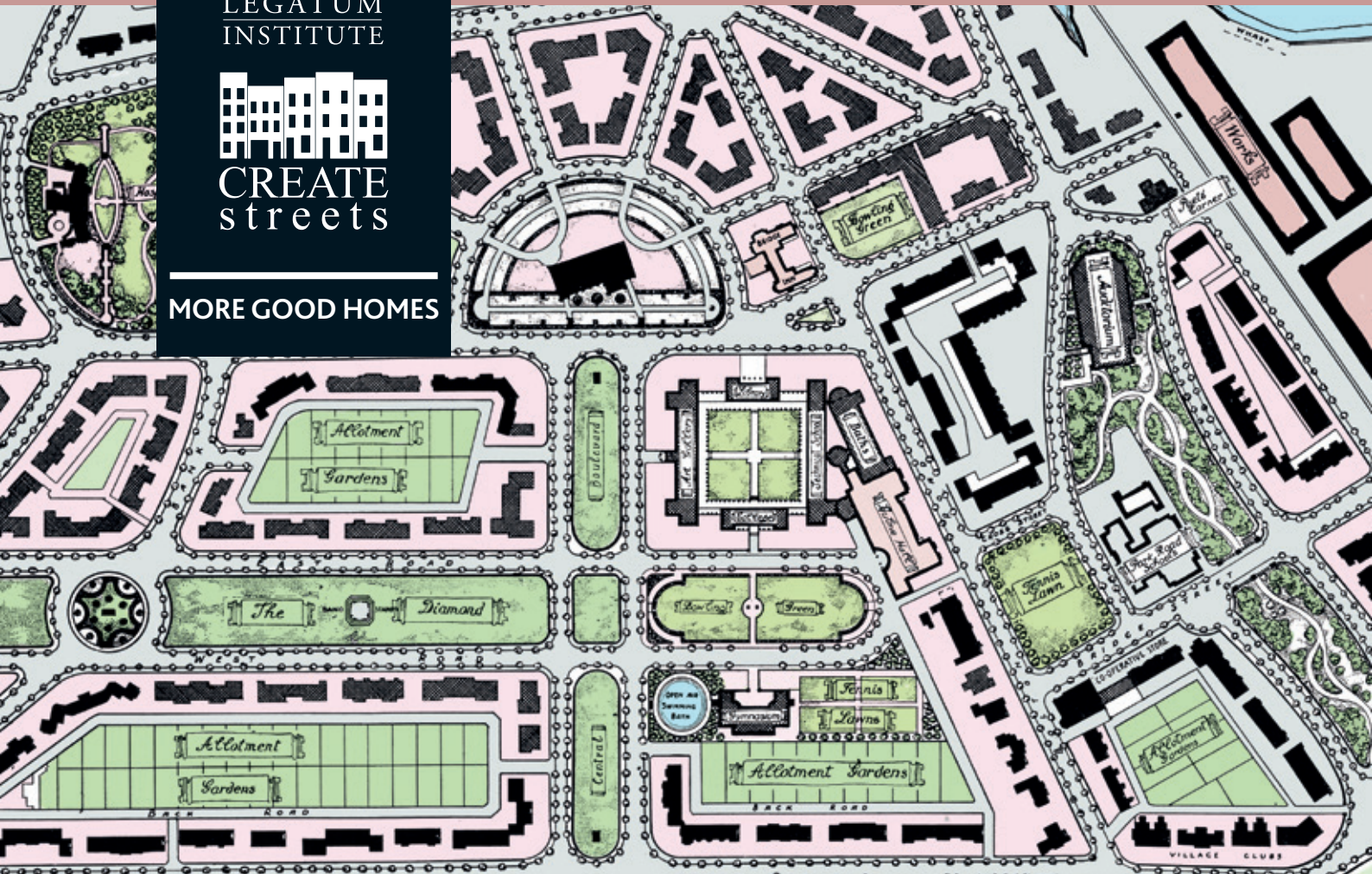




LEGATUM
INSTITUTE

CREATE
streets

MORE GOOD HOMES



More good homes

Making planning more proportionate,
predictable and equitable

by Nicholas Boys Smith

CREATING THE PATHWAYS FROM POVERTY TO PROSPERITY

ABOUT THE LEGATUM INSTITUTE

The Legatum Institute is a London-based think-tank with a global vision: to see all people lifted out of poverty. Our mission is to create the pathways from poverty to prosperity, by fostering Open Economies, Inclusive Societies and Empowered People.

We do this in three ways:

Our **Centre for Metrics** which creates indexes and datasets to measure and explain how poverty and prosperity are changing.

Our **Research Programmes** which analyse the many complex drivers of poverty and prosperity at the local, national and global level.

Our **Practical Programmes** which identify the actions required to enable transformational change.

ABOUT CREATE STREETS

Create Streets is a research institute that advises community groups and councils on planning and developing urban housing that matches how people want to live.

Create Streets has a 15-year aim to change the UK urban planning system, and it's doing this by making the case for popular housing and co-design, and helping communities build capacity to fight their corner.



Acknowledgements

The Legatum Institute would like to thank the Legatum Foundation for their sponsorship and for making this report possible.

Learn more about the Legatum Foundation at www.legatum.org.

The Legatum Institute is the working name of the Legatum Institute Foundation, a registered charity (number 1140719), and a company limited by guarantee and incorporated in England and Wales (company number 7430903)



Cover image credit: RIBA/Thomas Mawson,
*Civic art: studies in town planning, parks,
boulevards and open spaces* (London, 1911) pl. 239

CONTENTS

Foreword	2
Executive Summary	4
Chapter 1: are we building enough homes?	7
Chapter 2: how do we regulate the built environment?	13
Chapter 3: why don't we build enough homes?	17
Chapter 4: British exceptionalism—how British planning is odd and why it matters	29
Chapter 5: how good is British land use regulation?	38
Conclusion: a vision for 2030	46
Appendix one: the long history of British land regulation	54
Appendix two: power and practice in planning— who makes decisions and why?	66
Appendix three: how can regulation prevent competition, smaller firms and market entry	70
About the Author	72

FOREWORD



Britain's unaffordable housing and higher rents are creating a crisis of affordability for the younger generation

Our planning system in Britain is inefficient compared to other countries and it is depressing the supply of new homes whilst inflating prices. It is the younger generation that are paying the price for this market inefficiency. We now have the lowest proportion of young homeowners since 1926 and rent accounts for 30% of their income, and 40% in London.

We need a more efficient planning system that delivers more affordable homes but avoids an unregulated 'build everywhere' approach that would quickly lose the political support necessary to home-building. This research proposes a simple but potentially significant revision to the planning process by moving to a rules-based system for the majority of standard developments to create greater certainty and predictability in the system. This would free many of the bottlenecks to building more homes through a greater variety of channels and players.

There have been major announcements in recent weeks on the housebuilding role of councils. Despite this, the 'right to develop' in the UK is still hampered by a lack of certainty about what will be approved in different boroughs, counties, towns and cities. Seeking planning approval is a time consuming and costly business that can fall unexpectedly at the last hurdle because the British planning system is based on development control rather than clear rules. There is no standard rule book, we are running a bespoke system based on discretionary decision-making for a mass product—houses.

The lack of certainty is a brake on supply and has at least two big consequences. First, on landowners who maximise the value of their land only when they have secured planning permission and tend not to sell without it. Certainty of planning outcome would be an incentive to sell more land for development. Second, the planning process involves significant time, cost and complexity. This has created a market dominated by large developers who alone have the resources to navigate the process and has shut out many smaller builders and self-builders. This once vibrant sector has declined and accounts for a much lower share of new homes than all other OECD countries. In Britain only 10% of homes are custom or self-built versus a European average of 50%; and 34% of the European construction market is made up of smaller firms (50% in Germany, 73% in Denmark).

This all matters hugely because it impacts on our national prosperity. The lack of competition drives down housing supply whilst driving up prices. Ineffective land use regulation reduces British productivity by up to 40% in some industries, reducing GDP per head by as much as 25% and eroding disposable income and living standards. The ratio of average house prices to average incomes has doubled since 1998 and is creating a damaging generational

wealth inequality where high prices and higher rents, relative to income, are driving a crisis of affordability among young people. Having a safe, warm, uncrowded and appropriately located place to live is fundamental to the quality of our lives but it is becoming less attainable to a whole generation.

This paper recommends a significant change to our planning system: a move towards a clear rules-based system using a mixed-use zoning approach that standardises a lot of the of the planning approval for many developments. In turn, this would free up the limited resources of planning officers to focus on the complex and controversial developments that do require their development control expertise. We need to build beautifully with certain processes, accountability and powers that remove anti-competitive barriers to entry and permit the construction of homes that people find beautiful, in walkable and popular urban patterns with popular support. Improved data collection makes it much easier to understand what people want and will support. This will generate prosperity, equal opportunity and could boost the role and value of planners by allowing them to focus on what really matters, free from countless development control decisions.

This report does not focus on the short term, it sets out a vision for planning by 2030 that would end an inefficient, bespoke process and move democracy upstream to a far more efficiently regulated model within which the free market, the third sector and local councils (as different future governments desire) can all build housing more readily. There is no reason this cannot be politically acceptable to the broad centre on the left and right. There is much evidence from other countries that this would generate cheaper housing and greater prosperity. Expensive housing (and above all, higher rents) have become the biggest drain on disposable income and a major driver of poverty among the poor and the younger generation. Providing affordable homes in the UK is a critical path to prosperity for all.

The image shows two handwritten signatures in black ink. The signature on the left is 'Philippe' and the signature on the right is 'Stroud'.

Baroness Stroud
CEO, Legatum Institute

EXECUTIVE SUMMARY

- Worldwide there is a crisis of housing affordability in many successful cities. It is caused by low interest rates, by high demand to live in some city centres (which are better managed and more attractive and liveable than for generations) and by the regulatory and other constraints which make it hard to build new homes in or near city centres. However, the UK and specifically England's variant has mutated into something far worse.¹ There is not just a crisis of affordability in London but in much of the country from Abingdon to Yarmouth. Why?
- Westminster is waist-deep in reports on 'the housing crisis.' Some are excellent. Some are not. This one is different. It does not focus on land prices or (much) on green belts. It does not 'blame' planners or developers. Instead it (uniquely) looks at the actual detailed dynamics of how our planning system works and asks why this is odd comparatively and historically.
- Despite the recent lifting of the borrowing on council house-building, this report argues that much of the national discussion about planning and housing needs has 'gone wrong.' It is underpinned by almost no understanding of the historically and comparatively peculiar way that the UK manages government intervention in and regulation of the land market. In addition, it has led to too many formulaic and repetitive policy proposals that are tangential at best and un-implementable or positively unhelpful at worst—dealing with symptoms not maladies.
- In times of trouble, we turn to what we already believe.
 - Those who dislike state intervention call for 'less planning' apparently unaware that the UK already has 'less planning' than nearly any other western democracy.
 - Those who like state intervention call for more affordable housing apparently unaware that the UK already has more affordable housing than most other countries.
 - Defenders of planning as it has existed since 1947 point to the mismatch between homes permitted and homes built, apparently unaware of the way in which high levels of British planning risk (not regulation) act as a systemic barrier to entry to smaller and self-builders.
- For the key fact is that in historic and comparative terms, the UK has a very strange planning governance and process. And this really matters.
 - The right to develop in the UK has been nationalised with uncertainty of what will be permissible. In much of the world, the right to develop is merely regulated very often with greater clarity about what is permissible. We rely more on development control and less on rules. Put differently, we are (trying to) run a bespoke system (discretionary decision-making) for a mass product (housing)

¹ The focus of this report is the planning system in England. However much of the research, underpinning concepts and data are also relevant (though variably) to Wales, Scotland

and Northern Ireland. Our conclusions and detailed analysis of planning process are however only focused on England.

- We allocate for individual sites on a case-by-case basis rather than zoning more widely for what is, and is not, permissible. We have less clarity, more discussion and fewer rights to develop land or build new homes.
- All this matters because the slow process and reduced clarity increases planning risk. This poses a major barrier to entry to smaller developers, self-builders, build-to-rent providers and third sector developers. It is not an accident that the UK has a consistently and increasingly more concentrated development sector. In Britain about 10 per cent of homes are built by self or custom build (versus a European average of 50 per cent); and 34 per cent of the construction market is made up of smaller firms. (In Germany, it is 50 per cent, in Denmark 73 per cent).
- In turn, the lack of competition drives down housing supply and drives up prices. Ineffective land use regulation supply retards British productivity (by some estimates pushing up costs by up to 40 per cent in some industries).² It reduces GDP per head (potentially up to 25 per cent) eroding disposable income and living standards.³ The ratio of average house prices to average incomes has doubled since 1998.⁴ This is having catastrophic consequences for standards of living and wealth inequality, above all generationally. A smaller proportion of people born between 1981 and 2000 are homeowners, at this stage in their lives, than for any previous generation since 1926.⁵ And, what they are paying in rent has increased from around 10 per cent of their income 30 years ago (15 per cent in London) to around 30 per cent (and 40 per cent in London).⁶
- We need to move to a system where more homes are built through a much greater variety of channels and players. This would lead to cheaper housing and greater prosperity. The biggest drain on disposable income has become more expensive housing, particularly higher rents.
- However, if we do this by just 'building everywhere', we will lose political support for more homes above all from homeowners less directly affected by this crisis. Building beautifully with consent will be faster, less controversial and more effective.
- To achieve this, we need to improve the way we govern planning. We need more certain processes, accountability and power in order to erect fewer anti-competitive barriers to entry and permit the construction of homes that people find beautiful in popular urban patterns with popular support. The good news is that improving data is making it much easier to understand what people like, want and will support. This will encourage societal prosperity and more equal opportunity. Such a system could actually value planning (and planners) more. It would free them up to focus on what really matters and add much greater value to society (as they desire) without being dragged into the miasma of countless development control decisions.

2 McKinsey Global Institute (1999), *Driving Productivity and Growth in the UK economy*, p.15. The 40 per cent figure relates to the hotel industry.

3 Myers, J. (2017), *Yes in my backyard*, p. 9.

4 DCLG (2017), *Housing White Paper*.

5 Corlett, A. & Judge, L. (2017), *Home Affront*.

6 O'Brien, N. (2018), *Green, pleasant and affordable*, p. 11.



Image credit: Shutterstock

- This report does not focus on the short term. It sets out a vision for planning by 2030 that would stop applying a bespoke process to a volume problem. It would 'move the democracy upstream.' It would, we hope, be broadly politically acceptable to most on the centre-left and the centre-right, the broadly *dirigiste* and the essentially free market. It would fulfil the criteria of good regulation—qualities in which the status quo is, despite the hard work and good intentions of many thousands of public servants, sadly, woefully and shamefully short.

1. ARE WE BUILDING ENOUGH HOMES?

'Facts are stubborn things and whatever may be our wishes, our inclinations or the dictates of our passions, they cannot alter the state of the facts and evidence'

John Adams

It is not news that much of the UK faces urgent major challenges of housing affordability. However, the critical role of a lack of overall supply (both current supply and the impact of many years of undersupply) does continually get lost in the discussion of solutions. An international comparative analysis brings it into sharp and painful relief and highlights the scale of the problem.

CRISIS OF AFFORDABILITY

Worldwide there is a crisis of housing affordability in many successful global cities. It is caused by low interest rates, by the high demand to live in some city centres (which are better managed and more attractive, efficient and liveable than for several generations) and by the spatial and regulatory constraints which make it hard to build new homes in or near city centres.⁷

However, the UK's variant is worse. The ratio of average UK house prices to average incomes has doubled since 1998.⁸ The UK had the highest growth in real house prices of any OECD country in the 45 years before 2015. An average home increased in price by 378 per cent from 1970 to 2015. In the OECD as a whole, it was only 94 per cent.⁹ This means that Britain's housing challenges are not just retarding the age of home ownership as in, for example, the US.¹⁰ They are fundamentally changing generational fairness. A smaller proportion of people born between 1981 and 2000 are homeowners, at this stage in their lives, than for any previous generation since 1926.¹¹ What they are paying in rent has increased from around 10 per of their income 30 years ago (15 per cent in London) to around 30 per cent (and 40 per cent in London).¹² This is having catastrophic consequences for standards of living and wealth inequality, above all generationally. The biggest drain on disposable income has become more expensive housing, particularly higher rents.

The UK's crisis of affordability is also geographically broader-based. The baker in Berwick might have just as much difficulty affording his home as the teacher in Tottenham. Why is this?

THE IMPORTANCE OF SUPPLY AS WELL AS DEMAND

Very many factors can influence the demand for an individual home. However, there can be little empirical doubt of the crucial role that supply also plays. As study after study has found, other things held equal, the fewer new homes are built or are available to potential residents

7 See the work of Richard Florida for the advantages and the disadvantages of this global phenomenon.

8 DCLG (2017), *Housing White Paper*.

9 <http://ec.europa.eu/eurostat/web/housing-price-statistics/data/database>

10 In the US, for example, housing challenges in popular cities are delaying the age at which people buy homes but not on the whole preventing it. See *City Lab* (8 Aug 2018), 'Who Owns a Home in America, in 12 Charts'

11 Corlett, A. & Judge, L. (2017), *Home Affront*.

12 O'Brien, N. (2018), *Green, pleasant and affordable*, p. 11.



Image credit: Shutterstock

or businesses the higher the price per home. The more new homes are built or are available the lower the price. For example, in 2009 Santa Clara County in Silicon Valley, California was the US region with the most expensive housing. Those high prices, though, reflected more than just high incomes. They also reflected a very scarce supply of housing. Santa Clara permitted the construction of only 16,000 detached houses from 2001 to 2008. Estimates computed by Edward Glaeser concluded that if the county had built an additional 200,000 new properties over the same period, house prices would have been around 40 per cent lower.¹³ Greater supply does not just reduce prices. It also reduces price volatility. One study found that:

‘from 1996 to 2006, on average, real prices rose by 94 per cent in twenty-six of America’s cities where building is most difficult, but only by 28 per cent in America’s least supply-constrained cities. In the boom of the 1980s, real estate prices went up by 29 per cent in the supply-constrained cities, but only by 3 per cent in the elastic places.’¹⁴

Ineffective land use retards British productivity (by some estimates pushing up costs by up to 40 per cent in some industries).¹⁵ It reduces GDP per head (potentially up to 25 per cent) eroding disposable income and living standards.¹⁶

13 Polinsky, A. & Ellwood, D. (1979). An empirical reconciliation of micro and grouped estimates of the demand for housing. *The Review of Economics and Statistics*, pp. 199-205. Glaeser, E. (2011). *Triumph of the city: How our greatest invention makes us richer, smarter, greener, healthier, and happier*, p.189. Penguin.

14 Glaeser, E. (2011). *Triumph of the city: How our greatest invention makes us richer, smarter, greener, healthier, and happier*, p.190. Penguin.

15 McKinsey Global Institute (1999), *Driving Productivity and Growth in the UK economy*, p.15. The 40 per cent figure relates to the hotel industry.

16 Myers, J. (2017), *Yes in my backyard*, p. 9.

INSUFFICIENT STOCK OF HOUSING—WE JUST DON'T HAVE ENOUGH HOMES

Put simply, the UK housing market is very tight. The UK has one of the lowest ratios of homes per inhabitant in Europe with 0.437. This is the equivalent of a home for every 2.3 people. Among prosperous nations, only the Netherlands and France are lower, but only marginally, with 0.429 and 0.423 homes per inhabitant. (These are the equivalent of one home per 2.3 and 2.4 people). Put simply, most prosperous, and indeed the majority of less prosperous, nations have more homes per person with the simple (unweighted) average being 0.492 (one home for every 2 people). This is 13 per cent higher than in the UK. Even removing the outlier (Estonia) still leaves an unweighted average of 0.470 (one home for every 2.1 people).

Table 1—Number of Homes per 1,000 of the population and per household¹⁷

COUNTRY	HOMES PER INHABITANT	PEOPLE PER HOME	HOMES PER HOUSEHOLD
Greece	0.59	1.7	1.46
Portugal	0.556	1.8	1.45
Austria	0.555	1.8	1.17
Spain	0.538	1.9	1.37
Finland	0.534	1.9	1.00
Denmark	0.491	2.0	1.19
Belgium	0.473	2.1	1.13
Ireland	0.440	2.3	1.18
UK	0.437	2.3	0.99
Netherlands	0.429	2.3	1.00
France	0.423	2.4	1.18
Luxembourg	0.406	2.5	0.97
Poland	0.360	2.8	0.99
Average¹⁸	0.492	2.0	1.12

An even worse picture emerges when comparing the number of homes per household, which adjusts for household size. The slightly smaller typical households in the UK, compared to European averages, result in no or very little slack in the UK housing stock. Only Poland and Luxembourg have fewer homes per household than the UK. Housing is not 'one market', which can be centrally planned from on high. A household that needs a four bedroom near Leeds is not helped by the availability of a two bedroom flat in Totnes. This is why a ratio with no overall slack in it is, in reality, incredibly tight. In theory and in comparative practice nationwide we just do not have enough homes (Though it is worth adding that there remain towns and cities where lack of supply is not an issue).¹⁹

¹⁷ Housing Europe (2015), *The State of Housing in Europe*. European Mortgage Federation. Eurostat.

¹⁸ Not weighted by volume of housing per country. Homes per household calculated on a wider dataset than shown in table.

¹⁹ For instance, many former industrial towns are still only at 50 – 70 per cent of their pre-war population. See Boys Smith, Venerandi & Toms (2017), *Beyond Location*, pp. 138-149.

INSUFFICIENT HOME BUILDING OVER MANY YEARS

Since the 1980s, Britain has consistently had some of the slowest increases in housing stock, particularly when you consider the relatively robust economic growth for much of that period. In the 1980s, the UK built houses at only 71 per cent of the rate of the simple average across Europe, according to estimates made in a study for the IMF. In the 1990s, this dipped further to 42 per cent. From 2000-2004, that fell to 39 per cent.

Table 2—Percentage growth in housing stock, 1980-2004²⁰

COUNTRY	1980S	1990S	2000-04
Ireland	2.0	1.8	6.5
Austria	[NA]	1.8	5.6
Spain	1.4	1.2	3.4
Greece	[NA]	1.4	2.1
Belgium	0.0	4.5	1.3
Finland	2.1	1.4	1.2
France	1.2	1.0	1.0
Netherlands	1.9	1.3	0.8
Germany	0.1	3.9	0.7
UK	1.0	0.7	0.7
Denmark	1.4	0.6	0.6
Portugal	2.8	2.2	0.4
Sweden	[NA]	0.6	0.4
Italy	1.5	1.0	0.2
Average²¹	1.4	1.7	1.8
UK as % of average	71%	42%	39%

Other countries that 'performed badly', in certain decades, tended to build more homes in other decades. For example, Portugal and Denmark grew their housing stock by only 0.6 and 0.4 per cent from 2000 to 2004, but grew them by 2.8 and 1.4 per cent in the 1980s. Only Britain (and Sweden) were consistently poor bottom quartile homebuilders. Overall, since 1990 Britain ranked 24th out of 28 OECD countries in supply of new homes.²² This comparison is all the starker when you consider that Britain's population and household growth has been relatively high over much of the same period due to higher immigration and smaller households.

This trend is set to continue. The UK Government has estimated that there will be an increase in the number of households of 1.2 million (5 per cent) between 2014 and 2019 and of 2.2 million (10 per cent) by 2024. This implies an average annual growth of number of households of 210,000 between 2014 and 2039.²³ Other estimates are higher—between 250,000 and 275,000 per year from the Town and County Planners Association and 340,000 according to the National Housing Federation.²⁴ The rate of housebuilding will need to increase significantly, to not only keep up with this growth, but also to address the historic shortfall.

20 Hilbers, P., Hoffmaister A., Banerji, A. & Haiyan, S. (2008), 'House Price Developments in Europe: a comparison', *IMF Working Paper*. www.imf.org/external/pubs/ft/wp/2008/wp08211.pdf

21 Not weighted by volume of housing per country.

22 Cited in O'Brien, N. (2018), *Green, pleasant and affordable*, p. 14.

23 DCLG (2016), 2014-based household projections: England, 2014-2019. This increase is mainly due to increased population but also to a slight reduction in average household sizes.

