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# **Can ‘Permission in Principle’ for New Housing in England Increase Certainty, Reduce ‘Planning Risk’, and Accelerate Housing Supply?**

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# Can ‘Permission in Principle’ for New Housing in England Increase Certainty, Reduce ‘Planning Risk’, and Accelerate Housing Supply?

In this article we examine the probable impact of moving towards ‘up front’ planning permission for housing schemes in England, on development pace and future housing supply. That examination draws on interviews and focus groups with planning professionals, house builders, land promoters and others involved in land development. We begin by exploring the apparent effect of planning and ‘regulatory risk’ on development, before examining strategies, including upfront ‘permission in principle’ (PiP), that claim the potential to reduce that risk and deliver greater certainty for the development sector. The broader focus for this article is how those compliance-based strategies might operate in England’s otherwise discretionary planning system, in which the power to scrutinise and make decisions rests with local government and elected politicians, and what benefits they might bring.

Keywords: planning risk, housing, UK, permission in principle, discretionary planning

## Introduction

A popular formulation of the housing crisis in England is that too few new homes are being built, leading to rising prices and limited opportunities for new households and those trading up through the market to secure the housing they need. It is claimed that responsibility for this lies in (private sector) construction capacity, the business models and practices of developers, and particularly in planning regulation – which creates a risk-laden and uncertain environment for the private sector, and culminates, in some instances, in popular local rejection of development (Gallent, 2019). The path to achieving planning permission is punctuated with risks and uncertainties that may reduce the appeal of a particular project for housebuilders, land-owners and funders. Private builders’ objectives can be described in terms of maximising profits in the

longer term. In assessing profitability, the builder has to take account, not only of costs and revenues, but also about any future potential variation in these estimates based on past experience and future expectations of both market prices and the timing of delivery. Importantly, risks and uncertainties increase the rate of return that the builder requires to start development. The required return (and the costs of funding associated with development) declines as risks are resolved (Whitehead, 2017).

In this context, “journey risk” (de Magalhaes et al, 2018) centres on unforeseen physical impediments to development, on difficult relationships with community and other actors (Carmona et al, 2003), on process delays and on the challenges around negotiating conditions and reaching agreements that do not undermine a project’s viability in the eyes of investors or funders. Ultimately, applications may be denied at the final Planning Committee stage – this is the ‘destination risk’ that all projects encounter, either ending the prospect of housing being built (for now), or signalling the start of a costly appeals process.

This article builds upon research that explored the journey and destination risk confronting residential development (de Magalhaes et al, 2018) and in it, we ask whether a significantly altered local planning process – in which permission for development were granted *in principle* from the start of that process - would help mitigate these risks, by giving greater certainty to developers, thereby unlocking marginal sites. The paper draws on interviews with planning professionals, housebuilders, land promoters and funders, and on open round-table focus groups involving the same range of actors. It also explores the ways in which planning and land-use regulation may in some circumstances generate risk for development, increase costs and slow the pace of development; and considers, through interviews with key actors, how a different approach to planning – centred on movement towards a

compliance-based system – might remove or mitigate potential risks and both increase and accelerate development.

### **Housing Supply and the Planning System**

Is the planning system a cause of risk and what impact does that risk have on housing supply? Many recent analyses of the housing crisis (which is characterised by increasingly stretched ratios between workplace earnings and housing costs, by a sharply declining rate of homeownership, and by inter-generational wealth inequality between young renters and older home-owners) look broadly across a range of supply and housing consumption drivers (see for example, Barker, 2014; Ryan-Collins et al, 2017; Minton, 2017; Ryan-Collins, 2018; Gallent, 2019). Bowie (2017), however, focuses squarely on the “supply crisis” (meaning new-build supply), not attributing it entirely to planning, but seeing planning as an important determinant of housing outcomes. The housing supply debate in England has two principal components, which implicate producers and regulators in the problem of inadequate housing production. The producers (mainly volume housebuilders, responsible for 80% of total output) either will not or cannot supply the homes that are needed. If they will not then this is likely to be the result of a dominant business interest (making money) conflicting with the aspiration of others (e.g. the UK government, which sees the private sector as its principal instrument of housing delivery): essentially, there is some reason why it is better to build fewer homes than more homes (Letwin, 2018). If they cannot supply the homes needed, then this is likely to be due to labour capacity (too few bricklayers), availability of materials (too few bricks), access to finance, or regulatory constraint. Regulatory constraint – the role, principles and practices of land-use planning – may generate uncertainty, risk and make it more difficult to raise finance on more marginal development sites (de Magalhaes et al, 2018). Additionally, some of the land being

allocated for new housing in local plans is unsuited to that use in the current market:

there is too much political influence over those allocations which are intentionally unrealistic and designed to slow the pace of development (Gallent et al, 2013).

Government Planning Inspectors will pick this up at the official local Planning Inquiries but still, political manoeuvring by politicians representing anti-development constituencies will add a new dimension to 'regulatory drag'.

