PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT HOUSING AND PLANNING ACT 2016 (PERMISSION IN PRINCIPLE ETC) (MISCELLANEOUS AMENDMENTS) (ENGLAND) REGULATIONS 2017

Monday 20 February 2017

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not later than

Friday 24 February 2017

The Committee consisted of the following Members:

Chair: PHIL WILSON

† Barwell, Gavin *(Minister for Housing and Planning)*
† Blackman-Woods, Dr Roberta *(City of Durham)* (Lab)
Clwyd, Ann *(Cynon Valley)* (Lab)
† Davies, Byron *(Gower)* (Con)
† Doyle-Price, Jackie *(Thurrock)* (Con)
† Fernandes, Suella *(Fareham)* (Con)
† Foxcroft, Vicky *(Lewisham, Deptford)* (Lab)
Gove, Michael *(Surrey Heath)* (Con)
† Green, Chris *(Bolton West)* (Con)
Hodge, Dame Margaret *(Barking)* (Lab)
† Merriman, Huw *(Bexhill and Battle)* (Con)
† Offord, Dr Matthew *(Hendon)* (Con)
† Pow, Rebecca *(Taunton Deane)* (Con)
† Quince, Will *(Colchester)* (Con)
† Smith, Owen *(Pontypridd)* (Lab)
Streeting, Wes *(Ilford North)* (Lab)

Jonathan Whiffing, *Committee Clerk*

† attended the Committee

First Delegated Legislation Committee

Monday 20 February 2017

[Phil Wilson *in the Chair*]

Draft Housing and Planning Act 2016 (Permission in Principle etc) (Miscellaneous Amendments) (England) Regulations 2017

4.30 pm

The Minister for Housing and Planning (Gavin Barwell): I beg to move,

That the Committee has considered the draft Housing and Planning Act 2016 (Permission in Principle etc) (Miscellaneous Amendments) (England) Regulations 2017.

It is a pleasure to serve under your chairmanship, Mr Wilson, for what I think is the first time. The regulations are necessary to ensure the effective operation of permission in principle when it is introduced later this year.

Permission in principle is a new route to planning permission that will give developers up-front certainty that sites are suitable for housing-led development in principle before they need to work up detailed and costly development proposals. It will therefore be of particular benefit to small developers. I think there is a recognition across the House that we are far too dependent on a small number of large developers and need to look at things we can do to encourage existing small and medium-sized developers to grow and to encourage new people into the market. Permission in principle will make the planning process less risky and more efficient. In doing so, it will help to tackle the under-supply of housing by increasing the amount of land—particularly brownfield land—with permission to build.

We secured the primary powers for permission in principle through the Housing and Planning Act 2016 and consulted on the detailed operation of the policy. Having taken account of the responses received, we are developing secondary legislation that we intend to lay before the House shortly. The regulations before us today are technical and make a small number of minor consequential and miscellaneous amendments to primary legislation. In effect, they deal with matters that have been identified since the 2016 Act received Royal Assent. I will do my best to explain the particular pieces of legislation being amended.

Regulation 2 amends paragraph 9 of schedule 12A to the Local Government Act 1972, which, as I am sure everyone in this room knows, prevents a local planning authority from excluding information at a planning committee meeting about an application for planning permission in relation to development on its own land. The amendment will require the local planning authority to comply with that requirement where an application for permission in principle is made in relation to local authority land, thereby ensuring similar treatment to normal planning permission.

Regulation 3 amends the Town and Country Planning Act 1990. Section 69 of the 1990 Act deals with entries on planning registers—something we talked about in the Neighbourhood Planning Bill Committee—which are public records of planning applications and permissions in the local area. Regulation 3 will ensure that records of permission in principle applications and consents are made available on registers in the same way as normal applications for planning permission.

Section 75 of the 1990 Act ensures that a grant of planning permission enures for the benefit of the land—when I first read this speech, I thought that word was "ensures", with a typo—which means that a grant of planning permission runs with the land and is not personal to the applicant. Regulation 3 applies that long-standing principle to grants of planning permission in principle, so that they also run with the land rather than with the applicant.

Section 96A of the 1990 Act enables a non-material change to be made to a grant of planning permission, such as the correction of a spelling mistake. The regulation will enable the applicant to follow an expedited process to make a non-material change to a grant of permission in principle in the same way that applies for normal planning permission. Without the amendment, the applicant would have to reapply for permission in principle to make such a change.

