Written evidence on Parts 3, 4, and 5 of the Levelling-Up and Regeneration Bill - submitted by the British Property Federation

Introduction

1. The British Property Federation (BPF) is the trade association that represents large scale investors in the real estate sector. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers, and developers of real estate. Our members invest in a broad range of places where people live, work, and enjoy their leisure time. They are therefore the custodians of retail units, logistics industries, homes, offices, and social infrastructure. Our members invest close to £1 trillion in the UK economy, often on behalf of pensioners, and drive economic growth across the whole of the UK, underpinning the drive to level up the nation.

2. We have already provided evidence on Part 7 (Compulsory Purchase Orders) and Part 8 (Letting by Local Authorities of Vacant High-Street Premises) of the Bill in an earlier submission.

3. This latest submission sets out our views on the planning aspects of the Bill following initial consultation with our membership.

Plan-making

4. The BPF are strongly supportive of the measures included in the Bill to speed up plan-making. Having an up-to-date local plan is the foundation on which a plan-led system is built. More regular plans will better reflect the needs of local communities.

5. We also welcome the proposals to introduce a suite of National Development Management Policies (NDMPs), although we would urge Government to publish what these will cover as soon as possible. At one extreme they could cover relatively uncontroversial issues, where there is already significant consistency between different local authorities' policies, and therefore provide some simplification of the system. At the other extreme, they could cover more controversial issues where there is less consistency. Our understanding is the policy intention is about the former, rather than the latter.

6. The BPF are also supportive of the digitalisation measures outlined in the Bill. However, it should also be recognised that with the elevated status of the relevant local plan through the suite of announcements in the Bill, this will also mean that the data inputs which inform the evidence base for the local plan become even more important. The BPF published a paper last year which, in part, questioned the extent to which the current evidence base feeding into the wider local plan process is fit for purpose. This is particularly the case for planning for employment land through Employment Land Reviews where too often the information is static and out of date by the time of adoption.

7. Our members are not supportive of the proposal announced alongside the Bill to remove the requirement for Local Authorities to demonstrate a five-year housing land supply when a plan is up to date (less than five years old). It should be noted that sites allocated through the relevant local plan do not always come forward for development consistent with the timescales anticipated in the plan. Our members therefore see a role for the five-year land supply requirement regardless of whether a local plan is up to date or not as it serves an effective incentive for local authorities to stay on track with their allocations through the plan.

Duty-to-Cooperate

8. We are not supportive of the proposal to remove the Duty-to-Cooperate (DTC) in the Bill. Whilst not without its flaws, the DTC is the only statutory arrangement for strategic planning and the sharing of unmet local need to adjacent authorities. This strategic planning

approach is particularly important for the delivery of strategic employment sites.

9. We note that the Government's intention is for the DTC to be replaced with a more flexible alignment test set out in national policy. We would ask the Bill Committee to request further details on the 'flexible alignment test'? We would also reiterate the BPF position that we see a role for Mayoral Combined Authorities in tackling strategic planning issues such as the delivery of strategic employment land through new spatial planning powers that could assist in greater co-ordination of cross-boundary issues.

Infrastructure Levy

10. The White Paper proposal for a national Infrastructure Levy (IL) was unworkable and we are therefore pleased to see amended proposals coming forward that better reflect the development economics of different places and different assets.

11. The proposals as we now understand them, however, add risk and uncertainty for local authorities, over the existing system. With a front-loaded CIL system based on floor space, developers know what they will pay, and local councils know what they will receive. A back-ended system based on Gross Development Value (GDV) will add risk for local councils, who will not know what they will receive as GDV may go up or down. If local councils are borrowing to fund infrastructure there will be the added risk of funds going down and there not being sufficient to cover borrowing.

12. A tariff based on Gross Development Value will work well for homes for sale, where there is an obvious sales price. For residential rental assets, mixed-use, and commercial development, it will be less clear what GDV is. Clear rules will have to be developed with the valuation community. Without clear rules, the system could suffer from uncertainty, argument, and delay.

