

Faster Growth, Greener Scotland

A discussion document on reforming the Scottish planning system

Tom Miers

Synopsis

This discussion document outlines a new approach to reforming the planning system in Scotland. It proposes introducing financial incentives to help find the right balance between efficient development and an enhanced environment.

The available evidence suggests that the planning system currently does not allow a satisfactory balance to be struck. The recent housing boom revealed that the planning system does not respond adequately to demand signals for new land. Nor has it protected or enhanced our built environment. As a result it is both an impediment on economic growth and a blight on our landscape.

It should come as no surprise that a state run system for distributing such valuable assets as development rights has problems. Indeed examples from abroad, and from our own history, suggest that planning systems work better when those granting the rights have an incentive to do so, and those applying for them have an incentive to develop land sympathetically.

In this paper I suggest three main reforms to the Scottish planning system that go with the grain of existing practices and new legislation.

- Local authority finances should be reformed so that councils gain financially from new development;
- ‘Developer contributions’ – now used erroneously for welfare and infrastructure finance – should be reformed so that developers pay instead for any environmental or social damage they inflict;
- Quangos, regulators and infrastructure providers which have a blocking role in the development process should be exposed to competition or incentives to encourage good performance.

Such reforms would introduce an enabling culture among the practitioners of planning and development. Decisions over development rights would become more akin to commercial transactions. Much of the bureaucracy that currently plagues the system would wither away, and Scotland would benefit both from cheaper development (including more affordable, attractive housing) and an enhanced environment.

Introduction

Land use planning is fundamental to the functioning of Scottish society. It regulates the physical development of the country, striking the balance between our material need for economic change and the aesthetic requirement to maintain the integrity of our built and natural landscape.

For the Scottish economy to reach its potential, an efficient and flexible planning system is essential. The Scottish government has identified planning reform as a priority in its quest to

stimulate economic growth. Its new Council of Economic Advisers chose planning as one of its first subject for enquiry¹.

At the same time, planning is a critical element for any society that looks to help the poorest. That most essential and costly necessity – housing – is to a large extent governed in price and quality by the effectiveness of land-use planning. A system that fails to deliver affordable, attractive housing adds enormous complexity to efforts to alleviate poverty.

However land use planning regulations exist not just to allow a coherent infrastructure of housing and industrial development to flourish. They are there to protect and enhance our scenic environment. The public's desire to maintain Scotland's matchless scenery and the architectural gems of our towns and cities is unquestioned. In essence it reflects an alterative value placed in environmental amenity that must be balanced with the more measurable value of material progress.

In Scotland we have a system of planning regulations that is devised and implemented by the state. After the Second World War the rights to develop land, build new housing and infrastructure of all kinds, and even to change the use of land and buildings was nationalised. The state now governs, in great detail, how the balance between development and scenic protection is struck.

How well does this system work? Has it met the needs of industry? Has it supplied plentiful land for good quality housing? And has it protected our environment? These are the questions addressed in this paper. It looks at the available evidence for the effectiveness of land use planning in Scotland. It also examines other systems from around the world and seeks to identify common factors that lead to success. Finally it suggests some ways in which our own methods could be reformed.

How the Planning System in Scotland Works²

Land use planning in Scotland is primarily the responsibility of the thirty-four planning authorities. Thirty two of these are controlled by local councils, the other two by the two National Parks (Cairngorms and Loch Lomond & the Trossachs). There is some input from smaller community councils, and the Scottish government plays a refereeing role, with particular influence over major infrastructure projects. In December 2006, the Scottish Parliament passed a wide-ranging Planning Act, introducing major reforms to the system³, which was implemented over the following two years.

Development Plans

The primary tools for guiding development are Development Plans, consisting of **Strategic Development Plans⁴** and **Local Development Plans**, which under the Act must be renewed on a

¹ The first meeting of the Council was addressed by Jim Mackinnon, the Chief Planner, on 21st September 2007. See *Minutes of the Council of Economic Advisers*.

² For simple guides to the Scottish planning system, see *Guide to the Planning System*, The Scottish Government, or *The Planning System in Scotland*, BBC Action Network Team.

³ See *A Brief Guide to the 2006 Scottish Planning Act*, Scottish Executive.

⁴ Equivalent to the pre-2006 Structure Plans.

five year cycle⁵. Strategic Development Plans are produced by a group of local councils that constitute a 'City Region', of which there are four – Glasgow, Edinburgh, Dundee and Aberdeen. These set out a long term plan for development that takes into account predicted economic and demographic needs and establishes broadly the location and type of development. Strategic Development Plans are advertised for consultation with local people, and are submitted to the government for approval. Councils outwith a City Region need not draw up a Strategic Development Plan⁶

All councils draw up more detailed **Local Development Plans**, again in consultation with local people and groups, designed to guide development in local areas. These must be compatible with the centrally approved Strategic Development Plan. 'Local plan examinations' are set up to resolve elements of plans that provoke particular local controversy.

Planning permission

Those who wish to develop new built infrastructure, or change the use of land or buildings⁷, must apply for **planning permission** from the local planning authority, which notifies their neighbours, who have the right to comment within a fortnight. The council decides if the application is consistent with the development plans. It has the discretion to ignore all or part of the plans, taking into account important environmental, economic or social 'material considerations,' but will generally stick to them. It can grant permission with or without conditions, or reject it altogether.

The government's aspiration is that 80% of applications are decided upon within two months. There are some 40,000 applications in Scotland every year.

The Hierarchy of development

The new provisions establish a hierarchy of developments for different treatment depending on their size and impact:

National developments, considered by the government to be of strategic importance to Scotland, are placed on the **National Planning Framework (NPF)**. Projects are thus agreed in principle, and only the details of implementation are left to be addressed by the local planning authority. Ministers can 'call in' projects to speed up the process if necessary. At the time of writing, the second draft NPF included airport expansions at Glasgow and Edinburgh, the new Forth crossing, two container terminals and the Commonwealth Games infrastructure.

Major developments are categorised by size and impact. For example, housing developments above one hundred units or two hectares are included, as are power plants generating more than 20 megawatts, roads and rail over eight miles in length, industrial units over four hectares and so on. Ministers can designate projects as 'major' outside these criteria. Major developments must

⁵ A timeframe stipulated in the new Act in response to the out-datedness of plans, 70% of which were over five years old and 20% over fifteen years old (see *Affordable Housing and the Labour Market in Scotland*, A Glass, A MacGregor, A McTier, A O'Sullivan, G Young, Communities Scotland 2006).

⁶ Some councils such as Fife, are partly within a City Region and partly without. They must contribute to the Strategic Development Plan for the area within, and need only draw up a local plan for the rest of their council area.

⁷ Some minor developments are 'permitted' and do not require consent. The rules are stricter for 'listed' buildings – those defined as having particular architectural or historical merit.

be subject to a ‘pre-application consultation’ whereby the developer consults the local authority and community to address issues that might otherwise hinder the planning application process.

All other developments are categorised as **local**, and are subject to planning applications as normal. The exception are minor ‘**permitted developments**’ – household improvements and extensions as defined by central government.

The Government can ‘call in’ planning applications to determine the outcome itself in certain situations, for example when councils have a conflict of interest (such as financial benefit from an application), or wish to approve an application that does not follow a strategic development plan.

In addition, the government issues ‘Scottish Planning Policies’ to set guidance on large scale developments, and ‘Planning Advice Notices’ (PANs) to advise on local planning practices.

Appeals, consultation and enquiries

Plans and applications are subject to public input, either from individuals, community councils, statutory bodies (typically where the development has implications for historic buildings or the environment) or other organisations.

Applicants whose proposal is rejected can appeal the decision to a local review board made up of councillors. Further appeals can be made to the Government. Generally these are dealt with by its **Directorate of Planning and Environmental Appeals**, but ministers can get involved directly on major cases. Public enquiries are established to investigate particularly vexatious cases.

The process of application, consultation and appeal has taken on quasi-judicial characteristics. For example, local councillors have to remain very cautious about commenting on particular aspects of planning policy if they are to decide on individual cases, for fear of any contradiction or perceived bias leading to legal challenge by rejected applicants.

Planning Obligations and affordable housing

One of the powers that local councils have with respect to the planning process is to award planning permission subjects to conditions and planning agreements⁸.

Clarified by PANs⁹, Planning Obligations empower councils to negotiate developer contributions in return for granting planning permission. Following precedent set in England – where the equivalent ‘Section 106’ has been in place for some time – councils increasingly use these powers to try to adjust development to offset various infrastructure or environmental costs that development might impose on the local area. They are also used to deliver certain social goals as well.

So instead of funding economically or socially desirable infrastructure directly, they invite private developers to do so as a condition of being granted permission to develop sites.

⁸ This power is commonly known as ‘Section 75’ after the clause that introduced it in the Town and Country Planning (Scotland) Act of 1997, though in practice Section 69 of the Local Government (Scotland) Act 1973 is also used.

⁹ See, for example, PAN 74 on Affordable Housing. They were previously called ‘Planning Agreements’.

