

Planning Committee

02 February 2024

Agenda item number 15

Levelling Up and Regeneration Act

Report by Head of Planning

Summary

The Levelling Up and Regeneration Act has received Royal Assent. This report provides a summary of its provisions relating to planning. Secondary legislation and Regulations will be required to enact many of its provisions.

The National Planning Policy Framework (NPPF) which sets out the national planning policy was updated in December 2023. This report provides a summary of its main provisions.

Recommendation

To note the report.

1. Introduction

- 1.1. The [Levelling Up and Regeneration Act 2023 \(LURA\)](#) received Royal Assent on 26 October 2023, with its provisions coming into effect in 2024. The LURA is the mechanism by which many of the Government's manifesto commitments and policy objectives from The Environment Act 2021 and elsewhere are brought into force. Planning reform features heavily in the LURA and a summary of the main provisions relating to planning is set out below.
- 1.2. A report on the provisions of the LURA as relevant to the Broads Authority but excluding the planning elements was presented to the 26 January 2024 meeting of the Broads Authority: [The Levelling-Up and Regeneration Act 2023 and the Government response to the Landscape Review \(broads-authority.gov.uk\)](#).
- 1.3. The revised [National Planning Policy Framework \(NPPF\) \(gov.uk\)](#) was issued on 19 December 2023: [National Planning Policy Framework \(pdf | publishing.service.gov.uk\)](#)

2. The Levelling Up and Regeneration Act (LURA)

- 2.1. The LURA covers a broad range of issues including the levelling-up mission (Part 1), local democracy and devolution (Part 2), compulsory purchase (Part 9), information records relating to land, the environment and heritage (Part 11), as well as town and country planning (Part 3). The principal themes in the LURA relating to planning are around the need to speed up the planning system, hold developers to account, cut bureaucracy,

and encourage more councils to put in place plans to enable the building of new homes. Of the Act, Secretary of State for Levelling Up, Housing and Communities, Rt Hon Michael Gove MP said:

“Our landmark Levelling-Up and Regeneration Act will deliver more homes for communities across the country and unleash levelling up in left-behind places.

It will deliver revitalised high streets and town centres. A faster and less bureaucratic planning system with developers held to account. More beautiful homes built alongside GP surgeries, schools and transport links, and environmental enhancement.

Communities taking back control of their future with new powers to shape their local area. And our long-term levelling up missions enshrined in law.”

- 2.2. The main changes are set out below. It is worth noting that few of the provisions come into effect immediately, with the majority dependent on secondary legislation and further regulations.

Planning policy

- 2.3. The Government will introduce a suite of National Development Management Policies (NDMPs), which will be general policies that cover issues that apply in most areas. The example that is given is general heritage protection policies. In the drafting of the NDMPs, the policy makers are required to have regard to climate change and the need for mitigation and adaptation. The NDMPs will be subject to consultation in “all but exceptional circumstances” although they will not be subject to parliamentary approval. These NDMPs will have the same weight as policies in Local Plans and Local Plans must not duplicate them. Local Plans will be limited to locally specific matters only “such as allocating land for development, detailing required infrastructure and setting out principles of good design”.
- 2.4. Groups of authorities will also be able to produce voluntary spatial development strategies on specific cross-boundary issues, however the ‘duty to co-operate’ will be dropped, and time limits prescribed for different stages of plan preparation. The LURA has sought to make “several other changes to improve the process for preparing local plans: new powers will enable the introduction of ‘Gateway’ checks so that issues are identified earlier during plan preparation, and allow time periods to be prescribed for different parts of the plan preparation process, enabling delivery of a time-bound end-to-end process; digital powers in the Bill will allow use of more standardised and reusable data, and there will be a new requirement for local planning authorities to produce a consolidated policies map of the full development plan for their area, improving the clarity and transparency of plans; and the ‘duty to co-operate’ contained in existing legislation is being repealed”.
- 2.5. There will be a new power for planning authorities to create ‘supplementary plans’ for some or all of their areas where policies for specific sites or groups of sites need to be prepared quickly. The use of Supplementary Planning Documents (SPDs) will cease.

- 2.6. The Neighbourhood Plans process is to be simplified, with the introduction of “a new neighbourhood planning tool called a ‘neighbourhood priorities statement’, providing communities with a simpler and more accessible way to set out their key priorities and preferences for their local areas. Local authorities will need to take these into account, where relevant, when preparing their local plans for the areas concerned, enabling more communities to better engage in the local plan-making process.” Alongside this, the LURA will “prescribe in more detail what communities can address in their neighbourhood plans and amend the ‘basic conditions’ to ensure neighbourhood plans are aligned with wider changes to the planning system”.
- 2.7. All plan makers must take account of local nature recovery strategies in drawing up their documents.
- 2.8. There has been much media coverage of the proposed ‘street votes’ system, which will permit residents to propose development on their street and hold a vote on whether planning permission should be given. The original version of the draft legislation included “placeholder for a substantive clause which will introduce a ‘Street Votes’ system that permits residents to propose development on their street and hold a vote on whether it should be given planning permission”. This has been amended and replaced with “street vote development orders”, and related regulation-making powers covering the preparation and making of an order, including provision for independent examination and a referendum. This appears closer to the existing Neighbourhood Plans process. At the time of writing, Street Vote Orders approach was out for consultation; a proposed response will be presented to the March meeting of the Planning Committee.
- 2.9. Looking at funding, the LURA provides that the secretary of state can ask authorities to reimburse the government for local plan advice costs. It is not clear how this differs from the existing arrangement where the LPA pays the Planning Inspectorate for the cost of the Examination of its Local Plan.

