Would You Tell Me, Please, Which Way I Ought to Go from Here? Planning Reform: A View from the Coalface

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This paper is dedicated to the memory of Janet Norah Fennell (19 December 1929–25 September 2016)

Introduction

The story of Alice in Wonderland, from which the title is derived, has been described as a load of joyous nonsense, its only purpose being to give pleasure. No one would seek to argue that housing and planning reform is a joyous activity, but some may say it is nonsense, perhaps those overwhelmed by the sheer extent and pace of change in recent years. The purpose of reform isn't to give pleasure, although if it's successful it could certainly make many people happy if, for example, they are afforded access to homes that otherwise wouldn't be attainable to them.

My task in this paper is to offer a view of housing and planning reform from the coalface. This task is a massive one and so I must define my remit carefully. I concentrate almost solely on the Housing and Planning Act 2016 ("the Act"), a piece of legislation very much at the forefront of Government reform of the planning system, but one with so many details which have been left to be specified in regulations later down the line.

Mine is the perspective of a planning consultant and the particular coalface from which I will be commenting is the work my colleagues and I undertake and the interactions we have with clients, local and central government and many other stakeholders.

Before I embark on providing a guide to the key aspects of the Act, it is important to start with an understanding of some of the basic drivers for reform.

First, the Government wants to win the next election. In the aftermath of the referendum vote to leave the European Union and the political turmoil that followed, this is even more important.

Secondly, all of the political parties agree that more homes need to be built to help solve the housing crisis and the vast majority of the Government's efforts on planning reform revolve around this single objective.

Thirdly, the Government had, up until now, pursued an austerity-based approach to the financial management of the country since the recession, such that direct investment in supporting its reforms has been necessarily limited. The new Chancellor of the Exchequer now seems to be viewing things differently.

The Government's reform drivers have been directly translated into some of the planning policies and legislation already brought forward, such as the Act, or through other measures proposed in the new Neighbourhood Planning Bill.

The rationale and objectives behind the key housing and planning provisions included in the Act seem to be:

> Increasing housing delivery in the short-term, to have "tangible" figures to show that the Government's policies have been successful in achieving higher rates of housebuilding that particularly boost home ownership for first time buyers and for long-term social renters (for example, the "Starter Homes" and "Voluntary Right to Buy" initiatives).

Speeding up and simplifying the planning process, to give more certainty to investors and developers, and eventually further help to increase housing delivery (for example, the "Permission in Principle" and "Planning Freedoms" initiatives).

Further reducing public spending and limiting central and local government involvement in housing delivery, while at the same time ensuring an increase in housing supply (for example, the "Higher value local authority housing" and the 'Related housing in Nationally Significant Infrastructure Projects' ("NSIP") initiatives).

There are inherent difficulties associated with marrying a desire to deliver political objectives with the complexities of the planning system and the housing market. Planning is perceived as a constraint on housing delivery and this drives the political objective to reform legislation and policy. The reform then gets bogged down by the lack of a deep enough understanding of: the reasons for the problem; the short-term nature of many of the political drivers; a seemingly ingrained commitment to localism; and the unintended consequences arising from well-intended but somewhat rushed initiatives. All these issues appear to be evident in the Act and I explore them in the context of its main planning provisions below.

We are on our way

Following its rather difficult, and high profile, passage through the two Houses of Parliament we now have the Act and its implementation has begun in earnest. However, much is dependent on secondary legislation and some of that will require the approval of both Houses.

Section 216 of the Act brought various provisions into force on enactment (i.e. 12 May 2016). The provisions brought into force on that date include a number of planning-related matters: the designation of neighbourhood plans (s.139) and the setting of time limits in relation to neighbourhood development orders and plans (s.140); new intervention powers of the Secretary of State and the Mayor of London in relation to neighbourhood development orders and plans (s.141); and the requirement for local planning authorities to keep a register of particular kinds of land (s.151).

Perhaps one of the most notable new initiatives which commenced on enactment was ss.161–164 regarding pilot schemes to test introducing competition in the "processing" of applications "to do with planning", or in other words the Government's proposal to open up this aspect of the planning system to competition.

Under a pilot scheme, applicants would be able to choose to submit their planning applications to either the local planning authority ("LPA") or one of a number of designated alternatives for processing. Regulations are required for the details of the pilot and these would deal with fees, and may provide that any connected application must also be processed by the alternative provider selected by the applicant.

A team at Department of Communities and Local Government ("DCLG") has been formed to investigate the setting up of the pilots and has undertaken a significant amount of consultation, readying itself for when it will have the necessary powers and regulations to put arrangements in place. The rationale for opening up the planning system to competition is a straightforward one: most other local government services are open to such competition and competition should drive price down and quality up; so why should planning be any different? This general philosophy has been very much part of Government thinking since the recession, as it reduces the size and cost of the state.

