The Housing and Planning Bill 2015

The Housing Bill, or Housing and Planning Bill (with explanatory notes) as it has become, forms a cornerstone of the Conservative Government's vision for 2020. With much of the content trailed, not only in the Conservative Manifesto, but in Fixing the Foundations (the Government's productivity plan), it's a heavy weight piece of legislation – all 145 clauses and 11 schedules of it. The Bill applies to England only.

This brief covers the sections of the Bill of most interest to BPF members. We will be engaging extensively with Parliamentarians and officials over the next weeks and months.

Part 1

Chapter 1
Clauses 1-7: Starter Homes

This chapter sets out the definition of starter homes:

- A new dwelling
- Available to first time buyers only (under 40)
- At at least 20% less than market price
- To be less than the price cap (£250,000 outside London and £450,000 in London)
- To be subject to restrictions set by the Secretary of State in regulations.

Local authorities are under a duty to promote the supply of starter homes, and to prepare reports about the actions they have taken under the starter homes duties.

The Secretary of State could, through regulations, to require all that in relation to applications for residential development above a certain size there must be a planning obligation (under section 106 of the 1990 Act) securing a certain proportion of starter homes on the site.

The regulations may also specify that certain types of residential development should be exempt, or that certain areas should have a higher starter home requirement, or that local planning authorities should have discretion about certain requirements.

Chapter 2
Clauses 8-11: Self build and custom housebuilding

Self building and custom building is defined as a unit built or completed by an individual, association of individuals or person working for either of the former – not the building of a unit on a plot where the plans have been specified, but not delivered by the purchaser.

Local authorities have a duty to grant permission on enough serviced plots of land to meet the demand for self building and custom building in their area.

Part 2

Chapter 1 & 2
Clauses 12-21: Rogue Landlords and Letting Agents in England – Banning Orders

This chapter introduces the concept of a banning order, which is an order made by the First-tier Tribunal, which has the effect of banning a person from:

- letting housing in England;
- engaging in letting agency work that relates to housing in England;

- engaging in property management work that relates to housing in England; or
- doing two or more of those things.

The Secretary of State will set out in regulations what constitutes a banning order offence. A local housing authority in England may apply for a banning order against a person who has been convicted of a banning order offence. Before applying for a banning order, the authority must give the person a notice of intended proceedings, informing them that the authority is proposing to apply for a banning order and explaining why, and inviting them to make representations during a 'notice period', which must not be less than 28 days. The authority must consider any representations made during the notice period and wait until this period has ended before applying for a banning order. A notice of intended proceedings must be given within 6 months from the date on which the person is convicted of a banning order offence.

The clause provides that in deciding whether to make a banning order and if so, what order to make, the Tribunal must consider:

- the seriousness of the offence;
- any previous convictions that the person has for a banning order offence;
- whether the person is or ever was included in the database of rogue landlords and letting agents;
- the likely effect of the banning order on the person against whom the banning order is proposed to be made and anyone else who may be affected by such an order.

A ban must last for at least six months. If the order is breached, a 'responsible local housing authority' can impose a financial penalty up to £5,000.

A breach of a banning order does not invalidate or affect the enforceability of any provision of a tenancy or other contract. In particular, this is to ensure that a tenancy agreement cannot be found to be invalid on the basis that it was granted when a landlord or letting agent was subject to a banning order. This provides protection for the parties to a tenancy agreement by ensuring that they do not lose their rights under the agreement as a result of the banning order.

Chapter 3
Clauses 22-31: Database of Rogue Landlords and Letting Agents

The Secretary of State is required to establish and operate a database of rogue landlords and letting agents. Local housing authorities will be responsible for maintaining the content of the database. Local authorities must include those with banning orders made against them, and those where the local authority deems it suitable for inclusion (if not in possession of a banning order).

An appeal mechanism will be in place for those included in the database.

