

# development land ownership – the crucial key

The apparently never-ending process of planning reform fails to address land ownership, the fundamental component in the successful delivery of large-scale development, says **John Walker**

The TCPA has been campaigning to improve the planning system, which has been the subject of continual reform for more years than I can remember. What if the TCPA succeeds? Will we see much improved development, with plentiful, truly affordable, well designed housing? Will infrastructure be provided when it is needed, including roads, parks, cycle ways, public transport, social facilities, schools, and health centres? Can a reformed planning system produce radically better results that will deliver the above and promote more sustainable living?

Allow me to digress for a moment, in order to come back with some suggested answers.

## **The biggest problem – a 40-year under-supply of affordable housing**

We stopped building truly affordable homes at any real scale in the early 1980s. In 1977 we built 314,000 new dwellings in the UK, of which 170,000 were affordable, at local authority or housing association rents. By 1982 the total had fallen to 182,000, and 54,000 were affordable, and by 2017 the respective figures were 193,000 and 35,000.<sup>1</sup> So, over that 40-year period private developer output had risen by 13,000 per annum, while local authority and housing association output had fallen by 135,000 per annum (see Fig. 1 on the following page).

Even that modest developer increase was fuelled by government subsidies for first-time buyers. So private developers, having had the field to themselves for 40 years, have produced broadly what they did before, plus some extra when government sent specific, targeted subsidies their way. The numbers gap has never been made up, both in overall quantity and, of greater importance, in terms of affordability.

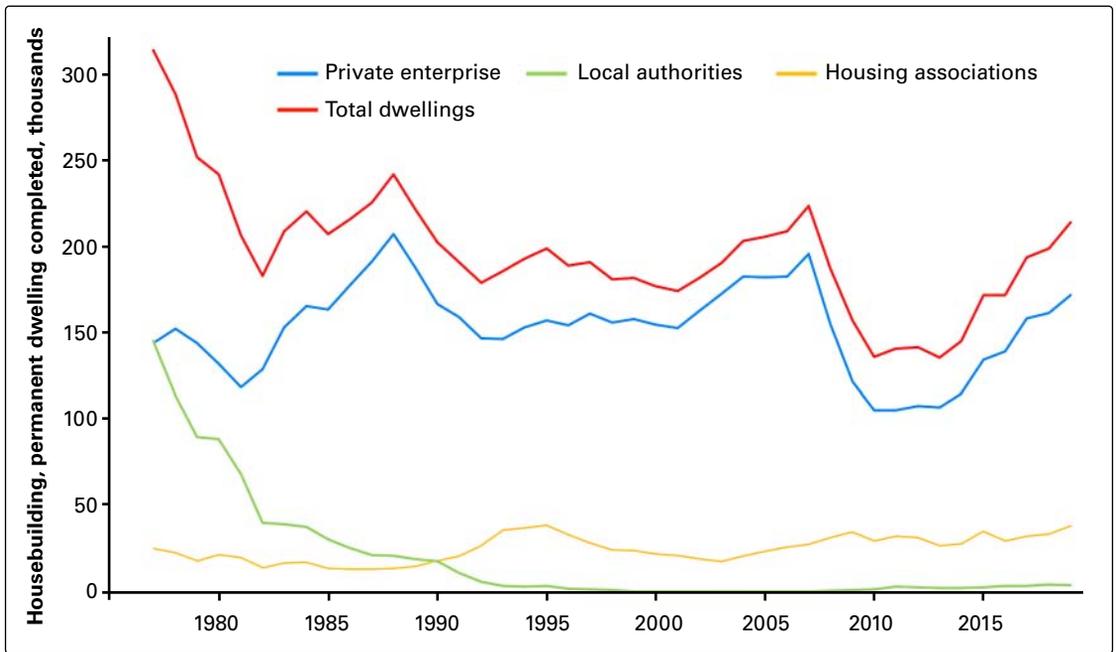
People on lower incomes have been denied the right to a decent home at an affordable price and have been forced into the private rental market, which often costs more than a mortgage – leading to the

creation of multi-millionaire ‘buy-to-let’ owners, while leaving behind ‘generation rent’, with no equity in the expanding property bubble. The ‘winners’ have been those already on the property ladder and a third sector of people who have benefited disproportionately from buying their council homes at a large discount, some of whom have then joined the buy-to-let sector, renting out their ‘council homes’ for private-sector rents.

