

INFORMATION ITEM

REPORT OF	MEETING	DATE	ITEM
HEAD OF PLANNING	PLANNING COMMITTEE	24 JANUARY 2024	5
THE LEVELLING UP AND REGENERATION ACT 2023 AND CONSEQUENTIAL REVISIONS TO THE NATIONAL PLANNING POLICY FRAMEWORK			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY OF INFORMATION

‘Levelling Up’ has been a central plank in the Government’s agenda, through which it seeks to reduce geographical, economic, social and health inequalities. The enactment of The Levelling-up and Regeneration Act on 26 October 2023 introduced primary legislation to deliver key elements of government policy. The Act covers a broad range of topics, with many of the provisions being delivered through the introduction of secondary legislation.

The topics covered by the Act are diverse, but from a planning perspective, the Act contains a significant body of provisions intended to speed up the planning system, hold developers to account, cut bureaucracy, and encourage more councils to put in place development plans to enable the building of new homes. These will potentially have wide-ranging implications for the discharge of planning functions once they do come into effect.

Together with a summary of the recent changes to the National Planning Policy Framework, this report contains an overview of the key changes to planning set out in the primary legislation to ensure members remain up to date on these matters.

It is proposed that a more in-depth training/briefing session will be arranged to cover the changes in legislation and national policy in the near future.

SOURCE OF INFORMATION

Department for Levelling Up, Housing and Communities

LINK TO INFORMATION

Full details of the Act are available at: [Levelling-up and Regeneration Act 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

The RTPI’s National Association of Planning Enforcement has published guidance on the enforcement provisions introduced in the Levelling Up and Regeneration Act 2023 which is available on the [RTPI website](#).

The December 2023 version of the National Planning Policy Framework is available [here](#).

WHY IS THIS INFORMATION BEING GIVEN TO THE COMMITTEE?

In order to ensure members are aware of the new planning provisions introduced through the Levelling up and Regeneration Act 2023 and recent changes to the National Planning Policy Framework.

FURTHER INFORMATION

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INFORMATION NOTE

LEVELLING-UP AND REGENERATION ACT 2023 (LURA) AND NATIONAL PLANNING POLICY FRAMEWORK – DECEMBER 2023

Introduction

1. 'Levelling Up' has been a central plank in the Government's agenda, through which it seeks to reduce geographical, economic, social and health inequalities. The Government published its Levelling-up and Regeneration Bill in May 2022 following on from the 'Levelling Up in the United Kingdom White Paper' published in February 2022. The Bill was subject to a series of amendments as it passed through parliament, eventually receiving Royal Assent and so becoming The Levelling-up and Regeneration Act (the Act) on 26 October 2023.
2. The Act covers a broad range of topics associated to the Government's levelling up agenda and is divided into a number of parts. Many of the provisions set out in the Act will be delivered through the introduction of secondary legislation and so the Act itself can be considered the scaffolding from which future legislation will hang. Some provisions in the Act came into effect on 26 December 2023, but many will be triggered by the introduction of secondary legislation.
3. The topics covered by the Act are diverse and include, for example, provisions associated to local democracy and devolution, including the introduction and operation of Combined Authorities, the registration of short-term rental properties, reform of compulsory purchase provisions through to powers related to empty properties and Council Tax.
4. From a planning perspective, the Act contains significant body provisions intended to speed up the planning system, hold developers to account, cut bureaucracy, and encourage more councils to put in place development plans to enable the building of new homes. These will potentially have wide-ranging implications for the discharge of planning functions once they come into effect.
5. This report contains an overview of the key changes to planning set out in the primary legislation to ensure members remain up to date on these matters. It is proposed that a more in-depth training session will be arranged to cover the changes in legislation, together with the recent changes to the National Planning Policy Framework in due course.
6. The Act is split into 13 topic-based Parts, containing 256 individual clauses and 24 supporting Schedules. The most relevant to this committee are likely to be:
 - (a) Part 3 - Planning
 - (b) Part 4 – Infrastructure Levy and Community Infrastructure Levy
 - (c) Part 5 – Community land auction pilots
 - (d) Part 6 – Environmental outcomes reports
7. Not only does the Act introduce new legislative provisions directly, but it also makes significant changes (additions, revisions and/or deletions) to other pieces of pre-existing legislation; with these set out in the included Schedules. Most notably in relation to the planning provisions, it introduces amendments to the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004.
8. It is important to note that a significant proportion of the provisions contained within the Act do not come into immediate effect upon Royal Assent but are subject to later introduction upon a specified date or upon associated secondary Regulations being laid before Parliament.
9. Detailed commencement and transitional arrangements associated with the bringing into effect of the individual provisions of the Act are set out in clause 255 in Part 13 of the Act.