Most importantly this mechanism is used as a tool to generate ‘affordable housing’ that is made available to let or buy for certain segments of the population at below market rates. The aim is to ensure that accommodation is within reach, either of poorer citizens, or particular workers that are needed throughout the country but may not be able to afford private accommodation in expensive areas.

The government recommendation¹⁰ is that developers should typically set aside 25% of the development plot for sale to a ‘Registered Social Landlord’ (RSL) who can then develop the land for subsidised housing¹¹.

The same powers are also used to get private developers to build other public infrastructure such as roads, parks or even schools, that are thought to be needed as a result of the development.

Planning obligations have been used increasingly by councils over the last few years, especially in areas where house price pressures have been highest, and the need for more affordable housing apparently greatest¹².

Under arrangements encouraged by the new Planning Act, it is envisaged that developer contributions will be built into plans as they are drawn up. This will provide greater certainty and (it is hoped) simplify the process of negotiating contributions. The infrastructure requirements of new development – in terms of schools, roads, utility connections and affordable housing – will be pre-calculated, so that all parties know the additional cost involved before development decisions are made.

However, such contributions are thought likely to be generally *higher* than they are at present. This is because current infrastructure payments, negotiated as they are on an estimated, ad hoc basis, do not generally take full account of the capital cost of additional school places or road usage.

Outcomes

Does the planning system deliver what Scotland requires in terms of economic flexibility and environmental protection? The available evidence is patchy. As ever with government-controlled sectors of the economy, it is particularly hard to judge the *relative* performance of the planning system, because this requires comparisons with other jurisdictions. The data for this is inevitably often inconsistent, particularly with those outside the UK. In many respects, therefore, such as its efficiency and its environmental utility, we left in the dark as to its relative performance.

This section looks at the overall picture before examining in more detail the planning system’s impact on the all-important housing market, the commercial property market, and Scotland’s rural and urban landscape.

¹⁰ In *PAN 74 Affordable Housing*.

¹¹ The RSL also receives a direct subsidy from the government called a ‘Housing Association Grant’ (HAG). It is hoped that the two marry up to allow the RSL to deliver affordable housing, although the exact mechanism varies from council to council. For example, in small developments, such as are the norm in rural areas, a cash contribution is extracted, and the 25% threshold is negotiable.

¹² Some councils, notably in West Central Scotland, with a relatively depressed housing market and plenty of existing social housing, have rarely used planning agreements.

Overall performance

The Scottish Government seems to accept that the planning system is insufficiently flexible to meet Scotland's economic and social requirements. In October 2007 it issued a consultative document *Firm Foundations*¹³ that stressed the need for more efficient decision making. It said:

“The planning system has struggled to respond to demand, failing to enable an acceleration in housing supply.”

At the same time, the Scottish Government's new Council of Economic Advisers chose the planning system as its first topic for consideration. At its opening meeting¹⁴ the government's Chief Planner gave his assessment of the planning system:

“The Chief Planner began by acknowledging that, during the last twenty years, the Scottish planning system has not been performing well... many see the planning system as an inhibitor to growth rather than a major driver of economic development”

Hardly a vote of confidence in the current system. Such concern reflects widespread unhappiness in the business community and among economists at the performance of the planning system¹⁵. Without exception, business groups cite planning as a major obstacle and regulatory headache. They point to a number of frustrations in particular:

- The length of the planning process, which can take two or three years for a simple site;
- The difficulty of inducing statutory bodies that have a say in the process, such as environmental bodies, Transport Scotland and Scottish Water, to engage with the process expeditiously;
- The low priority or low status accorded to planning departments in councils, which undermine their effectiveness;
- The length of time needed to appeal decisions;
- The internal costs of maintaining staff to tackle the planning process;
- The lack of relevance of development plans to demand for new development. Many projects are outside plans, which conversely often allocate land that has no prospect for development.

Unfortunately, hard data on the costs imposed on the Scottish economy by delays and distortions in the planning system is hard to come by. In 2004 the Scottish CBI produced a report suggesting that “the planning system costs the country £600 million a year through a combination of deferred benefits of infrastructure investment, lost turnover from delays to commercial investments, the impact of higher housing costs on salaries, and the opportunity cost of lost investment.”¹⁶

The Scottish Government began publishing general performance statistics on local authority planning departments in 2004. These show that only 40% of local plans are less than five years

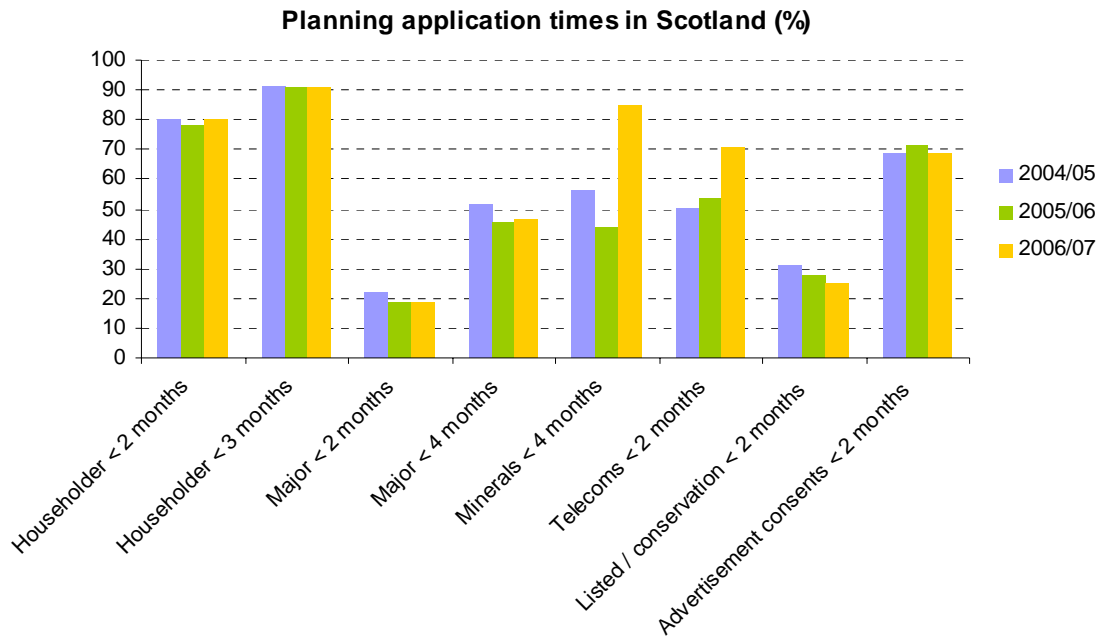
¹³ Firm Foundations: The Future of Housing in Scotland: A discussion document, Scottish Government October 2007.

¹⁴ *Minutes of the Council of Economic Advisers*, Scottish Government.

¹⁵ These concerns are reflected repeatedly in government documents referring to all sorts of fields and industries. For example, *Growing Pains – Can We Achieve 50% Growth by 2015* by the Scottish Parliament Economy, Energy & Tourism Committee, reported that the planning system was a major problem inhibiting investment in new hotels and leisure facilities.

¹⁶ ‘Planning for growth: the business agenda for planning reform’, CBI Scotland publication, 2004.

old, and that 17% are more than fifteen years old. The following chart shows applications times for different classes of development in recent years:



Source: *Planning performance statistics 2004-7* Scottish government¹⁷.

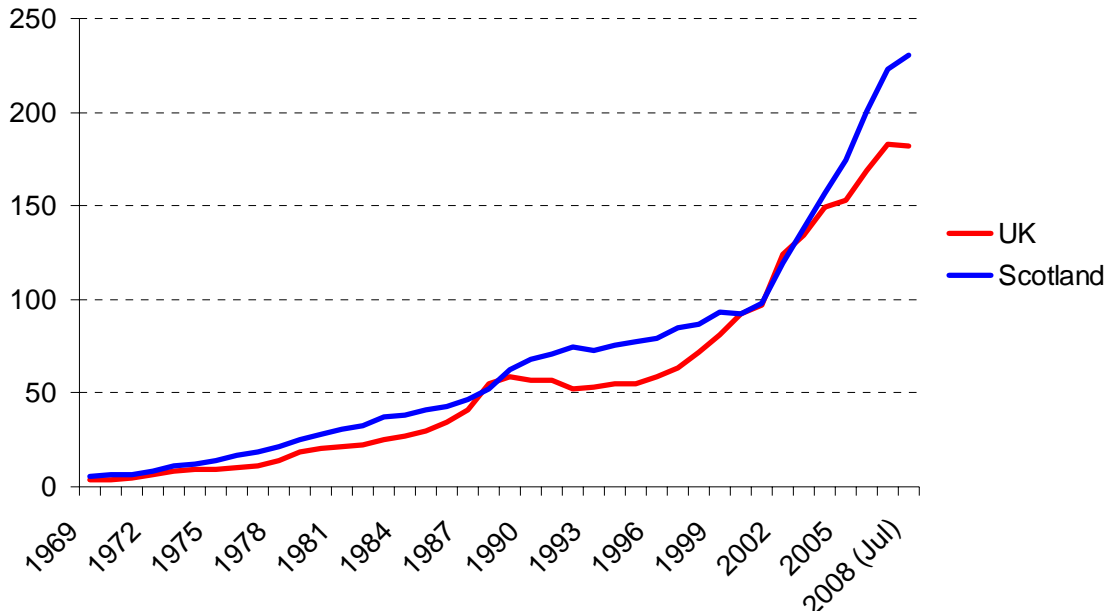
Less than half of developments of any size are dealt with in under four months. This does not seem compatible with the fast changing demands of an advanced economy. However, without comparisons from other jurisdictions it is difficult to draw concrete conclusions from data such as this about the performance of the system. Instead, some of the best evidence for systemic failure in planning comes from its effect on the housing market, because it highlights the system's inability to cope with demand.

