

THE HOUSING PROBLEM IN LONDON

a broken planning system

SIR MARK BOLEAT

Contents

The Author · 3

Summary · 4

The perceived problem – and why it is wrong · 6

The real problem – obstacles to house building · 14

Solutions · 22

References · 27

About The Housing & Finance Institute · 28



The Author

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He has undertaken studies on housing finance for the World Bank and other international agencies in Russia, Nigeria, Egypt, Uganda and Nigeria.

Mark has held a number of board positions in the housing field, including being Director General of the Building Societies Association and the Council of Mortgage Lenders, Chairman of Circle 33 Housing Trust and the Jersey Development Company and a board member of Countryside Properties and the Housing Corporation.

He has held numerous other board positions including being Chairman of the Policy and Resources Committee (the “political leader”) of the City of London Corporation for a five year term until May 2017.

Mark is currently Chairman of LINK, which runs the country's ATM network.

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Summary

It is universally accepted that the very high cost of housing, particularly in London, is a significant problem – for people who live and work in London and for the competitiveness of London. This problem is sometimes attributed to a shortage of land, the behaviour of developers – including building too slowly and prioritising overseas buyers, the decline in public sector house building and rapacious behaviour by landlords.

But the laws of supply and demand have not been repealed. The housing market is doing what public policy has told it to do – supply has been restricted in the face of rising demand as a result of which prices have risen. There is no shortage of land for housing (which accounts for under 10% of land use in London) and there is no evidence to support the argument that developers are to blame by hoarding land or not building fast enough or selling to foreign buyers. On the contrary, a Homes for Londoners Board report concluded that the role of overseas buyers reduces funding and development risk and that without them the number of houses available for Londoners to buy or rent would reduce.

To be developed for housing, land must meet four tests:

- 1** It is owned by a developer or capable of being bought by a developer.
- 2** It is in a condition that can be built on, and the necessary infrastructure is in place or will be in place in a timely manner.
- 3** It has or is likely to have the necessary planning permission.
- 4** The housing is capable of being sold at price a that will yield an adequate return to a developer.

Each of these aspects can be problematic, and each carries with it a degree of uncertainty and therefore risk.

The supply of new housing has been restricted by six inter-related factors:

- 1** Policies on land use, particularly in respect of the Green Belt – an oxymoron as much of the Green Belt is not green and much green land in London is not in the Green Belt.
- 2** The imposition of a high tax on house builders through planning obligations, and a planning system geared to the “haves” not the “have nots”, which adds considerably to costs of building housing, including through the imposition of conditions that have to be complied with before building can commence.
- 3** The reluctance of public sector bodies to release surplus land.
- 4** The complex nature of sites that have the potential to be used for house building.
- 5** Inadequate infrastructure provision.
- 6** The nature of the house building industry, which has become increasingly dominated by a small group of large developers, partly in response to the five previous points.

Political leadership is also important. Strong and effective leadership can manage the constraints such that new house building can be substantially increased. But the constraints make it unnecessarily difficult for the politicians who want to increase the supply of housing and all too easy for those who do not.

The solution to the problem requires the following:

- 1** An evidence-based debate and recognition that there are trade-offs.
- 2** Recognition that the problem will not be solved by building on brownfield land alone.
- 3** Recognition that the higher the tax on house building through planning obligations the fewer houses will be built. 30% of a large number can be much higher than 50% of a small number.
- 4** A change of policy towards land use, including the Green Belt, and permitting higher densities.
- 5** Strong penalties on public sector bodies that fail to release surplus land.
- 6** Planning conditions to be reduced significantly, costed and deemed to be discharged within seven days of certification by the developer, unless the local authority has clear evidence that the conditions have not been complied with.
- 7** Ensuring that planning decisions in local authorities are joined-up with wider policy objectives.
- 8** Planning decisions should be taken by relatively small panels, who have received appropriate training, and representatives of an area in which a development would take place should be excluded from voting on that decision.
- 9** Simplification of the Community Infrastructure Levy and S.106 requirements particularly for social housing.
- 10** Political leadership in individual local authorities, without which the problem will never be solved and which is a pre-requisite for addressing the other issues.



The perceived problem – and why it is wrong

The problem

It is beyond dispute that the high cost of housing in London is causing real problems. House prices and rents have risen substantially in real terms. Housing costs now show up as a major concern in opinion surveys, and the issue is high on political agendas.

Rents or mortgage payments now account for a very high proportion of incomes. High prices in inner London have led to young people moving outwards, with resultant long and expensive commutes. Businesses find it more difficult to recruit at pay levels that they can afford. While young single people still find London attractive, a significant proportion now seek to move to somewhere cheaper when they want to start a family.

This is tied into a wider social mobility and inter-generational fairness issue. In London in particular the current generation now in their 20s are likely to be poorer than their parents. The housing issue is one of a number of causes of this, but is particularly significant for those without the “Bank of Mum and Dad” for support.

More generally, the high cost of housing is threatening London's competitiveness as against other business centres – not just in the UK (which is not really a problem) but rather as against other international centres. For example, PwC's *Cities of Opportunity* (PwC, 2016) ranks London as between first and third in four of ten criteria and easily first overall, but 13th in sustainability and natural environment and 26th in cost (out of 30 cities in total). Mercer's *Quality of Living Index* (Mercer, 2017) puts London in 40th place. *Moving out* (London First, 2014) reported that 73% of London business decision-takers considered that London's housing supply and costs were a significant risk to the capital's economic growth.

Although the problem is particularly acute in London the same issues apply to much of the wider south east of England.



Britain's biggest house builders possess enough land to create more than 600,000 new homes

Causes of the problem – the conventional wisdom

It is frequently asserted that Britain generally, and London in particular, suffers from a “broken housing market”. Indeed the Government's 2017 White Paper (DCLG, 2017) is entitled *Fixing our broken housing market*.

The causes of the real problems identified in the previous section have been variously attributed to:

- Shortage of land, with it sometimes being said that Britain is a small over-crowded island and that London specifically is densely occupied.
- The behaviour of developers in not building fast enough and merely sitting on land in the anticipation that it will rise in value such that they can sell it at a profit.

“Britain's biggest house builders possess enough land to create more than 600,000 new homes, an analysis by the Guardian has found, raising questions about whether they are doing enough to solve the housing crisis facing Britain.

The nine house builders in the FTSE 100 and FTSE 250 hold 615,152 housing plots in their land bank, according to financial disclosures. This is four times the total number of homes built in Britain in the past year.” (*The Guardian*, 30 December 2015)

Developers have also been accused of exacerbating the problem by selling homes to foreigners rather than to Londoners.

- The decline in council house building.
- Rapacious behaviour by landlords, exploiting tenants by charging excessively high rents and evicting at will.

The conventional wisdom leads to perceived solutions, promulgated particularly vigorously at election time. Often these take the form of announcing targets for new house building, subsidising people to pay market prices, threatening action against developers for not building enough houses and promises of rent and other controls over landlords.