This single defect of development over the last 40 years has done more than anything else to create a generation that is less well off than its predecessors, with all the consequent social tensions and resentment.

Planning has sometimes been blamed for this problem, but that is simply not true. Governments which either supported or denied the value of planning have, in their turn, all reformed ‘the system’ to address the lack of quantity and quality. None of the reforms successfully addressed the production of sufficient homes in well designed communities whose development enhanced their environment and their host communities. There were some notable attempts with very limited success, such as John Prescott’s ‘Sustainable Communities’ initiative and Gordon Brown’s ‘Eco-towns’ – and even these initiatives relied more on investment than on planning reforms. Both ultimately failed because they did not have sufficient political momentum, nor did they leave behind robust delivery processes to deliver at scale.

Large-scale delivery of socially, environmentally and economically successful communities takes a lot of time. Political priorities rarely last beyond a single term, and frequently less. Even where a ‘policy theme’ remains, such as the need for more housing during the last 20 years, the means by which politicians seek to address it frequently alter, bringing fresh initiatives that usually destroy what little progress the last one made – ‘invest in infrastructure’,



**Fig. 1 Housebuilding in the UK, 1977-2019 – over a 40-year period the fall in local authority and housing association delivery has not been offset by the smaller increase in private sector output, giving rise to persistent and growing housing unaffordability**

Source: Table 3a: 'House building: permanent dwellings completed, by sector, United Kingdom, historical calendar year series'. In *House Building, UK: Permanent Dwellings Started and Completed*. Office for National Statistics<sup>1</sup>

'address market failure through incentives', 'intervene to alter outcomes', 'create new innovative financial arrangements', 'use Section 106 agreements', 'use the Community Infrastructure Levy', 'offer first-time buyers subsidy', etc. all get mixed up, rolled out, reinvented and repackaged to give the appearance of action, often with little real impact on the overall problem.

We used to see a wide range of small builders, locally focused and mainly intent on building a good product whose value was improved locally by their track record of high-quality delivery. Perhaps a better planning system could support these companies, who would probably welcome a process that gave them a chance to deliver good quality – if it can still find them.

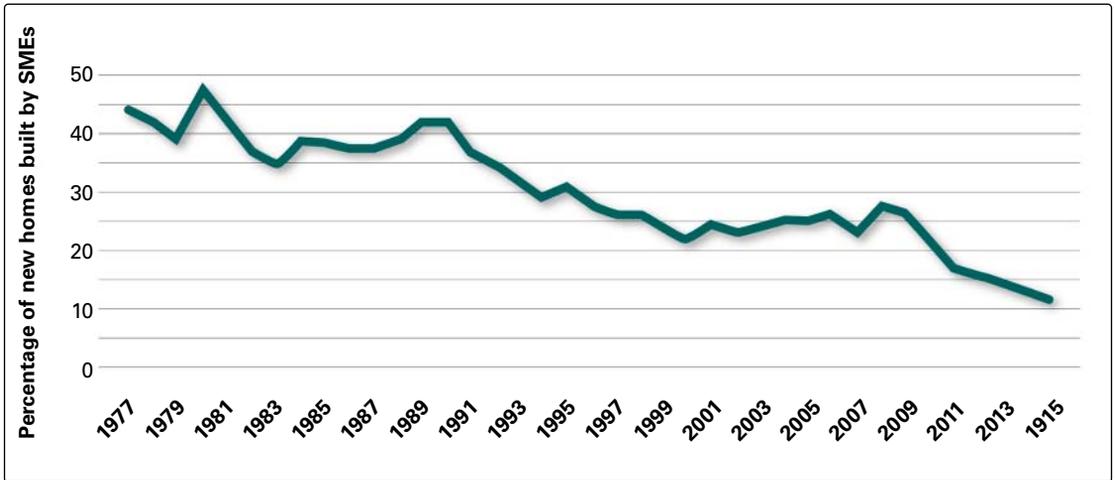
But there are far fewer of these smaller companies now (see Fig. 2 on the following page). Most housing is delivered by a small number of large developers, for most of whom quality is secondary to the short-term profit margin. Once the product is sold, they are no longer interested, since their houses sell on price and location rather than anything associated with their 'brand'. They are skilled at dealing with local planning authorities and can afford to employ the best, highly paid planners, lawyers and surveyors to promote their cause. Many have become land speculators first and developers second. They buy land in a competitive market, forced to offer prices to landowners that factor in their ability to minimise the scale of Section 106 costs that planning authorities will try to impose.

