



# Planning in a free society

## London as a case study for a spontaneously planned future

By Tom Papworth

### Executive summary

1. Planning policy has proven to be one of the most resilient pillars of the post-war command-and-control state. Created in 1947 with the first Town and Country Planning Act, the basic features of the act remain unchanged: rights to develop separated from right of use; a politicised approach to decision making; an all-or-nothing approach that fails to compensate, or incentivize, third parties; the blanket protection of large swathes of undifferentiated land; and an unswerving faith in the ability of a bureaucratic planning process to achieve superior outcomes to those achieved in the spontaneous order resulting from voluntary action.

2. According to the Mayor of London, "London's population is expected to grow by around one million over the next twenty years, and the number of households by nearly 700,000." This translates to a net housing requirement of at least 32,600 homes every year for the next 20-25 years. Yet the development of new homes over the past decade has not even approached that figure, averaging net growth of just 22,145 new dwellings per year.

3. 98 per cent of businesses see the planning system as a barrier to the delivery of new infrastructure. The Confederation of British Industry believes that "Cutting back the reams of planning policy and guidance ... makes absolute sense" and has said that "The UK needs a planning system that is transparent, predictable and can deliver decisions in a timely fashion..." The London Chamber of Commerce and Industry has expressed concerns that the Localism Bill, going through parliament in 2011, will create new uncertainties and block house building and infrastructure projects.

4. The vast majority of land in England remains either green space or water. Almost half of England (46 per

cent) is designated as a green belt, national park, Area of Outstanding National Beauty or Site of Special Scientific Interest; 30 per cent is designated an Environmentally Sensitive Area; another 30 per cent is agricultural land of the highest-quality. Over half of England is reserved for forestry and agriculture. According to one recent calculation, just one tenth of England is developed, of which almost half is domestic gardens, while buildings cover less than two percent of the land and transport infrastructure a further 2.5 per cent.

5. Empty housing cannot fill the gap. Shelter England observe that there are 5 million people waiting on housing registers. In London, 30,526 properties had been empty for six months or more as of August 2011, just 1 per cent of London's total housing stock of 3.3 million.

6. Urban containment through the creation of Green Belts has several effects, few of which are beneficial even for those living in the city. Firstly, it displaces development to areas beyond the Belt, sacrificing equally, or even more, valuable rural land for that on the edge of the city. Secondly, it necessitates the development of more extensive transport infrastructure of convey the residents to their jobs in the city, thus sacrificing more land to transport use and lengthening the time people must spend travelling (to which one might also add the increased environmental costs of travel – for example, increased output of greenhouse gasses). Thirdly, it increases the cost of housing and reduces supply. Fourthly, it increases the density within the city.

7. Without compensation for loss of amenity or other negative externalities resulting from a planning decision, NIMBYism is not only inevitable but also rational.

8. Options for planning reform:

a) Devolve choices over planning systems to the

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33 local authorities within London. The hope would be that they would then compete to provide the ideal planning system, balancing the demand for development against the existing amenity of landowners.

b) Auctioning development rights would generate revenue from which to compensate third parties. Determining who was compensated and by how much would become the role of planners in a process akin to environmental impact assessments. This would represent an improvement on the current system because technical externalities would be internalised, while the market would set the price of development rights and the detailed pattern of development

c) Issuing tradable development rights (TDRs) to residents, rather than auctioning them, would act as an incentive to residents to allow more development, as this would enable them to profit directly from development, rather than the benefits accruing to the local authority, as would be the case with an auction. Development rights could be issued to groups of landowners instead of individuals, who would then own and determine land-use collectively.

d) Other options include uses of the courts for dispute settlement and the establishment of land use covenants to allow the conservation of certain valuable areas.

9) The real lesson for policymakers should be that the process of determining the means of planning development is itself a discovery process. It is only by allowing local (including sub-authority) level control over planning that experimentation can take place and the optimal mechanism for planning in each locality can be identified.

## Introduction: A plan for London

Planning policy has proven to be one of the most resilient pillars of the post-war command-and-control state. Created in 1947 with the first Town and Country Planning Act, the basic structure has survived two thirds of a century virtually untouched. Revisions to the acts in 1962, 1984 and 1990 were more cosmetic than real. The basic features of the act remain unchanged: rights to develop separated from right of use; a politicised, public choice approach to decision making; an all-or-nothing approach that fails

to compensate, or incentivize, third parties; the blanket protection of large swathes of undifferentiated land; and an unswerving faith in the ability of a bureaucratic planning process to achieve superior outcomes to those achieved in the spontaneous order resulting from voluntary action.

This is all the more remarkable when one considers the overwhelming academic consensus on the failure of the system. The planning system, which was developed after the war to promote development, has proved to be a powerful impediment to it. This report will consider why the planning system has gone so badly wrong and what can be done to fix it.

The report was originally commissioned by the Adam Smith Institute for the forthcoming book *A Manifesto for London*. Consequently, it focuses especially on the policy and geographical environment of the capital. However, the economics of planning policy are universal and much of the criticism of planning in London is equally applicable to other urban centres across the UK – both cities and smaller towns. Furthermore, the rigid distinction between “town” and “country” has arguably been more problematic for smaller towns and villages, where a reluctance to permit sensible and natural expansion has resulted in younger generations struggling to afford housing in their home towns.

