

## Introduction & Context

The Home Builders Federation (HBF) is the representative body of the home building industry in England and Wales. HBF members account for some 80% of all new homes built in England and Wales each year. The majority of HBF's members are small and medium-sized home builders (SMEs). These private home builders are responsible for delivering, via Section 106 Agreements, half of all new affordable homes built.

HBF members seek three principal outcomes from the planning system:

- A regular supply of land available for development (linked to the meeting of housing need at national and sub-regional levels);
- Efficiency of process; and
- A clear, consistent and justifiable regulatory regime.

It is through these prisms that the HBF's observations on the Levelling Up & Regeneration Bill (LURB) are offered.

It should be noted at the outset that the case for reform of the planning system in England is compelling. The process of obtaining planning permission has, over the past thirty years, become riskier, costlier, and more complex. HBF members are fully supportive of a plan-led system. At present, however, the politicisation of processes, under resourcing and funding of planning departments and delays to the discharge of pre-commencement conditions are having a significant impact on housing delivery.

Builders, particularly SMEs, are struggling to manage the vagaries and uncertainties of the process and timelines that make it virtually impossible for them to manage timelines and workloads. SMEs especially struggle with the time it takes between securing a consent and getting on site.

Whilst these challenges are experienced by builders of all sizes across the country, they are felt most acutely by SMEs. In a survey of small builders conducted in autumn 2021, 94% reported delays in securing planning permission or discharging conditions as a major barrier to housing delivery<sup>1</sup>.

"Planning in England is less effective than at any time in the post-war era, with an underfunded and deeply demoralised public planning service, conflicting policy objectives, and significant deregulation", stated the Raynsford Review<sup>2</sup>.

LPAs have faced significant funding challenges over the last twelve years, which have inevitably had knock on effects upon their planning teams at all levels.

The Royal Town Planning Institute (RTPI)<sup>3</sup> has calculated that net expenditure by LPAs fell by 43%, from £844m in 2009/10 to £480m in 2020/21, when adjusted to 2021 pounds. This amounts to just 0.45% of local government budgets allocated to planning services.

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<sup>1</sup> HBF/Close Brother Property Finance/Travis Perkins, State of Play: Challenges and Opportunities Facing SME Home Builders, 2021

<sup>2</sup> <https://tcpa.org.uk/resources/the-raynsford-review-of-planning/>

<sup>3</sup> <https://www.rtpi.org.uk/policy-and-research/research/planning-agencies/>

A 2019 analysis by the Institute for Fiscal Studies<sup>4</sup> revealed that gross spend on planning and development was reduced by 42% per person between 2009/10 and 2019/20. Net spend reduced by 60%, which was the largest reduction across all areas of local government.

A proposed increase in planning fees (35% for 'major' applications), to be tied to a "better service for applicants", will help to build capacity, but this increase on its own will not be enough to comprehensively address the issue of resourcing.

The RTPI<sup>3</sup> has explored the performance of LPAs in England by examining the number of applications received and the number of decisions made in the agreed timeframe between 2009 and 2021. Whilst the number of applications has consistently remained between 400,000 and 500,000 per year the number of decisions made in the agreed timescales is declining. In 2009, approximately 85% (354,000 of the 415,000) decisions were made within statutory time limits and without performance agreements, but by 2021 this figure fell to 49% (209,000 of the 427,000). Whilst Covid will have had a recent impact, the trend over the last twelve years is both clear and concerning.

While the system established through the NPPF has delivered greater quantities of planning consents than was previously the case, it should be recognised that these sites are taking longer to proceed to a point at which they are implementable. The average permissioned site size has also increased significantly, with larger schemes often providing large proportions of necessary numbers. Between 2007 and 2021, the average consented site increased in size by almost 70%, from an average scheme size of 19.9 homes in 2007 to 33.0 in 2021. This has served to diminish land supply for SMEs. Most significantly for the housebuilding sector, the proportion of major residential applications decided on time fell recently to 81%, which is the lowest level for five years.

Planning policy is faring little better, and it is not hyperbolic to suggest the local plan-making is grinding to halt. The HBF is aware of at least nineteen local plans that have been delayed or withdrawn in recent months.

