



PLANNING BULLETIN

THE HOUSING AND REGENERATION BILL

A new Homes and Communities Agency (HCA)

This Bill was introduced in the House of Commons on 15th November 2007 and signals the demise of the Housing Corporation and English Partnerships (incorporating the Urban Regeneration Agency and the Commission for the New Towns). It is suggested that the new HCA is modelled on the powers of the Urban Regeneration Agency. The Bill also proposes the formation of a new social housing regulator, to be known (somewhat laughably) as 'Oftenant'.

Background

The Prime Minister's statement to Parliament of 11th July 2007 on the draft legislative programme set out the context for the Bill. The Queen's Speech on 6th November 2007 confirmed that "Available and affordable housing is one of my Government's main priorities. Legislation will be introduced to create a new Homes and Communities Agency that will deliver more social and affordable housing, and promote regeneration."

Professor Martin Cave began an independent review of social housing regulation on 14th December 2006. Professor Cave's remit was to establish a clear set of objectives for the regulation of social housing to underpin any new regulatory system, present options for reform and make recommendations about institutional arrangements. His report *Every Tenant Matters: A review of social housing regulation*, was published on 19th June 2007. On the same day, the Government launched the consultation paper *Delivering Housing and Regeneration: Communities England and the future of social housing regulation*. This paper took forward Professor Cave's recommendations and set out proposals on the role, responsibilities and operation of Communities England, now the HCA.

The Government's Housing Green Paper *Homes for the future: more affordable, more sustainable*, published on 23rd July 2007, set out the role of the HCA in the context of the proposals set out in the Green Paper. The Bill follows from these reviews, consultations and statements.

Summary of Proposals

Part I of the Bill creates the HCA and sets out its objects and powers. The main objects of the HCA will be to improve the supply and quality of housing in England; to secure the regeneration or development of land or infrastructure in England; and to support in other ways the creation, regeneration or development of communities in England or their continued well-being.

The Bill also abolishes the predecessor organisations of the Urban Regeneration Agency and the Commission for the New Towns, which operated under the joint name of English Partnerships. The powers of the HCA are modelled to a large extent on those of the Urban Regeneration Agency but by combining the 'land and money' powers, the HCA will ultimately have a "...budget of billions for affordable housing" (Communities website).

Part 2 of the Bill creates the new social housing regulator, the Office for Tenants and Social Landlords ('Oftenant'). The new regulator will regulate social housing in England provided by registered providers (which will include current Registered Social Landlords (RSLs), along with other bodies who choose to register). The new regulator will take on the regulation functions of the Housing Corporation. The Bill would abolish the Housing Corporation and English Partnerships (URA and CNT)

The Bill will also give effect to other measures in relation to housing services which were proposed in or alongside the Housing Green Paper *Homes for the future: more affordable, more sustainable* on 23rd July 2007, including proposals that a mandatory rating against prescribed sustainability standards should be introduced for new homes, indicating whether the home has been assessed and, if it has, the performance of the home against the standards (proposed in *The future of the Code for Sustainable Homes - Making a rating mandatory*, published on 23rd July alongside the Housing Green Paper). **Note: The mandatory Code seems increasingly likely after at least 70% of respondents to this consultation supported the idea (see Planning 16/11/2007).**

Furthermore, there are a number of key measures to enable Councils to re-commence Council-housing development, facilitated by new provisions enabling them to reinvest surplus rents and to lever in private sector investment.

Other measures

The Bill will also give effect to a number of measures in the consultation paper *Tenant Empowerment: A Consultation Paper*, published on 11th July, which set out proposals to increase tenant empowerment. There are also many other miscellaneous measures in relation to housing services. A notable item here is the instruction to extend from six months to two years the time limit for local authorities to prosecute those who breach any provision of building regulations to which section 35 (penalty for contravening building regulations) of the Building Act 1984.

