APPENDIX A

LEVELLING UP AND REGENERATION BILL (LURB)

Changes to the planning system

Local Plans

The Bill makes several changes to strengthen the role of democratically produced plans, so that decisions on applications are more genuinely plan-led:

- Local plans will be given more weight when making decisions on applications, so that there must be strong reasons to override the plan. The same weight will be given to other parts of the development plan, including minerals and waste plans (a Lincolnshire County Council responsibility) prepared by minerals and waste planning authorities, neighbourhood plans prepared by local communities
- To help make the content of plans faster to produce and easier to navigate, policies on issues that apply in most areas (such as general heritage protection) will be set out nationally. These will be contained in a suite of National Development Management Policies (NDMP), which will have the same weight as plans so that they are taken fully into account in decisions.
- Several other changes are provided for to improve the process for preparing local plans and minerals and waste plans (a Lincolnshire County Council responsibility): digital powers in the Bill will allow more standardised and reusable data to inform plan-making; there will be a new duty for infrastructure providers to engage in the process where needed (such as utilities) and the 'duty to cooperate' contained in existing legislation will be repealed and replaced with a more flexible alignment test set out in national policy

Implications: Proposals which were set out in the Planning for the Future White Paper (2020) for all land to be placed in prescribed categories (growth, renewal, and protection) and linked to automatic 'in principle' permission for development in areas identified for development, have been abandoned. This means local authorities will still be able to decide planning applications and exercise democratic control. Local plans, including minerals and waste plans, will also continue to be assessed for whether they are 'sound' at examination, but the government will review whether the current tests are sufficiently proportionate as part of the work to update the National Planning Policy Framework (NPPF).

The most controversial and unclear aspect of the LURB at the time of writing is the proposed nationally set NDMP. A recent legal opinion by Paul Brown QC of Landmark Chambers said that the move "represents a significant change to the existing planning system", undermining "an important planning principle, the primacy of the development plan, by elevating national development management policies to the top of the planning hierarchy".

It said it is "clear that the bill will significantly centralise development management in England. Under the new regime, locally-produced development plan policies will only be permissible and/or relevant insofar as they do not conflict with central government policies.

The scope for granting permission for proposals which do not accord with the development plan or national development management policies will also be reduced."

The bill also contains "no obligation to allow the public to participate in the development of national development management policies", the opinion said. It said: "Despite the fact that these [national] policies will affect many more people than a locally-produced development plan, the process for producing these policies involves very limited rights of public participation."

The bill also includes a new power for planning authorities to quickly create "supplementary plans" for some or all of their areas, while groups of authorities would also be able to produce voluntary spatial development strategies on specific cross-boundary issues.

The legal opinion said the bill "provides for very limited opportunities for public participation in the production of these documents". The opinion noted that paragraph 15AC of the bill states that "No person is to have a right to be heard at an examination in public." The opinion said: "This is in stark contrast to the examination of development plans, for which there is an explicit right to be heard at examination."

Much of the detail of how these changes will be implemented in practice is still unknown. This is because the bill grants a very large range of powers to the secretary of state to implement the changes via secondary legislation.

- The Bill also includes new ‘street vote’ powers, allowing residents on a street to bring forward proposals to extend or redevelop their properties in line with their design preferences. Where prescribed development rules and other statutory requirements are met, the proposals would then be put to a referendum of residents on the street, to determine if they should be given planning permission.

Implications: this is considered by many to be unworkable and a recipe for neighbour conflict. Planning has traditionally provided the means of mediating between competing interests based on existing regulations and policies. In practice, current permitted development tolerances are generous by historic standards and enough to satisfy residents’ need for extra space.

- To incentivise plan production further and ensure that newly produced plans are not undermined, the intention is to remove the requirement for authorities to maintain a rolling five-year supply of deliverable land for housing, where their plan is up to date, i.e., adopted within the past five years. This will curb perceived ‘speculative development’ and ‘planning by appeal’, so long as plans are kept up to date.

Implications: The NPPF currently requires all planning authorities to demonstrate a five-year pipeline of deliverable housing sites. Where authorities are unable to do so, the NPPF’s “presumption in favour of sustainable development” applies and their local housing supply policies are weakened, leaving them vulnerable to speculative applications. This a long overdue and welcome change. The proposal should provide an incentive for more authorities to get their plans approved. However, housing allocations in those plans will need to be even

more realistic to satisfy inspectors, and monitoring delivery will still be important to avoid supply problems at a later date.

