Council administrative boundary and also, in part, within the planning remit of the South Downs National Park Authority.
- To avoid disputes and legal challenges it is felt Part 2 ‘Neighbourhood Areas’, 7 (1) should set very clear minimum requirements ie as a minimum the local planning authority should place on their website and put up at least one ‘site/area’ notice (see bullet point below). An onus should also be placed on the submitting body to advertise and raise awareness in the respective area that an application is with the local planning authority for a decision including all the other respective details eg name of area, how to make representation, deadline for responses.
- In view of the Code of Practice on Consultation issued by the Department of Business Enterprise and Regulatory Reform it is suggested Part 2 ‘Neighbourhood Areas’, 7 (2) c should apply a 12 weeks period in which representations are to be made.
- In view that there is currently no requirement for a ‘relevant’ body to include a planning lawyer and/or planner, the Government is strongly urged to ensure there is clear ‘plain English’ guidance notes provided which are downloadable and easily accessible from the DCLG website.
- For clarity it would be useful if it could be made clear if notifications relating to the designation of a neighbourhood area etc could be put up on lamp-posts etc by the relevant body and/or Local Authority within the area by way of publicizing such applications or whether this would be classed as flyposting. It should be made clear that if this method were to be adopted that both the relevant body and local planning authority respectively should not remove before the end of the consultation deadline and then post the deadline all should endeavour to take responsibility for removal.
- As raised above it is important that the extra costs incurred by Local Authorities are fully met in view of the current cuts in public sector resources eg publicising,

administering and reporting responses etc. In view of the changing public sector resources the lack of a specified timeframe within which applications should be decided is welcomed.

b) designating neighbourhood forums

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

Explanation/Comment:

Processes which increase neighbourhood engagement and provide the ability to ensure regard and weight is given to a collective view in respect of future land use /changes in their area is welcomed. However there is a significant difference between a process which enables neighbourhoods to set out their vision and aspirations for their area (eg Parish Plan, Village Design Statements) which could hold significant planning weight depending on the process taken, engagement etc versus a process that is required to result in a robust planning policy document to which significant planning weight is to be given.

If the Localism Act had simply introduced measures to facilitate and enable people within a neighbourhood to engage in land use considerations and to collectively set out their aspirations for their area then it would have been appropriate to keep the requirements simple and easy to meet. Whilst any plan formed by such a body could form a material planning consideration the weight to be applied would vary depending on the community engagement and the regard given to all normal planning considerations etc. The proposed arrangements for designating a Neighbourhood Forum are considered appropriate for an aspirational plan to help ensure the aspirations are based on a collective view. Such an approach provides greater flexibility in the type of plan produced and could help to keep Forum members and the neighbourhood engaged as it gives them greater freedom over what is produced. Indeed not everyone wishes to fully understand or is willing to be confined by planning legislation and regulations. It will therefore enable a voice to be given to neighbourhoods which can be interpreted as appropriate by developers and planning professionals.

However the Localism Act does not just enable neighbourhoods the ability to write a collective plan but requires such plans to be robust planning documents so that they warrant significant planning weight to be given to them. Realistically for this to be achieved the Neighbourhood Forum will need to

1. understand and address the complexities of all the various planning issues, legislation and regulations (eg wider versus local needs, pollution, traffic

- impacts, balance between population and employment, planning history of sites etc);
2. take into account the background evidence produced to support the Local Authority Local Plan and understand the respective implications for their neighbourhood;
 3. fully evidence their plan to demonstrate need, deliverability and engagement with landowners and developers etc;
 4. meet Government and European requirements in respect of equalities, sustainable appraisals, Habitat Regulations Assessments, sequential flood risk assessments etc.

On this basis further requirements should be imposed in respect of designating a Neighbourhood Forum. For example a requirement for trained planning professionals including community engagement facilitators to be part of the forum (or sufficient funding to employ on a substantial basis), legally binding code of conduct for members (to avoid discrimination, to ensure it acts in the public's interest etc), an understanding and access to GIS mapping, an understanding of both physical and demographic characteristics of their area etc. It is therefore considered either the planning weight to be attached to the Neighbourhood Plan should be made flexible or tighter controls and requirements be imposed in respect of the Neighbourhood Forum.

