Broads Authority

Planning Committee

22 July 2022
Agenda item number 12

The Levelling Up and Regeneration Bill- briefing

Report by Planning Policy Officer

Summary

The Levelling Up Bill makes provision for the setting of levelling-up missions and reporting on progress in delivering them; about local democracy; about town and country planning; about Community Infrastructure Levy; about the imposition of Infrastructure Levy; about environmental outcome reports for certain consents and plans; about regeneration; about the compulsory purchase of land; about information and records relating to land, the environment or heritage; for the provision for pavement licences to be permanent; about governance of the Royal Institution of Chartered Surveyors; about vagrancy and begging; and for connected purposes. This is a summary of aspects relevant to the Broads Authority.

Recommendation

The report is noted.

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1. Introduction

1.1. 'Levelling Up' has been a central plank in the Government's agenda and through which it seeks to reduce geographical, economic, social and health inequalities. The Government published its Levelling-up and Regeneration Bill on 11 May 2022. The Bill follows on from the 'Levelling Up in the United Kingdom White Paper' published in February 2022 and covers a raft of potential changes to law. These include the setting of statutory 'levelling up missions' for Government to achieve, the establishment of 'Combined County Authorities' (CCAs) to allow devolution of powers in two tier areas,

changes to compulsory purchase arrangements and development corporations, and the arrangements for letting out of high street premises.

1.2. It remains to be seen whether or not there will be changes to the ‘levelling up’ agenda - either in terms of objectives or the way in which it is to be delivered - following recent changes within Government. Members will be updated as and when we know more. It is interesting to note that many of the provisions set out in the August 2020 Planning White Paper were not taken forward in this latest Bill and there has also been significant change to many of the elements that have been taken forward. It is clear that Government wishes to make changes to the planning system, but there is continuing uncertainty as to what these changes will be.

1.3. The following report sets out the provision in the May 2022 Levelling Up and Regeneration Bill.

2. The Proposals

2.1. Much of the Levelling-up Bill is ‘enabling’ legislation, authorising Government to prepare secondary legislation (in the form of regulations) that will set out the detail of how the general aims of the Bill will be delivered. Elements of the Bill will also evolve as it moves through the parliamentary process. For these reasons, we cannot know the precise details of how any new planning system will operate at this early stage, however the Bill indicates the Government’s overall intentions at this stage.

2.2. A full summary of the Bill is available at Appendix 1. The Bill proposes:

a) A single **Local Plan** for each local authority, to be prepared within a specified period (likely to be 30 months).

b) A new set of **National Development Management Policies**, which must be considered in decision-making, and which will carry equal weight to local plan policy, except where there is conflict, where they take precedence. These may be included in the new NPPF, previously scheduled for publication in July 2022.

c) A new system of statutory **Supplementary Plans,** replacing Supplementary Planning Documents which would be subject to independent public examination, and which could set out policy for individual sites, infrastructure requirements or specific design policies.

d) The option to prepare a **Joint Local Plan** or wider strategic **Spatial Development Strategy** between two or more local planning authorities.

e) A requirement for local planning authorities to produce a **Design Code** for their whole area.

f) A new **‘requirement to assist’** with plan-making which would apply to other public bodies.

g) The **‘duty to cooperate’** contained in existing legislation will be repealed and according to accompanying notes replaced with a more “flexible alignment test set out in national policy.”

h) Changes to one of the tests which **Neighbourhood Plans** must meet to proceed to referendum, removing the need for general conformity with the Local Plan. This is to be replaced with a requirement that plans must not prevent housing supply identified in a development plan from going ahead. The Bill also proposes the creation of **‘neighbourhood priorities statements,’** which must be considered when producing local plans. They would summarise what the qualifying body considers to be the principal needs and prevailing views, of the community in the neighbourhood area in relation to which the body is authorised, in respect of local matters.

