

# **BUILDING IN BEAUTY**

**BUILDING BETTER, BUILDING BEAUTIFUL COMMISSION**

**FEBRUARY 2020**





KNIGHT FRANK

# BUILDING IN BEAUTY

BUILDING BETTER, BUILDING BEAUTIFUL COMMISSION

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# 1.0

## ABSTRACT

In order to draw out the themes of our questionnaire responses, we have created a fictional landowner with a fictional development site. While this account has been personalised for the purposes of illustration, the promoter of development could be a group of land interests: a public/private partnership or a publicly led entity. The extent to which the practical issues illustrated affect each party varies depending on perspective and the development context, however in order to illustrate the multiple issues that need to be addressed throughout the promotion and development cycle we felt this was most clearly communicated through a personalised approach.

The landowners' story is one of a typical farming family whose land on the edge of a growing town becomes appropriate for large-scale development. We have aimed to use their journey as a means to show the difficulties that landowners face in delivering high quality housing. From the complications of land equalisation, the inability to fund a planning application and the length of the planning process, to the burden that the financing of infrastructure places on large-scale development, the landowners are actively disincentivised from participating in the development process despite their desire to steward a high quality urban extension on their land.

## 2.0

## INTRODUCTION

**Building Better, Building Beautiful Commission:** This research supports the work of the Building Better, Building Beautiful Commission that was set up by the Government in December 2018 to look at improving beauty in the delivery of new homes and neighbourhoods. The Commission will advise the Government by developing practical measures to help ensure that new housing developments meet the needs and expectations of communities, making them more likely to be welcomed rather than resisted. To support this work, the Commission wishes to take forward a series of research projects. This report is the result of work undertaken in connection with Research Project 5: “Building in Beauty.”

**Objectives of project:** The aim of the research was to interrogate the critical path of a standard medium to large-scale residentially led development to consider the standard delivery methodologies that currently prevail in the sector, and how these might be innovated to secure a higher quality residential product, both in terms of the individual home and the wider community. What constitutes a “high quality residential development” is the subject of much debate and is, of course, a question of subjectivity to some degree. However, the notion of “higher quality” for the purposes of this research assumes widely acknowledged criteria attributable to successful placemaking, including: the design and build of the residential homes, including non-standard house types, the characteristics and extent of public open spaces, and the layout and operational efficiency (including sustainability) of key infrastructure.

The Commission supplied the hypothesis that there is a strong correlation between the involvement of a landowner

adopting a stewardship role and a higher quality residential product. If a stewardship role can be encouraged it should follow that better quality housing will be more commonplace. The exercise interrogated:

- What are the key decisions in the housing delivery process from inception to completion?
- Who are the critical actors that influence outcomes?
- How the key decisions are currently made and whether these support a high quality outcome?
- What the motivations of the critical actors are, and whether these support a high quality outcome?

**Methodology:** The project seeks to review the experiences of landowners that have progressed projects that have quality as an explicit aim. It is anticipated that these projects will have faced factors that may have enhanced or diluted that initial aim. By identifying those factors and by understanding how they influence decision-making, it is hoped that the research can identify the critical areas that may determine whether future actors choose to adopt a stewardship role. The research will involve inviting key individuals or organisations to complete a questionnaire or participate in a structured interview, with the responses to be reviewed and analysed by professionals that are active in this sector in order to identify the critical motivational factors and how they might be enhanced or mitigated in the future.

## 3 . 0

## EXECUTIVE SUMMARY

The narrative within this study has been informed by the questionnaire responses we received. They have provided a variety of opinions, on a wide range of sites, in different parts of the country, from different stakeholders. We have drawn evidence from consistent themes which we have been explored with expert input from Knight Frank LLP, The Farrer & Co LLP, Saffery Champness LLP, and SAY Property Consulting LLP.

The major themes to emerge from the study revolve around the reactive nature, cost and speed of the planning process, the burden that infrastructure places on large-scale development, and a tax system that disincentivises landowner participation. We have also examined best consideration legislation and masterplanning and stewardship best practice. The following table summarises the issues identified and the mitigation recommendations.

