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THE QUEEN'S SPEECH AND THE LEVELLING UP AND REGENERATION BILL

Introduction

1. For the first time in 59 years, the Queen did not deliver her annual speech at the State Opening of Parliament this year and, instead, the speech was delivered by Prince Charles. In a less historical moment, the speech outlined upcoming planning reform, as part of ongoing efforts to revise England's planning system.

2. The Levelling Up and Regeneration Bill was published the day after the speech. As showcased by its name, the Bill is a product of the Government's Levelling Up agenda. The Queen's Speech summarised it as aiming to "drive local growth, empowering local leaders to regenerate their areas, and ensuring everyone can share in the United Kingdom's success." It comes nearly two years after the publication of the Government's White Paper for Planning (August 2020) which promised wholesale transformation to help speed up and simplify the planning system and engage local communities more and just three months after the Levelling Up White Paper (February 2022). It is accompanied by a detailed, separate, Government policy paper.

3. So what does the long-awaited Bill actually say? Its scope is much wider than just a planning remit, with talk of levelling up 'missions', changes proposed to local government structure and devolution measures, changes to compulsory purchase legislation and proposed rental auctions designed to revitalise our high streets. Extensive space in the Bill is dedicated to planning, however, and its 'long title' acts as a handy signpost of the main changes.

4. We summarise the Bill's main provisions relating to planning below. This is not a comprehensive summary of the Bill's content.

a. About town and country planning:

i. **Proposals to alter the s38(6) balance**, i.e. how planning decisions are made, so that planning officers would need to consider that material considerations "strongly" outweigh departures from the development plan, as opposed to a more balanced judgement. National development management policies would also have development plan status, with national policies prevailing over local ones should conflict arise.

ii. The Bill proposes to **simplify, standardise and digitise the process for local plans** to encourage them to be prepared more quickly, and with more involvement from local communities. This would include limiting the scope of local plans and introducing national development management policies. There would be a target of producing local plans in 30 months in accordance with a published timetable, with greater involvement from the Planning Inspectorate throughout the process. Plans would then be updated at least every five years. The duty to cooperate would be removed, as would the need to demonstrate a five year rolling housing land supply, for areas with up-to-date plans.

iii. A requirement for **all LPAs to bring in area-wide design codes**, which would then cascade down to more site specific codes. Design codes would be part of the statutory development plan. This appears to be a requirement for local plans to include design policies, as a minimum.

iv. Proposals for **strengthening neighbourhood planning** through relatively minor changes to the neighbourhood planning system in an effort to make the process simpler and more aligned with the wider planning system and provide alternative options for local communities to express local priorities.

v. The introduction of **street votes**. Only a very basic enabling provision is included, allowing for secondary legislation to create a system to allow residents of a street to vote to grant a form of planning permission for blanket extensions or redevelopment of that street, to encourage them to support new development.

vi. Changes to **the protection of the historic environment**, so that all designated heritage assets would have the same statutory protection as listed buildings and conservation areas.

vii. Introduction of **a new S73(B) route to make "non substantial changes"** to existing permissions, including changing the description of development and conditions – more to be discussed on what this adds to the current NMA/MMA system.

viii. **Changes to the 4 year/10 year rule** so that all unauthorised development in England would be lawful only after a 10 year period (as opposed to the current 4 years for resi/works), as well as amendments to **strengthen the current planning enforcement** system.

b. About Community and Infrastructure Levy; about the imposition of the Infrastructure Levy;

i. More detail on the much discussed **introduction of the Infrastructure Levy** which would eventually look to replace the current section 106 and CIL charging regimes, although the new system will clearly build on the existing CIL system.

ii. New rates and thresholds of the IL will be defined in **locally set charging schedules**.

iii. Developers would be required to deliver some forms of infrastructure on site, whilst LPAs would have a duty to prepare infrastructure delivery strategies to set out how they would spend the levy. This could include **a minimum requirement for the level of affordable housing that would continue to be required on-site**, in-kind, rather than through financial contributions.

