

The Housing Guarantee

BY ALEX MORTON





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Introduction

England has a long history of failing to build sufficient new homes. Indeed, supply has steadily deteriorated over time. The 2010s were a worse decade in terms of new build supply than the 2000s, which in turn were worse than the 1990s, and so on and so on back to the 1960s.

In recent years, attempts to fix this have mostly focused on increasing the number of planning permissions flowing through the system. The assumption was that new permissions would axiomatically be turned into homes, so simply increasing the flow of new land for permissions by, say, 50,000 or 100,000 plots a year would increase supply accordingly. Yet in the wake of the 2010 planning reforms, permissions soared to over 350,000 – while new build numbers rose more slowly, to just over 200,000.

‘ The six biggest house builders alone currently have roughly 1 million plots in their strategic land banks, close to the equivalent of the required five-year land supply across England that the system aims to deliver ’

Many people have argued that the chief culprit is ‘land banking’ by big developers, which amass huge amounts of land without any intention to build out on those plots. This report argues something different. It argues that planning permissions, as currently constituted, should be thought of as options to build rather than obligations. The lack of an obligation to build, combined with England’s particularly restrictive planning system, creates a bottleneck that facilitates and incentivises the capture of this land supply by a few large house builders, and housing promoters who tend to sell to them. The six biggest house builders alone currently have roughly 1 million plots in their strategic land banks, close to the equivalent of the required five-year land supply across England that the system aims to deliver.

This report also shows that, over the 2010s, it was mainly the sales rate of new build homes that determined housing supply and increased permissions, as new plots were created to match demand by house builders drawing on their strategic land banks to meet their land needs.

The result is that not that houses remain unbuilt, but that they are built at a slower pace than ideal in order to suit those companies’ financial models. These financial models are in turn built around the boom-and-bust nature of house building in England. This requires the ability to turn off supply in a downturn, resulting in underinvestment in skills and modern construction methods, standardised products and a sub-contracted and insecure workforce. This same large house builder model has also resulted in homes that are produced to an Identikit standard, often of relatively poor quality, which (as the Letwin Review showed) is itself a driver of slow sales rates and therefore of slow build-out. Finally, the current system has resulted in repeated cycles of market consolidation, with SME house builders squeezed out of the market whenever the economy enters a downturn.



This report sets out a new house building model that will help us move past these systemic failures and ensure better and faster housing delivery.

The first element is to turn planning permissions into delivery contracts, with permission granted in return for a broad agreed trajectory of new build homes (subject to economic conditions). Where house builders could not deliver this, they would have to pass the land on at an agreed price to others who could, making up any shortfall. This would turn permissions from a one-way benefit into a mutually beneficial exchange – and mean that as land came forward for development, it was actually translated into new homes.

Allied to this would be a renewed emphasis on the Housing Delivery Test, which judges councils on whether they have enabled the building of sufficient homes to meet local annual need, rather than seeing them obsess about land supply for potential permissions. Since land being available, or even turned into permissions, is not a guarantee of supply, councils should instead be judged and penalised on whether they have ensured sufficient homes are delivered.

This would force councils to think about ways to ensure new build homes make up a sufficient share of their local housing market sales, e.g. by diversifying tenure but also the size and type of property being granted permission. We would also propose a review of council powers over development, to allow greater intervention by the Planning Inspectorate where councils are holding up sites; speeding up and providing greater certainty over the delivery of planning permission; and separate reforms allowing action to be taken by house builders against statutory consultees and others who can hold up delivery. Just as builders would commit to build out their sites, the state would commit to enabling them to do so with all due to speed.

Finally, councils and Government need to ensure that public sector land, when sold, does not just end up in strategic land banks, but actually sees new homes being built on it – in a way that ensures the quality and diversity of local housing supply, and supports competition within the sector. We propose that there should be panels of local house builder SMEs that public sector land is sold to, with challenging delivery targets.

These changes would take time to take effect – in particular because they would only apply to future planning permissions. This would give house builders time to adapt, because it would be a breach of faith to change the terms on which they have sought existing permissions. Over time, however, these reforms would be likely to create a very different new build housing market. It would be more transparent, ensuring the flow of land actually turns into new homes via a clear and obvious build-out trajectory.

As this report will show, both large and small house builders would be incentivised to increase sales speed by providing a more diverse variety of homes, of better quality, increasing the market share of the new build sector as a proportion of transactions. It is likely that as a result of these changes, the SME sector would expand – indeed, our goal is not to penalise the large house builders, but to expand other parts of the system to create a house building sector that can actually deliver 250,000 to 300,000 homes a year.

We have a once-in-a-generation opportunity to address these issues, and with a Planning Bill under way, now is the time for action.



Executive Summary

PART A: The problem with just focusing on land supply

Part 1: Past reform focused too much on planning permissions

- The last decade saw a major push on planning reform, particularly in the 2010 parliament. But it did not fix the problem of insufficient housing supply.
- The 2010s saw even fewer new build homes than the 2000s, at 135,000 a year. This was the continuation of a decline in new homes reaching back to the 1960s.
- One of the main problems with the Coalition-era reforms is that they focused very heavily on boosting land available for planning permission, assuming that this would automatically lead to increased housing supply.
- The main change was that councils had to provide a ‘five-year land supply’ of land capable of planning permission or face planning permissions being granted on legal appeal via the ‘Presumption in Favour of Sustainable Development’.
- Permissions rose steadily over the decade, increasing from under 200,000 in the wake of the financial crisis to nearly 400,000 by 2018 and 2019.
- Yet new build supply remained low, with new build housing numbers in 2018/19 running at just over 200,000.
- As previous CPS research has shown, the 2018/19 figures represent the system working in an optimal economic environment – in recessions supply falls even more.

Part 2: Permissions do not automatically translate into homes

- Unlike other parts of the private economy, planning permissions are not based on mutually beneficial contracts (I give you X in return for Y). They are effectively options to build which can be exercised if the house builder wants.
- A planning permission is a one-way gift which boosts the value of the land from say £20,000 a hectare to £2 or £3 million, in return for no obligation on the part of those receiving the permission to do anything beyond breaking ground.
- This system was created in 1947, when councils were given the ability to ration out land with permissions, but also built most of the homes (alongside a few small firms). This meant a very different dynamic.
- Now, while land remains heavily rationed by councils, building homes is largely in the hands of a few large builders and a cottage industry of land promoters, pushing up the value of land with permissions and meaning that permissions do not necessarily translate to homes.



Part 3: Our land and housing market is dominated by a few large players

- England has a very peculiar housing new build market compared to other countries. In many other countries, smaller builders, particularly custom and self-build, provide a majority of new homes – with an average across the EU and USA of around 40% built using the self and custom build sector, which is dominated by smaller builders.
- In England, the top 10 house builders alone build 40% of all new homes, with the top six controlling around 33% of the market. This is a relatively new phenomenon, with the market having become much more concentrated over recent decades.
- The SME element of the house building sector has shrunk relentlessly. In the late 1980s, firms that built 1-100 homes a year were responsible for 40% of supply, whereas it is now just 10%.
- The current system incentivises large house builders to acquire and control land. The top six firms control more than a million plots, of which over 90%, or 935,000, are controlled by the top three.
- In addition, many other plots that could have permission granted are owned or controlled by speculators or promoters whose main relationship is with the large house builders.
- The national five-year land supply in England is between 1 and 1.25 million plots. The national housing target is 266,000 homes a year in theory, but councils can reduce this in each area if they face land constraints such as green belt, and many do. This means the 5-year land supply is likely to be 200,000 plots to 250,000 plots a year multiplied by five – ie between 1 and 1.25 million plots.
- Since we know that these 1 to 1.25 million plots are the main element of marketable land in the country, and the large house builders effectively control most of this, we can infer that they control most of the permissioned and easily permissionable land supply in this country.
- The Federation of Master Builders' main SME survey that showed from 2015-2019, the biggest problem for SMEs was obtaining land, and the second biggest for much of that period was the related issue of planning. This was at a time when there were (in theory) a large number of permissions being granted.
- SMEs rarely have the financial capacity to sign binding land agreements or land bank, which is why they have struggled to obtain land even as permissions have surged, and consequently have shrunk as a share of the market.

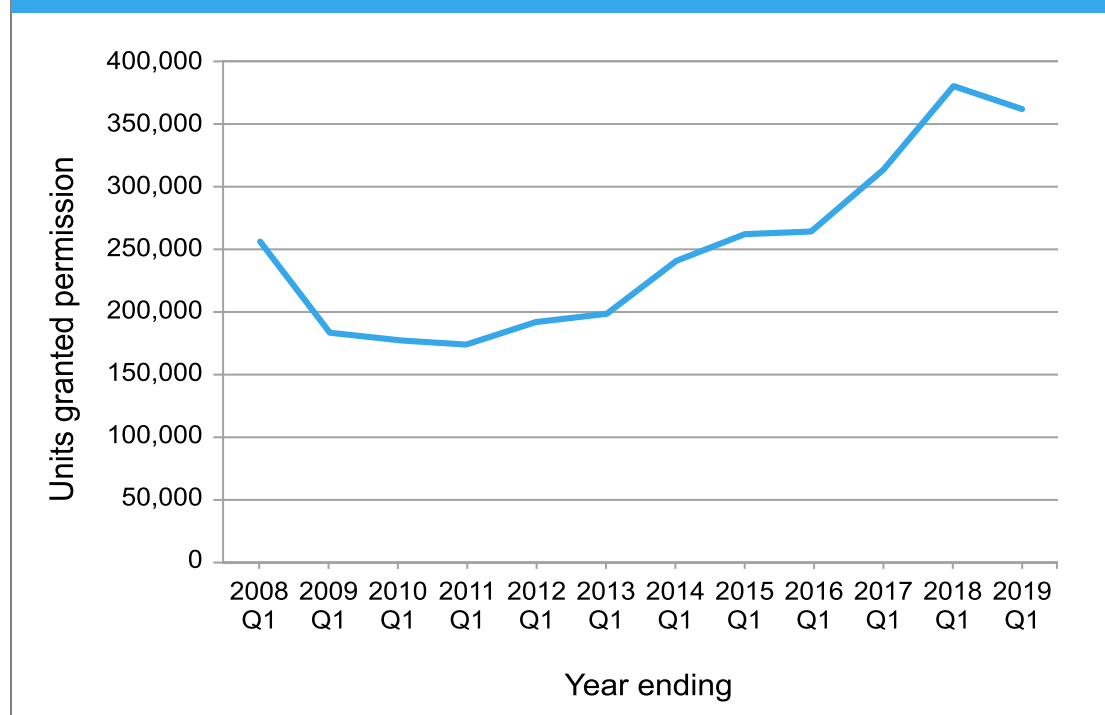
Part 4: New build sales rates drive both new housing supply and new planning permissions

- As the Letwin Review set out, the build out rate of new homes on large sites is set so as to maximise the number of sales without putting so many houses on the market that prices fall.
- In turn, the number of planning permissions sought by the large house builders is determined by the need to replenish and maintain this pipeline.



- Given this, the level of housing supply across this country is driven by the number of transactions nationally and the market share of new build, which together create the sales rate for new build homes.
- A 20% new build market share of a million transactions will deliver 200,000 new build homes. A 40% new build market share of a million transactions or a 20% new build market share of two million transactions will deliver 400,000 homes.
- The Letwin Review argued that the chief cause of slow build out is that the style and type of homes on each development tends to be fairly homogeneous, which limits consumer appetite (and the market share available for new build properties) and incentivises house builders to build out more slowly.
- If a developer built many styles, sizes and tenures, this would allow them to supply different products into different parts of the housing market, and sell more rapidly. However, this goes against the economic model that the boom-and-bust nature of the housing market encourages (see part 5 below).
- If there was a genuine market blockage that the early 2010s reforms removed, you would expect a surge of permissions from 2011 and then a levelling off within a couple of years.
- Instead permissions rose steadily over time. This is because house builders slowly increased the speed at which they were building and selling new homes. As they found each increase in build speed or new sites opening did not lower prices, they increased both the number of permissions being brought forward and the number of or speed at which homes were being built and sold. This supports the hypothesis that the large house builders control the land market and speed at which new permissions are generated.

Figure 6: Number of housing units granted planning permission, England, rolling annual totals to March 2019 ^P





- This pattern of steady rise in permissions is also linked to the steady expansion of the Help to Buy Equity Loan, from 20,000 sales in 2014 to 50,000 sales in 2019, which increased the market share of new builds across all transactions.
- The problem with this model is that there is almost always a large gap between permissions and new homes, and there is no certainty permissions will be converted into new build homes.
- In addition, the large house builders prefer (and can obtain via the Presumption) large sites, which tend to have slower build out rates than multiple smaller sites.
- Thus, while planning permissions rose sharply, the number of sites actually fell from 18,232 in 2012 to 17,978 in 2019. This cut supply, as sales tend to be faster over multiple sites than a single large site, with build out rates reflecting that.
- Worse, in a downturn, sales fall, new build supply falls, and permissions entering the system also slow down, even when house prices remain elevated.

