




Local Authorities' Role in Housing Supply

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The Housing Crisis

Broken housing market 


- White Paper *Fixing our broken housing market* February 2017, PM foreword:
"Our broken housing market is one of the greatest barriers to progress in Britain today. Whether buying or renting, the fact is that housing is increasingly unaffordable – particularly for ordinary working class people who are struggling to get by."
- 1.15m households on English council housing waiting lists, 2017
- Accepted homeless households in TA on track to reach 100,000 by 2020

Government target 

- Autumn Budget 2017 target: 300,000 new homes p.a.
- MHCLG Single Departmental Plan updated June 2019: 629,190 cumulative total of net additions 2015-2018
- Average of c. 210,000 p.a.

Local Authorities' Role? 

- In the White Paper, the main role of local authorities in boosting housing supply was identified as strategic, enabling the private sector to deliver much needed new homes using their planning powers.
- Cf. in the Green Paper *A New Deal for Social Housing*, August 2018 at 5.1: "We will support local authorities to build more."


cornerstone barristers

Strategic role as enablers

Elphicke-House Report



- Elphicke-House Report January 2015
- Sub-titled *From statutory provider to Housing Delivery Enabler*
- Main emphasis of recommendations was strengthening councils' strategic role in planning and facilitating the required house building by the private sector

Housing White Paper /1




- Executive Summary:
"The Government is offering higher fees and new capacity funding to develop planning departments, simplified plan-making, and more funding for infrastructure. We will make it easier for local authorities to take action against those who do not build out once permissions have been granted. We are interested in the scope for bespoke housing deals to make the most of local innovation. In return, the Government asks local authorities to be as ambitious and innovative as possible to get homes built in their area"


Housing White Paper / 2




All local authorities should develop **an up-to-date plan** with their communities **that meets their housing requirement** (or, if that is not possible, to work with neighbouring authorities to ensure it is met), **decide applications for development promptly** and **ensure the homes they have planned for are built out on time**. It is crucial that local authorities hold up their end of the bargain. Where they are not making sufficient progress on producing or reviewing their plans, the Government will intervene. And where the number of homes being built is below expectations, **the new housing delivery test will ensure that action is taken...**

National Planning Policy Framework 

- See the *Morris Homes* case in the Supreme Court [2017] 1 WLR 1865.
- Because Suffolk Coastal DC could not demonstrate a five year supply of deliverable housing sites, the NPPF provided for a presumption or “tilted balance” in favour of granting planning permission.
- The Inspector refusing planning permission had wrongly found this was displaced.
- Revised NPPF July 2018 incorporates a new, tougher Housing Delivery Test.

Limitations of the market 

- NPPF target of 10% Affordable Housing on major housing developments
- Mayor of London London Plan aim of maximising reasonable amount of Affordable Housing
- Affordable Housing = no more than 80% market rent.
- Unaffordable for “ordinary working class people”: see *Priced Out*, Public Policy Research November 2017
- Heriot-Watt Uni research for NHF, 2018: c. 40% of new supply should be affordable, 25% social rent
- In fact affordable c. 20%, social rented less than 5%



Local Authorities as house builders

Local Authorities' traditional role



- Long history of house building, dating back to Housing and Working Classes Act 1890
- 1950s and 60s about 200,000 new council homes built a year in England
- By 1999-2000 it had crashed to 60
- Reasons:
 - enactment of RTB in 1980
 - pooling of RTB receipts
 - social housing grant targeted at housing association sector

Council House Building (England)



	LA	HA
• 1969/70	135,700	7,100
• 1979/80	74,790	16,280
• 1996/97	450	24,630
• 2017/18	1,960	27,110

Council House Stock (England)



	LA	HA
• 1969	4,390,000	-
• 1979	5,187,000	353,000
• 1996	3,470,000	942,000
• 2018	1,592,000	2,452,000

Borrowing cap



- In April 2012, when English local authorities became self-financing in relation to housing, the Government imposed a cap on Housing Revenue Account ("HRA") debt, which restricted councils' ability to borrow against their housing stock.
- Following calls to scrap the cap from the LGA, backed by the Treasury Committee from 2017, in October 2018 the cap was scrapped.
- Councils may now borrow against HRA assets in accordance with Prudential Code.

