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BY ANGUS WALKER

Today's entry reports on the Housing and Planning Act 2016.

Despite receiving Royal Assent on 12 May, the Housing and Planning Act 2016 wasn't published until yesterday. The section that allows an element of housing in nationally significant infrastructure projects (NSIPs) has ended up as section 160, and will come into force on a day of the government's choosing (probably October).

The bill had quite a ding-dong (or more correctly 'ping pong' – which apparently used to be called 'lutte a la corde' or tug of war in French) between the two Houses of Parliament before they could both agree to it, going back and forth six times in the last couple of weeks of the session. The full text of the Act [can be found here](#).

As a reminder (and it was entirely unamended during its passage through Parliament) section 160 amends the section of the Planning Act 2008 that says what sort of development can be in a development consent order (DCO) (i.e. section 115), to allow 'related housing development', which is then defined as being close to the infrastructure project or related to it. The government must have regard to any guidance when deciding applications.

Draft guidance was issued as part of a briefing note when the bill was published, with a view to it being updated once the bill became an Act, although it hasn't been updated yet. [The briefing note can be found here](#). It says that related housing should either be within a mile of the NSIP or have some functional connection, and the maximum amount of housing that can be in an application is 500 houses. In extremis, it could be just under a mile away and not related to the NSIP.

As these limits are in guidance, they can be changed fairly easily, which would not have been the case had they been in the Act itself.

Here is a summary of the other provisions of the Act. Parts 1-5 (sections 1 to 138) are about housing and are beyond the scope of this blog.

Part 6 – planning

Sections 139-142 make minor amendments to the neighbourhood planning process. There should be some more coming along shortly if the name of the bill in the Queen's Speech 'Neighbourhood Planning and Infrastructure Bill' is anything to go by. Sections 139 and 140 have already come into force.

Sections 143-148 are described as 'local planning' and involve step-in powers for the government when local authorities aren't preparing their local plans fast enough (the [latest stats](#) being that 32% of councils still haven't adopted a local plan since 2004).

Section 149 extends the planning powers of the Mayor of London, now of a different political hue than when the bill was published. It has already come into force.

Sections 150 and 151 introduce the concept of 'permission in principle', a form of zoning that is supposed to make it easier to get funding and therefore go through with development, intended mainly to be housing. To get full planning permission having got permission in principle, one has to secure 'technical details consent'. Section 151 is about maintaining a register of land, which you wouldn't know it from the section, but is intended to be a brownfield land register, some of which gets permission in principle simply by being in the register. Section 151 has already come into force, and part of section 150 will come into force on 12 July.

Sections 152-157 are some miscellaneous modifications of the town and country planning regime. Section 154 is interesting, because it allows local authorities to apply to the government to create a 'planning freedoms scheme', which can disapply planning provisions 'to facilitate an increase in the amount of housing' in an area. Section 155 requires committee reports to give information about financial benefits of granting planning permission, whether

or not material to the application. Hmm. Part of section 152 and all of section 157 have already come into force, and section 153 will come into force on 12 July.

Sections 158 and 159 are about planning obligations, i.e. section 106 agreements and unilateral undertakings. They help with disputes about them and not enforcing affordable housing provisions in some cases.

Section 160 is the NSIP one, as mentioned above.

Sections 161-164 are about 'alternative provision of planning services', i.e. piloting the privatisation of planning application processing (but not decision-making). They have all already come into force.

Section 165 is about energy performance and only commits the government to a review, being the resulting compromise after ping pong. It has already come into force.

Sections 166-170 are about urban development areas, urban development corporations and new towns. For one thing it stops orders creating them being 'hybrid' in parliament, where they can be petitioned against and take a long time. Sections 166-168 have already come into force.

Section 171 is a much watered down (ho ho) version of a section rebel peers tried to insert on sustainable drainage.

Part 7 – compulsory purchase

Sections 172-179 are about a general right to enter land for surveying or valuation purposes in connection with compulsory purchase.