I remain open-minded about this particular reform, but I am aware that others are worried and concerned by the prospect of what the future might hold. I understand that reactions have softened and as the DCLG team has done its rounds, more have become inquisitive about what reform might entail. The obvious control mechanism is that decision-making remains in the domain of the LPA, whether that be via decisions made by the elected members or powers delegated to an officer. Nevertheless those who "process" planning applications will inevitably have some bearing on the eventual outcomes and this is what the emerging

pilot details will have to concern themselves with, to ensure the integrity of the system does not become open to question.

Whether there is a business proposition in undertaking this kind of work for my company that we would be interested in is probably doubtful but we remain interested in the outcome of this reform in case there is, and because it will affect the work we carry out for our clients.

The first of the regulations implementing the Act came into force on 26 May 2016. The Housing and Planning Act 2016 (Commencement Order No.1) Regulations brought into force s.145(5) of the Act; this has inserted a new s.21A into the Planning and Compulsory Purchase Act ("PCPA") 2004, giving the Secretary of State the power to issue a temporary direction pending the possible use of other local plan-making intervention powers. This enables the Secretary of State to direct a local planning authority not to take any step in connection with the adoption of a development plan document, pending the possible use of other intervention powers.

The existing local plan intervention powers provided by s.21 of the PCPA have been seldom used, but the new s.21A powers were used immediately; on the very day that they came into force, the Rt Hon Greg Clark MP, the then Secretary of State for Communities and Local Government, directed Birmingham City Council not to take any step in connection with the adoption of the Birmingham Development Plan 2031.

This action by the Secretary of State left one in no doubt that the Government meant business with the Act. It was also somewhat ironic that he chose to intervene so soon after receiving, only two months earlier, the report of the Local Plans Expert Group ("LPEG"), a group he had tasked with finding ways to speed up local plan making.

Not long after these first regulations came into force, the referendum result shifted political attention to matters surrounding the likely effects of leaving the European Union and the political turmoil that quickly engulfed both the Conservative and Labour parties. Nevertheless, work on the Act carried on regardless and new provisions came into force on 13 July 2016, with others on 1, 21 and 31 October 2016. While there is much to do, with many more regulations being required, it is clear that some momentum has already been gained and the Act's reforms seem set to continue.

Despite this, there could easily have been some doubt as what the new Government's attitude might be to an Act that didn't have the easiest passage through the Houses of Parliament. The new Housing and Planning Minister, Gavin Barwell MP, gave us a good idea as to his attitude on the release of the latest DCLG English housing survey in July 2016. Buoyed by the news from the survey that the number of people owning their own home has stopped declining for the first time since 2003, he stated:

> "The ground breaking Housing and Planning Act will allow us to go even further delivering our ambition to build an additional 1 million homes."(emphasis added)

Later in the same press release, DCLG describe it as a "landmark" Act, the rhetoric perhaps suggesting that we can expect the regulations to follow as planned, albeit with a slight delay post-Brexit and the formation of a "new" Government.

This paper focuses on the key, new planning initiatives that the Act has introduced into legislation, specifically:

> Starter homes, as they are widely considered to be the flagship measure of the Act aimed at increasing home ownership among younger generations.
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> Permission in Principle ("PIP"), designed to boost investor confidence in development sites and speed-up the planning process to facilitate housing delivery.
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> Other planning provisions, such as dispute resolution in s.106 obligation negotiations, "related housing" in NSIPs, and "Planning Freedoms" schemes, as these can each contribute towards achieving a greater increase in housing supply, by simplifying and speeding-up the planning system.

Finally, the paper provides a short summary of some housing-related provisions included in the Act, focusing in particular on the extension of Right to Buy to housing associations funded by the disposal of vacant "higher value" local authority housing.

Starter homes

Sections 1–8 of the Act introduce starter homes into primary legislation, applying to England only. Starter homes are the new affordable housing product designed by the Government to specifically meet the housing needs of younger generations and to allow them to access home ownership.

Section 2 specifies that starter homes are:

- new dwellings;
- available for purchase by "qualifying first-time buyers" only; these are defined as people who don't already own a home and who are aged 23–40; and
- to be sold at a discount of at least 20% of their market value, and always for less than the price cap (currently set to £450,000 in Greater London and £250,000 outside London).

Accordingly, ss.4 and 5 determine that an English LPA:

- must carry out its relevant planning functions with a view to promoting the supply of starter homes in England;
- will be only allowed to grant planning permission for certain developments if specified requirements relating to starter homes are met; and
- has the power to dispense applications made in respect of a rural exception site from the starter homes requirement.

