Levelling Up & Regeneration Bill - Briefing

May 2022

The Heritage Alliance

Levelling Up & Regeneration Bill – As introduced.

"Make provision for the setting of levelling-up missions and reporting on progress in delivering them; about local democracy; about town and country planning; about Community Infrastructure Levy; about the imposition of Infrastructure Levy; about environmental outcome reports for certain consents and plans; about regeneration; about the compulsory purchase of land; about information and records relating to land, the environment or heritage; for the provision for pavement licences to be permanent; about governance of the Royal Institution of Chartered Surveyors; about vagrancy and begging; and for connected purposes."

On **10th May**, the Levelling Up and Regeneration Bill was introduced, and it will receive its second reading on 8th June. This bill was published alongside a variety of other documents, which set out Government's position. These include:

- Explanatory notes for the Bill
- A Policy Paper
- The Government response to the Planning Select Committee

For more information on how a Bill passes through the Houses of Parliament, we recommend reading this useful guide.

Please find below a summary of the Bill, highlighting the main points of interest for the heritage sector.

Key points in the Bill:

- Heritage is on the face of the Bill and has its own chapter, Chapter 3;
- Historic Environment Records will be made statutory, Clause 185;
- Environmental Impact Assessments will be replaced with Environmental Outcome Reports, Part 5, Clause 116;
- Levelling up missions and reporting on their progress will be made a statutory process, Part 1;
- The creation of Combined County Authorities, which in some cases will take on public authority functions, Part 2;

- Planning data will be subject to new regulations, which will include which systems are used for digital planning, how data is processed and what data is made publicly available

Chapter 3 - Heritage

It is welcome that heritage not only had its own chapter, but is also cited on the face of the Bill, meaning that heritage is a central consideration. As is to be expected, given the prominence of heritage, Chapter 3 contains a number of important considerations for the sector.

Clause 92 – regard to certain heritage assets in exercise of planning function

This clause would amend the Town and Country Planning Act 1990, so that when considering whether to grant planning permission or permission in principle, which affects a relevant asset or its setting, planning authorities or the Secretary of State must have special regard for preserving or enhancing the asset or its setting. This includes "preserving or enhancing any feature, quality or characteristic of the asset or setting that contributes to the significance of the asset." The relevant assets are set out in the bill, alongside their significance, as below:

TABLE

"relevant asset"	"significance"
a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979 (see section 1(11) of that Act)	the national importance referred to in section 1(3) of that Act
a garden or other area of land included in a register maintained by the Historic Buildings and Monuments Commission for England under section 8C of the Historic Buildings and Ancient Monuments Act 1953	the special historic interest referred to in subsection (1) of that section
a site designated as a restricted area under section 1 of the Protection of Wrecks Act 1973	the historical, archaeological or artistic importance referred to in subsection (1)(b) of that section
a World Heritage Site (that is to say, a property appearing on the World Heritage List kept under paragraph (2) of article 11 of the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage adopted at Paris on 16 November 1972)	the outstanding universal value referred to in that paragraph

While this table does cover many of the key asset groups we would expect to see, there are some notable exceptions, such as Ancient Trees.

This same regard is to be included in the consideration of draft neighbourhood development orders. There are also two amendments to the Listed Buildings Act, so that 'preserving' is read as 'preserving or enhancing'. We need to understand what the Bill means by 'enhancing'. There have also been comments from the sector that there should be some additional amendments to this section so that the setting of conservation areas is included in this table, amending section 72 of the 1990 Act.

Clause 93 – Temporary stop notices

This would amend the Listed Building Act so that a local planning authority can issue a stop notice to works which affect the special or architectural interest of the building. These notices must be in writing, prohibit specific works for taking place and give the planning authority's reasoning for prohibiting them. The stop notice can then be served to the person causing the works, the occupier or the person with interest in the building. Works should then be stopped immediately. Stop notices will have to be displayed at/on the building, with the date when the stop notice was served, and would come into effect as soon as they are displayed as such. The stop notice would then last for 56 days, unless a shorter period is specified in the stop notice itself, and planning authorities will not be able to issue subsequent stop notices for the same works, unless they have taken enforcement action in relation to those works. There is also a clause allowing the Secretary of State to permit works in line with regulations or circumstances which the Secretary of State prescribes.

The clause then goes on to make it an offence punishable by fine to contravene, or cause a person to contravene, a stop notice, subject to some limited defences which include health and safety works and works for the preservation of the building. It is also significant that in deciding the fine, the court must have regard for the realised or potential financial benefit to the person in consequence of the works.

The clause also allows for loss or damage compensation, including payment for breach of contract, to the person who has interest in the building, in circumstances where the stop notice is a repeat of a previous stop notice, where no injunction has been taken, or where the local planning authority withdraws the notice the day after it ends without listing the property. However, compensation will not be paid if the claimant was required to provide information to the local planning authority, and then loss or damage could have been avoided if the claimant had provided that information or otherwise cooperated with the local planning authority.

