North Devon Council & Torridge District Council

Report Date: 8th December 2023

Topic: Levelling-up and Regeneration Act 2023

Report by: Senior Planning Policy Officer (TDC)

1. INTRODUCTION

1.1. The Levelling-up and Regeneration Bill received Royal Assent in October 2023, formally becoming an Act of Parliament (law). Now known as the Levelling-up and Regeneration Act 2023 ('LURA'), it contains primary legislation that covers a broad range of topics associated to the Government's levelling up agenda.

1.2. The topics covered by LURA are diverse and include, for example, provisions associated to local democracy and devolution (including the operation of Combined County Authorities), the registration of short-term rental properties, reforms of compulsory purchase provisions, changes to the regulation of sewerage disposal works through to powers around empty properties and Council Tax.

1.3. Most notably for this Committee, the LURA contains a significant body of provisions that will potentially, in due course, have wide-ranging implications for the discharge of planning functions by the two local planning authorities.

1.4. This report seeks to introduce these provisions, recognising that it is essential for Members of the Committee to remain up-to-date and be familiar with the changing national context within which they are operating.

1.5. It is important to note that the report can only provide an overview of the provisions as many of them will require associated secondary legislation, in the form of Regulations, that are yet to be published.

2. RECOMMENDATIONS

2.1. Members of the Joint Planning Policy Committee are recommended to:

(a) note the content of this report relating to the enactment of the Levelling-up and Regeneration Act 2023.

3. REASONS FOR RECOMMENDATIONS

3.1. To ensure Members are kept appraised of on-going reforms to the planning system and the potential implications for North Devon and Torridge.

4. REPORT

4.1. The Levelling-up and Regeneration Bill (LURB) was first introduced to Parliament in May 2022, culminating in it receiving Royal Ascent on 26th October 2023; following detailed scrutiny, significant debate and amendment during its passage through the

House of Commons and House of Lords[1]. Upon achieving Royal Ascent, the Bill became an Act of Parliament and became known as the Levelling-up and Regeneration Act 2023[2].

4.2. The LURA is split into 13 topic-based Parts, containing 256 individual clauses and supplemented by a series of 24 supporting Schedules. Of notable direct interest to this committee are likely to be:

(a) Part 3 - Planning

(b) Part 4 – Infrastructure Levy and Community Infrastructure Levy

(c) Part 5 – Community land auction pilots

(d) Part 6 – Environmental outcomes reports

4.3. Additionally, the Committee may have an associated interest in other aspects including provisions around charging Council Tax on empty dwellings, changes to Compulsory Purchase powers (Part 9), the ability for local authorities to let vacant high-street premises (Part 10) and the Registration of short-term rental properties (Part 12). The Councils more widely are likely to have a direct interest in many other aspects including those provisions on Combined County Authorities (Part 2) and a variety of other Miscellaneous provisions (Part 12).

4.4. As is the case with many Acts of Parliament, the LURA does not only introduce new legislative provisions directly but also makes significant changes (additions, revisions and/or deletions) to other pieces of pre-exiting legislation; with these set out in the included Schedules. Most notably in relation to the planning provisions, it makes amendments to the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004.

4.5. It is important to note that a significant proportion of the provisions contained within the LURA do not come into immediate effect upon Royal Ascent. They are rather subject to later introduction upon a specified date or are predicated upon associated secondary Regulations being laid before Parliament and coming into force. Clause 255 in Part 13 of the LURA sets out the detailed commencement and transitional arrangements associated to the bringing into effect of the individual provisions of the Act.

4.6. In relation to the planning aspects of the LURA, no part comes into force until at least two months after the Act was passed (i.e. 26th December 2023), with most aspects, including those associated to plan-making, also contingent upon the subsequent introduction of subservient Regulations, policy and guidance.

Plan-making

4.7. The LURA introduces the primary legislation required to support the Government's programme of reforms to plan-making. It provides the framework for the majority of the key aspects that have been trailed through earlier proposals and consultations. In particular, and in summary, it provides for the following:

[1] https://bills.parliament.uk/bills/3155/stages
[2] https://www.legislation.gov.uk/ukpga/2023/55/section/93/enacted

(a) Requirement that local planning authorities **must prepare a local plan** and that they can only have a **single local plan**.

