ANNEXE A

THE LOCALISM ACT 2011

1. PLANNING

Strategic Planning

1.1 The legislation relating to Regional Strategies is repealed. The Secretary of State is empowered to revoke the existing Regional Strategies.

1.2 There is a duty to co-operate placed upon local planning authorities, County Councils and bodies to be prescribed by regulation. So far as they relate to a "Strategic Matter" those bodies must co-operate to maximise the effectiveness with which the following are undertaken:-

- the preparation of Local Development Framework documents
- activities that prepare the way for the preparation of Local Development Framework documents
- activities that support the above

"Strategic Matters" are defined as:-

(i) sustainable development or the use of land that have or would have a significant impact on at least two planning areas, in particular sustainable development of the use of land for or in connection with infrastructure that is strategic and has/would have a significant impact on at least two planning areas.

(ii) sustainable development or use of land in a two-tier area if the development/use is a County matter or has or would have a significant impact on a County matter. "County matter" means, essentially minerals or waste development.

The duty to co-operate involves in particular an obligation to consider whether Local Development Framework documents should be jointly prepared. In carrying out the duty the bodies must have regard to guidance issued by the Secretary of State. The independent examination into development plan documents will consider whether the local planning authority has complied with the duties.

1.3 Under the legislation relating to Local Development Frameworks each local planning authority is required to produce a Local Development Scheme which sets out the development plan documents and Supplementary Planning Documents it intends to produce and the timetable for their preparation. The legislative requirements relating to Local Development Schemes are relaxed so that requirements to produce such a scheme in accordance with prescribed requirements and to submit to the Secretary of State are repealed. To bring a Local Development Scheme into effect the local planning authority must resolve that the scheme is to have effect and specify the date from which it is to take effect. The scheme and up-to-date information showing compliance or non-compliance must be made available to the public.

1.4 The Act amends the process for adoption of a Development Plan Document (i.e. a document prepared by the Local Planning Authority which is to become part of the statutory Development Plan). If the person conducting the examination in public into the DPD concludes that the draft document complies with the statutory requirements, that it is sound and that the LPA has complied with the duty to co-operate then he/she **must** recommend that the DPD be adopted. If he/she cannot recommend adoption then he/she must recommend non-adoption. If the person conducting the examination in public concludes that the LPA has complied with the duty to co-operate but is unable to recommend adoption then if asked by the Local Planning Authority the Inspector must recommend modifications to the DPD such that it would comply with the statutory requirements and would be sound. The LPA may then adopt "with the main modifications" or with the main modifications and additional modifications if the additional modifications do not materially alter the draft with the main modifications. If the Inspector recommends adoption the LPA may adopt the DPD as it is or "with modifications that (taken together) do not materially affect the policies set out in it". After a DPD has been submitted to the Secretary of State for independent examination it can be withdrawn by the LPA without the consent of the examiner.

Community Infrastructure Levy ("CIL")

1.5 CIL is effectively a tax on new development (excluding changes of use) the amount of which will be calculated according to the floor space. The Council intends to implement CIL in the Borough in 2013/14. The amount of CIL payable is to be set out in a "Charging Schedule". The Act requires the LPA to use "appropriate available evidence" to inform the preparation of the charging schedule. The Secretary of State is empowered to make regulations regarding such evidence. Before CIL can be implemented an Inspector has to conduct an examination in public into the Charging Schedule. The Act amends what recommendations the Inspector may make consequent upon the examination in public. There are three possible scenarios:-

(i) if the Inspector finds that there is any respect in which the legislative provisions regarding the drafting of Charging Schedules has not been complied with **and** the failure to comply cannot be remedied by modifications then the Inspector must recommend that the draft be rejected. In that event the LPA will not be able to adopt.

(ii) if there is a respect in which the drafting requirements have not been complied with but could be remedied by modifications to the draft Charging Schedule the examiner must specify in what respect the requirements have not been met, recommend modifications sufficient and necessary to remedy the non-compliance and recommend that the draft be approved with those modifications or other modifications sufficient and necessary to remedy the non-compliance. In that event the LPA can adopt in accordance with the Inspector's recommendation or with modifications sufficient and necessary to remedy the non-compliance.

