

Levelling-up and Regeneration Bill

Committee stage briefing:

Planning and the Infrastructure Levy

June 2022



Our Organisation

London First is a business membership organisation which convenes over 175 of the capital's leading employers across a wide range of sectors. We are united by a common commitment to the capital to make it the best city in the world in which to do business, working for the whole UK.

Our Overarching View on the Bill

London First supports the Government's levelling up ambitions and welcomes its recognition of the importance of London's success as the UK's capital and a global city. It is right that growth is spread across the UK and at the same time to recognise that London's economic recovery will accelerate growth across the UK, not least through the £38bn net tax surplus it generates in normal times. Levelling up, as the Government has acknowledged, is not a zero-sum game; the success of regional economies is inextricably linked to a thriving capital city.

With regard to the planning reforms in the Bill, there are several parts that we support as they will create a smoother development process. These include:

- (i) slimming down local plans so that they focus on local issues and can be produced and updated more quickly (ref: Part 3, Chapter 2, Clauses 82-84);
- (ii) improving the procedures available to make changes to an existing planning permission. This – which will bring huge benefits for the delivery of larger, complex schemes where changes during the course of construction are inevitable. This is something we have long campaigned for alongside the Planning Officers Society (Part 3, Chapter 4, Clause 98); and
- (iii) the principle of replacing the EIA and SEA regime with a new 'Environmental Outcomes' regime that is better tailored to the English planning system (Part 5, Clauses 116-130).

We are, however, concerned that the Bill reduces the weight attached to local development plans in the determination of planning applications and centralises power in the planning system, despite the fact that local plans will be encouraged to focus on local issues and tailor local policies accordingly. The Bill also provides significant power to the Secretary of State to introduce a new Infrastructure Levy, but without sufficient detail to assess how the Levy will work in practice. Suggested amendments to the Bill are set out below.

Part 3: Planning

Chapter 2 – Development Plans etc Clauses 82-87

Overview

We support slimming down local plans by removing generic policies that are repeated across the country and instead having a set of national development management policies (NDMP). The introduction of NDMPs will allow local plans to focus on local issues, potentially significantly reducing their size, making them easier to use and update. It will also provide more clarity and certainty if some baseline policy issues are consistent across England,

helping to reduce the complexity of development. However, local planning authorities (LPAs) must retain the right to deviate from national policies where a local policy approach can be justified through evidence, and it passes clear and robust tests during local plan examination; this is a fundamental pillar of England's planning system and a move away from this is a centralising action that undermines local democracy.

Recommended amendment to Clause 83 (2), page 91, line 27: Role of development plan and national policy in England

- ***remove the word "strongly"***

Subject to subsections (5) and (5C), the determination must be made in accordance with the development plan and any national development management policies, unless material considerations ~~strongly~~ indicate otherwise.

Explanation

This Clause amends Section 38 of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) through inserting (5B) which raises the bar for material considerations in the determination of planning applications and (5C) which gives precedence to NDMPs over a local plan if there is conflict between the two.

When taking planning decisions, LPAs must have regard to the relevant development plan and take a balanced view on the impacts of the proposed development versus its benefits. This is a fundamental principle of our planning system. Rarely is a scheme fully compliant with the relevant development plan, particularly on larger, complex schemes and the types of brownfield development that are delivered in London. LPAs must exercise their planning judgement and there is extensive case law in existence to clarify how much weight should be attributed to material considerations in different circumstances.

The insertion of the word 'strongly' (when compared to the wording in S38 of the PCPA 2004) has the potential to raise the bar of the test and have a huge impact on planning decision making. It will be for the courts to define the tests for 'strongly' and it will take years for case law to develop to provide the certainty needed in the development industry to maintain delivery (at a time when there will be considerable uncertainty in the development process from the new Infrastructure Levy). The existing wording in S38 of the PCPA 2004, and associated case law, provides adequate weight to the development plan and the circumstances in which material considerations may justify a deviation from the development plan.

Recommended amendment to Clause 83 (2), page 91, lines 29-30:

- *remove the words “in favour of the national development management policy”*
- *and insert “according to the age and status of the development plan. Where a local policy post-dates the national development management policy and has satisfied the relevant tests at examination, the conflict must be resolved in favour of the local policy”*

If to any extent the development plan conflicts with a national development management policy, the conflict must be resolved ~~in favour of the national development management policy~~ according to the age and status of the development plan. Where a local policy post-dates the national development management policy and has satisfied the relevant tests at examination, the conflict must be resolved in favour of the local policy.

