

Government Publishes New Series of Planning Related Reforms

The Government has published details of a new raft of planning reforms in England aimed at speeding up the provision of new housing. This briefing gives a run-down of the key measures which are contained in a new Housing and Planning Bill, and an announcement on the extension of office-to-residential permitted development rights. It also notes some measures proposed to reform compulsory purchase rules which are contained in the Bill.

"Permission in Principle" for Housing on Brownfield Land

The most radical reform is a framework power in the Bill for a new form of "Permission in Principle" for housing developments on brownfield land.

Permission in Principle (PiP) would be a new form of right which establishes the principle for development on a specific site. The Government intends it to apply where a site is either designated by a local planning authority (LPA) on a brownfield land register as suitable for housing, or that site is allocated for housing in the local development plan or neighbourhood plan. A PiP would not in itself be a planning permission; however, a subsequent "technical details consent" (which would constitute the planning permission) would need to be granted in accordance with the PiP.

The process would work broadly as follows:

- The Secretary of State would issue a generic development order (similar to the General Permitted Development Order) which would grant PiP to all applicable sites from time to time under the following conditions:
 - It would apply to sites which are allocated in a qualifying document (i.e. brownfield land register or relevant development plan) and have been assessed as suitable for use as housing in that location.
 - An alternative and separate process would be established allowing applications to be made for PiP. Under this process, the maximum amount of development permitted would be fewer than 10 units.
 - The order would establish the validity period of the PiP.
- Each LPA would need to maintain a register of brownfield land. The Government has suggested possible criteria for inclusion of land on the register:
 - Land must already be available, or become available in the near future;
 - The land must be suitable for housing development of at least five units; and
 - There must be no insoluble physical or environmental constraints to development.LPA's will have to comply with the development plan and national policies in making these assessments. LPA's may also be required to consult upon the inclusion of land on the register.

Key issues

- New form of "Permission in Principle" for housing developments on brownfield land to be introduced
- Office-to-Residential Permitted Development Rights are to become permanent and will in future include new demolition and rebuild rights
- Various other planning and compulsory purchase reforms are announced

- Alternatively, an applicant would be able to apply for PiP to the LPA.
- If a site fell within the PiP development order (or the PiP is otherwise granted by a LPA) an applicant could then apply to the LPA for Technical Details Consent (TDC). This application would need to contain all remaining details necessary to grant full planning permission for the development. The LPA cannot question the principle of development in determining the TDC (except in limited circumstances where circumstances have changed) and can, therefore, only reject the application in relation to the technical details contained in the application. This would cover matters such as type of housing, design of the development, and access. The TDC could then contain planning conditions in the usual way.

It remains to be seen whether the PiP mechanism will greatly speed up planning decisions on housing. Much depends on how the brownfield land register can be made to work and whether decisions will simply become bogged down in the TDC process. In particular, it seems clear that there will be room for disputes between applicants / objectors and the LPA as to whether particular sites should, or should not, be included on the register. If the PiP approach proves successful, however, it might be tempting for the Government to extend it to other forms of development, although any extension to the type of developments covered would need to be consistent with the Environmental Impact Assessment Directive.

Permanent Office-to-Residential Permitted Development Rights

The Government has announced that it will make permanent the office-to-residential permitted development rights that have been in place since 2013. These rights were to expire on 30 May 2016. In addition, the Government announced that the changes will include new rights to demolish offices and rebuild as dwellings. Further details about limitations and the prior approval mechanism will be published in due course.

In addition, the Government has confirmed that those who have permission under this regime will have 3 years to complete the change of use.

LPAs which successfully applied for Article 4 directions disapplying these rights in their areas under the pre-existing regime, will have to apply afresh for these exemptions to remain in place. In the meantime, existing exemptions will remain in place until May 2019.

It has been reported that the Government will consult shortly on proposals to require developers who take advantage of the office-to-residential permitted development rights to provide starter homes at a 20% discount. Currently, there is no requirement for Section 106 agreements / affordable housing contributions in relation to such change of use.

The Government has also announced that new permitted development rights allowing changes from industrial light buildings and launderettes to housing will be introduced.

Starter Homes

The Bill requires LPAs to promote the supply of starter homes for first-time buyers. It also contains powers to require planning permission for residential development to contain a specified proportion of starter homes or commuted sums for their provision.

Mayor of London's Planning Powers

The Bill aims to extend the planning powers of the Mayor of London in relation to planning. Firstly, the Secretary of State will be given powers to prescribe that applications of potential strategic importance for London (to which call-in and direction-to-refuse powers apply) can be determined by reference to the London Plan from time to time. This will provide more flexibility to ensure the Mayor's powers to call-in and direct refusal of applications remain relevant to the changing nature of London planning policy.

Powers are also given to the Mayor to require London boroughs to consult with him before granting planning permission for development of a specified type. The Government intends to use this power to allow the Mayor to have control over River Thames wharves and important London sightlines.

Related Housing within Nationally Significant Infrastructure Projects

The Bill allows housing associated with a Nationally Significant Infrastructure Project (NSIP) to be consented as part of the Development Consent Order for the main project. The Secretary of State will set out guidance as to the amount of housing that could be included as part of the NSIP. The Government has confirmed that construction worker housing and housing for key operational phase workers would be included.

It does not appear that that this change will allow a significant housing element to be included, for example, within a mixed use business and commercial NSIP where this is unrelated to the construction or ongoing management of the development.

Affordable Housing Obligations

Separately, David Cameron announced at this month's Conservative Party conference that affordable housing obligations in Section 106 Agreements will in future only require the provision of affordable housing to buy (no longer for rent). This will be welcomed by developers but is likely to prove challenging to local authorities from the point of view of meeting their social housing objectives.

Local Plans

A significant number of planning authorities still do have not up-to-date local plans in place which comply with the National Planning Policy Framework. In September 2015, the Government announced a review by an expert panel into simplifying the local plan-making process. This follows an announcement by the Government in July 2015 that it would intervene to arrange for a local plan to be written on behalf of any authority which did not have a local plan in place by early 2017.

Compulsory Purchase

A number of reforms to compulsory purchase procedures are proposed in the Bill including primarily:

- A requirement for the Secretary of State to publish timetables setting out the steps for confirming compulsory purchase orders (CPOs).
- Power for Inspectors to confirm CPOs even where objections remain (previously only the Secretary of State could confirm these).
- Removal of the "Preliminary Notice of Intention to make a General Vesting Declaration (GVD)" stage of CPO procedure.
- An extension of the minimum period following GVD before possession can be taken, from 28 days to 3 months (with a new counter-notice mechanism where a person in possession of land wishes possession to be taken on an earlier date).
- Clarification that GVDs can only be made within three years of the CPO becoming operative (in line with the "notice to treat" route). This had been uncertain under case law.
- A power to allow decisions to confirm a CPO to be challenged (not simply the CPO itself). This would allow a CPO to be redetermined if a decision to confirm was quashed.
- Provisions to allow specified acquiring authorities (such as statutory undertakers) to use similar powers to override easements and other private rights as are enjoyed by LPAs.
- General rights for all acquiring authorities to survey land in relation to compulsory purchase proposals.

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