

Agenda item 5: To note information from Cornwall Council Planning Team regarding the proposed planning changes under the Levelling Up and Regeneration Bill.

Cornwall Council has provided the below briefing note, dated 12 May 2022 regarding the proposed planning changes under the Levelling Up and Regeneration Bill.

Information Classification: PUBLIC



Briefing note

Proposed planning reform through the Levelling up and Regeneration Bill

12th May 2022

Introduction

The purpose of this Briefing Note is to set out the key planning elements from the Levelling Up and Regeneration Bill, which was introduced to Parliament on 11th May 2022. The bill includes a raft of changes to the planning system, including developer contributions, environmental assessment and enforcement. This briefing note sets out a first idea of the measures that are likely to be most important to planning in Cornwall.

The planning measures in the bill are stated to have been informed by more than 40,000 responses to the government's 2020 White Paper 'Planning for the Future', and the subsequent inquiry into planning reform by the Housing, Communities and Local Government Select Committee.

The Bill may be accessed at: <https://publications.parliament.uk/pa/bills/cbill/58-03/0006/220006.pdf> Explanatory Guidance is presented at: <https://www.gov.uk/government/publications/levelling-up-and-regeneration-further-information/levelling-up-and-regeneration-further-information>

The explanatory notes to the Bill list eight planning-related headings covered by the new legislation:

- Beauty – design codes will be required for every Local Authority
- Infrastructure – Infrastructure Delivery Strategies will be required
- Democracy – greater weight to be given to Local Plans and neighbourhood plans, but Local Plans limited to local issues and national policies developed by Government
- Environment – a new Environmental appraisal method to be developed and statutory requirements for Biodiversity Net gain and Nature Recovery,
- Neighbourhoods – a new proposal for street votes and simpler neighbourhood plans,
- Planning application process and planning fees
- Enforcement – loopholes will be closed
- Protecting heritage – designated heritage assets will be given the same weight as listed buildings and conservation areas.

What does this mean for Cornwall? What are the transitional arrangements?

The Bill is unlikely to be enacted until 2024.

The Explanatory notes to the Bill state that work is being undertaken on the detail of regulations, policy, and guidance. Government will consult separately on:

- Technical consultations on the detail of the Infrastructure Levy and changes to compulsory purchase compensation.
- A consultation on the new system of Environmental Outcomes Reports which will ensure a user-centred approach to the development of the core elements of the new system, such as the framing of environmental outcomes as well as the detailed operation of the new system.
- Proposals for changes to planning fees.
- A vision for the new National Planning Policy Framework (NPPF), detailing what a new Framework could look like, and indicating, in broad terms, the types of National Development Management Policy that could accompany it. The document will also set out the position on planning for housing, and seek views on this, as well as consulting on delivering the planning commitments set out in the British Energy Security Strategy.
- A subsequent consultation on the proposed suite of National Development Management Policies, as well as the revised National Planning Policy Framework.

The Government will publish formal plans for transition, but in broad terms changes to planning procedures will begin to take place from 2024, once the Bill has Royal Assent and associated regulations and changes to national policy are in place. An approach will be agreed to transitioning to the new system to ensure that plans can still come forward before 2024.

There is currently no visible means of making representations to the Bill, but much of the detail will be in draft regulations that will be consulted on separately

These are felt to be the key proposals that would impact planning in Cornwall:

1) A design code must be put in place covering the whole of Cornwall

The bill will require "all local planning authorities to have a design code in place covering their entire area". This will then act as a framework, for which subsequent detailed design codes, prepared for specific areas or sites and led either by Cornwall Council, neighbourhood planning groups or by developers as part of planning applications. The purposes are stated to "help ensure good design is considered at all spatial scales, down to development sites and individual plots."

2) A new levy will replace s106 planning obligations and the Community Infrastructure Levy

The bill will replace the current section 106 and the Community Infrastructure Levy (CIL) regimes with a new Infrastructure Levy.

The Levy will be charged on the value of property when it is sold and applied above a minimum threshold. Levy rates and minimum thresholds will be set and collected locally, and local authorities will be able to set different rates within their area. The rates will be set as a percentage of gross development value rather than based on floorspace, as with the Community Infrastructure Levy at present.

The explanatory document says that the rates and thresholds of this new levy will, as with the existing CIL regime, be set in charging schedules" and set and raised by local planning authorities (rather than nationally), but subject to public examination. This is stated to mean that rates are "tailored to local circumstances and deliver at least as much onsite affordable housing". There will also be "a process to require developers to deliver some forms of infrastructure that are integral to the design and delivery of a site".

3) An infrastructure delivery strategy must be put into place

The bill also places "a new duty on local authorities to prepare infrastructure delivery strategies to outline how they intend to spend the levy". This is to "make sure that infrastructure requirements and levy spending priorities are considered carefully", the notes say.

4) The scope of local plans will be limited to "locally specific" matters, with a new suite of national policies

The Council would be required to provide one Local Plan with the content limited to "locally specific matters such as allocating land for development, detailing required infrastructure and setting out principles of good design".

General policies on issues that apply in most areas (such as general heritage protection) will be set out nationally and contained in a suite of National Development Management Policies. These will have the same weight as the local plan so that they are fully taken into account in decisions. Local plans will not be able to repeat these.

5) More weight would be given to local plans and neighbourhood plans and the new national planning policies

The notes say that local plans and neighbourhood plans "will be given more weight when decisions are made on applications so that there must be strong reasons to override the plan, providing communities more certainty".