Why the conventional wisdom is wrong

The conventional wisdom is wrong. The laws of supply and demand have not and cannot be repealed. Price responds to the inter-action of supply and demand. If demand rises and supply fails to respond then prices rise. Conversely, if demand falls with a constant or rising supply then prices fall. The notion that prices always rise is unsustainable in theory and contradicted by evidence. For example, house prices in London fell in nominal terms by over a quarter between 1988 and 1993. Between Q1 2007 and the end of 2016 the real change in house prices was -36% in Spain and Ireland, -26% in Italy, -15% in the US and even -4% in the UK (*The Economist*, 2017). Other countries, notably New Zealand, Canada, Germany, Australia and Switzerland, experienced real increases of over 30% in the same period. Similarly, the notion that prices are beyond the ability of people to pay is wrong – by definition. Prices are where they are precisely because people are willing and able to pay them – uncomfortable as that might be.

It is worth analysing this final point in more detail. People have responded to the rising cost of housing in a combination of ways:

- Young people are remaining in the parental home for longer – one in four young adults in London is now doing so, compared with one in six in the 1990s.
- Parents are contributing to the housing costs of their children through the “Bank of Mum and Dad”.
- People are occupying less space, either by sharing or by renting or owning smaller properties. People in their late 20s are now living as students used to live 20 years ago.
- People are paying much more for their housing – and therefore have less money for other expenditure.
- People are living in cheaper areas – although there is a trade off with commuting costs, and as people move into cheaper areas so they become less cheap.
- The age at which people are buying their first homes has risen dramatically. In the 25-34 age group home ownership has halved since 1990. It should be noted that this is not because owning is more expensive – on the contrary it is cheaper than renting because owners are not paying a third party to manage and maintain their housing. Rather, the

problem is government policy that has restricted access to home ownership through regulation of the mortgage market. In this context the expression “generation rent” is thoroughly unhelpful as it implies that the problem is reduced access to home ownership, whereas the real problem is reduced access to any form of housing.



...buy land, they're not making it anymore

The housing market is doing precisely what policy makers have, albeit unintentionally, told it to do. Demand has risen because London has been booming – the place where people want to be because of the job opportunities and everything else that has made London the most successful global city. Having said that, it was only in 2015 that London's population regained the previous peak level of 8.9 million, recorded in 1939, the population having fallen to a low point of 6.7 million in 1983. The population of London has risen by more than a third in the last 30 years.

Between 1998 and 2015 the population of London increased by 21% while the supply of housing increased by just 12%. The laws of supply and demand mean that the impact of rising demand not matched by rising supply is that prices have risen to a market clearing level. House prices and rents are at the level that matches supply and demand. The ratio of the average price paid by first time buyers to mean gross earnings has risen from 2.6 in 1995 to 10.4 in 2016. Lower interest rates mean that the decline in affordability, at least at the point of purchase, has been far less dramatic although still substantial.

Other cities have managed to increase their supply of housing in line with, or more rapidly than, the growth in their population.

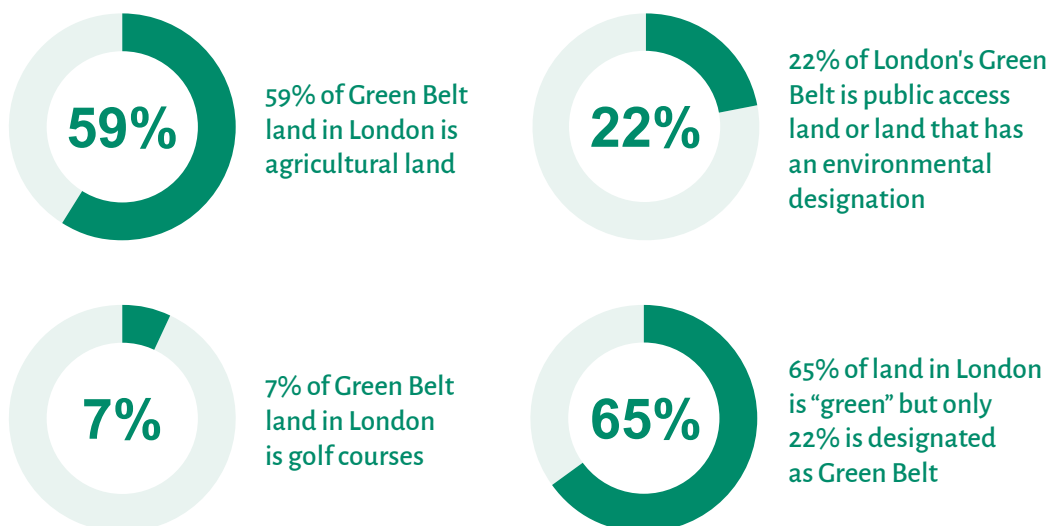
“In common with London, Tokyo, Paris and New York all experienced growth in both population and housing over the last decade. But while London has had the fastest population growth (1.4% a year), Tokyo built by far the most new homes, at a rate of 1.9% a year compared with 0.9% in London and 1.5% in both Paris and New York. If London had grown its housing stock at the same rate as Tokyo it would have built about 59,000 new homes a year in the last decade.” (GLA, 2015)

The perceived causes of the problem do not stack up, and generally are simply asserted with no supporting evidence. The four points are now considered in turn.

Is the problem a **shortage of land**, with Britain being over-crowded and London being densely occupied? Mark Twain is alleged to have said: “buy land, they're not making it anymore”. But while the second part of the phrase is correct the first makes the wrong assumption that all land is being put to its most productive use. This may be true in small areas but is manifestly not true for London or for the whole country. Urbanised areas cover 9.9% of England, the built area 4.2% and domestic housing 1.1%. Green space covers 94.4%. The figures in London are certainly different – the built area is 27.6%, housing 8.7% and green space 38.2%. However, it is clear that even in London housing occupies a very small proportion of land. (It should be noted that different sources give very different figures for land use. The housing figure quoted above is for physical buildings only. Domestic gardens account for around 30% of land use in London.)



The “Green Belt” features prominently in the debate about land use and at times seems to be almost as much of a religion as the NHS. There is an assumption on the part of some that the Green Belt is green space open to the public and the only protection against the countryside being concreted over. Some of the facts were usefully set out in a London First report (London First, 2015):



However, it is fair to point out that the purpose of the Green Belt is to limit “urban sprawl” rather to provide green space accessible to the public. But this does not alter the fact that the effect of the Green Belt has gone well beyond restricting urban sprawl.

Are **developers building too slowly** and merely hanging on to land which they then trade and are they manipulating the market for land? It is true that developers do have large land banks – often running to ten years or more, and that land is traded between developers. However, it is absurd to suggest that developers can each make a profit by trading land between themselves. Holding land has a cost and land values can fall as well as rise. In London, residential land values fell 40% between 2007 and 2009, putting a number of developers in severe financial difficulty, although there has since been a strong recovery.

