

Report to: Strategic Planning Committee



Date of Meeting 7 June 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Levelling Up and Regeneration Bill – Planning Implications

Report summary:

This report is intended to summarise the key planning reforms proposed in the new Levelling Up and Regeneration Bill which had its first reading before parliament on the 11th May 2022. The report intends to highlight the key issues that may impact on production of the new Local Plan as an on-going effort to manage the risks of progressing a new Local Plan in a time of such uncertainty with regard to planning reform.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

Strategic Planning Committee are asked to note the summary of the proposals contained within the Levelling Up and Regeneration Bill and officer's commentary.

Reason for recommendation:

To ensure that Members are aware of the proposed changes to the planning system through the Levelling Up and Regeneration Bill and the potential impacts on strategic planning in East Devon.

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Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk;

Links to background information Levelling Up and Regeneration Bill - [Levelling-up and Regeneration Bill - Parliamentary Bills - UK Parliament](#); Levelling Up and Regeneration Bill summary and further information - [Levelling Up and Regeneration: further information - GOV.UK \(www.gov.uk\)](#)

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
 - A greener East Devon
 - A resilient economy
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Background

The government consulted on a Planning White Paper in August 2020 which included a number of potentially significant reforms to the planning system. A paper summarising the proposals and the Council's responses to the consultation questions can be found at: [Planning White Paper.pdf \(eastdevon.gov.uk\)](#). This was followed by the Levelling Up White Paper of earlier this year which can be found at: [Levelling Up the United Kingdom - GOV.UK \(www.gov.uk\)](#). It is understood that the governments intentions is to take forward measures to reform the planning system and the levelling up agenda together through the new Levelling Up and Regeneration Bill.

Levelling Up and Regeneration Bill

The bill covers a broad range of subjects, however this report will focus on the proposed planning reforms and their likely impacts. A document entitled "Levelling Up and Regeneration Bill – Further Information" summarises the aims of the proposed planning reforms as follows:

“Improving the planning process, so that it gives local communities control over what is built, where it is built, and what it looks like, and so creates an incentive to welcome development provided it meets the standards which are set. The Bill includes powers to support our approach to achieving this, which is through reforms to:

- deliver high quality design and **beautiful places**, and protect our heritage
- enable the right **infrastructure** to come forward where it is needed
- enhance **local democracy** and engagement
- foster better **environmental outcomes**
- allow **neighbourhoods** to shape their surroundings, as this is where the impact of planning is most immediately felt”

Taking each of the main sections of the bill the proposals can be summarised as follows. In each case a brief commentary on the impacts of these proposals on EDDC are noted focusing on the potential risks to local plan production.

A genuinely plan led system

“Getting simple, meaningful local plans in place faster that give more certainty to communities that the right homes will be built in the right places”.

- The bill seeks to strengthen the weight to be attributed to the development plan in decision making so that there must be “strong reasons to override the plan” rather than the current

position whereby decisions should be made in accordance with the development plan unless other material considerations suggest otherwise.

- The bill takes forward the idea of having nationally set development management policies that was first put forward in the Planning White Paper. These will carry the same weight as policies in development plans but it is suggested that they will deliver consistency and make plans easier to produce and quicker to navigate.
- It is proposed to repeal the duty to co-operate and replace this with a more flexible alignment test that would be set out in national policy.
- New Local Plan Commissioners would be introduced to support local plan production and in some cases take over plan making if local planning authorities fail to meet their statutory duties. The intention here is to increase the number of authorities with up-to-date plans (currently only 39%).
- Retain opportunities for communities and interested parties to influence and comment on emerging plans but with greater use of digital technology allowing both plans and the underpinning data to be accessed and understood more easily.
- New power to prepare 'supplementary plans' containing policies for specific sites or groups of sites and will be easier to prepare and carry more weight than the current supplementary planning documents.
- Enable groups of authorities to produce joint spatial development strategies to cover cross boundary issues if they wish.
- Proposals for a zoning system and 'in-principle' consent for sites allocated for growth are not being taken forward.
- Updating of the NPPF to ensure that current tests of soundness for local plans are proportionate.
- Give more weight to neighbourhood plans in planning decisions and increase access to neighbourhood planning by allowing the production of 'neighbourhood priorities statements' as a simpler form of neighbourhood plan.
- The bill seeks to give the secretary of state the power to make regulations for the provision of 'street votes' whereby residents on a street could bring forward proposals to extend or redevelop their properties and where various rules and statutory requirements are met the proposals would be put to a referendum of residents in the street to determine if planning permission should be granted. There is no further detail at this stage of how this would work as this would be left to regulations.
- Alongside the bill the government is proposing to remove the requirement of a 5 year housing land supply where the local plan for the area is up to date having been adopted in the past 5 years. This is seen to incentivise authorities to maintain an up to date local plan.

