

Permission in Principle

A Clause in the Housing and Planning Bill

Place Alliance/UDL Workshop

20 January 2016

KEY TAKEAWAYS

1

This event looked at the Housing and Planning Bill, and in particular the potential impact of the Permission in Principle concept proposed in the Bill. In particular how the design quality of schemes built, and places created, under the system would be ensured.

2

The session started with a briefing on the main elements of the Bill, which looks to radically change the way housing, and social housing, is defined and delivered.

3

We then moved on to look at PiP in detail, and how it would relate to planning policy, application processes etc. Although some thought it would not make much difference, the overall consensus was that it could profoundly change the planning system. It was felt that there was not enough information available to properly understand impact.

4

A proposition was made to use a form of design codes to set out required development parameters for PiP schemes. Although exactly how this could work would need more thought, there was general support for the idea and a willingness to work on the details.

5

This was a well attended event with good participation from the circa 100 built environment professionals in the room. It was clear that there is considerable concern about PiP and a feeling that its impact on the character, quality and popularity of housing development should not be left to chance.

Speakers

Sue Vincent, UDL

Matthew Carmona, UCL

Nicholas Boys Smith, Create Streets

David Waterhouse, Design Council

Fred Manson, Heatherwick Studios

Esther Kurland (Chair) UDL



NOTES

This workshop was organised following a question asked of the Planning and Housing Minister, Brandon Lewis at the Place Alliance BIG MEET 4, namely how would design issues be considered and quality ensured under the PiP system introduced in the Bill. The answer seemed to be that although it was the Government's intention to ensure that homes built would be well designed and of high quality, the detail of how this would work under the proposed system was not yet available.

Not wanting to leave such an important issue undiscussed, or its resolution to chance, the Place Alliance and UDL organised a session on 20th Jan where the issue could be discussed and suggestions for practical ways forward explored.

The session started with two introductory talks, first Sue Vincent of UDL ran through the main elements of the Bill itself. Then Matthew Carmona of UCL put forward a proposition on how a form of design coding could be used to ensure design quality under PiP.

Contributions to the discussion were received from David Waterhouse of the Design Council, Fred Manson of Heatherwick Studios and Nicholas Boys Smith of Create Streets. David explained that the purpose of the system was to reduce duplication of work, to ensure efficient delivery of housing, and that the primacy of local plans should underpin this drive.

Fred Mason looked at the intention behind PiP, and queried the purpose of PiP and the role and amount of discretion that will be left for local authorities.

It was Nicholas' view that although the government's intent to change the planning system was serious, they also want to ensure quality, and think design, and the popularity of new developments, is important. He suggested that the Government may be open to suggestions about how to secure quality under PiP as long as efficiency and certainty were not undermined. For him the key was to obtain 'popular' design quality.

What is PiP?

There was some confusion about what was being introduced by the Bill and how it would work. Some felt that it would not make much difference, would work like any outline and reserved matters application and people were worrying about a 'storm in a teacup' while others felt that it could radically change the way our planning system works, moving away from the discretionary granting of permission to an as of right situation.

To summarise, the system would:

- Involve a list of brownfield sites, included in Local Plans, Brownfield Registers or similar. The list would identify the amount of housing that could be given PiP on each parcel of land.
- The Secretary of State would use a new national Development Order to grant Permission in Principle for housing development on listed sites.
- A developer would apply to a local authority for PiP on a site listed and provide details of technical matters for consent.
- The PiP plus the technical details consent would equal a full planning permission

Questions

As we started to better understand the proposed system, many questions arose, but few answers. Overall we felt that, without further information, it was difficult to clearly understand the system, its potential impacts or suggest ways in which it could deliver good design and quality places. Key questions and areas where more details should be provided by government included:

