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11 October 2023

Our Ref: 2023/7224

Dear Sir/Madam,

**Levelling-up and Regeneration Bill: consultation on implementation of plan-making reforms**  
**Representations on behalf of Mactaggart & Mickel**

**Introduction**

On behalf of our client, Mactaggart & Mickel, we are pleased to enclose representations in response to Levelling-up and Regeneration Bill (LURB): consultation on implementation of plan-making reforms which closes on 18<sup>th</sup> October 2023.

It is widely agreed that the current planning system has a number of fundamental inefficiencies. Principally, these relate to significant delays in the planning application process, from pre-application through to S106 legal agreements, refusals for planning permission on allocated sites, LPA staff recruitment and skills and wider LPA resourcing and moratoriums on new grants of planning permission. This has been accompanied by a suite of economic, societal and environmental challenges including the cost-of-living crisis, housing affordability, nutrient neutrality and climate change.

Given the above, there is no doubt that there is an acute need for increased efficiency, certainty, consistency, and stability within the planning system. Positive reforms are therefore needed and welcomed but it is also considered that these needs to be coupled with the correct government investment into the planning system to assist in the improvement of its process and procedures.

We set out below our comments on those matters raised in the Levelling-up and Regeneration Bill: consultation on implementation of plan-making reforms considered of relevance to our client.

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## A Plan-Led System

The starting point for the planning system must be Section 38(6) of the Town and Country Planning Act (TCPA) 1990 which sets out that;

*"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."*

Currently, the government identifies that only around 40% of local planning authorities (LPA) have adopted Local Plans within the past 5 years. A plan-led system must be built on the very essence of just that, being led by plans containing policies and spatial strategies, and this can only be achieved by LPA's having Local Plans in place that are adopted, relevant, deliverable and effective.

In the context of the above, there must therefore be greater accountability if an LPA does not have an up-to-date adopted Local Plan in place. We agree that it is right that the presumption in favour of sustainable development set out in the National Planning Policy Framework (NPPF) remains an important part of the planning system, to ensure that development comes forward where up-to-date Local Plans are not in place. However, we consider its strength should be heightened. In the context of greater emphasis on the plan-led system, the consequence of not having an adopted Local Plan in place must be serious such that the presumption is capable of being disapplied only if the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. This is a high bar.

We agree that in circumstances where LPA's have up-to-date Local Plans which are delivering against, or exceeding, their objectives, development should come forward in accordance with Local Plans. However, we highlight that there will inevitably be cases where Local Plans are not delivering against their objectives and in these circumstances, there must be more opportunity for applications to come forward to 'plug the gaps'. Indeed, we consider there must be a realistic expectation that applications will come forward in such cases. Notwithstanding, in authorities who are delivering against their housing requirement, it should be reemphasised that the housing requirement is a minimum not a maximum figure and therefore opportunities to exceed housing requirements should be pursued as and when suitable development sites, in addition to those set out in Local Plans, come forward.

In addition, under a plan-led system, if a Local Plan is found sound at examination by the appointed Inspector/s, there must be a default position in which LPA's must be required to adopt said Local Plan without delay. Similarly, under a plan-led system, we do not consider there is any scope for LPAs to delay plan-making to take account of new legislation or guidance 'potentially' coming into effect, doing so would undermine the objectives and effectiveness of a plan-led system.

## Housebuilding

A plan-led approach to housebuilding relies on sites being allocated in Local Plans. It is understood that the aggregate annual housing requirement figure across all adopted Local Plans in England is circa 224,000, significantly short of the government's 300,000 ambition.

We consider that Local Plans must seek to raise the profile of housebuilding which must therefore see Local Plans planning to meet their housing requirement as a minimum, and exceeding it where possible. Indeed, the plan-led system is by its nature pro development and must be seen as a way to ensure the right developments are in the right places, rather than as a means to stifle development opportunities.