Other barriers to house building




- Under the Welfare Reform and Work Act 2016, new council homes are subject to a mandatory social rent and 1% annual rent reduction until y/e March 2020
- From April 2020 the Government's policy is that a new rent standard (for LAs as well as HAs) will allow rent increases of CPI + 1% p.a
- The RTB still acts as a disincentive to investment in new council housing


Future trends




- It is too early to say whether scrapping the HRA debt cap and the promised relaxation of social housing rent controls will boost direct delivery of new council housing.
- Watch this space!



Local Housing Companies

Powers to use LHCs 

- Local authority powers to provide housing through companies ("LHCs"):
 - section 95 of the Local Government Act 2003 and
 - the general power of competence under section 1 of the Localism Act 2011
- LA investments in LHCs are accounted for in the General Fund. The duty to keep a HRA under section 74 of the Local Government and Housing Act 1989 relates to houses disposed of and land acquired or appropriated by the local authority, under Part 2 of the Housing Act 1985

Incentives to use LHCs 

- LHCs are subject to the same regulation as ordinary private sector providers, and in particular are not subject to rent control. (The Welfare Reform and Work Act 2016 does not apply to tenancies granted by LHCs.)
- LHCs have unrestricted powers of disposition of housing stock: cf. s.32, Housing Act 1985
- LHC tenancies do not attract the RTB
- Profits from LHCs can be used to subsidise other General Fund activities

LHCs on the increase



- *Delivering the renaissance in council-built homes: the rise of local housing companies*, the Smith Institute October 2017, noted a rapid rise in LHCs
- Currently a total of 150 LHCs in England, which were being used by councils to deliver a mix of housing tenures, including 30-40% affordable housing and some at social rents
- Other studies carried out by the Association for Public Sector Excellence (November 2017) and Inside Housing (February 2018) have noted the same trend

Elphicke-House Report



- Embraced the concept of local housing delivery organisations
- Para 7.24 recommended that councils consider setting them up
- Para 7.2.1 described 3 models:
 - wholly owned company funded by the council,
 - investment partnership, with funding provided by a developer and the council providing land and
 - operating lease granted by the council to a registered provider
- Relevant case studies at Appendix 5

Government response / 1



- Written statement to Parliament 20 March 2015 (HCWS441):
"It is important that new council tenants should have access to the Right to Buy, and that new homes should not be built by councils which are excluded from the Right to Buy. In order to be eligible, local authority tenants need to have a secure tenancy. All forms of secure council tenancies are subject to the Right to Buy, including new flexible tenancies, regardless of whether they are accounted for in the local authority's Housing Revenue Account or the General Fund.
- ...

Government response / 2



A number of local authorities have established local housing companies to help deliver local housing solutions. The Government recognises the benefits that public private partnerships can bring in supporting new forms of housing, and notes that the Elphicke-House review into the role of local authorities in housing supply identified that different housing delivery organisations offer different strengths and opportunities. The Government welcomes approaches where local housing companies are developing new homes **for market sale or purchasing private rented homes for the accommodation of homeless households**, through an appropriate legal entity structure and/or the borrowing does not count as public sector borrowing."




Housing Partnerships

Housing partnerships



- Potential fiscal advantage of partnerships: local authority not subject to corporation tax
- Typically, the local authority provides land to a Housing Development Vehicle and the private partner provides finance
- See *Peters v Haringey LBC* [2018] PTSR 1359
- Section 1 of the Localism Act 2011 empowers a local authority to enter into a housing LLP with a development partner, rather than use a company
- Provided that making a profit is not the council's dominant purpose



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