They have to, or a competitor will offer more. Their drawings will usually look attractive...

Under this process, 'town planning' has often become a process of choosing between competing sites, all put forward by developers, rather than a top-down regional or a bottom-up community-led approach. Much of the added value created when land is granted permission for development is already set aside for the lucky landowner, as are the substantial fees paid to advisors and the 'risk dividend' that developers see as fair return for fronting up the very substantial costs of speculative land promotion.

So land that passes successfully through this process is subsequently developed at costs and standards that must reflect this pre-allocation of added value, or else profit margins will disappear. The pace of building will suit the master-developer – enough to make good profits but not so much as to depress selling prices. Infrastructure will usually be provided as late as possible, because this makes sense for cash flow. Affordable housing is minimised, and is often subsidised by the taxpayer because there was not enough added value left in the land.

The very nature of affordable housing has been redefined by successive governments in different ways, most of which fall short of making housing really affordable to those on the lowest incomes. The taxpayer continues to pick up the tab for much of the shortfall, in terms of housing benefits for those whose only option is private rental. Housing



**Fig. 2 The declining contribution of smaller housebuilders (1-100 units per annum), 1977-2015**

Source: *Reversing the Decline of Small Housebuilders: Reinvigorating Entrepreneurialism and Building More Homes*. Home Builders Federation, 2017. [www.hbf.co.uk/documents/6879/HBF\\_SME\\_Report\\_2017\\_Web.pdf?pk\\_campaign=newsletter\\_824](http://www.hbf.co.uk/documents/6879/HBF_SME_Report_2017_Web.pdf?pk_campaign=newsletter_824)

benefit spending nearly doubled from 0.8% of GDP in 1983-84 to 1.5% of GDP in 2013-14.<sup>2</sup>

Of course there are exceptions where master-developers have a genuine long-term interest in value creation, but they are notable for being just that – exceptions – and their existence cannot be guaranteed in any specific development because ownership can change hands at any time.

### What contribution would a 'better' planning system make?

So how would a better planning system deal with this? Well, in principle it could do a lot at the smaller end of the scale. Clarify that all the infrastructure must be provided in a timely way, including real support for walking, cycling and public transport. Specify the need for really affordable homes and require them to be delivered. Insist on high standards of design and sustainability. Require long-term stewardship arrangements that will be accountable and affordable to residents. Collect contributions towards clean energy infrastructure and ensure they are included across the wider area.

On smaller sites with smaller builders, this could be successful, because there can be sufficient clarity before the short building phase about detailed designs and costs. Contributions for larger facilities can be defined and collected. Delivery is less likely to drag out over many years, avoiding some of the risks of a volatile market or changes in ownership.

But on larger sites, who would bet that the local planning authority would successfully fend off repeated attempts over several years to value-engineer (water down) the planning requirements on grounds of viability or changed circumstances? On a site that will take five, 10, or even 20-30 years to build out, who would bet on the local planning authority gaining consistent support from relevant Ministers in successive governments, who will not

even remember why the current planning system was reformed and who are probably already publicly blaming it for lack of delivery while drawing up their own set of further reforms to 'solve the problem'?

This is depressing – although, you never know, that next further reform might turn out to be better – or worse. So what more could and should be done to reduce the risk of failure?

### Land ownership in the wrong hands

At the same time that we stopped building affordable housing, we also stopped using the public sector's ability to buy and assemble large sites at existing-use value (so called pre-scheme value), using the subsequent uplift in value to contribute substantial sums towards essential infrastructure and affordable homes, minimising the need for general taxpayer support, and promoting faster rates of delivery.

These larger sites are the ones on which local planning authorities will continue to struggle, even with a better planning system. Putting the control of land into a special-purpose, democratically accountable body not only saves public money in the long term, but also puts control over the pace and quality of development into the hands of a body that represents the public interest in a way that balances financial returns against public benefit. Land can be serviced and developed directly, or released to the market with a clear brief, in which case it can be developed under a licence agreement that is far more effective than any planning controls, since the developer does not get the freehold until the houses are completed in accordance with the agreed plans. Developers actually gain from this, especially the small and medium-sized companies that are currently frozen out of the market. Developers can get back to doing what they originally were set up to do – build homes rather than speculate in land.

