Chichester District Council

Development Plan and Infrastructure Panel 14 February 2024

Update on the 'Levelling-up and Regeneration Act' (LURA) in respect of planning provisions and the National Planning Policy Framework (NPPF) December 2023

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2. Recommendation

2.1 That the Development Plan and Infrastructure Panel note the implications of the LURA and NPPF for both Development Management and Planning policy functions of the Council.

3. Background

3.1 The Levelling-up and Regeneration Bill received Royal Assent in October 2023, formally becoming an Act of Parliament (law). Now known as the Levelling-up and Regeneration Act 2023 ('LURA'), it contains primary legislation that covers a broad range of topics associated to the Government's levelling up agenda.

3.2 The matters covered by LURA are diverse and include, for example, provisions associated to local democracy and devolution (including the operation of Combined County Authorities), the registration of short-term rental properties, reforms of compulsory purchase provisions, changes to the regulation of sewerage disposal works through to powers around empty properties and Council Tax.

3.3 In respect of the council's planning functions, the LURA contains a significant body of provisions that will potentially, in due course, have wide-ranging implications for the discharge of its planning functions.

3.4 This report seeks to set out the detail of these provisions and, where possible, highlight the implications for the council as Local Planning Authority (LPA), in so far as it is known at this stage.

3.5 It is important to note that the report only provides an overview of the provisions as many of them will require associated secondary legislation, in the form of Regulations that are yet to be published, in order to be implemented.

4. Outcomes to be Achieved

4.1 To understand the implications of the LURA and revised NPPF for both development management and plan making functions of the council.

5. The Levelling Up and Regeneration Act

5.1 The Levelling-up and Regeneration Bill (LURB) was first introduced to Parliament in May 2022, culminating in it receiving Royal Ascent on 26th October 2023; following detailed scrutiny, significant debate and amendment during its passage through the House of Commons and House of Lords[1]. Upon achieving Royal Ascent, the Bill became an Act of Parliament and became known as the Levelling-up and Regeneration Act 2023[2].

5.2 The LURA is split into 13 topic-based Parts, containing 256 individual clauses and supplemented by a series of 24 supporting Schedules. Of notable direct interest to this panel (and Planning Committee) are likely to be:
(a) Part 3 - Planning
(b) Part 4 – Infrastructure Levy and Community Infrastructure Levy
(c) Part 5 – Community land auction pilots
(d) Part 6 – Environmental outcomes reports

5.3 As is the case with many Acts of Parliament, the LURA does not only introduce new legislative provisions directly but also makes significant changes (additions, revisions and/or deletions) to other pieces of pre-existing legislation; with these set out in the included Schedules. Most notably in relation to the planning provisions, it makes amendments to the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004.

5.4 It is important to note that a significant proportion of the provisions contained within the LURA do not come into immediate effect upon Royal Ascent, but are rather subject to later introduction upon a specified date or are predicated upon associated secondary Regulations being laid before Parliament and coming into force. Clause 255 in Part 13 of the LURA sets out the detailed commencement and transitional arrangements associated to the bringing into effect of the individual provisions of the Act.

[1] https://bills.parliament.uk/bills/3155/stages
[2] https://www.legislation.gov.uk/ukpga/2023/55/section/93/enacted

5.5 In relation to the planning aspects of the LURA, no part took effect until at least two months after the Act was passed (i.e. 26th December 2023), with most aspects, including those associated to plan-making, also contingent upon the subsequent introduction of subservient Regulations, policy and guidance. Where relevant sections have immediate consequences, this will be set out in the relevant section.

