Cripps

# The latest on LURA

On 26 October 2023, the long-awaited Levelling-up and Regeneration Act (LURA) became law. The provisions introduce significant changes to planning law, with the aim of speeding up the planning system, increasing developer accountability, reducing geographical differences and ultimately to get the country building.

Like with a number of pieces of legislation passed in the last year or so, LURA provides the legislative framework for change, but the government intend to rely on rafts of secondary legislation to bring the law into effect. For this reason, large sections of LURA are still to come into force, and query, will they ever?

In this article we will discuss some of the additional planning powers granted to Local Planning Authorities ("LPAs") that will require action by both developers and LPAs. But with LPA resources already stretched to capacity will such provisions help or hinder? Or will such powers fall by the wayside?

The following are some of the provisions that are intended to be used to encourage development to come forward and are either in force or soon to be in force:

## Section 111 (inserts new s93G to the TCPA 1990) – commencement notices

This section introduces a requirement for developers to submit a commencement notice to the LPA specifying the date the development is expected to commence. If the anticipated commencement date changes or the development does not begin on the previously specified date, then another notice may be submitted to the LPA.

The LPA may serve a notice on a person who fails to submit a commencement notice and that person shall be

guilty of an offence if they fail to provide the relevant information required by the LPA within 21 days and may be liable on summary conviction to a fine (not exceeding £1,000). It is worth noting that a defence is available where a person can prove they had a reasonable excuse for failing to provide the information requested.

Such requirements will not be new to developers as such requirements usually apply under s106 agreements and in respect of Community Infrastructure Levy notifications however, LPAs will introduce new processes, which are likely to differ across different areas so developers should check with the relevant LPA to ensure such provisions are not unintentionally breached.

## Section 112 (inserts new s93H to the TCPA 1990) – completion notices

Completion notices are not new but the LURA attempts to give them a new vigor by removing the need to seek the Secretary of State's approval and waiting for the commencement deadline to expire. The LURA provides the LPA with the power to serve a completion notice warning that planning permission previously obtained by the developer will cease to have effect within a certain deadline in the event that the LPA is of the opinion that completion of the development will not occur within a period they deem to be '*reasonable*'.

LPAs must allow at least 12 months after service of the completion notice for the works to be completed. An appeal can be made to the Secretary of State against the service of a completion notice.

## Section 113 (inserts new s70D to the TCPA 1990) – The power to decline to determine planning applications

This will essentially provide the LPA with discretionary powers to decline to determine applications when, in the opinion of the LPA, the applicant or someone "connected" to the applicant has a record of being "unreasonably" slow to build out developments in that area. In forming their opinion as to whether the developer has been "unreasonably slow", the LPA will have regard to "all the circumstances" and it shall be relevant whether a commencement notice (referred to above) has been issued and adhered to. This section will naturally progress through the courts as developers and LPAs try to establish what "unreasonably slow" and "all the circumstances" actually means.

It is a summary offence for an individual who has been served with a notice to make a statement that they know to be false or misleading or do so recklessly.

## Section 114 (inserts new s90B into the TCPA 1990 – development progress report conditions

The LPA have the power to impose mandatory conditions relating to annual development progress reports submitted by developers on specified residential planning permissions in England.

The aim is to provide greater clarity about the actual and projected delivery of new homes and development build out rates, which one presumes will support the powers under s70D and s93H of the TCPA 1990 (referred to above).

If a relevant planning permission is granted without the development progress report condition it shall be deemed granted subject to the condition. Given the discretionary nature of the powers of enforcing a breach of condition and the increased level of administration it will create for LPAs it may not provide the outcome envisaged by the government. Developers should however take note and make the necessary reporting processes internally to ensure they are not caught out.

We await the secondary legislation in respect of sections 140, 180 and 185, that shall set out the specific details for the enforcement of the community infrastructure levy, the acquisition of land by the local authority for the purposes of regeneration and the power to extend the time limit for implementation so watch this space!

If you would like advice on any of the issues covered in this article, please do not hesitate to contact us.

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