The report will look first at the nature of the problem, which is repeated on a grander scale across Britain. The next section, looking at empty housing, is less pronounced outside the capital than within in, and the problem is different: rather than there being not enough empty houses, they are simply in the wrong place – there is too much housing in cities that are experiencing a natural down-sizing due to shifts in Britain’s economy and demographics, while growing areas experiencing housing constraint. The following section, on the economic theory of planning policy, is universal and Green Belts and other centralised means of “protecting” land are widespread. Consequently, the proposed alternatives – and they are just a few possible alternative means of development planning – would apply in any community. Crucially, however, it should not be assumed that the same policy must be applied to all parts of the UK. The main lesson of this paper is that different parts of Britain should be free to experiment with different approaches to solving the dilemma of planning for human development within an environment of free acting individuals.

The London in these pages should be considered to be a case study. The lessons should be taken to every corner of

the country.

## The problem

London is in the grip of a development crisis. Politically this manifests itself most obviously in housing, leading to a host of interventions that attempt to make housing “more affordable”. But planning restrictions also impact upon businesses and alter the pattern of development, leading to longer and more crowded commutes and higher environmental impact.

That there is a housing shortage in London is beyond doubt: there are too few of them; they are too small;<sup>1</sup> they do not meet the needs of Londoners. As a consequence, they are too expensive.<sup>2</sup> And the problem will only get worse. According to the Mayor of London, “London’s population is expected to grow by around one million over the next twenty years, and the number of households by nearly 700,000.”<sup>3</sup> This translates to a net housing requirement of at least 32,600 homes every year for the next 20-25 years.<sup>4</sup> Yet the development of new homes over the past decade London has not even approached that figure, averaging net growth of just 22,145 new dwellings per year.<sup>5</sup>

Business is being throttled by a poor land use planning system. Almost all businesses (98 per cent) see the planning system as a barrier to the delivery of new infrastructure.<sup>6</sup> The Confederation of British Industry believes that “Cutting back the reams of planning policy and guidance ... makes absolute sense”<sup>7</sup> and has said that “The UK needs a planning system that is transparent, predictable and can deliver decisions in a timely fashion...”<sup>8</sup> The London Chamber of Commerce and Industry has expressed concerns that the Localism Bill, going through parliament in 2011, will create new uncertainties and block house building and infrastructure projects.<sup>9</sup>

Policies aimed at preventing urban sprawl have merely displaced development from the fringes of London to dormitory towns.<sup>10</sup> Thus the price of protecting the North Downs in Bromley, Croydon and Sutton has been the destruction of the North Downs in Surrey and Kent; Harrow, Bent and Enfield have been protected at the expense of Hertfordshire; Havering and Redbridge at the expense of Essex etc. Meanwhile, the density within London has been pushed unnecessarily higher,<sup>11</sup> and hundreds of thousands of people have been forced to undertake longer commutes than would otherwise be necessary.<sup>12</sup>

At the heart of the problem is a fundamental misconception

on the part of the British public about the level of development in the UK. To paraphrase, the widely-held belief is that Britain is overdeveloped, with urban sprawl leading to the paving over of our beloved countryside to the point where we are rapidly running out of green space. According to the Campaign for Rural England, “Our countryside is vanishing under new housing... urban sprawl is nibbling away at the green spaces across England”,<sup>13</sup> whereas “the countryside should be protected for its own intrinsic character, beauty and heritage.”<sup>14</sup> Survey evidence indicates that two-thirds of the electorate believe that more than two thirds of the UK surface area is devoted to urban uses, such as roads and housing.<sup>15</sup>

This is a common mistake: the actual figure is around 11 per cent.<sup>16</sup> The vast majority of land in England (let alone the more rural parts of the UK) remains either green space or water. Almost half of England (46 per cent) is designated as a green belt, national park, Area of Outstanding National Beauty or Site of Special Scientific Interest; 30 per cent is designated an Environmentally Sensitive Area; another 30 per cent is agricultural land of the highest-quality. Over half of England is reserved for forestry and agriculture.<sup>17</sup> According to one recent calculation, just one tenth of England is developed, of which almost half is domestic gardens, while buildings cover less than two percent of the land and transport a further 2.5 per cent.

Greenspace and water	90.1%
Domestic gardens	4.3%
Transport routes	2.5%
Buildings	1.8%
Other/unclassified	1.4%
Total	100%

Based on ONS Land Use Statistics (18)

It is thus disingenuous for the Campaign for Rural England to claim that “Housebuilding covers more countryside than any other kind of development”, as it requires domestic gardens to be classed within “housebuilding”, and ignores the fact that gardens provide green amenity and biodiversity of a level far more valuable than in the arable monoculture that the opponents of development often seek to protect. Britain remains and will continue to be a “green and pleasant land”.

