Chapter 2

Planning frameworks and housing delivery

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In response to widely recognised shortages in housing supply, the planning system's role in providing private housing and resourcing the provision of affordable housing and infrastructure is receiving much greater attention. The modern planning system in England, Wales and Scotland originated in the 1947 Act, but each country is now able to pass its own primary legislation. Moreover, each is now undertaking reform of its planning system, as is Northern Ireland. As in housing policy, there is scope for divergence in planning policies in the different parts of the UK, despite these shared origins.

This chapter summarises the planning frameworks as they now operate and identifies patterns of convergence and divergence between the four countries. Particular focus will be placed on approaches to the use of planning gain to resource affordable housing and infrastructure. We also examine the introduction of viability tests in England which can be used to reduce a developer's affordable housing obligations, as well as the lags that occur between the granting of planning permission and the building out of permitted sites.

Planning policy in a devolved United Kingdom

The modern planning system established by the Town and Country Planning Act 1947 applied across Great Britain.[1] It nationalised development rights, but adopted an assumption in favour of development. The current version of the system is 'plan led' which means that individual planning decisions should be made in accordance with planning policies unless other 'material considerations' apply, so reflecting the system's distinctive discretionary nature. Across the UK developers may appeal against a refusal by a planning authority, but no equivalent right is enjoyed by third parties.

In England, the main piece of consolidating legislation remains the Town and Country Planning Act 1990, but there have also been significant subsequent changes, notably the 2008 Planning Act which introduced the Community Infrastructure Levy and the Localism Act 2011 which introduced the framework for neighbourhood planning. In addition, the Cities and Local Government Devolution Act 2016 paved the way for new, directly elected mayors to combined local authorities in England, together with devolved powers including planning. Seven such 'metro mayors' were elected in May 2017 following devolution agreements for Cambridge and Peterborough, Greater Manchester, Liverpool City Region, Sheffield City Region, Tees Valley, the West Midlands and West of England.

The National Assembly for Wales initially only enjoyed control over secondary legislation, so the basis of the Welsh system remains the same 1990 Act which applies in England. The 2008 Act, which introduced the Community Infrastructure Levy (CIL), also applies in Wales, although the Wales Act 2017 has now devolved responsibility for CIL. However, in 2011 the Westminster parliament granted the Welsh Assembly the power to pass primary planning legislation in this area and it did so in 2015. The Planning (Wales) Act 2015 embedded the plan-led system and introduced the National Development Framework that is now being developed and will replace the Wales Spatial Plan which was first adopted in 2004. The Law Commission is working on proposals for consolidating planning law in Wales.

The Scottish Parliament has enjoyed the competence to legislate fully on planning since its inception in 1999. However, as in many areas of policy, planning was already subject to separate legislation and the pre-devolution 1997 Act still forms the basis of the system. The Scottish Parliament amended it in 2006 and ministers introduced another planning bill to the Scottish Parliament in December 2017.

The 1947 Act did not apply to Northern Ireland where planning was already devolved, largely based on an act passed in 1944.[2] However, as was the case with housing, the UK government removed planning responsibility from local authorities in 1972 and placed it in the hands of the Department of the Environment in order to prevent discrimination on sectarian lines. Between the suspension of the Stormont Parliament and the establishment of the Northern Ireland Assembly, UK ministers effectively controlled planning policy. Responsibility has now returned to the Northern Ireland Executive, although complicated by the fact that it is currently suspended. In 2015 a reform of public authorities and a new plan-led planning system introduced in the 2011 Act moved responsibility for much of the planning system to 11 new local authorities, which are now developing local development plans alongside community plans.

Regional level planning

Formal regional-level planning structures ended in England outside London after 2010, but look likely to re-emerge in another form. The Westminster government is responsible for national policies contained in the National Planning Policy Framework, as well as its interpretation through Planning Practice Guidance. Local authorities are responsible for local plans within this framework. Regional Spatial Strategies, which were introduced in 2004 (outside London) and were intended to address regional issues such as housing that cut across local authority boundaries, were abolished by the coalition and replaced with a duty on local authorities to 'co-operate'. However, a regional tier is retained in London where the Mayor is responsible for a city-wide plan, and provision is made for this in the city regions (see above). The Greater Manchester Combined Authority, for example, is developing a spatial strategy to secure land for housing and other functions.