- Regulations will be updated to set clear timetables for plan production – with the expectation that they are produced within 30 months and updated at least every five years. During this period, there will be a requirement for two rounds of community engagement before plans are submitted for independent examination. Any new digital engagement tools will sit alongside existing methods of engagement (such as site notices and neighbour letters). For decision making, the Bill will also enable pre-application engagement with communities to be required before a planning application is submitted.

Implications: a 30-month timetable for plan production is a challenging target but possible if adequate staff and financial resources are provided. Traditional engagement methods will also be retained alongside new digital which will allow those without the internet or IT skills to participate. Pre-application engagement is also essential, especially with controversial developments such as wind farms.

<u>Infrastructure Levy</u>

- The government wants to make sure that more of the money accrued by landowners and developers goes towards funding the local infrastructure – affordable housing, schools, GP surgeries, and roads – that new development creates the need for. To do this, the Bill will replace the current system of developer contributions with a simple, mandatory, and locally determined Infrastructure Levy. The Bill sets out the framework for the new levy, and the detailed design will be delivered through regulations.
- The Levy will be charged on the value of property when it is sold and applied above a minimum threshold. Levy rates and minimum thresholds will be set and collected locally, and local authorities will be able to set different rates within their area. The rates will be set as a percentage of gross development value rather than based on floorspace, as with the Community Infrastructure Levy (CIL) at present.
- This will allow developers to price in the value of contributions into the value of the land, allow liabilities to respond to market conditions and removes the need for obligations to be renegotiated if the Gross Development Value (GDV) is lower than expected; while allowing local authorities to share in the uplift if gross development values are higher than anticipated. The government is committed to the Levy securing at least as much affordable housing as developer contributions do now. The Bill will set out the framework to enable this approach, with some of the details set out in regulations.

Implications: the replacement of CIL and, to a lesser extent Sc 106, with a more streamlined alternative is welcomed in principle. However, there are a number of legitimate practical concerns regarding the following:

- Although it is welcome that local authorities will be able to set their own rates, this will need to be resourced either through in-house staff or procuring expertise from the private sector.
- It is expected that GDV valuations will generate plenty of scope for argument. Recent and rapid inflation in building costs is an example of how valuation discussions will

be difficult when circumstances change during the course of the development process.

- There is concern that a fairly simple and easy to measure calculation will be replaced with something which is complex and uncertain. For example, the levy is generally intended to be collected on completion, when the final liability based on the GDV is known. However, the bill makes provision for councils to receive payment by instalment or on account prior to completion.
- The mandatory nature of the new levy could pose a challenge to some Lincolnshire local authorities such as East Lindsey, Boston and South Holland which currently have chosen not to adopt a CIL because of low land values and fear of deterring new development. This raises the question of how necessary infrastructure will be provided in low value areas and whether central government funding will be available. This is reinforced by the observation that CIL and Sc 106 yielded £ 7 – 8 billion in 2018/19 primarily in the more expensive areas of London and the Southeast. Without a centralised redistribution mechanism, spatial inequality will persist contrary to any "levelling up" ambitions.

- To strengthen infrastructure delivery further, the Bill will require local authorities to prepare Infrastructure Delivery Strategies (IDS). These will set out a strategy for delivering local infrastructure and spending Levy proceeds. The Bill will also enable local authorities to require the assistance of infrastructure providers and other bodies in devising these strategies, and their development plans.

Implications: an IDS is similar to current Infrastructure Delivery Plans which are required as part of the Local Plan evidence base and demonstrate how sustainable growth can be delivered and funded. The ability to require co-operation from utilities and other infrastructure providers is welcomed.

Much of the detail of different elements of the new Infrastructure Levy will need to be set in regulations, following consultation. Specifically, the government will:

- Require developers to deliver infrastructure integral to the operation and physical design of a site – such as an internal play area or flood risk mitigation. Planning conditions and narrowly targeted section 106 agreements will be used to make sure this type of infrastructure is delivered.
- Detail the retained role for section 106 agreements to support delivery of the largest sites. In these instances, infrastructure will be able to be provided in-kind and negotiated, but with the guarantee that the value of what is agreed will be no less than will be paid through the levy.
- Retain the neighbourhood share and administrative portion as currently occurs under the Community Infrastructure Levy.
- Introduce the Levy through a 'test and learn' approach. This means it will be rolled out nationally over several years, allowing for careful monitoring and evaluation, in order to design the most effective system possible.