(b) Prescribes **what local plans can** and **can't contain** and to **what they must have regard** and **take account of**; including the amount, type, location and timetable for development in the local planning authority area, other policies for the use or development of land which relate to particular characteristics or circumstances of the area or specific sites, details of the infrastructure requirements or affordable housing, requirements with respect to design or other matters prescribed by the Secretary of State. Additionally, the local plan must be designed to secure that the use and development of land contributes to the mitigation of and adaptation to climate change. It must take account of national development management policies, any other national policies and guidance and any Local Nature Recovery Strategy (LNRS). It is required to have regard to new Neighbourhood priorities statements (see below) and take account of any assessment of the amount and type of housing needed, including affordable housing. Significantly, a local plan is not allowed to include anything that is not prescribed by the relevant legislation, nor may it be inconsistent or repeat any national development management policy.

(c) Replaces the requirement to prepare and maintain a Local Development Scheme (LDS) with a similar provision to **prepare and maintain a local plan timetable**, with the Secretary of State able to prescribe the form and content of the timetable. In reality the change is not significant, although there is an associated requirement for local plans to be prepared in accordance with the local plan timetable.

(d) Establishes a requirement for local planning authorities to **seek observations or advice in relation to a proposed local plan** from a person appointed by the Secretary of State (i.e. a Planning Inspector from PINS for example), to publish said advice and have regard to it in plan-making. This provides the framework for the Government's proposals to for a series of Gateway Assessments.

(e) Provides for the introduction of **new Supplementary Plans** that will form part of the development plan. The scope of Supplementary Plans is strictly controlled through the LURA, particularly in terms of their geographic scope. They are principally limited to being able to be used to introduce policies related to the development of a specific site, or two or more specific sites which are considered to be nearby to each other. The exception to this limitation is that they may also be used to set out requirements with respect to design across wider geographical areas, including and up to the local planning authority's area; with this intended to allow local planning authorities the discretion to introduce the mandatory area-wide design code (see below) through a Supplementary Plan rather than their local plan.

(f) Introduces a requirement for local planning authorities to have a **design code for the whole [local planning authority] area** as part of the development plan. It stipulates that the development plan includes requirements with respect to design that relate to development to which proposals should adhere. It does usefully caveat that there is no expectation that local planning authorities are required to ensure that there are requirements for every description of development, for every part of the area or for every aspect of design.

(g) Affords powers for the Secretary of State **to take over plan making, revise plans or give direction to the local planning authority**, if they are considered to be failing to do anything necessary or expedient to prepare a plan or its revision, or if a plan is going to be, or may be considered unsatisfactory. Allied to the above, the LURA provides for the introduction of *local plan commissioners*, who the Secretary of State can appoint to investigate and take over plan making. Significantly, the LURA also provides the Secretary of State with the ability to recover any costs associated with intervention from the local planning authority.

(h) Introduces a power to **require assistance with certain plan making activity by prescribed public bodies**. The power set out within the LURA is potentially wide reaching, establishing that the prescribed body *must do everything that the plan-making authority reasonably requires of the body*. However it also provides that the Secretary of State may, through regulations, set out what a plan-making authority must, may or may not require a prescribed body to do, set the timeframe for their doing so, any procedure to be followed and the form and content of any notification, documentation or information. The LURA does not set out the bodies that will be subject to the duty with these to be established at a later date. Whilst the provision is to be welcomed, it's effectiveness will be contingent on the scope enabled through regulations and perhaps more importantly, the capacity of individual prescribed bodies to fulfil their duty.

(i) Revises the approach to **plan examination**, including the provision to provide a go/ no go gateway check to proceed to examination and the introduction of the ability for the examiner to formally pause the examination to allow for further work to be carried out. It also provides a different streamlined examination process for Supplementary Plans, modelled on the approach applied to neighbourhood plans.

4.8. Interestingly, the LURA does not include explicit legislative provisions to establish the advocated 30-month time limit for the preparation of local plans; with an expectation that this will rather be stipulated through national policy or guidance. It is reasonable to assume however that the powers afforded to the Secretary of State through LURA for local plan commissioners and to intervene in plan-making will be capable of being utilised to enforce compliance with any policy-based timeframe requirements.

4.9. Similarly, the LURA does not establish transitional arrangements for plan-making, in so far as those trailed through previous consultations, such as the cut off dates for the submission and adoption of local plans under the existing planning system, or the so-called 'waves' which may determine when local planning authorities may start work on new-style local plans. It is therefore reasonable to assume that these aspects will be introduced through sub-ordinate regulations or through associated policy.

National Development Management Policies

4.10. The LURA provides basis for the introduction of national development management policies, including a significant range of consequential amendments

to existing legislation to ensure their consideration in plan making, decision taking and any subsequent enforcement activity.

