

Brandon's brave new world?

In March last year, Housing and Planning Minister Brandon Lewis, signalled a commitment to further intervention in the housing market - targeted specifically at young people.

The Minister acknowledged that: "...there are still far too many hard-working young people from all walks of life struggling to gain a foot on the property ladder, so we want to go further and give them access to a new generation of high-quality, low-cost starter homes".

The 'starter homes' initiative is fast becoming a legal reality. What will those new powers and duties mean for developers, local planning authorities, and all those involved in the delivery of new market and affordable housing?

In this article, Robert Waite and Gareth Davies from our Planning & Environment team discuss chapter one of the Housing and Planning Bill and its implications.

Just for starters...

Whilst future regulations may restrict the definition further, clause 2 of the Bill requires any 'starter home' to fulfil 4 criteria.

First it must be a 'new dwelling'. Importantly, however, it need not be a new building; a building which has been converted to first time residential use could still be a starter home.

Second, it must be 'available for purchase' by a first time buyer under the age of 40. Whilst those in their late thirties contemplating buying a home may be pleased to find themselves officially recognised as 'young', the age selected could be seen as a painful reminder of the inexorable rise in the average age of 'first time buyers' over recent decades.

Legislators were no doubt relieved to find that a definition of 'first time buyer' already exists in the obscure provisions of the 2003 Finance Act. Since the Housing and Planning Bill cross-refers to section '57AA (2)' of that statute, it is worth noting that that this could place a

considerable burden of inquiry on housebuilders and local planning authorities.

To be a 'first time buyer' not only must the person in question not have 'previously been a purchaser in relation to a relevant acquisition of a major interest in land which consisted of or included residential property', but there are 3 further criteria aimed, amongst other things, at excluding those who have previously owned residential property outside the UK.

Worse still, section 57AA of the Finance Act 2003 itself cross-refers to 2 other sections which concern cases in which a financial institution purchases a major interest in land and then sells it on to a 'person' and takes a legal charge over it instead, or lets or sub-lets to a 'person'. In those types of case the 'person' cannot claim to be a first time buyer under the starter homes regime - they have in effect owned their own home before, albeit under a more complex arrangement involving an initial purchase by a financial institution.

Expecting housebuilding companies and Local Planning Authorities (LPAs) to enquire into the complex 'housing history' of people in their twenties and thirties, including periods of time in which they may have lived outside the UK, is likely to be a tall order.

Third, a starter home must be sold at a discount of at least 20% of its market value.

Fourth, it must be sold in any event for a price which is no more than £250,000 where the starter home is outside Greater London, and where it is within Greater London it must be sold to the first-time buyer for no more than £450,000.

Making it happen ...

The Government has placed itself under pressure to deliver. The Bill recognises, however, the central role of LPAs. Clause 3 of the Bill places a duty on a LPA in England to carry out its relevant planning functions, including both plan-making and decision-taking on individual planning applications, 'with a view to promoting the supply of starter homes in England'.



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The mechanics of delivery for a specific scheme are not even sketched out in clause 4 of the Bill, which has the misleading heading 'Planning Permission: Provision of Starter Homes'. However, the intention appears to be to leave it to subsequent regulations to actually establish how this is to be done.

In sub-section (4), however, there is a hint about potential content; it states that regulations may: 'for example, provide that an English Planning Authority may grant planning permission only if a person has entered into a planning obligation to provide a certain number of starter homes or to pay a sum to be used by the authority for providing starter homes'.

Implications for section 106 agreements...

Where developers wish to introduce an element of starter homes into a scheme which already has planning permission and a section 106 agreement or undertaking, the wording of the section 106 document is not likely to provide for this. The Bill does not suggest that when the law is changed pre-existing section 106 arrangements are to be automatically over-written in some way to cater for starter homes.

In any event, the introduction of starter homes is likely to raise some key issues including:

1. Who will have the burden of assessing people claiming to be 'first time buyers'? - How will the assessment process be paid for, and can the cost of that be passed to the buyer without breach of the price cap? How will evidence be provided to satisfy the LPA that the homes in question are indeed being sold to qualifying first time buyers?
2. What is the relationship to be between introducing some starter homes and affordable housing, which may or may not have already been provided for?
3. How, if at all, would the future status of a 'starter home' be preserved? At least for a sufficient period to prevent buyers simply taking the 20% profit on re-sale in the short term?
4. What effect does the introduction of starter homes have on scheme viability (and will that in turn justify re-visiting the affordable arrangements in the context of section 106A)?
5. If payment of a sum to enable off-site provision of starter homes by the LPA is being considered, how is the sum payable to be calculated in order to satisfy regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL) (as amended), and in

particular how will that sum fairly and reasonably relate to the development as a whole ?

6. What will the wider relationship between starter homes and CIL be (for example, will starter homes be wholly or partly exempt from CIL by analogy with social and affordable housing?).

Conclusion

If the generations whom central government regards as at risk of missing out on home ownership are to be given a practical 'foot up' onto the property ladder, the detailed workings of the starter homes system will need to emerge sooner rather than later.

Local plans will not contain policies for starter homes provision and until local plan-making can 'catch up', it is likely that amendments to the NPPF will be the focus for debate and deliberation on individual planning applications.

The consultation document on 'Proposed Changes to National Planning Policy' of December 2015 indicated a willingness to consider expanding the definition of 'affordable housing' to include 'a wider range of low cost home ownership options', but only hinted at a potential inclusion of 'starter homes' within the class of 'affordable housing'. No doubt the consultation responses will be under careful scrutiny at the department.

However policy may be adjusted to reflect the expanded starter homes regime when the Bill becomes law and a wave of modifications of existing section 106 arrangements is a foreseeable consequence.

Developers who might want to introduce starter homes within schemes still within the planning process will be considering whether draft section 106 agreement terms can provide for future flexibility notwithstanding the lack of detail in the Bill itself.

There may moreover be many schemes suitable for starter homes which already have planning permission, but have not yet been built out. A wave of modifications of existing section 106 agreements is foreseeable for these schemes, if the Bill were to be enacted in something like its current form.

It is sometimes said that people are as old as they feel, but being on the 'right side' of 40 years of age is likely to be of more practical benefit to would-be home-buyers. 39 year olds must be watching the progress of the Bill with particular attention.

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