(iii) that the draft Charging Schedule be approved

1.6 As originally enacted the LPA could only use CIL funds for "Funding Infrastructure". That has now broadened to "supporting development by

funding the provision, improvement, operation or maintenance of Infrastructure".

1.7 CIL regulations may require that a proportion of CIL be passed on to someone else. The money must be used by that person for:-

- the provision, improvement, replacement, operation or maintenance of infrastructure, or
- anything else that is concerned with addressing demands that development places on an area.

It is widely anticipated that the power will be used to require local planning authorities to pass on a proportion of CIL to Parish Councils.

Neighbourhood Planning

1.8 The Act introduces Neighbourhood Development Orders ("NDOs"). An NDO is an Order which grants planning permission in a neighbourhood area for development or a class of development specified in the Order. In Parished areas the process must be initiated by the Parish Council. The NDO will apply to a "Neighbourhood Area" which is an area designated by the LPA on application by the Parish Council. The LPA must have regard to (inter alia) the desirability of designating the whole of the Parish as a neighbourhood area. Whenever an LPA designates a neighbourhood area they must consider whether they should also designate the area as a "Business Area". An area can only be designated as a Business Area if, having regard to matters prescribed by the Secretary of State, the LPA consider that the area is wholly or predominantly business in nature. There is a complex process leading to the adoption of an NDO which involves an examination in public and at least one referendum (if the neighbourhood area is also designated as a Business Area then there must be two referendums). The purpose of the examination in public is to consider whether the NDO is appropriate having regard to national policies, the making of the Order would contribute to the achievement of sustainable development and the Order is in conformity with the strategic policies contained in the development plan. An NDO cannot grant planning permission for minerals development, waste development, various major types of development for which an Environmental Impact Assessment is required and nationally significant infrastructure.

1.9 The Act also introduces "Community Right to Build Orders" ("CRTBO"). These are a particular type of Neighbourhood Development Order but they are made pursuant to a proposal made by a "Community Organisation" and grant planning permission for specified development on a specific site. A "Community Organisation" is a body corporate established for the express purpose of furthering the social, economic and environmental well being of individuals living or wanting to live in a particular area, meet the prescribed conditions (i.e. prescribed by the Secretary of State) in relation to their establishment or constitution and more than half of whose members live in the neighbourhood area. The process for a CRTBO is similar to that for an NDO but the LPA has less discretion in deciding whether or not to proceed with the CRTBO.

1.10 The final part of the neighbourhood planning jigsaw is "Neighbourhood Development Plans". A Neighbourhood Development Plan is a plan which sets out policies in relation to the development and use of land in the whole or

part of a neighbourhood area. The process for putting in place an NDP is essentially the same as for an NDO (i.e. the Parish Council prepares the proposals which are then subject to an examination in public and a referendum. Once adopted an NDP becomes part of the statutory development plan.

1.11 The Secretary of State may make regulations providing for the expenses incurred by the LPA in connection with neighbourhood planning to be recouped in whole or in part by charges payable on the commencement of development authorised by an NDO.

Development Control and Enforcement

1.12 The Act introduces requirements for an applicant for planning permission for certain types of development (to be specified in regulations but anticipated to be development of significant scale) to carry out pre-application consultations. An application for development to which the requirements apply must be preceded by publicising of the proposed application. The applicant must have regard to consultation responses in deciding whether the application made should be the same as that proposed.

1.13 The Act permits LPA's to take a tougher line in response to "retrospective" applications for Planning Permission. An LPA may decline to determine an application for planning permission which seeks planning permission for something which is already the subject of an Enforcement Notice.

