

13 June 2022

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| <b>Report of</b>      | <b>Assistant Director of Place and Client Services</b>       | <b>Author</b> | <b>Bethany Jones</b> |
| <b>Title</b>          | <b>National Updates – Levelling Up and Regeneration Bill</b> |               |                      |
| <b>Wards affected</b> | All wards  |               |                      |

## 1. Executive Summary

- 1.1 On 11 May 2022, the Government published the Levelling Up and Regeneration Bill to “devolve power and give local leaders and communities the tools they need to make better places”. The Bill is seen as a key component to level up the country and builds upon the Levelling Up White Paper published in February. It incorporates some of the proposals for planning reform outlined in the earlier Planning for the Future White Paper published in August 2020, where the Government set out support for the approach to Levelling Up.
- 1.2 There are eight planning related topics covered by the new legislation including:
  - Beauty
  - Infrastructure
  - Democracy
  - Environment
  - Neighbourhoods
  - Planning Application Process
  - Enforcement; and
  - Protecting Heritage
- 1.3 This is the first step in bringing changes to the planning system. Changes to the planning procedures will begin to take place from 2024, once the Bill has received Royal Assent and a series of associated regulations and changes to national policy are in place. There will be a number of consultations which the Council will be able to feed into during this time, including changes to the National Planning Policy Framework (NPPF).
- 1.4 This report summarises the impacts on planning and other related services in the context of Colchester.

## 2. Recommended Decision

- 2.1 No decision is required as this report is for information only.

## 3. Reason for Recommended Decision

- 3.1 This report is for information only.

## 4. Alternative Options

- 4.1 N/A

## 5. Background Information

- 5.1 Following the Queen's Speech, the Government published the Levelling Up and Regeneration Bill on 11 May 2022. This is available online via <https://publications.parliament.uk/pa/bills/cbill/58-03/0006/220006.pdf>
- 5.2 A Policy Paper has also been published which summarises the steps being taken by Government through the Levelling Up and Regeneration Bill and other legislation and policy. This is also available online - <https://www.gov.uk/government/publications/levelling-up-and-regeneration-further-information/levelling-up-and-regeneration-further-information>
- 5.3 The Levelling Up and Regeneration Bill (The Bill), is a key component of the wider programme to level up the country, as set out in the [Levelling Up White Paper](#) published in February 2022. The Bill also incorporates some of the proposals for planning reform outlined in the [Planning for the Future White Paper](#) published in August 2020, which support the approach to Levelling Up.
- 5.4 The Bill is within 3 parts, with Chapters 2 and 7 being those most closely related to Planning. These cover the broad topic areas of Beauty, Infrastructure, Democracy, Environment, Neighbourhoods, Planning Application Process, Enforcement and Protecting Heritage.

### Implications for the Planning System

- 5.5 Planning Resource has identified 29 key ways in which the Bill and Policy Paper would change planning:
  1. Local Planning Authorities (LPAs) will be required to have a design code in place covering their area. The area wide codes will act as a framework where detailed design codes can then come forward, prepared for specific areas or sites. These design codes will have full weight in decision making, either through forming part of the Local Plan or being prepared as a Supplementary Plan.
  2. More weight is to be given to Local Plans and Neighbourhood Plans in determining planning applications (and Spatial Development Strategies where proposed by Mayors or Combined Authorities).

The Development Plan for Colchester could therefore consist of the following:

- Local Plan;
  - Neighbourhood Plans;
  - Minerals and Waste Local Plans (prepared by Essex County Council);
  - Supplementary Plans (if prepared); and
  - Spatial Development Strategies (if prepared).
3. The scope of Local Plans are to be limited to 'locally specific' matters including allocating land for development, detailing required infrastructure and setting out principles of good design. Development Management (DM) Policies will be set nationally. National DM policies will have the same weight as a Local Plan. These national DM policies will not be repeated in Local Plans. It is intended this will speed up the plan making process.

