

TONBRIDGE & MALLING BOROUGH COUNCIL
HOUSING AND PLANNING SCRUTINY SELECT COMMITTEE

19 March 2024

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision

1 NATIONAL PLANNING POLICY LEGISLATION UPDATE

This report sets out the key changes to planning policy legislation and policy resulting from the [Levelling Up and Regeneration Act, 2023](#) and the December 2023 [National Planning Policy Framework](#).

1.1 Background

1.1.1 The Levelling up and Regeneration Act (LURA) was enacted on 26 October 2023. Changes introduced in the Act include a new system and vocabulary for planning policy and the development plan. In addition, a new version of the National Planning policy Framework was published on 19 December 2023. This introduced some of the proposed changes first introduced in a consultation in December 2022 (as reported to Cabinet in [February 2023](#)).

1.1.2 This note sets out the key amendments and any implications of both documents, for the development of the local plan.

1.2 Levelling Up and Regeneration Act, 2023

1.2.1 The LURA introduces some key changes to the plan-making system, planning data requirements and confirms the new Infrastructure Levy. However, the majority of the measures require secondary legislation therefore the detailed implications for the local plan will depend on the timing and content of implementing regulations and forthcoming practice guidance. It is anticipated that there will be a further round of consultations and secondary legislation to set the detail on some of these reforms. The main implications are set out below:

Plan-making

1.2.2 The Act introduces a spatial plan-making system to be followed by Local Planning Authorities but with some significant modifications to current practice. What will come about involves changes to the language, timing, content approach and responsibilities. It introduces a duty to prepare a 'local plan timetable', to replace the existing Local Development Scheme (LDS), which should also set out what Supplementary Plans are to be prepared and new considerations to be apply to

such plans. The Act also requires the authority to set out how it proposes to meet the requirements relating to design codes. The LURA also gives the Secretary of State (SoS) several new powers to prepare the timetable, make amendments and direct the authority to bring them into effect. Further regulations would be required to set out when and how LPA's must revise their local plan timetable.

- 1.2.3 The LURA also sets out the scope of local plan content. Through the introduction of National Development Management Policies (subject to further consultation) the scope of local plans will be more limited, to locally specific matters. There is an indication that more weight will be given to the local plan in decision-making, unless material considerations "strongly" indicate otherwise but that remains to be seen how it will operate in practice as it is test through new case law. Alongside locally specific policies a local plan must take account of the assessment of housing and affordable housing, should include details of infrastructure and design requirements, and must now also take account of any local nature recovery strategy and other provisions relating to biodiversity net gain.
- 1.2.4 The LURA sets out a new demanding 30-month local plan preparation timetable, broad arrangements in relation to the proposed 'gateway' process (additional checks by external investigation earlier in the plan-making stages) and amendments to the examination process. These changes are first to be road tested by a smaller number of selected authorities but further details are awaited. Further regulations are required in relation to the mandatory gateway checks, reimbursement of costs to the SoS, the form and content of the plan, and documents to be produced. The LURA will also facilitate the ending of the 'duty to cooperate', to be replaced with a new alignment policy which will be subject to further detail through secondary legislation and guidance.
- 1.2.5 The Act introduces Supplementary Plans (SP) as a replacement of Supplementary Planning Documents (SPDs). It sets out the scope of SPs which includes policies relating to a specific site, details of infrastructure requirements or affordable housing or requirements in relation to design, but crucially SPs are to undergo examination and will form part of the development plan.
- 1.2.6 Design Code/s will need to be prepared as Supplementary Plans. It sets out how a Local Planning Authority must ensure that every part of the area is subject to requirements relating to design but do not need to cover every description of development or aspect of design. The LURA also gives the SoS's new powers to intervene where an LPA is considered to be failing in its preparation of a local plan or design codes, and how the costs incurred would be sought. A continuing role for Neighbourhood Development Plans (NDP) is set out within the Act and these include giving such plans a longer "lifetime" and immunity from challenge post-adoption with the publication of other later planning documents.
- 1.2.7 Finally, the Act also introduces measures to replace the SA/SEA process with the environmental outcome reports (EOR), however further consultation and parliamentary scrutiny is required. It also introduces a further duty on LPAs to

grant sufficient permission for self and custom build housing and include pre-existing unmet demand.

Planning data

- 1.2.8 One of the key themes of the LURA is support for plan-tech and data-led approaches. It sets out requirements in relation to the provision of planning data and gives the SoS power to prescribe use of approved planning data software and may prescribe what monitoring data should be available to the public. Monitoring processes will need to ensure compliance with these processes.

Infrastructure levy

- 1.2.9 A key change to be introduced through the LURA is the Infrastructure Levy (IL) which will replace the current S106 and Community Infrastructure Levy (CIL). This will be mandatory and involve a new way of calculating developer contributions based on a proportion of the development value of the land, moving away from the current land value capture approach. Further regulations will still be required in relation to the detail, approach and timing of this, including transitional arrangements. LPAs will also be required to prepare an Infrastructure Delivery Strategy to set out how the levy would be spent.

