

THE HOUSING WHITE PAPER

SAJID JAVID INTRODUCED THE HOUSING WHITE PAPER TO THE HOUSE OF COMMONS, STATING THAT THE DOCUMENT IS A “BOLD, RADICAL VISION FOR HOUSING IN THIS COUNTRY.” BEGINNING WITH A REFRESHINGLY STRAIGHTFORWARD INTRODUCTION, THE DOCUMENT STATES, ‘VERY SIMPLY’, FOR TOO LONG WE HAVE NOT BUILT ENOUGH HOMES IN THIS COUNTRY. THIS IS THE CAUSE OF THE “BROKEN HOUSING MARKET” REFERRED IN THE DOCUMENT’S TITLE. IF ONLY THE MEANS TO FIXING THE HOUSING SHORTAGE WAS AS SIMPLE.

Some of the consequences of this broken housing market – the scale of the shortfall in housing delivery over decades; worsening affordability; decline in home ownership; and the lack of regulation and financial burdens of those in the private rented sector – provide a familiar context to those involved in promoting increased housing delivery. The Paper also points to wider economic impacts resulting from the housing shortage, stating that this “is a national issue that touches every one of us. Everyone involved in politics and the housing industry has a moral duty to tackle it head-on.”

The executive summary provides an overview of the professions and institutions that the Government wants to play a greater role. For all involved, the Government has set out ways in which it will assist, but with a clear expectation that the support given to them will result in changes which boosts significantly the supply of housing, ‘or else’!

Step 1: Planning for the right homes in the right places

With the Paper stating that up-to-date plans are “essential” to ensure development is ‘planned’ rather than resulting from “speculative” proposals, we see the Paper repeat words from a select committee report published in 2014, stating that authorities that fail to ensure an up-to-date plan is in place are failing their communities.

“Over 40% of local planning authorities do not have a plan that meets the projected growth in households in their area.” Recognition is given to the most significant reason for this in the way local decision-makers respond to public attitudes about new housing, with some ‘ducking’ difficult decisions and not planning for the homes their area needs. Indeed!

So, a raft of reforms to plan-making are proposed and below we comment on some of the key proposals.

Getting plans in place

The task may not be made any easier by the proposed reforms to national policy, notably on assessing housing need

Sajid Javid’s threat to local planning authorities that he will “where necessary” intervene to ensure that an up-to-date plan is put in place was first announced in July 2015. The deadline of a plan being “published by early 2017” (not confirmed in the White Paper) suggests that there must be at least some authorities which are now vulnerable to such action being taken. However, the task may not be made any easier by the proposed reforms to national policy, notably on assessing housing need, as discussed below.

The Paper proposes to remove the requirement in the NPPF for a single Local Plan, reverting to a Local Development Framework approach introduced in 2004. Critically, authorities must have a Local Plan which provides policies for the strategic priorities of the area (see paragraph 156; NPPF). Other documents can be produced where necessary, for example, area action plans.

In addition to putting an up-to-date Local Plan in place, the Paper also advises that regulations will be introduced which set a requirement for Local Plans to be reviewed at least every five years. **Furthermore, authorities will need to update their plans if their existing housing target can no longer be justified against their objectively assessed housing requirement, unless they have agreed a departure from the standard methodology with the Planning Inspectorate. It is unclear on what basis such a departure would be agreed.**

Where an authority is not proposing to meet all of its housing need, the Paper notes the Duty to Cooperate which places a legal requirement for cross-boundary working. Acknowledging that this has not been successful “in some parts of the country”, the Government will consult on changes to the NPPF so that authorities are expected to prepare a Statement of Common Ground which sets out how they will “work together” to meet housing requirements. **Such an approach is however commonplace, six years on from the introduction of the Duty to Cooperate though, despite this, strategic collaboration remains as challenging as ever, since the removal of “top down” plans.**

