



PINS NOTE 32/2015r2

To: All Inspectors (England)

Relevancy: Planning appeals and Secretary of State casework;
Enforcement appeals; Local Plans examinations;
Nationally Significant Infrastructure Projects;
Compulsory Purchase Orders.

Date of Issue: 16 October 2015

Currency: for review as appropriate in course of Bill progress

Last updated: 25 November 2015 – Part 5 summary in paragraph 2 revised with regard to the scope of the assessment of housing and accommodation needs of the community; and Part 6 summary in paragraph 2 and Annex A revised further following the publication of DCLG draft guidance on the inclusion of housing in NSIP applications.

THE HOUSING AND PLANNING BILL

Action

1. Inspectors should be aware that the [Housing and Planning Bill](#) received its First Reading on 13 October 2015. Explanatory Notes prepared by the Government to explain the purpose of the Bill can be found [here](#), and should be read alongside the appropriate provisions of the Bill. An Impact Assessment has also been published and can be found [here](#). Of particular interest to Inspectors are Part 1 'New Homes in England' (Starter Homes), Part 6 'Planning in England' (NB this also includes Local plans and NSIPs) and Part 7 'Compulsory Purchase Orders etc', details of which are given in Annex A.

Background

2. The Bill consists of eight parts:

- **Part 1: New Homes in England (promoting the delivery of starter homes)**
 - Starter Homes - providing a statutory framework for the delivery of starter homes

- Self-build and custom housebuilding –requiring local authorities to meet demand for custom-built and self-built homes by granting permissions for suitable sites
- **Part 2: Rogue landlords and letting agents in England**
 - Private rented sector – providing greater powers for local authorities to identify and tackle rogue landlords
- **Part 3: Recovering abandoned premises in England (procedures landlords may follow to recover possession without a court order)**
 - Private rented sector – reforming abandonment to more effectively recycle rented property
- **Part 4: Social housing in England (right to buy; vacant high value housing; reducing legislation; high income social tenants)**
 - Right to acquire – extending Right to Buy discount levels to housing association tenants
 - Vacant high value local authority housing – requiring local authorities to manage their housing assets more efficiently, with the most expensive vacant properties sold and replaced with new affordable housing in the area
 - Reducing regulation – allows the Secretary of State to reduce regulations on Housing Associations
 - High income social tenants – requiring tenants in social housing on higher incomes (over £40,000 in London and over £30,000 outside London) to pay market rate, or near market rate, rents
- **Part 5: Housing, estate agents and rentcharges: other changes**
 - Housing needs in England – simplifying the legislation governing the assessment of housing and accommodation needs of the community (the amendments move away from separate definitions in housing legislation to make clear that

when authorities are carrying out a review of housing needs that it considers the needs of all the people residing in or resorting to their district, without any references to Gypsies and Travellers).

- Regulation and enforcement – a more stringent ‘fit and proper’ person test for landlords letting out licensed properties, such as Houses in Multiple Occupation, to help ensure that they have the appropriate skills to manage such properties and do not pose a risk to the health and safety of their tenants; allowing financial penalties to be imposed as an alternative to prosecution for certain offences; requiring Tenancy Deposit Scheme data to be shared with local authorities; and amending the Estate Agents Act 1977 to allow the Secretary of State to appoint the regulating authority.
- Enfranchisement and extension of long leaseholds – makes provision for the valuation of minor intermediate leasehold interests in leasehold enfranchisement and lease extension cases to continue to be possible when using the legislation.
- Rentcharges – allowing the formula for calculating the amount needed to redeem a rentcharge to be amended by secondary legislation.
- **Part 6: Planning in England (Neighbourhood planning, Local planning, powers of Mayor of London, planning permission, NSIPs & housing, UDCs)**
 - Neighbourhood planning – simplifying and speeding up the neighbourhood planning process to support communities that seek to meet local housing and other development needs through neighbourhood planning.
 - Local planning – giving the Secretary of State further powers to intervene if Local Plans are not effectively delivered.
 - Planning in Greater London – devolving further powers to the Mayor of London.
 - Local registers of land and permission in principle – creating a duty for local authorities to hold a register of various types of land, with the intention of creating a register of brownfield land to facilitate unlocking land to build new homes; and

giving housing sites identified in the brownfield register, local and neighbourhood plans planning permission in principle, and providing an opportunity for applicants to obtain permission in principle for small scale housing sites.

- Planning permission etc – levelling up the power which enables conditions to be attached to development orders for physical works so that they are consistent with those for change of use; extending the planning performance regime to apply to smaller applications; and putting the economic benefits of proposals for development before local authority planning committees.
- Nationally Significant Infrastructure Projects – allowing developers who wish to include an element of housing within major infrastructure projects to apply for consent under the nationally significant infrastructure planning regime. Further guidance will be issued by DCLG on what will be classed as ‘related’ housing. This is now available in draft (as an Annex to a DCLG [Briefing Note](#)), pending passage of the Bill.
- Urban development corporations – creating a faster and more efficient process for creating Urban Development Areas and Corporations whilst ensuring that those with an interest locally are properly consulted at an early stage.