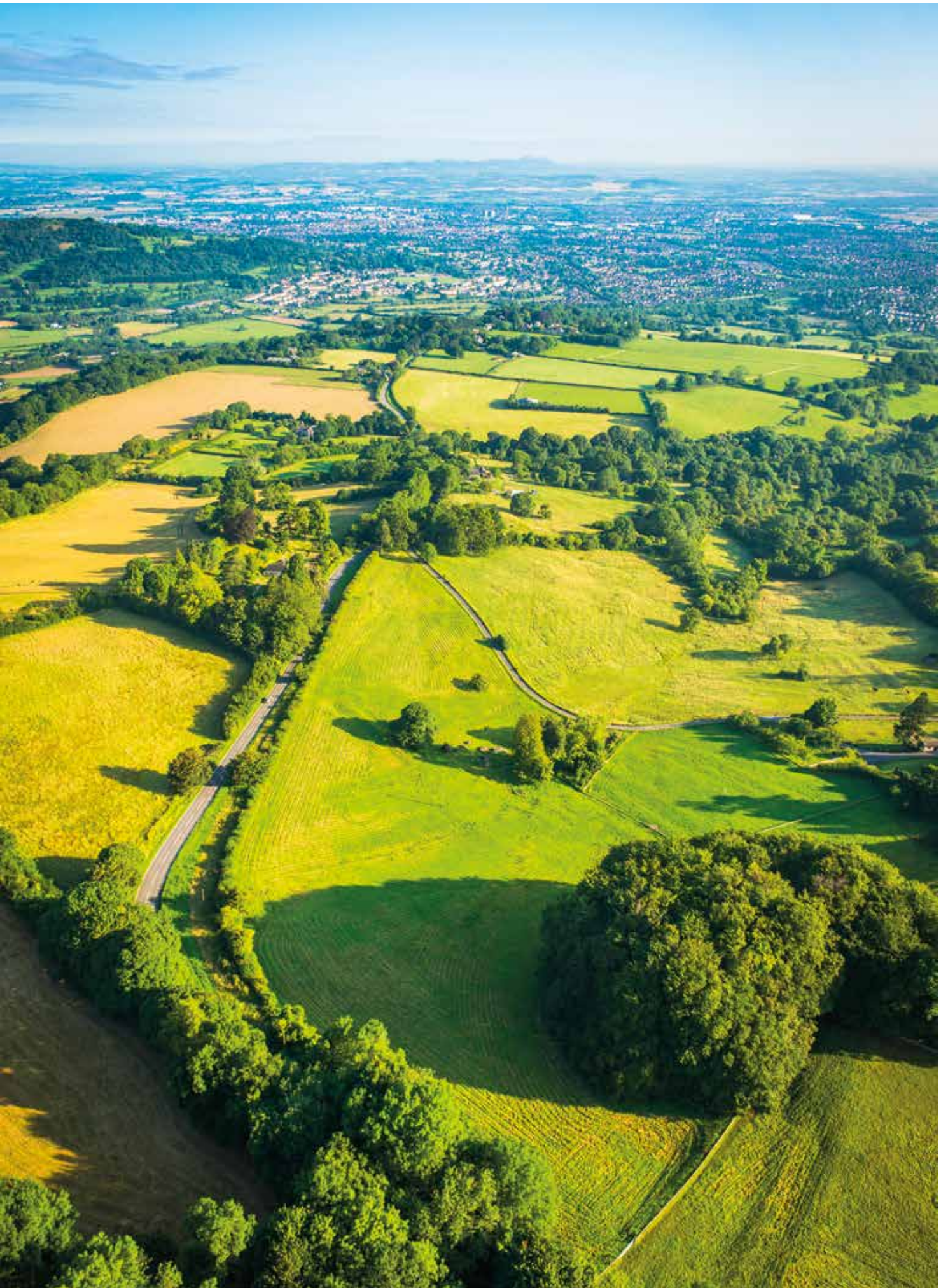
	ISSUE	RECOMMENDATION
<b>PLANNING: THE PROCESS IS REACTIVE</b>	In order for a local authority to be aware, let alone consider the merits of, land within their jurisdiction, they are reliant on land being promoted. This is a reactive process which leads to a distrusting and confrontational system where NIMBY-ism is commonplace.	Planning should begin with a systematic and objective approach to defining the right place for development. Geospatial information systems can be used to map the sustainability credentials of all areas informing a presumption in favour of development.
<b>PLANNING: THE PROCESS IS PROHIBITIVELY EXPENSIVE</b>	The cost to promote land for sustainable residential development is prohibitively expensive for most landowners.	Data collation can improve the evidence base facilitating more proportionate requirements and reduce the cost burden on applicants.
<b>PLANNING: THE PROCESS IS SLOW</b>	The main delays to achieving a planning permission come from interaction with statutory consultees and is often over twice as long for larger schemes.	A permission in principle would focus the planning application process onto the main and fundamental issue of whether in principle development as proposed is capable of being acceptable.



