



Client breakfast briefing

A strategy to build 1 million homes by 2020

Housing and Planning Update

December 2016



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In short:

- The Housing White Paper, which is set to establish new government policy to deliver more homes, is expected end January 2017 (delayed from November 2016)
- November's Autumn Statement links infrastructure to housing delivery with new announcements on spending
- The London Mayor's draft supplementary planning guidance (SPG) on housing and viability focuses on "genuinely affordable" homes for Londoners on low and middle incomes
- A government review confirms a clear case for the Homes and Communities Agency, with the need for a new statement of purpose
- Further guidance is awaited on the implementation of starter homes and the practicalities of planning permission in principle (PIPs) pursuant to the Housing and Planning Act 2016
- The scope of the Neighbourhood Planning Bill is limited, but suggests quicker neighbourhood plan making and reduced 'pre-commencement' planning conditions
- Recent legal case decisions further test the interpretation of national planning policy

Change...again!

The basics stay the same, the plan-led system, but the policy emphasis and detail is forever changing with each new secretary and planning minister.

In recent years we have seen a common thread, current government would say a golden thread, and strengthening message that the planning system and health of our economy is inextricably linked. Put simply, the country needs to build more homes to meet social and economic objectives. This places those that deliver in a crucial role but scheme success often depends on understanding the policy nuances and how these play out in local politics.

This paper outlines key current announcements and themes in housing and planning, with national policy changes set to continue through the soon to be published Housing White Paper.

The Housing White Paper

The Government has indicated that a number of new planning policies would be included in the forthcoming Housing White Paper. This should respond to the recommendations of the Local Plan Expert Group and can be expected to cover the following items:

- Delivery test
- Community Infrastructure Levy
- Objective assessment of need
- The speed of local plan making
- Local planning fees

Autumn Statement

Chancellor Philip Hammond has announced £2.3 billion 'Housing Infrastructure Fund' to deliver infrastructure to unlock house building in the areas where the need is greatest, as well as an affordable housing settlement for London.

Reacting to recommendations by the new National Infrastructure Commission (NIC), £100 million is pledged in development funding for a new Oxford to Cambridge rail link, and £27 million to develop plans for a road expressway between the cities. The NIC is asked to further explore delivery models across the country, underpinned by assumed government spending on infrastructure of between 1 per cent and 1.2 per cent of GDP each year from 2020 to 2050.

London Housing

The Autumn Statement confirms a Greater London Authority's (GLA) affordable housing settlement of £3.15 billion to deliver over 90,000 homes starts by 2020/21, the largest sum yet devolved to a London mayor. The mayor's proposal is that nearly all the new homes will be one of three "genuinely affordable" types; shared ownership, affordable rent and 'London Living Rent' (the latter based on a third of average household income in each borough).

Announced on 26 November, Sadiq Khan's draft affordable housing and viability SPG consults on a proposed threshold of 35% "genuinely affordable" homes per site of 10 or more homes (without needing public subsidy) to avoid mayoral scrutiny of viability information. A standardisation of the information that viability assessments should include, and the methodology that should be used, is also proposed.

The SPG states support for built to rent, with tailored guidance to be developed for this product and its 'pathway' through the planning system, including a specific viability approach.

Proposals for 'standardisation' of viability assessment may well filter beyond London in time.

A future purpose for the Homes and Communities Agency (HCA)

Following a government review of the need for the HCA, a written ministerial statement on 30 November confirms a clear and continuing need for a body carrying out HCA functions (except regulation), with a principal objective on housing delivery and subordinate objectives including regeneration, growth and devolution.

The review suggests a more focused HCA with enhanced skills and delivery capacity.

The Housing and Planning Act (Royal Assent, May 2016)

The existence of the Act reflects recognition of the national housing crisis. It had a difficult passage through the two Houses of Parliament and a lot of detail is left for later regulations, policy and guidance. Two key elements of the Act are as follows.

A duty on English local planning authorities to promote the supply of 'starter homes' (defined as an affordable housing type). Future regulations will clarify on-site requirements, which could be as high as 20% for developments of 10 plus new units. Starter homes are to be available to purchase by 'qualifying' first time buyers between 23 and 40 years of age at a discount of at least 20% of the market value with restrictions on resale. The introduction of starter homes has been welcomed by some, for commercial and local political reasons, but has raised concerns from others that it will reduce further the provision of affordable homes to rent.

The Act paves the way for the introduction of *planning permission 'in principle'* for housing-led developments. The purpose is to address 'in principle' issues such as land use, location and scale prior to the submission of details. A PiP may be granted by the LPA (small sites - under 10 units - where a developer has made an application to the LPA) or through allocations in 'Qualifying Documents', namely an adopted development plan document, a made neighbourhood development plan or a 'brownfield register'. Application PiPs will last for three years whilst allocation PiPs will last for five years, in both cases unless otherwise stated by the LPA. Once a PiP has been granted, work on site cannot commence until consent has been granted for technical details. 'In principle' issues cannot be re-opened at technical details stage.

Without the detail, it is difficult to see how PiPs provide a practical advantage over the current basket of allocation/outline/full/reserved matters, except a potential fast-track and/or reduced risk option for rural brownfield sites. It will be some time before the practical working of PiPs is clarified, established and familiar.

Neighbourhood Planning Bill

The Bill was introduced in September 2016 and is currently passing through Parliament with a view to becoming law in 2017. It proposes relatively modest changes to neighbourhood planning, compulsory purchase and the use of planning conditions.

The *timetable for adopting Neighbourhood Plans* is likely to be shortened, to enable greater weight to be attributed sooner.

To address 'toxic' planning conditions, the Bill proposes regulations to restrict the extent and use of conditions. Written agreement will be required from applicants before a local planning authority can impose 'necessary' *pre-commencement planning conditions* on a full planning permission.

This should be welcomed by the development industry, enabling a focus on deliverable consents.

Legal cases

The interpretation of planning policy is increasingly tested in the courts. As an illustration of the scope and potential effect, recent cases include:

- *Shropshire BC & SSCLG v BDW Trading* – where it is agreed that a local plan requirement is out of date / inconsistent with the NPPF an Inspector must come to a finding on objectively assessed need and consider the five year housing land supply to conclude whether policies relevant for the supply of land for housing are out of date
- *East Staffs BC v SSCLG & Barwood Strategic* – there is no freewheeling test of sustainable development outside paragraph 14 of the NPPF. Only paragraph 14 determines when the presumption in favour of sustainable development applies. Whilst there is some discretion to allow a proposal which conflicts with the development plan, the local plan should prevail (applications that conflict should be refused) in all but exceptional cases. The judgment stops short of discussing how exceptional 'exceptional' has to be. To minimise risk of judicial review the weight of the breached policy as well as the weight of the extent of the harm to the breach should be addressed.
- *Test Valley BC & SSDCLG v Trustees Barker Mills Estate* – reiterating no freewheeling test of sustainability outside paragraph 14 of the NPPF

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