

Committee(s): Planning and Transportation Committee	Dated: 5 March 2024
Subject: Levelling Up and Regeneration Act 2023	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	6 9 11 12
What is the source of Funding?	
Report of: Remembrancer	For Information
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Summary

1. This Report deals with planning matters in the Levelling Up and Regeneration Act.
2. Overall, the Act creates a skeleton framework to which details will be added by subsequent regulations. The first step in the Act's implementation happened on Boxing Day 2023 when some ministerial regulation-making powers came into force. The regulations themselves, generally, have not yet been brought forward.
3. In summary, the Act:-
 - a. establishes the Infrastructure Levy (IL), in the long-term replacing CIL, (but will not replace the London Mayoral CIL)
 - b. introduces National Development Management Plans and supplementary plans
 - c. seeks to reduce the complexity of and time period for preparation of local plans
 - d. creates digital planning approaches to applications and consultations

- e. re-states an existing power for planning authorities to issue completion notices (these provisions will come into force at a future date to be announced)
 - f. gives planning authorities a new power to decline to determine applications (this power is not yet fully in force)
 - g. Extends the time limit for enforcing breaches of planning control in England to 10 years for enforcement of building operations and unauthorised change of use of a building to a dwelling (these provisions will come into force at a future date to be announced)
 - h. creates a power for the government to make regulations requiring developers to submit commencement notices to a planning authority specifying the date that development is expected to start (these provisions will come into force at a future date to be announced)
 - i. strengthens protection for ancient woodland (in force by 26 January 2024)
 - j. replaces Environmental Impact Assessments, Sustainability Appraisals and Strategic Environmental Assessments with Environmental Outcome Reports
 - k. permits “non-substantial changes” to planning permissions (these provisions will come into force at a future date to be announced)
 - l. makes changes to compulsory purchase orders so that the acquiring authority can seek a direction that the compensation is to take no account of prospective future planning permissions, except for subdivisions of dwellings
 - m. Strengthens heritage and environmental protections
4. The matters of most interest to the Corporation are discussed below.

Recommendation(s)

5. To note this Report.

Main Report

Political Background

6. Despite receiving broad cross-party support, the Bill became mired in parliamentary wrangling and was subject to many hundreds of government amendments, including on its final day in Parliament. In the House of Lords alone, scrutiny lasted 24 days and considered over 1000 amendments.
7. During Second Reading in the Lords, Baroness Scott of Bybrook for the government said the “principal” planning measure was to give greater weight to the development plan when decisions on applications are made, so that there must be strong reasons to override the plan.
8. Scott explained that the provisions were intended to speed up adoption of and increase engagement in the production of local plans. She highlighted the strengthened powers for local planning authorities to act against unreasonably slow development. A new Infrastructure Levy would be set locally and permit authorities to set different rates according to the nature of development.
9. Labour gave a cautious welcome to the planning provisions in the Bill. Labour’s Baroness Taylor called for local communities to have a greater say in local housing provision. She added her voice to those concerned that the Infrastructure Levy would create excessive administrative uncertainty if introduced in one go, and not generate as much money from developers as the current CIL and s106 systems. Late in the Bill’s proceedings, it became clear from government amendments that the Infrastructure Levy would be introduced slowly and only after local pilots.
10. For the Lib Dems, Baroness Thornhill expressed scepticism about the provisions and felt it would not meet expectations, suggesting that the Bill was “like getting a soft Christmas present—you are hoping for a silk scarf but you get socks”. Lord Shipley (LD) felt the Bill may help to improve planning issues but was sceptical about whether it would lead to building more homes.

The Infrastructure Levy

11. One of the main elements of the Act is the Infrastructure Levy (IL), which creates a new charge on development that is applicable to developer contributions towards affordable housing and infrastructure. The IL would bring about a substantial change in processes surrounding developer contributions, but the policy is subject to three important caveats. First, the Government has indicated a 10 year trial period for IL and, second, that s106 agreements would run alongside IL and be used to support delivery of the largest or most complex sites. Third, the

Labour party has indicated it will repeal the IL provisions if it forms the next administration.

12. The existing regimes of Community Infrastructure Levy and s106 contributions will continue to operate until such time as the IL is introduced. Sites granted planning permission before the introduction of the new Levy will continue to be subject to their CIL and S106 requirements.
13. The government's stated intention is that, when introduced, the IL will be capable of delivering at least as much affordable housing as the existing system of developer contributions. IL will be a charge based on the gross development value rather than on the measurement of floorspace. Developers are likely to request estimates of IL ahead of any development, because otherwise developers will have no sense of their likely liability (because that will not be known, in most cases, until a development has been completed or sold). The Act allows developers to pay a proportion of their IL contributions in-kind as onsite affordable housing.
14. Only the framework of the IL is set out in the Act. Details will be set out in regulations to be brought forward at a later date. The initial phase of IL roll out is proposed for 2025/26, with a target for full rollout from 2030.

Changes to planning policy

15. The Secretary of State said the Act will deliver "a faster and less bureaucratic planning system", and discussions on planning dominated debates in Parliament.
16. A set of National Development Management Policies (NDMPs) will be introduced, which will set policies at a national level and sit alongside local plan policies in decision-making. Local plans will be subject to a standardised procedure designed to simplify and speed up production. This might mean that the government takes the lead in determining when plan processes are commenced. The government has indicated that, at least initially, parts of the current National Planning Policy Framework will be carried over to the NDPMs.
17. Current planning legislation allows departures from the development plan where material considerations indicate that the departure is warranted. In the future, decisions must be made in accordance with the development plan and national development management policies, unless material considerations 'strongly' indicate otherwise.