Chapter 4
Clauses 32-46: Rent Repayment Orders

This Chapter empowers the First-tier Tribunal to make rent repayment orders to deter rogue landlords who have committed an offence (below), or rented housing in breach of the new banning order made under Chapter 2.

The offences are:

- breaches of improvement orders and prohibition notices and of licensing requirements under the Housing Act 2004,
- violent entry under the Criminal Law Act 1977, and
- unlawful eviction under the Protection from Eviction Act 1977.

An order requires a landlord to repay rent paid by a tenant or to repay to a local housing authority housing benefit or universal credit which had been paid in respect of rent.

Chapter 5
Clause 47: Interpretation of Part 2

This chapter provides the definition of a "letting agent", "letting agency work" and "property management work". It also describes what is meant by "English letting agency work" and "English property management work".

Part 3
Clauses 49-55: Recovering Abandoned Premises in England

This part provides that a landlord may follow to recover possession of a property where it has been abandoned, without the need for a court order. A private landlord may give a tenant notice which brings the tenancy to an end on that day, if the tenancy relates to premises in England and certain conditions are met:

- a certain amount of rent is unpaid (two months, if monthly, or one quarter);
- that the landlord has given a series of warning notices
- and that neither the tenant or a named occupier has responded in writing to those warning notices before the date specified in the notices.

Part 4: Social Housing in England

Chapter 1
Clauses 56-61: Implementing the Right to Buy on a Voluntary Basis

This enables the Secretary of State to pay grant to private registered providers to cover the cost of a discount awarded to the tenant of a provider when buying their home from that provider. The effect of this clause would be to enable the Secretary of State to pay for the cost of the discount when a tenant of a private registered provider applies to buy their home under the terms of a voluntary deal between the Secretary of State and the private registered provider sector.

Chapter 2
Clauses 61-72: Vacant High Value Local Authority Housing

This Chapter enables the Secretary of State to require local housing authorities to make a payment to the Secretary of State calculated by reference to the market value of the high value vacant housing owned by the authority. The requirement only applies to local authorities which are required to keep a Housing Revenue Account ("HRA").

The provisions also place a duty on local housing authorities to consider selling such housing and enable the Secretary of State to enter into an agreement with a local authority to reduce the amount of the payment, so long as the money is spent on housing or on things that will facilitate the provision of housing.

The provisions are intended to encourage the more efficient use by local authorities of their housing stock through the sale of their high value housing so that the value locked up in high value properties can be released to support an increase in home ownership and the supply of more housing.

Chapter 4
Clauses 74-83: High Income Social Tenants: Mandatory Rent

The clause gives the Secretary of State the power to set the levels of rent that registered provider of social housing must charge high income social tenants (‘HISTs’). Following consultation on some of the detail, regulations will determine how much rent a HIST should pay.

HIST will be defined as with an income of over £30,000 per year and over £40,000 in London.

Part 5: Housing, Estate Agents and Rentcharges: Other Changes
Clauses 84-91

This is a mixture of separate measures that may have some impact on members, depending on what part of the sector they operate in. For PRS members the Bill contains provisions which change the fitness test for landlord licensing.

It also allows local authorities access to tenancy deposit scheme databases for enforcement and information provision.

For leasehold members, clause 90 and Schedule 5 set out new methods of calculating enfranchisement and lease extension claims to be made by regulation by the Secretary of State.

Part 6

Clauses 92-95: Neighbourhood Planning

This part introduces a timetable by which local authorities must undertake key neighbourhood planning functions, in addition to allowing the Secretary of State to intervene in a local authority's decisions on whether to hold a referendum on an NDO or a neighbourhood plan.

Local authorities must also notify neighbourhood forums of any planning applications in their area.

Clauses 96-100: Local Planning

The existing provision enables the Secretary of State, or the Mayor of London if the local planning authority are a London borough, to direct the authority to amend their local development scheme (which sets out the development plan documents that the authority intend to produce and the timetable for their production). The amendment is intended to ensure that directions made under the power can relate to the subject matter of documents specified in a scheme. This addresses concern that the current wording may be open to an unnecessarily narrow interpretation.