Plan Making

10. The Act introduces the primary legislation required to support the Government's programme of reforms to plan-making. In particular, it provides for the following:

(a) Requirement that local planning authorities must prepare a local plan and that they can only have a single local plan. As Fylde Council has already taken this single plan approach, this clause is of limited consequence.

(b) Prescribes what local plans can and can't contain and to what they must have regard and take account of; including the amount, type, location and timetable for development in the local planning authority area, other policies for the use or development of land which relate to particular characteristics or circumstances of the area or specific sites, details of the infrastructure requirements or affordable housing, requirements with respect to design or other matters prescribed by the Secretary of State. Additionally, the local plan must be designed to secure that the use and development of land contributes to the mitigation of and adaptation to climate change. It must take account of national development management policies (see below for further information), any other national policies and guidance and any Local Nature Recovery Strategy (LNRS). It is required to have regard to new Neighbourhood priorities statements (see below) and take account of any assessment of the amount and type of housing needed, including affordable housing. Significantly, a local plan is not allowed to include anything that is not prescribed by the relevant legislation, nor may it be inconsistent or repeat any national development management policy.

(c) The Act replaces the requirement to prepare and maintain a Local Development Scheme (LDS) with a similar provision to prepare and maintain a local plan timetable, with the Secretary of State able to prescribe the form and content of the timetable. This change is not significant, although there is an associated requirement for local plans to be prepared in accordance with the local plan timetable.

(d) Establishes a requirement for local planning authorities to seek observations or advice in relation to a proposed local plan from a person appointed by the Secretary of State (i.e. a Planning Inspector from PINS for example), to publish said advice and have regard to it in plan-making. This provides the framework for the Government's proposals for a series of Gateway Assessments.

(e) Provides for the introduction of new Supplementary Plans that will form part of the development plan and replace Supplementary Planning Documents (SPDs). The scope of Supplementary Plans is strictly controlled through the Act, particularly in terms of their geographic scope. They are principally limited to being able to be used to introduce policies related to the development of a specific site (or two or more specific sites which are considered to be nearby to each other). The exception to this limitation is that they may also be used to set out requirements with respect to design across a wider area; with this intended to allow local planning authorities the discretion to introduce the mandatory area-wide design code (see below) through a Supplementary Plan rather than a local plan.

(f) Introduces a requirement for local planning authorities to have a design code for the whole authority area as part of the development plan. It stipulates that the development plan includes requirements with respect to design that relate to development to which proposals should adhere.

(g) Affords powers for the Secretary of State to take over plan making, revise plans or give direction to the local planning authority, if they are considered to be failing to do anything necessary or expedient to prepare a plan or its revision, or if a plan is going to be, or may be considered unsatisfactory. Allied to the above, the Act provides for the introduction of local plan commissioners, who the Secretary of State can appoint to investigate and take over plan making. The Act also provides the Secretary of State with the ability to recover any costs associated with intervention from the local planning authority.

(h) Introduces a power to require assistance with certain plan making activity by prescribed public bodies. The power set out within the Act is potentially wide reaching, establishing that the prescribed body must do everything that the plan-making authority reasonably requires of it. However, it also

provides that the Secretary of State may, through regulations, set out what a plan-making authority must, may or may not require a prescribed body to do, set the timeframe for doing so, any procedure to be followed and the form and content of any notification, documentation or information. The bodies that will be subject to the duty will be established at a later date.

(i) Revises the approach to plan examination, including the provision to provide a gateway check to establish whether a plan may proceed to examination and the introduction of the ability for the examiner to formally pause the examination to allow for further work to be carried out. It also provides a streamlined examination process for Supplementary Plans, similar to the approach applied to neighbourhood plans.

(j) The Act will replace the current duty to cooperate with a new 'Alignment Policy' to secure appropriate engagement between authorities where strategic planning considerations cut across boundaries. This will be tested at Examination and, unlike the current system, authorities and Inspectors would have the ability to amend Plans to improve alignment.

