

# Simplified planning

The case for sunset clauses

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Appendix one: list of legislation relating to planning law



## SUMMARY

- In common with all recent Governments, the Coalition has often declared its ambition to “cut red tape”. Yet only modest gains have been achieved:
  - In the first half of 2011, 278 new regulations were introduced compared to 150 regulations in the first six months of the Blair Government;
  - In the first eight months of 2012, almost one-fifth of the Impact Assessments were judged as “not fit for purpose”;
  - while the absolute number of new laws (both Acts of Parliament and Statutory Instruments) fell by 8% to its lowest level since 2002, there were still 1,727 new laws passed in the whole of 2011.
- Nor has the “One In/One Out” (now “One In/Two Out”) proposal had as great an impact as desired:
  - half of all new regulatory proposals introduced in the first six months of 2012 were not covered by this programme;

- excluding the DWP, the cumulative cost of regulation under the One In/One Out programme has actually *increased*.

## **Planning**

- Both the Chancellor of the Exchequer and the Prime Minister have stated that planning regulations are one of the chief obstacles to economic growth in the UK economy.
- They are right. The regulations controlling the planning system are notoriously complex. 118 Acts – including the Artisans and Labourers Dwelling Act 1868, the Landlord and Tenant (War Damage) Act, the Nuisance Removal Act 1855, the Sanitary Act 1866 and the Sunday Entertainments Act 1932 – combine to create a “lawyer’s banquet” of complexity.
- The result is an unnecessarily lengthy and costly planning procedure which enables vested interests to prosper, creates commercial uncertainty and restricts new development.
- This damaging complexity in part explains the high house prices in the UK, the low level of construction of new houses and the significant delays to new infrastructure projects.

## **Are Garden Cities the answer?**

- The failure of post-War New Town developments is widely recognised.
- The exception to this record of failure is Milton Keynes which continues to flourish. Applying the lessons of its success (and that of the Urban Development Corporations) could lead to a new era of privately-financed Garden Cities, thereby greatly easing the current housing shortage while also spurring economic growth.

## MAIN RECOMMENDATIONS

- The proportion of regulations covered by the One In/One Out programme should be greatly extended, the rigour, quality and monitoring of Impact Assessments should be greatly improved and sunset clauses should be more widely adopted.
- Compulsory Purchase Orders (CPOs) should be employed in certain circumstances to assemble sufficient land for new construction.
- In terms of planning regulation, a more market-orientated approach is needed to meet the pressing demand for housing of all types. The Coalition is moving in the right direction but can go further.
- A first step must be to simplify all current planning regulation. **A New Consolidated Act should be enacted which rationalises the 118 statutes that currently impact on planning and development.** This New Consolidated Act should be specifically designed to reduce the unacceptable delays inherent in today's planning system.

- Planning gains need to be priced and recognised by a planning system that takes into account the economic case for a development.
- Instead of deliberately planning for an 'optimal' urban form, it should be the choices and actions that people make which, in the medium term, determines future development.
- This is best revealed by the subjective view of their inhabitants as signalled by the relative willingness to pay for different types of development scheme.
- The renewed interest in Garden Cities is to be welcomed. For such a renaissance to succeed, however, the private sector must be free to design, fund and build such developments in an attractive and sustainable manner. Successful new developments would be likely to include a full mix of housing rather than shun the owner occupied sector as too often happened – disastrously – in the past.
- Central government should encourage neighbouring local councils to come together to identify potential sites for new Garden Cities.
- Once a design framework has been agreed, development rights for the construction of these new urban centres should be auctioned. This should encourage diversity and interest.
- As part of this process, covenants should lay down responsibilities for infrastructure such as urban parks, retail shops and entertainment and leisure facilities. These market mechanisms can bring landlord, developer, builder and consumer together and enable the quality and control of the overall environment to be part of the overall attraction of a site.

## **1. THE PROBLEM**

Governments of all colours like to express their determination to tackle the onerous costs and distortions triggered by excessive regulation. Yet, in practice, they tend to achieve little. The problem just grows and grows – damaging entrepreneurship, misallocating resources and shackling wealth creation.

The Coalition has followed this familiar pattern. Soon after coming into office it announced – along with the usual fanfare of trumpets – a Regulatory Reform Agenda. Its declared goal was to focus on delivering better regulatory outcomes while driving down unnecessary burdens for all those affected by regulations. And it set itself an ambitious objective: to be the first administration to leave office having reduced the regulatory burden, rather than increased it.

The Department for Business, Innovation & Skills (BIS) is the Whitehall department responsible for cutting regulation. Vince Cable MP, the Secretary of State, has said that the drive against red tape would achieve results ‘very quickly and on a big scale’. Initially only modest gains were achieved. In the first half of 2011,

for example, no less than 278 new regulations were introduced whereas the Blair government only implemented 150 in the first six months after it was elected. No wonder business groups have been worried about the Government's deregulatory push, branded the 'Red Tape Challenge'. John Walker, chairman of the Federation of Small Businesses has commented:<sup>1</sup>

*"Businesses are losing confidence in the government's commitment to deregulate. It is evident that hefty regulatory changes in pensions, flexible working and maternity and paternity – as well as changes in Europe – are still going to hit small firms hard".*

Mark Prisk MP,<sup>2</sup> the Minister for Housing acknowledges, "There has become a generation of policy-making founded on the belief that regulation, and legislation, are the default answer". He warns that "this won't change overnight".

He is right: consider the sheer scale of legislation and amendments being passed in any one year. According to Sweet & Maxwell, in 2011, the burden of new government legislation in the UK fell to its lowest level since 2002:<sup>3</sup> the absolute number of new laws (both Acts of Parliament and Statutory Instruments) fell by 8% while the number of changes to existing legislation

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<sup>1</sup> Reported in *The Financial Times*, 27 July, 2011

<sup>2</sup> Until September 2012, Mark Prisk was Minister responsible for Business & Enterprise.

<sup>3</sup> See *Thomson Reuters*, "Signs indicate UK Government has reduced the burden of new legislation over the last year", 28 May 2012. Note that the data for the number of laws are adjusted to remove minor legislation relating to work on roads and motorways.

caused by new laws fell by 16%. This downward trend is welcome – but must be put into context: 1,727 new laws were passed in 2011 and 25,708. changes were made to existing legislation caused by new laws.

So how can this perennial problem be tackled?

## 2. THE COALITION'S MOVES TO TACKLE RED TAPE

The Coalition has been keen to utilise Impact Assessments (IAs), as a means of ensuring regulations are justified. Yet in practice this assessment procedure is not satisfactorily applied across government. In the first eight months of 2012 almost a fifth – 19%<sup>4</sup> - of IAs were judged “not fit for purpose” by the Regulatory Policy Committee (RPC) – the watchdog established to audit whether the UK regulatory regime is meeting its objectives.<sup>5</sup>

There has also been a sharp rise in the percentage of IAs judged to be supported by a poor quality of analysis and

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<sup>4</sup> See *Assessing Regulation, an independent report on the evidence and analysis supporting regulatory proposals January – August 2012*, Regulatory Policy Committee, para 2.4, page 16, published November 2012.