The 'big' planning process questions

- How are the Development Plan policies applied? When a site is listed, at the technical consents stage? Both? Neither?
- Similarly how are environmental impacts considered?
- How would the viability of the sites and the amount of housing given PiP on them be tested?
- Are all brownfield sites assumed suitable for housing? Will there be guidance on what constitutes an appropriate PiP site?
- When are communities and statutory consultees involved? For example would there be consultation on technical details? Or would they be expected to set out site by site comments and requirements at the site listing stage? Although it was felt that up front involvement was a good thing, it was also noted that people can find it very difficult, if not impossible, to comment on abstract schemes, with no drawn up proposal to relate to.
- Will CIL and Sec 106 agreements apply? If so when are the details of any agreement to be discussed?
- PiP only applies to housing and ancillary development. What constitutes 'ancillary'? Would it cover the provision of services and facilities those living in the homes would need? It was felt that if a 'mix of uses' could not be ensured this might discourage the listing of sites while, if large sites were listed, this would geographically divorce homes from the services they need
- Would there be a fee payable for processing PiP/technical detail consent applications, and would this cover the cost of compiling a well researched list of PiP sites?
- Would the PiP system be extended to other uses in the future?
- How long would PiP last? Until the lists are changed? Could a local authority remove a site from a PiP list? How long would be given to deal with the consent process?

Questions about development form

- How would an appropriate amount of housing for each listed site be calculated? To do this properly requires the testing of indicative layouts and so on. Very rough figures could be created in the same way as SHLAAs but it was generally felt that these would be too crude to really understand an appropriate capacity for most sites.
- How would layout and access issues be dealt with? It was pointed out that linking access routes to and through the sites to the surrounding network was important, and it was not clear if basic site specific requirements for this would be set out at the listing stage to give a good indication of what was actually being given permission in principle
- Similarly the scale/bulk/massing and layout form appropriate for the site would be useful information for developers early on, but could/would this form part of the listing?

Questions about local control

- Would the local authority be able to set what constituted 'technical details' locally or would these be specified at the national level as happens now with change of use from office to residential permitted development applications?
- What happens if a developer wants to build less homes on a site than that allocated to it in the listing? Would PiP still be possible?
- Will local authorities be able to freely decide what sites are listed, or not. Will PINs have a role in approving or placing sites on lists? Will local authorities be required to show PiP sites to fulfil a 5 year supply or will numbers on PiP and non PiP sites both contribute to supply. (the later would be more sensible)
- Will there be a right of appeal relating to not listing sites, or giving consent for technical details?
- Can conditions be applied to consents/permissions? If not, how will further details such as application of voluntary elements of the Building Regulations be ensured?

Generally there was some scepticism about how the PiP system could really speed up delivery, create more certainty, remove duplication of effort AND still adequately manage design and quality issues. Some thought that design would be sacrificed to speed, which would store up significant problems by undermining local support for development and potentially the state of homes and neighbourhoods in the future.

However, the point of the session was to look at ways in which this could be prevented, and those present set to exploring options with a willingness and positive attitude.

Ideas to make the system work

Matthew Carmona had set out a proposition (see Annex) – that design codes could be used to compliment the PiP site list and technical consents regime. His idea was that all PiP sites should be covered by a code and compliance with this checked at the technical detail consent stage.

Matthew explained that there was already a history of using codes attached to Local Development Orders and his suggestion was an extension of existing best practice. In his view the codes should be site specific, although he did suggest that where a number of sites in an area had very similar characteristics and issues these could be covered by an area-wide code.

There was some concern over what such a design code would cover. People had experience of very weighty, overly complicated codes which had taken a long time to prepare and were overly prescriptive and inflexible. However codes in this context could be more light touch and capable of amendment as conditions changed. Going back to the questions earlier in this note, testing parameters to understand an appropriate carrying capacity for a site, seen as needed to identify the quantum alongside the site listing, could also create the headers for the code itself. Minimum and maximum heights, plot ratio and plot coverage (amount of built on area compared to open areas), key access points, the need for through routes across the site, requirements relating local conditions such as flooding or heritage, and so on, could form the basic structure of a PiP Code.

Nicholas explained that local acceptance of schemes was very important, politically to the government, but also as a prerequisite of eventual quality. One suggestion to help achieve this was to include local character and aesthetic requirements alongside functional design issues within the codes.

There was general support for the idea of PiP Codes, although some felt that all requirements could be equally well covered through good local plan policies. Others felt that such policies would end up being too generic, and would require that the technical consents regime worked just like a planning application, which seemed at odds with the purpose of PiP in the first place. .

