



PLANNING COMMITTEE

3rd December 2015

REPORT OF THE HEAD OF PLANNING AND BUILDING CONTROL

Housing and Planning Bill

1. PURPOSE OF REPORT

To advise Committee of the planning implications of the Housing and Planning Bill, with specific reference to the Starter Homes proposals, which are considered by officers to have the most significant impact.

2. RECOMMENDATIONS

i) That the Committee notes the report and considers the implications of the proposals within the Bill; and

ii) That Planning Committee agrees that the Head of Planning and Building Control should share this report with the borough's MPs, the Black Country Local Enterprise Partnership (LEP), other West Midlands Metropolitan Councils, the Local Government Association and others concerned with the regeneration of the borough, to help advocate that potentially damaging proposals should be avoided and/or mitigated.

3. FINANCIAL IMPLICATIONS

None arising directly from this report.

The proposals in the Bill will have financial impacts on local planning authorities but without a detailed evaluation it will not be possible to quantify what the financial impacts on the council's planning service might be. However, it is likely that the proposals would lead to increased administrative burdens on the authority - in respect of proposals such as for planning permission in principle, requirements to consider and provide for starter homes and self-build and custom housing and in considering the implications for the application of planning policies - without additional revenue being generated to cover such burdens.

Some of the proposals in the Bill, notably Starter Homes, could have wider impacts on the borough through the loss of employment land and job opportunities, impacting on the economy of Walsall as a whole.

Besides referring to funding to support measures proposed in the Housing and Planning Bill, the Chancellor's Autumn Statement sets out important proposals for Local Government Finance. It is notable that these include large cuts in central Government grant funding to local authorities, whilst it is proposed that authorities should be enabled to retain 100% of business rates.

4. POLICY IMPLICATIONS

None arising directly from this report.

The Council's corporate plan priorities include supporting businesses and helping people into work, improving health and well-being, and creating safe, sustainable and inclusive communities. The council's development plans, including the Black Country Core Strategy (BCCS), support these priorities in a regeneration strategy that seeks to provide and maintain supplies of employment land and premises, a supply of land for housing, and investment in town, district and local centres, all supported by necessary infrastructure whilst protecting the environment. In the view of officers important proposals in the Housing and Planning Bill could conflict with local priorities and policies. Particular examples are set out as follows:

- a) Some of the proposals within the Bill look to encourage homes in commercial and industrial areas. The results of this would be likely to be the loss of viable businesses, higher costs for businesses, displacement of businesses and an inability to promote the redevelopment of existing industrial areas for modern economic uses. This could lead to job losses and unemployment locally. The regeneration strategy of the Black Country Core Strategy would then be undermined. Decentralisation of economic activity and of population would increase leading to growing pressure on the Green Belt.
- b) The creation of housing in industrial and other commercial areas would be likely to lead to poor levels of amenity and conflicts between uses, which would impact negatively on future residents as well as on businesses.
- c) Some of the proposals within The Planning and Housing Bill might be in conflict with the emerging local plans for Walsall. The Site Allocation Document looks to provide a portfolio of land to meet the current and future needs of industry. The Starter Homes proposal could undermine this supply by encouraging housing on employment sites.

5. LEGAL IMPLICATIONS

None arising directly from this report.

The Bill proposes to give legal status to the concept of Starter Homes and for the provision of such housing as well as custom / self-build housing, as well

as providing for a register of brownfield sites and for planning permission in principle. Such provisions would have to be taken into account in its plan-making and development management decisions.

6. **EQUALITY**

None arising directly from this report.

The Government's proposals appear likely to have adverse impacts in terms of the future of industrial activities and the creation of poor living conditions. Besides risking increasing unemployment, they would seem most likely to fall on the less well-off in society. The Government's Housing and Planning Impact Assessment (October 2015) does not appear to address equalities issues such as the loss of employment opportunities.