The final change being made through regulation 3 is to amend section 100 of the 1990 Act, which deals with revocation powers. The amendment will ensure that local planning authorities can revoke or modify a grant of planning permission in principle in the exceptional circumstances where that course of action is necessary. That is consistent with the current arrangements for grants of full or outline planning permission.

Regulation 4 will amend the Planning (Hazardous Substances) Act 1990 to ensure that in dealing with an application for hazardous substances consent, the hazardous substances authority shall have regard to any permission in principle granted in relation to land in the vicinity. The change will ensure consistency with the arrangements for having due regard to grants of full planning permission in relation to a hazardous substances consent.

Finally, regulation 5 will amend the Commons Act 2006 to ensure that when a local planning authority publicises its intention to grant permission in principle to a suitable site on a brownfield register, the right to apply to register that site as a town and village green is switched off. The right to apply is reinstated when a period of 10 weeks passes from when the local planning authority publicises its intention to grant permission in principle without the land being granted permission in principle. The right to apply is also reinstated when the granted permission in principle expires.

I hope that is clear. Essentially, regulations 2 to 5 change pieces of primary legislation in ways that treat permission in principle in exactly the same way as ordinary planning permission is treated. These are things that were not spotted when the 2016 Act was before the House, and the regulations are trying to put that right. They are technical and, I hope, uncontroversial in nature, but I will soon find out. I commend the regulations to the Committee.

4.36 pm

Dr Roberta Blackman-Woods (City of Durham) (Lab): It is a pleasure to serve under your chairmanship, Mr Wilson. I thank the Minister for outlining what is in

the statutory instrument. I suspect that this is one of many corrections that might have to be made to the 2016 Act, but we will see.

As the Minister rightly pointed out, the SI deals with the new consent route, called permission in principle, which is designed to separate the planning decision making on in-principle issues, such as the location or number of homes to be built, from matters of technical detail. That subject was much talked about, though not by this Minister, during the passage of the 2016 Act, and I have to say it is a route to permission that those of us on the Opposition Benches had some difficulty with. We know that the Government aim to give up-front certainty to developers that fundamental principles are acceptable before they get into the detail, but we think that the cost of such a policy is too great because it will bypass local people almost completely with regard to decision making.

The Opposition would have much preferred the Government to have looked at how to streamline and simplify the planning system, rather than, in effect, creating a way around the system, completely circumventing policies in place and, in particular, communities that will be affected by development. However, we are where we are, so I hope that the Minister will at least keep permission in principle under review, to look at whether there are any adverse consequences for local communities.

To turn to the specifics—I accept that the SI is largely technical in nature, amending primary legislation—I have a number of questions for the Minister. Regulation 2 relates to exempt information and provides that a local planning authority's application for permission in principle should not be exempt information. That is vital, so that is one part of the SI that we support. It will enable more transparency in the planning system, but there are much greater issues that require greater transparency, such as viability and how that is arrived at. It would be interesting to hear the Minister's comments on whether his newly found quest for transparency in the system is going to go further.

I have a specific question on regulation 3 that relates to non-material amendments. It would be helpful to have more detail on how that will work. In particular, I want clarification from the Minister. One problem that we had during the passage of the 2016 Act was about permission in principle being granted and it not being possible to withdraw it in any circumstances. For example, if permission in principle were granted for a site that was then found to be archaeologically very important, the local authority would not be able to withdraw it. I am not sure, from what the Minister said, whether he and his Department are starting to think of circumstances in which it might be necessary to withdraw permission in principle.

Regulation 4 is about hazardous substances consent in relation to permission in principle. Again, will the Minister give us some assurances? The regulation calls for the hazardous substances authority to have regard to any permission in principle that has been granted for land in the vicinity, but what exactly does that mean in practice? How do the Government define "in the vicinity"? Will there be a formal notification process for local people who might be looking to buy housing that comes forward on that land? Will they know that there are hazardous substances there or near it? Will they have to carry out testing in relation to environmental impacts—impacts that the hazardous substance might have on the water supply or on plant or animal life? Moreover, without knowing exactly what will be on the site, how will the hazardous substances authority be able accurately to determine the potential consequences? The implications could be quite wide ranging, and we need to hear more from the Government on that.

