Nine ways the agreed Levelling Up Bill amendments would change the system

PlanningResource by Samantha Eckford, Michael Donnelly and Toby Porter 14 December 2022

1) **Councils would have the power to decline to determine applications from applicants who have been slow to implement previous permissions**

   New Clause 67, according to the government's statement "allows local planning authorities in England to decline to determine applications for planning permission in cases where an earlier permission has not been implemented or the development has been carried out unreasonably slowly".
   Housing minister Lucy Frazer said: "We are ensuring that when permissions are given, developments can be built out quickly. It is wrong for developers simply to sit on planning permissions."

2) Provisions to allow councils to benefit financially from land allocations

The amendments make temporary provision for the piloting of "community land auctions", which would allow landowners to "grant options over land…with a view to the land being allocated for development in the local plan".

The participating local planning authority would then have the power to "exercise or sell" the option, allowing it to capture "some of the increased value that would result from allocation for development".

The difference between the option price and the post-allocation price could subsequently be used by authorities to "support development of the area".

Authorities would be permitted to take into account the "financial benefits arising from options" when making decisions about the local plan.

3) Councils would have the right to require developers to provide progress reports on their projects.

New clause 48 says planning permission must be granted subject to a condition that allows allows a planning authority to require that it is provided with a development progress report.

4) Statutory consultees could be permitted to charge for advice related to Nationally Significant Infrastructure Project applications

The secretary of state would be given the power to make regulations permitting "certain public authorities to charge fees for the provision of advice, information or other assistance in connection with applications for development consent orders".

This would also apply to changes to Development Consent Orders for NSIPs and "other prescribed matters to do with nationally significant infrastructure projects".

In her address to the Commons yesterday, housing minister Lucy Frazer said this amendment "recognises that commenting can be a resource-intensive exercise".

5) Residents would be able to propose and vote on development in their immediate locality, subject to independent examination and referendum

The amendments make provision for “street vote development orders”, replacing the placeholder clause in earlier versions of the bill, and further clarify how these orders will work in practice.

These powers would allow residents to propose and vote on development in their street.

The amendment confers “regulation-making powers relating to the preparation and making of an order, including provision for independent examination and a referendum”.

Development granted by a street vote development order would also be subject to the Community Infrastructure Levy.

6) New duty on councils to grant sufficient permission for self- and custom-build housing

The new clause 68 “would clarify the legislation… that self-build and custom housebuilding means individuals must have main input into the full design and layout of their home”.
The clause states that applicants cannot include “a firm, business or company; and nor does it include off-plan homes, nor homes purchased at the plan stage prior to construction”. The “main input into the full design and layout” must be from the “future occupiers”.

7) Requirement for water companies to upgrade sewage treatment works to unblock permissions in sensitive areas affected by nutrient pollution

In late July, the government unveiled a package of proposals which it said would help unblock the logjam of housing schemes caused by government agency Natural England's guidance over nutrient pollution in protected watercourses.

This included a requirement for water companies to upgrade wastewater treatment works, which can remove nutrient pollution derived from homes before it hits rivers, by 2030.

A series of government amendments have now been made to the LURB to enact changes, including the requirement to upgrade sewage treatment works in "sensitive catchment areas" by 2030, and to allow enforcement where this does not occur.

One of the amendments (NC77) says that such areas are those in "an unfavourable condition by virtue of pollution from nutrients" comprising either nitrogen or nitrogen compounds or phosphorus or phosphorus compounds.

The amendment states that a "sewerage undertaker whose area is wholly or mainly in England must— (a) in the case of each nitrogen significant plant comprised in its sewerage system— (i) secure that, by the upgrade date, the plant will be able to meet the nitrogen nutrient pollution standard, and (ii) on and after the upgrade date, secure that the plant meets that standard". It implements the same measures in relation to phosphorus discharges.

Several exemptions apply in relation to the nutrient pollution standard, including if plants "have a capacity of less than a population equivalent of 2,000 when the designation of the associated catchment area takes effect".

An explanatory note says the new clause "allows the secretary of state to designate catchment areas for certain sites polluted by nitrogen and/or phosphorus and requires certain sewerage undertakers to ensure that treated effluent from sewage disposal works in England

that discharge into them will, unless exempted, meet specified pollution concentrations by the applicable upgrade date".

