

# Levelling Up & Regeneration Bill

## Briefing for Commons Second Reading

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### Appeal to MPs

The Levelling Up and Regeneration Bill has demonstrated Government's continued commitment to build its levelling up agenda on the foundations of a more robust and accessible planning system.

In addition to the new powers made available to councils for regeneration and community engagement, the bill changes the fundamental requirements of local planning services affecting every constituency in England.

We have long argued for government to support a strong plan-led system, support digital transformation in planning and develop ambitious policy, regulation, and standards and we welcome proposals in the bill that will make planning a more powerful tool to deliver both development and sustainability.

However parts of this bill represent a significant departure from the status quo with many key elements of planning reform awaiting further consultation. Opportunities for parliamentary scrutiny, local discretion and, in places, public consultation must all be protected because they help our planning system to reflect the communities it governs.

These proposals also miss important opportunities to restore pandemic-style hybrid (in-person and virtual) planning committees, require local authorities to have suitably qualified Chief Placemakers and go further to align planning with Government's environmental, health and social commitments.

To successfully deliver the regeneration that areas need, measures must be considered in the context of public sector planning's chronic underfunding over the last decade – spending has fallen by a third in absolute terms, from £686m in 2009/10 to just £401m in 2017/18 - and likely inflation which both impact the most deprived areas of our country hardest.

**Support from all sides of the House will therefore be needed to ensure that communities, not Ministers, are empowered by the levelling up intended in this bill.**

### About the Royal Town Planning Institute

The Royal Town Planning Institute champions the power of planning in creating sustainable, prosperous places and vibrant communities. We have over 27,000 members in the private, public, academic and voluntary sectors. Using our expertise and research we bring evidence and thought leadership to shape planning policies and thinking, putting the profession at the heart of society's big debates. We set the standards of planning education and professional behaviour that give our members, wherever they work in the world, a unique ability to meet complex economic, social environmental and cultural challenges.

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#### Arrange a briefing

The RTPI would be happy to arrange briefings for MPs and their staff at your earliest convenience.

## Summary of our concerns with the bill

It would be helpful if you would consider raising the following points in the Second Reading debate:

1. **Councils who are pursuing devolution that wish to retain alternative development management policies should be allowed to do so.** Like other incentives for deepening devolution, development management is an important tool to stimulate growth and reflect regional priorities that will be lost to local leaders under a single national policy.
2. Even in areas without devolution, it is historically unprecedented that central government should determine and apply a single national development management policy to all of England without **clear requirements for parliamentary scrutiny in both houses and minimum standards for consultation.** The requirements for local authority consultations on local plans are clear and the Secretary of State should be similarly subject to them.
3. Development can be made more sustainable by assessing its impact on our health, economic and social fabric in addition to nature, heritage and landscape. Efforts to replace EU standards post-Brexit with **an improved, domestic environmental outcomes assessment should be welcomed but must retain the assessment of alternatives and requirements to consult with the public** so that the proper process of democratic deliberation is not undermined.
4. Higher levels of investment in infrastructure are critical to Levelling Up's success but the new Infrastructure Levy must avoid the risk of added complexity, bureaucracy and dependence on legal negotiation involved in other developer contribution frameworks. **It is unclear how local authorities areas with multiple levies and threshold rates, set through potentially cumbersome examination processes and enduring uncertainty about viability will make development easier and secure more developer contributions.**
5. More must be done to incentivise strategic planning through devolution and strengthen mechanisms for cross-boundary collaboration about the national assets, infrastructure investment, housing distribution and employment opportunities that regions will need to level up. **Many areas could lose out on the benefits of strategic planning without requiring Joint Spatial Development Strategies in new devolution deals, the inclusion of existing County Councils and Combined Authorities and greater promotion from the Secretary of State across England.**
6. Considering the emphasis placed in the bill to support digital transformation and widen community engagement in planning, **government must introduce amendments to allow at least a 'hybrid model' for planning committee meetings to reach decisions in-person and virtually – as we've recommended.** RTPI research found that remote meetings held during the pandemic were more accessible to a wider audience.
7. **The bill fails to ensure that local authorities retain qualified professional planners, working to the highest standards in order to deliver Levelling Up and Regeneration.** Current reforms should adopt the Building Better Building Beautiful Commission's recommendation and that of the 2020 White Paper to require a 'Chief Placemaker' in each local authority - as has worked well in Scotland.