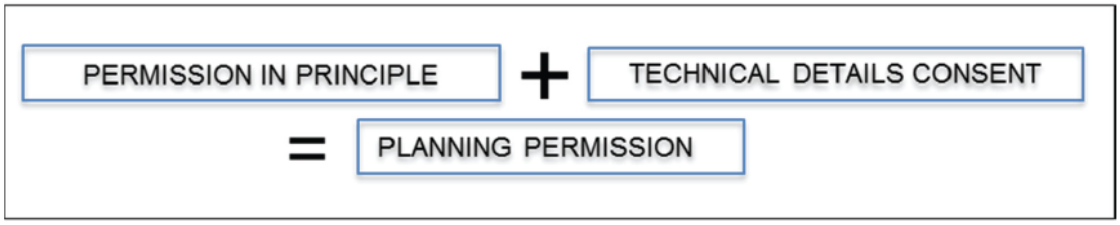
Clause 101: Planning in Greater London

This clause enables the Secretary of State to prescribe these applications by reference to the Mayor's spatial development strategy or London borough development plan documents.

In addition, the Secretary of State, by development order, can enable the Mayor to direct a London borough to consult the Mayor before granting planning permission for development described in the direction (this is the embodiment of the trailed devolution to the Mayor of planning powers over wharves and sightlines).

Clause 102-103: Permission in Principle and local registers of land

These clauses make clear that:



The Secretary of State can, by a development order, grant permission in principle to land that is allocated for development in a qualifying document. The development order will set out the detail of the type of document which will allocate land for a permission in principle.

Initially, the Government intends only land allocated in the Brownfield Register, Development Plan Documents and Neighbourhood Plans will be capable of obtaining permission in principle. The development order will also set out what type and scope of development will be granted permission in principle. The Government's current intention is that this will initially be limited to sites suitable for housing (use), location and amount of development. If land is allocated in such a document and satisfies the requirements of the development order as to type and scope of development the development order will automatically grant it permission in principle.

The Government's current intention is to limit the type of development to minor housing development (the creation of fewer than 10 units) and intend to consult on the details of the technical detail consent in due course.

There will be regulations requiring a local authority to compile and maintain a register of particular kinds of land in their area.

Clauses 104-106: Planning permission etc

"Permitted development rights".

This clause enables development orders to require the approval of the local planning authority or the Secretary of State for any matters related to the building operations or the use of the land following those building operations. This enables certain aspects of the permitted development right to be delegated to the local planning authority, so that local conditions and sensitivities can be taken into account.

Local authority planning performance

Local authorities can be designated for their performance in determining applications for categories of development described in regulations made by the Secretary of State (which could now include a separate category of non-major development). The developer may then choose to make an application for development of that description directly to the Secretary of State.

The amendments also allow the Secretary of State to provide that certain applications may not be made directly to him. For example, if a local planning authority was designated for its performance in determining non-major applications, it may be appropriate for certain minor applications to continue to be dealt with at a local level.

Local authorities: information about financial benefits

This ensures that potential financial benefits of certain development proposals are made public when a local planning authority is considering whether to grant planning permission (including CIL).

Clause 107: NSIPs

This provides the Secretary of State with the power to grant development consent for housing which is linked to an application for a nationally significant infrastructure project.

Guidance produced by DCLG will set out details of the amount of housing that may be granted consent within a development consent order. This will include

- housing which is functionally linked to the infrastructure project (for example, housing that is required for workers during the construction phase of an infrastructure project or for key workers during the operation phase).
- housing where there is no functional link but there is a close geographical link between the housing and the infrastructure project.

Clause 108-109: Urban Development Corporations

These clauses bring in new consultation requirements and a changed parliamentary procedure.

