



Levelling-up and Regeneration Bill 2022-23

Introduction

The Queen’s Speech is an annual opportunity for the Government to set out its legislative priorities for the coming year. Last week, the Government announced a raft of legislation which it seeks to introduce, including a Levelling-up and Regeneration Bill 2022-23 (“the Draft Bill”, [available to view online](#)). In short, **the Draft Bill is substantial and proposes significant changes to the planning system, particularly in England, resulting in fundamental divergence in planning in England and Wales.**

This post intends to:

- Identify some of the key planning law changes proposed
- Acknowledge clear omissions
- Outline next steps before the draft bill becomes law

Reform and “Levelling-up”

Since 2019, planning reform and broader “levelling-up” proposals have been conflated and legislative reform has previously stuttered:

- The Government’s August ‘Planning for the Future’ White Paper (August 2020) proved controversial and an embryonic Planning Bill being dropped from the legislative agenda.
- In September 2021, the Ministry for Communities, Housing and Local Government was renamed the Department for Levelling Up, Housing and Communities.
- In February 2022, the Government’s Levelling Up White Paper described the term as a “moral, social and economic programme for the whole of government” (i.e., not limited to planning reform)

In line with this, Part 1 of the Draft Bill provides for requirements that ministers prepare and lay before Parliament a statement of levelling up missions, setting out the objectives which the Government intends to pursue to reduce geographical disparities in the United Kingdom significantly within a specified period, and how it intends to measure progress.

Focusing on planning matters, in summary:

- The Draft Bill has dropped some of the more controversial aspects contained in the Planning for the Future White Paper. It has been confirmed that plans to introduce a zonal planning system have been abandoned.
- Other previous suggestions have survived, such as proposals relating to the digitisation and simplification of plan making.
- Plans to replace section 106 agreements with a new infrastructure levy remain.

The nuts and bolts

The Draft Bill, in the main, extends to England and Wales, although some of the key provisions apply to England only and other provisions applying across the UK, with adjustments made recognising devolved powers.

The Draft Bill contains 196 clauses within 11 parts, and a further 17 schedules.

Part 3 of the Draft Bill makes provision for planning. That part comprises six chapters:

- Chapter 1 (cls.75-81) concerns planning data
- Chapter 2 concerns development plans in England (cls.82-91)
- Chapter 3 concerns heritage in England (cls.92-95)
- Chapter 4 concerns the grant and implementation of planning permission (cls.96-100), including making provision, in England, for a new section 73B application for permission “substantially the same as existing permission”
- Chapter 5 concerns the enforcement of planning controls (cls.101-107)
- Chapter 6 concerns other provisions (cls.108-112)

This post will focus on two of the most notable general changes proposed in the draft bill which will affect local planning authorities and other planning decision-makers: the emergence of national development management policies, and amendments to planning enforcement provisions.

Development Plans and National Development Management Policies

Section 38(6) of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”) presently provides that “if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”.

The Draft Bill proposes to amend section 38 PCPA 2004:

- Clause 82 of the Draft Bill makes provision for development plans and national policy, amending the documents comprising the development plan for the purposes of any area in England.

- Clause 83 makes provision for the role of development plan and national policy in England. Under cl.83(2) of the draft bill, section 38 PCPA 2004 is amended to insert a subsection 5A:

“(5A) For the purposes of any area in England, subsections (5B) and (5C) apply if, for the purposes of any determination to be made under the planning Acts, regard is to be had to—

(a) the development plan, and

(b) any national development management policies.

(5B) 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.

(5C) 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.”

- Clause 83(3) of the Draft Bill amends the statutory obligation in section 38(6) PCPA 2004 to make any determination under the planning Acts “in accordance with the development plan unless material considerations indicate otherwise”, so it applies only “for the purposes of any area in Wales”.
- Clause 83(5) of the Draft Bill refers to Schedule of the Bill 6, which provides for determinations and other decisions under the Planning Acts to have regard to national development management policies.
- Clause 84 of the Draft Bill inserts after section 38 PCPA 2004 a further section 38ZA, which contains the meaning of a “national development management policy”:

(1) A “national development management policy” is a policy (however expressed) of the Secretary of State in relation to the development or use of land in England, or any part of England, which the Secretary of State by direction designates as a national development management policy.

(2) The Secretary of State may— (a) revoke a direction under subsection (1); 10 (b) modify a national development management policy.

(3) Before making or revoking a direction under subsection (1), or modifying a national development management policy, the Secretary 15 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.”