The Paper sets out that every authority focuses upon having a Local Plan in place which deals with the “strategic priorities” for the area including strategic sites. Other development plan documents and Neighbourhood Plans, identified as “optional”, can be produced so long as the documents avoid duplication. **The theory is that this should enable plans to be produced more rapidly, however it is often the strategic priorities including the overall level and distribution of (housing) development in an area which delays plan preparation, due to the inherent political difficulties.**

Under the sub-heading “Making plans easier to produce”, the Paper states that Government is proposing to amend the test for assessing whether a plan is “sound”. The Annex explains that this change could mean less stringent requirements upon the evidence base and that plans need only propose ‘an’ appropriate strategy as opposed to ‘the most’ appropriate strategy, when assessed against reasonable alternatives. **Being mindful of Government’s previously issued dictate that Inspectors should be ‘pragmatic’ and ‘flexible’ when assessing Local Plans, this raises concerns that the assessment of plans at Examination will be less robust.**

Highlighting a desire to develop a new standard methodology for objectively assessed housing need (OAHN), contrary to expectations, the Paper does not introduce an immediate or short term solution to the issue of establishing local housing need. Once agreed, however, a new standardised methodology would aim to establish baseline housing need. Whilst the Paper suggests the assessment will be able to depart from this standardised methodology, there would be an incentive for it to be used. The Paper acknowledges that “Growing businesses need a skilled workforce living nearby, and employees should be able to move easily to where jobs are, without being forced into long commutes”, a point which is considered critical to the success of the recently published Industrial Strategy and perhaps one that conflicts the Local Plans Expert Group recommendations.

For the time being therefore, local planning authorities will continue to fall back on the existing OAHN methodology contained within the Government’s Planning Practice Guidance.

However, there is a clear desire to develop a new standard methodology for this. By April 2018, in the absence of an up-to-date local or strategic plan, the new methodology for calculating objectively assessed requirement would apply as the baseline for assessing five-year housing land supply and housing delivery. Further consultation on this is proposed for 2017, but the Paper places a clear focus on the following: address current and future housing market pressures; consistency with the country’s modern Industrial Strategy; and account for the needs of different groups, including older people.

It is important that proposed changes to the process of preparing up-to-date Local Plans, some of which could be significant, are introduced quickly to avoid any further delays; a key failure of the planning system which the White Paper seeks to address.

Making enough land available in the right places

This section of the Paper begins with the proposed introduction of a requirement within national policy for authorities to have “a clear strategy to maximise the use of suitable land in their area, so it is clear how much development can be accommodated”. The Paper identifies “particular priorities that should be pursued” as part of this strategy including utilising brownfield and public sector land, creating new communities and also supporting small and medium sized sites.

Whilst the Paper identifies future rounds of garden villages, towns and cities, it is silent on the role of sustainable urban extensions to towns and cities other than identifying that Green Belt should be ‘a last resort’ for new housing. This is surprising given the important role of such developments to housing delivery, and the ability of most authorities to meet their full identified housing need (emphasised elsewhere in the Paper as a firm requirement).

Perhaps the clearest missed opportunity through this HWP is that it proposes to amend national policy so that, in planning to meet development needs, all other options should be “fully examined” before reviewing Green Belt boundaries. In Practice, this may not represent a significant shift in the approach which is often taken by authorities but confirming this as a matter of policy will come at the expense of wider sustainability objectives. Brownfield sites in the Green Belt can be redeveloped under current national policy anyway albeit in a more constrained manner, so the proposed change does potentially enable more housing to be delivered.

The proposal for developers to be essentially taxed further for the “privilege” of developing Green Belt land, so that the environmental quality and accessibility of remaining Green Belt can be improved, may mean that such development becomes unviable.

Strengthening neighbourhood planning and design

Against the background of the Neighbourhood Planning Written Ministerial Statement (WMS) of 12 December 2016 and application for permission to apply for judicial review, it is noteworthy that the Paper repeats the bold claim forming part of the WMS, that “analysis suggests that giving people more control over development in their area is helping to boost housing numbers in plans.

