

**WRITTEN EVIDENCE SUBMITTED BY
THE NATIONAL COALITION FOR INDEPENDENT ACTION (NCIA) TO THE
HOUSE OF COMMONS COMMUNITIES AND LOCAL GOVERNMENT SELECT COMMITTEE
INQUIRY ON COMMUNITY RIGHTS**

Executive Summary:

The government's community rights package is failing to make a positive difference, not only because of its poor internal design, but because it is incongruously placed in a governance culture that comprehensively benefits the privileged centre at the expense of localities. Official advice and guidance reflect this dysfunctionality: most communities find their provisions, content and style inaccessible, perhaps deliberately so. Any improvement requires a new and better-designed contract between the centre and localities – based on mutual understanding and respect.

About the NCIA (www.independentaction.net)

We are an alliance of individuals and organisations who believe in independent voluntary and community action. We produce position papers and case studies, but our main interest is to encourage community, voluntary and support groups to pursue independent voluntary action. In particular, we:

- speak out against privatisation, cuts, the Big Society and the government's localist agenda. We gather local people's stories, negotiate with commissioners and seek ways to fund and promote democratic management styles for voluntary action.
- support people and groups who work for social justice and challenge practices that threaten independent action.

The author is Laird Ryan, an NCIA co-director: he is a Chartered Town Planner and policy analyst. Laird has worked in central, regional and local government, academia and the voluntary sector, and was previously chief policy advisor to an Elected Mayor. Currently, he leads the NCIA's Localism Watch initiative: this online resource, developed in collaboration with Open Democracy, helps grassroots activists engage with the localism agenda.

Context

The Localism Act offers a suite of new community rights: to challenge (for the delivery of services); to bid (for Assets of Community Value); and to build (local facilities and amenities). It also provides for Neighbourhood Forums to deliver statutory Neighbourhood Plans and Development Orders¹. As an encouragement to local groups, the government has made around £52m available in funding to progress these initiatives². This is operated by

¹ Gov.uk 'Giving People More Power Over What Happens in their Neighbourhood'
www.gov.uk/government/policies/giving-people-more-power-over-what-happens-in-their-neighbourhood

² My Community Rights grants page 'Looking to run or take over a local service?'
<http://mycommunityrights.org.uk/community-right-to-challenge/grants/#>

the SIB Group, through what SIB's website describes as an 'engaged investor' approach³. The government-subsidised www.mycommunityrights.org.uk, run by its franchisee, Locality, presents these offers in terms of heroic enthusiasm⁴.

Evidence of communities' awareness and use of the rights

When the new regulations came into force, there were concerns that the Right to Challenge in particular would encourage oligopolies like Serco to make expressions of interest to councils, or use compliant community and voluntary organisations as a front for 'Trojan Horse' challenges to run public assets⁵. Yet despite these incentives for local groups to take charge, few such initiatives have yet seen the light of day. Exceptions include the designation of the Ivy House pub in Nunhead as an Asset of Community Value, through the efforts of an upper-middle-class pressure group⁶, and LB Lambeth's decision in February 2014 to list the South Bank undercroft as an Asset for skaters⁷.

The DCLG, in response to a recent Freedom of Information request, contends that around 2,000 'community rights' applications been taken up across England⁸. However, around half of these do not in fact relate to the rights that are the subject of this Inquiry. They relate to areas pursuing Neighbourhood Plans, mostly at a preliminary stage. Fewer than 3% of plans have been formally adopted, and forums are difficult to establish in the big cities where most people live. Of the remainder, there have been only five Community Right to Build applications: two of these failed at Examination, and (at the time of writing) the remaining three have yet to be determined⁹.

In contrast with blandishments in My Community Rights for local groups to take up these opportunities, a trawl of the website reveals an embarrassing lack of cases where community-led initiatives have secured the earmarked funding and progressed to

³ SIB Group 'Engaged Investment' <http://www.sibgroup.org.uk/engaged-investment/> SIB are also contracted to operate the Office for Civil Society's £10m Investment and Contract Readiness Fund, enabling 'ambitious' social ventures to access new forms of investment and compete for public service contracts.