Plan-making

5.6 The LURA introduces the primary legislation required to support the Government's programme of reforms to plan-making. It provides the framework for the majority of the key aspects that have been trailed through earlier proposals and consultations. In summary, it provides for the following:

a) Requirement that local planning authorities must prepare a local plan and that they can only have a single local plan.

b) Prescribes what local plans can and can't contain and to what they must have regard and take account of; including the amount, type, location and timetable for development in the local planning authority area, other policies for the use or development of land which relate to particular characteristics or circumstances of the area or specific sites, details of the infrastructure requirements or affordable housing, requirements with respect to design or other matters prescribed by the Secretary of State. Additionally, the local plan must be designed to secure that the use and development of land contributes to the mitigation of and adaptation to climate change. It must take account of national development management policies, any other national policies and guidance and any Local Nature Recovery Strategy (LNRS). It is required to have regard to new Neighbourhood priorities statements (see below) and take account of any assessment of the amount and type of housing needed, including affordable housing. Significantly, a local plan is not allowed to include anything that is not prescribed by the relevant legislation, nor may it be inconsistent or repeat any national development management policy.

c) Replaces the requirement to prepare and maintain a Local Development Scheme (LDS) with a similar provision to prepare and maintain a local plan timetable, with the Secretary of State able to prescribe the form and content of the timetable. In reality the change is not significant, although there is an associated requirement for local plans to be prepared in accordance with the local plan timetable.

d) Establishes a requirement for local planning authorities to seek observations or advice in relation to a proposed local plan from a person appointed by the Secretary of State (a Planning Inspector from PINS for example), to publish said advice and have regard to it in plan-making. This provides the framework for the Government's proposals to for a series of Gateway Assessments.

e) Provides for the introduction of new Supplementary Plans that will form part of the development plan. The scope of Supplementary Plans is strictly controlled through the LURA, particularly in terms of their geographic scope. They are principally limited to being able to be used to introduce policies related to the development of a specific site, or two or more specific sites which are considered to be nearby to each other. The exception to this limitation is that they may also be used to set out requirements with respect to design across wider geographical areas, including and up to the local planning authority's area; with this intended to allow local planning authorities the discretion to introduce the mandatory area-wide design code (see below) through a Supplementary Plan rather than their local plan.

f) Introduces a requirement for local planning authorities to have a design code for the whole Plan area as part of the development plan. It stipulates that the development plan includes requirements with respect to design that relate to development to which proposals should adhere. It does usefully caveat that there is no expectation that local planning authorities are required to ensure that there are requirements for every description of development, for every part of the area or for every aspect of design.

g) Affords powers for the Secretary of State to take over plan making, revise plans or give direction to the local planning authority, if they are considered to be failing to do anything necessary or expedient to prepare a plan or its revision, or if a plan is going to be, or may be considered unsatisfactory. Allied to the above, the LURA provides for the introduction of local plan commissioners, who the Secretary of State can appoint to investigate and take over plan making. Significantly, the LURA also provides the Secretary of State with the ability to recover any costs associated with intervention from the local planning authority.

h) Introduces a power to require assistance with certain plan making activity by prescribed public bodies. The power set out within the LURA is potentially wide reaching, establishing that the prescribed body must do everything that the plan-making authority reasonably requires of the body. However, it also provides that the Secretary of State may, through regulations, set out what a plan-making authority must, may or may not require a prescribed body to do, set the timeframe for their doing so, any procedure to be followed and the form and content of any notification, documentation or information. The LURA does not set out the bodies that will be subject to the duty with these to be established at a later date. Whilst the provision is to be welcomed, it's effectiveness will be contingent on the scope enabled through regulations and perhaps more importantly, the capacity of individual prescribed bodies to fulfil their duty.

i) Revises the approach to plan examination, including the provision to provide a go/no go gateway check to proceed to examination and the introduction of the ability for the examiner to formally pause the examination to allow for further work to be carried out. It also provides a different streamlined examination

process for Supplementary Plans, modelled on the approach applied to neighbourhood plans.

5.7 The LURA does not include explicit legislative provisions to establish the advocated 30-month time limit for the preparation of local plans; with an expectation that this will rather be stipulated through national policy or guidance. It is reasonable to assume however that the powers afforded to the Secretary of State through LURA for local plan commissioners and to intervene in plan-making will be capable of being utilised to enforce compliance with any policy-based timeframe requirements.