Part 5: The current major house builder model traps us in a slow build out system

- The Letwin Review was puzzled by the fact that in the short term, the large house builders on each site built fairly homogenous new build homes, limiting the market they could sell into compared with what could be achieved by more varied (and higher quality) design.
- However, this model has proved highly successful for the big house builders in the long run, as we saw earlier. Crucially, the large house builders accept that their market share in the short term is lower across all housing market transactions. However, they are not primarily competing with second-hand homes, but the SME sector and each other in the land market. Their goal is to win that competition against other builders, not maximise new builds as a share of the overall market.
- In particular, as outlined in the Centre for Policy Studies' previous paper 'Help to Build', this model has minimal overheads, essential for rapidly reducing output in recessions.
- Through using sub-contractors (who make up 85% of their workforce), and external supply chains, large house builders can cut labour, materials and output rapidly if sales rates fall substantially. They also have minimal capital outlays (and have little incentive to invest in skills or more modern construction methods).
- In a downturn, the large house builders are able to retrench and endure, using their strong balance sheets. This is not true of SME house builders, whose numbers tend to fall dramatically in the aftermath of recessions. This enables the big house builders to further entrench their grip on the market when normality resumes.
- This model means the quality and build out speed of housing are lower than they could be, and creates erratic supply chains and skills shortages which also act as bottlenecks when demand for homes rises again.
- This explains the perennial concern within Government about poor quality of housing, lack of take-up of modern methods of constructions, poor skills and so on. These are not unfortunate features of the housing market, but the result of deliberate decisions – which are themselves practically inevitable given the market's structure.



Part 6: Government proposals do not yet tackle this critical issue

- The Government's proposed planning reforms have many positive elements. Streamlined local plans, a focus on design, and the introduction of zonal aspects to reduce uncertainty (i.e. earmarking land for particular types of development with key decisions already made such as density, height and so on) are all excellent ideas.
- However, they do not currently tackle the issue of ensuring supply by reforming how planning permissions operate.
- One possible solution would be to increase the number of planning permissions dramatically. But flooding the housing market with land would be politically difficult – and anything less is unlikely to change the current market dynamics.
- Attempts to introduce zonal elements to England should simplify and streamline the system, but zonal planning alone does not increase land supply or lead to better functioning land or housing markets.
- Ed Glaeser's *Rethinking Federal Housing Policy* shows how similar zonal systems in US states lead to very different outcomes.
- The Government's planning proposals will substantially improve the planning system, but we need solutions to the issues raised above.



PART B: How to fix the land market and ensure housing delivery

Solution 1: Planning permissions should include delivery contracts

- i) *As part of planning permissions, delivery contracts are needed to set out an agreed contractual trajectory of housing delivery.*
- Whether these are alongside or as part of the planning permission is less relevant than their existence as legally binding elements of both outline and full permissions.
 - These delivery contracts as part of an outline permission would set an indicative build out rate that would then translate into full planning permission. For example, an outline permission for 6,000 homes would set a build rate of between 150 and 250 homes a year, over 16 to 20 years, with each full permission having to fit within this envelope.
 - Smaller sites (e.g. 20 homes or less) would be exempt other than requirement for the whole site to be built out within a given period of work starting, e.g. 18 months. Given sales rates on most such sites are 3-4 homes a month, this seems a reasonable speed.
 - The full planning permissions for larger sites would confirm the timeframe set out in the outline planning permission in detail over the timeframe of the permission. Multiple full permissions could be possible within a single outline, as well as multiple developers and contractors.
 - These contracts would work according to a *cumulative* total, so if you overdelivered in some years you would not be punished if underdelivered later on.
 - Where the trajectory was below the cumulative total required, the house builder would be required to sell on sufficient land to make up the shortfall. So if you had to build 150 homes each year and in year one you built 160 homes and 100 in year two, you would have to release land for 40 homes.
 - This land release would firstly occur at a pre-agreed reserve price to local SMEs, and then if that failed via auction to self and custom builders, who all would have a year to deliver the shortfall in homes. This avoids CPO by using contractual terms.
 - This land would be paid for after the homes were completed and sold in order to help those building with cashflow and act as a further penalty.
 - This land as sold would have to be:
 - Discrete so that it was clear what was being sold.
 - Representative of the site as a whole or more desirable than the overall site.
 - Connected to entrance and exit points so that it was viable.
 - In a major downturn the contract should stipulate either the contract would lapse, the trajectory could fall, or if lower Section 106/Affordable housing would apply.
 - This creates a less unstable housing supply that can be planned for.



- Of course, it may not be house builders' fault that certain projects are delayed. Builders should certainly not be punished for the inadequacy of local government in delivering on its end of the bargain, for example by providing infrastructure, or approving site access and so on.
 - So any timetable would only begin once any necessary grace period to resolve pre-commencement conditions was completed.
 - This new system should also be accompanied by robust incentives to ensure that house builders could find it as easy as possible to develop. We propose a review of deemed discharge – where councils impose conditions but then do not sign off once these are implemented by builders. Councils should also be penalised where they do not facilitate necessary steps after the permission. We also propose that statutory consultees should also be liable for delays in the system, acting to incentivise them to deal swiftly with issues they are responsible for, and a review of planning permissions to ensure that they are granted with appropriate speed.
 - Ultimately the sanctions above around land sales would not be used where council failures were to blame. If others (e.g. statutory consultees) were to blame for any hold up, they would have to bear the cost of lost profit by the house builders.
 - This reform would help turn local plans into reliable delivery mechanisms, by setting out the broad trajectories for each site and then enforcing them. Councils could actually plan to meet their housing need, and would have no excuses for inadequate provision. In other words, a vague commitment to a five-year land supply would be replaced by concrete housing delivery trajectories.
 - This approach has to be set from the centre. Scandalously, when Central Bedfordshire tried to push house builders to sign up to agree build out rates, the Planning Inspectorate undermined them and questioned the necessity of the approach.
 - This new approach would also limit land speculation since you would be agreeing to obtain permission in return for building out reasonably quickly. This would not mean an end to land promotion – the most useful function of the land intermediaries – but it would mean that their profits would have to come from getting permission granted or getting the sites in local plans.
 - For house builders that consistently failed to meet their obligations, access to state support (e.g. Help to Buy) could be curtailed.
 - These reforms would create a greater flow of land through the system over the medium term, since ensuring a flow of new homes, and so new households, leads to higher household projections, allowing higher housing targets at a later date with less political controversy.
- ii) *This will bring the land market in line with the rest of the economy*
- This brings planning permissions and the land market more in line with the rest of the economy, seeing it governed by a contractually agreed set of mutual obligations.



- Contracts are already heavily used by the large house builders. Barratts alone had 12,000 subcontractors and suppliers in 2015 – almost all with contracts in place and penalties for failing to live up to them.
- Some have argued that turning planning permissions into a two-way commitment would reduce the number being applied for. Yet permissions will remain very valuable. And if councils remain responsible for ensuring delivery, they would be legally obliged to grant enough to meet local housing need. If the big house builders did not agree to these obligations imposed, SMEs and others would expand. The big house builders would also have time to adjust, as there would be no impact on the many plots for which they have already been granted permission (as it would be wrong to unilaterally change the terms on which they made those decisions).
- This reform would force the existing model of house building to focus more on achieving delivery not land speculation. But this is a good thing and a better approach in the medium to longer term.

Solution 2: Councils should focus on the Housing Delivery Test rather than land supply

- The Housing White Paper stated that the Housing Delivery Test will remain in place. Yet the focus of the paper was on land availability rather than ensuring deliverability.
- The Housing Delivery Test needs to be strengthened and put at the heart of the system, rather than the five-year land supply test. It is too easy for councils to simply approve a few large sites to meet land supply tests while failing to meet need. Instead, councils should focus on ensuring that sufficient homes are built in their area each year, and that the supply of homes matches demographic – and so market - need, (e.g. retirement homes) and penalties should focus on this.
- This works hand in hand with delivery contracts above – by forcing sufficient land into the system with delivery contracts attached we can be sure of housing delivery. A greater focus on meeting the Housing Delivery Test would also push councils to focus on a more diverse market in terms of a mix of tenures, builders and housing types, ensuring that the annual housing need is delivered.
- The Housing Delivery Test also works better in terms of working with the new ‘renewal’ category of land. The risk is that since this ‘renewal’ land will not easily fit in the five-year land supply in local plans, an excessive focus on the five-year supply will result in no land being put into this category at all.
- A Housing Delivery Test focus would also allow the scrapping of the Presumption in areas which are meeting housing need but failing to have a five-year land supply, encouraging councils to meet housing need, not arbitrary land targets.
- This would be popular among Conservative MPs, especially in areas where the Presumption is used only for homes to remain unbuilt, and further appeals lodged. It could help get other, more important objectives through.



Solution 3: Public sector land should be sold off to SMEs, with tough delivery targets attached

- Given the state of the housing market, there is a need to level the playing field between smaller firms and large. One way to do this, and ensure that we move to a greater diversity of housing supply, is to give them priority when it comes to developing land released by the public sector, so long as this is accompanied by commitments to rapid delivery.
- Land would be sold at a pre-set price to panels of SME house builders, with tough delivery targets. The land should be sold using a fair valuation based on existing Government use values.
- All the SMEs in an area would initially see land allocated in order to help diversify the supply of builders and create a varied market, with key variables already set out to help de-risk the site (e.g. density, massing and so on).
- Currently public sector land is often sold off to the larger house builders or land promoters, which has raised revenue for government but failed to contribute enough to supply, given slow build out rates.
- This will help ensure delivery through new players who are geared up to build quickly.



PART A: The Problem with Just Focusing on Land Supply

Part 1: Past reform focused too much on planning permissions

The Government's planning reforms are absolutely crucial. But to maximise their effect, we need to learn from the failures of previous attempts to fix England's housing supply problems. Most notably, the Coalition government embarked in 2010-12 on a major push on planning reform. In the middle of the 2010s, another push began, only to stall under the May administration. Yet housing supply in this country is still insufficient.

There are two ways, broadly speaking, to drive up housing supply. The first is to substantially increase the number of permissions. The second is to do more to ensure that permissions that are granted are actually developed. Both politically and pragmatically, the second option is much more appealing both for voters and for politicians – and is where this paper will focus.

The reform package of the early 2010s, which itself was extremely politically controversial, centred around a Presumption in Favour of Sustainable Development (hereafter often shortened to 'the Presumption'). The Presumption, which was implemented in 2012, allowed house builders to obtain planning permission via legal appeals on additional sites granted by the Planning Inspectorate, if and when a local council did not have a 'five-year land supply' available for permissions. This 'five-year land supply' is calculated by requiring land be available for five years' of projected household growth, once adjusted for any land constraints (e.g. green belts or AONB) that allow the final housing target to be lower.

The idea was to force councils to approve enough land to build sufficient homes to meet local need, or else create a new route for more land to come to the market where the council had not done so.

It caused a major political storm at the time, but despite this the Government pressed on. Yet it did not have the desired effect. Overall, new build housing numbers in the 2010s were lower than the previous decade, which had been lower than the previous decade, and so on and so on until the 1960s, as the table below shows.¹ This was despite higher immigration from the 2000s onward, and hence higher demand for housing.

Decade	1960s	1970s	1980s	1990s	2000s	2010s
Homes built (million)	3.01	2.57	1.80	1.50	1.46	1.35

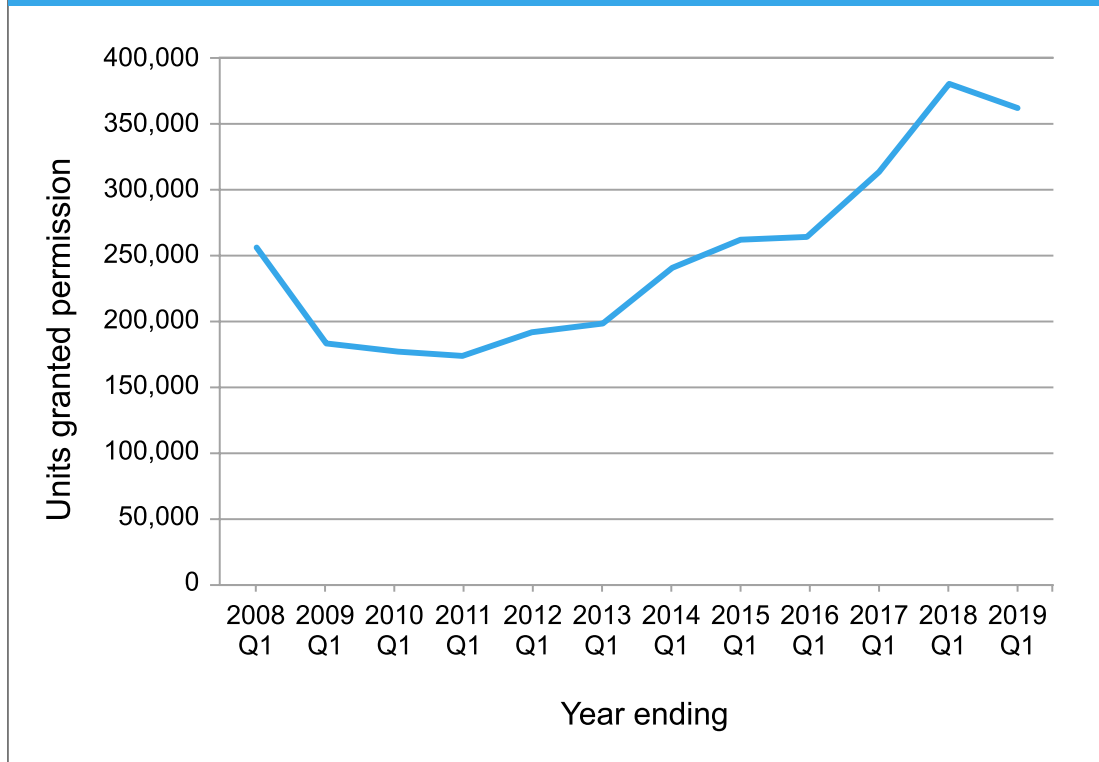
The Presumption did work in one sense. There was indeed a slow increase in planning permissions, which rose steadily - as the graph below shows - throughout most of the

¹ Ministry of Housing, Communities and Local Government, *Table 244: House building: permanent dwellings started and completed, by tenure*. [Link](#).



decade, peaking at over 350,000 a year toward the end of the period.² So the system did deliver sufficient planning permissions and land to deliver the Government’s goal of 250,000-300,000 homes – indeed it delivered more than enough.