The regulations (or further guidance notes provided which) should set out clear guidance on what should be included in a Neighbourhood Forums written constitution. The Localism Act's requirement for the Forum to have at least 21 members is supported and could be clearer within the regulations. It is considered the regulations should require the Forum to submit the full contact details of all Forum members so that membership can be checked if necessary. There should be a requirement that the Forum must notify the local planning authority if any changes in membership arise. The Regulations should make it clear what action should be taken at the respective stages of plan preparation should membership drop below 21 members. It is also felt the regulations should set a requirement that at least 51% of the members should be resident within the respective Neighbourhood Area even for business-led forums. There should be a duty placed on the Neighbourhood Forum to engage with residents, landowners and businesses within the respective Neighbourhood Area.

The set up of Forums also need to take account of the legal issues surrounding how funding is to be provided and thus budgets managed. There are certain requirements in respect of local authorities being able to delegate budgets for example often budgets can only be delegated to elected members or specified officers rather than unelected and/or non registered charitable groups. If Neighbourhood Forums are to be directly funded by the public sector then the Forum will need a treasurer to maintain accounts etc. It should be clear what measures are in place to investigate claims of misconduct.

There should be a requirement placed on any Forum or organisation formed to notify and invite involvement from the local Councillors at an early stage and at subsequent key stages. This is considered important because Councillors are the people elected to represent their community and they play a vital role in this Country's democratic system. Indeed such a requirement should help to add to the democratic system by opening up additional avenues of communication between Councillors and the communities they represent.

In order to avoid confusion and in view of the need for continued commitment and full neighbourhood engagement etc it is considered a Neighbourhood Forum and a Community right to build organisation should be one and the same or at least sufficiently similar so that they can be one and the same. Indeed many of the requirements for a community right to build organisation would be appropriate for a Neighbourhood Forum. Brighton & Hove City Council would welcome a clause that ensures membership must be open to anyone living or working in the area however this should be subject to a specified code of conduct. This is considered necessary in the event someone should join with the intent to disrupt the process or seeks extreme discriminatory options that are not in the public interest etc so there needs to be a process for discharging members. It is unclear who will vet/audit members of a forum.

The regulations should address the method by which all complaints are to be handled (eg local planning authorities are subject to a complaints system and can be investigated by the ombudsman, officers working in a professional capacity can also be investigated by the respective professional body). Local plans are subject to High Court challenges, if this is also to be the case for Neighbourhood Plans the Regulations should require Forums to take out insurance to cover any such costs.

In view of the changing public sector resources, the lack of a specified timeframe within which applications should be decided is welcomed because it would be inappropriate for resources to be deflected from producing a Local Plan which could result in a delay in its adoption.

c) Community Right to Build organisations

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

Explanation/Comment:

Welcome the clause that ensures membership must be open to anyone living or working in the area however this should be subject to specified code of conduct. This is considered necessary in the event someone should join with the intent to disrupt the process or seeks extreme discriminatory options that are not in the public interest etc so there needs to be a process for discharging members. It is not clear who will vet/audit such organizations.

As raised above, in order to avoid confusion and in view of the need for continued commitment and full neighbourhood engagement etc it is considered a Neighbourhood Forum and a 'community right to build organization' should be sufficiently similar so that they can be one and the same.

There should be a requirement placed on any Forum or organisation formed to notify and invite involvement from the local Councillors at an early stage and at subsequent key stages. This is considered important because Councillors are the people elected to represent their community and they play a vital role in this Country's democratic system. Indeed such a requirement should help to add to the democratic system by opening up additional avenues of communication between Councillors and the communities they represent.

The Regulations should make it clear if the 'community right to build organisation' is to be separate to the Neighbourhood Forum whether they have to apply to and seek approval from the local planning authority in a similar manner or whether they are to be self approving.

d) preparing the neighbourhood plan

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

Explanation/Comment:

A neither agree or disagree response has been given because the main requirements in respect of neighbourhood planning is placed within the Localism Act 2011 and do not therefore form part of this consultation.

