

the myth of zoning – the european experience



The planning system is frequently made the culprit in all that goes wrong in English planning, in particular the housing crisis. The current comments and proposals by the government, recently brought to attention by Dominic Cummings' description of the planning system as 'appalling', are just the latest in a series of ill-defined reforms.¹ None has succeeded in delivering more housing than was the case under the previous system. The latest iteration aims to 'rethink planning from first principles', as announced by Secretary of State for Housing, Communities and Local Government Robert Jenrick in June this year.² At the heart of the reform is a zonal planning system that provides direct building rights to proposed developments that comply with the zoning code, inspired by the US. The main argument is that such a system is faster *and* better.

The government's proposals have been met with instant criticism in the world of planning. The RTP1's Chief Executive, Victoria Hills, responded by saying that 'dismantling [the current discretionary planning system] completely in favour of a zoning system will not result in faster permissions or better development' and called local planning zones a 'blunt instrument'.³ The TCPA's Policy Director, Hugh Ellis, presented the debate over a zonal system as a 'straight trade off between certainty and democracy'.⁴

The Planning White Paper announced in March has been published just as this article goes to press, and it is worthwhile reflecting on the zoning practices in Europe. The Universities of Glasgow and Liverpool recently carried out work for the Scottish Land Commission, studying housing land allocation, assembly and delivery in three European countries: Germany, the Netherlands, and Switzerland.⁵ One of the problems within the debate in England is a fundamental misunderstanding of how zonal systems such as those elsewhere in Europe work – not only on paper, but also in practice.

Often a distinction is being made between 'conforming' planning systems, in which development

rights are assigned in binding land use plans in advance according to a long-term spatial strategy, and 'performing' planning systems, in which development rights are evaluated on their merits in line with non-binding policy. The former is often associated with zoning. The UK's discretionary planning system clearly belongs to the latter category of performing planning systems and has long been an exception in Europe.⁶ This dichotomy, however, is too simple and neglects the practice in many European countries, where land use plans are negotiated between stakeholders and can therefore be considered 'neo-performative'.⁷

Conformative planning systems as imagined by planners familiar with discretionary planning systems probably never existed in their purest form. Germany intended to create such a system in the 1960s, but it remained partial. Detailed land use plans are nowadays almost exclusively drafted in response to proposed development. The same is true for the Netherlands, where a conformative system was practised, but given that the municipalities were often also the landowners and the majority of housing was delivered by housing associations, conformance was rarely put to the test. Land use planning effectively occurred through land banking.⁸ While in Switzerland municipal zoning plans provide planning permission to landowners directly, the municipality also always had powers to designate sites requiring more detailed land use plans.

Municipalities in these countries make ample use of their planning powers to deliver housing that is affordable *and* good. The crux is when and under what conditions planning permission is given and on what grounds they can be contested. In all three countries, a development is permissible if it conforms to the provisions of the land use plan, which will at the least regulate the use class and building heights. However, in Germany for instance, binding land use plans often cover only a fraction of the built-up area, and where no such land use plan exists development projects are 'only permissible where, in terms of the type and scale of use for building, the coverage type and the plot area to be built on, the building proposal blends with the characteristic features of its immediate environment and the provision of local public infrastructure has been secured'.⁹

Therefore, any larger project requires a land use plan. And it is here that the UK and neo-performative planning systems differ. Whereas a UK developer can lodge an appeal and is incentivised to do so in seeking a larger profit if the local planning authority refuses planning permission, no such opportunity exists in Germany, the Netherlands, and Switzerland: the municipality is obliged to permit development that is in line with the existing land use plan or regulations, but it cannot be forced to amend its land use plan to enable a proposed development project. Discretion is thus a relative concept, depending on the specific stage in the planning process analysed.

