

Competition and Markets Authority: Housebuilding Market Study: *Working Paper on Planning* Response of the Royal Town Planning Institute

December 2023

1 About the Royal Town Planning Institute (RTPI)

The RTPI champions the power of planning in creating sustainable, prosperous places and vibrant communities. We have over 27,000 members in the private, public, academic and voluntary sectors. Using our expertise and research we bring evidence and thought leadership to shape planning policies and thinking, putting the profession at the heart of society's big debates. We set the standards of planning education and professional behaviour that give our members, wherever they work in the world, a unique ability to meet complex economic, social environmental and cultural challenges.

2 General Observations for England Scotland and Wales

We have put together observations on the working paper from the point of view of both our overall Great-Britain level thinking and also from the individual jurisdictions. Of necessity this has been compiled at some pace, and using existing published material.

We have examined the options in Chapter 5 of the Working Paper and cover those in sections 4 to 8 of our response. However by way of broader introduction in section 3 immediately below we examine a rather wider role for the national and local state than appears to have been considered in the working paper.

Furthermore planning does not work in isolation and neither can you plan in isolation. Planning isn't just about housing numbers, it is about quality outcomes (right place at the right time, served by all the necessary services and infrastructure). We have some concerns about the general approach taken by the CMA regarding what are called "trade-offs" to determine which objective will win out at the expense of another. The best planning seeks to achieve a variety of objectives in parallel.

3 Role of non Market Activity

We appreciate the importance of ensuring that there is competition in the sale of new homes. However in a wider context the sale of homes to owner occupiers cannot be regarded as the only means of meeting housing need. Furthermore, the development of land speculatively purchased by housebuilders from original land owners or land "promoters" is not the only, or even the preferable, means of ensuring a supply of both new housing to buy and to rent.

We appreciate that home ownership is falling, and that many who would wish to are prevented from buying their own home. However holistic housing and planning public policy needs to be

realistic about the needs of people who will never be “consumers” of housing, even if home ownership were to reach hitherto unreached levels such as 80%. Moreover one reason for aspiration to home ownership is the poor offer in the rented sector. In countries where the rental offer is of high quality there can be less pressure on the sale market.

Housing delivery is undertaken by a range of actors, which include not only private housebuilders but also housing associations and councils (both of which now build homes to sale as well as different kinds of rent). The Working Paper does not appear to have sought evidence from these providers and perhaps has underestimated the greater potential they could play in future. All developers (whether private, voluntary sector or public) have an interest in smoothly-working planning systems.

The approach taken by the Working Paper also seems to limit the role of “planning” to development and to the function of determining planning applications. In our view the achievement of the goals of planning (including the provision of sufficient homes to own and rent) would be greatly assisted by ramping up the proactive aspect of urban planning which has been somewhat curtailed in recent years. [The RTPI has undertaken research](#) which indicates the value of planning as not only a market taker but a market maker, with examples from France Germany and the Netherlands.

Our [Planifesto](#) for the 2024 UK General Election refers to the desirability of enhancing the role of local planning authorities as master builders. “[Political] parties should follow European examples of councils who assemble, masterplan and provide infrastructure on suitable sites, before selling them back to – particularly small and community-led developers or self-builders – with permissions to build.”

For example in relation to England, Sir Oliver Letwin’s Review proposed:

that the [UK] Government should adopt a new set of planning rules [for England] specifically designed to apply to large sites. The purpose of these rules should be to ensure that all sites in areas of high housing demand whose size exceeds a certain threshold are subject to an additional form of planning control that requires those owning such sites to provide a diversity of offerings on the site which are able to address the various categories of demand within the local housing market. This, in turn, should ensure that houses can be built at a greater rate than at present on such sites, because the absorption rate for each category of housing will be complementary, yielding, overall, a greater absorption of housing by the local market as a whole in any given period.

[These proposals] are intended to apply to the granting of new outline permissions for all sites of over 1,500 units in areas of high housing demand, regardless of where in the country they lie and regardless of whether they have or have not yet been allocated in a particular local authority’s local plan. In all such sites, increased diversity can – for the reasons set out in my analytical report – help to increase the speed of build out. Planning rules that encourage diversity will accordingly also encourage more rapid development.

