

Planning for the future—the new Housing and Planning Act 2016

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Planning analysis: Following a lengthy period of debate, the Housing and Planning Act 2016 (HPA 2016) has received Royal Assent and was recently published. Roy Pinnock, partner at Dentons, considers the main planning aspects of the new legislation and the implications for local authorities.

What are the key planning provisions in HPA 2016?

HPA 2016, Pt 1 introduces a duty to promote starter homes (Section 1), which are new homes to be sold to first time buyers aged 23–39 at no more than 80% of market value (capped at £450,000 in Greater London and £250,000 elsewhere). HPA 2016, s 4 imposes a general duty on local authorities to promote the supply of starter homes when carrying out planning functions (such as preparing local plans, discharging the duty to cooperate and determining planning applications).

The Secretary of State may make regulations restraining the grant planning permission for specified residential developments if set requirements relating to starter homes are met (HPA 2016, s 5). This may include a requirement for section 106 obligations to secure a set amount of starter homes or a payment in lieu. He may also issue compliance directions sterilising specific local planning policies where they are getting in the way of delivery (HPA 2016, s 7).

Similar duties and powers apply to the grant of planning permission and permission in principle (PIP) for self-build/custom build homes (HPA 2016, s 10).

HPA 2016, Pt 6 enables other initiatives intended to promote housing delivery, many of which require secondary legislation to join the dots:

- o speeding up neighbourhood area designation and neighbourhood plan adoption (HPA 2016, ss 139–142)
- o 'local planning' powers for the Secretary of State to intervene to suspend, prepare and otherwise control the plan-making and examination process (HPA 2016, ss 143–148)
- o mayoral intervention (HPA 2016, s 149)—allowing regulations to be made to widen the scope of mayoral call in and consultation powers
- o PIP for 'housing led' development in England (HPA 2016, s 150)—PIP may be granted by a local development order on sites listed in the brownfield register and allocated in local and neighbourhood plans (or by application, in relation to small sites) and will establish the principle for development, with an application for 'technical details consent' needed
- o brownfield register (HPA 2016, s 151)—local authorities in England will be required by regulations to compile and maintain a register of brownfield land
- o dispute resolution service (HPA 2016, s 158) to allow applicants or authorities to ask the Secretary of State to appoint an 'independent person' for non-binding recommendations about the terms of the section 106 agreement where it is otherwise 'likely' that the permission would be granted and a specified period has passed
- o housing within nationally significant infrastructure projects in England (HPA 2016, s 160)
- o a power to review/limit enforceability of affordable housing planning obligations, which may have been intended to cater for any adverse result in *R (on the application of West Berkshire District Council and Reading Borough Council) v Secretary of State for Communities and Local Government* [2015] EWHC 2222 (Admin) [2015] All ER (D) 360 (Jul) (HPA 2016, s 159)
- o powers to allow pilots for planning application administration to be outsourced (HPA 2016, ss 161–164)
- o planning freedoms schemes to disapply planning controls at the local authority's request to boost housing provision (HPA 2016, s 154)
- o a duty to report financial benefits of development at the decision-taking stage (HPA 2016, s 155)

When will the provisions come into force and will there be any transitional arrangements?

HPA 2016 came into force on 12 May 2016, although it was unusually only published on 23 May. The power to make brownfield register regulations and to intervene in neighbourhood and local plans came into force immediately (and has already been used, in relation to the Birmingham local plan). The framework powers for the PIP come into force on 13 July 2016 and the remainder of those above will become effective as appointed by regulations.

What will be the most significant changes/implications for developers?

The starter homes duties are a challenge for the development and government sectors as a whole. The government is considering the responses to its technical consultation on the starter homes regulations and the development industry needs much more certainty about the product and the process, in particular how open market value and viability exceptions will work. The new product will be accompanied by changes to the National Planning Policy Framework policy on affordable housing so that it will essentially replace existing provision. As well as providing commercial opportunities, this new form of tenure brings its own uncertainties.

PIP offers real opportunities for short cuts, but the technical challenges on environmental assessment, masterplan structure and development parameters/flexibility are going to challenge all those involved.

What will be the most significant changes/implications for local authorities?

Implementing the duty at the expense of affordable housing provision, alongside local plan requirements and evidence of need, is going to be a technical and political challenge for authorities.

The dispute resolution service provisions are unlikely to make much difference unless there is a very clear starting point on the use of conditions instead of planning obligations and the use of template agreements. Authorities will also be more cagey about saying that they are likely to grant permission and may look to refer schemes to the Secretary of State to block out an appeal for the protected period.

Scrutiny of local plan preparation and pressure to deliver a five year housing land supply on paper are intensifying and will continue to do so. HPA 2016 now provides an arsenal of powers for the government to control the extent of plan coverage, thematic issues (such as starter homes and green belt release), switching certain types of affordable housing obligation off and sterilising local plan policies that inhibit starter home delivery. As a result, there are significant tailwinds to plan adoption but HPA 2016 ultimately increases the overall regulatory burden on authorities, with a still-diminishing administrative resource.

Is the concept of 'permission in principle' likely to speed up and/or encourage new development to come forward?

PIP is intended to enhance the attractiveness to lenders of development assets, by providing a more certain outcome than the development plan allocation process. With a supportive authority, and sensible masterplan structures, it could be a much quicker process but it is totally reliant on collegiate working on environmental assessment and other issues to be realisable. Given that the powers to create local development orders already exist, the question remains as to what incentive there is for authorities to dedicate resources to it.

Interviewed by Alex Heshmaty.

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