- **Part 7: Compulsory Purchase etc**

- Improving the compulsory purchase regime, so it is clearer, fairer and faster.

- **Part 8: General (transitional and consequential provisions, regulations, extent, commencement)**

Commencement

3. The provisions on the extent, commencement and short title of the Bill, together with the powers to make secondary legislation to make saving, transitory or transitional provision in connection with the coming into force of any provision of the Bill, will come into force on the day it is passed. Clauses 90 to 93, 101, Schedule 5, clause 104(1), and clauses 108 to 110 will come into force on the day on which the Bill is passed. Clauses 62 to 72, clause 84, clauses 102(1) to 102(3), and clauses 103 and 105 will come into force at the end of the period of two months beginning on the day on which the Bill is passed. Other provisions of the Bill come into force

on such day as the Secretary of State may by regulations appoint.
Progress of the Bill can be followed on the [Parliamentary website](#).

Extent

4. The Bill will apply to England only, with some exceptions:
 - a. Clause 88 (Estate Agents) extends to England and Wales, Scotland and Northern Ireland;
 - b. Clauses 90 (long leaseholds), 91 (Rentcharges), and Part 7 (Compulsory purchase) apply to England and Wales.
 - c. Clauses 108 to 110 (urban development corporations) extend to England, Wales and Scotland.
5. Separate PINS guidance is being issued for aspects of the Bill affecting Wales.
6. Please contact XXXX for any general queries on this note, or XXXX for any casework-related queries.

**STARTER HOMES, PLANNING IN ENGLAND, COMPULSORY
PURCHASE: FURTHER DETAILS**

1. Although Inspectors are advised to make themselves fully aware of the content of the Bill, details of the areas of particular interest to Inspectors, mainly taken from the Explanatory Notes, are given here.

Starter Homes

i. Under the provisions of the Bill, a starter home is a new dwelling which is only available for purchase by qualifying first-time buyers and which is made available at a price which is at least 20% less than the market value. An English planning authority (which is either a local planning authority or the Secretary of State) will only be able to grant planning permission for certain residential developments if specified requirements relating to starter homes are met. These requirements are to be set out in regulations.

Planning in England

i. Neighbourhood planning: the Bill provisions cover the designation of neighbourhood areas, timetables in relation to neighbourhood development orders and plans, intervention powers in making development orders and plans, and notifying the neighbourhood forum of applications.

ii. Local Planning: The Bill includes power to direct amendment of a local development scheme, and to give direction to the examiner of a development plan document. There are also powers to intervene to direct submission of a DPD to the SoS for approval, to make clear what is to happen where the Secretary of State withdraws (or partially withdraws) a direction, to require a LPA to reimburse the Secretary of State for any expenditure incurred in relation to an intervention, and to issue a 'holding direction' to a local planning authority not to take any step in connection with the adoption of a development plan document while the Secretary of State considers whether to intervene under section 21.

iii. The SoS is given default powers to prepare or revise a DPD where he considers that the LPA are failing or omitting to carry out this duty. The SoS may direct the LPA to prepare or revise a document, to submit that document to independent examination, to publish the recommendations of the person appointed to carry out the examination, and to consider whether to adopt the document. The SoS may recover from the relevant

LPA the costs of the independent examination of a development plan document prepared by the authority or by the Secretary of State.

iv. Permission in principle: Clause 102 inserts into Part 3 of the Town and Country Planning Act new section 58A. This section sets out that permission in principle may be granted for development of land in England. It also refers to section 70 of the 1990 Act as amended by the Bill, under which an application for technical details consent (as defined in that section) has to be determined in accordance with permission in principle. The result would be the grant of full planning permission.

v. The local planning authority is to keep a register of particular kinds of land (Clause 103).

vi. New subsection (1A) of section 60 makes provision for permitted development rights in respect of building operations (as listed under section 55(1A) under the 1990 Act).

vii. Under clause 105, the Secretary of State may designate a local authority for its performance in determining applications for categories of development described in regulations made by him (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 under section 62A.

viii. Clause 106 inserts a new section 75A into the Town and Country Planning Act 1990 to ensure that potential financial benefits of certain development proposals are made public when a local planning authority is considering whether to grant planning permission.

ix. NSIPs: Clause 107 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. Clause 107 also provides that the Secretary of State must consider factors set out in guidance when determining whether to grant consent for housing. A draft of this guidance was included as an Annex to a DCLG Briefing Note issued in October 2015. Some of the notable proposals include:

- It is very unlikely that the Secretary of State will grant consent for more than 500 dwellings in a single Development Consent Order and that in some locations, for example those where development is already restricted by policies in the National Planning Policy Framework, a lower amount of housing, or no housing at all, will be appropriate.
- Housing can be included within a DCO where:

- There is a functional need for the housing in terms of the construction or operation of a project; and/or
- Where the housing is in geographical proximity to the project, which means up to 1 mile from the site.
- The housing proposals should be assessed against the NPPF and the relevant development plan.
- Any proposed housing will not be used to decide whether a business or commercial project is 'nationally significant' and can therefore use the NSIP process.

