

On the starting line - update on 'starter homes' legislation

Introduction

In May, the Housing and Planning Act (the New Act) received Royal Assent. The importance which Government attaches to starter homes provision in England was further underlined by the 'up-front' positioning of the machinery for its delivery within the Statute.

It forms *Chapter 1 of Part 1* of the Act, which:

1. defines 'starter home';
2. provides for regulations to be made to require payments or discounts on resale;
3. will place a duty on English local planning authorities to carry out planning functions '...with a view to promoting the supply of starter homes..'; and
4. provides for regulations to be made to restrict the grant of planning permission for a residential scheme unless the 'starter homes requirement' (the SHR) is met (the regulations will define what the SHR is to be).

Whilst no commencement order has yet brought this into effect, it is worth looking at some of the more detailed issues which the Government has been grappling with in order to be able to formulate necessary regulations.

Target for starter homes?

Government policy already supports starter homes (on the basis of the exception sites approach it canvassed in 2014). In his Ministerial Statement on the 2 March this year, Brandon Lewis spoke of proposals to support 100,000 new high quality low cost starter homes.

In his introduction to the technical consultation on the future Starter Homes Regulations under the New Act, however, the former Minister for Housing and Planning spoke in terms of a more optimistic target. He stated a commitment to double the target by: '...building 200,000 high quality starter homes exclusively for young first time buyers under 40...'

In the Queen's Speech on 18 May, the Government expressed its desire that 1 million new homes (of all tenures) should be built by 2020. Setting the result of the Brexit-referendum aside for a moment, the existing and new starter homes regimes are seemingly intended to deliver an ambitious 20% of that million new homes by 2020.

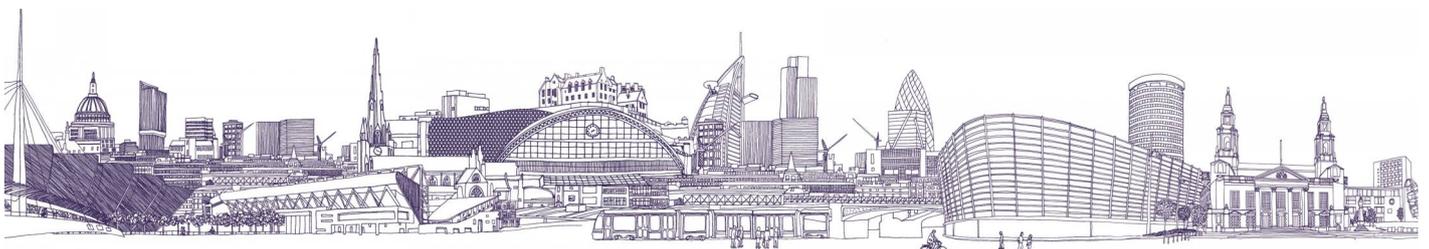
To have a realistic chance of doing that, however, the future regulations are going to have to address a number of issues raised in the technical consultation.

Restrictions on re-sale through Section 106 Agreements

How do you stop a first time buyer simply selling on the starter home and realising the 20% up-lift reflected in the discount to market value, built into the definition of a 'starter home' under the Act?

The National Planning Practice Guidance states that: 'On starter homes exception sites, local planning authorities should include in the relevant section 106 agreement a requirement on the developer to offer starter homes to a first time buyer under the age of 40 for a discount of at least 20 % below the open market value of the property, and for there to be appropriate restrictions to ensure that starter homes are not resold or let at their open market value for five years following the initial sale. Local planning authorities should enforce these planning obligations...'

It seems likely that starter homes provided under the New Act will also have these restrictions in Section 106 Agreements, but the technical consultation raises the question of how long the period of restriction should be and whether (as the title of section 3 of the Act itself mentions) there should be 'tapering' so that the extent to which the gain can be realised increases gradually as the end of the period approaches.



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Whilst the technical consultation suggests that the period of restriction should not be longer than eight years it remains to be seen whether the existing five year period referred to in the Practice Guidance will continue to find favour.

Flexible eligibility

What if you and your partner would both qualify as *first time buyers*, but only one of you is under 40?

The regulations may allow for you to still qualify and therefore be able to buy a starter home together.

This flexibility may also extend towards another exceptionally deserving group - injured service personnel and those whose partner has died in service, who may be eligible even if they are over 40.

Minimum site size requirement

The similar exemption from affordable housing requirements which the Government attempted to introduce through a Ministerial Statement and policy change has had a rather chequered history in the courts, but the technical consultation suggests a similar exemption for the SHR.

The proposal was that only schemes of 10 units or more, or sites of 0.5 Ha or more, would be subject to the requirement.

On a non-exempt site, what percentage of the units might have to be starter homes?

A single national minimum requirement of 20% is proposed in the technical consultation. Whilst Government recognised the need not to prejudice viability in putting this forward, it indicated that it did not favour any regional variation in the actual requirement set through the regulations themselves.

However, it stated that there should be a general viability exemption such that where '...it can be clearly demonstrated that the starter homes requirement would render the site unviable...' the requirement would not apply.

Other exemptions

The Government also consulted about whether certain other types of scheme should be exempt.

These included:

1. residential care home schemes (or any other specialist accommodation for a particular group with an element of support); and

2. affordable housing-led developments where there is a high proportion of shared ownership and affordable rented units being delivered by a Housing Association.

The potential exemptions consulted upon also included student accommodation and custom build developments, in what is the unlikely case of such a development being above the size threshold in any event.

Little boxes ..all made out of ticky-tacky?

To assuage any concern that the starter homes would fall short of the design quality strongly supported in the National Planning Policy Framework and elsewhere, the Government has also published Design exemplars. Poundbury is the first source and an ambitious benchmark is seemingly being set.

Whilst the design document recognises that starter homes do not have to conform to these exemplars: 'Where developers want to build something else, which is as good or better in design, and this is approved by the local planning authorities this is acceptable. What is not acceptable is the approach that regards the appearance and design of the homes and communities we build as an afterthought'.

Conclusion: Watch this space...

The consultation exercise concluded in June. Regulations will need to be formulated to give effect to the Government's conclusions, in the light of the responses received.

After the Brexit referendum there are many voices expressing concern that economic slow-down in the construction sector generally will need firm action to mitigate its most adverse effects, and whether this influences the timetable for implementing the new law remains to be seen.

The strength of the commitment to assist a section of the population seen to have suffered long-term disadvantage, with some prospect that the starter homes model could help to underpin demand as long as it is introduced with great sensitivity to supply-side cost and risk, may mean that it stays on track in the post referendum world.

In challenging times once again, the industry may find itself saying to local planning authorities (as it has regularly before): 'You can have some of this...or you can have some of that...but if you want something, you cannot have everything'.

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