This figure, according to Lichfields<sup>5</sup>, was eleven in March, which speaks to an acceleration in this alarming trend. Lichfields calculated that eight of the eleven had published a plan with specific allocations that totalled 69,161 homes, plans for which will no longer be drawn up with certainty.

The nineteen, of course, are the LPAs that have for one reason or another had their plan-making progress, or absence thereof, made public. Countless other LPAs will be more privately making no progress.

Indeed, the sixteen local plans adopted last year was the lowest since the NPPF was introduced ten years ago<sup>6</sup>.

The LURB recognises that local plans should be at the heart of the system. Presently, however, there are few carrots to incentivise LPAs to progress them and no threat of a stick if they do not. That is perhaps an inevitable consequence of local plans taking decisions in many policy areas in the void where county-wide and regional planning once was.

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<sup>4</sup> <https://ifs.org.uk/publications/english-local-government-funding-trends-and-challenges-2019-and-beyond-0>

<sup>5</sup> <https://lichfields.uk/blog/2022/april/26/counting-the-cost-of-delay-the-economic-impact-of-local-plan-delay-to-housing-delivery/>

<sup>6</sup> <https://www.planningresource.co.uk/article/1748725/councils-abandoned-paused-delayed-local-plans-last-six-months>

As largely enabling legislation, it is noted that the LURB contains a number of platforms on which could be built at a later date the kind of radical reform mooted by 2020's 'Planning for the Future' White Paper. At present, however, the detail that has emerged and the narrative around could be said to amount merely to sensible 'tidying up' measures. It is noted that the House of Commons Levelling Up, Housing & Communities Select Committee<sup>7</sup> has picked up on this theme and raised concerns about a lack of detail. As the Committee Chair Clive Betts wrote to Secretary of State Greg Clark:

*If one central thrust of the Bill is not to centralise planning decisions, then the remaining planning provisions in the Bill can be described as loosely connected proposals to tinker with the current system, hopefully achieving some improvement. We have not received strong opposition to any of the proposals, but in part this is a factor of the detail not being published, so witnesses are having to hypothesise what will be enacted rather than respond to a firm proposal.*

The LURB, according to the Government, "acts on several fronts to create a robust framework for levelling-up. It gives local communities control over what is built, where it is built, and what it looks like, and so creates an incentive to welcome development provided it meets the standards which are set". The extent to which the LURB will achieve these aims is difficult to judge, but the priority of HBF members is addressing a system currently beset by under-funding, over-politicisation, and operational dysfunction.

It is within this general context that the HBF offers more specific observations on the thematic elements of the LURB.

#### Development Plans

As stated, the LURB recognises that local plans should be at the heart of the system and its proponents point to two initiatives that it is hoped will incentivise LPAs to get plans in place: the removal of the need to demonstrate a deliverable five year supply of housing (5YHLS) where a plan has been recently adopted, and a higher bar for non-plan-compliant development to get over (thus addressing so-called 'speculative development'). As a fundamental tenet of the NPPF, 5YHLS provisions have been instrumental in delivering the unprecedented increase in housing delivery seen between 2013 and 2019. From the lowest peacetime housing supply figure on record in 2012/13 to record net housing supply returns, surpassing even the outturns seen during the housing boom years of the 1950s and 1960s. Abolishing the 5YHLS requirement puts at risk the major steps forward that have been made in addressing decades of undersupply.

Given that the 'presumption in favour of sustainable development' that can be invoked where a LPA does not a 5YHLS does not, of itself, provide the exceptional circumstances required justify development in the Green Belt, the extent to which this really would incentive plan-making can legitimately be questioned.

HBF members are concerned that it will be more difficult for sustainable planning applications in places where progress towards a local plan-making was proceeding slowly.

At root, the local plan delays referred to above that are particularity afflicting the South East of England presently are related to the vexed issue of housing need. Uncertainty remains over how the Government intends to address the question of how many homes should be built and where, and HBF is particularly concerned about the possibility of nationally-set, evidence-based targets being scrapped and the impact this will have on housing delivery,

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<sup>7</sup> <https://committees.parliament.uk/publications/28460/documents/171233/default/>

Similarly, the Duty to Cooperate, whilst a difficult legal test for some LPAs to pass, does at least force difficult conversations about meeting need across a housing market area. The repealing of the Duty and its replacement with a more nebulous new 'Policy Alignment Test' will make it less likely that housing needs are met in full.

