

Appendix A - Summary of key planning points arising from the Levelling Up and Regeneration Bill

General Planning

Digital transformation of planning services

The Bill sets out measures to increase the use of high-quality data and digital services in the planning process - including powers to require compliance with data standards and make planning data publicly available through an open licence.

The Bill also includes a new power to prescribe the use of specific types of planning data software and require that electronic planning applications comply with “particular technical standards or specifications”.

This section of the Bill is highly technical and further information around this will need to be forthcoming to enable authorities to properly understand any implications and how this will be managed at the local level.

Environmental regulations

The new legislation builds on targets set by the Environment Act, with improvements to the process used to assess the potential environmental effects of relevant plans and major projects, through a requirement to prepare ‘environmental outcomes reports’. The reports are intended to replace the existing EU ‘strategic environmental assessments’ and ‘environmental impact assessments’ and will see relevant plans and projects measured against environmental outcomes set by ministers. A consultation will be published on the proposals for the new system.

Infrastructure funding

The Bill introduces a new national infrastructure levy where locally produced ‘infrastructure delivery strategies’ will determine where and how infrastructure spending is allocated. This new approach will remove the CIL process, outside of London and Wales and the levy will replace much of the section 106 (s106) payments system. The new levy will be charged on the value of property when it is sold and applied above an, as-yet, undefined minimum threshold. It will be calculated as a percentage of gross development value rather than based on floorspace. The government claim there will also be a process to require developers to deliver some forms of infrastructure that are integral to the design and delivery of a site, although question is raised as to why this is any different to the responsibilities that should fall to developers already.

The bill also places a new duty on local authorities to prepare infrastructure delivery strategies to outline how they intend to spend the levy.

Planning Policy

Local and Supplementary Plans

Under the proposed legislation, each Local Planning Authority would be required to prepare one Local Plan, with the content limited to locally specific matters such as allocating land for development, detailing required infrastructure and setting out principles of good design. It is also suggested that Local Plans would be given more weight when decisions on applications are being made. The change will mean that there must be strong reasons to override a local plan.

The government propose to support Local Plans at the national level with a common framework of National Development Management Policies covering issues that apply across most areas and will carry the same weight as local plans. However, in the event of conflict between the development plan and a suite of new national development management policies exists, the latter will have primacy. This could suggest a potential move back to national Planning Policy Statements (PPS), but further information is needed. Generally, many changes in the Bill afford the Secretary of State significant power to shape future planning policy which is likely to be increasingly set nationally, and the Draft Bill contains no limit on the scope or extent of national policy detail.

The Bill also proposes that Supplementary Plans would replace supplementary planning documents (SPD) that councils are able to produce currently, with the new version afforded more weight than its predecessor. However, there are resource implications to this as they would need to be examined, before being adopted, which is not currently the case. Further information on this needs to be made available in order to understand the full extent of this proposal.

Duty to Cooperate

The Duty to Cooperate would be repealed under the new legislation. It would be replaced with a more 'high-level' approach, which might include standard steps which each authority needs to take in their plan-making. No information is currently available of if and how cooperation will need to be demonstrated.

Assistance from public bodies/Infrastructure providers

The Bill introduces a duty which places requirement on public bodies, such as National Highways and other infrastructure bodies, to assist planning authorities in their plan-making. It is emphatic that the public body must do everything it can to help support plan-making so that documents are not held up due to the lack of, or limited involvement of those bodies, which is often so essential.

For the Council, while National Highways have engaged in the Council's plan-making to date, more significant input at the plan preparation stage could have negated a significant amount of the post hearing work that has been necessary. Any such introduction is welcomed but bodies will need to be properly staffed if it is to be successful.

Intervention and Local Plan commissioners

The government believe that the Bill will speed up the plan-making process and will expect plans to be prepared and adopted within 30 months of commencement or implementation of the Bill where no up to date Plan is in place. Plans will also only be able to be withdrawn by the Secretary of State, or Planning Inspector on their behalf, taking a more centralised approach to Local Plan progress and removing the ability for the Local Authority to take that decision, themselves.

In addition, the Bill proposes to introduce Local Plan commissioners to intervene with authorities who are not making expected progress etc. All costs relating to any such intervention, would be recouped by the Secretary of State from the Local Planning Authority. It is unclear from this, however, whether commissioners will also be Planning Inspectors or if additional resources will be found at the national level.

In the past, the threat of and mechanisms for interventions have not been shown to have had particular success or been heavily imposed on those authorities which have drawn such attention.

Green Belt

Policies on issues such as green belt and general heritage protection, will be set out nationally to assist the speed of plan-making through the national development management policies. This suite of policies will be subject to a full and public consultation, but no dates have been specified.