However, in relation to large sites that have yet to be allocated within a local authority’s local plan, ... it is possible and desirable to go one step further. The Government should, as part of the new primary legislation, introduce a power for local planning authorities to designate particular sites within their local plans as sites which can be developed only as single large sites and which therefore automatically become subject to the new planning rules for large sites³. In addition, I believe that the local planning authority should be empowered to specify, at the time of designation, strong master-planning requirements including a strict design code as well as landscaping and full and specific infrastructure requirements.

.... One further amendment to primary legislation should make it possible in future for a local planning authority (or a group of local planning authorities) in an area of high housing demand to establish a new form of development

vehicle to develop the site through a masterplan and design code which increases the diversity and attractiveness of the offerings on site and hence its build out rate.

[There are] two possible structures for such a development vehicle:

a. the local authority could use a Local Development Company (LDC) to carry out this development role by establishing a master plan and design code for the site, and then bringing in private capital through a non-recourse special purpose vehicle to pay for the land and to invest in the infrastructure, before “parcelling up” the site and selling individual parcels to particular types of builders/providers offering housing of different types and different tenures; or

b. the local authority could establish a Local Authority Master Planner (LAMP) to develop a master plan and full design code for the site, and then enable a privately financed Infrastructure Development Company (IDC) to purchase the land from the local authority, develop the infrastructure of the site, and promote a variety of housing similar to that provided by the LDC model described above.

There are useful models outside Great Britain which provide a useful starting point for how local authorities in all three countries could take greater *initiative* in allocating land for development and seeing that it meets a variety of purposes including increasing housing supply, securing infrastructure and encouraging a greater variety of providers.

For example Germany uses a legally binding process of land pooling or ‘readjustment’ called *Umlegung*. The process starts with the municipality determining the area of the site for *Umlegung* and the rights and claims of all individual plots are added together. The land designated for streets and other public space is then appropriated from the total area. The remaining land area is then returned to the original land owners according to their share of either the original value or land area. If allocated by land value then the landowner has to pay the uplift in value - between the original land value and the new land value – to the municipality as public investment in infrastructure makes the land more valuable. This means the municipality can recoup the costs of infrastructure. If the area of plots is allocated as the share (which only works well if the size of plots are similar) then the municipality retains up to 30 per cent on greenfield land and 10 per cent on inner-city. (See Connellan, O. - Land Assembly for Development – The Role of Land Pooling, Land Re-adjustment and Land Consolidation FIG XXII International Congress 2002).

In 2020 the Scottish Land Commission published a report about the issue of land banking in Scotland. A key finding of this report is that:

“we estimate the flow of new planning permissions in Scotland would need to rise from an average 24,000 per year during the last three years to 28,000 per year in order to build 23,000 homes per year. In sum, there is not enough permissioned land in the system. **This does not appear the result of a low planning approval rate**...increasing the number of planning permissions for housing, whilst necessary, is unlikely to be sufficient to increase new housing supply to the levels needed to substantially improve affordability, due to the prevalent (speculative) housebuilder model and market absorption constraints.”

In 2021, the Scottish Land Commission published its review and recommendations on reforming the housing land market. The review concludes that we need to move away from a housing land market driven by private profit towards one in which the public sector plays a more proactive role driven by public interest. It should be noted that National Planning Framework 4 sets out the purpose of the planning system as development and management of land in the public interest.

4 Housing Targets and Local Planning Authorities (WP para 5.14 and para 5.21)

The UK Government proposed in December 2022 to reduce the role of housing targets in England. The RTPI responded:

“The planning system depends on an array of checks and balances to ensure that local decision makers plan for new developments that are in the public interest. Taken together, these proposals aim to move the planning system away from a system of checks and balances which disincentivises the local under-supply of homes by reducing LPAs’ control over new developments where this occurs. The government’s reasoning appears to be that this approach has undermined community support for plans. This is a fair analysis: An overly technical and numbers-led approach to planning can indeed be damaging, and a genuinely plan-led system should be a key goal of planning reform. This is a very real challenge.” But we are concerned the proposed reforms do not replace these disincentives with new incentives for local decision makers to produce plans that meet local needs, or make the case for development where it would be in the wider public interest.”

The CMA refers to the possibility of rewarding local planning authorities for adherence to national housing targets. However the “reward” seems to be linked to the provision of sufficient resources to undertake the planning function (para 5.26). It has long been the concern of the RTPI that the more fundamental resources needed to underpin urban planning outcomes, such as funding for infrastructure, are not linked to the plan making function. (By contrast the local transport planning process in England does link the plans to the resources.) Rather than make the administrative resources contingent on plan making, shouldn’t the incentive be the possibility of making the central investment in local infrastructure in return for plan making?