## The “Empty Homes” myth

Opponents of “urban sprawl” and “Greenfield development” propose a number of ruses for increasing

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London's housing stock without building on previously undeveloped land – indeed, sometimes without building at all. One favourite is the “empty houses” myth. According to its advocates, huge numbers of houses are currently lying empty, just waiting to house the homeless. *The Guardian*

*“estimate that more than 450,000 properties have been empty for at least six months... 25% higher than previously thought... Highlighting the scale of the problem, the figure provided by one London borough was nearly 30 times higher than that used in official figures... [based on] the number of properties claiming a discount or exemption from council tax on the basis they had been empty for six months or longer.”<sup>19</sup>*

But even if one ignores the absurdity of implying that every one of these properties can be brought into use, leaving no home in Britain unoccupied for more than six months, this apparently impressive number of empty homes is dwarfed by the demand for housing. Shelter England observe that there are 5 million people waiting on housing registers.<sup>20</sup>

In London, 30,526 properties had been empty for six months or more as of August 2011,<sup>21</sup> just 1 per cent of London's total housing stock of 3.3 million.<sup>22</sup> Yet the Mayor estimates that London needs at least 32,600 new homes every year for the next 20-25 years if it is to meet current and future demand.<sup>23</sup> Empty housing simply cannot fill the gap.

## The theory of land use planning

Planning policy in Britain is a zero sum game. Planning applications are either approved or rejected, and in the process, either the would-be developer or those who object to development “win”.<sup>24</sup> It can almost appear as though it is designed to prevent an outcome that satisfies all parties. This is by no means necessary. It should be possible to identify and realise an outcome that, at least, fully compensates third parties for any losses incurred as a result of one party getting their way. This does not necessarily imply developers always getting to build and pay off objectors: it may just as easily involve objectors purchasing covenants on valued land to prevent further development.

Creating a system whereby third parties are directly compensated for the decision (not) to allow development maximises welfare because the end result more closely approximates Pareto optimality, whereby no one can be

made better off without someone else being made worse off. The planning system as it exists today does not seek to compensate third parties: rather, it is satisfied so long as the overall welfare gain is of sufficient size that *it would be possible* to compensate third parties. No transaction actually takes place between the parties: welfare is supposedly maximised through planning authorities deciding whether the utility gained by satisfying the developer outweighs the utility lost by disappointing third parties, or vice versa. As such, the system is not Pareto Efficient because, while there might be a net welfare gain, it is achieved by making some parties worse off (either by preventing a party from developing land, or by allowing development that reduces the amenity that another party enjoys).

It is therefore obvious that the first step in overcoming NIMBYism is to create a mechanism whereby individual property owners can be compensated for their loss of amenity.<sup>25</sup> Without compensation for loss of amenity or other negative externalities resulting from a planning decision, NIMBYism is not only inevitable *but also rational*.

This latter point is of vital importance: as long as property owners are not compensated for the negative externalities of neighbouring development, it is always worth the property owner opposing any neighbouring development that has any negative impact upon them, no matter how small; furthermore, it is worth them dragging out the process (for example, through appeals to the Secretary of State) for as long as possible, in the hope that the developer gives up. As a result,

*“The process of obtaining planning permission can be time-consuming and drawn out, leading to delays in development which in certain circumstances can in themselves prevent the development from taking place.”<sup>26</sup>*

The failure of the planning system in the UK to make any provision for the compensation of third parties is surprising because it was not how the current policy was originally conceived. In the Town and Country Planning Act 1947, provision was explicitly made to compensate ‘losers’ from the proceeds of ‘betterment’. However, the Conservative Party has consistently opposed Betterment Taxes and, therefore, the only means operating within the system to compensate third parties. For its part, the Labour Party has subsequently allowed Betterment Taxes and their later replacement, “Planning Gain”, to be collectivised, with the windfall accruing to the local authority rather than being used to directly compensate those who are genuinely

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adversely affected.<sup>27</sup> Both Conservative and Labour governments have acquiesced in the use of Planning Gain to enrich local authorities (which they largely controlled) rather than compensating negatively affected third parties, despite the fact that “Providing benefits for the community at large is very different from ensuring that the interests of third parties damaged by development are properly addressed.”<sup>28</sup>

The 1947 tax-and-compensate concept fell foul of the interests of the two main political parties. But it also came up against the economic calculation problem: planning authorities did not have (and could not have) the knowledge to calculate what the “unearned” increment was; equally, they could not determine who was genuinely harmed by third party effects and to what extent. The former is perhaps impossible to unpick.<sup>29</sup> The latter, however, is subject to negotiation and thus an appropriate price can be determined. What is needed, therefore, is a method for individual property owners to trade their property rights – including rights to development and rights to amenity.

The knowledge problem is in fact key to understanding the impossibility of authoritarian planning policy, not only because planners cannot correctly calculate planning gain but also to because they cannot determine where development should take place and of what type. As Mark Pennington explains:

*“the costs and benefits associated with environmental externalities are inherently subjective and are only revealed through the actions and choices that people make when confronted with a range of competing alternatives. The best way of dealing with the relevant uncertainties, therefore, may not be deliberately to plan for an ‘optimal’ urban form, but to permit a wider variety of experiments in urban living. This may allow a discovery process to reveal which particular ways of organising urban areas work best from the subjective view of their inhabitants as signalled by the relative willingness to pay for different types of development scheme.”<sup>30</sup>*

It is also impossible to co-ordinate the activities of the various planning agencies in the absence of a market.<sup>31</sup>

To create this market it would be necessary to privatise land development rights.<sup>32</sup> Opponents of private development rights tend to assume that this will result in a free-for-all building binge, ending in the paving over of vast tracts of virgin land.<sup>33</sup> Yet, as Alan Evans noted in 1988, “Those

who travel outside Britain do not seem to think that the landscapes of Tuscany, Umbria, Brittany or the Loire Valley have been irretrievably ruined by piecemeal development. On the contrary, they seem to be pleased that villas and gites exist which are relatively cheap and which allow them to live in rural surroundings.”<sup>34</sup> One might make a similar point about London itself, where the streets and communities built during and before the 1930s are generally considered to be more desirable and more successful than those built in the wake of the Town and Country Planning Acts.