i) Allowing charging authorities to charge double the rate of **council tax on second homes** and empty properties,

j) A new statutory **‘Infrastructure Levy’** (IL), to replace Community Infrastructure Level and Section 106 agreements. This would include a ‘right to acquire’ affordable housing by local planning authorities, rather than the current system of negotiating levels of affordable housing. Authorities will also be required to produce an **Infrastructure Delivery Strategy.** Detail on the relationship between current Section 106 contributions and the new IL is left to future regulations, with explanatory notes (page 225) explaining that these regulations will control the use of Section 70 of the Town and Country Planning Act relating to the use of planning conditions and agreements. Further information published states that there will be a “retained role for Section 106 agreements to support delivery of the largest sites. In these instances, infrastructure will be able to be provided in-kind and negotiated, but with the guarantee that the value of what is agreed will be no less than will be paid through the Levy.”

k) The Bill proposes replacing Environmental Impact and Strategic Environmental Assessments (Sustainability Appraisals) with simpler **‘Environmental Outcome Reports’** reflecting national priorities and targets for the environment.

l) A new statutory duty on Local Planning Authorities to produce and maintain a **historic environment record.**

m) Various changes to the **enforcement process,** including introducing **temporary stop notices** for work on listed buildings, an extension of the four-year enforcement period beyond which action cannot be taken to 10 years, increasing the time of temporary stop notices from 28 days to 56 and the introduction **enforcement warning notices** requiring the submission of a planning application within a certain period.

n) Outside of the Bill, the Government has also announced an intention to increase planning fees by 25% for minor applications and 35% for major applications.

2.3. More details on the contents of the Bill are set out at **Appendix 1.**

3. Commentary

3.1. National DM policies: It will be interesting to see what these policies cover and what they say. It is not likely that they would cover topics particularly relevant to the Broads such as the policies relating to navigation for example.

3.2. Supplementary plans and not SPDs: We currently have one adopted SPD on flood risk and another being produced relating to coastal adaptation. We may want to incorporate more from the flood risk SPD in the Local Plan.

3.3. Design Code: The draft design code for the Broads will be consulted on from end of July.

3.4. Duty to cooperate (DTC) – removal: We have relied on the DTC in the past to help us meet our housing figures – Great Yarmouth Borough Council took on some of our need. We will have to understand the details of any new test as we produce the local plan and seek to meet our need. In terms or working together with other LPAs in Norfolk or Suffolk, just because the DTC is going to be removed, it does not necessarily follow that the close working will end. Using GIRAMS and Nutrient Neutrality as an example, addressing certain topics on a wider area basis is logical.

3.5. Neighbourhood Plan Basic Conditions change: The removal of the need for Neighbourhood Plans to be 'in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)' is intriguing. It is not clear why this is being introduced. Locally, we are not aware of any issues with that basic condition. Whilst the replacement Basic Condition ensures that housing delivery set out in the Local Plan is ensured, housing is but one element of a Local and Neighbourhood Plan.

3.6. Infrastructure Levy: The introduction of the mandatory Infrastructure Levy (IL). There are few details at present of how this will be set, however if introduced this is likely to be a new area of work should the Authority be required to introduce one. The Bill also includes a clause (Schedule 11 Part 10A, Section 204B, subsection 4) which would allow regulations to specify that a county, district or borough authority could be the charging body instead of the local planning authority, with explanatory guidance (page 203) giving the example of a National Park Authority where only a small part of their area falls within a certain district, and where it may be more appropriate for that district to charge for that area.

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Appendix 1 – Summary of the Levelling-up Bill

Broads Authority

Appendix 1 – Summary of the Levelling-up Bill

The Levelling-up 'missions' (Clauses 1 – 5)

1. The Bill provides a legal basis for setting and reporting on the **12 'missions'** announced in the Levelling-up White Paper. These covered four areas: boosting productivity and living standards by growing the private sector, spreading opportunities and improving public services, restoring a sense of community, local pride and belonging, and empowering local leaders and communities. A levelling-up mission statement will be laid before Parliament, accompanied by the methodology and metrics the Government intends to use to evaluate its progress towards delivery. The Bill also creates a statutory obligation for the Government to report annually on progress towards the delivery of each mission.

