

Housing, Finance and Corporate Service Policy & Scrutiny Committee

Date:	13 TH April 2016
Classification:	Public
Title:	The Housing and Planning Bill – affordable housing supply and private rented sector
Report of:	Barbara Brownlee – Director of Housing and Regeneration Annette Acik – Head of Residential Services Barry Smith – Head of City Policy and Strategy
Wards Involved:	All
Policy Context:	Housing, growth and prosperity, City for All
Financial Summary:	There are no direct financial implications of this report, although a number of the national policy proposals it covers will have substantial financial implications for the Council. These are dealt with in detail in the body of the report.

1. Introduction

- 1.1 This report deals with national policy changes being made through legislation currently before Parliament (mainly those in the Housing and Planning Bill) relating to affordable housing supply and regulation of the private rented sector. It discusses their potential impact and the Council's lobbying objectives. Increasing home ownership and house building are key themes of current national policy.
- 1.2 The Bill was introduced in the House of Commons in October 2015 and is expected to receive Royal Assent in summer 2016. It is currently at report stage in the House of Lords. The Bill is largely a framework, providing ministers with powers to fill in most of the detail about how the policies will be implemented by regulation. Some further information has been given by ministers during debates on the Bill and in some areas consultation documents have been issued saying more about the approach the Government intends to take. In many important areas, however, detail is still lacking.

1.3 Members of the Committee are asked to:

- Note the proposals as they currently stand
- Scrutinise the Council's response to date
- Provide a view on the Council's response to the recent Starter Homes Technical Consultation
- Provide guidance on any further lobbying activity.

2. Overview of the Council's response

2.1 The main provisions of the Bill affecting supply of affordable housing and regulation of the private rented sector are those dealing with:

- Starter homes
- Extension of the Right to Buy (RTB) to housing association tenants
- Required sale of high value council housing to fund housing association right to buy discounts
- Provisions to improve enforcement action against "rogue landlords" in the private rented sector.

2.2 The Council supports the Government's focus on home ownership and increasing supply, but has concerns about the cumulative impact of the changes and the possibility of unintended consequences - which could reduce traditional affordable housing supply, at a time when demand is very high (and may well increase given changes being made to the benefits system through the Welfare Reform and Work Bill).

2.3 A further factor that could affect supply is the 1% annual reduction in social housing rents considered at the last meeting of the Policy and Scrutiny Committee which will reduce the amounts available to fund new provision in the Housing Revenue Account (HRA). Any reduction in social supply directly impacts on temporary accommodation numbers and costs given that c60% of lets are to homeless households.

2.4 The Council has welcomed the strengthening of enforcement powers to deal with rogue landlords and property agents in the private rented sector.

2.5 The Council's has extensively communicated its position and asks:

- Participation in the London Councils Task and Finish Group on the Bill and other housing legislation/policy changes (on-going) - to assess impact of the changes and to make the case for London
- Participation in a Central London Forward Group covering the various changes and their impact on supply (on-going) – to consider impacts on central London boroughs
- Statement to the Housing Minister from the leaders of Westminster, Kensington and Chelsea and Wandsworth councils (June 2015) – proposing alternative ways of funding the housing association Right to Buy (RTB) and highlighting the impact on homelessness numbers and costs that it – and the associated forced sale policy – may have
- One to one meeting with DCLG officers and follow up note (September 2015) – focus on homelessness
- Letter to the Housing Minister from the leaders of Westminster, Kensington and Chelsea and Wandsworth councils (September 2015) – focus on homelessness
- Bill Briefing to Mark Field MP (October 2015) – setting out a range of asks
- Evidence given by the Leader at Bill Committee (November 2015) – focus on impact on supply. Follow up written evidence
- Publication of a Housing Strategy: Direction of Travel Statement (December 2015) – setting out ideas to increase supply in Westminster and across London
- Joint note from the leaders of Westminster, Wandsworth and Kensington and Chelsea to selected peers – setting out asks (January 2016). Sent to additional peers showing interest in the Housing and Planning Bill (February 2016)
- Consultation response to changes to the National Planning Policy Framework (NPPF) (February 2016) – setting out that the Council needs to retain the ability to respond to a variety of housing needs.

3. Affordable Housing Supply

3.1 Starter Homes

Government aims for 200,000 Starter Homes to be delivered by 2020. A Starter Home is defined in the Bill as a new dwelling to be made available for sale to first time buyers, under the age of 40 and sold at a 20% discount of the market value. There will be a price cap in Greater London of £450k.

