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MORE PLANNING REFORM - OR IS IT?



In the run up to the party conferences in October we are beginning to see planning and development become a key battleground between the main parties. As part of this focus, the Government has recently announced a raft of planning reform measures and consultations, many of which stem from previous Government White Papers and which build upon principles being brought forward through the Levelling Up and Regeneration Bill ('LURB').

In this note we set out a summary of what the latest announcements are, what the potential changes to the planning system might be, and how this might affect planning and development moving forward.

Recent announcements - what are they?

On 24th July, the Prime Minister and the Secretary of State for Levelling Up, Housing and Communities ('SoS'), Michael Gove, announced a '**Long Term Plan for Housing**', sticking with the Government's focus on housebuilding. The Plan included a range of measures to help boost the supply of new, beautiful and safe housing including:

- 1. Support for area-based regeneration** - specifically, the focus was on regenerating Cambridge (to make it Europe's new 'science capital'), developing a new 'Docklands 2.0' in east London and regenerating Leeds city centre partially through the introduction of a West Yorkshire mass transit system. This follows the Levelling Up White Paper commitment to regenerate 20 cities and funding was also announced to unlock new homes on brownfield land, including through investment to Greater Manchester and the West Midlands.
- 2. Improving planning capacity and resource** - a new Planning Skills Delivery Fund of £24 million was announced, which is part of a wider capacity and capability programme designed to try and tackle the backlog of planning applications and increase skilled resource within Local Planning Authorities ('LPAs'). This came alongside the laying of draft Regulations for an increase in planning application fees (following consultation earlier this year).

3. **Supplying beautiful, safe and decent homes** - the new 'Office for Place' (to be chaired by Nicholas Boys-Smith in the interim) has now been established which is a new body to lead "a design revolution" and look to support design code development. The Government also confirmed its intention to mandate second staircases in new residential buildings above 18m. Reference is made to transitional arrangements being designed *"over the summer"* so as to secure the *"viability of projects which are already underway"*.
4. **Consultation on plan-making reform** - the consultation sets out details of how the new streamlined local plan system (as being brought forward by the LURB) might look in practice. Such a system would need to be supported by detailed regulations, planning policy and guidance which the Government intends to have in place by autumn 2024. The consultation outlines how plans should be structured and developed (primarily by using Government produced templates which are yet to be produced), prepared (in close conjunction with stakeholders and within a formal 30-month period), evidenced (via streamlined, 'strictly necessary' evidence), and adopted (via a new 'Gateway Assessment' approach which is intended to simplify and speed up the examination process). Plans should be local in nature and not seek to repeat National Development Management Policies ('NDMPs') which are being brought forward separately. The consultation also outlines more about how Community Land Auctions ('CLAs') could work in practice which are seen as a tool for LPAs to be able to capture more land value uplift from the site allocation process.
5. **Consultation on extension to permitted development ('PD') rights** - the consultation covers a range of topics but most notably it looks to extend the PD rights available to convert commercial buildings to residential.

As noted above, the Government also laid draft Regulations which will **increase planning application fees** for major applications by 35% and other applications by 25% from April next year. This follows a consultation on increasing fees which was held earlier in the year. As part of the Government's response to that consultation, it has been confirmed that no ring-fencing measures for planning application fees will be put in place, but nonetheless the Government said that they would expect LPAs to at least protect application fee incomes for planning services.

Commentary - what does it all mean?

Whilst on first glance the headlines might suggest something new has been announced in terms of planning reform, in reality, a number of the measures set out simply build upon previous commitments and themes, many of which are currently progressing through the LURB. However, notwithstanding this, the announcements give us a good idea of where the current Government's priorities are in respect of planning and development in the run up to the general elections next year. We set out below some thoughts on what these announcements might mean for development in the short and long term.