<sup>5</sup> The RPC is an “executive Independent Non-Departmental Public Body – sponsored by the Department for Business Innovation and Skills” (or quango). Its members have backgrounds in industry, academia, the trade unions, and the civil service.

inadequate evidence. More disappointing still is the fact that there has been no improvement since mid-2011 in the proportion of IAs reckoned to be ‘fit for purpose’.<sup>6</sup> The RPC has been given an expanded role by the Coalition. It now assesses all IAs which seek to justify new regulations and reports its findings to the Cabinet’s Reducing Regulation Committee (RRC). But:

1. The RPC does not comment on IAs that support regulatory proposals that are not subject to RRC clearance.
2. Nor does it comment on the Coalition’s negotiating positions relating to EU legislation/regulation.
3. It is not able to comment on regulatory proposals made by regulators such as Ofwat, Ofgem and the Financial Services Authority (and its successor organisations).

The Coalition has also introduced a “One-in, One-out” (OOIO) rule. The aim of this rule is to control the “flow of new regulation by departments and reduce the net burden imposed on business and civil society organisations”. While this welcome initiative has swept away some antiquated regulatory controls, the net impact has been disappointing: once one strips out the effect of reforming pensions regulations at DWP the cumulative cost of regulation under the OOIO programme has actually increased by £51 million (see Table One overleaf). The Home Office and the Department for Environment, Food and Rural Affairs (DEFRA) have been the worst offenders, introducing regulations estimated to impose an annual burden of £51 million and £186 million respectively, albeit some of these regulations are linked to EU regulatory requirements. Apart from DWP, the

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<sup>6</sup> Ibid, para 2.7, page 17.

total savings achieved by abolishing regulations have so far proved insubstantial.

In practice, many new regulations are outside the scope of the Coalition's deregulatory drive because they are implementing EU initiatives or relate to policy areas deemed non applicable, notably environment or tax: in 2011 42% of all new regulations fell outside the "One-in One-out" policy. As the British Chambers of Commerce (BCC) points out, this is a disproportionately high figure and one that leads to "businesses on the ground still (feeling) the effect of more, rather than less, regulation". More recent analysis by the BCC indicates that the situation is deteriorating rather than improving. No less than a half of all new regulatory proposals made in the first six months of 2012 were deemed to be 'out of scope' with respect to the OIOO rule. This represented an eight per cent increase in the amount of new regulation that was considered to be outside the reach of the OIOO reform. If the Coalition is serious about reducing the regulatory burden faced by business it should seek to extend the proportion of regulations subject to the OIOO rule.

In December 2012 Michael Fallon MP, the minister responsible for deregulation, announced a new 'one in, two out' (OITO) target to replace OIOO. Progress against target will be recorded twice a year when BIS will publish new regulations that will be implemented over the next six months together with the number of existing regulations that will end within six months. It will be telling to see whether Whitehall Departments can improve their erratic performance to date.

**Table 1: A summary of the IN /OUT Regulatory Initiative**

**An Analysis of the Estimated Annual Regulatory Cost to Business for Measures implemented between 1 January 2011 to 30 June 2012.**

Department	Annual Regulatory cost to business in £m Net figure £m	INs	OUTs
BIS	-28.33	8.25	-36.58
DCLG	-4.49	0.03	-4.52
Cabinet Office	0	0	0
DCMS	-9.37	0	-9.37
DECC	-2.51	0.02	-2.53
DEFRA	46.83	185.9	-139.06
Dept for Educations	-0.07	0	-0.07
Dept for Transport	4.07	6.55	-2.48
Dept for Health	21.47	21.54	-0.07
<b>Dept for Work &amp; Pensions/Helath &amp; Safety Executive</b>	<b>-3374.5</b>	0	-3374.5
Food Standards Agency	-0.13	0	-0.13
HM Treasury	-26.46	1.48	-27.94
Home Office/Govt Equalities Office	49.97	50.8	-0.83
Ministry of Justice	0	0	0
<b>TOTAL</b>	<b>-3323.52</b>	<b>274.57</b>	<b>-3323.52</b>

Source: One-in, One-out, Third Statement of New Regulation, BIS, February 2012.

### 3. SUNSET CLAUSES

One policy innovation that has received enthusiastic backing is the concept of Sunset Clauses, a requirement to review legislation after a due interval (normally around five years) to establish whether the regulation is achieving its stated aims, and whether the benefits to be derived from the regulation outweigh the total costs.<sup>7</sup> In the last year, the Coalition has made it mandatory for all new regulations to be subject to sunset clauses if there is a net burden (i.e. cost) to business or what it refers to as civil society organisations (this really means groups such as charities and non-profit bodies). Over the six month period January to June 2011, it was estimated that a sunset or statutory review provision has been included in 60 new regulations including regulations implementing EU regulations.<sup>8</sup>

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<sup>7</sup> See, for example, T Ambler and K Boyfield, *Road Map to Reform: Deregulation*, Adam Smith Institute, 2005.

<sup>8</sup> Source: *One-in, One-out: Third Statement of New Regulation*, BIS, February 2012, page 11. As noted above, the total number of new laws (both Acts of Parliament and Statutory Instruments) passed in the whole of 2011 was 1,727.

The Coalition has also stated that domestic legislation introduced through secondary legislation, in other words through Statutory Instruments, should henceforth be subject to a formal requirement for a statutory review within five years and an automatic expiration date set no later than seven years after the adoption of the regulation. The bulk of new regulations in the UK are implemented through the adoption of Statutory Instruments, so this is a welcome development. Whether this move will prove successful hinges on whether ministers instil in officials the need to ensure that regulations as they are framed are still necessary or whether they could be abolished since they no longer serve a useful purpose.

The Enterprise & Regulatory Reform Bill introduced into Parliament in 2012 provides the necessary statutory power<sup>9</sup> for Ministers to apply sunset clauses and review clauses in all secondary legislation; currently there is a problem in so far as any such initiative can only be fulfilled if there were sufficient legal powers included in the original primary legislation. Once this Bill is enacted, there is considerable scope for reviewing secondary legislation with the aim of removing it or introducing a sunset clause to a specific regulation.

Those running a business in Britain may take heart from the appointment of Michael Fallon MP as Minister of State for Business and Enterprise. Mr Fallon's record indicates that he is keen to abolish unnecessary regulations and directives. As he has stated:<sup>10</sup>

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<sup>9</sup> This is achieved by an amendment to the Interpretation Act 1978.

<sup>10</sup> See 'Government widens fight against excessive red tape', [www.bis.gov.uk/ministers/michael-fallon/by/news](http://www.bis.gov.uk/ministers/michael-fallon/by/news), 16 September 2012.

*“Reducing the number of rules and regulations that apply to business is absolutely central to the Government’s vision for Britain”.*

In this context, shortly after taking up his post he announced a review of regulations on business-to-business services.<sup>11</sup> This initiative forms part of the Coalition’s Red Tape Challenge and hinges on business peoples’ willingness to respond on a government website with regard to how ineffective, burdensome or unnecessary regulation adversely affects enterprise.

The problem with this initiative is that neither the general public nor business people are generally aware of such websites or initiatives. Indeed, past experience does not suggest that the response from business will be that valuable.

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<sup>11</sup> Michael Fallon MP has pledged to scrap or reduce a total of 3,000 regulation as part of the Government’s strategy to “slim down regulation and make Britain an easier place to start and run a business.”, BIS press release, ‘Freedom day for businesses as red tape stripped back’, 1 October 2012.

## **4. IS THE DEREGULATORY CRUSADE FLOUNDERING?**

The apparent lack of progress in executing any significant reduction in regulations has led the Coalition Government over the last year to spearhead a renewed initiative. This move has manifested itself in a variety of ways.