## Reducing Complexity

National Development Management Policies (NDMP) are part of the government's ambition to make it easier to produce plans and foster a genuinely plan-led system, leading to clearer and more certain decision-making. It is understood that the starting point for NDMPs would be the existing parts of the NPPF which apply to decision-making. Once adopted, NDMPs would sit alongside an updated and repurposed NPPF.

Specifically, the Bill proposed replacing section 38(6) with a new section 38(5A)-(5C):

*(5A) For the purposes of any area in England, subsections (5B) and (5C) apply if, for the purposes of any determination to be made under the planning Acts, regard is to be had to—*

*(a) the development plan, and*

*(b) any national development management policies.*

*(5B) Subject to subsections (5) and (5C), the determination must be made in accordance with the development plan and any national development management policies, unless material considerations strongly indicate otherwise.*

*(5C) If to any extent the development plan conflicts with a national development management policy, the conflict must be resolved in favour of the national development management policy.*

We will not go into detail here on NDMPs which were the subject of an earlier consultation, Levelling-up and Regeneration Bill: reforms to national planning policy; however, we agree that Local Plans are often lengthy, as a result of replicating many aspects set out in national policy, and therefore we wholly support opportunities to streamline Local Plans. We agree that Local Plans should focus on local issues, and respond directly to the needs and circumstances of their local area.

It is understood that under the reformed planning system, LPAs will no longer be able to prepare supplementary planning documents (SPDs). Instead, these will be replaced by Supplementary Plans (SP). Crucially, SPs will be afforded the same weight as a Local Plan or Minerals and Waste Plan and other parts of the development plan, and will also be subject to consultation and examination. Many LPAs have a significant number of SPDs and there is therefore concern surrounding the financial cost and time associated with combining these into a full development plan document. Additionally, it is considered unlikely that SPs will be subject to the same level of scrutiny as Local Plans and are likely to benefit from a 'slimmed down' examination process. Whilst this is likely to be welcomed from a resourcing point of view, there are concerns that given the same weight will be attributed to SPs as Local Plans themselves, this could be abused by LPAs. We therefore emphasise that the examination process of SPs should be robust.

The consultation also makes clear that design codes, which will be made mandatory by LURB, are expected to be adopted either within the Local Plan or as SPs. This is despite the fact that many LPAs are currently drawing up design codes and guides, as per current government advice, as SPDs. There is therefore some concern with regards to what this will mean in practice, particularly from a resourcing point of view, will the LPAs which fall under this umbrella immediately have to work to transform their design codes and guides once they are adopted as SPDs into an SP? Whilst the intention is that design codes will empower local communities to have more say on the appearance of their areas, it is stressed that careful consideration should be given to the level of detail that is provided within them. Design codes must remain sufficiently flexible and not be overly prescriptive to cater for practical matters such as the cost and availability of materials.

### Speeding up the Process

The reforms propose a timeframe of 30 months (two and half years) to prepare and put in place (adopt) new Local Plans. This is significantly quicker than the current timeframes which take on average 7 years and must therefore be welcomed. However, we emphasise that speeding up the plan making process should not come at the expense of 'getting it wrong' or cutting

corners. Paragraph 84 of the consultation material sets out that that the evidence base should be 'proportionate' to ensure the 30-month timeframe is achievable, implying that LPAs will need to produce a reduced quantity of evidence to support Local Plans. There is some concern regarding this, which could open up Local Plans to legal challenge in the courts, which would have the opposite affect of speeding up the process. The government must therefore give clear and specific guidance on the evidence base which LPAs will be required to prepare for their Local Plans.

There are also questions raised about how the government will resource such timeframes and the financial implications associated with such resourcing. From a practical perspective, will each LPA have a dedicated 'Local Plan team' which will focus only on the preparation of Local Plans? However, speeding up the Local Plan process should not come at the cost of delaying the wider development process as a whole which is already under resourced. We urge the government to consider whether the 30-month timeframe is realistic and how this will operate in practice.