I consider regulation 5 the most contentious element of the SI. In fact, it is so contentious that I am surprised the Minister has not had a rethink. The regulation is about triggering and terminating events in relation to the right to apply for registration of a village green. As the Minister will know, section 87 of the Localism Act 2011, in addition to the 2006 Act, which he covered, deals with assets of community value and the process of being able to register a village green. During the passage of the 2011 Act and subsequently, the then Minister thought that that was such an important benefit for communities that he insisted that it be put into the national planning policy framework, and I think he was right to do that. However, the whole point of giving a community the ability to designate a village green is to ensure that there is continued community benefit from a piece of land that has important recreational value locally, and the SI, and therefore Act itself, seeks to ensure that that right is lost to lots of people.

We all know that, in practice, communities are often persuaded or encouraged to register a piece of land as a village green only when it is under threat. That is the only time when they think they need to do something to protect it; otherwise, they think it will just be there, for community use, year after year. However, the SI will ensure that as soon as a piece of land is put into a development plan or a developer comes forward with a scheme, the right to be able to protect that piece of land disappears. We did not like that during the passage of the 2016 Act and we do not like it now. It is profoundly anti-localist.

The Government should think again about whether they want to remove that right completely. We thought during the passage of the Act, and I think now, that the Minister should be putting in place a streamlined procedure to judge whether an asset of community value or a piece of open space may be registered as a village green, and ensuring that that determination is made very quickly so that it does not hold up development, rather than taking away from local communities this important right to be able to protect land that is important to them.

Lastly, I accept what the Minister said about this being an SI that will amend primary legislation, as it does not include a lot of detail about how permission in principle will work in practice. During the passage of the 2016 Act, he promised that a lot more detail on how that difficult procedure will operate in practice would be brought forward in secondary legislation. Clearly, this is not the secondary legislation that will give us that additional detail, so it might be helpful to hear from him about when he expects that we will get much more information on how permission in principle will operate in practice.

4.45 pm

Gavin Barwell: I will do my best to respond to the points raised by the hon. Lady and, I hope, to reassure her so that she feels able to support the regulations.

[Gavin Barwell]

On the hon. Lady's point about corrections to the previous Act, I draw a distinction: there are some areas where this new Government have taken a different view—welcomed, in a number of cases, by the official Opposition—from the previous Government and are changing policy. The regulations do not, however, change the principle of the policy at all—they are merely correcting some things that neither the Government nor, to be fair, the official Opposition at the time spotted when the legislation was going through the House. It is usual under Governments of all colours, particularly in complex areas of legislation, to include a clause that allows us to correct such things through the affirmative procedure, rather than our having to take up the House's time with primary legislation.

Although it is not on the detail of the regulations, I reassure the hon. Lady that it is not at all the case that, in some way, permission in principle is an attempt to get around the planning system. First, the Government have always been quite clear that permission in principle will be used in limited areas. The first is in relation to sites that local authorities choose to list on the new statutory brownfield registers. Again, I would have thought it is a point of agreement across the House that we want to see more development on brownfield land in this country.

Dr Blackman-Woods: I thank the Minister for the points he is making, but I say to him that if the Government had kept Labour's "brownfield first" policy, we would not have to have a brownfield register or have permission in principle being given to get around the planning system.

Gavin Barwell: With respect to the hon. Lady, I am not sure that we managed to avoid building on significant areas of greenfield in this country during the 13 years of the last Labour Government. There is an agreement that we want a "brownfield first" policy, but brownfield registers have been fairly widely welcomed across the sector because they will give developers clear information about brownfield sites that are suitable for development in an area. I hope the hon. Lady is not signalling that the official Opposition do not support brownfield registers, because many Labour councils have been involved in piloting them, and the Government very much welcome those councils' support for our agenda.

The brownfield registers are important. That is one area in which permission in principle will work. The second is sites that are specifically allocated through a local plan or a neighbourhood plan. That is not in any way getting around the planning system; that is local authorities and communities specifically choosing to allocate sites as suitable for permission in principle. The third area is by application by a developer on small sites only. It is clear that that is about trying to ensure that small and medium-sized developers find it easier to get planning permission for sites that they are able to develop. The hon. Lady will know, from the evidence that the Federation of Master Builders gave to the Neighbourhood Planning Bill's Public Bill Committee, that the difficulty in acquiring sites is one of the main reasons why our housing market is dominated by a small number of large developers at the moment.