Developers need a pipeline of land because the process of buying all the required land, obtaining planning permission and building out a site can take years. There are sound logistical reasons for this. House building is labour intensive, and with large sites there needs to be a steady flow of work for the various skills that are required rather than, for example, trying to install bathrooms or kitchens in 4,000 units are exactly the same time. And, sensibly, developers do not aim to complete a large site all at the same time because



local markets cannot absorb a huge increase in supply at prices that make a development worthwhile. Of course, developers are seeking to make a profit – like all other private sector organisations that cannot rely on public subsidies to keep them going. This behaviour is entirely rational. In the short term developers could speed up construction to some extent – if they can obtain the necessary resources and can sell more units off-plan, but this would be a one-off effect that would be reversed in subsequent years unless the supply of land ready and suitable for house building is considerably increased.

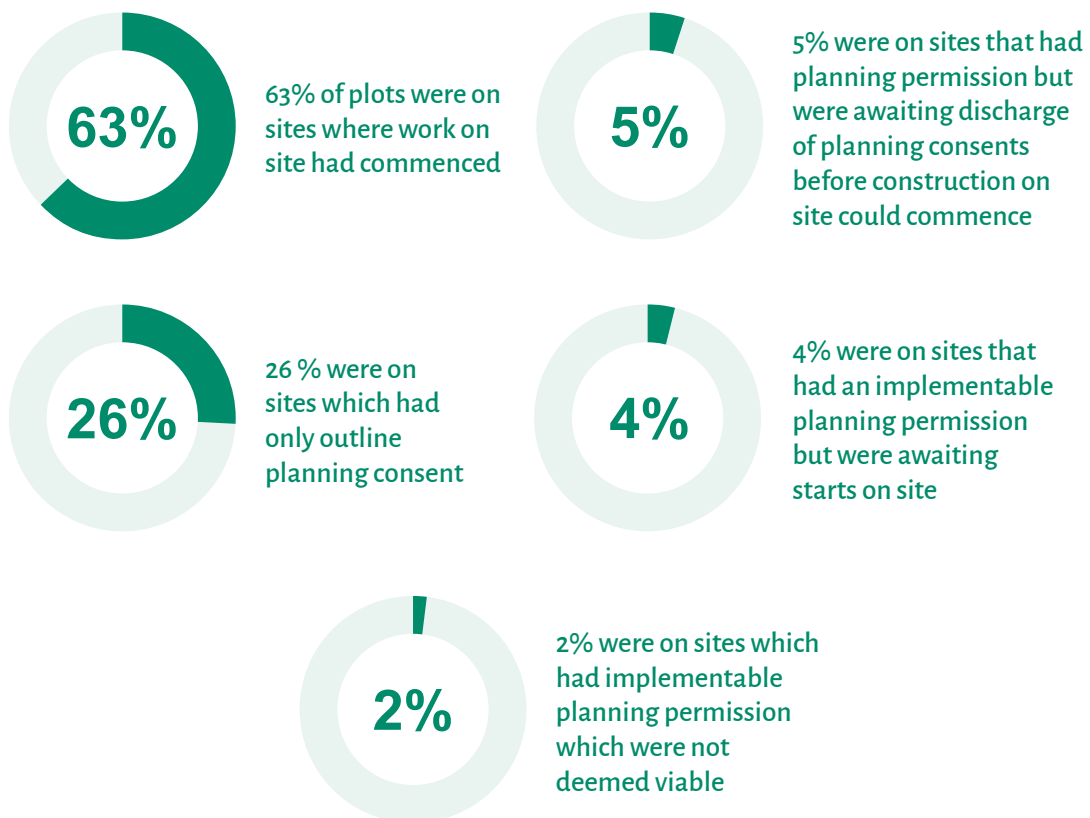


So the fact that non-builders control almost half the planning pipeline is a constraint on housing development in London

This issue of land banking has been examined by official bodies on a number of occasions. The results are summarised in a House Builders Federation report (HBF, May 2014). While the HBF has a remit to defend developers the report fairly quotes the official studies and at least gives hard evidence. Among the reports quoted:

- The Barker Review of Housing Supply (2004) commissioned by the Chancellor and Deputy Prime Minister: “the Review has found little evidence, at least across the country as a whole, to substantiate concerns that option contracts and the practice of land banking allow house builders to erect barriers to entry into the market”.
- The Callcutt Review of House building Delivery (2007) commissioned by the government: “There are no doubt some individual cases where house builders hold land for longer than they need. But, in our view, the current evidence does not support the suggestion that this practice is at all widespread”.
- The Office of Fair Trading report *Homebuilding in the UK* (2008): “We have not found any evidence to support the view that, at the national level, homebuilders are hoarding a large amount of land with implementable planning permission on which they have not started construction. This suggests competition has not been impaired by homebuilders mothballing permissioned land to create a barrier to entry and artificially raise prices even during the long upturn in the market until 2007. Equally there is little evidence to suggest that homebuilders have been able to systematically obtain market power at a local level by acquiring planning permissions.”
- The Molior report on Barriers to Housing delivery in London (2012) commissioned by the Mayor of London: “site-by-site interviews suggest the obvious: builders intend to build their sites, non-builders do not! So the fact that non-builders control almost half the planning pipeline is a constraint on housing development in London. When accusations of land banking are directed at builders, those accusations are misplaced.”

The HBF conducted a survey of its larger members' development pipelines in 2014. The results showed that:



The annual reports of the major house builders provide some additional information – and also on the issue of whether house builders make money from buying land, sitting on it and then selling at a profit.

- Taylor Wimpey's Annual report for 2016 reported that it owned 76,000 plots – five years supply, and that it had a strategic land bank (that is land on which there was no planning permission) of 108,000 plots. In 2016 it converted 9,519 plots from strategic to short term. It completed 14,000 homes in 2016. During 2016 it recorded house sales of £3.268 billion and land sales of £48.1 million.
- Berkeley Homes Annual report for 2016 showed that it owned 42,858 plots of which 9,000 were contracted but did not have planning permission. This compares with completions of 4,000 in 2016. It also had a strategic land bank of 5,000 plots. In 2016 Berkeley recorded house sales of £1.965 billion and land sales of £2.3 million.

More recently the finger has been pointed at overseas buyers, the implication being that more housing units sold to foreign buyers mean less housing and higher prices for Londoners. It has also been suggested that foreign buyers buy housing and then leave it empty, expecting to profit by selling at a high price. One of the perceived solutions is to require developers to offer homes to “Londoners” (a term that is difficult to define if it is to be used to grant preferential access to housing) before marketing them overseas. This line of argument is implausible in theory, but has been allowed to run in the absence of hard evidence. Fortunately, there is now hard evidence. The Mayor of London's Homes for Londoners Board convened a sub-group to investigate overseas investment and purchase in London's residential property market. This sub-group commissioned research on overseas

investment in London's property market along with other evidence. The report (Homes for Londoners Board, 2017), published in June 2017, found that:

- Overseas buyers bought 10% of all new homes in London between 2014-16, although if new affordable homes are excluded from this total, the figure is 13%. This activity was focused in central London.
- At least 70% of overseas purchases were bought with the intention to rent out, suggesting that, overall, up to 4% of market sale homes were bought by overseas buyers and might potentially not be regularly occupied. Within this 4%, a spectrum of uses was identified, ranging from occupation by students to occasional business or leisure use, commensurate with London's role as a global city. The number of homes deliberately kept empty was considered to be negligible.
- Overseas investment in London's property market finances and de-risks development at an early stage, helping to unlock housing supply and provide associated community benefits. Overseas investment had a net benefit on housing supply, meaning that many times more homes were built and lived in overall than were bought and not regularly occupied.
- London attracts a significant amount of institutional investment from lenders and business globally, bringing forward development on major development sites faster and with more homes than would otherwise have been the case.