4. The Duty to Cooperate is repealed. This is to be replaced with a more flexible alignment test to be set out in National Policy. This will be more subjective and not simply a pass or fail test.
5. Introduction of 'Gateway' checks for Local Plans and prescribed time periods for different parts of the plan making process. These will include a check before the examination. Gateway checks are to be introduced through the revised NPPF, which will also outline a 30 month maximum timescale for Local Plan production which will include 2 public consultations and an examination (as previously outlined in the Planning for the Future White Paper). The requirement to review and update a Local Plan at least every 5 years will remain. It is intended that having a maximum timescale for production of the Local Plan, will curb planning by appeal and speculative development.
6. LPAs to create 'Supplementary Plans' where policies for specific sites or groups of sites need to be prepared quickly or to set out design codes for a specific site, area or whole area. The examination process for a Supplementary Plan will be different to a Local Plan examination, likely to be a 'check and challenge' approach to be set up through a new examination system. Supplementary Plans would replace Supplementary Planning Documents (SPDs) in the current system.
7. Groups of authorities will be able to produce voluntary Spatial Development Strategies on specific cross boundary issues to provide strategic policies for the local area.
8. Authorities will no longer have to maintain a five-year housing land supply (5YHLS) if a local plan has been adopted and is considered up to date i.e., adopted within the past five years.
9. Environmental Outcomes Reports will be introduced to replace EU processes of Strategic Environmental Assessments (SEAs) and Environmental Impact Assessments (EIA). The Environmental Outcomes Report will enable decision makers and local communities to see where a plan or project is meeting environmental outcomes and what steps are being taken to avoid and mitigate any harm to the environment.
10. A new neighbourhood planning tool is to be introduced – Neighbourhood Priorities Statements. These can be produced by Parish Councils or Neighbourhood Forums to set out their key priorities and preferences for their local areas. LPAs will be obliged to take these into account in the Local Plan making process. More detail will also be provided for what can be addressed in a Neighbourhood Plan (including that Neighbourhood Plans can make site allocations) and the basic conditions which a neighbourhood plan must meet, which will be aligned to the wider changes in the planning system.
11. Introduction of 'Street Votes' to enable residents to propose development on their street (extension or redevelopment of their properties and new build sites in line with design preferences) and hold a vote on whether it should be given planning permission. 'Street Votes' were proposed last year by the Policy Exchange Thinktank who have advocated for the densification of urban areas.
12. Increase in planning application fees. For major applications an increase of 35% and for minor applications by 25%, subject to consultation. The increase in fees must result in an improved planning service.

13. A new Infrastructure Levy to replace Section 106 planning obligations and the Community Infrastructure Levy (CIL). Rates and thresholds are to be set in charging schedules by the LPAs. Rates will be able to be tailored to local circumstances (including differences for brownfield and greenfield sites) and will be able to deliver onsite affordable housing. The rates will be based on the value of the property when sold and be applied above a minimum threshold. There will be retention of Section 106 obligations for large sites, however a *large site* has yet to be defined.
14. Requirement for LPAs to prepare Infrastructure Delivery Strategies to outline how the Infrastructure Levy is intended to be spent and outline the strategy for delivery. This is to make sure infrastructure requirements and levy spending priorities are considered carefully.
15. Impose a new duty on decision makers to make planning decisions in accordance with the development plan and National DM Policies unless material considerations *strongly* indicate otherwise. This is to increase certainty in planning decisions. Insertion of the word *strongly*, increases the weight currently in the NPPF. In the event there is a conflict between local and national policy, it would be national policy that take precedence.
16. Emphasis of the NPPF to shift to guiding plan making rather than decision making. Policies within the current NPPF which are intended to guide decision making would be removed and will form the basis of National DM Policies.
17. Removal of the sunset clause where currently the requirement for pre application engagement with communities before a planning application is submitted is due to expire in 2025. The Bill would make this requirement permanent. This will relate to certain applications, particularly those where pre-application engagement is already mandatory and will include additional types of applications which are yet to be confirmed. Currently pre application public engagement is only required for wind turbine development as per the PPG, however for Colchester this also includes any large scale or potentially controversial application where there is a significant impact to the environment or local community or where the application is likely to attract significant local interest as outlined in the [Colchester Statement of Community Involvement](#).
18. Introduction of commencement notices which would be required when a scheme with planning permission starts on site and the Bill will make it easier for LPAs to issue completion notices to developers to require them to complete their projects.
19. Amendments and strengthening of powers and sanctions available to LPAs to deal with individuals who fail to abide by rules and processes associated with the planning system (Enforcement). This includes:
  - Closing of existing 'loopholes' in enforcement which can prolong unauthorised development such as tightening the scope of appeals against enforcement notices so there is only one opportunity to obtain planning permission retrospectively;
  - Extending time period for all breach investigations to 10 years (currently 4 years);
  - Introduction of enforcement warning notices to allow LPAs to formally warn landowners that a breach has occurred providing an opportunity to remedy through a retrospective planning application;
  - Doubling fees for retrospective planning applications;

- Increasing fines associated with certain planning breaches. Fines for a number of breaches including breach of condition will rise from a maximum of £2,500 to be unlimited;
  - Extending temporary stop notices to be in place for up to 56 days (currently 28 days); and
  - The Planning Inspectorate will be able to dismiss enforcement appeals where the appellant is causing unnecessary delays.
20. Registered parks and gardens are to gain the same level of planning protection as listed buildings, World Heritage Sites, protected wreck sites, registered battlefields and conservation areas. Local Authorities will also have a new duty to maintain a Historic Environment Record (HER).
  21. Creation of a new route to allow the Crown to apply directly to the Secretary of State for determination of nationally important and urgent developments.
  22. Changes to the Compulsory Purchase Order (CPO) system, including publicity requirements and how inquiry procedures are held. LPAs will be able to use CPO powers for brownfield land for regeneration purposes.
  23. Existing Urban Development Corporations' planning powers to be revised (New Towns, Urban Development, Mayoral and locally led New Town). Centrally and locally led development corporations will be able to become LPAs for the purpose of Local Plan making, overseeing neighbourhood planning and development management. There is also introduction of a new type of corporation – Locally Led Urban Development Corporation seeking to regenerate areas which would be accountable to the Local Authorities, rather than Secretary of State.
  24. LPAs would be able to partially base land allocations on the option price of sites offered to them by developers, under legislation promised by the Bill to enable the pilot of 'Community Land Auctions'. Landowners would be able to submit their land for allocation as part of an emerging Local Plan, offering the LPA an option on the land at a price set by the landowners. LPAs will allocate land based on planning considerations and option price, the auction will provide the development rights to the successful bidder once the land is allocated in the adopted Local Plan. The difference between the option price offered by landowners and the price offered to develop the allocated land, will be retained by the Local Authority for the benefit of the local community.
  25. LPAs given 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. This will only apply to properties which have been vacant for over 12 months.
  26. Introduction of a discretionary council tax premium on second homes and changes to the qualifying period for use of a long term empty homes premium of up to an additional 100% on council tax bills for second homes and empty homes after one year (currently two years).
  27. A new model for a Combined County Authority (CCA) to be formed from upper tier local authorities only (at least two are required to form a CCA and no district councils). This is different to a Combined Authority which has to include all local authorities within the area it covers e.g., county council and all district councils
  28. Introduction of a new measurement to make land ownership more transparent.