This introduces a new approach in which consideration of the NDMP must take place at the outset and an assessment must be made of what material considerations indicate. In this context, it seems likely that much debate will focus on the definition and interpretation of 'strongly'. In this context, there is some industry concern about what impact these changes might have. In the event of conflict between the local plan policy and NDMPs, NDMPs will have primacy.

18. In the future, the current duty to cooperate, which currently sets out the basis for cooperation between planning authorities, will be repealed. The duty will be replaced by a different regime, which the government states will have greater flexibility. However, there is no information about what a new regime might look like, nor is there an indication of how a new regime might encourage cross-border planning work between planning authorities.
19. All development plans will be required to have regard to local nature recovery strategies and biodiversity. The requirements to "have regard" could mean that planning authorities ask for additional requirements or mitigations as part of a planning and development process. This requirement will come into force after regulations and guidance are brought forward.
20. At present 'supplementary planning documents' (SPDs) do not have the weight of a development plan. In the future, after regulations are made and come into force, that regime will be replaced by supplementary plans, which may be produced as part of the local planning process. The new supplementary plans will be used to address site-specific needs or opportunities which require a new planning framework to be prepared quickly (like a new regeneration opportunity). Planning officers note that the scope of supplementary plans seems more limited than SPDs and that planning authorities might have less flexibility in the future. In a further change, supplementary plans will be part of the development plan. Supplementary plans will be subject to an examination process, which has the potential to add complexity to the planning system as well as imposing a cost on planning authorities.
21. New digital planning processes, welcomed by the City Corporation, will be set out in secondary legislation, requiring planning authorities to adopt common formats for the data they publish on line. The intention is to ensure that information is transferable and universally understandable. Common presentation of open data is intended to encourage data analysis across planning areas.
22. There are a raft of provisions in the Act that will come into force on a later date appointed by the Secretary of State. A considerable volume

of associated guidance will also be required prior to implementation. The provisions that are coming into force at a later date include, that

- a. development plans must have regard to the need to mitigate and adapt to climate change
- b. design codes must be included in the development plan
- c. supplemental plans will be subject to less scrutiny than primary plans.

Planning Practice

23. In the future, once regulations giving full effect to the requirement are made and in force, developers will be required to provide information to planning authorities about when work on a development is likely to commence. This is intended to improve the knowledge that an authority has about developments in its area. This change may be seen as complementary to the power for planning authorities to issue completion notices even before the initial three-year commencement period has lapsed if the authority believes that the development will not be completed within a reasonable period. Planning authority powers are further strengthened by a new power to decline to determine planning applications from applicants who have previously not implemented a permission or who have sought to carry out the development, in the words of the minister, "unreasonably slowly".

Beautiful Places and Environmental Provisions

24. Every local authority will be required to produce design requirements (often referred to as a code) that should be met for planning permission for development to be granted. This will be part of the local plan or as a new supplementary plan. All areas will be required to have design codes, however there will be flexibility regarding the number of codes that may apply in any area. For example, a single design requirement may apply to an entire planning authority area or there may be a patchwork of codes with differences between them. Codes may be general or specific. For example, highly sensitive locations might have a detailed code, whilst unexceptional areas might be covered by a more generic code. Design codes must be included in development plans (described above).

25. The government's intention is that the Office for Place (created to help improve the beauty of developments) will have a role in supporting

planning authorities and communities to deliver design codes and "better design outcomes". In January 2024 the Office for Place published templates and its learning from pilot activities.

26. Overall, the framework set out in the Act indicates that cultural and environmental protections will be maintained or increased. Heritage, archaeological, environmental and architectural groups have broadly welcomed a new layer of protection for historic and heritage sites. The Act places a requirement on planning authorities to prepare and maintain an Historic Environment Record (HERs) for their area. These mandatory records will be a public register of important sites, including listed buildings, conservation areas, ancient monuments, world heritage sites and protected gardens and land.
27. In an associated move, the Act provides that planning authorities must have 'special regard' to the desirability of preserving or enhancing heritage assets.
28. Since 1998, developers have been subject to EU-inspired Environmental Impact Assessments (EIAs), which evaluate the potential consequences of a development on the environment and on human health. Under the Act, EIAs will be replaced by Environmental Outcomes Reports (EORs) once regulations are brought forward to give effect to EORs. Whilst the detail will be provided in regulations, the new regime will require an appraisal of the outcomes of development projects and schemes. The outcomes will relate to matters such as heritage protection and the natural environment. An EOR must include steps which will be taken to avoid, mitigate or compensate for any effects of a development.
29. In late amendments in the Lords, additional protection was given to chalkstreams and national parks. Areas of outstanding natural beauty were given extra protection thought reinforcing existing protected landscape management plans.

Conclusion and Miscellaneous Matters

30. With a general election on the horizon, some questions must arise as to whether much of the Act, contingent as it is on secondary legislation for delivery, will ever come into force if there is a change of government.
31. Alongside the Bill, the government has
 - a. proposed an increase to planning fees for major and minor applications by 35% and 25% respectively. These increases will be subject to consultation

- b. indicated that nature protection policies will be better integrated into plan-making and decisions, including, for instance, biodiversity net gain policies and the inclusion of Local Nature Recovery Strategies
- c. stipulated that the timetable for local plan production will be 30 months, updated at least every five years. During this period, there will be a requirement for two rounds of community engagement before plans are submitted for independent examination. This process will be phased-in so that cohorts of planning areas will adopt the approach at different times.

Consultation

32. The Planning and Development department has been consulted in the preparation of this Report.

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