The sub-group considered specifically the impact of overseas buyers and house prices. It concluded:

"There is no indication that if all overseas buyers disappeared tomorrow house prices would become more affordable for Londoners. Indeed, given the role of overseas purchasers in buying homes off-plan, thus reducing funding and development risk, and hence helping to deliver new homes in the first place, housing supply would probably be significantly adversely affected if all overseas demand vanished, reducing the number of homes available for Londoners to rent and buy."

The report of the sub-group includes research from LSE. This concluded:

"Overall, therefore, sales to overseas buyers almost certainly contributed to the net availability of housing to Londoners. The positive impact of overseas investment on the supply of new housing development is additional and complementary to that arising from these sales and is becoming increasingly important in speeding delivery, especially on large sites. One important implication of these findings is that there would be real costs to the London housing market if overseas investment either through purchasing new dwellings or supporting new developments began to feel unwelcome."



There is no indication that if all overseas buyers disappeared tomorrow house prices would become more affordable for Londoners

If the problem really was the behaviour of developers then it would be easy to solve – by local authorities and housing associations expanding their own development activities and using the anticipated “excess profits” to subsidise social housing. In fact local housing associations face exactly the same problem as private developers in obtaining land suitable for development. In a survey of 104 senior executives of housing associations in 2017, 72% said accessing development land was a major factor presenting housing delivery.

Decline in council house building

It is a fact that council house building has declined from very high levels to negligible levels and at first sight this has contributed to the current housing problem in London. But this statement must be qualified. Old style council house building may have produced large numbers but it also produced poor quality and heavily subsidised housing that had to be financed by taxes and rates. A given capital sum can lead to a higher level of house building if used in ways other than simply building council houses to be allocated according to bureaucratic rules and which exclude a majority of the population. This is now widely recognised, which is why increasingly councils are using what resources they have in more imaginative ways, for example remediating brownfield land so as to make private sector building viable, or financing shared ownership schemes.



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A qualification – the impact of taxation

One important qualification is needed to this analysis. Housing used to be incredibly well treated by the tax system (through mortgage tax relief) and through housing benefit combined with artificially low council rents. This issue has been partly, although not wholly, addressed. Mortgage tax relief has been abolished and council and housing association rents are much nearer a market level than was the case 30 years ago. But two important subsidies remain:

- Owner-occupied housing is largely exempt from inheritance tax so there is an incentive for people with wealth to have that wealth in the form of property, the incentive being greater the older and better off people are. Popular opinion is that to maximise tax efficiency individuals need to own a house and be married in their final years.
- Most tenants of social housing receive housing benefit, in many cases that pays the whole of their rent. They therefore have no incentive to occupy less property. Being given a council tenancy in some of the more desirable parts of London is the equivalent of being given a capital asset of well over £1 million – which though the right-to-buy is capable of being realised at a later date.

Some would argue that the rating system is another factor explaining very high housing costs. It is undoubtedly true that council tax is tiny in relation to business rates and that rates as a percentage of rents or mortgage costs are much lower for expensive properties than for cheap properties. However, this all depends of what the purpose of rates is. Arguably they are a tax on residents to provide services, not a tax on the value of housing, in which case the value of housing is irrelevant. In Britain, wealth holdings – whether expensive cars or houses or works of art – are not taxed; only income actually received is taxed. Having said that, clearly if council tax was more related to property values then it is likely that there would be a moderating effect on housing costs.

The rapid increase in house prices means that council tax as a proportion of property values has fallen significantly – from 0.5% in 1996/97 to under 0.2% in 2015/16. Against this, the rise in house prices, together with changes in the structure of the tax, have led to a massive increase in stamp duty revenues, from £1 billion in 2000 to over £3 billion in 2015/16. Arguably, some of the recent changes in stamp duty, particularly the surcharge on buy to let properties and second homes has contributed to house prices stabilising, and in some parts of the market falling, over the last year.

Given these factors, the cost of housing is bound to be higher than would otherwise be the case, but not to the extent that is currently the case.

The real problem – obstacles to house building

The principal reason why the supply of new homes has not matched rising demand is that the supply of land for housing has been artificially restricted. To be developed for housing land must meet four tests:

- 1** It is owned by a developer or capable of being bought by a developer.
- 2** It is in a condition that can be built on, and the necessary infrastructure is in place or will be in place in a timely manner.
- 3** It has or is likely to have the necessary planning permission.
- 4** The housing is capable of being sold at price a that will yield an adequate return to a developer.

Each of these aspects can be problematic, and each carries with it a degree of uncertainty and therefore risk.

It is helpful to understand the process that a developer goes through. The starting point is identification of land and an initial assessment of the sales value of the houses that can be built on that land. A calculation has to be made of build costs, other costs such as the cost of the capital used to purchase the land and finance the construction, marketing costs, planning fees etc, and then allowance made for planning obligations – broadly speaking payment of the Community Infrastructure Levy and “Section 106” requirements that cover local infrastructure, social housing, employment schemes etc. The developer will expect a return on capital and seek a margin of around 15% of the sale price. The maximum price that can be paid for the land is therefore a residual. The table below illustrates, in a very simplified form, a typical calculation at the plot level.

Illustrative economics for a house selling for £500,000	
Sale price	£500,000
Building cost	-£150,000
Planning, marketing, interest etc	-£50,000
CIL, S106 etc	-£50,000
Profit	-£75,000
<i>Price willing to be paid for the land</i>	= £175,000

In effect, the land price is the residual, and is determined not in isolation but rather by the relationship between the expected selling price and total costs incurred by the developer. So in the example above, other thing being equal a £100,000 increase in the expected sale price would lead to an increase in the price the developer was willing to pay for the land from £175,000 a plot to nearer £275,000.

It needs to be recognised that not all house builders/developers follow the same model. Some specialise in land assembly, master planning, obtaining planning permission etc and then selling part or all of a site “oven ready” to companies that specialise in building

houses rather than in development. This applies particularly to very large sites where a developer would not wish to concentrate risk. There are companies that specialise in identifying potential sites and securing outline planning permission only. Some concentrate activities in areas where local authorities do not have an agreed plan, in which case there is a presumption in favour of development. This type of activity was well explained in a recent article by Isabelle Fraser (*Sunday Telegraph*, 2017), although the article rather presented such activities as a “bad thing” rather than as a significant contribution to helping address the shortage of housing. Some house builders are precisely that – specialist house builders, concentrating on physical construction on land that has planning permission.