For example, BIS announced on 10 September 2012 that, as a result of the review undertaken under the Red Tape Challenge, at least 3,000 cross-government regulations will be either “scrapped” or “reduced”.<sup>12</sup>

A month later, in October 2012, a set of new amendments were added to the Enterprise & Regulatory Reform Bill currently being considered by Parliament aimed, for instance, at removing automatic liability on business when they are not found negligent for civil damages in health and safety cases; employer liability for third party harassment will also be

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<sup>12</sup> “Scrapped” is defined as a regulation which is completely removed from the statute book, whereas “reduced” refers to regulations that are reduced in number (e.g. a consolidation, making the rules simpler to find and follow); and/or in terms of the burden they impose.

eliminated; and planning consents for work on listed buildings would be considerably simplified.

In a further legislative step, the Coalition announced a range of new measures in the Infrastructure (Financial Assistance) Act with the express aim of reducing confusing and overlapping red tape that delays and discourages investment in new infrastructure and the creation of jobs. This new legislation, which received Royal Assent on 31 October 2012, enables government to guarantee up to £40 billion of investment in infrastructure, and up to £10 billion of new housing. This legislation is a response to what is claimed to be a credit crunch<sup>13</sup> across the private sector for major infrastructure schemes in the transport, energy, communications and environmental sectors<sup>14</sup> as well as the wider housing sector.

Following the publication of the revised National Planning Policy Framework (NPPF) guidelines, and a series of ministerial announcements, including the Prime Minister's speech<sup>15</sup> at the Conservative Party Conference in October 2012, there appears to be a renewed political commitment to support a significant relaxation of planning controls in favour of boosting investment in infrastructure, commercial space and residential housing.

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<sup>13</sup> Ironically, it can be argued that the credit crunch is mainly attributable to banks' need to repair their balance sheets and meet international capital adequacy regulations.

<sup>14</sup> These schemes are set out in the National Infrastructure Plan.

<sup>15</sup> With reference to the housing market, the Prime Minister observed, "there's something else we need to do – and that's accept we need to build more houses in Britain". He also commented, "For a business to expand, it needs places to build. If it takes too long, they'll just build elsewhere" – citing the continent of Europe.

Taking the lead in this reform initiative is Nick Boles MP, the Parliamentary Under Secretary of State for Planning. He has angered the anti-development lobby by calling for more house construction across Britain. Nick Boles correctly points out that previous governments have failed to provide enough land for development. He argues that this can be achieved if new housing is built to a more attractive design standard (thereby ditching the template box approach which despoiled so much of Britain in the 1970s and 1980s) and if local communities are given far more say in how infrastructure budgets are spent - once they have given their support to a new development. Just as realistically he recognises that “unfortunately there is no painless way to make homes affordable for working people earning ordinary wages.”<sup>17</sup>

Nick Boles and his ministerial colleagues at the Department for Communities and Local Government (DCLG) have been busy announcing a series of reforms to tackle red tape in housing. On 31 October 2012, the DCLG announced a new independent group of building industry experts, charged with the task of simplifying the mass of rules imposed on developers and housebuilders, to make them easier to understand and follow. Furthermore, a new Independent Challenge Panel has been set up to consider how the current, complex system of building regulations and housing standards operate and what potential there is to “free up the system”, thereby making it work more efficiently.<sup>18</sup> The Panel is due to report to Spring 2013.

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<sup>17</sup> ‘Housing the Next Generation’, a speech given at Policy Exchange, 10 January 2013.

<sup>18</sup> Local authorities sometimes impose needless regulatory standards which require, for example, two phone lines in home offices,

A separate group will work alongside the Independent Challenge Panel to consider the specific issue of standards applied to housebuilding. While some of these standards are applied nationally, others are made mandatory by individual councils for building in their area and some are entirely voluntary. This has triggered confusion for local people and developers alike.

These moves are to be welcomed. But the Coalition is already encountering stubborn resistance from the vested interests affected by deregulatory initiatives. This includes resistance from business and commerce where regulations have proved useful in so far as they deter new entry or prop up certain firms' commercial interests. It is worrying to note that the British Property Federation (BPF)<sup>19</sup> has combined with the Local Government Association (LGA)<sup>20</sup> to lobby for a limit on any

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irrespective of need. There are also regulations on the size of windows that include a 'dirty window factor' – imposing bigger windows to allow for dirt on them, rather than assuming people will simply clean their windows. To further complicate matters these standards are assessed repeatedly by different people – such as planners, code assessors, building control officers – often looking at the same issues but coming up with different answers. For further details of these superfluous standards see 'Independent panel to help government cut housebuilding red tape and boost growth', 31 October 2012, [www.communities.gov.uk/news](http://www.communities.gov.uk/news)

<sup>19</sup> The British Property Federation (BPF) is a membership organisation established to represent the commercial interests of those involved in property ownership and investment. Its members comprise the largest companies in the property industry – property developers and owners, financial institutions, fund managers, investment banks and professional bodies.

<sup>20</sup> The LGA represents a total of 423 local authorities in England & Wales as well as national park authorities and other local bodies such as passenger transport authorities.

further changes to planning regulations. However, as both the Prime Minister and the Chancellor of the Exchequer have noted, it is our planning regulations which are one of the chief obstacles to economic growth in our economy.

At a time when supply-side reform is essential to enable economic growth, and at a time of huge unmet demand for housing, it is essential that radical reform is implemented quickly.

## 5. PLANNING AS A CASE STUDY

Perhaps no other sector of the UK economy is as shackled by regulation as the property and construction sector.

Planning in Britain was effectively nationalised by the 1947 Town & Country Planning Act. This legislation was essentially statist in approach. It repealed all previous legislation as related to planning with one exception,<sup>21</sup> and represented a huge increase in both central and local government control over land use and development. In particular, it introduced a top down Whitehall-led policy with respect to house building and office and factory development throughout the UK. For the first time, the Secretary of State was effectively cast as the central planning authority. All development rights were vested in the state via a Central Land Board set up to acquire land for development.

While there have been a raft of amending Acts, this basic approach continues through to today (see the following box for the extraordinary proliferation of planning acts since 1947).

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<sup>21</sup> The exception was the Minister of Town & Country Planning Act 1943.

## THE EXTRAORDINARY PROLIFERATION OF PLANNING ACTS

Following the 1947 Act, new Town & Country Planning Acts were introduced in 1953, 1954, 1959, 1960 and 1962.

The Town & Country Planning Act 1962 and subsequent legislation was repealed and consolidated under the Town & Country Planning Act 1971, which in turn was amended by several Acts passed between 1972 and 1986 with a further major consolidation in 1990.

Only a year later this legislation was amended in a significant manner by the 1991 Planning & Compensation Act. Over the last 20 years there has been a further avalanche of legislation: the Environment Act 1996 provided the statutory authority for the Environment Agency of England & Wales; the Planning & Compulsory Purchase Act passed in 2004 introduced a two tier system based on Regional Spatial Strategies for English regions aimed at sustainable development (the Coalition abolished spatial strategies with the adoption of the Localism Act 2011); and the Planning Act 2008, modelled on the White Paper, *Planning for a Sustainable Future*, published in 2007.

The 2008 Act was a response to the mounting criticism of the inertia of the planning system: it aimed to speed up the process for major infrastructure schemes such as airports, power stations and transport schemes, primarily through the creation of a new body, the Infrastructure Planning Commission (IPC). This newly established bureaucratic body made little impact on planning delays since it was wound up two and half years after it was established on 1 October 2009 (It closed its doors on 1 April 2012). Its functions were transferred to yet another new entity, the Infrastructure Planning Unit within the Planning Inspectorate.