That regulatory drag constitutes a 'planning risk', potentially generating uncertainty, which may increase up-front costs and threaten the overall viability of a project (or eat into its projected return and therefore result in a withdrawal of finance). A *developer* or *housebuilder* considering developing land without planning permission must factor planning risk into their viability calculations. Planning risk covers not only the binary outcome (i.e. the 'destination risk' of being granted or not granted planning permission), but also the broader requirements that might be a condition of that permission as well as potential delays in decisions and permission to build. These can be conceived as the 'journey risks', including the negotiating of planning obligations (the Section 106 agreements of English planning law, which might include the private provision of a quantum of affordable housing, open space, public facilities and infrastructure). Would-be developers also need to account for the costs involved in securing planning permission in terms of expert advice, the costs of capital tied up and, crucially, time. Timing is important for two reasons: first, the longer the preliminary phases take, the more the developer incurs in holding costs — interest on loans, site security, etc. Second, delays in the preliminary phases have a knock-on effect on eventual revenues, especially given market cycles, decreasing their certainty and / or overall value. *Financiers* of development similarly incorporate planning risk into their decisions about what to finance and at what interest rate or required return. Banks

generally will not lend on development schemes until after planning permission is secured. Similarly, most institutional investors will only invest in property assets after the granting of planning permission or, later still, after construction is complete. However, investors with a higher risk appetite will invest at an earlier stage in ‘strategic land’ (that is, land without planning permission). In doing so, they elect to bear the planning risk and will therefore seek a higher rate of return, thereby altering the fundamentals of project viability.

In practice, regulatory drag can mean that allocation of land for development and even granting permission for development may not eventually translate into actual homes being built. Taking forward the ‘won’t or can’t’ binary noted above, Lichfields (2017) have recently examined whether the failure to build out sites is a result of private sector ‘land banking’ - developers

“[...] choosing not to promote the build out of sites, and instead sitting back and watching the value of the land grow, before eventually building new homes, or selling the site on at an inflated price to another party” (p. 3)

– or whether other factors are at work. They conclude that high “lapse rates” between permissions and completions have numerous explanations, which include difficulties in raising finance, shifts in site viability (attributable, for example, to delay or time taken to meet pre-commencement conditions), or developers and landowners refocusing on new priorities, sometimes because of planning costs (e.g. the changing cost of delivering an agreed public benefit in a shifting market). Nationally, roughly half of the ‘stock’ of planning permissions are turned into housing completions (ibid, 2017). In her 2004 Review of Housing Supply for the then Labour Government, Kate Barker referred to this as an “implementation gap”, attributable to the uncertainties of development planning, with its underpinnings in political discretion and the locally

variable priority it gives to the demands of local voters versus the development sector (Barker, 2004). Recently, Coelho et al (2017) have drawn attention to the greater likelihood of proposals for residential development being rejected in authority areas with higher proportions of homeowners, adding weight to the argument that planning too regularly bows to relatively short-term vested local interests.

The inherent negativity of planning – as well as the system’s tendency to reject or slow development – has become a standard critique, which nevertheless has a long history. Hall et al’s seminal *Containment of Urban England* (1973) warned that post-war planning and urban containment – in the form of ‘green belt’ – had been a victory for the rural shires, with their green fields and their NIMBYs, and a defeat for overcrowded towns and cities. ‘Friends’ of the planning system have attributed the challenges planning faces to the intrinsic difficulties of connecting smoothly to the property market (Adams, 2011). Adams points to the inherent friction between enterprise and regulation, evidenced by the regularity with which developers resorted to legal appeals to push schemes through during the 1980s – the period of so-called ‘planning by appeal’ – and also by the shift to a more clearly plan-led system in 1991, which was designed to combat uncertainty and de-risk the planning process. Other, arguably less friendly, voices have been more strident in their criticism of planning, presenting it as a fundamental driver of the crisis of housing supply and cost. Hilber and Vermeulen (2010), for example, undertook an analysis of the direct impact of supply constraints on house prices in England, concluding that prices would have been 35% lower in 2008 in the absence of regulatory barriers. They concede, of course, that “removing all regulatory barriers is not realistic”, but some easing (based on a quantified measure of restrictiveness) would have lowered prices by 14%.



Planning, however, is not only a technical process. It is a “means by which society collectively decides what urban change should be like and tries to achieve that vision by a mix of means” (Rydin, 2011: 12). The idea of collective decision-making immediately suggests a politically-charged process, with embedded and competing ideologies (for or against intervention, or viewing the market as a ‘force’ to be tamed or unleashed), with change realised through a mix of public investments and interventions. Development planning is one of those interventions. But where should the boundary be set between reaching a collective (political) decision “on what urban change should be like” and where it should happen, and implementing that decision through a technical process of selecting land for housing and granting planning permissions against agreed policies and plans? There is a view that if the boundary is blurred, then politics will encroach on the space of ‘development’ and developers’ and financiers’ risks will be increased. One way to reduce these risks is to ensure a clear separation: front-load political processes into plan formulation and then ensure that the adjudication of applications is a compliance-based technical process requiring minimal further political input - thereby moving some way towards the zonal planning traditions of many other countries (see Booth, 1995; 1996).

### **The Potential for a More ‘Certain’ Planning System**

The UK’s planning systems, embedded in local government structures, give elected politicians the power to scrutinise development applications against locally-formulated plans, and to then decide whether or not to grant planning permission, taking into account a number of material considerations (see Tewdwr-Jones, 1999; Booth, 2003). These include the plan itself, physical aspects of the proposed development, proposed community contributions (including affordable housing) and preferences expressed by private residents of the local area, either through written or verbal

representation or through Neighbourhood Development Plans. Although decisions relating to some minor applications may be delegated to planning officers, larger applications are usually decided in planning committees where elected members have the discretion to give weight to different considerations and thereby reach a decision, or set conditions, which are not entirely predictable.

