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# Pinsent Masons, Landmark Chambers & HGH Consulting - The LURA (Levelling Up & Regeneration Act): The Effects Now and in the Medium Term

8 November 2023

A purpose-led professional services  
business with law at the core

# Agenda

	Open and overview	
	Development Management Implications	
	Environment Outcome Reports	
	Development Plans	
	Development Corporations	
	CPO and brief touch upon Nutrients (ie gone and prognosis) and BNG and BNG timings for EA implications	
	Wider Q&A	

# Your expert panel



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# LURA: what and when



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# What and when

- Completion Notices
- In force or in force by Christmas:
- Levelling up mission machinery
- Mechanics of the Combined County Areas changes
- EOR (Environmental Outcomes Reports)
- Nutrients
- Information
- Miscellaneous small points – including rental properties, RICS and HSE, open access and ancient woodland



# Not in force until regulations are laid

- Data rules: ch 3, ss, 84-91
- Changes to the development plan and NDMPs: ss 92-94
- London Plan controls: s.95; street votes s.106ff
- Enforcement changes: s.115-119
- Material variations to permissions: s.110ff
- Completion notice changes: s.112ff
- Heritage changes: s.102
- Infrastructure Levy: Part 4
- Community Land Auctions: Part 5
- Development Corporations: Pt 8
- CPO and compensation changes: Pt 9



# Short term effects - 2024

- If the NPPF/NDMPs changes happen in Q4 2024/Q2 2024, then daily planning will be reshaped with a definite shift to central government policy across at least half the country, and the inevitable legal challenges
- Local Plan making will slow again as the changes are absorbed
- Some short term easing for housing potentially on nutrients but lots of adjustment for EOR including legal challenges



# Longer term effects

- General election will likely determine how much of the rest of LURA is implemented
- Development Corporations, CCAs (sub-regional planning), CLAs, Completion Notices, Enforcement, even perhaps Street Votes might happen under Labour or Lib Dems; but will be overlaid
- If taken as a package and implementation assumed (though perhaps unlikely): some tools for pragmatic action in key areas (eg Dev Corp + CPO + CCAs + NDMPs)
- But to what extent do the changes bolster or undermine a 'planned' system, or result in stability?







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# LURA: Development Management Implications



# Development Management Implications

## MATERIAL VARIATIONS IN PLANNING PERMISSION

- A new S73B that enables LPA's to grant new planning permissions for developments that are “substantially” the same in effect as an existing permission, whilst only considering ways in which the new permission would differ from its predecessor.
- Responds to case law (but not specifically with Hillside in mind) limiting how one might deploy a “section 73 variation” to vary development together with the scope of non-material amendments under section 96A being so variable from one local planning authority to the next .
- The scope of S73B is relatively narrow insofar as it does not enable extensions of time, or the disapplication of conditions relating to biodiversity net gain or requirement to provide Progress Reports.

# Development Management Implications

## **COMMENCEMENT & COMPLETION NOTICES (Come into force 26 December 2023)**

- Commencement Notices to be submitted by developers to the LPA specifying the date on which it is expected that development will be begun;
- Powers for LPA'S to serve Completion Notices in cases where they consider that the development will not be completed within a reasonable period stating that planning permission will cease to have effect at a specified deadline.

## **POWER TO DECLINE TO DETERMINE APPLICATIONS IN CASES OF EARLIER NON-IMPLEMENTATION**

- Where applicants have been slow to implement previous permissions across local authority areas, Councils will be able to decline to determine applications from such applicants.

## **DEVELOPMENT PROGRESS REPORTS**

- Introduction of the mandatory condition to be imposed on planning permissions requiring annual development progress reports to be submitted by developers.

# Environmental Outcome Reports

- Designed to reduce duplication and streamline the process for identifying and assessing the environmental impact of plans and projects.
- There is limited detail in the Act on the detail of the new EOR regime however- like there is for EIA - there will be two categories of plans and developments that will require an EOR:
  - (1) Category 1 consents which will require an assessment in all circumstances; and
  - (2) Category 2 consents which will require an assessment if the criteria set out in the regulations are met.
- We also know that an EOR must:
  - measure the expected environmental effects of a plan or consent against the environmental outcomes set out by the Secretary of State;
  - set out the impact of any reasonable mitigation or compensation measures; and
  - consider reasonable alternatives to the plan or consent.