Development management

- 2.10. The emphasis of the National Planning Policy Framework will shift to guiding plan-making and policies in the current National Planning Policy Framework (NPPF) that are intended to guide decision-making will be stripped out to form the basis of the promised National Development Management Policies that will take precedence over local plans as the primary policy guide for decision-making.
- 2.11. Decision-makers will face a new duty to act in line with the development plan and national policies and there will be “a new duty on decision-makers to make planning decisions in accordance with the development plan and national development management policies unless material considerations strongly indicate otherwise.” It is not clear how this differs from the existing presumption in favour of the development plan set out in the NPPF and the Act.

- 2.12. Planning application fees will be raised by more than one-third and it is stated that the government intends to increase planning fees for major and minor applications by 35% and 25% respectively. This increase in fees came into effect on 6 December 2023. Documents that accompany the LURA advise that powers are to be introduced “to bring forward powers to charge developers and promoters for statutory consultee advice in certain circumstances.”
- 2.13. A new Infrastructure Levy will replace section 106 planning obligations and the Community Infrastructure Levy (CIL). The rates and thresholds of this new levy will, as with the existing CIL regime, be set in charging schedules devised by the LPA, so that rates are tailored to local circumstances. The charging schedules must have regard to previous levels of affordable housing funded by developer contributions such that they are kept at a level that will exceed or maintain previous levels. All schedules will be subject to public examination. The LURA will also introduce a process to require developers to deliver some forms of infrastructure that are integral to the design and delivery of a site.
- 2.14. Powers to require developers to engage with communities pre-application will be made permanent. For decision-making, the Act will also enable pre-application engagement with communities to be required before a planning application is submitted, removing the sunset clause, making the powers that currently expire in 2025 permanent.
- 2.15. LPAs will have the power to decline to determine applications from applicants in cases where an earlier permission has not been implemented or the development has been carried out unreasonably slowly; this covers the whole of an LPAs area, not just a single site.
- 2.16. Finally, the existing performance framework for planning authorities will be expanded to measure performance across a broader range of quantitative and qualitative measures. There is also a commitment to develop a planning skills strategy for LPAs.

Heritage and design

- 2.17. There is a requirement under LURA for a Historic Environment Record (HER) to be maintained by a ‘relevant authority’ for its area. The Broads Authority is listed as a relevant authority for this purpose. Currently the HER for the Broads is maintained by the two County Councils under Service Level Agreements and this arrangement is likely to continue, albeit potentially with revised wording to meet the LURA requirements.
- 2.18. LPAs will be required to have a design code in place covering their entire areas. It is envisaged that these “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 will help ensure good design is considered at all spatial scales, down to development sites and individual plots”.
- 2.19. Registered parks and gardens will get the same level of planning protection as listed buildings. Whilst, other designated heritage assets, such as World Heritage Sites,

protected wreck sites, and registered battlefields, will have the same statutory protection in the planning system as listed buildings and conservation areas.

Planning enforcement

2.20. The Act has introduced a number of changes which impact on planning enforcement, as follows:

Section	Provision	Notes
S.103	The introduction of a Listed Building Temporary Stop Notice (LBTSN)	The LBTSN can be in force for up to 56 days.
S.111	The introduction of 'Commencement Notices'	These introduce a mandatory requirement for the developer to give notice to the LPA, specifying when they propose to commence the work. The date can subsequently be varied if the work does not commence as proposed, but the failure to provide the LPA with the information on commencement when requested is an offence.
S.112	The introduction of 'Completion Notices'.	These may be used to require completion of a development which has commenced, but not been completed where the LPA are of the opinion that the development will not be completed within a reasonable time period. The 'Completion Notice' has the effect of cancelling the planning permission if the development is not completed by the time specified in 'the completion notice deadline'. There is a right of appeal.
S.113	Declining to determine applications	Introduces the power for LPAs to decline to determine applications in cases of earlier non-implementation or unreasonably slow build-out.
S.115	Changes to period of immunity from enforcement action	Immunity for enforcement action is currently acquired after four years for 'operational development' and ten years for 'material change of use'. The period is standardised to ten years for both types of breach.