HOME BUILDING BY REGION

This picture of a tight ratio of homes to households holds true when you look at the data regionally. The shortage of homes is far from equal and there are even places with more homes than they need.²⁵ However, London and the South East do just not have the highest incomes and prices. They also have very average percentage increases in housing and tight ratios of homes to households—of places to live to people who want to live there.²⁶ This is all without taking account of potential suppressed household formation due to high prices.

Table 3—Regional and UK number of homes per household, 2011²⁷

	HOMES PER HOUSEHOLD		HOMES PER HOUSEHOLD ²⁸
Wales	1.08	East Midlands	1.03
Scotland	1.07	West Midlands	1.03
South West	1.07	North West	1.03
Northern Ireland	1.06	North East	1.02
London	1.04	East	1.02
South East	1.04	Yorkshire	1.01

This shortage of homes in the right places is not just directly increasing rental and purchase prices and decreasing prosperity and standards of living. It is also giving more power to landowners and less to tenants. It is widely judged to be creating 'opportunities for exploitation and abuse: unreasonable agents' fees, unfair terms in leases, unreasonable letting out of danger, overcrowded properties...the loss of a private sector tenancy is now the most common cause of homelessness.'²⁹

AFFORDABLE HOMES—MORE ARE NEEDED BUT NOT THE CAUSE OF UNDERSUPPLY

In a Britain with too many on low wages and far too many beset by high housing costs, affordable housing (from councils or Registered Social Landlords) performs a vital role. Without it, many might be homeless or forced to live in very inadequate conditions, not just the wrong home in the wrong place but also an inadequate home with insecurity of tenure. Nevertheless, it is important to draw the distinction between what we should build, who should build it and the reason for the mess we are in.

24 TCPA (2018), Planning 2020, p.43, footnote 59. National Housing Federation (18 May 2018), 'England short of four million homes'. Available at <https://www.housing.org.uk/press/press-releases/england-short-of-four-million-homes/>

25 Boys Smith, Venerandi & Toms (2017), Beyond Location, pp. 138-149.

26 <https://www.gov.uk/government/statistical-data-sets/live-tables-on-net-supply-of-housing> Table 109, cited by Wilson, Barton, Smith (2018) Tackling the under-supply of housing in England, House of Commons Briefing Paper available at researchbriefings.files.parliament.uk/documents/CBP-7671/CBP-7671.pdf

27 Data is based on 2011 data unlike previous table hence mismatch in average data.

28 This data does not quite match onto previous table due to different base year. <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/adhocs/005374totalnumberofhouseholdsbyregionandcountryoftheuk1996to2015> (file title: totalnumberofhouseholdsbyregionandcountryoftheuk1996to2017final.xls) & <https://www.gov.uk/government/statistical-data-sets/live-tables-on-dwelling-stock-including-vacants> Table 109, cited by Wilson, Barton, Smith (2018) Tackling the under-supply of housing in England, House of Commons Briefing Paper available at researchbriefings.files.parliament.uk/documents/CBP-7671/CBP-7671.pdf

29 DCLG (2017), Fixing our broken housing market, p.10.

Since the mid-1970s the state has largely withdrawn from building affordable housing and this has only very partly been compensated by the building activity of Registered Social Landlords

Despite the evidence of a very tight market, some argue that the problem with housing affordability in the UK is not a matter of overall supply but of ownership patterns. In other words, the UK has enough homes (which it does not) but not enough homes rented at below market rates. It certainly is true that since the mid-1970s the state has largely withdrawn from building affordable housing and that this has only very partly been compensated by the building activity of Registered Social Landlords. The recent lifting on the cap on councils borrowing money to fund house-building will, almost without doubt, lead to more homes being built in aggregate. It is hard to imagine any 'solution' to Britain's housing needs, which does not involve more state or charitable house building—particularly in some places. This will not just increase overall supply (by helping those who cannot afford to buy or pay market rents without house builders' fear of reducing local prices).³⁰ It will also directly help some of those in greatest need. That is, certainly and rightly, the new political consensus.

However, looked at comparatively, it is impossible to argue that the UK has a relative proportionate undersupply of social housing provision and that this is a cause of the undersupply of sufficient homes. In the latest EU data (for 2016), the average proportion of sub-market rented homes in the EU was 10.8 per cent. This has actually been trending down since 2008 (when it was 14.6 per cent). The UK equivalent figure is 18.6 percent of which about 8 per cent is council housing and the rest managed by Registered Social Landlords.³¹ It may well be that a lack of public sector building is a factor in lower UK house building. In addition, it is easy to see why communities feeling threatened by rising prices call for more affordable housing. And why many families need it. However, it is hard to see it as a *primary* driver of our long-standing lack of supply. The provision of more affordable homes will help those housed in them, is strongly to be welcomed and is a part of the solution above all for faster construction. However, we still need more homes overall as well.

30 Also see chapter three on this argument.

31 <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

2. HOW DO WE REGULATE THE BUILT ENVIRONMENT?

**'I do some mild developing. The sort of place I need
Is a quiet country market town that's rather run to seed
A luncheon and a drink or two, a little savoir faire -
I fix the Planning Officer, the Town Clerk and the Mayor.'**

John Betjeman, *The Young Executive*

Modern planning gets it in the neck. On the left, it is criticised as being the plaything of big developers and enforced 'gentrification;' on the free-market right as a 'Stalinist' dead hand 'gumming up' development and starving citizens of homes and gardens.³² Planners are widely criticised in public debate (*The Guardian* described the public perception of town planners as being 'uncharismatic pedants').³³ And local planning departments have seen reductions in budget since 2010 of up to 50 per cent—far sharper than any other part of local government.³⁴ They are under-resourced and (often) at low morale. The Town and Country Planning Association (TCPA) recently admitted that:

'the scale of public disenchantment with [planning's] processes and outcomes are... unprecedented...[it is] one of the most controversial aspects of local life, generating more political heat than almost any other local policy issue.'³⁵

It is impossible not to feel strong human sympathy for the hard-working, well-intentioned professionals who staff the system. The criticism seems particularly unfair as the public are actually strongly in favour of the sort of public goods (above all public open space) that planners passionately believe they exist to protect.³⁶

As the focus of the criticisms show, 'planning' in public discussion has come to mean the process and practice of development control, something that either stops the home-owner building their extension, or is unable to prevent the voracious developer carving up an historic high street for short term profit. However, the state intervenes more broadly than this and we need to set out how and why if we are to understand what has gone wrong over the last few generations.

HOW DOES THE STATE INTERVENE IN LAND USE DECISIONS IN ENGLAND?

What is the framework for managing land use regulation in England? It has two main components; the planning system and building regulation.

32 For example see <https://www.thesun.co.uk/news/4750761/jacob-rees-mogg-says-britains-green-belt-fields-must-be-built-on/> and <https://www.architectsjournal.co.uk/opinion/emma-dent-coad-grenfell-changed-everything-forever/10032008.article>

33 'For the sake of our cities, it's time to make town planning cool again' (2014) *The Guardian* <https://www.theguardian.com/cities/2014/nov/10/-sp-cities-town-planning-cool-architects>

34 District and single tier councils have seen reductions of 46 per cent. District councils have seen reductions of 24 per cent. *Planning 2020: Interim Report of The Raynsford Review Of Planning In England* (2018) TCPA p.25

35 *Planning 2020: Interim Report of The Raynsford Review Of Planning In England* (2018) TCPA p.iv and p.1. The report also describes 'entrenched perceptions of planning as 'Stalinist', 'centralised', 'technocratic', the 'enemy of enterprise', and 'out of touch'.

36 For example see 2014 blog by Michael Harris on RTPI website, 'Why some people seem to hate planning?' <http://www.rtpi.org.uk/briefing-room/rtpi-blog/why-some-people-seem-to-hate-planning/>

Policy documents, most notably the National Planning Policy Framework (NPPF) gives guidance to local authorities as to how they are meant to apply policy.

What is planning?

The planning process and the concept of planning permission (the right to build) draws its legal authority from the 1990 Town and Country Planning Act. This defines the need for most development to require planning permission, defines the powers of the Government and the ways in which Local Development Authorities can operate these on the Government's behalf. The 1990 Act is a consolidation of previous planning legislation that had evolved mostly since 1947. Subsequent statute has updated elements of this framework notably:

- the Planning and Compulsory Purchase Act 2004 introduced a statutory requirement for each Local Planning Authority to produce a Local Plan, and tried to facilitate local authorities land purchases via compulsory purchase orders;
- the Planning Act 2008 attempted to speed up the approach to nationally significant infrastructure projects by putting a new Infrastructure Planning Commission in charge of these decisions. It also introduced the community infrastructure levy; and
- the Localism Act 2011, which introduced neighbourhood planning.

Within this framework, policy documents, most notably the National Planning Policy Framework (NPPF) gives guidance to local authorities as to how they are meant to apply policy. There are additional policy documents on specific elements such as waste, traveller sites and areas at risk from flooding. However, the NPPF is the most important and comprehensive. The 2012 NPPF was a simplification from a previously much larger number of Planning Policy Statements. In July 2018, a new NPPF was issued. It placed much more focus on design and early neighbourhood engagement.

Within the guidance of the NPPF, local councils (and the Mayor of London) must write their Local Plan. The NPPF states that each Local Planning Authority (within local councils) should produce one, although it has no legal mechanisms to ensure that they do. Local Plans usually cover a 15-year timespan. Local Plans set local policy and intent but not specific local rules. An independent examiner who ensures that they are legally sound inspects them. The Secretary of State can modify local plans if they deem them 'unsatisfactory.' The Local Plan is what local planning applications are assessed against by the local planning authority.

Planning appeals

Applicants (but not neighbours or other third parties) have the right to appeal planning decisions to the Secretary of State. In practice, a Planning Inspector determines such decisions though the Secretary of State has powers to 'recover' an appeal for his or her own determination. Planning decisions can also be challenged by judicial review in the High Court. This quashes a decision, which then needs to be remade. Growth in judicial reviews in recent years (from 4,500 in 2001 to over 11,000 in 2011) are seen by some developers as a material driver of increased planning risk. The government has therefore taken various steps to constrain their further growth.³⁷

³⁷ Key steps include shortening the time limit or bringing a judicial review from three months to six weeks and introducing a new planning court. Views of some developers based on conversation with authors.



Image credit: Shutterstock

Obligatory consultation.

Local planning authorities have been required to undertake statutory consultations on proposed development since the 1990 Town and Country Planning Act. The 2011 Localism Act added a duty for developers also to consult on their plans prior to the submission of the planning application. As part of this, they must consult with statutory bodies. These include Parish Councils, Historic England, the Forestry Commission and Highways England amongst others.

What are building regulations?

In addition to and *separate from* planning permission, most building projects are notifiable. This means that building regulations approval is required from a building control body that is either the building control department of a local authority or an approved private inspector. Building regulations cover requirements for specific aspects of building design and construction such as structure, fire safety, ventilation, access and security. These are set out in 'approved documents.' These were given legal status by the 1984 Building Act, which consolidated previous legislation. Building plans need to be deposited with the building controller in advance for larger projects or notice of works given two days in advance for more minor projects. 'Regularisation' (request for approval subsequent to building) can only be determined by the local authority not by approved inspectors.

38 Town and Country Planning Act 1990 www.legislation.gov.uk/ukpga/1990/8/section/106. Labour administrations in 1947, 1975 and 1976 introduced betterment payments, but these were repealed by subsequent Conservative administrations. However, Section 106 has now survived at least two changes of government (arguably three or four). Meanwhile CIL (unlike previous Labour betterment charges) has not been repealed by a subsequent Conservative government though its implementation has been slow.

39 For more guidance s106, see 'Planning Advisory Service's S106 obligations overview,' at www.local.gov.uk/pas/pas-topics/infrastructure/s106-obligations-overview

40 Planning Portal *About the Community Infrastructure Levy* www.planningportal.co.uk/info/200126/applications/70/community_infrastructure_levy

41 The author has a non-executive role at the relevant agency in England, Historic England.

There are now 15 green belts in England surrounding 17 cities and taking up about 13 per cent of England's land area.

Betterment payments

Though there were intermittent earlier variants, since the Town and Country Planning Act of 1990, England has had a form of 'impact fee' called Section 106 payments (normally shortened to S106).³⁸ This captures some of value uplift from development—for example, when farmland becomes housing. These payments are mainly used to pay for affordable housing, or contributions towards infrastructure. They are site-specific necessary legal agreements between an applicant winning planning permission and the local planning authority.³⁹ Since 2010, most new developments, of more than 100 square metres or which create a new dwelling, have also had to pay Community Infrastructure Levy (CIL).⁴⁰ This is intended to be a predictable planning charge to help deliver infrastructure to support the development of their area—unlike the negotiable S106.

Listed buildings

Under different acts for different parts of the United Kingdom, listed buildings (which do not actually have to be buildings) are deemed to have sufficient architectural or historical interest to require additional protection. A listed building may not be extended, altered or demolished without listed building consent from the local planning authority. This is separate from planning permission or building regulations approval. In turn (in England and Wales) a national amenity society (such as The Victorian Society) must be notified of any work to a listed building, which involves any demolition. Consultation can also be made to central government agencies in significant cases.⁴¹

Green belts

Under first the 1938 Green Belt (London) Act and then the 1947 Town and Country Planning Act, local authorities are permitted to designate land as Green Belt. Their use took off after Duncan Sandys' circular of 1955 and continued to increase in the late twentieth century. Green belts increased in area by 130 per cent from 1979 to 1997. There are now 15 green belts in England surrounding 17 cities and taking up about 13 per cent of England's land area. Within them local planning authorities are meant to refuse inappropriate development (such as building homes) unless exceptional circumstances can be demonstrated or, as set out in the 2018 NPPF.

Other relevant protections and restrictions

A range of other categorisations also impact what can or cannot be built and with what process of sign off. These include Conservation Areas, National Parks and Areas of Outstanding Natural Beauty.

3. WHY DON'T WE BUILD ENOUGH HOMES?

'Laws may be unjust...as when burdens are imposed unequally on the community, although with a view to the common good. The like are acts of violence rather than laws'

Aquinas, *Summa Theologiæ*

POTENTIAL BARRIERS TO SUPPLY OF SUFFICIENT HOMES

As demonstrated, a low supply of homes has been consistently associated with more expensive homes. Why don't we build enough homes? There are many theoretical barriers to sufficient delivery of homes where there is unmet demand. These include:

1. Lack of political support.

Homes cannot be built because there is not political consent for new homes 'in principle' or 'in practice;'

2. Lack of structural supply of developable land.

Homes cannot be built because landowners are not sufficiently incentivised to develop or can 'afford to wait' as their ownership of land gives them structural advantage (or there may be a more profitable use for land with permission than constructing homes).⁴² Or homes cannot be built as the necessary infrastructure (roads, sewers etc.) are not in place;

3. Lack of permissions to build homes.

Homes cannot be built as not enough homes are being permitted by the planning and regulatory process (or they are being permitted too slowly); or

4. Not enough completions.

Homes are receiving permission but are not being built for whatever reason.

Of course not all of these issues are capable of easy analysis. They might also interact. How relatively important are these potential barriers to sufficient homes in modern England?

LACK OF POLITICAL SUPPORT?

Lack of acceptability of new housing has been a key reason for the lack of new homes. However, this is changing. In 2010, 46 per cent said they would oppose new homes being built in their area. This fell to 31 per cent in 2013 and 21 per cent in 2014.⁴³ In a 2017 survey, 57 per cent said they would support new homes. This rises to 73 per cent for homes that are affordable to

42 This is the land market failure argument set out by the Prime Minister's housing advisor, Toby Lloyd. Ryan-Collins, J., Lloyd, T., Macfarlane, L. (2017), *Rethinking the economics of land and housing*, pp.6-12.

43 DCLG, (2015) *Public attitudes to house building*.

44 National Housing Federation (2017) *Demise of the NIMBY: Changing Attitudes to New Building New Homes* pp.3-4

45 DCLG (2015) *Public attitudes to house building* p.8-

The lack of political support for new housing has reduced but it remains potent and its legacy continues to haunt the debate about new housing.

people on average incomes.⁴⁴ The proportion of people saying they supported home building in their local area rose from 28 per cent, in 2010, to 56 per cent, in 2014.⁴⁵

The reality 'on the ground' is less stark. Our consistent experience is that people are very able to support housing 'in principle' (and say so) whilst opposing it in practice. 20 per cent of inner London councillors, and 40 per cent of outer London councillors, still regard supporting new building as a vote-loser.⁴⁶ Most of them are probably right. Political opposition to new housing emerged as a material barrier to new housing in our professionals' survey. (See appendix two). Those living in areas the longest and in places with the most land to develop, are the most opposed to new development. The British Social Attitudes Survey found that homeowners, and those living in small cities and towns, and in rural areas, were more likely to oppose new housing than people who rent and those living in large cities.

Similar patterns of claiming to support new housing 'in principle' whilst often opposing it 'in practice' certainly happens in other countries.⁴⁷ Alongside the instinctive fear of change, there is a concern over who will live there, what the pressure will be on services and what the housing will look like.⁴⁸ This is true of town and country alike. In September 2017, the head of housing and regeneration in an important central London borough said in a meeting:

'We don't get the support on the ground. We propose to build on some ugly, unused garages and we get petitions and complaints.'⁴⁹

Similarly, the chief executive of a major Registered Social Landlord has also admitted to the author that he and his wife opposed a development near to their home in the country. Examples of opposition to green belt development are too frequent to require detailed citation.⁵⁰ Both major parties' candidates opposed building on the green belt, in the 2016 London mayoral election, and, post-election, the Mayor of London, Sadiq Khan, still says that he supports 'a strong commitment to protecting the green belt.' He is giving credence to this with his actual planning decisions.⁵¹ The lack of political support for new housing has reduced but it remains potent and its legacy continues to haunt the debate about new housing.

LACK OF STRUCTURAL SUPPLY OF DEVELOPABLE LAND?

Landowners' incentives

Homes and offices, or more accurately the parcels of land on which they are built, do not constitute a normal market as Toby Lloyd (the Prime Minister's housing advisor) strongly argued in a 2017 book.⁵² The land supply is ultimately fixed. Parcels of land have a fixed location. This gives landowners enormous power to extract value from their land. Why sell until the price is high enough? The value uplift available to agricultural land when it becomes available for residential development is well known—a multiple of between 50 and 160 according to official figures though it can be much higher in the right location.⁵³ Land (or more accurately the right to build on it) now accounts for an average 70 per cent of the value of a new home—up from 50 per cent in 1995, with three quarters of the increases in home prices being due to increased land prices.⁵⁴ Such enormous potential profits to landowners, above all



Image credit: Shutterstock

for land bought at agricultural prices, must be a disincentive to sell without planning permission. There are certainly many specific cases where this is true. Moreover, the commercial advice of property professionals to landowners is nearly always to sell *with* planning permission if possible to maximise returns. If it is not available yet, why not wait and sell later? A bird in the hand might be a lot less tempting than a thousand birds in the bush.

Of course, this begs the question: *why* are the value uplifts on permission to build so stratospheric? Anecdotally, they are not comparable in other countries though we have not yet found a full comparative study. Is it, as first principles and wider economic analysis would imply, the consequence of 'planning', of an artificially constrained supply? The short answer is 'yes' though in a more complicated way than is usually assumed. For the planning system (thanks to reforms over the last few years) is now permitting far more homes. On paper, it is permitting enough. However, it is doing so in a way that constraints competition and (too often) incentivises bad, unpopular, unsustainable development.

46 London First and Turner & Townsend. (2014). *Moving Out: How London's Housing Shortage is Threatening the Capital's Competitiveness*.

47 For an example of different American beliefs on the provision of affordable housing 'in principle' and 'in practice' see Campaign for Affordable Housing, (2014) *What we know about public attitudes on affordable housing*, p.6.

48 For an analysis of why people oppose housing and the roles of design and public engagement see Boys Smith & Toms (2018), *From NIMBY to YIMBY*, chapter 3, Boys Smith, (2016), *Heart in the Right Streets*, section 9.8. and Boys Smith (2016), *A Direct Planning Revolution for London?*

49 Private information. A member of Create Streets was at the meeting.

Alternative land uses

On the other hand, more profitable alternative use of land do not appear to be a major barrier. In aggregate and in most normal circumstances, building for homes is more profitable than building for any other land use. In England (on average) land for residential use is worth nine times more than land for commercial or industrial. There are exceptions but the commercial attraction of housing is consistent.⁵⁵ Housing normally pays.

The exception to this of course is waiting for higher density or more profitable planning permission or for house prices to rise further. This clearly does happen. However, this is a symptom of constrained supply and not the underlying malady.

Lack of infrastructure

Another potential barrier to the supply of land for housing is the requirement of supporting infrastructure. There is certainly a lack of confidence on the part of many neighbours or new development that new homes will be accompanied by existing infrastructure.⁵⁶ Britain has also been historically bad at providing strategic infrastructure projects due to (depending on your politics) NIMBYs, ineffective governance, poor CPO powers or inadequate government expenditure. However, we are not aware of any evidence that the provision of more modest infrastructure is less timely than anywhere else.⁵⁷ Small sites typically need very little additional infrastructure. Larger sites are able to deliver necessary infrastructure before build out starts, as Sir Oliver Letwin's Independent Review into build out rates has recently found.⁵⁸

40 per cent of local planning authorities did not have a plan that met the projected growth in households in their area.⁵⁹

LACK OF PERMISSIONS TO BUILD HOMES?

Are there insufficient permissions to build homes? This could take three forms. There could be insufficient land allocated for housing development; there could be not enough planning permission given for homes where they are demanded; or there could be delays in the granting of permission.

Not enough homes allocated in local plans for the long term

The government has set a target of 300,000 houses built per year, so as to also make good some of the backlog. However, for such houses to be built, sufficient land has to be allocated for housing by local authorities in their local plans.

Of course, this need varies widely across the country. In 2017 the government judged that 40 per cent of local planning authorities did not have a plan that met the projected growth in households in their area.⁵⁹ In 2015, Savills' analysis estimated that England was heading for a housing shortfall of 180,000 homes over this parliament.⁶⁰ We also know that the approximate number of homes proposed in local plans from land released from green belts is 459,000 (or just over two years' supply).⁶¹ This would all imply a significant shortfall in the total allocation of homes in the medium to long term.

50 For one example, see <http://www.getsurrey.co.uk/all-about/green-belt-developments>

51 For instance his comments on the Housing White Paper in February 2017 (www.standard.co.uk/news/london/sadiq-khan-housebuilding-drive-must-give-green-belt-guarantee-a3459376.html) and his decision over expansion of Hasmonian High School in July 2017. *Jewish News*, 'Hasmonian expansion blocked by Sadiq Khan over green belt concerns', 18 July 2017.

52 Ryan-Collins, J., Lloyd, T., Macfarlane, L. (2017), *Rethinking the economics of land and housing*, pp.6-12.

53 DCLG (2015), *Land value estimates for policy appraisal*. According to a senior land agent, agricultural land worth £5-10,000 per acre can sell for £1-4million per acre with residential planning permission.

54 Cited in O'Brien (2018), *Green, pleasant and affordable*, p.14.

55 DCLG, (2015), *Land value estimates for policy appraisal*. This multiple drops to four times if London is excluded. Actual market figures can be much higher.

Not enough homes given planning permission per year

The total number of permissions per year tells an improving story. Under pressure from central government and with new mechanisms to make it easier for developers to appeal planning refusals, the number of homes approved has been rising steadily for at least seven years.⁶² According to the House Builders Federation, it surpassed the 210,000 annual target in 2013 and the more recent 300,000 target last year. Even if the system is still constraining supply in the long term, perhaps it has now been sufficiently adapted to start meeting the country's housing needs.

Table 4—Number of English Housing Permissions, 2011-2017⁶³

	NUMBER OF HOMES APPROVED	PROPORTION OF 210,000 ANNUAL TARGET	PROPORTION OF 300,000 ANNUAL TARGET
2010-11	176,738	84%	59%
2011-12	195,300	93%	65%
2012-13	217,488	104%	72%
2013-14	239,310	114%	80%
2014-15	260,778	124%	87%
2015-16	293,127	140%	98%
2016-17	351,169	167%	117%

Of course, many of these permitted homes may not be in the right place—near to where there are jobs and consequent demand. One consistent complaint about the British planning system is that the existence of green belts prevents development near towns with a high demand for labour and housing. There is a wider question about how we want our country to look and be, but purely statistically; this seems hard to argue with. According to CPRE analysis, more than 24,000 homes have been approved on green field sites within green belts since 2009/10 from 186 applications.⁶⁴ This represents just over one-month's supply. It is also only 1.4 per cent of total approvals since 2010. This number looks set to increase in the years to come—with nearly half a million homes (or two years' supply) planned from green belt released land in current local plans.