The Impact Assessment does however, state when discussing Starter Homes that *"developers may choose to adjust the level of affordable housing in relation to the number of Starter Homes they will be developing. This may reduce or alter the mix of affordable housing provided which could impact on those individuals seeking affordable housing"* (p.31). This potential impact on the availability of affordable homes also needs to be considered in the context of the Government's move from funding rented social housing towards owner-occupation. The consequences of this may be that those who could not afford an affordable Starter Home would also be less able to find a property to rent. It is possible therefore, that those who are in most need of affordable living accommodation are at real risk of being adversely affected. .

7. **ENVIRONMENTAL IMPACT**

None arising directly from this report.

The proposals to promote housing in industrial areas may have impacts on the amenity of future residents and on neighbours of nearby businesses.

Whilst proposals such as for Starter Homes' appear aimed at increasing development on brownfield land, if the economic regeneration of the inner areas of the borough was undermined then pressure for development in the Green Belt could actually be increased.

8. **WARD(S) AFFECTED**

All.

9. **CONSULTEES**

The report has been shared with colleagues in Housing and Economic Development

10. **CONTACT OFFICERS**

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11. **BACKGROUND PAPERS**

Planning and Housing Bill 2015-16 (13.10.15)

<http://services.parliament.uk/bills/2015-16/housingandplanning.html>

Housing and Planning Bill Impact Assessment (19.10.15)

<http://services.parliament.uk/bills/2015-/housingandplanning/documents.html>

Ministerial Statement on Starter Homes (02.03.15)

<https://www.gov.uk/government/speeches/starter-homes>

‘Starter Homes plan could 'kill off' emerging build to rent sector’, *Planning Resource* (11.11.15)

<http://www.planningresource.co.uk/article/1372201/starter-homes-plan-kill-off-emerging-build-rent-sector>

‘Starter Homes will 'squeeze out' other affordable housing, MPs told’, *Planning Resource* (18.11.15)

<http://www.planningresource.co.uk/article/1373362/starter-homes-will-squeeze-out-affordable-housing-mps-told>

‘Lewis moots local connection test for Starter Homes’, *Planning Resource* (23.11.15)

<http://www.planningresource.co.uk/article/1373854/lewis-moots-local-connection-test-starter-homes>

Walsall Site Allocation, CIL Deliverability and Viability, DTZ (15.09.15)

http://cms.walsall.gov.uk/index/environment/planning/planning_policy/local_plans/evidence.htm

The land that time forgot: Planning for employment land, *Turley* (06.11.15)

<http://www.turley.co.uk/intelligence/land-time-forgot-planning-employment-land>

West Midlands Combined Authority Deal Document (17.11.15)

http://www.westmidlandscombinedauthority.org.uk/pages/wmca_docs.aspx

Spending Review and Autumn Statement 2015 (25.11.15)

<http://services.parliament.uk/bills/201516/housingandplanning/documents.html>

David Elsworthy

Head of Planning and Building Control

REPORT DETAIL

Section one: An overview of the Housing and Planning Bill

1. The proposals of the Housing and Planning Bill can be summarised as follows:

a) Starter Homes: The Bill puts into legislation the Government's commitment to provide 200,000 Starter Homes for first-time buyers under the age of 40. The idea is that Starter Homes would be sold at a discount of at least 20% of the market value up to a value of £450,000 in London and £250,000 elsewhere. At present this 'affordability' is however only set for five years. Specifically, the Bill puts a general duty on all planning authorities to promote the supply of Starter Homes, and provides a specific duty, which will be fleshed out in later regulations, to require a certain number or proportion of Starter Homes on reasonably-sized sites.

b) Self Build and Custom Build: The Bill requires local authorities to keep a register of people seeking to acquire land to build or commission their own home and specifically requires local authorities to grant "*sufficient suitable development permission*" for serviced plots of land to meet the demand based on this register.

c) Tackling 'rogue' landlords: The Bill aims to give local authorities additional powers to tackle rogue landlords in the private rented sector. This would give authorities the ability to apply for banning orders against private landlords and includes proposals for a database of rogue landlords and agents to support with enforcement work.

