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Dear Member

## **OVERVIEW AND SCRUTINY BOARD - WEDNESDAY, 6 SEPTEMBER 2023**

I am now able to enclose, for consideration at the Wednesday, 6 September 2023 meeting of the Overview and Scrutiny Board, the following reports that were unavailable when the agenda was printed.

<b>Agenda No</b>	<b>Item</b>	<b>Page</b>
5.	<b>Levelling Up Bill and Regeneration Bill</b>	(Pages 2 - 8)

Yours sincerely

Governance Support  
Clerk

**Meeting:** Overview and Scrutiny Board **Date:** 6 September 2023

**Wards Affected:** All

**Report Title:** Government Changes to the Planning System (Levelling Up and Regeneration Bill etc.)

**When does the decision need to be implemented:** See main report. Some changes in Autumn 2023.

**Cabinet Member:** Councillor David Thomas, Leader of the Council

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## 1 Background

- 1.1 The planning system is undergoing substantial change. This briefing note seeks to summarise key elements of those changes. Planning has come very much into the national political spotlight. It is emphasised that the reforms may change further before they come into force. The most immediate effects are likely to be felt in changing policy, rather than through the legislative changes in the Levelling Up and Regeneration Bill. The Government's main planning policy vehicle is the National Planning Policy Framework (NPPF), which was last updated in 2021.
- 1.2 The key elements of changing planning policy are:
- The Levelling Up and Regeneration Bill, currently at Report stage in Parliament
  - Changes to the National Planning Policy Framework (consulted on in December 2022-March 2023)
  - Ministerial Statements on housing targets and housing need.
  - The Government's Long Term Plan for Housing. July 2023.
  - Extension to permitted development rights (consultation currently underway).
- 1.3 This paper focusses on housing policies and those which most directly affect housing supply. The planning reforms cover a wider range of issues including design, building safety, Infrastructure Levy, enforcement, biodiversity net gain, green energy, and regeneration. There is a very good FAQ section on the Planning Advisory Service website at: [Levelling-up and Regeneration Bill | Local Government Association](#). This also sets out options for continuing to prepare existing Local Plans or whether to move to new-style ones.
- 1.4 These changes originate from the Government's Planning White Paper "Planning for the Future" (2020) which promised to create an entirely new planning system for England "from the ground up". The White Paper's proposals have been somewhat curtailed, and have been introduced in the Levelling Up and Regeneration Bill (LURB). The LURB proposes simpler new style "30 month" Local Plans, replacement of Community Infrastructure Levy (CIL) with a development value tax called "Infrastructure Levy" and the publication of binding National Development Management Policies (NDMPs). The proposal to give the NDMPs primacy

over local policy has caused interest in the planning press and would be a significant change to legal basis on which planning applications are determined. The LURB also seeks to boost affordable housing and regeneration and proposes to use IL for this. These changes will require secondary legislation and guidance. Given the extent of the reforms, the precise meaning and interpretation of the legislation (and Framework) is likely to be tested in the Courts.

- 1.5 In practice changes to the NPPF are likely to have a more immediate effect on Torbay in terms of how planning applications are determined. The first section of this paper looks at those changes before looking at the LURB in more detail.
- 1.6 Unfortunately, the changes to national planning do create a period of uncertainty, particularly as ministerial statements pull in different directions from the (2021) NPPF. Both are capable in principle of being “material considerations”. As noted, the LURB and draft NPPF have not yet come into force and may be amended. The 2021 NPPF has not, as of 1<sup>st</sup> September 2023, been rescinded and is still being used by Planning Inspectors. Officers are not aware of any official advice from government or the Planning Inspectorate to reduce the weight given to the 2021 NPPF, but will keep the situation under review.