Delays in achieving planning permission

It is not just that not all permissions are in the places of most demand. They can also take a long time to convert into actual building activity. In 2015, the House Builders' Federation estimated there were 150,000 plots with outline planning permission waiting for full planning permission.⁶⁵ According to 2016 analysis, the average planning approval period for all large scheme is around five years; the average for schemes of more than 2,000 homes is 6.1 years.⁶⁶

Analysis based on a more recent and different sample (for the Letwin Review of build out rates) estimated an average period required for full regulatory approval of 4.8 years for 15 sites

56 Boys Smith & Toms (2018), *From NIMBY to YIMBY*, chapter 3.

57 See Boys Smith & Toms (2018), *From NIMBY to YIMBY*, pp.41-8.

58 MHCLG (2018), *Independent Review of Build Our Rates*, pp.18-9.

59 DCLG (2017), *Fixing our broken housing market*, p.13.

60 Savills (2105), *Beyond the election*, pp.3-4. Savills judged that 31 per cent of English local authorities did not have a five year land supply and of 175 who claimed to, 43 per cent did not and 26 per cent were 'borderline.'

61 CPRE (2018), *The state of the green belt 2018*, p.8.

62 Above all councils need to be able to demonstrate a five year land supply or face losing appeals for new housing not in accordance with site allocations in their local plan. By 2015, 54 per cent of successful appeals cited a lack of 5 year land supply as a factor. Savills (2105), *Beyond the election*, p.9.

with between 2,000 and 15,737 homes. 18 smaller though still large sites with 500 or more homes had an average regulatory period of one year for those going straight to a full planning application and of just over three years for those going via outline planning application.⁶⁷

The system is faster but still slow and unpredictable for smaller sites. In a recent survey of smaller builders, the length of time from the pre-application discussions, to discharge of conditions and authorisation to start on site was over seven months, for over half of recent developments. For one-third it was over a year.⁶⁸

NOT ENOUGH COMPLETIONS?

Defenders of the British planning system argue that the system is working because the 'supply' of permissions is now outstripping the supply of new homes. This is true. For example, in 2016-7 there were 351,169 permissions granted but only 183,570 new build completions and only 217,350 net additional dwellings. (The figure for net additional dwellings is boosted by conversions and change of use but also takes account of demolitions).⁷⁰ One would expect a lag between permissions and constructions of a couple of years but as table 5 shows the gap seems to be closing more slowly than that. Some actual permissions appear not to be translating into development at all—or at any rate to be doing so very slowly. What is going on? Why is there this slow build out rate?

Such a lack of completions could be caused by a range of factors, including a lack of finance to fund development; or a lack of construction capacity; or a lack of competition in the sector incentivising those owning planning permissions to complete.

Table 5—Table of permission and completions since 2010

	NEW HOMES APPROVED	PERCENTAGE INCREASE	NEW BUILD COMPLETIONS	PERCENTAGE INCREASE	NEW ADDITIONAL DWELLINGS	PERCENTAGE INCREASE
2012-13	217,488	11%	118,540	-8%	124,720	-8%
2013-14	239,310	10%	130,340	10%	136,610	10%
2014-15	260,778	9%	155,080	19%	170,690	25%
2015-16	293,127	12%	163,940	6%	189,650	11%
2016-17	351,169	20%	183,650	12%	217,350	15%

Lack of finance

Some argue that insufficient finance prevents new development. However, the evidence is unconvincing. Firstly, larger builders are able to fund their operations from their own balance sheets and from their ability to 'juggle' multiple large projects sharing pre and post-planning risk at the same time. The interim Letwin Review of build out rates on large sites has concluded:

63 House Builders Federation (2018), *Housing Pipeline Report—Q4 2017 Report*, p. 3.

64 CPRE (2018), *The state of the green belt 2018*, p.7.

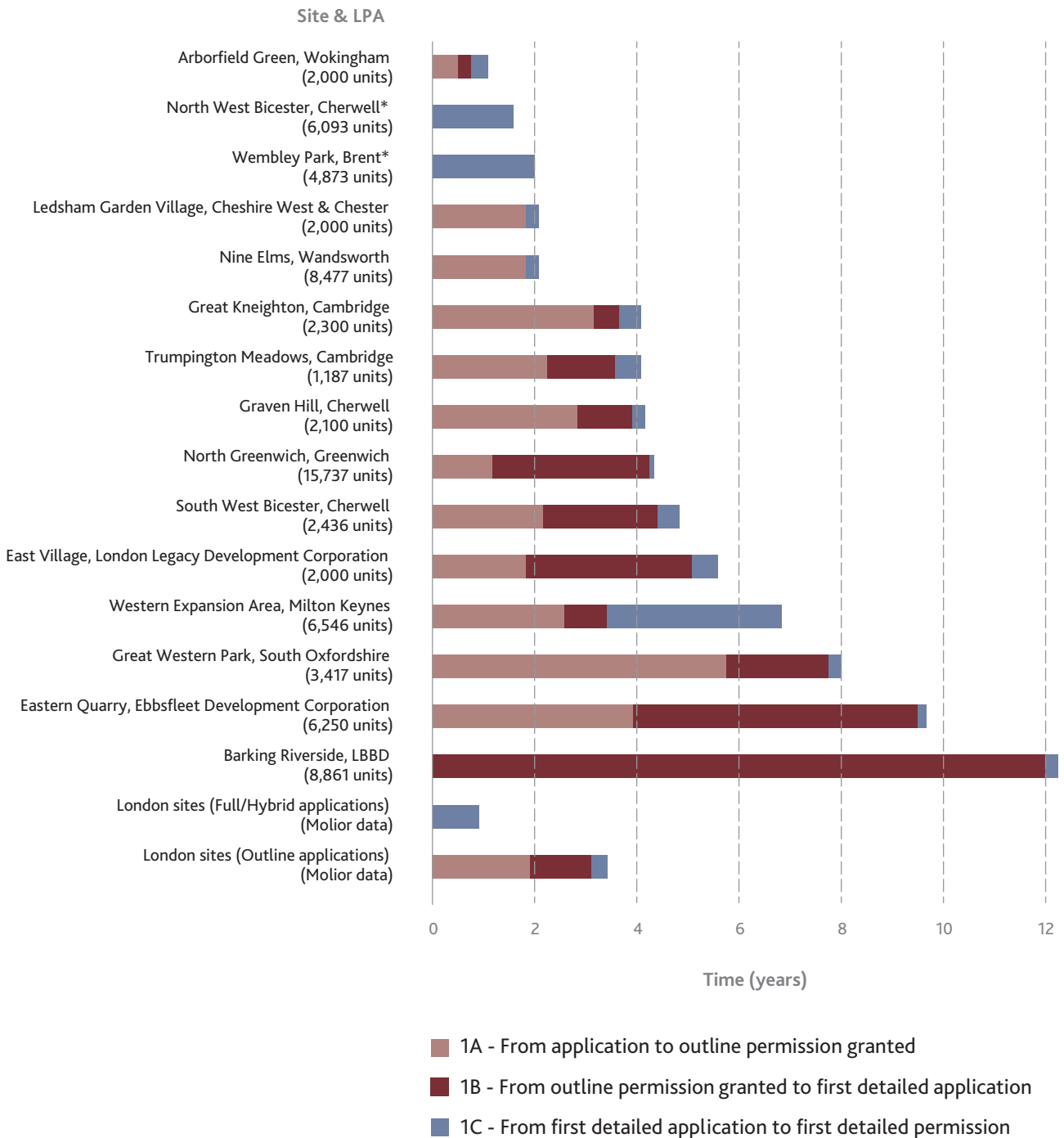
65 <https://www.bbc.co.uk/news/magazine-30776306>

66 Nathaniel Lichfield & Partners (2016), *Start to finish: how quickly do large-scale housing sites deliver?*, p.8

67 MHCLG (2018), *Independent Review of Build Our Rates—Annexes*, p.AX10. Analysis is approximate as based on table AX10 not underpinning data.

68 NHBC Foundation, *Small house builders and developers (2017)*, pp.13-24.

Figure 1—Regulatory stage length⁶⁹



Note: Stage 1—from outline application to first detailed permission. Asterisk (*) denotes hybrid application. For Barking Riverside, the black bar denotes length of regulatory and build out stages prior to December 2017. The mean length of each stage has been calculated for London sites in the Molior dataset.

69 Adapted from MHCLG (2018), *Independent Review of Build Our Rates—Annexes*, p.2

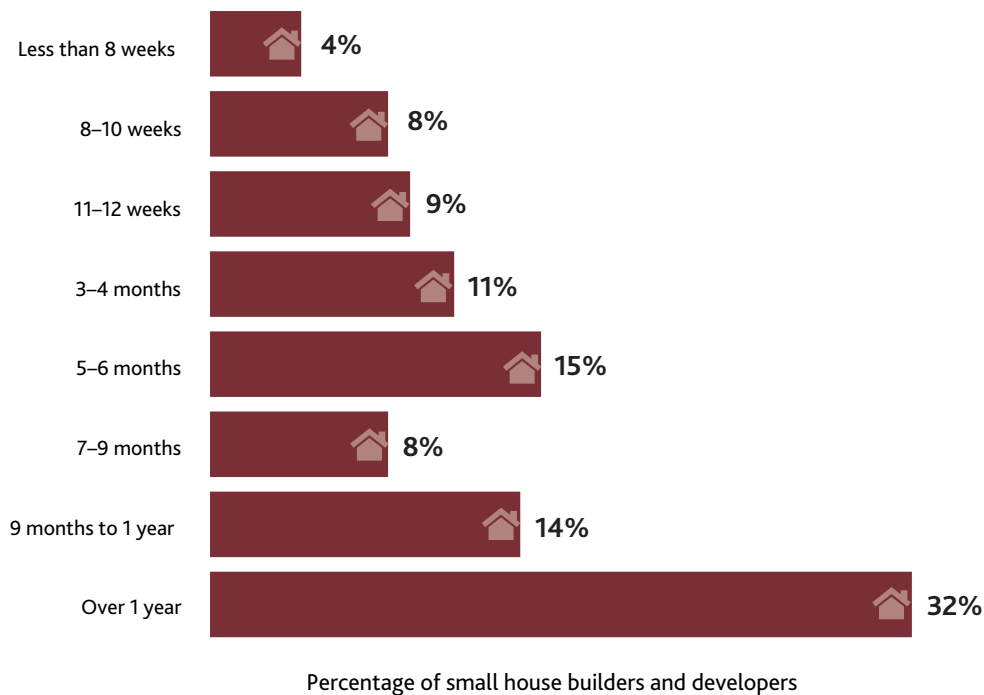


Figure 2: (above)
Length of time to start on site in 2017 survey of small builders

“neither discussions with industry participants nor discussions with those involved in providing finance have furnished any evidence that such constraints are biting at present.... the major house builders have capital structures with very low gearing. They are able to obtain large lines of credit to fund working capital requirements; but they rarely use this as a means of obtaining long-term debt finance, ... their cash flow is typically sufficient to repay such loans in-year”⁷¹

The finance that *is* difficult to obtain is so-called development finance or finance before planning permission has been obtained in more risky situations. This is the finance that is a consequence of a planning-permission led approach to development. The Letwin Review also found that:

‘SME builders (who are not typically present on very large sites at the moment) are no longer able to obtain the straightforward balance sheet financing that they used to obtain from the high street banks, and are therefore driven back to project financing. We have been told that this frequently limits their capacity to engage in multiple transactions simultaneously, as each project requires a substantial equity component.’⁷²

Finance can also be difficult for the newly emerging self and custom build sectors. Bodies such as the National Custom and Self Build Association therefore put focus into trying to persuade investors and banks to fund building models other than the speculative developers. However,

70 House Builders Federation (2018), *Housing Pipeline Report—Q42017 Report*, p. 3. Stephens (2018), *UK Housing Review 2018*.

is this cause or effect? As we analyse below, new, alternative and small business models struggle to gain a toehold in the development market because of high levels of planning risk. Risky ventures are always hard to fund. The underpinning issue is the nature of the risk not the availability of the finance. Change the nature of the risk and the finance would follow to a greater range of developers and builders. Indeed, there is already evidence on this. Once permission is received, then funding is clearly readily available. Lack of finance is not a primary barrier to the timely completion of more homes.

Lack of construction capacity or efficiency

Others argue that lack of capacity in the construction industry delays delivery of new homes. There are either not enough builders, or not enough bricks. The Letwin Review of build out rates however found that building materials were not a constraint. (Factories could increase capacity by 10-15 per cent in under a year if necessary). It also pointed out less than a quarter of most relevant skilled trades were directly employed in housebuilding. The industry could, if necessary 'gear up.' This might push up construction prices but shows that lack of labour is not the core constraint.

'According to ONS figures, the building of new homes occupies less than a quarter of the total construction workforce. Indeed, ONS figures show that even in most of the key trades which form part of the critical path for the construction of a new home, the majority of the skilled workforce (and, in most cases, the great majority) are employed in construction activities other than the building of new homes. This suggests that, if there were a serious shortage of skilled labour in the various trades and professions required for house building, it would in general be possible to meet these demands by raising the wage rates paid to these workers in order to draw them over from other parts of the construction industry—albeit with some consequences for the rest of the industry—until such time as the level of training increased to reduce the shortages.'

Another variant of the same argument is that a lack of innovation in the construction sector is holding back development. We are still relying on builders and bricks not 3D printing in factories. However, this misses the point. Land costs not building or construction costs have driven the rise in house prices over the last two decades. As we saw above, three quarters of the increase in home prices being is due to increased land prices.⁷³ More efficiency or capacity in the construction sector is to be warmly welcomed. However, it is not addressing the critical constraint.

A lack of competition

By far the most convincing reason for a slow build out rate across the whole market is the lack of vertical and horizontal competition between landowners, developers and builders. With a supply of permissions that (though increasing) remains below the 'catch up' rate required and with high land prices and high planning risk, there are just not enough potential landowners or small developers who are able to build homes and compete down on margins.

By far the most convincing reason for a slow build out rate across the whole market is the lack of vertical and horizontal competition between landowners, developers & builders

71 MHCLG (2018), *Independent Review of Build Our Rates*, p.21.

72 MHCLG (2018), *Independent Review of Build Our Rates*, p.22.

The gap in self-build housing, where households both plan and inhabit a house, is particularly sharp. On average over 50 per cent of European homes are built through self or custom build. In the USA, it is around 45 per cent.⁷⁴ In Britain it is closer to 10 per cent.⁷⁵ In Japan, which achieves a house-building rate around 12 times that, three quarters of newly built houses are commissioned by private individuals and built on their own land. This leads to around 400,000 personalised and customised houses per year.⁷⁶ Like many countries, Japan has a clear rules-based system where it is easy for smaller builders and even individuals to know in advance whether any prospective development project they had for their own land would be approved.⁷⁷

Similarly, the proportion of homes that small builders developer in the UK continues to decline in the face of high land prices and high planning risk and costs. The market share of small builders has fallen to 12 per cent and the membership of professional bodies for builders has declined from over 12,000 to 2,710. In a recent survey of over 500 small firms, they were very clear that their main challenges were the planning process and associated risks, delays and costs. 38 per cent (the highest number) voted this their primary challenge and 31 per cent the second highest. Only the (deeply interconnected) problem of land prices was comparable. Most firms felt that the costs associated with the planning process were getting worse. 60 per cent felt that the length of time and unpredictability of the planning were a serious impediment to delivering houses. Main concerns were:

‘the length of time it takes to achieve a decision, the unpredictability and inconsistency of the process, the fees and tariffs involved, and the internal resourcing of, and communication with, planning departments. Factors such as these, and the pre-application process, are now greater concerns for small house builders and developers than in 2014.’⁷⁸

In the latest available data smaller British firms built fewer new buildings proportionally than any other European country.

Table 6—market share of smaller building firms in different countries’ construction sectors

MARKET SHARE ⁷⁹	COUNTRY	MARKET SHARE ⁷⁹	COUNTRY
83%	Italy	67%	Switzerland
80%	Belgium	65%	Sweden
78%	Spain	53%	Netherlands
75%	Luxembourg	50%	Germany
73%	Denmark	40%	Austria
68%	Finland	37%	France
67%	Portugal	34%	UK

73 Cited in O’Brien (2018), *Green, pleasant and affordable*, p.14.

74 Geoghegan, (2014) Self-build role for local plans, *Planning Resource*, www.planningresource.co.uk/article/1303106/self-build-role-local-plans

75 Barlow, James. "Self-promoted housing and capitalist suppliers: The case of France." *Housing Studies* 7, no. 4 (1992): 255-267.

76 Barlow, James, Paul Childerhouse, David Gann, Severine Hong-Minh, Moh Naim, and Ritsuko Ozaki. "Choice and delivery in housebuilding: lessons from Japan for UK housebuilders." *Building research & information* 31, no. 2 (2003): 134-145.

77 Ministry of Land, Infrastructure and Transport. (2003). "Introduction of Urban Land Use Planning System in Japan"



Image credit: Shutterstock

A lack of competition is in turn associated with the practice on the part of incumbents to protect local sales prices by constraining supply. They can do this because smaller developers (happy to take a smaller margin) or self-builders (happy to take no margin at all) are simply unable to compete. This has been convincingly explained for large sites by the Letwin Review's analysis of build out rates:

'The fundamental driver of build out rates once detailed planning permission is granted for large sites appears to be the 'absorption rate'—the rate at which newly constructed homes can be sold into (or are believed by the house builder to be able to be sold successfully into) the local market without materially disturbing the market price. The absorption rate of homes sold on the site appears, in turn, to be largely determined at present by the type of home being constructed (when 'type' includes size, design, context and tenure) and the pricing of the new homes built. The principal reason why house builders are in a position to exercise control over these key drivers of sales rates appears to be that there are limited opportunities for rivals to enter large sites and compete for customers by offering different types of homes at different price-points and with different tenures.'⁸⁰

78 NHBC Foundation, *Small house builders and developers (2017)*, p.3, pp.13-24.

79 Defined as proportion of production value of residential and non-residential building construction, 2015. Companies below 50 employees. Eurostat. This is a different definition to the paragraph above.

CONCLUSION

Table 7 summarises the estimated importance of each of these potential barriers to delivery of sufficient homes. Political challenges of consent underpin the challenges facing new homes. This is now reducing but remains constrained by ugly development and a perceived unfair process. Other key barriers have been a lack of allocated or permissioned new homes. Again this is now reducing. However, the barriers of a slow process, uncertain infrastructure and, above all, barriers to prevent smaller landowner, third sector and SMEs building new homes remain very significant indeed.

Table 7—Relative importance of different barriers to housing delivery⁸¹

POSSIBLE BARRIERS TO HOUSING DELIVERY	IMPORTANCE AS BARRIER TO NEW HOUSING	GETTING BETTER OR WORSE?
Lack of political support?	High	Getting better
Lack of structural supply?	Medium	Same
Not enough homes allocated in local plans for long term?	High	Getting better
Not enough homes given planning permission per year?	Low	Getting better
Not enough homes given planning permission in the right place?	High	Getting better
Delays in achieving planning permission due to S106, reserved matters or pre-commencement conditions?	Medium	Unclear
Lack of infrastructure?	Low	Same
Lack of competition?	High	Getting worse
Lack of consumer ability to pay?	High	Getting worse
Lack of construction capacity?	Low	Same
Lack of finance?	Low	Same
More profitable alternative uses of land?	Low	Same

To understand why our housing supply sector is so slow and why it takes so long to turn a housing allocation into a finished new home we now need to understand far more about how land use regulation in the UK is fundamentally odd in comparison to other countries.

80 MHCLG (2018), *Independent Review of Build Our Rates*, pp.11-2.

81 House Builders Federation (2018), *Housing Pipeline Report – Q42017 Report*, p. 3.

4. BRITISH EXCEPTIONALISM—HOW IS BRITISH PLANNING SO ODD AND WHY IT MATTERS

'If it looks like a duck, swims like a duck and quacks like a duck, then it's probably a duck.'

Popular idiom

PLANNING AND BUILDING CONTROL: A COMPARATIVE ANALYSIS

As we have seen, the UK has low levels of proportional housebuilding and very tight homes to households ratios. Many suggestions for how to reform or improve planning in England are therefore premised on 'what they do in Holland' or 'what they do in Germany.' However, very few suggestions are based on a systematic comparative review of planning systems.

When you do this, it turns out that many of the elements of Britain's planning system which are frequently criticised are also more comparable to the approach in other countries than is normally realised. We have analysed eight elements of the British planning system to try to answer the question of British exceptionalism: is British planning odd? Does it matter?⁸² These elements are:

1. **Governance and control**—the roles and rights of different tiers of government;
2. **Green belt or urban limits**—the degree to which expansion of towns and cities is constrained;
3. **Benefits**—the sharing of land value capture and incentives (which affects the relative profit that goes to landowner, developer or government and indirectly which types of developer model are most successful);
4. **Land assembly and infrastructure**—mechanisms for assisting land assembly and ensuring infrastructure is provided (which can affect profitability of development and ease with which development occurs);
5. **Rules and predictability**—the predictability of the system, given the interaction of residents' rights, regulations, and regulator discretion (which, above all, affects who tends to develop land);
6. **Stakeholder consultation**—the timing and importance of obligatory consultation;
7. **Penalties**—penalties for non-compliance and timespan of permits to build before they expire; and
8. **Enforcement**—the level of enforcement.

⁸² A fuller version of this analysis was first published in Boys Smith & Toms (2018), *From NIMBY to YIMBY: how to win votes by building more homes*, chapter two. We examined different planning systems focusing particularly (but not exclusively) on nine different countries, of which six are European. All countries studied are prosperous western nations. Sources

were: interviews and questionnaires with architects, developers, planners and urban designers operating in different countries; existing academic, industry, official and think tank comparative studies; and formal planning documents and guidance in different countries.



Image credit: Shutterstock

LEVEL OF CENTRALISATION: GOVERNANCE AND CONTROL— THE ROLE OF DIFFERENT TIERS OF GOVERNMENT

Britain's planning system is not more centralised than most nations according to EU analysis.⁸³ There is a wide array of different models, for countries of very different sizes. In 1997, the UK had a 'unitary' system in which power resides with the national government, with responsibilities delegated to regional bodies for specific territorial units or to local government.⁸⁴ This is the most common approach. Denmark, Finland, Greece, Ireland, Luxembourg, Netherlands, Portugal and Sweden all have similar systems. Since then regional power in the UK increased markedly in 1999 and, despite difficulties, remains much greater than 20 years ago.⁸⁵

It is often argued that there is a lower role, for regional spatial planning, in parts of England than in much of Europe. In other words decisions about *where* to put housing or infrastructure and about *how* to trade-off between the desires of one local authority and another are made less efficiently and effectively in the UK than elsewhere. There are certainly horror stories: a third runway at Heathrow has now been discussed for decades. Similarly, many regard Oxford's inability to grow into Oxfordshire as a strategic own-goal.

83 Boys Smith & Toms (2018), *From NIMBY to YIMBY* pp.32-5.

84 Other countries studied use 'regionalised,' 'federal' or fully federal systems. See *The EU Compendium of Spatial Planning Systems and Policies*, European Commission (1997) p.39.

85 Power was delegated to Scotland and Wales and (unelected) Regional Development Agencies (RDAs). RDAs were abolished in 2010.

However, the UK arguably has far more regional planning than ever before, other than a brief period at the beginning of this century. There is regional governance for London and (spatially though not constitutionally) for Wales, Northern Ireland and Scotland. Even within England, there remain both regional bodies (such as Local Enterprise Partnerships) and regional funding (the Regional Growth Fund) as well as emergingly important City Deals and Mayoralities. There is also the potential for further devolution under the programme of Devolution Deals and the 'duty to co-operate' across boundaries. Two-tier governance exists in many areas, with 27 county councils sharing governance with 201 district councils. By contrast, only Italy and Spain have completely regionalised planning systems with full spatial planning powers.

It therefore seems hard to argue that levels of control and governance in Britain's planning system is systematically anomalous from the wider range of examples.