d) A Right to Buy for housing association tenants and 'pay to stay' - higher rents for high income social tenants: The Bill provides for grants to be paid to associations to compensate them for selling homes at a discount and provides a mechanism through which local housing authorities will be required to make payments to the Secretary of State. These payments will be calculated with reference to an authority's high value housing stock with the expectation that this stock will be sold as it becomes vacant. The receipts raised from the sale of high value council stock will be used in a number of ways: to pay off the debt associated with these properties; to provide for replacement of the sold stock; to cover the cost of discounts for housing association tenants; and to finance a Brownfield Regeneration Fund. The Bill also makes provision for 'high income' social tenants to pay a market rent as opposed to a social rent – this policy is referred to as 'pay to stay.'

e) Assisting local authorities' private sector enforcement work: The Bill covers a range of measures including changes to the 'fit and proper person' test applied to landlords who let out licensable properties; and allowing arrangements to be put in place to give authorities in England access to information held by approved Tenancy Deposit Schemes.

f) Changes to the planning system: The Bill contains a number of different reforms to the planning system, with the stated aim of speeding it up and

allowing it to deliver more housing. Powers are given to the Secretary of State to intervene in the local and neighbourhood plan making process. A new duty to keep a register of brownfield land within a local authority's area will tie in with a new system of allowing the Secretary of State to grant planning permission in principle for housing on sites identified in these registers.

g) Compulsory Purchase: The Bill gives all acquiring authorities the same powers of entry for survey purposes prior to a compulsory purchase order being made; to introduce a standard warrant provision in relation to the proposed new common power of entry for survey; and to introduce a standard notice period of 14 days for entry for survey purposes; developing targets and clearer timetables for the confirmation stage of the compulsory purchase order process; allowing the Secretary of State to delegate decisions to a planning inspector in certain circumstances; and making changes to the process of taking possession of the land and on the timing of the acquisition process.

2. The Bill has had its second reading in the House of Commons and is currently at the public bill committee stage. There have however, been a number of tabled amendments and there is still considerable debate over the details of the Bill. This report discusses the current draft of the Bill and various published discussions to try and provide an overview of the possible impacts.
3. The provisions of the Bill need to be considered in the context of other proposals. In particular:
 - a) As confirmed in the Chancellor's Autumn Statement, funding is to be provided to support the delivery of Starter Homes. There is no additional funding for the provision of homes to rent, at the same time as the introduction of the 'Right to Buy' might reduce the availability of homes to rent;
 - b) The Government has announced that it will make permanent the permitted development rights that enable offices to be converted to housing without a need for planning permission (although with certain issues, such as traffic and ground contamination addressed through a prior notification procedure). This right is also proposed to be extended to allow for the demolition of office buildings and it is further proposed that it should apply to B1 light industrial premises.
4. The proposals in the Bill raise a number of potential issues for planning including;
 - a) Custom-build homes: Walsall has a lack of local authority land and there has also been a lack of expressions of interest. The borough already has lots of small sites that could be suitable and supported by the Council, but it is for private owners to bring such sites forward. This proposal is also very unlikely to address the real housing needs in the borough, including the delivery of affordable homes. The proposal is therefore likely to be an administrative burden on the Council with little benefit.
 - b) Planning Permission in Principle and the Brownfield Land Register: The current edition of the Bill is lacking in the details on this proposal and it will depend on regulations. The proposal could however simply make the system more complicated whilst reducing the fee income for local planning authorities. The Chancellor's Autumn Statement indicates that development might be promoted on brownfield sites in the Green Belt.

c) Decision Making: There is a direct conflict with the localism agenda through proposals for additional powers for central government. The Secretary of State would be able to prevent councils granting planning permission for developments if enough Starter Homes are not included and to require permissions to be granted where Starter Homes are proposed; to intervene in the examination of development plan documents and to direct changes to such documents; to grant permission in principle for certain types of development project; and to grant consent for developments of up to 500 homes associated with nationally significant infrastructure projects. This could result in local authorities having less of a say over their local areas.

5. This report, however, focuses on the element of the Housing and Planning Bill which, without amendments, officers consider as being potentially most harmful to Walsall, namely **Starter Homes**. This is for two main reasons. First is the simple point that the current proposal will not guarantee affordability and does not appear likely to meet the most pressing needs of Walsall's communities. Second is the issue that terms such as 'underused' and 'no longer viable' could serve to undermine the supply of industrial land and therefore job creation and economic regeneration. It is the view of officers that there is a real need to consider further the impacts of the Bill, the language used and the detail within the Bill.