## Levelling Up Missions (S1 – S6)

Missions introduced in the Levelling Up White Paper are recognised in this bill along with clear reporting requirements and should be welcomed. These missions align with many of the policy outcomes that planners and our planning systems deliver in communities including living standards, pride in place, housing, transport infrastructure, health and local leadership.

## Local Democracy and Devolution (S7 – S74)

Greater devolution cannot help local leaders to achieve the Levelling Up Missions and fulfil our climate commitments without better incentives and stronger mechanisms for cross-boundary collaboration that leave no part of England behind.

The bill responds to challenges that local planning authorities currently face when reaching decisions about natural assets, housing distribution, infrastructure investment and local growth that are critical to meeting regional ambitions to level up and our climate commitments but span multiple local authorities.

Joint Spatial Development Strategies proposed in the bill are likely to become a more attractive and deliverable strategic planning model that supports local decision-making and better value for money from public investment because these will be tested through their own process and regulations rather than local plan assessments. This is a positive step because the ‘duty to cooperate’ repealed in this bill has proved too rigid and impeded progress with new local plans.

However, unlike the previous statutory duty to cooperate, the decision to prepare a joint Spatial Development Strategy is voluntary and will therefore be difficult to organise in practice for places that lack sufficient local enthusiasm, enough dedicated resources and skilled strategic planners – especially when difficult decisions must be taken in the long-term interests of a region – without more support. The West of England’s recent experience shows some of the challenges that can be faced.

We have previously recommended introducing voluntary mechanisms like **Green Growth Boards**, forums of local leaders and other relevant organisations like statutory consultees and infrastructure providers together at a strategic scale to agree decision-making protocols, align strategies and identify opportunities across an area. These would complement and stimulate new joint Spatial Development Strategies.

In addition, Spatial Development Strategies proposed in the bill as a mechanism for strategic planning can be strengthened by:

- **Greater promotion by the Secretary of State**
- **Making all relevant local authorities – including County Councils and Combined Authorities – who must collaborate within an area jointly responsible for them**
- **Requiring them as a core foundation of all new devolution deals for Combined County Authorities**

If supported, these steps would afford all of England more formal opportunities for local collaboration with powers that were previously only available in some metropolitan areas.

## Digital Transformation in Planning (S75 – S81)

We welcome the introduction of new data standards, reporting requirements and transparency measures in the bill and have consistently advocated for greater digital transformation of our planning system. Our members in both the public and private sectors have responded enthusiastically but **proposals to require the use of software approved by regulations (S78) could undermine public investment in non-approved tools that have already been purchased and are in use.**

## Local Plans (S82 - S91)

We have called for local plans to be strengthened and welcome the value placed on them in this bill because they are an important way that communities can agree a vision for future development and account for resident's housing, employment and infrastructure needs.

We also welcome measures to restore confidence in local plans that will better reflect the communities who own them and guide planning decisions including: the establishment of fixed time-scales for their production; the requirement of design codes to accompany local plans; greater strategic advice provided through "gateway checks" to local plans before their final assessment; support for neighbourhood plans and simpler 'neighbourhood priorities statements'.

However, the bill proposes to introduce a single national development management policy (NMDP). On the one hand, these would make local plans simpler to produce and more accessible but on the other, **any single national policy would have statutory weight for the first time in our planning system's history** with a number of consequences:

NMDPs proposed in the bill would undermine new devolution deals by preventing local leaders from exercising discretion over an important tool for stimulating growth. **The ability to set alternative development management policies therefore should be retained as an incentive and opportunity of deepening devolution provided that is pursued as part of a wider deal.**

In areas not covered by a devolution deal, a single national policy would apply equally across very different parts of the country and would require significant review to ensure that policies align well with community's local ambitions. For this reason, **both houses of parliament should be required to debate any NMDP**, as with National Policy Statements established by the Planning Act 2008.