The table can usefully illustrate the sensitivity to changes in the key variables. For example:

- A “brownfield” site may require extensive remediation before construction can begin. If that remediation costs £175,000 a plot the land value is zero. If it costs £200,000 a plot then the developer has to be paid £25,000 to develop the land or another agency must take on responsibility for remediating the site. It should be noted that the cost of remediation is often very uncertain, adding a further risk to a developer.
- If the social housing requirement under S.106 is increased to say £100,000 the developer will reduce the price they are willing to pay for the land, but if the land owner is unwilling to accept a reduced price the land may not be sold.
- If costs increase after the land has been acquired, for example because of a new higher S.106 levy or unexpectedly high build costs, the developer may decide not to build – but is still left carrying the interest charges on the purchase price of the land. Alternatively, the developer may seek to sell the site to another developer who has a different view of the market or to sell to cut losses. It can make sense to build with an expected profit of zero if the sale price covers the marginal cost of construction etc.
- If expected sale prices fall by 10% with other things being equal the profit margin is halved. The developer is left with the same equation as if costs have risen.



Some house builders are... ..specialist house builders, concentrating on physical construction on land that has planning permission

One difficult issue is the assessment of the appropriate S.106 charge, particularly the provision of social housing. Broadly speaking this sets a “tariff”. Developers must pay for a number of social housing units, typically equal to 35% of the number of private units. The preference is for the social units to be on the same site. However, this can lead to fewer social housing units than if the units are off-site, particularly for more expensive developments. In practice there is a negotiation of the appropriate social housing contribution on the basis of viability assessments, with the result often being controversial. There are cases where an agreement has worked to the benefit of the developer and others cases where the opposite has been the case. Where there is a downturn in the market a developer may seek to renegotiate the agreement on the grounds that otherwise the project will not go ahead. These issues are hugely controversial, as well as very expensive for both developer and local authority, and introduce significant uncertainty into the development process. There is no easy answer to the problem. It is accepted that giving planning permission for housing yields a huge benefit to the land owner and that some of this should be clawed back for the benefit of the community, but there is no magic bullet as to how this can be achieved. However, it is obvious that the higher the requirement (in effect the price that has to be paid for obtaining planning permission) the fewer the number of houses that

will be built for the private market – and therefore social housing units. And it is equally obvious that the protracted negotiations on the “right” figure are costly and unsatisfactory all round.

The supply of land

The issue of the supply of land was exhaustively considered in the Barker Review (Barker, 2004). Its conclusion (paragraph A.19) was:

“The underlying constraint on housing is the supply of land. This is constrained by a range of factors:

- *the house building industry, its response to risk and the speculative nature of land leading to a reluctance to build out large sites quickly;*
- *the increasingly complex nature of sites (especially brownfield), where significant remediation may be required;*
- *land ownership and the incentives to bring land forward for development along with the difficulties of site assembly, where ownership is fragmented;*
- *the planning system and its influence over the amount of land which is made available and whether development is viable through the delivery of necessary infrastructure; and*
- *land use is also politically contentious.”*

These issues are inter-related.



The health service has long been identified as a “hoarder of land”

Land ownership

Generally, a private sector owner of land has a financial incentive to sell in that they get the money that can be used for other purposes. A public sector owner generally has no such incentive. Either the sale proceeds are expropriated by the centre or if kept by the institution their use is likely to be strictly controlled and the people who take the decision are unlikely to benefit from any sale. On the contrary, they are likely to be abused for “selling off the family silver” or selling land “that may be needed in the future”. The health service has long been identified as a “hoarder of land”. This issue was considered by Sir Robert Naylor in his review of NHS property (Naylor, 2017). He concluded:

“spare land worth about £2.7bn remains unused because there is no incentive for NHS bodies to release land for development.”

The review estimated that unlocking land for private developers would create space for up to 40,000 homes.

Transport bodies and local authorities have the same issue. The City of London Corporation is a very large land owner. The Corporation has in place policies to ensure that land that is not required by the relevant service committee must be declared “surplus”; responsibility for it then passes to a separate department to sell or otherwise manage. A report to the Corporation’s Policy and Resources Committee in June 2017 noted that progress in releasing surplus land had been slow. The reported commented:

“Experience to date indicates that Service Committees are seeking assurance over the future use and/or disposal of assets when considering declaring them surplus which is delaying the declaring as surplus decision.”

“The introduction of Standing Order 55 which requires Service Committees to consider the effective and efficient use of all operational assets has not resulted in any new surplus or underutilised property or land being identified.”

The report noted that in practice there was no incentive on service committees to release land and it went on to propose a number of possible incentives to remedy the position.

The difficulty in making surplus public sector land available for housing would not matter if the public sector owned only a small proportion of land. But in London a quarter of all land is owned by public bodies.

Complex nature of sites

The ideal site for a developer to acquire is a large greenfield one where there is a single owner willing to sell and which has or can easily have all the necessary services – roads, electricity, water etc. But such sites do not exist. Most new housing is now built on brownfield sites that are likely to have one or more of the following problems:

BROWNFIELD SITE PROBLEMS					
Large scale	Multiple owners some of which have little or no incentive to sell	Contamination that will require an indeterminate amount of money to rectify	The need to divert some existing utilities	No certainty that electricity and water will be available when needed	Difficulties in accessing and working on the site

It can take years to assemble such sites and get them into a state when building can commence. And building has to be phased, both because a developer does not have the resources simultaneously to start thousands of homes on a site and because a local market cannot absorb a high volume of new supply without reducing prices so much as to threaten the viability of the scheme. Building in phases also de-risks a scheme for a developer. If the market moves in such a way as to make the scheme unviable the developer can, if necessary, stop construction. It should be noted that this is not true of apartment blocks – once building has commenced all the units have to be built in one go and generally be available for occupation at the same time. This is therefore a risky business requiring significant capital and can be done only by large companies.



Nature of the house building industry

The complex nature of sites is one cause of a change in nature of the house building industry. Over the years house building has become increasingly dominated by a small group of very large developers, which have the necessary capital and other resources to develop large complex sites. The number of homes built by builders building under 100 units a year has halved over the last ten years while the number built by larger developers has increased. Few small sites are available and even where there are they are likely to be complex to develop.

It is worth considering in more detail competition in the house building industry. It is sometimes suggested that house builders deliberately hold down the number of houses they build so as to maintain high prices. This can be true only if builders collectively collude to behave in this way, as an individual builder cannot “rig the market”. And if builders do collude then they are in serious breach of competition law and liable to substantial penalties. Neither the competition authorities nor anyone else has produced evidence of such behaviour. However, it is undoubtedly the case that the other factors covered in this section have contributed to a more concentrated and less competitive house building industry, and therefore to high profits over the last few years. Public policy is the direct cause of this. What would really threaten the profitability of the large house builders would be a significant increase in the supply of developable land by public sector bodies releasing more land, local plans making more provision for housing and the planning system generally facilitating development of housing rather than frustrating it.