This clause also gives the Secretary of State the power to issue a stop notice on any land in England, as well as extending the provision to Wales and Greater London.

Clause 94 - Urgent works to listed buildings: occupied buildings and recovery of costs

This amends section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as it applies to England and Wales in a number of ways to:

- Remove the provision that in occupied buildings, urgent works can only take place in the unoccupied sections, subject to the owner and occupier having 7 days notice, and;
- Allow an urgent works notice to recover the costs of works to be served to a new owner.

Clause 95 removes the right to claim compensation for any loss or damages due to the serving of a Building Preservation Notice in England. This would come into force after the passing of the Levelling Up and Regeneration Bill, so any notices served in England before then would still give interested persons the right to apply for compensation.

Part 10 – Miscellaneous

Clause 185 – Historic Environment Records

This clause makes Historic Environment Records a statutory requirement for relevant authorities, in so far as the relevant authority has the information and considers it suitable for inclusion in the record. The relevant authority must take reasonable steps to obtain the information, and keep it up to date. The clause also gives the Secretary of State various powers, including making regulations to enable a relevant authority to charge for access to the record, and for copies of the record.

Relevant authorities include county councils, district councils where there are not district councils, London boroughs, National Park Authorities, and the Broads Authority.

This is something that the heritage sector has long called for, and was included in our 2019 Heritage Manifesto.

Part 5 – Environmental Outcome Reports

Clause 116 gives the Secretary of State powers, with reference to Part 1 of the Environment Act 2021, to create regulations which may specify environmental protection outcomes for the UK and the relevant offshore area. These are a replacement for Environmental Impact Assessments.

Environmental protection in this context means:

“(a) protection of the natural environment, cultural heritage and the landscape from the effects of human activity;

(b) protection of people from the effects of human activity on the natural 15 environment, cultural heritage and the landscape;

(c) maintenance, restoration or enhancement of the natural environment, cultural heritage or the landscape;

As well as monitoring and reporting on any of the above.

It is also worth noting that the definition of cultural heritage includes any building, structure, other feature of the natural or built environment or site, which is of historic, architectural, archaeological or artistic interest.

Clause 117 creates the power to make Environmental Outcome Reports required in the development of relevant consent and relevant plans, and that consent cannot be given or plans taken forward unless the EOR is produced. The clause then defines what an EOR should be; a written report which assesses the extent to which a plan or consent will impact the delivery of specified environmental outcomes containing:

- Steps that might increase the delivery of those outcomes;
- Steps that will be taken to avoid environmental outcomes not being delivered;
- Steps to mitigate any extent to which those environmental outcomes cannot be delivered;
- Steps to remedy the those environmental outcomes which cannot be delivered;
- Steps to compensate for those environmental outcomes being delivered;
- How any of the proposed steps will be monitored or secured.

Clause 118 then defines what relevant consent and relevant plans are; both are to be defined in the forthcoming regulations.

Relevant consents will be classed as either category 1 consent, (meaning that it will need an EOR in any circumstance), or category 2, (meaning that an EOR will be needed only if certain criteria in the EOR regulations are met).

Clause 119 allows for future EOR regulations to assess and monitor impacts on outcomes, and clause 120 mentions the safeguards that the Secretary of State must consider in making any EOR regulations. These include that the regulations must meet the minimum standards in environmental law, are consistent with the UK's international obligations, and that public engagement takes place.

Clause 123 allows for the future creation of enforcement actions, which could include a criminal offence, civil sanctions power of entry, power of inspection, and use of reasonable force.

The rest of chapter 5 goes into further detail about what the regulations may contain, and how they will be consulted upon.

Part one – Levelling up Missions

This part of the Bill legislates for the implementation of a statement of levelling up missions, which sets out the objectives which the Government intends to pursue to reduce geographical disparities, within a specified period, which much be longer than 5 years, with specified target dates for delivery of the each of the missions. These will be laid before Parliament, and Minister will need to prepare as new statement before the end of the previous mission period. (part 1, section 1)

A minister must report to parliament on the progress made towards levelling up missions at least annually, using the methodology and metrics in the levelling up mission statement of that period. The progress methodology and metrics can be changed; if a Minister does want to change them or a target date for delivery of a mission, then they need to publish a statement with their reasons and place a reviewed statement of levelling up missions before parliament.

The levelling up mission statement must be reviewed by a Minister of the Crown within 5 years of the start of the mission period of that statement, and then reviewed at least every 5 years after that, until the end of the mission period.

Part two – Local Democracy and Devolution

This part of the Bill allows for the creation of Combined County Authorities, where both a. all the area is within England and consists of the whole of the area of a two tier county council, and the whole area of one or more of: the area of a two tier county council; the area of a unitary county council, or the area of a unitary district council; AND b. that no area forms part of the area of another CCA; the area of a combined authority, or the integrated transport area of an Integrated Transport Authority.