Scotland retains a regional planning tier in most of the country, but this is likely to change. At the national level, the Scottish Government is responsible for Scottish Planning Policy (SPP) and the National Planning Framework (NPF) as well as issuing guidance. Each of Scotland's 32 unitary authorities is responsible for producing a local plan. In addition, Strategic Development Plans (SDPs) are centred on the 20 local authorities that make up the four city regions of Glasgow, Edinburgh, Aberdeen and Dundee. The Scottish Government intended SDPs to address cross-authority issues including the provision of land for housing. However, following a review of planning policy, the current planning bill proposes to abolish this regional tier on the grounds that SDPs are 'too prescriptive, generate overly-complex and lengthy statutory processes and resultant substantial costs, and are limited to only Scotland's four largest city regions'.[3] Although, as is the case in England, the planning bill envisages a duty on local authorities to co-operate, this appears to be part of a centralising strategy. Local authorities will have a duty to co-operate in providing information to the Scottish Government whose NPF will not only absorb SDPs, but 'will also expand to incorporate a more focused strategic planning element at the regional scale, in addition to its existing national focus'.

Meanwhile, Wales is moving towards *establishing* a regional tier of planning to sit between the National Development Framework and local development plans. The 2015 Act provides for the establishment of Strategic Planning Panels empowered to draw up Strategic Development Plans. Such regional plans are not obligatory and are likely to have most relevance around the largest cities; City Deals are already in place centred on Cardiff, Swansea and the North Wales A55 corridor.

Northern Ireland's planning system has restored the role of local authorities within national-level policies contained in the Programme for Government and the Regional Development Strategy.

Neighbourhood planning

There has also been a trend towards neighbourhood planning. The Westminster government provided for neighbourhood plans in England in the Localism Act 2011. These may be developed by community or parish councils (or a bespoke forum where these do not exist) within the frameworks of national and local (authority) policies and objectives. They are subject to approval in a referendum and examination process. Once approved they become part of the local plan; they must be taken into account when decisions are made by the local planning authority on planning applications in the area they cover. This initiative has evoked widespread interest. In March 2017 there were 280 neighbourhood plans in force, and 300 had passed referenda.[4] A selective list of referenda suggests that they are passed with overwhelming majorities (often over 80 per cent in favour), but on turnouts that rarely exceed 40 per cent of the electorate. Moreover, research suggests that they are disproportionately located in the south, rural and more affluent areas, and that they give disproportionate influence to older people. Often communities have used them as a means of blocking developments.[5]

The current planning bill in Scotland provides for 'local place plans' to be developed by communities. The planning authority may then incorporate them into local development plans. The tension inherent between empowering communities and the Scottish Government's aspiration to speed up development is reflected in the assertion that:[6]

It is critical that planning reflects the views and aspirations of the communities it seeks to serve. Equally, it is important that local place plans (LPPs) support, rather than undermine, the LDP [Local Development Plan], and provisions have been designed to avoid reducing the capacity and willingness of communities to play a part in designing the wider LDP.