The obvious issue of resourcing was raised. Who would draw up the codes, when, and how would this be funded? As noted above, people did not know if application fees would be applicable, and if so at what level and when it would be applied. Even if they were, would they cover the up front work needed to create local PiP Codes?

One suggestion to overcome this was to have a 'live' list of PiP sites, which had codes attached, maybe ones where this work had already been done, and a future list, where, if a code was created for the site, it could move to the live list. This could incentivise land owners and developers to support the creation of codes. It should not hold up development as the work would be needed to be done to test out viability and start to consider the built form of schemes where there was an actual intent to build anyway, and give the opportunity for partnership working to get the leg work done quickly and simply.

Another option would be to have fall back generic codes that would be applied where no site specific one had been created. The government might draw up a set of codes for different types of places/sites alongside the secondary legislation needed to bring the PiP system into force. Alternatively local authorities, or communities through neighbourhood plans, could draw up either area wide generic codes, or site specific codes which could be applied instead of national generic codes were done.

Other ideas were put forward included using the existing Built for Life tool as a framework for the technical details consent regime and, potentially, as a useful structure for PiP Codes. By itself, however, these criteria are far too generic to overcome the discretion and uncertainty that the PiP system aims to address.

Conclusion

Overall this was a very informative, energetic and positive session. 99 built environment professionals had booked to attend, on the day there were around 85 people in the room including those with planning, architectural, house building, surveying and many other backgrounds.

There was significant scepticism over how the PiP system would, really, ensure good design and high quality homes and neighbourhoods. Many questions were raised and we would welcome more information and, hopefully, answers to these from DCLG and the government.

Overall there was a willingness to examine options and find a way of making it work. PiP Codes were the most discussed and favoured suggestion, with a number of variations on the theme, from using national generic codes to site specific ones. How these will be funded, worked up and used, the level of information they would contain and the issues they would cover were not discussed in detail, and will make a massive difference to how a PiP Codes system could work.

We urge DCLG and the government to continue this conversation and work with the Place Alliance and the industry to find a way to ensure everyone involved is proud of the homes PiP may deliver in the future.

Annex: Safeguarding quality via PiP + design codes

The Housing and Planning Bill currently working its way through Parliament suggests a radical departure from the way we have long done planning in the UK. That is the move to permitting development via a 'Permission in Principle' (PiP) relating to sites on a register of brownfield land held by each local authority, or otherwise identified in the development plan. In the run up to publication of the Bill, the Government talked about the introduction of a 'zonal' system for brownfield sites, and in doing so directly equated the change to a move from our long-established 'discretionary' system of decision-making to an 'as of right' system as practiced by most of the rest of the world.

A big question remains, how will design quality be guaranteed through this new system and with it the support of communities?

Systems of zoning

Systems of zoning range from: incredibly crude and simple systems with often perverse design outcomes such as found in Japan¹; to more sensitive but ultimately hugely complex systems such as New York's with its 900 page zoning ordinance and legions of zoning lawyers to interpret it²; to very sophisticated models as found in many continental European countries such as Germany. In Germany, land use provisions are accompanied by carefully constructed site-specific regulating plans (B-plans) which establish the morphological framework within which development occurs³. In effect this guarantees design quality by establishing the unifying urban framework through which subsequent developments (large and small) coalesce to form coherent and connected bits of the city.

Speaking at BIG MEET 4, Brandon Lewis, the Minister of State for Housing and Planning, argued that "an increased focus on good quality design could help us to deliver more homes, at a quicker pace, which communities can feel proud of"⁴. He suggested that the Housing and Planning Bill would establish the bones of a new system, but conceded that the detail of delivery has still to be worked out. Any move towards zoning in the UK should learn from the German model that offers certainty of provision and certainty of outcome. It should strongly avoid the former models that would very quickly undermine public support, and ultimately raise barriers to more housing rather than shedding them.

A possible model

The Bill itself specifies in Section 58A that an "application for technical details consent must be determined in accordance with permission in principle", and later that an application for technical details consent is in effect a planning application relating to development in an area covered by a PiP. Nowhere is the form and content or matters to be considered under such a consent specified, although consents can include conditions just like regular planning permissions.

