



Report of	Meeting	Date
Director of Development, Preston City Council	Central Lancashire Strategic Planning Joint Advisory Committee	27 June 2016

HOUSING AND PLANNING ACT 2016

PURPOSE OF REPORT

1. To advise members of the Joint Advisory Committee on the content of the Housing and Planning Act.

RECOMMENDATION(S)

2. The Joint Advisory Committee is recommended to note the contents of this report.

EXECUTIVE SUMMARY OF REPORT

3. Members have previously been advised of the Housing and Planning Bill being prepared by the government (JAC November 2015). The Housing and Planning Act was passed on 13th May 2016. This report summarises the content of the Act.

REASONS FOR RECOMMENDATION(S)

4. To advise member of the Joint Advisory Committee on the changes to legislation.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

5. N/A

BACKGROUND

6. The Housing and Planning Bill received Royal Assent on 13 May 2016, having taken seven months to make its way through both Houses of Parliament. It was the subject of many proposed amendments in the House of Lords but these resulted in relatively few changes. The details of many of the Act's provisions will only emerge once the Secretary of State issues regulations.
7. The Act is lengthy, containing over 200 clauses and covers the following:
Part 1 – New homes in England covering starter homes and self-build & custom housing
Part 2 – Measures to address rogue landlords and letting agents

Part 3 – Recovering abandoned premises
Part 4 – Social housing provision
Part 5 – Other changes to legislation regarding housing, estate agents and rentcharges
Part 6 – Planning
Part 7 – Compulsory Purchase
Part 8 – Public Authority Land
Part 9 – Other general provisions including transitional and consequential provisions.

8. The Queen's Speech on 18 May 2016 announced a Neighbourhood Planning and Infrastructure Bill 2016-17 which will include some further planning reforms.
9. A Local Plans Expert Review Group was set up in September 2015 by ministers to examine what measures or reforms might be helpful in ensuring the efficient and effective production of Local Plans. The Group has made a number of proposals to speed up and simplify the process of making Local Plans which were presented in a report to ministers on 16 March 2016. These proposals have been subject to a period of consultation. The Government will respond to the Group's recommendations in due course (although broad support was expressed in the 2016 Budget).
10. In its December 2015 "*Consultation on proposed changes to national planning policy*" the Government proposed a number of changes to the NPPF, with the intention of better supporting the development of housing on certain types of land (particularly brownfield land).
11. The March 2016 Budget made a number of proposed changes related to planning, including support for the development of Garden Villages and Towns, and support for the recommendations of the Local Plans Expert Group
12. The Act is intended to support the delivery of the Government's commitments as put forward in the Conservative party manifesto and the Productivity Plan *fixing the foundations: creating a more prosperous nation*. In particular these relate to providing more housing 'that people can afford', increasing home ownership and improving housing management.
13. Many of the planning provisions in the Act have not yet come into force, but when it does it contains provisions to:
 - Place a general duty on all planning authorities to promote the supply of Starter Homes and to require a certain number or proportion of Starter Homes on site;
 - Allow intervention by the Secretary of State over the production of local plans where local authorities are judged to be too slow; and
 - Create a system of planning permission in principle for housing.
14. The following sections of the Act on planning came into force from the day the Act received Royal Assent:
 - Local planning authority duty to keep a register of particular kinds of land;
 - The setting of fees for planning applications;
 - Processing of planning applications by alternative providers; and
 - Urban development corporations.
15. The other planning provisions in the Act are not yet in force.

Starter Homes – providing a statutory framework for the delivery of starter homes

16. The Act will put into legislation the Government's commitment to provide a number of Starter Homes, sold at a discount, for first-time buyers under the age of 40. Starter homes are to be new dwellings, sold at a discount of at least 20% of market value subject to a price cap of £250,000 outside Greater London (£450,000 within Greater London). The Act puts a general duty on all planning authorities to promote the supply of Starter Homes, and provides a specific duty, which will be determined in later regulations, to require a certain number or proportion of Starter Homes on site.
17. On 23 March 2016 the Government published a "*Starter Homes regulations: technical consultation*" which closed on 18 May 2016. The consultation asked for views on the details of the regulations to be made under the then Housing and Planning Bill, including proposals for a new requirement of 20% of new homes to be provided as starter homes on sites above a specified size.
18. This has been the most contentious proposals as the then Bill was debated with many amendments being put forward in the House of Lords. The principal concerns were that this new form of tenure will squeeze out affordable rent and shared ownership products. After a period of Parliamentary "ping-pong" these amendments were rejected by the Commons on the ground that it would undermine the delivery of starter homes. The details of the policy will not emerge until the regulations are issued.