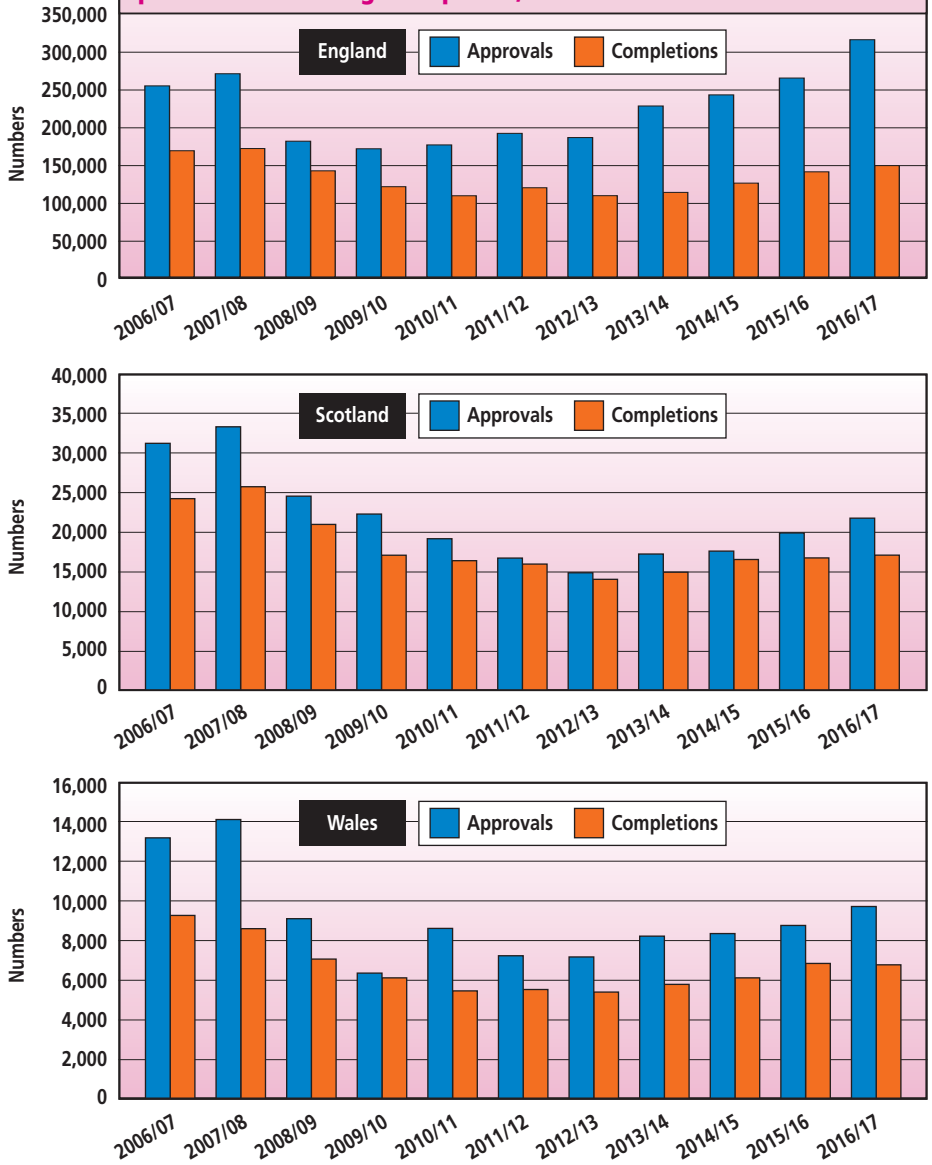
Northern Ireland now provides for community planning, but responsibility lies with the local authority (rather than local communities) and the legislation lists statutory partners which must be consulted. The Welsh Government has introduced 'place plans', which can be formally adopted as supplementary planning guidance to the local development plan.

Housebuilding and build out rates

Whilst the planning system is still widely perceived as having some responsibility for constraining housing supply, attention has also increasingly focussed on the building industry. The argument is that large housebuilders 'sit on large amounts of suitable land and develop it slowly in order to keep prices high'.[7] The Home Builders Federation suggested to the House of Lords Select Committee on Economic Affairs that this phenomenon was almost entirely attributable to land owned by non-developers. MHCLG claimed that, since planning permissions are normally time-limited, there is little incentive to hoard permitted land.

Figure 1.2.1 shows the number of housing units securing detailed planning approval and the number of dwellings completed in England, Scotland and Wales, over the period 2006/07 to 2016/17. The charts indicate that the numbers of units given detailed planning permission exceeded the numbers completed in each nation and in each year. By the end of the period, units completed lagged behind planning permissions by almost 39,000 in Scotland, nearly 28,000 in Wales and by more than 1 million in England. The relationship is uneven between the countries, too. Whilst the number of units completed represented 84 per cent of the number of new permissions in Scotland and 72.5 per cent Wales, the figure for England is only 59 per cent.

Figure 1.2.1 **Housing units securing detailed planning approval and permanent dwellings completed, 2006/07-2016/17**



Source: Glenigan, New Housing Pipeline, Q2 2017; ONS Live Table 209.

The Westminster government responded to the House of Lords Select Committee report by stating, '... it is the responsibility of the housebuilding industry to be more transparent and forthcoming in agreeing a trajectory for build out rates on sites with local authorities'.[8] Following a recommendation in the committee's report, in his 2017 Autumn Budget the Chancellor announced an 'urgent review' of the gap between planning permissions and building, to be chaired by Sir Oliver Letwin. This will 'identify the principal causes of the gap, and identify practical steps that could increase the speed of build out'. An interim report is expected in the Spring and a full report in time for the 2018 Budget.

Clearly, the review has yet to find the reasons for the gap. However, the Chancellor indicated that he would be prepared to use 'direct intervention compulsory purchase powers as necessary' and warned that 'no one should doubt this government's determination to [fix this problem]'.[9] The select committee favoured empowering local authorities to levy council tax on developments not completed within a set time period.[10]

The Scottish Government is alert to the question of build out. Its formal position is to 'explore options' around compulsory purchase and sale orders and a development land tax, separately from the current planning bill.