Figure 6: Number of housing units granted planning permission, England, rolling annual totals to March 2019^P



However, while this surge in permissions corresponded with an increase in new homes, the increase was not matching. Higher permissions mainly created a rising gap between permissions and new homes, not a like-for-like increase in the number of homes being built. This is true even if we allow a substantial time lag of two years between permissions being granted and homes being built out.³ (The table below uses a slightly different data source from the chart, but the same pattern is clear.)

Year	2013/14	2014/5	2015/6	2016/17	2017/8	2018/19
New homes built	130,340	155,080	163,940	183,570	195,290	213,860
Average annual permissions in the two previous years*	218,800	242,000	262,250	282,100	331,050	376,850

* So for example 2013/14 shows average of 2 years’ permissions granted in 2012 and 2013.⁴

² Ministry of Housing, Communities and Local Government, *Planning Applications in England: January to March 2019*. [Link](#).

³ Ministry of Housing, Communities and Local Government, *Housing supply; net additional dwellings, England: 2018-19*. [Link](#).

⁴ Ministry of Housing, Communities and Local Government, *Planning Applications in England: October to December 2019*. [Link](#).



These figures show a consistent gap of at least 50,000 to 150,000 fewer homes being built than permissions granted, and gap between the number of planning permissions and homes built growing over time. In 2013/14 the gap, based on the average level of permissions granted in 2012 and 2013, was just over 100,000, but by 2018/19 it stood at 162,990.

Of course, any increase in housing is preferable. But the reforms in the early 2010s assumed that if you could get permissions way up – and in the end they were close to 400,000 a year – then you could reach 250,000 to 300,000 homes a year on a sustained basis.

The most alarming part of this is that – as set out in a previous CPS paper, *Help to Build* – the system was operating by the end of that decade under optimal conditions. In other words, if we were not going to be hitting house building targets a decade after the last recession, we were never going to hit them.

The reason for this, as that paper explains, is that the housing supply system is fundamentally pro-cyclical. The numbers of permissions going into a recession tend to be fairly high. But as the table below shows, and for reasons explored later on, supply crashes in a downturn. (The figures here apply to the financial crisis, but previous recessions show the same pattern.)

Housing supply and permissions in an economic downturn

Year	2008/9	2009/10	2010/11
Homes built	157,630	124,200	117,700
Average annual permissions over previous two years*	230,750	188,850	171,600

* So for example 2008/9 shows average of two years' permissions granted in 2007 and 2008.⁵

In short, far from every planning permission being automatically turned into a new home, there is always a gap between permissions and new builds. And both the delivery of homes and the number of planning permissions get worse in any downturn. (The Government's stamp duty cut has so far helped to ameliorate these effects post-pandemic, which is one of the reasons why the Centre for Policy Studies suggested it.)

By focusing on the pipeline of land and permissions rather than homes built, the 2010 reforms failed in two crucial ways. First, they failed to increase the number of homes being built sufficiently in the boom period. Second, they failed to address the underlying boom-and-bust problem, in which housing supply under normal circumstances will fall in a downturn, and take far longer to recovery than the rest of the economy. Understanding why these reforms failed is thus critical to avoid the reforms of the early 2020s failing too.

5 Ministry of Housing, Communities and Local Government, *Units granted planning permission on all sites, England*. [Link](#).



Part 2: Permissions do not automatically translate into homes

One of the main reasons for the failure of past reforms is a failure to understand what planning permissions *are*, and what planning permissions *do* – and that just as important as the numbers granted is who gets the permissions and under what terms they are granted.

Often the debate implies that permissions lead inevitably to more homes – that the granting of permissions equals homes built. This, as we have seen, is far from true.

The key point is that planning permissions are best thought of not as contractual agreements, but as a one-way ‘option to develop’. The council granting the house builder or landowner the permission to build housing, whether outline or full, creates an instant and large increase in value, in return for no commitment by the house builder or land owner to do anything. The Section 106 system often requires that certain payments are made *if the development takes place*, but the house builders or landowner has no automatic obligation in return for the huge increase in land value due to the permission being granted.

To understand why this approach is flawed, we have to understand the intellectual and practical framework of planning permissions as derived from the 1947 Town and Country Planning Act and subsequent acts, most notably the 1990 Town and Country Planning Act.

When the current system was created via the 1947 Act, the councils themselves built almost all homes. From 1945-51, around 80% of homes were built by councils, with the remainder usually built by geographically constrained small builders who had to maintain good relationships with the council.⁶

‘ The Section 106 system often requires that certain payments are made if the development takes place, but the house builders or landowner has no automatic obligation in return for the huge increase in land value due to the permission being granted ’

The 1947 Act also allowed the compulsory purchase of land at existing use value by councils, and required developers to pay the full price of any increase created by planning permission.⁷ In this original system, higher land values led largely to the landowner or builder having to pay the whole or most of the value of the increase to government. Planning permission in these circumstances was just a stage in the house building process, with building by the council or the handful of small builders following soon after permissions were granted. The landowner or builder could not profit from simply asking for permission and then not building the homes, and so there was no need to have any compulsion, requirement, or contractual obligation in the permission.

Over the decades, the specific nature of planning permissions, (you can build X in place Y), has remained, but the building process and gain in land value that comes with permission is now effectively privatised, alongside a very tight rationing of land.

6 Peter Malpass and Alan Murie, *Housing Policy and Practice*, Palgrave: London.

7 *Town and Country Planning Act 1947*, c. 51. [Link](#).



If you own land where a permission is granted, you have no obligation to build, and councils cannot force you to do so. The privatisation of land value would have been fine in a functioning market, (i.e. where the price of land with permissions rising means more land is brought forward until the price falls again), but in our current system, where land is tightly rationed, this means permissioned land is an asset that tends to appreciate over time, and is thus valuable in itself.

The fact land has been heavily rationed for decades, creating a major gap between the value of land with and without permission, means gaining and holding land with permissions is now the heart of the land and housing market – and success as a house builder. The value of agricultural land or greenfield is generally between £20,000 and £30,000 a hectare. The same hectare, if used exclusively for private housing, would be worth around £700,000 in less buoyant markets (e.g. Bradford or Doncaster), £2-3 million in the average community (e.g. Norwich, mid-Suffolk, Leeds), £5 million in buoyant markets (e.g. mid-Sussex or Oxford), and a staggering £10 million+ on the fringes of London (and tens of millions in the heart of the capital, though it would there have to be converted from commercial rather than greenfield land).⁸

The option to build at a future stage on a piece of land, which is what permissions are, is thus very valuable. And this valuable option is given without any requirement or obligation on the party who owns the land or obtains the permission (you can even apply for permission on land someone else owns, which has led to the creation of thriving land promotion industry).

‘ The fact land has been heavily rationed for decades, creating a major gap between the value of land with and without permission, means gaining and holding land with permissions is now the heart of the land and housing market – and success as a house builder ’

There is, admittedly, a requirement to start work within three years. But once that is done, there are no specific rules around how quickly building takes place. In theory, councils can issue ‘completion notices’ to force the work through – but this is done vanishingly rarely (the Secretary of State has to sign them off, and it is believed only a couple have been issued in the past decade and a half, although they are so rare that no data is actually collected on their use).⁹ They are also a blunt tool, requiring completion within 12 months of their issuance.

Of course, if the permission lapses, the value could vanish. But because the council will have had to justify granting the permission, almost all sites that have permission granted will find it easy to obtain permission in future using the same reasons.

This approach strikes at the heart of the concept of reciprocity that most market and economic transactions have at their core. The very concept of a contract, the fact you trade two valuable things in exchange (e.g. time or goods and services for money), so essential to most of our economy, is missing. Once we start to see planning permissions as ‘options to build’ we can understand the system much better.

⁸ Ministry of Housing, Communities and Local Government, *Land value estimates for policy appraisal 2019*. [Link](#).

⁹ Adam Branson, *Why planning departments so rarely issue completion notices*, August 2019. [Link](#).



Part 3: Our land and housing market is dominated by a few large players

This 'option to build' system, where planning permissions should not be seen as an inevitable step toward the creation of new homes but simply the creation of a valuable asset, ties into further crucial facts about the English housing market.¹⁰

Because the land market is heavily restricted, the large house builders spend most of their effort on obtaining planning permissions, dominating most local land markets and using their deep pockets and fact that large land owners and land intermediaries need to maintain good terms with them for future purchases. The result is that they can convert most of these planning permissions, or more accurately 'options to build', into housing at their preferred speed.

Now let us consider how much land is available to be easily turned into homes. As we saw earlier, the key variable in the current planning system is the five-year land supply, which all councils must have, or face the possibility of having to release land via appeal. It is worth quoting the National Planning Policy Framework,¹¹ which states that:

'Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing.'

And that:

'Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted.'

Where a five-year supply is not in place, then the Presumption in Favour of Sustainable Development (mentioned earlier) applies. This means sites should be granted on appeal where doing so does not lead to harm outweighing the national planning guidance as a whole (see paragraph 11 of the NPPF). In practice only a minority of appeals are successful (around 33%).¹²

Currently, the total number of homes required in England according to housing need is 266,000 or so homes each year

This is far from a free for all – usually only sites that would have been in, or would likely to be, in a local plan, are able to obtain permission. In addition, once such sites are granted, they too count toward the five year land supply in that area.

Thus the most important land is that which is either in, or would be in, the five year land supply.

¹⁰ This report focuses on England but the same is largely the same in other parts of the UK, although lower economic wealth and much lower population density/greater overall land availability makes the situation less critical elsewhere. Of course, these two factors also apply in parts of England as well – there is not a binary issue here but a spectrum with most of England closer to the description above.

¹¹ Ministry of Housing, Communities and Local Government, *National Planning Policy Framework*. [Link](#).

¹² Ministry of Housing, Communities and Local Government, *Table 2.5 s78: Dwellings – major and minor dwellings; appeals decided, number of dwellings decided, appeals allowed, number of dwellings allowed*. [Link](#).



Currently, the total number of homes required in England according to housing need is 266,000 or so homes each year.¹³ In reality, because this is the number *before* constraints such as green belt and AONB are applied, the number in all local plans is only 187,000 plots each year (though not all areas have a local plan).¹⁴

Using this we can work out the size of the five-year land supply across the country if all areas had local plans. It is likely to be somewhere between these two numbers, meaning land for between 200,000 and 250,000 homes a year, or total plots delivering 1 million to 1.25 million new homes over those five years.

Around 28% of councils currently do not have a five-year land supply according to Savills (meaning over seven in ten do). However, many of these 28% of councils are around London's commuter belt, Sussex, and Dorset – all areas with large amounts of restricted land (i.e. land that cannot be built on at appeal) due to being green belt or part of natural parks/AONBs.¹⁵ So this is unlikely to change the picture that dramatically. But it might indicate that the real figure for land likely to be granted permission is closer to 1.25 million plots.

The purpose of this five-year land supply is to create a 'market' in land that ensures those who want to build can find land available to do so. But this is not happening.

In 2019, the top 10 house builders delivered 86,000 or so homes, or around 40% of the total across England. Within this, as the table below shows, the top six contributed 69,000 and the top three alone nearly 49,000, or roughly a third and a quarter of the total.¹⁶

House builder	Homes in 12 months to Dec 2019
Barratt	17,529
Persimmon	16,449
Taylor Wimpey	14,933
Bellway	10,307
Redrow	5,718
Countryside	4,295

It should be acknowledged by the standards of the wider economy, this is not a particularly unusual level of market concentration. A survey of the UK economy by the Resolution Foundation found that in any given industry, the market share of the top 10 firms stood at over 50% in 2015-16, and the top five firms at approximately 43%.¹⁷ But internationally, in terms of the construction sector, this is a very high level of concentration. In most countries, the largest share of new homes are built by the SME self and custom build sector, with the average across Europe and America running at 40%.¹⁸ By contrast, the UK figure was around 15,000 homes in the most recent figures, or just over 10%.¹⁹

13 Ministry of Housing, Communities and Local Government, *Technical consultation on updates to national planning policy and guidance*. [Link](#).

14 Ministry of Housing, Communities and Local Government, *Changes to the current planning system: Consultation on changes to planning policy and regulations*. [Link](#).

15 Hamish Simmie and James Newitt, *Planning Data Update*, January 2021. [Link](#).

16 pbctoday, *UK's biggest housebuilders of 2019 revealed*, December 2019. [Link](#).

17 Torsten Bell and Dan Tomlinson, *Is everybody concentrating? Recent trends in product and labour market concentration in the UK*, July 2018. [Link](#).

18 David Byers, *Self-build housing isn't only for the rich*, April 2019. [Link](#).

19 Ministry of Housing, Communities and Local Government, *Boost for families wishing to build their own home*. [Link](#).



