

Insights

LEVELLING UP BILL: MAJOR CHANGES TO LOCAL PLANS

May 26, 2022

SUMMARY

The Levelling Up and Regeneration Bill introduces some fundamental changes to the English planning system particularly for local plans. In the first of three Insights on the planning changes in this Bill, we examine the proposed changes to local plans and whether they have the potential to improve developer and investor confidence in the planning system.

The Levelling Up and Regeneration Bill was introduced to Parliament in May 2022 (accompanied by a policy paper) ostensibly to support and legislate for elements of the government's levelling up agenda, but it also represents the culmination of the government's planning reform ambitions first set out in the Planning for the Future White Paper in August 2020.

Whilst the changes to the planning system introduced by the Bill will not deliver the government's ambition for 'radical' change or create a 'whole new planning system', elements of the original reform proposals live on and it is nonetheless extremely important as it will fundamentally change the English planning system.

This is particularly the case for local plans which we examine in this Insight, the first of three in BCLP's series on the planning changes in the Bill, with the second and third in the series examining the new infrastructure levy and the new environmental assessment framework.

MAJOR CHANGES

Development plans are central to the operation of the planning system and planning applications must be determined in line with them unless material considerations indicate otherwise. The Bill introduces some major changes to the suite of documents that make up development plan documents, adds a new layer of national planning policy in the form of the National Development Management Policy ("NDMP") and changes the scope of material considerations.

SHIFT OF POWER TO CENTRAL GOVERNMENT

The proposed changes to local plans are important because they mark a significant shift towards greater central government control in planning and will lessen local authorities' discretion in decision making in four key ways:

- the introduction of the new NDMP has no fixed limits on its scope, allowing central government more control over a wide range of policy matters;
- an amendment to s38 of the Planning and Compulsory Purchase Act 2004 ("PCPA") gives the NDMP primacy in the event of any conflict with local development plans;
- the bar is raised as to what amounts to material considerations that can be taken into account by decision makers in order to justify a departure from a development plan if there is a conflict which will reduce local authorities' discretion in decision making;
- an increased number of documents in the suite of development plan documents allows more scope for central government intervention in the examination process. Although rarely exercised, the Secretary of State has powers, where justified, to become involved in the examination of local plan documents and to recommend changes and exert influence.

DEVELOPMENT PLANS

Changes proposed to development plans means they will comprise:

- a much shorter Local Plan limited to locally specific policies including a local design code (unless separately contained in a Supplementary Plan);
- a Policies Map showing site allocations and the geographic application of policies and designations;
- a Neighbourhood Plan (with some potentially significant modifications);
- a Spatial Development Strategy (optional);
- Supplementary Plans (if made).

Development plan documents will still be subject to public consultation and examination but they cannot be inconsistent with or repeat the NDMP. It is intended they are prepared faster with a suggestion (in the accompanying policy document) that new local plans take 30 months to produce, enabled by some procedural amendments, much of the detail for which is deferred to secondary legislation. Importantly the documents in this list will carry the same statutory weight in decision making as local plans, but they will be secondary to the NDMP if there is a conflict.

NATIONAL DEVELOPMENT MANAGEMENT POLICY

The NDMP will be a new layer of national planning policy consisting of policies (“however expressed”) that apply in most areas to the development or use of land (eg general heritage protection). They will be designated by a Secretary of State direction after a public consultation, but not necessarily after an independent examination.

The NPPF will be re-focussed so it contains policies on plan making rather than decision taking, with many existing NPPF policies transferred to the NDMP.

DEPARTURES FROM LOCAL PLANS WILL BE HARDER TO JUSTIFY

A proposed amendment to s38 PCPA raises the importance of development management policies and changes how material considerations are to be dealt with in the context of conflicts between the development plan and the NDMP, potentially making departures from these documents harder to justify.

CHANGES TO SCOPE OF MATERIAL CONSIDERATIONS

The current statutory requirement in s38(6) PCPA is for planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

However, the Bill will amend this test so that determinations must be made in accordance with the development plan **and any national development management policies**, unless material considerations **“strongly indicate otherwise”** adding that national development management policy has primacy in any conflict with local development plans.

In effect this will mean the NDMP will always trump local development plans and, in raising the bar as to what material considerations planning authorities can take into account, they will have less discretion to grant planning permission when there is a conflict. Schemes often do not fit squarely within local plan policies so this change could be a problem if it means some of the nuances and range of considerations that are currently weighed in the planning balance are lost.

Whether a material consideration will be “strong” enough justify a departure from a local plan or NDMP will be a matter of planning judgement but this change will no doubt open a new avenue for dispute. Bearing in mind that what constitutes a ‘material consideration’ is a heavily litigated area, we expect introduction of this new test will follow suit.

NEW PLANNING TOOLS

Supplementary Plans

Introduction of Supplementary Plans could be a valuable new planning tool for large schemes where development opportunities arise after adoption of a local plan. The option for a faster route for planning authorities to supplement local plans will be useful if a local plan doesn’t already provide a robust planning framework for a development opportunity, particularly one that is reliant

on compulsory purchase. The statutory weight afforded to these plans is what will make them more valuable than the current supplementary planning documents they replace and the fact that they will be examined more quickly by written representations.

Spatial Development Strategies

Cross-boundary strategic planning is a problematic area in planning. Optional Spatial Development Strategies are proposed in an attempt to improve strategic decision making. The duty to co-operate is removed, and replaced with a requirement for key stakeholders (prescribed public bodies) who influence the delivery and planning of infrastructure to do everything reasonably required by the plan-making authorities to assist the plan-making process. However, reaching cross-boundary consensus is likely to remain a challenge for strategic issues, and the proposed changes do not address this.

SUMMARY

The changes outlined above are significant. On the one hand they may improve developer and investor confidence in the planning system as they bring clarity and will reduce debate around the relevance and weight of local planning policies that are out of date or inconsistent with national policy and if the making of local plans is sped up this will be welcomed. However, a more prescriptive system with less discretion for local decision makers to accommodate the nuances and range of considerations weighed in the balance in certain cases could disadvantage many proposed schemes that don't fit neatly within a local plan.

With echoes of the more centralised planning system of the past, when decision making was guided by a wide range of national planning policy statements and planning policy guidance, but abolished in 2012 with the introduction of the NPPF, are these changes simply re-winding the clock?

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