5.8 Similarly, the LURA does not establish transitional arrangements for plan-making, in so far as those trailed through previous consultations, such as the cut off dates for the submission and adoption of local plans under the existing planning system, or the so-called ‘waves’ which may determine when local planning authorities may start work on new-style local plans. It is therefore reasonable to assume that these aspects will be introduced through sub-ordinate regulations or through associated policy.

National Development Management Policies

5.9 The LURA provides basis for the introduction of national development management policies, including a significant range of consequential amendments to existing legislation to ensure their consideration in plan making, decision taking and any subsequent enforcement activity.

5.10 The Act provides the Secretary of State with the power to be able to subsequently define what constitutes a national development management policy by direction, so far as it is a policy, however expressed, in relation to the development or use of land. It does prescribe that when preparing or modifying national development management policies, the Secretary of State must ensure consultation with and participation by, the public and other bodies or persons that they consider appropriate.

5.11 The provisions within the LURA associated to national development management policies provide for a fundamental shift in the status of national planning policy in determining planning applications. The changes will elevate the status of any of these development management aspects of national planning policy, from simply being a material consideration in the determination of making planning decisions (as per the case for the current National Planning Policy Framework), to having an equal status to the provisions contained within the development plan.

5.12 Significantly, the Act stipulates that in decision making, where there is a conflict between the development plan and a national development management policy, any conflict must be resolved in favour of the national development management policy.

5.13 The definitional provisions for NDMPs came into effect on 31 January 2024[3]. This is the "statutory hook" which enables NDMPs to be introduced through policy and secondary legislation at a later date.

Decision-making

5.14 The LURA introduces changes that will have a bearing on the fundamental principles applied in the determination of planning applications. Firstly, will be the changes to the construct of the development plan – with the requirement for a single local plan, coupled with any accompanying Supplementary Plans. Additionally, there is the introduction of the national development management policies and the elevation of this aspect of national policy from being a material consideration to having prescribed status alongside the development plan.

5.15 Significantly, the LURA makes a simple but fundamental change to the status of material considerations in the determination of planning applications; requiring that determinations must be made in accordance with the development plan (and any national development management policies) unless material considerations strongly indicate otherwise. This appears intended to strengthen the role of the local plan (and national development management policies) in decision making, reaffirming the plan-led approach to planning.

Self-build and custom Housebuilding

5.16 The Council has an existing duty through the Self-Build and Custom Housebuilding Act 2015 to ensure that sufficient permissions are granted, within a prescribed period, to meet the level of 'need' identified through the number of entries on the Council's statutory self-build registers. There has been criticism from some sectors that the duty is poorly defined within the legislation and that it currently allows a flexible and liberal interpretation as to what planning permissions can be counted against the need.

5.17 Provisions within the LURA will afford the Secretary of State to address this concern, providing the ability for the preparation of regulations to specify the descriptions of permissions that can be counted towards meeting the duty. It is important to recognise that this could have an impact on the ability of the Councils to fulfil their duty or may potentially result in a requirement to take a more proactive approach to the delivery of custom and self-build housing, however any impact will be contingent on the content of any future published regulations. The relevant parts of the Act came into force on 31 January 2024.

[3] https://www.legislation.gov.uk/uksi/2024/92/made

Infrastructure Levy

5.18 The LURA provides the primary legislation to allow for the imposition of a new Infrastructure Levy (IL), with the purpose of contributing to the costs of supporting development of an area. It is intended to be a replacement for the Community Infrastructure Levy (CIL) and planning obligation (s106) as a mechanism for securing contributions towards infrastructure and affordable housing. It provides the skeleton framework for the imposition of the charge, along with processes for its introduction, collection and enforcement.

5.19 Upon implementation, the introduction of IL has the potential to significantly alter the way that infrastructure and affordable housing is secured and delivered across the District. Once further regulations are introduced, it is anticipated that "test and learn" authorities will operate the Levy from 2025/26, with a target for full rollout from 2030.