The Planning System's effect on the housing market.

The housing market has experienced big fluctuations in demand over recent years. At the time of writing there is a downturn in the market, but overall there has been major upwards pressure on prices over the last three decades, and particularly in the last six years, when house price inflation in Scotland has outpaced the UK as a whole:

¹⁷ 'Major' applications are defined as housing developments over ten units or commercial developments over a hectare in ground space or 1,000 m² in floor space. The listed / conservation category includes listed buildings and those in conservation areas.

UK & Scotland house price index (Feb 2002 = 100)



Source: Table 590, Department of Communities and Local Government

Demand has come from a series of factors, including economic growth, a reduction in the size of households, inward migration and, most significantly in the recent boom, an extension of the borrowing power of individuals caused by low interest rates, the deregulation of the mortgage market and investment speculation¹⁸.

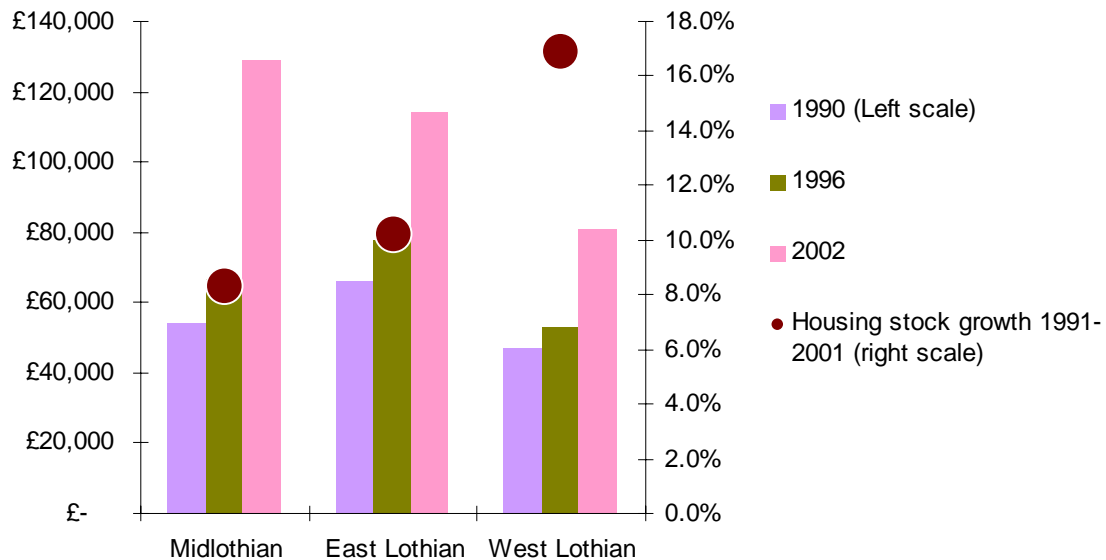
In a normal market, such an increase in demand would result in higher margins by producers, leading to investment in new production. In the construction industry, where response times to new demand are necessarily slow, the market does not respond instantly. Nonetheless, in a situation where the correct balance between the demand for housing and environmental concerns was found, we would expect supply to approach demand over time. There would not be an exact match, because the premium that society placed on environmental amenity would grow as construction rates increased, leading to higher new build prices. But overall, significant new land should come on stream as, at the margins, the material benefits of new housing became more valuable than the environmental benefits of *not* building.

The correlation between new land and house prices seems obvious. And there is evidence from within Scotland that higher house building rates help to keep prices down. A study by Walker Group, a West Lothian based house builder, shows that the availability of land for new housing in West Lothian¹⁹ in the 1990's was greater than in East and Midlothian, resulting in lower house price growth:

¹⁸ For an analysis of the behaviour of the housing market in Scotland, see *Scottish housing market review Evidence and analysis 2007*, Scottish Executive.

¹⁹ The new town of Livingston in West Lothian had a large reserve of land for new building.

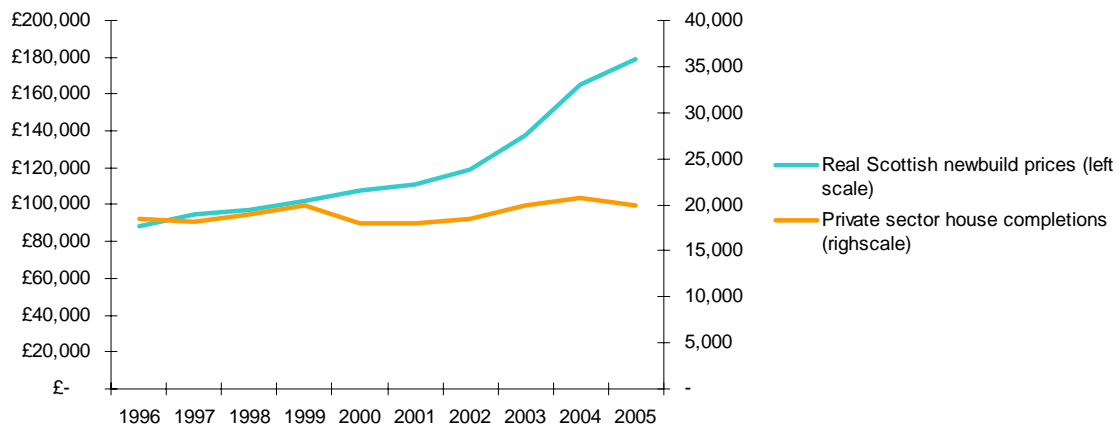
Lothians average house prices and housing stock growth



Source: *The Economics of the House Building Industry*, Walker Group

Scotland-wide there was almost no increase in the rate of new housing construction in response to the recent house price boom. This is largely²⁰ because the planning system is too inflexible to respond to market demand for new land to develop:

Scottish House price rises and new build completions



Source: *Scottish housing market review, Evidence and analysis 2007*, Scottish Executive.

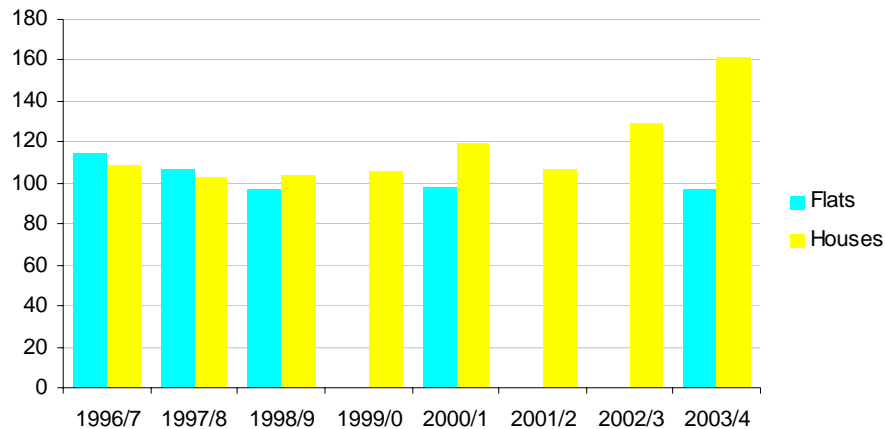
Where the system does provide land for development, it seems unable to deliver the right type of housing in different areas in response to market signals. Surveys of consumer preference indicate

²⁰ As the Scottish Executive admitted in its 2007 *Review*.

consistently that Scottish and British householders aspire to owning detached houses in the countryside or suburbs²¹.

But in Scotland, as in the rest of the UK, the focus has recently been on building city centre flats rather than suburban family homes. The following chart illustrates a study into the relative prices of flats and houses in Glasgow and Edinburgh. It shows how the price of family homes and flats in Edinburgh (where demand for new accommodation was particularly acute) diverged compared to those in Glasgow. In other words, the planning system in Edinburgh was not only providing insufficient land, it was providing it in the wrong proportions for different types of dwelling:

**Edinburgh Property Prices As % of Glasgow
Equivalents**



Source: *The Planning Famine*, Professor Sir Donald Mackay, Policy Institute 2004

These problems are now widely recognised among policy makers. While the previous Executive's response to the UK government's Barker Report²² held that the Scottish system was more flexible than that south of the border, the experience of the recent boom seems to have engendered a more realistic assessment, as *Firm Foundations* and other documents indicate.