Indeed, because privatisation of property rights would include not only the Right to Develop but also the Right to Amenity, it may very well be easier for those who wish to protect an area from development to do so, through purchasing a covenant on valued pieces of land and thus protecting it from development. To expand this latter point, it should be noted that “under the common law... ownership of land confers a bundle of rights, of which one is the right to develop the land *provided that it does not adversely affect the property rights of others*. The law of nuisance limits this right, as do individually negotiated restrictions such as easements and restrictive covenants.”<sup>35</sup>

Inevitably disputes would arise. This is to be expected and indeed cannot be avoided. The question for planning policy is now how to avoid conflict but how conflicts are best resolved: through supplementing and assisting the market of suspending it.<sup>36</sup>

Some will undoubtedly raise concerns that the privatisation of development rights would discriminate against the less wealthy. In fact “virtually every study of government land-use planning conducted in both Britain and the United States has concluded that intervention has redistributed wealth from the poor to the middle class.”<sup>37</sup> If anything, it is the current, nationalised system that discriminates: against the poor, those who do not yet own property, and outsiders (which, in London, may very well include people from other boroughs as well as other parts of the UK).

## The Green Belt

One cannot discuss land-use planning in London without considering the role of the Green Belt. Neither can one casually dismiss it. The Green Belt holds an almost sacred place in the heart of Londoners. It is seen as a vital bulwark against urban sprawl, preventing London expanding forever, “carpeting over” the south of England. And it is believed to provide essential green space, enabling Londoners to escape to the country.

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These views should not be taken uncritically, however. The idea of “urban sprawl” is itself controversial – the rigid distinction between “urban” and “rural” is an artificial invention, yet one that is enshrined in the very name of the Town and Country Planning Acts.<sup>38</sup> It was questioned even at the time of the Royal Commissions on land-use planning: one member of the Scott Committee, the economist Professor Dennison, rejected the distinction and the very idea that urban containment should be treated as a merit good.<sup>39</sup> Indeed, Dennison “was so concerned about the economic illiteracy of the Scott report that he wrote a minority report within Scott, almost completely at variance with Scott’s proposals.”<sup>40</sup>

Urban containment through the creation of Green Belts has several effects, few of which are beneficial even for those living in the city. Firstly, it displaces development to areas beyond the Belt, sacrificing equally, or even more, rural land for that on the edge of the city.<sup>41</sup> Secondly, it necessitates the development of more extensive transport infrastructure of convey the residents to their jobs in the city, thus sacrificing more land to transport use and lengthening the time people must spend travelling (to which one might also add the increased environmental costs of travel – for example, increased output of Greenhouse Gasses). Thirdly, it increases the cost of housing and reduces supply. Fourthly, it increases the density within the city.

This last is worthy of note because increased urban density is now being treated as an end in itself,<sup>42</sup> with London planners deliberately looking at ways to increase the density of urban living.<sup>43</sup> Yet it is far from clear that current and future homeowners share the planners’ desire to live in more densely packed housing, and whether or not they would choose to do so is best (indeed, can only) be determined through a competitive process of entrepreneurial land development, rather than through the imposition of modes of living. Furthermore, while it may be superficially attractive to ring London with a swathe of countryside so as to provide Londoners with access to green space, if this is done at the expense of urban green space this may be counterproductive. It is likely (though, again, we can only be sure through entrepreneurial experiment) that Londoners would prefer extensive green space throughout the city than a ring of green *around* the city.

It should be borne in mind that for the typical resident of (for example) Lambeth or Camden, the Green Belt is a long way away, and the extent to which city-dwellers actually

visit the countryside is fast decreasing: between 1998 and 2002/3, the number of day trips to the countryside declined by 12 per cent, a process which has accelerated, so that the number of visits decreased by 45 per cent between 2002/3 and 2005.<sup>44</sup> If city-dwellers really want and need access to green space, this may be better provided within the cities, which would therefore be of *lower* density; yet existing policy is undermining the protection of urban green space from those very planners who would seek to increase the density of urban living.<sup>45</sup>

It thus seems sensible to revisit the idea of Green Belts. That the Green Belt is a shibboleth of London politics derives from the mistaken belief that it is essential to provide Londoners with access to green space and to prevent London causing more harm to the environment.<sup>46</sup> Any attempt to remove the Green Belt would thus have to persuade Londoners that the environmental impact, and the availability of open space, will not suffer, and may in fact benefit, from the abolition of the Green Belt. This should be easier than it might appear, once one bears in mind the varying quality of the Green Belt. This includes within its orbit not just forest and hills but railway and motorway embankments, old gravel pits, quarries, previously developed land and farmland that, rather than representing a metropolitan arcadia, is in fact a man-made monoculture of dubious environmental merit, that is for the most part closed to the public.<sup>47</sup>

