Housing And Planning Act 2016

20 May 2016

The Housing and Planning Bill received Royal Assent on 12 May, the day after the Lords capitulated on its final proposed amendment to the Bill. The government, who have pushed hard from the outset to move this Bill as rapidly as possible through the parliamentary process, were keen to ensure the Bill became legislation before the Queen’s Speech and parliamentary focus turned to the upcoming EU referendum. The key provisions have remained largely intact despite the pressure from the Lords and opposition MPs for wide-reaching changes. Much of the detail as to how the new provisions will operate and when they are likely to take effect is still, of course, unknown as we await the related regulations and orders to be made.

This note provides a summary of the provisions relating to starter homes, permission in principle and vacant higher value council housing as they now stand under the Act, and is an update to our earlier detailed notes on the Bill and its passage into law. It focuses on the areas where most debate has taken place and where further changes have been made to the wording of the provisions. A link to our earlier publications and commentary can be found here: Pinsent Masons: Housing and Planning Act 2016.

Starter Homes

Key principles at a glance

• Duty on local planning authorities (LPAs) in England to promote the supply of starter homes
• LPAs can only grant planning permission for certain residential development if the ‘starter homes requirement’ is met
• The ‘starter homes requirement’ will be set out in regulations yet to be published but is likely to require a minimum 20% of homes on the residential development to be starter homes, subject to exemptions.
• Starter homes will be available to purchase by ‘qualifying’ first-time buyers between the age of 23 – 40 at a discount of at least 20% of the market value
• Starter homes are defined as an affordable housing type
• Restrictions (to be made under regulations) will apply on re-sales: requiring repayment in respect of the starter homes discount, reduced according to the time that has expired since a home was first sold; or preventing a starter home being sold within a specified period other than to a qualifying first-time buyer at a discount
• Rural exceptions sites, where policy exists for housing under a development plan, will be exempt from any requirement to deliver starter homes.

What we anticipate in the regulations

During the passage of the Bill, the government issued a technical consultation: ‘starter homes regulations’ indicating the likely approach they will take to the detail of starter homes provision and asking for consultation responses. The consultation closing date has been extended to 27 May and many developers and leading industry organisations are expected to submit responses.

The consultation provides that any first-time buyer who is under the age of 40 (but age 23 or over) will be eligible to buy a starter home. The proposal confirms that if the property is being purchased jointly and only one purchaser is eligible, they should still be able to jointly purchase a starter home. The age restriction is to be lifted for any injured military personnel or partners of those who lost their lives in service.

The government recommends imposing restrictions for those who would like to sell or let their starter home. A restriction of five to eight years is likely for sales and lettings. The consultation paper suggests “a tapered approach which enables the starter home to be sold at an increasing proportion of market value” and they can only be sold to other qualifying first-time buyers. Once the property has been occupied for eight years, the restrictions will not apply.

The consultation states that developments which cover over half a hectare or include 10 or more units will be required to build starter homes. This minimum criterion is in-line with the planning definition of a “major development” and also ensures that it does not force small sites to provide starter homes, making them financially unviable.

Any qualifying development will be required to allocate 20% of homes as starter homes. The government considered setting a varied starter home obligation based on regional differences but decided to set a “single national requirement” to prevent it being too complex.
According to the document, a “general exemption” to the starter homes requirement will be applied where clear evidence proves it would make the development unviable, but this will only be used in “tightly defined circumstances.” The government acknowledges that starter homes may not be appropriate for all schemes and the regulations will “identify types of developments which will not be subject to the starter homes requirements.” Suggested developments include specialist care accommodation, estate regeneration developments, custom build and purpose build student housing.

It is proposed that most starter homes will be delivered on-site but the government will allow some flexibility when this could make the development no longer viable, especially in areas of high value. In such circumstances, “commuted sums would have to be used by the LPA for providing starter homes elsewhere”.

Issues and impacts around starter homes

The government resisted attempts by the Lords to introduce amendments into the Act which were aimed at ensuring other forms of affordable housing would continue to be built. There is still significant concern across the industry that starter homes will squeeze out affordable for rent and shared ownership in particular. The consultation does not deal with the case where, for example, local policy imposes a 20% affordable housing requirement and the national 20% starter homes requirement will mitigate that in full, the result being no further types of affordable housing for those not fulfilling the starter homes criteria. The government wants to see more LPAs build their own affordable for rent homes but most LPAs do not feel financially or practically equipped for this.