Sections 180-182 require timetables for confirming CPOs (to be published in due course), but they are not compulsory, unlike the deadlines are in the Planning Act 2008 (although having said that the [Yorks and Humber CCS pipeline](#) decision is late); allowing inspectors to decide CPOs if so appointed by the 'confirming authority', and aligning the expiry of CPOs as three years for service of both notices to treat and general vesting declarations.

Sections 183-185 make modifications to the 'general vesting declaration' method of acquiring land.

Sections 186-191 are about taking possession of land. They extend the minimum length of time before land can be entered onto from 14 days to three months. A landowner can serve a counter-notice to require possession to be taken so that notices are not just served and nothing done.

Sections 192-198 are about advance payments of compensation. Advance payments must be made when possession is taken or two months after a request for them, whichever is later. Interest can be claimed for late payments at a rate to be set by the Treasury, expected to be punitive.

Sections 199 and 200 are about objecting to divided land, i.e. where only some of someone's land is taken.

Sections 201 and 202 are about what happens when CPOs are challenged. Section 201 says the decision to make them can be quashed rather than the CPO itself, so the acquiring authority doesn't have to go right back to the start of the process. Section 202 stops the clock on time limits while a challenge in the courts is being dealt with (but only up to a year).

Sections 203-206, the only ones in this part of the Act that are stand-alone rather than amending other Acts, modify the law on overriding easements to carry out building or maintenance work.

I reproduce section 206 in all its glory, to show how modern drafting has become:

206: Amendments to do with sections 203 and 204

Schedule 19 gets rid of legislation replaced by sections 203 and 204.

Part 8, sections 207-211 are about disposal of public authority land, and part 9, sections 212-217 are the usual ones at the end of an Act about commencement and regulations. All the above sections come into force at a date of the government's choosing unless mentioned above.

So the accelerating process of new legislation affecting the Planning Act 2008 regime has hit the statute book. We now have:

- Planning Act 2008
- Localism Act 2011 (3 years later)
- Growth and Infrastructure Act 2013 (2 years)
- Infrastructure Act 2015 (2 years)
- Housing and Planning Act 2016 (1 year)
- Neighbourhood Planning and Infrastructure Act 2017? (1 year)

- See more at: <https://www.bdb-law.co.uk/blogs/planning-act-2008/700-housing-planning-act-2016-finally-published/#sthash.VeobXZ7H.dpuf>

Housing & Planning Act 2016 – Summary

Posted by [Ben Arrowsmith](#) on May 27 2016 in [Commercial property development](#), [Planning & environment](#), [Residential development](#)

After much to-ing and fro-ing between the House of Commons and the House of Lords, the Housing & Planning Act 2016 ("HPA") received Royal Assent on 12 May 2016.

We have provided a summary of the key points in the Housing & Planning Act 2016 below. For the purposes of this summary, we have concentrated on the following parts of the Housing & Planning Act 2016:

- Part 1 – New Homes in England
- Part 4 – Social Housing in England
- Part 6 – Planning in England
- Part 7 – Compulsory Purchase

Part 1 – New Homes in England

This Part of the Housing & Planning Act 2016 deals with the issues of starter homes and self-build and custom house building. Section 2 of the Housing & Planning Act 2016 sets out what starter homes are and who will be eligible to purchase such dwellings. The key points to note are:

1. Starter homes are to be "new dwellings";
2. Starter homes will be available to first-time buyers only and purchasers must be at least 23 years old and no older than 40 (although this may be amended by the Secretary of State by regulations).
3. Starter homes are to be sold at a discount of at least 20% of the market value and always for less than £250,000 outside of Greater London (and £450,000 in Greater London).

Starter homes are going to be “affordable housing” for the purposes of the National Planning Policy Framework and, therefore will count towards Councils’ affordable housing targets as well as the provision of “affordable housing” by developers under Section 106 Agreements.

A lot of detail remains to be provided concerning starter homes (including provisions concerning their onward sale) and this will be provided through regulations which, in turn, are going to be informed by responses received to the Government’s Technical Consultation on the Starter Homes provisions which was launched in March 2016.