	ISSUE	RECOMMENDATION
<b>INFRASTRUCTURE: THE BURDEN IS UNFAIRLY PLACED ON LARGE SCHEMES</b>	Large schemes bear the cost to upgrade networks when they benefit a wider community. Whilst the projects are large, that does not mean they can contribute any more – pro rata – to infrastructure.	The cost of major infrastructure items should be equalised across all new developments within a sub-regional geography. Large sites should deliver local community benefits based on evidence of local need.
<b>INFRASTRUCTURE: IT IS DIFFICULT TO SECURE FUNDING</b>	The cost of infrastructure is overly burdensome and front-end loaded. The costs can be compounded by expensive finance rates and short-term loans, which force participants into joint ventures with larger corporate investors and dilute ambitions of quality.	<p>Consideration should be given to a means to neutralise the favourable rates enjoyed by corporate entities given equivalent collateralisation and covenant strengths.</p> <p>Consideration should be given to a Patient Capital Fund to provide long-term lending at competitive rates, with flexible repayment options (e.g. tariff repayments when homes are sold), and where developments meet certain criteria that encourage good quality sustainable settlements</p>
<b>TAX: COLLABORATION AGREEMENT TAX TREATMENT IS RESTRICTIVE</b>	<p>Equalisation can mean various things to different people. Broadly, it means trying to equalise receipts on sale between landowners.</p> <p>Equalisation agreements face issues with double charging if the land is sold in a different proportion to the percentages set out in the agreement.</p> <p>Land pools can, under current HMRC practice, be set up without charges to CGT or SDLT but access to Entrepreneurs' Relief or Business Asset Rollover Relief on the proceeds of land sales can be difficult unless a common entity can be set up involving both landowners to continue to use the land in a trading business.</p> <p>Cross options or restrictive covenants can result in a capital gains tax charge on creation which can be significant and would undermine the commerciality of the arrangement.</p>	<p>A solution would be to bring the current land-pooling trust into the statute so there is no doubt about its taxation status.</p> <p>Consideration should also be given to extending Business Asset Rollover Relief and Entrepreneurs' Relief to receipts from a land pooling trust, if the land in question would have qualified before the trust was established.</p> <p>Consideration should also be given to extending the current replacement property provisions for agricultural property relief and business property relief to interest in land-pooling trusts, so that the current IHT consequences are mitigated.</p>

	ISSUE	RECOMMENDATION
<b>TAX: PARTICIPATING IN DEVELOPMENT IS TAXED MORE HEAVILY THAN OPTION AND SALE ARRANGEMENTS</b>	The current tax regime encourages landowners to pursue option and sale arrangements for the promotion phase of projects, then to sell development land up front rather than participating in the development for the longer term.	Taxation policy should equalise the tax treatment of land vested as patient equity with current option/sale arrangements. HMRC should introduce rollover relief on income and consider an efficient 'wrapper' to bring together land and infrastructure investment within a corporate structure with satisfactory tax treatment for all parties, and to encourage stewardship.
<b>BEST CONSIDERATION: THE LEGISLATION IS OUTDATED AND IS NOT ALWAYS PROPERLY IMPLEMENTED</b>	The Local Government Act 1972, S123 is a duty to obtain best consideration (i.e. a consideration not less than the best that can be reasonably obtained) but it is not a duty to obtain that consideration instantly. This is not often properly understood.	Reform S123 of the Local Government Act 1972 so that Councils can, without limit, lawfully take into account matters relating to the social, economic, and environmental wellbeing of their areas when considering 'best' consideration.
<b>MASTERPLANNING: THE VALUE OF UP-FRONT MASTERPLANNING IS NOT REALISED</b>	The up-front cost of exceptional masterplanning design can be prohibitive. Landowners are likely to take a more incremental approach which may not lead to the best possible masterplan.	Consideration should be given to government funded masterplanning awards, and to supporting warranties on non-standard new build housing.
<b>STEWARDSHIP: STEWARDSHIP IS A DYNAMIC ACTIVITY OF OPTIMISING LAND USE FROM START TO FINISH OF THE DEVELOPMENT AND INVESTMENT PROCESS, AND BEYOND TO SECURE THE MAINTENANCE OF A SCHEME OVER TIME</b>	<p>Too often this activity, which is fundamental to value generation in the scheme, is under resourced. There is an urgent need for the development of senior level skills set in place making and stewardship-led development recognising the fundamental shift of emphasis towards deriving triple bottom line value and the long term nature of the activity. This could be accomplished rapidly by means of a highly targeted mid or late-career</p> <p>Executive MBA to quickly develop a cadre of new development leaders with the appropriate skillset.</p> <p>Further, all too often, regardless of their exit strategy, landowners or developers spend an inadequate amount of time creating a robust estate management strategy which considers the TCPA's three principles of success:</p> <ol style="list-style-type: none"> <li>Planning for Long Term Stewardship</li> <li>Paying for long-term stewardship</li> <li>Running a stewardship body</li> </ol>	<p>A study should be commissioned to establish who is doing what and how well it is working. Identifying lessons learnt, including the older stewardship style developments and garden villages and cities. Where exemplar results have been achieved, the best practise should be modelled.</p> <p>As regards community amenities and infrastructure, the planning system should demand what is really needed, empirically researched, over a broader area rather than a repetitive request for a community centre or sports pitch. In this way, landowners, local authorities and communities need to work better together on neighbouring sites plots and across wider geographies to deliver coordinated growth and genuine community benefit. On a scheme level, promoters they should be obliged to consider the setting up of community trusts as a consortium to develop and share one vision which ties in with the local plan.</p>







