Submission to the Lyons Housing Review

from David Brock, Brock Consulting

1 The Land Market – unlocking land for housing development

This is the first of the Lyons Review questions. It begins saying that "The high cost of housing is largely driven by the high cost of land". However, this is to view the problem from the wrong end of the telescope. It is important to get this right. Land has no intrinsic economic value. It is only worth what the market will pay, and the market generally pays by reference to the profit which can be made from the land. So in commercial property the capital value of an office building is related to the rent which will be paid. And in housing land the price of the land is related to the amount the houses will sell for. Put simply, if a plot of land with a completed house would sell for £500,000, and the construction costs, developer's profit and professional fees are £400,000 the land will sell for about £100,000. But if the construction costs, profit and professional fees are £425,000, the land will sell for about £75,000. The value of the land is therefore intimately connected with the amount the tenant or purchaser is willing to pay. That, in turn, is related to the amount the tenant or purchaser has available for property costs.

Valuers of property know and understand this as we see in the classic residual land valuation; the price paid for land for property development is what is left over from the purchase price of the finished development (or capitalised rent in the case of rented property) after deducting the cost of construction, a reasonable profit for the developer to compensate for risk, environmental and planning obligations which have to be met, and professional fees. The key amount of money in this is the price obtained for the finished development.

The laws of supply and demand operate here. If purchasers have more money and supply does not change, then prices will go up. If supply drops or does not match demand, the price will go up. If there are not many buyers, for example because times are hard, then straightforward economics tells us that prices drop. Of course there are other factors; when times are hard and prices drop, fewer units come onto the market as vendors see less point in selling, and postpone the upgrade, or cannot get a job elsewhere which would have led to a move and sale. And buyers are not always hard-nosed. But when we look at the housing market we must realise that the price of land is driven by the price fetched for the finished development. And so if there is more money chasing houses that will tend to keep house prices high and will in turn inflate land prices. It is for this reason that organisations such as the IMF and many others criticise the current government's Help to Buy programme which puts more money into the market and on classic economic theory will increase purchase prices still more as long as there are more house-buyers than houses available. Similarly, if there are more houses on the market than there is demand then prices should drop.

On that basis the key is to release more land for housing, which will lead not only to a drop or stability in the price of houses, but also reduce or stabilise values of land with the potential to be developed for housing.

The first question goes on to assert that the planning system gives large windfalls to those able to get planning permission for housing and that this creates incentives to hoard and speculate in land, with developers prioritising the trading of land over building decent homes.

We hope that the Review will seek evidence of trading and hoarding, as that appears to be a major plank of the argument.

The Review should also consider whether it is right to assert that "the planning system gives large windfalls to those able to get planning permission for housing". The previous Labour government looked at that argument and proposed to introduce Planning Gain Supplement. It decided against that and instead proposed the very similar Community Infrastructure Levy, for which the necessary secondary legislation has been enacted. Many councils have introduced it . But both are a tax on development. Capital gains are also taxed. So the "windfalls" are not left wholly in the hands of the landowners who get planning permission.

We say more about "windfalls" in section 5 below.

We can now turn to the questions.

- *How do we get much more residential land to market and what are the best mechanisms to achieve this?*

If there is a shortage of residential development land (which we assume means land with planning permission) the simple step is to grant permission for more residential development. We know that there is some land with permission not being developed. The reasons for this need to be investigated properly. It may be that there are actually difficulties in developing the land which is not coming forward, for example that there are access problems, or that some landowners will not sell (the applicant for planning permission does not have to own the land). Or it may be that this is a legitimate store of land for future development – nobody uses all their stock at once. But if there were to be more land with planning permission, the workings of the marketplace ought to bring it to the market. This could also contribute to overcoming any quasi-monopoly enjoyed by the current rather small number of housebuilders.

It might be said that granting more permissions would result in too much development, or even empty houses. But that would be to suggest that the market will not work. Will developers really collectively develop houses at a greater rate than they can sell them?

- *How can we ensure that land brought to market is available for development and not simply landbanked?*

Land should come to the market and be developed if it is profitable to develop. If land with permission is not coming to the market now that suggests that housebuilding is not profitable enough at the moment. It might also be evidence of non-delberate anti-competitive behaviour, suggesting that there are not enough housebuilders in the market.

