

## Levelling Up and Regeneration Bill 2022 – some comments

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The Levelling Up and Regeneration Bill (LURB) was launched in May 2022 soon after the publication of the Levelling Up White Paper (LUWP), defying the convention that, while white papers are statements of government policy, they should have a period of examination and discussion before moving to legislative proposals. The nature of the LURB, which is long in content and frequently short on detail, leaving ‘placeholders’ rather than clear statements of legal intention such as that proposed street votes on proposed development. This leaves the way open for the Government to follow through with later consultations but also for the government to fill in these gaps through secondary legislation which will have little or no Parliamentary scrutiny. This is not the case for all aspects of the LURB as the early consultation on compensation for compulsory purchase orders demonstrated<sup>i</sup>. However, overall, this means that many responsible for planning and regeneration issues are left attempting to second guess the Government’s direction of travel. There are also some large areas of planning legislation that require urgent post-Brexit reform to replace EU Regulations, such as the Planning Act 2008 and these are not fully addressed.

In considering the LURB there are, therefore, a number of questions about its scope and style before second guessing the possible detailed implications of the current more general content. The first question is whether any or all of the LURB will be implemented. In practice, the lack of clarity on its legal proposals may delay the Bill as it goes through Parliament and attract more attention from the Parliamentary Select Committee for Levelling Up<sup>ii</sup>. The LURB is likely to become law in 2023 which is one year away from a General Election if one is not called earlier. The LURB includes a range of proposed planning reforms in Part 3, including the role of the local plan in determining planning applications, the introduction of national development management policies and the removal of the negotiated elements of developers’ contributions through s106 agreements to be replaced with a fixed infrastructure levy. However, this latter reform does not extend to the largest development proposals and this is likely to fail to contain community fears and objections to new housing. As planning has been a particular issue for the Conservative government in its southern England heartlands, there is a possibility that any proposed changes in the local plan system will be delayed until after the General Election in case they cause uncertainty amongst this core electorate. These uncertainties may also attract concerns and opposition from MPs, who are seeking to safeguard their majorities. The Chesham and Amersham by-election in 2021, where a large Government majority was overturned leading to a loss of a Conservative safe seat and led to the demise of the Planning White Paper. If there is a change of government following a General Election, many of the LURB provisions will remain to be detailed and it may allow an incoming government to use the secondary legislation in ways other than those currently intended.

The second question to be considered is the legal role and influence of the Missions in Part 1 of the LURB. There were 12 missions included within the LUWP, which are described as an anchor for policy across government<sup>iii</sup> and will have a major role in determining the way that the rest of the Bill will be implemented. The announcement by the Secretary of State for Levelling Up that he intends to create an Office of Local Government<sup>1</sup> to monitor and measure local authority performance of these missions reinforces the role that they will have, once they are included within legislation. This also suggests a return of a body like the Audit Commission that was closed in 2015, that indicates the extent to which

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the current government wishes to hold local government to central government priorities. This is a similar centralising approach as seen in deals, where decisions on local projects are taken in Whitehall. The LUWP indicates that it intends local authorities should have health and social care as their main area of public policy choice although these too are heavily centralised. None of the missions in the LUWP include a specific reference to planning and are more focused on the economy and well-being. The mission for transport infrastructure and connectivity for example will have clear implications for local plan site selection and urban intensification if the model provided for standards of transport communication to be achieved is that of London.

The third issue is the role of the LURB in respect of the UK rather than for England. The extent of this Levelling Up policy reach is made in the forward of the LUWP and continues throughout, although the potential implications of this have frequently been overlooked by commentators. As the LUWP states, the six types of capital it identifies – ‘physical, human, intangible, financial, social and institutional – straddle areas of responsibility and tiers of government across the UK’ (p xix) and it suggests that only action on behalf of the UK government can bring together the benefits for the whole state. As the LUWP states,

‘Devolution settlements in Scotland, Wales and Northern Ireland recognise that devolved governments are best placed to deliver certain services, like health and education. But outcomes are a shared interest for the whole of the UK. Our broad UK-wide tax base already funds public services across the UK, ensuring for example that the NHS can deliver for people whether in Scotland, Wales, England or Northern Ireland’ (p xx).