4.11. The Act provides absolute discretion to the Secretary of State to be able to subsequently define what constitutes a national development management policy by direction, so far as it is a policy, however expressed, in relation to the development or use of land. It does prescribe that when preparing or modifying national development management policies, the Secretary of State must ensure consultation with and participation by, the public and other bodies or persons that they consider appropriate.

4.12. The provisions within the LURA associated to national development management policies provide for a fundamental shift in the status of national planning policy in determining planning applications. The changes will elevate the status of any of these development management aspects of national planning policy, from simply being a material consideration in the determination of making planning decisions (as per the case for the current National Planning Policy Framework), to having an equal status to the provisions contained within the development plan.

4.13. Significantly, the Act stipulates that in decision making, where there is a conflict between the development plan and a national development management policy, any conflict must be resolved in favour of the national development management policy.

Decision-making

4.14. The LURA introduces changes that will have a bearing on the fundamental principles applied in the determination of planning applications. Firstly, will be the changes to the construct of the development plan – with the requirement for a single local plan, coupled with any accompanying Supplementary Plans. Additionally, there is the introduction of the national development management policies and the elevation of this aspect of national policy from being a material consideration to having prescribed status alongside the development plan.

4.15. Significantly, the LURA makes a simple but fundamental change to the status of material considerations in the determination of planning applications; requiring that determinations must be made in accordance with the development plan (and any national development management policies) unless material considerations **strongly** indicate otherwise. This is intended to strengthen the role of the local plan (and national development management policies) in decision making, reaffirming the plan-led approach to planning.

Self-build and custom Housebuilding

4.16. The Councils' have an existing duty through the Self-Build and Custom Housebuilding Act 2015 to ensure that sufficient permissions are granted, within a prescribed period, to meet the level of 'need' identified through the number of entries on the Councils' statutory self-build registers. There has been criticism from some sectors that the duty is poorly defined within the legislation and that it currently allows a flexible and liberal interpretation as to what planning permissions can be counted against the need.

4.17. Provisions within the LURA will afford the Secretary of State to address this concern, providing the ability for the preparation of regulations to specify the descriptions of permissions that can be counted towards meeting the duty. It is important to recognise that this could have an impact on the ability of the Councils to fulfil their duty or may potentially result in a requirement to take a more pro-active approach to the delivery of custom and self-build housing, however any impact will be contingent on the content of any future published regulations.

Community Levy

4.18. The LURA provides the primary legislation to allow for the imposition of a new Infrastructure Levy (IL), with the purpose of contributing to the costs of supporting development of an area. It is intended to be a replacement for the Community Infrastructure Levy (CIL) and planning obligation (s106) as a mechanism for securing contributions towards infrastructure and affordable housing. It provides the skeleton framework for the imposition of the charge, along with processes for its introduction, collection and enforcement.

4.19. Upon implementation, the introduction of IL has the potential to significantly alter the way that infrastructure and affordable housing is secured and delivered across northern Devon.

Neighbourhood Planning

4.20. The LURA retains neighbourhood planning and neighbourhood plans as part of the development plan. In a similar manner to the provisions for local plans, it introduces provisions that set out what neighbourhood plans must, must not and may include. It also seeks to affirm that a neighbourhood plan or neighbourhood development order may not have the effect of preventing housing development from taking place that is proposed within the area.

4.21. A new concept of the Neighbourhood priorities statement is introduced that provides qualifying bodies (i.e. town or parish councils designated for neighbourhood planning purposes) with the opportunity to set out what they consider to be the principal needs and prevailing views of the community in that area in respect of prescribed local matters. The LURA provides the primary legislative framework for the preparation, amendment and revocation of neighbourhood priorities statements.

4.22. Importantly, as noted above, local planning authorities are required to have regard to neighbourhood priorities statements when preparing a local plan. The matters for these statements are to be prescribed by the Secretary of State but may include wide ranging matters covering the development, management or use of land, housing, the natural environment, economy, public spaces, infrastructure, facilities, services and other features.

Planning data and systems

4.23. The LURA affords that local planning authorities can be required to make use of approved software for the processing of their planning data, whilst regulations may also restrict or prevent local planning authorities from using, creating or having any rights in relation to any software specified or described through regulations. It is

unclear as to the extent to which controls may be introduced, however there is potential scope that the provisions would require the transition to alternative software systems, as advocated by the Government, for the submission, management and processing of planning data.