In view of the Code of Practice on Consultation issued by the Department of Business

Enterprise and Regulatory Reform it is suggested Part 5 'Neighbourhood development plan', 15 (a) (iii) should apply a 12 weeks period in which representations are to be made.

Whilst the Localism Act and the draft National Planning Policy Framework indicate a Neighbourhood Plan is to form a development plan document, different requirements and procedures are being proposed. It is suggested they should be similar (unless amendments are made allowing a Neighbourhood Plan to be a collective vision and aspirational plan, the planning weight of which would then depend upon the preparation process undertaken, community support etc). It is essential a Neighbourhood Plan includes a proposals map or similar to avoid confusion and disputes over site allocations and references.

In view that a neighbourhood plan is to be prepared by a Forum which may not hold any detailed knowledge about planning and yet the plan is to hold significant planning weight it is considered important for the Regulations to require the submission of a document which details all the background evidence and supporting documents that must have been taken into account when preparing the plan. The Regulations or guidance notes should help indicate what sort of background evidence and supporting documents would be relevant (this should include Government guidance, evidence compiled by the local planning authority for its local plan such as Employment Studies, Housing Needs Studies, Retail Studies etc and necessary updates etc).

It is unfortunate this consultation did not include the provisions to be proposed in respect of ensuring Neighbourhood Plans meet EU obligations. Indeed a need for a Sustainability Appraisal would dictate how a plan is prepared because it requires different options to be tested and the chosen option justified. Where a Neighbourhood Plan is seeking additional development to that included in an adopted Local Plan or where a Local Plan is considered to be out of date then the Regulations or subsequent guidance should make it clear that relevant assessments must be undertaken and submitted with the application in order to support the development allocations (or lack of them if requirements are high) eg Transport Assessment, Sustainability Appraisal, Appropriate Assessment etc because the higher level assessments undertaken to support a Local Plan are unlikely to have taken into account this additional development.

It is understood Neighbourhood Plans can be adopted in advance of a Local Plan, the Regulations should therefore make it clear whether it is for the local planning authority to decide what takes priority in respect of resourcing preparation and adoption or the Regulations should clearly set what takes priority. For example would it be appropriate for Local Planning Authorities to focus on Neighbourhood Plans rather than on preparing a Local Plan. If the production of a Neighbourhood Plan is to be less onerous, not required to follow the same processes as a Local Plan, not required to be supported with detailed background evidence etc (including housing requirements assessments) and not subject to the same test of soundness which may result in being a faster process than a Local Plan - then what is to stop Local Planning Authorities leading on Neighbourhood Plans and/or officers becoming members of Neighbourhood Forums in order to obtain authority development plan coverage

instead of preparing a Local Plan? If this is not considered acceptable then the Regulations or guidance should make clear what is acceptable. For example before any Neighbourhood Plan can be adopted should a Local Authority have an up to date Local Plan setting out, as a minimum, its strategic policies.

To assist in managing expectations it is important the regulations very clearly detail what the minimum requirements are for a local authority to fulfill the new duties. Greater clarity is required over who is responsible for the writing and printing of the proposed plan and then the printing of amendments and distribution etc of a Neighbourhood Plan (eg do the requirements on local authorities in respect of publish/publicising a proposal include printing the neighbourhood plan and are these costs to fall to local authorities. It needs to be clear whether the duty on local authorities to help draw up neighbourhood plans mean neighbourhoods can require local authorities to write a neighbourhood plan for them). The Localism Act as detailed in the guidance note issued at the same time as this consultation expects the planning authority to consider the (independent) examiner's views and decide whether to make those changes. If the decision to amend and how to proceed is taken away from the Neighbourhood it is likely to undermine the intentions of these new procedures. Indeed it appears the neighbourhood is to play no part in such amendments which they may not support leading to a waste of resources on a required subsequent referendum.

Whilst most local planning authorities are interested and keen to increase community involvement, in respect of neighbourhood planning too much appears to rest with local authorities, which undermines the suggested objective of these procedures and cannot practicably be achieved at a time when public sector resources are being cut (reducing staff numbers and thus man hours necessary for existing statutory duties). As detailed below it is likely five neighbourhood forums may wish to progress plans and orders at any one time. The resource implications for the planning authority could be significant, it is therefore essential the regulations clearly set a limit on the requirements placed upon local planning authorities.