## 2 December 2022 Government Changes

- 2.1 The Government announced a number of changes to government housing policy in December 2022. These have been reported as “scrapping housing targets” but the situation is more complicated. Michael Gove issued a Written Ministerial Statement on 6<sup>th</sup> December 2022 [Written statements - Written questions, answers and statements - UK Parliament](#). This states that “A method for calculating housing need will remain but will be an “advisory starting point, a guide that is not mandatory. It will be up to local authorities, working with their communities, to determine how many homes can actually be built, taking into account what should be protected in each area....”
- 2.2 The Department for Levelling Up Housing and Communities (DLUHC) launched a consultation on a revised NPPF on 20<sup>th</sup> December 2022. The final revised NPPF is likely to be published in Autumn 2023 after the Levelling Up and Regeneration Bill receives Royal Assent.
- 2.3 The main changes to the NPPF are summarised below. The government has very usefully provided a track changes version online which compares the draft to the July 2021 edition of the Framework. [Levelling-up and Regeneration Bill: reforms to national planning policy - GOV.UK \(www.gov.uk\)](#)
- 2.4 Key proposed changes to the NPPF are:

### **NPPF: Housing Numbers and Housing Supply**

- Changes to the Presumption in Favour of Sustainable Development at Plan Making stage (paragraph 11) to reduce the need to build at densities “significantly out of character with the existing area”. Also allowing previous over-delivery to reduce the future requirement (and the converse?)
- Revisions to paragraph 14 to give **neighbourhood plans five years’ protection**. Under this revision, Torbay’s three neighbourhood plans may be brought back “up to date” until June 2024. A lot will depend on whether they meet the stipulation to “b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;”

- Simplification of the **Test of Soundness** for Local Plans at paragraph 35- removal of the “justified” test and making it easier for Plans not to meet need if doing so would conflict with other NPPF policies.
- The Standard Method Local Housing Need formula becomes an “**advisory starting point**” for establishing the housing requirement (paragraph 61). But the NPPF still requires areas to meet as much of their housing need as possible, and suggests that unmet need must be passed to neighbours.
- **Retirement housing** and care homes can count as housing (63).
- Increased **emphasis on urban regeneration** and the urban uplift for the 20 most populated cities (including Plymouth) (62).
- No need to demonstrate five year supply when strategic plans are less than five years from adoption (75, footnote 44).
- Plans more than five years old need to show five year supply based on Local Housing Need (LHN) formula taking into account past under or over delivery (75). The requirement to add past under delivery to the Standard Method LHN is significant.
- 5 year supply requirement continues to apply to Gypsy and Traveller sites (footnote 43)
- There are some transitional arrangements to allow four years’ supply to be demonstrated (paragraphs 225,226).
- Changes to the Housing Delivery Test. The HDT continues to apply unless planning permissions exceed 115% of the housing requirement over the last 3 years. Permissions can be counted towards the HDT. The draft text does not say if this means detailed permissions, or can include outline permissions and permission in principle and permitted development prior approval.
- **Non Housing NPPF amendments.**
- Emphasis on beautiful buildings (paragraph 94)
- Encouraging of mansard roof extensions 122 (e)
- Local Design Codes and National Model Design Code as a way of assessing design (135).
- Clearer planning conditions (137)
- No need to review Green Belt boundaries even if this the only way to meet needs. Clarity is needed as to whether this also applies to Local Green Spaces
- Encouraging “re-powering” i.e., replacing renewable energy installations (157 and 160 (c))
- “Significant weight” should be given to energy efficiency improvements. (161)
- More weight given to food production value of agricultural land (footnote 67)
- Transitional arrangements (225,226)- The new (2023) NPPF will apply to Torbay.
- Glossary – Community Led Developments are defined. The Housing Delivery Test also includes planning permissions.

**2.5** The NPPF consultation received a very high level of response. It has been seen by the housebuilding industry as being anti-development; but by many amenity groups as restoring some control to local communities. These changes, if implemented may reinstate Torquay and Brixham Peninsula Neighbourhood Plan as “up to date” until June 2024. The revised changes would not help Torbay achieve five year housing supply, as the 2021 definition of “deliverable sites” has not changed. However, the consequences of not having a five year supply have been reduced somewhat. Clarity is also needed about how the “Duty to Cooperate” (or its replacement) with neighbours over unmet housing need is expected to operate.