The current level of market concentration is also historically unusual. In the late 1980s, around 40% of all supply came from house builders who built between 1-100 homes a year. By the 2007/8 crash, this had fallen to around 25%. By the mid to late 2010s, this had fallen yet further to just over 10%. Meanwhile, the number of medium-sized house builders who built between 101-2,000 homes fell from around 200 in the late 80s, to 150 in the mid-2000s, to around 100 by the mid-2010s.²⁰

The issue then is what is different about England. And this turns on the factor that makes house building unlike any other sector – land. The desired market in land is pretty skewed.

For it is access to land that the SME sector are struggling with. The Federation of Master Builders surveyed SME house builders and found that the no 1 issue from 2015-2019 was land availability, with the second or third issue the related issue of planning – even though plenty of land with planning permission was theoretically available.²¹

This transformation is not the result of anti-competitive behaviour by the big house builders, but the structure of the market. For house builders of any size, the most important task under the current system is to acquire land with planning permission, or land that could obtain permission. And while the SMEs are struggling, the large house builders are doing this extremely well.

The table below, constructed using data from the top three house builders' annual reports, shows that their total pipeline of land (i.e. potential homes) is well over 900,000 plots.

Three largest house builders' land in terms of plots in pipeline and strategic land²²

<i>House builder</i>	<i>Land Bank in pipeline</i>	<i>Strategic Land</i>	<i>Total</i>
Taylor Wimpey	76,000	140,000	216,000
Barratt	80,000	192,000	372,000
Persimmon	93,000	254,400	347,400
Total			935,400

Of course, not all of the land that is held like this has any form of planning permission – much of the strategic land for the very largest house builders is land that exists in the five-year land supply, but does not have permission, or, where no five-year supply exists, is likely to come through on appeal if needed.

To see the relationship between strategic land banks and the housing pipeline, consider that 56% of Taylor Wimpey's completions in the most recent year came straight from their strategic land bank.²³ Persimmon noted in their own annual report that 50% of the plots they currently held as land with permission had recently come from their strategic land bank.²⁴

20 Home Builders Federation, *Reversing the decline of small housebuilders: Reinvigorating entrepreneurialism and building more homes*, January 2017. [Link](#).

21 Federation of Master Builders, *House Builders' Survey 2020*. [Link](#).

22 Taylor Wimpey, *Annual Report and Accounts 2019*. [Link](#); Barratt Developments: *Building Excellence Annual Report and Accounts 2019*, (strategic calculated at 16 homes an acre). [Link](#).

23 Ministry of Housing, Communities and Local Government, *Boost for families wishing to build their own home*. [Link](#).

24 Persimmon Homes, *Focusing on our customers Annual Report 2019*. [Link](#).



This desire to hold land ripples down. To ensure their own project pipeline, the next tier of house builders also try to increase their pipeline in terms of plots. Though are unable to build up the strategic land banks that the very largest can manage, the next three largest house builders alone control 124,800 or so plots.

Fourth to sixth largest house builders' land pipeline in terms of stated plots²⁵

House builder	Land Bank in pipeline
Bellway	68,300
Redrow	31,500
Keepmoat	25,000
Total	124,800

Contrary to much of the rhetoric about 'land banking', it is both logical and necessary for these companies to do this, up to a point. Their entire future depends on having land to develop, and they want to ensure a security of supply and be able to deal with uncertainty. They are, by and large, not holding on to land purely so that its value increases. They are giving themselves a pipeline for development, and making sure that if demand increases, they can bring new sites on stream.

Yet at the same time, it is clear that these land banks are far larger than can be justified by imminent need. More than 1 million plots are way more than these firms would need say for three years' worth of new homes (around 180,000 plots for the largest three and 60,000 for the next three). This behaviour is what the economic structure dictates: if one of the large house builders decided not to behave like this, they would be squeezed out by the other players, who would capture the available stream of land and choke off their competitor's ability to build.

Given that councils are highly unlikely to release far more land than is needed – due to the perennial NIMBYist impulses of the public – the fact that the top six housebuilders control roughly the equivalent of the five-year land supply suggests that the market is fairly tight. By and large, smaller builders are relegated to plots that are not worth the large house builders' investment, and they struggle to obtain good land – explaining the FMB survey results referred to above.

On top of this, many of the remaining plots in the five-year land supply, or sites that might soon enter it, will be controlled by land promoters and speculators, whose ultimate goal is selling to the large house builders. Large land traders such as Gladwell mainly sell on to these large house builders and prioritise these commercial relationships.

In short, the official strategic land banks that are declared by the large house builders, while helpful as an indicator of the amount of land in the system, are an underrepresentation of the control they can potentially exert over the land market. So while it could be argued that there is indeed land outside the strategic land banks, much of this will be captured by the larger land promoters.

²⁵ Redrow, *Full Year Results Presentation Year to 30 June 2019*. [Link](#). Keepmoat Homes, *Annual Report & Financial Statements 2019*. [Link](#).



Thus it is clear that for the big players in the new build housing market, capturing existing and likely development land is a vital commercial incentive – more so, arguably, than the number or quality of homes that they build.

Part 4: New build sales rates drive both new housing supply and new planning permissions

In the section above, we showed that the housing sector is dominated by a few big players. By itself, this is not actually a cause for concern. As we also showed, the housing sector is less concentrated than many others.

But as we showed, the reason to be concerned is that housing is not like other sectors, not least because of the role of government in dictating the ability to build (in particular via the granting of planning permissions on land). As previous CPS research has shown, home ownership is a near-universal aspiration, and one of the reasons that it is out of reach of far too many people is that we have not been building nearly enough houses, over a period of many decades. This especially applies to particular housing types for which there is significant unmet demand, such as bungalows and specialist retirement housing.

‘As previous CPS research has shown, home ownership is a near-universal aspiration, and one of the reasons that it is out of reach of far too many people is that we have not been building nearly enough houses, over a period of many decades’

One of the key arguments of this paper is that increasing the velocity of house sales will also increase the quantity of house building. Which means that the speed with which permissions are converted to new homes is a critical issue, as the Government agreed when establishing the Letwin Review on build out speed.

The simple answer to this question is that *planning permissions are converted to homes at the speed the builder can sell them and no faster*. This means that an increase in permissions, by itself, will not necessarily translate into additional homes being built.

As Letwin put it in his interim analysis, commissioned for the Treasury in 2018, *‘the open market value of a marginal newly constructed home (the price that can be reached between a price-maximising willing seller and a price-minimising willing buyer) will bear some close relation to the price of a comparable second-hand home in the same location. There is, however, a crucial assumption lying behind this method of valuation: namely, that the supply of new homes in the locality is not going to be sufficiently large to have any noticeable effect on the supply and demand balance in that local housing market, and is therefore not going to have any noticeable impact on the open market value of second-hand homes in that locality. Only if this assumption holds good, will the marginal valuation principle hold true. In other words, the standard method of valuation for new housing used by all reputable valuers in the UK bakes in the assumption that local housing markets will not be ‘flooded’ with new homes to the point where the current prices of second-hand homes in the local market are forced downwards.’²⁶ (My emphasis.)*

²⁶ Ministry of Housing, Communities and Local Government, *Independent review of build out: draft analysis*. [Link](#).



In other words, house builders will only build at the rate at which the local market can absorb. Their best business strategy is therefore to build and sell at the fastest speed possible consistent with maintaining existing house prices for new build properties, ie something close to the rate paid for similar homes in the second-hand market.

The annual reports of the large house builders duly focus on what is termed the 'sales rate per outlet': the number of homes you can sell on each site at the prevailing general price. This is why, when they start new projects, they often do so away from other sites, where they will not cannibalise existing sales.

In other words, the key factor driving new supply – at least from the large house builders – is the ability of new homes to be absorbed by the local market, not the rate of permissions.

Below is the net sales rate per outlet per week in 2019 for the largest house builders.

	Taylor Wimpey	Barratt	Persimmon
Net sales rate per outlet per week 2019	0.96	0.68	0.7

Of course, if one of these firms was prepared to drop its price, then it could sell more on each site, or open new sites near existing ones. But this would eat into their margins and make them less competitive.

As was discussed in some detail in the CPS reports *Stamping Down* and *Help to Build*, this means that the key points when working out total housing supply nationally are as follows:

- The number of transactions underway.
- The share of transactions made up by new build homes in the market.

On the first, for example, in the two decades before the introduction of Help to Buy (which tilted incentives towards new build), the link between national transactions and supply hovered around 10:1, fluctuating only slightly. If transactions fell by 50%, supply would follow fairly shortly afterwards, as builders lost confidence that they would be able to sell what they were building. This phenomenon has been exacerbated by the fairly homogeneous supply of new build homes and flats, which have largely had two main models – three- or four-bed family homes on greenfield or one- or two-bed flats on brownfield.

Another key insight in the Letwin Review was that this fairly homogeneous product itself retards build out rates: *'When a large house builder occupies the whole (or even a large part) of a large site, the size and style (and physical context) of the homes on offer will typically be fairly homogeneous.'*²⁷ In Letwin's analysis, *'the homogeneity of the types and tenures of the homes on offer on these sites, and the limits on the rate at which the market will absorb such homogenous products, are the fundamental drivers of the slow rate of build out'*.

Thus, the issue of who owns the permission and what the permissions consists of are critical variables, since the more homogenous the supply, the slower the overall build out rate in an area will be, because the pool of potential buyers will be smaller.

²⁷ Ibid.



Letwin also noted that different types of home could impact the effective demand for new homes: *'I conclude that if either the major house builders themselves, or others, were to offer much more housing of varying types, designs and tenures (and, indeed, more distinct settings, landscapes and street-scapes) on the large sites and if the resulting variety matched appropriately the desires of the people wanting to live in each particular part of the country, then the overall absorption rates – and hence the overall build out rates – could be substantially accelerated.'*

This analysis of build out rates and sales rates into the market contrasts sharply with the Coalition-era reforms, which took the simplistic view that pushing more land into the planning system would just drive increased creation of new builds for sale.

‘The number of homes granted planning permissions from the end of 2012 rose from 195,300 on a rolling basis to 293,127 on the same rolling basis by Q4 2016’

But Letwin’s analysis and the points set out above about the size of the large house builders’ strategic land banks helps explain why those reforms did not have as big an effect as hoped. In particular, all other things being equal, larger sites reduce build out. Two smaller sites in different places can usually sell homes faster than the same number of homes on a single site. Building homes on one side of a town compared with another, or one village compared to another, usually taps into a slightly different market.

This matters because in the 2010s, the Presumption in Favour of Sustainable Development allowed builders to get land via appeals in areas which did not have a five-year land supply. The sites that were brought forward due to the appeals process were often large and dominated by the larger house builders.

This shift toward larger sites can be seen in the data. The number of homes granted planning permissions from the end of 2012 rose from 195,300 on a rolling basis to 293,127 on the same rolling basis by Q4 2016. Yet the number of actual specific permissions (i.e. the number of sites) actually fell marginally from 18,232 to 17,493.²⁸ By Q4 2019, 374,119 homes were granted permission on just 17,978 sites.²⁹

In other words, while the number of homes granted permission nearly doubled, this was entirely down to an increase in the size of sites. But large sites build out more slowly.

Thus the Presumption turned out to be a particularly bad way of ensuring new homes would be delivered. It made it easier for builders, particularly large ones which could afford the appeal costs, to obtain land. But it did not mean sufficient homes were built.

This shift toward large sites and large house builders illustrates a second fact. The Letwin Review, while excellent, failed to notice an even deeper truth – *that the speed at which permissions themselves are created relates to the speed at which new homes are built and sold.*

²⁸ Home Builders Federation, *Housing Pipeline report – Q4 2016 Report*, April 2017. [Link](#).

²⁹ Home Builders Federation, *Housing Pipeline report – Q4 2019 Report*, May 2020. [Link](#).



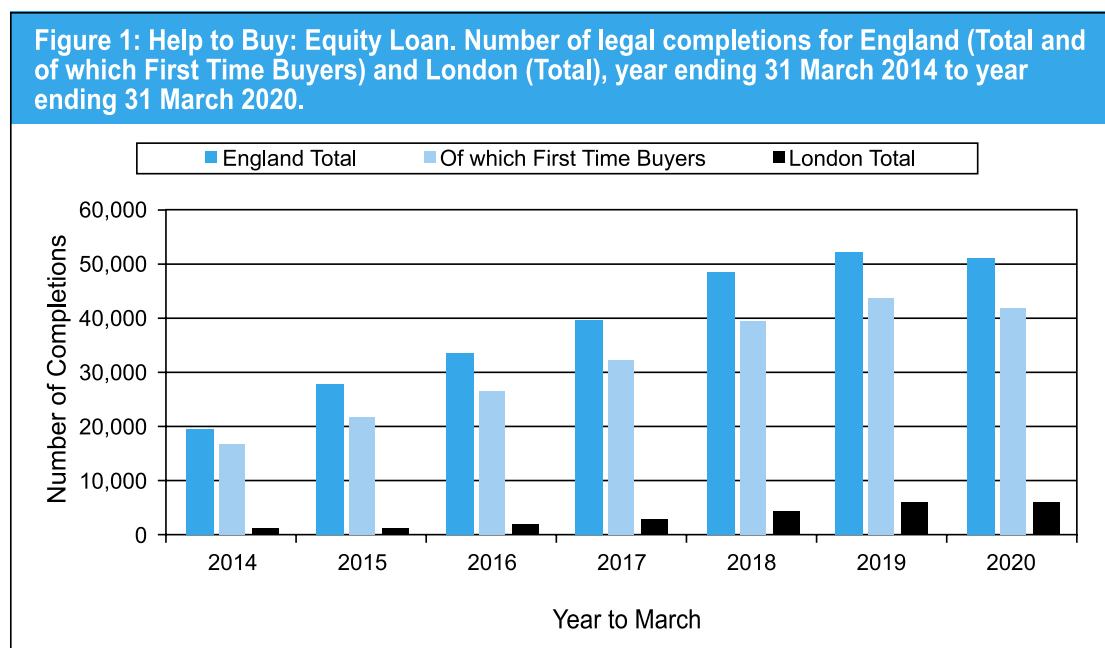
The large house builders, as we have seen, have a significant stockpile of land that could be permissioned. But they translate this into land with permissions only as and when they need to do so. So as sales increase, and the speed at which plots are built on accelerates, more new permissions have to be granted to replace these and continue the pipeline.