S115 of the Planning Act 2008 is amended so that Related Housing Development becomes development for which development consent may be granted. Related Housing Development does not fall within the definition of associated development.

Related Housing Development means development which is the construction or extension of dwellings, and is either on the same site or next or close to any part of the integral development.

It should be noted that Related Housing Development may only be included in England or English territorial waters.

x. UDCs: Clauses 108 and 109 make two changes in relation to orders establishing urban development areas and urban development corporations in England, ie they impose new consultation requirements, and they change the parliamentary procedure for making orders. Orders are currently subject to the affirmative procedure but the clauses change this to the negative procedure. These changes put on a permanent footing the temporary changes that were made by sections 46 and 47 Deregulation Act 2015 (which were limited to orders laid before Parliament on or before 31 March 2016).

Compulsory Purchase etc.

i. Clauses 111 to 117 introduce a new general power of entry for survey purposes which will be available to all acquiring authorities in connection with a proposal to compulsorily acquire land. Clause 118 inserts new sections 14B and 14C into the Acquisition of Land Act 1981. Section 14B requires the Secretary of State to publish one or more timetables setting out the steps to be taken by confirming authorities in confirming a compulsory purchase order.

ii. Clause 119 inserts a new section 14D into Acquisition of Land Act 1981. This enables a confirming authority to appoint an Inspector to act instead of it in relation to the confirmation of a compulsory order to which section 13A of the Acquisition of Land Act 1981 applies. The Inspector has the

same functions as the confirming authority under Part 2 of the Acquisition of Land Act 1981. The clause also introduces provision for a confirming authority to revoke its appointment of an Inspector at any time until a decision is made.

iii. The amendments, which are extensive, go on to cover vesting declarations, possession following notice to treat, compensation, disputes, and power to override easements and other rights. Further details are as follows:

iv. As noted above, the Bill introduces a right to survey land, requiring 14 days notice to be served. It allows the use of force if sanctioned by a JP and provides that obstruction of entry becomes an offence. The surveying of Crown Land, streets, and Statutory Undertaker Land require further steps to be taken. A right to compensation is introduced if damage is caused during surveying.

v. The Acquisition of Land Act 1981 is amended to set a requirement for a bespoke timetable to be published in relation to confirming a CPO (excluding Welsh Ministers). A duty is placed on the Secretary of State to lay before Parliament an annual report showing a confirming authority's compliance with applicable timetables. The Act is also amended to allow delegation of confirmation powers from a confirming authority to an inspector, giving the inspector the same functions as a confirming authority, whether or not all remaining objections are withdrawn or objections remain and an Inquiry is held.

vi. The Compulsory Purchase Act 1965 is amended so that the time limits for a notice to treat or general vesting declaration are amended. Notice to treat may not be served after the end of the period of 3 years after the CPO is operative. A general vesting declaration also may not be served after the end of the period of 3 years after the CPO is operative. Schedule 7 of the Bill omits s3 of the Compulsory Purchase (Vesting Declarations) Act 1981 therefore the requirement to serve a preliminary notice is removed. In relation to general vesting declarations, the earliest vesting date is raised from 28 days to 3 months.

vii. With regards to notices of entry the minimum notice period for entry is changed from a specified 14 days to a period set out in the notice which must be at least 3 months, and allows for repeat notices if new owners are discovered. A 'counter-notice' can be served by a landowner where they require entry by a certain date. Dates of entry can be extended by agreement. The 'alternative procedure' contained within s11(2) of the Compulsory Purchase Act 1965 is abolished. S9 of the 1981 Act is amended so that the notice period for service of a notice of entry for land specified in a General Vesting Declaration, but which is subject to a minor

tenancy or long tenancy about to expire, is extended from 14 days to three months.

viii. With regards making a claim for compensation the Land Compensation Act 1961 is amended so that the Secretary of State may by regulation impose further requirements for the notice that would be served on the Upper Tribunal. The Act is also amended so that requests can be made for payments in advance of compensation and that if the compulsory purchase does not go ahead the advance payment must be repaid.

ix. If there is a dispute with regards to division of land that causes material detriment the affected landowner can serve a counter-notice but this process currently differs dependent on whether a notice to treat or general vesting declaration is served. This is now harmonised so that the process under each process is similar and so that the acquiring authority can enter and take possession of land before any dispute has been determined by the upper tribunal.

x. If a high court challenge is made under s23 of the Acquisition of Land Act 1981 at present only the Order itself can be quashed by the Court, that power is now extended to the decision so that the decision alone can be quashed. The time limit for implementing an Order is also now increased where there has been a challenge.

xi. Some acquiring authorities such as statutory undertakers do not currently have powers to override easements and restrictive covenants. Those powers are now extended to all specified bodies (with some restrictions). Compensation is payable when these rights are acquired.