The abolition of the Green Belt might very well facilitate the development of areas of land of limited environmental merit, while enabling the preservation of those areas (such as the North Downs and the Chilterns) that Londoners truly value for their environmental and aesthetic merits. This would in turn help protect more valuable green space in areas not currently protected. As Mark Pennington notes:

*“This argument is especially pertinent when considering that for every site of doubtful environmental quality preserved within the Green Belt itself, pressure mounts for the development of potentially more attractive and more valued sites in the rural areas beyond the designated zones. When taking into account the level of development that has been displaced into the ‘deep countryside’ rather than taking place on the immediate urban fringe, Green Belts may have resulted in a greater loss of valued rural sites than might otherwise have been the case.”*

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## Options for deregulating land use planning

There are a number of possible approaches to improving the efficiency and efficacy of land use planning, ranging from greater localism, through an increased use of market mechanisms to outright denationalisation.

### Localism in Planning

Perhaps the easiest approach, politically, would be to devolve choices over planning systems to the 33 local authorities within London. The hope would be that they would then compete to provide the ideal planning system, balancing the demand for development against the existing amenity of landowners. Some caution is needed, however: as Pennington notes, “Empowering local actors to take decisions can be very beneficial, *but only if these actors are faced with an incentive structure that encourages them to weigh costs and benefits and to be properly accountable for the relevant decisions.*”<sup>48</sup>

Unfortunately, those incentives do not currently exist. Planning policy guidelines require planners to have a thought to the future amenity of residents; to consider whether new housing would provide a sufficient quality living space. However, there appears to be no corresponding duty to consider the aggregate needs of future homeowners and tenants for more, cheaper housing. As a consequence, projects are frequently turned down on the (dubious) grounds that the property does not provide sufficient amenity to future residents – ignoring the fact that said residents would be able to exercise this judgement themselves and factor it into the price that they pay – thus exacerbating the shortage of housing and inflating prices. Furthermore, the real concern for councillors is the short-term impact that a development has (or is perceived to have) on their incumbent constituents – many existing residents have been angered by permission being granted to develop a neighbouring site, but few people moving into a new property have bothered to find out if their local representative supported the build, and awarded their vote accordingly.

More generally, it is not clear that real competition would emerge between the boroughs. As Professor Richardson observes, “The ‘herd instinct’ is compelling”: it is by no means clear that local authorities would significantly alter planning policy, or differ from one another.<sup>49</sup> This would be compounded by the fact that local authorities receive identical advice from organisations such as London Councils, the Local Government Association and lobbyists

such as the Royal Institute of Chartered Surveyors. Secondly, the incentives outlined in the previous section benefit individual landowners, rather than local authorities. Indeed, they weaken the role of both councillors and planning officers, and are therefore likely to face fierce resistance from both.

### Introducing market mechanisms

An alternative would be to create a system of zoning, as practiced in many parts of the United States, and then either auction development rights or issue them to residents in a tradable format. In both cases the local authority would retain the ability to set the overall level of development, while allowing developers more freedom over the site and type of development. Zoning would enable the local authority to retain some control over broad patterns of development by, for example, distinguishing between conservation zones, development zones, and so on, while the fine grained pattern was determined by the market.

Auctioning development rights would generate revenue from which to compensate third parties. Determining who was compensated and by how much would become the role of planners in a process akin to environmental impact assessments. This would represent an improvement on the current system because technical externalities would be internalised, while the market would set the price of development rights and the detailed pattern of development.<sup>50</sup> The economic calculation problem still obtains, because planners are still required to make a value judgement in the absence of market prices. Furthermore, there is likely to be considerable rent-seeking behaviour around the delimitation of development zones. However, by retaining a role for planners it would face less opposition from vested planning interests; it also goes some way towards satisfying those who take a benign view of government intervention and hold unrealistic beliefs about the ability of experts to assess value.

There is a marked difference between compensating third parties and encouraging parties to support development, however. Issuing tradable development rights (TDRs) to residents, rather than auctioning them, would act as an incentive to residents to allow more development, as this would enable them to profit directly from development, rather than the benefits accruing to the local authority, as would be the case with an auction. The value of an individual’s TDR would not be enough to undertake much development; instead, those who wished to develop would need to buy development rights from others. The quantity of TDRs issued would become a matter for debate between

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those seeking to minimise development and those seeking to maximise profits from the sale of TDRs. Thus the political process would not be entirely circumvented.

One problem with TDRs is that amenity is extremely localised: if my next-door neighbour decides to extend his house, this will have a significant impact upon me; if a household twenty doors up the road extends, it may have no impact upon me at all. I may therefore be perfectly happy to sell my TDR to the household twenty doors up, while cursing the owner of the property nineteen doors up for selling their TDR to my next-door neighbour. There is thus no reason to assume that those harmed by externalities are adequately compensated for development.