It is understood that three mandatory gateway assessments as a 'three check system' of soundness will take place throughout the Local Plan preparation process with the intention that these will be used to filter out any issues, thereby reducing the time spent in examination. They will offer an early check of the compliance of the Local Plan against the relevant requirements, potentially giving greater certainty that the plan is capable of successfully passing examination, and reducing the risk to LPAs of carrying out abortive work. Specifically, gateway 1 will act as an initial scoping 'sift', gateway 2 will take place after the first round of consultation with gateway 3 taking place after the second round on consultation prior to submission. Currently, Local Plan examinations take on average 12 to 18 months, although there are circumstances in which this is significantly exceeded. In the context of the current timeframes, the gateway assessments are welcomed and we consider these are proposed at the right stages of the Local Plan process – allowing the examination to focus only on issues fundamental to assessing the soundness of a Local Plan and subsequently shortening the current timeframes.

It is understood that expert plan-making support is proposed to a first, small cohort of around ten "front runner" LPAs to prepare new-style local plans. It is intended that this will provide a strong foundation of learning and best practice for other LPAs to draw upon. However, greater guidance should be published on how this information and best practice guidance will filter out to LPAs who are not part of this front runner group to ensure that this is a meaningful exercise.

Turning to the relationship between the Local Plan process and the political system, it is acknowledged that local government elections take place at least every 4 years, although not all local government elections take place at the same time and can be undertaken under any one of the following procedures -

- elect all the local councillors every 4 years;
- elect half the local councillors every 2 years; and
- elect one third of the local councillors every year for 3 years and hold no elections in the 4th year.

A period of 30 months (two and half years) is less than any political term. The Local Plan process must therefore be robust enough to be able to stand up to and sit through election cycles. There must also be an expectation that LPA's will continue working, in so far as possible, on the various elements of a Local Plan during a pre-election period, in order to work towards the 30-month timeframe. For a plan-led system to effectively deliver homes, LPAs – whatever their political control – must provide up to date Local Plans that meet local needs and priorities.

## Engagement

It is understood that statutory bodies face often challenges identifying the resources needed to feed in their technical expertise, with little warning and limited time to comment. This can create challenges further along the process, including slowing down

examinations if major issues need to be resolved at a late stage. Therefore, we support earlier participation in the Local Plan making process from statutory bodies.

We also support earlier participation from local communities and encourage the Local Plan making process to bring local communities on the journey with them, allowing their voices to be expressed and heard from the outset. Notwithstanding, we wish to highlight that under the current system, consideration is given to public objections received as part of the consultation process (both Local Plan and decision-making) which is the correct approach. However, we consider that weight should also be afforded to the silent majority of which it must be assumed that all others consulted who provide no formal comment have a neutral opinion at worst or are in support at best.

### The Role of Politics in the Plan-Making System

There is concern regarding the scope of local political influence on the Local Plan making and decision-making process which can mask bigger picture issues such as housing delivery.

Indeed, local elections have direct implications on emerging Local Plan consultation timescales. Whilst Local Plan preparation, and identifying potential locations for development, should be assessed on planning merits, LPA Officers acknowledge that such decisions can be used as a political platform by Councillors to achieve local support, particularly around election time. As a result, LPAs often delay Local Plan consultations until post-election. Whilst such actions seek to manage political influence on site allocations, in a plan-led system this delay can cause a snowball effect on the development industry by slowing down predicated timescales for securing new allocations, subsequent submission of planning applications and ultimately housing delivery. We encourage the need for members to receive planning training which should be standardised for roll out across the board and consider that the relationship between politics and planning should be reconsidered to put the decision-making power back in the hands of qualified industry professionals.

Paragraph 85 of the consultation material refers to the need to ensure that reforms to evidence improve and do not undermine the quality or effectiveness of policies or plans, or the decision-making that relies on them. We agree that this is fundamental and indeed, Section 38(6) of the TCPA sets out that decision-making must be made in accordance with the plan, underpinned by the evidence base, unless material considerations indicate otherwise. With regard material considerations, it is emphasised that they must be afforded weight in respect of their relevance to the planning matter, weight should not be afforded to material considerations based on the number of people supporting that them, which may have limited or no relevance to the planning matter.

