



Department for
Communities and
Local Government

Members of the House of Lords

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Dear Colleagues,

Housing and Planning Bill Committee sitting Eight: Part 6 - Planning in England

I am writing following the eighth sitting of the Lords Committee on the Housing and Planning Bill on 22 March.

Clause 136 – Permission in principle

I am hopeful that the debate was helpful in clarifying our intentions behind the permission in principle measure. We believe that this is an important measure that will contribute to delivery of new homes. In the course of the debate I gave strong assurances that the decision about where to grant permission in principle would be a local one, reached through the rigour of the existing plan making process – including consultation with the community and statutory organisations. I also gave repeated assurances that the National Planning Policy Framework would continue to govern decisions on granting both permission in principle and the technical details consent process.

During the course of the debate, a number of questions were raised on how the policy would work in practice and I agreed to reflect on whether any changes were needed.

There were also some specific technical questions on permission in principle. Answers to these are set out in Annex A.

Following discussion of the position of aerodromes, the General Aviation Alliance has been in touch to follow up the offer made by Baroness Evans to discuss the proposals for a brownfield register and permission in principle with the general aviation sector. Discussions are now proceeding at official level.

Clause 137: Registers of Land

Baroness Evans agreed to write on any unanswered points which had arisen in relation to the brownfield register. I attach further information on these at Annex B.

New Clause: Planning and Design

I promised to outline the various ways in which the Government are promoting good design. As I mentioned at Committee, we attach great importance to improving the design quality of new homes and neighbourhoods.

We have established a good framework to promote high quality design through strong messages in the National Planning Policy Framework and planning guidance. Section 7 of the Framework emphasises how local authorities should plan positively for design, while the guidance sets out key principles and practical tools for delivery such as the use of design codes.

We are also showing strong leadership and commitment to design through our housing programmes. We are encouraging good design through our support for the development of large sites such as at Ebbsfleet, involving design experts to ensure that the Government's estate regeneration programme improves the design quality of new homes and the local area, and encouraging industry-led innovation through the Government's support of the Housing Design Awards.

Last year we also set up a new Design Advisory Panel to help set the bar on housing design across the country. One of the Panel's first tasks was to help develop a starter homes design exemplars document, published in March 2015, to help ensure that new starter homes are popular with buyers and communities and designed to stand the test of time. It is now looking at how we can promote greater community engagement in the design of new homes

Clause 138 – Approval Conditions for Development Orders

I agreed to write to you about how the amended permitted development right for office to residential conversion, which will allow local authorities to consider noise impacts on new residents from commercial premises in the surrounding area, will work in practice.

Permitted development rights for change of use are encouraging the development of much-needed new homes, whilst the prior approval process enables local planning authorities to consider those impacts that require local consideration. This approach continues to encourage development whilst ensuring specific impacts can be considered where they are relevant.

Applicants who wish to exercise their permitted development right to change a building's use from office to residential are required to seek prior approval from the local planning authority on specified matters before the development can go ahead. Prior to 6 April 2016, developers were required to seek prior approval in relation to highways and transport, flooding and contamination. In response to concerns raised by the UK music industry the Government has introduced a new provision relating to noise in the amended permitted development right, which came into effect from 6 April 2016. This requires developers to include in their prior approval application noise impacts from established businesses on the intended residents of the development, in addition to the existing prior approval requirements.

This means that, after 6 April, noise must be considered in a prior approval application where it is a relevant consideration, in accordance with the National Planning Policy Framework, as it would be under a planning application. Consequently, where local authorities determine that there are likely to be unacceptable noise impacts from nearby commercial premises, for example live music venues, on new residents they will be able to ensure that the applicant puts in place suitable noise mitigation measures in line with national planning policy and guidance.

The changes do not apply retrospectively: it would not be appropriate or fair for the Government to seek to apply the new prior approval where a developer has applied to change use from office to residential under the current regulations.

National policy and guidance include strong protections against noise impacts, making it clear that the planning system should prevent new and existing development from being adversely affected by unacceptable levels of pollution. Further, it sets out that planning decisions should aim to avoid noise giving rise to significant adverse impacts on health and quality of life as a result of new development. National policy also incorporates the Agent of Change principle by making it clear that existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established. The planning guidance, which was updated in December 2014, is also clear that the potential effect of a new residential development being located close to an existing business giving rise to noise should be carefully considered.

Where the local planning authority consider that the applicant's proposals to address the noise issues are insufficient, it would remain open to the local planning authority to refuse prior approval on this basis preventing the development from going ahead.

A copy of this letter will be placed in the House Library.

A handwritten signature in cursive script that reads "Williams of Trafford".

BARONESS WILLIAMS OF TRAFFORD

Annex A – Further Questions on Permission in Principle

What will the role of the Mayor in London be in the new permission in principle system?

