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LEVELLING UP AND REGENERATION ACT 2023: SUMMARY OF PLANNING REFORMS

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SUMMARY

The Levelling-up and Regeneration Act 2023 was given Royal Assent on 26 October 2023. It introduces some wide-ranging reforms to the planning system which we summarise in this Insight. However, most of the changes will not come into force immediately as they are subject to associated regulations and changes to national policy.

The overarching objective of the Levelling-up and Regeneration Act 2023 (LuRA) is to reduce geographic disparities across the UK through changes to existing local government, planning, and compulsory purchase legislation. In this Insight we provide our initial thoughts on some of the principal planning changes which the LuRA introduces to development plans, heritage planning, street development orders, s73B amendments, commencement notices, enforcement and developer contributions, but we do not cover the e-planning provisions.

DEVELOPMENT PLANS

Changes to the Development Plan regime introduce a new system and vocabulary for planning policy and the development plan. Two main points of interest are:

- a return to the days of regional spatial planning with the introduction of “spatial development strategies” for the Mayor of London (i.e. the London Plan), combined authorities and two or more authorities (not in London or combined authority areas); and
- the elevation of more detailed supplementary policies into “supplementary plans” as part of the development plan.

NATIONAL DEVELOPMENT MANAGEMENT POLICY

Perhaps of greater significance is the introduction of "national development management policy" (NDMP) as statutory policy which, together with the development plan, forms the policy standard against which planning applications must be determined. Perhaps this is a move towards a system more similar to the National Policy Statements within the infrastructure planning regime.

It should be noted that for development proposals not in accordance with the development plan and NDMPs there must now exist material considerations **strongly** indicating otherwise, so there is an even greater presumption against development that is not in accordance with policy.

HERITAGE PLANNING

In the area of heritage planning, LuRA introduces to the Town and Country Planning Act 1990 (TCPA) a new duty to have special regard to the desirability of preserving or enhancing certain specified heritage assets for plan-making and decision-taking. Interestingly, there is also a more general expansion to the duty of decision-takers when it comes to heritage assets from the desirability of preserving to the desirability of preserving **or enhancing**. This may have the effect of encouraging more creative ways to involve heritage assets in development or it may create an additional hurdle to overcome i.e. by requiring a subjective betterment to the heritage context.

There is also a new enforcement power in the creation of an option to serve temporary stop notices for listed buildings. Similar to the powers that have long been available for development under the TCPA, this appears a logical and overdue addition to a local planning authority's armoury. Of course, whether it will be used more commonly than under the TCPA will have to be seen or whether the compensation provisions would have a similar deterring effect in that regard.

STREET DEVELOPMENT ORDERS

Street development orders are a new concept under LuRA. These follow a similar principle to existing local development orders in the sense that they allow for specified classes of development to enjoy permission, without needing a separate planning permission, on terms. The difference is that the creation of street development orders will be driven by local residents much in the same way as neighbourhood development orders albeit in an even more localised fashion. While sounding pro-development in principle, we will wait to see if a local-level order that facilitates development will be frequently utilised. The precedent of neighbourhood development orders might indicate a reluctance to use such powers.

SECTION 73B MATERIAL VARIATIONS TO PLANNING PERMISSIONS

In a response to fairly recent case law limiting how one might deploy a "section 73 variation" to vary development together with the scope of non-material amendments under section 96A being so variable from one local planning authority to the next, a statutory provision allowing for Section 73B material variations in planning permissions is being introduced. This will plug the gap between

wholly new planning permissions and what are often termed “minor material amendments” under section 73 of the TCPA.

As long as there is a parent planning permission to compare the application to (albeit recognising there might have since been s73 variations) this allows for more material changes provided its effect will not be “substantially different from that of the existing permission”. This is a new formulation of words to accompany non-material and minor material, which will no doubt occupy the Planning Court in due course. One advantage to this route to consent is that, similar to section 73, it narrows the basis on which the proposal is considered for determination.

COMMENCEMENT NOTICES

Commencement notices are a new obligatory step for a developer that, again, seems overdue. It borrows from mechanisms long used in section 106 planning obligations and more recently the Community Infrastructure Levy (CIL) process. This will enable local planning authorities to coordinate CIL compliance and planning condition discharge status for development, subject to resourcing. Take care to note though that the role of completion notices is renewed and re-emphasised in LuRA. A further innovation in development management is the mandatory condition to be imposed on planning permissions requiring annual development progress reports to be submitted by developers**.** Given the potential administrative burden on local planning authorities who will have to receive these reports, one assumes their realistic use will be limited to circumstances of alleged breaches or slow progress.

ENFORCEMENT

One significant change in the planning enforcement regime is the abolition of the four-year rule for breaches of planning control in England. This means that, in order for a breach of planning control to become lawful, the ten-year rule will apply in all cases. Enforcement warning notices are a new and sensible discretionary measure as a pre-step before enforcement proceedings in those circumstances where a planning application is encouraged to be submitted to avoid the need to take other, perhaps more interventionist, enforcement action. LuRA also legislates for a prohibition on appeals against enforcement action where that action has followed the submission of a planning application relating to the same issue.

INFRASTRUCTURE LEVY

One other, much heralded and consulted upon change is to reduce the geographic scope in England of CIL to London and to replace it elsewhere with a new Infrastructure Levy. At first blush, one may wonder what the difference is between the new Infrastructure Levy and its forerunner. Both are a levy on development with rates described locally in a charging schedule and both will use the revenue to fund infrastructure. While the detail will be in regulation, and so other differences will no doubt become apparent in due course, two points to note in particular are that local authorities are

obligated to impose the Infrastructure Levy (there are still authorities across England that have chosen not to pursue CIL) and there appears to be more explicit flexibility to allocate funds to third parties to deliver infrastructure. A tentative and optimistic read of LuRA appears to confirm that initial widespread concerns in consultation about a rigid, centralised rate-setting methodology have been dispensed with. Whether this is the magic key to combine a fair land value capture mechanism with effective delivery of infrastructure is to be seen. One of the common criticisms of CIL was that the income was not used effectively or consistently enough to fund locally needed infrastructure.

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