### Digital Technologies

Through the digital reforms, the government's aim is to enable more people to engage easily with the planning system. We strongly support the use of digital technologies to increase participation, engagement and understanding of and in the planning process, by making it more accessible and user-friendly. This is fundamental.

More specifically, we strongly support the introduction of standard templates. There are currently grave inconsistencies between LPAs with regards to their Local Plans. Notably in relation to their appearance, structure, detail and use of supporting text as well as policies maps. We consider that the use of standard templates will assist both LPAs in the preparation of Local Plans, as well as communities and professionals in navigating them. We support the notion that templates will be designed to provide sufficient flexibility, for example to allow for individual local circumstances and to enable local innovation, whilst ensuring that key standards are met where it really matters.

We consider the templates for the Local Plans should be different from Minerals and Water plans owing the variation and difference in issues.

We consider there is scope for online consultation portals, seeking representation as part of a Local Plan, to be better laid out, easier to navigate and with sufficient flexibility.

We support the move towards digital plans; however, the intention behind the comment that *"plans are static and PDF-based meaning they go out of date quickly"* is unclear. A Local Plan is the version adopted following examination and cannot be changed until the next formal review. The comment suggests that the/a Local Plan would be a dynamic document capable of change between the period of adoption and the adoption of the next Local Plan.

In the context of the above, all LPAs should be well equipped to procure and/or develop their own digital services, and use them to make informed data driven decisions whilst being aware of their strengths and limitations. However, there are queries around the resourcing of this. Will third party organisations deliver the necessary training and skills development to LPAs and how will this be funded? Consideration will also need to be given to resources for updating and maintaining these many digital products.

In addition, not all people have the necessary digital capabilities and it is acknowledged that the government will continue to work with LPAs to identify 'hybrid' approaches that can work with different communities to offer alternative routes to engage with the planning system, alongside traditional forms of engagement. Whilst this must be supported, consideration should be given to how the hybrid approach will operate in practice to ensure that those which are unable to utilise the digital tools still retain access to the same amount of information and detail.

We consider that more should be done to enable accessible and free access to data from other public bodies, such as Defra, Environment Agency, Natural England and others. This would also assist in speeding up the Local Plan process.

## Monitoring

It is noted that Paragraph 171 of the consultation material states that the minimum requirements (i.e. the yearly monitoring of the standard metrics) should take place annually and be published on the anniversary of plan adoption. This implies that each LPA will be reporting at a different time in the year, depending on when the plan is adopted, and therefore there are queries around the comparison of data between LPAs and what this will mean in practice. The government is yet to publish the 2023 Housing Delivery Test (HDT), which has been published in early Spring in previous years. This is both concerning and inherently problematic, inhibiting the planning system from making better decisions around what housing is needed and in which locations. Research from Savills which used data from the last three years to March 2023 predicts that only 61% of LPAs would pass the HDT, with the percentage of those failing up from previous years. In order for the plan-led system to operate effectively, there must be greater transparency of data which requires LPAs to have greater accountability for reporting data in a timely manner. In the same way, there must be greater consequences for LPAs whose data falls short of passing such tests.

Paragraph 172 of the consultation material states to ensure that monitoring is meaningful and tailored to local circumstances, we also propose that on top of the minimum requirement for reporting, planning authorities should monitor against the success of implementation of their specific vision for the Local Plan. This implies that visions will need to be specific and capable of being measured. This raises questions as to how the vision will be drafted, and the scope of detail they should cover.

## Conclusion

In conclusion, on behalf of our client Mactaggart & Mickel, we support the proposed plan-making reforms. However, reemphasise that these needs to be coupled with the correct government investment into the planning system to assist in the improvement of its process and procedures. Failure to do so is likely to undermine the proposed reforms and render them ineffective. Housebuilding should be at the front and centre of the plan-led system and that plan-led system must plan for housing positively with those LPAs not planning positively facing more severe and effective sanctions.

We hope these representations are helpful and would welcome further opportunities to engage with the consultation process.

Yours sincerely,

*Planning Potential*

**Planning Potential**

London

Enc. N/A