### **The courts and the common law**

Both the failure of TDRs to address compensation, and the problem of relying on local authority planners to calculate levels of compensation, could be overcome if compensation were separated from the process of buying development rights. This could be achieved by the simple expedient of legislating to require developers to compensate third parties. Developers could then negotiate directly with third parties – perhaps through a mediation service – with the courts acting as the final recourse if negotiation and mediation fails.<sup>51</sup> As John Corkindale notes, this creates “economic incentives for both sides to behave rationally, as both would prefer not to use the courts as a means of settlement, as recourse to the courts would involve significant costs.” Thus, developers will wish to fairly compensate those who have suffered genuine losses, while opportunists will be deterred from pursuing false claims.

### **Protecting valued amenity**

What of those who wish to prevent development altogether? Corkindale says that “Logically... an absolute guarantee of conservation could not be justified unless the value of the conservation were to be regarded as infinite”, but some people do see environmental conservation as being of infinite value, despite the fact that “ ‘the environment’ is not an all-or-nothing good, but a bundle of *different goods*.”<sup>52</sup> Having said that, this absolutist approach to environmental questions may be a direct result of the absence of markets.

A market in development rights should not only benefit developers: it should also benefit those who wish to prevent development. This will manifest itself in at least three ways. Firstly, conservation groups may choose to buy development rights for the express purpose of preventing their use: this would enable the subjective values of conservationists and those supportive of development to

be measured against one another and ensure the optimal use of resources. Secondly, it may be possible to design the system such that development in environmentally sensitive areas is explicitly linked to promoting conservation.<sup>53</sup> Thirdly, conservationists would retain the ability to take out covenants on pieces of land to prevent future development – a practice that has waned since the nationalisation of development rights in 1947.

And it need not only be conservationists and amenity-conscious neighbours who invest in covenants. Developers might also do so, to improve the value of their developments: by taking out a covenant on neighbouring land and/or imposing deed restrictions on the properties for sale, the developer can sell the properties to buyers who can be confident that the amenity of their new homes will not be affected by future development. This would increase the value of the developments and enable buyers to express their real preferences for neighbouring amenity through the price they are prepared to pay.

### **Proprietary communities**

Another approach to the denationalisation of development rights would be through the creation of proprietary communities.<sup>54</sup> This would entail devolving development rights not to individual landowners or households, but to groups of landowners in a geographically contiguous area. These would hold the private property rights in their locality collectively and would be able to sell agreed bundles of development rights, depending on shareholders’ preferred design and density and on their relative desire to maximise profit or amenity. The shareholders would at first be property owners, but over time the ownership of the development rights and of the physical assets might diverge – a factor which would itself affect the value of each.<sup>55</sup>

### **Pluralism and experimentation**

The above are just some methods that might be used to introduce a market into land use planning. But the knowledge problem affects not just planning and development control; it also impacts upon *the way that we plan*. As a consequence, we cannot know which of the above approaches, if any, is the best approach: this, too, is a discovery process. Perhaps the crucial lesson is that the best solution to the planning problem is not to deliberately design a land-use planning system but to allow various systems to compete. Not only will this discovery process reveal which particular ways of organising land-use planning work best; it will also allow for different conditions and opinions prevailing in different localities.<sup>56</sup>



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## Conclusions

The current, nationalised land-use planning system ought to be questioned, if only because it was designed at a time when the underlying fundamentals were so different from today. The Town and Country Planning Acts were passed at a time when the prevailing orthodoxy among politicians, economists and the home-buying classes was towards greater central planning. Socialism was red in tooth and claw. Two thirds of a century later, the efficacy of central economic planning and the omniscience of governments is no longer taken seriously. To coin a phrase, we wouldn't start from here. However, the land-use planning system appears to be one of those areas of public policy that has proven peculiarly resistant to change: the basic structure and underlying assumptions remain the same as those enshrined in the first Act in 1947.

The consequences for London have been disastrous. Too little housing has been built, and what has been built is expensive and of low quality, often resembling "Rabbit Hutches on Postage Stamps".<sup>57</sup> For the past decade, barely two thirds of the officially estimated housing need has been met. London's economy is suffering: businesses are concerned about a lack of infrastructure, customers are paying over the odds for consumer goods and tourists are deterred by unnecessarily high accommodation and transport costs. This is not due to a shortage of land – huge swathes of land of dubious quality is protected by blanket bans on development that are based on questionable assumptions. Property owners have no incentive to acquiesce to development and every reason to object.

It is time to introduce a new Planning Bill with the aim of revoking the Town and Country Planning Acts, abolishing national prohibitions such as the Green Belt, and privatising development rights. Power should at the very least be devolved to local authorities, but preferably beyond. If local authorities are to retain a role, it should be by applying market mechanisms to land-use planning, possibly by designing an overall planning framework and zoning the boroughs, and/or by auctioning tradable development rights or issuing them to property owners within the borough. However, serious thought should be given to going beyond the boroughs, devolving development rights to local neighbourhoods through the creation of proprietary communities. At the same time, the government should legislate to require developers to compensate third parties that suffer genuine negative externalities, establishing the courts as the final arbiter.<sup>59</sup> Finally, whatever system the government settles on should be open to competition: it

should not be assumed that the new planning regime is necessarily right. Pluralism and experimentation should be an integral part of the design, allowing development control to occur within a dynamic environment.