The Attlee Government also applied a tax on all private development land gains at 100%. Not surprisingly, this attempt to nationalise development failed spectacularly and the legislation was partially repealed in 1953. However, comprehensive planning controls remained in force and became more onerous over time.

### **The Green Belt**

The Green Belt has evolved into a bulwark to prevent development in the Home Counties and other desirable stretches of real estate across the country. It was originally seen as a relatively narrow belt of essentially amenity land around major conurbations. Furthermore, local authorities were obliged to purchase land that was designated Green Belt. The 1947 Act lifted this condition.

Professor Paul Cheshire of the LSE observes:

*“One feature was that the boundaries of green belts (as provided within the framework of the 1947 Act) were set during the 1950s and were much more extensive than the original architects of the legislation intended”.*

It should be added that, unlike Areas of Outstanding Natural Beauty or Nature Reserves, Green Belts do not owe their designation to the quality of the landscape, views or wildlife. No wonder that some parts of the Green Belt are a lot ‘greener’ than others. The net impact of the extensive areas of land designated as Green Belt – 12% of the total land area of England – has been to raise land prices, extend commuting times and costs, and make housing increasingly unaffordable for many families with young children.

In reality, the vast proportion of land in England is either green space or water (see Table 2).

**Table 2: The make-up of England**

Green space and water	90.10%
Domestic gardens	4.30%
Transport routes	2.50%
Buildings	1.80%
Other/unclassified	1.40%
TOTAL	100%

Indeed, almost half the country – 46% – is designated as a Green Belt, national park, Area of Outstanding National Beauty or Site of Special Scientific Interest. A further 30% is designated an Environmentally Sensitive Area and another 30% is agricultural land deemed to rank as of the highest-quality. Under our current planning regime over half of England is reserved specifically for forestry and agriculture.<sup>22</sup>

In practice, as Professor Paul Cheshire points out:<sup>23</sup>

*“Successive planning legislation and interventions since 1947 have in fact tied up more and more land in reservations effectively exempt from development; and encouraged governments to micromanage development on an ever more draconian basis through, for example, policies such as Town Centres First and the 60% Brownfield policy.”*

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<sup>22</sup> T Papworth, *Planning in a free society: London as a case study for a spontaneously planned future*, Adam Smith Institute, May 2012.

<sup>23</sup> Correspondence with the author.

## **6. PLANNING REGULATION: A LAWYERS' BANQUET**

The remorseless tide of planning legislation produced over the last 50 years has shackled development in this country and divorced it from economic reality. The key legislation has been:

- Town and Country Planning Act 1947 and thereafter
- Planning (LBCA) 1990
- Planning and Compensation Act 1991
- Planning and Compulsory Purchase Act 2004
- Planning Act 2008

Under the 1947 Act, local authorities were given responsibility for developing local planning schemes. These were to be reviewed every five years. These plans can be ridiculously detailed: Barnet, for instance, has 183 policies covering synthetic sport pitches, shop fronts and minicab offices along with housing and retail building.<sup>24</sup>

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<sup>24</sup> See A Morton, *Cities for Growth: Solutions to our planning problems*, Policy Exchange, 2011, page 12.

This crop of legislation has given local authorities comprehensive powers over the location, construction, design and use of all new buildings in their jurisdiction and also over the use of existing buildings. These powers are now exercised within the “Local Development Plan”, introduced under the Planning & Compulsory Purchase Act 2004 and detailed in Planning Policy Statement 12.<sup>25</sup> These Plans dictate policy in England and Wales on the use and development of land within their jurisdiction. If development permission is withheld, developers must appeal to a Planning Inspector. This has now become a well-travelled, costly path for many developers and supermarket chains. Ultimately, there is the option of judicial review, which is an even more expensive process.

Every development decision is now subject to uncertainty. This, in turn increases costs to developers and makes the supply of new housing or business premises more price inelastic. Consequently, every development of any significance provides ample scope for confrontation and lobbying. Hence, over the last couple of decades, specialist lobbying consultancies have prospered as developers have sought to win development permission.<sup>26</sup>

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<sup>25</sup> The latest version was published in June 2008.

<sup>26</sup> The boom in planning law has led not only to plenty of work for planning lawyers but also the rise of a thriving lobbying industry, with specialist firms such as PPS Group in the vanguard. PPS Group’s website states that, “Twenty-one years of experience in communities up and down the country makes us the market leader in this field. PPS helps clients engage with local communities, seeks out and mobilises local support and guides the way through the local politics and media. We have experience of all sectors, from residential to retail, energy to waste management, commercial to leisure”.

In contrast, the Continental European and US systems, which are both 'rule-based', confine the consultation to deciding the plan and the rules. Once the plan has been agreed, development proceeds. In Britain, with its long legal tradition of individual case law, final planning approval can easily take several years or longer to be awarded (indeed, it may never be won).

In practice, the whole concept of the Local Development Plan as implemented by both Labour and the Coalition Government has proved to be an expensive disappointment. Although it is now eight years since local authorities were first required to adopt a Local Development Plan, only around half have done so. Consequently, for half the country there is no development framework to guide institutional and corporate property investors, retailers, house builders or housing associations.

Notably absent from the planning process is any mention of the economic factors relating to the proposal. Indeed, economic factors are deemed 'not material' to planners assessments of schemes. Paul Cheshire explains:

*“Since the planning system and its local implementation controls the supply of space of all use-types, it effectively sets the price of space. But the impact planning has on the price of housing, offices or shops is deemed ‘not material’ and explicitly excluded from the decisions process. This*

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<sup>26</sup> This option was notably taken up by United Utilities under the last Labour Government when the Secretary of State, John Prescott MP, repeatedly refused permission for the development of Waterside Park in Tameside, apparently at the prompting of the local MP, the redoubtable Sir Gerald Kaufman.

*has increasing led to price distortions almost on a level with the late Soviet era.”*

Our current planning system can also be criticised on aesthetic grounds – paradoxically one of the prime justifications for its introduction. Harry Mount has argued:<sup>27</sup>

*“Towns and cities are now developed by dirigisted, centralised diktat, declaring what can and can't be built. Gone is the instinctive, untrammelled spirit that produced the typical English look: a hodgepodge of periods, and architectural features, sprouting up independently of each other, but working together in serendipitous harmony... Ironically, it is modern nimbyist planning restrictions that have dumped those blockish, right-angled towers of steel and concrete on England's cities, and sprinkled faceless brick boxes around the edge of its villages.”*

The planning process is a shambles. And a very expensive shambles at that.

### **The housing morass**

The damaging results of this regulatory stranglehold are increasingly obvious. Imtiaz Farookhi, Chief Executive of the National House Building Council has warned:<sup>28</sup>

*“Insufficient supply inevitably leads to higher prices and this is creating a two tier Britain, split between those lucky enough to already own a desirable*

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<sup>27</sup> H Mount, *How England Made the English: from Hedgerows to Heathrow*, Viking, 2012.

<sup>28</sup> NHBC website.