The post-war New Towns were developed in this way, and many European countries still use public land ownership as the foundation of good delivery.

While many of the early New Towns developed soon after the Second World War were focused strongly on affordable homes, they all placed an emphasis on good infrastructure, and the later New Towns (such as Milton Keynes) used much of their land to stimulate and support small private-sector developers by breaking the sites up and selling on, as above, without any loss of planning control. As Director of Planning at Milton Keynes Development Corporation (MKDC), I never had to worry that developers would dumb down their delivery, because my commercial colleagues would not let them have the freehold if they did. Good development standards were delivered through an iron grip on the land.

At MKDC, we developed a strong and positive relationship with housebuilders. We serviced, marketed and specified what was needed. We released enough land each year to satisfy demand, which in turn was stimulated by the development of employment sites and the timely delivery of all local facilities. Housebuilders bid for sites, knowing the context – that the roads, utilities, schools, health centres and parks would be in place, and that the developers on adjacent sites would be held to the same high standards. We de-risked their task, allowing them to concentrate on building homes. In doing so we probably reduced their opportunity to make extremely high profits, but we also reduced their risk of major loss. It was a win-win for those that were not wedded to land speculation. And they knew it!

While we continued to develop much of the affordable housing directly (in later years through our wholly owned housing association) we also marketed sites for affordable housing to other not-for-profit developers. Small sites, on average for less than 50 homes, ensured a good mix in all locations. These days we would probably get more of the affordable delivery through the housebuilders, to integrate it more fully and make it tenure-blind.

New Towns eventually fell out of favour in the UK, for several reasons. From the mid-1970s governments came to see them as being at odds with regeneration, although of course they were conceived as part of a two-pronged approach, relieving need in big cities and allowing space for their regeneration and improvement. The problem was that no-one had got round to doing the regeneration until the 1980s.

The key strength of the New Towns was the establishment of a single-purpose entity, set up by parliamentary assent, with a clear long-term purpose and effective land acquisition powers.

Successive Ministers had varying degrees of enthusiasm, often less than their predecessors due to the 'not invented here' syndrome, which every political leader tries to deal with by finding 'new and

better ways'. However, in the main, they let the New Town Development Corporations (NTDCs) get on with their job, because it was difficult to close them down before they had achieved their task without full parliamentary support. This strength allowed these projects to be substantially completed long after political fashion had moved on.

Governments required the NTDCs to jump through new hoops along the way. A good example was provided by the incoming Thatcher government in 1979, which decimated public sector housing development nationally. This applied to the New Towns as much as anywhere else, since its approach was implemented in the simplest and most direct way – by slashing budgets.

This change revealed another key quality of this type of special-purpose vehicle. At MKDC, instead of shrugging our shoulders, like most local authorities had to, and accepting that our goal of a socially and economically balanced community was impossible, we created a new housing association, worked with banks to provide a new form of mortgage, and created the UK's first major shared-ownership programme, delivering up to 700 new homes a year. This was skilfully processed through Ministers by our Chief Executive, positioned as 'private sector housing', because of the involvement of banks and the fact that the occupier had responsibility for maintenance, thus ticking the right political boxes. As an alternative to its previous rental housing programme it was a poor second, but in the context of almost complete obliteration of such a programme nationally it was a huge achievement and allowed many people on low incomes to find an affordable home.

The point is that the vehicle that was set up for delivery of a large, long-term project had its own long-term mandate which was difficult to cancel, and it used its skills and initiative to keep its task alive, in the face of radical changes in national policy that could have undermined the promises offered through the approved plan. It could also use its powers and skills to innovate and improve. It is notable that national energy performance standards for buildings and large-scale shared-ownership housing were both delivered first through NTDCs, before spreading nationally over following years. The same models today could focus effectively on sustainable infrastructure, building standards, and long-term stewardship.

### **Securing proper accountability**

One can, of course, argue that this type of behaviour was undemocratic, and indeed that the whole New Towns programme lacked accountability. But how should you hold to account an organisation that has explicit long-term goals established through a democratic process when these conflict, in mid-delivery, with a change in national policy, driven by political views which have not considered their impact on such projects? Should today's government

feel any sense of responsibility for big projects which can never offer all their benefits if half-delivered?