Regulations under ss2, 4 and 5 require a draft of the necessary regulations to be laid before and approved by a resolution of each House of Parliament (as do regulations under s.3(6) which make provision about the use of money paid by a person who sells a starter home within a specified period).

The Act outlines the framework within which starter homes will be delivered in England, while DCLG's 'Starter homes regulations: technical consultation', launched in March, is helpful in understanding the detail of what the Government is intending to introduce at a later stage; although, most of the operational details still need to be specified or confirmed and will be set via the regulations. Some of the possible specifics relating to starter homes will be introduced via secondary legislation, but the consultation document indicates as follows:

- the starter homes requirement would apply nationally to sites of 10 units or more (or 0.5ha or more);
- there would be a nationwide starter homes requirement of 20% on all homes delivered in developments;
- exemptions are mooted for viability constraints, estates regeneration, specialist housing, etc.;
- joint purchasers would have eligibility to buy starter homes (not all being under 40); and
- a tapered approach would come into effect on re-sale (the Government's position, as of March 2016, was for a post-purchase period of 8 years).

The Act enables the Secretary of State to make regulations concerning a wide range of issues and, particularly, to:

- specify restrictions on the sale or letting of starter homes, including how the amount of the payment or discount is to be determined, and providing for reductions according to the length of time since the dwelling was first sold;
- specify additional criteria in relation to "Qualifying first-time buyer" and/or disapply the age requirement for specified categories of people;
- amend the definition of "first-time buyer", as in s.57AA(2) of the Finance Act 2003 (this forms part of the legal definition of "qualifying first time buyer");
- specify circumstances in which a dwelling may still be a starter home even if it is available for purchase by joint purchasers not all of whom meet the age requirement (as explained in the starter homes consultation);
- amend the price cap and provide for different price caps to apply: (a) in different areas in Greater London; (b) in different areas outside Greater London;
- set the starter homes requirement that is to be met in order for an English council to grant planning permission (as mentioned before, the starter homes consultation document envisages a 20% nationwide requirement, and to apply this to sites of 10 units or more or 0.5ha or more); and
- confer discretions on an English local planning authority; and
- make different provision for different areas.

As it is clear that many details are to be specified via regulations, there are currently many unknowns around how the starter homes regime will actually work in practice. The "unknowns" are further underlined by interpretations of recent statements made by Prime Minister Theresa May, Communities Secretary Sajid Javid and Housing and Planning Minister Gavin Barwell, all to the effect that the last Conservative Government's housing policies will be pursued as they reflect the Party's manifesto, but there will be a shift towards increasing the total supply of housing i.e. building more houses of every single type and not focussing on one single tenure.

First, it is yet to be understood how the "at least" 20% discount on market price will be estimated and, specifically, how market prices will be assessed for different areas within the same local authority.

Secondly, the likely introduction of restrictions on sale and the operational mechanisms of the tapered approach could have a significant impact. The unknowns here are many, since it is not yet clear:

> How long the discount period will last. The initial intention was for the discount period to last 5 years, during which time a starter home would not be sold; the consultation document mentioned the possibility of a tapered approach (up to 8 years), when the starter home could be sold to another qualifying first-time buyer at a discount that would decrease for each year of occupation. The House of Lords pushed this further and agreed an amendment that extended the restricted sale period to 20 years, before the House of Commons eventually rejected it.
>
> How the discount repayment will be calculated, in terms of whether it is to be based on the initial value of the starter home or on the market value at the time of selling.
>
> Who would be the "specified persons" (s.2) to effectively benefit from the repayment in respect of the starter homes discount and how this correlates with the previous Government's intention to guarantee that the dwelling's value uplift will benefit the qualifying first time buyer(s).

Finally, it is not yet clear how the starter homes requirement for certain developments would relate to viability constraints, specifically in areas where market values are already quite affordable.

The political driver behind starter homes emanates from the long-held Conservative party philosophy that home ownership is "king" and is what its voters (and many of those who vote for other parties for that matter) want and aspire to. Some of those old enough might remember Mrs Thatcher's speech opening the Central Milton Keynes Shopping Centre in 1979, when, talking about housing opportunities she stated:

> "This morning … I visited Mr and Mrs King who are buying their house from the Corporation. Encouraging people to own their homes, whether in new towns or Council estates, is something to which this Government attaches great importance."

Starter homes now sit alongside the "Right to Buy" flagship policy of the 1970s and 80s which has now been extended to include housing association properties, with starter homes being aimed squarely at helping younger people onto the property ladder.

The political drivers to starter homes are, therefore, fairly easily understood. The market will embrace the reform and some twenty and thirty somethings will benefit from being given a generous leg-up onto the bottom rung of the ladder. But there are potential unintended consequences, or perhaps they are known but just ignored by the politicians. The fear of the short-term, brought about by the electoral cycle, is something that can be a powerful driver of change but also one that can, perhaps, blight the quality of decision-making for the longer term.