3.2 There will a general duty on local authorities to promote Starter Homes through their planning functions (in determining planning applications and in drawing up their local plan). There is a power for ministers to set a “starter home requirement” so a proportion of them will be required on certain development sites if planning permission is to be granted. The Secretary of State will have powers to make further regulations on the monitoring of Starter Homes and on local authority compliance. There is provision in the Bill for commuted sums i.e. enabling Starter Homes to be delivered off site.

3.3 The discount is to be funded by the developer. Ministers have indicated that given this, Section 106 contributions for affordable housing and infrastructure should not be sought from Starter Homes and that they will be exempt from the Community Infrastructure Levy¹. As proposed by the National Planning Policy Planning Framework (NPPF), consultation², discounted market sale products such as Starter Homes will be a form of affordable housing (in addition to social and intermediate housing).

3.4 Government has proposed amendments; that the age restriction can be disapplied in some circumstances and that there may be circumstances where a Starter Home is being purchased jointly that not all of the purchasers need to meet the age requirement. A DCLG official has indicated that the Starter Homes requirement could be imposed on sites where Section 106 obligations have already been agreed.³

3.5 A number of amendments to the Bill have been proposed by Opposition Peers none of which have been pressed to a vote:

- The sale price should be affordable to households on median local incomes, defined by the local housing authority, with the discounts to remain in perpetuity (rather than 20% of market value for five years)

¹ /www.gov.uk/government/uploads/system/uploads/attachment_data/file/419212/150330_-_Starter_Homes_Design_FINAL_bc_lh_pdf.pdf

² The consultation closed on 22nd February 2016

³ Indicated at “How to Maximise Affordable Housing Delivery: The Big Debate” (Presented by the National Planning Summit) 9th March 2016

- They should be offered to buyers who live or work in the areas in which they are built
- Removal of the local authority duty to promote Starter Homes, if this at the expense of providing other types of affordable housing
- Exemption for new supported housing, hostel and build to rent developments from the duty to promote Starter Homes.

3.6 A Starter Homes Technical Consultation was published on 23rd March and runs until 18th May⁴. A list of the consultation questions are in Appendix 1. The main issues which the consultation seeks views on are:

- Whether the proportion of the market value, an individual is able to realise on the sale of Starter Home, should increase gradually in line with the number of years they have lived at the property before it is completely lifted. Government does not support restrictions beyond 8 years
- The proposed Starter Homes requirement – that is should apply to sites of 10 units or more and that evidence suggests that 20% would be viable on an average development, but it also asks for views on 15% and 25%
- If exemptions to the requirement are supported where it can be demonstrated that Starter Homes would make a developed unviable and if there should be any other exemptions
- If the use of commuted sums are supported.

3.7 Officers are currently considering the Councils response to the consultation and looking specifically at the number of sites the requirement may apply to and how the requirement for different percentages of Starter Homes may affect the delivery of all forms of affordable housing.

3.8 *Implications for Westminster*

These are difficult to assess without further detail. It is not clear how they will work in high value areas, where the majority of properties are well above the £450k cap, and how the market would react to them. According to Rightmove, the average asking price of homes in Westminster in February 2016 was £2,015,540; at a 20% discount this would be £1,612,432 – 358% of the £450,000 maximum price cap. Given this, providing Starter Homes on any

⁴Starter Homes Regulations: Technical Consultation March 2016

www.gov.uk/government/consultations/starter-homes-regulations-technical-consultation

scale is likely to involve very significant costs to developers which, taken with the viability issues that are already a major factor in Westminster, is likely to have major effects on future delivery of “conventional” affordable housing. In addition, Starter Homes are unlikely to be accessible to the majority of customers on the intermediate housing list – 70% of households needing a one bedroom property have incomes of £40k or less. However the purchase of a Starter Home can be combined with the London Help to Buy Scheme to make them more affordable. London Help to Buy, which is due to start in April 2016, offers a 40% equity loan to first time buyers and movers on certain new build properties⁵.

3.9 A DCLG official has indicated that there are eight boroughs in London where Starter Homes “may not work”. They also suggested some sites may be exempt from a Starter Homes requirement where they could prevent replacement affordable housing⁶. No further information is available.