Due to the legal planning weight to be placed on Neighbourhood Plans, neighbourhoods will need support from planners and/or planning lawyers. Without this their plans are unlikely to appropriately address all the necessary planning issues and will not therefore gain approval (eg need to assess impact of proposed development on transport, schools, historic environment, nature conservation, pollution/contamination matters etc). If a plan is not made the impact on a neighbourhood that has worked hard to bring forward a plan that they feel sets out their collective vision could therefore be significant and lead to disenchantment with the process and disengagement (eg all that effort for nothing which could lead to a 'why bother' attitude in future). It is therefore essential Neighbourhoods are given appropriate support by Government to ensure the Neighbourhood Plans are fit for purpose so that they can be considered acceptable by an independent examiner and subsequently the local planning authority. Otherwise this will place local planning authorities in an untenable position (eg having a duty to assist but having to resist offering all but the minimum required provision of professional planning support because they do not have sufficient/spare resources and yet then having to administer and staff an independent examination even if the neighbourhood plan does not form a robust appropriate planning document unlikely to be considered acceptable by an independent examiner. Indeed, unless it is explicit a Parish Council or Neighbourhood Forum is reasonable for writing and producing a neighbourhood plan action is likely to be taken against a local planning authority for failing in its duty to support when a neighbourhood plan is not made because it does not address all necessary elements.).

Indeed the current development plan/Local Plan procedures and draft National Planning Policy Framework seek to ensure neighbourhoods are engaged in the Local Plan making process thus in theory there should be little need for a Neighbourhood to produce their own plan. The main uptake of these new procedures will therefore be by Neighbourhoods who already feel a certain frustration with local authorities for failing to appropriately include their views in a Local Plan. This in part can arise due to a lack of understanding by a neighbourhood of the planning procedures and requirements and an unwillingness to accept legislation and national guidance. Instead of helping to build communication and relations between local authorities and the communities they seek to serve it could set them apart and thus harm beneficial appropriate engagement in the planning system. It is therefore important the Regulations are clear and make clear what a neighbourhood can expect from a local authority (based on what a local authority can realistically provide in view of the current public sector austerity measures where staffing levels and budgets are significantly reducing).

Whilst the draft National Planning Policy Framework states the plan must be assessed by an independent examiner before it can go to a local referendum, the current consultation does not make it clear what the responsibilities are for the neighbourhood versus local planning authority in respect of submitting a Neighbourhood Plan to an independent examiner and during an examination (eg the printing of the plan and supporting documents, the management of a hearing timetable and notification of alterations, the preparation and distribution of supporting technical papers in response to queries raised during the examination etc). Similarly it is not clear who can be an examiner and whether they can only suggest

amendments or impose amendments. The Localism Act indicates it is for the local planning authority to amend the plan following an examination and it can even decide to extend the area. However it is not clear if this is to be subject to approval from the neighbourhood forum/parish council, neither is it clear who amends, publishes and prints the plan following examination so that it's contents are clear prior to a referendum and also the procedures required in order to initiate a referendum. Nor is the adoption process clear eg is a Neighbourhood Plan to be considered adopted once the results of the referendum prove it has appropriate support or does it have to be taken before Local Authority members in order to accord with current local democratic processes, are there requirements to notify of adoption and a time period for legal challenges to be brought etc (eg as required for Local Plans/Local Development Documents).

Whilst Ministers have indicated a Local Planning Authority could adopt a Neighbourhood Plan without undertaking a referendum it is unclear how this could happen unless the Neighbourhood Plan follows the same procedures as a Local Plan. The Localism Act, Schedule 10 (to be inserted as schedule 4B to the town and country Planning Act 1990) paragraphs 12 (4) and 14 (1) clearly states a referendum must be held on the making of a neighbourhood development plan [by virtue of Schedule 9 38C (5)]. A neighbourhood plan is to be 'brought into force' by a Local Planning Authority if more than 50 per cent of people voting in the referendum support the plan (or order). It is therefore felt a Local Planning Authority would be open to challenge if a referendum is not undertaken unless this alternative method of adoption is made explicit in the regulations or guidance and the weight to be given to such plans if they have not followed Development Plan procedures (ie could this enable 'unsound' aspirational neighbourhood plans to be adopted as planning advice notes or similar and respective planning weight applied). Indeed it would be useful if such an alternative approach could be addressed in the Regulations and clear indication that local planning authorities have the ability to advise neighbourhoods that this could be an appropriate way forward at any stage of the neighbourhood planning process (eg if it becomes clear there are insufficient resources, a lack of compliance with EU obligations and national and strategic plans etc and yet the document is considered to form the communities aspirations).