13. It is therefore important that the Bill does not constrain the regulations that will follow, on what the levy should be based on, and whether it is GDV, or some other method of calculation.

14. The BPF are supportive of the proposal to retain a role for s106 for larger more complex schemes. Identifying all those schemes at the stage of plan-making, however, could be difficult, as sites suitable for large-scale development do sometimes come forward between plans.

15. A further critical aspect of the new system and one that needs to be road-tested through the 'test and learn' approach, is the 'Right to Require'. At present, affordable housing is often felt to be what 'gives' in viability discussions as CIL is a fixed and non-negotiable charge that cannot be used to deliver affordable housing.

16. However, viability issues will not disappear. A different part of the contribution will just get squeezed and if a scheme required a planning obligations package that would cost more than IL receipts and the developer says it cannot viably pay/deliver more than the value of the IL. In that situation either elements of the non-levy funded package would need to be dropped to provide a viable scheme or the local planning authority would need to refuse permission and fight the point at appeal.

17. The transition from one system to the next will also concern our members. Most local planning authorities are significantly under-resourced and have little capacity to deal with their existing workload, let alone develop the framework at a local level for a new IL system.

18. Getting the different rates and thresholds right at a local level is, however, perhaps the most important aspect of the whole system. Getting the wrong rates and thresholds could significantly impinge on development activity and harm the Government's levelling-up agenda. It appears from the Bill that the Infrastructure Levy will follow much the same process as existing CIL charging thresholds, which makes some sense. Nevertheless, the IL will not be as sensitive to specific site economics as the existing dual system, and outcomes should be closely monitored.

19. A final plea is to use the opportunity of a Bill to ensure that Infrastructure Levy funds are spent. Local communities expect to get something back from the development process. Studies have found, however, that £2.5bn of developer contributions in England go unspent.[1] There are good reasons sometimes why contributions are unspent, and the Government has tried to apply pressure through transparency, with all receiving authorities expected to publish an annual Infrastructure Funding Statement. To aid levelling-up, however, it is more important than ever that levy funds get spent. We suggest that funds unspent after a set period should go into a central pot to be spent on supporting infrastructure in areas where land values do not support infrastructure provision, with an appeals mechanism to the Secretary of State, because there will always be exceptions.

Recommendations

20. Given the above concerns, the BPF welcomes the Government's proposal to implement the Levy gradually over time through a 'test and learn' approach. The BPF would ask the Bill Committee to further explore what that means in practice? How many local authorities will be in phase one? For the 'test and learn' approach to be effective and insightful, the Levy should be tested in several authorities of varying economic geography and viability constraints. Will those in phase one be able to revise their approach based on what they learn?

21. The BPF also understands that DLUHC have been working with academia to model what might be raised under different assumptions about the precise rate of any Infrastructure Levy compared to the existing system of S106 and CIL. As part of the Committee Stage of the Bill, the BPF would ask that this analysis is published in full so the contents of the research can be used to inform the legislative scrutiny process.

22. As we have detailed, a failing in the existing legislative framework for developer contributions is that there is no guarantee that receiving authorities will spend the funds they raise. The Bill presents an opportunity for the Committee to ensure that is rectified.

Environmental Outcome Reports

23. We understand that the Bill will enable the government to set what the Environmental Outcome Reports will be measured against through subsequent regulation. As currently drafted, we note there is both a heritage and environmental focus to this section of the Bill but no reference to the role of measuring socio-economic benefits as part of preparing an Environmental Outcome Report.

24. It should be noted that BPF members view the role of demonstrating the socio-economic benefits of their development as a key part of the toolkit for persuading local authorities and communities of the merits of development locally. The BPF would therefore strongly encourage measurement of socio-economic benefit to be incorporated within the process of preparing and submitting an Environmental Outcome Report when further details of the new system are worked up. We would also advocate more broadly for a planning system where the measurement socio-economic benefit is given the necessary profile and weight in the decision-making process within the broader measure of sustainable development.

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[1] Property Week, London authorities sitting on £1.29bn of CIL and S106 cash, 12 March 2021