*property and the younger generation who can see their own aspirations of home ownership dashed by unwillingness at local level to build the homes that would make that possible.”*

The damaging effects of the complexity of the planning system contribute to the following problems:

1. ***High house prices.*** In England a median price home now costs seven times the median salary. House prices tripled from £66,786 in 1995 to £208,757 in 2010. 60% of new housing costs is spent on land, infrastructure and local community funding.<sup>29</sup>
2. ***The growing difficulty for young people, especially those with families, to find anywhere affordable to live.*** The average age for first time mortgage holders with no support from their parents has now reached 37.<sup>30</sup> Yet given the pent-up demand for accommodation in the South East Dr Tim Leunig of the LSE warns that house prices may well soar once the mortgage market recovers.<sup>31</sup>
3. ***Not enough new house construction.*** The UK has approximately 26 million homes. In 2011, only 110,000 new homes were built across the entire country. Six years ago in

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<sup>29</sup> *Financial Times*, “Housebuilders pin hopes on new projects”, 13 February 2012.

<sup>30</sup> *Mortgage Solutions*, “Average first-time buyer age to rise to 43”, 10 September 2010.

<sup>31</sup> Written evidence to the Parliamentary Select Committee on Communities & Local Government’s Inquiry into the National Planning Policy Framework (NPPF), September 2011.

2006, 185,000 new homes were built. At the current rate of construction it would take more than 236 years to renew our housing stock. In addition, the UK population is growing at its fastest rate for 50 years yet housebuilding is at its lowest level since the 1920s (the most recent projection by the ONS predicts that the population of the UK will reach 70 million by mid 2027).<sup>32</sup>

4. **Greater pressure on London.** According to the Mayor of London, “London’s population is expected to grow by around one million over the next 20 years, and the number of households by nearly 700,000.”<sup>33</sup> This is equivalent to a net requirement of at least 32,600 homes every year for the next 20 to 25 years. However, the average net growth of new dwellings is just 22,145 per year.<sup>34</sup> Nor can empty housing fill the gap. *Shelter England* observes that there are 5 million people waiting on housing registers. In London, 30,526 properties had been empty for six months or more as of August 2011, a mere 1% of London’s total housing stock of 3.3 million.<sup>35</sup>

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<sup>32</sup> ONS, press release, 26 October 2011.

<sup>33</sup> *A Revised London Housing Strategy – Initial Proposals: consultation with the London Assembly and the GLA Group*, section 3.2, page 15.

<sup>34</sup> T Papworth, op. cit.

<sup>35</sup> The reasons why a home might stand empty include: the owner dies and the legal ownership of the property is unclear; a local authority runs out of funding for essential repairs; a private owner cannot sell because of low local demand for housing; a private landlord might be waiting for a rise in house prices to make the most of his investment; and so on.

5. **Delays to new infrastructure development.** It takes many years to authorise major new schemes, such as railway links, airports and nuclear power stations. In contrast, our economic competitors handle these matters far more speedily. Paris Charles de Gaulle airport has expanded rapidly and now effectively offers nine terminals while in China eight new airports were opened in 2010 and there are plans to build a further 70 by 2020, including a third airport for Beijing.
  
6. **Domination by vested interests.** Special interest groups – such as the Council for the Protection of Rural England, the RSPB, the National Trust – combined to voice their opposition to the relatively modest proposals contained in the Coalition’s draft National Planning Guidelines. There were claims that the Coalition’s plans threatened the Green Belt (although the revised guidelines specifically protected them) with suggestions that Britain was threatened by the massed ranks of construction firms eager to build over our green and pleasant land. The planning minister Nick Boles MP has referred to campaigners opposed to a relaxation in planning regulations as “scaremongering latter-day Luddites.”<sup>36</sup>

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<sup>36</sup> Nick Boles MP, speaking to a Tory Reform Group meeting, January 2012.

## 7. GARDEN CITIES: A GOOD IDEA REDISCOVERED?

How is the country going to provide sufficient housing for Britain's growing population? One idea that has attracted significant support is the concept of 'Garden Cities'. These were originally conceived by utopian thinkers and philanthropists such as Ebenezer Howard,<sup>37</sup> whose ideas and guidance led to the building of Letchworth in 1903 and Welwyn Garden City in the 1920s.

Garden Cities were originally conceived as a means of eradicating slum conditions and rehousing the inhabitants in well-designed homes with decent sanitation and plenty of amenity space and parks. The towns would be of sufficient size to provide employment by a range of employers.

It was originally hoped that new construction would be funded through acquiring farmland at rural valuations and repaying the borrowing and interest from the subsequent increase in land

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<sup>37</sup> Ebenezer Howard was the author of *Garden Cities of Tomorrow*, still in print today but first published in 1898.

values. But in practice, Garden Cities suffered from considerable financial problems,<sup>38</sup> being handicapped by a lack of finance and undercapitalisation.<sup>39</sup> Providers of finance, often altruistic supporters of the concept of Garden Cities, sustained substantial losses. It was not a model which the private investors were going to follow.

### **The post-war New Towns: a blueprint on how not to do it**

Inspired by the idea of Garden Cities, New Towns were the principal focus for new housing as envisaged by the Attlee Post War administration. The state would step in to build these New Towns where the market was perceived to have failed. Since the adoption of The New Town Act in 1946, over 50 have been built throughout the UK, providing homes for more than two million people.<sup>40</sup>

The New Town Commissions were invested with wide reaching powers, most notably the ability to acquire land on the basis of compulsory purchase. The first wave of new settlements, constructed between 1946 and 1970 was inspired by the contemporary claim: “if we can build better, we can live better”.

But their appeal was short-lived, far shorter than that of the Garden Cities which had inspired them: while some New Towns provided better accommodation to bombed-out slum dwellers,

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<sup>38</sup> P Hall and M Tewdwr-Jones, *Urban and Regional Planning*, Routledge, 2010.

<sup>39</sup> Town & Country Planning Association, *Re-imagining Garden Cities for the 21<sup>st</sup> century: benefits and lessons in bringing forward comprehensively planned new communities*, July 2011.

<sup>40</sup> A Alexander, *Britain's New Towns: From Garden Cities to Sustainable Communities*, Routledge 2009.

they often failed either to attract or to retain employers. This was precisely the opposite of what was originally envisaged. On top of that, perhaps deterred by their often brutalist architecture, people simply did not want to live in them.<sup>41</sup> Significantly, none of the original growth targets for population were achieved by the New Towns established in the 1960s and 1970s.

The key problem, however, was financing: the Development Corporations responsible for overseeing the construction of New Towns and their associated infrastructure borrowed money for a period of 60 years from HM Treasury. Interest on these loans was rolled up, in the confident expectation that the increase in the value of the land over time would enable the loans to be repaid. However, spiralling inflation in the 1970s and 1980s contributed to the fact that many of the loans were never fully repaid.<sup>42</sup>

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<sup>41</sup> For example, Cumbernauld, originally built in the late 1950s, is renowned for some of the most loathed architecture in Scotland. Much of the original Shopping Centre had to be demolished due to structural damage. Similarly, Skelmersdale, designated a New Town in 1961, was intended to house inhabitants of Liverpool. But in practice the problem of poor housing was merely exported to an unloved New Town. As David Cameron remarked in his speech to the Institute of Civil Engineering on 19 March 2012: “mistakes were made in the New Towns with the state deciding, often rather arrogantly, what people ought to like and what they should not like”.

<sup>42</sup> The remaining Development Corporations responsible for New Towns were dissolved in 1992, including the Milton Keynes Development Corporation. Their assets – land, buildings, retail centres – were transferred to the Commission for New Towns, which in turn was dissolved in 1998. Most of the rented accommodation was handed over to local authorities while the assets, still including a lot of undeveloped land – passed to the English Industrial Estates Corporation, later renamed English Partnerships, another government quango.