3.10 Property consultants Savills have considered the likely effects of the starter home requirement. Their view is that it “is likely to result in fewer homes delivered for what is currently classified as an affordable tenure”. They also consider that Starter Homes may generate no more land value than that of “traditional” affordable housing, particularly in high value areas where to reach the price cap a higher “discount” would be required. In addition, “traditional” affordable housing is typically sold in bulk to housing associations, thereby securing developers’ cash flow; this may be less likely to happen with Starter Homes and this could mean that land dedicated to them may return lower values. In short, they conclude that this initiative may have significant effects on development viability that could squeeze other forms of affordable housing and affect overall levels of delivery⁷.

3.11 *The Council’s position*

- Local authorities should still have the ability to deliver a range of affordable housing products to meet the section of National Planning Policy Framework (NPPF) which requires them to have local plans which meet the objectively assessed needs for market and affordable housing in *their* housing market area

⁵ The scheme requires a 5% deposit from the applicant and they need to raise a mortgage of 55% of the purchase price. Repayments on the loan start after 5 years. CLG confirmed Starter Homes can be combined with Help to Buy at the “Maximise Affordable Housing Delivery: The Big Debate” (Presented by the National Planning Summit) event on 9th March 2016

⁶ Indicated at “How to Maximise Affordable Housing Delivery: The Big Debate” (Presented by the National Planning Summit) 9th March 2016

⁷ Savills Policy Response: The impact of new housing measures on development, February 2016

- The economic viability of development in each local authority area should be taken into account by ministers when setting the proportion of Starter Homes that should be required. This should take account of factors such as construction costs and prices (which are typically higher in places like Westminster)
- The 20% discount should remain in perpetuity, (the Bill currently only requires repayment if the property is sold within five years) so that the element of subsidy (which will be partly funded by the community through reductions in section 106 and Community Infrastructure Payments (CIL)) can be recycled and benefit others – as is the case with other forms of affordable housing
- Buyers should be subject to a local connection test (not least because without this it is impossible to meet the NPPF requirement).

3.12 **Housing Association Right to Buy (RTB) Extension**

The Conservative Manifesto included this commitment to bring parity across the social sector and promote home ownership, (currently housing association tenants can only purchase certain properties with lower discounts). In London the maximum discount for council tenants is c£104k.

- 3.13 Following an agreement between the National Housing Federation (NHF) and government, the majority of associations have agreed to offer the RTB on a voluntary basis, rather than being compelled to do so through legislation or regulation. This is linked to the question of the Office of National Statistics (ONS) reclassification of housing associations as public bodies (see 3.17).
- 3.14 Under the agreement housing associations will be fully compensated for the discount (funded from a local authority payment to government based on the sale of their high value council homes when they fall vacant) and can keep the full receipt from the sale. The RTB unit is to be replaced within three years although the expectation is that it should be within two. They are explicitly not obliged to replace RTB stock in the same area or with a home of the same tenure – or even to provide the housing authority in whose area stock is sold with nomination rights to the replacement units.
- 3.15 Although there is a presumption that housing associations will sell the home where the tenant has been living, they have some discretion to offer an alternative home for sale with a “portable discount”. The agreement suggests that funding for the RTB will be cash limited annually which in turn suggests the number of sales could be restricted annually.

- 3.16 A RTB pilot began in November 2015, with five housing associations accepting applications in certain areas. Westminster is not included. In London and the South East 8.4% of tenants have applied⁸.
- 3.17 The Bill also includes provision for Government to reduce housing association regulation, although there is no further information on this. This is likely to relate to the ONS reclassifying housing associations as public bodies in 2015 due to the increasing regulation they were facing. This led to the agreement between the NHF and government for housing associations to offer the RTB on a voluntary basis, rather than being required to do so through statute. The agreement also suggests that housing associations may have more flexibility in future on who they allocate homes to⁹.
- 3.18 *Implications for Westminster*
It is difficult to estimate the number of housing association RTB sales in Westminster. There are c14,000 housing association properties and 8.4% of sales would equate to 1,176 properties. However - high prices, the economic profile of tenants¹⁰ and the fact that an application does not automatically lead to a sale, will all impact on take up. The Council estimates 120 RTB sales p.a. in the first five years, which is based on the current levels of council RTB sales p.a. (c60) plus an estimate of pent up demand.
- 3.19 c40% of Westminster social lets p.a. (200 – 300 units) come from housing association stock, so any reduction in their stock (or them having greater flexibility over who they let their stock to) could reduce social supply. As with the sale of local authority voids (see below), the full impact of the RTB extension will depend on how, when and where stock is replaced. A recent House of Commons Communities and Local Government Select Committee report asks government for more information on how replacements will work and how factors such as the capacity of the house building industry and skills shortages will be addressed¹¹.
- 3.20 Housing associations will be less constrained than local authorities in replacing RTB homes on a one for one basis as they can replace them in different areas and they will not be subject to the same financial arrangements. Following higher RTB discounts in 2012 (called the Reinvigorated RTB), councils entered into a Local Agreement with

