

<b>Committee:</b>	<b>Date:</b>
Property Investment Board	15 June 2016
<b>Subject:</b> Housing and Planning Act	<b>Public</b>
<b>Report of:</b> Remembrancer	<b>For Information</b>
<b>Report author:</b> Sam Cook, Remembrancer's Office	

### Summary

This report advises Members of the enactment of the Housing and Planning Act, the Bill for which was previously reported to the Board. The Act includes four measures principally intended to encourage land held in the public sector to be made available for housing development. These are a duty for Government departments (and potentially other public authorities) to engage with other public authorities when developing proposals to dispose of land, a duty for public authorities to prepare and publish annual reports about surplus land-holdings, a power to set broader criteria for the Secretary of State to direct the disposal of public sector land, and a duty for local authorities to prepare and publish annual assessments of the sustainability and efficiency of the property estate.

A ministerial statement was secured during the passage of the Bill, confirming that these measures would apply only to land held by the City Corporation in its local authority capacity (*i.e.* City Fund properties). Officials also clarified that the duty to engage would not for the time being apply to local authorities, and that land held for investment purposes would not be considered surplus for the purposes of the reporting requirement. It is likely that the efficiency and sustainability assessments will apply to investment properties held in the City Fund (not those within the City Estate or Bridge House Estates), although discussions on this point are continuing.

### Recommendation

Members are invited to note the actions taken in furtherance of the City Corporation's interests, noted at paragraphs 2, 4, 6 and 9 below, and to receive this Report.

### Main Report

1. The Housing and Planning Act contains important, and in many cases contentious, measures intended to set the direction of the Government's housing policy and enable it to meet its house-building targets. Clauses in the Bill for the Act concerning public sector land were the subject of a report to the Board at its meeting of 10<sup>th</sup> February. These have now passed into law.

They are mainly, although not exclusively, intended to encourage land to be released for house-building.

### **Application to the City Corporation**

2. In the case of the first three measures described below, the relevant clauses were drafted widely and left it to regulations to identify the public authorities which would be affected. It was not therefore self-evident that the measures would be confined to property held by the City Corporation in its local authority capacity (that is to say, City Fund rather than City Estate or Bridge House Estates property). This point was taken up with officials and subsequently with Lord Carrington of Fulham and the Cabinet Office Minister, Lord Bridges of Headley. As a result, Lord Bridges placed the following assurance on the parliamentary record at Report Stage in the House of Lords—"I take this opportunity to reassure the Corporation that our intention is to apply regulations under this part of the Act to the Corporation in its capacity as a local authority only, and that the drafting of the Bill allows for this." The effect of this assurance is to confirm that all of the measures described in this report to be implemented through regulations will, to the extent that they apply to the City Corporation, apply only to City Fund property.

### **Duty of engagement**

3. The Act imposes a new duty on public authorities to engage with other interested public authorities when developing proposals for the disposal of land. The duty is principally targeted at Government departments, but may also be applied to other public authorities (such as local authorities) through regulations.
4. As noted in paragraph 2 above, this requirement could only be applied to City Fund property. In respect of such property, it could nevertheless capture routine transactions such as commercial lease renewals where there would be no purpose in discussing the use of the land with other public authorities. In the resulting discussion with the Department, a clarification was offered that there was no present intention to extend the duty to local authorities. Therefore there will be no immediate burden placed on the City Corporation. If, however, this policy were to change in the future, the Act includes an exempting power which would enable certain types of disposal to be excluded. Officials have been made aware of the arguments in favour of excluding transactions such as commercial leases where no change in the use of the land is envisaged. This case will be pursued further if the need arises.

### **Surplus land reports**

5. The Act requires public authorities to prepare and publish annual reports of their surplus land-holdings, *i.e.* buildings or other land which the authority has identified as being surplus to its requirements but in which it continues to own an interest. Reports will only cover land identified as surplus within the previous two years (or six months in the case of land already used for housing). They will have to include an explanation of why the authority has not disposed of its surplus holdings. Further details about the contents of the

reports will be set out in regulations, which may also exclude certain sorts of land from the reporting requirement.

6. The application of this measure to City Fund investment property was discussed with departmental officials and it was agreed that nothing in the Bill would require the Corporation to treat land as “surplus” if a decision had been made to retain it for investment purposes. Accordingly land will only have to be included in the register once it has formally been declared as surplus, which will occur after both the Corporate Asset Sub Committee has decided that it is no longer required for operational use and the Board has decided that it should not be retained for investment purposes.

### **Power to direct disposal of land**

7. The Act provides a new route by which the Secretary of State can direct public authorities to dispose of land held by them. Such a power presently exists, but may only be used where the land is considered by the Secretary of State to be unused or insufficiently used for the purposes of the authority. The Act enables alternative criteria to be set out in regulations. This move has been prompted by the Government’s “right to contest” initiative, by which members of the public are encouraged to submit proposals to the Government for the better use of public land. It is not yet clear what alternative criteria the Government will propose. As a result of a concession made in the House of Lords, the criteria will have to be approved by a vote of both Houses of Parliament before they take effect. As noted in paragraph 2 above, if regulations are made they will apply only in relation to City Fund property.

### **Efficiency and sustainability assessments**

8. The Act requires local authorities (including the City Corporation acting in that capacity) to prepare annual reports, in respect of each year beginning with 2017, containing a ‘buildings efficiency and sustainability assessment’. This is an assessment of the progress made by the authority towards improving the “efficiency and contribution to sustainability” of buildings owned by the authority. In particular, it must include an assessment of progress made in reducing the size of the authority’s estate, and in ensuring that buildings newly acquired by the authority fall within the top quartile of energy performance. Reports will have to be published no later than 1<sup>st</sup> June in the year after that to which they relate. The assessment is based on those which already have to be carried out by central government under climate change legislation. Regulations will be able to exclude certain sorts of land from the assessment, and statutory guidance will be issued about how the assessment is to be approached.
9. The duty to prepare the assessment currently seems likely to apply to investment property in the same way as to operational buildings. This wide scope of application may prove onerous in the case of the City Corporation, owing to the scale of its investment holdings (even if, as is the case, City Estate and Bridge House Estate are not included). Furthermore, the implication that every local authority should, in the interests of efficiency, seek to reduce the size of its estate would not seem appropriate in the case of investment property. These concerns have been expressed to departmental

officials and to the Local Government Association, which is currently liaising with the Government on the implementation of the measures. Officers will continue to put the case that the distinct position of investment property should be recognised, either in regulations or in guidance.

### **Next steps**

10. The City Corporation will, in relation to City Fund investment property which is declared surplus, need to comply with the new reporting duties in relation to surplus land. It is likely that it will also need to produce sustainability and efficiency assessments of buildings held as City Fund investment property, although the case will continue to be made that this requirement should not apply in the same way to investment properties as to operational ones. The practical content of the new duties will depend to a large extent on regulations and guidance which have yet to be published. Officers will continue to monitor the situation and will report to Members on any developments of interest.

### **Background papers**

- Report of the Remembrancer on the Housing and Planning Bill, 10<sup>th</sup> February 2016, Item 4

### **Sam Cook**

Assistant Parliamentary Affairs Counsel

020 7332 3045

[sam.cook@cityoflondon.gov.uk](mailto:sam.cook@cityoflondon.gov.uk)