GREEN BELTS AND URBAN LIMITS

Green belts are the *bête noire* of critics of planning. However, two facts are little realised. Firstly, they are a creation, not of the 1947 Town and Country Planning Act but (largely) of the 1950s to 1990s. The total size of UK green belt increased from 720,000 hectares in 1979 to 1,650,000, in 1997.⁸⁶

Secondly, and although you would never guess it from the public debate, planning systems in nearly all developed countries have some controls on city growth. Britain is not a particular outlier in terms of the amount of land protected: 28 per cent versus a simple average of 22 per cent with Germany as high as 37 per cent. However, this research does not show where the land is protected nor take account of the relatively more crowded nature of England.⁸⁷

Most planning systems studied have *some* mechanism for controlling the outward growth of at least some towns, although they are very variably effective and most are more flexible than the British system. This is often not appreciated in Britain because such constraints are partly delivered through urban limits, zoning and land-use planning rules. These mechanisms are unknown in the UK, as opposed to readily-comprehensible green belts.

As in the UK, these constraints reduce the amount of development beyond the urban limit (or within the green belt) and thus push up prices. Our recent comparative analysis concluded;

'While Britain has less protected land than Germany and similar levels to Spain, France or Belgium it is true that British urban containment policies are at the stricter and wider end of the spectrum and this will be associated with fewer homes and higher prices. However, it is not axiomatically more restricting of supply than several other systems—most notably Holland, Denmark and some parts of America and Australia.'⁸⁸

Nearly all developed countries have some controls on city growth

86 Lund B (2017), *Housing politics in the United Kingdom*, pp. 48-50. The modern process for their creation dates to Duncan Sandys and the 1950s.

87 Britain (28 per cent) is similar to Spain (28 per cent) and France (25 per cent) and starkly less than in Germany (37 per cent). World Bank. <https://data.worldbank.org/indicator/ER.LND.PTLD.ZS>.

88 Boys Smith & Toms (2018), *From NIMBY to YIMBY*, p 41.

THE SHARING OF LAND VALUE CAPTURE AND INCENTIVES

The right to build self-evidently increases the value of land. Increases in land value are therefore a normal outcome of planning and zoning systems. Most countries therefore find ways to use this increase in value to fund infrastructure, affordable housing or other 'non-market' outcomes. According to the OECD, this is most frequently achieved via an 'impact fee' or 'betterment levy.' Impact fees have to be paid by landowners for the construction of infrastructure, which directly services their plot. Betterment levies are similar but can be charged at any point in time when a public action causes an increase in property values. If they raise sufficient debt, private companies can also use this value uplift to fund infrastructure. This happens in Japan and was how many American 'streetcar suburbs' were financed and built.

The right to build self-evidently increases the value of land. Increases in land value are therefore a normal outcome of planning and zoning systems.

Though there were intermittent earlier variants, since the Town and Country Planning Act of 1990, England has had a form of 'impact fee' called Section 106 payments (normally shortened to S106).⁸⁹ These are mainly used to pay for affordable housing, or contributions towards infrastructure, and are site-specific necessary legal agreements between an applicant winning planning permission and the local planning authority.⁹⁰ Since 2010, most new developments, of more than 100 square metres or which create a new dwelling, have also had to pay Community Infrastructure Levy (CIL).⁹¹ This is intended to be a predictable planning charge to help deliver infrastructure to support the development of their area—unlike the negotiable S106. London also has a 'Mayoral CIL,' introduced to support major Infrastructure investment in the capital.

Most other countries take a similar approach. Examples include Australia, Austria, Finland, France, Germany, Greece, Israel, Italy, Japan, Korea, the Netherlands, New Zealand, the Slovak Republic, Sweden and Switzerland. Many areas in the US capture land value for infrastructure via impact and betterment levies. Some other systems appear to be better at pooling risk and sharing upside from development than in the UK but others are not. CIL, S106 and Enterprise Zones clearly have their equivalents. Other countries, such as Germany, use not just impact fees but also the public purchase of land at unimproved valuations. Property tax is also used in some countries.⁹²

We have therefore concluded that the British approach to value capture and incentivisation is broadly comparable to most other systems. It seems hard to argue that a different approach to capturing value uplift or sharing of incentives can, in itself, explain how poor is Britain's record at building sufficient homes.⁹³

89 Town and Country Planning Act 1990 www.legislation.gov.uk/ukpga/1990/8/section/106. Labour administrations in 1947, 1975 and 1976 introduced betterment payments, but these were repealed by subsequent Conservative administrations. However, Section 106 has now survived at least two changes of government (arguably three or four). Meanwhile CIL (unlike previous Labour betterment charges) has not been repealed by a subsequent Conservative government though its implementation has been slow.

90 For more guidance s106, see 'Planning Advisory Service's S106 obligations overview,' at www.local.gov.uk/pas/pas-topics/infrastructure/s106-obligations-overview

91 Planning Portal *About the Community Infrastructure Levy* www.planningportal.co.uk/info/200126/applications/70/community_infrastructure_levy

92 Australia, Denmark, Finland, Japan, Korean, New Zealand, Portugal and parts of the US among others.

93 Oddly, the recent OECD analysis categorised Britain as having 'no value capture' mechanism. This is incorrect and the authors appear to be unaware of S106 or CIL payments. OECD (2017), *Land-use Planning Systems in the OECD: Country Fact Sheets*, p. 37, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264268579-en>

MECHANISMS FOR ASSISTING LAND ASSEMBLY AND ENSURING INFRASTRUCTURE PROVISION

Some states are legally able to purchase land at unimproved valuations, a form of value sharing. In the example of Germany, mentioned above, there are two main mechanisms for supporting development in constrained areas: land readjustment and circular land use management.⁹⁴ France and the Netherlands are also more active than the UK in this respect. This is quite a common mechanism for encouraging development by bringing together separate parcels of land into larger plots capable of being developed and, sometimes, of ensuring infrastructure provision.⁹⁵ This was a key element of the housing offer in the 2017 election manifesto.

However, not all countries are active in land assembly. The OECD describes compulsory purchase in Belgium as being 'politically and legally difficult in practice and not frequently used.' In Spain, land assembly works through private developers having to give five to fifteen per cent of land, re-zoned for development, to the municipality, who typically use it for affordable housing.⁹⁶

Table 8– approach to land assembly

COUNTRY	PUBLIC PURCHASE OF LAND AT UN-IMPROVED VALUATIONS?	IS STATE ACTIVE IN LAND-ASSEMBLY?
Australia	No	Variable ⁹⁷
Belgium	No	'Rarely used'
Denmark	No	Variable ⁹⁸
France	No	Active
Germany	Yes	Active
Netherlands	No	Active
Spain	Yes	Not very ⁹⁹
UK	Sometimes	Variable
USA ¹⁰⁰	Sometimes	Variable

Land assembly does sometimes happen in the UK.¹⁰¹ Under English law, open compensation for compulsory purchase is assessed on existing use (i.e. un-improved) value. However, case law since at least the 1940s has established that it can consider development value. This is similar to many countries that do not permit purchase of land at un-improved valuations. Of our sample, only Germany regularly does.

Some other counties would appear to use *more* methods to share land value. Public bodies in the UK do have modest differences to most or many other systems in the degree to which they take the lead in land assembly. We have therefore concluded that, on land assembly,

94 Monk, S., Whitehead, C., Burgess, G. & Tang, C. (2013) International review of land supply and planning systems, Joseph Rowntree Foundation, p.27 as cited in *From NIMBY to YIMBY*.

95 Several states, such as France, Germany and the Netherlands appear to be much more active at this than the UK.

96 NHPAU (2009) *Review of European Planning Systems* p.28

97 This conclusion is tentative and we would welcome advice from readers with Australian experience.

98 This conclusion is tentative and we would welcome advice from readers with Danish experience.

99 NHPAU (2009) *Review of European Planning Systems* p.28

100 US takes many approaches due to the highly-localised nature of the system.

101 Examples include the London Dockland Development Corporation (LDDC) in East London's Docklands and The Merseyside Development Corporation, in the 1980s, the 2012 London Olympics, and numerous estate regenerations, including the redevelopment of the Heygate Estate in Southwark, London, and the Colville Estate in Hackney. CPOs are also relatively common for road widening and new transport developments. However these are not the bulk of developments, and CPOs can only be used in circumstances where the land is required for a regeneration project or it is for the 'greater public good'. See *From NIMBY to YIMBY* pp.45-8.

public bodies in the UK do have modest differences to most, or many other, systems. This is a judgement. It might be over-stressing the differences.

RULES AND PREDICTABILITY—THE EXCEPTIONALISM OF BRITAIN

However, one key element of Britain’s planning and building control system *does* stand out as unique when compared to every other system we have examined. It is a feature which has been oddly overlooked in nearly all analysis and which strongly influences *how* we build new homes and *who* builds them. Unlike every other prosperous planning system, the British system nationally is not rules-based but instead takes a case-by-case approach. It is more discretionary with much lower levels of clarity about what is and is not acceptable.¹⁰² This leads to a slower and less streamlined process where debate takes place at each individual decision rather than strategically.¹⁰³

In every other European country studied (other than Ireland and Portugal) the main permit required is conceived of and indeed called a building permit. The language is revealing. Only in Britain and Ireland are *both* a planning permission and a separate building permit required.¹⁰⁴ Only in Britain and Ireland is the primary focus the planning permission. This is the smoking gun.¹⁰⁵

Table 9—name of main building permits¹⁰⁶

COUNTRY	NAME OF MAIN PERMIT (AND ENGLISH TRANSLATION)	PRIMARY FOCUS
Austria	<ul style="list-style-type: none"> • <i>Baubewilligung</i> • Construction Permit 	<ul style="list-style-type: none"> • Right to construct • Building regulations
Belgium	<ul style="list-style-type: none"> • <i>Permis de bâtir</i> • Permission to build 	<ul style="list-style-type: none"> • Right to construct • Building regulations
Denmark	<ul style="list-style-type: none"> • <i>Byggetilladelse</i> • Building Permit 	<ul style="list-style-type: none"> • Right to construct • Building regulations
France	<ul style="list-style-type: none"> • <i>Permis de construire</i> • Construction permit 	<ul style="list-style-type: none"> • Right to construct • Building regulations
Germany	<ul style="list-style-type: none"> • <i>Baugenehmigung</i> • Building Permit 	<ul style="list-style-type: none"> • Right to construct • Building regulations
Greece	<ul style="list-style-type: none"> • <i>Oikodomiki adeia</i> • Building Permit 	<ul style="list-style-type: none"> • Right to construct • Building regulations
Ireland	<ul style="list-style-type: none"> • Planning permission 	<ul style="list-style-type: none"> • Right to construct • Building regulations
Luxembourg	<ul style="list-style-type: none"> • <i>Permis de construire</i> • Construction permit 	<ul style="list-style-type: none"> • Right to construct • Building regulations
Netherlands	<ul style="list-style-type: none"> • Building Permit 	<ul style="list-style-type: none"> • Building regulations
Portugal	<ul style="list-style-type: none"> • <i>Licenciamento Municipal de Obras Particulares</i> • Municipal Licensing of Private Works 	<ul style="list-style-type: none"> • Right to construct • Building regulations
Spain	<ul style="list-style-type: none"> • <i>Licencia de edificación</i> • Construction permit 	<ul style="list-style-type: none"> • Right to construct • Building regulations
UK	<ul style="list-style-type: none"> • Planning Permission 	<ul style="list-style-type: none"> • Right to construct

102 There are cities and regions (particularly in the US) which have ended up with very discretionary approaches but nowhere appears to have done so nationally.

103 A comprehensive 1997 EU analysis, showed that most countries have binding local plans. Only Britain and Ireland do not. See: *The EU Compendium of Spatial Planning Systems and Policies*, European Commission (1997) p.85.

104 *NIMBY to YIMBY* p.49.

105 Queen’s University Belfast <http://www.qub.ac.uk/research-centres/span/FileStore/Papers/Fileupload,152760,en.pdf>

106 *The EU Compendium of Spatial Planning Systems and Policies*, European Commission (1997) p.82.

The starkly different level of planning risk is also brought out sharply by an analysis of the required link between permits to build and main policy instruments, and the level of permitted exceptions to the plan. These are set out in table 10.

Table 10—Required link between development and policy

COUNTRY	LINK TO POLICY INSTRUMENTS	EXCEPTIONS TO THE PLAN?
Austria	• 'Application must be in compliance with binding plans & regulations'	• 'Only very limited flexibility to vary from the plan'
Belgium	• 'Application must be in compliance with binding plans & regulations'	• 'Only when not in conflict with the plan principles'
Denmark	• 'Application must be in compliance with binding plans & regulations'	• 'There is only very limited flexibility to vary from the plan'
France	• 'The application must conform with the POS'	• 'There is only very limited flexibility to vary from the plan'
Germany	• 'The application must conform with the B-plan'	• 'Exemptions from the provisions of a B-plan may be allowed in certain circumstances'
Greece	• 'Decision should not infringe provisions of town plans'	• 'For areas covered by town plans there is only very limited flexibility to vary from the plan'
Ireland	• 'The Plan is binding'	• 'Flexibility to vary from the plan through the material contravention process'
Luxembourg	• 'Application must be in compliance with binding plans & regulations'	• 'No Exceptions to the plan'
Netherlands	• 'Application must be in compliance with binding plans & regulations'	• 'Departures from the plan are allowed in some circumstances'
Portugal	• 'Application must be in compliance with binding plans & regulations'	• 'Minor changes that do not conflict with the plan's principles'
Spain	• 'The application must be in compliance with binding plans and regulations or the old plan modified'	• 'Only for state public works, in case of exceptional public interest'
UK	• 'The plan is not binding, but is the primary consideration in determining an application. Each application is considered on its merit.'	• 'Departures are allowed if other material considerations justify this, but they are subject to a special procedure.'

In zoning-based systems, the plan sets out what can be developed in each zone, sometimes including the projection of allowable buildings. However, in England's discretionary planning system, areas are not zoned to follow certain rules but individual sites are allocated for housing. Permission is then granted case-by-case after detailed consideration of proposals for particular sites. Local Plan policies are statements of principle with allocation of specific sites. Planning permission is only given after an examination of how these principles are translated into a project or master plan.

Other than in the UK, rules also tend to be tighter.¹⁰⁷ In France, for example, zoning can pre-set a very large range of elements. The standard elements of a regulatory document include 15 criteria. These include the maximum building footprint on site and the maximum building height including form. This can include criteria such as eaves height, ridge height, and floor

107 NIMBY to YIMBY pp.50-51

setbacks. External appearance can be further set, via criteria for materials, sizes and shape. While the maximum outline shape is always defined, not all criteria are always enforced.¹⁰⁸

Nearly all other systems of which we are aware have more rules-based approaches. These can give landowners more certainty about what will be acceptable.¹⁰⁹ As one seasoned planner with experience at the highest levels in the public and private sector told us:

'At the beginning of the planning process there is very little policy to guide as to what should happen. There's a bit about affordable housing, but very little about form, apart from things like view corridors. The risk does not diminish, as you might expect it to do, as you go forward. Even with a recommendation from planning officers, a proposal could still "go down on the night", and then there's still risk of judicial review, of s106 negotiations, whether or not a building should be listed.'¹¹⁰

Similarly, one local authority told us that nearly half of all applications they receive are deemed 'invalid.'¹¹¹ This is a grotesque waste of time and effort.

We conclude therefore that, in this area, the British system has fundamental differences to most or many other systems. This leads to uncertainty, which increases planning risk, pushes up land prices when planning is secured, acts as a major barrier to entry (above all for self-build and small developers) and lowers public support for new building by increasing risk over *what will be built* (which is crucial in understanding why people oppose new homes).

OTHER ANALYSES

Britain's planning system would appear to be very normal or only moderately different from other systems.

We looked at three other elements and found that Britain's planning system would appear to be very normal or only moderately different from other systems.¹¹²

- Stakeholder consultation: In most systems, consultation and political debate takes places when the local plan is being set—and this is a very meaningful and important process.¹¹³ The UK is an outlier alongside Ireland and Luxembourg. This is arguably, in the UK's case, a consequence of the fundamental differences of certainty in the planning system explored above.
- Penalties for not developing land with permission: Britain has a 3-year expiration date on planning permission, which puts it broadly in line with many other European nations.
- Enforcement of planning regulation: our indicative analysis puts the UK clearly in line with most countries in the level of its enforcement.

CONCLUSION

Table 11 sets out the findings of our international comparison of planning systems.

108 *NIMBY to YIMBY* pp.51-53

109 This can come with its own challenges, but at the least it seems better to align demand with supply. Certainly it is true, perversely, that much of the detailed policy (and planning practice) we do have in the UK actively delinks what we build from the best ways of delivering livable, street-based high-density cities. See see Boys Smith N. (2016), *A Direct Planning Revolution for London?*, pp.22-29 and London First, (2017), *Unlocking London's Residential Density*.

110 Workshop 17th July 2018.

111 Private conversation.

112 *NIMBY to YIMBY* pp.54-56

113 *The EU Compendium of Spatial Planning Systems and Policies*, European Commission (1997) pp.70-3.

Table 11 –Where is British planning fundamentally or modestly different or broadly comparable?

	COMPONENT OF SYSTEM	BRITISH PLANNING COMPARED TO INTERNATIONAL NORMS
1.	Governance and control	Broadly comparable
2.	Green belts and urban limits	Modestly different
3.	Sharing of land value capture & incentives	Broadly comparable
4.	Land assembly and infrastructure	Modestly different
5.	Rules and predictability	Fundamentally different
6.	Stakeholders	Modestly different
7.	Penalties	Broadly comparable
8.	Enforcement	Broadly comparable

We are not the first to point out British planning’s strange exceptionalism. Kate Barker has noted:

‘Development control (giving permission to particular proposals) might also be made easier if local plans were more rule-based, so that once the plan existed it was clearer and simpler for proposals in line with the plan to obtain permission. This kind of zoning exists in other countries and has often been suggested here—to replace a system in which we argue not only about the plans but also, subsequently, about all the individual developments.’¹¹⁴

However, such comments are left tantalisingly hanging. Kate Barker did not include fundamental changes to the way the British system uses rules in either her 2006 Barker Review recommendations for the Government or her more recent 2014 study. Most studies don’t consider the issue at all. This now needs to change. Our comparative analysis suggests that there are four ways in which the nature of the British planning system could be altered to increase the supply of homes, the diversity of housing provision and overall housing affordability:

- Above all increase the certainty of what is and is not permissible in different parts of the country. Move from a system of **discretionary planning permission** to **clear rules** and **building permission**. However, this must be linked to clear data on what people like and will politically support. We need to **‘move the democracy upstream’** with a process of neighbourhood plan setting. This should also be associated with only setting rules on a limited number of factors;
- Make it easier to share value upside from development with the public sector above all by making it **easier for the state to buy land at existing use value plus a set premium**;
- Encourage and help public sector bodies to play a **more active role in land assembly**; and
- Consider increasing the ease with which green belts adapt to circumstances and ‘change shape’ to permit development along mass transit corridors.

The British system should be less odd, differently ambitious and more predictable. This would reduce planning risk, make life easier for self-builders, encourage smaller firms and prevent bigger firms dominating their way through it. It would also allow public sector planners to do what they came into the profession to do.

113 Barker, K. (2014), *Housing: Where’s the Plan?*, p.38

5. HOW GOOD IS BRITISH LAND USE REGULATION?

'Efficiency is doing things right; effectiveness is doing the right things'

Peter Drucker

The British system is very odd. It is nationalised and discretionary in principle rather than regulated and rules-based. It allocates sites on a case-by-case basis rather than setting clear rules for what can and cannot be done. Politicians and many planners have been so habituated to the system that they have lost sight of how odd it is. Moreover, many leading lights of the British planning profession hold its flexibility dear.¹¹⁵ Flexibility *does* have advantages. It may always be right for large developments or specialised buildings. However, we are using a bespoke approach to manage the mass market.

Appendix one explains why some level of regulatory involvement in the land and development markets should not be surprising. For as long as there has been government, it has sought to minimise disputes between its people. Buildings and property are amongst the most consistently contentious issues. Government interventions in urban land use decisions are therefore as old as cities. However, the British system has evolved from a system that was premised on a socialist and state delivery mechanism to one that is conceptually ambitious but practically uncertain.

As we have seen this is not without serious consequences in terms of the volume and quality of new homes and the consequent drag on the standard of living of many of our citizens, particularly the poorer and the younger generation. And this is despite a proportion of subsidised rental homes that is actually well *above* the European average.

THE PRINCIPLES OF SUCCESSFUL LAND USE REGULATION

If all can concede that *some* form of state intervention in land markets and building standards is inevitable, then the question becomes: what are the attributes of a successful system of state involvement in the land, development, infrastructure and housing markets, which has fewer perverse consequences? We would suggest there are five underpinning principles.

1. Stable and politically acceptable:

In its key elements it has to be broadly politically and socially acceptable and be accepted across parties of both left and right from one parliament to another. This requires compromise from 'both sides.'

2. It needs to be able to deliver socially and economic desirable outcomes including;

- a. Enabling sufficient homes in the right places;

¹¹⁵ For example see the recent defence of discretionary planning in the interim report of the TCPA's Raynsford Review.



Image credit: Shutterstock

- b. Enabling safe homes;
 - c. Enabling homes of the right quality aligned with the way people want to live in the types of places in which they want to live;
 - d. Supporting new homes and changing places being broadly acceptable to the community;
 - e. Not creating wider consequences for energy usage or environmental impact than the nation is prepared to accept;
- 3. It needs to have good general regulatory characteristics including:**
- a. Being fair, accountable and transparent;
 - b. Being efficient and quick in decision-making;
 - c. Being predictable and consistent;
 - d. Being proportionate—intervening only where necessary;
 - e. Being targeted with minimised side effects;
 - f. Not getting frozen and being capable of adapting to changing circumstances and technologies;

- g. Representing community and consumer needs above producers and not being susceptible to 'producer capture.' People will no longer accept that the 'man in Whitehall (or City Hall)' knows best;

4. It needs to have good characteristics which are specific to its interactions with the land and housing markets including:

- a. Permitting the funding of necessary infrastructure and amenities either via predictable betterment payments or via permitting matching of returns;
- b. Not prevent or delaying development finance;
- c. Permitting the provision of sub-market housing via predictable betterment payments;
- d. Being predictable in such a way as to permit a broad market of housing providers to play in the land market and not squeeze out any one sector; and
- e. Managing unavoidable trade-offs between different landowners and users.

5. Those managing the system need to have the right skills, capabilities and capacity.

Stable and politically acceptable

Britain's urban building-standards led system of the eighteenth and nineteenth centuries lost legitimacy because it was insufficiently able to deal with the complexities and insanitary conditions of much larger towns and cities in a coal-fired economy.¹¹⁶ The emerging zoning approach to planning of the 1930s (though increasingly powerful as seen by the end of ribbon development and the deliberate curbing of 1930s self-builders) was seen to have inadequately defended the much-loved countryside from excessive sprawl. The post-war settlement was premised on a socialist vision for Britain that (while very popular with some) was not able to command a political consensus for more than one parliament. Any stable system of the future will need to be acceptable in its broadest terms across most of the political spectrum for a period of decades.

Socially and economic desirable outcomes

Having a safe, warm, dry, non-crowded and appropriately located place to live is one of the most fundamental drivers of the quality of our lives alongside adequate income and good and nurturing interpersonal relationships.¹¹⁷ Any government intervention in housing and building markets which fails to permit the provision of sufficient new homes or which fails to secure support from existing residents is not working. However, the provision of new homes also needs to trade off the wider impact on energy usage and the countryside.

It needs to have good general regulatory characteristics

There has been lots of research on 'good regulation' which does not distort provision of goods or lead to 'capture' of a market by those who know decision-makers.¹¹⁸ Good regulation needs to hold different qualities in tension; it needs to be fair but also efficient; it needs to be predictable but also capable of change; it needs to understand the legitimate travails of producers but also fundamentally be on the side of consumers and wider civil society; it needs to be consistent in what it does regulate and clear about what it does not.

Having a safe, warm, dry, non-crowded and appropriately located place to live is one of the most fundamental drivers of the quality of our lives

¹¹⁶ See Appendix one

¹¹⁷ In 2011 the OECD was sufficiently confident of the importance of rooms per person as an important metric of wellbeing that it was one of only two housing metrics chosen on an international scale of wellbeing. (The other was the presence of basic facilities. In total there were only 21 variables). OECD (2011), *Compendium of OECD Well-being indicators*, p.8.