⁸ <http://www.insidehousing.co.uk/policy/right-to-buy/rtb-pilots-57-of-tenants-register-interest/7013712.article>

⁹ Currently housing associations are required to let 50% of their voids to local authority nominees and 75% of their family sized voids

¹⁰ 70% receive HB

¹¹ House of Commons, DCLG Committee, Housing association and the Right to Buy, Second Report of the Session 2015 – 16, 3 February 2016

government in relation to the receipts that could be retained to invest in new affordable supply¹². In Westminster, since this agreement, 133 properties have been sold under the Reinvigorated RTB generating £29.5m in capital receipts. £17m of this has been retained by the Council, and of this, £5.1m has been spent on replacing 42 properties. £12m remains to be spent in future years.

3.21 High Value Local Authority Housing

The Conservative Manifesto included a commitment that the housing association RTB would be funded by requiring local authorities to manage their housing assets more effectively and to sell off some vacant homes as they fell vacant¹³. The policy is intended to release the value locked up in high value housing assets in order to build more homes. Government has estimated it will generate £4.5bn¹⁴.

3.22 The Bill includes a requirement on local authorities to make an annual payment to government based on an estimate of the number of high value voids that are expected to fall vacant p.a. Ministers will apply a formula, related to this estimate, to work out how much each authority will have to pay. Once this is set, the authority will be able to decide how the sum is raised (although there will be a legal duty on them to consider the sale of a high value unit when it becomes vacant). The definition of “high value”, what constitutes a void and any exemptions to the stock that will be taken into account in this calculation, are not yet known and will be set out in secondary legislation. The Bill makes it clear that stock cannot be transferred to another organisation to avoid the payment.

3.23 DCLG has indicated they will consult with local authorities on the formula for the payment¹⁵ but no more is known on how this will be done, although a formal public consultation is not expected. Current information is that the payment will be based on the high value stock relative to a local authority area but this has not been confirmed¹⁶. The current position was summarised by the DCLG Permanent Secretary to the House of Commons Public Accounts Committee as follows:

“Once we have worked out what we think the appropriate contribution is from each authority, we will set that out in a determination, on which we will consult, and then that will be the amount that each local authority is required

¹² The Reinvigorated Right to Buy, introduced in 2012 placed a requirement on local authorities to replace homes on a one for one basis, p25

¹³ The Conservative Party, The Conservative Party Manifesto 2015, p52

¹⁴ Policy Fact Sheet: Disposal of Vacant High Value Social Housing, p1

¹⁵ Policy Fact Sheet: Disposal of Vacant High Value Social Housing, p1

¹⁶ Based on a local authority officers meeting with DCLG

to pay us. As I said, the timings of that have yet to be determined; the amounts have yet to be determined; and the formula has yet to be determined. But those are the details we are working through at the moment."¹⁷

- 3.24 Local authorities have provided DCLG with details of their stock value and void rates. It is expected determinations will be issued soon after the Bill gets Royal Assent and that payment will be made at the end of 2016/17.
- 3.25 Civil servants have indicated that local authorities will be able to retain a sum relating to the repayment of debt relating to properties sold, the transaction cost incurred in the sale and an amount equivalent to 30% of the cost of building a replacement home¹⁸. In Westminster, the average debt is £25k per property. There is also provision in the Bill for the payment to be reduced by agreement between ministers and local housing authorities. The Government has amended the Bill relating to agreements for reduced payments. It requires that in Greater London they will be subject to a requirement that at least two new affordable homes are provided for each one sold. Homes built by the Mayor could be counted against this requirement but are not required by the Bill to be in London. There is no further information on how this would work in practice. The Housing Minister has also confirmed that brand new vacant housing (i.e. that has not yet been occupied) would not fall within the definition of vacant housing.
- 3.26 Opposition peers proposed amendments, none of which were pressed to a vote. These included:
- To allow councils to keep the proceeds of sales to replace homes and repay debt before making payment to Treasury
 - To give councils the power to define high value, and restrict it from applying to more than 10% of stock
 - To prevent a property from being treated as "high value" if its sale would not pay for a replacement
 - To exclude regeneration schemes and supported housing
 - To allow councils to deduct cost of a replacement home before repaying to Treasury

¹⁷ Evidence of Melanie Dawes, Public Accounts Committee 9th March 2016, Q75

¹⁸ Evidence of Peter Schofield, Director General, Housing and Planning, DCLG to the House of Commons Public Accounts Committee, 9th March 2016, Q79

- To exclude properties built or renovated within the last two years.