The idea that a Local Plan Commissioner can oversee gateway checks and take over the preparation of a plan is considered sensible, as is the proposal that an authority cannot withdraw a submitted plan without the agreement of the PINS.

Whilst Strategic Development Strategies (SDS) are a welcome, tentative step back towards greater-than-local planning, there is some scepticism as to whether they would address the fundamental reasons why plans are being delayed and withdrawn. SDSs would only be undertaken voluntarily, but not in areas where there is already a combined authority or a mayoral combined authority and only if a higher tier, county-level authority is involved. SDSs would not allocate sites, would only be reviewed 'from time to time', as opposed to the five-year obligation on local plans, and, unlike joint local plans, cannot be willed into existence by a Secretary of State. It is legitimate to ask whether, when compared to current arrangements, these provisions will make it more or less likely that the nineteen authorities referred to above will adopt a local plan in anything shorter than the long term.

In relation to National Development Management Policies, it seems entirely sensible that local plans do not replicate or unnecessarily deviate from national policies on matters like, for example Green Belt, and that consistent standards be applied across the country on matters such as sustainability or space standards.

#### Neighbourhood Plans

Whilst the development industry will largely welcome recognition of the role for neighbourhood plans and the desire for them to be afforded the same status and scrutiny as local plans, HBF members will be wary of 'Neighbourhood Priority Statements' if they can express views on matters such as design and housing locations that would be inconsistent with an emerging local plan.

#### Minor amendments to planning permission

There is very little in the LURB that will have a practical, direct impact on reducing the time it takes to secure planning permission, which is why, since amending consents can be very complicated, new 'fast track' provisions to determine broadly similar applications "where the local planning authority is satisfied that its effect will not be substantially different from that of the existing permission" are very much welcomed.

#### Commencement and Completion Notices

The industry is comfortable with Commencement Notices, provided that the trigger point is the discharge of all pre-commencement conditions, on the basis that HBF members, like all builders, are keen to get on to every site as soon as is possible.

It is interesting in this regard that the stated justification for Commencement Notices is to address “perceptions of ‘land banking’ and slow build out by larger developers”. The Letwin Review<sup>8</sup> was the latest publication of its type to seek evidence to support this perception and concluded the following:

*But I cannot find any evidence that the major house builders are financial investors of this kind. Their business models depend on generating profits out of sales of housing, rather than out of the increasing value of land holdings; and it is the profitability of the sale of housing that they are trying to protect by building only at the ‘market absorption rate’ for their products. I have heard anecdotes concerning land owners who seek to speculate in exactly this way by obtaining outline permission many years before allowing the land to have any real development upon it – and I am inclined to believe that this is a serious issue for the planning system. But it is not one that is consistent with the business model of the major house builders.*

HBF members are resistant to Completion Notices, which LPAs will have the power to serve ceasing a permission if a development remains uncompleted after a certain time period. This could make it harder for smaller builders to restart on sites that another builder may have had to close down.

### Design

The requirement for every local authority to progress a local design code is not necessarily something that the industry would be resistant to in principle if it does not slow down local plan-making, but the conclusions of the National Model Design Code (NMDC) pilot programme review<sup>9</sup> were striking in this regard. It was found that “a steep learning curve is required to produce design codes and to use the new methodology in the NMDC, and with a few exceptions local authorities were not set up to deliver design coding in-house.”

### Developer Contributions (Infrastructure Levy for England)

HBF is sympathetic to efforts to optimise developer contributions through the planning system and its processes, but would caution against a major overhaul without a sensible logic and evidence base. Attempts at development land taxation have been made many times.