¹¹⁸ For example see OECD (2005) *Guiding Principles for Regulatory Quality and Performance* or the principles established by the 1997 Better Regulation Taskforce.

Homes and offices, or more accurately the parcels of land on which they are built, do not constitute a normal market.

Good characteristics, which are specific to its interactions with the land and housing markets

Homes and offices, or more accurately the parcels of land on which they are built, do not constitute a normal market.¹¹⁹ This peculiarity is easy to exaggerate.¹²⁰ Nevertheless, the land market does create externalities—consequences of development, which the market struggles to price in. For instance, many towns and cities have needed to respond to the potential for the undersupply of public goods, such as a park or essential services. Such public goods are not just necessary to make successful towns and cities. They also add value to surrounding offices and homes. However, they do not add value to the *land they are on* themselves. Smaller landowners or developers thus have little incentive to provide them. Large landowners may be sufficiently incentivised to invest in such wider value-enhancing investments. Otherwise, either some sort of private profit equalisation mechanism or state intervention is necessary to ensure that public amenities accompany development. Successful state intervention in the land and housing markets permits the funding of necessary infrastructure and amenities either via betterment payments or via matching of returns. It is also predictable in such a way as to permit a broad market of housing providers and helps act as a non-judicial efficient mechanism for resolving the unavoidable trade-offs between different land owners and users.¹²¹

Those managing the system need to have the right skills, capabilities and capacity

Clearly, public servants working in planning and building regulation need to have the right skills. But which skills? The range is growing: design, legal and procedural understanding, an understanding of economic drivers and consequences, an ability to engage with and represent public views and (increasingly) an ability to harness digital technology to improve efficiency and public engagement. Historically, planners tended to come from a design background with much less economic awareness.¹²²

HOW CLOSE ARE WE TO THESE PRINCIPLES OF A SUCCESSFUL PLANNING SYSTEM?

Despite the hard work and best intentions of many thousands of officials and developers, we do not think that the *status quo* is meeting many of these aims.

No doubt some of these judgements could be disputed. Many, however, are fairly empirical and based on measurable numbers which can be compared historically or geographically.

119 For a summary of this argument see Ryan-Collins, J., Lloyd, T., Macfarlane, L. (2017), *Rethinking the economics of land and housing*, pp.6-12

120 For example, the ultimate supply of land may be fixed but, is it importantly fixed? In most places, most of the time there is a lot more land that could be built on – even if infrastructure investment is required to make it usable. Boys Smith, Venerandi & Toms (2017), *Beyond Location*, p.16.

121 If a homeowner owns a picture on their wall or a kettle in their kitchen nothing that their neighbour does short of outright theft can impinge their enjoyment of the picture or the utility of the kettle. However, if their neighbour knocks down their

own house and instead constructs a modestly sized iron smelting works or tannery then the utility and value of the homeowner's property are fundamentally undermined. Economists call such unpriced consequences of activity, externalities.

122 Certainly, most twentieth century planning and policy developments have been built upon a shakiest understanding of what the economic consequences might be. Unfortunately, the same ignorance of valuation consequences (particularly in the long term) still pervades much of the public debate on architecture, planning and housing today. See Barker, K. (2014). *Housing, where's the plan?*, p. 25

Table 12—Performance of current approach

TEST OF GOOD PLANNING		PERFORMANCE OF CURRENT APPROACH	
1.	Stable and politically acceptable	POOR	<ul style="list-style-type: none"> • Very low levels of support (from left & right) for the planning <i>status quo</i>¹²³
2a.	Sufficient homes in right place	VERY POOR	<ul style="list-style-type: none"> • One of the lowest home-building records in Europe over the last 30 years • One of the tightest ratios of homes per households in Europe¹²⁴ • Insufficient housing supply in the regions of greatest demand (London and the South East)¹²⁵
2b.	Safe homes	MIXED	<ul style="list-style-type: none"> • As the Grenfell tragedy has highlighted there appear to be issues with fire safety regulations, certainly in tower blocks
2c.	Homes of the right quality aligned to how people want to live	POOR	<ul style="list-style-type: none"> • Based on analysis of every single property sale in six British cities, the 'new-build premium' for new homes over otherwise similar older home is often about 20 per cent of the 'traditional settlement' premium for homes in a traditional street pattern and with a higher proportion of listed or pre-1900 homes¹²⁶ • National polling and multiple visual preference surveys show a consistent and preference for older vs. newer homes and settlements¹²⁷
2b.	Helping ensure new homes are broadly acceptable to the community	POOR BUT IMPROVING	<ul style="list-style-type: none"> • Despite growing support for new housing <i>in principle</i> there is less support for new housing 'near me'¹²⁸
2c.	Not creating wider environmental consequences than acceptable	MIXED	<ul style="list-style-type: none"> • Many homes continue to be built in a low-density suburban model, which is popular but is entirely car dependent. This is necessary in some places, but not everywhere • New build density is currently increasing from its post-war norms (which comes with sustainability benefits but design challenges)
3a.	Being fair, accountable and transparent	VERY GOOD	<ul style="list-style-type: none"> • Given the value that is made when planning consent is granted there are remarkably low levels of corruption in public decision-making¹²⁹
3b.	Being efficient and quick	POOR	<ul style="list-style-type: none"> • On average, for larger sites, it takes 8.9 years from land being allocated for housing to delivery of new homes¹³⁰ • The general industry perception is that plans take too long to produce and then remain static for too long¹³¹ • Risk remains high throughout the process—as one planner put it to us: 'Well-funded appeals can be almost endless'¹³²
3c.	Being predictable and consistent	VERY POOR	<ul style="list-style-type: none"> • English local plans are statements of policy not rules. They are probably the least binding in Europe • The UK probably has the easiest system in Europe for departures from the plan.¹³³ This does not give residents confidence in what will be delivered and undermines public interest in the plan-making process
3d.	Being proportionate	POOR	<ul style="list-style-type: none"> • 50 per cent of planning decisions are applications of a bespoke process to householder developments (such as extensions, loft conversions and conservatories).¹³⁴ This prevents resource being used on larger and wider decisions
3e.	Being targeted with minimised side effects	POOR	<ul style="list-style-type: none"> • There are very clear and important consequences of low housing supply in measurably reduced standards of living • Potentially up to 30 per cent per cent of personal prosperity is lost through higher housing costs¹³⁵

123 Chapter two.

124 Boys Smith & Toms (2018), *From NIMBY to YIMBY*, pp. 11-13.

125 Chapter one.

126 Boys Smith, Venerandi & Toms (2017), *Beyond Location*, p.120.

127 Boys Smith (2016), *Heart in the Right Streets*, pp.122-130

128 Airey, Scruton and Wales (2018), *Building More, Building Beautiful*

129 'RTPI hits out over 'unfounded' planning corruption allegations' (2017) Planning Resource Available at <https://www.planningresource.co.uk/article/1453073/rtpi-hits-unfounded-planning-corruption-allegations>

130 Nathaniel Lichfield & Partners (2016) *Start to Finish: How Quickly do Large-Scale Housing Sites Deliver?* P.3 Available at <https://lichfields.uk/media/1728/start-to-finish.pdf> (average lead in time for large sites prior to submission of the first

planning application is 3.9 years + average planning approval period is 5 years for all large sites studied.)

131 One expert with 40 years' experience asked us in a workshop: 'how can a plan take eight years to produce and then remain the same for ten years?'

132 Quote from planner in private practice in one of our workshops.

133 Boys Smith & Toms (2018), *From NIMBY to YIMBY*, p. 50.

134 MHCLG (2018) Planning Applications in England: January to March 2018 p.12 available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717962/Planning_Applications_January_to_March_2018.pdf

135 Myers (2017) *Yes In My Back Yard: How To End The Housing Crisis, Boost The Economy And Win More Votes* p.2

TEST OF GOOD PLANNING		PERFORMANCE OF CURRENT APPROACH	
3f.	Being capable of adapting	POOR	<ul style="list-style-type: none"> Although in principle flexible approach to planning should be capable of adaption this seems not to be happening—perhaps due to capacity and capability challenges One senior official with widespread experience of planning and the wider public sector told us: 'Planning is probably at the back in terms of embracing of technology compared with other government functions and departments'¹³⁶
3g.	Not being susceptible to 'producer capture'	POOR	<ul style="list-style-type: none"> There have been recent improvements due to the Localism agenda. but neighbourhood planning is long and most are poorly-focused Local plans are 'tedious and jargon ridden' and so remain largely professional arenas. Little or (sometimes) no use is made of images to set what is and is not acceptable
4a.	Permitting funding of infrastructure & amenities	MIXED	<ul style="list-style-type: none"> This is often criticised but can fund infrastructure quite well Many other systems less good than is often assumed¹³⁷ Some national infrastructure projects (for example Heathrow) do 'get stuck' but this is due to political conflict at the parliamentary level rather than planning <i>per se</i>
4b.	Not preventing development finance	POOR	<ul style="list-style-type: none"> There is no issue for volume house-builders who can fund from cash flow and their other sites. Similarly, RSLs can borrow against their assets However, few if any institutions will lend at reasonable rates until <i>after</i> planning permission thus disadvantaging smaller developers and self-build¹³⁸
4c.	Permitting provision of sub-market Housing	HISTORICALLY GOOD BUT NOW POOR	<ul style="list-style-type: none"> British housing stock has an above-average proportion of affordable housing compared to wider averages¹³⁹ However new builds have a much lower proportion of affordable housing
4d.	Being predictable to permit broad market of housing providers	VERY POOR	<ul style="list-style-type: none"> SMEs account for 12 per cent of new builds—a low and falling figure in international comparative terms¹⁴⁰ The UK has a very low proportion of custom-build and self-build compared to most other markets¹⁴¹ Uncertainty over section 106 payments are 'major sources of risk' for smaller players¹⁴²
4e.	Managing unavoidable trade-offs between land owners	GOOD	<ul style="list-style-type: none"> The more nuanced discretionary system of the UK does have some advantages. One is that it is good at responding to complicated trade-offs between different landowners and finding bespoke solutions
5.	Right skills, capabilities and capacity	POOR	<ul style="list-style-type: none"> Planning budgets have been reduced by up to 46 per cent since 2010¹⁴³ Planning bodies report widespread public disenchantment with planning and low professional morale¹⁴⁴

TOWARDS ZONING—A STEP IN THE RIGHT DIRECTION OR A FALSE DAWN?

There are various other mechanisms within the British planning system that could be used (or indeed were historically created to facilitate) greater certainty and clarity in the development controlled planning system. None have fully worked yet though it is too early to tell in some cases.

Outline Planning Permission

Since 1990, on large sites it is possible to apply for outline planning permission, followed later by full planning permission. This was introduced to reduce the uncertainty and costs associated with planning permission. Research for the RTPI however has concluded that;

136 Conversation with authors, July 2018.

137 Boys Smith & Toms (2018), *From NIMBY to YIMBY*, pp.45-7.

138 RTPI Research Paper, *Planning Risk and development*, p. 14.

139 Boys Smith & Toms (2018), *From NIMBY to YIMBY*, p.26.

140 Boys Smith & Toms (2018), *From NIMBY to YIMBY*, p.110

141 Boys Smith & Toms (2018), *From NIMBY to YIMBY*, pp.107-8.

142 RTPI Research Paper, *Planning Risk and development*, p. 14.

143 *Planning 2020: Interim Report of The Raynsford Review Of Planning In England (2018)* TCPA p.25

144 *Planning 2020: Interim Report of The Raynsford Review Of Planning In England (2018)* TCPA p.iv and p.1. The report also describes 'entrenched perceptions of planning as 'Stalinist', 'centralised', 'technocratic', the 'enemy of enterprise', and 'out of touch'.

'While simple in its conception, it has developed into a lengthy process that requires considerable upfront investment for preparation of masterplans and other technical documents. It can also still leave significant uncertainty about so-called reserved matters that need to be agreed later. It is also reactive (i.e. developers come up with the proposals), whereas permission at local plan stage would in principle allow local authorities to proactively decide what they expect.'¹⁴⁵

Local Development Orders (LDOs)

LDOs give a type of permission at local-plan stage. LDOs can be issued by local planning authorities. They grant the right to develop to specific types of development within defined areas. Schemes that are compliant do not need further permission. Local authorities cannot require Section 106 contributions for affordable housing under LDOs.¹⁴⁶ Despite simplifying in 2013, we understand anecdotally that councils remain very disinclined to grant them. This is not surprising. They reduce S106 income and remove planners' discretion. They have mainly been used for commercial developments and, after much work, have been used for at least one of the very few custom build schemes in the UK. Further research into why they are not used would be worthwhile.¹⁴⁷

Over the last couple of years, the system has begun to tilt back towards an approach with less planning risk and more certainty about what can be delivered. This is welcome. However, it has only been a partial success to date. It seems to have been quite hard to 'layer' a zonal approach into the discretionary English system. At least three challenges have emerged.

- Firstly, legal guidance on the new rights makes it clear that exercising these rights is very procedurally top heavy with (often) the need for the local council to opine on whether permitted development does or does not apply. This is hardly a step forward—merely a changing of the nomenclature.¹⁴⁸ More detailed work and a little more boldness is needed.
- Secondly, there is a need for a change in expectation from the wider market. Where certificates of permitted development have been achieved, sales agents are often requesting statements of immunity from planning permission.¹⁴⁹ Again, this is hardly, freeing up time.
- Finally, there is a risk of throwing the 'public support' baby out of the window with the 'political uncertainty' bathwater. Attempts to enhance certainty to date have focused on pre-permitting, as research for the RTPI put it, 'a rather abstract principle of development. Community opposition could well emerge later in the process; once it becomes possible to visualise details of schemes.'¹⁵⁰ A more thoughtful shift towards more certainty which also thinks about how to win public support is necessary. Some of the judgements made so far may not be quite right.

'Permitted Development' for home extensions

Since May 2013, the size of single-storey domestic extensions that can be built without recourse to planning permission has been increased from 3m or 4m to 6 or 8m depending on house type.¹⁵¹ Building regulations still apply. This was intended to support home extensions and reduce small application pressure on the planning system.

¹⁴⁵ RTPI Research Paper, *Planning Risk and development*, p. 19.

¹⁴⁶ Although developers can voluntarily provide them.

¹⁴⁷ RTPI Research Paper, *Planning Risk and development*, p. 19.

¹⁴⁸ For example see Neil Cameron QC (Landmark Chambers, 2013) 'Recent change to the General Permitted Development Order Available at http://www.landmarkchambers.co.uk/userfiles/documents/resources/NC_PD_RTPI_October_2013.pdf

¹⁴⁹ We have been told this by planners 'on the ground' and also by senior officials at the Ministry of Housing.

¹⁵⁰ RTPI Research Paper, *Planning Risk and development*, p. 23.

¹⁵¹ This was due to the 2013 Town and Country Planning (General Permitted Development) Order.

Permitted Development has been attacked for reducing quality, levels of affordable housing and developer contributions.

'Permitted Development' for office-to-residential change of use

Since May 2013, it has been possible to convert an office to residential use without planning permission as had been required since 1948.¹⁵² This policy (initially a three-year pilot) was made permanent in April 2017. It was intended to increase the supply of housing and to aid regeneration of town-centres. A prior approval notification is required but no formal planning permission. The number of additional homes delivered through change of use increased from 12,520 in 2013-14 to 20,650 in 2014-15 and 30,600 in 2015-16. This is nearly 19 per cent of new homes in 2015-16. Although some of this may have been a return to longer trends much was clearly due to de-regulation. This would appear to be a clear win for the policy.

There are critics, however. Permitted Development has been attacked for reducing quality, levels of affordable housing and developer contributions. A RICS study of the extension of Permitted Development in just five local authorities found they may have lost £10.8m in planning gain and 1,667 affordable housing units from approved conversions.¹⁵³ The report also criticised the small size of such new homes.¹⁵⁴ A similar but slightly less ambitious policy which exempted the change of use from planning permission but which nevertheless required a pre-set CIL payment and which set minimum home sizes (but no further detail) might have been a way to evolve the policy with wider political consent—a necessary corollary if the reform is to be sustainable over time.

Permission in Principle

The Housing and Planning Act 2016 allows local authorities to grant permission in principle on brownfield sites available for housing, and to 'introduce a fast-track certificate process for establishing the principle of development for minor development proposals.' It also permits developers to apply for permission in principle. The intent for this was to increase certainty and permit a greater range of developers. It is still too early to judge the success of the programme. 73 pilot local authorities published their brownfield registers in December 2017. The mechanism went live in June 2018.¹⁵⁵

152 Seventeen areas were granted exemption. Historic buildings, conversions requiring external work and development requiring Environmental Impact Assessments.

153 RICS (2018) *Assessing the impacts of extending permitted development rights to office-to-residential change of use in England* p.92

154 RICS (2018) *Assessing the impacts of extending permitted development rights to office-to-residential change of use in England* p.40

155 RTP1 *Research Paper, Planning Risk and development*, p. 20. RIBA website (31 May 2018), 'Permission in principle applications in England go live.' <https://www.architecture.com/knowledge-and-resources/knowledge-landing-page/permission-in-principal-applications-in-england-go-live#>

CONCLUSION: FROM BRITISH EXCEPTIONALISM TO DIRECT PLANNING—A VISION FOR 2030

'You cannot ask men to stand on their own two feet if you give them no ground to stand on'

Iain Macleod

2018 is not the year for radical reform of the planning system. Thanks to reforms over the last few years, the planning system is now permitting sufficient homes albeit in a way that constrains competition and (too often) incentivises bad, unpopular, unsustainable development. But the taps are running and turning them off is not an option given the desperate need for more homes in much of the country. This conclusion therefore does not focus on the short term. It sets out a vision for the future that would stop applying a bespoke process to a volume problem.

What might the characteristics be of a system which met the criteria of good regulation, which did not undermine the provision of adequate levels of housing and affordable housing in popular places and which had consensus political support from parliament to parliament? What should our planning system look like by 2030?

A system of Direct Planning would be faster, more popular and open to a greater range of developers and investors than the current site-by-site and development-controlled approach. It should be 'brief, flexible, lenient, but strict and detailed where it had to be.'¹⁵⁶ It would focus on certainty early in the process to have most impact and would also need to *visualise* what can be built. It would aim to move the politics 'upstream' whilst ensuring ongoing public support.

By permitting greater certainty and clarity on the vast majority of sites, such a system would actually value and respect professional planners more than at present by letting them focus on larger sites, and applications that are more complex. By linking their expertise more firmly to public preferences, it would also make it harder to repeat some of the post-war mistakes when planning and architectural theory become chronically disconnected from popular preferences and observed empirical reality. A more certain, more visual system that regulated fewer things but with more predictability could also make better use of IT automation. This might also permit limited resources to be stretched far further and help make good the capacity and capability challenges underpinning the current situation.

Such a system of Direct Planning would have six key strategies;

1. **Better regulation—moving from an unpredictable 'bespoke' system to one of more predictability and consistency in most cases;**
2. **Lowering barriers to entry on large sites;**
3. **Not regulating where not necessary;**
4. **Permitting the gentle and popular intensification of our streets;**

¹⁵⁶ The phrase is taken from a description of the Building Acts which were much admired internationally and permitted both quality and quantity. S. Muthesius (1982), *The English Terraced House*, p.36.



Image credit: DrimaFilm / Shutterstock.com

5. Valuing planning and supporting skills, process and technology; and
6. Getting more from public land.

1. Better regulation—moving from an unpredictable 'bespoke' system to one of more predictability and consistency in most cases;

From planning permission to building permits

- As is the case in most of the developed world, it would have moved from a planning permission-led system to a building permit-led system in the majority of development situations. To construct via a building-permit approach would require strict adherence to a very clear (but limited) set of rules on betterment payments and design. Ideally, this would be entirely aligned to strict and clear building regulations. If these rules were followed then approval would be a matter of course with post-construction verification wherever possible.¹⁵⁷ This should speed up the development control process exponentially, help set land prices, free up planners to focus on real planning and limit planning risk which acts as a critical barrier to entry for smaller developers and non-volume house-builders. Building permits would be particularly appropriate for smaller and more straightforward sites;

¹⁵⁷ The essential corollary of post-construction verification would need to be a sufficiently robust process of verification (paid for out of betterment payments – see point 7) with severe sanctions for those breaking the terms of the fast track building permit. Building permits might 'evolve' out of several existing mechanisms such as Local Development Orders or Permitted Development however this needs further study.

More predictable and consistent on matters on infrastructure, affordable housing and design

- The crucial consequence of this approach would be far more clarity for neighbourhoods and developers on what normally could and could not be built and what the consequences of development would be. Matters that would normally become a matter of building permit rather than planning permission would include;
 - a. **A non-negotiable pre-set percentage payment to local government for infrastructure spend and affordable housing** to escape the protracted delays, costs and legal wrangling over Section 106 negotiation. In essence this would mean replacing a very variable Section 106 payment and a modest pre-set CIL payment with a far larger pre-set payment (call it new 'CIL'). This might be set by local government for a period of years within a range permitted by central government. It would be fixed based on value.¹⁵⁸ Developers would know in advance and with confidence what proportion of their gross development value would be payable to the state as a 'betterment payment' and this would help set the land price. Amounts payable under 'new CIL' should be a flat tariff with no scope for the current tortuous and drawn-out arguments;¹⁵⁹
 - b. **Urban form and design codes with popular pre-set plans for simple housing types.** Developments benefiting from the accelerated building permit route would need to follow provably popular, visually set out design and style codes. These would lay out (via pictures and numbers not verbal and meaningless judgements over 'suitability') clear criteria on relationship to rest of the public highway, height, range of acceptable materials, bay width and fenestration pattern. It would be axiomatically necessary that such visual design codes were proven popular via polling with the wider community. This is to avoid the consistent 'design disconnect' whereby many professional architects and planners have provably different design preferences to the majority of the population;¹⁶⁰

Moving the democracy upstream from development control to setting the local plan

- Self-evidently Planning 2030 would need to enjoy popular support if it was to survive. This means that the key moment of powerful local democracy would not normally be an individual planning application but the setting of the Local Plan. This is what would influence what development will normally look like and the level of payments for accompanying infrastructure and affordable housing. This is very much in line with (though going beyond) the development and practice of Neighbourhood Planning since 2011;
 - a. **From allocation of sites to zoning on rules.** At present Local (or Neighbourhood) Plans try to allocate most individual sites on which development is expected. We should instead anticipate that local plans set rules for the type of development that is possible (or not possible) in certain areas—certainly via building permits. This would permit greater clarity on what is possible to intensify use in a far greater range of places;

¹⁵⁸ It needs to be flat proportion based on value not volume or number of homes so as not to create perverse incentives. For example, a flat tariff per development would squeeze out smaller developments.

¹⁵⁹ There is a linked but separate issue

¹⁶⁰ Boys Smith in Manhattan Institute, *Urban Plan frontiers* pp.89-91.

What are design or form-based codes?

Design or form-based codes can give communities confidence that what they want to see in their neighbourhoods is what ends up happening, as well as providing certainty for local government and developers. The new 2018 NPPF very sensibly encourages design codes for precisely this reason. Design codes are a set of illustrated design rules and requirements, which instruct and may advise on the physical development of a site or area. They are much more common in many other countries. There are now over 400 form-based codes in US and Canadian cities. In 2010 Miami, became the first major US city to replace their historic approach with a design code. The US Department of Defence has recently switched to using them. They are common in much of Europe, which has consistently managed to build systemically more homes than the UK with nothing like the equivalent level of political controversy. In countries such as France, for example, if developers and builders follow the Local Urban Plan to the letter, then the difficulty, complexity and cost of achieving development control is very low compared to the UK.

Making use of pre-set clear design codes in more situations could speed up the delivery of new homes and permit a wider range of smaller and third sector developers. In the future, communities should work with local authorities and architects to draw up 'Community codes' that set appropriate parameters for new development. Greater certainty would remove the huge advantage that larger, more experienced and well-capitalised developers have under the current, historically and comparatively very peculiar British development control-led planning system.