Another impact of the proposals on other affordable housing provision is that starter homes take priority in viability negotiations. The consultation is clear that the percentage of starter homes should only ever be reduced for viability reasons where the percentage of other affordable tenures has been reduced to zero. This will be unpopular with LPAs who wish to provide a mix of affordable housing in viability negotiations.

The private rental sector (PRS) is likely to feel the impact of starter homes as predictions show that there will be an increase in the ability of those currently renting privately to get a starter home mortgage.

When will the starter homes provisions come into force?

Dates will be specified in the regulations still to be published. It is understood that a number of regulations are likely to be made in October 2016.
What’s been changed or clarified and what can we expect in the Development Orders?

Changes to the Act have made it explicitly clear that PiP is intended for housing-led development and not, at the current time, for other types of development. An amendment was agreed to specifically exclude fracking development from being capable of being granted PiP. The duration of both forms of PiP and what ‘Qualifying Documents’ could be taken into account for Allocation PiP were also added into the Act.

The ‘Technical consultation on implementation of planning changes’ which was opened by the government on 18 February 2016 and closed on 15 April 2016, provides some further background on PiP and sets out proposals for the detail to be contained in the development orders. The proposals make clear that decisions about granting PiP should be locally driven, taking account of national and local policy. Allocations in existing plans cannot grant PiP i.e. it will not apply retrospectively. CIL and s106 could apply and will be applied or negotiated at the technical details stage.

The proposals suggest that the ‘in principle’ matters that should be determined as part of the PiP will include:

- Location: a detailed red line plan identifying the location and parameters of the site
- Use: should be housing-led but retail, community and commercial uses that are compatible with residential use can also be approved under the PiP where they form part of a housing-led development
- Amount of residential development: an acceptable minimum and maximum level of residential development is proposed, indicated by number of units or by dwellings per hectare.

Parameters of the technical details for the development that need to be agreed are expected to have been set out at the ‘in principle’ stage. Technical details will be considered having regard to local and national policy in the normal way.

Issues and impacts around PiPs

A key issue for clarification is how PiP will interact with existing requirements for environmental impact assessments (EIA) and habitats assessments. The consultation proposals consider EIA and say that developments exceeding thresholds above which EIAs may be required will not be able to receive PiP unless an EIA has been produced and appropriate mitigation agreed or the relevant LPA has determined that an EIA is not necessary. As detailed information is required in order for EIA decisions to be made, this approach appears to be at odds with the government’s insistence that the ‘in principle’ matters dealt with by PiP will only include the location, uses and number of units, with everything else regarded as ‘technical details’ for later agreement. Many sites allocated in local plans will exceed the EIA thresholds and so Allocation PiPs may be of limited value.

The market reaction to PiP is generally positive, particularly for small builders. Commentators think that PiP will encourage local planning authorities to be more committed to the delivery of sites in their local plan and that PiP will bring valuable focus to local planning authorities in bringing sites forward. Some local planning authorities are supportive but have concerns over administrative burdens involved with the proposals. There are also concerns around viability for Allocation PiPs under the brownfield register due to high remediation costs involved with such sites.
Housing And Planning Act 2016
20 May 2016

When will the PiP provisions come into force?

The parts of the Act introducing PiP will take effect two months after Royal Assent – 12 July 2016. Development Orders will also need to be made.

Vacant higher value local authority housing

Key principles at a glance:

- A duty on local housing authorities (LHAs) to sell their interests in higher value local authority housing that has become vacant
- The SoS may make a determination to require a LHA to make a payment to the SoS representing the market value of their interests in any higher value housing that is likely to become vacant during the year (less costs and deductions to be prescribed)
- An agreement may be entered into between the SoS and the LHA for the provision of housing in an area. The agreement may reduce the amount of the payment to be made subject to certain terms and conditions.
- Where an agreement is in place it must provide that for every old dwelling sold, there must be at least one new affordable home provided in areas outside Greater London ('one-for-one replacement') and at least two new affordable homes in areas within Greater London ('two-for-one replacement')
- A “new affordable home” can include a starter home.

What’s been changed or clarified and what can we expect in the regulations?

A change was made to define the relevant local authority housing as “higher” value housing as opposed to “high” value housing in response to concerns in the Lords that for some areas all the local authority housing stock would be classified as “high” value. Further details are to be provided in regulations yet to be made, but the wording of the Act now makes clear that the regulations may define “higher value” in “different ways for different kinds of housing, different local housing authorities or different areas”.