It also suggests that landowners of land without permission are not willing to sell to developers at a price which delivers a profit for the developers. This is odd when the difference between (say) agricultural land values and residential values is several orders of magnitude (and according to the call for evidence the difference is from £20,000 per hectare to £2,000,000 per hectare). Whilst the current high price of bricks due to the mothballing and closure of brickworks in this country during the economic downturn will eat into some of the rise in value it is unlikely to render land sales for housing unattractive. In fact the difference in values casts some doubt on the theory that land is

being hoarded. The more likely explanation may be that land controlled by housebuilders has been bought at prices which now are too high to make the development profitable. It needs to be remembered that most land for housing development is "bought" under a conditional contract or option which allows the housebuilder to draw down the land when it is to be developed. The price will usually be the market rate at the time of drawdown, but with a minimum price per hectare. If that minimum price is now too high, the land is unlikely to be developed until the market improves.

Again, granting more planning permissions could alleviate the situation. Instead of developing the land with the high minimum price, new land would come to the market at today's prices.

- *How will a "use it or lose it" power for local authorities to discourage landbanking be implemented?*

Such powers already exist. Planning permissions are always subject to a time limit for their implementation. Sections 91 and 92 of the Town and Country Planning Act 1990 provide that permissions expire if not implemented within three years of the date of grant, or in the case of outline permissions, two years from the date of approval of the law reserved matters application. Applications for reserved matters approval must be made within three years of the grant. Local authorities can specify different periods when granting permission. So permissions which are not used are lost.

In addition, where a permission is not completed within the time for implementation the local planning authority can serve a completion notice. This requires completion within a reasonable period specified in the notice and the permission ceases to have effect for development not carried out before the expiry of the period. The powers are in sections 94 and 95 of the 1990 Act.

The power is rarely used. But it exists and it is difficult to see why any new powers are needed, certainly not until it has been tested by authorities using the existing powers. One reason why the powers have not been used may be that revoking the permission when there is demand for housing and the local authority has not granted permission for the number of houses required in its area simply creates a need to grant permission elsewhere. In addition, if the planning reasons for granting the (now revoked) permission are still good, there would appear to be no reason why a fresh permission would not be granted. One unhelpful result of revoking the permission when circumstances have become adverse to the grant of permission would be to reduce the supply of housing land.

Local authorities also already have a compulsory purchase power to acquire land for planning purposes. Section 226 of the 1990 Act says:

> (1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area —
>
> (a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land; or
>
> (b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

This is subject to the following qualification added by the last Labour government in 2004:

> (1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects–
>
> (a) the promotion or improvement of the economic well-being of their area;
>
> (b) the promotion or improvement of the social well-being of their area;
>
> (c) the promotion or improvement of the environmental well-being of their area.

One would have thought that both subsections (1) and (1A) would be easily met in the circumstances envisaged for "Use it or Lose it".

This power of compulsory acquisition is wide, but rarely used. Surely the current powers should be considered and investigated before enacting new legislation. It is simpler to do that than use Parliamentary time for something which is already covered.

Whether new powers are enacted or new life breathed into the existing powers, there are two important issues to be addressed. If the power to revoke the permission is to be used, one has to ask what would be the position if the following day a planning application were made for the same development. Surely permission would normally be granted, as, in the absence of different material considerations, the need for the housing would still exist and the site would be suitable. One is forced to ask if revocation achieves anything.

If the compulsory purchase power is used, how will that be funded and do local authorities have the funding to do the development? It may be said that they would bring in other developers. But that suggests that the development is worth doing in the market at the time, in which case, surely the developers controlling the site at the time of the purchase would be doing the development anyway. If that is not the case, it is going to be difficult to procure another developer to do the development. Thus to get the development to happen, government itself would have to fund it and take the commercial risks.