Planning agreements and affordable housing

England

Since the 1990 Act, section 106 planning agreements have become a vital means of resourcing new affordable housing. Although some commentators have disputed their underlying rationale, studies suggest that, as an instrument of land value capture, s106 agreements have been far more effective than previous development taxes.[11] Their relative success has been attributed to being locally determined (rather than fixed nationally), discretionary, flexible to local and site-specific circumstances, hypothecated, and re-used locally.[12] Whilst one would expect the introduction of the Community Infrastructure Levy in England and Wales from 2010 to reduce the scope for s106 agreements, research by CCHPR suggests that there is no conclusive evidence that CIL has caused a reduction in affordable housing provided in this way.[13] As noted in Commentary Chapter 4, in 2016/17 more than 18,000 affordable homes were provided in England through planning gain, or 43 per cent of the total.

However, there has been an increasing focus on 'viability' tests, whereby developers seek to reduce or remove any affordable housing contribution from a development. In response to the recession, legislation in 2013 allowed parties to renegotiate agreements where they made a scheme unviable, although this expired in 2016. Nonetheless, national planning policy in England states that to ensure viability where planning obligations are being considered these should still 'provide competitive returns to a willing landowner and willing developer to enable development to be deliverable'.[14]

Planning guidance further elaborates the role of viability tests:[15]

> *Decision-taking on individual schemes does not normally require an assessment of viability. However viability can be important where planning obligations or other costs are being introduced. In these cases decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development and promote economic growth.*

Neil Crosby of the University of Reading has argued that current government and RICS guidance encourages the use of a viability model that allows normal planning obligations (rather than the developer's profits or the land value) to become the residual.[16] This occurs by shifting the land price outside the model by using comparable transactions, and holding the developer's return constant. A developer may therefore bid more for the land and pass the cost on to the planning authority through contributing zero or fewer affordable housing units rather than by reducing profits.

There have been high profile controversies about levels of affordable provision, particularly surrounding the demolition and replacement of council estates in inner London. There are many individual examples of developers successfully reducing their affordable housing requirements. A study of the 82 largest housing developments in ten major cities by the Bureau of Investigative Journalism found

that only 40 per cent of them complied with local targets for affordable housing.[17] The Bureau found that at least half of developments in Bristol, Bradford, Cardiff, Manchester and Sheffield failed to meet these targets. It found that developers were making widespread and effective use of viability tests to reduce their commitments – either by reducing the number of units or switching to affordable tenures that required a lower contribution per unit.

The Bureau's study was conducted in 2013, and we sought to identify whether this trend is continuing. We inspected the website of s106 Management, a company that examines 'the necessity and viability of requirements for Section 106 affordable housing by Local Planning Authorities (LPAs)' on behalf of landowners and developers.[18] Table 1.2.1 provides five examples taken from its website. They are illustrative rather than representative, and indeed have been selected only for developments involving more than ten houses – the threshold that the Westminster government now applies for affordable housing obligations to be considered. However, it is also the case that none of the examples are of large new-build estates. The five examples do illustrate that developers have used viability tests across England, and the sums involved can be considerable.

Table 1.2.1 **Examples of viability tests reducing affordable housing requirements**

Local Planning Authority	Year	Development	Normal requirement/ request from LPA	Outcome and claimed saving to developer
Cornwall CC	2015	Site of derelict business premises: 27 houses, 131 flats, 1161m^2 offices, 600m^2 retail, 50-room hotel, a microbrewery	Request for 40% affordable homes in line with council policy	Zero contribution (saving £106,328)
LB Sutton	2014	Conversion of premises to form 13 self-contained flats	6 affordable housing units in line with council policy	Zero contribution (saving £500,000)
Stockport MBC	2015	Erection of 4 detached and 6 semi-detached houses on vacant site	40% affordable housing under council policy	Zero contribution (saving £106,328)
Stroud DC	2013	51 dwellings on brownfield site	15 affordable homes + £56,250 for recreation facilities	Permission for 49 open market houses (saving £750,000)
Thurrock DC	2013	41 flats and 270m^2 of shopping space	14 affordable homes under council policy	Zero contribution (saving c. £1 million)

Source: s106 Management (see www.s106management.co.uk/case-studies).