Section Two: Starter Homes and the Affordability Issue

6. There is a question mark over whether the proposed Starter Homes would help to meet the most pressing housing needs in an area like Walsall. Those working in the rental sector have voiced concern that the proposal will deter investors in the rental sector as developers and investors would lose control of parts of their sites (Ian Fletcher, British Property Federation, Planning Resource, November 2015). There are also concerns being voiced that these Starter Homes will still be out of reach of many would-be homeowners (Hugh Ellis, Town and Country Planning Association, Planning Resource, November 2015). This is likely to be the case for many households in Walsall, which has low levels of household incomes and above average levels of unemployment compared to national levels and is an area where people might find they do not have sufficient economic security or the ability to make deposits to fund mortgages. Shadow housing and planning minister Roberta Blackman-Woods has also voiced concerns that Starter Homes will not serve the needs of local people and there have been suggestions that tests should be introduced to allow local authorities to be satisfied that local people have been prioritised (Planning Resource, November 2015).
7. The Government has stated that the proportion of Starter Homes on a site will form part of the current S106 negotiations that local authorities undertake with developers. This is likely to only make the process more complicated and time consuming - slowing down the delivery of schemes. At present it is not clear from the Bill whether, in planning terms, the Starter Homes will form part of affordable housing requirements, but the Governments Housing and Planning Bill Impact Assessment states that *"developers may choose to adjust the level of affordable housing in relation to the number of Starter Homes they will be developing. This may reduce or alter the mix of affordable housing provided which could impact on those individuals seeking affordable housing"* (p.31,

October 2015). The Autumn Statement also discusses Starter Homes as part of plans for affordable housing. There is also concern that the proposals will encourage developers to try to renegotiate S106 agreements or argue that schemes are not viable enough to provide contributions in addition to Starter Homes. This issue may also be exacerbated by the fact the CLG has issued a letter urging planning authorities to respond constructively, rapidly and positively to requests for section 106 renegotiations and to take a pragmatic and proportionate approach to viability. Walsall already takes a flexible approach but there is a need to recognise that councils sometimes have to challenge the viability argument in order to deliver any affordable housing at all.

8. Furthermore if as suggested Starter Homes can be resold or let at open market value five years after the initial sale, affordability cannot be maintained and purchasers can reap a windfall in the future. This creates the obvious risk that the values of Starter Homes rise after this initial time period, and indeed that they could be boosted from the outset because of the prospect of an increase in sale price in the future. This could mean that not only are Starter Homes unaffordable to many in the first place, they could become even more unaffordable after the five years.
9. It seems clear that further work should be done on the Bill to ensure that affordable really does mean affordability for all, and that the system is adaptable to meet local needs whilst providing the clarity needed for local authorities to be able to operate the new requirements placed on them. It is also officer's view the Bill needs to be amended to state that the restrictions on re-sales and letting at open market value of Starter Homes are in perpetuity. This will help to achieve the aim of a long term supply of affordable homes rather than a temporary quick fix which the current Bill would provide. This is of particular importance if Starter Homes are to form part of affordable housing requirements as this would mean there is less affordable housing stock resulting in an overall loss in the amount of social and affordable rented homes that meet the needs of Walsall's communities.

Section Three: The Suitability of Sites Issue

10. In addition to the affordability issue there are also concerns over the type of land being promoted for Starter Homes. The Starter Homes concept was first mooted in a Ministerial Statement of March 2015, and this and the Impact Assessment for the Housing and Planning Bill refer to suitable sites for Starter Homes which have not previously been identified for housing as being likely to be those that are "*under-used or no longer viable for commercial or industrial purposes*" (p.30, Housing and Planning Bill Impact Assessment, October 2015). Any landowner could try to argue that a site is under-used or no longer viable. Indeed it is even possible for land owners to make their sites under-used. Typically housing values are higher than industrial values and it is likely that this could squeeze out industrial investment and perhaps even active industry.
11. Often, the redevelopment of industrial sites in places like the Black Country to provide for new industry and employment can face significant viability challenges. As a result such developments take time to come forward and often need public sector intervention. Recent work undertaken by planning consultants on employment land viability in Walsall has demonstrated that