11. The Act does not include explicit legislative provisions to establish the 30-month time limit for the preparation of local plans previously advocated by government; however, it is likely that this will be stipulated through future national policy or guidance. In addition, the powers the Act affords to the Secretary of State to establish local plan commissioners and to intervene in plan-making will be capable of being utilised to enforce compliance with any policy-based timeframe requirements.
12. Similarly, the Act does not establish transitional arrangements for plan-making, in so far as those trialed through previous consultations, such as the cut off dates for the submission and adoption of local plans under the existing planning system, or the so-called 'waves' which may determine when local planning authorities may start work on new-style local plans. It is therefore reasonable to assume that these aspects will be introduced through sub-ordinate regulations or through associated policy.

National Development Management Policies and Decision-making

13. The Act provides the basis for the introduction of national development management policies, including a range of consequential amendments to existing legislation to ensure their consideration in plan making, decision taking and any subsequent enforcement activity.
14. The Act provides absolute discretion to the Secretary of State to be able to subsequently define what constitutes a national development management policy by direction, so far as it is a policy, however expressed, in relation to the development or use of land. It does require that, when preparing or modifying national development management policies, the Secretary of State must ensure consultation with and participation by, the public and other bodies or persons that they consider appropriate.
15. The provisions within the Act associated to national development management policies provide for a fundamental shift in the status of national planning policy in determining planning applications. The changes will elevate the status of any of these development management aspects of national planning policy, from simply being a material consideration in the determination planning applications (as per the case for the current National Planning Policy Framework), to having an equal status to the provisions contained within the development plan.
16. Significantly, the Act stipulates that in decision making, where there is a conflict between the development plan and a national development management policy, any conflict must be resolved in favour of the national development management policy.
17. Significantly, the Act makes a simple but fundamental change to the status of material considerations in the determination of planning applications; requiring that determinations must be made in accordance with the development plan (and any national development management policies) unless material considerations strongly indicate otherwise. This is intended to strengthen the role of the local plan (and national development management policies) in decision making, reaffirming the plan-led approach to planning.

Self-build and custom Housebuilding

18. Councils already have a duty, through the Self-Build and Custom Housebuilding Act 2015, to ensure that sufficient permissions are granted, within a prescribed period, to meet the level of 'need' identified through the number of entries on the Councils' statutory self-build registers. There has been criticism from some sectors that the duty is poorly defined within the legislation and that it allows a flexible and liberal interpretation as to what planning permissions can be counted against the need.
19. Provisions within the Act will allow the Secretary of State to address this concern, providing for the preparation of regulations to specify the descriptions of permissions that may be counted towards meeting the duty. It is important to recognise that this could have an impact on the ability of the Council to fulfil its duty or may potentially result in a requirement to take a more proactive approach to the delivery of custom and self-build housing, however it will not be possible to assess any future impact until regulations and further guidance is published.

Infrastructure

20. The Act provides the primary legislation to allow for the imposition of a new Infrastructure Levy (IL), with the purpose of contributing to the costs of supporting development of an area. It is intended to be a replacement for the Community Infrastructure Levy (CIL) and planning obligations (s106) as a mechanism for securing contributions towards infrastructure and affordable housing. It provides the skeleton framework for the imposition of the charge, along with processes for its introduction, collection and enforcement.
21. The IL has the potential to significantly alter the way that infrastructure and affordable housing is secured and delivered across the borough. As members are aware, the council suspended work on the introduction of a Community Infrastructure Levy pending the introduction of this new legislation. As secondary legislation comes forward, work on an IL will be progressed.

Neighbourhood Planning

22. The Act retains neighbourhood planning and neighbourhood plans as part of the development plan. Similar to the provisions for local plans, it introduces provisions that set out what neighbourhood plans must, must not and may include. It also seeks to affirm that a neighbourhood plan or neighbourhood development order may not have the effect of preventing housing development proposed within the area from taking place.
23. Neighbourhood Priorities Statements are introduced as a new neighbourhood planning tool intended to be simpler to prepare than a neighbourhood plan. They are intended to provide town or parish councils designated for neighbourhood planning purposes with the opportunity to set out what they consider to be the principal needs and prevailing views of the community in respect of prescribed local matters. The Act provides the primary legislative framework for the preparation, amendment and revocation of neighbourhood priorities statements and require local authorities to take them into account when preparing local plans. The matters for these statements are to be prescribed by the Secretary of State but may include wide ranging matters covering the development, management or use of land, housing, the natural environment, economy, public spaces, infrastructure, facilities, services and other features.

Street Votes

24. Street vote development orders are a new tool intended to give residents the ability to propose development on their street and, subject to the proposal meeting certain requirements, vote on whether that development should be given planning permission. The government has recently commenced a consultation on how these provisions might work.