Overall the Centre for Progressive Capitalism estimates that £2.8 billion of land value uplift arising from newly built homes was captured through s106 agreements and CIL in 2014/15, but £9.3 billion was not captured.[19]

This is clearly an area of potentially great significance. It involves effective implementation through planning policies and guidance, professional practice, and the appeals and court systems. The importance of planning gain in providing affordable housing is recognised by the announcement of a Communities and Local Government Select Committee inquiry into 'the effectiveness of current land value capture methods and the need for new ways of capturing any uplift in the value of land associated with the granting of planning permission or nearby infrastructure improvements and other factors'.[20]

Scotland

Scottish legislation (section 75 of the 1997 Act) also makes provision for developer contributions towards affordable housing. Current national Scottish Planning Policy (dating from 2014),[21] defines affordable housing broadly as 'housing of a reasonable quality that is affordable to people on modest incomes' and may include mid-market rental accommodation and houses sold at a discount. Policy cautions local authorities against threatening viability by demanding excessive contributions, and states that affordable housing requirements 'generally be no more than 25% of the total number of houses'.

The Scottish Government no longer provides statistics on the number of affordable homes provided through planning agreements. However, the planning review established in 2015 suggested that the proportion of major developments with

legal agreements in place declined from 30 per cent in 2013/14 to 22 per cent in 2014/15.[22] It also identified widespread geographical variations in its use because 36 per cent of agreements were in two local authorities. Generally, the practice appears to be less widely used than in England, although this is partly attributable to lower average house prices and consequently a smaller average land value uplift than in England. The review claimed that s75 agreements were 'stretched to the limit' and:

> *... there is compelling evidence that they contribute significantly to delays in the development management process. For major developments, a Section 75 [agreement] is likely to double the decision making timescale.*

The planning bill enables ministers to establish an infrastructure levy through secondary legislation, payable to the local authority. More broadly, both the planning review and broader debate favour a deeper investigation into mechanisms for land value capture, and the recently created Scottish Land Commission's programme includes research into this and land value taxation.

Wales

Provision for developer contributions is derived from the 1990 Act that applies to England, although the Welsh Government issues its own guidance. The number of units of affordable housing delivered through planning obligations has risen from 384 in 2013/14 to 932 in 2016/17 (the highest number since records began in 2007/08).[23] These figures represent 15.9 per cent and 39.6 per cent of the total number of affordable homes completed respectively.

Northern Ireland

Section 76 of the 2011 Planning (Northern Ireland) Act provides for developer contributions, but they are used rarely if at all for affordable housing. The Department for Social Development commissioned a report on their potential use which found that they would render developments unviable in most of Northern Ireland.[24] It suggested that it would be impractical to operate such a scheme without the government supplementing it with a grant. It recommended that benchmarks for affordable housing provision should be set locally to take account of market variations. The report was published in December 2015 but no further action has been taken, in part because the Northern Ireland Executive is currently suspended.

Conclusions

The planning systems in England, Wales and Scotland are derived from the same GB-wide 1947 Act. Across the UK, administrations are concerned that the planning system facilitates rather than inhibits development, particularly housing development. There are differing responses to this: Scotland is following England in abolishing regional-level planning but in contrast Wales is moving towards having a regional-level planning tier.

Attention is also focussing on the housebuilding industry, and the question of build-out rates lagging behind the granting of planning permissions. A government review is taking place in England, whilst the Scottish Government is still considering its options.

In a climate of fiscal austerity, administrations are particular concerned about how infrastructure is paid for. Attempts at utilising land value capture to help to resource affordable housing and wider infrastructure needs are accepted across Great Britain, although Northern Ireland seems unlikely to introduce section 106-type arrangements. The Community Infrastructure Levy, legislated for in England and Wales a decade ago, finally appears in the current planning bill in Scotland. However, the Scottish Government has yet to decide how and when it will be implemented. In Scotland there is also interest in exploring other mechanisms for land value capture, including land value taxation.

Notes and references

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18 See www.s106management.co.uk/about-us

19 Centre for Progressive Capitalism (2017) *Estimating land value capture for England – updated analysis* (see http://progressive-capitalism.net/2017/03/estimating-land-value-capture-england-updated-analysis/).

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21 Scottish Government (2014) *Scottish Planning Policy*. Edinburgh: Scottish Government.

22 Beveridge, C., *et al* (2016) *Empowering planning to deliver great places. An independent review of the Scottish Planning system*. Edinburgh: Scottish Government.

23 Welsh Government (2017) *Affordable Housing Provision in Wales 2016-17*, Statistical First Release, 15 November, Table 6. Cardiff: WG.

24 Three Dragons and Heriot-Watt University (2015) *Developer Contributions for Affordable Housing in Northern Ireland*. Belfast: Department for Social Development.