This approach to development planning is distinct from that delivered through compliance-based systems, in which development proposals are green-lighted so long as they meet prescribed criteria. Gielen and Tasan-Kok (2010) compare practice in the UK with processes in Spain and the Netherlands, looking at the significance of flexibility in the pursuit of public-value capture – how outcomes are *negotiated* and with what effect. Whilst the UK is sometimes presented as an outlier because of the highly localised scale of decision-making and the degree of discretion exercised by decision-takers, a relative absence of discretion elsewhere incubates its own tensions, potentially limiting the extent to which core public values shape development outcomes (Forsyth, 1999) and sometimes failing to deliver against the complexity and nuance of local aspiration (Savini et al, 2015; Savini, 2016). Moreover, detailed examination of the range of zonal systems often shows that there is actually considerable local discretion (Monk et al, 2013).

Critiques of the planning systems operating in the UK - including those noted earlier - have given momentum both to a deletion of the ‘planning permission’ requirement in some situations and a search for greater speed and clarity in decision-making where ‘planning permission’ is retained. In 2012, Former Prime Minister David Cameron’s call to “get the planners off our backs” heralded a period of planning reform that began with various extensions to permitted development rights (i.e. the right to develop or make a material change to a building without recourse to local planning) - at

first confined to home, business and office extensions, and then rolled out to include office-to-residential conversions (Clifford et al, 2018) - and proposals for ‘permission in principle’ for some housing projects.

Whilst there has been some push-back against the dominant narrative of planning as a bureaucratic hurdle, getting in the way of building the homes that people need (see for example Raco et al, 2018, Carmona et al, 2003), Gallent (2019: 83) observes that “the period of peak housing crisis in England has been accompanied by frenzied planning reforms which, since 2010, have been billed as simplifications aimed at facilitating housing growth”. In 2015, the Conservative government’s Productivity Plan blamed the planning system in England for “[...] increasing the cost and uncertainty of investment, hence reducing the efficient use of land and other resources” (HM Treasury, 2015: 45). Government set itself the task of reducing that uncertainty, thereby accelerating housing development. It pledged to introduce a ‘zoning system’ for some previously-developed land, on which local authorities would be able to utilise “a fast-track certificate process for establishing the principle of development for minor development proposals” (ibid, 45-46).

The Housing and Planning Act 2016 delivered on that pledge. It established a mechanism of *permission in principle* for identified brownfield sites, irrespective of ownership and ahead of any specific development proposal. The legislation and associated regulations (the Town and Country Planning (Permission in Principle) Order 2017) established two ways in which permission in principle can be granted. First, local authorities can designate sites in a local plan, neighbourhood plan or brownfield register. Seventy-three pilot authorities published registers in December 2017, with ‘part 2’ of these registers listing sites with permission in principle. Second, developers or landowners can apply to a local authority to have sites designated for ‘minor

development' – although further enabling legislation will be required before this route is operational. A more detailed account of the rationale and mechanics of this tool is provided in the next section, in which findings from interviews and focus groups are used to explore the assumptions of the approach, how uncertainty around planning permission may contribute to the observed inelasticity of housing supply, and what potential *permission in principle* might have to address that uncertainty and thereby contribute to increased supply.

### **The Research**

The research employed an implicit theory of change, tested through interviews and focus groups. That theory assumes, first, that obtaining planning consent constitutes a significant risk in housing development, increasing developers' required rate of return and the cost of finance; second, that granting planning permission at local plan stage could reduce that risk and its associated cost, allowing developers to build with lower expected rates of return; and third, that permission at local plan stage would therefore lead to an increase in the supply of housing. This theory of change was unpacked above, and presented as regulatory drag, adversely affecting the pace of development.

Twenty (20) extended interviews were undertaken, in two batches, with key development, planning and finance actors (see Table 1a). The first batch was focused specifically on *permission in principle*, linking this new policy approach to four themes that emerged from a review of regulatory drag and risk; specifically:

- How *permission in principle* will function in local practice (for example, how technical details and planning conditions and obligations might be handled) and how this could affect perceptions of, and judgements relating to, planning risk;

- Whether *permission in principle* or similar instruments could, therefore, reduce planning uncertainty and accelerate development;
- Whether increased certainty might mean less flexibility and impact on what is achievable on designated sites in light of changing market conditions; and the
- Likely impacts on housing outcomes in different parts of England and in different market situations.