The bill **also fails to direct the Secretary of State sufficiently to consult with institutions, councils and other bodies before making, revoking or modifying an NMDP that would be subject to it.**

It is positive that new duties will be placed on infrastructure providers to engage with the production of local plans and we encourage the **explicit inclusion of private infrastructure providers in this requirement to ensure its effectiveness** and the participation of utility companies who provide vital services in their communities.

**The addition of Supplementary Planning Documents (SPDs) to local plan assessments would add significant cost to the process** of Planning Inspectorate examinations which have similarly limited the use of regeneration-focused Area Action Plans in more deprived parts of the country.

## Street Votes (S96)

We welcome new opportunities for community engagement that will help to improve economic and environmental outcomes. The bill will make it easier for hyper-local communities to participate in consultation, direct design guidance and ensure greater density development receives planning permission (e.g. extending buildings upwards, development on infill sites, etc.. in suburbs).

It is important that local authorities are sufficiently funded to run referendums and, if necessary, enforce the outcomes and design codes they generate. Scrutiny of the regulations governing street plans should help to make sure that everyone can engage in process, that safeguards are in place to mitigate the risk of abuse of local referendums and that private and social tenants wishes are considered as well as homeowners.

## Enforcement and other provision (S101 – S112)

We welcome measures in the bill to strengthen planning enforcement including the extension of time limits for enforcement, the duration of temporary stop notices and restrictions on appeal against enforcement.

In the context of the pandemic and the priority of public safety it was right that the Planning Inspectorate was temporarily able to limit enforcement action, but it is unclear why relief from enforcement is proposed in S107 to continue on a permanent basis.

## Infrastructure Levy (S113 – S115)

We welcome government's recognition that current levels of investment are not enough to fund the direct delivery of affordable homes and the critical infrastructure that connects communities, builds local pride and drives levelling up.

Contrary to previous Ministerial commitments, the bill introduces a framework for developer contribution rates that are set locally - as we have recommended – instead of a simplified flat rate that we warned would prevent development in more deprived areas and would not make a fair contribution in wealthier ones.

It is also positive that: Section 106 agreements will be retained on large sites; SME housebuilders will benefit from the removal of Section 106 negotiations from small sites; the Community Infrastructure Levy will be retained in London; and new infrastructure delivery strategies propose to connect developer contributions with the community's needs.

We have recommended that local authorities be given the power to borrow against future developer contributions so that public services and infrastructure can be provided effectively for new and existing communities. As has been effective in London, developer contributions can create a more secure funding environment for local authorities if used as collateral and would allow existing residents to see the benefits from new development earlier, reducing the impact of new homes on public services. However it is unclear if this will be possible from the primary legislation alone.

Further consultation on the bill has been promised by the Department but several elements of the levy's framework should be reconsidered during its immediate passage in parliament to stop the process for collecting developer contributions becoming more complex, more bureaucratic and more dependent on difficult legal negotiation which would significantly delay development.

### Complexity

Councils should be given discretion over their levy rate because communities should not be expected to endure the challenges of new development without control of the revenue they need to experience its benefits. However, the bill describes a framework where several rates and thresholds could apply within a local planning authority area depending on the type of site (e.g. greenfield, brownfield, etc...) or other factors. This **introduces the possibility that thousands of different levy rates could be introduced across England**, introducing significant complexity and requiring additional support to help developers understand when they are liable to contribute and at what level.

### Bureaucracy

The bill requires that council's levy rates be examined. No details are known, but we might support this would be at their own cost and conducted by the Planning Inspectorate which would reduce resources and add significant challenges for charging authorities. Experiences with the Community Infrastructure Levy have shown that authorities outside of London and South East have particularly struggled with this aspect of the process and as a result, that policy under-delivers in areas targeted for support in the Levelling Up White Paper. **We recommend an alternative mechanism for direct negotiation between the Secretary of State and charging authorities, informed by public consultation**, be introduced to determine whether levy rates are acceptable and account for viability and the appropriate level of affordable homes delivery.

### Dependence on legal negotiation

The bill responds to the difficult legal challenges involved with determining the economic viability of projects that can also make participation in the planning system difficult for members of the public to engage with. We welcome the intention to redress the imbalance in resources and expertise that can undermine local planning authorities recovery of developer contributions.