The chronic undersupply of new housing has been a long-term problem. It has only relatively recently been described as being of "crisis" proportions and, indeed, the RICS once went as far as to describe it as a "national emergency". Whatever terminology is now used to describe it, the problem is recognised by all the political parties and referred to in broadly similar terms. It is most obvious in London with house prices that are out of reach for many, with households spending an ever-increasing proportion of their incomes on housing, despite earnings' growth and historically low interest rates. Whilst the focus is often on London, where affordability issues are the most acute, a recent report[1] by the Resolution Foundation stated: "…It is wrong to see housing as a living standards challenge only in the South of England". The report pointed to the consequences of high housing costs, beyond the pressure being placed on incomes, in terms of impeding labour mobility and entrenching inequality between, what they describe as, the housing haves and have nots.

The problem of house price inflation that the starter homes initiative is seeking to alleviate (for those who will be eligible for it) will potentially be exacerbated by the very same initiative. Other things being equal a subsidy (and what is proposed here is a significant one) will probably serve to boost demand and potentially push prices up. But perhaps this is not an issue that most people or the Government will concern themselves with too much. Since the 1970s and 1980s housing has increasingly been regarded by the homeowner as an asset to invest and save in for the future; an asset that is expected to increase in value. Until relatively recent times house price inflation has been the stuff of celebration at dinner parties, not a cause of concern for how we provide for the basic needs of future generations.

The proposed 20% starter homes requirement on all developments, to apply nationwide, will have considerable implications on the affordable housing mixes that will be delivered on developments in the future. The starter homes requirement will indeed reduce developers' ability to deliver other affordable housing tenures (such as social rent and affordable rent), as these will be provided only with the remaining s.106 contributions after the starter homes requirement has been met, and only if their provision doesn't constrain the overall viability of development. This will lead to a lower proportion of other affordable housing types, widening the gap between affordable housing needs and the types of affordable housing delivered.

These issues are bound up in the wider debate over the need to increase housing supply, a problem acknowledged by all parties but the solutions are nearly always constrained by policy approaches in other areas and wider societal fear of change.

[1] The housing headwind, the impact of rising household costs on UK living standards; Resolution Foundation, June 2016

Permission in Principle

One of the interesting changes to the planning regime included in the Act is the new 'Permission in Principle' ("PIP") and all the related sections that commenced on 13 July 2016. PIP provisions are detailed in s.150 and Sch.12 of the Act, and are to apply to England only.

A PIP is a new form of planning permission for housing-led development. Designed by the Government to speed-up housing delivery and provide greater certainty of the development potential of residential sites (including for small-scale builders), the objective is to boost investor confidence in the development of land by separating decision-making on 'in principle' matters (e.g. land use, location and amount of development) from technical details.

A PIP is followed by a consequent application for Technical Details Consent ("TDC") which has then to be determined in accordance with the PIP. The combined result of a PIP and TDC would be the grant of a full planning permission.

The Government committed to legislating for a "brownfield register" of "land suitable for housing" in the Queen's Speech 2015 and the 73 councils piloting the brownfield register were announced in March 2016. Under s.151 of the Act, the Secretary of State may make regulations requiring LPAs to keep a register of particular kinds of land, of which the brownfield register will be one.

PIP provisions in the Act indicate that:

> A PIP may be granted for housing-led development either on application to the LPA (or the Secretary of State in some instances), or through qualifying documents (QDs). QDs are development plan documents, neighbourhood plans or the brownfield register meeting the criteria in s.59(2) of the Town and Country Planning Act 1990, which has been inserted by s.150 of the Act.
> At this stage, the main difference between the two PIP routes (application to the LPA/Secretary of State or through QDs) included in the Act relates to their duration; a PIP granted by a development order for qualifying documents ceases to have effect after five years, or such longer or shorter period directed by the LPA. It will not necessarily cease however, if a QD no longer has effect or is revised.
> A PIP granted by a LPA ceases to have effect three years after it comes into effect. The Secretary of State may amend the standard time limits by regulations (which must be approved by each House of Parliament).
> A PIP takes effect when the QD identifying the land is adopted, made, published or revised;.
> A development order may specify the date that the PIP takes effect.
> The LPA must determine the TDC in accordance with the PIP (i.e. in-principle matters cannot be re-opened), unless the PIP has been in force for longer than the period specified in the Order (i.e. it has expired), or unless there has been a "material change" in circumstances.
> A TDC should address all further matters to be considered to enable planning permission, there should no further "reserved matters".
> LPAs should have regard to guidance issued by the Secretary of State relating to PIPs.
> An extant PIP on a site will not preclude the submission of a planning application.