Planning Obligations

Planning obligations have introduced enormous complexity into the planning process. They are a source of *additional* delay and cost that further inhibits the efficiency and flexibility of the planning process. In particular they create two problems that affect the market:

²¹ See, for example, *A new build, detached property in the countryside is ideal* – Halifax Mortgages research 27/8/07, which showed that 89% of people would want to live in a detached house, bungalow or cottage, and only 7% would prefer to live in a town or city. And *What Homebuyers Want: Attitudes and decision making among consumers*. Commission for Architecture & the built environment 2005, which reported that 60% of households wanted to live in a detached house and 20% in a bungalow, and Scottish House Condition Survey 2002, which said that 72 % would like to live in a detached house or bungalow.

²² *Review of the Evidence on the Scottish Housing Market*. Scottish Executive (2004).

- Negotiating the obligation with the planning authorities delays the process by ten months on average²³, as does negotiating with third parties who are to deliver the infrastructure subsidised under the agreement – in the case of affordable housing, RSLs, Communities Scotland (who provide funding for RSLs) and others.
- Planning obligations are in essence a variable tax on development that is manifested in higher property prices and lower margins for developers and landlords (as well as bureaucratic costs). Their use as tools to deliver affordable housing and other infrastructure increases house prices both directly and by encouraging developers and landlords to use land for other purposes such as commercial developments that attract a lower levy²⁴. Perversely, they are used mainly in high price areas where there is a shortage of development land and affordable housing. It is here that councils can extract the most from planning obligations, but where these effects are least welcome. A report published by the Scottish Government in 2008 calculated that, between 2004 and 2007, £159.1m was extracted using planning obligations²⁵.

Under the new arrangements it is possible that the cost of delays and complexity may reduce somewhat as planning obligations are built into the plans. However, the overall level of contributions seems set to rise, because it will generally include the capital cost of new infrastructure rather than a levy based on additional usage.

Quite apart from introducing additional costs into the planning system and development industry, planning obligations do not appear to be an effective way of delivering their supposed goals. A recent study by the Chartered Institute of Housing was based on interviews with planning officers, housing officers, developers and RSL's, into the provision of affordable housing through planning obligations. A majority of all types of respondent in the survey agreed that Section 75 agreements 'created long delays in the planning process' and that providing affordable housing in this way represented poor value for money. The report concluded:

“So far the evidence suggests that affordable housing policies [using Section 75] have made no significant positive contribution to the alleviation of housing need in Scotland. Indeed there is a possibility that in the last three years the policy framework may have exacerbated unmet need by slowing down the rate at which housing supply responds to changing demand, thereby adding to upward pressure on prices.”²⁶

An additional danger is that local authorities are tempted to insist on planning obligations in high value areas, irrespective of the local need for the infrastructure in question.

²³ According to *Business Development and the Planning System* Liz Shiel, Francesca Richards and Andrew Waugh Tribal HCH, Scottish Executive 2005.

²⁴ Or not to convert unwanted offices into dwellings. In central Edinburgh, for example, there is a relative surplus of office space compared to residential dwellings. In many cases, planning obligations have rendered their conversion un-economic, exacerbating the housing dearth.

²⁵ *An Assessment of the Value of Planning Agreements in Scotland*, Raymond McMaster et al. In all, planning agreements can add up to 15% onto the cost of a new house, including the subsidy for affordable housing and local infrastructure.

²⁶ All Pain, No Gain? Finding the Balance Delivering affordable housing through the planning system in Scotland – Newhaven Research Jan 2008. The report also cast doubt on theories that creating socially 'mixed' communities through this affordable housing policy was beneficial.

Commercial development

Unfortunately there is very little hard evidence for the impact of the planning system in Scotland on commercial property development. We lack data on the quantity and value of development applications and the aggregate time taken for these to be processed.

More pertinently, there is no means to compare the situation in Scotland and the rest of the UK with that in other countries. In other words, we have no real idea about how our system compares in terms of effectiveness and competitiveness with our main economic competitors.

Instead we must rely on anecdotal and case-by-case evidence, and here there seems a wide acceptance that the planning system introduces unreasonable delays to commercial property development, particularly of major projects, as it does with residential development. Concerns at the seemingly endless rounds of appeals and public enquiries, that planning officials lack esteem and 'clout', that it is hard to arrange prompt meetings with them, and that outside agencies induce further delays, are common.

The Government recognises this implicitly. The Financial Memorandum to the 2006 Planning Bill states that

“Several major business interests have expressed concerns, which they have raised before, that the major uncontrollable cost of compliance with the planning system arises from delays which result from slow processing of applications and the negotiation of planning agreements under Section 75 of the 1997 Act. We have set out in the White Paper how we intend to tackle both of these issues”²⁷

It goes on to say that the new arrangements of pre-developments agreements, more up-to date plans and clearer guidance will reduce a typical planning delay of two years by six months.

If this implies that government thinks that the current system imposes an unwarranted six month delay, then we can assume that on this measure it imposes a cost of six months worth of interest on major developments. Unfortunately we do not know the value of developments in the pipeline in Scotland, so we cannot calculate the total cost of this to the economy. However, the total value of the commercial construction sector is £3.2bn²⁸, suggesting an unwarranted planning delay cost of tens of millions of pounds at least.

The planning system's impact on our surroundings

The planning system's effect on the built and natural environment can only be assessed subjectively. There is no accounting for tastes in architecture or our 'natural' surroundings, and anyway they change over the generations. Whereas Samuel Johnson saw in the Highlands nothing more than a dreary desert, we see a romantic paradise. Victorian buildings, regarded only a generation ago as the epitome of vulgarity, are now fondly regarded. However, it is probably fair to make two general comments on this matter.

²⁷ Para 273. The 2005 report *Business Development and the Planning System* suggested that the rise in householder applications was leading overburdened planners to neglect major applications, with only 37% of them being dealt with under three months, down from 53% in 1998/9.

²⁸ *The role of Commercial Property in the Scottish economy*, GVA Brimley

- The post war period, which coincided with the nationalisation of planning rights, has not been an architectural golden age. However nostalgically our descendants look upon the late 20th Century, it seems unlikely that the monolithic tower blocks, the grim concrete shopping centres and the monochrome rows of dun-coloured council houses will win their affection. The great flatted developments of the 50's 60's and 70's inflicted not just ugliness but severe social ills on their inhabitants²⁹. Mercifully, many are now being destroyed. New development seems less offensive, but the ongoing arguments over the threat to Edinburgh's status as a 'World Heritage Site' are testament to the continuing widespread concerns about the quality of modern architecture³⁰.
- The government implicitly admits that older buildings are more attractive than their modern equivalents by 'listing' 46,600³¹ of them (almost without exception pre-war) to protect them from redevelopment, and promoting our historic cities and towns as tourist attractions. If post war buildings were as attractive as their Georgian and Victorian equivalents, Cumbernauld would rate five stars in the tourist guides.

To what extent the planning system *per se* is responsible for ugly building is moot. But it has certainly not prevented the despoiling of our cities since the war.

The planning system's impact on the 'natural' environmental is very different. There is no doubt that it has protected the Scottish countryside from development to a large degree. A survey by Scottish Natural Heritage calculated that, between 1990 and 1998, the 'built up areas and gardens' habitat in Scotland had expanded by 2.1% - to a total of 2% of the total land area in Scotland³²! Meanwhile, the colossal premium paid by developers for land with planning permission indicates that we would expand our 'built up areas and gardens' if we could. This begs the question, **is it right to protect the rural land from development to the extent that we do?**

The Planning Gain phenomenon

Perhaps the best indication of failure in the planning system is the extent of 'Planning Gain'. This is the leap in value of land that has been granted planning permission³³. In Scotland it is not unusual for land with planning permission to be 100 or 200 times the value of nearby land that can be used only for agriculture. In effect, planning gain represents the premium that our society places on land *not* being developed.

When we consider that 98% of land in Scotland is non-urban, and that house prices have inflated way beyond the affordability of people on modest means, and dangerously stretched the borrowing capacity of middle earners, it is clear that this premium – Planning Gain - is much too high. Do we really think that the environmental amenity of a hectare of farmland is one hundred

²⁹ A good review of the mistakes of the past on housing design is a *Historical Literature Review of Housing Standards and Quality*, Scottish Homes.

³⁰ In August 2008 UNESCO's Director General, Koïchiro Matsuura, called for a halt to Edinburgh's major developments, while an investigation into the city's world heritage status was carried out. In the same month the Times' Magnus Linklater condemned the bland design of modern developments in the city - *Why leave a city's designs in one man's hands? Edinburgh's celebrated skyline is threatened by a planning policy that puts mediocrity before imagination or beauty*, Times August 13th 2008.