Part 7: Compulsory Purchase etc
Clauses 111-117: Right to enter and survey land

This part introduces a new general power of entry for survey purposes available to all acquiring authorities in connection with a proposal to compulsorily acquire land. An acquiring authority may authorise a person to enter and survey land in connection with a proposal to compulsorily acquire land. An authorisation may relate to the land which is the subject of the proposal or to other land.

Clauses 118-120: Confirmation and time limits

The Secretary of State is required to publish timetables setting out the steps to be taken by authorities confirming a CPO. An Inspector can be appointed to act instead of a confirming authority too.

The time limit for exercising compulsory powers where the notice to treat procedure is to be followed is clarified. A notice to treat may not be served after the end of the period of 3 years beginning on the day on which the compulsory purchase order becomes operative. A general vesting declaration may not be made after the end of the period of 3 years beginning with the day on which the compulsory purchase order becomes operative. This ends any uncertainty on this issue created by case law.

Clauses 121-122 (and Schedule 7): Vesting declaration: procedure

A preliminary notice of intention is no longer required before a general vesting declaration may be executed. Instead, a prescribed statement about the effect of Parts 2 and 3 of the Compulsory Purchase (Vesting Declarations) Act 1981 must be included in the confirmation notice under section 15 of the Acquisition of Land Act 1981. An invitation to any person who would be entitled to claim compensation if a general vesting declaration were made to give the acquiring authority information about the person's name, address and interest (using a prescribed form) must also be included in a confirmation notice.

The minimum period after which land may vest in an acquiring authority after the service of the notices required by section 6 of the Act is to be extended to a minimum of 3 months, from the current minimum of 28 days.

Clauses 123-128: Possession following notice to treat etc

The notice period for taking possession under the notice to treat/notice of entry procedure is to be extended to a minimum of 3 months, from the current minimum of 14 days.

A notice of entry ceases to have effect if, before entering on taking possession of the land, the acquiring authority becomes aware of an owner, lessee or occupier to whom they have not given a notice to treat. This may occur where a new interest in land comes to light (or there is a change in the terms of interested parties – such as a transfer of that interest to another person), after notice of entry has been given, but before possession is taken. If the acquiring authority serves a notice to treat on the recently discovered

owner, lessee or occupier, the acquiring authority may serve a new notice of entry on all the owners, lessees and occupiers of the land. A shorter notice period is introduced in these circumstances provided the recently discovered person is not in occupation of the land. That period will be a minimum of 14 days, or until the end of the period specified in the last notice of entry, whichever is the longer.

A person in possession of the land is able to serve a counter notice requiring the acquiring authority to take possession of the land on a specified date. The date specified in the counter-notice must be not less than 28 days after the date the counter notice is served and must not be before the end of the period specified in the notice of entry under section 11(1) or any extended period that the person has agreed with the acquiring authority.

Clauses 129-133: Compensation

These clauses provide a power for the Secretary of State to make regulations to impose further requirements about the notice claimants must give the acquiring authority detailing the compensation sought by them. These regulations may make provision about the form and content of the notice, and the time at which the notice must be given. They may also permit or require a specified person to design a form to be used in making a request and may require the acquiring authority to supply copies of the form to be used.

There are also provisions to make changes to the advance payments system to facilitate clearer claims and earlier payments. They also require the payment of interest if the acquiring authority fails to make a payment on time.

Clauses 134-136: Disputes

The intention is to harmonise (as far as possible) the approach to the treatment of material detriment under the vesting declaration and notice to treat procedures and to allow the acquiring authority to enter and take possession of the land they are authorised to take, before any dispute about material detriment has been determined by the Upper Tribunal.

Clauses 137-139 (and Schedule 11): Power to override easements and other rights

These provisions introduce a new power which extends the existing powers to override easements and restrictive covenants under the Town and Country Planning Act 1990 and other legislation to acquiring authorities, such as statutory undertakers, which do not already have those powers.

This enables a person to interfere with easements and other rights (except where the right is a "protected right") when undertaking building or maintenance works on, or using, land which has been vested in or acquired by a "specified authority" (limited to an acquiring authority that is a public body).

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