

HIGHBURY GROUP ON HOUSING DELIVERY

SUBMISSION TO THE GROWTH AND INFRASTRUCTURE BILL COMMITTEE

Summary

The group shares the Government's concern as to the inadequate level of housing completions. We are however concerned that some of the Government's proposals may have a negative impact on the quality of housing output, while not necessarily increasing the quantitative output. We are concerned that the focus of the Government's proposals is misdirected. There is limited evidence that the slowing down of the development programme is due mainly to unnecessary delays caused by local planning authorities, or by the onerous nature of s106 agreements. More fundamental is the lack of financial support for affordable housing and for the transport, utilities and social infrastructure to ensure that new developments are both sustainable and marketable.

Introduction

Our comments are limited to the key clauses which impact on housing delivery. The Highbury Group comprises an independent group of specialists from public, private and independent sectors with a membership drawn from housing, planning and related professions. It offers advice and makes representations to Government and other agencies on a variety of subjects, including responses to the changes in the economic and funding climate, with the aim of maintaining and increasing the output of housing, including high quality affordable housing. (See footnote for membership and objectives).

Clause 1. Designation of local planning authorities as poorly performing with applicants having the option to make application directly to the secretary of State.

We are concerned at the removal of planning decisions from a democratic decision making process.

We are also concerned whether central government has the resources or the skills to carry out planning functions of individual local authorities. As consideration of planning applications requires both local knowledge and the capacity to undertake site visits and community consultation, it is

difficult to understand how the centralisation of such processes would be practical, let alone cost-effective. We would have concerns if central government was to contract out such functions to private consultancies, as this could lead to conflicts of interest.

Criteria for judging whether a LPA performance is poor can be problematic. Any judgement based solely on quantitative data, such as approval rates or proportion of decisions made within a specified timescale, ignores the fundamental issue of policy compliance – ie whether the applications refused were, in fact, rightly refused on the basis of non-compliance with published planning policy. Moreover, the time taken to approve a scheme can reflect a number of factors, including the LPAs requirement for additional information to justify the application, and the extent to which the applicant cooperates to provide the required information. Delays in considering applicants may also reflect the lack of capacity within a LPA to process applications.

Clause 5. Modification or discharge of affordable housing requirements secured through s106 agreements.

The focus of the proposal is that where a scheme is not viable, any affordable housing obligation should be reviewed, and if necessary, be waived.

The presumption behind the proposal appears to be that it is onerous requirements for affordable housing set by local planning authorities that are the main reason for the slowing down of the development programme. Neither the Government, nor any other body, has, however provided any evidence for this presumption. There may be a range of reasons for schemes given planning consent before the recession not being developed, including the lack of public funding for affordable housing and/or infrastructure and changes in demand, generally related to reduced availability of finance for purchase and availability of development finance.

It should be recognised that planning agreements are freely entered into by applicants, and that they constitute an agreement between the applicant and the local planning authority. In acquiring sites, designing schemes, applying for planning consents and agreeing planning obligations, developers should have had regard to changing market demand and other economic factors. While it may be reasonable for a developer to approach the LPA to vary an agreement should

circumstances change, it is questionable whether it is appropriate to unilaterally amend an agreement freely entered into. The Government has not provided substantive evidence that LPAs are holding back development by refusing to review consents. There is a case for arguing that where a developer is no longer able to proceed with a consented scheme, then the onus should be on the applicant to put forward an alternative development proposal based on an option which is viable.

Any review of a planning agreement related to a consented scheme should be based on the following principles:

- a) it covers all obligations and is not just limited to the affordable housing component;
- b) it covers CIL where applicable;
- c) all justifications by the developer for amendment are in public and open to challenge by the local planning authority;
- d) there are sensible bounceback/ clawback/ completion mechanisms to ensure that if the review is too pessimistic or development does not start in the short term, the lost obligations and/or CIL contributions are reactivated;
- e) there are no other impediments to the development taking place (for example in relation to land assembly or development finance)

It should be noted that in many parts of the country, demand has revived to the extent that sales prices are significantly above their pre-2008 peak. On prime central London sites, international property investment has generated a new boom, with knock-on effects elsewhere in London, and in housing markets within commuting range of the capital. It is wrong, therefore, to presume that all development is less profitable than developers has assumed. In some circumstances the profit now anticipated may be less than previous overoptimistic assumptions, but this is not an argument for altering the nature of a planning consent so that these original expectations can still be realised in full.