3.27 Labour and Liberal Democrat front benches have indicated that they may oppose the clauses of the Bill relating to the sale of high value voids, entirely. Inside Housing has reported that peers are concerned that much of the detail in the Bill is to be determined in regulations that won't require approval by the Lords. This includes regulations relating to the high value void levy. It suggests opposition peers are considering using a 'sunrise clause' which can require the government to seek full parliamentary approval for secondary legislation¹⁹.

3.28 DCLG Select Committee has recommended that as a matter of principle, public policy (like that for RTB) should be funded by central Government, rather than through a levy on local government²⁰.

3.29 *Implications in Westminster*

The impact cannot be assessed until the formula is known which will determine the payment²¹. On average 3.4% of council stock becomes vacant each year (410 properties) – see table 1.

Table 1: Westminster council stock – numbers and turnover

Beds	1	2	3	4	5+
No	5,854	3,487	2,193	343	48
Average value	£351k	£450k	£528k	£604k	£958k
Indicative London "high value threshold" ²²	£340k	£400k	£490k	£790k	£1,250k
Forecast voids (annual)	273	74	58	3	2
As % stock	4.7%	2.1%	2.6%	0.9%	4.2%

¹⁹ Inside housing: Peers mull 'sunrise clause' to force scrutiny of RTB detail 15 March 2016

²⁰ Communities and Local Government Committee: Housing Associations and the Right to Buy, Second Report of Session 2015 – 16 p19

²¹ The Council did some initial modelling based on a table, published by the Conservative Party and reported in Inside Housing in May 2015, which indicated regional thresholds above which properties would need to be sold (and estimated 200) – but this approach will not be used

²² Figure from Conservative Party press release op cit

- 3.30 Some early modelling was done on the impact based on a table of regional thresholds published above which a sale would be required. This found that the Council would need to sell 200 high value voids each year (worth £100m), and that this would result in additional temporary accommodation costs of £1.5m until homes could be replaced. However, the Government has decided to adopt a formula-based approach rather than one that tracks individual sales. A formula will be developed based on an estimate of the number of properties assumed to fall vacant during a year meeting the price criteria for being regarded as “high value” and the amounts anticipated in net receipts. This will yield a payment that will have to be made to government. This allows a degree of local discretion about how the demand is met, but in practice (and depending on the size of the levy) this will require sale of high value voids. Most of the detail is as yet unknown, but it has been indicated that the “high value” threshold will be set relative to values in each local authority rather than against a regional yardstick, which would be likely to be more favourable for Westminster.
- 3.31 The impact of the policy will depend on how quickly 2 for 1 replacements can be delivered, how much of the receipt can kept for this, the availability of land and the capacity of the building industry. The increase in delivery needed to deliver the 2 for 1 requirement would be significant. There has been speculation on how much of the receipt will be left for replacements once the RTB discount has been made to housing associations²³.
- 3.32 The impact on the Housing Revenue Account (HRA) would depend on the scale of the levy and the type of properties that would need to be sold and the opportunities to replace properties.
- 3.33 *The Council's position*
- Support for the 2 for 1 amendment (the case has been consistently made for replacements to be at least on a one for one and like for like basis and for there to be a link between where homes are sold and where they are replaced (with nominations if this cannot be through physical replacement)
 - That the amount of the receipt retained should reflect the cost of developing new homes on a 2 for 1 basis
 - New build properties should be excluded from calculation of the high value void demand for at least 10 years from completion

²³ Selling off stock: An interim analysis of the proposals for sales of council houses in high-value areas to finance a new right to buy for housing association tenants, October 2015

- The Council should have as wide a degree of flexibility about how that part of the high value void receipt allowed to fund replacement stock is spent, with not less than 3 years allowed for spend and freedom to combine them with any other funding source (there are currently restrictions on use of capital receipts from non-RTB sales with funds from other sources)
- The Council has sought to be part of the discussion on the delivery of 2 for 1 and for local authorities to play a key role in this – with flexibility to develop bilateral agreements with other boroughs. The importance of this is also being raised with candidates for the Mayoral election
- Councils to have greater ability to add to affordable housing supply through borrowing against their HRA assets and using Section 106 monies to develop beyond borough boundaries.