1.14 In general, under existing legislation a local planning authority cannot take enforcement action against operational development more than 4 years after substantial completion of the development and neither can it take enforcement action against a change of use after ten years has expired from the change of use. In recent years there have been a couple of high profile cases where individuals have concealed the construction of dwellings (by constructing the exterior as an agricultural building or hiding them behind bales of hay!). The Courts have actually taken a surprisingly hard line against such activities and have declined to follow the literal wording of the legislation in cases where there has been outrageous deception. Nevertheless, the government has felt it appropriate to legislate for such cases and the Act therefore introduces "Planning Enforcement Orders". Such an Order effectively extends the period during which the LPA can take enforcement action. An application may be made to the Magistrates Court for a Planning Enforcement Order and the Court will make the Order if:-

- the breach of the planning control has been (to any extent) deliberately concealed, and
- the Court considers it just to make the Order having regard to all the circumstances

The application has to be made by the LPA within 6 months beginning with the date on which the LPA had knowledge of evidence of the breach of planning control. If an Order is made then the LPA has a further year (starting with 22 days from the date of the Order) in which to take enforcement action. The Act also contains provisions to extend the time limits within which a prosecution for a breach of a TPO or a breach of an advertisement control may be commenced.

1.15 The Act confers additional powers for LPA's to take action in respect of and to remove:-

- "display structures" (i.e. structures used for the display of advertisements in breach of advertisement control)
- the unauthorised display of advertisements on a surface of any building, wall, fence, structure, erection, apparatus or plant
- signs on surfaces (normally graffiti) which the LPA consider to be detrimental to the amenity of the area or offensive

1.16 Importantly, the Act allows the LPA to take into account "local finance considerations" in determining planning applications. "Local Finance Considerations" are defined as:-

- a grant or other financial assistance that has been/will be (could be) provided by a Minister (e.g. the New Homes Bonus), or
- sums that the Council has received/will receive/could receive in payment of CIL.

1.17 There has long been concern about the time which it takes to secure planning and other consents required to progress nationally significant infrastructure projects. In order to address that problem the Planning Act 2008 introduced a new regime for such projects. The regime created the Infrastructure Planning Commission which granted consent for most large scale significant infrastructure projects. The Act abolishes the Infrastructure Planning Commission. Instead the Secretary of State will approve such projects.

1.18 The duty to co-operate came into force on 15th November 2011. The amendments of existing legislation relating to Local Development Schemes, the adoption of Development Plan Documents and taking into account local finance considerations came into force on 15th January 2012. The remaining provisions will be brought into force by regulations.

2. HOUSING

2.1 The Housing Act 1996 introduced requirements relating to the "Allocation" of housing accommodation. In particular, the 1996 Act requires Local Housing Authorities to allocate in accordance with an Allocation Scheme. For these purposes "Allocation" includes nomination for a person to be a tenant of a Registered Provider. The Act provides that those requirements will only apply to an existing social housing tenant in respect of the allocation of housing accommodation if the person concerned is to be given reasonable preference (i.e. persons who are homeless, living in unsatisfactory housing conditions, who need to move on medical or welfare grounds or would suffer hardship if they did not move to a particular locality).

2.2 The Local Housing Authority is given a greater discretion as to whom they may allocate housing to ("Qualifying Persons"). Subject to regulations which may be made by the Secretary of State the LHA may decide what classes of persons are, or are not, Qualifying Persons. In preparing or modifying their allocation scheme the LHA must have regard to their current homelessness strategy and the current tenancy strategy (as to which see below).

2.3 The Act enables a Local Housing Authority to fully discharge their main homelessness duty to secure accommodation with an offer of suitable accommodation from a private landlord without requiring the applicant's agreement. Tenancies must be for a minimum fixed term of 12 months. The main homeless duty will recur, regardless whether the applicant has a priority need for accommodation, if the applicant becomes unintentionally homeless again within 2 years of accepting a private sector offer and re-applies for accommodation.

2.4 Each local housing authority is required to prepare and publish a Tenancy Strategy setting out the matters to which Registered Providers of social housing in the district are to have regard to in formulating policies relating to:-

- the kinds of tenancies they grant
- the circumstances in which they will grant a tenancy of a particular kind
- where they grant tenancies for set lengths, the length of tenancies
- the circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy

The first Tenancy Strategy is to be published within 12 months of the date on which the section comes into force (not yet specified). The LHA must have regard to the Tenancy Strategy in exercising its housing management functions. The Tenancy Strategy may be replaced or modified and must be kept available for public inspection.