However, the bill also introduces mandatory requirements to apply an Infrastructure Levy and set rates about both viability and delivering a level of affordable housing that is equal to or exceeds previous levels. These **criteria are often in tension and it is currently unclear how this would be resolved** without significant direction by the Secretary of State or the use of similar legal negotiations about charging schedules as have been seen with other developer contributions.

## Environmental Outcomes Reports (S116 – S130)

Environmental outcomes in the context of these clauses means the assessment of our natural environment but also cultural heritage and landscape that can be negatively impacted by development. However, this **falls short of modern definitions of sustainable development that should, for example, account for other types of health, social and economic impacts** (i.e. wider environmental factors) that also shape people's lives and can be similarly effected by development.

The bill replaces EU-derived Strategic Environmental Assessments (SEA) and Environmental Impact Assessments (EIA) on relevant projects and plans post-Brexit and we welcome the proposal to introduce an assessment system that is equivalent or ideally better than the EU standard.

Appropriate assessments would enable planning departments to engage local communities in better conversations about how areas change and better prepare planners to make clear recommendations about the potential impact of new public services, housing developments, energy, roads and other kinds of infrastructure.

However Environmental Outcomes Assessments cannot match – or ideally outdo – the EU directives it intends to replace without retaining two key features that safeguard sustainable development: **assessments must review alternative courses of action for a plan or project** to give communities greater ability to deliberate and reach informed decisions and **maintain the need for public consultation – more than just keeping the public informed (S120) at every stage of the process** so that nature, heritage, landscapes and a wider range of health, social and economic factors can be adequately considered by the public and decision-makers.

For example, this process would make cases like the Stonehenge tunnel on the A303 – whose planning permission was recently overturned by the high court – easier.

## Omissions from the bill

### Hybrid Planning Committees

The bill fails to restore powers that allowed local authorities to hold planning committees virtually. A recent High Court judgment found that references to 'meetings' in the Local Government Act 1972 excluded those held remotely, confirming that **primary legislation is required to continue them permanently**.

Considering the emphasis placed in the bill to support digital transformation and widen community engagement in planning, **government must act urgently to allow at least a 'hybrid model' for planning committee meetings to reach decisions in-person and virtually**.

During the pandemic, we noted that remote meetings has increased the opportunities for planning committees to hear from a more diverse group of participants and views because they were more accessible to a wider audience. Allowing the public and media to view remote proceedings at a time convenient to them also ensured that more people could engage with planning and the decision-making process. RTPi research conducted with Grayling has found that over half the UK public want to be involved in changes to their local community post-pandemic.

When our members were surveyed, 90% believed local authorities should continue to have the ability to hold at least some meetings remotely, while 88% thought that remote meeting arrangements worked either "well" or "very well".

A call for evidence on 'Local authority remote meetings' concluded on 17th June 2021 but is yet to publish its outcome nearly a year after seeking views from the public.

### **Chief Placemakers**

#### **The bill fails to ensure that local authorities retain qualified staff within their planning teams.**

The Levelling Up White Paper has recognised the importance of place in creating physical, intangible, human, financial, social and institutional capital. Previous planning reforms had adopted the Building Better Building Beautiful Commission's recommendation to require a 'Chief Placemaker' in each local authority - as has worked well in Scotland.

We have called for the post to be filled by a Chartered Planner because the public and other agencies need confidence that qualified professionals, working to the highest standards, are trained to support collaboration and bringing different parties together to help shape the built environment.

### **Climate Change**

Government has confirmed that any single national development management policy would be derived from the National Planning Policy Framework (NPPF) – which is itself undergoing review. **In light of the climate emergency declared since the NPPF was drafted, the document must be brought into alignment with the Climate Change Act 2008** and other international legal agreements urgently.

The stability of our planning system – and the effectiveness of these reforms - depend on the proper resourcing of new burdens for environmental protection resulting from the Environment Act 2021, which must also align with the policies strengthened in the bill. For example, we've recommended that Local Nature Recovery Strategies account for the commitments of local plans and we've expressed reservations about the feasibility of introducing biodiversity net gain in the form currently proposed by DEFRA. Without proper attention and greater caution, we expect these policies to result in crisis.