

Committee:	Date:
Planning & Transportation	5 th July 2016
Subject: Housing and Planning Act	Public
Report of: Remembrancer	For Information
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Summary

This report advises the Committee of the enactment of the Housing and Planning Act, the Bill for which was reported to the Committee at its meetings on 15th December last and 2nd February. The proposals described in those reports have now all passed into law, although various modifications were made, and policy clarifications offered, during the parliamentary proceedings. Developments with regard to the main planning measures are summarised in the body of the report below. Among other things, those measures enable a pilot scheme for competitive provision of planning processing services, introduce an independent adjudication scheme for 'section 106' disputes, promote the supply of 'starter homes' for first-time buyers, enable 'planning permission in principle' to be granted for land identified as suitable for housing, and replace powers to override easements such as rights to light.

Recommendation

The Committee is invited to receive this Report, and to note in particular the actions referred to in paragraphs 3, 10 and 12 in support of the City Corporation's interests.

Main Report

1. The Housing and Planning Act contains important measures intended to set the direction of the Government's housing policy and enable it to meet its house-building targets. In part this is to be achieved through reforms to the planning process. The Bill for the Act proved contentious, with the Government suffering an unusually large number of defeats in the House of Lords. Nevertheless it successfully passed into law before the end of the parliamentary session, with only minor concessions on the part of the Government. This report summarises the outcome of the parliamentary proceedings in relation the principal planning provisions of the Act. It does not repeat all of the detail set out in the earlier reports, for which reference may be made to the background papers listed at the end of this report.

2. During the passage of the Bill two consultations were issued by the Government about how the measures are to be implemented in secondary legislation—one on ‘starter homes’ and one on other planning matters. The Director of the Built Environment submitted to both consultations on behalf of the City Corporation. The Government’s responses to the consultations, which are expected to clarify much of the detail about how the Act will operate in practice, have yet to be published.

Alternative processing of planning applications

3. The Act will enable the Government to introduce a scheme whereby external providers will be able to compete with a local planning authority for the work of processing, but not deciding on, planning applications. The proposal met with some disquiet from local government representatives concerned about conflicts of interest, but was supported by many on the Conservative benches. Technical amendments were made in order to emphasise that the provisions only authorise a pilot scheme for a limited period. The Government rejected amendments which would have made participation in the scheme voluntary on the part of local planning authorities. It did indicate, however, that it would seek a consensual approach where possible, departing from this only where necessary to secure a properly representative sample of planning authorities. In accordance with views expressed by Members of this Committee when considering the reports on the Bill for the Act, representations were made at a Ministerial level to the effect that the City, owing to the unusual complexity of its planning work, would not be suitable for inclusion in this sample.
4. While some broad principles of the pilot scheme are discussed in the current consultation, many details remain unclear and will have to await secondary legislation. It is not expected that the scheme will begin before April 2017, although the pilot areas should be known by the end of the year.

Section 106 agreements

5. Proposals to introduce an independent adjudication scheme for ‘section 106’ disputes passed with little detailed scrutiny in either House. The drafting of the measures has left a number of uncertainties, such as when a section 106 negotiation becomes an “unresolved issue” (which is necessary to invoke the procedure) and the grounds on which a local planning authority is able to refuse a planning application once the developer has complied with the adjudicator’s decision. Other details, such as whether the procedure will be able to be invoked by a third party, will become clear once the Government has responded to the current consultation. Of particular importance will be the special timeframes that apply to the processing of an application once the scheme is invoked, and whether they allow flexibility for sort of consensual extension that is often agreed for large development proposals in the City.
6. A separate measure on section 106 gives the Government the power to make regulations restricting the enforceability of affordable housing obligations. This was aimed at reintroducing the ‘small sites exception’ policy that was quashed by the High Court last year. In the light of the Court of Appeal’s

recent judgment reversing that ruling, it is not known whether the Government will still pursue regulations.

Starter homes

7. The Act is intended to shift the balance of housing provision in favour of 'starter homes', which are available to first-time purchasers under the age of 40 at 80 per cent of market value, up to a price of £450,000 in Greater London and £250,000 elsewhere. It does so through placing local planning authorities under a general duty to promote the supply of starter homes when exercising planning functions, and through regulations requiring that residential developments may only be given planning permission if they include a certain proportion of starter homes. When viability constraints are taken into account, this will inevitably limit the scope to seek planning obligations for the provision of more conventional forms of affordable housing. The proposals passed in the face of strong resistance in the House of Lords, which favoured greater discretion for local housing authorities to decide on the type of affordable housing best suited to their areas.
8. A current consultation proposes to set the starter homes requirement at twenty per cent of units on residential developments consisting of more than ten units, subject to certain exemptions such as specialist housing and estate regeneration schemes. It is anticipated that a requirement set at this level will leave little, if any, room for councils in London to require further affordable housing contributions through section 106 agreements, on which the City Corporation's affordable housing schemes have typically relied. (Contributions from commercial developments will, however, be unaffected.) The consultation also proposes to allow local authorities to accept commuted payments for starter homes elsewhere, in lieu of on-site provision. The Government conceded in Parliament that purchasers of starter homes will have to repay a proportion of the discount they received if they sell within a given period, on a 'tapered' basis according to the length of time they remain in the property. The length of this 'taper' has not yet been determined, but seems likely to be set at eight years.