To offer the hon. Lady some further reassurance, when deciding whether to grant permission in principle for a particular application, the local authority must make the decision in accordance with its own development plan, which will include any relevant neighbourhood plans in the area, and in line with the national planning policy framework. Permission in principle is not in any way, shape or form an attempt to get around the planning system. It is about trying to provide greater certainty to small developers to try to do something to change our broken housing market and get more SME firms involved in development.

After my having said that these are technical regulations, the hon. Lady asked the perfectly legitimate question of when the main ones will come. I can provide her with some reassurance on that. Our intention is to lay the secondary legislation to introduce permission in principle through brownfield registers and by application on small sites between spring and summer this year, and then to come back with a further piece of secondary legislation that will introduce permission in principle through development plans—local or neighbourhood—shortly after that. That is the timescale in terms of the substantive regulations. I understand that the hon. Lady will no doubt want to scrutinise those carefully, given the concerns she has expressed and the position the official Opposition have adopted on this.

In terms of transparency, we had quite a long debate about viability assessments in Committee on the Neighbourhood Planning Bill and I would not want to rehearse it again here. I will say that the hon. Lady will now have seen the published review of the community infrastructure levy—CIL—and the knock-on implications for section 106 agreements. I hope that she finds that a convincing piece of work. We made it clear in the White Paper that we will be looking to respond to that on an autumn Budget timescale. That may offer a solution to that problem in a way that I hope will command fairly wide support.

The hon. Lady asked about the revocation powers. A local planning authority can modify or revoke whenever it considers it appropriate, having regard to planning policies—both its own planning policies, as set out in its local plan, and the national planning policy framework. The one caveat is that compensation is payable to the landowner for loss caused by the modification or revocation; however, it can be used consistent with national and local planning policy. The hon. Lady also asked what the term "in the vicinity" means. Like many of these terms, ultimately that is a matter for the courts but I can say that both normal planning permissions and permission in principle would show up on local land searches, to reassure her on that front.

The hon. Lady's final point was about village greens, which was the area of the regulations that caused her the greatest concern. I absolutely agree with my predecessor's comments about the importance of this legislation; that is why this Government supported those changes in the Localism Act. I reassure her that the changes we are proposing here are not going to undermine further—if I can phrase it that way—the current position because all these regulations will do is, essentially, apply the same rules in relation to an application for permission in principle as already apply, and have been agreed by this House and the other place, in relation to an application for full planning permission. The Committee may want to ask the question: is this going to lead to lots more areas being excluded from the right to apply to register a village green? The Government believe that is unlikely to be the case, and I will take a moment to explain why.

If the Government did not bring forward the new permission in principle route, the majority of sites that are likely to be considered for permission in principle would presumably, at some point, come forward for a normal planning application and would therefore fall within the scope of the existing regulations at that point.

I hope that I have reassured the hon. Lady most importantly, from my point of view, on the principle at stake here: that permission in principle is not an attempt to get around our planning system. Far from it—it is an attempt to try to fix our broken housing market. I hope I have also answered her detailed concerns on some of the specifics of the regulations.

4.53 pm

Dr Blackman-Woods: Overall, that was helpful but I point out to the Minister and the Committee that we are not against the brownfield register. Our main problem with permission in principle is how extensively it is likely to be applied. Had the Government simply said that it would apply to small sites, we would probably have accepted it, but we think that because of the brownfield register, the use particularly in some areas could be extensive. We understand the issues on land banking and for SMEs, which is why we would have accepted the proposal for small sites. What the Minister said about section 106 agreements was helpful, and we look forward to hearing what is said in the Budget, but what is happening on viability needs to be made more transparent.

Lastly, I am glad that the Minister has accepted that there is some undermining of the ability to register a village green. However, because of the reasons I have outlined, we think it is wrong that communities who discover that a piece of land has suddenly been put in a local development plan are not able to apply to have it registered. On that basis, I want to divide the Committee.

Question put.

The Committee divided: Ayes 9, Noes 3.

Division No. 1]

AYES

Barwell, Gavin	Merriman, Huw
Davies, Byron	Offord, Dr Matthew
Doyle-Price, Jackie	Pow, Rebecca
Fernandes, Suella	Quince, Will
Green, Chris	

NOES

Blackman-Woods, Dr Roberta	Smith, Owen
Foxcroft, Vicky	

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Housing and Planning Act 2016 (Permission in Principle etc) (Miscellaneous Amendments) (England) Regulations 2017.

4.57 pm

Committee rose.