

The planning system: broken beyond repair?

The manic level of detailed control now demanded by planners creates perverse incentives and fails to deliver the goods. It is time to start again argues Daniel Moylan

My pre-school religious education naturally gave a special prominence to the Book of Daniel (at that age only a picture-book). And I recall thinking that one day when I grew up I might end up in the Lion's Den. Thanks to the London Society and the Royal Town Planning Institute, today may be the day. Because I have come to ask some questions – not about how to fix the Planning system, but about whether it has now got beyond repair – questions that are unlikely to be welcome to the amenity societies, conservationists, planners and urbanists who I suspect make up much of this audience.

I look out of my windows at home onto a narrow shop-filled street, the buildings dating from the late Victorian and Edwardian era. A kink in the street is a relic of a mediaeval field-path, visible on old maps. The building materials are red brick and slate but there the similarities end. Roof heights, string-courses and floor levels don't match. Detailing is eclectic. Within a stone's throw is one of London's earliest garden squares, with houses of terrifying individuality and jostling roof-lines. Nearby, out of scale mansion blocks contend with stuccoed Victorian villas and archetypal mews.

This is Kensington, one of the most desirable places to live on earth. The history of how this built environment came to be is set out in detail in the four Kensington volumes of the *Survey of London*. Most was built speculatively, by small building firms, financed by debt. Many went bankrupt – some serially. Few of the properties were sold as quickly as expected. When they were, often by the Official Receiver, they went to buyers very different in character from those envisaged by their builders. New-build in London always takes time to settle in.

Absent from the creation of this paradisiacal neighbourhood were the planners. They don't figure in the *Survey of London*. You find there a rich catalogue of crooks, land-speculators and dodgy builders, but no planners. Nor do you find many architects. Least of all do you find master-planners. By modern standards, just as the bumble-bee theoretically can't fly, a successful place like Kensington theoretically can't exist.

Of course it was never a free for all. Building Regulations, originating in the Great Fire of London, specified road-widths in relation to building height and the use of materials and details intended to minimise the spread of fire. And while it is often said that town planning started with the post-war Town and Country Planning Act, I note that Neville Chamberlain, when he was a Birmingham City councillor, was for some of the time Chairman of the Town Planning Committee, I assume with some responsibility for the huge expansion of the city in the 1920s and 1930s, when a new ring of suburban development was added to the municipal doughnut.

But the post-war Act was a landmark. First it should be noted what an astonishingly well drafted piece of legislation it is, with a flexibility and foresight that has made it extremely

adaptable. (You don't get Parliamentary drafting like that these days.)

But note also that it was an essentially Marxist venture, driven by a policy instinct to nationalise all land that the Government of the day could neither afford nor carry through. The driver behind the Act, therefore, was that if all land could not be nationalised, at least all development of land could be brought within state control.

And the Act's framers recognised that, if development is only allowed with state sanction, then a surplus is generated by the permission alone, a surplus that in principle can be recovered by the state, at least in part, for its own purposes.

When the Metropolitan Railway bought land near its stations to build houses on, it paid broadly agricultural values for the fields. As long as supply was allowed to rise to meet demand, the value of the houses they built was simply the cost of the land and the cost of building the house. It didn't matter financially to the farmer whether he built the house or a developer did. But once the Town and Country Planning Act placed restrictions on the supply of developable land, the state's permission to release some of it for development brought with it a windfall bonus that is at the heart of the racket that the Planning system has become.

(I remember once asking a friend what his rich uncle did for a living. "He farms houses", came the reply. Lucky man.)

But at least we can say that the current Planning system stops the big, rapacious developers from building wherever they want, with no regard for community or amenity and solely in pursuit of profit. Think what the Berkeley Groups, the Persimmons, the Barratts would do if given a free rein to pursue capitalist development.

But that is to fail to recognise that the Berkeley Groups, the Persimmons and the Barratts are all creations of the Planning system.

We have it hammered into us from every quarter that private businesses are there to seek profit maximisation. Many business leaders would even say so themselves. But profit is a reward for risk. Ideally the higher the risk the higher the profit – low risk should go with small returns.

But the best combination of all is low risk and high profits. How can this be achieved?

The answers have been long known. Acquire a monopoly. But that is hard in the modern age, with competition authorities roving about to stop you. Collude with your competitors to fix markets and prices. Also now sadly a crime. No, in the modern age, the best way to achieve super, quasi-monopoly profits is to be in an economically regulated industry.

We see it in the water sector, in electricity, at Heathrow Airport. If regulators are setting your returns, then management of the regulator – what's called regulatory capture – becomes

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Former Deputy Chairman of Transport for London

the key business skill and goal, far more important than devising a product or service that suits the customer. The former Chief Executive of Heathrow departed not because of the fiasco of the Terminal 5 opening, but because the Civil Aviation Authority gave the airport a regulatory settlement that shocked shareholders in its parsimony. The art of crony capitalism has throughout the ages, been to use government patronage and regulation to minimise risk while still making profits that exceed those that would be available in a genuinely competitive market-place.

Now what has this to do with Planning, where there is after all no obvious economic regulator? New development, when undertaken by the private sector, is a market-led commercial activity. We can see that the inputs, land, labour and building materials are freely traded; and the outputs, the new houses for sale, offices for rent, are marketed and sold, normally, to the highest bidder. What could be more market-led than that?