## 4.0

## FINEBOROUGH

YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
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The landowners are a third generation, arable farmer and his wife. They are in their mid-30s and have two young children.

The family farm is on the edge of Fineborough, a hypothetical regional town in middle England. Their home is a four bedroom detached farmhouse built on the farm in the early 1900s. The farm extends to approximately 300 acres and includes their house, two small farm cottages, farm sheds and arable land. The family have long harboured ambitions of diversifying the farm to provide alternative sources of income, but have never found the time to commit to such a project properly.

The husband works 14-hour days, 7 days a week, 51 weeks a year. He employs one farmhand to assist. The farmhand is paid a salary of £15,000 in addition to the benefit in kind of living in one of the farm cottages with his girlfriend. The wife is a primary school teacher in the local village, which both their children attend, enabling them to combine their commute with school drop-off.

The farm has provided an average annual income of £75,000 over the past three years, but it is relatively unpredictable. Combined with the wife's salary of £20,000 and the net rent of £5,000 they receive from the second farm cottage; their household income is

approximately £100,000 per annum. This allows them to live a comfortable life; they own two cars and play an active role in village life. They would like to travel more but their lives are constrained by the requirements of running the farm.

Fineborough is approximately 100 miles from London, 50 miles from Birmingham and 20 miles from its county town. Whilst it has direct trains to a London railway station, typical journey times are 2 hours and therefore, very few people commute to London on a daily basis. Birmingham is the nearest major metropolitan but the journey is a challenge.

Their town has a population of c.25,000 people, which has increased by 15% since the turn of the Millennium. The ONS forecasts that the population will grow by 7% over the same period in the future.

Fineborough's housing stock has grown by 13% since 2000. The data suggests this has kept pace with household formation, but more and more people are sharing with family due to the challenges of affordability. This has led to increasing pressures for more local housing, although the new houses provided have not been affordable to those in need.



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**“The landowners have  
 a vision for a beautiful,  
 cohesive community where  
 people of all demographics  
 and affluence want to live.”**  
 ◆◆

Since the Millennium, there has been a net decrease in the provision of social housing. The increase in social housing provided by Registered Providers has been more than offset by a loss in social homes held by the local authority, largely due to tenants acquiring their homes under the Right to Buy policy.

The new homes that have been built are situated in one large development on the other side of town to the landowners’ farm. It was built by a national housebuilder in accordance with local planning policy. Those that have managed to afford the homes have been unimpressed by their quality. Some young professionals in their 30s have recently bought homes in the final phase under the Government’s Help-to-Buy scheme, and whilst they are happy to be on the housing ladder, they feel it to be a soulless place to live. Many comment that they have not met their neighbours. They are concerned that the housing market is static and they have limited equity in their property, making them feel exposed and potentially trapped.

Accordingly, there has been a negative local reaction to development around Fineborough. While the quality of the development on the east side of Fineborough has strengthened the resolve of those living in the village, there has been a long held and steadfast opposition to development from those who have lived in the area over successive generations and who do not want to see the character of their town altered. A local pressure group opposes all development of any scale. It is often a similar demographic who are vocal in their displeasure of their children and grandchildren not being able to afford to live near them. There is a growing pressure for more affordable homes. This is leading those who had previously rented in the town, or who were looking to buy, to move to neighbouring areas.