Section	Provision	Notes
S.116	Increase in period for Temporary Stop Notice	Increased from 28 to 56 days.
S.117	The introduction of 'Enforcement Warning Notices' (EWN)	Issued by an LPA where it appears to them that there has been a breach of planning control and there is a reasonable prospect that retrospective permission would be granted. There is provision within the EWN process for enforcement action to be taken if no planning application is received and the service of an EWN stops the clock for immunity purposes.
S.118	Restrictions on appeals against Enforcement Notices (EN)	Where planning permission has already been refused and an appeal dismissed for the development alleged in the EN, the appellant cannot appeal against the EN on the grounds that planning permission should be granted (the "ground (a)" appeal).
S.119	Timely progress on appeals	Introduction of the power for the Secretary of State (i.e. the Planning Inspectorate) to dismiss appeals where it appears to them that the appellant is responsible for undue delays in the progress of the appeal.
S.120	Increase in penalties for non-compliance	Currently subject to a cost ceiling (level 3 on the standard scale), the limit has been removed for most types of breach.

2.21. These changes have not yet come into effect and will come into force on such day as the Secretary of State may by regulations appoint.

Other provisions

2.22. The LURA will confer a "power on the secretary of state to require or permit a person who takes part in certain proceedings relating to planning, development or the compulsory purchase of land to do so wholly or partly remotely" and it is expected that the Planning Inspectorate will be appointed for this purpose. This could apply to any inquiry, hearing, examination, meeting or other proceedings which relate to planning, development or the compulsory purchase of land, although it will not allow an LPA to hold only virtual committee meetings.

- 2.23. The EU processes of environmental impact assessment and strategic environmental assessment are replaced by ‘environmental outcomes reports’, which introduce an “outcomes-based approach that will allow the government to set clear and tangible environmental outcomes which a plan or project is assessed against”. This will “allow decision-makers and local communities to clearly see where a plan or project is meeting these outcomes and what steps are being taken to avoid and mitigate any harm to the environment. These outcomes will be set following consultation and parliamentary scrutiny but will, for the first time, allow the government to reflect its environmental priorities directly in the decision-making process.”
- 2.24. A council tax premium on second homes can be introduced. The Bill, and now the Act, introduces a “discretionary council tax premium on second homes and changes the qualifying period for use of the long term-empty homes premium”. The document accompanying the LURA states that “local authorities may levy a premium of up to an additional 100 per cent on council tax bills for second homes and for empty homes after one year (as opposed to two years which is the current requirement)”. The government will consult on exemptions to this, the notes add.
- 2.25. The legislation also makes provision for registration of short-term rental properties. These are defined in an amendment sets as (a) a dwelling, or part of a dwelling, which is provided by a person (‘the host’) to another person (‘the guest’) (i) for use by the guest as accommodation other than the guest’s only or principal residence, (ii) in return for payment (whether or not by the guest), and (iii) in the course of a trade or business carried on by the host, and (b) any dwelling or premises, or part of a dwelling or premises, not falling within paragraph (a) which is specified for the purposes of this paragraph”. The Secretary of State is required to undertake consultation before implementing this provision.
- 2.26. The Government had intended to include in the Act a relaxation of the nutrient neutrality rules, but this has not been included. It does, however, require the upgrading of some Water Treatment Works to best available technology by 2030.

3. National Planning Policy Framework

- 3.1. The revised National Planning Policy Framework (NPPF) was issued on 20 December 2023. The following is a summary of the main changes.
- 3.2. Housing is a key topic in the new document. There are changes to the methodology for calculating this to increase flexibility, with the outcome of the standard method being an advisory starting point only. The final assessment will be subject to Examination, in the usual way.
- 3.3. It also removes the requirement for LPAs to demonstrate a five-year housing land supply on an annual basis, where there is an up-to-date local plan that contained a deliverable five-year supply of land at Examination. It also removes the 5% and 10% buffers that could be applied to five-year housing land supply, and maintains the 20%

buffer only for those authorities that do not have an up-to-date plan in place and score below 85% on the Housing Delivery Test. A local plan is up-to-date if it is less than five years old and these changes create a strong incentive for LPAs to complete their local plans regularly.

- 3.4. For Neighbourhood Plans, it increases the level of protection from the presumption afforded by neighbourhood plans from two to five years post adoption, provided they identify at least one housing site.
- 3.5. There is also additional support given to the delivery of self-build, custom-build and community-led housing and encouragement for the delivery of older people's housing, including retirement housing, housing-with-care and care homes. There is also a new definition for a community-led exceptions site.
- 3.6. Looking at layout and design, it clarifies that whilst there is an emphasis in national policy on 'densification', there may be situations where higher densities would be out of character with the existing urban area and where significantly uplifting densities would be inappropriate. This assessment of character should be made and evidenced through a design code which is adopted or will be adopted as part of the local plan.
- 3.7. There are significantly increased references to design and greater emphasis on the role of beauty and placemaking in strategic policies, as well as providing greater support for energy efficiency measures through requiring decisions on planning applications to place significant weight on the need to support energy efficiency improvements to existing buildings.
- 3.8. Agricultural land is given greater protection through additional reference to the need to address food production, maintaining the emphasis on Best and Most Versatile (BMV) land.
- 3.9. The publication of the NPPF was also accompanied by a Written Ministerial Statement focusing largely on planning performance.

4. Conclusion

- 4.1. The introduction of the LURA and the changes to the NPPF are noted and the required measures will be incorporated into the working of the planning team as required.

Author: Cally Smith

Date of report: 18 January 2024

Background papers: LURA and NPPF.