As expressed on the face of the Act, the PIP sections provide very little detail about how this new type of planning permission would work in practice. However, DCLG's technical consultation on implementation of planning changes, launched in February 2016, does provide more information about the Government's intentions for the PIP regime. According to DCLG's technical consultation on implementation of planning changes, the PIP regulations might state:

> Location, uses and the amount of residential development should be the only "in principle matters" determined at PIP stage.
> A minimum and maximum amount of residential development for PIP.

That PIPs on allocation will be by future (as opposed to existing) neighbourhood and/or local plans.
The circumstances where a PIP for development requiring environmental impact assessment ("EIA"), or development affected by the Habitats Directive may or may not be granted.
Consultation and application submission requirements, and determination periods.
A TDC application must be submitted as a single application and not broken up into parts.
Conditions may be attached to the TDC, which may also be subject to planning obligations and the Community Infrastructure Levy.
Where a PIP on application, or any application for TDC, is refused there will be a right of appeal.

At first glance, a PIP seems to share a lot of ground with the outline planning permission regime, as specified in the consultation document:

> "Even where only outline planning permission is sought with all matters reserved, an applicant often needs to invest heavily in illustrative details (e.g. showing detailed layouts and other design features) and applications for PIP will require less information upfront than an outline application."

In this regard, the Government seems to envisage the PIP/ TDC regime as a simplified version of obtaining an outline planning permission and then reserved matters approval.

From a developer's perspective, the new PIP regime should facilitate the LPA's decision on "in principle" matters (that should be limited to the proposed land use being housing-led, the site's location, the amount of residential development and the types of any other uses), hence requiring less information to be submitted by the applicant. Moreover, the PIPQD route should give developers and their investors earlier and greater certainty about the "suitability" for development of their sites, before "heavy investment is made in costly technical details". There would also be no requirement for a repeat submission as occurs now i.e. at the allocation of sites' stage of a local plan and then once again subsequently, post-allocation and on application. Finally, the grant of a PIP will guarantee the acceptability of the "prescribed particulars", as these cannot be re-opened when an application for TDC is considered by the LPA. Accordingly, LPAs will not have the opportunity to impose any conditions when they grant PIP.

DCLG's consultation document underlines:

> "The process for applying for TDC will draw on some of the key elements of information submission and consideration, engagement and decision making used for applications for outline planning permission, with some variation to avoid unnecessary requirements or duplication at the PIP and TDC stages."

Looking at the main differences between outline planning permission and PIP, these seem to be:

PIP can be granted also via QDs, and not only via an application to the LPA (as is the case for outline planning permission).
Applications for PIP are to be for housing-led developments only, and will require less information to be submitted upfront when compared with an application for outline planning permission.
The Government proposes that applications for TDC must "be contained in a single application (i.e. not broken down into a series of applications" [as is possible for an outline planning permission's reserved matters' approvals]); if this proposal is taken forward, it would mean that for phased developments, TDC would also have to be submitted in a single application.
While the expiry of a PIP granted on application is the same as for an outline planning permission, the Government proposes a shorter maximum determination period; this could be 10–15 weeks (5 weeks for PIP plus 5/10 weeks for TDC for minor/major sites), rather than the overall 16 weeks for an implementable outline planning permission (8 weeks for minor applications, plus 8 weeks for reserved matters approval).

Sites that have particular constraints and sensitivities, such as proximity to heritage assets, contamination and flood risk, will still have to assess the potential impact of development before full planning permission is granted.

PIP will also not remove obligations in relation to European Directives (as long as we are part of the EU, of course). To deal with these issues, the Government proposes that PIPs on either allocation or application can only be granted where:

> The LPA has sufficient information about the proposed development on that site to be able to screen it and, as a consequence of the screening, determining that EIA is not required.
> Where the development does need an EIA, then the authority has to carry out an EIA, including consultation, of all its significant effects, ensuring that PIP is only granted if measures to address the significant effects of the proposal are in place.

It is interesting to note that the "housing-led" focus of PIP was not included in the original version of the Bill introduced in Parliament, whilst it was mentioned in the technical consultation document issued in February this year; however, this term was eventually added to the Act due to a Lords' amendment. This focus seems reasonable given the current Government's drive to increase housing supply; however, in future further consideration is to be given to the opportunity of widening this planning regime to other uses, such as for industrial or commercial developments, also to guarantee equal treatment for different sectors.

Brownfield register regulations may: set out the criteria that land must meet for inclusion; include a part which lists sites, and a part which grants PIP; state that in preparing the register the LPA must have regard to matters such as the development plan and national policy and advice; allow some local authority discretion as to which land to exclude; and require consultation.