While imperfect, it is important to recognise the benefits to communities and local infrastructure investment that the current forms of land value capture are securing. Savills<sup>10</sup> estimate that around 50% of land value uplift is already captured via developer contributions, which is even before the landowner pays capital gains or income tax on any transaction. DLUHC’s own independent estimates suggest that in 2018/19, developer contributions exceeded £7bn per year with that figure likely to have grown in the years since. Perceptions of sub-optimal land value capture may be driven by a shift in focus of developer contributions, as demanded and negotiated by LPAs. DLUHC estimates suggest that in 2005/6, around half of all Section 106 Agreement contributions by cash value were being directed towards affordable housing. This had increased to 67% by 2016/17 and remained at that level in 2018/19. In real terms this represented an increase from just under £3bn per year to more than £4.6bn, necessarily squeezing out other, more visible, facilities and infrastructure, such as transport and travel, which once secured 9% of developer contributions and was just 4% in 2018/19.

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<sup>8</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/718878/Build\\_Out\\_Review\\_Draft\\_Analysis.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718878/Build_Out_Review_Draft_Analysis.pdf)

<sup>9</sup> <https://www.gov.uk/government/publications/national-model-design-code-pilot-programme-phase-1-lessons-learned>

<sup>10</sup>[https://www.savills.co.uk/research\\_articles/229130/267514-0](https://www.savills.co.uk/research_articles/229130/267514-0)

As Savills noted, there is a limit to how much further land value capture can be pushed before landowners are unwilling to bring sites forward for development. If the IL is to support greater infrastructure investment, perhaps the Community Infrastructure Levy, which has done so for many years now, could be improved in so far as the transparency of its application and value are concerned. Tangentially, it is also worth highlighting that through a range of industry-specific taxes and levies as well as new regulations and policy measures, the 'policy costs' of development are expected to increase by more than £4.5bn per year in the years ahead, estimated to cost builders or landowners around an additional £20,000 per new home.

Importantly, as other commentators in the housing sector will be noting, affordable housing has not been part of the CIL regime because it has been considered better realised by being delivered and integrated as part of a development rather than by contribution, which would be the case with an IL.

HBF was pleased to contribute to a review of the CIL, which was published in 2017<sup>11</sup> and recommended that CIL and Section 106 Agreements be replaced by a Local Infrastructure Tariff, with a Strategic Infrastructure Tariff at a housing market area or combined authority geography. Much of this work and its recommendations remain valid today.

#### Environmental Outcomes (Habitats Regulations)

Whilst, as the Office for Environmental Protection<sup>12</sup> has noted, it is not clear how the Government has assessed the current EIA and SEA legislation or compared it to the better environmental outcomes expected from proposals under the Bill, HBF supports in principle the long-term streamlining of environmental assessment legislation.

In the short-term, however, the most important element of the LURB is arguably the amendment that the Chief Planner<sup>13</sup> announced in July would be tabled to place a new statutory duty on water and sewerage companies in England to upgrade wastewater treatment works to the highest technically achievable limits by 2030 in nutrient neutrality areas.

In March 2022 when Natural England announced further restrictions, it brought the total of affected catchments to 27 and the number of affected LPAs to 74. HBF has calculated that at least 100,000 homes are currently delayed.

The housebuilding sector, and SME builders for whom this issue is particularly damaging, has several legitimate grievances about the emergence and management of the neutrality issue.

Firstly, the volume of nutrients contributed by new residential development is dwarfed by the volumes generated from other sources. The Somerset local authorities calculated in 2021 that phosphates generated from urban sources (4%), of which new housebuilding is only a sub-set, is marginal when compared to that generated through farming (42%) and wastewater treatment works (52%).

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<sup>11</sup><https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government>

<sup>12</sup> <https://www.theoep.org.uk/report/oep-written-evidence-levelling-and-regeneration-bill-committee>

<sup>13</sup>[chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1093278/Chief\\_Planner\\_Letter\\_with\\_Nutrient\\_Neutrality\\_and\\_HRA\\_Update\\_-\\_July\\_2022.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1093278/Chief_Planner_Letter_with_Nutrient_Neutrality_and_HRA_Update_-_July_2022.pdf)

Secondly, the housebuilding sector has paid in the region of £3 billion in Infrastructure Charges to the water industry since 1991. Each year water companies are receiving tens of millions as a by-product of residential development, along with a similar value of new infrastructure from which to secure long-term returns. This process is designed to ensure that water services are kept up-to-date with the needs of the plan-led system, which, patently, has not been the case. We would urge consideration as to whether the LURB could be used to more effectively hold water companies to account.