Again, this pattern is clear from the data. Between 2012 and 2018, there was no real change to planning policy. Yet the numbers of new permissions being granted rose steadily between the end of 2013 (when the numbers stood at 217,488) to nearly 400,000 five years later.³⁰

In other words, what drove the number of plots with permissions was the speed at which new homes were sold and built. It was a virtuous circle: more people bought more houses, so the house builders became more confident that they could sell homes without depressing prices. They therefore increased the number of homes built and (where possible) the speed at which they built. In order to maintain their pipeline, this meant they had to bring in more land at the other end of the system. This, along with the Presumption as set out above, explains the rising number of plots with permissions over the 2010s.

If planning permissions for new homes were simply determined by the planning system, there would be no way to explain this steady rise, or why permissions did not simply shoot up in 2013 or 2014 as the new system bedded in. By contrast, the steady rise in planning permissions makes perfect sense if permissions are driven by sales velocity.

One contributing factor, of course, was the steady rise of Help to Buy Equity Loan, which increased steadily from nearly 20,000 homes to 50,000 as shown below.³¹ Yet the remarkably consistent growth of Help to Buy over this period is explainable exactly by this dynamic. House builders slowly expanded the number of Help to Buy homes available in each area, to ensure that they could sell at the price they wanted. They therefore expanded their reliance on Help to Buy cautiously and steadily, making sure that the sales did not impact on the values of their other properties.



³⁰ Both figures use Home Builders Federation data referenced earlier.

³¹ Ministry of Housing, Communities and Local Government, *Help to Buy (Equity Loan scheme) Data to 31 March 2020, England*. [Link](#).



One key factor to note is that as the number of planning permissions house builders were pushing into the system rose, it increased the size of the strategic land banks, and the gap between permissions and new build supply. If you are building 10,000 homes a year, you need 20,000 plots with permission for a two-year supply. If this rises to 15,000 you need 30,000.

As sales rates rose, the large house builders converted more of their strategic land into permissioned plots. This in turn prompted others in the land market (such as land promoters or speculators) to increase the speed at which they too were bringing forward land with permissions.

‘ If you are building 10,000 homes a year, you need 20,000 plots with permission for a two-year supply. If this rises to 15,000 you need 30,000 ’

This also explains why, in a downturn, both housing supply and permissions collapse together. Sales cannot take place, so housing supply falls. Because fewer new plots are needed, so new permissions are not created. This continues until the numbers of new permissions and sales both bottom out. However, unlike other markets, there is no ‘creative destruction’ in housing. Instead for reasons set out in *Help to Build* and recapped in Part 5 below, the market position of the large house builders is actually strengthened during periods of recession. The structure of the industry also means that sales, building rates and permissions all recover more slowly than the economy as a whole, as seen very clearly in the 2010s.

This analysis also changes our understanding of ‘land banking’.

It is sometimes assumed that given England has a heavily restricted land market, which means generally land prices over time will rise, house builders are incentivised to hold on to land because its value will rise over time – and there is no economic penalty for not building on it immediately.

If true, this cannot explain the fact over the 2010s the house builders did increase sales, and did increase permissions going through the system.

The truth is that those house builders who sit on their permissions and strategic land banks too long risk constraining their cash flow to the point where they cannot obtain future land and where landowners start to make deals with others.

Housebuilders maximise their strategic land banks because that is what the current system pushes them towards. But they will not hang on to these indefinitely, but build those sites out, just as long as they can do so at prevailing prices – the optimal build out rate.

Land banking is also necessary for the big builders because at any one point in time, sales will vary from site to site, and it is better to be working on multiple sites to ensure a smooth cash flow. If a site sees sales rates or prices fall, then build out can be restricted. Conversely, if a site is proving more profitable, then build out can be accelerated, for example by transferring manpower from other sites.



Having a mix of sites minimises risk, maximises efficiency and allows for both higher dividends to shareholders and the ability to make further purchases of land in the system, on which the firms' long-term future rests.

Part 5: The current major house builder model traps us in a slow build out system

The analysis above suggests that if we want to build more homes, we should aim to increase the speed of sales. That means a greater number of smaller sites, and a more varied mix of homes. We could also try to increase new build's share of overall transactions, which would mean diversifying beyond the rather homogeneous nature of much new build, or using new construction methods to lower the cost of new build, and therefore the price.

‘ Retaining maximum operational flexibility means that as sales and often prices collapse, the large house builders can simply bunker down, cutting back on supply chains and letting contractors go ’

Unfortunately, the economic imperatives within the housing industry – and in particular the boom-and-bust cycle outlined in *Help to Build* – makes this extremely hard to do.

As outlined above, the larger house builders need to be able to turn the number of homes being built off and on across all sites, and to increase and decrease throughput on specific sites.

To switch the flow of housing off and on across both the whole firm and on specific sites means minimising fixed costs, and having standardised inputs (e.g. labour, materials) that can be moved from site to site. This means:

1. Contracted out and standardised labour.
2. Limited investment in modern methods of construction.
3. Contracted out and standardised materials.

But this is not just about maintaining the optimum build out rate to maximise profits, although it is certainly part of it. It also positions these firms to withstand the inevitable downturns.

There is not space here to recite the entire evidence base from *Help to Build*, but we were able to show that the housing market is driven by a pattern of sharp downturns and slow recoveries. Every crash is accompanied by a fall in transactions, and therefore construction. This also drives SME house builders out of the market, as they lack the reserves to weather the financial storm (and are often building on more marginal sites that are not worth the big players' investment). Their numbers may stabilise in the wake of the downturn, but never recover.

Retaining maximum operational flexibility means that as sales and often prices collapse, the large house builders can simply bunker down, cutting back on supply chains and letting contractors go. Because their core operating costs are low, they do not need much cashflow to keep going. This model also helps them in the boom years, as they can move labour and materials around to the areas where they will make the most profit.



The result of all this is the large-scale use of subcontractors. As a 2015 study by the Home Builders' Federation (HBF) says, 'direct employment of trade labour by house builders is low, with only 15% of the workforce estimated to be employed directly. The construction industry as a whole (as well as house building more specifically) relies on a high degree of subcontracting to specialist firms to carry out the bulk of housing construction on a site-by-site basis.'

This is effective at minimising direct operating costs. But can also make working in the sector unattractive and insecure – particularly during a downturn. It also creates the 'skills and labour crisis' which Government frets over.

‘ Supply chains will always be outsourced as far as possible, and will have limited scope for local materials or more expensive, higher-quality products (even if they realise a higher sales price) ’

These factors also mean that it is not worth the large house builders' time – in fact, it is actively harmful to their business prospects – to invest in the skills, methods and materials that would allow for a better or cheaper housing product. For instance, if they built homes in a local stone in one county and homes using local bricks in the next county along, then they could not transfer materials or labour as easily.

Likewise, despite repeated attempts by Government to push them in that direction, the large house builders have been reluctant to invest in what are called 'modern methods of construction' – which promise to be more efficient, but are also much more capital intensive.

As a recent review on construction productivity from Mace noted: *'The construction sector today is characterised as being 'labour-intensive' – it employs more people to produce each £1 of output than most other sectors and it generally employs less capital e.g. plant, machinery, computers etc. And it hasn't changed or "innovated" its productive processes as much as other sectors over the years. Construction is bottom of the productivity pile, a position that was not true 20 years ago... Construction output has risen moderately but so has the number of construction workers and so its productivity has barely budged.'*³²

McKinsey also notes that while infrastructure in the UK had been more efficiently delivered than in other parts of the world, there are substantial issues in much of the construction sector more widely as *'investment in labour-efficient technologies has been relatively low compared with other countries... the private sector has thus far been risk averse and unconvinced about the investment case for new technologies'*³³

It is not that they are unconvinced – it is that given the constant threat of downturns, serious investment in the sector would be too risky.

This also explains why the materials and quality of the new homes in this country are often lacking. Supply chains will always be outsourced as far as possible, and will have

³² Mace Group, *Construction productivity: the size of the prize*, January 2018. [Link](#).

³³ McKinsey Global Institute, *Reinventing construction: A route to higher productivity*, February 2017. [Link](#).



limited scope for local materials or more expensive, higher-quality products (even if they realise a higher sales price.)

This boom-bust cycle also limits the speed of recovery. Consider the fact that for example, in 2015/16, nearly a decade after the previous slump began, a shortage of bricks slowed output. As one study noted, *'Almost two-thirds of small and medium-sized construction businesses (SMEs) faced a two month wait for new brick orders, with almost a quarter waiting for up to four months and 1 in 6 (16%) waiting six to eight months.'*³⁴

In the long run, this model is highly suited to the large house builders, because they can weather both the booms and busts of the cycle, varying speed across sites as and when different markets are doing well or badly.

‘As one study noted, ‘Almost two-thirds of small and medium-sized construction businesses (SMEs) faced a two month wait for new brick orders, with almost a quarter waiting for up to four months and 1 in 6 (16%) waiting six to eight months’

Yet it also makes it increasingly difficult for smaller builders to compete. The number one issue is obtaining land, as seen above. In fact, their three main constant complaints – about obtaining land, difficulties in the planning system, and obtaining finance – are actually three sides of the same coin.³⁵ The only way that many have survived is by focusing on the smaller sites the large house builders are not interested in. Yet these are more complex and difficult to operate. These firms also cannot borrow easily because they have no large land bank or cash pile from past sales, so if they run into difficulty, they go bust. This creates a feedback loop where the large grow and the smallest are constantly pushed out of the market, or at least on to the more difficult or marginal sites.

SME builders are also more vulnerable to market fluctuations at a local and national level. While the large house builders can hold land strategically and build as necessary to maximise return on capital employed, SME house builders often have to build even when it is not optimal to do so, due to cashflow. This is bad at all times, but particularly in a recession. The smaller the builder, the more urgent cash flow is. At the most extreme, if a small builder who develops say 10 homes a year tries to build a small site out slowly because local markets are depressed, they are likely to go bankrupt. Thus the current model ensures the large house builders do not build as quickly as they could, while at the same time increasing their market share over time and squeezing out the SME sector.

³⁴ Alex Morton, *Help to Build: An emergency plan to support housing supply*, June 2020. [Link](#).

³⁵ These are the three consistent top complaints among the small builder sector, see for example Federation of Master Builders, *House Builders' Survey 2020*, which shows these as the top 3 issues repeatedly from 2014-19. [Link](#).



Part 6: Government proposals do not yet tackle this critical issue

The Government's bravery in bringing forward planning changes should be applauded. There are various aspects of its current proposals which, if followed through, will likely increase the quality and quantity of homes, not least the following elements:

1. **Streamlined local plans and planning rules.** These will make it simpler to focus on the core issues around site location, new infrastructure, and better design.
2. **A requirement that all areas will have a new plan within 24-30 months.** The Government is right to ensure that all areas should have a new plan – not least because as this paper sets out, the Presumption is very much a second best in terms of ensuring housing delivery.
3. **Introducing zonal elements.** This should make it easier and quicker to progress sites from a local plan into more detailed planning permissions by setting the core aspects around density, height, massing and so on, which can then allow for a greater focus on design and a much speedier full planning permission process.
4. **Design aspects.** Improving the quality of new homes will accelerate the speed at which house builders can build and reduce the opposition to new homes, a critical feature in increasing supply over the longer term.

However, while these are all substantial improvements to the existing system, the reforms – even at their most radical – do not tackle the core issue of turning more permissions into housing more quickly.

For example, the initial proposals set out in summer 2020 assumed that there will be land released for at most 300,000 homes – but this formula is the maximum, and councils will be able to reduce the amount if there are land constraints in place such as green belts, national parks or Areas of Natural Beauty (which there obviously will be in many areas).

‘ The Government is – rightly – trying to bring in ‘zoning’, a system whereby more decisions are made explicit in the local plan rather than made at the stage where an individual application has made ’

At the 300,000 level, these proposals would result in a 60,000 increase in the number of plots being given planning permission per year. If we make the (generous) assumption that the total increase after land constraints are applied would be 50,000 more plots each year, this means an increase of some 250,000 plots in the five-year land supply, which forms the backbone of the planning system.

Given that the six largest house builders already control over a million plots, this will make a very marginal difference to them, and will certainly not change the fundamental market dynamics. And even this attempt to push numbers up and boost the release of land has run into severe political difficulties.

Thus any reforms have to tackle this issue of how permissions flow through the system.



The Government is – rightly – trying to bring in ‘zoning’, a system whereby more decisions are made explicit in the local plan rather than made at the stage where an individual application has made. There are three arguments for zoning, but zoning as currently proposed will not fix the issues set out above.