whilst sites may not always be viable in the conventional sense the borough has a good track record of delivering sites and future delivery is possible (Walsall Site Allocation, CIL Deliverability and Viability, DTZ, September 2015). Walsall has an occupier led market and sites often get developed without having been on the market. Conventional ideas around viability (based on a desk-based development appraisal in an open-market context) therefore don't necessarily apply to the industrial land market and there is a need for the Government to recognise this.

12. There is currently 114.9ha of vacant industrial land (as opposed to premises) in Walsall. Using the Homes and Communities Agency employment / gross internal floorspace ratios at the historic take up rate of roughly an 80:20 division between B1/B2 and other types of industrial land such as logistics (which yields much lower employment yields), the total estimated net internal floorspace in the vacant land supply translates as 73,600 sqm of B8 and 294,400 of B1/B2/other. If this land was lost to Starter Homes that would equate to the potential job opportunity loss of 920 B8 jobs and 8,000 B1/B2/other *sui generis*-type jobs.
13. This is obviously a worst-case scenario of lost job opportunities but combined with recent changes to permitted development rights there is a real risk that the Starter Homes proposal could undermine the urban regeneration strategy. Some industrial investment undoubtedly will continue (albeit at a reduced rate), but given the amount of Walsall's land that is in industrial use, the likelihood is that much of it will be either turned over to housing or kept as a speculative windfall asset with a housing rather than industrial value attached. This would severely curtail inward investment and not allow existing companies to grow. As more sites are vacated over time there would be a barrier to them being used to accommodate changes in industrial requirements for expansion and / or relocation, leading to a speedier, and perhaps eventually terminal, decline in manufacturing employment, as landowners speculate on the higher values that might be obtained from housing.
14. Currently there is a known demand in Walsall for 13 sites between 0.4-1ha and 9 sites between 1-3ha to meet the needs of industry. It can also be predicted that in future years there might be a need for at least 4 sites between 0.4-3ha a year and 2 sites for single occupiers of 3ha and over per year. The loss of potential employment land is therefore a real concern in terms of the borough's ability to meet the needs of industry and provide jobs. At present Walsall has the land and the demand but the focus on viability not deliverability could mean that this land is lost to housing.
15. Therefore the use of terms such as "*under-used and no longer viable*" (p.30, Housing and Planning Bill Impact Assessment, October 2015) are potentially damaging in this context and the Government needs to fully understand the consequences of the language used in the Bill and in supporting statements and documents. The test is the National Planning Policy Framework is whether or not a site is 'deliverable', and the language in the Bill should reflect this and move away from 'unviable' to 'undeliverable'.
16. A recent report by planning consultants Turley has called for local authorities' Local Plans to ensure there is a sufficient supply of land to meet rising demand for employment land and commercial premises (The land that time forgot:

Planning for employment land, November 2015). This is exactly what the emerging Site Allocation Document for Walsall looks to do.