⁴ These include phrases such as "The local area is in your hands!", "You now have much more control over your community." "Take control over local services and budgets in your neighbourhood." and "Think you can do it better? Take over a local service such as education advice." <http://mycommunityrights.org.uk/>

⁵ See, for instance, Dan Sumners' blog 'The community right to challenge will open the door to private profit' 17.03.2011 <http://www.dansumners.co.uk/the-community-right-to-challenge-will-open-the-door-to-private-profit/>

⁶ About the Ivy House www.ivyhouseunhead.com/about.php

⁷ Long Live South Bank (2014) 'Lambeth upholds South Bank Undercroft as Asset of Community Value' www.llsb.com/press-release-lambeth-council-upholds-southbank-undercroft-as-asset-of-community-value/

⁸ BuzzFeed (2014) 'Literally No One Has Actually Built Any Houses Under This Government Scheme To Build More Houses' Available at: <http://www.buzzfeed.com/jonstone/coalitions-radical-new-power-to-kickstart-housebuilding-has>

⁹ LinkedIn Neighbourhood Planning Group (2014) 'Implementation Gap ... Community Right to Build?' Available at: <http://linkd.in/1tkqhln>

completion¹⁰. As expressed in the blog of a major law firm whose business focuses on public and third sector clients, they in effect constitute a ‘community right to very little at all’¹¹.

Over the past year, the NCIA has conducted interviews with community representatives across England on the local impact of outsourcing public services as part of its wider inquiry into the state of the sector. They included charity chief executives, activist groups and members of residents’ associations. We also spoke to elected councillors and officers, trade unions and a leading member of the Locality consortium.

Consultees, generally, were aware that community rights formed part of the government’s overall policy framework. Most (though not all) knew that the Localism Act existed. But few had a clear picture of what the Act contained, their related rights and responsibilities, or the potential implications for future service provision, e.g., in terms of the Right to Challenge. This was particularly true with local community groups, less than 10% of whom had heard of the new ‘rights’. Fewer still knew of, or had accessed, www.mycommunityrights.org.uk.

The politicians we consulted seemed to be taking a wait-and-see approach: neither their councils, nor their political parties, had offered them formal training in community rights. Council officers, for their part, had been tasked to “think out of the box” on new ways of funding, delivering and commissioning statutory services in anticipation of further cuts. They - and, indeed, the Locality consortium member - reported that localism had unfairly raised expectations of enhanced powers and resources among community groups: many gave examples where time and effort that could have been spent more productively by all concerned had to be devoted to resolving this confusion¹².

Why the rights are not being used - and why their use is rarely successful

A major reason is because their exercise is subject to long, complex and costly procedures, which are beyond the capacity of most community groups, and in respect of assets or powers that are too ‘niche’ for oligopolies like Serco, Capita and G4S.

¹⁰ As a telling indication of Locality’s limited success in outsourcing planning powers to local communities, My Community Rights reports that a consultancy has devised an online ‘mapping tool’ for the Fortune Green and West Hampstead Neighbourhood Forum to ‘make it easy for busy young professionals to have their say on the area’s Neighbourhood Plan’. <http://mycommunityrights.org.uk/case-studies/fortune-green-west-hampstead-neighbourhood-forum/>

¹¹ Anthony Collins Newsroom (2012) ‘Community right to very little at all’ 08.05.2012 <http://newsroom.anthonycollins.com/ebriefings/community-right-to-very-little-at-all/>

¹² Ryan, L (2014) ‘Outsourcing and the Voluntary Sector’ NCIA Voluntary Services Inquiry Paper 5 <http://www.independentaction.net/wp-content/uploads/2014/06/Outsourcing-and-the-Voluntary-Sector-final.pdf>

The Community Right to Build, which the government has trumpeted as ‘the power to grant planning permission firmly in the hands of communities’ with the added incentive of an ‘Early Bird Bonus’ for groups that ‘move quickly and get their plans in early’¹³ has palpably failed to deliver. However desirable its objectives, the measure has not been subject to a half-decent reality check.

For communities, the rigmarole of forming eligible bidding organisations, accessing funding and consultancy support, undertaking pre-feasibility and feasibility processes before even venturing into the bureaucratic minefield of commissioning, procurement and project management, renders the whole process not just unattractive, but unworkable. More than that, it has proven to be just as much uncharted territory – and a drain on scarce resources - for their local authorities.