iv. **Section 106** would remain on the statute book and there is reference to "narrowly targeted" s106 agreements and planning conditions continuing to be used. There are also suggestions that s106 may remain as an alternative to the IL for the largest sites.

v. There would be provision for the piloting of **Community Land Auctions**, with LPAs enabled to allocate land for development based on both planning considerations and the option price proposed by a developer, with allocated land then being auctioned to developers with the difference in price retained by the LPA.

c. About environmental outcome reports for certain consents and plans:

i. The **introduction of a duty on the spatial development strategy to mitigate, and adapt to, climate change**. We expect this will add complexity to the preparation of development plan documents, especially taking into account the ongoing arguments about the correct way of interpreting and transposing the UK's net zero commitments.

ii. The introduction of **a new system of Environmental Outcomes Reports to replace the current EU EIA and SEA process**. This would comprise an "outcomes-based approach" which would set clear and tangible environmental outcomes which a plan/development is then assessed against. The outcomes would be set following consultation and parliamentary scrutiny.

d. About compulsory purchase:

i. **"Regeneration" has been added to the key objective test** in section 226 of the Town and Country Planning Act 1990 (for England only). This is to remove any doubt that compulsory purchase is to be used for regeneration purposes.

ii. The confirming authority of a CPO **can decide which procedure it uses for handling objections** between public local inquiry or representations (either written or on an informal oral hearing basis if requested by the objector).

iii. **Orders can be confirmed subject to a small number of conditions:** this moves confirming authorities away from the blunt options of "confirm", "reject", or confirm (in part).

iv. **The time limit for using the powers under a CPO can be extended** to a period greater than three years (the default position).

v. Flexibility is provided to **allow the vesting date** (i.e., the date that ownership is transferred) **to be moved by agreement** between the acquiring authority and the claimant. The valuation date will coincide with the agreed vesting date in such circumstances.

vi. The **introduction of standards for compulsory purchase data** to improve access, drive efficiencies in the process, and facilitate better public engagement.

vii. The **definition of "the Scheme" in the Land Compensation Act 1961 to be amended** to ensure that where greenfield sites are acquired by compulsory purchase for development – made possible by a "relevant transport project" – then the uplift in value due to the relevant transport project is disregarded.

e. Other matters

i. Making **permanent the temporary COVID provisions for pavement licences** for outdoor seating and dining, streamlining the previous system that required separate highways licences and planning permissions.

ii. An **increase in planning application fees** of 25% - 35%.

The Government has indicated that the Bill will be taken through this Parliament, possibly extending into the next Parliament, with practical changes starting to take effect from 2024.

Commentary

5. The changes proposed in the Bill and accompanying paper are extensive.

6. In our view, they are more extensive than had been trailed by the Government and anticipated by observers. Whilst the zonal concept that had proven politically unpopular has been removed, at least in name, most of the other changes proposed in the White Paper remain in some form.

7. These include a simplified plan-making system, changes to infrastructure funding and greater digitalisation.

8. Collectively, the Bill would point to a planning system that is more plan-led (but potentially faster in the formulation of those plans), more centralised and standardised, and with less scope for local discretion at development management stage.

9. The most significant area of change appears to be in relation to **shifting the balance of s38(6)** to give far greater weight to development plans. At present, this requires that planning permission is determined in accordance with the development plan **"unless material considerations indicate otherwise."**

10. The revised formulation would instead require material considerations to indicate **"strongly"** that the determination should be other than in accordance with the development plan. That plan would also include national development management policies. Adding that single word would significantly change the balancing exercise to be undertaken when evaluating applications against plans. At present, the system provides reasonable discretion to make a decision not fully aligned with a local plan. The revised formulation would make this more difficult, strengthening the role of the plan.

11. In practice, of course, applications rarely fully satisfy every policy in the development plan. Planning, especially as plans become ever-more-aspirational, inevitably involves trying to reconcile and balance competing objectives and pressures. The requirement to be in accordance with the plan could, however, lead to it becoming more difficult to take an 'on balance' or holistic view of the aspirations of the plan as a whole, if "strong" material considerations cannot be shown. Inevitably, the meaning of "strongly" will be litigated and dissected by the courts, in the same way as the "special regard" that has to be had to heritage considerations has been fertile ground for judicial reviews. The creation of a new test for the proper application of development plan policies, and a new avenue for legal challenges, is a concern especially in complex areas where development plans can be multifaceted with internal tensions.