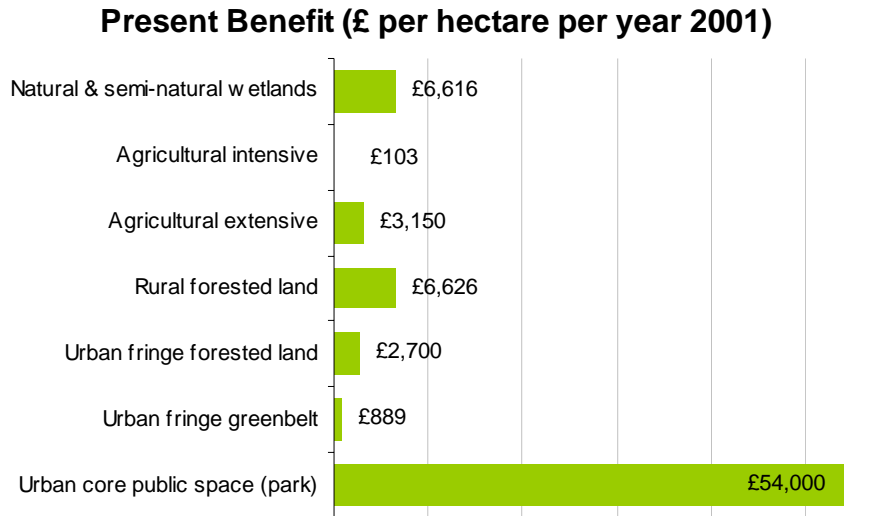
³¹ See *Guide to the Protection of Historic Buildings*, Historic Scotland, 2006.

³² *Natural Heritage Trends: Broad Habitats (1990 – 1998)* SNH, updated April 2004.

³³ The term is also used more specifically to describe the developer contributions that arise via Section 75 etc from this rise in value.

times that of an acre of housing? Of course not. The planning system treats development as if it were a pollutant of scarce land.

The Barker report into Housing Supply in England and Wales attempted to measure how people valued the environmental amenity of different types of open space:



Source: *Review of Housing Supply*. Kate Barker 2004

The results are based on a methodology, ‘contingent liability’, which has its limitations, and would probably have been slightly different in Scotland. However, they do indicate that people attach little value to agricultural land, of which we have plenty, compared to urban open spaces, which are under constant pressure from our policies of confining development to the urban area within a ‘green belt’.

To understand why our planning system fails so dramatically, we need to look at the philosophy behind it, before looking at how other systems work and proposing changes that might remedy the situation.

Philosophical problems with the Scottish planning system

That the planning system has major failings should come as no surprise to students of political economy, because the system is based on a model that has failed in other fields.

The rights to develop land are valuable assets, similar to other ownership rights, of property or other assets. Most of these are of course traded in the market place, where price signals between multitudes of agents determine where they are most useful or desirable, and therefore how they are distributed. All sorts of incentives exist in market systems to ensure that assets are traded efficiently through the competitive process.

Development rights are, by contrast, owned and distributed by the state. This approach is prone to well known problems of political decision making and resource allocation common to most government interventions.

These problems should be familiar to anyone who has examined, for example, the economy of the Soviet Union, or other public sector monopolies in the UK such as the health service.

In the same way that the Soviet government inadequate information on how many shoes to produce, and made poor quality ones that nobody wanted, so our planning authorities continuously misallocate land development rights for the wrong uses, as we have seen. There are a number of reasons for this:

1. Planning authorities and the government lack sufficient knowledge to judge the relative merits of different uses for land. Which is worth more, the beautiful view of the valley or a hospital built there? In the absence of information about the myriad individual preferences of the public (provided so efficiently in a market system by changing prices), they can only rely on 'expert assessments' to make decisions like this, which are invariably inaccurate and become out of date almost as soon as they are made. It is absurd to suggest that a local council can draw up a 'plan' every ten or even five years which will accurately guess fluctuating demand for different land usages. It is no more likely to get this right that the Soviet authorities were to get shoe production right in *their* versions of five year plans. What is worse, penalising developers for failing to fit in with such a plan, or basing infrastructure finance plans on it are equally mistaken.
2. Government lacks sufficient incentive to get its decisions right. The only penalty it pays is punishment by the electorate at the polls. But elections are infrequent and planning decisions only one amongst a plethora of issues upon which citizens pass their verdicts. A local authority could get every planning decision wrong but still win the subsequent election.
3. Campaigning lobby groups frequently attempt to exploit the distance between government and the electorate and influence decision making on planning. They can have a powerful impact depending more on their public relations talents and financial resources than the merits of their case. These groups are active on either side of the debate; environmental pressure groups or well-heeled local residential societies often succeed in blocking development. Big business with the ear of government can push it through³⁴. The poor and inarticulate tend to come out worse from the planning process.
4. Industries which are heavily regulated favour larger players that can afford the internal administration needed to cope with the red tape. Similarly the planning system is heavily weighted against small developers, encouraging large scale developments of similar style, and inhibiting market entry, variety of architectural style, innovation and competition.
5. In a competitive market, operators are continuously driven by consumer and investor preferences to discover new ways of delivering and developing goods and services and improving productivity. State decision making does not benefit from such a dynamic 'discovery process'. This leads to an inefficient and slow process of decision making – a major complaint of businesses and individuals involved in development – as well as inflexibility in the rules governing planning.
6. Land-use development has costs or benefits for neighbours and implicitly the inverse for developers. A planning decision is often an all-or-nothing event, therefore. If it goes in favour of the factory builder, he receives not only the economic benefit of the factory, but does not pay for the negative externalities – in terms of pollution or unsightly building - he creates. These costs are instead borne by his neighbours, sometimes manifested in monetary terms by a reduction in the value of their property. Victory for the neighbours yields inverse benefits and considerable costs

³⁴ The classic recent example being the decision to wave through the Donald Trump Golf Course scheme, but business also uses its clout to oppose development which might benefit potential rival market entrants.

in terms of lost time and opportunity for the developer. This can lead to ferocious and costly legal and political battles with the loser damaged and embittered.

7. Government is in a strong position to circumvent its own planning policies either through specialist knowledge of the procedures, or appeal to higher 'social' imperatives that provide an excuse for ignoring them. Leading, for example, to sub - standard municipal buildings.

Given these problems of principle, which in different guise have induced systemic failure in industries and countries from Cuba to North Korea, it is perhaps no surprise that those involved with our planning system encounter such difficulties.

This also gives rise to concern about the likely effectiveness of the recent 2006 Planning Act. This has been welcomed in some quarters because it promises to make the bureaucratic process swifter and more decisive. It also promises more certainty for developers by introducing a long term 'National Planning Framework' and insisting that local plans are updated regularly. However the Act largely concerns itself with making the *process* more efficient. None of this helps the intrinsic lack of knowledge at the heart of economic decisions made by the state.

Indeed, policy makers find themselves confronted by the classic paradox of those who seek for the best way to distribute resources in an absence of price signals. On the one hand they can seek for more accurate information by consulting ever more widely, either with the public or with 'experts'. But in doing so they risk clogging up the system further with disputatious quasi-legal processes.

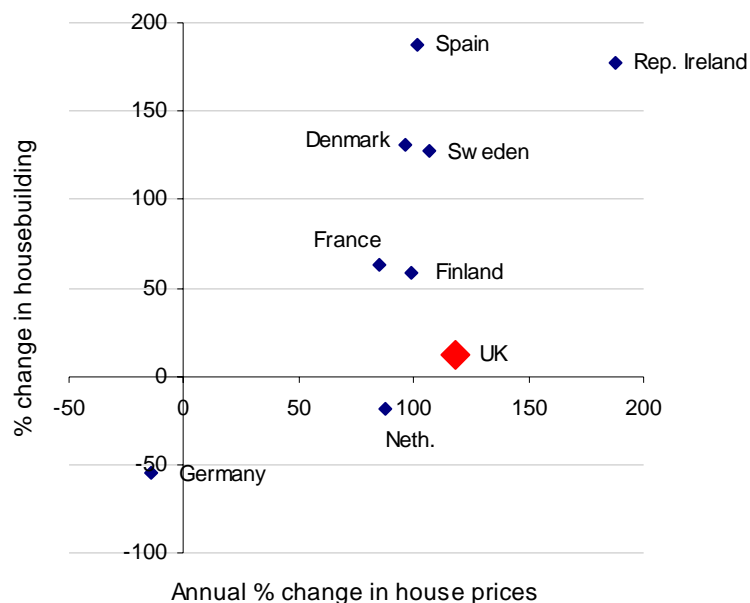
To slice through the Gordian knot with a sword, or seek to unpick it? This dilemma encapsulates attempts at reform of the Scottish planning system.

Alternative approaches

Every country has a different planning system. In fact within countries, indeed within our own national experience, countless examples exist of alternative approaches to distributing development rights.

Using housing data again, it is clear that the UK's planning arrangements seem particularly resistant to price signals. The following chart shows how house building rates have responded to increased demand over the last decade in various EU countries:

Housebuilding & Price Change 1996-2006



Source: RICS European Housing Review 2008

While many of the countries in this survey have experienced a similar housing boom to the UK, only the Netherlands (which has a population density 60% higher than the UK and six times that of Scotland) and has responded so feebly in terms of new house building.