17. The risk of Starter Homes eroding Walsall's employment land will also be added to by the proposals to increase permitted development rights to change of use from light industry to residential. This means that the council's ability to influence development is reduced even further and is likely to result in homes that have poor amenity and are not well served by facilities. Industrial sites are already under pressure from house builders and there is a need to empower councils to manage the regeneration of industrial sites (including where appropriate the possibility of conversion to housing sites, that are no longer needed for industrial uses) and not to reduce their control even further.
18. Walsall is one of a very limited number of authorities in the West Midlands that has actually been meeting its housing trajectory over the recent years but there is a clear need to provide more homes. The need to ensure economic prosperity as well as homes should be given greater recognition by the Government as housing growth cannot be sustained without access to jobs. Indeed the recent West Midlands Combined Authority Deal Document includes reference to ensuring there is a *"sufficient, balanced supply of readily available sites for commercial and residential development to meet the demands of a growing West Midlands economy"* (p.15 November 2015). Again, this is what Walsall's emerging Site Allocation Document aims to do, provide a balance between housing and employment land requirements.
19. The Starter Homes proposal appears to be seen by some as helping to deliver housing whilst 'saving' the Green Belt. However, in an area like Walsall it is the availability of industrial jobs that helps to retain the population in the inner areas. Without jobs then it is likely that the attraction of the inner areas as places to live could actually decrease and decentralisation could increase leading to more pressure on the Green Belt. There is a need to ensure that there is a balance and not housing growth at all costs.
20. Whilst officers welcome the aim of providing a supply of affordable homes it is our view that without amendments the Bill will fail to meet this aspiration, and indeed actually have a negative impact on regeneration. It is therefore our view that amendments to the Bill are needed to address the issue of suitable sites for the provision of starter homes in order to reduce any potential adverse impacts. The Bill should state that the provision of starter homes will be suitable on land/sites/premises that are no longer 'deliverable' and that a supporting evidence statement will be required before permission for such development would be granted. This amendment is considered necessary to protect not only active industry but also the supply of land and premises for industrial investment.

Section Four: Conclusions and the Chancellor's Autumn Statement

21. There is currently a lack of clarity in the Bill and this could leave local authorities struggling to anticipate, interpret and operate the new proposals and may well slow down the planning process. Furthermore since the Bill's last reading there have been a number of suggested amendments. These include proposals to enable local authorities to be able to ask for planning gain measures that provide for a range of affordable homes other than Starter Homes, suggestions

over what is affordable, and limiting Starter Homes to 'exception' sites (sites that are 'under-used or no longer viable for commercial or industrial purposes'). Government officials themselves seem unsure as to how some of the proposals will operate. All of this might indicate that elements of the Bill might not really be fit for purpose and that there could be the potential for future amendments to the Bill to address uncertainty. These might only serve to make the planning process more complicated. There has also been concern raised by some that the proposal could delay the plan making process as plans are withdrawn to accommodate Starter Homes.

22. Overall, there appears a real risk that the current draft of the Housing and Planning Bill will fail to achieve its key planning aims in terms of delivering affordable homes and speeding up the planning process. In an area like Walsall the Starter Homes proposal might actually reduce the amount of affordable homes available for those in the greatest housing need whilst at the same time making the process more time consuming and complex. The proposal could also undermine the protection and provision of employment land putting job creation at risk. This could weaken and delay the plan making process which looks to provide a balance of land to meet both housing and employment land requirements.
23. Furthermore, recent announcements in the Autumn Statement on 25th November have outlined the Government's financial proposals for delivering new homes along with confirming its view of the land which is suitable for Starter Homes. The statement includes a commitment of £2.3 billion funding to support the delivery of up to 60,000 Starter Homes, in addition to those delivered through reform of the planning system, and as well as funding for shared ownership housing and for some homes to allow residents "*to save for a deposit while they rent*". How such measures will work is currently unclear, but they show the Government's commitment. Overall the proposals within the statement are very much focused on building homes for owner-occupation rather than supporting improvements to the rental market and increasing the supply of homes for rent.
24. The Autumn Statement also includes a bold commitment that the government will remove constraints that prevent private sector organisations from participating in delivery of housing, including the constraints to bidding for government funding. There is however, nothing about helping with the delivery of employment land, which is a fundamental issue for places like Walsall. Whilst new Enterprise Zones are proposed nationally it is unclear how the need to provide for industry would fit with a blanket approach to the promotion of housing on brownfield sites. Perhaps most worryingly the statement says that housing supply will be accelerated by "*ensuring the release of unused and previously undeveloped commercial, retail, and industrial land for Starter Homes*" (p.41 November 2015). This reinforces our concerns around the pressure on employment land to be used for housing and highlights the need for the Bill to protect industrial land that is deliverable.
25. Clearly the Government is making the Starter Homes initiative a key plank of its policies. However, from the perspective of a place like Walsall there are real concerns with the Bill and the details behind the proposals. If these issues are not sufficiently addressed there is a potential risk that the Government will prioritise Starter Homes to the detriment to sustainable regeneration.