The number of homes built by builders building under 100 units a year had halved over the last ten years while the number built by large developers has increased

Infrastructure provision

House building is a highly complex operation, requiring a large number of physical and human resources to be brought together at exactly the right time. But some variables are outside the control of the developer. This particularly applies to water and electricity supply, where developers are often forced to deal with a specific supplier determined to work at their own pace rather than at the speed of the developer. This issue was analysed in a recent report by the Housing and Finance Institute (Housing and Finance Institute, 2016), which concluded:

“In industry discussions it is water, electricity, gas, broadband and roads which are the areas most often cited as holding back accelerated house building and which create practical barriers to speedy housing growth. Each of these is subject to separate companies, regulators, public authorities, price negotiations and its own industry rules and procedures. There is mounting evidence that the

performance of some utilities provision is adversely impacting on house building. In particular, there is evidence that a continuing failure of performance of some water companies is delaying housing growth. Some water companies are failing to respond to needs for house builders in making timely and effective sewerage and water connections. This poor experience of the water industry seems to impact on larger and smaller builders alike.”

Planning system

The planning system is perhaps the biggest problem. At a national level Hilber and Vermuelen (2010) estimated that around 35% of the price of a house in England is directly attributable to the regulatory restrictiveness of land use planning in that area. In many areas the system works well, planning policies and practices being aligned with corporate practices and policies such that developers know what the rules are and can acquire sites and develop plans safe in the knowledge that the rules of the game will not change. There are a number of London boroughs where this is clearly the case – with the result that there is a high level of house building.

The government's Housing White Paper (DCLG, 2017) acknowledged the failure of the planning system:

“Over 40 per cent of local planning authorities do not have a plan that meets the projected growth in households in their area. There are many reasons for this, but one of the most significant is the way local decision-makers respond to public attitudes about new housing.”

The White Paper noted that some local authorities “duck difficult decisions and don't plan for the homes their area needs.” In London, adopted local plan targets are just 77% of those set out in the London plan (Savills, 2017).

There is an intrinsic problem that needs to be addressed. Planning committees are made up of locally elected representatives, and to be elected members need to be responsive to the views of their constituents. But some take this further and believe that their role is to do what their electorate (or rather those who make the most noise) want. Planning applications invariably meet with strong resistance from neighbouring residents who put pressure on their elected representatives. London First (2014) reported that 40% of councillors in inner London and 21% in outer London said that they would receive less support if they advocated more house building. But the role of the Planning Committee is to decide whether the application is in accordance with agreed policies not to be arbiters in a debate between developers and objectors.



some local authorities “duck difficult decisions and don't plan for the homes their area needs”

There is accordingly a presumption against development. This means that planning applications that should go ahead run the risk of being turned down and developers have to go to significant lengths – and cost – to get the best possible chance of their applications being approved. This often includes “bribes” to local residents in the form of amenity improvements. At best, the process is an irritant that costs a lot of money, and at worst it inhibits development.

A second feature of the planning system that creates problems is the imposition of conditions that must be fulfilled, in some case before development can commence. Many of these conditions are necessary and readily accepted by developers. But others are not and may reflect the whim of a particular officer concerned about conservation or archaeology or

wind or trees. It is questionable whether such conditions are properly considered by officers and probably not questionable that they are not properly considered by elected members. Some conditions can impose huge costs on developers – whether directly or by delaying the commencement of a development. Developers report that it can now frequently take six months to fulfil conditions and therefore start building, whereas one month used to be the norm. There is no requirement on planning authorities to properly justify the reason for the conditions (often there is simply a reference to a policy of the authority).

A third feature is that in London there are 33 separate planning departments. While their policies may be broadly similar the way that they implement them is not. This factor creates difficulties for relatively small developers, operating in one borough, who want to branch out into other boroughs. They will have to go the expense of understanding different policies and creating new relationships. It is also understood that sites that straddle borough boundaries are particularly difficult to develop. Even where there is the maximum co-operation at political level the “not invented here syndrome” may well exist among the people actually dealing with a planning application. This factor helps to explain the substantial reduction in the number of small developers in London. Developers tend to be very small – operating within a borough – or very large, able to throw the necessary resources, albeit at some cost, in dealing with multiple planning authorities.



sites that straddle borough boundaries
are particularly difficult to develop

There are also some additional factors that frustrate development. Residents have a powerful voice in planning decisions, and where a local authority is seeking significant commercial development in an area the sensible plan is to have no residents. So the City of London, for example, has a clear policy of not allowing residential development in those parts of the City dominated by offices. Typically, offices have a life of 25-35 years, so allowing housing to be built close to an office will make it difficult for the office site to be redeveloped. “Rights to light” are another complicating factor. It may well be the case that many people would be happy living in an area dominated by commercial development and would not object to redevelopment, but it needs only one person with a different view (or who sees an opportunity for what some might call ‘blackmail’) to prevent redevelopment. To be resolved these issues would require legislation – which is unlikely to happen at least in the short term. For the time being they have to be taken as a given.

This analysis should not be taken to be criticism of individual planning departments or planning officers. Many departments are under-resourced. They are always at risk of losing good staff to developers and consultants who are in a position to pay much more than a local authority can. The problem is further compounded by the stifling hand of central government that constrains how much local authorities can charge for handling planning applications. Developers in general would rather pay more to ensure that local authority planning departments were adequately staffed.



Leadership

A final point is political leadership. As a general rule if the Leader of a London local authority (a Leader here means de facto as well as de jure, that is someone in power as well as in office) wants houses built in the local authority area then he or she can make this happen. Conversely, if they don't then houses will not be built. Tower Hamlets, Newham, Wandsworth, Croydon, Greenwich and Southwark are among the boroughs that have facilitated high rates of house building. By contrast Redbridge, Richmond and Kingston have proved successful in limiting new housing developments.

However, it is necessary to recognise the huge constraints on local authorities, particularly in meeting their statutory obligations. Newham, for example, has 2,000 households in temporary accommodation.



Solutions

The analysis in this paper lends itself to some conclusions as to what needs to be done to increase significantly the supply of housing in London.

The first requirement is for there to be an honest debate, based on evidence not assertion. Currently people influential in the debate have been able to get away with assertions such as:

- There is adequate brownfield land that can be built on for housing (for which no evidence has ever been produced).
- The Green Belt is sacrosanct – green space that is an important amenity for Londoners (public access land or land that has an environmental designation accounts for only 22% of London's Green Belt).
- London already has a high housing density. (Population density in the central London area is little more than half that of central Paris and well below the figures for central Tokyo and Manhattan and the Bronx. In London three quarters of all buildings are three storeys or fewer compared with 55% in Tokyo and 39% in New York City.)
- Developers are manipulating the market by not building on land that they own (refuted by the evidence quoted earlier in this paper).
- The problem is caused by foreign buyers buying housing that they do not occupy – refuted by the Homes for Londoners Board research.
- More housing must be matched by more schools, health services etc (true to a limited extent but this makes the assumption that more housing means more people whereas what is needed is more housing to house the existing people).

The honest debate also requires recognition that there are trade-offs:

- The building of more houses, particularly in areas already built up, is inevitably disruptive and generally unwelcome to existing residents.
- The higher the tax on house building – CIL and S.106 levies and the costs of obtaining planning permission and discharging planning obligations – the fewer houses that will be built.



