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Planning Update

June 2016

Housing and Planning Act 2016

The Housing and Planning Act has now passed through Parliament after several rounds of 'ping pong' between the House of Commons and the House of Lords and received Royal Assent on 12th May 2016. The Government's main aim of this Act is "to take forward proposals to build more homes that people can afford, give more people the chance to own their own home, and ensure the way housing is managed is improved".

We discuss below the key planning reforms contained in the Act.

Starter Homes

The Act includes a requirement for local authorities to provide starter homes for first-time buyers under the age of 40. Starter homes are to be sold at a discount of at least 20% of the market value. The Act puts a general duty on all planning authorities to promote the supply of starter homes, and provides a specific duty to require a certain number or proportion of starter homes onsite.

The requirement for starter homes will apply to residential developments of 10 units or more (or 0.5 or more hectares) and 20% of all homes in these developments must be starter homes.

The sale or subletting of starter homes will be restricted for 5 years following the initial sale and owners will be able to sell at an increasing proportion of market value over time.

Local planning

The Act provides the Secretary of State or the Mayor of London (if the local planning authority is a London Borough) with powers to intervene in the local plan making process. For example, they will be able to direct the authority to amend their local development scheme, or direct that a development plan document is submitted to them for approval.

The Secretary of State or Mayor would be allowed to intervene if a local authority was failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of a local plan.

The Government has proposed in its consultation paper Technical Consultation on Implementation of Planning Changes published on 18 February to prioritise intervention where:

- there is under-delivery of housing in areas of high housing pressure
- the least progress in plan-making has been made
- plans have not been kept up-to-date
- intervention will have the greatest impact in accelerating local plan production

Not wasting any time, the Government has already begun to exercise its new powers by recently placing a holding notice on Birmingham City Council's development plan.

Designation of local authorities for poor performance

The Growth and Infrastructure Act 2013 provided applicants for major development with the ability to submit a planning application directly to the Secretary of State, rather than the local planning authority, where that authority has been designated by the Secretary of State as a poorly performing authority due to its record on the speed or quality of its decisions on major development applications.

The Act extends the ability of the Secretary of State to designate authorities in relation to non-major applications. The Government in its February 2016 technical consultation has proposed the following thresholds for designation in relation to non-major applications:

- where authorities fail to determine at least 60-70 per cent of applications for non-major development on time, over the two year assessment period
- where authorities have had more than 10-20 per cent of their decisions on applications for non-major development overturned at appeal

Section 106 planning obligations

To speed up section 106 negotiations the Act provides for a new dispute resolution process which will allow a person to be appointed to help resolve outstanding issues in relation to section 106 planning obligations. The new process will apply only in situations where the local planning authority would be likely to grant planning permission if satisfactory planning obligations were entered into. After the appointed person issues their report, the parties will still be free to agree their own terms if they do not agree with the report, but only if they do so quickly. The Government in its February 2016 technical consultation gives further information about how the proposed dispute resolution mechanism would work and it intends to bring forward Regulations to provide for this.

The Secretary of State is also provided with powers to restrict the enforcement of section 106 planning obligations in relation to affordable housing in certain situations. The Government is to consult on how it will use this power, further details of which will be included in Regulations.

"Permission in principle" and local registers of brownfield land

The Act provides for a duty on local authorities to keep registers of brownfield land within their areas and provides the Secretary of State with the power by a development order to grant "permission in principle" for housing on land allocated for development in these registers. Planning permission in principle would then have to be combined with a new "technical details consent" granted by the local authority before development could go ahead.

The Government in its February 2016 technical consultation proposes that there should be three qualifying documents that would be capable of granting permission in principle which are future local plans, future neighbourhood plans and brownfield registers. Permission in principle granted from these documents would last for five years. It is also proposed that applicants for minor development should be able to apply for permission in principle on application. The consultation proposes that the 'in principle' matters should relate to the location, the uses and the amount of development on a particular site.

Self-build and custom houses

The Act amends the Self-Build and Custom Housebuilding Act 2015 (which requires local authorities to keep a register of people seeking to acquire land to build or commission their own home) by requiring local authorities to grant sufficient suitable development permission of serviced plots of land to meet the demand based on this register.

The Government in its February 2016 technical consultation proposes that for the small sites register small sites should be between one and four plots in size and that sites should be entered on the small sites register when a local authority is aware of them without any need for a suitability assessment.

Permitted development rights

The Act introduces a prior approval process for building operation permitted development rights and other development orders to allow local authorities more scope to take into account local conditions and sensitivities before these rights can be used.

Neighbourhood planning

The Act introduces new measures to speed-up and simplify the neighbourhood planning system. The Secretary of State will have the power to set time limits for parts of the process of making a neighbourhood development plan or order and will be able to intervene in the process if local authorities are not using their neighbourhood planning powers within these limits.

Increased call-in powers for the Mayor of London

The Act provides the Mayor of London with increased powers to call-in certain types of planning application for his own determination, which is aimed at allowing the Mayor to particularly have more control over protection of wharves and sightlines.

Processing of planning applications by alternative providers

The Act provides that the Secretary of State may by Regulations make provision for a planning application that falls to be determined by a specified local planning authority to be processed, if the applicant so chooses, not by that authority but by a designated person. Under this proposal the local authority's responsibility for determining the application should not be affected and the exercise of the option should only apply until a specified date and for a development of a specified description.

With regards to "designated persons", the proposal only states that this term should mean a person designated by the Secretary of State under specified Regulations.

The Government in its February 2016 technical consultation has requested views on who should be able to compete for the processing of planning applications, which applications could they compete for and on how fee setting in competition test areas should operate.