Regulations will be able to amend, repeal or revoke relevant existing environmental legislation, however, the Secretary of State must be satisfied that the regulations will not result in a lower overall level of environmental protection and that they are consistent with the UK's obligations under international law.

# New Fees Order

Whilst not part of the LURA a reminder that the New Fees Order has now progressed through Parliament and is likely to be in place this side of Christmas.

The Order will:

- Increase planning fees by 35% for major applications and 25% for all other applications.
- Implements an annual inflation-related adjustment to planning fees.
- Removes the 'free-go' for repeat applications.
- Introduces a prior approval fee for the permitted development right allowing the Crown to develop sites within the perimeter of a closed defence site; and
- Reduces the Planning Guarantee period for non-major applications to 16 weeks.





## Levelling-up and Regeneration Act 2023 received royal assent on 26 October 2023

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8 November 2023

# Levelling-up and Regeneration Act

## Development Plans

### What's happening?

#### S38 Changes

- Development plan now expressly includes supplementary plans, minerals/waste plans and policies maps
- Determination in accordance with development plan **AND** National DM policies unless material considerations **strongly** indicate otherwise.
- Conflicts – National DM policies trump development plan.

#### **NEW- Climate Change and Local Nature Recovery Strategies**

- All types of development plans and National DM policies-to have regard to the need to mitigate and adapt to climate change.
- All types of development plans- to have regard to local nature recovery strategies in particular areas that are/could be particularly important for biodiversity; areas where recovery/enhancement of biodiversity could make a particular contribution to other enviro benefits; priorities for recovery/enhancing biodiversity.

#### **Neighbourhood Plans**

- OUT General conformity with strategic policies in the development plan.
- IN- NP cannot have the effect of preventing proposed housing development in the development plan.

# Levelling-up and Regeneration Act

## Development Plans

### What's happening?

#### **NEW- Local Plan Timetables**

- Timetables to set the area; matters local plan deal with; design codes and suppl plans to be prepared; if any joint local plan/suppl plans; timetable.
- SoS and London Mayor can direct amends to LP Timetable
- LPA to publish and comply with LP Timetable.
- New Regs on what in the LT Timetable and when revise them

#### **NEW- Key Local Plan Procedures**

- LPA have to seek observations/advice on proposed LP from SOS appointed person. SOS may require LPA to pay for person's fees and expenditure.
- LPA must publish and have regard to the observations/advice and National DM policies.
- LPA must submit LP to examination if appointed persons advises prescribed requirements met.
- Suppl Plans general rule- examine by written reps. General conformity with any spatial dev strategy
- Withdrawing plans-once submitted can only withdraw LP if SoS directs or inspector recommends withdrawal.
- Design codes in dev plan- no need for every description of dev't nor every aspect of design
- New Regs on many things including: observations/advice, timing when SoS step in to prepare LP, when new LP needed.



# Levelling-up and Regeneration Act

## Development Plans

### What's happening?

#### **OUT- Duty to Cooperate**

- Sch 7 repeals s33A of PCPA 2004 which establishes DTC. Intention is national policy will introduce a new “alignment” test.

#### **NEW- Old Age & Disability Guidance**

- SoS must issue guidance on how LP/suppl plans address housing needs resulting for old age & disability- First time specific obligation to publish guidance for this specialist housing need.

#### **NEW- Policies Map**

- LPA must prepare a policies map illustrating geographic application of the dev plan- form and content may be prescribed by SoS. Part of move to be more accessible and digital transformation in planning.

#### **WATCH THIS SPACE...**

- Many regulations needed as well as guidance. This dovetails with the recent plan making reforms consultation on implementation. Needs regulations for Development Plan sections will come into force.

# Levelling-up and Regeneration Act

## Development Plans

### Practical Implications

#### Budgetary

- Allow for engagement with Design Codes, Suppl Plans as well as LP- more budget cost
- Climate change and Local Nature Recovery/Biodiversity- expect to see more LPA seeking additional requirements than just EA2021 10% BNG also affect NDA

#### Contract/Project Timings & Implications

- Do not adjust length of time for LP and applications- no real sticks & carrots to ensure delivery
- LPA will provide ambitious LP Timetables but likely to fail to achieve; SoS resource in PINS won't match demand for Gateway checks
- Allocation Fees- best to avoid-some policy details and certainty over delivery requirements may cascade to Suppl Plans.