Data published by Glenigan for the LGA and by the Mayor of London in his annual monitoring report demonstrates that the backlog of consented but unimplemented schemes is reducing rather than increasing. Glenigan shows the number of unimplemented schemes (ie consented but not completed) nationally as falling from 499,873 at March 2008 to 399,816 in December 2012. The Mayor's report gives a fall from 126,000 in April 2010 to 93,000 in April 2011 of the consented homes not started on site, with the number of homes under construction increasing from 67,000 to 101,000 over the same period. This demonstrates that the number of stalled schemes is falling rather than increasing.

Our main concern is that the waiving of planning s106 agreements, especially those relating to affordable housing, will lead to a reduced quality of development output. It should be recognised that the purpose of planning obligations is to either ensure that a development is acceptable in policy terms, or to mitigate the negative impacts of a scheme. While the government is separately consulting on proposal to encourage renegotiation of s106 agreements, (the group's response being attached as an annex to this submission,) the clause in the Bill relates solely to the issue of modifying or discharging agreements relating to affordable housing provision. The Government has not satisfactorily explained why this specific component should take the hit for developer's failure to anticipate changing circumstances. This is not acceptable in terms of the negative impact on households in the greatest housing need. Moreover, to modify or waive affordable housing obligations is completely contrary to the Government's objectives, shared by local planning authorities, to achieve the development of more mixed and balanced communities.

The government might also be concerned to maximise the supply of affordable housing in all parts of the country likely to be affected by the impact of the cap on housing benefits in April next year, when benefit recipients attempt to move to meet the new restrictions but still maintain a roof over their head.

Clause 6 Authority to public bodies to dispose of land at best value

This proposal is supported, subject to the public body needed to demonstrate the public policy benefits of such a disposal. However, where a public sector body is disposing of land to a private sector organisation or individual at less than best consideration, the LPA should retain an equity stake in such land to ensure at least part of future value appreciations returns to the public sector.

It is suggested that officials at DCLG request the RICS to update their advice on disposals of public assets at less than best consideration to reflect this measure in the Bill. The recent revision, published in December 2011¹, was only intended to be an interim review, pending some experience of the measures contained in the Localism Act.

Clause 21 Extended criteria for referral of major infrastructure developments to the infrastructure planning process.

We are concerned at the proposal to take further developments out of the

democratic decision making process. Decisions for major schemes need to operate within an explicit framework of national, regional and sub-regional planning and infrastructure policies.

Annex

DCLG S106 CONSULTATION: RESPONSE BY HIGHBURY GROUP ON HOUSING DELIVERY

We do not consider that Government encouragement to Local Authorities to renegotiate agreements entered into voluntarily by developers is appropriate unless there are very clear controls over the use of the process. In our view best practice for large scale developments involving development timescales over 3 years should already include formal mechanisms for review by scheme phase to reflect both changes in market demand, costs, value, availability of public funding and other external factors. This would be in accordance with the ATLAS best practice guide on Cascade agreements, previously endorsed by CLG and the guidance set out in the Mayor of London's Housing SPG (2005).

The purpose of revised financial appraisals is to inform a renegotiation of a s106 agreement to reflect changes in the development economics of a scheme. Where a developer has entered into a s.106 agreement without a mechanism for review to reflect changes in circumstances, including potential fall in anticipated sales values, this may reflect poor decision making. It should not be assumed that the local planning authority should automatically reduce the developer's obligations to reflect the changed circumstances. It is wrong to assume that a review will necessarily demonstrate a weakening of viability from the developer's perspective and a reduction in viability. In some circumstances, an increase in value may be greater than an increase in costs, and may therefore justify an increase in the planning obligation in relation to that previously agreed, and this may include an increase in the quantity, quality and/or affordability of affordable housing provision either within a scheme or as a contribution to off- site development. In some cases subsidy to the development may be available that was not guaranteed at the time of the initial appraisal and planning consent.

It should be noted that from the perspective of the local planning authority, the purpose of a development viability assessment is not just to assess whether there is a viability based justification for non-compliance with the policy of the LPA, but also to test whether the provision of public subsidy, either in terms of grant or discounted land cost is justified

in terms of additionality principles – ie whether policy compliance could be achieved without subsidy. A viability assessment can therefore demonstrate what additional affordable housing outputs could be achieved by increased subsidy. This approach was accepted by the HCA and its predecessor body, the Housing Corporation.