Sites permitted before the introduction of the new Levy will continue to be subject to their CIL and section 106 requirements.

Implications: the predicted demise of Sc 106 has not materialised, as it will be retained in a more targeted way to deliver infrastructure on the largest sites. This is reasonable so long as what kind of infrastructure is expected from the levy and Sc 106 is clearly differentiated in the regulations. Of more concern is the prolonged roll out estimated to take "several years". The prospect of having two parallel systems in place for so long will only lead to confusion and delay unless the government can provide clarity on transitional arrangements.

Environment

- The Bill will require every Local Planning Authority (LPA) to produce a design code for its area. These codes will have full weight in making decisions on development, either through forming part of local plans or being prepared as a supplementary plan.
- The Bill will give important categories of designated heritage assets, including scheduled monuments, registered parks and gardens, World Heritage Sites, and registered battlefields, the same statutory protection in the planning system as listed buildings and conservation areas. The Bill will also put Historic Environment Records (HER) on a statutory basis, placing a new duty on local authorities to maintain one for their area.
- It improves the process used to assess the potential environmental effects of relevant plans and major projects, through a requirement to prepare 'Environmental Outcome Reports'. These will replace the existing EU-generated systems of Strategic Environmental Assessment (including Sustainability Appraisals) and Environmental Impact Assessment and introduce a clearer and simpler process where relevant plans and projects (including Nationally Significant Infrastructure Projects) are assessed against tangible environmental outcomes.
- In addition to this, the increased weight given to plans and national policy by the Bill will give more assurance that areas of environmental importance – such as National Parks, Areas of Outstanding Natural Beauty and areas at high risk of flooding – will be respected in decisions on planning applications and appeals.

Implications: the requirement for each LPA to provide a design code is a welcome opportunity for local communities to become involved in the future planning of their areas but it should be backed up by government funding to support independent local preferences or else risk well-resourced developers' involvement resulting in ready-made pattern books. Codes should also be about internal standards, facilities, dwelling sizes and sustainable design and not just external appearance.

Lincolnshire County Council (LCC) welcomes the making of a HER the statutory requirement of a 'relevant authority' which in Lincolnshire would mean LCC. It would be useful if the Bill stated why there should be a HER. Having information is one thing but using that information to make decisions is what matters most. The broad definition of what should be recorded by a HER is also welcome.

We also welcome the consideration of heritage assets and their setting for planning decision making. This has the effect of bringing into one clear legal statement aspects of implied and real policy derived from the various PPGs and other planning guidance documents produced over the last thirty years or so. The improvements to powers for local authorities to take

enforcement action against those undertaking unauthorised works to a listed building are welcome.

Regeneration

- The Bill proposes a number of measures to support land assembly and regeneration. It will make important changes to compulsory purchase powers to give local authorities clearer and more effective powers to assemble sites for regeneration and make better use of brownfield land. The Bill also intends to introduce a measure that reforms land compensation by ensuring that fair compensation is paid for the value attributable to prospective planning permission ('hope value'). These changes will make the valuation of land in this context more akin to a normal market transaction.
- To support high street and town centre regeneration, the Bill will make permanent existing temporary measures on pavement licensing. These measures streamline and make cheaper the process of applying for a license to put furniture on the highway. The Bill will also give local authorities an important new power to instigate high street rental auctions of selected vacant commercial properties in town centres and on high streets which have been vacant for more than one year.

Implications: these measures are supported if they result in more streamlined powers to local authorities for the acquisition of land to enable regeneration and promotion of good planning in the public interest. The liberalisation of pavement licencing will also assist businesses in their post covid recovery.

Market Reform

- The Bill will increase the transparency of contractual and other arrangements used to exercise control over land. 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.
- The Bill will also introduce new commencement notices which will be required when a scheme with planning permission starts on site, addressing perceptions of 'land banking' and slow build out by larger developers. In addition, by removing the requirement to seek Secretary of State confirmation before they can take effect, the Bill will also give more control to authorities to issue completion notices to developers to complete their project.

Implications: Transparency and exposure of developer poor performance is necessary but not sufficient without the willingness and ability to directly intervene. There are incentives that encourage landowners and site promoters to benefit from increasing land values rather than building homes. Almost 60% of all residential planning permissions are held by non-builders and somewhere between 20 and 50 per cent of sites are not built out. Instead, these sites are sold on to benefit from the increase in value and are not developed. If it is the government's intention to increase house building rates, it should be stated more unambiguously.