Thirdly, it is to be noted that no restrictions have been placed on existing, let alone new, farming activities since the Dutch N decision.

Fourthly, progress towards calculating and then achieving nutrient neutrality has been slow and uncoordinated.

Whilst still not a short-term solution to the neutrality issue, the amendment to be tabled would at least represent some progress in this area. It is noted that the Prime Minister<sup>14</sup> has acknowledged the impact of the issue and has “pledged to ditch nutrient neutrality rules”. The HBF would obviously welcome any move to unblock development and safeguard long-term environmental standards.

#### Other Provisions

HBF could be supportive of affording inspectors at PINS the ability to change an appeal’s determination procedure if it meant swifter appeal decisions, especially if resources at PINS continue to be stretched.

Similarly, the HBF would be supportive in principle of statutory consultees charging for advice in certain circumstances, but it is suggested that this be coordinated by way of a pre-application, Planning Performance Agreement-type approach to ensure consistency and coordination.

It is noted that the Bill is to be used to increase the transparency of contractual and other arrangements used to exercise control over land. It has been stated that “the Government will have the power to collect and publish data on these arrangements to expose anti-competitive behaviour by developers and help local communities to better understand the likely path of development”.

Notwithstanding the point recognised by the Letwin Review and stated above the business models of homebuilders depend on generating profits out of sales of housing, rather than out of the increasing value of land holdings, there are perfectly legitimate commercial reasons for not disclosing commercially sensitive information when landowners and developments enter into a contractual arrangement such as a right of pre-emption, option or conditional contract. This is materially different to the information required to help communities understand who might be promoting which site for development, which is remedy perhaps best pursued through transparency afforded by further digitisation of the planning application and local plan processes.

#### Summary & Conclusions

In the absence of the accompanying technical consultations on the IL; the new system of Environmental Outcomes Reports; changes to improve the performance of the NSIP regime; proposals for changes to planning fees; a new NPPF; and National Development Management Policies, it is difficult to assess the extent to which the Bill would take these opportunities.

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<sup>14</sup> <https://www.housingtoday.co.uk/news/truss-vows-to-ditch-nutrient-neutrality-rules/5118915.article>

It is certainly cannot be said with confidence that the Bill would improve the supply of land available for development; help to shorten the time taken to secure planning permission, and result in a more clear, consistent and justifiable regulatory regime.

What can be said with certainty is that 61% of LPAs do not have an up to date local plan<sup>15</sup> and there is little in Bill to ameliorate this situation. Indeed, whilst there is recognition of “the importance of minimising disruption whilst transitioning to the new system, so that plans can and do continue to come forward in the meantime” it needs to be stated that plans are not and most likely will not come forward in the meantime.

It is recognised that many of the most important actions propounded by planning practitioners do not require legislative changes and that three of the most pressing issues affecting planning presently – uncertainty, nutrient neutrality and LPA resourcing – remained to be addressed.

Strong, healthy, and vibrant planning departments are necessary for the timely approval of meaningful, impactful, quality planning applications and there has to be recognition of the role of greater-than-local planning in addressing the current obstacles to getting local plans adopted.

Improving the planning process is important not only for the purposes of tackling the housing crisis but also for economic growth. In 2020/21, the house building industry was responsible for:

- Supporting almost 700,000 jobs;
- Generating £37.7bn of economic activity;
- £11.6bn spent on suppliers;
- £6.2bn investment in affordable housing;
- £2.7bn tax generated;
- £251m council tax generated;
- £66m investment in open spaces;
- £5.9bn spending in local shops; and
- £179m investment in new and improved school

These contributions could, of course, be considerably higher if the barriers in the planning process can be overcome and delivery can be increased. With much of the detail behind the LURB’s proposals yet to be published, it is unclear as to what extent the Bill will play in delivering on these ambitions. As drafted, however, the Bill will not provide the significant changes that are required.

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<sup>15</sup> <https://www.gov.uk/government/news/new-bill-to-level-up-the-nation>