4.24. Recognising the ambition for a move to improve accessibility to planning data, the LURA also provides for regulations to introduce provisions to require local planning authorities to make specified planning data available to the public under an open licence agreement.

4.25. In addition, the LURA provides the power for local planning authorities to, through the publication of a notice, require the provision of specific planning data from particular persons, the specifics of which are to be established through subsequent regulations.

Planning Enforcement

4.26. The LURA makes a number of changes to the planning enforcement regime, most notably:

(a) Extending the current four-year time limit for a breach of operational development to ten years;
(b) Extending the duration of temporary stop notices from 28 to 56 days;
(c) Introducing temporary stop notices for listed buildings;
(d) Introducing a new "Enforcement Warning Notice" to highlight where the local planning authority considers that there is a breach of planning control but whereby it is considered that there is a reasonable prospect that planning permission would be granted, offering a period for a planning application to be submitted;
(e) Restricting the opportunity to appeal against enforcement notices and introducing measures to manage undue delays in appeal proceedings introduced by appellants;
(f) Increasing the scale of financial penalties for non-compliance with breach of conditions and non-compliance with s215 notices; and
(g) Introducing ability for the Secretary of State to provide relief from enforcement for a breach of conditions for development relating to national defence, preventing or responding to civil emergencies or significant disruption to the economy.

Development monitoring, commencement and completion notices

4.27. The LURA provides for the introduction of a requirement for residential development schemes to have to submit *development progress reports* to the local planning authority to provide information on the intended progression of the delivery of the development. These will have to be provided to the local planning authority on an annual basis and set out the progress that has been made to date and that which is predicted to be made towards the completion of the dwellings; with the specifics of the form and content of the reports, along with how and when they are to be submitted, to be provided through subsequent regulations. The requirement will be applied to relevant planning permissions through the imposition of a condition. The progress reports have the potential to be of a significant benefit

to local planning authorities in robustly demonstrating housing delivery performance and their pipeline of future housing supply; and in particular the five-year housing land supply position. The benefit of this will however be contingent upon any submitted information being reliable and accurate.

4.28. Similarly, it introduces the notion of a *commencement notice*, which will require the person proposing to carry out the development subject to a planning permission (for prescribed types of development) to submit prescribed information to the local planning authority, specifying the date upon which they expect the development to begin. If this later changes, the person will be expected to submit a new commencement notice.

4.29. The LURA introduces the framework legislation for a power to allow local planning authorities to decline to determine planning applications for development from a person (with a prescribed connection to a previous scheme), whereby that earlier scheme has not been started or has been developed, in the opinion of the local planning authority, unreasonably slowly.

4.30. For circumstances whereby the local planning authority considers that a development (of a yet to be prescribed description) will not be completed within a reasonable period, the LURA introduces provisions to allow local planning authorities to serve a *completion notice*.

4.31. The provisions have the ability to cause a planning permission to cease to have effect after a specified period (to be at least 12 months from the serving of the notice) and can be served in relation to developments that have commended but that have not yet been completed. The LURA provides a framework for the serving of such notices, along with their effect and also the process for appealing such notices; with the ability for the Secretary of State to provide further detail through regulations. The completion notice is intended to provide local planning authorities with tools to expedite the delivery of development.

Environmental Outcomes Reports

4.32. The LURA sets the groundwork for introduction of new so-called *Environmental Outcomes Reports (EORs)*. It is expected that these will be intended to replace Sustainability Appraisals,(SAs), Strategic Environmental Assessments (SEAs) and Environmental Impact Assessments (EIAs), and accordingly the reports will apply to the consideration of planning consents, plans and projects.

4.33. The reports will be required to assess the extent to which the proposed consent or plan would, or be likely to, impact on the delivery of specified environmental outcomes, consider any proposals for increasing the extent to which an environmental outcome is delivered, any steps proposed for avoiding, mitigating or compensating for any effects and how any outcomes or steps will be monitored or secured. In doing so, it is required to consider any reasonable alternatives to the project, plan or any elements of it.

4.34. Whilst the LURA sets out an extensive range of matters in relation to EORs, much of the detail of the implementation and operation will still need to be established through subsequent EOR regulations.

Other provisions

4.35. The LURA contains a range of other provisions that may be of interest but are less directly related to the core function of this Committee. These include matters such as:

(a) reforms to compulsory purchase arrangements;

(b) the piloting of community land auctions;

(c) registration of short-term rental properties; and

(d) the letting of vacant high street premises by local authorities.