1. Zoning will help increase the supply of land.

Many other ‘zonal’ systems are better at building homes than the UK, as the data below sets out.³⁶

Country	Dwelling completions per 1000 population 2010-2014
Germany	2.4
France	5.2
Netherlands	3.1
UK	2.2

Yet the fact that some zonal systems generate more housing does not imply that zoning by itself can fix our supply problems. Rather obviously, the amount of land created by zoning depends on how much land is zoned. At the most extreme, zoning large swathes of land as available for homes can create a land market that is close in pricing to a completely free market (though there may be other costs). But at the other extreme, zoning can become effectively a system like ours.

Take Texas and Oregon, both ‘zonal’ systems in the USA. Texas’s population is higher than the US average, and is almost two and a half times as densely populated as Oregon (per square mile Texas has 96.3 people, the US has 87.4, Oregon has 39.9).³⁷ Despite this, the median single-family house price in Dallas was \$312,000, in Houston it was \$246,000, and yet in Portland, the main city within Oregon, it was \$518,000. Thus, Oregon has roughly 40% as many people per square mile as Texas, yet Oregon’s main city has single family homes priced at 66-100% more than Texas’ two main cities.

Simply having a zonal system is less important than the amount of land in the marketplace. While in theory Oregon and Texas both have a zonal system, Oregon has a very restrictive one – much less land is zoned for homes, there are more restrictions on the minimum or maximum size you can build, height is more controlled, low density housing that can be more easily built by SMEs is generally opposed and so on.

This not just about Texas and Oregon: the same pattern holds true across the US. *Rethinking Federal Housing Policy* by Ed Glaeser constructs an index of regulation across different metropolitan areas. It shows that while almost all systems operate on zonal principles, the key issue is how far land supply regulation restricts the flow of new land onto the market, with such regulation having a 60% correlation with house prices in an area.³⁸ In other words, zoning is not a magic bullet.

36 Thomas Aubrey, *Bridging the Infrastructure Gap*, June 2016. [Link](#). Source of data is Policy Network from European central statistical offices. France data is for starts. An analysis of the relationship between starts and completions suggests around a 10% difference implying figures of 5.4 and 4.7 for long and short run.

37 United States Census Bureau, *Basic Information for Texas*. [Link](#); United States Census Bureau, *Basic Information for Oregon*. [Link](#); United States Census Bureau, *Basic information for the US*. [Link](#).

38 Edward Glaeser and Joseph Gyourko, *Rethinking Federal Housing Policy: How to Make Housing Plentiful and Affordable*. [Link](#); Edward Glaeser, Joseph Gyourko and Raven Saks, *Why is Manhattan so Expensive? Regulation and the Rise in Housing Prices*. [Link](#).



2. Zoning is key to helping SME house builders.

Another argument that has been put forward in favour of zoning is that by reducing uncertainty in the planning process, you can reduce the power of the large house builders and diversify the market. But as we have shown, the large house builders' market position is primarily driven by deeper pockets and a pre-eminent position in the land market. Zoning would probably help up to a point, and could slow the shrinkage of the SME sector, but it is hard to see how it would fundamentally shift the market toward the SME sector.

3. Zoning simplifies and streamlines planning in a useful way.

Zoning does have significant benefits in and of itself, most notably a simpler and more efficient planning system for house builders, and greater certainty for local communities. That is why the Government is right to try to incorporate elements of it into our system: it should result in better homes and a clearer planning system, which local people can engage with more easily. But zoning alone does not fundamentally alter land markets.

Finally, it is worth noting that two similar approaches to zoning have already been tried: Local Development Orders in the early 2010s, and Planning Permission in Principle a few years later. Both attempted to create a new and streamlined – though optional – approach to obtaining planning permission. Both were largely ignored by councils, house builders and land promoters/speculators. That is why any attempt to move to a zonal system has to make zoning the main way to obtain permissions in future, rather than an optional way forward.



PART B: How to Fix the Land Market and Ensure Housing Delivery

As set out above, the current model of delivering land through planning permissions as they are currently constituted does not work. The Government's reforms have many positive aspects but they are unlikely to get us to 250,000 to 300,000 homes a year on a sustained basis – generally viewed as the threshold at which we will be providing sufficient supply.

‘ The Government's reforms have many positive aspects but they are unlikely to get us to 250,000 to 300,000 homes a year on a sustained basis – generally viewed as the threshold at which we will be providing sufficient supply ’

Alongside the reforms currently in train, we also need to improve the way land flows through the system. In particular, we must ensure that planning permissions return to what they were when the system was first created: a staging post that ensured homes were built, not a hypothetical option to build. We should also seek to diversify the nature of the housing market, both in terms of the number and size of players and the style and kind of housing being built. Currently too much of the land flows to a handful of the large house builders, which, when combined with their build out model, restricts housing supply.

This report therefore suggests three major changes to the planning system:

1. Planning permissions should include delivery contracts
2. Councils should focus on the Housing Delivery Test rather than land supply
3. Public sector land should be sold off to SMEs, with tough delivery targets attached.

These three ideas, alongside the other reforms already proposed by the Government, would help create a better functioning planning system, and deliver the homes that we need.

Solution 1: Planning permissions should include delivery contracts

The first and most critical solution is a change in the nature of planning permissions. These need to shift to contain an element that might be termed ‘delivery contracts’, replacing the one-way option to develop. There is already an element of this

The exact legal mechanism – whether within permissions or alongside them – is open to debate. But they should contain the following core elements:

1. As now, the council would give full or outline permission (subject to wider streamlining potentially underway in other planning reforms).



2. With outline permissions, the council would set a likely timeframe for build out (e.g. for a very large site with an outline permission for 6,000 homes, they would set timeframe of building out between 150 and 250 homes a year, over 16 to 20 years).
3. Full permissions would set out a more detailed timeline for the fully permissioned units (e.g. if the permission was being sought for 300 homes, the contract would agree that once work began, 75 homes would have to be delivered each year).
4. A developer could apply for multiple full permissions on multiple sites within an outline permission, or multiple developers could share a site.
5. Instead of the current three-year cut-off point, by which time work must begin (with no specified completion date), full planning permission would be granted with an agreed indicative timetable with a set minimum of units to be delivered each year, barring unforeseen circumstances.

This would fundamentally shift planning permissions to something that ensured new homes were actually delivered, rather than simply allowing speculation on land with permission (as at present). It would also allow councils to plan delivery much more effectively than at present.

How the delivery contracts could work

Obviously, such a significant change to the planning system would need to be thoroughly evaluated by government, in consultation with the industry. There are a few core principles, however, which would need to be respected.

First, these new contracts would only apply to newly granted planning permissions. It is obviously both unfair and unethical to change the terms on which existing permissions were sought and agreed. This will also help the industry adapt to the new situation, as the large builders in particular have a large portfolio of sites and permissions still be build out.

‘ The first part of this paper argued that build out rate is determined by developers in accordance with sales rates and wider market conditions ’

Second, firms should not be punished for things which are not within their control. The first part of this paper argued that build out rate is determined by developers in accordance with sales rates and wider market conditions. This is certainly true in general, but may not be the case for particular projects. It would be unfair to punish developers, for example, for delays in providing or approving infrastructure by a local council if the house builders are making their best effort to meet the targets. Indeed, as discussed further below, one way of sweetening the pill for the house builders would be to tackle the other obstacles they face when building or seeking permissions.



On that basis, our suggested model for the contracts is as follows.

Once a planning permission is granted, there would be an initial grace period while the site was made ready and any planning conditions dealt with by either the house builder or others (e.g. the council or statutory consultees). From that point, delivery would proceed at a set rate as set out in the delivery contract.

A delivery contract as part of a full planning permission for, say, 400 homes on a greenfield site, would mean the council agreed a delivery contract of a cumulative total of at least 80 homes a year for the next five years, with a specific house builder.

There would of course be some flexibility in the duration of any grace period and the speed of build out. For example, on a 350-unit greenfield site in the South of England, a minimum of 100 units might be delivered each year after an initial grace period assumed to be six months. On a 750-unit brownfield site in the West Midlands, 75 units might be delivered each year after a grace period of 12 months. The grace period would also give time for the council or other bodies to discharge conditions, with an automatic deemed discharge in most cases if the statutory consultees fail to live up to their requirements. Further on, we discuss how these bodies can also be held to account – and obviously until these obligations are fulfilled the clock would not start ticking on any delivery contract.

To build in flexibility and encourage rapid build out, the delivery contract should be cumulative. The purpose of this policy shift is to ensure that a minimum number of homes are cumulatively built during the local plan period, not to enforce a rigid timetable of a set number of homes every single year. For example, if you had committed to build 80 homes a year on a site, and built 100 in the first year, you could then build 60 in the second year without triggering the contract, since you were ahead of schedule after the first year.

‘ A delivery contract as part of a full planning permission for, say, 400 homes on a greenfield site, would mean the council agreed a delivery contract of a cumulative total of at least 80 homes a year for the next five years, with a specific house builder ’

Delivery contracts would not be necessary on smaller sites, e.g. those with less than 20 homes. However, it might be that a similar agreement was included alongside planning permissions stating that such sites should be fully completed within a particular timeframe, e.g. 18 months for all homes to be built out once all relevant planning conditions are met (which would give a very long sales period for under 20 homes, particularly given the large house builders sell 3-4 homes a month on the sales rates given earlier). Likewise, where a site had self or custom build plots, each plot could be given a deadline for completion. There would also be flexibility in the event of unforeseen economic circumstances, as outlined below.



How to deal with shortfalls

Once this system is in place, it would be the job of councils to monitor compliance with the delivery contracts that house builders had signed and ensure that agreements made were stuck to. But that raises the obvious question of what to do if the delivery contracts are broken. If there were no sanctions, the contract would be meaningless – no more than a vague aspiration.

As stated above, delivery for every project would be measured on a cumulative and rolling basis. So, what to do when there is a shortfall? Again, there are many different options for enforcing such a system, both in terms of the nature of the punishment and when it is levied. You could fine the firms, or even withdraw the permission. You could insist that any shortfall was made up in the following year, or at the end of the contract, or else take immediate action. We have tried to set out what we think the best option is below.

‘ Given that the purpose of this system is to speed up housing delivery, our view is that waiting until the end of the contract period would be counter-productive ’

Given that the purpose of this system is to speed up housing delivery, our view is that waiting until the end of the contract period before acting would be counter-productive. The reason to set out annual targets is to speed up build out. Again, if our target is to speed up housing delivery, then the use of fines (e.g. levying council tax on unbuilt homes) also seems like a distraction. Any penalty should be about making sure that the number of homes needed was actually delivered in the following year. There is also a problem in that the fines that some have proposed are often too small to make a difference: for example, in the case of council tax, the bill for the average band D home is £1,818 a year,³⁹ which may well be more than cancelled out by rising land values. Conversely, any fine that is large enough to substantially impact the house builder could hit their cashflow on the site, slowing build out still further.

We therefore suggest that any shortfall in one year should be made up in the next. Again, one way of doing this would be to let the builder make up the shortfall themselves – as long as the shortfall was relatively limited (e.g. if you agree to build 50 homes a year, as long as you hit 40 you could make up the remaining 10 in the year after if you so choose). But where there are major failures to hit agreed build out, we suggest that the builder should have to sell land to those who could build those homes more rapidly – and to do so in a way that maximises sales and increases competition within the industry, by diversifying both the providers and the nature of the houses built.

We therefore propose each delivery contract would set up a three-stage process once the penalty clauses were triggered:

³⁹ Ministry of Housing, Communities and Local Government, *Council tax levels set by local authorities: England 2020-21 (revised)*. [Link](#).



1. The land should be put back on the market at a pre-agreed reserve price of 80% of the current market price, or 80% of the market price at the time of the grant of the initial planning permission, whichever is the lower. SME builders would be given priority over large house builders for these homes. Since the price of the land would be fixed, the deciding factor, should multiple bids come in from SME builders, should be a neighbourhood ballot of the wider area, so that SME builders who focus on quality or deliver higher levels of affordable housing (of any tenure) are rewarded.
2. In addition, if a house builder had failed to deliver in the council area or any nearby council area in recent years, they would be excluded for bidding for this land, acting as a penalty for firms which fail to build out if they are meant to make up this shortfall.
3. Should no one be willing to purchase it at this price, the land would be parcelled out and auctioned off to self and custom builders at whatever price individual plots could obtain. The housebuilder should be allowed – or the council may invite another developer in – to provide the basic roads and utilities at a charge should the land be sold to self and custom builders.
4. In either case, the land sold off for any shortfall in homes to be made up should see homes completed within a 12-month period of any purchaser obtaining them.
5. The new builders would have to adhere to the terms of the original planning permission and local design codes, in order to ensure that the homes produced were of decent quality, but would be free to go beyond those conditions in terms of the quality of material and design. In other words, the new plots should feel like part of the same place, in terms of broad size, layout and design, but would not need to be identical to existing properties if they improved on original planning proposals. Allowing some variation would be particularly necessary for self and custom build.

‘ The new builders would have to adhere to the terms of the original planning permission and local design codes, in order to ensure that the homes produced were of decent quality, but would be free to go beyond those conditions in terms of the quality of material and design ’

On the surface, it might seem harsh to force the original builder to sell at a discount. But if the builder could sell the land at the market price, and the price of the land was rising, the house builder might decide to restrict supply and maintain higher margins on sold units, before auctioning the land at a profit as well. This is not particularly helpful or sensible – although it is still preferable to the existing system.

Also, to help with the issue of cash flow for SME and smaller builders, the payment for the land should only be made to the original builder once the new owner has completed the homes. This would assist the purchaser in converting these permissions into homes, especially for smaller SMEs or self and custom builders. The impact in



terms of cashflow would thus hit the original house builder rather than the new builder brought in to make up the shortfall.

