



NEWS

Housing planning news, July 2018

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Headline news

Letwin Review: Draft Analysis of the Independent Review of Build Out Rates published

The Independent Review of Build Out Rates was announced at Budget 2017; its purpose is 'to explain the significant gap between housing completions

and the amount of land allocated or permissioned, and make recommendations for closing it'.

The chair of the Review Panel, Sir Oliver Letwin, provided a preliminary update on the Review in March 2018, in the form of a letter to the Chancellor of the Exchequer and the Housing Secretary (see Lichfields Planning News for April 2018).

The Draft Analysis of the Review Panel (DA) was published on 25 June; it sought to establish:

1. what the build out rate on large sites in areas of high housing demand actually is;
2. why the rate of build out on these sites is as it is; and
3. which factors would be most likely to increase the rate of build out on these sites without having other, untoward effects.

The final recommendations will be presented to the Chancellor and the Housing Secretary 'at the time of the [Autumn] Budget'.

Essentially the DA has found that the 'homogeneity of the types and tenures' of homes on offer on large sites, and the limits on the rate at which the market will absorb them 'are the fundamental drivers of the slow rate of build out'.

In terms of scope, the Review has focussed on the site histories and experiences of 15 housing or housing-led sites in areas of very high demand. This case-study research has been compared with results derived from the Molior data-set for sites of over 500 homes in Greater London, and with their smaller data-set for sites of over 1,000 homes and found not to be atypical.

Response regarding 'land banking'

A focus of the Review is 'absorption rates', and in this respect, the DA concludes that the major housebuilders are 'land banking' in a sense as:

'[...] they proceed on a large site, once that site benefits from an implementable permission, at a rate designed to protect their profits by constructing and selling homes only at a pace that matches the market's capacity to absorb those homes at the prices determined by reference to the local second-hand market. Accordingly, if we can speed up the build out rate of large sites then the amount of land with full planning permission being held by the house builders should reduce'.

The DA finds that major housebuilders could accelerate the rate of build out of current sites without any substantial fear of running down their stock of land supply to levels that would reduce their long-term sustainability. This is provided that the plan-led system continues to require a five-year housing land supply; relaxation would simply bring forward housing rather than increasing supply. This finding is perhaps of particular interest in the context of the reduced housing land supply period required in certain neighbourhood plan areas.

With regard to 'land banking' in terms of parties holding onto land as an investment, Sir Oliver considers this inconsistent with the business model of the major house builders - but says that based on anecdotal evidence it is a 'serious issue for the planning system'.

Key findings

The Review has found that 'current low build out rates are caused by the restricted market absorption rates of the fairly homogeneous products typically being constructed at present by the major house builders on the largest sites', and accordingly has explored whether a greater differentiation of products within a site would increase build out rates.

The DA's conclusion indicates that the policy levers that the Review Panel recommends are likely to include seeking market variety within the largest sites:

'if either the major house builders themselves, or others, were to offer much more housing of varying types, designs and tenures (and, indeed, more distinct settings, landscapes and streetscapes) on the large sites and if the resulting variety matched appropriately the desires of the people wanting to live in each particular part of the country, then the overall absorption rates – and hence the overall build out rates – could be substantially accelerated'.

According to the DA, Sir Oliver is mindful that such policy options must avoid certain pitfalls such as 'jamming' the housing market, impairing the capacity of the major house builders to continue large-scale construction or straining local planning authority resources.

Conversely, policies should help to widen opportunities for people seeking homes and those capable of supplying new homes on large sites; and encourage developments that 'are beautiful and ecologically sustainable'.

Other matters potentially affecting build out rates

The DA has also looked at matters affecting build out rates beyond absorption rates and considers:

- Resolution of major infrastructure matters and provision of utilities would open-up large sites more quickly (and therefore require Government attention), but would not affect build out rates once construction has begun;
- Because remediation is usually required prior to commencement of development (i.e. prior to a permission being 'implementable'), there is no contrast between the build out rates of brownfield and greenfield sites;
- There is no evidence of capital constraints, although if SME builders were able to develop elements of large sites they might experience finance constraints that would require attention. A lack of access to large sites is also recognised as the main barrier to entry for Build to Rent;
- Greater assurances regarding the level of building materials required would lead to increased domestic production of the necessary building materials, with gaps in the interim filled by imports, and modular components reducing dependence on some materials in the medium term; and

- Ministers must consider now the need for measures to achieve a rapid expansion in the number of bricklayers.

Rt Hon Sir Oliver Letwin MP, *Independent Review of Build Out Rates, Draft Analysis*

Lichfields Planning News (April 2018), *Letwin Review - market absorption rates 'fundamental' to slow build out*

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Quote of the month



We are concerned that the Government's proposed approach [a standard methodology for assessing housing need], which includes a centrally generated set of figures for local housing need, is contrary to the spirit of localism and would undermine local democratic accountability [...]

The Committee [...] urges the Government to place safeguards into the final NPPF to ensure that local communities continue to have meaningful oversight of housing developments in their area.