2.5 Before adopting a Tenancy Strategy the Council must send a copy to every Registered Provider who provides housing in the district and give them a reasonable opportunity to comment. The LHA must also consult other persons prescribed by the Secretary of State and have regard to the current allocation scheme and homelessness strategy when preparing the Tenancy Strategy.

2.6 The Act introduces "Flexible Tenancies". A Flexible Tenancy will be for a specified length of time of not less than 2 years. When the Flexible Tenancy comes to an end the Court must order possession to be granted if no other tenancy has been granted, the Landlord has given the tenant not less than six months notice in writing that another tenancy will not be granted and the Landlord has given not less than two months notice that possession will be required. The tenant may ask the Landlord to review a decision to seek an order for possession and if that request is made then there must be a review. There is provision for Introductory and Demoted Tenancies to become Flexible Tenancies if the Landlord so provides by notice.

2.7 The Act reduces the category of persons who may qualify to succeed to a secure tenancy on the death of the existing tenant. In the absence of any express term in tenancy to the contrary the person will only be entitled to succeed to the tenancy if they occupy the dwellinghouse as their only or principal home at the time of the tenant's death and they are the tenant's spouse or civil partner. However, the provisions are not retrospective i.e. they do not apply to tenancies granted before the date on which the relevant provisions of the Act come into force.

2.8 The Act abolishes the previous system of Council housing finance. The Housing Revenue account subsidy system will end and Councils that operate

a Housing Revenue account will keep all of their rental income and use it to support their own housing stock.

2.9 The Act contains provisions designed to promote housing mobility i.e. mutual exchanges of tenancies.

2.10 The Tenant's Services Authority is abolished and its functions transferred to the Homes and Community Agency.

2.11 The Act provides for the creation of a single service for investigating complaints about the provision of social housing. Under existing legislation tenants of a Local Housing Authority have to make their complaints to the Local Government Ombudsman whereas tenants of Registered Providers make their complaints to the independent Housing Ombudsman. The Act extends the Housing Ombudsman's remit to cover local authorities in their capacity as providers or managers of housing services. The Act also changes the way in which a tenant may make a complaint about their Landlord to the Housing Ombudsman. The complaint must be referred to the Ombudsman by way of a referral from a Member of the House of Commons, a Councillor or a designated Tenant Panel. In addition the Act allows the Secretary of State to provide that Housing Ombudsman's decisions may be treated as Orders of the Court or a Tribunal (i.e. they will be legally binding).

2.12 The Act abolishes Home Information Packs.

2.13 The Act exempts buildings run by co-operatives from the requirements relating to licensing for houses in multiple occupation.

2.14 The abolition of the previous Housing Finance system (and its replacement) took effect on enactment. The abolition of HIP's will take effect on 15th January 2012. The remainder of the Act relating to housing will come into force on dates to be specified in regulations.

3. ASSETS OF COMMUNITY VALUE

3.1 The Council is required to maintain a list of land which is of community value. Land may only be included on the list in response to a "community nomination" or if permitted by regulations made by the Secretary of State. A "community nomination" is a nomination made by a Parish Council or by a voluntary or community body with a local connection.

3.2 A building or other land is only land of community value if in the opinion of the Council:-

(a) an actual current use of the building/land furthers the social well being or social interest of the local community, and

(b) it is realistic to think that there can continue to be use of a building/ land which will further (whether or not in the same way) the social well being or social interest of the local community.

OR

(a) there is a time in the recent past when an actual use of a building/ land furthered the social well being or interest of the local community, and

(b) it is realistic to think that there is a time in the next five years when there could be use of a building/land that would further (whether or not in the same way as before) the social well being or social interest of the local community

The Secretary of State is empowered to make regulations excluding types of land from being land of community land.