From a timing perspective s.150 of the Act, "Permission in principle for development of land" inserts new ss.58A and 59A, and new subsections to s.70, into the Town and Country Planning Act 1990. Section 150 commenced on 13 July 2016.

The Government may already require registers of land on a statutory basis, following the commencement of s.151 on 12 May 2016. However, regulations specifying the nature of those registers, in this case the brownfield register, are also necessary.

Amendments to the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the provisions refer to a development order) are necessary to introduce the procedure for obtaining PIP via application, or the brownfield register/QDs.

It is anticipated that regulations relating to PIP and the brownfield registers will be made, laid and come into force early in 2017. Local authorities will probably be considering the sites that could form part of the register, as part of their plan-making function.

The timescale for allocation of PIPs via QDs is, of course, related to the timescale for those documents.

The nearest historical parallel to PIP is probably the old-style outline applications of 20 or 30 years ago when, simply, a red line was drawn around a site, with all matters reserved, and planning permission obtained with the minimum amount of detail approved. Those old style outline applications were overtaken by a more sophisticated development management system, in particular arising from the Environmental Impact Assessment regulations and case law that followed. But it makes a welcome return of sorts, reincarnated on a smaller scale within the concept of PIP, the essential ingredients to its success being genuine simplicity and speed.

The most obvious limitation of PIP on application, at least initially, will be that it will only apply to minor development of less than 10 units. The technical consultation refers to it being of possible benefit to major development but the Government want to ensure it would be sufficiently distinct from existing

outline planning permission. Further research of the operation of outline planning permission is planned to inform this possible future step.

PIP appears to be a genuine attempt to create greater certainty early in the planning process that, in turn, may speed up delivery. In the wider scheme of things, its impact will be much greater if it is extended to larger sites on application, and if it is a genuinely simplified process when compared to obtaining outline planning permission. How the market views its introduction will depend on a number of matters. For example, some developers and their advisers may take the view they can come to their own judgement over 'in-principle' matters based on examining the development plan or through the use of a pre-application process. In this situation, the PIP route would probably only be taken if it's quicker, easier or cheaper than obtaining planning permission, or if it's a pre-requisite for obtaining funding.

In this regard, it is noteworthy that the "success" (as those who benefitted from it would describe it) of the office to residential prior approval process has been that it is quicker, easier, cheaper and more certain than obtaining planning permission for change of use. In this situation, the property market has responded quickly and decisively; the unintended consequences, for some others, left to be dealt with through more laborious and slower processes. If PIP is pitched right, the market should embrace it and there shouldn't be unintended consequences.

Other planning provisions

The Act contains a wide array of other provisions to do with planning; including additional Secretary of State powers of intervention in plan-making, further self-build and custom housebuilding measures, and facilitating the potential office to residential rebuild permitted development right.

However, it might be worth briefly mentioning some of the provisions that could possibly affect developers and landowners more consistently; therefore, this section focuses on:

- resolution of disputes about planning obligations (s158 and Schedule 13);
- NSIPs and development consent for projects that have 'related' housing (s160); and
- planning freedoms: a right for local areas to request alterations to the planning system (s154).

Once again, more than the Act itself, DCLG's technical consultation document sheds some light on the Government's intentions regarding s.106 dispute resolution. According to the consultation document, this will potentially apply to any planning application where the LPA would be likely to grant planning permission but where there are unresolved issues relating to s.106 obligations.

The dispute resolution process can be initiated at the request of the applicant, the LPA or another person (as will be set out in regulations) by making a request to the Secretary of State. The Secretary of State will then have a statutory duty to appoint someone (an independent body, as the consultation specifies) to help in resolving any s.106 issues.

Probably the most interesting part of this proposed dispute resolution procedure is the proposed "cooling off" time before a person is appointed to deal with the dispute; the Government proposes two weeks for this period.

The appointed person will then have a set time (four weeks in most cases) for producing a binding report; this report would set out the matters in dispute, the steps taken to resolve them and the terms of the s.106 (if both sides are in agreement), or recommendations as to what the appropriate terms would be (if parties continue to disagree). After the report is received, a mooted period of 2–4 weeks is proposed as the maximum time for entering into s.106 obligations.

What this dispute resolution procedure aims at is speeding-up housing starts, and providing more certainty about timescales for developers. As most of the details will be set in regulations, it is currently hard to say what potential impacts, opportunities and challenges this process could have.

In a similar way, "related" housing in NSIPs and the planning freedoms schemes seem potentially significant provisions but, again, the lack of detail available at present, particularly in relation to the latter, makes it hard to assess and understand what their impacts could be.

Some of the details and reasons behind the development consent for projects that have "related" housing can be found in the Housing and Planning Bill's impact assessment, dating from January 2016 (the latest available version) and an earlier briefing note prepared by DCLG.[2] The NSIP regime currently does not allow any provision of housing, including housing required for workers involved in the construction and operation of the consented infrastructure (only temporary housing is allowed); currently, applications for such housing must be made through the Town and Country Planning Act 1990 regime.