Community Land Auction pilots

5.20 The Act makes temporary provision for the piloting of "*community land auctions*", which will allow landowners to "*grant options over land…with a view to the land being allocated for development in the local plan*". Any participating LPA will 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".

5.21 The difference between the option price and the post-allocation price could subsequently be used by authorities to "*support development of the area*". Authorities will be permitted to take into account the "*financial benefits arising from options*" when making decisions about the local plan.

Neighbourhood Planning

5.22 The LURA retains neighbourhood planning and neighbourhood plans as part of the development plan. In a similar manner to the provisions for local plans, it introduces provisions that set out what neighbourhood plans must, must not and may include. It also seeks to affirm that a neighbourhood plan or neighbourhood development order may not have the effect of preventing housing development from taking place that is proposed within the area.

5.23 A new concept of the Neighbourhood priorities statement is introduced that provides qualifying bodies (i.e. town or parish councils designated for neighbourhood planning purposes) with the opportunity to set out what they consider to be the principal needs and prevailing views of the community in that area in respect of prescribed local matters. The LURA provides the primary legislative framework for the preparation, amendment and revocation of neighbourhood priorities statements.

5.24 Importantly, as noted above, local planning authorities are required to have regard to neighbourhood priorities statements when preparing a local plan. The matters for these statements are to be prescribed by the Secretary of State but may include wide ranging matters covering the development, management or use of land, housing, the natural environment, economy, public spaces, infrastructure, facilities, services and other features.

Planning data and systems

5.25 The LURA affords that local planning authorities can be required to make use of approved software for the processing of their planning data, whilst regulations may also restrict or prevent local planning authorities from using, creating or having any rights in relation to any software specified or described through regulations. It is unclear as to the extent to which controls may be introduced, however there is potential scope that the provisions would require the transition to alternative software systems, as advocated by the Government, for the submission, management and processing of planning data.

5.26 Recognising the ambition for a move to improve accessibility to planning data, the LURA also provides for regulations to introduce provisions to require local planning authorities to make specified planning data available to the public under an open licence agreement.

5.27 In addition, the LURA provides the power for local planning authorities to, through the publication of a notice, require the provision of specific planning data from particular persons, the specifics of which are to be established through subsequent regulations.

S.73B material variations to planning permissions

5.28 A new power is included in the Levelling up and Regeneration Act 2023 under section 73B of the Town and Country Planning Act 1990 (TCPA), which allows for material changes to existing planning permissions without requiring a new application, so long as its effect will not be “substantially different from that of the existing permission”.

5.29 An original planning permission is needed to use section 73B and, like section 73 of the TCPA, this cannot be used to extend the life of the permission.

Street votes

5.30 The Act makes further provision for the introduction of street votes. The Government has recently consulted on the necessary further provisions to enact this, which was

considered by the Planning Committee[4] on the 10 January, further to which the council's formal response[5] was provided.

Compulsory Purchase Powers

5.31 The amendments to compulsory purchase legislation included in the LURA are mostly designed to give local authorities the right compulsory purchase enabling powers and processes, and the confidence to use them, to encourage their use and facilitate regeneration in their areas. The most significant changes cover the following matters:

a) New ability to disapply 'hope value' when compensating owners in certain cases where justified (namely for schemes delivering affordable and social housing, or education or health-related development and where there is a compelling justification in the public interest). It is important to put these changes into context as they will only apply in very specific circumstances. Nonetheless, these provisions will start to take affect from 30 April 2024.

b) Changes to the process for obtaining a Certificate of Appropriate Alternative Development (CAAD) are designed to ensure that the CPO compensation regime does not deliver elevated levels 'hope value' which could result in more than fair value being paid to affected landowners. The powers in the LURA mean that compensation for alternative development can only be claimed following the issue of a CAAD and any 'hope value' in the future cannot be claimed. This means that when determining compensation, a Tribunal can only include compensation for development potential if a CAAD has been issued. The changes to certificates of alternative appropriate developments will take effect from 31 January 2025.