## 8. MILTON KEYNES: A POSITIVE LESSON

Milton Keynes is probably the most successful of the New Towns built in the second half of the twentieth century.<sup>43</sup> Construction began in 1967, driven by the need to alleviate worsening housing congestion in London. The population grew by 37% between 1981 and 1991,<sup>44</sup> one of the fastest increases recorded by a New Town. Since 2001, Milton Keynes has led the league table for the fastest growing city in Britain, expanding its population by nearly 17%.<sup>45</sup>

Milton Keynes is today home to a wide spectrum of employers, including the ground-breaking Open University. It also offers, crucially, a broad diversity of housing as well as tenure. The town shows the way in which a local authority which is pro-

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<sup>43</sup> J Bishop *Milton Keynes – the Best of Both Worlds? Public and professional views of a new city*, University of Bristol School for Advanced Urban Studies, 1981.

<sup>44</sup> M Clapson, "The origins and extent of postwar urban dispersal", in *Invincible green suburbs, brave new towns*, Manchester University Press, 1998.

<sup>45</sup> *Cities Outlook 2013*, Centre for Cities, page 39.

development can ensure that house prices are more affordable. House prices<sup>46</sup> are significantly below the UK average and the price of property in other strongly performing conurbations. The reason for this difference is that Milton Keynes has encouraged new construction so that supply meets demand, a policy which is in contrast to the general trend throughout the Home Counties.

Milton Keynes continues to expand and can point to one of the highest growth rates in private sector jobs in the UK.<sup>47</sup> “We want to grow”, says Iain Stewart the local Conservative MP:

*“There is no nimbyism in Milton Keynes.”*

In contrast to many New Towns, Milton Keynes has also proved to be financially viable. Land acquired on the basis of its agricultural value has risen in value as a result of investment by the Development Corporation. Money borrowed from HM Treasury has been repaid with interest. As the Town & Country Planning Association notes:<sup>48</sup>

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<sup>46</sup> In the third quarter 2011 average house prices were £219,000 whereas the English average was £249,000 (source: *Cities Outlook 2013*, Centre for Cities).

<sup>47</sup> A Morton, *Cities for Growth: Solutions to our planning problems*, Policy Exchange, 2011.

<sup>48</sup> Town & Country Planning Association, *Policies, practices, partnerships and model approaches*, May 2012. Members of The Expert Group which authored this report proposed that “where land for a new Garden City or Suburb is identified in the Local Plan, its value should be frozen at existing use plus a ‘reasonable profit’, as long as the local authority provided a reasonable level of certainty (for example through Development Agreements or Partnerships)”.

*“The original Garden Cities and Milton Keynes provide good examples of where capturing value through land acquisition has been both an economic success and a benefit to the community”.*

### **The success of Milton Keynes**

This New Town demonstrates the benefits to be won from an enlightened policy of development. In population terms the town has grown by 17% between 2001 and 2011 but the housing stock has also increased by 18%. This means that people have found it easier to afford to rent or buy. In turn this has led to a surge in employment opportunities. This is reflected in the fact that the employment rate in Milton Keynes has remained on average 6% above the average English employment rate over the last decade. A particular feature of this economic success has been the way in which the town has managed to attract private sector jobs. It ranks as the fifth most successful town in the UK with regard to the ratio of private sector job to public sector employment – its own ratio is 3.8 (114,800 private sector jobs compared with 30,300 public sector employees). Average earnings growth was in the top half dozen in the UK (weekly earnings stood at £543 per week in 2012).

Milton Keynes has been able to ride the rigours of the economic downturn far better than most places in the UK. Indeed, it ranks as the fourth best performing city for new business start-ups per 10,000 population (2011).\* It also ranks among the top ten cities in the UK in terms of patents approved per 100,000 residents.

\* *Cities Outlook 2013*, Centre for Cities, page 42.

## 9. THE RESURGENCE OF INTEREST IN GARDEN CITIES

Recently, there has been a renaissance of interest in the concept of Garden Cities. Faced with the need for housing for Britain's growing population, the Coalition has shown a keen interest in ideas for a new wave of Garden Cities. Indeed, a consultation paper is promised on the topic.<sup>51</sup> Furthermore, the Prime Minister has voiced his support for the concept of Garden Cities.<sup>52</sup>

*“Now, it seems to me that our post-war predecessors had the right idea embodied in the visionary plan prepared by Patrick Abercrombie in 1944. His plan underpinned the Southeast's economic success by proposing well planned and well located new towns, which would in time become new engines of economic growth”.*

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<sup>51</sup> *Financial Times*, “Garden city offers Cameron's vision space to grow”, 24 March 2012.

<sup>52</sup> Speech on 19 March 2012 delivered at the Institute of Civil Engineering.

Seeking to reassure doubters that the Coalition was committed to maintaining the existing Green Belts, he nonetheless added:

*“We also urgently need to find places where we’re prepared to allow significant new growth to happen. That is why we’ll begin consultation later this year on how to apply the principles of garden cities to areas with high potential growth in places people want to live. And we must get our planning system fit for purpose; it needs to be quick, it needs to be easier to use and it needs to better support growth, jobs and homes”.*

Garden Cities, either located in the country or on adjoining areas to existing urban areas, may well have an important contribution to make to Britain’s pressing housing needs.

Nick Clegg MP, the Deputy Prime Minister, is also an enthusiast. On his weekly LBC radio phone-in programme in January 2013 he called for new settlements modelled on Milton Keynes to be built in three counties - Buckinghamshire, Warwickshire and Oxfordshire - to meet the pressing demand for new housing. Mr Clegg specifically referred to an “arc” of land between the west of the UK and Cambridge where there “aren’t enough homes to live”. Commenting on the success of Milton Keynes he observed, “You take a big decision that you’re going to create a settled community with all the right facilities and transport links which are sustainable into the future.”<sup>53</sup>

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53 *Daily Telegraph*, “Nick Clegg: Build new ‘garden cities’ in the countryside”, 17 January 2013.

There remains the key issue of how to fund such building. Given the unmet demand for housing, and the high prices of residential property, the right planning framework could provide attractive opportunities to pension funds, life insurance companies and overseas sovereign wealth funds looking for long-term returns.

Pilots could be undertaken on surplus land held by the public sector. It is estimated that there is sufficient land for up to 100,000 homes, albeit many of the sites are relatively modest in size. Here is an opportunity for government to work with the private sector to construct new residential, retail and business space within a Garden City framework. One example of such a location is the former Ministry of Defence site, Whitehill Bordon, which was earmarked to be an ecotown (another of Gordon Brown's policy proposals that failed to materialise).

But there are also a number of towns in England – particularly in the South East – that have seen substantial expansion over the last decade: Milton Keynes, Peterborough and Swindon have all seen population growth of over 15% between 2001 and 2011. Many of these are now looking to grow further: Milton Keynes is at the forefront of a move by a number of local authorities in England to attract investment and develop new residential as well as housing neighbourhoods. As *The Economist* has noted:<sup>54</sup>

*“Whereas similarly well-placed cities in the south-east such as Oxford or Guildford are restrained by Green Belts and Byzantine planning processes, these places embrace developers. In Milton Keynes*

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<sup>54</sup> *The Economist*, “England’s pro-growth towns: Texas in the shires”, 27 September 2012.