Additional wording was added to ensure that where an agreement is made with a LHA outside Greater London about building new homes and reducing the payment to be made by the LHA to the SoS, that the LHA would be required to provide at least one new affordable home for every old dwelling assumed sold. Due to a change that MP Zac Goldsmith successfully argued for in the Commons, at an earlier stage of the Bill debate relating to Greater London, it is a “two-for-one” provision in Greater London.

The regulations are intended to include provision to give local authorities with particular housing needs the opportunity to reach bespoke agreements about the delivery of different types of new homes in their areas. The regulations will most likely contain exclusions for rural areas to the housing to be considered for payment in respect of higher-value vacant housing.

Issues and impacts of the sale of vacant higher value local authority housing

The main point of contention about the one-for-one and two-for-one replacement provisions was how the replacements were to be funded by LHAs in the absence of them being able to retain the sale receipts. The government had made clear that the payments to be made by LHAs in relation to their vacant higher value stock were required to help fund the right for housing association tenants to buy their homes under the extended “Right to Buy” scheme. The Commons twice rejected amendments to the Bill that would have enabled LHAs with demonstrable needs to retain the money for reinvestment in new affordable homes and homes for social rent.

There remains uncertainty about how the financials are going to add up and whether the outcome will be lower quality replacement housing in many areas.

When will the sale of vacant higher value local authority housing provisions come into force?

These provisions will have immediate effect.
Housing And Planning Act 2016
20 May 2016

For further information, please contact:

Marcus Bate
Partner
Planning & Environment, Energy & Infrastructure
London
T: +44 (0)20 7490 6594
M: +44 (0)7585 996177
E: marcus.bate@pinsentmasons.com

Richard Ford
Partner
Planning & Environment, Energy & Infrastructure
London
T: +44 (0)20 7490 6241
M: +44 (0)7884 110265
E: richard.ford@pinsentmasons.com

Iain Gilbey
Partner
Planning & Environment, Energy & Infrastructure
London
T: +44 (0)20 7418 8223
M: +44 (0)7809 200351
E: iain.gilbey@pinsentmasons.com

Richard Griffiths
Partner
Planning & Environment, Energy & Infrastructure
London
T: +44 (0)20 7490 6981
M: +44 (0)7770 303734
E: richard.griffiths@pinsentmasons.com

Nicholle Kingsley
Partner
Planning & Environment, Energy & Infrastructure
London
T: +44 (0)20 7490 6617
M: +44 (0)7880 096688
E: nicholle.kingsley@pinsentmasons.com

Robbie Owen
Partner
Planning & Environment, Energy & Infrastructure
London
T: +44 (0)20 7490 6420
M: +44 (0)7973 380348
E: robbie.owen@pinsentmasons.com

Michael Pocock
Partner
Planning & Environment, Energy & Infrastructure
Manchester
T: +44 (0)161 250 0223
M: +44 (0)7880 096688
E: michael.pocock@pinsentmasons.com

Jonathan Riley
Partner
Planning & Environment, Energy & Infrastructure
Leeds
T: +44 (0)113 294 5227
M: +44 (0)7799 256922
E: jonathan.riley@pinsentmasons.com

Rebecca Warren
Partner
Planning & Environment, Energy & Infrastructure
Birmingham
T: +44 (0)121 625 5387
M: +44 (0)7971 036564
E: rebecca.warren@pinsentmasons.com

This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.
Pinsent Masons LLP is a limited liability partnership registered in England & Wales (registered number: OC333653) authorized and regulated by the Solicitors Regulation Authority and the appropriate regulatory body in the other jurisdictions in which it operates. The word ‘partner’, used in relation to the LLP, refers to a member of the LLP or an employee or consultant of the LLP or any affiliated firm of equivalent standing. A list of the members of the LLP, and of those non-members who are designated as partners, is displayed at the LLP’s registered office: 30 Crown Place, London EC2A 4ES, United Kingdom. We use ‘Pinsent Masons’ to refer to Pinsent Masons LLP, its subsidiaries and any affiliates which it or its partners operate as separate businesses for regulatory or other reasons. Reference to ‘Pinsent Masons’ is to Pinsent Masons LLP and/or one or more of those subsidiaries or affiliates as the context requires.
© Pinsent Masons LLP 2016.

For a full list of our locations around the globe please visit our websites: www.pinsentmasons.com and www.Out-Law.com.