- b. **The challenge—top-down zoning for housing where necessary.** It should be possible still for local government or neighbourhood plans to zone for no or very little intensification of use (for example in conservation areas or where there is demonstrably insufficient infrastructure) However, where local government was unreasonably not setting enough space for new homes, it could be mandated from above;
- c. **But neighbourhood-led preferences for design and form (community codes).** In contrast, the urban form and façade pattern set out in suggestion 2b would preferably be set from below. Although we could imagine the 2030 version of the NPPF would have a default series of national design and style guides (set by national polling), these should be very limited. It should be possible for councils, parish councils and neighbourhood fora to set more localised variants. Clearly evidence would be required that such codes are locally popular and there would need to be constraints on adding detail that prevented viability or made development impossible. It would not be possible to add stultifying complexity or internal requirements;

- d. **And confidence on payments for infrastructure and affordable housing.** There would be hugely reduced scope for developers to pay anything other than the pre-set amount for betterment payments and affordable housing (and none at all within the building permit regime) thus increasing certainty for neighbours;
- e. **An enhanced role for Neighbourhood Planning.** Within this framework, Neighbourhood Planning would not just continue but would be further empowered. Neighbourhood planners would normally be expected to move from merely allocating sites to setting local form-based codes (community codes) for fast track building permits in different zones.

2. Lowering barriers to entry on large sites:

'Code Zones' or 'Permission in Form' for larger sites or for sites with specialised infrastructure requirements.¹⁶¹

- It might often not be possible to use borough or countywide pre-set rules on larger sites that are more complex. Such development sites should wherever possible take a 'Code Zone' or 'Permission in Form approach'. This would mean;
 - a. Working to create a popular, though commercially viable and deliverable masterplan and form-based code. Development would then be possible 'as of right', via the building permit regime, for buildings that met the master plan and code;
 - b. There should be time limits on building permit sign-off or they should be post-construction wherever possible;
 - c. Splitting larger developments into a large number of pre-serviced plots would permit construction by a wider number of developers and an enhanced role for self-build and custom build as is possible in most of Europe and the US (but not the UK with our peculiar high up-front risk planning system);
 - d. Again, it is utterly crucial to stress the axiomatic need for very significant neighbourhood input into these codes, or the risk of embedding officially-approved innovative design, rather than value-enhancing popular design is virtually inescapable;
 - e. As with the new building permit regime, proportions of affordable housing should be pre-set and non-negotiable. Viability arguments should not apply. In this way, planning would set land prices in code zones not the other way around;¹⁶²

Procedurally, we currently treat nearly all development applications as if they were special cases.

3. Not regulating where not necessary:

Maintaining flexibility

- Maintaining flexibility on non-regulated matters or for complex and higher-density sites. Procedurally, we currently treat nearly all development applications as if they were special cases. There are advantages of the current discretionary system—particularly for more complex sites. We should maintain the more nuanced planning permission route for more complex sites where it is appropriate;

¹⁶¹ This is essentially an extension (with more constraints) of the Government's new Permission in Principle regime.

¹⁶² It is worth stressing that code zones are about certainty of a more limited number of rules. They are importantly different

from a 'no regulation' zone. For the difficulties of these within the current model see Shelter, (2017), *New Civic Housebuilding*, pp. 28-29. There are also some similarities between this proposal and Shelter's proposed New Home Zones. In practice, we could see them working together.

- a. **Not regulating what you don't regulate.** It would not normally be possible for Local Planning Authorities to object to design or other elements not covered within the fast-track building permit routes. For example, although it would probably be considered appropriate to regulate the minimum size of a home built under the building permit approach, we would suggest it would not be necessary to regulate current room sizes as happens at present;
- b. **Still possible to innovate.** If developers or landowners want to build higher density, higher or more innovative designs with different materials or fenestration patterns then they need to apply for planning permission as at present. This would expose them to similar up-front costs and risks as now. In this way, innovation and change are still permitted with a similar level of scrutiny as at present. This would be relevant on larger or more complex sites;
- c. **Impossible to reduce betterment payments or affordable housing within the building permit regime though some exceptional scope within planning permission.** It would categorically not be possible for developers to change their fixed 'new CIL' payment within the building permit regime. There would need to be a mechanism to permit variance within the continuing planning permission regime. However this process should be difficult and exceptional with a very strong expectation that variance is not possible in any normal scenario;

Flexibility of use but with minimum standards

- Change of use applications in most circumstances should be part of the new building permit regime or permitted development not a full planning application. As far as possible changes would not require consent. Building permit change of use would have a small number of minimum standards (for example on minimum home size) but would not need full planning permission as long as no changes were made to the exterior;¹⁶³

4. Valuing planning and supporting skills, process and technology

Investing in digital planning, planners' skills and planners' careers

- The need for more resources and more skills in planning has been a consistent criticism of the current situation—and emerged strongly in our professionals' survey. Part of this is due to the inefficient development-control-led approach we take in this country. However, it also reflects falling budgets since 2010. Budgets will be necessarily limited but the government should aim to restore pride in the crucial role that planners perform, supporting the digitising of data entry and processing, planners' urban design skills and their confidence and knowledge of techniques of visual preference surveys and wellbeing studies. (There are some incredibly impressive and expert public sector planners in Britain. Many have deep knowledge of where people flourish, what they like and why. Sadly, others are less impressive). The direct planning vision we are sketching here is intended to liberate public sector planners to perform their role more effectively and with support that is more popular. Their importance, expertise and status should be celebrated and invested in as far as possible;

The need for more resources and more skills in planning has been a consistent criticism of the current situation

¹⁶³ There would be exceptions for noxious or land uses that are would require full planning permission or are not possible.

There remains scope materially to improve the efficiency and effectiveness of development control for both residual planning and fast-tracked building

Giving planners greater enforcement powers and greater sanctions

- Without a system of detailed pre-development planning permission and with only post-construction verification in some cases, the danger of some people exploiting the system risks increasing. To help manage this, the enforcement sanctions available when people clearly break building permit rules should be far greater. The flip side of liberalising supply within an acceptable carapace must be that the parameters of that carapace are adequately policed with robust sanctions. People are much freer to build but within certain constraints that help the town and city function for everyone. More work is required to see how to give sharper teeth to this new proposed system;

Streamlining the planning process

- There remains scope materially to improve the efficiency and effectiveness of development control for both the residual planning applications as well as for the new fast-tracked building permits. Important opportunities include;
 - a. **Strictly limiting the length of planning (and building permit) applications.** Outline planning permission was initially created to provide a light-touch way of achieving more certainty but has ended up becoming a complex process in itself with needlessly long and verbose applications;
 - b. **Digitising data-entry and revolutionising the ability of Local Planning Authorities to automate the processing** of new building permits and components of planning permission. Planning department budgets have been reduced over the last decade by up to 50 per cent. Budgets will necessarily be limited but central government needs to work hard on how it can help planning authorities digitise their data entry and transform their processing of spatial and design information;¹⁶⁴

5. Permitting the gentle and popular intensification of our streets

- One possible variant of fast-track building permits is worth describing in more detail due to its important potential to increase housing supply. Until the early twentieth century and the imposition of regulations mandating suburban house forms, cities have become denser as they develop. Direct Planning should (up to a point) re-start this process by permitting one or more of;
 - a. **Step-up building permits:** as of right, building-permit mandated single storey extensions with form-based pattern books by different types of building (by age, design, materials etc.). Again, these should be worked up via polling and focus groups, with different variants for different regions, as set by local residents not just by design professionals;
 - b. **Step-up suburbs.** As suggested by Ben Derbyshire (President of RIBA) a more radical version of the same suggestion would be to sanction Permitted Development (or new building permits) from two storey suburban housing, to medium-density terraced developments, plot by plot, on a pre-approved design code (again worked up via polling and focus groups). This might include translating suburban (say) semi-detached homes into pre-approved (a) terraced homes, or (b) low to medium rise flats;¹⁶⁵

¹⁶⁴ The work of Future Cities Catapult is important in this context.

¹⁶⁵ This has been termed 'Supurbia.' See www.hta.co.uk/projects/supurbia and www.supurbia.info/. Analysis based

on 2015 values made by Savills for the Supurbia project estimated that permitting the evolution of semi-detached houses into supurbia would generate around £5m of additional value per hectare and represent a 60 per cent margin for owner occupiers.

- c. **Localism step-up.** As suggested by London YIMBY, another variant would be to create the localist mechanism to let individual streets decide to give themselves individual rights to heighten or replace existing buildings—perhaps selecting from a pre-approved list, worked up by central or local government, or (slower) working up their own. This would allow streets to choose to 'opt-in' to a value-enhancing building permit framework;

6. Getting more from public land

Public sector bodies

- Help public sector bodies play a more active role in land assembly when necessary by strengthening compulsory purchase orders and making it easier to buy land at existing use value plus a pre-set premium. This would require changes to the 1961 Land Compensation Act, to exclude compensation for prospective planning permission. One suggested compromise might be to pay landowners existing use value plus 50 per cent of the expected uplift.¹⁶⁶ This in turn might support some careful investment in the digitisation of the planning process;

The role of public land

- Although not strictly a matter of planning, the role of public land in ensuring housing supply is likely to continue to be crucial over the next 15 years. This is the only place where you can dodge the 'land price bullet' and get building. The state should continue to release land for development via JVs as well as through outright sale.

We have written case studies on some of the best large-scale developments, developments that somehow seem to 'square the circle' and achieve both higher value, higher density and higher levels of affordable housing.¹⁶⁷ One response to these is that such high quality development is only possible when the landowner takes a very long-term view of value. In our current system, this is a very fair point. It is easier at present to build great places if you own the land at an eighteenth century book value.

However, this cannot be right. By creating a simpler, more popular, differently ambitious but more predictable planning system, Direct Planning should make it both easier and more necessary for landowners and developers to build more good homes in better places for residents and neighbours. Ultimately, we should be zoning for development, not allocating individual sites. We should be pre-coding for popular house types that can be built purely with building permission so that we can make good the historic shortfall of homes, to buy, to rent and to rent at below market values. If we did this, we would not just make planning more proportionate, predictable and equitable. We would also increase citizens' prosperity and choice. One day we might not even need top-down housing targets at all.

Ultimately, we should be zoning for development, not allocating individual sites.

¹⁶⁶ Aubrey, T (2017), *Boosting Britain's Housing Stock*. Philp, C (2017), *Homes for everyone*, p.26

¹⁶⁷ Boys Smith & Toms (2018), *A place to call home* describes the development of the Nansledan urban extension to Newquay.

APPENDIX ONE: THE LONG HISTORY OF BRITISH LAND USE REGULATION

'The thing that hath been, it is that which shall be; and that which is done is that which shall be done: and there is no new thing under the sun'

Ecclesiastes 1.9

Far too many political commentators assume that state intervention in land use decisions 'started' with the 1947 Town and Country Planning Act, and is mainly about the green belt preventing urban expansion. Historians of 'planning' cast their line a little further out and normally tell a tale of government starting to intervene in town 'planning' during the nineteenth century in response to the appalling and increasingly polluted and insanitary conditions of growing Victorian industrial towns clogged up by soot and smog—as well as the pressure for change from below that this created. They are both wrong or, at best, recklessly incomplete perspectives.

For as long as there has been government, it has sought to minimise disputes between its people. And buildings and property are amongst the most consistently contentious issues, particularly with the risk of fire spreading from one building to another. Government intervention in urban land use decisions is therefore as old as cities. The Romans did it. And there is evidence of English governments doing it probably in Anglo-Saxon towns and very certainly in medieval and early modern towns. This profoundly changes the question from *should* government regulate land use and urban form to *how* do we do so as efficiently and effectively as possible.

What actually happened in response to growing cities, overcrowding, pollution and political agitation in Victorian and Edwardian Britain was categorically *not* the creation of state-influence over development decisions. That was age old. However, it was extended and the idea and then the practice developed that the state should directly finance housing for the poor. Finally, in 1947 and almost uniquely in the West, Britain moved away from

regulating what could be built (i.e. setting clear rules for what could be built) to *nationalising* development rights (i.e. vesting in the state the right to develop and only granting it to individuals on a case by case basis). This was a system that had (in a very different and more corrupt fashion) been attempted, and then abandoned, in and near London in the early seventeenth century. Other countries, with both common law and more European legal systems, take what is often referred to as a more 'zoning' approach where what is permissible is more predictable with fewer discretionary powers.¹⁶⁸

It is worth briefly setting out the long history of British 'planning' and building regulations and some of its drivers to make the point.

Building regulations in ancient and medieval England (100AD to 1580)

Under Roman rule, British towns generally appear to have been subject to the same laws and practices as the rest of the Empire. Roman regulations generally consisted of detailed specifications, including details of building procedures, how stones were to be laid and wall thickness.¹⁶⁹ There is also evidence of land use regulation in Anglo-Saxon England, with rectilinear planning of sites and apparent regulation of distances between buildings in towns such as Winchester, Hereford and pre-conquest Canterbury.¹⁷⁰ Later new towns such as Stratford-upon-Avon and New Sarum (Salisbury) were clearly 'planned' with the setting out of street grids and specific plots for shops and houses. Most other new towns, however, were not planned in detail, though their boundaries were clearly set. Medieval England was astonishingly ambitious in the creation of new towns: 'particularly in the twelfth and thirteenth centuries, landowners were founding towns all over England.' 60 new towns (or boroughs) were created in Devon alone. In most cases however:

168 America and New Zealand take this more 'regulated' approach.

169 S. Kubba, (2003) *Space Planning For Commercial And Residential Interiors*, p.297

170 For examples, see Biddle M. Towns in Wilson, D. M. (Ed.). (1976). *The Archaeology of Anglo-Saxon England*, pp. 253-81.

'most landlords...made no attempt to lay out their new towns. They gave them charters, sometimes supplied building materials, offered low rents and other inducements, but they were content to let the town grow—if it were to grow—as it liked within the prescribed area. And when that area was satisfactorily filled, they were prepared to extend the boundaries of the borough by granting more land for building.'¹⁷¹

Building regulation, rather than spatial planning, does, however, seem to have been quite common. The first extant regulation is from London in 1189. Henry Fitz-Elwyne's Assize of Buildings granted individuals the right to have construction halted until the Mayor could rule on a dispute. It included regulations with specific numerical requirements, such as:

'When two neighbours shall have agreed to build between themselves a wall of stone, each shall give a foot and a half of land, and so they shall construct, at their joint cost, a stone wall three feet thick and sixteen feet in height.'¹⁷²

In 1212 thatched rooves were banned in London and old buildings obliged to re-roof themselves with 'tiles shingles, boards or...lead' under pain of being pulled down.¹⁷³ Regulations of 1276 and 1466 set the minimum ground floor storey heights when adjacent to a street.¹⁷⁴ Many legal disputes in medieval England involved argument over whether different landowners were (or were not) in contravention of specific rules (or common law custom) about what they could or could not build. In 1302, Thomas Bat was 'hailed before the Mayor on a charge of neglecting to put tiles instead of thatch on his houses.'¹⁷⁵ And, in a surviving late fourteenth century legal case, the plaintiffs argued that a chimney should have been built of 'plaster and stone, as the custom of the City requires.'¹⁷⁶

Other towns and cities adopted comparable building controls to maintain the streets or prevent fire though it

is not clear how many, as records are very incomplete. Bristol banned houses that encroached into the street by the late fourteenth century. Salisbury banned thatched rooves in 1431.¹⁷⁷ And in 1467 Worcester banned both thatch and timber chimneys.¹⁷⁸

Nor were constraints on a landowner's rights constrained to towns and cities. The tradition of common land and of the age-old rights of peasants to pasture animals on open fields were powerful and, according to the seminal history of the English countryside, 'jealously safeguarded and preserved.' Certainly, the Tudor state actively intervened to prevent the 'enclosure' of common land. Landowners were forced to pull down hedges and restore lands to common use. Licences were required in law to enclose land.¹⁷⁹

Planning 1.0: London's Elizabethan green belt and the first attempt to nationalise development rights (1580 to 1666)

Though it may seem surprising, late sixteenth and seventeenth century London had a green belt and attempted to regulate building in a comparable way to modern Britain. The London of Elizabeth I and James I, of Globe and gunpowder plot, of Civil War, Cromwell and Commonwealth may have had little in common with the modern city. However, like today's capital, it was not allowed to grow.

The late Tudor city was growing. The response was not to let it but to try to stop it. From 1580 until 1661, City of London authorities attempted not just to regulate what was built but also where it was built. Under pressure from London's Mayor and Alderman, four successive monarchs and the Parliamentary Commonwealth all attempted to prevent building beyond the city limits. At least three Acts of Parliament, nine Royal Proclamations and innumerable Orders in Star Chamber and letters to and from the Privy Council attempted to ban the construction of new building within one, two, three or five miles of the City Gates and of Westminster (details changed over time), other than

171 W. Hoskins, (1976), *The making of the English landscape*, pp. 111-3, pp.274-6.

172 P. Meadows, (ed.) *A Source Book of London history from the Earliest Times to 1800*. pp. 19-21.

173 <http://users.trytel.com/~tristan/towns/florilegium/community/cmfabr08.html>

174 'The Construction of Medieval and Tudor Houses in London', *Construction History*, Vol. 7, 1991

175 C. Knowles & P. Pitt, *The History of Building Regulations in London*, 1972. Many cases survive between 1301 to 1431.

176 A. Saint & G. Darley (1994) *The Chronicles of London*, p. 32. Masons and carpenters gave evidence to the courts in many cases records survive between 1301 and 1431. www.buildinghistory.org/regulations.shtml

177 E. Crittal (1962) *Salisbury City Government before 1612*. Available from www.british-history.ac.uk/vch/wilts/vol6/pp94-100

178 www.buildinghistory.org/regulations.shtml

179 W. Hoskins, (1976), *The making of the English landscape*, p.142, pp.148-9, p.164.

on existing foundations.¹⁸⁰ From 1608, no new building or rebuilding was possible without a licence under pain of imprisonment and demolition. As one historian put it, 'modern planning regulations seem puny by comparison.'¹⁸¹ Under Cromwell, any new home built within ten miles of London required four acres of land with it.

These attempts to prevent the city's growth were certainly not fully effective. But it was not for want of trying. The Courts of Alderman and of the Star Chamber seem to have been active in prosecuting illegal building. Many illegal new buildings were certainly pulled down. And in 1615 a commission was established to monitor new buildings and prevent construction within the prescribed zone. Over time, the ban seems to have evolved into a modestly more controlled system where government demanded returns of new houses to be submitted and where some building was permitted under licence and on payment of a fine. In short, around London at least, the state was not just regulating what could be built, but had nationalised a landowner's right to build. (Landowners could not build without case-by-case permission).

Motivations for this Elizabethan green belt were complex. They certainly included the City authorities' desire to maintain control, but also a dislike of immigrants to the city, a desire for 'the preservacon of the healthe of the Cittie' and a dislike of 'the desire of Profitte' of 'covertous Buylers.'¹⁸² If these motivations seem very familiar in the modern debate about housing so do some of the consequences. Fearful that new buildings might be pulled down, development seems to have been of lower quality. The historian of the growth of Stuart London and its regulations concluded:

'The various restrictions on building tended to produce the very evils they were presumably intended to prevent or cure. Only the cheapest houses were erected as there was a risk of their

being pulled down for a breach of the building rules, and these were put as far as possible out of the way...Another result was cheap additions with big cellars underneath.'¹⁸³

Big cellars in London due to high prices and regulation: history never quite repeats itself, but it can rhyme. One of London's great seventeenth century developers, Nicholas Barbon, also concluded that building restrictions had encouraged emigration to the new world.¹⁸⁴ Perhaps America owes some of its origins to the Elizabethan and early Stuart green belt?

Some other cities witnessed similar concerns at uncontrolled expansion. However, we have not been able to find evidence of any other fully-fledged Tudor or Stuart green belts. For example, in 1606 the University of Oxford attempted to secure an Act of Parliament to remove recently built cottages. They did not succeed although some cottages were demolished.¹⁸⁵ In the eighteenth century the freemen of Nottingham were more successful in using historic common land to block their town's extension—a sort of common land green belt. The consequences were high prices, overcrowding and 'some of the worst slums of any town in England.'¹⁸⁶ Sometimes glebe land could have similar consequences of preventing development. Under Acts of 1571 and 1572, glebe land could only be let for a maximum of forty years. This dissuaded builders from taking on these plots.¹⁸⁷

Throughout the Elizabethan and early Stuart period, the need to control what could be built so as to attempt to manage fire risk and sanitation continued even if, in London, it was overshadowed by the attempt to constrain the city's growth. For example, Charles II's 1625 proclamation did not just demand no building within three miles of London. It also reissued regulations for brickwork in walls and window frames, for wall thickness, against jetties and on standardising brick making.¹⁸⁸

180 N. Brett-James (1935), *The Growth of Stuart London*, pp. 67-106, pp.296-311.

181 S. Jenkins (1975), *Landlords to London*, p. 150.

182 The quotations are from a tract published in James I's reign. N. Brett-James (1935), *The Growth of Stuart London*, p.98.

183 N. Brett-James (1935), *The Growth of Stuart London*, p.94.

184 N. Brett-James (1935), *The Growth of Stuart London*, p.124.

185 A. Crossley & C. R. Elrington (1979), *A history of the county of Oxford*, vol.4. Available at www.british-history.ac.uk/vch/oxon/vol4/pp74-180

186 C. Chalkin (1974), *The Provincial Towns of Georgian England*, p.121. 'Land prices were high be midland standards' with the median price between 1786 and 1994 being about 5 shillings per square yard as opposed to about 2 shillings in Wolverhampton. Also see W. Hoskins (1976), *The making of the English landscape*, pp.280-6.

187 C.W. Chalkli, (1974) *The provincial Towns of Georgian England: A study of the building process* pp.70-72

188 N. Brett-James (1935), *The Growth of Stuart London*, p.105.

It is hard to be conclusive about building regulations elsewhere. However, they seem to have been less comprehensive than those in London—perhaps not surprising given the high cost, for example, of a private Act of Parliament. But they certainly continued to exist. Calais (under the English crown until 1558) had a 1548 Paving Act, which banned the use of thatch and insisted on slate or tiles for roofs.¹⁸⁹ And there were certainly very many other local rules or practices which (as in the Middle Ages) continued to do likewise. For example, from the early sixteenth century, Oxford city and university authorities made by-laws and stipulations in leases discouraging thatch or chimneys not made of brick or stone.¹⁹⁰

After the Great Fire: abandoning Planning 1.0 and moving from a 'green belt-first' policy back to a 'buildings-first' policy in Georgian London (1667 to 1830)

After the 1666 Great Fire of London, there was a sea change. The authorities abandoned their attempt to constrain growth and focused instead on quality control. As the principal historian of London's seventeenth century growth concluded, 'the general attitude of the authorities towards building had manifestly changed, and regulation rather than prohibition was more general.'¹⁹¹

The crucial step was the 1667 Rebuilding of London Act. This remarkable piece of legislation brought together, systematised and improved on at least four hundred years of edicts, City regulation and common law. It did not control the *right* to build. However, it did constrain *what* could be built. It dictated not just material (brick and tiles) but also set the height and types of buildings based on the width and nature of the road. The Act also determined the development of façade design and decoration by setting only four types of building that could be built and where they could be built: 'fronting by-streets and lanes...fronting streets and lanes of note

and the Thames...fronting high and principal streets... [and for] persons of extra-ordinary quality not fronting either of the three former ways.' Storey heights, wall width and number of storeys were all set.¹⁹² Surveyors were appointed to ensure that the rules were followed. Crucially, the Act contained no prohibition on building beyond London. A few further attempts were made to constrain building beyond the City boundaries (for example in 1671, 1677 and 1709) but they could not win Parliamentary support. The desire for exemptions and support for the quality of the extended city being built was too strong.¹⁹³

The 1667 Act arguably set the direction of building regulations for the next 250 years. It only applied to the City of London. However, a further series of London Building Acts extended that to Westminster (in 1707 and 1709) and then to the entire now rapidly growing city (in 1774). These Acts also enhanced protection against fire with increasingly strict rules against exposed timbers in box sashes and introduced rules on bow windows, shop windows and doorways. In turn, a series of builders and developers published standard plans for houses that were compliant with legislation. To look at them now is to look at London. And they are very easily dated as they adapted to evolving legislation.¹⁹⁴ Most houses in London for nearly 200 years were built to fairly standard patterns taken straight from books.¹⁹⁵ The Georgian and Victorian city looks like it does not just due to 'fashion' but because statute said what it could look like.