Research conducted by Barton Willmore in support of the legal challenge against the WMS has shown that this claim is inaccurate or based upon an inadvertent error by the Minister.

The Paper of course proposes to support neighbourhood planning, through further funding being made available and proposed changes to the NPPF to make it easier for communities to prepare them. This includes neighbourhood planning groups being able to “obtain a housing requirement figure from their local planning authority in order to avoid delays.” **This approach should support DCLG’s case for more Neighbourhood Plans and provide groups with a figure which would boost significantly the supply of housing, though our experience points in the opposite direction.**

The Paper’s proposals to “improve the approach to design” through proposed changes to the NPPF, include a requirement for local and Neighbourhood Plans to set out “clear design expectations” and “make clear that design should not be used as a valid reason to object to development where it accords with clear design expectations set out in statutory plans.” The Paper also proposes to recognise the value of a widely-accepted design standard such as ‘Building for Life’. **This however doesn’t appear to address the gap often found between the interpretation of design policies by local authorities and developers/promoters; or the potential imposition of design criteria set by those with little design or commercial experience.**

This section of the Paper also focuses on the efficient use of land for development. It proposes to amend the NPPF so that plans and individual developments avoid low density housing and “address the particular scope” for higher density housing in urban locations that are well served by public transport. **Of note, the Paper proposes to introduce a requirement for authorities to take a flexible approach to policies which could inhibit efficient use of land for development, for example, avoiding a “rigid application” of open space standards if there is adequate provision already in the wider area.**

Step 2: Building homes faster

This section of the Paper opens with the statistic that as of July 2016, there were 684,000 homes with detailed planning permission on sites which have not yet been completed. Of these, building had started on 359,000 homes. It should be highlighted that 90% of the remaining 335,000 are categorised as progressing to a start and that only 5% are stated as being on hold or shelved. So, developers are bringing sites forward, just not necessarily quickly enough in the Government's view.

The concern is that slow building of new homes "undermines" Local and Neighbourhood Plans and, where this leads to a lack of five-year supply, an authority is vulnerable to speculative development, and thus communities sense a lack of control and public confidence in the plan-led system is undermined.

Through the Paper, the Government proposes action which it professes will not only address the issues that cause problems for developers and authorities by holding up building, but will make developers and authorities "up their game", holding them to account if they fail to deliver. So, how do they intend on doing this?

Provide greater certainty

Accepting its effectiveness, the requirement for authorities to demonstrate a five-year housing land supply, plus a buffer, will remain.

The Paper's proposal, therefore, is to amend national policy to give authorities "the opportunity" to have their housing land supply agreed on an annual basis and then fixed for a one-year period. Those authorities who take up this opportunity will need to consult with developers and provide for a 10% buffer on their supply. The Government proposes to issue new guidance on the calculation of five-year supply and there is a proposal that the assessment would be published, consulted upon, and then examined by the Planning Inspectorate before being adopted.

Many local authorities, particularly those in good market areas who face pressure from developers looking to bring forward unallocated sites, already review their supply annually, seek to liaise with developers and publish their assessments before adopting a position. The problem comes when the authority's interpretation of what is and what is not deliverable becomes the point of contention. More guidance from Government will help this process. **But the potential for examination, annually, with all the related process is surely a big ask; not only for authorities themselves but also the Planning Inspectorate. It will also be interesting to see how many authorities choose to follow this route; the lure of potentially cutting out those expensive Public Inquiries where the issue of five-year supply takes centre stage, will no doubt be a tempting one.**

The Paper endorses the Written Ministerial Statement of 12 December 2016, unsurprisingly, with the additional protection to Neighbourhood Plans to be written into a revised NPPF. **We do note with interest, however, that the Government is proposing to consult on the further strengthening of this protection by relaxing the requirement for Neighbourhood Plans to have to allocate sites for housing in order to benefit from that additional protection. No doubt Ministers have realised that many Neighbourhood Plans do not actually allocate housing land!**

The Government is convinced that "unnecessary appeals" are a source of delay in the planning system and, consequently, intend to consult on the introduction of an appeal fee. The suggestion is that this be graded with complexity, with the Paper suggesting a cap of £2,000 for inquiries. There is a suggestion that fees could be refunded where an appeal succeeds.