Batch 1 Interviews – Planning in Principle	Batch 2 Interviews – Assessing Risk
Commercial / Residential Property Consultant	Asset Management (1)
Housebuilders’ Representative Body	Asset Management (2)
Lobby Group Representative	Asset Management (3)
Local Government Representative (Finance)	Asset Management (4)
Local Policy / Lobby Group	Housebuilders’ Representative Body
Master-planning / Development Consultant (1)	Major Housing Association
Master-planning / Development Consultant (2)	Major National Housebuilder (1)
Planning Officers’ Representative	Major National Housebuilder (2)
Professional Body (1)	Strategic Land Developer (1)
Professional Body (2)	Strategic Land Developer (2)

Table 1a: Interviewees

The second batch focused more broadly on risk and the way in which development actors and investors gauge (or try to quantify) the level of risk that they may encounter in different situations. The discussion in this paper draws mainly on first batch interviews, but some insights are also drawn from the second batch –which touched upon the way in which PiP might impact on assessments of risk. Furthermore, focus groups for planners, developers, land promoters and related professionals were also organised (see Table 1b). These aimed to further test the understanding of in-plan permission and its probable impacts on housing outcomes, gained from the individual interviews. More particularly, this question was explored; how would permission at plan stage affect judgements regarding planning risk and consequently impact on the financial calculations of those involved in housing development and ultimately on housing supply? A discussion of the findings, structured around the themes listed above,

is presented in the remainder of this section.

Focus Group 1	Focus Group 2
Housebuilders' Representative Body (1)	Housing Association
Housebuilders' Representative Body (2)	International Property Law Representative
Leading Researcher in Field	Land Promoter
Lobby Group Representative	Major National Housebuilder (1)
Local Government Representative	Major National Housebuilder (2)
Professional Body	Master-planning / Development Consultant
	Property and Planning Consultant
	Smaller Housebuilder (1)
	Smaller Housebuilder (2)
	Urban Local Authority

Table 1b: Focus Group Participants

### **Theme 1: Rationale and Mechanics of Permission in Principle**

It was noted above that many planning systems around the world attach some form of planning permission to sites earmarked for development. Planning is achieved through this level of control over future land use, with 'zonal systems' setting out what will and will not be permitted on a particular parcel of land, occasionally down to the projection of allowable buildings. England's discretionary system, however, involves the 'permissioning' of development case-by-case, after detailed consideration of proposals for particular sites. Under that system, local plan 'policies' are in fact statements of principle, and planning permission is only granted after scrutiny (by elected politicians, advised by professional planners) as to how it is proposed that those principles will be translated into a particular master plan or project.

However, means have been devised – often for larger schemes – to fast-track development and eliminate some of the uncertainties arising from detailed political scrutiny. Broad agreements are reached during pre-application discussions that are designed to clear (or at least make clear) known hurdles (Carmona et al, 2001; 2003). Working arrangements and timescales are agreed ahead of development consortia seeking formal planning permission, and local authorities sometimes agree to commit

additional resource to work through the detail of an application with a trusted development partner. Such arrangements may focus on public land and its redevelopment by the private sector. Pre-application discussions and agreements can look like permission at local plan stage, though they do not have the legal force of a permission in principle.

A widely used means of dealing with uncertainty and its associated costs is to seek and grant an *outline planning permission* ahead of full permission. Whilst simple in its conception, the path to outline permission has become lengthier and more complex in recent years. Considerable investment may be required to produce the requisite master plans and technical documents. And achieving outline permission will not eliminate the uncertainty of having to address ‘reserved matters’ later on. This process is also reactive rather than proactive: developers come forward with proposals and authorities react, rather than authorities taking a lead on setting out their expectations (principles) for a site.

An arguably more proactive approach, on the part of local authorities, is to enact *Local Development Orders* (LDOs) – described by one participant in the study as the ‘closest thing England has to zonal planning’. These give a sort of permission at local plan stage; they can be used by planning authorities to grant permission for specific uses and types of development within defined areas. Compliant projects can go ahead without further permissioning. A similar tool – *Neighbourhood Development Orders* – is available to officially recognised Neighbourhood Forums, allowing them to green-light projects that, for example, result in farm buildings being converted into residential or community use. Local (and Neighbourhood) Development Orders (LDOs) turn something that would otherwise require planning permission into *permitted development*. However, they are problematic for larger schemes, as authorities cannot

require Section 106 (s106) contributions (planning gains) under LDOs. Despite moves to simplify their use in 2013, LDOs have been used only sparingly and predominantly for less controversial employment-led uses within industrial areas (Peter Brett Associates, 2014).

*Actual Permitted Development* (rather than the de facto variety locally created through development orders) is defined within secondary instruments – the Use Classes Order (UCO) and General Permitted Development Order (GPDO). Together, these define land uses and the requirement for planning permission when transferring from one use to another. Permitted development (PD) generally involves structural changes to a building or certain changes of use, now including conversion of offices into residential use (see Clifford et al, 2018). PD removes certain types of ‘material change’ from political scrutiny, but is restricted in scope to existing buildings with defined characteristics and particular localities. In the case of office-to-residential conversion, doubts have been expressed over the quality of development delivered, the inability of such schemes to generate Section 106 contributions, their limited contribution to housing supply, and their likely negative impact on local employment (ibid.).

Government’s appetite for a more certain and streamlined planning process for housing schemes – whetted by negative analyses of planning’s impact on housing supply - has not been satiated by any of these existing approaches. It was for that reason that *permission in principle* at local plan stage was introduced in 2016. Although no local authorities had attached ‘PiP’ to any allocated land at the time of the interviews, the prospect of its use (and anticipation of its likely impact) became the primary foci of field work.