c) Conditional confirmation of CPOs. At present confirming authorities can only reject a CPO or confirm it with or without modifications, or to confirm it in stages. This new provision creates an additional option that allows confirmation of a CPO subject to conditions before it can be exercised. Currently, acquiring authorities often delay making their CPO until other impediments (such as funding) have been overcome, and this can delay the overall scheme delivery. This power is designed to encourage acquiring authorities to make the CPO earlier in the process alongside other consenting and funding processes.

d) Time limit for implementation of CPOs beyond 3 years, giving confirming authorities more flexibility in the implementation of CPOs by allowing longer than three years to implement a CPO after its confirmation where justified. It will be for the confirming authority to decide whether a longer period is justified in the circumstances and what that longer period should be, if any.

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[4] https://chichester.moderngov.co.uk/documents/s26722/17.0%20Street%20Votes%20Consultation.pdf
[5] https://chichester.moderngov.co.uk/documents/s26723/17.1%20Street%20Votes%20Consultation%20-%20Appendix%201.pdf

Planning Enforcement

5.32 The LURA makes a number of changes to the planning enforcement regime, most notably:

a) Extending the current four-year time limit for a breach of operational development to ten years;
b) Extending the duration of temporary stop notices from 28 to 56 days;
c) Introducing temporary stop notices for listed buildings;
d) Introducing a new "Enforcement Warning Notice" to highlight where the local planning authority considers that there is a breach of planning control but whereby it is considered that there is a reasonable prospect that planning permission would be granted, offering a period for a planning application to be submitted;
e) Restricting the opportunity to appeal against enforcement notices and introducing measures to manage undue delays in appeal proceedings introduced by appellants;
f) Increasing the scale of financial penalties for non-compliance with breach of conditions and non-compliance with s215 notices; and
g) Introducing ability for the Secretary of State to provide relief from enforcement for a breach of conditions for development relating to national defence, preventing or responding to civil emergencies or significant disruption to the economy.

Development monitoring, commencement and completion notices

5.33 The LURA provides for the introduction of a requirement for residential development schemes to have to submit development progress reports to the local planning authority to provide information on the intended progression of the delivery of the development. These will have to be provided to the local planning authority on an annual basis and set out the progress that has been made to date and that which is predicted to be made towards the completion of the dwellings; with the specifics of the form and content of the reports, along with how and when they are to be submitted, to be provided through subsequent regulations. The requirement will be applied to relevant planning permissions through the imposition of a condition. The progress reports have the potential to be of a significant benefit to local planning authorities in robustly demonstrating housing delivery performance and their pipeline of future housing supply; and in particular the five year housing land supply position. The benefit of this will however be contingent upon any submitted information being reliable and accurate.

5.34 Similarly, it introduces the notion of a commencement notice, which will require the person proposing to carry out the development subject to a planning permission for prescribed types of development) to submit prescribed information to the local planning authority, specifying the date upon which they expect the development to begin. If this later changes, the person will be expected to submit a new commencement notice.

5.35 The LURA introduces the framework legislation for a power to allow local planning authorities to decline to determine planning applications for development from a person (with a prescribed connection to a previous scheme), whereby that earlier scheme has not been started or has been developed, in the opinion of the local planning authority, unreasonably slowly.

5.36 For circumstances whereby the local planning authority considers that a development (of a yet to be prescribed description) will not be completed within a reasonable period, the LURA introduces provisions to allow local planning authorities to serve a completion notice.

5.37 The provisions have the ability to cause a planning permission to cease to have effect after a specified period (to be at least 12 months from the serving of the notice) and can be served in relation to developments that have commended but that have not yet been completed. The LURA provides a framework for the serving of such notices, along with their effect and also the process for appealing such notices; with the ability for the Secretary of State to provide further detail through regulations. The completion notice is intended to provide local planning authorities with tools to expedite the delivery of development.