- *Given the consensus that our current development industry is not capable of delivering the homes we need, how can we bring about greater capacity, competition and diversity to ensure it can deliver the homes our country so badly needs?*

Again, and answer here could be to grant more planning permissions, for the reasons set out above. Another measure might be to increase the number of housebuilding companies and thus increase competition. According to the Economist (11th January 2014) "Since 2008 the number of small house builders—those that put up between 10 and 30 units per year—has fallen by 50%. The number of big builders has increased slightly." The fall over the past fifty years has been far greater. This leads to a less competitive market. However, current planning policies often require significant amounts of housebuilding to take place on huge sites, capable of taking thousands of dwellings. The resource needed to steer such sites through the planning system is considerable, not just in terms of money, but of expertise and time. Large teams of professionals are needed. This is not encouraging for smaller developers, meaning that large housebuilders are in a stronger position. But planning

policies which made it easier to develop smaller sites would be more attractive to smaller developers. It would also assist self-builders and community-builders.

Is there however a consensus that our current development industry is not capable of delivering the homes we need? And even if there is such a consensus is that true? Is not the problem actually that it is still very difficult to obtain planning permission for the numbers of houses which are needed? Local communities are reluctant to see housebuilding. Local councils are reluctant to grant permission. Members of Parliament are reluctant to support new development.

The Westminster Hall debate on planning which took place on 8th January 2014 is instructive on this. Member after Member suggested that local views, whatever they might be, should reign supreme. So that for example Jason McCartney, the Conservative Member for Colne Valley said: "The nub of the matter is that when local councillors on the planning sub-committee listen to local concerns and are minded to refuse an application, its planning officers run roughshod over them, so there is no local democracy and no local accountability." The expectation is clearly that local views will be against development (though it is usually asserted that local people do not want to stop it) and so we read from Neil Carmichael, the Conservative Member for Stroud said "When we go around our patches, as I do, encouraging neighbourhood plans, the response heard is, "Well, that won't be sufficient to stop what's being proposed."

Even Roberta Blackman-Woods, the Labour Member for Durham City and Opposition spokeswoman on planning said: "I want to put on the record that I agree with some of the issues raised by the hon. Member for Somerton and Frome, particularly those about ... how we take more notice of neighbourhood planning." She recognised that "We know that we need more housing, including in rural areas. I shall not rehearse again all the figures that I gave last time. Suffice it to say that, to secure a typical mortgage, a rural resident needs to earn £66,000. With the average rural income standing at just over £20,000, there clearly is a problem with affordability, partly as a result of insufficient supply" and later in her speech made it clear that she sees neighbourhood planning as a way to approve development. But there is no recognition that the popular and political perception of localism and neighbourhood planning is that they are tools to resist development.

It is now becoming difficult for national Governments to take a lead on this. Whilst John Gummer when Secretary of State for the Environment said we needed to build four million homes by 2016, this proved to be unpopular and his Labour successor, John Prescott, criticised those figures, resetting them as annual numbers. The current Government has abolished "the hated top-down Regional Strategies" which encapsulated them, asserting that local authorities should be able to decide. And the Shadow Secretary of State for Communities and Local Government, Hilary Benn says: "Local communities should decide where they want new homes and developments to go and then give their consent in the form of planning permission." In his experience, if you give people responsibility for these things they will respond. "If they get it wrong there will be no-one else to blame for the lack of new homes".

Is this really going to work? The difficulty with localism and neighbourhood planning is that they ask small communities to take self-sacrificing decisions for the greater good of those not yet in their communities and those who will always be outside their communities. On the other hand, one of the key tasks of Government is to take the difficult decisions.

In short, is it really the case that the development industry is not capable of delivering the homes we need? Or is there actually a deeply felt dislike by the general public of new housing development? Until that is addressed, the problem will persist.

We will not comment on issues 2 and 3 which lie outside our field of expertise.

Issue 4 – a new right to grow.

- *How can we ensure that local authorities that want to expand but do not have the land on which to grant planning permission without cooperation from a neighbour, are able to do so?*
- *What are the incentives, disincentives and requirements that should be used to ensure co-operation between local authorities in a joint planning process in their areas?*

First we would suggest that the Review considers whether there are really so many authorities which wish to expand their housing stock, and whether they need land in the area of other authorities in order to do so. The difficulties at West Stevenage are reasonably well known. Is that a problem elsewhere? If it is, the question arises of whether it is right for Authority A to force Authority B to accept new homes or other development. And that sort of principle would be open to abuse by any Authority A effectively using its neighbour B to take development A needs but did not want in its area.