Self-build and custom housebuilding –requiring local authorities to meet demand for custom-built and self-built homes by granting permissions for suitable sites

19. The Act adds to and amends the Self-build and Custom Housebuilding Act 2015, which requires local authorities to keep, and have regard to, registers of people seeking land for self-build and custom housebuilding. The Act requires local authorities to grant sufficient suitable development permissions on serviced plots of land to meet the demand for self-build and custom housebuilding in their area, based on the register. Draft guidance was published by the Government in February 2016.
20. To comply with the Act, the Councils now maintain a register. The interest shown thus far in terms of those asking to be included on the register has been fairly modest.

PART 6: PLANNING IN ENGLAND

Neighbourhood planning – simplifying and speeding up the neighbourhood planning process to support communities that seek to meet local housing and other development needs through neighbourhood planning

21. The Act will introduce measures designed to speed-up and simplify the neighbourhood planning system. It gives the Secretary of State powers to set certain time limits for parts of the process of making a neighbourhood development plan or order. It also allows the Secretary of State to intervene in the process if local authorities are not using their neighbourhood planning powers within these prescribed limits (detailed in the "*Implementation of planning changes; technical consultation*"). The Act will allow the Secretary of State to intervene if a LPA is failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of a neighbourhood plan.

Local planning – giving the Secretary of State further powers to intervene if Local Plans are not effectively delivered

22. With the aim of encouraging more local authorities to have a local plan in place, the Act gives the Secretary of State greater powers to intervene in the local plan making process. Specifically, it would allow the Secretary of State 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's *Implementation of planning changes: technical consultation* proposes to prioritise Government 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.
23. While the Secretary of State already has default powers in relation to the preparation or revision of a local plan, this extends that power to enable the Secretary of State to direct local authorities to prepare one within a specified timeframe.

Local registers of land and permission in principle – creating a duty for local authorities to hold a register of various types of land, with the intention of creating a register of brownfield land to facilitate unlocking land to build new homes; and giving housing sites identified in the brownfield register, local and neighbourhood plans planning permission in principle, and providing an opportunity for applicants to obtain permission in principle for small scale housing sites

24. With a view to enabling more housing to be built on brownfield land the Act introduces a new duty for local authorities to keep a register of brownfield land within its area. This will then tie in with a new system of allowing the Secretary of State to grant "planning permission in principle" (or "PIP") for housing on sites identified in these registers. PIP would then have to be combined with a new "technical details consent" granted by the local authority before development could go ahead.
25. In its *Implementation of planning changes; technical consultation* the Government proposed that there should be three "qualifying documents" that would be capable of PIP. These are: future local plans; future neighbourhood plans; and brownfield registers. PIP 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 proposed that the "in principle matters" should relate to the location, the uses and the amount of development on a particular site. It is understood that PPIP will not be conferred on current local plan housing allocations.
26. In relation to the registers of brownfield land, the consultation proposed that a "key component" of the evidence base for this work would be the local authority's Strategic Housing Land Availability Assessment process. The definition of brownfield would be that land which meets the definition of "previously developed land" as defined in Annex 2 of the NPPF. Sites would also be assessed against specific criteria that will be set out in regulations to ensure that they are suitable for housing. The Government expects the register to be updated on an annual basis. The consultation restated the Government's aim to ensure that 90% of suitable brownfield sites have planning permission for housing by 2020. It also made clear the Government's intention to introduce measures to ensure that progress is made against this target by local authorities. Specifically it proposed that local planning authorities that had failed to make sufficient progress against the brownfield objective would be unable to claim the existence of an up-to-date five year housing supply when considering applications for brownfield development, and therefore the NPPF's presumption in favour of sustainable development would apply. The presumption means that planning permission should be granted unless "any adverse impacts of doing so would

significantly and demonstrably outweigh the benefits [...] or specific policies in this Framework indicate that development should be restricted.” (NPPF para. 14).