Planning permission in principle

9. The Act introduces a new concept of 'planning permission in principle'. This is intended to establish the principle of development—its location, use, and amount of units—before consideration of other planning matters, which will be dealt with by an application to the local planning authority for 'technical details consent'. This two-stage process is intended to give greater certainty to developers so that they are encouraged to invest in developing detailed proposals. Permission in principle will be granted automatically to sites identified in local or neighbourhood plans, or in new registers of brownfield land which the Act will require local planning authorities to maintain. The Government also proposes to allow local planning authorities to grant permission in principle on application, but it is likely that this ability will be confined to minor development.
10. During the parliamentary proceedings on the Bill, the Government offered a number of important clarifications about how permission in principle is

intended to operate. In particular, it accepted an amendment to the Bill which spells out that only 'housing-led' development may be given permission in principle, and gave assurances that local planning authorities would retain discretion over the designation of individual sites so as to be able to assess their suitability for housing. This is in keeping with representations made by the City Corporation and other bodies, and should ensure that permission in principle does not provide a vehicle for inappropriate residential development in the City.

Overriding of easements

11. The Act contains a new power for bodies with powers of compulsory purchase to override easements and other rights affecting land, in connection with a development for which compulsory purchase could be used. This will replace a number of more specific powers, including section 237 of the Town and Country Planning Act 1990, which enables local planning authorities to override rights affecting land held in their planning estates. This power has been used in the City to overcome obstacles such as rights to light, which would otherwise inhibit development. The new power, while drafted differently, will operate in much the same way.
12. As originally drafted, the Bill would seemingly have extended the new power in perpetuity to subsequent owners of the site concerned. Given that the body with compulsory purchase powers is liable in default for any interference with an easement carried out in reliance on the overriding power, this could have exposed the City Corporation to open-ended compensation liabilities. This technical concern was pursued and addressed in an amendment to the Bill, so that the power may only be used in connection with the purposes for which the body with compulsory purchase powers took ownership of the site. A further difficulty, described in the earlier reports on the Bill, which threatened to remove the overriding power in respect of land acquired before the enactment of the Bill was also dealt with by an amendment tabled in the Lords.

Planning powers of the Mayor of London

13. The Act makes two changes to the way in which planning powers may be conferred on the Mayor of London, both of which are technical in character and do not represent a major extension of the Mayor's powers. They are intended to be used to devolve the Secretary of State's powers to decide which sight-lines and wharves in London should be 'safeguarded' (so as to require the Mayor to be consulted on applications affecting them), and to define the Mayor's 'call-in' powers by reference to certain concepts defined in the London Plan. A number of back-bench amendments were tabled in both Houses seeking to extend the Mayor's planning powers further. The thrust of these was to devolve powers down from the Secretary of State, rather than to transfer them up from the local planning authorities. These amendments were not, however, pressed.

Information about financial benefits

14. The Act requires officers' reports to committees on planning applications to include a list of certain types of financial benefit likely to be obtained as a result of proposed developments. Parliamentary debate helped to clarify the purpose of this provision. This is to ensure that the potential benefits of new developments to the local community are more effectively publicised, even if they are not legally material to the decision on the application (and therefore are not to be taken into account by the committee). The benefits to be listed will include Community Infrastructure Levy payments and any Government grants (such as the New Homes Bonus), and if the Government proceeds with the proposals in its consultation will also include council tax, business rates and section 106 contributions.

Self-build and custom house-building

15. The Act requires local planning authorities to grant suitable planning permission for enough serviced plots of land (*i.e.* plots with access to highways and utilities) to meet local demand for self-build or custom house-building. That demand will be evidenced by the number of persons subscribing to each authority's register of persons seeking to acquire land to build a home (introduced by legislation last year). It is unlikely, however, that self-build or custom housing will be appropriate for the character of the City. The Director of the Built Environment therefore proposes to seek an exemption from the Secretary of State, under an exempting power contained in the Act. A further report on this will be presented to the Committee in due course.

Other measures

16. The Act includes a number of other planning measures which were described in the earlier reports on the Bill and did not undergo significant changes in the course of its parliamentary passage. The Secretary of State will acquire a wider range of powers to intervene in the preparation or revision of local plans—powers which may, in London, be delegated to the Mayor. Nationally significant infrastructure projects and commercial developments dealt with by the Planning Inspectorate under the development consent process will for the first time be able to include elements of housing. The way in which local planning authorities may be designated as 'under-performing', with the result that planning applications may be made directly to the Secretary of State instead, will be changed so that different criteria may be set for different types of application (*e.g.* major and minor development). Time limits will be imposed on local authorities' consideration of applications to designate neighbourhood areas, with a power to deem some applications to be automatically accepted. None of these measures is expected to have significant effects on the City in the foreseeable future.

Next steps

17. The Act is largely an enabling measure, and its practical effects will to a large extent depend on operational details to be set out in regulations. Much of the detail should become known when the Government responds to the two

consultations it has conducted. Officers will report further to the Committee on any significant developments.

18. A further Bill on planning was announced in the Queen's Speech. It will focus on neighbourhood planning, the use of planning conditions, and the compulsory purchase regime. This Bill will be monitored and reported on in the usual way, with the need for further activity considered once details are known.

Background papers

- Report of the Remembrancer on the Housing and Planning Bill, 15th December 2015, Item 10
- Report of the Remembrancer on the Housing and Planning Bill, 2nd February 2016, Item 7
- Report of the Director of the Built Environment on the City Corporation's response to DCLG's technical consultation on the implementation of planning changes, 5th April 2016, Item 8a

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