Population density in the central London area is little more than half that of central Paris

The second requirement is a combination of more land being made available for house building and higher densities:

- A review of policy on Green Belt land such that land that does not meet the popular view of what the Green Belt is (that is green space accessible by the public) and that is not needed to prevent urban sprawl can be considered for housing use. In case areas there is scope for a “swap”, some existing Green Belt being reclassified and other “green” land being given Green Belt status.
- Tougher penalties on public sector bodies holding on to land that they do not need. A private owner has an incentive to sell land to a developer – that is they receive a direct financial benefit. A public sector body often has no such incentive. This may be because

the organisation itself cannot keep the proceeds, or even if it can the people running the organisation will not benefit financially and may be subject to criticism for selling land “that may be needed in the future”. Local authorities, central government bodies, the health service and transport bodies are all guilty in this respect. The solution is not necessarily for public bodies simply to sell land. Joint ventures can be a sensible way forward – maximising the return to the public purse. This was well argued in a report by Richard Brown and Brell Wilson (Centre for London, 2016).

- Allowing higher densities, particularly in central London. This does not mean low quality high rise flats – such as were built in the 1960s. It can mean for example more terraced housing, five or six stories in height, similar to much of the housing in Paris. The public clearly do not regard high density housing as destroying value. House prices in London are highest in Kensington and Chelsea, which has the highest housing density. A number of councils in central London – Wandsworth, Hackney, Southwark and Haringey for example – have implemented imaginative proposals to increase significantly density in some of their existing estates, but there is scope for much more to be done in other boroughs.



a tariff that is fixed, workable and fair, and to ensure that the delivery of affordable housing and market housing is not compromised

The third requirement is to simplify the section 106 viability assessment process. The current system leads to expensive and time consuming negotiations that can leave everyone dissatisfied. There is no “right answer” and different experts can quite legitimately have different views all backed up by hard evidence, based on different assessment of build cost and sales price in particular. Local authorities can point to cases where a developer has secured a lower section 106 requirement on the basis of a viability assessment, and has then gone on to sell the land at a huge profit. And developers can point to viability assessments that have either prevented development at all or slowed it down until market conditions have changed. The truism remains – that 30% of a large number is likely to be higher than 50% of a small number. A target for social housing cannot be expressed as a percentage of housing built, but needs to be an absolute number and with a clear strategy for achieving it. One option would be a short-term fix of a single percentage (say 30%) being automatically accepted.

The London Housing Commission (IPPR, 2016) considered this in some detail. It concluded:

“The question of viability may be addressed by applying a tariff in order to set a fixed affordable housing contribution for developments in London. Applying a tariff is not necessarily easy or uncontroversial, on account of differing land values across the capital, which means that in some places a tariff will underprovide for affordable housing in some areas, and in others bring into question the viability of the housing development. A great deal of care needs to be taken therefore to apply a tariff that is fixed, workable and fair, and to ensure that the delivery of affordable housing and market housing is not compromised in the process.

On balance, if these conditions are met, the commission is in favour of applying a planning tariff in London, so long as it is achieved after in-depth consultation. The GLA and boroughs should begin consultation on replacing negotiated affordable housing contributions with a tariff system of fixed developer contributions to affordable housing.

Specifically, the GLA should consult on an affordable housing tariff in order to simplify the process of agreeing affordable housing contributions and speed up the agreement of planning applications. The GLA and boroughs should work together to determine the level of the tariff, and use borough

plans to estimate the viability of the tariff in different areas. The consultation on the tariff must ensure that its introduction would not have the effect of reducing overall levels of housing supply or affordable housing supply.

The tariff could differ by travel zones, or between inner and outer London, to recognise differences in land values. The default position of the tariff should be that homes are delivered on site, or at least within the borough, where this is not possible."

For both the CIL and section 106 requirements the market does adapt. A simple system will produce some anomalies in the short term and would require transitional arrangements but is probably the best solution longer term.

Similar arguments apply to the Community Infrastructure Levy. The Housing White Paper noted that "The independent review of CIL and its relationship with S.106 planning obligations... found that the current system is not as fast, simple, certain or transparent as originally intended". This is something of an understatement. The independent review found that CIL was yielding only about a third of the amount originally envisaged, as a result of which infrastructure was not being delivered in a timely manner.



CIL: the current system is not as fast, simple, certain or transparent as originally intended

The fourth requirement is to change radically the planning system such that the bias against development is significantly reduced. This requires changes in respect of the role of elected members and planning departments. Elected members are often put in a near-impossible position. They have been elected and need to be re-elected and therefore are responsive to their electorates, who invariably are opposed to developments. But their responsibility is not just to current electors but to future generations. The formal and informal consultation process is deeply flawed giving far too much weight to articulate groups who make a lot of noise, and not enough weight to the "have nots". The result is that planning applications for housing are time-consuming and therefore expensive and have a significant possibility of failing, even when in accordance with a council's own policies. Local authorities find themselves in this position when acting as developers. The City of London has committed to build 3,700 new units, mostly on land it owns outside the City, by 2025. A report to the City's Policy Committee in October 2016 commented:

"Delivery of this programme is subject to a number of risks which may impact on both the timetable and scope of delivery. These include conflict with local planning policies within host boroughs, objections from existing or neighbouring residents, and the complexities and sensitivities of decanting existing properties (where required).

Members should also note that planning negotiations and applications can be very protracted, and procurement and approval processes necessarily add to the lead time before any development can start on site."

The primary role of elected members is to settle the overall plan for their area. If a development is in accordance with the plan then it should be an administrative matter to improve it. However, particularly in existing built up areas most planning applications are likely to depart in more or more respect from agreed policies, and it is a matter of judgment



as to whether the departures are acceptable in the context of the whole development. So the decision can be between having say 100 units in a scheme which, to be viable, departs from say five of 30 agreed policies and having no units. The option of having 100 units in a scheme which meets all planning policies in every respect and which is fully in accordance with the local plan is unlikely to exist. The question is who should exercise this judgment. Generally it is an entire planning committee. It would be more sensible for the decision to be taken by a panel excluding the local members on the grounds that they are conflicted. Those members would be able to have they say to the panel, properly representing the views of their constituents, but it would be for the panel to decide. On the face of it this might seem to strike against the concept of democracy and decisions being taken at the local level. But in reality many councillors would welcome such an approach, as all too often they feel they need to be seen to be supporting the prevailing vocal view even if they know that a development is desirable.

In practice a number of local authorities in London already have such arrangements. Either the panel making planning decisions is small or a panel is convened for particular applications, in neither case with more than ten members. All the members must have had the appropriate training (planning committee discussions are littered with comments made by members that have nothing to do with planning or which generally are not relevant to the application) and the panel will engage with the developer from the earliest pre-application stage to the final decision stage. In this way the process is predictable. By contrast, in a system where the members first see the application a week or so before the decision and where every member has their say regardless of the merits of the application or agreed planning policies runs the risk of turning the planning system into a lottery.

It is worth noting in this context the Australian system whereby individual planning applications are determined by a panel of experts, not by elected members.