Further devolution (Clauses 7-54)

2. The Levelling-up White Paper committed Government to offer a devolution deal to all areas by 2030, each with a directly elected mayor. The Bill includes measures to create new **'combined county authorities,'** (CCAs) more suited to non-urban areas where there is a two tier (county and district/borough) structure. The difference between these and existing combined authorities such as Tees Valley is in membership – county combined authorities must only include two or more 'upper tier' members – for example one county representative and at least one other county or unitary representative, unlike current combined authorities where district or borough councils must be represented. 'Lower tier' councils cannot be members of a CCA.

Council tax on second homes and unoccupied dwellings – Clauses 72 and 73

3. Clauses 72 and 73 of the Bill proposes changes to the Local Government Finance Act 1992 to allow local authorities (including from next year the new North Yorkshire Council) to charge **double the rate of council tax** on properties classed as a "long-term empty dwelling" or "dwelling occupied periodically" i.e., a second home.

Planning data – Clauses 75 – 78

4. Clauses 75 to 77 of the Bill enable the Secretary of State to introduce regulations requiring local planning authorities to produce **planning data to a standardised format** and for them to acquire standardised data from others, and to require publication of that data. Clause 78 would require the use of standardised software approved by the Secretary of State.

Development Plans – Clauses 82 - 91

5. A new set of **national development management policies** will be, once consulted upon will be signed off by the Secretary of State and will have statutory weight in decision making. There is no detail at present on the scope and range of topics these will cover.

6. Clause 83 then proposes that **decisions must be made in accordance** with the development plan and National Development Management Policies unless material considerations "**strongly** indicate otherwise". Where there is a conflict between development plan and national development management policies decisions "must be resolved in favour of national development plan policy" (Clause 83(5C). This effectively means national policy and local plans will carry equal weight in decision making; unless there is a conflict in which case national policies should be followed. In 'Further Information the Government also states that "increased weight given to plans and national policy by the Bill will give more assurance that areas of environmental importance – such as National Parks, Areas of Outstanding Natural Beauty and areas at high risk of flooding – will be respected in decisions on planning applications and appeals."

7. Clause 87 would insert Schedule 7 of the Bill into legislation, which covers plan-making. Schedule 7:

   - Allows for two or more local planning authorities to prepare a **'spatial development strategy'** which would include policies of 'strategic importance,' and which could specify infrastructure and affordable housing requirements for that area (Schedule 7 15A). This in effect gives a vehicle for statutory strategic plans – and subject to consultation and independent examination - albeit one that is optional, unlike the system of Regional Spatial Strategies that operated until 2012.
   - Requires local planning authorities to prepare a **single local plan**, with only one local plan allowed to operate in a local planning authority area (Schedule 7 15C2).
   - Local plans must set out local policies, infrastructure requirements and requirements **'in respect of design'** (Schedule 7 15C4).
   - Requires that local plans be in **general conformity with any spatial development strategy and national development management policies** (Schedule 7 15CA2 and Schedule 7 15CA5c).
   - Allows two or more local planning authorities to produce a **joint local plan** (Schedule 7 15I).
   - Requires local planning authorities to produce a **'local plan timetable'** (to replace current 'Local Development Schemes') (Schedule 7 (15B)) and to conform to that timetable (Schedule 7 15CA1). Government has stated that forthcoming regulations will require plans to be produced within a 30-month timeframe and be reviewed every five years.
   - Allows local planning authorities to prepare **'supplementary plans'** (Schedule 7 15CC). The Bill anticipate that these would be used in three circumstances – to provide site specific policy, to set out infrastructure requirements and to set out design policies. These would replace Supplementary Planning Documents (SPDs), which cannot include separate policy, only explain how policy in a development plan

will be implemented, and supplementary plans would be subject to independent examination (unlike SPDs)

- Requires local planning authorities to produce a **design code** for their whole area (Schedule 7 15F).
- Provides the **Secretary of State with powers** to prepare or revise a local plan or give directions to the local planning authority to do so (Schedule 7 15HA). Supporting information states that "new Local Plan Commissioners may be deployed to support or ultimately take over plan-making if local planning authorities fail to meet their statutory duties."