In summary:

- (a) Section 38 PCPA 2004 will be amended such that, for the purposes of any area in England, planning decisions must have regard to the development plan and national development management policies.
- (b) Such determinations must be made in accordance with the development plan and any national development management policies unless material considerations “strongly indicate” otherwise.
- (c) Where the development plan and national development management policies conflict, the conflict must be resolved in favour of the national development management policies.
- (d) The power to designate, and the mode of expressing, national development management policies is bestowed on the Secretary of State.

This is a significant change to planning decision-making:

- Levelling-up might mean many things, but it clearly does *not* mean devolution or decentralisation, at least in a planning context in England.
- The changes afford the Secretary of State significant power to shape future planning policy which is likely to be increasingly set nationally. In fact, the Draft Bill contains no limit on the scope or extent of national policy detail.
- The meaning of “strongly indicate” will produce inevitable litigation on when other material considerations can overcome lack of compliance with the development plan and national development management policies.

ENFORCEMENT

Part 3, Chapter 5 of the Draft Bill provides for reform of planning enforcement:

- Clause 101 of the Draft Bill amends section 171B of the Town and Country Planning Act 1990 (“TCPA 1990”), which concerns time limits for enforcement action. The immunity period for operational development and change of use to single dwellinghouse will change to 10 years in England; in Wales it will be four years. In the case of operational development, time will begin with the date on which the operations were substantially completed; In the case of a change of use of any building to use as a single dwellinghouse, time begins with the date of the breach. The immunity period in the case of any other breach of planning control remains unchanged as 10 years beginning with the date of the breach (subject to s.171B(2A)).
- Clause 102 of the Draft Bill amends section 171E TCPA 1990 (temporary stop notices) to extend the duration of a temporary stop notice in England from 28 days to 56 days.

- Clause 103 of the Draft Bill inserts a new section 172ZA into TCPA 1990 which provides for “enforcement warning notices” in England. A local planning authority may issue an enforcement warning notice where it appears to them that there has been a breach of planning control, and there is a reasonable prospect that, if an application for planning permission in respect of the development concerned were made, planning permission would be granted.
- Clause 104 of the Draft Bill amends section 174 TCPA 1990 to impose further restrictions on appeals against enforcement notices.
- Clause 107 of the draft bill inserts a new section 196E TCPA 1990, which empowers the Secretary of State to make regulations providing that a local planning authority in England may not take, or is subject to specified restrictions in how it may take, relevant enforcement measures in relation to any actual or apparent failure to comply with a relevant planning condition.

Perhaps most notably, the standardisation of immunity periods in England brings immunity periods for operational development and changes of use to single dwelling-houses into line with other breaches of planning control, extending the period where enforcement action can be deployed to address unpermitted development. The changes amount to a further expansion of enforcement power which will eventually alter how local planning authorities manage planning controls.

What else is in the Draft Bill?

Of course, there are other passages of the Draft Bill which propose novel developments. Changes to heritage include imposing upon planning decision-makers a duty to regard certain heritage assets in granting planning permission (clause 92), and requirements that local planning authorities must maintain an Historic Environment Record (clause 185).

Note that the extent of the Bill should not be ignored and contains several important changes to related areas:

- Part 2 makes provision for local democracy and devolution, including introducing new “combined county authorities” in England
- Part 4 makes provision for an infrastructure levy
- Part 5 makes provision for environmental outcomes reports
- Part 6 makes provision for development corporations
- Part 7 makes provision for compulsory purchase
- Part 8 makes provision for letting by local authorities of vacant high-street premises
- Part 9 makes provision for information about interests and dealings in land
- Parts 10 and 11 provide for further miscellaneous and general items

Many of these items will no doubt be covered in future analysis from the Cornerstone Planning team.

What is missing?

There are no new climate measures in the Draft Bill, either in relation to the Government's roadmap to net zero or in terms of planning measures to respond or adapt to dangerous climate change. This omission jars with the language of "climate emergency" widely adopted in the 2019 party manifestos and declared by the UK Parliament on 1 May 2019.

What next?

These are very early days. The Draft Bill will face extensive parliamentary scrutiny and may change significantly. In the detailed examination of the Draft Bill at committee stage, politicians will be able to hear from experts and interest groups from outside parliament on their views of the proposals. Cornerstone's planning team will be able to provide informed insight as further details become clear.

This blog post is designed for planning specialists, solicitors, and policymakers. [Cornerstone Barristers Planning Day 2022](#) will take place at the Royal College of Surgeons on 14 November 2022, where we will discuss a range of current topics facing practitioners. Further details will be announced in due course.