Such a change, affecting far more than just London, would represent the most radical shake-up of planning law for 65 years. It would end one of the last bastions of post-war socialism, but more radically, it would explicitly acknowledge that governments cannot determine the ideal system for discovering solutions or managing systems. It would unlock a frenzy of experimentation in both urban forms and modes of governance that would revolutionise the way we live. London would never be the same again.

### About the author

Tom Papworth is an independent researcher, policy analyst and writer. He was worked in two of the world's leading security studies institutes, been a Cabinet Office civil servant, and worked for trade associations in the early years and higher education sectors. He was Director of Policy at Liberal Vision from 2009 to 2011 and continues to contribute to their work. He is a Fellow of the Adam Smith Institute and is currently working at the Institute of Economic Affairs.

Tom was elected to the London Borough of Bromley in September 2007 and has for several years served on Plans Sub-Committees as well as representing residents at planning appeals and public enquiries. As a result, he has seen first hand the effects of planning decisions and the planning system on individuals and communities.

### Endnotes

- 1) "An estimated 224,000 households live in overcrowded accommodation in London... In 2008/09, 7.2 per cent of households in London were overcrowded." *A Revised London Housing Strategy – Initial Proposals: consultation with the London Assembly and the GLA Group*, section 3.12, p31.
- 2) And the problem of affordability is worsening. The ratio of lower quartile house prices to lower quartile earnings rose from 8:1 in 2009 to 9:1 in 2010. This compares with an average for England of 6.7. Sixty per cent of Londoners see the cost of housing as a problem. (Figures from DCLG and GLA, quoted in *A Revised London Housing Strategy – Initial Proposals: consultation with the London Assembly and the GLA Group*, section 3.8, p25. The year to which the England average figure applies is not given).
- 3) *A Revised London Housing Strategy – Initial Proposals: consultation with the London Assembly and the GLA Group*, section 3.2, p15.
- 4) The exact figure is somewhat confused. The proposed Mayoral Housing Policy 3.3: *Increasing housing supply* commits the Mayor to "ensure the housing need... of 32,210 net additional homes across London", but elsewhere the Mayor admits that "a more appropriate requirement comparator... is the SHMA's 34,000 total requirement figure" (Revised London Housing Strategy paragraph 3.18) while paragraph 3.46 of The London Plan 2011 talks of "the current annual average strategic housing requirement of 32,600 – 34,900 dwellings pa."
- 5) The net change in the number of dwellings in London was 243,590 over the eleven years 2000-01 to 2010-11. This represents an average of 22,145 new dwellings per year. While the figure for 2010-11 was below trend, resulting in much criticism of the Mayor, it was not in fact unusually low, and indeed was higher than the 2000-01, 2001-02 and 2002-03. *Housing Live Table 118: Annual net additional dwellings, England and the regions, 2000-01 to 2010-11*.
- 6) *Making the right connections: CBI/KPMG infrastructure survey 2011*, CBI, September 2011.
- 7) *National planning policy framework must restore confidence in the planning system*, Statement by Katja Hall, CBI Chief Policy Director, 25 July 2011.
- 8) *Creating the conditions to ensure continued construction sector growth*, CBI 2011.

9) The London Chamber of Commerce and Industry website, 21 November 2011, [http://www.londonchamber.co.uk/lcc\\_public/article.asp?aid=4844](http://www.londonchamber.co.uk/lcc_public/article.asp?aid=4844).

10) Notably, the Ford Towns: Chelmsford; Watford; Guildford; Dartford.

11) *Evaluating the Economic Impact of Planning Controls in the United Kingdom: Some Implications for Housing*.

12) *Liberating the Land*, p42.

13) *Our countryside is vanishing under new housing*, Campaign for Rural England website, 1 December 2011, <http://www.cpre.org.uk/what-we-do/housing-and-planning/planning/the-issues>.

14) *Radical planning shake-up threatens green fields*, Campaign for Rural England website, 1 December 2011, <http://www.cpre.org.uk/what-we-do/housing-and-planning/planning/update/item/2522-radical-planning-shake-up-threatens-green-fields>.

15) *Town and Country Planning in Britain, 1988*, p184.

16) *Ibid*. This calculation was made in the late 1980s and so some variation is to be expected. However, it gives the reader a sense of the discrepancy between perception and reality, and more recent calculations show that it is broadly unchanged.

17) *Conservation and the Countryside: By Quango or Market?*. As the figures should make clear, these areas are not mutually exclusive. However, c.14 per cent of England is Green Belt alone (*Liberating the Land*, p54).

18) Figures calculated by Kristian Niemietz and published in *Land use planning: the Corn Laws of our times*.

19) *Half a million houses are lying empty, Guardian research shows, The Guardian*.

20) *Ibid*.

21) According to the Department for Communities and Local Government (*Housing Live Table 615: Vacant dwellings by local authority district: England, from 2004*), there were 34,422 houses in London that had been vacant for more than 6 months in October 2010, of which the Mayor had brought 4,145 into use by August of the following year (*Revised London Housing Strategy – initial proposals*).

22) *Housing Live Table 100 Dwelling stock: Number of Dwellings by Tenure and district: England; 2010*.

23) The exact figure is somewhat confused. The proposed Mayoral Housing Policy 3.3: *Increasing housing supply* commits the Mayor to “ensure the housing need... of 32,210 net additional homes across London”, but elsewhere the Mayor admits that “a more appropriate requirement comparator...is the SHMA’s 34,000 total requirement figure” (*Revised London Housing Strategy paragraph 3.18*).