3.34 **Broader changes to the affordable housing landscape**

A number of broader changes also need to be considered when discussing affordable housing supply:

3.35 *The Community Infrastructure Levy (CIL)*

The CIL will be introduced in Westminster in May 2016. It is a charge on development involving increases in floor space to help fund infrastructure - such as public realm, transport, open spaces, leisure projects and schools - which the Council, local community and neighbourhoods require to help accommodate new growth from development.

3.36 Under the CIL legislation, councils have to show that their proposed rates will not have such an impact on development viability in their area that it will put their planning policies at risk. Potential impacts on affordable housing delivery are always looked at particularly carefully in CIL examinations (one of our neighbouring authorities nearly had their rates rejected for this reason).

3.37 For this reason, particular care was taken to ensure the impact of the Westminster CIL rates would not impact unduly on affordable housing delivery across the City as a whole. The viability evidence commissioned by the Council from BNP Paribas Real Estate tested the effects of the rates in conjunction with 35% affordable housing – in practice the highest level the council seeks anywhere in the Borough – **plus** a 20% increase in build costs **and** without assuming any existing floor space pace which in practice is netted off when CIL payments are calculated; this was the “base case” that the independent examiner considering our rates used in ensuring we had met the required tests.

3.38 The independent examiner's report stated that the methodology and approach to CIL setting was "*rigorous, robust and entirely appropriate to the unique circumstances of Westminster*".

3.39 Given this, the evidence suggests that at the levels at which CIL has been set in Westminster, it should not, in itself, have a significant impact on affordable housing delivery across the City. Other factors, particularly levels of funding (and the greater priority national government is giving to ownership rather than rent) and the starter homes requirement, are likely to have much more significant effects).

3.40 *Build to Rent Initiatives*

There is some interest currently at national level in large scale Build to (private) Rent as an alternative to Build to Sell. Discussion on the benefits focuses on:

- The need for private rented homes for people that cannot afford to buy
- To improve the quality of the private rented sector and length of tenure
- To increase supply and speed up development (as units can start being let as they are developed) which generates income.

3.41 Traditionally Build to Rent at scale has not been delivered as the rate of return for institutional investors is not attractive compared with Build to Sell. The Investment Property Forum estimate the rate of return to be 7.5% p.a. compared with a Build to Sell of 17.5% and they point to the need to address what they term the "viability gap"^[1]. However there are some indications the model may be becoming more attractive. In 2015 government set up a Private Rented Sector Task Force and also a Build to Rent Fund^[2]. The Financial Times recently reported that institutional investors are preparing to invest £50bn into this type of model and government's Build to Rent Guide for local authorities also highlights investor demand^[24].

3.42 The Council does not encourage one tenure of private market housing over in its City Plan but encourages all residential development through the City Plan. If this model does increase and speed up delivery - it is likely this would only be on large sites, which are not the norm in Westminster. The Council would

^[1] Property Investment Forum: Mind the gap: Achieving more large scale build to rent housing

^[2] The Fund is a recoverable commercial investment and is available as a loan to cover up to 50% of eligible development costs. Developers pay the loan back by refinancing the deal or selling on to an institutional investor within one to two years of completing the scheme

^[24] Accelerating Housing Supply and Increasing Tenant Choice in the Private Rented Sector: A Build to Rent Guide for Local Authorities

also need to consider wider impacts of encouraging this model such as if the private rented sector, as the largest in England, is already big enough. *(Note an expert witness may be required if the Committee want to explore this further).*

4. The private rented sector

- 4.1 The Bill includes the following measures intended to tackle rogue landlords and property agents in the private rented sector:
- 4.2 **Banning orders**
Local authorities will be able to apply for banning orders against rogue landlords and property agents, following conviction for a “banning order offence” (offences will be set out in regulations). Banning orders will last for a specified period and must be for at least twelve months and their intention is to prevent a person from letting a house and engaging in letting agency or property management work. The Government has made further amendments which would mean that breaching a banning order would be a criminal offence or could result in a fine, set by the local authority, at up to £30k.
- 4.3 **Database of rogue landlords and property agents in England**
A database of rogue landlords and property agents in England will be established which will include those subject to a banning order (while it is in place). Local authorities will be responsible for keeping it up to date. This will be accessible to local housing authorities and can be used for research purposes.
- 4.4 **Rent Repayment Orders**
Rent Repayment Orders will be available to enable tenants to recover rent from rogue landlords (local authorities will also be able to recover housing benefit), following offences including; breaches of improvement orders, under Housing Act 2004; violent entry under the Criminal Law Act 1977 and unlawful eviction under the Protection from Eviction Act 1977. Both local authorities and tenants can apply for the order.
- 4.5 **Fit and Proper Person Test: Houses in Multiple Occupation**
There will be extensions to the ‘fit and proper person’ test for landlords wanting to let out licensed properties, such as HMOs. This is intended to prevent potential rogue landlords and property agents from receiving licences. The test includes the criterion that the applicant should be entitled to remain in the UK and should not be insolvent or bankrupt.

