BAILY GARNER ARCHITECTS

PLANNING REFORM – A RECIPE FOR DISASTER OR A SILVER BULLET FOR CHANGE?

It's undeniable that we're in the midst of a housing crisis of epic proportions. The evidence is clear: we simply aren't constructing enough homes, and our snail-paced build-out rates in comparison to other countries are a glaring testament to that fact. While various factors contribute to this problem, the crux of the matter lies in our outdated and flawed planning system. It is plagued by systemic issues, is notoriously slow and, inherently, as unpredictable as British weather. Even if developers meticulously adhere to local plans, every application ultimately hinges on the whims of a designated planning officer, whose judgment can differ drastically from their colleagues. We've witnessed planning applications, backed wholeheartedly by the planning officer, getting the axe at committee meetings. This chaos is further exacerbated by the lack of resources within Local Planning Authorities (LPA's), which has created an insurmountable backlog of planning applications that regrettably hasn't improved in over a decade.

Furthermore, we are severely falling short of meeting housing targets within our local constituencies. The dream of owning a home is fading away for many, and is not helped by soaring interest rates and inflation. To add to this, the construction industry has several ambitious sustainability goals to meet, in order to meet net zero and decarbonisation commitments by 2030 and 2050.

The call for planning reform has been a long-time coming, with the 2020 Planning White Paper and the 2022 Levelling Up White Paper paving the path to reform. The Labour Party recently promised sweeping planning reform to jumpstart the economy and provide much-needed housing, along with a commitment to recruit 'hundreds' of extra planners should they secure victory in the next general election. And more recently, the King's Speech to Parliament promised 'reform to the housing market' and a long-term plan to revitalise towns.

The Levelling Up & Regeneration Act (LURA) finally delivers the blueprint for reform, and after a long period in the House of Lords, finally received Royal Assent on 26th October 2023. The Act proposes a radical overhaul of the planning system, not only empowering decision-making at a local level, but by its very title aims to tackle demographic disparities across the nation. Whilst the changes are certainly welcomed and the shake up the planning system needs, we await to see if the policies laid out will solve the crisis we find ourselves in, or merely add complexity to our already dysfunctional planning process.

The LURA, endearingly dubbed the 'Christmas Tree Bill' is expected to have numerous pieces of secondary legislation added to it forthcoming months. Here are our key points, although please do note that these may be subject to revisions as secondary legislation emerges.

SIGNIFICANT PLAN-MAKING CHANGES

A substantial shift in planning policy is on the horizon, with the aim of emphasising greater decision-making at local level in order to speed up the planning process. We expect to see a comprehensive revamp of the National Planning Policy Framework (NPPF) to align with the principles of the LURA. Local Authorities (LA's) will finally be required to produce their own Local Plan, which in theory should make following policy less ambiguous, compared to the often vague NPPF. This change is a breath of fresh air, as the more prescriptive nature of Local Plans should set out to foster high-quality design that genuinely resonate with the unique character and quirks of each locality. We will also see Supplementary Planning Documents being replaced by Supplementary Plans, and a set of National Development Management Policies being introduced. These will set policies on issues that apply to most areas and will sit alongside Local Plan policies in decision making, with the intent being to remove duplication between national and local policy.

A package of measures have been introduced to expedite construction build-out rates. Through changes proposed in the LURA, LPA's now wield enhanced powers to consider various additional factors when evaluating planning applications, including developers' historical track records in regards to build-out rates and timelines. In instances where there are protracted delays to project programme, LPA's retain the authority to reject applications. Additionally, new 'Commencement notices' will require developers to specify the project start date. If a LPA suspects that development may not be completed within a reasonable timeframe, there are new powers for them to issue a 'Completion notice'. Further to this, failure to adhere to the prescribed timelines in this notice will grant LPA's the power to revoke planning permission, necessitating the submission of a new application. So, developers beware!

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On the contrary, a more lenient approach to planning enforcement will be adopted, characterised by the introduction of 'Enforcement warning notices' for unauthorised development. LPA's will have the authority to request developers to submit retrospective planning applications within defined timeframes. Conversely, fees for retrospective planning applications are expected to increase.

A welcoming change being proposed is allowing greater flexibility to amend existing planning permissions, particularly for non-substantial planning modifications. This change promises to streamline the process for adapting to design changes that occasionally (and sometimes inevitably) arise during the detailed design phase.

Finally, there will be an increase to planning fees, with LPA's now having the autonomy to determine their own planning application costs. Furthermore, LPA's will also have the authority to charge developers for the time expended by external consultees to review and provide input to proposals. Whilst obtaining external consultee feedback can be a challenge as it is, this may introduce further complexities and potential delays, particularly for large-scale developments where consultation with Highways and Urban Designers for example, may be required. The specifics of how this system will operate and the criteria for how fees will be set remain to be seen, so we eagerly await further detail.

ENVIRONMENTAL CHANGES – NUTRIENT NEUTRALITY & BIODIVERSITY NET GAIN

The construction industry is adapting to a wave of new environmental regulations to adhere to global net-zero goals. The LURA sets out a framework for assessing environmental action for development and ensures that climate change now must legally be taken into account and hold 'special importance' within planning applications. These regulations usher in a raft of new policies, including Biodiversity Net Gain (BNG) and Nutrient Neutrality. Whilst initiatives like these are certainly needed, the question that arises is: Will the sheer complexity of these measures inadvertently prolong the delivery process?