There was a strong sense of responsibility within MKDC towards the communities it was helping to create and the promises made through the approved plan, which amounted to a kind of investment prospectus for those arriving with their firms or families.

## 'Land ownership, in the hands of a properly accountable public body, purchased at near existing-use values, would add enormous value to a reformed planning system'

Of course, there was also an issue of local accountability, given that the NTDCs were accountable to Ministers, not to local councils. Much has been written about this, and the TCPA is better informed on the subject than any other body, but it is worth saying that NTDCs were driven by long-term goals that would serve the communities that they were essentially helping to create, and this required a balanced approach towards the interests of existing and future communities. Many NTDCs pre-dated their local councils, because the places that they were there to create did not yet exist! For example, MKDC pre-dated the formation of Milton Keynes Council by seven years, before which there were six smaller councils, each speaking for communities that were partly inside and partly outside the new city area. No local elected authority could speak for the future residents. The local authorities were also represented on the NTDC boards, where the interests of the future incoming population had to be given proper consideration.

However, none of this completely overcomes the perceived and real lack of accountability to local authorities. This would be particularly strong when the plans to be delivered have been drawn up by those local authorities. While recent amendments to the New Towns Act do address the subject of local control of NTDCs, sadly they do not deal with some key stumbling blocks that might otherwise make their use widespread. Although 'locally led NTDCs' would be accountable to a local authority body, the question of funding has not been properly addressed, and with it comes a need to relate the two. Then there is also the chicken-and-egg planning process conundrum.

The first of these issues can be summed up as 'no funding without accountability' and has to be squared with 'locally led'. Since most major projects will need substantial up-front loans, the question is who would underwrite these loans, and in what proportion. This really needs a sensible site-specific approach, considering all relevant factors, including

the nature of the infrastructure, the scale of land value capture and the prospect of positive returns, and the capability of local partners to shoulder the burden. This has to happen up-front and needs active, open government participation with the local authorities.

The second issue, of planning process, is a crazy unintended consequence of the order in which things are expected to happen in the revised Act. The case for development needs to be established at local level. The preferred way is through the Local Plan process, which is subject to all the usual requirements, including demonstrating deliverability. But big projects may only be deliverable using New Towns Act powers (or something similar) which allow the purchase of land at the value that existed before detailed plans have been produced. So the project may appear undeliverable unless an NTDC is created – but this cannot be confirmed until after the plan has been approved. So the plan gets refused. Catch 22!

### Public land procurement could greatly enhance the power of good planning in large projects

While New Town powers are a tried-and-tested way of delivering good planning, and could be used today, the underlying point I want to make here is that land ownership, in the hands of a properly accountable public body, purchased at near existing-use values, would add enormous value to a reformed planning system. Aside from NTDCs, this approach could be delivered by partnerships between Homes England and local authorities, as long as the governance arrangements are sufficiently transparent, accountable and robust to last the course. The key starting point is ownership of development land by a robust and accountable public body that is fully aligned with the public interest to deliver the project to the highest possible standards and with an interest in its long-term maintenance.

None of what I am advocating here needs new legislation; just political will, which is sadly in short supply.

● **John Walker** was formerly Director of Planning at Milton Keynes Development Corporation, then Chief Executive of the Commission for the New Towns. He has subsequently worked for 20 years as an advisor, advocate and chair for large-scale projects. The views expressed are personal.

### Notes

- 1 Table 3a: 'House building: permanent dwellings completed, by sector, United Kingdom, historical calendar year series'. In *House Building, UK: Permanent Dwellings Started and Completed*. Dataset. Office for National Statistics, Mar. 2021. [www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ukhousebuildingpermanentdwellingsstartedandcompleted](https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ukhousebuildingpermanentdwellingsstartedandcompleted)
- 2 *Welfare Trends Report*. Office for Budget Responsibility, Oct. 2014, para. 9.6. [https://obr.uk/docs/dlm\\_uploads/Welfare\\_trends\\_report\\_2014\\_dn2B.pdf](https://obr.uk/docs/dlm_uploads/Welfare_trends_report_2014_dn2B.pdf)