The UK does not just have an inflationary housing market. EU wide, our houses are the fifth smallest on average, 75% smaller than those in France, Germany or the Netherlands, with the smallest room sizes³⁵.

A 2005 study, *Bigger, Better, Faster, More*³⁶ conducted an in depth comparison of the planning systems of Germany, Switzerland, Australia and the Irish Republic and how they differed from the UK model.

The study covers a cross section of countries that are similar to both Scotland and the UK as a whole in a number of complementary respects, including culture, demography, and economy.

It observed that house prices had remained stable over the last thirty years in Germany and Switzerland, despite similar demand pressures in terms of the decrease in household size and economic growth. Meanwhile houses in Britain tended to be older, and new houses smaller, than in other countries in the study. Completion rates were also lower³⁷. The findings are summarised in the table below. It is worth adding that Scotland's population density, at sixty four inhabitants per square kilometre, is nearer Ireland's, while its population has actually declined since 1970:

³⁵ See *Room to Move? Reconciling Housing Consumption Aspirations and Land Use Planning*. John Stewart, House Builders Federation. 2005.

³⁶ *Bigger, Better, Faster, More,- why some countries plan better than others* – Professor Alan Evans, Dr Marc Hartwich, Policy Exchange, Sep 2005.

³⁷ Germany experienced a housing construction boom in the early 1990s which contributed to relatively low rates and in recent years, hence the overall decline shown in the RICS survey above.

| | Germany | Switzerland | Rep. Ireland | Australia | UK |
|--|---------|-------------|--------------|-----------|-------|
| Av. Annual population growth 1970-2005 (%) | 0.16 | 0.45 | 0.98 | 1.32 | 0.24 |
| Decline in household size 1980-'03 (people) | 0.3 | 0.27 | 0.7 | 0.4 | 0.3 |
| Inhabitants per sq km | 230.9 | 181.4 | 57.1 | 2.6 | 246.9 |
| Annual GDP per capita growth 1970-2003 (%) | 1.4 | 0.9 | 4.4 | 2.0 | 2.1 |
| Completions per 1000 inhabitants (2003) | 3.25 | 6.41 | 17.13 | 6.54 | 3.14 |
| Average size of new builds (sq m) | 109.2 | n/a | 87.7 | 205.7 | 76 |
| Average size of dwelling stock (sq m) | 86.7 | 101.2 | 88.3 | n/a | 85 |
| Average annual real house price growth (1970 – 2003 %) | 0.05 | 0.22 | 3.32 | 2.89 | 3.87 |

The key difference in Germany and Switzerland, where prices have remained most stable, with plenty of new, spacious dwellings, lies in the incentive structure of local government. In Germany, central government or state grants to local councils are linked to population and tax revenues, inducing councils to compete to attract new inhabitants and development. For example, the authors interviewed the head of planning in Essen, who told them that the city lost about 1,500 euros in revenue for every inhabitant that left. The planning authorities are structured along similar hierarchical lines to the UK, but a rather different approach of defining zones, within which certain types of building are allowed, gives developers more certainty and seems to make the process faster.

In Switzerland, a different method of local finance results in similar outcomes. There, local cantons raise two-thirds of their revenues from locally raised taxes. This leads to similar competition to retain and attract inhabitants and businesses, both by providing land and ensuring a wholesome environment. And a result, says the report, “There has been virtually no real house price inflation in Switzerland for three decades, while at the same time Swiss houses have become bigger and better, allowing more and more Swiss to live in the houses they desire.”

The report contrasts these regimes with the situation in Ireland and Australia, where the planning systems are derived from the UK model. In the Irish Republic there has been a centrally driven housing boom but, with very little local autonomy, it has not responded adequately to consumer preferences. As a result there has been a glut of small new dwellings on estates, that has not succeeded either in dampening demand higher up the market or the price boom overall.

In Australia planners have followed the UK pattern of restricting land for development while at the same time levying homebuyers to finance infrastructure. Both measures have resulted in a land shortage and price inflation³⁸ in one of the least densely populated countries of all.

Land use planning does not necessarily have to be conducted by government agencies at all. The history of development in Scotland is full of examples of how private agencies, often landed estates, encouraged new building on their land. By setting covenants for developers they were able to facilitate development (thus improving their incomes in the form of rents) while ensuring

³⁸ The paper reports that in Sydney, 78% of the purchase price of a house is made up of the land value.

aesthetic or environmental standards that did not damage the interests of the local area. Edinburgh's beautiful New Town is an example of this type of development. Some such covenants, protecting views or placing limits on development, still exist in Scotland.

In the United States and elsewhere, whole communities have been developed on the same principle, whereby development rights are held by local people as shareholders, to be sold or granted to developers under certain conditions. In this way the economic benefits of new houses or commercial buildings are shared between the developer and the local community, in balance with their environmental impact³⁹.

Lessons and principles

What can be learnt from the problems apparent in our planning system, the philosophical principles that it ignores, and the practice of more successful approaches?

It is clear that a balanced price mechanism is absent from the Scottish planning system. In other words, the various actors in the planning process – local communities, developers, planning authorities and central government – lack proper incentives to find the right balance between the economic imperative of development and the desire to enhance and protect our surroundings.

Further reform of the planning system must therefore focus on introducing the right incentives across the board. More accurate price signals would inform us where and what type of developments we should build. Planning rights must be held by those who are affected by development, so that they can grant them to developers in exchange for some of the economic benefit derived from it.

That way communities - like those in Germany and Switzerland - will welcome development so long as its benefits outweighed any costs. Developers in their turn would be incentivised to maximise benefits and minimise those costs.

Reform of the Scottish Planning System

The new Planning Act is introducing changes to the system that are designed to introduce more flexibility and efficiency to the process of development. This programme of reform – that has involved in depth policy making, legislative processes and consultation lasting many months and years – should not be substantially altered at this stage. The new arrangements need time to bed in and the various practitioners have devoted considerable effort to prepare for and adjust to the new rules. Tearing it up would just introduce enormous uncertainty and delays into the market.

Besides, what is more important than the machine itself is the way that its operators handle it. Overall performance relies more on the attitude and capability of the driver rather than the exact specifications of the vehicle.

³⁹ A good exploration of this concept is *Liberating the Land*, by Dr. Mark Pennington, IEA 2002. He expanded on these ideas in a Scottish context with the author in *The New Land Economy*, Policy Institute, December 2006.

The emphasis of further reform should now not be on the process itself, but changing the culture of its users to engender a positive approach to enabling appropriate development⁴⁰. The only sure way to do this is to incentivise the various people and institutions involved.

This can be done largely without major changes to the legislation, which – both before and after the current Act – in fact allows enormous scope for experimentation and variety in policy application.

At one extreme, for example, a local planning authority could establish a very liberal regime that assigned all land in its jurisdiction for potential development and adopted a relaxed attitude to applications. If backed by a compliant government at the city region level this would result in a development ‘free for all’ that would certainly reduce the price of building land, if not enhance our environment.

At the other, the legislation allows for the polar opposite – a highly restrictive regime with complex plans, punitive developer contributions and a sceptical attitude to applications.

It is true that there are some statutory elements of the planning system that remain outwith the control of planning authorities – primarily the rights of quangos and infrastructure companies to influence the process. I suggest measures to extend the influence of accountable government in these areas (see C below). But the two primary proposals here are aimed at encouraging a culture of sensitive development, by introducing the right incentives for the planning authorities to encourage development (where its economic value outweighs environmental considerations), and for developers to design sensitive projects.

They are, A, to reform local government finance so that planning authorities have a positive incentive to encourage development, and B, to reform developer contributions to provide a balancing incentive towards sensitive development in line with popular tastes.

A. Incentives to develop – reforming local government finance

Both principle and practice (in countries like Germany and Switzerland) suggest that local communities must have an incentive to allow development in their area. In other words they must have a share in the economic benefits that come from commercial and residential projects. With the right incentives, appropriate development – essential to Scotland’s prosperity – will be encouraged, and a positive, *enabling*, culture is likely to flourish within the planning system. Higher priority would then be accorded to planners, with the relevant officials gaining prestige and clout within the authority because they would be responsible for delivering growth and new revenues.

At the moment, the opposite incentive is in play. Local Authorities *lose* money from new development because they must fund key services – schools, roads and so on – that underpin new housing or commercial premises. The council tax they eventually accrue from new housing is insufficient to cover the new demands placed on them⁴¹.

Currently, there is a growing trend for local authorities to look for their economic dividend from developer contributions, a process that is entrenched in the new Act. As argued in the next

⁴⁰ The term ‘culture’ was used with surprising consistency by interviewees from all walks of planning life during the course of research for this paper.

⁴¹ How local authorities lose money from development is described well in the Barker Report.

section, we believe these should not be the mainstay of local authority revenue from new development.

This paper suggests instead that local government finance be reformed so that new development – whether residential or commercial – brings additional revenue to local councils that outweighs any costs.