24) This is a slight simplification. Planning authorities frequently cajole developers into making amendments that go some way to meeting the demands of objectors. While some might argue that this enables the developer to develop the land while ameliorating the impact on the objector, this frequently satisfies neither party. It is thus often the case that planning policy leads to a lose-lose outcome.

25) It seems hardly necessary to explain to readers that NIMBY stands for “Not In My Back Yard” and refers to the tendency among property owners to resist all development in their area.

26) *Evaluating the Economic Impact of Planning Controls in the United Kingdom: Some Implications for Housing*, p76.

27) The whole complicated saga is set out in *Fifty Years of the Town and Country Planning Acts: Time to Privatisise Land Development Rights?*

28) *The Land Use Planning System: Evaluating Options for Reform*, p68.

29) Even advocates of Land Value Taxation (also known as Site Value Rating) tend to rely upon public sector valuation officers determining the Site/Land Value, as distinct from the value of improvements, and setting the tax accordingly. This can only be a very arbitrary process.

30) *Liberating the Land*, p44.

31) *The Road to Serfdom*, p55-6.

32) Note that land itself is owned privately. It is the right to develop the land that is nationalised. The separation of these two aspects of land ownership lies at the root of the problem.

33) The use of loaded terms such as “binge”, “vast” and “virgin” in this sentence is a deliberate attempt to draw the reader’s attention to the assumptions made by opponents to development. There is unfortunately insufficient space here to consider the reality of these assumptions.

34) *No Room! No Room! The Costs of the British Town and Country Planning System*.

35) *The Land Use Planning System: Evaluating Options for Reform*, p70. Emphasis added.

36) The distinction is Hayek’s, expressed in *The Constitution of Liberty*.

37) *Liberating the Land*, p95. See also R. Goodin and J. Le Grand, *Not Only the Poor*, Allen and Unwin, London 1987.

38) The case for keeping urban and rural distinct is set out in P. Abercrombie, *Town and Country Planning*, Butterworth, London 1933.

39) There were no fewer than four Royal Commissions into planning-

related matters during the 1940s, despite the fact that there were other, more pressing, matters to concentrate on during the first half of the decade. The four Royal Commissions were The Barlow Commission (1940) into the distribution of industrial population, The Scott Committee into rural land use (1941), The Uthwatt Committee into compensation and betterment (1942), and The Reith Report into New Towns (1947).

40) *Some popular assumptions about countryside planning*.

41) These terms must be used cautiously, as they reflect, and add weight to, the distinction between rural and urban. In addition, the extent to which a piece of land is “rural” is itself a subjective matter.

42) Increasing urban density is a general planning condition (PPS1, 27, viii) and is particularly emphasised in reference to housing (PPS3, 47).

43) See, for example, *Housing Intensification in seven South London Town Centres*.

44) *Great Britain Day Visits Survey 2004, and The England Day Visits Survey 2007*. Note that the first set of figures applies to Great Britain while the second set applies to England only.

45) To cite just one example, taken from the ward I represent as a councillor on the London Borough of Bromley, the London Development Agency has secured permission to build approximately 180 homes on designated Metropolitan Urban Land within the confines of Crystal Palace Park.

46) The author would dispute the idea that London, or any city, “causes harm” to the environment, redolent as it is of an artificial distinction between man and nature that reflects the already-mentioned distinction between urban and rural at an even higher level.

47) On the dubious environmental merit of agricultural land, see *W(h)ither rural: new canons for old?*, p14.

48) *Liberating the Land*, p75 (emphasis original).

49) Richardson’s quote comes from the forward to *Liberating the Land*.

50) For a discussion of the advantages of auctions as a mechanism for allocating usage rights, see for example *The Undercover Economist*.

51) The unwillingness of the courts to review planning decisions is anyway anomalous. The courts do consider cases brought against planning authorities over whether the correct procedures have been followed during planning decisions, but have generally not entertained cases between parties over compensation. This is not the case in other jurisdictions. Legislation could change this, and there is no reason to believe that such a role would be beyond their capability.

52) *Liberating the Land*, p51.

53) The systems applied in Kern County and the New Jersey Pinelands are examples.

54) For a fuller discussion of proprietary communities, see *Liberating the Land*, especially pages 91-102.

55) So, for example, one might be able to buy a larger house for one’s money if one was prepared to forego any right to extend or re-design it, and/or forgo any say in neighbouring development.

56) The author deliberately echoes the quote to which footnote 30 refers.

57) *‘Rabbit Hutches on Postage Stamps’: Planning, Development and Political Economy*.

58) It is worth noting that London and national governments experience strong lobbying to keep the official estimates low. As a consequence, they are far more likely to be under- than over-estimating demand.

59) But only for technical externalities (i.e. loss of amenity and the consequent reduction in the value of their property). Some of the financial loss that third parties experience will result from the resource that they own (i.e. developed land, in the form of a house, factory, shopping centre, etc.) becoming less scarce. This is a loss of economic rent resulting from competition, and property owners have no more right to compensation for this aspect of their losses than do businesses or workers when competition squeezes profits or wages.

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