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The Levelling up and Regeneration Bill 2022

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We are in the early stages of the consideration of the Levelling Up and Regeneration (LUR) Bill. There is of course a journey ahead before what has been announced becomes law, and the detail of what will apply remains uncertain.

The Government has said that it expects that changes to planning procedures will begin to take place from 2024 - once the Bill has Royal Assent, and the associated regulations and changes to national policy are in place.

The Bill is a long one - it contains 196 provisions and 17 schedules (which set out the more detailed changes). There is a 248-page 'Explanatory Notes' document. Currently, it is subject to scrutiny in the Committee stages in the House of Commons, so it is yet to go back to the chamber of the Commons (Third Reading of the Bill) and go through the House of Lords.

The stated aims of the Bill include the following:

- The simplification of local plans ensuring they are transparent and easier to engage with.
- The consideration of new models for a new infrastructure levy.
- A number of policies and powers to enable planning to better support town centre regeneration.
- Improving democracy and engagement in planning decisions.
- Supporting environmental protection through planning.

Therefore, in this month's article on Planning, we will have brief fly through the principal changes as they apply to Planning.

The Planning White Paper

Before the LUR Bill was introduced, the Government had published and then consulted on the Planning White Paper in August 2020.

Ministers have confirmed their intention is not to bring forward a separate planning reform bill. The proposals set out in the "Planning for the Future" White Paper for all land to be placed in prescribed categories and linked to automatic 'in principle' permission for development in areas identified for development, are not being taken forward.

The LUR Bill therefore represents a wholly separate set of proposals that will affect the planning system.

Permitted Development Rights (PDR) and lawfulness

The Government is looking to tighten up the enforcement powers open to councils through the Bill. Firstly, the Bill would increase the enforcement time limit to 10 years for all types of development. The justification for this is unclear. It may be because enforcement is so poorly resourced now. Other suggested changes would make obtaining retrospective permission more expensive and difficult. Therefore, particular care must be taken when seeking to buy or regularise planning for properties in use as houses or flats that do not have planning permission, if 10 years' continuous use and occupation in Use Class C3 has to be proven.

However, despite the apparent tightening of enforcement procedures, the widespread use of PD rights continues to be encouraged by Government – with tension between what Government wants and what local authorities might allow beginning to show.

Local authorities are continuing to apply for Article 4 directions to try to limit the effect of PD rights - particularly in relation to the Class MA permitted development rights, which allows the change of use from Class E uses to residential. In order to

protect the continued use of PD rights, the Government's policy in paragraph 53 of the NPPF has become more explicit: to require in all cases, that Article 4 directions be based on "robust evidence and apply to the smallest geographical area possible". Where they relate to the change of use from non-residential to residential use, Article 4 directions are subject to a National Planning policy test of 'necessity'; i.e., they should be limited when they are:

- necessary to avoid wholly unacceptable adverse impacts, or when they are
- necessary to protect local amenities or the well-being of the area.

Strengthening National and Local Plan Policy

Where development does not proceed under PDR, but instead an application for full planning permission is needed, then a balancing exercise takes place with the LPA, by weighing the Council's Local Plan policies against other material considerations that are not a part of these policies. This 'statutory formula' forms the basis for all planning decisions on full and outline applications; section 38(6) of the Planning and Compulsory Purchase Act 2004.

The Bill proposes to amend the statutory formulation and so elevate the importance of the NPPF (National Planning Policy Framework), NPPG (National Planning Policy Guidance) and National Design Guide (& other relevant national development management policies) to planning primacy. This will mean that Nationally Described Space Standards (NDSS) are more likely to be assumed to be part of the Local Plan, such as where Local Plan policy does not make this clear.

It is also going to be more important to bring forward schemes that show that they comply with Local Plan policies and objectives as other material considerations will only be sufficient to support an application if they strongly indicate otherwise. The word 'strongly' would be inserted – making it harder to obtain planning against Local Plan or National Development Management Policies (NDMP). Where the Local Plan is outdated and in conflict with the NDMP (e.g. NPPF or NPPG), then the NDMP has primacy over the Local Plan where there is any conflict between the two.