8. Clause 90 includes **'a requirement to assist'** with plan-making, replacing the current 'Duty to Co-operate.' This means that 'the prescribed public bodies' who influence the delivery and planning of infrastructure are required to be involved in the plan-making process and, according to the guidance note must do everything asked by the plan making authorities, within reason.

Neighbourhood |Plans – Clause 89 and Schedule 7 15K

9. Clause 89 replaces one of the five 'basic conditions' a neighbourhood plan must comply with to proceed to referendum. As present, the neighbourhood plan is required to be in 'general conformity'[1] with the local authority development plan. It is to be replaced by a condition that **must not prevent housing development** proposed in the development plan for the local area from coming forward.

10. Schedule 7 15K Empowers a 'qualifying body' (usually a Parish Council) to prepare a **'neighbourhood priorities statement'**, "which summarises what the body considers to be the principal needs and prevailing views, of the community in the neighbourhood area in relation to which the body is authorised, in respect of local matters" - for example housing, natural environment, economy, infrastructure and open spaces. This would be subject to local consultation but would not be independently tested or subject to referendum. It would be published by the local planning authority who must take it into account in their own plan-making.

Heritage – Clauses 92 – 95, Clause 185

11. The Bill will place a statutory duty on Local Planning Authorities to produce and maintain a **historic environment record** (Clause 185) and includes provisions (Clause 92) so that registered parks and gardens, World Heritage Sites, protected wreck sites, and registered battlefields have the same statutory protection within the planning system as listed buildings and conservation areas. The Authority already has a historic environment record.

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[1] Government does not further define this term in policy but in effect means that a neighbourhood plan cannot include anything that may undermine delivery of local plan strategy.

12. New enforcement powers will be available to protect listed buildings by introducing **temporary stop notices** (Clause 93); strengthening the power to issue urgent works and recovering costs by local planning authorities (Clause 94); and removing the compensation liability in relation to Building Preservation Notices (Clause 95).

Planning permissions – Clauses 96 – 100 and 108 to 112

13. Clause 96 is a 'placeholder' clause that would allow the Secretary of State to introduce regulation over the use of **'Street Votes,'** to allow residents to have a direct say on new development in their area. There is little detail on this, however explanatory notes and in the Government's own publicity states this 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." This could imply some form of localised 'local development order' where rules on development are proposed and voted upon, which would then allow for development within those rules.

14. Clause 98 intends to allow for greater flexibility in the ability to **vary planning conditions.**

15. Clause 99 would require developers to provide a local planning authority with a **commencement notice** specifying when that development is expected to start.

16. Clause 100 removes the need for a local planning authority to secure the consent of the Secretary of State when serving a **completion notice** requiring that development be completed.

Enforcement – Clauses 101 - 107

17. The Bill proposes extension of the 4-year **enforcement period** beyond which action cannot be taken to 10 years (Clause 101).

18. The period of **temporary stop notices** will increase from 28 days to 56. It will be a legal offence to ignore such a notice (Clause 102).

19. Clause 103 introduces **enforcement warning notices**. These would be used where a local planning authority becomes aware of an unauthorised development that has a reasonable prospect of being acceptable in planning terms. They would then serve an enforcement warning notice asking the person concerned to submit a retrospective planning application within a specified period.

20. Clause 104 would prevent an **enforcement appeal** being lodged where retrospective planning permission has been applied for before the expiry of the deadline for determining that application.

21. Clause 105 would allow the Secretary of State to dismiss an **enforcement appeal** if the applicant is causing undue delay.

22. Clause 106 **increases fines** associated with certain planning breaches (over Section 215 notices to tidy up land failing to comply with breach of condition notices) and doubling fees for retrospective applications.