Environmental Outcomes Reports

5.38 The LURA sets the groundwork for introduction of new Environmental Outcomes Reports (EORs). It is expected that these will be intended to replace Sustainability Appraisals,(SAs), Strategic Environmental Assessments (SEAs) and Environmental Impact Assessments (EIAs), and accordingly the reports will apply to the consideration of planning consents, plans and projects.

5.39 The reports will be required to assess the extent to which the proposed consent or plan would, or be likely to, impact on the delivery of specified environmental outcomes, consider any proposals for increasing the extent to which an environmental outcome is delivered, any steps proposed for avoiding, mitigating or compensating for any effects and how any outcomes or steps will be monitored or secured. In doing so, it is required to consider any reasonable alternatives to the project, plan or any elements of it.

5.40 Whilst the LURA sets out an extensive range of matters in relation to EORs, much of the detail of the implementation and operation will still need to be established through subsequent EOR regulations.

Crown Development

5.41 The Crown has previously possessed the capability to employ a procedure outlined in section 293A of the Planning Act, triggering a similar process to an application that has been called in by the Secretary of State, and bypassing the Local Planning Authority.

5.42 The Levelling Up and Regeneration Act (LURA) extends this provision, empowering the Secretary of State to issue a development order for projects meeting either of the following criteria:

1) Considered of national significance and necessitated urgently
2) Pertinent to matters of national importance

5.43 Any such order created will have a similar effect to existing permitted development rights – it will grant permission for any development defined within the order, without further recourse required to the LPA to obtain a specific grant of planning permission.

Nutrient Pollution Standards

5.44 The LURA modifies the Water Industry Act of 1991, extending nutrient pollution regulations to sewage disposal facilities. These regulations specifically pertain to discharges of treated effluent in regions designated as nitrogen and phosphorus sensitive areas within England. The legislation establishes the classification of phosphorus-sensitive and nitrogen-sensitive catchments.

5.45 In designated catchments, water companies have a duty to ensure wastewater treatment works serving a population equivalent over 2,000 meet specified nutrient removal standards (as set out in any relevant permit) by 1 April 2030.

5.46 Since the LURA received Royal Assent, the government has published a notice of designation of sensitive catchment areas[6], which includes the Solent and Chichester Harbour. CDC (as the Competent Authority) is required to consider whether the nutrient pollution standard will be met by the upgrade date when carrying out Habitats Regulations Assessments. In reality, this process already takes place at CDC as part of the precautionary principle.

Other provisions

5.47 The LURA contains a range of other provisions that may be of more general interest to members, but are less directly related to the council's planning functions, including provisions around charging Council Tax on empty dwellings, the ability for local authorities to let vacant high-street premises and the registration of short-term rental properties and a variety of other miscellaneous provisions. These are not covered in this update.

Conclusions on the provisions of the LURA

5.48 The enactment of the Levelling-up and Regeneration Act 2023 signifies a key milestone in the Government's planning reform agenda. It does not however, in itself, implement any immediate fundamental changes to the planning system. Rather,

[6] https://www.gov.uk/government/publications/notice-of-designation-of-sensitive-catchment-areas-2024

most of the planning related provisions will be introduced at a later date, either by virtue of implementation and transition dates set out in the LURA itself, or by the necessity of regulations being laid in order to allow provisions to come into force.

5.49 It is important to be mindful of the extensive provisions and to give some forethought to the potential implications. It is however challenging to prepare fully for their implementation, given the reliance upon secondary regulations, policy and guidance. It is expected that the Government will consult upon and/or publish subordinate and associated regulations along with changes to policy and guidance over the coming months and beyond.

5.50 Officers will continue to scrutinise the provisions of the LURA and any subsequent regulations, policy and guidance they may be forthcoming and will seek to keep Members appraised of the emerging planning reforms as and when further information becomes available.