In line with continued consolidation of the rights of travellers, the Bill provides for the same security of tenure, and other rights and responsibilities, to Gypsies and Travellers on local authority sites as currently apply on private sites, and occupants of other types of residential caravan site, such as park home sites. This is in response to the European Court of Human Rights ruling in the case of *Connors v United Kingdom*. The stationing of a mobile home on a Council site would therefore benefit from 'protected rights' under the Mobile Homes Act 1983.

Provision is also made to widen the existing power for the Lord Chancellor to provide financial assistance for the giving of general advice in respect of the law relating to commonhold land in so far as this relates to residential matters.

In sum, the key points of note are:

- the **demise of the Housing Corporation and English Partnerships** (incorporating the Urban Regeneration Agency and the Commission for the New Towns)
- A new **Homes and Communities Agency (HCA)**, to improve the supply and quality of housing in England; to secure the regeneration or development of land or infrastructure in England; and to support in other ways the creation, regeneration or development of communities in England or 'their continued well-being'.

- A new social housing regulator, the Office for Tenants and Social Landlords ('**Oftenant**').
- A **mandatory rating against prescribed sustainability standards** to be introduced for all new homes (Code for Sustainable Homes), probably from next April 2008. A new duty will be imposed upon residential owner-occupiers of newly built dwellings to supply a **Sustainability Certificate** to purchasers [*Note: provisions are made to extend these requirements to the conversion of existing buildings and non-residential properties, although the Government states that "...there are no present proposals to use these powers".*]
- Powers to extend from six months to two years the time limit for local authorities to prosecute those who breach any provision of building regulations
- The same 'protected rights' and responsibilities for Gypsies and Travellers on local authority sites as they currently apply on private sites.

Commentary

The key powers of the HCA should be particularly noted. These are

- To provide, regenerate, acquire and restrict land with a view to achieving its objectives. The HCA may use its powers "...independently of each other or together".
- The HCA may also be appointed the LPA for a designated area and can act on both development control powers, policy making powers and other development powers cited above. It is therefore both developer and development controller! The supporting text to the Bill's explanatory notes states that

Where the HCA is designated as the LPA, it will not be constrained by its objects in exercising those powers (but, in this situation, it will function in accordance with existing planning legislation).

Whilst it is true that these powers to a large extent do reflect those of the Urban Regeneration Agency and CNT (and for that matter the Olympic Delivery Authority), they are broader and appear all-encompassing. But equally this is a reflection of the clear determination to redress the existing serious deficit in affordable housing and housing supply generally, which is backed up by numerous recent Reviews (Barker, Cave etc). Nonetheless, the combination of CPO powers with all other powers does beckon an increased resort to the Courts by landowners who will be up against an agency with a 'budget of billions' and an unequivocal green light to build. Conversely, those wishing to promote residential schemes in such locations ought to receive clear support from the HCA acting as LPA (especially if the HCA gets to benefit from the proposed Housing and Planning Delivery Grant!)

The Prime Minister's vision for 10 eco towns by 2020 will clearly benefit most from the arrival of the HCA especially given the plan-making powers provided.

It would be interesting to establish to what extent the HCA, acting as LPA, would rigidly apply the current trend for s.106 'shopping lists' of contributions, bearing in mind their overriding aim to generate the supply of new affordable, sustainable housing. As the HCA takes on LDF responsibilities, there would be scope to make representations to ensure emerging policies ensure that the s.106 burden is minimised and kept strictly within the remit of Circ.05/05, especially for schemes being promoted by RSLs. The impact of any replacement 'planning tariff' will also need to be factored into proposed developments within HCA designated locations.

One has to have some concern for homeowners, given the obligations in terms of Home Information Packs and now Sustainable Certificates. To what extent this would affect the supply of existing 1- or 2-bed homes on to the market (as first time homeowners delay selling for fear of the cost and time constraints associated with these various obligations) remains to be seen. But clearly, the mandatory requirement for residential developers (and, in due course, those wishing to convert or develop non-residential properties) to demonstrate compliance with the Code for Sustainable Homes must be noted and clients pre-warned.

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