It is anticipated that the protection for the green belt will be maintained.

Design Codes

The Bill intends to strengthen the role of the 'national model design code', to ensure that locally informed and clear design standards are in place in all parts of the country. It includes a provision that would require every local planning authority to produce a design code for its area and which will have full weight in making decisions on development.

It is intended that the area-wide codes will act as a framework, for which subsequent detailed design codes can come forward, prepared for specific areas or sites and led either by the local planning authority, neighbourhood planning groups or by developers as part of planning applications. This work is proposed to be mandatory for authorities and would need to be factored into future budgets and work planning. Like many of the proposals set out in the Bill, questions regarding capacity, resourcing and skill levels are raised.

Neighbourhood Planning

The bill seeks to introduce Neighbourhood Priorities Statements, suggested by government as a neighbourhood planning tool which can provide communities with a simpler way to set out the community's key priorities and preferences for their local areas. These would need to be taken into account, where relevant, when preparing their Local Plan. It is indicated that more detail regarding what communities can address in their neighbourhood plans and amend the 'basic conditions', but it is unclear what priority statements should or should not include and whether they will need to be supported by evidence.

Housing land supply

As a measure to speed up plan-making and to help stem speculative development and 'planning by appeal', the Bill would result in amendments to the NPPF which remove the current requirement for a rolling five-year supply of housing land, where the local plan is up to date (i.e. for the first five years of the plan).

There is no information, however, as to how housing need will be determined, or if there will be a shift to move higher numbers to the more northern areas of the County, to accord with the approach to levelling up. As one of the most controversial aspects of the Planning for the Future white paper, it is disappointing that this has not been addressed.

Development Management

Fees and capacity

The Bill proposes a number of changes to the DM processes including the increase of planning fees for major and minor applications to be increased by 35% and 25% respectively, subject to consultation. This is intended to assist in improving capacity within planning departments. There is also the intention to work with sector experts to develop a planning skills strategy for local planning authorities to further address the issues with insufficient planning professionals that exists across the country.

Commencement notices

There are attempts to influence market reform by introducing new commencement notices which will be required when a scheme with planning permission starts on site, addressing perceptions of 'land banking' and slow build out by larger developers. While 'land-banking' is not a particular issue for the District, anything which holds developers and applicants to account in terms of delivering schemes nationally, should be welcomed.

Pre-application engagement

A further positive step set out is that pre-application engagement with communities would be required before a planning application is submitted for specified forms of development. This would hopefully mitigate against a number of detailed issues that often extend the planning application process, if they can be discussed at earlier stages.

Street Votes

The Bill includes new 'street vote' powers, which would allow residents on a street to bring forward proposals to extend or redevelop their properties in line with their design preferences.

Where prescribed development rules and other statutory requirements are met, the proposals would then be put to a referendum of residents on the street, to determine if they should be given planning permission.

Of all the proposals in the Bill, this is one of the most controversial and there is no information about how such a 'voting' process would be governed, or how any negative impact on neighbourly relations, would be mitigated. There are also concerns around the resourcing implications of this.

The role of material planning considerations and policy has always at the heart of planning decisions and the ability for Council's to take an objective position. The subjective nature of personal views could undermine this process and there is much uncertainty around the costs vs benefits of such an approach.

Enforcement

Period for action

The government state that in enforcement terms, the bill strengthens the powers and interventions for planning authorities when dealing with those who seek do not abide by planning rules and processes. One such way the Bill seeks to change this is by amending the operational development period of a development within which enforcement action can take place. Currently the period for taking enforcement action is four years. Should the Bill be enacted as presented, this would increase to ten years in all cases.

Warning and stop notices

In addition, there would also be an introduction of enforcement warning notices. These could be issued where it appears to the LPA that there has been a breach of planning control, and there is a reasonable prospect that, if an application for planning permission in respect of the development concerned were made, planning permission would be granted. It is assumed that the governments reasoning for this is the be more pro-active in enforcement matters, avoiding avoidable and more straightforward cases, from escalating.

It is also proposed that the durations of temporary stop notices will be extended from 28 to 56 days. Such an approach would allow the local authority more flexibility and opportunity to progress the enforcement case and should be welcomed.

Financial penalties

Financial penalties to dissuade unlawful behaviour are also addressed with increased fines associated with certain planning breaches and double fees for retrospective applications.

Appeals against notices

Also, the scope for appeals against enforcement notices will be tightened so that there is only one opportunity to obtain planning permission retrospectively.

All of these elements have a positive element to them but are likely to increase pressures on Council resources.

What is missing from the draft Bill?

There are no new climate measures in the Draft Bill, either in relation to the Government's roadmap to net zero or in terms of planning measures to respond or adapt to dangerous climate change.