*Permission in principle* was conceived as a push towards limited zoning as a means to accelerate housing supply. The regulations, published in 2017, separated the



‘in principle’ issues - land-use (e.g. housing-led), location (within the site) and quantum of development (maximum and minimum number of units) – to be covered in the ‘permission’ from technical details, including s106 requirements, which would need to be addressed at a later stage. The rationale was simply that prospective developers would have greater certainty that ‘compliant’ development would be given the green-light and that ‘in-principle’ issues would not be re-opened once permission were granted. However, the need to achieve a ‘technical details consent’ (TDC) – typically covering the provision of infrastructure, open space, affordable housing, design, access, layout and landscaping – before commencement of works, might be judged an obvious weakness in the mechanism, as such requirements might generate delay, thereby impacting on the viability of a scheme. This was an important point of discussion in interviews and is returned to at the end of the next section.

## **Theme 2: Reducing Risk and Uncertainty**

For PiP to have a positive impact on development pace and outcomes, it must help generate lower risks for private enterprise, giving firms the confidence to invest resource in the pursuit of new opportunities. Whether or not it would actually bestow confidence provided an important focus for interviews.

Potential effectiveness was thought to be difficult to judge given the lack of ‘worked examples’: the majority of those interviewed believed that PiP could provide a helpful lever for SMEs (small to medium sized enterprises) seeking finance for smaller schemes. It could be a useful part of a wider support package for smaller firms.

Nurturing greater ‘plurality’ in the housebuilding sector is seen by the Home Builders Federation (HBF, 2017) as vital if smaller sites are to deliver against their full development potential.

More broadly, interviewees suggested that PiP is likely to affect different sorts of companies in different ways, depending on their financial models and consequent perspectives on risk. Housebuilders focused on large low-density schemes use ‘land options’ to acquire and assemble development sites, and thereby achieve lower capital costs. However, developers focused on high-density schemes, and reliant on private investors, tend to incur higher costs of capital. Uncertainty is potentially a more significant issue for the latter, as they are obliged to raise finance earlier in the development process. Similarly, registered providers (of social housing) and build-to-rent (BTR) developers have an incentive to deliver new homes quickly and start producing rental income, so they will reap potentially greater rewards from any mechanism that provides faster planning permission. Conventional housebuilders, on the other hand, operate on a phased development model – producing and selling housing at a rate matched to the local market. Finally, strategic land-developers benefit from the uncertainty of obtaining planning permission – gambling on achieving a permission on a difficult site, fraught with political risk - as their model aims to capture the associated risk premium. One interviewee compared the differential impact on developers and housebuilders:

“Often you get the industry criticising planning as the reason why delivery doesn’t happen and, in a sense, they’re right; but I see it as a proxy for uncertainty with respect to the timing of delivery; planning - it might take thirteen weeks, it might take thirteen months or longer, and the cost of capital for a developer is a huge issue. It’s perhaps the most important issue if they’re carrying the cost of the land during that period; a house builder, in contrast perhaps, has a very different cost of capital, often they’re more reliant on option agreements, often the whole cost of the land is lower as a total proportion of built cost [...] The speed through the full development process, or a lack of speed, represents a bigger potential risk for developers than for house builders and therefore the sensitivity of planning

certainty or uncertainty would work against a developer” (Commercial/Residential Property consultant).

Doubts were also expressed as to whether PiP provides any guarantee that there will not be unforeseen constraints (ground risks) that will affect a site’s ‘developability’. Likewise, PiP offers no clarity on policy compliance requirements – to be dealt with in the technical details consent – beyond principles set out in the local plan. For these reasons, the majority of interviewees concluded that pre-application discussions with the local authority – in which clarity can be sought on all issues – is likely to be more effective than PiP in reducing (perceptions of) risk, especially for large developments on complex sites. However, it was acknowledged that agreements and informal understandings with planning officers may simply be ignored by politicians-led planning committees.

Interviewees tended to oscillate between positive reflections on the future potential of PiP to reduce uncertainty and moments of doubt over its practical implementation. One very significant doubt centred on local authority capacity. Zonal planning systems invest huge resource in checking the suitability of sites for different kinds of development: planners are practised in undertaking the sorts of detailed site appraisal required by private enterprise (see, for example, Booth, 1995; 1996). But there was a broadly shared concern that ‘bare to the bone’ local authorities in England do not have the resources or wherewithal to conduct the background investigations (or ‘do the heavy lifting’ as one developer put it) necessary to confirm the developability of sites and therefore support PiP with the guarantees that developers and their funders will want. Currently, such investigations – including checks on legal title and possible restrictive covenant – are carried out and paid for by developers. *Permission in Principle* shifts these not inconsiderable costs onto local authorities, without any

promise of the necessary resource. (Focus group participants speculated on whether landowners might be willing to contribute to these costs, but there would need to be a financial logic – costs being recovered and value added to their land). Indeed, authorities continue to bear the brunt of austerity and public spending cuts – leading others to doubt their capacity to deliver a more proactive and expensive planning service. The conclusion from this line of argument was that ‘PiP on the cheap’ might increase risk, causing developers to invest resources in sites that might prove, on further investigation, to be subject to land title disputes, covenants affecting use, poor ground conditions and so forth. Similarly, cash-strapped authorities may well not be in a position to determine the right quantity (expressed as a unit number range) and therefore the right density of development on a designated site, given prevailing market conditions.