For this system to work, the land sold following a failure to meet the delivery contract should follow certain principles. It should be:

- **Discrete** – one continuous and practical parcel of land that it can be purchased and developed by a single housebuilder. The initial sale option should be for all the shortfall to be sold to a single bidder.
- **Representative or desirable** – not be of poorer quality than the site overall (e.g. land adjacent to a motorway at the edge of the development). If it is not possible for this land to be representative, it should be more desirable than the site as a whole.
- **Connected** – the purchaser should be able to access the plot from public land immediately, regardless of the status of the remainder of the site. You could not sell off land that was not reachable only through walking through the rest of the building site, owned by the original house builder.

This proposal avoids the need for councils to compulsorily purchase land, which is an expensive and complicated way of getting land. Instead, councils could use a contractual delivery clause to require developers to sell on land where they have failed to deliver. The cost of buying the land would never fall on the council but on those purchasing it.

This is similar to the options agreements developers themselves use to exert control over the land market. It is a way to create an enforceable method of getting land to those who will build without adding to strained balance sheets.

↳ **This proposal avoids the need for councils to compulsorily purchase land, which is an expensive and complicated way of getting land** ↴

Supporting house builders by removing barriers and penalising councils or others who obstruct them

The grace period above ensures that house builders cannot be penalised for delays that are out of their control, in particular with the so-called 'pre-commencement conditions', such as the provision of infrastructure, or waiting for vacant possession on brownfield sites. Until the grace period ends, the agreed build out trajectory would not start.

But the uncertainty around grace periods is in itself unhelpful. House builders may assume they can complete such matters in six months, only to find that they are blocked by a council failing to live up to its side of the bargain, or else a statutory consultee (ranging from heritage to transport bodies) that fails to respond as is necessary.



This problem has already been addressed in part by reforms to deemed discharge, which allows house builders to self-certify planning conditions have been met. But more could be done. In addition, sometimes councils and others throw up obstacles once works are already under way (e.g. delaying or refusing permits around access as a new stage of the project requires heavy machinery to enter and exit the site).

Therefore, we propose Government should alongside the Planning Bill undertake a review of deemed discharge to see if it could go further.

In particular, we believe councils and statutory consultees should also be legally liable for the costs of delays. It is not acceptable for homes to be held up by bureaucratic red tape. Thus, where deemed discharge cannot operate, house builders who are delayed once work begins and miss their agreed targets, would be able to sue for the lost profit on any units they had to release. This would be a major burden for most councils and statutory consultees. The cost of bringing such action should also be placed on the council.

Government should also consider allowing even stricter financial penalties where the council is clearly and repeatedly delaying or blocking house building through a political decision to obstruct permissions granted in good faith (which does happen when a council changes political hands or a new council leader takes over), or where there is a clear pattern of failure, rather than occasional incompetence.

‘ We also suggest that the Government continues its efforts to ensure greater predictability and automaticity within the planning process ’

This would ensure all house builders feel that what is occurring here is a fair and even handed approach where both sides have to ensure the homes they both agree on are actually delivered.

We also suggest that the Government continues its efforts to ensure greater predictability and automaticity within the planning process. Again, the switch to a zonal system should help here, but it is clearly less than ideal that planning applications can take months or years to put together, and then months or years more for approval to be granted or refused, and the appeals process to adjudicate. If builders are being asked to commit to a firm schedule of build out on sites, the logical quid pro quo is that the planning system offers them greater speed and certainty in turn.

How to respond to downturns

The most obvious problem with turning planning permissions into delivery contracts is that, if the economy craters, previously viable schemes may become uneconomic. House builders will then find themselves committed to deliver homes at prices which are guaranteed to be loss-making. The result is likely to be either bankruptcy or scores of abandoned projects.

At the same time, one of the most crucial lessons of past recessions is that housebuilding should be supported. Not only does it keep the construction sector



active, but it positions the industry to recovery more swiftly once prosperity returns – rather than lowering housing delivery for years to come, as happened after the 1988 and 2008 crashes, among others.

Again, there are many ways in which this could be handled. Our suggestion is that the relevant clauses should be triggered if local house prices or transactions fell sharply – potentially making the projects uneconomic. These would, firstly, see the council cut its share of the planning gain (via Section 106 or the new infrastructure levy) and secondly, permit the builders to slow (but, crucially, not stop) build out.

For example, if the number of homes on a site was 50 per year, then if house prices fell by more than 5% or transactions dropped by more than 25% in the region that

‘ If house prices dropped by more than 10% or transactions fell by more than 40%, there would be a reduction in the building trajectory, on top of the lower section 106 payments ’

the site was in, the Section 106 required would fall by a certain amount (e.g. 20%). If house prices dropped by more than 10% or transactions fell by more than 40%, there would be a reduction in the building trajectory, on top of the lower section 106 payments. There is also the potential for central government to provide additional support, for example by increasing the grant for affordable homes if house builders will recommit to existing build out trajectories.

Among other things, the fact that they could not abandon projects completely would encourage house builders to over-deliver when they could, so they could have a buffer if a recession occurred. Using land release mechanisms to address shortfalls rather than just using financial penalties would also help on this score: even in a downturn it will be profitable to build a self or custom build home for long term occupation, since these homes have a very low profit margin, no overheads such as marketing, no planning gain and so on.

This is not a perfect system, but it should help minimise reductions in any downturn and move the trajectory back to where it was as quickly as possible. And by setting out in advance what will happen if house prices and transactions fall substantially, and starting to get both local and national government to think about this, it should make for a more stable delivery system than the current boom-and-bust model discussed earlier.

Local plans would become mechanisms for delivering sufficient homes

The Planning White Paper attempts to ensure that every area has a local plan within 30 months of planning reforms being completed. The goal partly appears to be to turn local plans into mechanisms for delivery. For example, the White Paper proposes ‘a more focused role for Local Plans in identifying site and area specific requirements, alongside locally-produced design codes. This would scale back the detail and duplication contained in Local Plans... Plans will be significantly shorter in length (we expect a reduction in size of at least two thirds), as they will no longer contain a long list of “policies” of varying specificity – just a core set of standards and requirements for development.’⁴⁰

⁴⁰ Ministry of Housing, Communities and Local Government, *White Paper: Planning for the Future*. [Link](#).



This is very welcome, local plans should be about sites and bringing forward new homes. But the current system lacks bite: once sites are proposed, there is nothing to ensure that they are actually built out. Delivery contracts should and could have a key role in guaranteeing this.

Thus, a key element of the local plan should be a broad delivery schedule, as set out below. This is obviously an oversimplification, but the concept should be clear enough. As one site sees fall, other sites see their numbers increase. In the example below, as site C winds down, Site D increases to meet it.

Local Plan Delivery Schedule over four years

	Year 1	Year 2	Year 3	Year 4
Total Required	400	400	400	400
Site A	200	200	200	200
Site B	100	100	100	100
Site C	100	50	0	0
Site D	0	50	100	100

By creating delivery contracts, the local council ensures it delivers sufficient homes to meet local need each year. This will link to streamlining and focusing on the core goals of the local plan – site identification, design, and infrastructure. Thus, this reform boosts what the Government is already trying to achieve. This would also allow a downgrading of the five-year land supply, which as discussed later on, would have positive political and policy effects.

This approach needs to be driven from the centre

It is not exactly true that delivery contracts have not been tried before in England. There have in fact been local attempts to bring in something like them. But they have been thwarted.

In 2016, Central Bedfordshire tried to utilise Section 106 agreements to require that developers provide a set level of delivery, in this case completing permissions granted within a five-year period.⁴¹

In 2019, decided to insert into all Section 106 agreements a ‘housing delivery clause’. This would have set out a clear delivery schedule. The council’s relevant planning document echoes many of the points in this report – that it is hard for councils to plan, that house builders need to set out a realistic delivery timetable, and this will create a better system. The build out trajectory could also help the builder obtain permission as it counts as a ‘material consideration’ in applications (i.e. a key factor that can be taken into account).⁴²

Yet bizarrely, this approach came under attack from the Planning Inspectorate before it got off the ground, with an inspector declaring: *‘I have concerns about the necessity of this type of obligation and how effective this obligation actually would be in the event of slippage in the programme.’*⁴³ This is very unhelpful, since the approach might be flawed, but it is clearly better than just relying on the goodwill of the house builder.

41 Lee Baker, *How we did it: Holding developers to housing delivery*. [Link](#).

42 Central Bedfordshire Council, *Housing Delivery Clause Technical Note January 2019*. [Link](#).

43 The Planning Inspectorate, *Appeal Decision: Inquiry held on 3 and 5 September 2019 and 28 to 31 January 2020*. [Link](#).



It is true trying to enforce a mandatory injunction to bring forward development may be a difficult approach to take – and the five-year time window is obviously a cruder approach than our system of cumulative annual targets. But Central Bedfordshire should have been encouraged, not blocked.

For delivery contracts to become embedded, they need central government backing. Not least because the Government is proposing to abolish Section 106, which is largely a contractual system, and replace it with an Infrastructure Levy approach. This could render the Central Bedfordshire approach impossible in future – and indicates why a new legal framework to create delivery contracts is necessary.

This approach would limit land speculation and make the market more transparent

These changes would mean that it would no longer be possible to apply speculatively for planning permission – after all, you cannot agree a build out trajectory on a site you do not actually own, control or represent. This would help enhance the transparency of the land market, a key goal of Government. While landowners could still strike conditional deals with house builders, the council would know that sites would be built out once they received permission. However, this would not create a closed shop.

**‘ There is nothing wrong with land promoters
and they can have a useful role – it is the
system which is failing ’**

While gaining full planning permission would obviously require having the resources to actually build the homes, there would still be a role for promoters and speculators in bringing forward land into local plans, or even obtaining outline planning permission, which as stated above would have only indicative commitments on build out speed, which would become enforceable only when full planning permission was granted. So you could apply for land with an outline planning permission as a land promoter, and then sell on this land in line with the agreed indicative commitments to house builders. There is nothing wrong with land promoters and they can have a useful role – it is the system which is failing.

An additional punishment for builders who consistently fail to deliver?

One of the advantages of the delivery contract system is that it would make clear to everyone – especially councils – which builders can be relied upon to deliver promptly, while of course keeping to agreed quality standards.

We suggest that central government could collate and publish data on the delivery rate of every large developer in the country, broken down at regional and local council levels. This would allow councils to see which developers have the fastest delivery. It should also flag any builders consistently failing to build out as agreed.

In addition, central government should put in place clear disincentives for those developers who consistently fail to deliver on delivery contracts. This could take the form of restrictions on the right to purchase public sector land (covered below), or access to taxpayer-funded schemes such as Help to Buy. These restrictions could either be regional or national, depending on the location and frequency of contract breaches.



How delivery contracts would improve the housing market

Delivery contracts would not just ensure that housing was delivered more quickly. They would, over time, result in greater housing supply.

There is a feedback loop between the number of new homes built and the level of houses built in future, because the UK's planning system is based on the number of households forming in each area. If an area sees 300 homes built a year, meaning 300 new households will form, then that will be incorporated in future projections of household growth. In other words:

Houses built -> new households form -> household projections use this -> land release is increased -> more houses are built -> new households form (etc etc)

Part of the political problem with the top-down planning formula announced in summer 2019 was it tried to get around the fact that we are not building enough homes by imposing higher numbers. But local people rightly pointed out that builders are not building the homes they get permissions for – so why release more land until they do so?

‘ The top 20 house builders use a staggering 60,000 sub-contractors and each one of these is likely to have some kind of contractual relationship with the house builder ’

Delivery contracts would end this painful situation, because targets would actually be hit. Over time, this would allow for a slow increase in local household projections, rather than having to impose new and controversial targets from the centre.

There may of course be claims that delivery contracts would be unfair, that they are impossible to implement in the development industry, that they are too complex, or that the land market is somehow unique.

The argument around unfairness is fairly quick and easy to despatch – why should house builders, as at present, be able to simply obtain permission as a one-way bet?

On complexity, developers consistently use contracts already. There is nothing new about their operation in housing. Indeed, without contracts, house building, like every other industry, would not function.

Barratt, for example, stated in their 2015 annual report *‘we are also reliant for our success on over 12,000 subcontractors and suppliers’*⁴⁴ The top 20 house builders use a staggering 60,000 sub-contractors and each one of these is likely to have some kind of contractual relationship with the house builder.⁴⁵

44 Barratt PLC, *Annual Report and Accounts 2015*, October 2015. [Link](#).

45 Home Builders Federation, *The case for collaboration in the homebuilding supply chain*, September 2016. [Link](#).



The final argument, that the land market is unique, is partly true. The land market is unique because government heavily rations the creation of new planning permissions. But this just makes the need for delivery contracts more important. The planning permission system dates from a time when government built almost all homes and a few small builders did the remainder. Given we are not going to return to this, we need a new way to ensure that permissions are turned into homes. Unless we are prepared to flood the land market – which is politically impossible – then we need a workable alternative.

The other argument that may be deployed is this will disrupt the land market, leading to either too little land coming forward, or too few permissions being sought. For example, the large builders might choose to prioritise completing their existing permissions, at whatever rate they chose, rather than engaging with the new system. Alternatively, land would still come forward but at very long timeframes so that the house builders could still build at their preferred rate. House builders would also seek to obtain very low build out rates on delivery contracts, so that they were never subject to the penalties.