1. **Tension between housing targets and method of delivery** - the Prime Minister summed up the Government's approach to housing delivery by saying *"Rather than concreting over the countryside, the government will focus on prioritising building in inner-city areas where demand is highest and growth is being constrained"*. In theory this makes sense however in reality the planning system is not being given the tools it needs to be able to do this. Quite the opposite in fact, with a system coming forward which pushes a community-led, 'gentle densification' approach possibly in the absence of local housing targets. Just to add to complexity, the potential impact of the recent M&S decision on the demolition and redevelopment of buildings could also constrain the ability of some sites to maximise housing. Focusing on city centres and brownfield sites and expanding PD rights will not, on their own, solve the housing crisis and these methods need to be considered as part of a much broader package of options.
2. **Levelling up agenda and London** - recognising funding as a barrier for housing delivery and seeking to address that is positive, particularly for the regions which will play a key role. It is interesting to note that the recent announcement centred heavily around development in Cambridge, which could be transformational, however the significant challenges there in terms of water will need to be urgently addressed before those plans can be realised. Alongside the announcement of plans for regeneration in London came a raft of criticism of the Mayor and his housing targets, including reference to the SoS reserving *"the right to step in to reshape the London Plan if necessary"*.

3. Top-down approach to planning - even though the press releases emphasise local and community control over planning, the plan reform consultation suggests much more of a top-down approach to planning than exists currently. This is through the introduction of the NDMPs, a much more standardised and rigid approach to local plan making and, crucially, through reducing the amount of control decision makers have in determining appropriate balanced judgements on planning applications. This is due to the proposed amendment within the LURB to alter the s38(6) balance so that material considerations would need to “strongly” indicate otherwise to justify departures from the development plan i.e. this would elevate the importance of the development plan in decision-making terms. Should this amendment and the revised plan process come forward, we expect that developers will have to be more engaged in plan-making activities at an early stage to help influence policy and site allocations.

The introduction of new/expanded PD rights will also lead to less local control. We have seen in recent months the SoS intervene and modify several Article 4 directions proposed by local authorities seeking to restrict commercial to residential PD rights, so that these can be used more flexibly.

- 4. Economy vs housing** - as with other planning announcements from this Government, the focus is very much on housing delivery with little reference to economic development. Whilst there has been some focus on the life sciences industry (including the recent announcement of a Liverpool life sciences Investment Zone) and a recent call for evidence for the freight and logistics industry in respect of emerging planning policy, the headlines are all about housing. The expansion of PD rights in order to deliver more housing could also have unintended consequences in terms of town centres’ vitality.
- 5. Planning resource** - it is welcome that the Government acknowledges there is an issue with capacity and skills within planning departments which is slowing down the planning system. However, this may all just be a ‘band aid’ in the face of a chronic issue which could take some time to remedy. Long term, the plan to move towards a more digital, standardised approach to planning may help in terms of resource but in the short term this transition is likely to cause more work for planning departments to implement.

Coming Up

Safe to say in the run up to the election we expect to see the fruition of a number of these announcements crystallise. In his speech the SoS said we can expect to see the revised NPPF published “*a little bit later this year*” and we are also waiting on the passing of the LURB, which may receive Royal Assent in the autumn (subject to the remainder of the Parliamentary process). The detail on a number of other key planning reform measures, including the Infrastructure Levy and Biodiversity Net Gain, are also forthcoming. We also expect to see progress on the London Plan review, which we had anticipated would begin in earnest after the Mayoral elections next year (albeit informal consultation has already begun). Following on from recent ‘announcements’, we may or may not see SoS intervention in that process.

It seems as if the Government has played all of its cards in terms of what we can expect for ‘big ticket’ planning reform measures (although never say never). However, a lot of the potential impact will depend on the detail of how these measures are proposed to come forward and the publication of the revised NPPF, consultation on future amendments and the scope of NDMPs will be important. We will also need to wait and see how far the Government progresses with this programme of planning reform and where this sits in the context of any general election result next year.

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