Appellants do not enter the appeal system lightly, especially the Public Inquiry route, as a result of the costs involved and, perhaps more importantly, the significant time it takes to conclude the process. Our view is that the introduction of fees would have little impact on the number of appeals landing on the Inspectorate's doorstep. Furthermore, there is a statutory right to appeal a planning decision and a costs mechanism in place to capture any unreasonable behaviour on both sides. It does not seem reasonable to financially penalise Appellants to exercising what is a statutory right.

Ensuring infrastructure is provided in the right place at the right time

There is clearly the potential for infrastructure investment to unlock more land for housebuilding, but whether this will deliver homes faster, as intended, will be dependent on many wider factors.

Infrastructure delivery and the delays this can have for bringing development forward is an age old problem. The Paper promises a £2.3bn Housing Infrastructure Fund, focused towards areas of housing need, with the intention to unlock the delivery of new homes.

Raising the funds for infrastructure has always been an immensely time-consuming exercise and even where certain funds are allocated for certain projects, these will never cover the full cost; local authorities and developers often need to find substantial sums themselves, which all takes time. On top of this we have the bidding process – more time. So, whilst allocating resources is very much welcomed, the success of this will depend on the efficiency of the bidding processes, the availability of parallel funding streams and, perhaps most importantly, the focus of the fund being genuinely aligned to joined-up strategic plans for housing and economic growth.

Supporting developers to build more quickly

Conditions, habitat management of protected species and simplifying developer contributions – are all in but lacking detail

We know from our vast experience that discharging planning conditions can be a time-consuming process and indeed we responded to the recent consultation in this regard. Authorities can sometimes give such applications less priority than those linked to KPIs, and it can be particularly difficult to have details signed off where a statutory consultee or outside agency needs to input into the process. Unfortunately, the charging and refund process and the recently introduced deemed discharge mechanism does not appear to have done a great deal to speed up the process and in some cases, results in a default refusal rather than encouraging any negotiation.

The proposal of the Paper is to allow the Secretary of State to “prohibit” conditions that do not meet the national policy tests and ensure that pre-commencement conditions can only be with the agreement of the applicant.

The NPPF already sets out tests for planning conditions and in appeal situations, at least, these tests are more rigorously applied. Outside of the appeals process it is, and will remain, simply a case of negotiation. There is also already a right of appeal to the Secretary of State for applicants that are unhappy with conditions. So there isn't a great deal that is new here.

In relation to pre-commencement conditions, we agree that these are excessively used and can cause delay, and any tool that requires authorities to be more pragmatic over when a condition needs to be discharged is welcomed. However, as set out in our response to the consultation on this matter, the balance of power is clearly uneven. Can you see a developer being prepared to stand firm and risk having to appeal over a pre-commencement condition, resulting in more delays and more expense?

Holding developers and local authorities to account

A collection of punitive measures which we believe reflects the reality that the issue of land-banking is not clear cut; and the root of the problem is not the action of developers, but some far wider ranging issues - including the severe shortage of housing land; the often protracted nature of the planning system; and lead-in times – which are symptomatic of the housing crisis.

Tough words on the face of it and ahead of the Paper's release it was expected by many that Government would bring forward more radical proposals to tackle the issue of land banking for example. Indeed, it was rumoured that Government would introduce “use it, or lose it” style powers for local authorities to acquire land that they deem developers were holding onto, or land-banking. Instead, what we have is a proposed set of measures including more transparency on information relating to delivery, build-out rates, the development pipeline and the new addition of a delivery date within the planning application, all of which are far less punitive.