4.6 **Offences under the Housing Act 2004: Financial Penalties**

The Bill enables local authorities to impose financial penalties for certain offences under the Housing Act 2004 as an alternative to prosecution.

Offences that might result in financial penalties include: failure to comply with an improvement notice issued by the local housing authority; offences committed by people in control of, or managing, houses in multiple occupation (HMO); and offences contravening the management regulations in respect to an HMO.

4.7 The Government has also made amendments to these provisions of the Bill throughout its passage through Parliament. These include amendments to make the breach of a banning order a criminal offence, increase the fines that local authorities can set for the breach of an order and enable further fines to be levied where the breach continues after a conviction.

4.8 The House of Lords considered this part of the Bill in early February 2016. A number of amendments were proposed by a mixture of peers at that stage, none of which were pressed to a vote. These included amendments to:

- Set out the grounds for a banning offence in legislation and require parliamentary approval for the relevant banning order regulations
- Initiate a pilot of extending the Housing Ombudsman to cover the private rented sector in Greater London
- Ensure the section of the Bill on banning orders does not come into force until at least one year after the publication of a draft of regulations.

4.9 *Implications in Westminster*

The Council will need to develop new systems and processes to respond to the measures. Obtaining a Banning Orders is likely to be particularly resource intensive although the likely numbers involved cannot be estimated until there is more information on the offenses they would apply to. The focus on enforcement could result in a move away from negotiating with landlords.

4.10 *The Council's position*

The Council fully supports these areas of the Bill and supported higher fines for breaching of banning order offences (from the £5k as originally set out), which was amended by government to £30k. The Council is clear however that as the responsibilities of local government will be expanded through these changes, they must be resourced, and would hope that such fixed penalties would cover costs and related expenses. The Council also wants to see penalties registerable as a charge against the property – something that is

particularly important in Westminster given the number of overseas based landlords.

4.11 Wider policy landscape

4.12 *Proposals to extend the mandatory licensing of HMOs*

Government consulted on proposals to broaden mandatory licensing for Houses in Multiple Occupation (HMO) in December 2015. Currently HMOs must be licensed where they are comprised of non self-contained accommodation of three or more storeys and occupied by five or more people, who do not form a single household. There are 257 licensed HMOs in Westminster. The numbers are low as the majority of Westminster properties are flats - and flats generally have to be on three floors to be captured by licensing – which is rare.

4.13 A licensed property has to; meet the Council’s standards; the landlord or agent has to declare that they are a “fit and proper person” to manage the property and management arrangements have to be adequate. Licenses last for five years and cost £285 for the five years per unit (i.e. for each bedsit or room). Properties are inspected twice within this period and licenses can be revoked if landlords do not comply with the conditions. Scheme costs must be reasonable so are based on the cost of a scheme to the Council.

4.14 The overall definition of an HMO is very broad as table 2 shows:

Table 2: Types of HMO in the 2004 Housing Act

A	B	C	D
Entire house or flat let to 3 or more tenants who form 2 or more households and who share a kitchen, bathroom, or toilet	A house converted entirely into bedsits, or other non self-contained accommodation which is let to 3 or more tenants, who form two or more households, and who share kitchen, bathrooms or toilets	Converted house which contains one or more flats which are not wholly self contained and which are occupied by 3 or more tenants, who form 2 or more households	A building which is converted entirely into self-contained flats – but the conversion does not meet 1991 building regulations and more than one third of the flats are on short term tenancies

4.15 The consultation asked if mandatory licensing should be extended to different types of HMOs. The Council’s responses was that mandatory licensing should be extended to cover the properties below, but also that a balance needs to be struck between concentrating on the worst HMOs, while not over regulating the sector where it is not needed. Overall that mandatory licensing should also not capture HMOs in such volume that a scheme would be unmanageable - and detract from work in other property types. Local

authorities can always use their powers to introduce additional licensing schemes to apply to a broader range of properties where needed.