Taking as a starting point the three aims of i) streamlining the process of securing consent to develop, ii) increasing certainty for developers and investors, and iii) maintaining a focus on quality outcomes; it may be appropriate to revive an idea first mooted at the time of the Government funded design code pilot

¹ Design Matters 34 and 35 <https://www.bartlett.ucl.ac.uk/cross-faculty-initiatives/urban-design/latest/design-matters>

² Design Matters 33: New York as-of-right – is the time right for the UK? <https://www.bartlett.ucl.ac.uk/cross-faculty-initiatives/urban-design/latest/design-matters>

³ Stille K (2007) "The B-Plan in Germany", Urban Design, 101: 24-26

⁴ <https://www.bartlett.ucl.ac.uk/placealliance>

programme⁵ when the designation of Local Development Orders (LDO) tied to the provisions of design codes was proposed. Similar to PiP, LDOs are devices that remove restrictions on permitted development within a defined boundary, whilst design codes are tools that establish the key urban design parameters for a site or area, with a particular focus on making the place. Their use is advocated in the NPPF.

Given that a Development Order is also the means by which the Housing and Planning Bill aims to implement PiP, there is a clear logic to this proposition. Moreover government funded research tracking the use and utility of design codes concluded, “if used alongside design codes, LDOs offer considerable potential to deliver high quality development with considerable certainty to applicants and speedy implementation of development. When linked to a LDO, developments in accordance with the design code would effectively be permitted development for which no planning application would be required”⁶.

PiP + design codes

The preparation of design codes themselves requires an up-front investment that is only reaped further down the line, but recent research reflecting on the use of design codes in England since the mid eighties has shown that these tools have become mainstreamed for the development of large housing sites and that developers are well used to commissioning them for local authorities who are used to using them⁷. Moreover, whilst design codes are best suited to coordinating development across large individual sites where multiple phases of development and/or housebuilders are involved, they can also be used on an areas-wide basis to guide the development of housing on multiple smaller sites within a contextually homogenous area. This relates well to the separate provisions in the Bill concerning the grant of PiP on small brownfield sites.

But why go to the bother and expense of preparing site specific codes when a national checklist or local authority wide guide might do? In contrast to such generic guidance, design codes operating on the basis of individual sites or areas have a number of distinct advantages:

- They can be easily updated or renewed as the market or policy changes
- They can be speedily prepared as and when sites come up for development and do not have to anticipate every eventuality years in advance and for every site covered in a brownfield register
- Developers typically pay for the production of design codes and welcome the certainty they provide (at little cost to the public purse)
- Their preparation can be mandated as a requirement of the award of PiP through the Development Order, whilst the technical details consent can act as the ‘light-touch’ check that the provisions of the design code are being delivered
- The qualities they espouse can be subject to public discussion and engagement very early in the development process, and long before proposals have become too detailed for public concerns to be taken on board

⁵ Carmona M & Dann (2006) *Design Coding in Practice, An Evaluation*, London, DCLG

⁶ DCLG (2006) *Preparing Design Codes, A Practice Manual*, London, RIBA Publishing: 91

⁷ <http://www.udg.org.uk/publications/udg-publication/design-coding-diffusion-practice-england>

- This localised approach to particular sites ensures a greater focus on high quality contextually appropriate design, and will deliver higher quality design and greater public support.

Don't leave it to chance

Used in this way, design codes can help to define a kind of urban DNA similar to that of the German B-plans to sit alongside the PiP and ultimately the right framework for the provision of the high quality sustainable housing that this country needs. This could be achieved alongside far greater certainty for all concerned; developers and communities alike. Indeed recent research has again confirmed that design codes themselves help to deliver high quality outcomes and once in place can also streamline planning decision-making associated with design⁸.

There is no harm discarding a little of our beloved discretion in planning, as long as this can be done without abandoning the principles that underpin good planning and in particular the achievement of high quality design. Without the necessary safeguards in place provided by carefully designed design codes, the danger is that PiP will lead to more sub-standard housing development and to a further undermining of local community support. No one, not least the Government, will benefit from that. We shouldn't leave it to chance!

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⁸ <http://www.udg.org.uk/publications/udg-publication/design-coding-diffusion-practice-england>