This national set of policies would shorten the length of local plans at least but appears to leave little scope for local variations. The idea is to have one local plan, produced in 30 months (a hangover from the old White Paper), and perhaps a set of independently examined supplementary plans (and no SPDs). We are still going to be left with neighbourhood plans, and if the Bill has its way, there will be simpler neighbourhood planning documents for the LPA to have to consider called a "neighbourhood priorities statement" that set out to identify the neighbourhood's key priorities. There are currently no transitional provisions set out in the Bill, so it is not clear how we will move from one way of doing things to another, or when and over what time.

More say for local residents

The Bill aims to introduce increased powers for Neighbourhood Plans (NP) and greater power to the local community to affect future development delivery. The new NPs will set out the following information, all of which will form a part of the Local Plan and have the same primacy in development considerations:

a. Allocation of sites for development - what, where, how much, timescale etc.
b. Details of infrastructure and affordable housing requirements.
c. Greater weight given to the importance of helping to mitigate and address climate change through development.

The new NPs cannot reduce the amount of housing development proposed in the local area or seek to withdraw support for sites already allocated in the development plan

Therefore, as noted above, if seeking to acquire sites and add value through planning permission:

1. Does it have planning permission already?
2. If this expired, then how long ago and have Local Plan and NDMPs changed in the meantime?
3. You need to consider the impact of Local Plan, NDMPs and Neighbourhood Plans or Priorities Statement before seeking to renew an old consent or revise it.
4. Consider the impact of emerging draft Local Plan policies and how close they are to adoption when making an application.

To add to these changes to Neighbourhood Plans, local residents will be able to promote their own development proposals through "Street Votes". This requires separate secondary legislation, and residents in a street can propose a scheme on their street and vote in favour of it. It does not apply to situations where the same residents seek to vote against other people's schemes, in their street or elsewhere. It is not clear what conditions are required to be met or how much weight will be given to the vote over Planning Committee / officers. Every LPA will need to produce its own design requirements that should be met for planning permission for development to be granted. This will be part of the local plan or produced as a new supplementary plan document.

A new Infrastructure Levy

The Bill also sets out a provision for a new "Infrastructure Levy" (IL), to replace ▶

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CIL. The express intention is to charge a rate based on the uplift in land value, as a percentage of gross development value - rather than a rate being charged, like CIL, on the increase in floorspace. The levy will be charged at a later stage, on the value of property when it is sold. It will only apply above a minimum threshold. There will be provision for payment of IL to be made 'in-kind' rather than in money, for instance through the delivery of infrastructure.

The rates must consider economic viability, economic effects, the development plan, provision of infrastructure, any other matter affecting the value of land, the infrastructure delivery strategy, admin expenses, other funding etc. There will also be a new requirement for an "Infrastructure Delivery Strategy", which will be subject to "independent examination" as part of CIL Charging Schedules or Local Plans.

There is some doubt that it will ever happen, as apparently the government will "introduce the Levy through a 'test & learn' approach...it will be rolled out nationally over several years". It does mean that sites permitted before the introduction of the new Levy will continue to be subject to their current CIL & S106 requirements. So, we could have three systems operating in parallel: S106, CIL, IL!

'Biodiversity net gain'

The provisions on 'Biodiversity Net Gain' for individual developments are on their way - if all goes to plan. On 11 January 2022, Defra launched its consultation on the Biodiversity Net Gain Regulations and Implementation and sought views on the practical implementation and details of delivering a biodiversity net gain. The consultation is now closed.

Currently, the requirement can be found in some local plans. It is a matter of NPPF policy that local plans should "identify and pursue opportunities for securing measurable net gains for biodiversity" (NPPF paragraph 179) and that "Planning policies and decisions should contribute to and enhance the natural and local environment by:…(d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures." (NPPF paragraph 174). There are no targets in the NPPF.

The mandatory requirement under the Act for new developments to provide a 10% biodiversity net gain is due to come into force in 2023. Permissions that are granted will be made subject to a new general pre-commencement condition, requiring a biodiversity gain plan to be approved. The biodiversity net gain plan should include an assessment of the value of the affected natural habitats pre- and post-development. It will apply to all planning permissions in England, with the exception mainly of householders and change of use applications (by reference to the fact that they are granted under a development order. There is no exemption for brownfield sites, despite early indications that there might be. PIN