Municipalities in these countries use these powers to negotiate the parameters of development, including developer contributions. The municipality and the developer will usually team up and, despite potentially diverging interests, work collaboratively. For larger or important sites, most municipalities will require a design competition, incorporating municipal as well as developer aspirations. It is common practice that a developer provides local public infrastructure at the specification of the municipality, or, where the municipality insists on delivering this, pays for it, and returns it into municipal ownership afterwards.

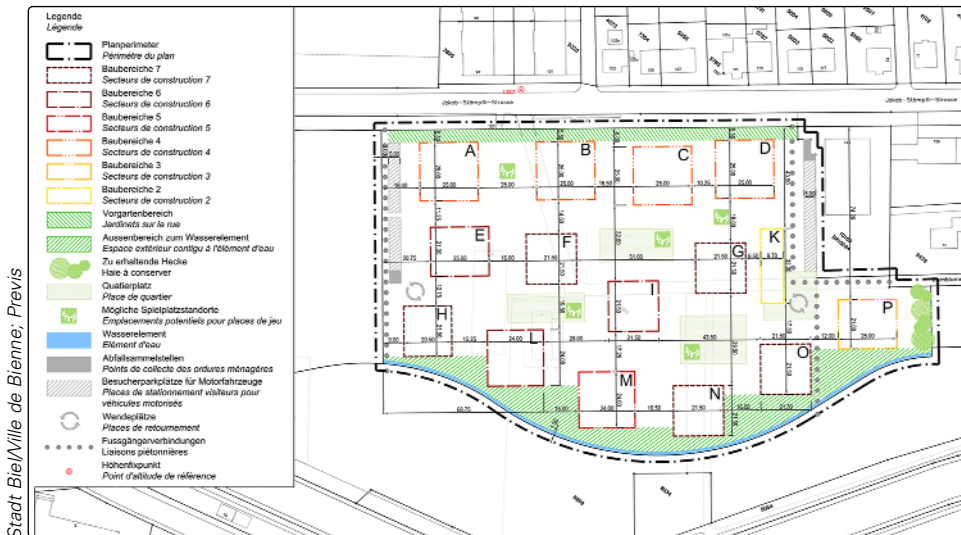
This process is as challenging as a planning application in the UK, and it takes at least a year from start to finish, although usually much longer. Like any planning application in the UK, the detailed land use plans will be subject to public scrutiny, with stakeholders, including the general public, bringing forward their legitimate concerns. Legal appeals are usually launched by those affected by the plan, not developers. In Switzerland, land use plans often require approval under the rules of direct

democracy, meaning public concerns need to be taken even more seriously.

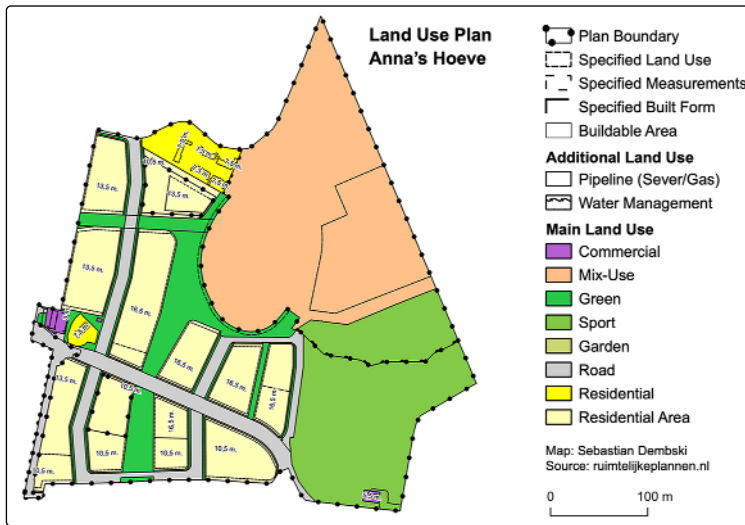
Zoning plans such as these are not faster, certainly not for the large-scale schemes that the government has in mind for its zoning plans. They may provide more certainty than an outline planning permission but will equally include detailed provisions. They also enable local authorities to ensure minimum standards in terms of design and materials without risking an appeal from developers. There is also no possibility to use discretion once the plan is approved without amending the plan, meaning there is little flexibility.