Local councils should have greater tax raising powers so that the services they provide locally are largely funded locally. This would mean that new developments would pay, through the revenues they generated, for the services needed to support them⁴².

These ideas have been discussed in detail elsewhere, not least in Reform Scotland publications such as *Local Power* and *Fiscal Power*⁴³, because of their merits quite apart from the planning point of view. There is no need to discuss their implementation in great detail here. Suffice it to say that a simple first step would be to allow Local Authorities to keep the revenue from business rates generated in their jurisdictions. Currently the City of Edinburgh, for example, loses around a third of its business rates for reallocation by the Scottish government – hardly an incentive to attract new investment.

However, it may be that such taxation reform does not take place, or is delayed for a time, and local authorities continue to rely on central government grants for the majority of their income. In the interim, the same principle should be applied to ensure that councils benefit from new development.

The financial settlement between central and local government should thus be reassessed to take increases in households and businesses into account. In other words, a mechanism should be introduced so that councils receive more money as soon as their population and development increased.

B. Reform of developer contributions

One of the major elements of cost and delay in the planning system is the evolving network of developer contributions. The thinking behind developer contributions in Scotland is philosophically muddled, and their practical results are pernicious. This paper recommends that these should be drastically realigned so that they perform their proper function in providing an incentive towards high quality development and compensating those affected for any environmental or social damage caused. Developer contributions should not thus be abolished in their entirety. Instead, they must be re-thought, and the principles and purposes of their use clearly stated.

This is a complex area of economics and public policy that merits discussion in some depth.

As we have seen, the development of land potentially creates costs that, while hard to quantify, are imposed on the development's neighbours. These 'externalities' (a term discussed in the box below) are typically environmental, but can be social or economic too.

Externalities – beauty and the beast

Assets or economic activity often have an intangible value, negative or positive, which is hard to capture through an income or cost stream. This is called an 'externality' by economists. In general, the market will undersupply positive externalities, such as beautiful views, because it cannot extract value from them. Similarly it might oversupply negative externalities, such as pollution, because it does not pay the full costs of them. In essence, the whole question of how to distribute development rights and undertake land use planning is bound up with trying to quantify the externalities inherent in our environment. So it is hard to avoid use of an ugly word to discuss the economics of beauty.

For example, a noisy factory built in a peaceful rural valley can impair the visual amenity, as well as the peace and quiet, of the existing inhabitants. A new supermarket or transport link, while providing economic benefits to local people from lower grocery and travel bills, might also impose costs in terms of threatening the viability of town centre businesses and thus impairing the social attractiveness of the area.

It is right that a mechanism should exist, therefore, for developers to contribute toward the local community to compensate for such externalities. In other words the quantifiable economic benefits of development should outweigh any environmental or social costs so that everyone benefits.

Under such arrangements, not only would local people and their elected representatives have incentives to allow and encourage development by sharing in its economic benefits, but developers would have balancing incentives to minimise the negative externalities that they inflict. This element should be central to any planning system. **Developers must have a financial stake in ensuring that their project causes as little damage as possible to the local environment, or indeed enhances it.** By making the size of the developer contribution dependant on its environmental and social impact introduces an essential incentive towards high quality development that enhances our surroundings, something that has been missing in Scotland for far too long.

However, in Scotland a system is evolving whereby developers are also expected to pay for local infrastructure whose costs are easily ‘internalised’ i.e. paid for by the people who enjoy their benefits. They are also being asked to fund a social welfare programme - affordable housing – which is really nothing to do with them at all.

A number of justifications are used for these excess developer contributions – now called ‘planning obligations’ which must be challenged.

For infrastructure, the claim is that new housing developments place additional demands on schools and roads, while commercial developments also put pressure on transport. This is of course true, but does not justify an additional capital payment from the new householders or businesses, who will also pay for these services in the normal way through taxes and charges just like everyone else.

In effect, new arrivals are being asked to pay twice⁴⁴. It is as if, on moving to a new area, we were asked to pay a capital charge for use of the local supermarket or cinema, as well as normal prices for tickets and groceries.

Apart from the iniquity of penalising new arrivals relative to existing inhabitants, this is not how investment for the provision of such services should be arranged. In the private sector, most business models involve raising funds in capital markets and reflecting the cost of funds in service charges. Publicly funded models similarly involve debt financing paid for by broad-based taxes.

⁴⁴ Some of the costs of developer contributions fall on landowners (in the form of lower land prices) or developers (in the form of lower margins) as well. As in all markets, price increases are always shared across the value chain, the proportion varying according to circumstances. But the end consumer pays his share.

Developers are also often required to contribute to ‘affordable housing’ projects. These introduce enormous complexities into the planning process. They involve time-consuming negotiations with social landlords, as well as local authorities. In some cases, government funds (in the form of Housing Association Grants) are insufficient to complete the funding package, slowing projects down even further. As we have seen, the available evidence does not suggest that this programme is working well.

Quite apart from the costs involved and its effectiveness, it is hard to see why developers should be expected to pay for a programme of affordable housing provision in the first place. After all, most other aspects of welfare policy are funded by general taxation, usually at the national level.

Besides, the trend elsewhere in welfare is to provide recipients with cash with which to buy necessary goods and services in the open market⁴⁵. A complex system that requires developers to subsidise the building of dwellings for certain people in certain areas on an *ad hoc* negotiated basis is not just rotten economics but perverse in welfare terms too⁴⁶.

Debate about developer contributions in Scotland – as in the rest of the UK – is usually focussed on how to make them simpler and more effective. Many developers and people in government would prefer a simple tariff system – sometimes called a ‘community infrastructure levy’ – that would provide some kind of certainty and avoid the protracted and costly negotiations that currently bedevil the system. Ingenious proposals to encourage council lending for investment, equity stakes in infrastructure companies or bond issuance have also been proposed. Many of these have merit given the current complex and costly burden of developer contributions to infrastructure and social welfare. But they all presuppose that developments should be heavily taxed for purposes that are really not possible to justify.

A related idea was floated by the Barker Report, which suggested a ‘Planning Gain Supplement’ as an alternative to developer contributions. This would tax the planning gain ‘windfall’ described earlier in this paper, to pay for local infrastructure and compensate for negative externalities. This is justified on the grounds that landowners and developers are in receipt of a windfall from society, some of which they should return.

As stated at the beginning of this section, development should indeed take into account the externalities it creates, and compensate for environmental and other damage. But the Planning Gain Supplement is based on the premise that the ‘windfall’ from getting permission to develop is greater than just the cost of the externalities of development.

The concept implicitly accepts that the system is therefore introducing additional costs that should not be there, and the economic benefits of more land being developed would outweigh the externality costs of doing so. This indicates that not enough land is being released for development. The way to solve this mismatch is not by taxing the windfall – which compounds the problem by increasing the cost of land further – but by reforming the system to allow more land to be released, which would reduce its cost so that the windfall disappears. We should be

⁴⁵ Housing benefit itself has just been remodelled in this way, for example. In most Western democracies welfare policy is moving away from targeted benefits in kind to more universal, monetary benefits.

⁴⁶ For a good dissection of the problems with state provision of subsidised housing to certain groups, see *Housing for the Poor: The role of Government*, Economic Affairs, Vol 28 No 2 June 2008. One major problem is that a targeted benefit such as social housing penalises those who are ineligible for it, such as a low paid private sector worker, who then have an incentive to seek the benefit by changing their circumstances for the worse, in a classic ‘poverty trap’.

aiming for a situation where, once a developer has compensated for any negative externalities he created, there should be no ‘planning gain’ at all, so to try to tax it would be self-defeating.

I would question the logic behind both a ‘community infrastructure levy’ and a ‘planning gain supplement’ therefore. In fact, the proposed reforms of local government finance and affordable housing outlined above would remove the need for either of these or for developer contributions to fund infrastructure.

In their place I suggest a far simpler and lighter system that focuses on the externality costs of development. A system that will reduce the costs of land and housing while improving their environmental impact. However, the change proposed is mainly economic rather than legislative, because it makes use of the existing arrangements for developer contributions, and takes into account some of the ideas that have been put forward for reform to encourage simplicity and certainty. The key recommendations are:

- Developer contributions should be explicitly to compensate the local community for externality costs such as environmental blight or undermining its social cohesion. Contributions could be made either by the provision of some facility to mitigate the effects of development, or, if none adequately captured the costs involved, in cash⁴⁷.
- The contributions should thus be decided at the level of government that represents the community affected most accurately. For simplicity, the same definitions used in the 2006 Act for the various scales of development (described above) could be used. So contributions related to ‘local’ developments could be decided upon either by community councils where they exist, or by representative committees of local councillors⁴⁸. Those related to ‘major’ developments would be negotiated at the local authority level.