The Regulations should provide clarity between the links between Part 5 and Part 9. It is not clear if a local planning authority can seek modifications where appropriate prior to submitting a plan (or order) to independent examination (eg where a plan is in general acceptable but there are sections which are not and where amendments could be undertaken to make it acceptable).

As evident even in some of the Vanguard schemes and which could be greater in future proposals, a number of neighbourhoods will wish to prepare a plan that seeks to conserve their area and potentially apply restrictions on development by way of additional design criteria and/or does not really add anything more than what the Local Plan, Conservation Appraisals, Supplementary Planning Documents already provide. Whilst the Government have indicated this is not the intent it is not explicit (the Impact Assessment indicates this is addressed by the need for neighbourhood plans to be in general conformity with strategic policies however it does not reference emerging policies and the draft National Planning Policy Framework indicated

neighbourhood plan policies take precedence over existing local plan policies). In view of the duty to support placed on local planning authorities the Regulations must make it clear neighbourhood plans cannot seek less development than an emerging or adopted local plan. The Regulations must detail how 'restrictive' plans are to be handled and considered. Otherwise it will be unclear how resources are to be managed in such cases leading to unforeseen consequences (eg challenges if support withheld or ill afforded resourcing of restrictive plans at a time of austerity).

There must be the inclusion of a clause that enables a local authority to delay consideration of a neighbourhood plan until after the adoption of its Local Plan where it is felt to be in the public's interest. For example where a neighbourhood plan focuses on conserving current land uses and/or does not add much more to the emerging Local Plan and where by focusing on the local plan will serve the neighbourhood and wider public as effectively if not more effectively. There should also be a clause to enable a local authority the ability to delay the holding of a referendum until another is being held and/or when it can be undertaken most effectively and efficiently. It could include a suggested maximum postponement period for example up to three years (in order to take account of the costs involved in holding referendums).

There is a concern that the neighbourhood forums would be able to decide that they wanted a school for their area regardless of how this fitted with the strategic planning that local authorities already undertake to ensure that there is an adequate supply of school places for all children who want one. An over supply of school places is just as much of a problem as an under supply since it can destabilise established schools and because funding follows pupils, undersubscribed schools find it very difficult to set balanced budgets. This raises a further concern that there are likely to be other strategic planning issues which could be undermined in a similar way.

The comments raised in response to (j) below are also considered to be relevant to this section.

e) preparing the neighbourhood development order

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

Explanation/Comment:

A neither agree nor disagree response has been provided because this element has

not been fully considered in detailed by Brighton & Hove City Council. However the following two comments are made:

- In view of the Code of Practice on Consultation issued by the Department of Business Enterprise and Regulatory Reform it is suggested Part 6 'Neighbourhood development orders and community right to build orders', 21 (a) (iii) should apply a 12 weeks period in which representations are to be made.
- Depending on the extent to which the Freedom of Information Act applies to these bodies it may be necessary for the consultation statement to include the full response from the consultees in order to check the presented summary is appropriate.

f) preparing the Community Right to Build order

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

Explanation/Comment:

A neither agree nor disagree response has been provided because this element has not been considered in detail by Brighton & Hove City Council.

g) Community Right to Build disapplication of enfranchisement

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

Explanation/Comment:

A neither agree nor disagree response has been provided because this element has not been considered in detailed by Brighton & Hove City Council.

h) independent examination

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

Explanation/Comment:

A neither agree or disagree response has been given because the main requirements in respect of neighbourhood planning is placed within the Localism Act 2011 and do not therefore form part of this consultation.