“There’s a massive risk in [permission in principle]: either the local authority has to do a lot of work in order to know that the site is deliverable and developable, or they run the risk of allocating sites and granting [a] permission in principle which is not actually deliverable, and therefore, when it comes to the technical details, they will refuse the technical details, and yet they shouldn’t be able to refuse the technical details since they’ve granted a permission in principle” (Housebuilders’ representative body).

If they are unable to pay for background studies, authorities may simply choose not to take the *permission in principle* path. Focus group participants did not judge this to be any great loss, given the uncertain benefits of PiP. However, they argued that whatever new tools are developed, a good quality planning service that is well-resourced provides a degree of “positive counterbalance to local political contexts” that are uncertain and subject to rapid change.

Finally, a major area of concern for interviewees was the separation of the permission in principle from the *technical details consent* (TDC). Those who thought that PiP might deliver greater speed and certainty felt that these potential gains could be jeopardised by a return to issues of policy (and negotiation) at the TDC stage. Fixed conditions cannot be attached to a permission in principle – authorities are unable, for example, to pre-define Section 106 requirements, which remain an issue of principle (set out in the local plan) to be negotiated.

Moreover, development planning occurs in a contested space where there is a clear expectation of community involvement and consultation. The Housing and Planning Act 2016 requires local authorities to consult communities on proposals to attach *permission in principle* to development sites; but there is no requirement for further consultation at the TDC stage. All such attempts to ‘front load’ consultation are designed to accelerate projects through the planning process, but many are still challenged as the details of schemes emerge and accusations of infrastructure overloading, inappropriate design, or inadequate community contribution, are levelled (Gurran et al, 2016). The PiP process is likely to be challenged, in some instances, on the grounds of inadequate consultation on the details of schemes.

### **Theme 3: Trading Flexibility and Certainty**

The wider issue here is that *permission in principle* does not sit comfortably with the prevailing governance arrangements for development planning. Focus groups, with the full range of development and planning actors, rounded on this issue. Negotiated interpretation, resulting in compromise (aka flexibility) on issues of stated principle, is a key feature of the planning systems across the UK. Whilst compliance-based zonal planning in other countries tends to remove some uncertainty (as to what might be permissible on a particular site), this is paid for with a loss of flexibility and, in many

instances, a loss of community buy-in (Monk et al, 2013). Zoning is often achieved through high-level political steer and the exercise of executive power – for example, by city mayors – but such interventions might prove controversial given the culture of localised development planning and decision-making in England. Participants concluded that because ‘real zoning’ is difficult to achieve, effort is expended on thinking up tools – including LDOs and *permission in principle* – with more limited scope and ambition.

The compromise between flexibility and certainty in the planning process was a recurrent theme in the interviews and in the focus groups. Several interviewees observed that the ‘normal route of outline planning permission and reserved matters’ would always offer practical advantages for larger brownfield sites, allowing phased development that can respond to market changes as a site is built out over a number of years. *Permission in principle*, in contrast, does not anticipate or allow revisions to the quantum of development, meaning that changes cannot be made in response to a downturn or upswing in the local market. In the worst (but not uncommon) scenarios, market changes might render sites unviable

*Permission in principle*, at different levels, aims to offer certainty at the price of flexibility. Many interviewees and focus group participants argued that whilst PiP might be occasionally helpful – generating the certainty needed by a particular small developer on a specific site – a more general shift to zonal development planning would be a turn in the wrong direction. It is quite possible to increase plan-level certainty without compromising development-level flexibility. Participants in the focus groups registered broad support for the ‘plan-led system’ created in 1991, which instituted plans as the basis for planning decisions, and delivered greater certainty than the period of ‘planning by appeal’ that preceded it (see also Adams, 2011):

“If the English planning system worked properly, then you would have Local Plans in place that were regularly being reviewed and Local Plans that allocate land and that, you know, those policies would say ‘this is how many units you’re going to have on the site’ and also sensible policies about design, and massing, and all that kind of stuff, and in theory, actually that ought to provide developers with a reasonable degree of certainty [...] But we [often] don’t have a Local Plan [...] so in large parts of the country it’s a complete planning vacuum; and hence developers are - if you’ve got land that you want to promote for development - effectively taking a punt each time as to a) whether the principle is going to be established and then b) what’s the quantum of development that you’ll get” (Master planning/development consultant (2)).

But taking a punt can be risky – and developers will therefore seek higher returns, so the one that succeeds pays for the many that fail. The net effect is to drive up cost and expected profit margins, because trying to operate in the context of no plan creates uncertainty and generates delay. Moreover, a plan-led system coupled with regional strategic planning was said to be an effective way to obviate risk, ensure stable access to funding, and thereby deliver more homes. On this point, it was argued that the demise of strategic planning since 2011 has led to ‘messy situations’ in which coordinated investments and decision-making across local authorities are rarely possible. Uncertainty as to whether ‘good relations’ can be built and sustained across wider areas has been a common cause of planning risk in the past (Gurran et al, 2016) and it continues to undermine major cross-border schemes.