6. The Revised National Planning Policy Framework

6.1 At their meeting of the 14 February 2023 Members considered a report responding to a government consultation on changes to the National Planning Policy Framework (NPPF). The many changes proposed included some relating to the calculation of housing need and 5-year housing land supply that would potentially have significant implications for plan making and decision taking. On the 20 December 2023 the government published a revised version of the NPPF[7] incorporating some of the proposed changes as well as a detailed response to the consultation that had previously been undertaken.

Housing Need Calculations

6.2 Paragraph 61 of the NPPF has been amended to make it clear that the standard method for calculating housing need is a "*starting point for establishing a housing requirement for the area*". It goes on to state that "*There may be exceptional circumstances, including relating to the particular demographic characteristics of an area which justify an alternative approach to assessing housing need; in which case the alternative approach should also reflect current and future demographic trends and market signals*". In a foot note it is stated that "*Such particular demographic characteristics could, for example, include areas that are islands with no land bridge that have a significant proportion of elderly residents*". No further clarification of these characteristics is given.

6.3 In the government response to the consultation the government states that the changes are *"…to provide greater clarity and certainty to plan-makers" and "….to remove ambiguity from existing policy and clarify what is meant by exceptional circumstances*". It is expressly not a change in policy.

[7] https://assets.publishing.service.gov.uk/media/65a11af7e8f5ec000f1f8c46/NPPF_December_2023.pdf

6.4 Members will recall that in the council's response to the consultation it was argued that environmental constraints to the district and the capacity of the district to accommodate growth should be considered. The government's response states "*Some issues raised, such as constraints due to flood risk, should be taken into account via existing policy when local planning authorities are planning for housing in their areas, rather than when establishing need*". It is clear that 'need' and 'constraints' are two very different considerations that should not be conflated.

6.5 The governments consultation response document goes on to state that "*Existing policy (paragraph 67) expects strategic policy-making authorities to establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period. This could include consideration of constraints on land as set out in paragraph 11b and footnote 7 of the Framework such as areas at risk of flooding and Areas of Outstanding Natural Beauty*". The housing need and housing requirement figures are two distinctly different figures with the need figure being unconstrained by any debate around whether it is reasonable to accommodate the number; whereas the requirement figure takes into account what can actually be supplied and delivered. Therefore any unmet need would have to be robustly evidenced and agreement sought with neighbouring authorities to meet that unmet need.

6.6 In conclusion, on this issue, it is considered that the changes to the NPPF simply seek to clarify that the standard method should be a starting point for establishing housing need but there needs to be evidenced exceptional circumstances to justify departing from the standard method.

6.7 In terms of the housing requirement, it likewise clarifies that environmental and other constraints can be considered when determining the housing requirement figure but if the figure is lower than the identified need then there is an expectation that unmet needs are resolved through discussion with neighbouring authorities.

5 Year Housing Land Supply Calculations

6.8 The new NPPF makes some notable changes in terms of 5-year housing land supply calculations. Councils will no longer usually have to provide for 5-year housing land supply buffers and so the previously applied 5% buffer would no longer apply thus improving the council's 5-year housing land supply position. A buffer would only now apply where there has been significant under delivery over the previous 3 years as calculated under the Housing Delivery Test.

6.9 A more significant change is the potential to benefit from a new provision for decision-making purposes, whereby the housing land supply the council is required to demonstrate from specific deliverable sites is 4 years not 5. Paragraph 77 of the NPPF states that "*…..local planning authorities should identify and update annually a*

supply of specific deliverable sites sufficient to provide either a minimum of five years' worth of housing, or a minimum of four years' worth of housing if the provisions in paragraph 226 apply".

6.10 Paragraph 226 states: "*From the date of publication of this revision of the Framework, for decision making purposes only, certain local planning authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years' worth of housing (with a buffer, if applicable, as set out in paragraph 77) against the housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than five years old, instead of a minimum of five years as set out in paragraph 77 of this Framework. This policy applies to those authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) stage, including both a policies map and proposed allocations towards meeting housing need. This provision does not apply to authorities who are not required to demonstrate a housing land supply, as set out in paragraph 76. These arrangements will apply for a period of two years from the publication date of this revision of the Framework*".