- Through regulations it is intended to set out an expectation that plans be produced within 30 months and are updated every 5 years.
- It is also indicated that the government intends to make pre-application consultation by developers with the community on certain developments.

Comment

The potential introduction of national development management policies provides some uncertainty about what should be included in a new local plan. This runs the risk that areas proposed to be covered in the local plan are introduced through these national policies at a late stage of plan production such that amendments are needed to any local plan. It also leads to the risk that the national policies do not cover the issues that we would want to cover under a local policy and we are unable to do so.

Repealing the duty to co-operate is potentially a positive change that removes a potential risk with the new local plan however it presents uncertainty in terms of what any replacement test would require.

It is unclear how the new 'supplementary plans' will be any different to the current 'supplementary planning documents' (SPD's) which already carry significant weight. Hopefully it will overcome the problem of SPD's only being able to expand on and explain local plan policy rather than set new policy.

The removal of the 5 year land supply requirement under up-to-date plans provides greater certainty to authorities with an up to date plan, however a plan would only be found sound if it secured a 5 year housing land supply anyway and so this change is not as significant as it may first appear.

It is entirely unclear how the 'street votes' would work and what the administrative burden on the council would be, however the majority of applications in East Devon receive at least 1 objection letter and applications are often controversial and so this could be a significant administrative burden.

Delivering Infrastructure

“A simple, non-negotiable, locally set Infrastructure Levy will ensure that developers pay their fair share to deliver the infrastructure that communities need”.

- Replace the Community Infrastructure Levy (CIL) with a simpler, mandatory and locally determined levy to be delivered through regulations.
- It is intended for the levy to be charged on the value of property when it is sold with the rates set as a percentage of gross development value rather than based on floor space as with CIL.
- It is suggested that this will allow developers to price in the value of contributions into the value of the land, make the levy more responsive to market conditions, remove the need for renegotiation if the value is lower than expected while allowing local authorities to share in uplift when values are higher than expected. This all suggests that payment would be made at the end of the build out rather than phased alongside build out.

- The government says it is committed to securing at least as much affordable housing as are secured under the current system.
- New requirement to prepare infrastructure delivery strategies setting out how levy proceeds will be spent and infrastructure delivered with the assistance of infrastructure providers.
- It is proposed to pilot community land auctions. Through this “Landowners will be able to submit their land into an allocation process as part of an emerging local plan, offering the local planning authority an option on the land at a price set by the landowner. The local authority will allocate land based on both planning considerations and the option price. It will then auction the development rights onto a successful bidder once land is allocated in the adopted plan. The difference between the option price offered by landowners, and the price offered to develop allocated land, will be retained by local authorities for the benefit of local communities”.
- Alongside the bill it is proposed to remove the role of negotiation in determining levels of onsite affordable housing allowing local authorities to determine the portion of the levy received in-kind as affordable housing.
- Continue to use planning conditions and section 106 agreements to secure on-site infrastructure.
- Retain the neighbourhood proportion of the levy as under CIL.
- A gradual roll out of the new system with the existing system being gradually phased out.

Comment

It is unclear at this stage how the new infrastructure levy would work. Basing it on the value of the specific development is potentially beneficial but since this will not be known until it has been built and valued raises many questions around how this valuation is undertaken and by whom. It also raises issues of when the levy would be paid since it implies that payment would not be made until after the development has been sold, however by this time the need for the infrastructure will have been created without any provision having been made in advance.

The relationship between the community levy and S106 agreements is unclear but sounds similar to the relationship with CIL.

Creating beautiful places and improving environmental outcomes

“Ensuring new development meets clear design standards which reflect community views, a strengthened framework of environmental outcomes, and expanded protections for the places people value”.

