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Levelling-up and Regeneration Bill 2022-23

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LURB is in the air

Last week's Queen's Speech delivered the much-anticipated Levelling Up and Regeneration Bill, colloquially referred to as the LURB. The aims of this Bill are lofty; "to reduce geographical disparities in the United Kingdom significantly". As a result, the Bill is a lengthy one, with planning policy being seen as the main tool to achieve its aims, and prompting Victoria Hills, Chief Executive of the Royal Town Planning Institute to comment that "it feels like the profession has been promoted from the Championship to the Premier League".

While scaled-back from the more radical "once in a generation" reforms proposed in the 2020 White Paper, specifically the continental style zoning-based planning system, the Bill still sets out some significant changes:

A new levy to replace CIL

As one would anticipate, the Bill introduced proposals that would require a certain amount of secondary legislation to get off the ground. This leaves us with a "TBC" pile of proposals that will be better understood once supporting regulations are drafted.

Chief among these is the proposal to scrap the Community Infrastructure Levy ("CIL") and replace this with a new infrastructure levy that will also incorporate various s.106 obligations, including affordable housing contributions. The LURB says that rates and thresholds will be set locally, instead of the initial "national" approach as raised in the white paper. While criticism can fairly be levelled at CIL, and the delays caused by negotiating s.106 contributions, whether their replacement is any better will depend on those supporting regulations. It seems unlikely that a new levy will be able to replace a s.106 agreement in most scenarios.

Localism

Also, in the "TBC" pile are measures that purport to hand greater control of decisions to local leaders, and more opportunity for local people to have their say in local plans. The LURB lays the foundations for more regional mayors, and control over budgets, transport and skills, with the hope that this will lead to more joined-up decision making. An additional power in a local authority's armoury will be the ability to put tenants into vacant high street properties, via high street rental auctions. This proposal that raises many questions about its viability, and it will be fascinating to see how this idea is rationalised into regulations, never mind how it works on the streets.

Elsewhere, the LURB introduces the concepts of "neighbourhood priorities statements" and "Street Votes", which are intended to provide communities with a more direct way to express their principal needs and prevailing views on the kind of development they wish to see. These would then be considered by local authorities when drafting their local plans.

The opposite of localism

While the LURB plays up the local angle, it is quieter about the fact that other proposals significantly reduce local influence on planning decisions. Section 38(6) of the Planning and Compulsory Purchase Act 2004 currently provides that the local authority must determine a planning application in accordance with the local plan unless material considerations indicate otherwise.

However, the Bill proposes that determinations must be made in accordance with the local plan together with any national development management policies, unless material considerations now strongly indicate otherwise. What is more, if there is a conflict between the local plan and national development management policies, then the national policies will prevail. But what is a "national development management policy", you ask? This appears to be whatever the Secretary of State designates as one. We shall assume it means the National Planning Policy Framework (NPPF).

The inclusion of the word "strongly" is also interesting. We now know that national policy will be the most important consideration, followed by the local plan, but how far behind are other considerations? We'll have to wait for some High Court decisions to find out.

This constitutes a seismic departure from the "plan-led" system that we've had for decades. However, it makes sense. Having a standardised set of development management policies nationwide will lead to more consistent decision making and free up local authorities to focus on local issues and have a better chance of keeping their local plans up to date.

Heritage assets

Another interesting change is the protection afforded to the lesser-spotted heritage assets, specifically scheduled monuments, registered parks and gardens, protected wreck sites, registered battlefields, and World Heritage Sites. While these are all already designated as heritage assets, and afforded protection under policy, they do not currently have the same statutory protection in the planning system as listed buildings and conservation areas. It is proposed that this is to change, but it won't really impact the actual protection the heritage assets receive.

Enforcement period

Finally, all periods for enforcement by the local planning authority are to be set to a blanket 10-year period. While most breaches currently need to hit this 10-year mark before they are safe from enforcement, changes of use to a single dwelling house are currently immune from enforcement after just four years.

As alluded to above, most of the meatier reforms are going to require secondary legislation, which is probably just as well, as they are going to require a bit of further thought about how they can practically be implemented. There's a good chance the proposals will look quite different by the time anything hits the statute books.