Nutrient pollution is rapidly becoming a significant issue and the need to address pollution on construction sites is already affecting project delivery. At present, nutrient neutrality measures only apply to specific catchment areas within 74 LA's. Essentially, wastewater from new development is exacerbating imbalances in nutrients within waterways, leading to detrimental effects on wildlife. Developers are now compelled to mitigate nutrient loads either on-site or within the same catchment area, by way of necessitating the creation of new wetlands, buffer zones along watercourses, or contributing to the upgrade of outdated water treatment plants. Another hurdle for developers to go through, is obtaining a Habitats Regulation Assessment, which will add an additional layer of consultation during the feasibility stage.

Recognising the financial burden on developers, the government's support is two-fold. Firstly, it has introduced a national £30m nutrient mitigation scheme, and secondly has introduced the requirement for water companies to upgrade wastewater treatment facilities by 2030. Nevertheless, questions linger about whether the funding goes far enough to support developers in meeting Nutrient Neutrality measures. Whilst environmental policy changes are indispensable, developers may start to witness sites teetering on the edge of viability, as they grapple with the requirement for measures such as SUDS which may impact number of units on sites, or the financial burden of contributing to off-site gains.

BNG follows a similar trajectory. Initially set to take effect in November 2023, the implementation date has been postponed to January 2024 for major developments, April 2024 for small sites, and 2025 for nationally significant infrastructure projects. BNG requirements mean that all new projects must contribute at least 10% BNG compared to the existing sites' biodiversity value, and landowners must maintain this for 30 years, which will be enforced through a pre-commencement planning condition.

Developers essentially have three options to provide BNG gains: on-site enhancements, off-site enhancements (within the same catchment area) or as a last resort purchasing BNG credits. The latter option translates into a substantial financial commitment for developers, with costs per credit ranging from £42,000 to a staggering £650,000 each. To fulfil a BNG 'unit' two credits are required, potentially leading to landowners banking sites, particularly those deemed unviable for development, with the intent to cash-in on 'off-site' gains. This has the potential to significantly raise land values in biodiversity-rich catchment areas.

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Developers be aware that brownfield sites are not exempt from BNG requirements and may even have a high BNG value if left vacant and overgrown for some time. Outline planning applications will also necessitate a BNG strategy, even for later phases that may not come to fruition. The onus of monitoring and ensuring BNG delivery for 30 years falls on the shoulder of the developers initially, transferring to landowners, with LPA's possessing the authority to take enforcement action. Finally, a legal agreement resembling similarities to a S106 agreement or Conservation Covenant are expected between the LA and the developer.

NEW CATALYSTS FOR HOUSING DELIVERY & REGENERATION

New measures to expedite housing delivery and regeneration are a stride in the right direction. The LURA gives LA's the power to acquire land for regeneration through a simpler Compulsory Purchase Order (CPO) acquisition process, finally equipping LA's with capabilities on par with Homes England and the Greater London Authority. The LURA will bolster the 1961 Land Compensation Act, devaluing land with planning permission and empowering LA's to purchase land closer to its current market value, rather than its 'hope value'.

The LURA also introduces an ambitious new proposal for 'Community Land Auctions', which will see land allocations transform into a competitive process, akin to tendering. Landowners will engage in head-to-head competition, setting out land sale prices, which will give LA's the prerogative to make judicious decisions, considering land value capture in deciding which sites to allocate.

Finally, the concept of 'High Street Rental Auctions' signifies a resoundingly positive move towards revitalising vacant properties and fostering urban regeneration. Granting LA's powers to auction the rental rights of commercial high-street properties that have been vacant for longer than 12 months in a 24 month period is certainly a commendable endeavour. This will see successful bidders entering into lease agreements which can span from 1-5 years.

Whilst these changes certainly seem pivotal and a change for the better, the practical execution of these initiatives remain a question mark, particularly with already under-resourced LA's, and it is therefore crucial to see how these changes translate into reality.

THE NEW INFRASTRUCTURE LEVY

The new Infrastructure Levy (IL) is a bold step towards holding developers to account for a fairer share in funding affordable housing and essential local infrastructure. IL will place greater emphasis on the uplift in land value, with rates being determined as a percentage of Gross Development Value rather than floor area. The IL is poised to replace the existing CIL and S106 contribution system, though these will continue to persist until the full implementation of IL. For major projects, a 'delivery agreement' will be established between developers and the Local Authority.

Whilst the introduction of IL represents a bold shift, we are seeing a prevailing concern within the housing sector. Concerns centre around potential delays in the local plan process, challenges for brownfield sites, uncertainty for developers, and a possible reduction in the number of affordable homes. Once more, we will observe the unfolding impact of this new planning tax.

In conclusion, the LURA marks a significant milestone in planning reform for the UK. Whilst the proposed changes aim to address the housing crisis and environmental concerns, the potential impact on developers, site viability and the practical execution of these initiatives raises questions. The LURA's emphasis on local decision making, environmental regulations, housing delivery and the new Infrastructure Levy introduces a complex landscape with both promising and equally concerning aspects. As we await the implementation and evolution of these reforms, the true efficacy in solving the housing crisis remains uncertain, and the delicate balance between progress and pitfalls will define its success.

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