23. Clause 107 would allow the Secretary of State to restrict local authorities from taking **enforcement action** in certain circumstances. A possible example given in explanatory notes is where there is a breach in conditions relating to deliveries to shops in certain hours, should there be a shortage of HGV drivers.

The Infrastructure Levy – Clauses 113 - 115

24. The Bill proposes replacement of Section 106 agreements and the Community Infrastructure Levy (CIL) with a mandatory **'Infrastructure Levy'** (IL). This would usually[2] be produced and enforced by local planning authorities and once prepared would be non-negotiable. The levy would be set as a percentage of gross development value and expressed in pounds per square meter. There will be a retained role for Section 106 agreements to support delivery of the largest sites.

25. The Bill introduces a new **'right to require'** to remove the role of negotiation in determining levels of onsite affordable housing. This is intended to rebalance the inequality between developers and local authorities by allowing local authorities to determine the portion of the levy they receive in-kind as onsite affordable homes.

Environmental Outcome Reports – Clauses 116 – 130

26. The Bill proposes replacing Environmental Impact and Strategic Environmental Assessments (Sustainability Appraisals) with a new set of **Environmental Outcome Reports, with Government** promising "a clearer and simpler process where relevant plans and projects are assessed against tangible environmental outcomes set by government." Few details are currently provided, however explanatory notes that such reports must have regard to the Governments Environmental Improvement Plan (currently the 25 Year Environment Plan), that it is likely that consent cannot be legally granted in the absence of such a report, that reports should consider realistic alternatives. Subsection 1 of Clause 120 requires that the Secretary of State to ensure that any new regulations requiring Environmental Outcome Reports must not lead to a lower level of protection than previous arrangements.

Compulsory Purchase Orders, Development Corporations and vacant high street premises (Clauses 131 – 183)

27. Although not of direct relevance to the Broads Authority, for completeness the remainder of the Bill mostly covers simplification of **Compulsory Purchase Orders,** specifically for regeneration projects, and proposals for new 'locally led' development corporations, accountable to local authorities rather than the Secretary of State, The

[2] The Bill also proposes that the Homes and Communities Agency could introduce an Infrastructure Levy

Bill, if enacted would also allow all current and future development corporations to act as local planning authorities for their areas, in line with current Mayoral Development Corporations. The Bill (at clause 181) also intends for the Government to have the power to publish land transactions data and contractual arrangements used by developers, to make more transparent where 'land banking' may be occurring. Finally, the Bill would grant powers for local authorities to instigate auctions to sell empty high street properties where they have been vacant for over a year.

28. Although not in the Bill, alongside its publication the Government also announced:

- An intention for a national **increase in planning fees** increasing them by 25% for minor applications and 35% for major applications.
- That there will be a new method of **assessing local housing needs**, with the Times reporting that plans will no longer be expected to reach "unrealistic" new housing targets providing their local plan is "well evidenced and drawn up in good faith." There are no further details or announcements at this stage however the previously intention to set and enforce national housing targets appears not to be going ahead.
- The removal of the requirement for authorities to maintain a rolling **five-year supply of deliverable land for housing**, where their plan is up to date, i.e., adopted within the past five years, Government states that this is to "curb perceived 'speculative development' and 'planning by appeal,' so long as plans are kept up to date".
- Ministers confirmed they would bring forward legislation to enable the piloting of **community land auctions.** In pilot areas, landowners would be able to submit their land to local authorities in the process of developing their local plans, offering the council an option on the land at a price set by the landowner. The planning authority would allocate the land within its local plan and then auction the development rights to a successful bidder. 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. Note – although the Broads Authority is the local planning authority it is not the housing authority and not subject to local government finance regulations – hence it is unlikely this scheme would operate in the Broads.
- It will legislate to define what counts as a 'suitable permission' when assessing local planning authorities to provide suitable plots for those wishing to build **custom and self-build housing.**