Development Management

- 1.2.10 The LURA strengthens the powers and sanctions for planning enforcement, closing loopholes, allowing more time for the investigation of breaches, with the removal of the 4-year rule, increasing fines and making enforcement timescales more consistent. It will also make it easier for local planning authorities (LPAs) to force developers to complete schemes, through completion notices. LPAs will also have the powers to decline to determine applications from applicants who have been slow to implement previous permissions.
- 1.2.11 Other measures which have already been taken forward include the increase in planning application fees by 35% for major and 25% for minor applications.

Other matters

- 1.2.12 In addition to the measures outlined above the LRA also introduces a series of other more minor changes which are subject to further consultation. The government is currently consulting upon the detail of the new street votes approach which will allow residents to propose development in their street and vote on whether planning permission should be given. The aims being to encourage 'gentle' densification of areas.
- 1.2.13 The introduction of a simpler approach to neighbourhood planning, involving a 'neighbourhood priorities statement', allowing communities to set out their key priorities and preferences for their area. These will need to be considered in local plan preparation.

- 1.2.14 Local authorities will be able to undertake auctions to encourage uptake of leases on vacant high street properties. The LURA also facilitates the introduction of 'community land auctions. These will allow developers to submit land for allocation in the local plan process offering an option on the land at a specific price. The LPA will then be able to retain the difference between the option price and the price offered to develop the land.
- 1.2.15 A council tax premium on second homes can be introduced under new measures within the LURA.

1.3 National Planning Policy Framework changes

- 1.3.1 Unlike the LURA, the changes introduced in the 2023 NPPF (see **Annex 1**) apply from the date of publication. The only exception being that LPAs who consult on their Regulation 19 local plan before 19 March 2024 will be examined under the 'relevant previous version of the Framework', as we are not expected to do so, this version of the NPPF will apply. The key changes and the implications are set out below:
- 1.3.2 Housing need- the previous NPPF consultation indicated that there would be some changes to paragraph 11 in relation to the adverse impacts of meeting objectively assessed needs. Densification and character impacts have not been included in the published version, with the exception of where identified within a design code. However, Paragraph 60 has been amended to reflect the aim to "meet as much of the area's identified housing need as possible". Paragraph 61 also sets out that the outcome of the 'standard method' of objectively assessed needs is now the 'starting point' where exceptional circumstances may provide a case for an alternative method. However, those cited do not reflect the profile of the borough, e.g. island without a land bridge.
- 1.3.3 Crucially paragraph 61 still references unmet need in other areas and needs to be taken into account when establishing the amount of housing to be planned for. New text has also been introduced to paragraph 67 in relation to housing requirements being higher than need where it includes provision from neighbouring areas. Therefore, despite the proposed removal of the duty to cooperate in the LURA, this is still included within the NPPF and without any detail on its replacement 'alignment policy' conversations will need to continue with neighbouring authorities as usual.
- 1.3.4 Green Belt- as set out in the previous consultation, a series of amendments have been made in relation to clarifying the government's position on the Green Belt. Paragraph 145 now states that there is "no requirement" for Green Belt boundaries to be reviewed through plan-preparation. It does still set out that LPAs may choose to amend these where exceptional circumstances are fully evidenced and justified. However, some proposed wording in December 2022 consultation making reference to "*if this would be the only means of meeting the objectively assessed need for housing over the plan period*" has not been taken forward.

Therefore, this amendment relates more to the strengthening of language rather than introducing any new significant change of direction in policy. Whilst an 'exceptional circumstances' case has already been introduced within the [Stage 1 Green Belt Study](#) therefore does not change the policy context to the preparation of the local plan.

- 1.3.5 If anything, the new requirement now to “meet housing need” (previously “addressing housing need”) gives even greater emphasis on allocating substantial new housing allocations where an objectively assessed housing need has been established as a minimum in the standard housing target figures published by Government. This places “constrained” authorities such as those with extensive Green Belt and few other development opportunities in the same or even more difficult position of making the right choices and achieving a balance between competing pressures for development and protection. The expectation remains, in order to meet the pressing need for a significant increase in the number of new homes to be built, Local Plans must clearly demonstrate how as much housing need as possible will be met by the allocation of a sufficient amount and variety of new housing land, to meet the needs of groups with housing needs, and to be delivered in a timely fashion.
- 1.3.6 Housing supply measurements - Para 11 sets out that for the purposes of determining applications, policies in a local plan will be considered out of date where an LPAs cannot demonstrate a five-year supply with an appropriate buffer, or where the Housing Delivery Test (HDT) demonstrates delivery below 75%. Paragraph 226 introduces a four-year supply requirement only where a Regulation 18 plan including a policies map and site allocations has been produced. Our Regulation 18 plan did not include these therefore this does not apply. We also do not currently have a five-year supply and would need a 20% buffer in accordance with paragraph 76. This applies where there has been significant under-delivery in the HDT over the previous 3 years. Therefore the ‘tilted balance’ will still apply under these minor amendments to housing delivery measurements. Please note that the 5 and 10% buffers have now been removed, as set out in the NPPF consultation, but the 20% buffer remains.
- 1.3.7 Tests of soundness - no changes have been made to the tests of soundness as previously indicated in December 2022 consultation, therefore remain as a) positively prepared; b) justified; c) effective and d) consistent with national policy. Previous suggestions for changes to a) re-emphasised meeting needs, “as much as possible” but this has not been included.
- 1.3.8 Community-led development- paragraph 70 (b) provides additional support for small site development through self-build/custom build and community-led development, and para 72 sets out that market community-led development may be included as a rural exception site.