We also consider inappropriate the separate announcement by Ministers that developers should have the right to refer s106 agreements which they have signed to the planning inspectorate, who would then have the power to impose revisions to the agreement on the local planning authority. This is not an appropriate function for the planning inspectorate. While a LPA and developer in dispute should be able to agree to appoint an arbiter, this should not be a unilateral process initiated by a single party.

It should be noted that while development viability is a factor which should be taken into account in determining a planning application it is not the primary consideration. As s106 obligations need to be justifiable in terms of being necessary to make a development proposal policy compliant, it follows that waiving a planning obligation freely entered into would make a development proposal less acceptable to the local planning authority. It should be noted that the variation of a planning consent and planning obligation on the grounds of reduced viability, may be of such significance as to make a development proposal unacceptable to the local planning authority. LPAs should have the right to reach such a judgement and it is not appropriate for the planning inspectorate to impose revisions to a scheme on the local planning authority.

We recognise, however, that not all s.106 Agreements will have been drafted in line with the best practice outlined in this response. Accepting that circumstances have changed in many cases through factors beyond the control of either party, we consider that a more appropriate response from Government would be to issue a Chief Planner's letter, or some best practice guidance, to highlight good practice in the voluntary renegotiation of agreements where the interests of both contracting parties have been protected. If the proposed approach is pursued then the Group believes that:

- (a) it should only apply where a developer is able to demonstrate, to the satisfaction of the planning authority, that the development will proceed if the obligation is waived or relaxed;
- (b) the application process should be supported by information that shows that the development will proceed and by a viability analysis

(or other material) that provides a clear and compelling reason for relaxing the planning obligation. All of this material should be open for public review, scrutiny and challenge;

- (c) if an obligation is relaxed then the amended agreement should contain “catch up” provisions that allow affordable housing levels to be reviewed again if the developer fails to start/is materially delayed or if the viability analysis turns out to have been wrong

Footnote

Footnote

The Highbury Group is an independent group of specialists from public, private and independent sectors from housing, planning and related professions which prepares proposals for Government and other agencies on maintaining and expanding the output of housing including affordable housing.

The group was established in 2008. It comprises the following core members: Duncan Bowie - University of Westminster (convener); Stephen Ashworth – SRN Denton ; Julia Atkins - London Metropolitan University; Bob Colenutt - Northampton Institute for Urban Affairs ; Kathleen Dunmore - Three Dragons ; Michael Edwards - Bartlett School of Planning, UCL; Deborah Garvie - SHELTER ; Stephen Hill - C20 Futureplanners ; Roy Hind - Bedfordshire Pilgrims HA ; Angela Housham - consultant ; Andy von Bradsky - PRP ; Seema Manchanda - L B Wandsworth; Tony Manzi - University of Westminster; James Stevens - Home Builders Federation ; Peter Studdert – planning consultant ; Janet Sutherland - JTP Cities; Paul Watt - Birkbeck College ; Nicholas Falk- URBED; Richard Donnell – Hometrack; Pete Redman – Housing Futures; Richard Simmons - consultant; Eric Sorensen- consultant; Pippa Read – National Housing Federation; Roger Jarman- housing consultant..

The views and recommendations of the Highbury Group as set out in this and other papers are ones reached collectively through debate and reflect the balance of member views. They do not necessarily represent those of individual members or of their employer organisations. .

The key purpose of the group is to promote policies and delivery mechanisms, which

- * increase the overall supply of housing in line with need
- * ensure that the supply of both existing and new housing in all tenures is of good quality and affordable by households on middle and lower incomes
- * support the most effective use of both existing stock and new supply
- * ensure that housing is properly supported by accessible infrastructure, facilities and employment opportunities

Contact: Duncan Bowie

Convener, Highbury group on housing delivery
University of Westminster
d.bowie@westminster.ac.uk
Tel 020 7911 5000 x66568

ⁱ <http://www.rics.org/uk/knowledge/more-services/guides-advice/local-authority-asset-management/local-authority-asset-management-07-disposal-of-land-at-less-than-best-consideration>