The provisions introduced by the Act create the possibility for developers to include elements of housing within a development consent order (DCO) for an NSIP; this will include housing which is functionally linked to the NSIP, as well as where there is no functional link but there is a close geographical link between the two. The Bill's Impact Assessment states that:

> "It is also not possible to estimate the number of houses that each developer will seek consent for. The maximum is 500 and there is no minimum."

Finally and according to the Act, "a 'planning freedoms scheme' is a scheme that disapplies or modifies specified planning provisions in order to facilitate an increase in the amount of housing in the planning are concerned." It is worth noting that planning freedoms schemes are to apply to England only.

Planning freedoms schemes can be made by the Secretary of State via regulations if certain conditions are met, such as:

- a request from the LPA for the relevant area is made to the Secretary of State;
- the Secretary of State is satisfied that the scheme will lead to additional homes being built; and
- the LPA has prepared a summary of the views expressed in the consultation, which is required before bringing forward the proposals.

These schemes would operate for a specified period only, and the Secretary of State could restrict the number of planning freedoms schemes in force at any one time.

The rationale behind these provisions is to increase housing supply, as this is one of the conditions that has to be met. Some have seen in this provision the possibility to contribute to new garden settlements, by disapplying specified planning provisions for a certain amount of time. However, and once again, regulations and further details yet to be provided by the Government will clarify the potential effects of planning freedoms schemes.

The housing side of the Act

Finally, it is worth quickly reviewing some of the most significant housing provisions included in the Act so as to put the planning reforms into a wider perspective. Outside the chapters that address starter homes, and self-build and custom housebuilding, there are more than a hundred provisions in the Act that deal with housing matters. These relate to:

> Measures to tackle rogue landlords and property agents (ss.13–56).
> Recovering abandoned premises in England (ss.57–63).
> Setting of new thresholds for high income social tenants (ss.80–91).
> Reduction of regulations on social housing (ss.92–94).

[2] Housing and Planning Bill: Nationally Significant Infrastructure Projects and Housing, Briefing Note, Department of Communities and Local Government, October 2015.

Insolvency cases of registered providers of social housing (ss.95–117).
Secure tenancies, to phase out tenancies for life (ss.118–121).
Housing, estate agents and rent charges: other changes to relate to safety standards, accommodations needs, deposit, administration charges, etc (ss.122–138).
The implementation of the Right to Buy on a voluntary basis (ss.64–68).
The vacant higher value local authority housing disposal (ss.69–79).

The last two points, in particular, were consistently debated during the passage of the Bill; these provisions have also proved to be particularly controversial among housing associations, which are most likely to be affected by their implementation.

The Government committed to extend Right to Buy to housing associations' tenants, without spending any public funds to compensate housing associations for their assets' loss (and the discount they have to grant). In this framework, the Government proposed to find the needed financial resources through the selling-off of vacant "higher value" local authority housing.

The mechanism envisaged by the Government is as follows:

Local authorities will have to make a payment to the Secretary of State based on disposal of their higher value housing which is expected to become vacant during the financial year.
This payment will then be granted to housing associations in order to compensate them for discounts given to their tenants in relation to Right to Buy.
Housing associations will then be required to replace the dwellings sold with new affordable housing units, on a 1-for-1 (outside Greater London) or a 2-for-1 basis (within Greater London).

As for other provisions included in the Act, secondary legislation is needed to understand the potential impact of these provisions as, for example, 'higher value' needs to be defined, in the same way as the local authority payment for vacant housing stock needs to be specified by a formula.

However, some considerations and questions arise in relation to both the extension of Right to Buy and the selling of vacant "higher value" local authority housing:

A general issue relates to the political differences in the application of Right to Buy policy, as devolved administrations have already (Scotland), or are in the process of (Wales) scrapping their Right to Buy policies. Is Right to Buy still an effective policy to increase home ownership, or are the related costs for the community too high, in terms of loss of publicly-owned assets?
Housing associations have already warned about potential difficulties in replacing homes sold, particularly in areas where land values are high, as in the South of England; the situation could potentially be even worse for housing associations that operate in Greater London, as these will be required to provide two new affordable homes for each one sold under Right to Buy. In March 2016, the National Audit Office (NAO) warned:[3]

> "To meet the target of replacing the roughly 8,512 homes sold in 2014/15 by the end of 2017/18… would require quarterly housing starts to reach around 2,130, a fivefold increase on recent figures of approximately 420 per quarter."

NAO also noted that one-for-one replacement:

> "does not necessarily mean like-for-like; replacement properties can be a different size, and built in a different area, compared to those that have been sold."