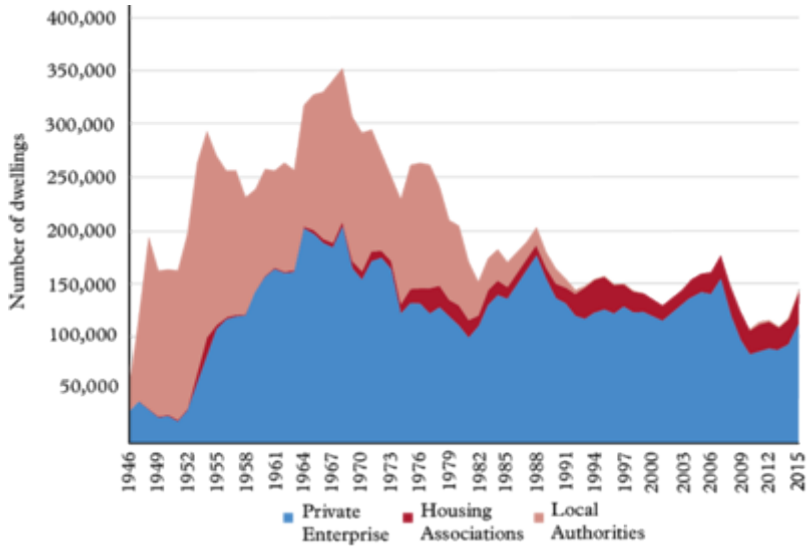
The report by former Conservative Minister, Oliver Letwin reaffirmed the findings of other surveys to show that housebuilders limit the number of homes built each year. In Letwin's

letter to the Chancellor of 9 March 2018, he had already formulated an explanation for slow build out rates which amounts to too low an "absorption rate" i.e., the *rate at which newly constructed homes can be sold into the local market without materially disturbing the market price.* This last statement alludes to the fundamental *raison d'etre* of corporate house builders, which is to convert land and buildings into shareholder value. There is no legal or moral obligation for them to meet local and national housing targets.

In her government-commissioned review of housing supply, economist Kate Barker argued that reform of the planning system would not be enough to increase the number of homes built. What was needed was a huge increase in productivity by the housebuilding industry. No such increase in production has been forthcoming. More useful areas of reform would include:

- Reducing the concentration of oligopolistic power in housing supply;
- The shifting of revenue spending on benefits to a new capital programme of bricks and mortar;
- promotion of modern methods of construction as a means of accelerated delivery;
- a public inquiry into the current pandemic of poor quality newbuild homes; and,
- fiscal disincentives for land banking and slow build out rates.

The only time housebuilding rates exceeded 250,000 per annum in England since WW2 was in the period 1955 – 1975 when local authorities invested in substantial amounts of housing (see below). The annual completion rate from 2014/15 – 2018/19 has varied between 124,000 and169,000 (ONS) compared to the current government target of 300,000pa.



Planning Procedures

- The Bill includes a number of measures which will allow a transformation in the use of high-quality data and modern, digital services across the planning process, including powers to set common data standards and software requirements.
- Ensuring that planning enforcement works effectively by extending the period for taking enforcement action to ten years in all cases; introducing enforcement warning notices;

increasing fines associated with certain planning breaches; doubling fees for retrospective applications.

- Making permanent existing temporary powers to require pre-application engagement with communities before a planning application is submitted for specified forms of development.
- To improve capacity in the local planning system, we intend to increase planning fees for major and minor applications by 35% and 25% respectively, subject to consultation. Increasing fees must lead to a better service for applicants.
- We will also support local authorities to build the skills they need, initially by working with sector experts to develop a planning skills strategy for local planning authorities.

Implications: The use of data driven technology can be supported in principle if it includes hard to reach groups such as the elderly who may not be IT proficient. The key to successful consultation is not the availability of high-tech 3D maps capable of being read on a smart phone but sensitive engagement with local people who have valuable knowledge regarding their own settlements. Debating the complexities of future development to include a wide range of participants is less well suited to online forums. Digital technologies are good at supporting quick communication between residents and decision makers but there must also be provision for "slower" engagement through discussion as well as approaches that do not exclude those who cannot participate digitally.