27. Preston City Council and South Ribble Borough Council have successfully bid to become part of the Government’s “Brownfield Register Pilot Project”. This is intended to be a partnership of local authorities and the Government to shape and develop the policy, so that the experiences of pilot authorities will feed into the development of secondary legislation and guidance to support local planning authorities more widely. The Councils are therefore preparing a register and expect to publish it by the end of June 2016. Pilot authorities will not be expected to grant PIP as part of this project, although the Government expects local planning authorities to take a positive and proactive approach when considering granting permission for sites included on their registers.
28. The introduction of PIP represents a shift towards a “zoning” type of planning (common in the US and part of Europe) and away from the more flexible, discretionary approach of the British planning system (which allows unforeseen matters to be taken into account in determining whether planning consent should be granted).
29. A further process involving the grant of a “technical details consent” for development proposals which benefit from a permission in principle will permit the local planning authority to impose conditions which control the permitted development. Taken together the permission in principle and technical details consent will be similar to outline planning permission and reserved matters approvals.
30. Permission in principle can be granted through a development order or on application.

Planning permission etc – levelling up the power which enables conditions to be attached to development orders for physical works so that they are consistent with those for change of use; extending the planning performance regime to apply to smaller applications; and putting the economic benefits of proposals for development before local authority planning committees

31. This part of the Act amends an existing power in section 60 of the Town and Country Planning Act 1990 under which planning permission may be granted by a development order subject to conditions or limitations i.e. “permitted development rights”. The Act would allow a prior approval process to be introduced for building operation permitted development rights and other development orders. The idea is to allow local planning authorities greater scope to take into account local conditions and sensitivities before these rights can be used.
32. It also extends the Secretary of State’s ability to designate local planning authorities for poor performance in relation to the speed or quality of decisions on non-major applications. The February 2016 *“implementation of planning changes: technical consultation”* proposed the following threshold ranges of designation to non-major applications
 - Speed of decisions: 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 they would be at risk of designation.
 - Quality of decisions where authorities have had more than 10-20 per cent of their decisions on applications for non-major development overturned at appeal, they would be at risk of designation.
33. The Act will also require local authorities to produce a report of the financial benefits associated with accepting the planning application. This could, for example, cover financial benefits such as income from the community infrastructure levy, and grants and other financial assistance from Government such as the New Homes Bonus.

Nationally significant infrastructure projects – allowing developers who wish to include housing within major infrastructure projects to apply for consent under the nationally significant infrastructure planning regime. Urban development corporations – creating a faster and more efficient process for creating Urban Development Areas and Corporations whilst ensuring that those with an interest locally are properly consulted at an early stage.

34. This part of the Act provides the Secretary of State with the power to grant development consent for housing which is linked to an application for a nationally significant infrastructure project (NSIP). This could be, for example, for housing provided for workers during the construction or operation phase of a NSIP. The Act will also allow for consent to be granted for housing where there is no functional link, but where there is a close geographical link between the housing and the NSIP.
35. The Government's March 2016 National Infrastructure Delivery Plan 2016-2021 said that this provision would allow up to 500 dwellings included alongside infrastructure in a single DCO application.
36. The Act will make permanent some temporary changes that exist already relating to the establishment of urban development corporations (UDC's). It sets out the consultation requirements needed before an UDC can be established and it changes the parliamentary procedure for making orders from an affirmative to a negative procedure.

Pilot schemes for competition in processing planning applications

37. The Act will give the Secretary of State the power, by regulations, to introduce pilot schemes for competition in the processing (but not the determining) of applications for planning permission. The February 2016 "implementation of planning changes: technical consultation" asked for views on who should be able to compete for the processing of planning applications, which applications could they compete for and how fee setting in competition test areas should operate.

Section 106 planning obligations

38. The Government introduced new clauses into the Bill at Report Stage (30 and 31) to set out a dispute resolution process to speed up S. 106 negotiations in order to help housing starts to proceed more quickly. They provide for a person to be appointed to help resolve outstanding issues in relation to S 106 planning obligations. The new process will only apply in situations where the local planning authority would be likely to grant planning permission if satisfactory planning obligations were entered into. The February 2016 "Implementation of planning changes: technical consultation" provides further information about how the proposed dispute resolution mechanism would work.

FORTHCOMING CHANGES NOT IN THE LEGISLATION

Local and neighbourhood plans

39. There are some measures on speeding up local and neighbourhood plans that are not part of the Housing and Planning Act 2016. Separately to this in the November 2015 Autumn Statement the Government said that it will bring forward proposals for a "delivery test" on local authorities to ensure delivery against the homes set out in local plans within a reasonable timeframe.
40. On 15 September 2015 the Government announced that it had set up an "expert panel" to consider how to simplify the local plan making process. The panel published its final report on 16 March 2016, which coincided with the March 2016 Budget. The budget statement alluded to the report and supported the recommendation to "look at the scope to reduce the

weight of outdated plans in decision-making". The Government has consulted on the final report (period for comments closed on 27 April 2016).