- 1.3.9 Additionally, a series of minor wording changes have been introduced to reinforce the role of 'beauty' in decision-making, and specific changes relating to mansard roof extensions.

1.4 Local Plan impacts

- 1.4.1 In summary, the policy environment has not changed as fundamentally as was indicated in the December 2022 consultation. We still have the requirement to work with neighbouring authorities to deliver housing requirements as much as possible, and although there is no specific requirement to review Green Belt boundaries to meet needs, for the purposes of good planning, demonstrating the additional requirement now to "meet as much housing need as possible", promotion of sustainable development patterns and to combat affordability issues an 'exceptional circumstances' case must be explored robustly.
- 1.4.2 The Regulation 18b Local Plan will be brought to members in May/June 2024. Evidence within the Stage 2 Green Belt Study, Housing Constraints Assessment and [Housing Market Delivery Study](#) will be utilised to develop an appropriate sustainable spatial strategy to meet as much of the objectively assessed needs as possible. We will continue to work with neighbouring authorities under the duty to cooperate to discuss any unmet need within the housing market areas.
- 1.4.3 Although the LURA introduces a series of changes to the plan-making system, many of these still require secondary legislation to be taken forward. As set out in the December 2022 consultation, the government proposes to introduce new transition arrangements to the new plan-making system. The government's December 2023 consultation response refers to text within the July 2023 proposals on plan-making reforms which states:

"We confirm our intention that the latest date for plan-makers to submit local plans, minerals and waste plans, and spatial development strategies for examination under the current system will be 30 June 2025. We also confirm our intention that those plans will, in general, need to be adopted by 31 December 2026. [As confirmed above] these dates are contingent upon [Royal Assent of the Levelling Up and Regeneration Bill] as well as parliamentary approval of the relevant regulations. However, we are setting this out now to provide planning authorities with as much notice as possible of these dates."

- 1.4.4 This means that the transition dates still stand, and we will need to submit the local plan to the SoS by 30 June 2025. However, this will only be formally confirmed when further regulations have gone through the relevant parliamentary process. This remains a high risk, please see **Annex 2** for updated risk register.

1.5 Financial and Value for Money Considerations

- 1.5.1 There will be direct financial and value for money considerations associated with local plan preparation. To be able to meet deadlines within the proposed transition period for the preparation of the local plan this means that there will be increased

spend over the next five years. This was reported to members at the June 2023 meeting of this committee. A reserve has been established for the full funding of the Local Plan.

1.6 Legal Implications

1.6.1 Local Planning Authorities are required to prepare and keep an up-to-date development plan for their area. The Planning and Compulsory Purchase 2004 (as amended) and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) set out the requirements and the statutory process for the preparation of a Local Plan.

1.7 Risk Assessment

1.7.1 The preparation of the new local plan will provide the council with an up-to-date Local Plan on adoption. This will alleviate the current risks associated with not having an up-to-date development plan in place.

1.7.2 However, changes introduced through the LURA confirm the intention to proceed with the transition arrangements. There are risks associated with any slippage in the local plan programme which resulted in the failure to meet the final date for submission of 30 June 2025. This would result in a need to re-commence plan-making under the new arrangements. The timing of the commencement would depend on which 'tranche' of authorities the council was placed within, which could mean upwards of 18 months delay to when a local plan would be in place. Please note that since the HPSSC [June 2023 item](#) on options for local plan production the government has suggested a 4-month pre-plan preparation process and a staggered start to plan-preparation under the new system.

1.7.3 **Annex 2** shows the current local plan risks and issues.

1.8 Equality Impact Assessment

1.8.1 The decisions recommended through this report have relevance to the substance of the Equality Act 2010. The stages in plan preparation will be undertaken in accordance with the new Statement of Community Involvement which ensures that planning policy consultations are accessible to all, irrespective of protected characteristics. An Equalities Impact Assessment is being undertaken alongside the preparation of the next stages of the Local Plan.

1.9 Recommendations

1.9.1 HPSSC is asked to recommend to Cabinet:

(1) NOTE the contents of the report; and

(2) APPROVE the approach to local plan preparation matters as set out in the report.

Background papers:

Annex 1- National Planning Policy Framework
(December 2023)

Annex 2- Risk Register

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