The Secretary of State can make provision by regulation for the constitutional arrangement of a CCA. This includes appointing the executive of the CCA and deciding what their function is. It is work noting that in the appointment of the Executive, Clause 8.3.F gives the Secretary of State to power to disregard section 15 of the 1989 Local Government and Housing Act. This means that the membership of the executive will not be reviewed to allow for the representation of different political parties, and indeed the executive could be all from one political party.

It is also worth noting that membership of the CCA can only be amended if the CCA agree to a review.

The cost of CCAs will be met by the constituent councils, and they can take on any functions which the Secretary of State deems appropriate, operating within part or a whole of the CCA's area, subject to the agreement of the councils in the CCA. This includes the CCA taking on the functions of public authorities; the Secretary of State can then dissolve the public authority in cases where the CCA having taken on the functions of the public authority, the public authority has no other purpose, (for public authorities which operate only within that CCA). All subject to the agreement / regulation by SI and accompanying report of the Secretary of State. This includes functions of the Integrated Transport Authority and Passenger Transport Executive.

There are also powers for the Secretary of State to amend the areas in a CCA, subject to the approval of those areas, and dissolve CCAs, transferring the functions they are responsible for to another public body. And the process for electing a Mayor of a CCA, who is also the Chair, and the appointment of a Deputy Mayor, who will serve the same term at the Mayor.

There is direct provision in the Bill for CCAs to have policing and fire and rescue powers, but also very generally to take on other powers;

Clause 46

(1) A CCA may do—

(a) anything it considers appropriate for the purposes of the carrying-out 30

of any of its functions (its "functional purposes"),

(b) anything it considers appropriate for purposes incidental to its

functional purposes,

(c) anything it considers appropriate for purposes indirectly incidental toits functional purposes through any number of removes,

(d) anything it considers to be connected with—

(i) any of its functions, or

(ii) anything it may do under paragraph (a), (b) or (c), and

(e) for a commercial purpose anything which it may do under any of paragraphs (a) to (d) otherwise than for a commercial purpose.

This raises questions about exactly what a CCA will be able to do, and whether it will be a commercial entity or not.

The Secretary of State can limit the powers of all or particular CCAs, in consultation with the CCA and whomever the Secretary of State deems relevant Minister/s.

Planning Data

Clauses 75 – 81 make provision for relevant planning authorities and those engaging with the system to provide and process data in line with approved data standards, as set by the Secretary of State. This includes giving the relevant planning authority the power to serve notice on a person / persons to provide data in line with data standards, and for relevant planning authorities to make certain planning data publicly available under open licence, in line with planning data regulations. It also includes a provision that relevant planning authorities could be prevented from using planning software which has not been approved by the Secretary of State.

Insofar as the devolved nations are concerned, the Secretary of State would have to consult with Ministers in Scotland, Wales and Northern Ireland before devolved nations would be asked to comply with such regulations.

Other items which might be of interest:

Chapter 2 – Development plans and Design Codes

Many of the amendments in this section would mean that in the future local plans 'regard must be had' for national development management policies, and defines what a national development management policy is:

(1) A "national development management policy" is a policy (however expressed) of the Secretary of State in relation to the development or use of land in England, or any part of England, which the Secretary of State by direction designates as a national development management policy.

(2) The Secretary of State may—

(a) revoke a direction under subsection (1); 10

(b) modify a national development management policy.

(3) Before making or revoking a direction under subsection (1), or modifying a national development management policy, the Secretary of State must ensure that such consultation with, and participation by, the public or any bodies or persons (if any) as the Secretary of State thinks appropriate takes place."

This chapter also allows for the implementation of design codes: "requirements with respect to design that relate to development, or development of a particular description, throughout the neighbourhood area, in any part of that area or at one or more specific sites in that area, which the qualifying body considers should be met for planning permission for the development to be granted."

Chapter 5 – Enforcement of Planning Controls

Clause 101 updates the Town and Country Planning Act 1990, so that time limits for enforcement of breaches of planning controls are changed from 4 to 10 years in England, and to four years after the substantial completion date in Wales.

Clause 102 updates the same Act, to allow temporary stop notices to last for 56 days in England and 28 days in Wales.

Council Tax

The Bill proposes that the Local Government Finance Act is amended so that dwellings empty for 1 year, as opposed to 2 years, are charged a higher rate of council tax. (Clause 72)

Street Names

Clause 74 enables Local Authorities to change street names by holding a referendum.

Chapter 4 – Grant and implementation of Planning Permission

Clause 96 leaves an open-door to the Secretary of State to bring in regulations to allow for street votes. This could mean that in the future, residents of a street would be permitted to vote on which developments on their street are granted planning permission. This is a place-holder clause, meaning that it is holding the place for future regulations, which we do not know the detail of yet.