As the replacement measures included in the Act have "to ensure that at least one (two in Greater London) new affordable homes is provided for each old dwelling" considerations arise in relation to

[3] Extending the Right to Buy: Memorandum for the House of Commons Committee of Public Accounts; National Audit Office, March 2016.

the tenure of these replacements. As starter homes are included in the definition of "new affordable homes" included in the Act, this could lead to a shift in terms of tenure, with housing associations choosing to develop more of those in order to address viability issues. This shift could determine a lower provision of much-needed affordable rented properties and potentially widen the gap between affordable housing needs and related provisions; and

Finally, it is interesting to note the amendment the Government made to vacant local authority housing; this was firstly defined as "high value" in the Bill, but a later Government's amendment changed it to "higher value". What at a first glance could seem a minor change, it carries considerable weight. "High value" is an absolute measure, and could have affected vacant local authority housing in high value areas only, such as London, the South East and cities in general. The shift towards "higher value", which is a comparative measure (higher than what?), means that the considered vacant local authority housing could be in any part of the country, as also low value areas (such as the North East) have housing that is of "higher value" in comparison to the average housing of their local areas. The move seems to be towards a wider number of potential vacant assets (of relatively lower values), rather than few vacant assets (of high value) located in few local areas. The definition of "higher value", and the related consequences (how much it would be possible to raise from their selling?), is a crucial point that is most likely to define the eventual success of the extension of the Right to Buy policy, as this is the tool the Government envisage to fund the entire scheme.

Concluding remarks

The Housing and Planning Act 2016 is very much at the forefront of Government reform of the planning system. After a rather difficult passage through both Houses of Parliament a huge amount of the detail has been left to be determined later. This process has just started and it seems that it will continue with the new Government.

The mere existence of the Act reflects an escalation in importance of the housing crisis within Government and Westminster more generally, the vast majority of planning reform centres on it and has done for some time. Whilst the political parties describe the problem in much the same way, the approaches to finding the solution are different, influenced as they are by different ideologies. Home ownership has for a long time been a central plank of Conservative party housing policy so the starter homes and the extension of the Right to Buy come as no surprise in that regard.

Precisely what impact the Act will have is difficult to decipher at this juncture, such is the huge amount of detail left for consideration later. Starter homes will no doubt be popular with those who will benefit from the initiative. One of the drivers of reform is to win the next election and if starter homes gain traction over the next three years, as it is anticipated they will, the Government will undoubtedly appeal more to the 20- and 30-year-old age group than otherwise it might. With affordability arguably being at the root of the current crisis, particularly for first time buyers, a subsidy of this scale will undoubtedly be a major fillip to those who stand to benefit.

The underlying solution to the housing crisis must be to create a step-change in the delivery of housing, such that future supply far more closely matches the needs that we need to cater for as a nation. It is highly unlikely starter homes will provide this step-change but they may have an impact at the margins. The Act, in isolation, will support some incremental and modest growth of year-on-year housing delivery, notwithstanding the possible challenges that might be presented should economic downturn or recession result from the decision to exit the EU or for any other reason.

However, the Act must be examined in the context of wider reforms at play across a number of different fronts. For example, if the recommendations of the report of the Local Plans Expert Group[4] ("LPEG") are implemented, they should have a greater and more significant impact on housing delivery by making local plans far more resilient and flexible, in order to respond to change. The Panel's recommendations would help ensure that local plans are able to confidently tackle the big decisions in reasonable timescales that really will make a difference to housing delivery, without the fear of being found unsound, or of Government intervention.

With the Autumn Statement not too far away we wait to hear what the Chancellor of the Exchequer meant when, on his visit to China in July, he referred to possible plans to 'reset' economic policy. We will then see whether this might have any implications for planning policy or decision-making. Within, or in parallel to, the timescales for the Autumn Statement, amongst other things, we might expect to hear more about some of our long-awaited major infrastructure projects, an announcement about the work of LPEG and further provisions relating to the Act coming into force.

The Government knows where it wants to get to, although this currently seems to be shifting. It wants to be re-elected having provided for one million new homes, potentially with 20% of these being starter homes (although the emphasis may change with the new Government now referring to pursuing all tenures to boost housing supply). It has referred to the one million new homes in terms of an "ambition" it's striving towards; the language used probably reflecting the doubts the Government itself has over the feasibility of achieving such a number. In my view, the Government needs to provide strong leadership to deal with the underlying housing crisis, without it, the imperative to be re-elected will compromise the Government's ability to put in place the necessary reform, such that we can once again provide for the needs of future generations in a way that we haven't been able to for decades.

[4] Local Plans, Report to the Communities Secretary and to the Minister of Housing of Housing and Planning, Local Plans Expert Group, March 2016.