### 3 Long term Plan for Housing

- 3.1 The government announced its “Long-term plan for housing” in July 2023 [Long-term plan for housing - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/long-term-plan-for-housing). This was accompanied by statements by Michael Gove and Rishi Sunak that they won’t “*concrete over the countryside*”, but will “*build the right homes where there is the most need and where there is local support, in the heart of Britain’s great cities*”: [PM to build 1 million new homes over this Parliament - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/pm-to-build-1-million-new-homes-over-this-parliament).
- 3.2 The details of the Plan will need to be finalised through the Levelling Up Bill, the updated NPPF and secondary legislation. However, the July announcements endorse the government’s focus on urban regeneration and development in cities, rather than greenfield sites.
- 3.3 The announcements also reiterate a commitment to Neighbourhood Planning: “*To deliver housing anywhere, all new homes built will need to be accepted by the community – they will need to be beautiful, well-connected, designed with local people in mind and be accompanied by the right community infrastructure and green space. Communities must have a say in how and where homes are built*”. This includes through simplified local plans.
- 3.4 The Long Term Plan for housing contains measures to unlock development sites including a £24m Planning skills Delivery Fund” and an Office for Place. (The main focus is currently on Cambridgeshire but with wider funding for other urban areas).
- 3.5 The Long Term Plan for Housing proposes a significant expansion of **permitted development rights** to extend properties, and convert buildings into dwellings. This includes increased rights to convert agricultural buildings, upwards extensions, and a proposed permitted development right to be able to convert hotels (Class C1) into dwellings. Concern has been raised about the quality of development achieved through permitted development and conflict with the government’s objective to create beautiful places. Allowing permitted development change between hotels and dwellings could see a significant increase in the number of houses in multiple occupation in struggling seaside resorts. [Permitted development rights - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/permitted-development-rights) The deadline for consultation responses is 25<sup>th</sup> September 2023.

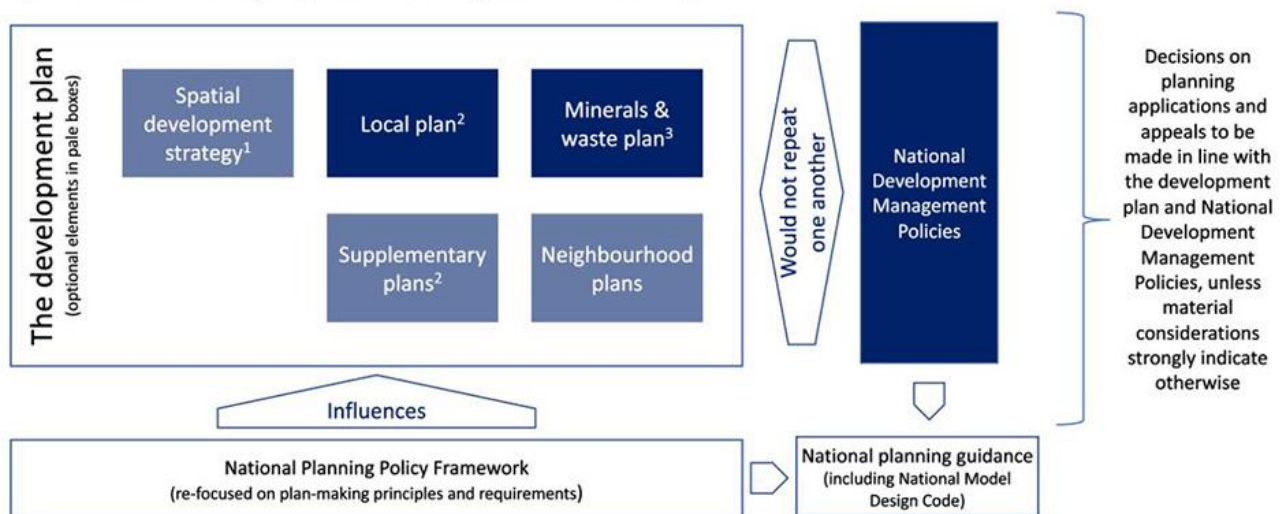
### 4 Levelling Up and Regeneration Bill (LURB)