Planning data and systems

25. The Act affords that local planning authorities can be required to make use of approved software for the processing of their planning data, whilst regulations may also restrict or prevent local planning authorities from using, creating or having any rights in relation to any software specified or described through regulations. It is unclear as to the extent to which controls may be introduced, however there is potential scope that the provisions would require the transition to alternative software systems, as advocated by the Government, for the submission, management and processing of planning data.

26. Recognising the ambition for a move to improve accessibility to planning data, the Act also provides for regulations to introduce provisions to require local planning authorities to make specified planning data available to the public under an open licence agreement.
27. In addition, the Act provides the power for local planning authorities to, through the publication of a notice, require the provision of specific planning data from particular persons, the specifics of which are to be established through subsequent regulations.

Planning Enforcement

28. The Act makes a number of changes to the planning enforcement regime, most notably:
- (a) Extending the current four-year time limit for a breach of operational development to ten years;
 - (b) Extending the duration of temporary stop notices from 28 to 56 days;
 - (c) Introducing temporary stop notices for listed buildings;
 - (d) Introducing a new “Enforcement Warning Notice” to highlight where the local planning authority considers that there is a breach of planning control but whereby it is considered that there is a reasonable prospect that planning permission would be granted, offering a period for a planning application to be submitted;
 - (e) Restricting the opportunity to appeal against enforcement notices and introducing measures to manage undue delays in appeal proceedings introduced by appellants;
 - (f) Increasing the scale of financial penalties for non-compliance with breach of conditions and non-compliance with s215 notices; and
 - (g) Introducing ability for the Secretary of State to provide relief from enforcement for a breach of conditions for development relating to national defence, preventing or responding to civil emergencies or significant disruption to the economy.

Development monitoring, commencement and completion notices

29. The Act provides for the introduction of a requirement for residential development schemes to submit development progress reports to the local planning authority to provide information on the intended progression of the delivery of the development. These will have to be provided to the local planning authority on an annual basis and set out the progress that has been made to date and that which is predicted to be made towards the completion of the dwellings; with the specifics of the form and content of the reports, along with how and when they are to be submitted, to be provided through subsequent regulations. The requirement will be applied to relevant planning permissions through the imposition of a condition.
30. The progress reports have the potential to be of a significant benefit to local planning authorities in robustly demonstrating housing delivery performance and their pipeline of future housing supply; and in particular the five-year housing land supply position. The benefit of this will, however, be contingent upon any submitted information being reliable and accurate.
31. Similarly, the Act introduces the concept of a commencement notice, which will (for prescribed types of development) require a developer proposing to carry out the development to submit prescribed information to the local planning authority, specifying the date upon which they expect the development to begin. If this subsequently changes, the developer will be expected to submit a new commencement notice.
32. The Act introduces the framework legislation for a power to allow local planning authorities to decline to determine planning applications for development from a developer (with a prescribed connection to a previous scheme), whereby that earlier scheme has not been started or has been developed, in the opinion of the local planning authority, unreasonably slowly.
33. For circumstances whereby the local planning authority considers that a development (of a yet to be prescribed description) will not be completed within a reasonable period, the Act introduces provisions to allow local planning authorities to serve a completion notice. These provisions have the ability to cause a planning permission to cease to have effect after a specified period (to be at least 12 months from the serving of the notice) and can be served in relation to developments that have commenced but that have

not yet been completed. The Act provides a framework for the serving of such notices, along with their effect and also the process for appealing such notices; with the ability for the Secretary of State to provide further detail through regulations. The completion notice is intended to provide local planning authorities with tools to expedite the delivery of development.

Environmental Outcomes Reports

34. The Act sets the groundwork for introduction of new Environmental Outcomes Reports (EORs). It is expected that these will be intended to replace Sustainability Appraisals (SAs), Strategic Environmental Assessments (SEAs) and Environmental Impact Assessments (EIAs), and accordingly the reports will apply to the consideration of planning consents, plans and projects.
35. The reports will be required to assess the extent to which the proposed consent or plan would, or be likely to, impact on the delivery of specified environmental outcomes, consider any proposals for increasing the extent to which an environmental outcome is delivered, any steps proposed for avoiding, mitigating or compensating for any effects and how any outcomes or steps will be monitored or secured. In doing so, it is required to consider any reasonable alternatives to the project, plan or any elements of it.
36. Whilst the Act sets out an extensive range of matters in relation to EORs, much of the detail of the implementation and operation will still need to be established through subsequent EOR regulations.