The Bill will enable permission in principle to be granted on sites that local authorities choose and specifically allocate within their local plan, neighbourhood plan or identify on the new brownfield register. Granting permission in principle through locally prepared plans and registers aims to strengthen and make better use of the local plan; helping to ensure that development takes place on locally supported sites. The Government therefore considers that the choice about where to grant permission in principle through a locally prepared plan or register should be a local one, reached through involvement of communities and statutory bodies through the existing plan making process.

By contrast, the Mayor of London is responsible for setting the strategic direction for planning in London. This will continue under the new permission in principle system. For example Section 24 of the Planning & Compulsory Purchase Act 2004 requires that a London Borough Development Plan must be in general conformity with the London Plan. This means that through the London Plan the Mayor will be able to set out policy based expectations about where and when local authorities should be granting permission in principle. Additionally as a key statutory consultee during the plan preparation of any Borough in London, the Mayor will be able to make representations on sites that he believes are suitable for a grant of permission in principle.

Furthermore, we have amended section 2A of the Town and Country Planning Act 1990 to allow the Mayor to direct that he is planning authority when an application for permission in principle is of potential strategic importance (to 'call in' the application). This means if an applicant makes an application to a local planning authority for permission in principle or technical details consent and it is considered to be of potential strategic importance, the Mayor can determine the applications.

Lastly, under powers introduced by the Localism Act 2011, the Mayor can designate an area as a Mayoral development area and ask the Secretary of State to establish a Mayoral development corporation, with powers to make a Local Plan for that area. In these circumstances, where the Mayor Development Corporation plan allocates specific sites, these could be granted permission in principle.

Can a planning application be made on a site that has been already been granted permission in principle? Which one will take precedence?

It will be possible for an application for full planning permission to be made where a site has already been granted permission in principle. Under the current planning system, where there are two permissions in respect of the same land, they can co-exist. That position will remain until permission expires or one of the permissions is implemented. This will be the same with permission in principle which, once granted, will remain valid until it either expires or is technical details consent is granted and implemented by the applicant. This means that even if permission in principle is granted on a site, an applicant can still bring forward an application for full or outline planning consent if it is preferable to do so. In such a case both permission in principle and planning permission will appear on the planning register open to public view and it is likely that the permission in principle will be a material consideration in the determination of the planning application.

Annex B – Further Questions on the Brownfield Register

Will the register be flexible if it emerges that the future needs of an area meant that a site on the register would be better suited to another use?

Sites on the brownfield register will have been assessed as suitable for housing against criteria that we will prescribe in regulations. Local authority decisions will also be expected to have regard to the National Planning Policy Framework, local plan and any relevant neighbourhood plan. It is unlikely therefore that sites included in the register would subsequently be deemed unsuitable for housing. But we acknowledge that in exceptional circumstances there may be justification to remove a site from a register. Our proposals would not prevent this, and allow for regulations to make provision about revising the register.

Can a brownfield site become greenfield over a period of time and how will this be assessed?

The National Planning Policy Framework already recognises that brownfield land could become greenfield over time. The definition of previously developed land in the glossary excludes from the definition land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time. It is for local authorities to determine if a particular site comes within the definition of previously developed land.

What is meant by ‘housing led’ and how will the need for supporting infrastructure be addressed?

The approach to the definition of ‘housing led’ for sites on the register and for sites granted permission in principle will be aligned. We are currently consulting on an approach that would enable permission in principle to be granted for housing-led development to allow for the possibility of mixed-uses that are compatible with a residential environment.

This means that as long as a site allocation contains a proportion of residential development, local authorities will be able to grant permission in principle, in line with local and national policy, for other uses – such as retail, community, and office space. This approach is absolutely crucial to continuing to promote sustainable development and the delivery of balanced, mixed communities, spaces and places – in line with the principles set out in the National Planning Policy Framework.

We are not proposing that this would include supporting infrastructure. These matters will be agreed, at the technical details stage for those sites which have been

granted permission in principle or when a planning application is submitted for sites on the register which do not have permission in principle.

We are currently consulting on what the suitable parameters should be for development to be considered housing.

What are the additional burdens on local authorities as a result of the register?

Local authorities already collect and review information on housing land as part of the Strategic Housing Land Availability Assessment process. We intend to follow this process to minimise new burdens on local authorities. The Department's rigorous New Burdens assessments ensure local planning authorities receive the relevant resources to meet their statutory obligations.

How would an organisation bid for funding under the Home Building Fund?

This information will be made available once the fund has been launched. The £2 billion is intended for infrastructure funding, and will help unlock or accelerate a pipeline of 160,000 to 200,000 homes by supporting developers to get infrastructure in place and get land ready to build on.