There is unnecessary confusion over the role local planning authorities are to play in respect of a 'decision on a proposal' and that of an independent examiner. The Localism Act indicates plans are to be submitted to local planning authorities for it to check the submitting body is a parish council or a neighbourhood forum approved by the local planning authority and it is not a repeat application subject to caveats. The administration and hosting of an independent examination then falls to the local planning authority. It is for the independent examiner to consider if the neighbourhood plan conforms with national and strategic policy, takes into account historical factors and does not breach EU obligations. The examiners report does not appear to be binding and the Localism Act enables a local planning authority to amend the plan and even refuse it subject to caveats. A local planning authority then has to hold a referendum prior to adopting a neighbourhood plan. A local planning authority has to 'make' a neighbourhood plan following a referendum (subject to caveats) unless it considers it to breach EU obligations (even though this is to be taken into account by the independent examiner). The requirements on local planning authorities in respect of the independent examination takes control away from the neighbourhood and diverts significant local planning authority resources away from other statutory duties (ie producing and reviewing local development plans). In addition to this if a neighbourhood does not need to have any regard to the costs of such examinations there is less onus on them to ensure it is a robust, fit for purpose, planning document.

As raised above it is unclear who the independent examiner will be eg a Planning Inspector or other? It is also unclear as to who will pay for the venue, examiners etc. The regulations indicate the Local Authority is to be the administrator and organiser of

the independent examination which is a process that normally requires significant resources. It is therefore unclear how this is to be undertaken in practice at a time when the public sector is facing significant cuts in resources (financial leading to staffing and assets including meeting venues etc). It is important the regulations are clear on this and the Government provides sufficient readily accessible funds to facilitate the process.

It is unclear the procedures for the independent examination and who will have the right to be heard/speak or whether it will be for the examiner to decide. It is unclear if a programme officer is to be required and who should employ or whether this could be a willing member of the Forum/community. Neither is it clear who will be responsible for printing and storing core documents that are likely to be necessary.

i) referendum

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

Explanation/Comment:

A neither agree or disagree response has been given because the main requirements in respect of neighbourhood planning is placed within the Localism Act 2011 and do not therefore form part of this consultation.

Whilst the principle of holding a referendum on Neighbourhood Plans and orders is supported, in practice they may not prove to be workable and proportionate unless the Government makes the necessary resources available at the time they are to be held. In respect of whether they prove to be proportionate it depends on whether they not only compliment but also add to the Local Plan process and whether the resultant costs are considered acceptable to the public even if a plan or order is found to have insufficient support. It is also uncertain how realistic it is to expect majority support for plans and orders because in general many people do not like change particularly if it is proposed near them.

It is hard to assess in detail until the full measures the Government are proposing are made clear, for example, some indication has been given that some or all costs could be recouped from the applicant/developer when Neighbourhood Development Order sites are built. However it is unclear how this will be achieved in practice and the impact it will have on S106/CIL contributions and thus the 'added' value is unclear.

The cost of holding a referendum is significant particularly at a time of public sector cuts. The costs of running a referendum would be reduced if it could be combined with another election, although not necessarily by half. For example, based on an initial rough assessment a referendum held in Brighton & Hove in May 2011 cost about £200,000 which is estimated would have cost about £320,000 if it had been a standalone referendum.

As raised below it is not unreasonable to assume that up to five Neighbourhood Forums could come forward at the same time wishing to progress a Plan and/or order. Due to the location of the respective referendums there would be little if any cost reductions if they are held at the same time (eg the potential cost reductions come about if held with a local or general election).

j) making the plan or order

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

Strongly disagree



Explanation/Comment:

A neither agree or disagree response has been given because the main requirements in respect of neighbourhood planning is placed within the Localism Act 2011 and do not therefore form part of this consultation.

The comments provided in relation to 'd' and 'e' above are felt to be relevant to this issue.