Indeed, as those who have attempted and failed with the Community Right to Build Process now acknowledge, long-established procedures for seeking planning permission are far simpler, quicker and cheaper to negotiate.

This leads to a second reason why the rights are not being extensively used and/or their exercise has encountered difficulties. They are inextricably linked to the agenda of a government that favours centralising, private sector growth. They are being delivered by DCLG, whose key ministers are at the forefront of dismantling the public sector at every level, not – it would seem - on grounds of ergonomics or financial prudence, but ideology.

In tandem with public sector cuts, the government has radically re-shaped England’s land use planning framework – a side-effect of which has been that only a small proportion of local plans are currently in compliance with the new National Planning Policy Framework (NPPF).

These factors, taken together, place communities in an invidious position. Not only are they at greater risk of losing valued local facilities through the withdrawal of funding by cash-strapped councils, but if they seek to take them over under a community right, more problems emerge.

If a council’s local plan does not comply with the NPPF, the latter’s ‘default setting’ gives a presumption of planning permission to what it describes as ‘sustainable development’¹⁴. This nebulous term gives large developers a strong steer to accumulate land banks and

¹³ Ministerial Announcement 29.05.2012 www.gov.uk/government/news/planning-permission-powers-firmly-in-the-hands-of-communities

¹⁴ DCLG (2012) National Planning Policy Framework, p.3
www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

make applications to build in ways and in locations that frequently run counter to what established communities know to be sustainable.

With a rising land market and the privatisation of the planning profession, developers not only have access to better technical expertise than most community groups, but they can usually outbid them. This is particularly true with the complex reclamation of derelict sites. It is all but impossible to bring together effective and representative community partnerships to exercise the new rights in inner urban neighbourhoods whose residents are socially diverse, economically disadvantaged, and less 'established'. Indeed, the previous owners of the assets that would be open to such bids – whether public bodies or private undertakings – are all the more likely to have let them become irredeemably run down.

Conversely, where communities have successfully up these rights, as with the Ivy House pub and the South Bank undercroft, evidence strongly suggests that this is due to the availability of unusually high levels of funding and technical expertise among their sponsors. It therefore begs the question whether similar or better outcomes might not have been obtained using pre-existing powers and procedures.¹⁵

The NCIA's ongoing research into community rights shows that, despite our consultees' varied backgrounds, several recurring themes emerge. A widely-voiced concern is that community rights are not being promoted with the prime aim of achieving outcomes that are more community-focused, responsive, equitable or sustainable, but as an adjunct to the cuts, with voluntary and community groups seen as a quick-fix, low-cost delivery option.

Most interviewees found it impossible to see 'taking up community rights' and 'the cuts' as anything other than interchangeable terms. Although organisations in disadvantaged areas like Merseyside, South Yorkshire and the Black Country are suffering from disproportionately high council funding cuts, those in ostensibly more affluent areas like West Sussex are also losing out. Public services there are being outsourced en bloc to large 'primes' in the private and charity sectors. Across the country, then, community rights are being consistently and comprehensively trumped by market forces.

But it is not just the market. The haemorrhaging of powers to Whitehall, through such measures as recent infrastructure legislation, blows away any pretence that localities are being invited to take the driving seat. While communities now 'enjoy' the right to challenge councils to run public services, they -and their councils - have lost the right to challenge strategic planning proposals like nuclear proliferation, fracking, and HS2.

¹⁵ A further recent example is Lord Phillimore's £400,000 contribution to help buy the Bottle and Glass, a vacant village pub near Henley, which was declared an Asset of Community Value under the Localism Act. <http://www.henleystandard.co.uk/business/business.php?id=1511051>

Helpfulness of official guidance and assistance on community rights

It is clear to the NCIA that the community rights are failing because they have been poorly designed and are at best ‘Cinderella’ initiatives within a system of governance that empowers the privileged centre at the expense of localities. Our comments about official guidance and support need, therefore, to be viewed from that starting point.