‘ Since councils would be asking developers what they could offer in terms of delivery as part of the planning application process, one point of differentiation could be for builders to offer to provide a more differentiated product mix, to increase sales and therefore build out rates ’

Many of these potential problems are countered by Solution 2, below, to beef up the Housing Delivery Test which would ensure a good flow of land. But given the biggest concern among the SME developers and self and custom builders in most years is the inability to get hold of land, the idea that house building would collapse upon the introduction of a new system is hard to envisage: if existing large house builders will not commit to the delivery contracts, others will step into the gap.

The reforms set out here should also help deliver the Letwin Review’s goal of larger sites becoming more diverse in their supply mix. Since councils would be asking developers what they could offer in terms of delivery as part of the planning application process, one point of differentiation could be for builders to offer to provide a more differentiated product mix, to increase sales and therefore build out rates. This could include more building of rental housing, older people’s accommodation (which we desperately need more of in order to help lower social care costs), shared ownership properties etc. This also creates opportunities for other house builders who sell into different markets, particularly SME house builders with a particular niche, to join forces with larger partners. Builders might also increase the quality of new homes in order to increase the speed at which they sell.

It is true we might see *fewer* permissions, but we would see *more* homes. But that is a positive rather than a negative.



This approach could also be integrated into the planning system relatively easily, alongside the new streamlined local plans and delivery test. If it does need primary legislation (and we are not convinced that it does) – then now is the time, through the Planning Bill soon to be introduced in parliament.

Solution 2: Councils should focus on the Housing Delivery Test rather than land supply

As discussed in the first half of this report, policy still focuses too much upon *the land available*. Instead, we need more of a focus on *the homes delivered*.

The Housing Delivery Test, created in 2015, was the first time that Government actually focused on the goal that the entire planning system is meant to deliver, namely sufficient homes in each area. However, planning policy is still framed around land supply, not housing delivery. Consider a quote from the Planning White Paper below:

‘What is striking is not just the acknowledgement that land supply does not equal houses built, but that this is the only reference to the Housing Delivery Test in the entire paper’

‘In the current system the combination of the five-year housing land supply requirement, the Housing Delivery Test and the presumption in favour of sustainable development act as a check to ensure that enough land comes into the system. Our proposed approach should ensure that enough land is planned for, and with sufficient certainty about its availability for development, to avoid a continuing requirement to be able to demonstrate a five-year supply of land. However, having enough land supply in the system does not guarantee that it will be delivered, and so we propose to maintain the Housing Delivery Test and the presumption in favour of sustainable development as part of the new system.’⁴⁶

What is striking is not just the acknowledgement that land supply does not equal houses built, but that this is the only reference to the Housing Delivery Test in the entire paper. Yet the land supply is only a means to an end – the end being the sufficient delivery of homes, the very thing the Housing Delivery Test measures.

At present, the sanction for failing the Housing Delivery Test is that the Presumption in Favour of Sustainable Development applies. But as we have seen earlier, the Presumption is not a particularly effective way to ensure houses get built more quickly: it currently leads to large sites becoming available for large house builders, which are built out relatively slowly.

Instead what is necessary is a focus on the Housing Delivery Test alone rather than the Presumption. And delivery contracts make this possible. Indeed, if you have delivery contracts in place you can rescind the Presumption around the five-year land supply, and focus councils entirely on delivering housing and meeting their Housing Delivery Test.

Currently there is always argument by councils around whether they have a five-year land supply. If, however, the main focus shifts to the Housing Delivery Test, this issue resolves itself, because it is clear whether or not need is being met.

⁴⁶ Ministry of Housing, Communities and Local Government, *White Paper: Planning for the Future*. [Link](#).



Even if the five-year land supply test is initially retained for a temporary period (e.g. until the new local plans are in place), but the Housing Delivery Test becomes more important, this will help encourage councils to designate land across multiple sites and with a mix of tenures and styles, reducing the risk that supply is not delivered. This would move councils away from the situation at present, where they focus on getting a five-year land supply – but often via large sites that are not actually capable of being built out very quickly.

Switching to a focus on delivery would be popular and effective

Because the Presumption creates perverse incentives to put large sites forward, even where these will only be built out very slowly, it creates local resentment where areas feel too many homes are being pushed through, even though those same areas have failed to meet local housing need. As the first half of this report showed, we end up with undersupply of new homes even though land supply goals are met.

‘ By focusing on housing delivery, councils cannot fail to supply enough permissions. And by focusing on delivery contracts, planning permissions cannot fail to turn into new homes ’

The combination of the delivery test and delivery contracts would ensure housing delivery. Each year, you would have to give out sufficient planning permissions to meet your housing target as a council. And when you did so, you would know that the homes would actually get delivered by house builders.

This would make it impossible for any council to fail to meet housing need in all but the most exceptional of circumstances, like an economic crash. By focusing on housing delivery, councils cannot fail to supply enough permissions. And by focusing on delivery contracts, planning permissions cannot fail to turn into new homes.

The Housing Delivery Test will ensure diversity of supply and so ensure delivery

The Housing Delivery Test also helps ensure diversity of supply – around tenure, and around a mix of builders. Current planning policy focuses on micromanaging a whole series of tenure types and tries to help SMEs with smaller sites and so on, but each of these interventions tends to be in the form of guidance.

While these are well intentioned, in practical terms, they often fall by the wayside. Despite clear guidance, provision of different tenures (e.g. PRS, or older person housing), an emphasis on smaller sites, and other measures to help, SMEs are often lost. For example, there is a general feeling that small sites should be more important (e.g. paragraph 68 in the NPPF). Yet as we saw above, sites have been getting fewer and larger, and the SME sector has been shrinking. London alone saw a 50% decrease in small housing developments between 2006 and 2016.⁴⁷

The large house builders remain dominant because their sites are the easiest to permission and easiest to have in the five-year land supply. By focusing on the

⁴⁷ Lichfields, *Small Sites: Unlocking housing delivery*, September 2020. [Link](#).



Housing Delivery Test, the system will continue to focus on diversity – but as a means to an end. This is because diversity is the only way to build out fast enough, as we saw in the Letwin Review. The Government should focus on encouraging different tenures to match demographic – and so market needs – e.g. through maintaining registers of older people who want retirement housing, helping identify market demand and releasing land for these specific purposes. This would ensure new builds came forward in line with market needs, expanding niches to boost new housing supply.

This would also help us replace the reams of guidance that go with the five-year land supply, making life far easier for builders. Councils would have to ensure a genuine mix of tenures and approaches – for example relying more on retirement housing than they do at present, and with a mix of different builders who are likely to have slightly different market niches.

A focus on the Housing Delivery Test and delivery contracts supports wider reforms

A focus on the Housing Delivery Test and delivery contracts also works well with the new zonal approach proposed in the Planning White Paper, which divides land into ‘growth’, ‘renewal’ and ‘protected’ areas. This will be key for local plans, which will have to have sufficient land ready to build out on.

The current proposal is for ‘growth’ to be land that is likely to have planning permission granted, for ‘renewal’ to be land where it is possible to have permission granted, and all other land to go into ‘protected’.

Combining this with the local plan system means most councils would put most land in local plans into growth or protected areas, since only the growth areas are likely to count against the five-year land supply. Indeed, it is hard to see how or why land in the renewal category will be included in local plan’s land supply. (If both renewal and growth areas count against the five-year land supply, then it is unclear why any council would choose growth rather than renewal, since this will make local plans easier to complete without biasing councils toward having to accept permissions on renewal land.)

‘The current proposal is for ‘growth’ to be land that is likely to have planning permission granted, for ‘renewal’ to be land where it is possible to have permission granted, and all other land to go into ‘protected’

This is even more true as if delivery contracts are in place, it is clear whether or not the council has sufficient land to meet the five-year land supply test for the purpose of having a sufficient local plan. In areas where the council might want additional homes (e.g. an area that is densifying) the renewal approach could work if the Housing Delivery Test was the main goal. This will encourage a healthier mindset around local plans based on future delivery.

A final point to note is that this combination of policies would be very popular with MPs, which should help get wider planning reforms through. One of their biggest complaints is that house builders win bids for greenfield sites on appeal and then only build out slowly (while pushing for yet more sites). Many also feel that their brownfield sites are not being built out after permissions are granted, even while greenfield sites are pushed through – often on appeal using the Presumption. The proposals above



will ensure housing is delivered, but in a way that is more popular because it is less disruptive.

Solution 3: Public sector land should be sold off to SMEs, with tough delivery targets attached

The final proposal in this report is around the disposal of public sector land. On top of applying the delivery contracts to public sector land sales as set out above, we should use public sector land to boost new niches and market entrants.

If we want to reach our housing numbers, we need to create a more diverse housing supply. The reforms above help to achieve this. But alongside this, there is a need to grow the SME sector so that its members can act as potential challengers to the large house builders, to ensure a healthy and competitive sector.

Thus the third recommendation is that public sector landowners should sell off land with rapid delivery goals, with this land going to entrants beyond the larger house builders. Such landowners, including government departments, councils, and other statutory bodies, should parcel up land and put it out to tender at a pre-set price, with SMEs applying via collective panels.

‘ The 2017 goal set by the Cabinet Office of freeing up state-owned land with capacity for at least 160,000 homes by 2020, and raising at least £5 billion from land and property disposals, is on track in terms of revenue, but not in terms of land ’

This would help to ensure land went to SME house builders, already forced by their economic model to build more quickly (as discussed earlier, they do not have the cashflow or reserves to be able to build out slowly), and encourage them to find ways to build even more quickly.

The ‘cost’ to the Treasury would not be that large. In each area, the land should be offered at the prevailing market price, as set out by the Government in its document *Land value estimates for policy appraisal*.⁴⁸ Currently, the knowledge that they can and will be outbid by those with deeper pockets discourages the SME sector from even trying to obtain such land. The public sector thus merely copies the private sector and aims to sell land to the highest bidder.

This is sensible from the point of view of maximising revenue, but not – for the reasons set out in the rest of this report – in terms of housing delivery. Sure enough, the 2017 goal set by the Cabinet Office of freeing up state-owned land with capacity for at least 160,000 homes by 2020, and raising at least £5 billion from land and property disposals,⁴⁹ is on track in terms of revenue, but not in terms of land.⁵⁰ The land is sold more slowly, and often not built on very quickly. The 2010-15 programme did not even focus on how many homes were built.⁵¹

48 Ministry of Housing, Communities and Local Government, *Land value estimates for policy appraisal 2019*. [Link](#).

49 Cabinet Office, *Guide for the Disposal of Surplus Land*. [Link](#).

50 National Audit Office, *Investigation into the government's land disposal strategy and programmes*, May 2019. [Link](#).

51 House of Commons Library, *Stimulating housing supply - Government initiatives (England)*, February 2021. [Link](#).



Some land should go to all house builders who are part of the panel

Since our goal with this measure is to ensure diversity, both in terms of the sector's structure and the mix of housing on each development, we suggest that the land disposed of by this method should go to panels of SME housebuilders, with each member of the panel being allocated at least some land as long as they can pay the market rate.

This would create a more diverse housing supply, and to incentivise as many as possible to join these panels. The land should also be de-risked – with key variables like density and massing already set out, helping ensure that the SME only has to agree the final details.

‘ Creating a large panel of SME house builders at the level of national, local and for each public sector body would also speed up sales, making the process easier for the state as it disposes of land ’

By refocusing the sale of land to SMEs and pushing them to build out more quickly, we can help SMEs within each area and region to expand, while still focusing on rapid build out. This will also create a more diverse mix of house builders than currently exists and emphasise speed of build out as a crucial variable. There should therefore be a cap on how much land a particular house builder could receive from any specific panel, which should help encourage multiple new house builders from each such panel.

Thus, instead of the current system where each piece of land is usually sold to the higher bidder, no matter how slowly the land is built out, this would ensure that the land is built out quickly and help to diversify the market. Creating a large panel of SME house builders at the level of national, local and for each public sector body would also speed up sales, making the process easier for the state as it disposes of land.

In addition, the Government should monitor how the SME house builders perform. If any of them repeatedly fail to deliver, then they should be removed from any relevant local panel and if this happens repeatedly, from any national panels as well.

This proposal would clearly link to the Government's stated aim of making the planning system faster, and should also link into the new local plan process, with each local plan setting out a panel of SME house builders for the public sector land in their area.



Conclusion

Britain has failed, for decades, to build enough new homes. In the past decade, Government reforms succeeded in pushing more land into the system, and substantially increasing the number of planning permissions – yet the number of homes actually being built rose far more slowly.

As this paper has shown, this problem is not an unfortunate accident of the planning system and housing market. It is a rational response, in particular on behalf of the large house builders, to the system with which they are confronted, and in particular to the boom-and-bust cycle in which the industry is trapped.

‘By supporting SMEs, we will reverse decades in which they have been squeezed out of the market and ensure that firms of all sizes can profit in an expanded housing sector that meets the pressing need of the public for more and higher quality homes’

But a better way of doing things is possible. By turning planning permissions from one-way options to build into contractual commitments to do so, we would be able to guarantee build out rates and housing supply. By introducing greater diversity into the system, both in terms of individual sites and the market as a whole, we would be able to speed up sales and hence build out rates. By supporting SMEs, we will reverse decades in which they have been squeezed out of the market and ensure that firms of all sizes can profit in an expanded housing sector that meets the pressing need of the public for more and higher quality homes.

Obviously, the proposals here will need evaluation, consultation and engagement. But we believe that, alongside the Government’s existing proposals, they are the missing piece of the housing jigsaw. We have talked about fixing the housing crisis for too long. It is time to guarantee housing delivery.



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