The Government is seeking views on whether an applicant's track-record of delivering previous, similar housing schemes should be considered as Material Considerations by local authorities when determining planning applications for housing development. This proposal is starkly at odds with most of the White Paper, by proposing fundamental changes to what can be considered as a Material Consideration by local authorities. It will be interesting to see how Government proposes to assess an applicant's track record; and how this will be balanced against the need for a local authority to be objective in its decision-making.

The Paper proposes to shorten the timescales for developers to implement a permission for housing development from the default period of three years to two years, except where a shorter timescale could hinder the viability or deliverability of a scheme. It is not entirely clear at this stage whether the proposals only seek to reduce the timescale for implementation of a full planning permission; or whether this would also catch outline planning permissions, reducing the three-year period to two years for submission of all reserved matters (from the date outline permission was granted), with development to begin within two years of the final reserved matters approval.

Having a standard two-year timescale for implementation is a particularly short period to complete the purchase the site (if not freehold), discharge the necessary pre-commencement planning conditions imposed by a local authority and prepare a site for development. That said, we have acted for clients who have been willing to offer shorter time periods for implementation, in order to secure a planning permission. Clearly, reducing this period down to two years places a greater burden on everyone's resources, but can be achieved providing the local planning authority is sufficient resourced.

The proposals also include a caveat that this shorter commencement period would not apply where a shorter timescale could hinder the viability or deliverability of a scheme. Based on our experience, you would expect developers will need to make this case, particularly for larger-scale developments.

The Government has proposed to prepare new guidance to encourage the use of local authority compulsory purchase powers to “support” the build out of stalled sites. The use of these words is far more conciliatory than expected and the approach seems to be to support developers, rather than force their hand on the delivery of sites.

Housing delivery test

The intention of the test is to ensure that local authorities are held accountable for their role in ensuring new homes are delivered.

It is important to emphasise that this is entirely separate to the matter of five-year housing land supply and related assessments. The test will highlight whether the number of homes being built is below the identified target, provide a mechanism for establishing the reasons why, and where necessary “triggering” policy responses that will ensure that further land comes forward. On the face of it this process looks to have many hurdles. This is how it is intended to work:

- Step one – establish the assessment period - so in this case, the three financial years April 2014 – March 2017.
- Step two – establish the baseline – for areas with an up-to-date Local Plan (less than five years old) this will be used. In areas where there is no up-to-date Local Plan the baseline requirement will be based on published household projections and the new standard methodology for assessing housing need.
- Step three – establish delivery – this will be based on net additional dwellings over a rolling three-year average.

Where there is under-delivery, a tiered approach to addressing the problem would be applied. The applicable action will depend upon the extent of shortfall and will be phased between November 2017 and November 2020 in order to allow authorities time to address under-delivery in their areas. So what do authorities need to do to address under-delivery?

- **From November 2017**, if delivery falls below 95% of the annual requirement (calculated as set out above) the local authority should publish an action plan, which sets out the reasons for under-delivery and the actions that the authority and others “need” to take to reverse the situation. If delivery falls below 85%, in addition to the action plan, the authority must plan for a 20% buffer on its five-year housing land supply (if not already applying by virtue of persistent under-delivery).
- **From November 2018**, if delivery falls below 25% of the housing requirement the presumption in favour of sustainable development applies.
- **From November 2019**, if delivery falls below 45% the presumption would apply.
- **From November 2020**, if delivery falls below 65% the presumption would apply.

This is of course supposed to simplify planning.

In relation to establishing the requirement at the outset of the test, it would be interesting to undertake a comparison exercise of how delivery would fair in a local authority area in a comparison between its Local Plan requirement and published household projections. Would a local authority with an out-of-date plan perform better against its calculated requirement than one with an up-to-date plan?

The intention here is, of course, to align the assessment with the emergence of the NPPF five years ago and the modern method of calculating housing requirements; but if a local authority receives less of a “penalty” for under-delivery as a result of its failure to prepare an NPPF compliant Local Plan, surely the test isn’t fair?

In the event of both tests – the housing delivery test and demonstrating a five-year housing land supply – we would expect such a significant failure to be afforded even more weight in decision making, however this is not confirmed in the paper.