There has been an historic decline in effective engagement between the governors and the governed in Britain – as clearly expressed in low election turnouts and membership of political parties. Matters, however, are not alleviated but exacerbated when politicians cite facile mantras to the effect that “local people know best about their areas, so we should let them get on with it”. But localism, as originally conceived, asks us to “think global and act local” – to learn from and support each other at all levels. Put simply, the available official guidance and support on the new community rights is not fit-for-purpose in delivering better local outcomes or better connectivity between the centre and localities.

For one thing, the government fails to communicate their package of ‘localist’ rights in a language that engages with the grassroots. Instead, it pursues a navel-gazing dialogue between politicians and their advisers, technocrats and think tanks - all too often in subscription-only publications, like *Planning* and the *MJ*, and self-congratulatory, expense-account seminars, from which communities are effectively excluded¹⁶.

Posting information on websites, while useful, is no substitute for generating and exercising the kind of grassroots activities whose true currency is based on word of mouth. Over the years, DCLG’s online presence has become an ideological mouthpiece for ministers, as its erstwhile role as a citizen-centred resource has declined. It has passed the buck for promoting community rights to the Locality-led consortium.

But the style and content of Locality’s www.mycommunityrights.org.uk website reach only the small minority of individuals and groups who already possess a high measure of organisational and technical ability. Its guidance documents bear a curious resemblance to council sub-committee agenda reports: process-driven, dry in the extreme, and all but silent on how community groups can in practice work with each other, politicians and public officials to negotiate the bureaucratic maze¹⁷.

¹⁶ For example, the non-member rate for the NALC’s Making Localism Work conference series is £216 – well beyond the means of the community groups at which the rights are supposedly aimed.

<https://www.surveymonkey.com/s/MAKINGLOCALISMWORK18SEPTEMBER2014BRISTOL>

¹⁷ Locality’s ‘Understanding the Community Right to Build’ guidance document

http://mycommunityrights.org.uk/wp-content/uploads/2012/04/LOCALITY-BUILD_UNDERSTANDING.pdf is a case in point. When the NCIA circulated it to a sample of local community leaders for comment, most found its contents unfathomable and a deterrent to pursuing further enquiries.

Although councils are required under the Localism Act to inform and support communities wishing to access the rights, their ability to do so effectively is reduced through the loss of funding and experienced staff. A trawl of English local authority web pages on neighbourhood planning and community rights reveals a significant proportion that contain formulaic information, or refer would-be clients to the DCLG or Locality websites¹⁸.

What more can be done?

The failure of community rights to make an impact is both a cause and a symptom of inequalities between the strategic centre and localities. There exists an embarrassing inconsistency between what Ministers say about community rights and their body language. This shows up in the overall policy framework in which the rights sit; how the rights are communicated to local people; and what happens when local people try to exercise them.

Firstly, there is a need to restore a culture of respect and partnership – not just between the centre and localities; but between politicians, public servants and citizens at every level. This should centre on the recognition that it is not chiefly the market that drives and defines communities – a failed philosophy that has led to the very community resources that these rights cover disappearing or in danger of so doing. And certainly, no-one should promote the rights as a solution or justification for austerity or back-door privatisation.

Secondly, there is a need for a radical re-design of official guidance and support, so that it embodies those forms of respect and partnership. It should address not just the processes, but the outcomes of community rights. Rather than talking the talk of politicians, technocrats and think tanks, the guidance needs to walk the walk, be hands-on, and address the genuine capacity and ‘what-if’ issues of real-world communities.

Thirdly, there is a need to record, monitor and review the outcomes in ways that are truly community-owned and led. The diverse geography of communities and issues across England, and the current lack of accessible and reliable advice and information, breeds confusion, isolation and a reluctance to act. That could be changed if local people thinking about exercising the rights had access to a place and a platform where they could easily and quickly meet with others, clarify, confront and challenge the barriers and achieve a sustainable resolution.

The NCIA’s Localism Watch initiative has been set up precisely to take up the baton for communities, separate the myths from the reality, and bring community rights, and localism in general, back to where they truly belong.

¹⁸ See for example, Stoke-on-Trent City Council’s Community Right to Challenge Page <http://www.stoke.gov.uk/ccm/content/business/general/procurement/community-right-to-challenge.en>