The key point made by the Housing & Planning Act 2016 concerning self-build and custom house building is the conferring on local planning authorities of a duty to “give suitable development permission in respect of enough serviced plots of land to meet the demand of for self-build and custom house building in the authority’s area...” (Section 10 (1) HPA). “Development permission” here will mean planning permission or permission in principle (a concept introduced by the HPA). Evidence of such demand will be provided by registers required to be kept under the self-build and custom housebuilding Act 2015. It is worth noting that local planning authorities can apply to the Secretary of State to be exempt from this duty.

Part 4 – Social Housing in England

This Part of the Housing & Planning Act 2016 deals with social housing in England.

The key points to note are:

- Under Section 64 of the Housing & Planning Act, registered providers of social housing (“RPs”) may be paid grants by the Secretary of State “in respect of right to buy discounts”. However, there is no detail in the Housing & Planning Act as to the amount of the grant and whether or not it will be a grant equal to the full market value of the dwelling, nor when and how any payments will be made. Section 66 envisages that the Secretary of State will identify criteria for the voluntary right to buy which would then be monitored by the social housing Regulator.
- Section 76 of the Housing & Planning Act imposes a duty on local housing authorities to consider selling vacant “higher value” housing (where such local housing authority keeps a Housing Revenue Account). What constitutes “higher value housing” will be the subject of regulations made under the Housing & Planning Act and, it is possible, that such definition will take into account different types of housing, different local housing authorities and different geographical areas. The rationale behind this duty is to raise more money to support the supply of more housing.
- Under Section 80 of the Housing & Planning Act, the Secretary of State may (by regulations) “make provision about the levels of rent that an English local housing authority may charge a high income tenant of social housing in England.” The regulations will deal with issues concerning the relationship of this higher rent to the market rate and allow for people with different incomes and social housing in different areas. Under the provisions of Section 81, any such regulations will also require a definition of what is “high income”.
- Sections 92 – 94 and Schedule 4 of the Housing & Planning Act deal with reducing regulation of social housing. This includes:

a) the removal of the disposal consent requirements, which could provide RPs with greater flexibility in relation to their asset management strategies. Schedule 4, Part 1 of the Housing & Planning Act amends Section 133 of the Housing Act 1988 and Section 172 of the Housing and Regeneration Act 2008 so that consent for the onward disposal of housing obtained from local authorities and consents to the disposal of interests in social housing dwellings is no longer required. This means that RPs who own properties acquired from local authorities will now be able to revalue those properties from the low Existing-Use-Value basis to the higher Market-Value-Subject-To-Tenancy basis, allowing them to raise more finance on the strength of their

asset base. Also, RPs are now free to dispose of their dwellings without the need to obtain the consent of the Social Housing Regulator allowing them more freedom to manage their assets. However, charitable RPs should note, the provisions of the Charities Act 2011 will apply unless some alternative arrangement is made with the Charity Commission.

b) the removal of the consents regime to be replaced with a system of notification, providing RPs with more freedom and control over their businesses particularly in relation to group restructuring, mergers, conversions and reconstructions. Again, charitable RPs should be mindful of the provisions of the Charities Act 2011 which currently continue to apply;

c) regulations which limit or prevent local authorities from exerting influence over private RPs through “(a) appointing or removing officers of private RPs; and (b) exercising or controlling voting rights”. Perhaps controversially, the Housing & Planning Act provides for the removal of local authority’s ‘golden share’ to override or modify any existing contractual or other rights or anything in a private RPs constitutional document.

- Chapter 5 of the Housing & Planning Act deals with the major issue of the insolvency of RPs. Section 99 of the Housing & Planning Act allows for the Secretary of State (or, with the consent of the Secretary of State, the Social Housing Regulator) to make a “housing administration order”. Such an order will enable the appointment of a receiver of the RP.

Part 6 – Planning in England

A number of changes to the planning system in England have been made under the Housing & Planning Act and the key ones to mention in this summary are:

- Neighbourhood planning. Under Part 6 of the Housing & Planning Act, local planning authorities are required to make both neighbourhood development orders and neighbourhood development plans “as soon as reasonably practicable after the referendum is held” in a measure to prevent local planning authorities being slow to bring to fruition neighbourhood plans. As to what comprises “as soon as reasonably practicable”, this will be the subject of regulations.
- Local planning. The key issue addressed by the Housing & Planning Act here is “permission in principle” (“PIP”) for housing-led development which will provide developers with greater certainty of consent at an earlier stage in the development cycle. The term “housing-led” development is a little vague but appears to include those developments where there is retail / commercial / etc uses as long as the development’s key component is housing. PIP will be granted either on the adoption of a “qualifying document” (e.g. a development plan document or a neighbourhood development plan) or on application to a local planning authority.