The bill will impose "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". The document says that this is to "increase certainty in planning decisions".

6) The five year housing land supply requirement will be removed where plans are up to date. Time limits will be prescribed for different stages of plan preparation and Planning authorities will be able to quickly create 'supplementary plans' for some or all of their areas

Local plans will need to be produced within 30 months (including 2 rounds of community engagement and Examination) and must be updated at least every five years. 'Gateway' checks will be introduced so that issues are identified by Inspectors earlier during plan preparation.

Digital powers in the Bill will:

- allow use of more standardised and reusable data and
- a consolidated policies map of the full development plan will be required for each area, improving the clarity and transparency of plans.

Local planning authorities will have a new power to prepare 'supplementary plans', where policies for specific sites or groups of sites need to be prepared quickly (e.g. in response to a new regeneration opportunity), or to set out design codes for a specific site, area or across their whole area. These would have a streamlined examination process that will be consulted on. This would potentially make it easier for a local plan to be updated to deal with specific requirements arising in Cornwall.

The requirement for authorities to maintain a rolling five-year supply of deliverable land for housing will be removed where their plan is up to date, i.e. is adopted within the past five years and has properly evidenced how it will meet local housing need. This will curb 'speculative development' and 'planning by appeal', so long as plans are kept up to date.

7) Environmental Impact Assessment and Strategic Environmental Assessment will be replaced by "Environmental Outcomes Reports".

The notes say that "A new system of Environmental Outcomes Reports will replace the EU processes of Environmental Impact Assessment and Strategic Environmental Assessment whilst retaining the UK's obligations under the UN Aarhus and Espoo Conventions."

The Bill will 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."

8) Changes to Neighbourhood Plans and a 'simpler to prepare' alternative introduced

The bill 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.

The bill also introduces 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." These will need to be taken into account, where relevant, when preparing local plans for the areas concerned, "enabling more communities to better engage in the local plan-making process".

9) A 'Street Votes' system that would permit residents to propose development on their street and hold a vote on whether it should be given planning permission

A further detail in the notes says that the bill includes a 'placeholder' for introducing 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. The document says that "This will provide a positive incentive for neighbours to consider the potential for development, especially in areas of higher demand, and support a gentle increase in densities through well-considered, well-designed and locally supported proposals."

10) Reinforcing enforcement powers

The period for taking enforcement action will be increased to ten years in all cases. Fines will be increased for certain breaches and retrospective fees will be doubled.

Enforcement warning notices will be introduced and the time period for temporary stop notices will be increased from 28 to 56 days. The Planning Inspectorate will be given the power to dismiss certain appeals where the appellant causes undue delay and the scope for appeals against enforcement notices will be tightened so that there is only one opportunity to obtain planning permission retrospectively.

11) Engagement and ensuring that development is delivered

Existing temporary powers to require pre-application engagement with communities before a planning application is submitted for specified forms of development will be made permanent. Design codes will need to be prepared with proper community engagement.

The Bill will also create a new power to amend planning permissions (minor amendments to schemes) in limited circumstances to provide greater post-permission flexibility following recent caselaw.

The Bill will also introduce the ability for authorities to serve commencement notices on schemes that have not been commenced to prevent land banking. It will also give more control to authorities to issue completion notices to developers to complete their project.

12) Increased planning fees and skills development

To improve capacity in the local planning system, an increase in planning fees for major and minor applications by 35% and 25% respectively will be made, subject to consultation. It should be noted that this does not take into account RPI (so is not as positive as it might first appear) and is linked to performance and a new performance monitoring regime. The wording avoids specifying ring fencing of fees for planning, but it is clear that a direct link to improved performance is expected. The proposal is that the existing performance measures that LPAs are judged against will be expanded to cover a broader range of quantitative and qualitative measures that are not yet articulated.

Local Authorities will be supported to build the skills they need through a planning skills strategy for local planning authorities. Details of this are awaited.

Further measures under the headings of 'devolution' and 'regeneration' include:

13) New measures to simplify and clarify compulsory purchase powers

The bill "streamlines and modernises Compulsory Purchase Orders (CPO) and grants the power to local authorities to use CPO for regeneration purposes". In particular, the proposals clarify that Local Authorities can use compulsory purchase for regeneration projects and seek to make the use of those powers simpler. This could be by allowing for conditional confirmation of orders which helps with the challenges of resolving iterative levels of detail in regeneration schemes. The measures include changes to publicity requirements around CPOs and how inquiry procedures are held.

14) A council tax premium on second homes would be introduced

The bill introduces a "discretionary council tax premium on second homes and changes the qualifying period for use of the long term-empty homes premium", the notes say. The document says 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.

15) Reducing vacant high street properties

A new measure will be created to give "local authorities powers to instigate auctions to rent vacant commercial properties in town centres and on high streets, for leases from one to five years to attract new tenants". The notes say these new powers "can be exercised at the discretion of local authorities, based on their local context and need, but only on properties which have been vacant for over 12 months".

16) New measures intended to make land ownership more transparent would be introduced

The notes say that the bill "includes measures that will facilitate a better understanding of who ultimately owns or controls land in England and Wales", supporting a 2017 Housing White Paper commitment by "collecting and publishing data on contractual arrangements used by developers to control land, such as rights of pre-emption, options, and conditional contracts".

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