#### **Theme 4: Impacts – General and Spatial**

Discussion of *permission in principle*’s likely impacts, in general and on specific places, inevitably touched upon the ways in which the mechanism might be tailored to different circumstances. Extending the earlier point that PiP would affect ‘different sorts of

companies in different ways', it was noted that residential development business models each have their own geography. The larger low-density schemes employing *land options* (typically priced at between 2% and 3% of the total cost of land with permission) to acquire and assemble development sites, and thereby achieve lower capital costs, tend to be focused on urban edge locations, often encroaching into rural hinterlands. High-density development schemes, reliant on private investors, and which tend to incur higher costs of capital, are more usually found within inner or peripheral urban areas. It was noted above that PiP may be more important for the riskier, high capital cost schemes.

However, even in the highest demand areas, smaller development sites are frequently overlooked by large housebuilders looking to achieve economies of scale. Government has recently emphasised the potentially greater contribution of small sites to overall housing supply (MHCLG, 2018: Para. 68), a point on which the Home Builders Federation agrees (HBF, 2017). Interviewees saw PiP as a possible means of unlocking small sites across the country – as a way in which these sites could be given 'more attention and funding'. It was argued that small sites (defined by participants as those yielding fewer than 50 units – probably on plots of no more than 2 hectares) often contribute higher proportions of affordable housing than large strategic sites; because less of their Section 106 yield is consumed by major infrastructure, of the type that strategic sites depend on. This also makes them potentially more straightforward to deliver.

It was suggested that *permission in principle* could play a role in driving forward development on such sites by eliminating some of the planning hurdles that SMEs sometimes struggle to overcome. Smaller sites could benefit from their own tailored infrastructure funding model, making them more attractive to private enterprise and



especially smaller providers. A combination of PiP and a new model of infrastructure funding can be set to work on ‘small sites’. Through such mechanisms, participants in the focus groups saw the possibility of PiP being used successfully to de-risk the sorts of sites that are often left undeveloped, thereby helping SMEs to access development finance and ensuring that PiP finds its appropriate niche – as one of a number of possible support options:

“I think what we’ll see is a limited roll out of [PiP] because it’s an option: it’s not a replacement for anything, it’s an option. I think we’ll see some [PIPs] in areas where there’s good performance in delivery terms anyway. It will be snapped up and used to its full potential (don’t ask me where those areas are!) [...] I think maybe some small to medium size being built [...] so it will all contribute and it will all help, but it’s not the silver bullet [and] I don’t think it was ever intended to be” (Professional body (2)).

On large sites, it was observed that developers “only make a profit on the last 50 houses” as income from earlier phases goes simply into development cost recovery. The really big developers have the resources to wait for those last 50, but smaller developers are much more vulnerable to cost uncertainties; PiP and / or support to landowners, prepared to do some of the pre-application bureaucratic groundwork on small sites, probably needs to be combined with tax breaks if government is serious in its commitment to getting more small sites delivered.

*Permission in principle* was, however, more generally regarded as an approach to development planning that would be extremely difficult to upscale given its awkward fit with expectations of democratic ‘due process’ (permitted development is already viewed by communities as an outrageous circumvention of that process), and with the limited public funding set aside for plan-making and site assessment. Moreover, interviewees struggled to predict the broader impact of PiP on the land market and overall housing production. They cautioned that sites permissioned in principle may

well be subject to ‘bidding wars’ and therefore command a higher market price, which would offset any cost advantages (for developers and homebuyers) arising from greater planning certainty. Such cost implications, impacting on local authorities and / or land values, tended to push interviews and focus group discussions back to the many other ways of clarifying the expectations of public regulators and increasing planning certainty. Whilst a number of existing tools and approaches were flagged – including pre-application discussions for major development and local authorities defining expected outcomes through planning briefs, area action plans and other supplementary planning documents – it was broadly agreed that the principal means of delivering certainty is through an up-to-date local plan with a five-year land supply; a plan which is not constantly changing and therefore provides a clear and consistent basis for planning decisions, many more of which should be delegated to officers.

### **Conclusions**

One of the most important reasons for risk and uncertainty in the English planning system arises from the political nature of planning and from a system in which development decisions are rooted, not in a common rule-book, but in the interpretation of guiding principles that are sometimes set out in a local plan or directly translated from national policy in the absence of such a plan. The research on which this paper draws was concerned specifically with the likely impacts of *planning in principle*, a new local instrument for generating greater certainty within the existing planning system. In this context *planning in principle* may simply be viewed as an addition to the toolbox of approaches already available to planning authorities. However, its arrival in the Housing and Planning Act 2016 may instead be interpreted as an important shift in planning discourse, away from our discretionary system towards a more rules-based

system where the political input is limited to the development of the local plan and the rules are then applied automatically.

Six broad findings emerge from our discussions with planning, development and finance professionals, initially covering the more immediate issue of how planning in principle might work within the existing system and moving on to the more fundamental issues of discretion versus rules based systems.

First, how permission in principle (at local plan stage) affects the level of detrimental planning risk will depend on a prospective developer's business model. Some models are more sensitive to uncertainty and delay than others. The aggregate impact on the pace and volume of housing development will thus depend in part on the composition of the house-building industry and what portion of that industry stands to benefit from PiP.

Second, were risk to be seen to be significantly reduced this would positively affect land values for sites with this sort of in-plan permission. One of the problems with a hybrid system is that it may generate a dual land market in which one set of development opportunities, associated with greater risk, results in lower land values reflecting these higher housing costs, while another set is associated with increased land prices because of reduced risk, resulting in similar net housing costs. The argument here is that potential gains are reduced or even eliminated under this arrangement: would it therefore be preferable to transition completely to a full zonal system?

