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Insights

PLANNING AND INFRASTRUCTURE BILL – THE NEXT STEP ON THE ROAD TO PLANNING REFORM

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SUMMARY

The much trailed Planning and Infrastructure Bill introduced to Parliament on 11 March covers wide ranging changes to the conventional planning process, CPO, development corporations and infrastructure planning. It is an ambitious piece of legislation, designed to support delivery of the Government's housing and critical infrastructure targets and drive growth, and introduces some novel measures.

In this first of three Insights on the Planning and Infrastructure Bill, we discuss the planning process changes and whether they will result in schemes progressing more quickly, with more certainty and go far enough to increase investor confidence as is hoped. There will be more to come with a closer look at the infrastructure regime and nature restoration in subsequent Insights.

A common frustration with the planning system is that it is slow and uncertain. It often requires a significant financial investment without any certainty of outcome. Whilst this risk can never be eliminated due to the democratic nature of the system and statutory process to be followed, the Bill seeks to address some of the barriers through the following measures.

IMPROVEMENTS TO THE RESOURCING OF LOCAL PLANNING AUTHORITIES

LPAs will be given new powers to set their own planning fees. Currently planning fees are set nationally by the Secretary of State, but a new power would allow sub-delegation to LPAs so fees can be charged at a level to allow cost recovery and ringfenced for use by the LPA's planning function. This latter point will be important given trends over recent years for income into planning departments rising in real terms while at the same time LPA expenditure on planning departments falling.

While this new measure could result in disparities in planning fees across the country, it should allow for LPAs to adapt better to local conditions. In principle, better resourcing is likely (though not guaranteed) to improve delivery of planning services, although as we have seen with the adoption and setting of CIL levies, areas in the most need of regeneration are often those where values are low and so cannot stand higher development costs.

IMPROVEMENTS TO DECISION MAKING

Greater consistency and transparency in decision making across the country will be introduced through reforms to planning committees with the introduction of a national scheme of delegation. This scheme will set out which planning decisions should be delegated to planning officers and which should go to a planning committee. Proposals that broadly meet the objectives of the local plan are likely to be delegated to officers, and more complex and contentious schemes decided by committee. Supported by statutory planning guidance on (amongst other things) planning committee size, it is hoped that smaller committees can focus on a smaller number of complex applications and provide more effective and faster decisions.

This will inevitably raise community concerns, but because there will be no change to the local community consultation requirements and the statutory duty for decision makers to take into account material considerations and representations, community views will still be considered.

However, for this measure to be successful, the national scheme of delegation needs careful construction to avoid ambiguity and potential arguments around delegation of decisions. Increased transparency in officer decision making and associated interaction with members (together with a strengthening of the Chief Planning Officer role) will also be important, so that lobbying of officers is carried out in public view.

These proposed changes have received a mixed response from bodies such as the Local Government Association. There is an orthodoxy associating local democracy with planning decision making, the result of which is a not insignificant contributory factor to delay and frustration of development. It will be interesting to see whether this adjusting of the dial will free up officers to get better decisions made more quickly.

A NEW APPROACH TO CROSS-BOUNDARY STRATEGIC PLANNING TO COVER THE WHOLE OF ENGLAND (PLUS CA CHANGE!)

Currently strategic planning is confined (by statute) to London (which will remain unchanged) and through devolution deals to four mayoral combined authorities. Most of England is not covered by a strategic plan, and cross-boundary issues require only compliance with a duty of co-operation of individual authorities through the local plan system, with patchy delivery. This was an evolution away from many years of an established concept of regional planning (Structure Plans, RSSs, RPBs anyone?).

The Bill introduces a new mechanism and duty for combined authorities and combined county authorities, both mayoral and non-mayoral, to produce a strategic development strategy (SDS). Where combined authorities do not currently exist, upper tier county councils and unitary authorities will be given the SDS duty and the Secretary of State can direct groupings of upper-tier authorities to combine in order to deliver an SDS.

An SDS would only cover strategic issues such as housing, infrastructure, economic, social and environmental improvements and identify generic areas suitable for development but not specific sites, with the role of the local plan unchanged.

Introduction of a statutory spatial planning duty across the country should result in a more joined up and strategic approach to development in the most sustainable areas and is to be welcomed. The link between a regional approach and the combined authorities structure should be less likely to encounter the historic challenges of cooperation at a regional spatial scale.

A NEW APPROACH TO DISCHARGING ENVIRONMENTAL OBLIGATIONS

The current approach involves the discharge of environmental obligations on a project-by-project basis is presenting major challenges in cases where mitigations are either difficult to secure, or in the case of nutrient neutrality, are not available causing delays or stalling schemes indefinitely until mitigation can be put in place.

A new approach designed to overcome this introduces a new 'environmental delivery plan' (EDP) that will set out conservation measures to be taken to address the impact of specified types of development on protected sites or protected species, alongside a new nature restoration fund (NRF) made up of contributions from developers through the new nature restoration levy. Where levy payments are made to address impacts identified in an EDP, an applicant's environmental obligations will be discharged, disapplied or modified, and a deemed licence granted under the relevant environmental regulations if required. However, impacts not covered by an EDP in relation to which payment of the levy has been made, will not be disregarded and will still require consideration under these regulations.

As expected, the Bill includes amendments to the Habitats Regulations. These amendments will likely be scrutinised by stakeholders across the real estate development / infrastructure industry (particularly where the assessment provisions (a central part of Habitats law) are affected – for example, by new EDPs). Habitats assessment is often a really important part of real estate / infrastructure projects across the country – so, significant changes will be watched with great interest. The devil will no doubt be in the details – as further regulations and information regarding EDPs come forward.

However, this more strategic approach to the funding and delivery of mitigation is to be welcomed. The scale of issues faced when development encounters habitats requires a coordinated, strategic approach. One aspect we must be mindful of is the further loading of cost onto the development industry (with the downstream effect this has on house prices). We saw with the CIL regime that development levies can become additional costs to local planning gain, rather than a substitute. LPAs will still be tempted to demand local improvements and mitigation in addition to this levy and developers are obligated already to fulfil their statutory biodiversity net gain (BNG) obligations.

BROADENING THE REACH OF DEVELOPMENT CORPORATIONS

The circumstances in which areas can be designated for the establishment of Development Corporations have been adapted to increase circumstances where designation will be appropriate. Specifically, the Development Corporation may cover an area including existing settlements (in addition to New Towns) or identify an urban extension as a New Town (ie not a wholly "new" town). This is consistent with Government's intention that Development Corporations and New Towns are central to the strategy for housing delivery. Similarly, Development Corporations may be designated for multiple New Towns.

There are also supporting provisions that supplement the powers of Development Corporations in the delivery of infrastructure associated with the New Town and also that require transport authorities to cooperate with them in their own strategic planning and also for Development Corporations to take on certain transport functions.

WILL THE REFORMS WORK?

Many of the measures proposed are significant and encouraging for developers. They show that the Government is listening and working hard to provide a balanced approach to unlocking development. Whilst key challenges and uncertainties remain, particularly around the sufficient and sustained resourcing of LPAs, we are optimistic.

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