The intention of PIP is to speed up the planning process by granting automatic permission (subject to various technical details (such as location, uses, etc) for homes which are on a local planning authority’s register (which they are required to keep under s151 of the HPA). Whilst no express mention is made of brownfield sites, it appears that this measure is aimed to regeneration the use of brownfield sites to help meet the ever-growing demand for housing. The PIP provisions will not commence until 13 July 2016 (being 2 months after the date of Royal Assent).

- Planning obligations. Sections 158 and 159 of the Housing & Planning Act set out new dispute resolution procedures in relation to planning obligations and make amendments to S106 of the Town and Country Planning Act 1990. Under these sections of the Housing & Planning Act, the Secretary of State is permitted to make regulations which “may impose restrictions or conditions on the enforceability of planning obligations entered into with regard to the provision of (a) affordable housing; or (b) prescribed descriptions of affordable housing.”

Part 7 – Compulsory Purchase, etc

Part 7 of the Housing & Planning Act (which applies to both England and Wales) sets out changes to the compulsory purchase system, the key ones of which are:

- Sections 172 – 180 give all acquiring authorities the same powers of entry on to land for the purposes of carrying out surveys prior to such land being compulsorily acquired (such measures to include standard warrant provisions and a standard notice period of 14 days to be given to every owner / occupier of the land prior to entering the land to carry out the survey).
- Clearer timetables and targets concerning the confirmation stage of the CPO process.
- Section 181 grants confirming authorities the power to appoint inspectors to act in the stead of the confirming authority in relation to the confirmation of a CPO.
- Section 203 confers the power to override easements and other rights where: (i) the land is the subject of planning consent for building or maintenance work; (ii) the land has become vested by a specified authority or has been appropriated by a local planning authority for planning purposes; (iii) the authority could acquire the land compulsorily for the purposes of the building or maintenance work; and (iv) the building or maintenance work is related to the purposes for which the land was vested, acquired or appropriated.

With legislation like this, a summary provides only an opportunity to highlight those issues which we feel will be of use to our clients. For further information on any of the other provisions of the Housing & Planning Act, please feel free to contact members of our Social Housing Sector Team.

Tuesday, May 24, 2016 Last updated at 10:21

HOUSING AND PLANNING ACT 2016



On 12 May 2016 the Housing and Planning Act 2016 was given Royal Assent, the Act extends to England and Wales only.

Certain aspects of the Act come into force on the day on which the Act was passed, namely the following:

Part 9 – General

Chapter 2 of Part 4 – Vacant higher value local authority housing

Schedule 10 – Enfranchisement and extension of Long Leaseholds: Calculations

Section 136 – Enfranchisement and extension of long leaseholds: calculations

Section 137 – Redemption price for rentcharges

Section 139 – Designation of neighbourhood areas

Section 140 – Timetable in relation to neighbourhood development orders and plans

Section 149 – Planning power of the Mayor of London

Section 151 – Local planning authority to keep register of particular kinds of land
Section 152(1) – Approval condition where development order grants permission for building
Section 157 – Planning applications etc: setting of fees
Section 161 – Processing of planning applications by alternative providers
Section 168 – Sections 166 and 167: consequential repeals

Other provisions come into force at the end of the period of two months beginning with the day on which the Act was passed, these are as follows:

Section 124 – Assessment of accommodation needs
Section 130 – Tenants' associations: power to request information about tenants
Section 150 (1) to (3) – Permission in principle for development of land
Section 153 – Planning applications that may be made directly to Secretary of State

Additional provisions of the Act come into force on such day as the Secretary of State may by regulations appoint.

If you wish to view the Act in full, you can do so via the following link:

www.legislation.gov.uk/ukpga/2016/22/pdfs/ukpga_20160022_en.pdf