London landowners were keen to take advantage of the legislation by laying out patterns of blocks, streets and squares, which did not just meet but went beyond the statutory minimums. Without deep debt and credit markets, rather than develop homes themselves, landowners leased out smaller or greater numbers of homes to smaller builders and developers. They typically

189 Calais Paving Act 1548, 2 & 3, Edward VI c 38

190 As so often, these seem to have been only partly effective. A. Crossley & C. R. Elrington (1979), *A history of the county of Oxford*, vol.4. Available at www.british-history.ac.uk/vch/oxon/vol4/pp74-180

191 N. Brett-James (1935), *The Growth of Stuart London*, p.304.

192 In fact wall width and storey heights were not set for fourth grade houses. D. Cruickshank P. Wyld (1975), *London: the art of Georgian building*, pp.22-24.

193 N. Brett-James (1935), *The Growth of Stuart London*, pp.307-8. S. Jenkins (1975), *Landlords to London*, p. 159.

194 From 1774 windows were obliged to have recessed reveals and, still today, it is easy to date houses built before and after this legislation.

195 Of course compliance was not universal. There are instances, for example, of box sashes built after 1774. D. Cruickshank (1990), *Life in the Georgian City*, pp. 101-2.

insisted on similar facade and materials via covenants and contract which also directly invoked the Building Acts.¹⁹⁶ This worked well for the estates in west London that were able to attract richer tenants. It worked less well in south and east London.¹⁹⁷ In short, where they could, developing London landowners were extending the environmental control made possible by law.

Town planning and building regulation in other cities (1667 to 1830)

This pattern of quite strict building control to prevent fire and maintain elegance spread increasingly, though imperfectly, across the kingdom. Where it did not, as in London, developing landowners could be very willing to meet the deficit by setting down what could and could not be built by covenant as they leased plots to individual builders.

Similarly, after 1660 the government ceased opposing the enclosure by private landlords of historic common land as it had been doing since the 1520s. This had far-reaching consequences for land use patterns and farming practices:

'[The government's] efforts had, it is true, been largely ineffectual, but down to 1640 they had acted as a break on wholesale agrarian change. The new government of landlords at the Restoration was of a different mind, and all over open-field England parishes were transformed from a medieval to a modern landscape.'¹⁹⁸

In towns conflagration was often the primary catalyst for legislation. For example, the 1694 Act for the Rebuilding of the town of Warwick followed a fire two months earlier and did not just permit street widening. It also set precise building rules for what could and could not be built, particularly on public facades.

'Houses were to be of brick or stone and roofed with tile or slate; two stories were to be the general rule, though three could be allowed,

and the height of each was specified. Party walls were to be of uniform thickness, brickwork between adjoining houses was to be bonded together so that no straight joints would appear, timber framing and thatch were forbidden.'¹⁹⁹

As in London, the commissioners appear to have been fairly rigorous in insisting upon the regulations with, for example, some owners being forced to dismantle dormer windows that did not comply. Rear elevations, by contrast, were much less regulated.

Similarly, in Edinburgh after a series of fires, an Act of the City Council in 1674 gave the Guild Court the authority to enforce new building regulations and restricted buildings to five storeys. This was ratified by an Act of the Scottish Parliament in 1698. Further building controls were introduced in 1767 with stricter ones in 1782 and 1785.²⁰⁰ Bristol passed Building Acts starting from 1778. One historian has concluded that 'by the 18th century some kind of building control had been established in many British cities.'²⁰¹

Of course, there were many important nuances and variety. Most towns do not seem to have been covered by Parliamentary Statute. However, there were local stipulations and ground landlords increasingly (though not always) used strict covenants to control what was built.²⁰² The Corporation of Liverpool, for example, considered every application for a granting of land from the 1740s onwards. There was much negotiation on the width of roads. From the 1780s and 1790s, the Corporation began proactively setting out the layout of parts of its estates. At the same time, the Corporation took more of an interest in the buildings. It appointed a General Surveyor in 1786. He was expected to 'set out the buildings according to the exact dimensions expressed in the lease', and to inspect the designs, ensuring they were compliant.²⁰³ These varied, and could include both specifications about the building itself but also requirements to carry out work on local infrastructure, such as the provision of sewers or paving.

196 D. Cruickshank (1990), *Life in the Georgian City*, p. 102.

197 D. Olsen (1964), *Town Planning in London*.

198 W. Hoskins, (1976), *The making of the English landscape*, p.153.

199 W.B. Stephens (ed.), (1969), *The borough of Warwick*. Available online at <http://www.british-history.ac.uk/vch/warks/vol8/pp427-434>

200 A. Morris (1979) *History of Urban Form Before the Industrial Revolution* pp.274-90.

201 <http://www.buildinghistory.org/regulations.shtml>

202 M. Girouard (1990), *The English Town*, p. 124. The range of landowners' approaches from the very activist as with the great estates in London to very laissez fair come through very clearly in a Christopher Chalkin's study of development in Bath, Birmingham, Manchester Liverpool Nottingham, Portsea and Hull. C. Chalkin (1974), *The Provincial Towns of Georgian England*.

203 C.W. Chalkli, (1974) *The provincial Towns of Georgian England: A study of the building process* pp. 98-110.

The Corporation began requiring bonds from lessees to ensure compliance. They also sometimes insisted that houses were built according to sketches drawn by the Corporation or according to 'fixed elevations'. However, in other backstreets, there were fewer constraints.²⁰⁴ Elsewhere (for example the Brunswick Square Act of 1830) legislation sometimes helped with the enforcement of covenants, which intended to maintain urban and building quality.²⁰⁵

However, eighteenth and early nineteenth century development was a little less *laissez faire* than this might imply. Set against this relative freedom of the landowner with respect to the state, it is crucial to understand that landowners were very often constrained by legal arrangements historically preventing the sale or division of a property. Entails often constrained the inheritance of estates to certain heirs over many generations. (Think of Mr Bennet not being about to leave his Longbourne estate to any of his five daughters in Jane Austen's *Pride in Prejudice*). To 'break the entail' landowners used Parliament to secure 'Private Acts.' This resulted in many acts being passed (over 700 between 1800 and 1850) and the practice continued up to 1882, when the Settled Land Act gave landowners greater freedom.²⁰⁶ However, this was expensive, costing around £150-£300. For larger developments this was affordable. For smaller properties, the cost of such a bill could be prohibitive, often delaying development for decades.²⁰⁷

Increasingly throughout the eighteenth and early nineteenth centuries, town and city corporations also made use of private acts of parliament to permit strategic improvements to their cities, normally by permitting compulsory purchase to allow the creation of new streets (often linked to new bridges) or to widen existing ones. Frome, Bristol, Shrewsbury, Worcester, Taunton, Newcastle, Liverpool, Bath, Brighton and Huddersfield were among the many examples.²⁰⁸

Victorian towns and cities: from local to national building regulations and building the 'byelaw terraces' (1830 to 1900)

Despite the spread of Building Acts and local acts, building regulation was still a patchwork by the early nineteenth century, with a mixture of legislation, covenant and common practice very imperfectly controlling the quality of what was built, and (crucially) the living conditions of those housed in what already existed. There can be no doubt that for the poor and the working classes, the living conditions permitted by the amalgam of societal wealth, housing, health and Poor Law administration remained 'pitifully inadequate'—as London's 1830s Commissions of Enquiry were to reveal. As the industrial revolution created mass urban employment in mills and docks, a rapidly growing population came to live in towns. They needed to be able to walk to work every day. By 1851, more than half the country lived in increasingly large and polluted towns and cities—many of them in homes built beyond the boundaries of existing building regulations or away from the eyes of their over-stretched supervisors. Many were in so-called courts, built on the gardens and backyards of existing houses and often approached by an archway penetrating the parent house.

Conditions were not always as bad as this. Some historians have judged that the houses occupied by working class families in these rapidly growing cities, 'were probably no worse, taken individually, than the country dwellings they had originally inhabited.' However, what certainly had changed was the sheer scale of towns with all the concomitant consequences: 'as long as each house was detached, refuse, liquid and solid could easily be disposed of....But now the density and sheer size of the new working class districts made refuse disposal almost impossible: open sewers ran along the roads, every available corner was piled high with rubbish.'²¹⁰

204 C.W. Chalkli, (1974) *The provincial Towns of Georgian England: A study of the building process* pp. 98-110.

205 S. Muthesius (1982), *The English Terraced House*, p.34.

206 UK Parliament *Great Estates and Private Acts* from <https://www.parliament.uk/about/living-heritage/transformingsociety/towncountry/landscape/overview/great-estates/>

207 C.W. Chalkli, (1974) *The provincial Towns of Georgian England: A study of the building process* pp.70-72.

208 M. Girouard (1990), *The English Town*, pp. 171-88.

209 S. Jenkins (1975), *Landlords to London*, p. 168.

210 Benevol, L. (1967), *The origins of modern planning*, pp. 21-3.

Insanitary conditions and frequent over-crowding led not just to misery, but also to cholera. Epidemics in 1831, 1848-9 and 1866 fuelled growing and well-justified concern about the living conditions of the urban poor.²¹¹ A consequent attempt in 1841 to create national building regulations failed. But the 1844 London Building Act extended the 1774 London Building Act to a much wider area (to reflect the growth of London) and introduced new rules intended to improve houses and public health. In addition to updated rules on materials, storey height and wall thickness, minimum-sized backyards were stipulated, alleys were given a minimum width of 20 feet and streets a minimum width either of 40 feet or the highest building in the street—whichever was greater. For the first time builders were required to give the district surveyor two days' notice if they were to construct a new building or alter an existing one.

Over the next 14 years, the spirit behind these rules was extended nationwide. First of all, the 1848 the Public Health Act gave Local Boards of Health the clear right to create byelaws covering building regulations. Then the 1858 Public Health Act suggested more details: minimum street widths of 36 feet, 150 square feet required behind each house and a minimum distance between buildings at the back of 10 feet or 15 feet for two storey buildings. Nearly all major towns issued byelaws according to these two Acts within the decade. The



Court housing in Liverpool (Credit: <http://www.yoliverpool.com>)

1875 Public Health Act further required running water and an internal drainage system in all new homes. And in 1877, the government issued model byelaws (based on the 1875 Act) suggesting more details.

The Public Health Acts probably stand second only to the 1667 Rebuilding of London Act as a seminal point in the history of the regulation of British building standards. By the mid-1880s, nearly all municipalities had issued byelaws. Finally, in 1901 Model Byelaws for Rural Areas were introduced. There is very wide evidence that these laws were strictly enforced. In fact, with less scope for variety than in post 1947 Planning, if anything the rules on urban form were *more* strictly enforced than in modern Britain. Therefore, just as Georgian London is physically readable from the four London Acts from 1667 to 1774, most late nineteenth century 'byelaw' streets or 'byelaw houses' are very predictable from local legislation.²¹² They tend to have long streets of two storey terraces punctuated by cross-streets and 'long back alleys usually only a few feet wide running between the high walls of little yards, the latter each stretching about 10 to 15 feet back from their respective houses.'²¹³ Nearly all are two storeys high without a basement. Differences from town to town in bay width, material or street widths were a matter of variety in local byelaws as well as local economics and available materials.²¹⁴

211 M. Girouard (1990), *The English Town*, pp.259-60.

212 S. Muthesius (1982), *The English Terraced House*, pp.34-36.

213 M. Girouard (1990), *The English Town*, p.260

214 For example Manchester did not demand streets 40 feet wide until 1908. Newcastle did from as early as 1866. M. Girouard (1990), *The English Town*, pp.260-3.

London remained governed by the (slightly different) 1844 London Building Act and then the 1894 Act and so was built to a rather different pattern. Many of these terraces (particularly in northern cities, which saw heavy depopulation from the 1930s, often for 60 years) have been demolished but, unlike the court housing they superseded, they were not slums. The great historian of the English terraced house, Stefan Muthesius, lamented in 1982;

'The mistake made by so many housing reformers of this century was to fail to distinguish between the bad conditions of the crowded dwellings of the earlier nineteenth century, and the better dwellings of the later years. In the case of the later houses it was chiefly an aesthetic dislike of the housing reformers.'²¹⁵

In fact, at the time, mid to late nineteenth century British building regulations were widely admired abroad as 'brief, flexible, lenient, but strict and detailed where it had to be.'²¹⁶ In case all this sounds like an 'inevitable' road to the modern British planning system, it is worth re-stressing that it remained radically different to the post-1947 system. Although increasingly stringent and broadly expected building quality standards were insisted upon, surveyors had no right to refuse developments



Byelaw housing in Manchester (Credit: Jeremy Sutcliffe/Wikicommons)

that met the rules. Building was regulated. But, compliantly conducted, it remained the property owner's right to build. The 1667 Rebuilding of London Act had, conceptually, spread nationwide.

Homes for heroes, council houses and English zoning (1900 to 1939)

Of course, many residents of Britain's towns and cities remained not just desperately poor but reliant on awful and overcrowded housing in teeming and filthy cities. Often this was older, once elegant housing, now abandoned by original tenants and crammed by tenants and sub-tenants desperately trying to make ends meet. Classic examples included the elegant terraces of London's Spitalfields. Built for early eighteenth century Huguenots, by the early twentieth they were crammed with London's poor including many Jews who had fled the pogroms of Tsarist Russia.²¹⁷ The smog and filth of a coal-powered economy did everything it could to make this worse. This led to growing pressure 'from below' for change.

One response to the desperate squalor and over-crowding of the urban poor was for the state to build homes themselves. There was an ancient tradition of charitable delivery of homes for the old and impoverished.²¹⁸ Why not

²¹⁵ S. Muthesius (1982), *The English Terraced House*, p.36.

²¹⁶ S. Muthesius (1982), *The English Terraced House*, p.36.

²¹⁷ D. Cruickshank (2016), *Spitalfields*.

²¹⁸ The oldest almshouse foundation still in existence (in Worcester) was founded in 990. By 1500 there were at least 800 across the country. <https://www.almshouses.org/history-of-almshouses/>

local government? The first 'council houses' were built in Liverpool under an 1864 Act. More were built in Glasgow a few years later.²¹⁹ However, these were the result of city-specific Acts and local initiative. The Housing and Town Planning Act 1909 gave local authorities the power to prepare schemes of new housing. The Town Planning Act 1919, promulgated in the shadow of World War I and with a determination to build 'Homes for Heroes', made the preparation of such schemes obligatory on Boroughs or Urban Districts with a population of more than 20,000. Local Government started to do so and had built many thousands by World War II.

A second response was to abandon the historic filthy cities and start again in lower density 'garden' developments. And the invention first of the train and then the motor car made this much easier to do. Work and accessible income, no longer had to be within walking distance. Human settlements could, so to speak, spread their wings. This approach was initially utopian, often socialist, dreaming of new and better settlements untainted by the grim grime of the present. The mill owner and philanthropist, Robert Owen, conceived of an 'ideal village' and tried to found one, New Harmony, in the United States. It came to nothing. Other thinkers attempted various new model cities along communal or radically alternative lines. Most petered out into normality as the pressures of economics or individual desires asserted themselves.²²⁰ More successful were the workers' villages, picturesque and green, built by philanthropic industrialists away from the filth of Victorian cities. Saltaire (from 1853), Bourneville (from 1878) and Port Sunlight (from 1887) were the best known and most influential. In Bourneville, for example, homes were built at eight to the acre and were surrounded by parks and fruit trees. These were no longer cities but suburbs. But how much better they seemed. One visiting journalist reported that he was 'charmed with the place...I felt how different is the lot of these Cadbury girls compared with many thousands of their enslaved and sweated sisters dragging on a jaded and hopeless existence in our large manufacturing towns and cities.'²²¹

Surely, this should be the future not the coal-smearred Victorian city? And these suburban planned developments encouraged a growing belief that the historic city was outmoded and a confidence that new developments could be designed by philanthropic top-down planners not an amalgam of landowners and builders. There was 'nothing gained by overcrowding.'²²²

Visionaries, such as Ebenezer Howard and Raymond Unwin, as well as the practical work of organisations such as the National Housing Reform Council, helped ensure that the garden city model was to become not just possible but obligatory: 'rather than renewing urban life [they]...would fatally undermine it.'²²³

The Town Planning Act 1919 responded to both themes of more council housing and a suburban development model. It did not just oblige council 'Homes for Heroes.' It also responded to the growing desire for space and air. The Act demanded much more generous space standards as set out in the 1918 Tudor Walters Report—standards that could only really be met on virgin land: terraces of no more than eight houses (which often led to culs-de-sac) and a density of twelve homes per acre.

With associated rapid developments in mass transport, thus began the building of municipal housing estates on town peripheries—'the basic social products of the twentieth century' as Asa Briggs described them.²²⁴ Ironically given the Act's focus on 'town planning', the state's regulation of construction had, critically, moved from being accepting of urbanity to demanding of suburbanity.

The Town and Country Planning Act 1932 introduced the concept of 'Planning Permission' into British legal history.²²⁵ It also extended the powers of local authorities to approve buildings from the towns and cities (where the Public Health Acts had applied) to almost any type of land if there was an approved plan in place. The contemporary view was certainly that it 'considerably extended the powers of local authorities in relation to planning schemes.'²²⁶ However, and crucially, it was much less ambitious for the new 'Planning Permission' than the old Public Health Acts as it

219 G. Towers (2000), *Shelter is not enough*, p.15.

220 L. Benevol, (1967), *The origins of modern planning*, pp. 54-84.

221 Cited in T. Hunt (2004), *Building Jerusalem*, p. 314.

222 The title of an influential pamphlet of 1918 by Raymond Unwin.

223 T. Hunt (2004), *Building Jerusalem*, p.308

224 T. Hunt (2004), *Building Jerusalem*, p.308.

225 J. Cullingworth (1972), *Town and country planning in Britain*, pp. 18-21.

226 The Act was carried over by the National Government from the Labour Government's Rural Amenities Bill.

227 S. Hill (1933), *Town and Country Planning Act, 1932*. Available at <http://journals.sagepub.com/doi/abs/10.1177/146642403305400211?journalCode=rsha>

focused more on use than on detailed form. The Tudor Walters standards were arguably more important in defining what could be built:

'The scheme was in fact a zoning plan: land was zoned for particular uses—residential, industrial and so on. Though provisions could be made for limiting the number of buildings, the space around them. In fact so long as the developer did not try to introduce a non-conforming use he was fairly safe.'²²⁷

By 1937 about half the country was covered by draft planning schemes. But these plans, even at Tudor Walters densities, were not stemming the potential for new homes for the increasingly prosperous and growing population. The plans held sufficient land zoned for housing; it has been calculated, to accommodate 350 million people.²²⁸

Planning 2.0: socialism and common law—the British experiment (1947-today)

Recent historians of 'planning' have presented its rise as a victory of state involvement over 'laissez faire sprawl.' But it is not as simple as that. Suburbs were the creation of many phenomena, mental, economic and

technological; the garden city movement, faster transport, a richer society, the natural human desire for space and the new space standards, which all but banned new urban development.²²⁹

An average 300,000 houses were built every year in the 1920s and 1930s, funded partly by the state, building for heroes in the wake of World War I and then by private developers as mortgage finance became widely available. Four million houses were built and the measurable standard of living of the British people was unquestionable improved.

However, there was a consequence. All these homes needed land. And the much lower density buildings standards from 1918 demanded far more of it than ever before. This led to growing criticism and resistance both from within elite groups but also far beyond. The quintessential English countryside was at risk. Who would save it? The Council for the Protection of Rural England was founded in 1926—with a leading role being played by planners such as Patrick Abercrombie. Buttressed by widespread and growing popular and political support, it quite rapidly achieved its first legislative victory. The Restriction of Ribbon Development Act 1935 permitted Highway Authorities to prevent building within 220 feet of roadsides. Highway Authorities quickly learnt to flex their new muscles and 'ribbon development...was a largely forgotten problem by the onset of the Second World War.'²³⁰

Which was more important? Adequate space for homes or protecting the countryside? Different aims of the emerging planning movement were thus in tension with each other. How could they be resolved?



Bournville showing scale and lack of density
Credit: Chronicle / Alamy Stock Photo

227 J. Cullingworth, (1972) *Town and Country Planning in Britain*, p.21.

228 J. Cullingworth, (1972) *Town and Country Planning in Britain*, p.22.

229 The natural human desire for more space is one of the most consistent findings from all studies of house price elasticity. Boys Smith, Venerandi & Toms, (2016), *Beyond Location*, p.40.

230 P. Waine, O. Hilliam (2016) *22 Ideas that saved the English countryside*, p.56.

As is well known, the experience of World War II pointed to what was seen as the answer. The nation had planned and managed the war. It could plan and manage the peace.

Thomas Sharp's 1940 Pelican on *Town Planning* had been 'devoured by 250,000 readers enthused by the idea that planning would not only preserve "our physical environment", it would also "save and fulfil democracy itself."' When Churchill had mocked his cabinet's enthusiasm for planning, he seemed very out of step both with the mental mood of the times but also with its suburban consequences: 'give me the eighteenth century alley where the harlot plies her trade and none of this new-fangled planning doctrine' he is supposed to have complained. Harold Macmillan caught the spirit of the times far more easily; 'planning has come to stay... There is general acceptance that in so small an island one cannot allow the complete freedom which might have been possible in more primitive days.'²³¹

Development, where people should live and where they should work was no longer to be broadly set in the 1932 zoning but more minutely managed at the point of application and delivered by the state. The Town and Country Planning Act 1947 established a system with three key components:

- The nationalisation of development rights;
- The creation of a series of local Development Plans to guide development and land use (including permitting land to be safeguarded as Green Belts); and
- The submission at the point of development of all development to a discretionary planning permission process guided by these development plans as well as by more precise building standards.

The nationalisation of developments was effected by a 100 percent 'Betterment Levy' charged on any rise in land value consequent on private developments. In addition, the public sector was intended to play a key

'master developer' role. The regional plans were intended to form a key part of the national direction of the economy. This national economic direction had several spatial and planning elements including encouraging people to move to the north and preventing 1930s style ribbon development via green belts and new towns.²³² Specifically in cities, planners intended to reduce densities, create new open spaces, segregate different zones for living or working, and improve the circulation of traffic. To their credit, 1940s planners did not hide the extent of their ambitions. One contributor to a 1944 conference on planning explained:

'Planning means control. You have got to put people out, tell them where to live and if someone wants to build a factory, you have got to tell them "nothing doing in Tottenham. You must build a factory in so-and-so"... Russia, Germany and Italy all had planned systems.'²³³

In reality, the post-war state simply had insufficient resources to monopolise all development. The Betterment Levy was abolished in the 1950s. And while social housing built immediately after the Second World War was generally of a high standard (mainly cottage estates on streets with small gardens), architectural fashion and the understandable political pressure to build as many homes as possible soon started badly to undermine quality.²³⁴

From the late 1960s onwards, criticism of the post-war estates and anti-urban master planning created by modernists (often but not always local government design departments) grew louder.²³⁵ Modernist architects lost confidence. And from the late 1970s onwards, the state began to withdraw from leading development and design. Public sector designers retired and were not replaced. In addition, there was a profound public and professional reaction against the post-war modernist developments typified by the 'towers in the park' approach to design. (Although such developments are trendy again with many millennial designers they remain associated with

231 P. Waite, O. Hilliam (2016) *22 Ideas that saved the English countryside*, pp.77-9.

232 The 1947 Act permitted local authorities to designate land as Green Belt without having to buy it as had already been possible around London since the 1938 Green Belt (London and Home Counties) Act. In reality designation of Green Belt did not 'take off' until Duncan Sandys' circular of 1955.

233 Cited in A. Evans & M. Hartwich (2005), *Unaffordable Housing*, p. 13.

234 Architectural fashion (Le Corbusier of course but also home grown architects such as Alison and Peter Smithson) proclaimed the possibility of rebuilding cities as 'streets in the sky.' And the Conservative 1956 Housing Subsidy Act subsidised them. Flats of four, five and six storeys obtained much larger government

subsidies. And above six storeys the subsidy rose by a fixed amount for each additional floor. A flat on a four storey block received £20, a flat in a six storey block received £38, 2.3 times the subsidy paid on a house. Increasing by £1.15 each floor this multiple over a normal house rose to 3 for a flat at fifteen storeys and 3.4 for one at twenty storeys. Dunleavy, P. (1981), *The Politics of mass housing in Britain*, p. 37.