- 4.1 The Levelling Up and Regeneration Bill is the government’s flagship planning legislation, that builds on proposals in the Planning White Paper (2020) and Levelling Up White Paper (2022). Many of the immediate effects of the LURB will be felt through accompanying policy changes to the NPPF, permitted development rights etc. The main proposals in the LURB will require secondary legislation. The LURB was introduced to Parliament in May 2022 and is currently at report stage with the House of Lords. Government proposes that the Bill receives Royal Assent in Autumn 2023. A number of technical consultations have been published along side the Bill.
- 4.2 The LURB is an extensive shake up of planning, but does not replace the 1990 Town and country Planning Act or numerous subsequent acts and regulations. Planning will therefore remain complicated, and clarification of the new system is likely to come through its testing in the Courts. The LURB does not propose a zonal planning system mooted in the White Paper. Nor does it contain proposals for a larger than local planning system, beyond replacing the current Duty to Cooperate.
- 4.3 **New style Local Plans.** The LURB proposes simpler Local Plans, that are expected to focus on a broad spatial development strategy. They should take 30 months to prepare.

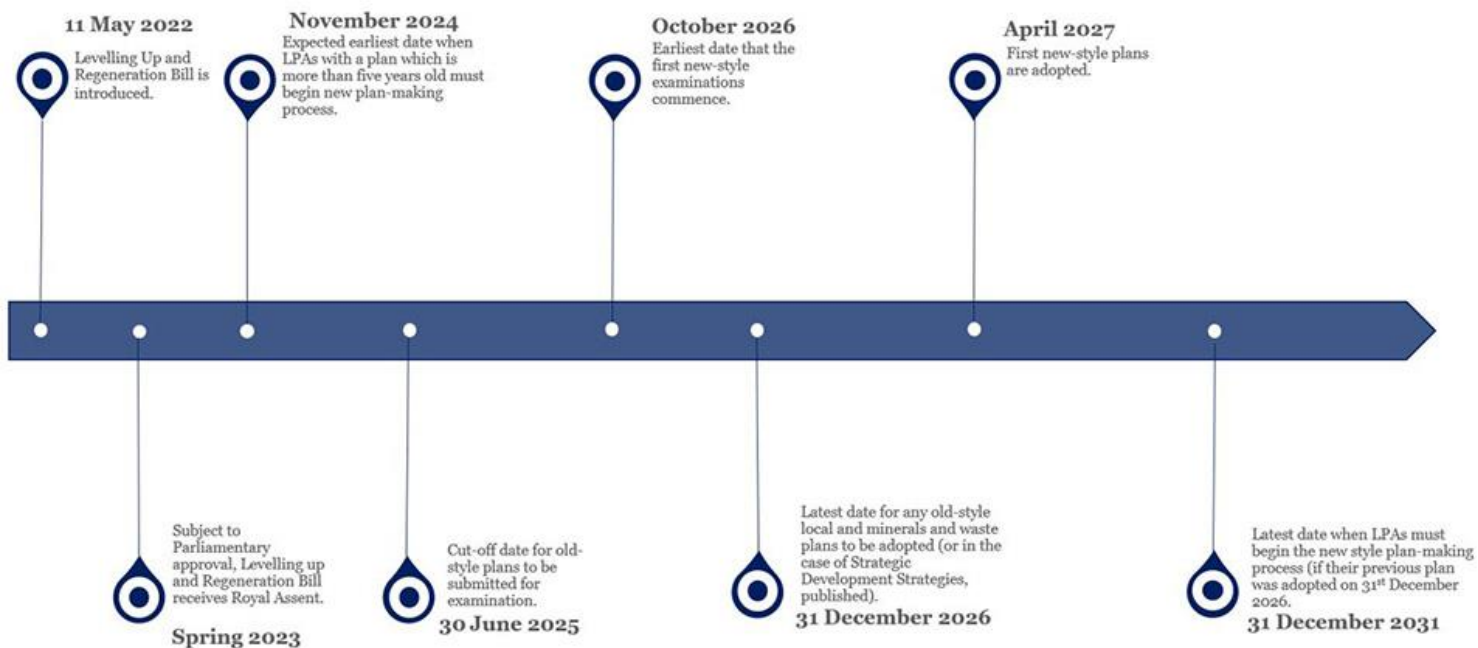
They will still need to be examined and pass a test of soundness. They will still require an evidence based, environmental testing will be simplified, with the existing Habitats Regulations Assessment and Sustainability Appraisal requirements being replaced by simpler Environmental Outcome Reports” (EORs).