41. The Budget 2016 also sets out the Government's intention to accelerate the preparation, adoption and delivery of local plan policies. This includes speeding up the process for assessing housing need (the government welcomes the local plan expert group recommendations) and setting out measures to encourage the production of local plans (later this year).

Incentive to put in place a local plan

42. In the Government's December 2015 "New Homes Bonus: Sharpening the Incentive: Technical Consultation" three options were put forward to limit the circumstances in which the New Homes Bonus would be paid in order to incentivise the impact of the Bonus. The options presented for consultation were:
 - Withholding the Bonus from areas where an authority does not have a Local Plan in place;
 - Abating the Bonus in circumstances where planning permission for a new development has only been granted on appeal; and
 - Adjusting the Bonus to reflect whether or not the homes would have been built without financial incentive.
43. The Government's preferred option, however, is that from 2017-18 onwards, local authorities who have not submitted a Local Plan prepared under the 2004 Act should not receive New Homes Bonus allocations for the years for which that remains the case. An alternative would be for local authorities to receive a set percentage (50%) of the Bonus allocation where they have published a Local Plan but not yet submitted it to the Secretary of State for examination. Consultation closed on 10 March 2015.

Duty to Cooperate

44. The Localism Act 2011 introduced a legal "duty to cooperate" on local planning authorities in preparing plans that relate to "strategic matters" (including housing) that would have a significant impact on at least two planning areas. The different relevant bodies from these different areas are expected to demonstrate how they have worked together. In the July 2015 Productivity Plan "Fixing the foundations: creating a more prosperous nation", the Government said that it would "strengthen guidance to improve the operation of the duty to cooperate on key housing and planning issues, to ensure that housing and infrastructure needs are identified and planned for".

Office to residential change of use

45. The temporary permitted development right to change the use of offices to residential without requiring planning permission was made permanent in April 2016 through the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016. It includes provision to allow local planning authorities to consider the "impacts of noise from commercial premises on the intended occupiers of the development". Proposed changes will have to be completed within three years of the developer getting prior approval.
46. The same Order creates a new three year temporary permitted development right for the change of use from light industrial to housing up to a maximum floorspace of 500 sq. m. This will come into effect from 1 October 2017.

Change to national planning policy for land for homes

47. In its December 2015 “Consultation on proposed changes to national planning policy” the Government proposed several changes to the NPPF with the aim of making it easier to build housing in certain circumstances. These proposals included:
- Strengthening national planning policy to provide a more supportive approach for new settlements;
 - To make clearer in national policy that “substantive weight” should be given to the benefits of using brownfield land for housing (in effect a form of “presumption” in favour of brownfield land). The Government intends to make it clear that development proposals for housing on brownfield sites should be supported unless overriding conflicts with the Local Plan or the National Planning Policy Framework can be demonstrated and cannot be mitigated.
 - To make clear that proposals for development on small sites (fewer than 10 units) immediately adjacent to settlement boundaries should be carefully considered and supported if they are sustainable.
 - To amend NPPF to ensure action is taken where there is a “significant” shortfall between the homes provided for in Local Plans and the houses being built. The proposal is to introduce a “housing delivery test” which would compare the number of homes that local planning authorities set out to deliver in their Local Plan against the net additions in housing supply in a local authority area over a two-year period.

CONCLUSIONS

48. The provisions of the Act are wide ranging and high level. One of the criticisms of the Bill in debate in Parliament has been the extent to which it devolves the detail of changes set out in it to regulations that have yet to be produced. Other have criticised many of the measures as being a major departure away from the NPPF’s aim of “allowing people and communities back into planning” and towards concentrating more power in the hands of the Secretary of State.
49. Some elements of the Act and other changes are more relevant to local authority planning and housing functions than other parts. Particular issues are:
- The extent to which the requirements for starter homes will affect the ability of the local authorities to deliver affordable housing as currently defined in the National Planning Policy Framework.
 - Changes to the planning regime including changes to the neighbourhood and local planning regimes and the introduction of the concept of permission in principle. Some have argued that this represents a major shift in town planning philosophy towards a zonal model.

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