Third, we already know that permission at local-plan stage is not a definitive green-light to development. Rather, it would be the first of a two-stage process. The principle of development permission (on an earmarked site) would be acknowledged in the plan, but approval of the detail would still need to be granted later on. The extent to

which this might reduce risk depends on how these two stages are connected, what exactly they cover and what form and level of compliance needs to be demonstrated in each. We already know, for instance, that developer contributions (to infrastructure or affordable housing provision) cannot be stipulated in the principle, so agreement on contributions needs to be reached at the second stage. We also know that this is often a protracted process. Given these remaining risks, the overall benefit of planning in principle is likely to remain limited, unless there are more fundamental shifts towards plan based decisions.

Fourth, an effective system of permission at local-plan stage is entirely dependent on local authorities gaining a detailed understanding of each permissioned site, thereby ensuring that there are no impediments to progressing development at the level and configuration envisaged. This detailed understanding extends from legal title to market intelligence. Local authorities will need to expend considerable resource on such investigations, requiring a significant injection of additional funding –through the system of planning fees (with applicants shouldering the cost), through increased central government grant, or through higher local taxes (if government were willing to ease local taxation limits). The question then is whether the added expense will be (more than) offset by increased housing supply and reduced housing costs.

Taken together, these four initial conclusions suggest that while prima facie planning in principle could improve the operation of the existing system, it is unlikely to reduce risks enough to make a significant difference to housing supply outcomes unless it is part of more fundamental change. Yet, two further conclusions suggest that there are big ‘strategic risks’ to the build out of sites and housing supply arising from any significant shift towards zoning.

The first of these arises from the fact that a discretionary planning system has the benefits of intrinsic flexibility in our uncertain environment. Market conditions when a site is developed might be very different from those prevailing when the local plan, with its in-plan permissions, was approved. The discretion to vary decisions and conditions offers the potential to develop a site in ways not originally envisaged, and thereby preserve the viability of development. If the direction of travel is towards greater use of permission at local plan stage, the strategic risk is that a loss of flexibility causes development (and housing supply) to grind to a halt in more challenging market conditions, because planning authorities are shackled to outdated decisions.

The second is that planning risk is rooted in prevailing systems of local governance and democracy, which give voice to the negative energy of community opposition. That energy shapes political decisions, creating a febrile environment in which some planning outcomes seem to hinge on the whims and fears of elected members. An opposing, more positive, view is that planning is an instrument of collective decision-making; within the current system of local government, members gain a mandate to take decisions both through periodic elections and careful consideration of residents' views on the contents of plans and the details of development proposals. Whichever view prevails, democracy presents the risk of uncertain outcome. The strategic risk here is that this very different way of planning development will be met with a groundswell of public opposition. Alongside significant extensions to permitted development rights (removed from all democratic processes), planning in principle may well be viewed as another retreat from public interest towards market imperative. Yet it is not at all clear whether the interests of the development sector are significantly advanced by decreasing the flexibility of local

planning and paring back public scrutiny of development decisions. It is also far from certain that there would be any tangible impact on housing supply.

Finally, it can be argued that planning in principle should not be evaluated on its own but should be seen as one more step towards a fully plan-led system, far more aligned with the zoning approaches seen in large numbers of comparable countries. Throughout the twentieth century and into the twenty-first, plan-making in England has been optional (although with increasing limitations on local powers when a plan is not in place). Moreover, decisions taken in the context of those plans have been based on bounded discretion – the discretion to fit principles to local context and weigh them against a mixed soup of other considerations. At the time of the 1990 Act those in favour of greater emphasis on local plans saw them as a way of increasing certainty and simplifying processes. However, the sometimes slow and difficult gestation of local plans, and the uncertainties of decision-making against those plans, have instead been seen as increasing delays while leaving most of the uncertainties in place. Whilst the planning community continues to expound the value of due democratic process and flexibility, others have seen the move towards local plans as perpetuating a deepening housing cost crisis (Ball, 2011; Hilber and Vermeulen, 2010). Uncertainty is then presented as a critical failing of the current system, which can only be corrected through a fundamental shift to a radically different approach to plan-making and decision-taking: opaque discretionary approaches should make way for clear rule-books that provide a basis for compliance-based planning. However, this view tends to ignore evidence of considerable difficulty in implementing most zonal systems, owing to their limited flexibility and high resource cost. Most of those systems include some elements of discretion, because the need for flexibility in the face of changing circumstances is universal. Moreover, the plan-making stage can be both more resource-intensive and

more political (Carmona et al, 2003; Allmendinger, 2006; Monk et al, 2013). There are therefore always trade-offs to be made and no straightforward ways of implementing change. On the one hand, *careful adjustment* towards a more formal rules-based approach, where it makes sense – and underpinned by continuing assessment of costs, benefits and outcomes - may well be a good way forward, despite its complexities. But that adjustment needs, on the other hand, to show clear benefit and reflect the nuance of different contexts and development models. It is not at all clear that technical zoning, embedded in the current expectations and systems of local government, can address the political causes of uncertainty.

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