Explanation

LPA must retain the right to deviate from national policies where a local policy approach can be justified through evidence, and it passes clear and robust tests during local plan examination (like the tests of soundness in the current National Planning Policy Framework, or NPPF, although we understand that these will also be reviewed as part of forthcoming DLUHC consultations). Giving NDMPs primacy over local policies, is centralising power, thus undermining local communities’ involvement in their local plan making process. If local communities become disengaged from the planning process because they feel that they cannot influence what is happening in their local area, as it is over-ruled by central Government, this will likely make them more opposed to new development and make it harder for developers to obtain local community support for new schemes. Therefore, if insert 5C is enacted in its current form, this potentially risks undermining the development pipeline.

Instead, our proposed changes give appropriate weight to local policies, but only where they have been brought through the new development plan system – i.e. the variant local policy approach has been justified by evidence at examination stage.

Recommended amendment to Clause 84 (3), page 92, lines 13-16: National development management policies

- *remove the words “ensure that such consultation with, and participation by, the public or any bodies or persons (if any) as the Secretary of State thinks appropriate takes place”*
- *and replace with “undertake a formal consultation process involving the public and all relevant bodies”*

Before making or revoking a direction under subsection (1), or modifying a national development management policy, the Secretary of State must ~~ensure that such consultation with, and participation by, the public or any bodies or persons (if any) as the Secretary of State thinks appropriate takes place~~ undertake a formal consultation process involving the public and all relevant bodies.”

Explanation

This Clause inserts the NDMPs into Section 38 of the PCPA 2004, defines what NDMPs are, and gives the Secretary of State the power to revoke or modify them and to determine the consultation arrangements when such policies are made or revoked.

Given the significant role that NDMPs will play in decision making, the policies and any subsequent modifications should be subject to extensive formal consultation as is currently the case with the NPPF. The insertion 38ZA (3) into the PCPA 2004 suggests that the Secretary State has discretion over the extent of that consultation or indeed if any consultation is required. It is imperative that a clear and formal process for consultation and scrutiny is set out in the Bill to ensure there is a transparent and accountable process in place that involves the public and all relevant stakeholders.

Part 4: Infrastructure Levy

Clauses 113-115, Schedule 11 – Infrastructure Levy

Given the complexity of the Infrastructure Levy (IL), the Government must publish its technical consultation on the Levy while the Bill goes through Parliament so the wide-ranging powers that the Bill provides the Secretary of State can be fully understood and scrutinised. The comments below outline areas of general concern about the IL.

Complexity

We support the Government's aspiration to simplify and standardise the current S106 and Community Infrastructure Levy (CIL) system, which is complex and difficult to navigate. However, from the detail that is available about the IL, the new system looks set to create layers of complexity akin to the current system.

Viability negotiations

The proposal to calculate the IL as a percentage of Gross Development Value (GDV) at project completion does not overcome the existing problem of lengthy viability negotiations. Instead, those viability negotiations will shift from when a development starts on site to when it is completed (with interim valuations taking place during the process).

Infrastructure delivery

The IL is predicated on developers paying the Levy and, generally, leaving the delivery of infrastructure to local authorities. This will create significant risk for developers who, in some instances, may not be allowed to progress construction until an item of infrastructure has been delivered even though they are not in control of it. This approach will also pose considerable challenges to local authorities who must become infrastructure providers, potentially having to borrow against uncertain future IL receipts to deliver local infrastructure projects.

Sustainability

The IL, as currently constructed, would discourage developers from re-using and extending existing buildings (generally a better outcome in terms of sustainability and carbon calculations), as it will be based on the total GDV of the scheme rather than, for example, just the GDV of an additional storey added to an office block. This is of particular concern to development in cities, most of which is re-development on brownfield land.

Affordable housing

The Government has said that the IL will deliver the same, if not more, affordable homes as the current system provides – but this will be a significant challenge in practice. A recent report¹ for Government analysing planning obligations and CIL showed that in 2018/19 67% of the total value of agreed developer contributions was for affordable housing worth £4.7 billion (a similar level was achieved in 2016/17). With a more standardised approach, the IL must be set at a level that does not put off development coming forward on more complex (and thus more costly) sites. LPAs will no longer be able to extract the maximum reasonable amount of affordable housing from each site.

Community support

The current S106 system shows clear community benefits that arise from each development, including physical infrastructure delivery and socio-economic benefits. If a tax is extracted from the development value and paid into a generic pot that could be spent on infrastructure anywhere in that local authority area, it will be much harder to convince communities to support development because there is no direct or obvious link to the scheme built and infrastructure that is delivered.

¹ *The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19*, MHCLG, 2020