LURB Actually

May 2022

Much still needs to be worked out if we are to fall in love with the Levelling-up and Regeneration Bill.

The Levelling-up and Regeneration Bill (now commonly referred to as LURB) was laid before Parliament on 11 May 2022: 196 clauses, 17 Schedules, 338 pages. It was accompanied by explanatory notes (248 pages) and a policy paper (15 pages).

LURB in part proposes legislative changes to take forward proposals within the government's February 2022 levelling-up white paper and in part finally introduces a range of proposed changes to the planning and compulsory purchase system – some of them watered down from the government's August 2020 planning white paper, some of them new.

Work in progress

With a fair wind we might expect LURB to be enacted by early 2023 but the changes are unlikely to come into effect immediately, indeed with only some of them taking effect by 2024. There is much still to be worked through. For instance, consultation is promised on the detail of the new "infrastructure levy" to replace CIL, on a new system of "environmental outcomes reports" to replace environmental impact assessment and strategic environmental assessment", on changes to NSIP procedures, on planning fees (proposed to increase by 35% for minor applications and 25% for major applications) and on changes to the National Planning Policy Framework, together with a proposed set of "national development management policies" which will replace the sets of local development management policies which individual local authorities currently include in their local plans). Some provisions are currently just "placeholders" pending further work, for instance the proposed regime of "street votes" which has attracted so much attention.

Fine tuning

There is much fine-tuning of other detailed elements of the current system, for instance:

- Data standardisation;
- A process to side-step the restriction on using section 73 to change a planning permission's description of development;
- A new requirement for development commencement notices;
- Making it easier for local planning authorities to serve completion notices;
- A blanket 10 year time limit for planning enforcement (whereas the time limit for some planning breaches is currently four years);
- Extension of the statutory decision making tests for listed buildings to other heritage assets;
- Neighbourhood plans must not result in less housing being planned than if the neighbourhood plan were not made;
- A new optional "neighbourhood priorities statement" to be taken into account in local plan preparation
- Fast-track procedures for Crown development; and
- The possibility for "conditional confirmation" of CPOs and greater flexibility over vesting deadlines.

The wicked issues

However, the success or failure of the proposals will come down to two main areas:

- the changed relationship between government guidance, local plans and the determination of applications and appeals; and
- the infrastructure levy.

A more zonal approach?

LURB provides that decisions on planning applications and appeals will need to be made in accordance with the development plan and national development management policies "unless material considerations strongly indicate otherwise". So, developers will need to make sure that:

- local plans and neighbourhood plans allocate the necessary land;
- the proposed mandatory local design codes are workable; and
- they can work within the constraints of whatever national development management policies the Government arrives at.

If development accords with these requirements, planning permission should be straight-forward. If not, applicants and appellants will need to overcome a heavy presumption against. Despite the Government's rejection of the zonal approach implied by the unpopular proposal in the planning white paper that local plans should identify "growth areas" within which development consent would be automatically forthcoming, LURB's proposals could be interpreted as a step in that direction.

Whether this is workable greatly depends on whether development plans, local design codes and national development management policies are properly tested for their realism. There will have to be even more focus on testing the soundness of local plans. However, in terms of local plan making, there are some major unresolved uncertainties:

- the Government has not yet resolved what changes to make to the "standard methodology" for assessing local housing need. A "prospectus" will be published at LURB's Committee stage.
- Does the annual national 300,000 new homes target remain?
- Given that LURB proposes the abolition of the "duty to cooperate" test, what will replace it to ensure that, for instance, authorities adjoining urban areas with high unmet housing needs cannot simply turn away from meeting those needs?
- The policy paper accompanying LURB indicates that local authorities' five year housing land supply requirement will be scrapped where the local plan is up to date. With no "tilted balance" in favour of development in these circumstances, how do we cater for the consequences of allocated sites not being developed?

Infrastructure levy

The community infrastructure levy has been much criticised for its complexity and unintended outcomes. The section 106 planning obligations system has also been much criticised for the time that negotiations can take and the uneasy interaction with negotiations over viability and the appropriate amount and types of affordable housing to be secured.

The government retains the planning white paper's proposals for a replacement "infrastructure levy" (although in London Mayoral CIL will continue and CIL will also remain in Wales). IL would be charged as a locally-set proportion of gross development value. The amounts raised would need to be vastly higher than for CIL, given that IL is also to raise at least as much funding for affordable housing as is the case under the current system. It will be for authorities then to use the IL to ensure that infrastructure and affordable housing is delivered (with the ability to require developers to provide it on site by way of a financial mechanism still to be finalised).

More work plainly is required. The promised technical consultation will be welcome, as is the Government's intention to introduce the new system iteratively, through a "test and learn" approach. Will it be simpler and more effective, whilst securing greater infrastructure and affordable housing delivery?

LURB is a many splendored thing…

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