#### Risks & Opportunities

- **Risk:** Suppl Plans- cascade of detail to SP to make LP less controversial and to try to hit timetables =less scrutiny of SP eg no Gateway checks and written reps
- **Risk:** Engage with National DM consultations as no independent testing
- **Opp:** Older person housing to be accommodated in LP- consider building into general housing sites
- **Opp:** New LP process has potential speed things up and Gateway checks could reduce delays later (Let's see!)



# Levelling-up and Regeneration Act

## Development Corporations

### What's happening?



# Levelling-up and Regeneration Act

## Development Corporations

### What's happening?

#### Now 5 (rather than previous 4) types of Development Corporation

- Current: New Town DC, Urban DC, Mayoral DC & Locally-Led New Town DC
- **NEW!**: Locally-Led Urban Development Corporation



#### New Locally-Led Urban Development Corporation Model for Wider Regeneration Purposes

- New locally led UDCs for wider regen remit - can cover wider, non-contiguous areas and different types of projects, including City & Town Centres, brownfield regen, new employment parks etc.
- Can be across multi-authority areas, e.g. Hertfordshire Growth Board authorities have been looking at this
- Local authority consults and proposes what it wants and SoS decides
- Oversight authority can be split functions between relevant local authorities
- Midlands Engine and others lobbied for this.
- Pathfinder Bids to DLUHC: Tewkesbury, Sheffield, Carlisle, Milton Keynes, others

# Levelling-up and Regeneration Act

## Development Corporations

### What's happening?

#### **More Consistent Powers Across the Development Corporation Spectrum**

- All Dev Corps now eligible to become LPAs for local plan making, overseeing neighbourhood planning and development management. Brings them into line with MDCs. How these powers are bestowed does still vary somewhat.
- N.B. All Dev Corps have CPO powers (even though Bill explanatory notes doesn't refer to this). Therefore watch out for Dev Corps looking to exercise the power to disapply hope value in the LURA as acquiring authorities – see Jenny Wigley's slides/slot.
- Borrowing aggregate limit removed and cap on board members removed

#### **Simplification of New Town Development Corporation Model**

- Simplifies establishment

# Levelling-up and Regeneration Act

## Development Corporations – Practical Implications

### Practical Benefits

Locally-Led Dev Corps allows multiple types of regen project and cross-authority collaboration, plus dedicated project delivery

More standardisation across Dev Corp powers and functions removes current discrepancies and limitations

Increased borrowing power for Dev Corps

Simplification of Locally-Led New Town Dev Corp establishment

More funding opportunities from DLUHC and Treasury for Local Authorities with Dev Corps

### Practical Risks/Issues

More clarity on funding needed for Locally-Led New Town DCs and Locally-Led Dev Corps

Role of Locally-Led New Town Dev Corps needs more clarity in light of Locally-Led DCs establishment

If you are a landowner/developer within a Dev Corp red-line boundary, consider enhanced risk of disapplication of hope value by compulsory purchase and potential “strong arm” negotiations by the Dev Corp (N.B. Dev Corps can certainly be your friend but also potentially not in this respect)

Delay risk to projects whilst Dev Corps and interim vehicles are set up. Guidance on establishment time (typically 18 to 24 months) would be helpful and pick and mix of powers – note County Council functions typically not covered

Inter-play with local authorities and Homes England needs monitoring and clarity in practice

# Levelling-up and Regeneration Act

## Development Corporations – What Should I Do?

### Local Authorities and Mayoralities

Consider Dev Corp options and models best suited to your area and local politics – funding, delivery focus, resources, political semi-independence

Engage with Government/DLUCH and Labour (who are also keen on Dev Corps for c.12 Growth Areas)

Business case production

Legal, financial, economic modelling & valuation advice

Engage politically locally and sub-regionally

### Landowner/Developers

Engage with local authorities, Homes England, DLUCH, Mayors (as applicable) and consider infrastructure funding and other studies/assessment opportunities