*plots of land wait ready to be built on with roads and other infrastructure already in place”.*

In September 2012, the Coalition agreed the transfer of land, assets and responsibilities from the Homes and Communities Agency (HCA) to Milton Keynes Council in an innovative step: the council will now be the sole planning authority, rather than sharing responsibility with an arm of central government.<sup>55</sup>

Milton Keynes has also been asked to explore options under the Coalition’s “city deal” programme that would incorporate innovative approaches to creating jobs and boosting the local economy. Wave 2 of the City Deals programme seeks to harness these towns’ ambitions to develop: through capitalising on the greater financial freedom and local control envisaged under the City Deals programme, Milton Keynes has estimated that up to 70,000 new jobs could be created by 2026 if its submission under Wave 2 is approved.<sup>56</sup>

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<sup>55</sup> See ‘Milton Keynes is the real (city) deal’, Monday 29 October, 2012, [www.milton-keynes.gov.uk/council-news](http://www.milton-keynes.gov.uk/council-news).

<sup>56</sup> Under the first wave of the City Deal programme, eight conurbations – Bristol, Birmingham, Manchester, Leeds, Liverpool, Newcastle, Nottingham, and Sheffield – were selected to put forward to develop their local economy by taking advantage of a range of delegated powers by central government. This initiative was given the formal go-ahead on 18 September 2012 under the City Deals programme. In the second wave, the following 20 urban centres were selected: the Black Country; Bournemouth; Brighton and Hove; Greater Cambridge; Coventry and Warwickshire; Hull and Humber; Ipswich; Leicester and Leicestershire; Milton Keynes; Greater Norwich; Oxford and Central Oxfordshire; Reading; Plymouth; Preston and Central Lancashire; Southampton and Portsmouth; Southend; Stoke and Staffordshire; Sunderland and the North East; Swindon and Wiltshire; and Tees Valley.

Another example of a town keen to develop its local economy is Peterborough. “The city wants growth: we want to thrive and prosper,” says Marco Cereste, the leader of Peterborough council. Peterborough wants to build more houses to add to 31,000 who have settled there in the last decade. Indeed, since being designated a “new town” in 1967, it has doubled in size.

Milton Keynes, Peterborough and Swindon are three examples of towns that have produced local plans which aspire to attract inward investment and new residents. And that requires new housing. Accordingly, all three local authorities have set aside land for development. Consequently, because there is land available, housing and commercial property costs much less than around other similar towns in the Home Counties. The combination of jobs and cheaper housing makes it feasible for people to move to these new urban centres – the price of an average semi-detached family home in Peterborough is around £131,000, less than a third of the price of a similar-sized house in London.

The development of new Garden Cities nestling next to such towns that are keen to expand is a possible solution to our housing problem. To realise this vision, the ingenuity and enterprise of the private sector – and private finance – need to be harnessed. The best model for doing this is that of the Urban Development Corporations (UDCs) established in the 1980s.

## 10. THE UDC: A PROVEN MODEL TO FOLLOW?

The Local Government, Planning and Land Act 1980 conferred powers on the Secretary of State to designate any area land as a UDC if he or she felt it was in the national interest to do so.<sup>57</sup> The aim was to sweep away planning regulatory controls and to embrace the ingenuity and know-how of the private sector.<sup>58</sup>

By far the most compelling example of what could be achieved by adopting this model was the transformation of 5,120 acres of redundant docklands in East London. The London Docklands Development Corporation was set up to encourage investment in residential housing and new enterprises through the removal or relaxation of taxes and regulatory barriers. Developers were freed from the existing planning controls and were given ten

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<sup>57</sup> Designation was achieved through an order confirmed by both Houses of Parliament. See R Duxbury, *Telling and Duxbury's Planning Law and Procedure*, Oxford University Press, 2009.

<sup>58</sup> The statutory authority for UDCs was created by the Local Government, Planning & Land Act 1980s. Significantly, similar powers have been created to take forward the redevelopment of the area around the Olympic Village in East London. The chair of this authority is Lord Moynihan.

years relief from paying local rates. Land was vested in the UDCs without recourse to lengthy, drawn-out appeals mechanisms. Crucially, UDCs exercised the planning powers previously wielded by local authorities.

It is clear that UDCs kick-started a revival in many run-down areas: private investment was attracted into these enterprise zones by the relaxation in planning rules combined with attractive capital allowances on new building and the exemption from local rates (by 1985 these Treasury subsidies amounted to £150 million a year).<sup>59</sup> Significantly, as Professor Sir Peter Hall, notes, UDCs “deliberately did little planning”. Instead, expert consultants were commissioned to draw up a broad framework and private developers were then encouraged to get on with it. Reginald Ward, the visionary chief executive of the London Docklands Development Corporation (LDDC), pointed out that:<sup>60</sup>

*“Planners presume that they can regulate the market place – and they can’t... [the need is] to be responsive to development pressure... which requires a very flexible planning framework”.*

By 1991, the LDDC had acquired 2,109 acres (40% of the total area of Docklands). It was responsible for upfront investment in infrastructure and site preparation but it gained from a considerable increase in land values generated by this initial investment. Land prices increased from £80,000 an acre in 1981 to £4 million an acre in 1988. Residential property increased

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<sup>59</sup> *Cities in Civilisation*, by Sir Peter Hall, Weidenfeld & Nicolson, 1998, page 920.

<sup>60</sup> Quoted in A Thornley, *Urban Planning under Thatcher*, Routledge, 1991.

threefold between 1984/5 and 1988. Sales of well-appointed riverside such as South Quay in Wapping funded subsequent infrastructure projects notably the Beckton extension of the Docklands Light Railway (DLR).

In total, the LDDC received £1,099 million in grants from central government. But this investment attracted a further £8 billion in private investment. While 20,532 jobs were lost in the Docklands area between 1981 and 1991, more than double that figure – 41,421 – new jobs were created in far higher-paying jobs in financial services, media, and service industries.

The LDDC proved to be an immense success and its record was mirrored in other parts of the country such as Merseyside where the redundant docks were again rejuvenated with investment in hotels, entertainment facilities, residential apartments and a new Tate Gallery. Indeed, the Coalition has acknowledged the attractions of this model of development by launching, in the 2011 Budget, a new round of 21 Enterprise Zones across England including new zones in Leeds, Liverpool, Sheffield, Greater Manchester, and a 300 acre site in the historic Royal Docks in Newham, adjacent to London City airport. The enterprise zones will offer a business discount rate worth up to £275,000 over five years for firms that move into the area over the course of the current Parliament.

The Coalition has also pledged to develop “radically simplified” planning processes, and install superfast broadband in these zones. Furthermore, the Chancellor said that he would consider enhancing capital allowances for plant and machinery in the zones. Finally, he indicated that, for at least 25 years, all business rates growth within the zones will be retained by local authorities to support their economy.

Should we revive the UDC model to drive economic development in Britain? Judging by recent experience there are local authorities such as Milton Keynes and Peterborough that need no encouragement to expand their communities and attract new investment and new housing. Such enterprising local authorities should be encouraged and the current City Deal should be strengthened.

However, there are many local authorities which resist development whether of an economic or residential character. However, there is some evidence that the Coalition is putting pressure on recalcitrant local authorities to identify new areas for economic development and, crucially, new housing. There are a whole cluster of local authorities that have seen their Local Plans rejected by the Planning Inspectorate because their plans do not include adequate provision for new housing.<sup>61</sup> Local authorities will need to have their core strategies in place by March 2013. If they fail to meet this deadline, they may well find any planning decisions they make turning down economic or housing development overturned on appeal to the Planning Inspectorate.