5 “Discretionary” Planning and Reform (WP para 5.27)

The CMA recommends a move towards “non-discretionary” “streamlined” planning to the three jurisdictions. While in England this is a return to proposals made by the UK Government (for England) in the Planning White Paper 2020, in other jurisdictions this is an entirely novel concept which has not been the subject of public debate or interest.

We note that this recommendation is, at least in part, a response to what the working paper describes as the “lengthy and complex” nature of current planning systems in Great Britain. However it is important to understand the full picture of what can cause delays to the planning process. There are a variety of factors that can influence the speed of housing delivery, not all of which are caused directly by local planning authorities. For example, applications submitted with incomplete information, or which do not adequately address the requirements of the local development plan, will inevitably result in a delayed assessment process. Delays can also be caused through the legalities of negotiating, and awaiting signatures on, Section 106 Agreements (in England and Wales) and Section 75 Agreements (in Scotland). Moving to “non-discretionary” planning systems would not necessarily make them anymore “streamlined”.

Paragraph 4.89 of the working paper references the high level of political engagement in decision making as a potential barrier, with too many planning decisions being considered by planning committees as opposed to delegated planning officers. We do not believe, however,

that this justifies moving away from discretionary decision-making towards a rules-based planning system. Every council throughout the UK has its own scheme of delegation to identify the circumstances where planning consent should be decided by planning committees rather than the delegated officers who are trained planning professionals, (a large proportion of whom are chartered members of the RTPI and, therefore, bound by the [RTPI Code of Professional Conduct](#)). Trained planning officers are aptly qualified to assess and decide applications using their discretionary powers. There may, therefore, be justification for reviewing councils' schemes of delegation to determine which applications are sent to committee.

In addition to the above, it is important to understand that planning is more than a reactionary system delivered on an application-by-application basis. Consequently, its success relies upon more than simply the speed and quantity of consents issued. It is the role of each planning system in the UK to help direct new housing to the right places at the right times, achieving the quality and diversity required to ensure that communities have access to the housing they need. A discretionary planning system is vital to achieving **quality** housing outcomes, which could be significantly watered down within a rules-based system, potentially disadvantaging communities throughout the UK in the longer-term.

We also note that the options set out in the working paper have been compiled within the narrow scope of the CMA's Housebuilding Market Study. However, if adopted, these options would have wide-reaching implications across more than just the housebuilding sector, to the potential detriment of other aspects of the built and natural environment for which discretionary decision making is vital. This would be necessary to ensure our built form and natural assets do not lose out within a check-box decision-making planning system.

The RTPI looked into zoning at the time of the Planning (England) White Paper in 2020. The [findings](#) are of relevance in any jurisdiction although the research did address specific England proposals at the time.

"The certainty of zoning can be a weakness, as the static nature of the zoning can mean a lack of flexibility when facing unforeseen circumstances over time. Typically zoning plans are set up to regulate development over a number of years, and sudden change of circumstances or appearance of development opportunities not known when the zoning plan was created can require frequent amendments to zoning plans, or a move toward more flexible zoning approaches. This lack of flexibility means that zoning plans tend to be more suited to regulate development of new settlements or expansions, rather than for managing the complex processes of change in existing built-up areas. This is because zoning often represents and preserves the status quo, particularly if there is a lack of upper tier strategic planning to guide changes in zoning regulations."

In all three jurisdictions government have recently concluded major statutory reform and are either overseeing (Scotland, Wales) or about to embark on (England) the implementation phase of those reforms. Speaking for the profession, the RTPI is acutely aware of the disruption to the development process caused by planning reforms. The implementation of planning reform is especially difficult in a period of limited resources in planning (an issue to which the CMA is clearly very alert). There are risks to having to run an old and a new system side by side, and the development industry, operating as it does over long time scales, tends to hold off on investment until the details of any planning reform are clear.

Whilst the RTPI is always keen to work with governments on ways to improve planning systems, it is important to be very clear that the disruption is worth the long term result. We are not convinced that in any of the jurisdictions this is the best time. Scotland is still working through a process of planning reform which began in 2015. New primary legislation followed in 2019 and 2023 saw the adoption of a new National Planning Framework and an accompanying [delivery programme](#). To introduce further reforms along the lines of the recommendations set out in the working paper, would undermine the extensive programme of reform that has been underway for the last 8 years or so. As part of these reforms, the Planning (Scotland) Act 2019 introduced Masterplan Consent Areas which local authorities could designate for particular types of development or uses. An approved MCA scheme would grant authorization for the development set out therein for the geographic area to which the scheme applies. Proposals that are in accordance with the scheme would, therefore, not need to apply for separate planning approval.