Clive Betts, Chair of the House of Commons Housing, Communities and Local Government Committee, writing to Housing Minister Dominic Raab on the draft revised National Planning Policy Framework, 4 June 2018

Planning permission quashed due to failure to have due regard to the public sector equality duty

The High Court has quashed a planning permission for the demolition of up to 542 dwellings and the provision of up to 700 dwellings at the Foxhill estate, to the south of Bath.

In *R oao Buckley v Bath and North East Somerset Council*, Peter Buckley, a long term resident of the estate and representative of the Residents' Association challenged the decision to grant planning permission on four grounds. Three of the grounds failed, but the first ground, that Bath and North East Somerset Council failed to have due regard to certain matters as required by section 149 of the Equality Act 2010 ('the 2010 Act') which is known as the public sector equality duty (PSED), succeeded. The matters required by the PSED include having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and protected characteristics include age and disability.

The judge, the Honourable Mr Justice Lewis considered:

'[...] the real issue of substance was whether the defendant could demonstrate that it had had due regard to the impact on the elderly or disabled of the loss of their existing home. Disabled persons may well have had an existing home adapted and can be certain that they can live, and function, in that environment. To lose that environment may give rise to particular considerations as to the impact of such a loss which are different from, and greater than, the impact on other persons.'

Most of the properties on the estate are owned by a registered social housing provider, with others leased from other registered social housing providers, and some privately owned. The development would result in the loss of 204 affordable homes.

The policy that was of primary relevance to the planning application, and which had been subjected to an equalities impact assessment, stated a general presumption to support the redevelopment of social housing where certain criteria were met (policy H8). The Policy H8 criterion relied on in this case was that '[t]here is a site specific socio-economic justification of re-development led regeneration, considered alongside alternative options for re-modelling or refurbishment'.

The Judge concluded:

- duty in section 149 of the 2010 Act applies to the function of granting outline planning permission pursuant to section 70 of the 1990 Act, and to the function of granted reserved matters approvals;
- policy H8 did not involve an assessment of the needs of particular groups or the impact of the demolition of dwellings of persons with protected characteristics, therefore the case did not involve the application of a policy designed to address the kind of equality considerations that might arise in relation to a particular proposed development and compliance with Policy H8 would not automatically involve compliance with the PSED;
- notwithstanding that the application material included demographic composition of the estate, including the proportion of older persons, and disabled persons, living on the estate and explained the steps taken to consult with residents to address the concerns about displacement '[...] the focus was on the impact of displacement, or moving, of residents. The defendant did not specifically address or have regard to the impact on groups with protected characteristics, in particular the elderly and the disabled, of the loss of their existing home. It may well be that not a great deal would have needed to be said on this matter. It may have been sufficient to draw that matter to the decision-maker's attention and then the decision-maker could have decided whether the contemplated benefits of the proposed development did outweigh any negative impacts. Ultimately, however, I am persuaded there were matters relevant to the discharge of the PSED which the relevant decision-maker needed to have due regard to but which were not drawn to the decision-maker's attention. In the circumstances, there was a failure to discharge the duty imposed by section 149 of the 2010 Act';

- the proposal was controversial, with members voting five to four in favour, so it could not be said that if the PSED breach had not occurred it would have been highly likely that the outline planning permission would have been granted in this particular case.

[Rao v Bath and North East Somerset Council](#)

[Equality Act 2010, section 149](#)

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Draft New Towns Act 1981 (Local Authority Oversight) Regulations 2018

Draft regulations were laid in Parliament on 4 June which, if approved by Parliament and brought into force, will make provision for the local oversight of new town development corporations.

According to a Government press release, once approved, the regulations 'will come into force later this year'.

Under the New Towns Act 1981 (Local Authority Oversight) Regulations 2018 (as drafted), the Secretary of State will have the power to appoint one or more local authorities to oversee the development of a selected area as a new town (a 'locally-led new town', as introduced by s16 of the Neighbourhood Planning Act 2017).

According to the explanatory note accompanying the draft Regulations, the functions of the Secretary of State under the Act, that are to be exercised by the oversight authority instead of the Secretary of State include:

1. where the oversight authority is the local planning authority for the area, approval of the plans for development of the new town by the new town development corporation;
2. the appointment of Board members of the new town development corporation;
3. the approval of land acquisitions or disposals by the new town development corporation; and,
4. consenting to the development corporation's borrowing.

Only with the consent of the oversight authority will the Secretary of State be able to make an Order to either reduce the size of the area designated for the new town, or dissolve the new town development corporation.

On the same day that the Regulations were laid, the Ministry of Housing, Communities and Local Government (MHCLG) published the Government's response to a previous consultation, launched in December last year, that sought views on draft Regulations made under s16 of the Neighbourhood Planning Act 2017. As a result of that consultation, additional provisions include (inter alia) that the oversight authority must have the aim, in overseeing the development of an area as a new town, of planning from the outset for the 'participation of the community' and 'legacy arrangements following the dissolution of the new town development corporation'. The

most significant amendment is that HM Treasury consent for borrowing by the new town development corporation in excess of £100 million is no longer required; borrowing is to be agreed between HM Treasury and the oversight authority.