As a result, local authorities that drag their heels are now likely to have their objections overruled. This suggests that the UDC model is not required to revitalise certain dilapidated regions of the country as it was in the 1980s.

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<sup>61</sup> Under the NPPG each local authority must be able to demonstrate a rolling five year land supply for housing, with a buffer of 5% or 20% dependent on past performance.

### **If not UDCs, why not Garden Cities?**

If UDCs are not necessary today, the idea of Garden Cities has much to commend it. The crucial element is the involvement of the private sector and the need to build a mixed range of housing, namely homes to buy and homes to rent.

The fundamental flaw associated with New Towns built in the 1940s and 1950s was that they were primarily and overwhelmingly aimed at the low-income, subsidised rental market.

To encourage the development of new Garden Cities, it makes sense to relax planning regulations in a similar fashion to the UDC model of the 1980s. Furthermore, tax incentives should be considered to encourage new construction. Lessons clearly need to be learned from failures of the past, particularly the importance of providing attractive retail, social and recreational amenities. Residents should also be given a say in how communities develop – community governance in the New Towns of the 1950s and 1960s was very much a top-down affair which arguably caused many of the later problems.

A key point to resolve is whether Compulsory Purchase Orders (CPOs) should be employed in certain circumstances to assemble sufficient land for new construction. This was an avenue adopted by the New Towns in the Post War Period and is an option that could be adopted if negotiations over land are dead-locked. It was also employed by UDCs in the 1980s. Dr Tim Leunig of the LSE has suggested that arable land should be acquired at a fixed rate of £75,000 per hectare (£27,778 an acre). This is considerably above the current market rate for farmland, almost all of which sells for less than £10,000 an acre, but substantially below the going rate for farmland with planning permission.

Land is only as expensive as it is with planning permission because of the shortage of supply induced by the planning system. If regulatory planning controls are relaxed, prices will fall in real terms (much to the disappointment of some landowners).

When considering the challenges and opportunities of creating new Garden Cities the onus is therefore on the private sector, working in co-operation with planners, to provide housing, retail stores and social infrastructure that serves the spontaneous and changing demand patterns of residents. If planners can identify suitable locations and establish appropriate transport infrastructure, then the private sector can provide attractive homes and facilities in response to individuals' preferences.

## 11. RECOMMENDATIONS

1. As the Coalition has indicated, sunset clauses should be more widely adopted. A post-implementation audit should be undertaken three years after enactment of each regulation, including a comparison of the objectives, costs and benefits specified in the Regulatory Impact Assessment against what has happened in practice. This will inform the decision as to whether to repeal, amend or retain.
2. In terms of planning regulation, a more market-orientated approach is needed to meet the pressing demand for housing of all types. However, there are some encouraging signs that the Coalition is now determined to tackle our antiquated planning system.
3. A Consolidated Planning Act is required. Its first clause should be the repeal of all existing legislation and its replacement with a single rationalised Act. A list of the 118 statutes is listed in Appendix One which impinge on planning matters in England & Wales.

4. This new Consolidated Act should have as its declared purpose the aim of reducing the time, money and effort required to win planning permission for new development.
5. Planning gains need to be priced and recognised by a planning system that takes into account the economic case for a development. Currently, this is notably absent. In practice, the way in which planning has developed over the last 60 years has resulted in very damaging economic consequences for the country. The planning system has demonstrated time and time again its inability to handle the competing claims of development and the need to protect the landscape and environment. This is because planning decisions are not formally priced.
6. We need to be bold in allowing a greater range and variety of urban development. Instead of deliberately planning for an 'optimal' urban form, it should be the choices and actions that people make which, in the medium term, determines future development.
7. This is best revealed by the subjective view of their inhabitants as signalled by the relative willingness to pay for different types of development scheme.
8. There is also a significant problem surrounding the failure of the UK planning system to "internalise externalities". Whereas the costs of development are borne locally, the benefits can be spread over a wide area. For example, the proposal to construct a third runway at Heathrow is a good example of this dilemma. The decision-making process is largely controlled by those who live within the area who may gain only marginally from the benefits stemming from a major infrastructure scheme.

9. Private developers should be responsible for compensating third parties affected by development. Determining who was compensated and by how much would become the role of planners in a process akin to environmental impact assessments. Adopting this approach would enable externalities to be internalised, while the market would set the price of development rights and the detailed pattern of development. Any disputes could be settled in the courts.
10. The renewed interest in Garden Cities is to be welcomed. For such a renaissance to be a success, however, the private sector must be free to design, fund and build such developments in an attractive and sustainable manner. Successful new developments would be likely to include a full mix of housing rather than shun the owner occupied sector as too often happened – disastrously – in the past.
11. A cap could be placed on the total sum of money paid to land owners by developers who win auctions. The difference should be channelled into local infrastructure provision, enhancing the revenues generated by the new Community Infrastructure Levy which builders will now pay to win planning permission.
12. Once a design framework has been agreed, development rights for the construction of these new urban centres should be auctioned. This should encourage diversity and interest.
13. As part of this process, covenants<sup>62</sup> should lay down responsibilities for urban parks, retail shops and

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<sup>62</sup> See Dr Stephen Davies' chapter on 'laissez faire urban planning' in *The Voluntary City: Choice, Community and Civil Society* edited by David Beito et al, University of Michigan Press, 2002, for the role

entertainment and leisure facilities. Covenants are market mechanisms that bring landlord, developer, builder and consumer together. This is a market mechanism that enables landlords and developers to sell the quality and control of the environment, as part of the overall attraction of a site.

14. Central government should encourage neighbouring local councils to come together to identify potential sites for new Garden Cities.
15. A tender procedure should be adopted whereby all development proposals should be judged first on their quality and acceptability and then, in a second stage, a short list of the best should be drawn up and their backers invited to submit competitive bids for permission to develop land.<sup>63</sup>

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covenants previously played in regulating the development of towns and cities. In London, the Grosvenor Estate and the Cadogan Estate are examples of traditional estates which continue to enforce strict covenants aimed at maintaining the aesthetic integrity and amenity of their neighbourhoods.

<sup>63</sup> This approach was originally suggested by R Ehrman, *Planning Planning*, Centre for Policy Studies, 1988.

## **APPENDIX ONE**

### **List of legislation relating to planning law in need of consolidation and revision**

1. Acquisition of Land Act 1981
2. Agricultural Land (Removal of Surface Soil) Act 1953
3. Alkali, etc Works Regulation Act 1906
4. Ancient Monuments and Archaeological Areas Act 1979
5. Ancient Monuments and Archaeological Areas Act 1990
6. Anti-social Behaviour Act 2003
7. Artisans and Labourers' Dwelling Act 1868
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In common with all recent Governments, the Coalition has often declared its ambition to “cut red tape”. Yet only modest gains have been achieved.

Planning regulations, in particular, remain notoriously complex. 118 Acts combine to create a “lawyer’s banquet” of complexity. The result is an unnecessarily lengthy and costly planning procedure which enables vested interests to prosper, creates commercial uncertainty and restricts new development.

The renewed interest in Garden Cities is to be welcomed. Applying the lessons of the success of Milton Keynes (and that of the Urban Development Corporations) could lead to a new era of privately-financed Garden Cities, thereby easing the current housing shortage while also spurring growth.

The first step must be to rationalise all planning regulation in a New Consolidated Act.; and to introduce sunset clauses for all new planning regulations.

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