The effect of the role of the capitals, missions and associated programmes becoming UK wide is that the devolved nations will be left in a position that would be much the same as before devolution in 1999. This approach to reducing the practical application of devolution by the UK Government has been occurring since 2014 and has accelerated post-Brexit through the application of deals for a parts of the devolved territory<sup>iv</sup>, removal of powers in the European Union (Withdrawal Act) 2018, the Internal Market Act 2020, the failure to apply the Sewel convention for legislative consent<sup>v</sup> and the removal of devolved budgets to support the UK’s donations to Ukraine<sup>vi</sup> all point in the same direction. Will this UK wide intention lead to political and legal contention and delay the implementation of some structuring aspects of the LURB?

The last issue to consider here is the extent to which the proposals in Part 3 of the LURB for planning work with the current commitments coming from DEFRA including the creation of a Land Use Plan for England as set out in the Food Strategy 2022<sup>vii</sup>? In 2015, when the UK signed the international agreement to implement the UN’s Sustainable Development Goals (SDG), this included a commitment to prepare a national land use plan in SDG 11, the New Urban Agenda<sup>viii</sup>. Initially the government’s policy response to meeting the commitments it made in the SDGs was to assume that they applied to other countries rather than the UK, giving the responsibility to the Department for International Development and then, only later, switching the lead to BEIS in 2020<sup>ix</sup>. However, DEFRA is committed to publish a land use framework to achieve national objectives for English agriculture, the environment and net zero in 2023 which is said to be in response to a House of Lords special inquiry into land use<sup>x</sup> although this has not yet reported.

The LURB leaves many issues unresolved both for planning and wider public policy that has a spatial dimension. It is not clear how the proposed reforms might respond to any kind of national strategy for the economy and achieving net zero, that would require an assessment of priorities for investment in infrastructure, housing and social policies. Rather, the approaches offered suggest short term

government initiatives to support day to day political interests rather than a long term strategy for Levelling Up and Regeneration that the country needs.

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<sup>i</sup> Compulsory purchase - compensation reforms: consultation.

<https://www.gov.uk/government/consultations/compulsory-purchase-compensation-reforms-consultation>.

<sup>ii</sup> <https://www.parliament.uk/business/news/2022/june/call-for-written-evidence-levelling-up-and-regeneration-bill/>

<sup>iii</sup> Levelling Up and Regeneration Bill Explanatory Notes <https://publications.parliament.uk/pa/bills/cbill/58-03/0006/en/220006en.pdf> p7

<sup>iv</sup> Morphet, J. (2021). *The Impact of COVID-19 on Devolution: Recentralising the British State Beyond Brexit?*. Policy Press;

<sup>v</sup> McEwen, N. (2022). Irreconcilable sovereignties? Brexit and Scottish self-government. *Territory, Politics, Governance*, 1-17; Masterman, R. (2022). Brexit and the United Kingdom's Devolutionary Constitution. *Global Policy*, 13, 58-68.

<sup>vi</sup> <https://nation.cymru/news/not-right-uk-government-dips-into-welsh-and-scottish-budgets-for-1bn-ukraine-military-aid/>

<sup>vii</sup> DEFRA (2022) Government Food Strategy <https://www.gov.uk/government/publications/government-food-strategy/government-food-strategy>

<sup>viii</sup> Morphet, J. (2021) A commentary on Bruce Stiftel's 'Planners and the New Urban Agenda: will we lead the agenda, or will the agenda lead us?' [Town Planning Review](https://www.townplanningreview.com/92-6-687-692) 92, (6), 687–692

<sup>ix</sup> <https://www.gov.uk/government/publications/implementing-the-sustainable-development-goals/implementing-the-sustainable-development-goals--2>

<sup>x</sup> <https://committees.parliament.uk/committee/583/land-use-in-england-committee>