The final requirement relates to planning conditions. A planning approval typically will be subject to a number of conditions, some of which must be fulfilled before the approval becomes effective and others that must be fulfilled before certain work can be done. It is probably fair to say that most members never consider the conditions, regarding them as standard technical provisions. In reality however many of the condition can be onerous, and arguably unnecessary. Also the planning approval will require the local authority to be satisfied that the conditions have been complied with before work can commence. And the local authority can take as long as it likes to give such approval in writing (yes in writing and duly posted). There are two points to note here:

- “Goodhart's law”, named after the distinguished economist Charles Goodhart, which is in essence that any variable that becomes a control is likely to lose its meaning. Planning applications have to be approved according to a timetable established by

central government. So if this is too difficult all a local authority has to do is to move its requirements to “conditions” where there is no timetable.

- In some local authorities there is a tendency to respond to an increase in workload by telling those adversely affected that “they must be patient and wait as we are very busy and working very hard”. No private sector organisation in a competitive market can work like this, and no public sector organisation should be allowed to. However, the constraints under which local authorities work need to be recognised – and central government controls eased.



Developers complain that planning authorities can take a long time to give their consent that conditions have been fulfilled

The solution on this issue is twofold:

- Typically, planning conditions are accompanied by a short anodyne justification. For example a planning approval for a housing development may include a requirement to carry out “an archaeological evaluation in order to compile archaeological records in accordance with a timetable and scheme submitted to an approved in writing by the Local Planning Authority before any commencement of archaeological evaluation work”. Now this may be fine in practice, but equally it may not be. Another requirement may be that no substantive construction work can be carried out until a programme of archaeological work has been approved, and this cannot begin until the evaluation programme has been approved. There is no indication of how long the two processes may take and how much they will cost the developer, the cost being predominantly holding up construction work, therefore extending the build period and increasing the interest cost. If the two processes would take six months to complete, for a 100 unit scheme the cost to the developer could be as high as £500,000. This information is generally not given to planning committees and indeed is probably not known (or one suspects cared about if known) in some planning departments. The solution is to require a rigorous assessment of whether conditions are appropriate and necessary (as opposed to nice to have) and for the cost in terms of both money and time to be included in the information given to committees.
- Developers complain that planning authorities can take a long time to give their consent that conditions have been fulfilled – again often citing “pressure of work”. The solution on this is very simple – deemed approval to exist within seven days of the developer certifying that the condition has been complied with unless the local authority has good reason to believe that the conditions have not been complied with.

This problem was recognised in the Housing White Paper:

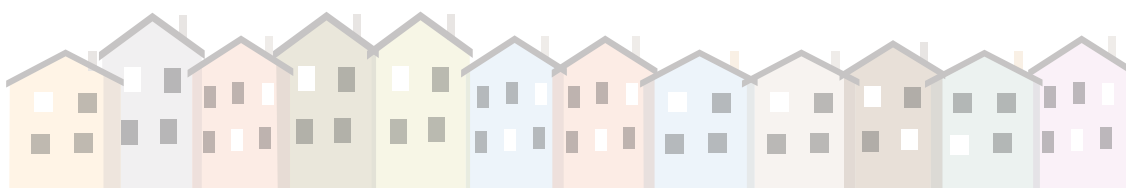
“Once detailed planning consent has been granted, a range of factors may cause delays to development. These might include the time taken to discharge planning conditions or address planning obligations; and the need to protect species such as great crested newts.”

The White Paper said that the government intended to prohibit conditions that do not meet national policy tests “and to ensure that pre-commencement conditions can only be used with the agreement of the applicant.”

Finally, there is a need for political leadership – without which nothing will happen.

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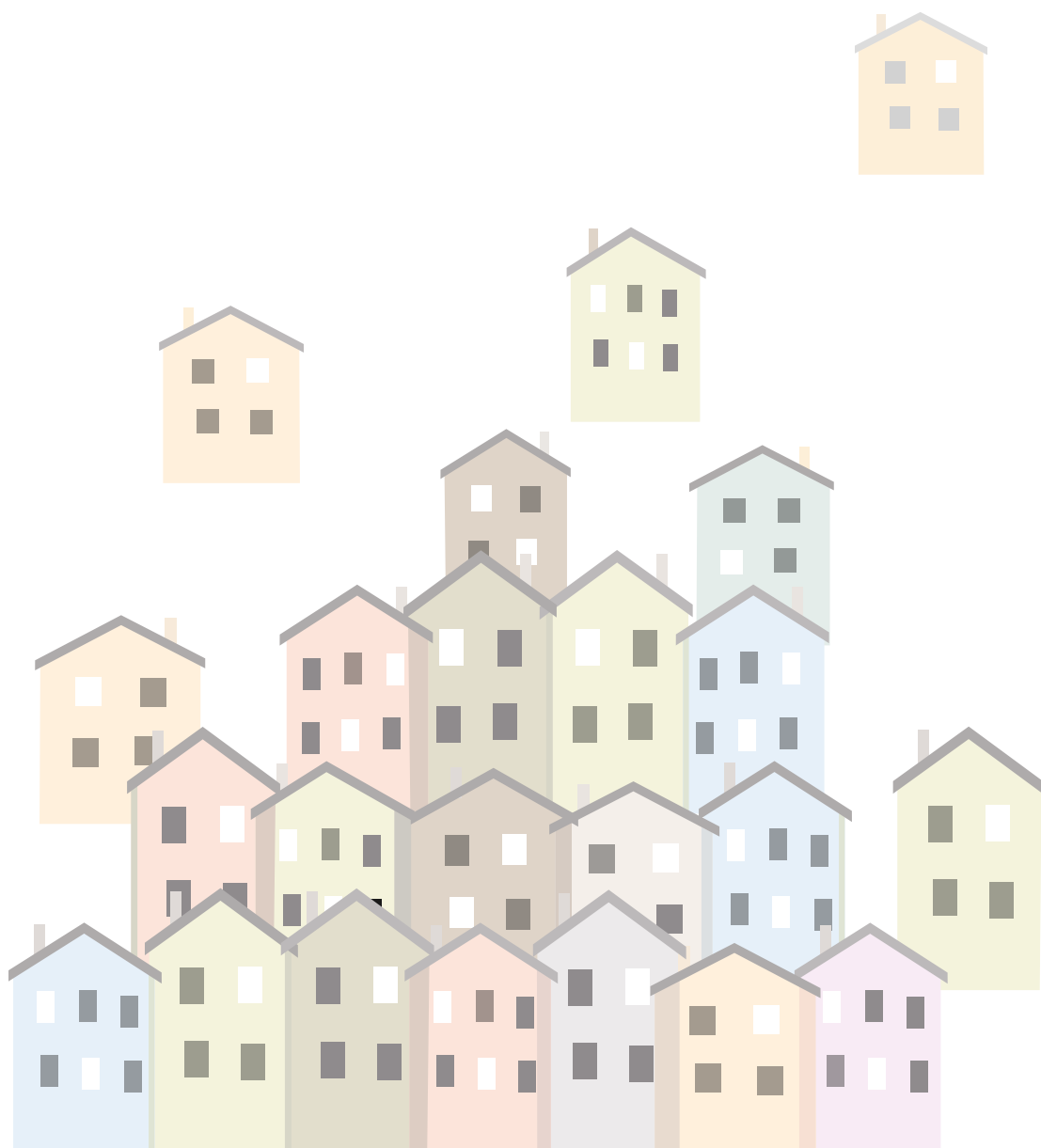
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