6.11 The council's emerging local plan has passed regulation 19 consultation and so the Local Plan is sufficiently progressed for the council to benefit from this provision. There has been recent update to the National Planning Policy Guidance to clarify how this should be applied and it confirms that the Council has only to demonstrate that it has a 4 out of 5 year supply.

6.12 It remains clear however that a local plan and its supporting evidence should at examination demonstrate a deliverable pipeline of sites for the first 5 years of the plan and paragraph 76 of the NPPF states "Local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing for decision making purposes if the following criteria are met:

a) their adopted plan is less than five years old; and
b) that adopted plan identified at least a five-year supply of specific, deliverable sites at the time that its examination concluded".

6.13 There are therefore clear incentives to the council being able to demonstrate it has as healthy as possible 5-year housing land supply position at the time of examination of the Local Plan. Any sites capable of early delivery permitted in the near future will likely assist with this. As it is also an annual rolling supply, it is important that the council continues to replenish and build upon its housing supply position to ensure that it can be maintained and strengthened. Notwithstanding these changes to the NPPF and the potential for these to mean that only a 4-year housing land supply is currently required; it is vital that the Council continues to bolster its housing supply position by continuing to grant consents for new homes where the benefits of doing

so are not significantly and demonstrably outweighed by the planning harm that would result. Failure to do so will likely lead to the council losing the control it may now benefit from as a result of the changes to the NPPF, in short order.

Conclusions on the main changes to the NPPF

6.14 The key outcomes of the revised NPPF are (i) the clarifications around the housing methodology and (ii) the temporary change to the requirement for the council to demonstrate that it has a minimum of 4 year supply from a 5 year requirement.

6.15 With regard to the methodology, it is difficult to see any significant difference in the way in which the government expects LPAs to calculate their housing need and requirement. It has always been open to LPAs to evidence a lower housing requirement than using the outcome of the standard method, however many authorities have found the bar to successfully demonstrate a lower requirement has been almost impossibly high. It is unclear how the changes to the NPPF will make any meaningful difference to most LPAs.

6.16 The temporary change to having to demonstrate a 4 rather than 5 years supply should be welcomed. However, it is important to highlight the temporary nature of these amendments and that it is vital the council continue to give appropriate weight to strengthening its supply in the determination of planning applications.

6.17 It is also important to note that engagement of para 11(d) can also be triggered whereby relevant Local Plan Policies are out of date. This will need to be assessed on a case-by-case basis.

7. Alternatives Considered

7.1 As this is an update on government legislation and policy, there are no alternatives to be considered.

8. Resource and Legal Implications

8.1 There are no immediate resource or legal implications arising from this report. However, the LURA does provide the basis for significant changes to the planning system, including the potential for the transition to the use of different systems and processes, and the introduction of different or enhanced content to the development plan. All of these may have an impact on the scale and nature of resources that need to be applied or deployed by the council. Given that most of the provisions of the LURA require the introduction of subordinate provisions to provide the detail, it is not yet clear as to the extent of any such resource requirements. It will be important to keep the introduction of planning reforms under review and to ensure that adequate and appropriate resources are in place.

9. Consultation

9.1 This is an update on provisions enacted in law by the government and therefore consultation is not required.

10. Community Impact and Corporate Risks

10.1 There are no community impacts or risks arising from this report.

11. Other Implications

	Yes	No
Crime and Disorder the consultation (q56) relates to improving the safety of public spaces for vulnerable users		✓
Climate Change and Biodiversity Elements of the Act relate to protecting the environment and tackling climate change	✓	
Human Rights and Equality Impact		✓
Safeguarding and Early Help		✓
General Data Protection Regulations (GDPR)		✓
Health and Wellbeing good design and placemaking supported by planning policy can lead to positive impacts on health and wellbeing	✓	