Monitor Dev Corp redlines carefully and engage/make reps

Consider provisions dealing with LURA disapplication of hope value risk in land acquisition contracts, options and promos re what happens if the land is CPO'd re any reduction below market value (cf. EUV, planning permission, CAAD and hope value components of valuation and viability models)

Consider JV and acceleration of development options with Dev Corps

Engage politically locally and sub-regionally





# CPO, Nutrient Neutrality, BNG



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# Compulsory Purchase – Hope Value - Not yet in force

- S.190 Inserts a power (s.15A LCA 1961) to require prospects of alternative planning permissions (colloquially known as ‘hope value’) to be ignored for the purposes of compensation;
- Only where authorising enactment is in new Sch 2A (those related to health, education or planning purposes - which must include affordable housing);
- Acquiring authority can seek a direction in the CPO that new s.14A LCA 1961 applies (compensation to take no account of prospect of future planning permissions other than subdivision of dwellings);
- Whether or not to confirm the direction is a binary decision (no sliding scale);
- Confirming authority must be satisfied direction is ‘in the public interest’ and dependent on a ‘statement of commitments’ put forward by the acquiring authority;
- Additional compensation (i.e the hope value that would otherwise have been payable) can be claimed if statement of commitments not fulfilled;
- Will this encourage more CPOs to be made? Many unintended distortionary consequences...



# Compulsory Purchase – Other provisions - Not yet in force

- S.180 amends s.226 TCPA 1990 to expressly include regeneration purposes;
- S.181 publication of CPOs to be online (as well as available physically);
- S.182 amends s.13A AQLA 1981 regarding procedure to hear objections – still a right to be heard at a hearing if requested but not necessarily a full public inquiry;
- S.183 Inserts s.13BA into AQLA to allow for conditional confirmation of CPOs (operative date delayed until fulfilment notice confirming discharge of all conditions – allowance for objectors to make written reps)
- S.185 Inserts power to extend time for implementation of a CPO (i.e can be more than 3 years);
- S.186 Allows for agreement to vary / postpone vesting date;
- S.188 Amendments to 'no scheme' principle in LCA 1961 to ensure the 'scheme' includes the transport project facilitating the CPO development



# Nutrient Neutrality – where are we now?

- Government amendment to LURB was designed to disapply the Habitats Regulations in relation to nutrient neutrality; But...
- Amendment defeated in the Lords and parliamentary procedure prevented it from being re-introduced in the Bill – so has not made it to the LURA;
- As per recent rumours, nothing in the King's speech (despite Gove's announcement at the Conservative Party conference);
- Position continues to be as set out in the High Court Judgment in Fry & Son Limited v. SSLUHC and Somerset Council [2023] EWHC 1622 (Admin);
- But look out for appeal to Court of Appeal (leapfrog to Supreme Court refused permission);
- And watch out for how the legal position might change following the Retained EU Law (Revocation and Reform) Act 2023 coming into force at the end of the year;
- But some potential easing of the position due to obligations on sewerage undertakers to upgrade sewage treatment plants in designated sensitive catchment areas by 1 April 2030 (or by a date not less than 7 years away where designations are not made within 3 months of Act being passed).
- And a corresponding requirement on Habitats Regs decision makers to *assume* that the upgrade to the treatment works will have happened by the relevant required 'upgrade date' (Part 7 & Sch 15).





# Biodiversity Net Gain – where are we now?

- Schedule 7A TCPA inserted by Environment Act 2021 – 10% BNG - still not yet in force;
- But +ve net gain already an NNPF requirement and 10% BNG a development plan requirement in some areas;
- Joint statement of DLUHC & Defra on 27 September stating will come into force in January 2024 (rather than Nov 2023 as previously billed); April 2024 for small sites and 2025 for NSIPs;
- Will be transitional arrangements to ensure it does not apply retrospectively to applications made before then – NB useful arguments re: weight;
- Draft guidance and draft BNG plan template published on 26 October 2023;
- S.135 LURA amends Sch 7A TCPA to reset the biodiversity baseline where activities undertaken after 25 August 2023 have reduced biodiversity value (even though pursuant to a planning permission);
- Builds on existing para 6 of Sch 7A which resets base biodiversity value if has been lowered as a result of activities carried on without planning permission on or after 30 January 2020.









# Thank you

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