As Hugh Ellis remarked, 'there is nothing inherently good or bad about zonal planning', just as there is nothing inherently good or bad about discretionary planning.⁴ It appears not unlikely that the government's preference would be for a 'light-touch' zonal system in which a limited range of land use categories are used to set out permitted uses and characteristics of development. But the outcomes of such a planning system would need to be evaluated in their totality, rather than simply in their effect on increasing completions.

A recent Centre for Cities report draws lessons from the Japanese planning system, in which simple zoning rules are held to create planning certainty for developers such that they are able to respond to market signals more effectively.¹⁰ Yet if such a system were to be effective in Britain on these terms, would the sort of built environment that results accord with society's preferences? Tokyo's house price growth is impressively restrained compared with London's, but its sprawling suburbs and excessive commuting times are less admirable, while its disordered suburban development, 'with an extreme form of



The land use plan is usually a direct translation of a mutually agreed design, as the example of the Gygax scheme in the Swiss city of Biel/Bienne shows



The land use plan for Anna's Hoeve, in the Dutch city of Hilversum, was explicitly kept relatively broad to allow for a flexible planning process, but due to municipal landownership the specification of the masterplan could be secured via private contracts

haphazard, unplanned growth', lies in stark contrast to the prized stability of the British suburb.¹¹

If a societal consensus is to be reached on the need to build more houses, communities must be brought onside regarding the sort of new development they see in their area. Moreover, the costs of sprawl are no more to be underestimated, simply because they fall on society as a whole rather than on any individual, than are the costs of insufficient housing.

Is there a way to deliver new homes in sufficient numbers within developments that accord to societal preference? Britain has achieved this in the past in the New Towns, while there are lessons to be drawn from our near neighbours, where the Netherlands in particular is able to meet housing need through developments that largely accord to British preference. A key reason underlying this is not that developers are necessarily more free to act as they please in the Netherlands, Germany and Switzerland, but that a great deal of developer risk has been removed from the development process by the reduction in land values that follows from the imposition of high standards of planning and urban design.

Because housebuilders in these countries expect to be challenged by local authorities to build to a high standard, they are able to incorporate these anticipated demands into their land valuations, in the same way that British developers do with planning obligations. Where planning is more able to determine the form taken by development, public and private sectors can work more effectively, not less, and windfall land value gains can be redirected more efficiently towards high-quality development.

Would a simpler zonal system lower land values, which are a major inhibition to development in the

South East of England? Assuming that all areas are of more or less equal accessibility and quality, making more land available for development would introduce competition into the land market and thereby lower prices. But as every housebuilder knows from the experience of encountering Local Plans where only the least attractive sites are allocated, what land is developable at a profit is determined by the market as well as the plan. Consequently, sufficiently profitable sites around high-pressure cities will maintain much of their value under a light-touch zonal system, simply because the most important component determining their price – their location and its accessibility – would remain unaltered.

It is public investments in infrastructure and services, rather than public action to allocate more land for development, that would be more effective in increasing the quantity of land available for development. In fact, when rules governing development are set early in the development process, at the point at which the land use plan is drawn up, land values rise accordingly, with two negative effects.¹² First, a major inhibition to development – the tendency of landowners not to sell for fear of losing out on further land value increase as development pressure continues to rise – is exacerbated. Second, the power of the local planning authority to use the award of planning permission as a trump card in negotiations over the provision of public goods is lost.

A zonal system is likely to provide more legal certainty and has the potential to deliver high-quality schemes, but it is unlikely to be faster unless the government removes any public scrutiny from planning. The point is perhaps not whether a planning

system is zonal or discretionary, but whether it avoids making what is a false choice between delivery of new homes by any means possible and matching society's needs and preferences.

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Notes

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