MCAs are an example of a mechanism that is similar to the “permitted zones” that the CMA recommends in the working paper, but which sit within Scotland’s current discretionary planning system. MCAs are included within the Scottish Government's 2023-2024 Programme for Government and it is expected that new regulations and guidance will be consulted on in the new year with a view to them being brought into effect in autumn 2024.

In England the Local Development Order system has been available for some time but its uptake has been limited. Careful attention could be usefully given to why this is. It may be that the burden placed on the LPA in doing an LDO is too great under current circumstances. We note that the 2023 Autumn Statement the UK Chancellor announced £5 million for LDOs in England. We are not clear if these are intended for the residential sector, because it says this is “to end delays for businesses so that key commercial projects secure planning permission faster”.

6 Statutory Consultees (WP para 5.33 and para 5.37)

It would indeed be helpful if statutory consultees all responded in the required timescale. The Working Paper records concerns about this issue but does not appear to have investigated why it might be the case. We do not believe statutory consultees fail to respond within time due to a lack opinion or willingness. It is well known that government executive agencies in the environment sphere are suffering a resource constraint at least as severe as local planning authorities.

The [Big Conversation](#) surveyed both planners and non-planners on the well-being of planners and the impact of the planning system in Wales. In the context of statutory consultees we note:

“Performance relies on the speed of our consultees such as Highways and Ecology and these local authority departments are also struggling with resources and recruitment which means that they cannot respond quickly or in full and this impacts on LPA services both in terms of the ability to provide timely and informed decisions and the perception of the planning process by customers.” (page 15)

The report goes on to explain that “contributions from Natural Resources Wales (NRW) were raised in particular, as well as other stakeholder / statutory consultees. Engagement from NRW was reported as poor, often rejecting paid for requests for advice or discussion, and significant inconsistencies between advice across Welsh regions.” (page 15)

This is one of many issues impacting on the performance of the planning system, and must be fully understood and considered as part of any discussion on performance of the planning system.

It would seem that the top priority is to address this problem. By contrast we can foresee severe difficulties in refusing to accept late responses and adopting this stance could result in a myriad of unintended consequences and undesirable outcomes for both planning applicants and communities. *Statutory* consultees are so defined because their input is not negotiable. For example input on flood risk is a matter of serious life risk. It would put the planning systems of Great Britain in an intolerable position if planning permissions were issued which did not take account of flood risk. In practice it would probably lead to a lot fewer permissions, as the only recourse of the LPA would be refusal. The advice from the Environment Agency, Natural Resources Wales and SEPA is essential in providing a means whereby developments can be permitted in areas of flood risk.

7 Resources for Planning (WP para 5.41)

The RTPI has been campaigning for some time for action to redress the worsening resource situation in public sector planning in Great Britain. We appreciate that the CMA has made this issue part of its working paper. Poorly resourced planning systems work in the interests of no one – neither developers nor the public.

The suggestion that planning fees should be ring fenced is an interesting one. Generally speaking, governments do not wish to micromanage local councils. In no jurisdiction do planning fees currently cover the cost of even the planning application process, let alone the wider functions of a local planning authority. In Scotland for example fees only cover 66% of the cost of determining planning applications (see [RTPI Scotland resourcing research for 2022](#)). RTPI Scotland's 2023 update to the resourcing research (due to be published mid-December) found that the impact of the April 2022 planning fee increase in real terms, when adjusted for inflation, did not result in a significant increase in the real term income generated by applications.

Our recent work on [State of the Profession](#) indicates that over the last 12 years there has been increasing dependence on fees to finance the operation of planning departments generally.

Total public expenditure on planning services in England contracted from £1.4 billion in the 2009-10 financial year by 16% to £1.17 billion in 2022-23 (when adjusted for inflation). At the same time, income from planning services increased by 14% from £507 million to £577 million. RTPI Scotland's 2023 update to the resourcing research found that planning expenditure in Scotland has decreased by 28.4% at the national level since 2010-11.