3.3 If a community nomination is made the Council is required to consider the nomination and must accept it if the land is land of community value. If unsuccessful, reasons must be given to the nominating body. If the land is included on the list notice must be given to the owner, the occupier, the nominator and persons specified in regulations. The owner may ask the Council to review the decision to include the land in the list. If such a request is made then there has to be a review. Regulations will make provision as to the reviews.

3.4 A list of unsuccessful community nominations must be maintained by the Council. The list must be published and a copy provided free of charge if requested. If a nomination is successful then (subject to any review) the land stays in the list of land of community value for five years.

3.5 The consequence of land being included in the list of land of community value is, essentially, that before the landowner can dispose of the land they have to fulfil certain conditions i.e a moratorium is imposed on the disposal until the conditions are fulfilled. The conditions are:-

A - the Council has been notified in writing of the owner's wish to enter into a "relevant disposal" (i.e a disposal of a freehold or a leasehold interest of 25 years or more).

B - the "interim moratorium period" (six weeks from the date on which notification was given to the Council) has ended without the Council having received a written request from any community interest group for it to be treated as a postential bidder OR the "full moratorium period" (three months from the date on which initial notice of wishing to dispose was given to the Council) has ended, and

C the "protected period" (i.e. the period of 18 months from the date on which notice was given by the owner to the Council) has not ended. (The purpose of this "protected period" is to allow the owner to complete a disposal of the land within 15 months of the full moratorium period expiring without his/her having to give a further notice to the Council triggering the whole re-run of the procedure).

3.6 If the Council does receive a notice of wish to dispose from the owner the Council must enter that notice on the register, give notice to the person who made the nomination and publicise the notice. If during the interim moratorium period (i.e. six weeks) the Council receives a written request from a community interest group that it wishes to bid the Council must pass on the request to the owner as soon as it is practicable.

3.7 Certain disposals are exempt from the requirement to give notice (i.e. the land may be disposed of without following the procedure alluded to above), namely:-

- gifts
- disposals under a Will or intestacy or by Trustees
- disposal between family members
- certain disposals where part of the land is within the list and part is not
- a business is carried on upon the land and the business is to be disposed of to the same person
- if the disposal is occasioned by a person ceasing to be a business partner
- as prescribed in regulations made by the Secretary of State

3.8 The provisions of the Act relating to Assets of Community Value will come into force on a date to be specified in regulations.

4. PRE-DETERMINATION

4.1 The concept of a decision being rendered unlawful as a consequence of the decision makers pre-determination does not arise from statute or from the Code of Conduct for Members but from case law. There have been a not insignificant number of occasions when Monitoring Officers have had to advise Members that although they do not have a Prejudicial Interest in the matter they nevertheless should not participate because of the case law around pre-determination. This has had the effect of precluding Members from participating in decision making when they have campaigned for or against a particular outcome in relation to the matter. Many Members have expressed the view that such advice effectively disenfranchises their constituents in relation to issues of significant concern for their ward. Ironically, in recent years the previous severe and perhaps unworldly stance of the Courts in relation to pre-determination in respect of local authority decision making has been significantly relaxed in case law. For the last two to three years at least the Courts have taken a more pragmatic approach and it is only in the most blatant of cases that a Member will be found to have pre-determined a decision in such a fashion as to render his or her participation in the decision unlawful. However, the government has responded to the pressure to ameliorate the law on pre-determination. Unfortunately, the wording of the section in relation to pre-determination is somewhat enigmatic. It does not abolish the rule of law that decisions are likely to be quashed if the person involved in the decision making process has pre-determined the matter. The Act stipulates that a Member is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because:-

(a) he/she had previously done anything that directly or indirectly indicated what view he/she took or would or might take in relation to the matter, and

(b) the matter was relevant to the decision.

The meaning and scope of the Act's wording has been the subject of some debate in legal circles. It is likely that in the fullness of time there will be litigation on the subject.

4.2 The provisions of the Act relating to pre-determination come into effect on 15th January 2012.