The Housing and Planning Act 2016

This Special Edition Housing Newsletter has been produced by the Housing Team at Cornerstone Barristers to highlight to the main issues arising from this important piece of legislation. Other articles will look at particular provisions either in force already or with a future commencement date, but first ***Andy Lane*** *and* ***Matt Lewin*** *take a step back and take an overarching view of the housing and planning themes in the Act*

The "housing" side of the Housing and Planning Act 2016 for housing lawyers

Andy Lane

There was a strange period of 11 days between the Royal assent being given to the Housing and Planning Act 2016 ("the Act") on 12 May 2016, and it being officially published for us all to see in final form. The preamble to the Act gives little away:

"An Act to make provision about housing, estate agents, rentcharges, planning and compulsory purchase."

and even a thorough read of its final form demonstrates significant gaps to be filled by as yet unpublished regulations.

Whilst there is an element of "mish mash" to the housing provisions in the Act - covering areas as diverse as private rented sector banning orders and rent repayment orders, a rogue landlords and property agents database, recovery of abandoned premises, extended ("voluntary") right to buy and sale of higher value local authority properties, 'pay to stay', reducing social housing regulation, succession rights for secure tenants and phasing out "tenancies for life" – common themes can be identified:

1. The acknowledgment of the increased importance of the private rented sector and desire to improve standards therein.

2. The continued aspirational goal of home ownership, and in the government's own words turning "generation rent into generation buy".

3. The reassessment of the purpose and function of local authority housing.

4. The desire to stress the private nature of housing associations (for obvious financial reasons given the ONS classification of them as public bodies in October last year leading to a £60bn increase in public sector net debt).

Whilst there was fierce debate during the passage of this legislation through the Houses of Parliament – not least on questions of the sale of higher value local authority housing stock to fund the "voluntary" extension of the right to buy to housing associations – the government succeeded in getting most of its agenda for the Act through after an extended 'ping pong' session between the House of Commons and House of Lords at the conclusion of the Bill's passage.

An obvious "casualty" was the original plan for a statutory right to buy for housing association tenants, being replaced by the voluntary scheme negotiated between the government and the National Housing Federation. Further, 'pay to stay' remains discretionary for housing associations following a consultation process that ended on 20 November 2015.

In summary, there are macro and micro issues, as always, which will exercise housing lawyers as the provisions come into effect, and regulations start to be made.

One final warning, and that sections 69 to 79 (vacant higher value local authority housing) are already in force, and provisions concerning the assessment of accommodation needs in England (section 124) and the power of tenant associations to request information about tenants (section 130) are in force from 12 July 2016.

The "planning" side of the Housing and Planning Act 2016 for housing lawyers
Matt Lewin

It has long been a common theme in statements emanating from the Department for Communities and Local Government that the planning system is a problem that needs to be solved. One of the first acts of the coalition government of 2010-2015 was radical reform of the planning system; one of the central objects of that programme of reform was "*to boost significantly the supply of housing"* (paragraph 47 of the National Planning Policy Framework).

That same object lies at the heart of the latest version of planning reform – the Housing and Planning Act 2016 – but, as the product of a single party government, it now takes a more

recognisably Conservative form: it is intended to boost significantly the supply of housing *for home ownership*.

The privileging of home ownership over other forms of tenure is expressed, on the "housing" side of the Act, by the further erosion of the social rented sector, in particular the extension of right to buy to housing association tenants and the phasing out of secure tenancies for life.

On the "planning" side of the Act, the reform which is of most interest to housing lawyers is the requirement for "starter homes" to be provided on new housing developments. It is important to bear in mind that this reform applies to England only.

"Starter Homes"

A starter home is defined as a new-build property which will be sold to a first-time buyer under the age of 40 and at a discount of at least 20% off the open market price, but which is below a price cap of £250,000 outside Greater London and £450,000 within Greater London.

The government's position when the Housing and Planning Bill was introduced was that the discount would not be repayable if the owner sold her starter home five years after she purchased it. Therefore, at the end of a five year "restricted period", the starter home would be indistinguishable from any other property on the open market and could be bought and sold at the market rate. The detail, however, was not dealt with in the Bill itself, but was left to be fleshed out in secondary legislation. The House of Lords proposed an amendment to the statutory definition of a starter home, which would have extended the restricted period to 20 years and would have limited the resale price of the starter home during the restricted period to a % of the market value, from 20% in the first year, tapering by 1% each year, to 0% at the end of the restricted period. Introducing the amendment, Lord Best explained that it would "*moderate the generosity of the starter homes package*". In response, the government proposed its own amendment which accepted the tapering principle. In its consultation on Starter Homes Regulations, the government has stated that it will limit the restricted period to a maximum of 8 years.

The most contentious aspect of the starter homes provisions was that the government would be given power to determine the number and location of starter homes at a national level, rather than allowing these matters to be decided by local authorities according to local assessments of housing need. The result would be that starter homes must be provided in

all new housing developments (of a certain size to be determined). However, the provision of starter homes will be at the expense of other forms of affordable tenure: rather than providing an affordable housing contribution comprising a mix of social rent, affordable rent and shared ownership properties, a developer will be legally obliged to provide starter homes as a proportion of the properties built on all new developments (the government's current proposal is 20%) which exceed a prescribed size threshold. In these circumstances, the requirement for an affordable housing contribution would in many cases fall away because insisting on affordable housing on top of starter homes would make the development unviable (local authorities cannot demand affordable housing requirements which would prevent a developer from making a "competitive return" on its investment).

The government accepted that the starter homes provisions would have the effect of pushing out affordable housing for rent, but that this was "*exactly what we put on the tin in the general election manifesto"* (HC Deb 3 May 2016 c65).

A furious debate between the House of Commons and House of Lords ensued over a succession of amendments, proposed by Lord Kerslake, which he argued would "*... place the responsibility for determining the proportion of starter homes in any particular development where it should properly lie: with the local planning authority."*

A majority of the House of Lords supported Lord Kerslake's amendment, agreeing with his concern that "*very few of us ... want to see more homes for better-off potential buyers at the expense of significantly fewer homes for those on lower incomes who struggle to find rented housing that they can afford."*

Lord Kerslake's amendments were repeatedly rejected by the House of Commons, where the government played its trump card: its manifesto – including the starter homes proposals – had won a majority at the general election. Eventually, Lord Kerslake reluctantly withdrew his amendment.

Starter homes occupy pole position in the Act and, along with additions and amendments to the Self-build and Custom Housebuilding Act 2015, can be found at sections 1 to 12. The essence of the starter homes reform is that all new housing developments of a certain size (to be determined) must include a proportion (to be determined) of starter homes, and will only be required, additionally, to provide affordable housing where that requirement would not undermine the viability of the development. For housing lawyers, this means that the number of new properties being built in the social rented sector is set to diminish, potentially radically.