- Every local authority to produce a design code for its area which will have full weight in decisions on development proposals.
- Scheduled monuments, registered parks and gardens, world heritage sites etc to be given the same protection as listed buildings and conservation areas.
- Statutory requirement to maintain a Historic Environment Record.

- Enhanced enforcement powers to protected listed buildings through new temporary stop notices, strengthened power to issue Urgent Works Notices and making the costs to carry out the works a local land charge to aid cost recovery and removing the compensation liability in relation to building preservation notices.
- Replace the need for Strategic Environmental Assessment (SEA) and Environmental Impact Assessments (EIA) with a requirement to prepare 'Environmental Outcome Reports'.
- Further changes to come through consultation on changes to the NPPF around bio-diversity net gain and local nature reserve strategies as well as addressing climate change.

Comment

The requirement for a district design code will require a lot of further work after this idea was dropped by the Council in 2020 in favour of site specific design codes for large scale site allocations in the new local plan. The East Devon area is so diverse in terms of its design and form that a district guide is difficult to achieve without going in to immense detail and being quite prescriptive.

Enhanced protection of heritage assets is welcomed, as are the increased enforcement powers but details are awaited to understand how beneficial these will be.

It is unclear to what extent the changes from SEA's and EIA's to 'Environmental Outcome Reports' is a rebranding exercise given that SEA's and EIA's originate from European legislation or whether they will be fundamentally different in some way. This could impact on local plan production if requirements change during the production and examination process.

Wider improvements to planning procedures

“The digital transformation of planning services, alongside wider improvements to speed up procedures and deter breaches of planning control”.

- Digitisation of the planning process using sets of common data and new software requirements.
- Extending the period for enforcement to ten years in all cases thereby removing the 4 year rule for built development.
- Introducing enforcement warning notices
- Increasing fines for certain planning breaches and doubling fees for retrospective applications.
- Extending the time period for temporary stop notices from 28 days to 56 days.
- The scope for appeals against enforcement notices to be tightened so that there is only one opportunity to obtain planning permission retrospectively.
- Enabling temporary relief to be given for enforcement action against prescribed planning conditions, where it is necessary to lift constraints on operations (e.g. for construction and delivery times);

- The Bill will also create a new power to amend planning permissions in limited circumstances to provide greater post-permission flexibility following recent case law;
- Speeding up the planning appeals process by giving Planning Inspectors the power to change the procedure for determining a planning appeal if an alternative would be more suitable;
- Alongside the bill it is stated that it is intended to increase planning fees for major and minor applications by 35% and 25% respectively, subject to consultation. This will however be in the context of other measures to boost performance and service quality through an expansion of the existing planning performance framework.
- Development of a planning skills strategy for local planning authorities.

Comments

Like the Planning White Paper there are numerous references to digitisation and data without any clear explanation of what this means, however the greater use of technology could be a significant benefit if this helps planning officer's focus on professional judgements and removes some areas of work where these are not required.

Enhanced enforcement powers are welcomed and removing the 4 year rule will give a greater timescale in which to pursue enforcement action where the breach had not previously been identified, however it is not clear if this will work retrospectively and lead to the reopening of various currently closed cases.

Doubling of the fees on retrospective applications makes sense on face value and delivers some deterrent to those who do not apply in advance. It would also deliver some natural justice through a financial penalty where people do not apply first. However this change could make it even harder to get people to apply retrospectively and force us to decide whether to take enforcement action in more cases knowing that we cannot take action unless the development is unacceptable.

The increasing of planning fees is welcomed as these have fallen behind inflation over the years leading to increased costs to the Council. The fact that these rises would only apply to major and minor applications mean that fees for house extensions, adverts etc would be unaffected.

Conclusion

In conclusion the bill makes some interesting proposals but in most areas is much less radical than the Planning White Paper. It is only a bill at this stage and it will no doubt be the subject to numerous changes over the coming months. It is not expected to receive royal assent until next year. In the meantime officers will continue to monitor the proposed changes and their impacts particularly on plan productions. However it is no longer proposed to completely overhaul the plan making system and so the risks to local plan production appear to be less overall when compared with the white paper proposals.

Financial implications:

There are no financial implications on which to comment at this stage.

Legal implications:

There are no legal implications other than as set out within this report for noting.