On 29 June, MHCLG published guidance to accompany the draft Regulations setting out 'how the Government expects the process of setting up a locally-led new town development corporation to work'. As previously announced by the Housing Minister in response to a series of written questions by Priti Patel MP regarding the New Towns, the guidance provides:

The Minister said that the Government will be publishing guidance to accompany the Regulations 'shortly', which will provide:

- further details on the mechanisms for ensuring appropriate local authority oversight of locally-led New Town Development Corporations;
- details on the involvement of private sector representatives in the governance of locally-led new town development corporations, and participation by local communities;
- details of the information and preparatory work the Secretary of State for Housing, Communities and Local Government will expect to see from local authorities wishing to designate a new town and create a locally-led new town development corporation, including arrangements for agreeing peak borrowing requirements; and
- details of the process for designating a new town and establishing a locally-led new town development corporation, as well as information on governance arrangements; stewardship and community engagement; making plans for development and other areas.

In response to Ms Patel's written questions (asked before the guidance launch) regarding private sector involvement in the governance and decision-making functions of the oversight authority the Minister stated:

'We consider the private sector to be a crucial partner in the delivery of new settlements, including any new towns that may be created using the New Towns Act 1981 (Local Authority Oversight) Regulations 2018. As part of process to designate a new town and create a locally-led new town development corporation, applying local authorities will need to provide a sustainable financial strategy to Government, including setting out how they will leverage in private sector investment. This will be considered by the Secretary of State when deciding whether designation of the new town is expedient in the national interest.'

And in response to a question regarding accountability the Minister replied:

'We are clear that a locally-led New Town Development Corporation will only be created where this has the express support of and is requested by all the local authorities, including in two tier areas the county council, covering the area to be designated for the new town. Any body created through these Regulations will be overseen by an oversight authority comprised of one or more local authorities appointed by the Secretary of State to oversee the development of the new town'.

[MHCLG, New powers for councils to deliver homes for local families](#)

[The New Towns Act 1981 \(Local Authority Oversight\) Regulations 2018 \(draft\)](#)

[Parliament, Written questions asked by Priti Patel MP of the Ministry of Housing, Communities and Local Government regarding New Towns, June 2018](#)

[MHCLG, Guidance on the New Towns Act 1981 \(Local Authority Oversight\) Regulations 2018](#)

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Government launches independent review into planning appeal inquiries

The terms of reference for the 'end-to-end review' of the planning appeal process announced by the previous Housing Secretary Sajid Javid at the launch of the draft revised NPPF in March have been published.

The aim of the review is:

'To review the use and operation of the planning appeal inquiries procedure to make it quicker and better'.

It will focus on rules and processes surrounding inquiries, particularly those for major housing schemes, and will also examine whether specific or general efficiencies in inquiries procedures could have wider benefits for the timing and handling of other appeals processes.

The Review will be chaired by economist Bridget Rosewell and will report to the Housing Secretary by the end of 2018.

This is the second review of the appeal system in six years. In 2012 the Government undertook a 'Technical review of planning appeal procedures consultation' which aimed to:

- a) Make the process faster and more transparent, and
- b) Improve consistency and increase certainty of decision timescales.'

An outcome of that consultation was the requirement to submit a full statement of case when an appeal is submitted.

[MHCLG, Planning appeal inquiries review: terms of reference](#)

[Department for Communities and Local Government, Technical review of planning appeal procedures: Consultation](#)

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MHCLG Select Committee letter to Raab critical of proposed housing methodology

Clive Betts, chair of the MHCLG Select Committee, has written to Minister for Housing, Dominic Raab, stating the Committee's disappointment that a letter from Mr Raab to the Committee indicates that the Government has already decided to proceed with its proposed housing need assessment methodology notwithstanding the 'informed and widespread critiques' received during the two consultations on the methodology. The letter raises

concerns regarding how house building targets reached determined through the new formula will be used as the basis for arguments both for and against Local Plans when under examination; sustainability and capacity challenges associated with providing the number of homes required through the proposed formula; and that an approach which uses centrally generated figures might undermine local democratic accountability.

[House of Commons MHCLG Select Committee letter to Housing Minister Dominic Raab, 4 June 2018](#)

[HM Government, Practice Planning Guidance](#)

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Social Housing Green Paper to be published by 24 July

The Housing Secretary has told Parliament that a Social Housing Green Paper would be published by the summer recess, which is 24 July.

[Parliament, House of Commons Debate regarding the Grenfell Tower, 11 June 2018](#)

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The Lichfields perspective



Sir Oliver Letwin's March 2018 letter to the Chancellor regarding the Independent Review of Build Out Rates might have contained the key headline that absorption rates are critical to build out rates, but the Draft Analysis report provides further evidence on this and a suggestion that absorption (and build) rates might be increased through a variation in the housing offer. However, we must wait another 4 months for recommendations on how to address this issue. The report's other big conclusion that land-banking is not consistent with the business model of major house builders is most welcome and should now put this matter to rest.

Simon Coop, Planning Director

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Registered office:
14 Regent's Wharf
All Saints Street
London N1 9RL

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