Other provisions

37. The Act contains a range of other provisions that may be of interest but are less directly related to the core function of this Committee. These include:
 - (a) reforms to compulsory purchase arrangements;
 - (b) the piloting of community land auctions;
 - (c) registration of short-term rental properties; and
 - (d) the letting of vacant high street premises by local authorities.

LURA CONCLUSIONS

38. The enactment of the Levelling-up and Regeneration Act 2023 signifies a key milestone in the Government's planning reform agenda. It does not, in itself, implement any immediate fundamental changes to the planning system. Most of the planning related provisions will be introduced at a later date, either by virtue of implementation and transition dates set out in the Act itself, or through regulations being laid in order to allow provisions to come into force.
39. At this time, it is challenging to prepare fully for their implementation, given the reliance upon secondary regulations, policy and guidance, but it is important to be mindful of the extensive provisions and to give some forethought to their potential implications. It is expected that the Government will consult upon and/or publish subordinate and associated regulations along with changes to policy and guidance over the coming months.
40. Officers will continue to scrutinise the provisions of the Act and any subsequent regulations, policy and guidance that may be forthcoming, respond to any associated consultations as appropriate and seek to keep Members apprised of the emerging planning reforms as and when further information becomes available.

NATIONAL PLANNING POLICY FRAMEWORK – DECEMBER 2023

41. The long expected changes to the National Planning Policy Framework (the Framework) were introduced on 20 December 2023. The main focus of the revisions is on housing delivery, but there are a number of other provisions as summarised below.
42. Plan Making – The revised Framework emphasises that preparing and maintaining up-to-date locally prepared plans (Local Plans, Neighbourhood Plans etc.) is a priority and providing for sufficient housing and other development in a sustainable manner is a main objective of this.
43. Calculating Housing Need – The Framework confirms that the standard method for calculating housing need in a local authority is an advisory starting point but adds that exceptional circumstances will be required for

using an alternative method. Local authorities with an up-to-date local plan (adopted within the last 5 years) will no longer need to continually show a deliverable five-year housing land supply.

44. Housing Land Supply Buffers – The 5% and 10% buffers applied to local authority housing land supply calculations have been removed, but where there is a history of under delivery of housing a 20% buffer may be applied.
45. Housing Need – Older people have been added to the list of specific groups for which local authorities must consider meeting their housing need.
46. Neighbourhood Plans – The Framework includes some greater protection for neighbourhood plans where proposed housing development conflicts with a neighbourhood plan.
47. Green Belt – The previous requirement that Green Belt boundaries should be reviewed or changed when local plans are being prepared or updated has been replaced to allow local authorities to choose to review and alter Green Belt boundaries in exceptional circumstances, with changes made through the plan-making process.
48. Affordable Housing/Community-led Development – All references to entry-level housing exception sites or similar have been replaced with community-led developments or similar, (the glossary accompanying the Framework includes a definition of community-led development. Other text has been amended to encourage community-led development not only in terms of housing.
49. Agricultural Land – The Framework emphasises that the availability and quality of agricultural land should be considered when allocating development.
50. Density of Development – Significant uplifts in the average density of residential development are considered inappropriate where it would be wholly out of character with the existing area.
51. Design and Local Design Codes – The Framework emphasises the use of local design codes prepared in line with the National Model Design Code as well as beautiful and well-designed places.
52. Planning Conditions – A requirement to refer to clear and accurate plans and drawings in planning conditions is introduced.
53. Energy Efficiency – Significant weight should be given to the need to support energy efficiency and low carbon heating improvements to existing domestic and non-domestic buildings.

Changes not included in the Revised Framework

54. Several changes which were proposed in the consultation version of the Framework have not been carried through into the final version. These include amending the ‘soundness’ test for the preparation of Local Plans and that the past “irresponsible planning behaviour” by applicants could in future be taken into account when determining planning applications.
55. There are further consultations to follow including on climate change adaptation and flood-risk management, provision of social homes and electric vehicle charging points.
56. The government will be issuing guidance clarifying some aspects of the reforms, for example, it has just issued guidance on where brownfield development in the Green Belt can occur provided the openness of the Green Belt is not harmed.

Framework Conclusion

57. As set out at the head of this report, it is intended that a member briefing session will be arranged with the intention of improving member’s familiarisation with the proposed changes set out in the Levelling-up and Regeneration Act and the changes made to the Framework last December.

FURTHER INFORMATION AVAILABLE FROM

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