29. Secretary of State to gain new powers to control changes to street names. This will ensure all Local Authorities follow the same process for changing street names and cannot do so without the consent of those who live on the street.

#### Other Key Points

- 5.6 The Local Development Scheme (LDS) which currently provides the project plan for the Local Plan will be replaced with a 'Planning Timetable'.
- 5.7 The Bill outlines the introduction of powers to charge developers and promoters for statutory consultee advice in certain circumstances.
- 5.8 Alongside the Bill, there will be the introduction of a new 'right to require' which will remove the role of negotiation in determining levels of onsite affordable housing. This is intended to rebalance the inequity between developers and local authorities by allowing local authorities to determine the portion of levy they receive in kind as onsite affordable homes. This will ensure delivery of at least the same provision as under current legislation.
- 5.9 Within the Bill the Government have also repeated their promise to develop a planning skills strategy for LPAs. This will be critical to implement the Bill once it has received Royal Assent.
- 5.10 In terms of monitoring, the existing performance framework for LPAs will be expanded to measure performance across a broader range of quantitative and qualitative measures. This is likely to be linked to the rise in planning application fees which must result in an improved planning service.
- 5.11 Part of the NPPF review and consultation which will be outside of the Bill, will consider whether the 'soundness' tests for Local Plans are sufficiently proportionate. Other changes to the NPPF which will be consulted upon are likely to include improvements to environmental outcomes, protection of historic environment and to set out the position on planning for housing.
- 5.12 The Government have also committed to providing new guidance on community engagement in planning including new digital engagement tools to sit alongside more traditional engagement methods such as site notices and neighbour letters.
- 5.13 Through the Bill, there will also be the introduction of New Local Plan Commissioners to be deployed to support or ultimately take over planning responsibilities in the event that an LPA fails to meet their statutory duties. These changes are intended to increase the number of authorities with up-to-date Local Plans in place.
- 5.14 Similarly, new legislation is intended to be introduced to clarify what can be counted as a 'suitable permission' in the Self Build and Custom Housebuilding Act, to support the delivery of more self and custom build housing to meet the needs of those who have registered an interest in this type of housing with the LPA.
- 5.15 Planning Inspectors will be given the power to change the procedure for determining a planning appeal if an alternative would be more suitable, in the interest of speeding up the planning appeals process.

## Next Steps

5.16 Changes to the planning procedures will begin to take place from 2024, once the Bill has received Royal Assent and a series of associated regulations and changes to national policy are in place. Many of the proposals in the Bill will be subject to further consultation, including a consultation on the following:

- NPPF revisions
- National DM Policies
- Infrastructure Levy
- New Environmental Outcomes Reports (to replace SEA and EIA)
- Planning Fees
- CPO Powers
- Infrastructure Provision

5.17 The government are yet to set out the transitional arrangements between the current and proposed planning system.

## **6. Equality, Diversity and Human Rights implications**

6.1 An Equality Impact Assessment has been prepared for the Local Plan and is available to view on our website.

<https://cbccrmdata.blob.core.windows.net/noteattachment/Equality%20Impact%20Assessment%20June%202017.pdf>

## **7. Strategic Plan References**

7.1 The Strategic Plan is relevant, in particular in contributing towards priorities under the themes:

- Delivering homes for people who need them;
- Growing a fair economy so everyone benefits; and
- Celebrating our heritage and culture.

## **8. Consultation**

8.1 N/A

## **9. Publicity Considerations**

9.1 The report is for information only and unlikely to generate publicity.

## **10. Financial implications**

10.1 The financial implications are not yet known.

## **11. Health, Wellbeing and Community Safety Implications**

11.1 N/A

## **12. Health and Safety Implications**

12.1 N/A

### **13. Risk Management Implications**

13.1 N/A

### **14. Environmental and Sustainability Implications**

14.1 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030. The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives.

### **15. Background Information**

15.1 The Planning Advisory Service (PAS) have published an initial set of FAQs to set out their initial thoughts on the Bill - [Levelling-up and Regeneration Bill | Local Government Association](#)