But it's my contention that, while it's true that the inputs and the outputs are traded in a broadly free market, what happens in between is an entirely state-mandated process.

When you take a combination of Building Regulations and Planning conditions, everything that goes to make up those new buildings, apart perhaps from the internal wall colours – is determined by the state. The height, the bulk, the massing, the fenestration, the external materials, the size of the bathrooms, the front-door-step, the number of parking spaces, the dimensions of those parking spaces, how much accommodation there is for bicycles are all determined by one form of state decision or another – or are very heavily guided by Supplementary Planning Documents at least.

And these are just examples of physical features. Financially, a Faustian pact is made whereby, through the viability assessment process, the minimum return to the developer is also guaranteed in exchange for an agreement that foreseeable potential surpluses are confiscated by the state. The principle underlying section 106 was the sensible one that development should bear the cost of the public infrastructure it required. What we have now is a form of lawful corruption, but very acceptable to developers precisely because it reduces risk.

And of course it works best for the large developers who are good at managing the planners: another instance of the premium placed on regulatory capture. Have we not all come across those cases of developers who can argue with impeccable evidence that the surplus available for social housing is, well, nil? And have we not come across cases where, having agreed a section 106 contribution and obtained Planning permission, the developer regretfully finds that the surplus is much less than envisaged and pledged?

This may seem like an instance of the free market working to subvert the public good. But that's a misperception. It is in fact a case of highly regulated private capital playing a game to outwit

its regulators. Just as a canny social tenant might play the system to get the type of housing they want, so the infinitely better resourced private developer plays the system to get a better deal.

And how many of the large house-builders are calling for this onerous system to be scrapped? None, because in addition to enhancing the scope for profit, it also significantly reduces risk, by limiting new entrant competition and artificially elevating the value of land and housing.

(I was once challenged by a Planner who said that market forces had too much power in the Planning system. She instanced the number of her recommendations that had been overturned on appeal. But who do the Planning Inspectors work for? They are merely another, though countervailing, arm of government. The decision-makers are at all points functionaries of the state.)

And we also need to recognise that it has become a very expensive process, one that makes it unviable for the small builders who built Kensington to make speculative planning applications. That of course suits the large builders very well. High Planning fees are a major barrier to entry for their potential start-up competitors: bring them on! It's worth paying something to lower risk.

Then we have the bizarre effects of housing targets. Efforts in my part of the world to re-assemble former flats into the original houses they were formed from, to provide family homes in accordance with good conservation principles, are now stymied because the reduction in "units" contributes negatively to meeting housing targets. Two young people living next door to each other in mildly squalid bedsits may wish to marry but will be told that they cannot tear down the wall that divides them because it's against Planning policy – even though there would still be two people living in the same space. It's a form of madness that actively prevents the constant investment of modest amounts of private capital in the housing stock that keeps it adaptable as social need changes.

There we have it: a complex system that seeks to encompass every significant feature of detail. And I haven't even entered into the urge to micro-manage evident in the Use Classes Order. Does it work?

We will all be familiar with the recent National Audit Office report "Planning for New Homes". What did it find? A well-oiled machine serving the needs of society? Or an expensive bureaucracy that gives rise to both perverse outcomes and housing that very few people can afford?

Well it certainly isn't producing enough housing: 222,000 new homes in 2017-8 compared to 300,000 a year needed. 56% of Local Planning Authorities whose local plan is more than five years old. But then it also finds flaws in MHCLG's methods of calculating need. (Was it ever easy being a Five-Year Planner in >>>

>>> the Soviet Union?) A Planning Inspectorate that is turning in an “unacceptable” performance. I could go on. Many of the criticisms can be addressed if only the right people try harder. I am sure they will in many cases.

But the NAO is not asking the question I am asking, which is not how the system can work better, but whether it can work at all. Is it not time to acknowledge that a system conceived in a world at war, when the state’s direction of the economy seemed a necessity, has simply ceased to be useful in the more complex, diverse and prosperous world we live in today?

So what would I replace it with? Of course, I don’t know. I am assuming that in this company it would be too much for me to suggest we go back to an unplanned system like that which produced hells on earth like Kensington. So I shall meet you halfway.

How about we scrap the Use Classes Order and reduce the number of categories of land classification to four: residential and ancillary, countryside and ancillary, commercial and ancillary and industrial and ancillary. Then let anyone build what suits them within that designated land provided it fits into the designated class and meets a basic test about massing and bulk? Of course certain protections would remain. For example,

Listed Buildings legislation would stay unchanged. Rights to light would remain.

And how about infrastructure? you ask: all the services needed to make a site developable. Well of course the beauty of the original rating system could be revived. If the Local Planning Authority provided the pipes, the cables, the roads and recharged through the rates the construction cost and the cost of maintenance then there would be both a source of finance and a ready link between the services and the taxpayer.

So I shall conclude there. Whether I have a plausible solution or not, the main purpose this evening has been to suggest that the system we have all grown up with has failed and that the reasons for its failure are built into the system.

Far from laying its faults at the door of the private sector (or even a lack of government funding), we should recognise that the private sector is merely responding cannily to a system that it has helped to shape in its own interests; that the manic level of detailed control now demanded by planners creates perverse incentives and at the same time fails to deliver the goods; that there is a role for a genuine market; that it is time to start again, with a pretty blank sheet of paper and see if that might work better. ■

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