Again however there are already powers which assist. The Secretary of State can call in planning applications for his own decision. So an application which straddled the boundary of an authority and where the neighbour was being recalcitrant could be granted by the Secretary of State. That will require some careful drafting of for example the section 106 agreement, but that would be a problem anyway unless Authority A is designated as the local planning authority in B's area, and expert planning lawyers have devised solutions in similar circumstances in the past.

There are also powers to set up joint planning boards, straddling boundaries – see s.2 of the Town and Country Planning Act 1990. These of course presuppose a willingness to cooperate. Finding the keys to cooperation where the parties are not really willing to work together is a difficult political issue which we will leave to the expertise of others

Issue 5 – Share the benefits of development with local communities.

Two questions are raised –

(i) *is the current planning system fit for purpose and what alternatives exist?*

(ii) *How can we ensure that a larger share of the windfall gains from planning permission go to local communities?*

Question (i) calls for an immense and almost open ended review of the current system. Our current system was devised after careful consideration by a Royal Commission and three special committees of which the most significant was the Uthwatt Committee. Importantly the aim was to promote development and that was the mindset of the Town and Country Planning Act 1947, which forms the basis of the current system (albeit amended and re-enacted by several statutes since then and now

to be found in the 1990 Act). The remit of Uthwatt was to create the legal framework for post-war development; its terms of reference included the following:

"To advise as a matter of urgency what steps should be taken now or before the end of the war to prevent the work of reconstruction thereafter being prejudiced."

That was a positive approach to development. It would appear that what has been lost since then is the appetite for development and new housing, rather than the system being unfit for purpose. Rather than enthusiastically embracing new development, the mindset of the general public and politicians today is to control and even prevent it. We can see this also in the furore created by the "presumption in favour of sustainable development" now to be found in the National Planning Policy Framework. That was however the reintroduction of a presumption dating from 1923 in circular 368/1923[1]

Turning now to Question (ii), we already have Community Infrastructure Levy which, subject to the levy not making development unviable, can be set at a rate chosen by local authorities. Capital gains are also taxed. Is there in fact a need for further taxes on development? It is to be hoped that the Review will address that question. Since 1947 there has been a succession of failed taxes on development, beginning with betterment levy, passing through the Community Land Act 1975 (which was never brought fully into force) and lastly Development Land Tax. They were all complex. Chancellors do not lightly repeal taxes. But development land taxation has rarely worked and their repeal might justifiably allow us to conclude they are more trouble than they are worth. We now have Community Infrastructure Levy. It is another complex tax. Conceived as a hypothecated tax, to fund infrastructure and reduce the need for section 106 agreements, it is already losing some of the hypothecation as part of it is given to parish councils with no requirement to spend it on infrastructure. It also suffers from errors in the original Order, which has had to be amended every year since its introduction to try to correct the problems. The most recent amendments were made a week ago by the Community Infrastructure Levy (Amendment) Regulations 2014 (SI 2014/385)[2].

We should also remember that what the 1947 Act did was effectively to nationalise development land. By introducing the requirement for planning permission the right to develop land was removed. Development profits would belong to the State. This nationalisation, like all nationalisations was to be accompanied by the payment of compensation to landowners for their loss of development value. However, the compensation was not payable immediately and in 1953 it was postponed so as only to be paid if planning permission was refused and a claim made, or on compulsory purchase. Claims were rare (they had downsides). It was ultimately abolished by the Planning and Compensation Act 1991. So actually, landowners have had their development rights

[1] Available in the National Archives and reproduced at http://thedavidbrockblog.com/?p=81

[2] These amendment regulations are themselves a good example of the complexity of the CIL system, as the draft amendment regulations laid before Parliament in December 2013 were themselves replaced in January by a second draft.

removed without the payment of compensation. Far from being a windfall, the grant of planning permission restores to the landowner the value expropriated by the 1947 Act.

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