A further linked change (NC78), inserts a new schedule into the bill to amend the Conservation of Habitats and Species Regulations 2017 - legislation which transposed the EU Habitats Directive into UK law - "to require certain assumptions to be made in certain circumstances about nutrient pollution standards the plant will meet the phosphorus nutrient pollution standard on and after the upgrade date".

The amendment says that in making a relevant assessment under the Habitats Regulations, "the local planning authority must assume — (a) ... that the plant will meet the nitrogen nutrient pollution standard on and after the upgrade date; (b) ... that the plant will meet the phosphorus nutrient pollution standard on and after the upgrade date". The measures also apply when "a plan-making authority makes a relevant decision in relation to a land use plan relating to an area in England".

Among its measures, the amendment says that it "does not prevent the local planning authority, in making a relevant assessment, from having regard to any outperformance, or expected outperformance, by a plant".

"This new schedule requires authorities, when making assessments required by the Conservation of Habitats and Species Regulations 2017 for planning-related decisions, to assume that sewage disposal works will meet the relevant pollution standards introduced by NC77 by the relevant upgrade date," an explanatory note says.

Another amendment (NC79) allows enforcement to take place if sewage plant upgrades are not delivered by 2030. "This regulation applies where a sewerage undertaker whose sewerage system includes a nutrient significant plant fails to secure that the plant is able to meet the related nutrient pollution standard by the upgrade date," it says.

The amendment adds that "Any damage attributable to the failure of the plant to meet the standard on and after the upgrade date, until it first meets the standard, that occurs to the related habitats site is to be treated for the purposes of these regulations as environmental damage to the site caused by an activity of the sewerage undertaker".

Speaking yesterday in the House of Commons, housing and planning minister Lucy Frazer said the measures "would unlock thousands of new homes, complemented by new wetland and woodland areas, improving people's access to green space and delivering new habitats for nature".

8) New powers to allow ministers to "repeal and revoke" planning legislation

Amendment NC118, on the "pre-consolidation amendment of planning, development and compulsory purchase legislation", inserts a new clause which "gives the secretary of state the power to amend or modify enactments [legislation] relating to planning, development and compulsory purchase in order to facilitate the consolidation of all or part of those enactments, and makes related provision". The amendment says that "amend" includes the ability to "repeal and revoke".

26 separate pieces of legislation are affected by amendment, including the Town and Country Planning Act 1990, the Acquisition of Land Act 1981, the New Towns Act 1981, the Planning and Compensation Act 1991, the Planning Act 2008, the Planning and Energy Act 2008, the

Localism Act 2011, the Housing and Planning Act 2016, and the Neighbourhood Planning Act 2017.

9) Provision for registration of short-term rental properties

Amendment NC119 adds a new clause to the bill requiring the secretary of state "to make provision by regulations requiring or permitting the registration of specified 'short-term rental properties'".

The amendment sets out that a "short-term rental property" means "(a) a dwelling, or part of a dwelling, which is provided by a person ('the host') to another person ('the guest')— (i) for use by the guest as accommodation other than the guest's only or principal residence, (ii) in return for payment (whether or not by the guest), and (iii) in the course of a trade or business carried on by the host, and (b) any dwelling or premises, or part of a dwelling or premises, not falling within paragraph (a) which is specified for the purposes of this paragraph".

The amendment says that the secretary of state "must consult the public before making the first regulations under this section".

Speaking yesterday, Frazer said that the government will "go even further by also consulting on a change to the Town and Country Planning (Use Classes) Order 1987 to enable local areas to better control changes of use to short-term lets, if they wish".

Also speaking in the Commons, Labour's shadow minister for housing and planning, Matthew Pennycook, said that the party welcomed "the fact that the government have finally accepted that more regulation of short-term rental properties is required".

He said: "At present, there is no single definitive source of data on the total number of short-term lettings in existence, not least because it is an incredibly diverse sector, with providers offering accommodation across multiple platforms. Accurate data is essential if we are to properly regulate the sector, and we therefore welcome the principle of a registration system as provided for by government new clause 119. However, in our view registration is a necessary but not sufficient step towards properly addressing the impact that excessive concentrations of short-term lets are having on communities across the country."