5. CONCLUSIONS

5.1. The enactment of the Levelling-up and Regeneration Act 2023 signifies a key milestone in the Government's planning reform agenda. It does not however, in itself, implement any immediate fundamental changes to the planning system. Rather, most of the planning related provisions will be introduced at a later date, either by virtue of implementation and transition dates set out in the LURA itself, or by the necessity of regulations being laid in order to allow provisions to come into force.

5.2. It is important to be mindful of the extensive provisions and to give some forethought to the potential implications. It is however challenging to prepare fully for their implementation, given the reliance upon secondary regulations, policy and guidance. It is expected that the Government will consult upon and/or publish subordinate and associated regulations along with changes to policy and guidance over the coming months and beyond.

5.3. Officers will continue to scrutinise the provisions of the LURA and any subsequent regulations, policy and guidance they may be forthcoming. Arrangements will be made to respond to any associated consultations in collaboration and consultation with Members as appropriate. Officers will seek to keep Members appraised of the emerging planning reforms as and when further information becomes available.

6. RESOURCE IMPLICATIONS

6.1. There are no immediate resource implications arising from the subject of this report. The LURA does provide the basis for significant changes to the planning system, including the potential for the transition to the use of different systems and processes, and the introduction of different or enhanced content to the development plan. All of these may have an impact on the scale and nature of resources that need to be applied or deployed by the Councils. Given that most of the provisions of the LURA require the introduction of subordinate provisions to provide the detail, it is not yet clear as to the extent of any such resource requirements. It will be important to keep the introduction of planning reforms under review and to ensure that adequate and appropriate resources are in place.

7. EQUALITIES ASSESSMENT

7.1. The report does not have any direct equality implications, given that it simply reports on the provisions of the introduction of new primary legislation. Given the extensive nature of the provisions contained within the LURA, there is scope for different

aspects to have varying implications for differing elements of northern Devon's communities. The specific implications are however unlikely to become clear until subsequent regulations, policy and guidance are available.

8. ENVIRONMENTAL ASSESSMENT

8.1. The report does not have any direct equality implications, given that it simply reports on the provisions of the introduction of new primary legislation. Given the extensive nature of the provisions contained within the LURA, including aspects associated to Environmental Outcomes Reports, Local Nature Recovery Strategies, climate change, ancient woodland and biodiversity net gain, there is scope for environmental implications. The specific implications are however unlikely to become clear until subsequent regulations, policy and guidance are available.

9. CONSTITUTIONAL CONTEXT

9.1. Schedule 2 of the Agreement for a Joint Planning Policy Committee (North Devon Council and Torridge District Council, dated 22nd October 2021); Section 10 of Annexe 1 – Powers and Duties of Committees, Constitution (North Devon Council, May 2023); and Terms of Reference and Functions of the Joint Planning Policy Committee, Constitution (Torridge District Council, October 2023).

10. STATEMENT OF CONFIDENTIALITY

10.1. This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

11. BACKGROUND PAPERS

11.1. The following background papers were used in the preparation of this report: (The background papers are available for inspection and kept by the authors of the report):

(a) Levelling-up and Regeneration Act 2023; received royal ascent 26th October 2023; available at: https://www.legislation.gov.uk/ukpga/2023/55/contents/enacted

(b) Levelling-up and Regeneration Bill (website); available at: https://bills.parliament.uk/bills/3155

(c) Levelling-up and Regeneration Bill: consultation on implementation of plan-making reforms (website); published 25th July 2023; available at: https://www.gov.uk/government/consultations/plan-making-reforms-consultation-on-implementation

(d) Levelling-up and Regeneration Bill: reforms to national planning policy – North Devon and Torridge Consultation Response; 1st March 2023

(e) Levelling-up and Regeneration Bill: reforms to national planning policy (website); published 22nd December 2022; available at: https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy

(f) Planning for the future Consultation (website); published 6th August 2020; available at: https://www.gov.uk/government/consultations/planning-for-the-future

12. STATEMENT OF INTERNAL ADVICE

12.1. The author confirms that advice has been taken from all appropriate Councillors and Officers:

(1) Cllr M Prowse, Lead Member for Economic Development and Strategic Planning Policy; Deputy Chair of Joint Planning Policy Committee (NDC)
(2) Cllr R Hicks, Lead Member for the Economy; Chair of Joint Planning Policy Committee (TDC)
(3) Helen Smith, Planning Manager (TDC)
(4) Sarah- Jane Mackenzie-Shapland, Head of Place, Property and Regeneration (NDC)

13. APPENDICES

13.1. This report is not supported by any appendices.