- 4.4 When adopted, new style Local Plans will not have to demonstrate five year housing supply for five years.
- 4.4. The current “Duty to Cooperate” with neighbours will no longer apply to plans submitted under the Levelling Up Bill. However, a new Alignment Policy will apply. This appears to be a lighter touch requirement and appears not to relate to housing numbers.
- 4.4 Local Plans can be supplemented by binding **Supplementary Plans**, which will replace Supplementary Development Plans (SDPs). **Neighbourhood Plans** can also be prepared and are expected to cover matters such as local design coding and can also allocate land. The LURB also allows for slimline “**Neighbourhood Priority Statements**” as a simpler and more accessible way to increase participation in neighbourhood planning.
- 4.5 The proposed new Local Plan system and transitional arrangements are summarised below. There is a current consultation (open until 18<sup>th</sup> October) on implementing the plan making reforms in the LURB [Plan-making reforms: consultation on implementation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/plan-making-reforms-consultation-on-implementation)

**The role of plans and national policy in the reformed system**  
(elements with full statutory weight in decisions on applications shown in blue)



1 Mandatory where SDS powers have been conferred on Mayoral/combined authorities; voluntary elsewhere.  
 2 A **district-wide design code** must form part of the local plan, or else be contained in a supplementary plan. The local plan will also be informed by an **Infrastructure Delivery Strategy**, to be produced by the local planning authority, and by any **Neighbourhood Priorities Statements** produced by neighbourhood planning groups in the area.  
 3 Minerals and waste can be covered in separate documents, and can be combined with the local plan where an authority has powers over both.



- 4.6 **National Development Management Policy (NDMP).** The LURB proposes to replace detailed development management policies in local plans with a National Development Management Policy framework. Supporters of this approach argue that it will reduce the amount of repetition of generic policies in Local Plans, leaving Local Plans to focus on strategic matters. However, critics have seen the NDMP proposals as a power grab by central government. The “national development management policy” will have primacy over local or neighbourhood plans in decision making (Clause 83) and can be introduced with minimal consultation by the Secretary of State (Clause 84). Although the LURB sets out a plan-led system; giving primacy to national policy is a significant shift in the way planning applications are determined (currently governed by Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990).
- 4.7 In addition, Local Plan writers may find it difficult in practice to wrench themselves away from their sequential tests and other local policies. However, the LURB does allow policies to be tailored to specific local circumstances.
- 4.8 **Replacement of Community Infrastructure Levy (CIL) with Infrastructure Levy (IL).** IL is proposed to be a tax levied on the completion of development based on the uplift in gross development value. It can be used to deliver affordable housing as well as infrastructure. However, some role for more localised S106 Obligations will remain. IL will be introduced on a gradual basis and is not expected to be fully operational until 2030. The main concern for relatively low value areas such as Torbay is that they stand to secure less funding through IL than more affluent areas, whilst they still have high infrastructure and affordable housing need. Charging the IL at the completion of development creates a lag between when funding is needed and when it is received, as well as opening potential tax loopholes.

- 4.8 **Design Coding for Local Areas** The government has published a National Model Design Code, and local areas are expected to produce local design codes. It is part of a significant drive in planning policy to create beautiful places.
- 4.8 **Regeneration.** The LURB contains increased regeneration powers, including the ability for local areas to request the establishment of locally led Urban Development Corporations. Powers are proposed to bring vacant town centre shops into use including high street auctions. There are also proposals to increase build-out and control the growth of second homes (including changes to the use class order to create a separate C5 use class for holiday homes). Measures to speed up the delivery of Nationally Significant Infrastructure Projects are proposed.
- 4.9 **Enforcement Changes** to enforcement powers are proposed including simplifying the exemption for enforcement to a simple 10 years (rather than 4 or 10 years at present) a potential increased fines for planning breaches.