⁴⁷ Currently, while developers (notably of wind farms) are sometimes invited to compensate local communities for the environmental blight they cause, they have to do so by providing some new facility - typically a refurbished village hall, or a new play park. The problem arises when the new facility has limited value to some in the community, who therefore either miss out on the compensation, or else demand so much that it becomes too costly for the developer to provide. In these cases a monetary payment for development rights is the only way to find the right balance. Critics of this concept have complained that it smacks of ‘bribery’ of the local community to let unsightly development go ahead. But if the development really is local in nature, there is no reason why local people should not ‘sell’ the development right, since only they will be affected by it. In fact they are more likely to arrive at the right price because they will be able to assess the impact of the development in terms of, say, a decrease in the value of their homes, or other negative effects. There would at least be a good chance of a better outcome than a higher authority imposing the development on them for an arbitrary level of compensation. A further criticism is that local communities would ‘hold out’ for compensation even when there were negligible externality costs from the development. It is likely that the huge number of community councils (there are currently 1,200 in Scotland) would provide sufficient competition to prevent this to any damaging degree – the developer could just go elsewhere. But even if ‘holding out’ did occur to an extent, it would still be a preferable state of affairs to the current situation where blanket resistance to development has led to such high land costs.

⁴⁸ Some community councils are either in abeyance, or have not matured sufficiently to be truly representative of local interests. The Reform Scotland paper *Local Power* recommends that Community Councils be able to acquire greater powers if a plebiscite of local residents showed that local understanding and willingness for such greater devolution of power and responsibility existed. These additional planning powers could be included in a similar arrangement to ensure that they were only devolved to a competent and responsible body. In the absence of such, decisions could be made by a committee of councillors from the same area.

- ‘National’ developments would still be decided upon by the Scottish government, but with a contribution negotiated with, and paid to the affected local authorities.
- In the same vein, the definition of ‘permitted development’⁴⁹, - changes to land or buildings too small to require planning applications at all - should be devolved to local communities, who are best placed to weigh the advantages of constituents’ freedom to adapt their property with any aesthetic downside to the community. The variety of regimes that this would encourage would allow homebuyers greater choice in the ambience of the neighbourhood they wanted to live in.
- An element of the contribution should be built into plans so that developers know for certain what they will be before considering a project. For example, plans could stipulate that developments had to take into account local architectural styles.
- Where the development is outwith a plan, or contains elements that the plan does not take into account, the planning authority should decide on the contribution *before* the economics of the development become apparent. In other words, the contribution should be decided upon externality costs alone, and not the profitability or otherwise of the development. Thus developments whose economic benefits outweighed externality costs would go ahead, while ones where the environmental and other costs outweighed the economic benefits would not.
- All developments should be assessed in the same way, including commercial developments, residential ones, roads and other infrastructure.
- The developer contribution should be paid once the development is complete (within a pre-agreed timeframe). This gives the planning authority an incentive to reduce delays in the process.
- The contribution would obviously vary according to the environmental or social sensitivity of the area and the nature of the development. As such it would be more complex than a standard levy. But it would reflect more accurately the circumstances on the ground too. As with pricing agreements in other markets, it need not follow complicated procedures that are subject to difficult interpretations. They could simply be negotiated according to what either side was willing to accept, just like any other commercial transaction.

While some of these proposals would modest changes to the legislation (for example devolving greater powers to community councils), the reforms sit well with the gist of the current system and the new Act. A guidance note could be issued by the Scottish Government, which would encourage and influence local authorities to follow good practice.

Such practice is by no means entirely new to Scotland. The following case study describes a recent developer / authority agreement that had many of the features described above. Indeed Aberdeenshire Council is widely regarded as setting good practice in this field, and has even been able to sell its services arranging developer negotiations to neighbouring council.

⁴⁹ This could well result in an increase in the scope of permitted developments as communities responded to the desire of inhabitants to improve their homes, thus relieving the planning system of a huge number of applications. See, for example, *Householders can convert lofts and extend homes without planning permission*, Daily Telegraph, 11/11/08. The article reported a change in England that would result in about a quarter of all applications being removed from the system.

Pricing beauty: paying for externalities in Aberdeenshire

In 2003 TESCO & ASDA applied to build new supermarkets on the outskirts of Huntly, an attractive market town whose centre hosts many small shops that give the town a special character.

Aberdeenshire has appointed Stuart Robertson, a powerful official called a 'Planning Gain Co-ordinator' whose remit it is to bring together the various parties involved with such new developments.

His approach was to assess, in conjunction with the local community, what the negative impact of the new development would be. Clearly it would damage the interests of town centre businesses and thus impact on the local community by detracting from the character of the local town – a classic negative externality that is not fully compensated for by the extra retail choice which local shoppers would enjoy.

The solution was to request TESCO & ASDA to contribute to environmental improvements to the town centre. The contributions have been used in part to fund a very successful shop enhancement scheme to revitalize the public face of the town centre and at the same time forging links between the edge of town stores and the existing retail community. These links are the overall benefit of the town. Retailers have part funded the scheme, so have a high degree of ownership in the process- relieving local business of an onerous financial burden while enhancing the attractiveness of the town.

At the same time both supermarket operators cooperated fully in the design of the stores and on site landscaping to be as much in sympathy with local landscaping cues whilst achieving designs of structure that important bit different from the norm. The operators also contributed in kind and by financial contribution to the visual arts in Huntly, the finalised value of these contributions were based on the gross floor areas of the stores.

These measures were decided upon without knowing the overall financial implications for the operators, there was no question of the development being 'milked' for as much as it could bear but purely in relation to the impact of the developments on the local community.

C. Measures to streamline the system

The above reforms would introduce a balancing set of incentives into the planning system that would encourage a culture of enabling attractive development where it was appropriate. In addition to this, I would suggest a number of further measures to streamline the system.

Aside from local authorities, community councils, the government and developers, a number of other organisations play an important role in the planning process. It is important that these are exposed to the same kind of financial incentives and lines of accountability that the other practitioners have, to ensure an efficient and effective process.

Various organisations such as the Scottish Environmental Protection Agency (SEPA) and Historic Scotland (HS) play a role in the planning process, either by having statutory rights to be consulted in applications, or in ensuring regulatory compliance by developers.

Where a quango⁵⁰ is involved in decision making in the planning process, it must be placed under the authority of the relevant tier of government (i.e. local councils for local or major decisions and national government for national decisions). The elected body should be able to hold these to account by, for example, placing reasonable time frames on their decision making, as they can over their own officials.

The best way to do this would be to make part of their funding derive directly from the work they do in the planning process. Bodies such as SEPA should charge fees for the work they do on applications, whose payment would be related to performance, including timeliness⁵¹.

A major irritant for many involved in the development process has been the poor performance of critical infrastructure providers such as Scottish Water, who supply new connections to mains

⁵⁰ The acronym stands for 'quasi-autonomous non-governmental organisations'.

⁵¹ Such a system mirrors closely existing precedents such as the way plumbers are paid to conduct compulsory gas checks or mechanics MoT's.

water and sewerage. This is in contrast to private providers such as the gas and electricity companies.

The Scottish Government should encourage a more customer focussed approach by Scottish Water. The obvious way is to privatise the company to improve its commercial accountability. Another would be to encourage competition in the provision of new infrastructure. While the network itself might remain in monopoly ownership, new branches into it could be open to other water companies. Developers could then shop around to find the most efficient and best value provider.

Conclusion: A green and spacious future

Now is not the time for a radical overhaul of the Scottish planning system. But it *is* a good time for a radical *change* in its approach and outcomes. As this paper is published, Scotland faces a host of economic difficulties. One silver lining to this cloudy outlook is that pressure on the planning system will ease as demand for new housing and new commercial development abates. This not only will allow the new Planning Act to bed in, but gives us the opportunity for further reform.

The proposals here are designed to be modest in terms of legislative change, but profound in their effects. By introducing financial incentives to benign behaviour in development planning, the whole process will become less like a political or legal battle and more like a commercial transaction.

This will have enormous benefits to Scotland in a number of ways:

- More development will materialise as local communities compete to attract investment by releasing land, leading to more affordable housing and lower costs for business.
- With more space, new houses will generally be bigger, better designed and set in more spacious surroundings.
- There will be less pressure on city centre parks, playgrounds and gardens.
- Development will take place more often where it is really needed, in response to market signals.
- There will be fewer ‘losers’ from the planning process, as those affected by development will be compensated in a way that reflects their loss better.
- There will consequently be fewer appeals, and the process will be less legalistic, akin more to a commercial transaction than a legal process.
- Local authorities will make it their business to ensure the planning process is as efficient as possible, with competent, high status officials – it will be in their economic interest to do so.
- Quangos and government monopolies will perform better – it will be in their financial interest to do so.
- There will be better design of housing and other development, with a more benign environmental impact. It will be in the financial interest of developers to fit in with local tastes and concerns, because they will have to pay less compensation if they do.
- It is likely that the necessity for detailed development plans will diminish, to be replaced by developer applications in response to market signals.

In short, much of the bureaucratic character of the planning system will wither on the vine. There is no need to micro manage how this process will come about in detail. Human organisations, like individuals, tend to act in their own interest. The task of government is to align those interests

with the common good. We can then trust the people involved to find the best way for themselves.

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