235 The 'high-tide' of criticism was probably Coleman (1985), *Utopia on Trial*. This has been criticised by many housing campaigners although its principal findings are borne out by more exhaustive recent research. See Boys Smith, Venerandi, Toms (2017), *Beyond Location*.

lower property values and higher levels of deprivation than more traditional urban settlement patterns).²³⁶ In 1980, Circular 22/80 appears to have reduced the ability of planning authorities to turn down applications on grounds of design.²³⁷

During the 1980s the role of the local plan receded with policy statements such as the 1985 'Lifting the Burden' which downgraded the development plan 'to one, but only one of the material considerations that must be taken into account in dealing with planning applications.' This led to a record level of successful appeals against local plan policy. This nadir in the effectiveness of the development plan produced a political backlash. Just as in the 1930s, the public kicked back against over-development. This in turn led to the Planning and Compensation Act 1991, which re-asserted the role of the local plan. This required that a local authority's development plan be a 'significant factor' in what might be permitted. By the mid-1990s, the number of appeals had halved.²³⁸

In short, by 1997 and after 18 years of market-based reforms, the development control system remained arguably the most significant commanding height of the economy still demonstrably within the government's control—even if unpredictably so. However, with the concomitant withdrawal of the state from public building, pressures of under-supply of housing and development began to grow. In 1999, an influential report by the McKinsey Global Institute argued that planning constraints were one of the most important brakes on British economic growth.²³⁹ Although in 2005 the Government's Planning Policy Statement 1 continued to stress the importance of the local plan, governments of all political hues have increasingly worried about the supply of new housing. The 2012 National Planning Policy Framework (NPPF) asserted a powerful policy presumption in favour of development. Failure to demonstrate delivery of housing can render a Local Plan out of date. Up to half of appeals against local decisions are now overturned on appeal.²⁴⁰ What can be built, and where, is arguably less clear than at any time during the last 100 years.

Conclusion

The aim of this historical survey is not to argue that we should regulate our towns and cities as if it were 1667, 1858, 1875 or 1947—the dates of, arguably, the most important statutes. That would be silly. But it is to show that the profound regulation of our towns and cities is nothing new and has been incredibly important in what we build and where. We have banned thatch, required bricks and regulated street widths for many hundreds of years. We have encouraged density, banned it and then encouraged it again. Some rules were effectively implemented. Others were not. Some permitted the growth of towns and the provision of adequate housing levels. Others have found that harder. From an historical perspective, the modern British planning system is curiously unclear and unpredictable, not just denying landowners development rights without formal consent, but also making it (in historical terms) unclear to neighbours what will be permitted. The question is not *should* government regulate land use and urban form but *how* do we do so efficiently and effectively, fairly and proportionately. The lesson must surely be that the better way to do that is to control on quality while being more liberal on the right to build, rather than the approach we currently take which has little control on quality but is very restricting on the right to build.

236 Boys Smith, Venerandi, Toms (2017), *Beyond Location*.

237 Thomley, (1991), *Urban Planning under Thatcherism*, chapter 7. Thank you to Richard Blyth of the RTPI for bringing this to our attention.

238 TCPA, *Raynsford Review of Planning, Provocation Paper 1* (2017).

239 McKinsey Global Institute, *Driving Productivity and Growth in the UK economy* (1999).

APPENDIX TWO: POWER AND PRACTICE IN PLANNING. WHO MAKES DECISIONS AND WHY?

Who has power? Our survey of views on the British planning system

During summer 2018, Create Streets conducted an online survey of 168 development professionals and interested members of the public into the planning, design and development process in modern Britain.²⁴¹ The survey was split into two parts—for professionals and for interested members of the public. We were primarily trying to understand:

- How much influence different participants felt they had in the development and planning process;
- Who they thought *did* have influence on the process;
- What they felt should be the aims of planning system; and
- What were the main barriers to delivery of sufficient housing?

For professionals, we were also seeking to understand their comprehension of the degree to which the English planning system is internationally peculiar. We cannot claim that our survey is confidently representative. However, surveys we have run on design via social media have replicated formal polling reasonably accurately, so we hope that it is usefully indicative.²⁴² It also highlighted clear differences in views between investors and developers on one hand and local authority officers on the other. One clear result of our indicative survey was a lack of consensus on what planning is for or who gets to influence it.

Professionals' survey. Of the 58 professionals filling in the survey, the main groups were:

- Planning consultants—19 per cent;
- Developers or their development advisors—18 per cent
- Local authority officers—16 per cent;²⁴³

- Architects, urban or landscape architects—16 per cent.
- Surveyors and solicitors—9 per cent; and
- Others —6 per cent.²⁴⁴

Interested Public Survey. Of the 108 filling in the interested public survey, 49 per cent had been involved in neighbourhood planning and 51 per cent had not. It is worth stressing that we were not trying to capture the views of the wider public but of those who have interacted with the planning, design and development process.

Power and influence in planning

Many professionals felt only very intermittently empowered by the current process. 55 per cent of responses scored their ability to influence specific elements of the design and development process as non-existent or low.²⁴⁵ The average score (from 1 meaning no influence to 5 meaning a lot of influence) across all groups was 2.45, with the highest score 3.05 for developers and the lowest 1.86 for members of the public.²⁴⁶ Most striking was the relative lack of confidence of local authority officials that they can influence the process. Their score was on average 0.35 lower than that of developers.

Table 13 –Self-perceived influence on the process (1 to 5)

ROLE	SELF-PERCEIVED OVERALL ABILITY TO INFLUENCE PLANNING PROCESS (FROM 1 TO 5)
Developers	3.05
Architects or designers	2.99
Local Authority Officers	2.69
Planning consultants	2.42
Surveyors or solicitors	2.20
Interested public	1.82
Other	1.46

241 The survey was conducted online from [date] to [date] via social media and a blog on the Royal Society of Arts website. The twitter of a range of relevant professional bodies and relevant think tanks and charities kindly helped promote the survey. These included RTPI, RICS, RIBA, TCPA and Shelter.

242 For example our visual preference surveys by social media or in individual locations all strongly replicate those we have conducted with MORI.

243 One respondent in this category was an elected councillor with an executive or planning responsibility. All others were officials.

244 Other was composed of the interested public, those working in central policy, those writing on planning and design and other professions.

245 This percentage does not include issues where respondents did not judge that it was relevant to their specific role.

246 Not including 'other.'

Developers' rating their own ability to influence the process is most strikingly greater than that of local authority officers on the amount of internal space in new homes (+1.64), what new homes look like (+1.53) and what materials to use (+1.30). Only in the height of new housing did officials feel that they had more influence than developers did (just: -0.06).

If most groups were quite wary of their own influence, who did they think is most influential group? This was judged to be investors and developers by most people; the least influential were residents and elected members. In short, most of our respondents involved with the development process did not judge planning to be very effective at influencing much of the detail of what we build.

Table 14 –Perceived key influencers on development process

ROLE	PERCEIVED INFLUENCE (NORMALISED TO 100)
Developers	100
Local Authority Officers	58
Architects or designers	38
Elected Members	14
Interested Residents	4

The interested public who filled in our survey very strongly felt that it was investors and developers who had the most influence over the development, planning and design process. 68 per cent judged that investors and developers had the most influence. Only 27 per cent felt that local authorities and planners did. Only 4 per cent felt architects and designers played a seminal role. Only one respondent selected 'residents.'

The interested public who filled in our survey very strongly felt that it was investors and developers who had the most influence over the development, planning and design process. 68 per cent judged that investors and developers had the most influence. Only 27 per cent felt that local authorities and planners did. Only 4 per cent felt architects and designers played a seminal role. Only one respondent selected 'residents.'

The aims of planning

Our survey found very different views about the primary role and purpose of planning. For local authority officers the most important aim of the planning system was to get new affordable homes built (5.00). For developers the most important aim was providing necessary infrastructure. (4.40). The areas of greatest difference were the system's role in supporting affordable homes and self-build or SMEs.

Table 15 –Greatest differences in perception on aims of planning between developers and local authority officers

BARRIER TO DELIVERY	AVERAGE DEVELOPERS' SCORE (1 TO 5)	AVERAGE LOCAL AUTHORITY OFFICERS' SCORE (1 TO 5)	DIFFERENCE
Getting new affordable homes built	3.80	5.00	-1.20
Getting new homes built	4.00	4.89	-0.89
Representing local design preferences	3.20	3.78	-0.58
Making it easier for self-build to build	4.10	3.56	0.54
Making it easier for smaller developers to build	4.20	3.67	0.53

Barriers to delivering new housing

The most consistently held view was that the poor resourcing of planning departments was a major barrier to new housing delivery (scoring 4.22 out of 5). This is certainly true given the process-heavy nature of UK planning. Other key perceived barriers were 'quality of expertise in local planning departments' (3.95) and the 'unpredictability and inconsistency of the planning process' (3.66).

However, sharp differences emerged between what different groups believed were the primary barriers. As can be seen from table 17, developers tend to think affordable housing requirements, the length of time, unpredictability of planning permissions and councils holding onto land are key barriers. Local officials blame their own lack of resources, developer capacity and expectations and developers holding onto land. In short, both groups blame the other guy.

Table 16 –Main barriers to delivering new housing

BARRIER TO DELIVERY	AVERAGE SCORE (1 TO 5)
Resourcing of planning departments	4.22
Quality of expertise in local planning	3.95
Unpredictability & inconsistency of planning process	3.66
Local opposition to development	3.64
Political opposition	3.64
Communication with planning departments	3.53
Developer expectations	3.47
Cost and time of specialist reports	3.32
Developers holding onto land	3.24
Pre-application process and advice	3.18
Access to finance	3.11
Length and time to get a planning decision	3.03
Number of conditions	2.91
Lack of small sites	2.88
Developer capacity	2.88
Time to discharge conditions	2.82
Councils holding onto land	2.76
CIL and other fees and tariffs	2.71
Best Value test	2.68
Affordable housing requirements	2.57
Payment of council tax prior to occupation	1.88

Table 17 –Greatest differences in perception on barriers to housebuilding between developers and local authority officers

BARRIER TO DELIVERY	AVERAGE DEVELOPERS' SCORE (1 TO 5)	AVERAGE LOCAL AUTHORITY OFFICERS' SCORE (1 TO 5)	DIFFERENCE
Affordable housing requirements	3.20	1.89	1.31
Length of time to get a planning permission	3.50	2.22	1.28
Councils holding onto land	3.30	2.20	1.08
Unpredictability & inconsistency of planning process	3.60	2.56	1.04
Resourcing of planning department	3.70	4.33	-0.63
Developer capacity	2.50	3.44	-0.94
Developer expectations	2.50	4.11	-1.61
Developers holding onto land	1.90	4.00	-2.10

How 'normal' is approach taken to planning in the UK?

It is possible that the results to this question were influenced by the sample who might be aware of our analysis to date. Nevertheless, a higher proportion of respondents than we anticipated showed awareness of the peculiarity of planning in the UK. 57 per cent felt that the approach taken to planning in the UK was 'fairly dissimilar' or 'very dissimilar' to that taken abroad. No one felt that the approach taken was 'very similar.'

Conclusion

Our survey is only indicative but it is strongly consistent with the themes that have emerged from our wider evidence base. Of course there are different views between local officials and developers. In a way, there *should* be. However, our survey has revealed a fundamental lack of clarity of agreement about *who* makes some decisions, *why* they make them and *what* the fundamental aims of planning are.

Table 18—How 'normal' is approach taken to planning in UK

APPROACH	RESPONSE (%)
Very dissimilar	17
Fairly dissimilar	40
Fairly similar	22
Very similar	0
Don't know	21

Is neighbourhood planning working?

Just under half (49 per cent) of respondents had been involved in Neighbourhood Planning. Of these, 65 per cent felt that the neighbourhood planning purpose had been of no or modest use and only 28 per cent felt that it had been quite a lot of use or very useful.

Table 19—Based on your experience is neighbourhood planning

APPROACH	RESPONSE (%)
Very useful	9
Quite a lot of use	19
Of some use	42
Don't know / too early to tell	8

APPENDIX THREE: HOW CAN REGULATION PREVENT COMPETITION, SMALLER FIRMS AND MARKET ENTRY?

How regulation helps large firms

Why should regulatory uncertainty penalise market entrants to the benefit of existing firms? The key to understanding the effects regulation has on small firms is differentiating between fixed and variable costs. In practice, it is impossible completely to distinguish between the two, because nearly all individual regulatory requirements will have effects of both types, but distinguishing is nevertheless useful for clarifying how we think about the issue.

Some regulations vary with firm output. For example in the UK, energy efficiency rules, regularly updated in periodical UK Building Regulations bills, as well as coming from the EU, require firms to keep to various lighting and airtightness standards.²⁴⁷ In general, with exceptions, these are variable costs. Of course, there is an element of the cost, which is fixed: finding a supplier of the relevant materials and working out the rules will cost about the same for smaller and larger firms. But by far the most significant added cost from this regulation is the added cost per-unit from using more expensive (and efficient) techniques and materials. This sort of regulation will not in general tilt the playing field towards larger firms.

By contrast, the cost of complying with some regulations varies very little with firm output. For example, the Code for Sustainable Homes requires a similarly costly report for projects building five dwellings as those building 50 or 500. Even where there is some increase in cost by size, there is usually a reduced cost *per dwelling* or per unit built.²⁴⁸ Similarly, if the regulatory system in practices proscribes a wide range of typologies, and prescribes a narrow range of dwelling types, developing a set, standardised schema will cost a similar amount for all sizes of firms, but can be applied extensively to more units once developed.²⁴⁹

A third type of regulation is in principle unrelated to firm size, but in practice makes it harder for smaller firms to compete. In the UK, smaller sites require proportionally more onerous ventilation than large parking lots.²⁵⁰ Since smaller firms simply do not have the capacity to take on large site projects, even if there were no further stumbling blocks, this restriction would reduce the fraction of projects completed by small builders or self-build.

Finally, large firms are better placed to deal with complexity and uncertainty in the system. Complexity functions like a fixed cost—regardless of the cost of actually complying with any regulations, *discovering how* to comply with regulations will cost a similar amount for all firms. However, larger firms will be able to spread this cost among a larger number of units. Uncertainty and risk can easily be spread across 1,000 projects. On average, the randomness will even out due to the law of large numbers. But for a small firm, a planning rejection after huge financial and time investment can mean financial ruin. This is why insurance exists: if your factory burns down that is a huge cost to you, but an insurer can easily cross subsidise paying for these costs based on the *premia* from all the other factories that do not burn down.

In practice, all of these types of regulation will blur into the others, with some fixed cost elements and some variable cost elements.

One major US estimate of the cost of regulations found that small businesses (those with under 50 employees) faced a burden 17 per cent higher than large firms (those with more than 500 staff)—nearly \$12,000 per employee vs around \$9,000.²⁵¹ Looking just at tax, UK government figures found, in the 1990s, less eye-popping numbers but with an even stronger gradient: firms with 1-4 employees spend £288 per employee each year to comply with tax legislation;

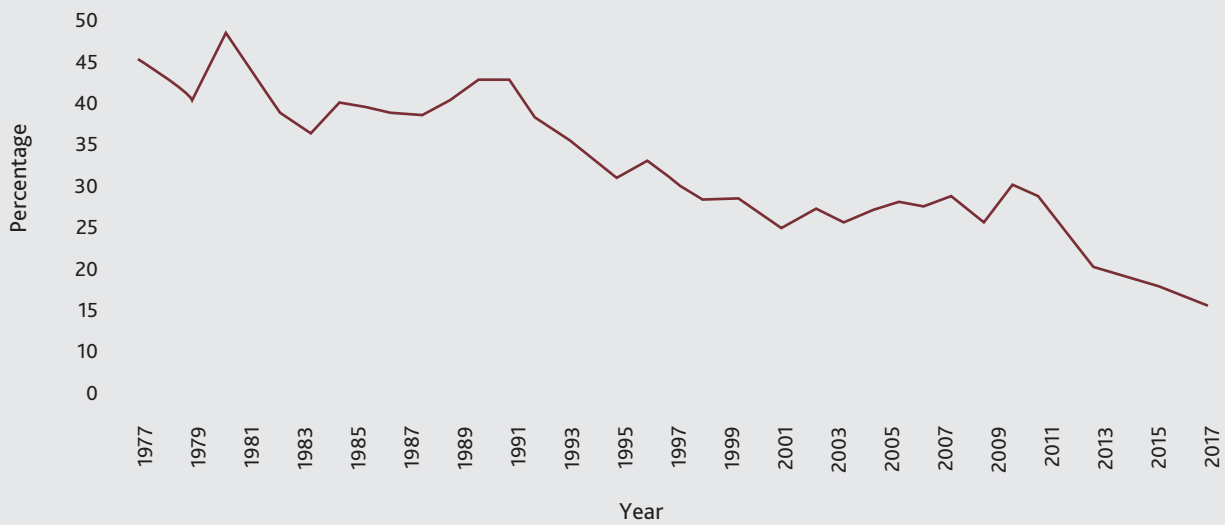
247 BIS. (2010). "GREEN LIGHT? A review of regulatory barriers to small businesses' resource and energy efficiency"

248 DCLG. (2014). "Housing standards review: Cost Impact"

249 Nicol, Chris, and Alan Hooper. "Contemporary change and the housebuilding industry: concentration and standardisation in production." *Housing Studies* 14, no. 1 (1999): 57-76.

250 Tulloch, R. (2017). "Missing teeth – why is it easier to build small sites in France than in England?". Create Streets

251 Crain, M.W., and Crain, N.V., "The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business" (2014). National Association of Manufacturers



Percentage of new homes built by SMEs (1-100 units pa) 1977-2015

firms with 5,000 or more employees spend around £5.²⁵² These particular numbers should be taken with a pinch of salt, since there is a large variation among different estimates. However, the gradient, with small firms bearing a weightier burden than large firms, is consistent.^{253, 254}

The goal should instead be predictable, rational and consistent regulations that do not unduly burden small firms, without giving those firms an artificial advantage or disincentive to grow. This is especially true given the stated goals in the NPPF and other UK planning documents for a greater proportion of self-build and less concentration—and potential market power—in general.

Regulations and firm size in the housing market

Given the theoretical considerations, and the general empirical literature for all sectors, it is unsurprising that we have such a concentrated housebuilding sector in

the UK. The current situation is summarised well by a 2017 Home Builders Federation report: just 12 per cent of new-builds are by small builders; the size of the average permissioned scheme is up 17 per cent even over the last decade; huge numbers of smaller firms closed during the recent recession; and the delays and uncertainties in the system have had knock-on effects on lending, further restricting the ability of small firms to build.²⁵⁵ By contrast the biggest three builders—Barratt, Persimmon, and Taylor Wimpey—are together building more than a third of the overall total, and, driven by the same uncertainty in the planning system, land banking hundreds of thousands of plots in order to ensure they can continue to build in the future.^{256, 257, 258}

The gap in self-build housing, where households both plan and inhabit a house, is even larger. Whereas in France around 40 per cent of housing is developed through self-build, in Britain it is closer to 10 per cent.^{259, 260} In Japan,

252 Revenue, Inland. "The Tax Compliance Costs for Employers of PAYE and National Insurance in 1995-96." Centre for Fiscal Studies, University of Bath (1998).

253 Baldwin, Robert. *Better regulation: is it better for business?*. Federation of Small Businesses, 2004.

254 *Small Businesses, Job Creation and Growth: Facts, Obstacles and Best Practices*. (1997) OECD

255 Home Builders Federation. (2017). "Reversing the decline of small housebuilders: Reinvigorating entrepreneurialism and building more homes"

256 McKibbin, Des. (2018). "Housebuilding in the UK". House of Lords Library Briefing

257 Nathaniel Lichfield & Partners. (2017). "Stock and Flow Planning Permissions and Housing Output"

258 Edwards, Michael. (2015). "Prospects for land, rent and housing in UK cities". Government Office for Science

259 Barlow, James. "Self-promoted housing and capitalist suppliers: The case of France." *Housing Studies* 7, no. 4 (1992): 255-267.

260 Toms, Kieran. (2018). "If Britain wants more self-build housing, we need to change its planning system" *Citymetric*

which achieves a house-building rate around 12 times that of the UK, three quarters of newly built houses are commissioned by private individuals and built on their own land, for around 400,000 personalised and customised houses per year.²⁶¹ Like France, Japan has a clear rules-based system where it is easy for smaller builders and even individuals to know in advance whether any prospective development project they had for their own land would be approved.²⁶²

Where next

The British planning system, as we have seen, is less predictable than many others are. The way the hurdles in the system are structured makes it harder to predict whether any given development proposal will get permission from authorities. This leads to less confidence from a public who both believes there is too little and too much development, and therefore a more inelastic housing supply system. It also holds back small- and self-builders. Tough regulatory hurdles tilt the playing field against small firms in *general*, but unpredictable regulatory control particularly harms their chances of competing. But we can see from around the world, especially countries like France and Japan, that these sorts of construction can be ways of making the market more responsive, local, and specific to people's needs.

Setting out proscriptions and prescriptions in advance, regarding heights, potential usage, light, materials, and so on, could make a big difference to the prospects for smaller construction firms in an increasingly concentrated market. Alone, it will not "solve the housing crisis", but in such a complex and politically contentious system there are no silver bullets that will be attractive to all and practical to implement. However, simply bringing ourselves to a system more in line with the rest of the world could make an appreciable dent in the problem.

²⁶¹ Barlow, James, Paul Childerhouse, David Gann, Severine Hong-Minh, Moh Naim, and Ritsuko Ozaki. "Choice and delivery in housebuilding: lessons from Japan for UK housebuilders." *Building research & information* 31, no. 2 (2003): 134-145.

²⁶² Ministry of Land, Infrastructure and Transport. (2003). "Introduction of Urban Land Use Planning System in Japan"

ABOUT THE AUTHOR



Nicholas Boys Smith

Nicholas is a fellow at the Legatum Institute and the founding director of Create Streets. He has published widely on the links between urban design, wellbeing and value and has worked for both communities and public-sector bodies on estate regeneration. He was a member of the Government's Estate Regeneration expert panel chaired by Lord Heseltine.

Personal Thanks

No man is an island. And all policy reports are, or should be, group efforts. *More Good Homes* would not be possible without the time, expertise and very generous advice of many dozens of housing policy, planning, development and design professionals and civil servants in central, London and local government who so generously provided the team with so much time and advice during our research and drafting. In addition to public officials, I would particularly likely to thank Richard Blyth (RTPI), Tony Burton (London Neighbourhood Planners), Chris Brown (Igloo), Zoe Chadwick (NHBC), Dr Hugh Ellis (TCPA), Andrew Forth (RIBA), Rose Grayston (Shelter), Elliot Lipton (First Base), Rosemarie McQueen (Historic England Commissioner and formerly at Westminster City Council), David Maddox (Maddox Associates), Euan Mills (Future Cities Catapult), Paul Miner (CPRE), Tony Mulhall (RICS), Luke Murphy (IPPR), John Myers (London YIMBY), John Parmiter (Future High Streets), Adrian Penfold (British Land), John Penrose MP (Co-chair of APPG on Housing), Anita Rivera (Mischon de Reya), Cecil Sagoe (Shelter), Robin White (Shelter) and Mario Wolf (the Self-Build Alliance) all of whom kindly came to one of our policy workshops or generously took the time to discuss our ideas or give us feedback on elements of the text. In addition Jonathan Schifferes, formerly of the RSA and now of the GLA, kindly put out a call for evidence on our behalf and hosted the first of our two policy roundtables. Of course none of those listed above necessarily agree with all (or any) of our findings and all errors remain our own.

Kieran Toms very expertly led the first draft of much of the report including the history of British land use regulation, ran the online surveys and provided draughts of dry wit when necessary. I am very grateful to Ben Southwood who pushed our thinking on economics and land use regulation and drafted Appendix three. Yasmin Lennon Chong helped manage our second policy workshop. None of our research would have been possible without Constance de Montigny. And Alexander Boys Smith proofread the first draft.

Above all, this publication would not exist without the generous support of the Legatum Institute and the wise advice and intellectually enriching challenge of their CEO, Baroness Stroud, and their Director of Policy, Dr Stephen Brien. Amelia Campbell, Thea Pope, Hugh Carveth and Patty McCabe very kindly proofread the final draft and Amelia also expertly saw it through to publication.



LEGATUM INSTITUTE
11 Charles Street
London W1J 5DW
United Kingdom
t: +44 (0) 20 7148 5400

Twitter: @LegatumInst

www.li.com
www.prosperity.com



NOVEMBER 2018