12. The Government hopes that, by shifting many policies to **national development management policies, local plans could be made simpler and easier to prepare**, more focused upon local design and land use issues without unnecessarily repeating national policy.

13. The Government has indicated there will be separate consultation forthcoming on the form and content of the national policies. Given the new weight that the system would place on those policies, getting them right will be essential in retaining a degree of flexibility in the system. Poorly drafted or conflicting policies, whose status has been bolstered by the new formulation in s38(6), could exacerbate risk.

14. If this proved possible, a more dynamic and responsive local plan system would be welcome. This appears more practical, especially for complex urban areas, than the three-way zoning system originally proposed within the White Paper.

15. Conversely, there is always pressure to expand the areas into which local plan policies should try to extend their reach and the proliferation of policies on a huge range of topics is a clear trend and pressure within the system. It is unclear whether the Government's intentions will be sufficient to reverse this trend. There are obvious risks if local plans remain as lengthy and ossified as they are at present, but their weight is increased by the shift within the s38(6) balance.

16. Reinforcing the plan-led nature of planning decisions, and reducing the scope for discretion, is likely to increase the need for meaningful engagement with local plan reviews, including on a site-specific basis, rather than being able to rely upon discretion being used at plan-making stage when the plan and development aspirations point in different directions

17. Government policy on the **national 300,000 new homes a year** target appears unclear. Whilst cryptic references to "Procrustean beds" captured the headlines immediately after the release of the Bill, the Secretary of State has subsequently been more conciliatory, indicating that the "ambition" for 300,000 new homes a year "remains undimmed." The Bill would remove the need to demonstrate a five year rolling housing land supply for local authorities with plans adopted in the last five years, again pointing to a greater role for the plan-led system. The Government has not indicated, however, how housing targets would be set beyond acknowledging further consultation on this will be carried out.

18. The proposals for **street votes** have attracted extensive, and often inaccurate, media attention. The Government's intention is to allow streets to grant themselves a form of planning permission for extensions or redevelopment, to encourage local communities to support development by being able directly to realise the benefits of gentle densification. Nothing beyond a basic enabling provision is provided within the Bill, and so the implications for commercial areas, and areas with conservation areas and listed buildings, are unclear. We anticipate this is unlikely to have a direct effect on more complex and mixed use areas.

19. The **Infrastructure Levy** will also be a key area of change. Much of the system remains to be designed, with the Bill providing a framework for secondary legislation, although this framework appears more detailed in places than perhaps anticipated. Its structure suggests that it will be modelled, in parts, closely on the existing CIL, but with some crucial changes, namely a shift towards a charge based on value rather than floorspace, and a requirement for the charge to be mandatory. Further consultation on the actual operation of the system, which will be crucial to its success, is promised, but no details on timing have been provided.

20. The IL is envisaged to be able to contribute to affordable housing, with one of the criteria for rate setting proposed to be ensuring that at least as much affordable housing as was previously delivered continues to come forward through the IL. Measuring this is potentially complex.

21. For development in mixed use areas, the detail of the IL will be crucial in understanding how it will be applied to non-residential development and the extent to which such development will, potentially, find itself contributing to affordable housing as well as other infrastructure.

22. Curiously, the Bill suggests that London's Mayoral CIL would remain in place. The overlay of a new, locally set, infrastructure levy and the Mayor's CIL could prove complex.

23. We anticipate that s106 would continue to have a role, albeit potentially more narrowly drawn than at present.

24. Again in practice, resourcing of local authorities, to implement these changes as well as continuing to manage and resource development management services, remains a key area of concern. The Government has indicated that it **intends to increase planning fees** for major applications by 35%, and for minor applications by 25%, but link this to improved performance monitoring to ensure it delivers a better service for applicants.