The Paper gives little away in relation to the content of action plans, their method of assessment, adoption and enforcement. What weight will they have in decision-taking? Will their existence and outcomes need to be acknowledged by and worked into Local Plan policy, in light of the reference to policy responses being triggered by the test? This will take time to establish. There will be a major question mark over the effectiveness of action plans until such detail emerges.

It is disappointing to note that the presumption in favour of sustainable development does not begin to apply until a) November 2018, and b) delivery is as low as 25% below the housing requirement. This threshold increases with time, in order to allow local authorities to get their delivery in order, but we wonder why there is an apparent lack of action at the outset given that it has been a key aim of Government policy to ‘boost significantly the supply of housing’ for nearly five years.

The presumption in favour of sustainable development has been a useful tool to push local authorities into updating their plans and increasing housing supply and delivery, as well as making developers think carefully about the benefits that their developments need to deliver. Without bringing the presumption into play earlier in the housing delivery test, our concern is that action plans will be no substitute. Perhaps this stems from the general gist of the Paper, whereby both authorities and developers need to take responsibility for increasing housing delivery.

Step 3: Diversifying the market

There is support for the small and medium-sized housebuilder sector to grow and make a greater contribution to the market however many of the measures are not new and it remains to be seen whether these steps will be sufficient to have the desired effect.

There are more notable changes proposed in this section, including a requirement for authorities to plan proactively for Build to Rent (where there is a need). This is one of the clearest indications that the Government's focus is shifting away from solely home ownership to include other forms of housing, such as the private rented sector. Indeed, Gavin Barwell confirmed this was a key aspiration.

The vital role of Housing Associations in building the homes needed in the country is recognised. To assist their delivery, the Paper proposes to introduce policies and amend regulations to facilitate this and we are already seeing some Housing Associations responding to this 'call for arms'.

In addition, the Paper encourages local authorities to build more homes. This approach to delivering more homes (whilst generating capital receipts for the authority) is becoming increasingly common and can present opportunities for private developers, for example, through joint ventures on local authority owned land.

Measures are proposed to boost productivity and innovation through modernising the housebuilding sector. The aim is to reduce the costs of construction and the time taken to build and the Paper gives a clear signal that the Government expects demand from housebuilders to increase.

Step 4: Helping people now

The Paper notes the funding already allocated to Help to Buy scheme up to 2021. It adds that the Government will work with the sector "to consider the future of the scheme", most likely in recognition of the importance of the scheme to the current health of the market including the number of homes being built.

The Paper brings to a close (or provides greater clarity at least) the role of starter homes as part of a "mixed package of affordable housing". Instead of a mandatory starter home requirement, it is proposed to amend the NPPF to require housing sites to deliver at least 10% affordable home ownership units (the Annex confirms this will be on sites of 10 or more dwellings or in excess of 0.5 hectares). A positive move and one that perhaps highlights that the Government have listened to the industry by not making the inclusion of starter homes mandatory on development sites at the expense of other affordable tenures. It will be for local authorities and developers to agree an appropriate mix of tenures, that could include starter homes or other affordable home ownership tenures.

Amendments are also proposed to the NPPF to allow more brownfield land to be released for developments with a higher proportion of starter homes. This includes development on brownfield land in the Green Belt where there is no substantial harm to the openness of the Green Belt.

Conclusion

Whilst there are clear challenges to achieving the Government's housing delivery ambitions, the White Paper creates uncertainty in some key areas of national policy. It remains to be seen whether local politicians respond 'ambitiously' to the proposals set out in the Paper and whether these will bring about. These will bring about the significant increase in land for housing being identified in Local and Neighbourhood Plans, the number of planning permissions being granted and the housing market building the number of homes needed. The White Paper includes draft proposals which are currently subject to consultation. The deadline for comments being submitted to DCLG is 2 May 2017. Please contact your local Barton Willmore office if you are interested in making a response or wish to discuss any of the proposals contained in the White Paper.

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