The general principle behind these new procedures is welcomed however there is concern over the introduction of new duties upon Local Authorities at a time of significant public sector austerity measures. Brighton & Hove has over thirty three neighbourhood characterisation areas within which local communities are likely to wish to identify smaller thus many more 'neighbourhood areas' It is not unreasonable therefore to assume that up to five neighbourhoods could come forward at the same time wishing to identify their area, set up a Forum, write a Neighbourhood Plan and investigate Neighbourhood Development Orders etc. Due to the requirement for neighbourhood plans to hold significant planning weight and to form a development plan document a high understanding of planning will be required. In practice, in order to maintain good relations, the involvement from the Local Planning Authority would have to be significant unless the Neighbourhood Forum is required to include a professional planner or funding is made available and is sufficient for it to employ a planner. This therefore needs additional resources which may not be available in view of the current public sector austerity measures.

To assist in managing expectations it is important the regulations very clearly detail what the minimum requirements are for a local authority to fulfill the new duties and that local authorities are provided with sufficient resources in order to meet these requirements. It needs to be clear who is responsible for printing hard copies of a Neighbourhood Plan and 'proposals map', who is to be given copies free of charge (eg Forum members, Ward and Parish Councillors, Local Authority planning officers and lawyers, charities and voluntary groups operating in the area upon request) and the mechanisms by which this is to be resourced.

The regulations should make it clear at what point a neighbourhood plan is to be considered made and the weight to be given to a plan that has been supported by a referendum. In addition to this it should be made clear who should prepare the case in support of a plan should a high court challenge be made. Provision for the resourcing of such matters should also be made.

The means by which a neighbourhood can appeal against a decision not to make a plan should be provided.

k) revoking or modifying the plan

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

Explanation/Comment:

A neither agree nor disagree response has been provided because this element has not been considered in detailed by Brighton & Hove City Council. However an ability to revoke or modify a plan or order is supported.

l) parish councils deciding conditions

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

Explanation/Comment:

A neither agree nor disagree response has been provided because this element has not been considered in detailed by Brighton & Hove City Council. Indeed it is felt there is insufficient clarity provided in the consultation for many to properly understand this proposal and thus appropriately consider a response (it would appear the reference to section 61K in the draft regulations is incorrect it is not clear if it should read 61L in Schedule 9 of the Localism Act 2011).

There is concern however that there is no duty for a Parish Council to employ a planner so their knowledge of planning legislation, regulations and guidance could be limited. In addition to this a potential lack of knowledge of the planning system and local policies/strategies etc could result in issues being overlooked which could be critical to a decision. For example regard to contaminated or polluted land, pollution and nuisance control, impacts of some uses on other uses (B2 uses on C2 or C3 uses), transport considerations, school places etc.

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:

Please see the comments provided to 'd' and 'i' above.

It fundamentally depends on what resources are to be made available to facilitate these procedures and the regard given to the need for trained knowledgeable staff for the core work rather than assuming this can be undertaken by staff employed on a temporary basis as and when needed.

Based on current public sector austerity measures it is considered the ability to delay the holding of a referendum should be longer than 3 months (indeed it will take time to set up and put in place). In view of the current public sector austerity measures which are leading to unprecedented reductions in resources (financial, staffing and venues) it is considered Local Authorities should have the ability to delay the holding of a referendum until another is being held and/or when it can be undertaken most effectively and efficiently. It could include a suggested maximum postponement period for example up to three years (in order to take account of the costs involved in holding referendums).

It is unclear how a referendum can be held 3 or more months before a Plan or order is complete.

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:

This element has not been considered in detailed by Brighton & Hove City Council. These are exciting and interesting proposals and something Local Planning Authorities are keen to support and/or explore. Indeed many of the proposals could effectively or best be supported by the Local Authority however it depends on the impact on already challenging workloads and the public sector austerity measures.

It is important that all key parties have access to clear 'plain english' guidance and have access to free appropriate legal advice. It is unclear what lending mechanisms will be available, how the handling of any funds directly made to neighbourhoods will be controlled/audited and how deprived neighbourhoods can be facilitated to use these measures.

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:

In the initial years at least, if not long term, it is considered the Department for Communities and Local Government (DCLG) should provide planning legal advice to Neighbourhoods and Local Authorities.

It is considered the Police should be included as a statutory consultee.

The reference to Primary Care Trust within the statutory consultee schedule will need to be amended as appropriate to take into account their abolition.