4.16 The Council's response to the recent consultation on HMO licensing - Mandatory licensing should be extended to cover:

- **All two storeys HMOs** as this would capture larger flats (i.e. on two storeys) which are higher risk and some HMOs above commercial premises (as the commercial premises can be counted as a storey), which are also higher risk due to the mixed use within the building
- **All self-contained HMOs in poorly converted premises (i.e. type D in table 2)** as this would capture high risk properties, but it was suggested that it should apply only properties where at least two thirds of the flats are privately let (as this would avoid the authority becoming over involved in properties primarily occupied by leaseholders). However it was suggested that this two thirds test should not be applied where the property is above commercial premises
- **All bedsits and flats above and below business premises (that meet the 5 person threshold)** as this would capture properties at higher risk properties, due to the mixed use of the building i.e. where there is not proper fire separation between the uses.

4.17 *Implications for Westminster*

- The number of HMOs that may be captured by each of the above is unknown. The costs to administer and enforce a mandatory licensing scheme are recoverable, however once a premises has been licensed, there is a statutory requirement to inspect/risk assess again within a five year period, and this cost is not recoverable.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact: Cecily Herdman, telephone 020 7641 2789, email cherdman@westminster.gov.uk

Appendix 1: Summary of questions asked in the Starter Homes Regulation, Technical Consultation March 2016

Q1: Do you support restrictions on the sale and sub-letting of starter homes for 5 years following initial sale? Do you support allowing individuals to sell at a higher proportion of market value as the number of years they have lived in the home increases? If not, what other approaches can we adopt to meet our objectives?

Q2: Do you agree that flexibility over the age 40 restriction should be given when joint purchasers are looking to buy a starter home, one purchaser being under 40 years old but the other older than 40?

Q3: Do you agree that there should be an exemption from the age 40 restriction for injured military services personnel and those whose partner has died in service

Q4: Would a site size of 10 units or more (or 0.5 ha) be an appropriate minimum threshold for the starter home requirement? If not, what threshold would be appropriate and why?

Q5: Should the minimum percentage requirement be applied uniformly on all sites over 10 units to provide a single requirement across the country?

Q6: If so, do you agree that 20% represents a reasonable requirement for most areas?

Q7: Do you support an exemption from the Starter Homes requirement for those developments which would be unviable if they had to deliver any affordable housing including Starter Homes? If so, how prescriptive should the viability test be in the regulations?

Q8: Do you support the proposed exemptions from the starter home requirement? If not, why not?

Q9: Should group custom build developments and developments with a very high level of affordable housing such as estate regeneration schemes be exempt? If not, why not?

Q10: Are any further exemptions from the starter home requirement warranted, and why?

Q11: Do you support the use of commuted sums to deliver starter homes where the local planning authority agrees?

Q12: Do you support the proposal that private rented sector housing (for institutional investment) and specialist older people's housing should meet the requirement through off-site contributions?

Q13: Do you agree that Starter Homes monitoring reports should be an annex to the Authority Monitoring Report?

Q14: Do you agree that these reports establish the key actions taken to support starter home delivery and the outcomes in terms of permissions granted and completions? 21

Q15: Do you agree that April 2017 is a reasonable date for the first report to be published? If not, do you have alternative suggestions and why?

Q16: Do you support a transitional provision for the starter home regulations?

Q17 Is there further evidence we should be considering in our assessment of equalities implications?

Q 18 (i): How do you anticipate the open market value of Starter Homes would compare to other affordable housing products such as social rent, affordable rent and affordable home ownership?

(ii): How do you envisage the market value of Starter Homes when compared to the market value of full priced new build homes bought by first time buyers?

(iii): What is your view on the proportion of sites that would be able to deliver 20% Starter Homes without viability being affected? How would this affect other developer contributions?

(iv): Do you agree that in most instances s106 negotiations occur on residential sites of 10 or more units, regardless of whether a s106 agreement is ultimately put in place? And do you agree that before the April 2015 pooling restrictions on Section 106, infrastructure contributions (as a proportion of development activity) tended to be higher in authorities that secured relatively low s106 affordable housing contributions?

(v) To what extent do you think the starter home requirement and associated exemptions will affect site viability, if at all?

(vi) We would welcome (a) any estimates of the costs incurred by developers in negotiating s106 agreements on sites of different sizes, for example time costs, consultants or legal fees, and (b) views on the extent these costs might change as a result of the 20% starter homes requirement.