This means that **growing income from planning services did not translate into more money spent on planning. This is because direct public investment in planning has been decreasing:** real net current expenditure on planning services fell 33.34% between 2009/10 and 2021/22 (from £893 million to £594 million).

Whilst we are very keen to ensure that planning fees remain dedicated to the purpose of determining planning applications, we do draw attention to the risk that local authorities may

continue to withdraw unrestricted funding from planning departments at the same time and to the same degree. Our evidence shows that in England the biggest cause of decline in planning departments funding since 2010 has been the withdrawal of direct government grant and the reduction in unrestricted non-fee income from local authorities' central funds. So there is a possibility of unintended consequences.

Our preference is to enable local authorities to set their own fees and for these therefore to be able to cover the full cost of the determination of planning applications.

How can the supply of planners be increased? (see question 5.4.2)

The RTPI has been working hard to ensure a satisfactory pipeline of new planners. This includes:

- [Accrediting Planning Schools](#) and ensuring that planning education is related to practice
- [Bursaries](#) for students on accredited programmes supported by the UK Government
- [Apprenticeships in England](#) - level 4 and level 7
- [Schools' engagement/Ambassadors](#).

The RTPI supports the work of Public Practice in opening up roles in local authorities to a wider range of qualified staff. The Local Government Association's [Pathways to Planning](#) provides a new additional resource.

8 SMEs (WP para 5.49)

Large /small sites

The huge pressure placed on councils by the government to meet housing targets may be leading to suboptimal outcomes, both in terms of quality of homes and also in terms of location. Furthermore, it can sometimes be that only by concentrating housing allocations on the largest sites that there is any realistic prospect of provision of infrastructure. Smaller sites do not easily carry the ability to finance new infrastructure, and yet collectively once occupied they all place a burden on services. Naturally council members are reluctant to be granting permission under these circumstances, especially if they have a choice.

A new report published by RTPI Cymru, [Building Capacity through Collaboration and Change](#), sets out the work of a number of pro-active LPAs in Wales, in supporting effective site identification in Local Development Plans and supporting agents and applicants to understand planning application requirements in Wales (page 20).

In relation to Monmouthshire County Council's Candidate Sites Advice Service, "Planning consultants who had engaged with the service on behalf of clients reported that the service was extremely valuable and effective in bringing forward sites and development proposals."

The good work that is taking place in these and other proactive authorities across the country must be recognised and nurtured with appropriate resourcing.

Assisting SME builders

When making international comparisons of the level of SME involvement attention should be given to the varying contexts. Council-led development is a way in which land/work opportunities can be made available to SMEs. This could involve councils purchasing land, installing infrastructure and then selling plots off to a variety of builders, including individuals as

custom build plots. This would be common in other parts of Europe. And it happened for example in the Suffolk towns involved in the Expanded Towns Programme in the 1960s and 1970s.

The Letwin Review as quoted above would enable greater opportunities for SMEs. It would reduce what has been termed “planning risk” because the land in play all comes with outline permission. It also reduces the burden on developers to provide infrastructure, and could lead to the removal of the need for Section 106 entirely. Graven Hill at Bicester is an example of a scheme initiated by Cherwell District Council with a particular focus on encouraging custom build.

Public Land Disposals

We think serious consideration should be given to accelerating build out on land which originates in the public sector, by making sure that sales are made on condition that build-out objectives are realised. This could be through site splitting and directly contracting builders to complete homes either for low-cost market sale, full market sale or other tenures including self and custom build.

There has been considerable reluctance to use public land in this way in the past due to concerns around prioritising deficit reduction. However a case can be made that this approach would be financially prudent if for example it was used in pursuit of reductions in the housing benefit bill.

Post permission on-site public sector capacity

In the course of meetings for the Letwin Review, Sir Oliver referred to the high level of public sector input on large sites *after* planning permission granted on some Continental sites. Such an input was described as covering highways, landscape, utilities, transport. It would seem as he said extraordinary that having brought about a huge increase in value as a result of the will of the community, that the community then turns its back on making sure that value is realised for the public good. It seems like an excellent move to support a proper public-sector on-site team but questions there arise regarding how it can be resourced. Our only thought is that it could possibly be a charge on Section 106 (in England and Wales) and Section 75 (in Scotland). Other possibilities which have been mooted are crack teams funded more centrally (DLUHC, combined authority, Greater London Authority) which can be moved from one major site to another. The UK Government has recently proposed such a team for Cambridge.