The landowners’ farm abuts the settlement edge on the west side of the town. Together with land owned by the local authority, it is the logical location for urban expansion and has capacity for around 1,000 homes at typical densities. Given the configuration of the road network, it is the most sustainable location for development but was not included in the last Local Plan because the landowners had not promoted it through the call for sites process at that time.

The landowners do not want to live next to a new housing development like others they have seen elsewhere, nor do they want to be responsible for housebuilders to merely recreate the development that has been unpopular on the east side of Fineborough. They hope that with their stewardship they might be able to do things differently. Their vision is for a beautiful, cohesive community where people of all demographics and affluence want to live and where they can find a home of which they can be proud.

# 5.0

## ALLOCATION

YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
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The landowners had appointed a planning consultant to discuss the potential of extending farm buildings or providing ‘glamping’ accommodation – the first stage of their diversification plan. In a chance conversation with the consultant, they learn of the opening of a call for sites for the next Local Plan.

Although the landowners are entirely unfamiliar with the process, and inexperienced in any form of medium or large-scale development, they submit a short letter to the local authority expressing their vision for creating a sustainable development on their land. Although the landowners were unaware, the local authority had stated that submissions should include a detailed pack of information:

*Interested parties are advised to submit relevant technical reports in support of their submission. This should be viewed as similar to what might be required at outline planning application stage. The studies should focus on the impacts of an indicative scheme and identify what measures will be put in place to address those impacts. The following are likely to be particularly relevant: transport statement or assessment, landscape and visual impact assessment, flood risk assessment, Phase 1 habitat survey, tree survey, minerals assessment, town centre uses, and air quality impact assessment.*

The landowners would later reflect that they were fortunate to receive any response from the local authority given the naivety of their submission, but they receive a letter from the Estates Services department of the District Council stating an interest in co-promoting the 100 acres of land they own adjacent the landowners’.

With no knowledge of promotion, or any conception of what an allocation within the Local Plan is, and what the process leading to it might involve, the landowners appoint a residential planning consultant to support them. The consultant firstly explains some of the basic principles of equalisation: both landowners’ land interests may be used for different purposes within a masterplan, but both would be contributing to the overall project. Whilst the landowners might consider taking independent valuation advice, all the land is being used as farmland and despite some farm buildings, it was felt that the overall share of value would approximate to the split of acreages, being 50:50.

On that basis, and with the deadline for submissions rapidly approaching, the landowners agree to split the cost of the reports required with the District Council with the Estates Office taking the lead to tender, appoint, and manage the team of technical consultants needed. The landowners consider themselves to be relatively well informed, and their regular reading of the broadsheets has taught them that housebuilders often report profits that allow their top executives to be paid substantial bonuses. They have also heard anecdotes about the sums of money that other farmers around the country have received for their land when selling for large-scale residential development. They are further reassured following conversations with friends and family; they are all confident that the farm could provide a legacy for their family. None is a strategic land expert.

In the meantime, the landowners are encouraged to seek professional tax advice explaining the various ways to collaborate with a neighbouring landowner and the different tax treatments associated with each.









*Beaulieu Park, Chelmsford*

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**“Policy and/or building regulations need to lead [sustainability] at a national level. A piecemeal approach leads to developers, however aspirational they may be, having to buy land which is price matched against developers who are delivering much lower standards.”**

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COUNTRYSIDE PROPERTIES (BEAULIEU PARK)

#### KEY ISSUE: THE RIGHT DEVELOPMENT IN THE RIGHT PLACE

##### ISSUE

The local plan is reliant on land being promoted. It creates a reactive process and leads to a distrusting and confrontational system where NIMBY-ism is commonplace.

Local Plan Making is a process whereby land availability is critical in defining the delivery strategy. The latest advocate for this approach is the National Planning Policy Framework, where land availability drives the basis for plan making. This is construed by Local Planning Authorities as being a reactive implementation of policy, which in turn places the emphasis of delivering development on the successful engagement by landowners in the local plan making process.

Due to the present lack of a more strategic layer of planning, there is often no locus for and insufficient consideration given to issues of land use suitability, economic opportunity, and utilities/infrastructure capacity at the larger than local level of scale. This can lead to suboptimal and sometimes perverse outcomes with authorities that should be coordinating land use and infrastructure to support the best outcome.

Normally a Local Planning Authority will issue an invitation to engage in a call for sites process to land agents, owners, and leaseholders registered with them, usually annually and outside of any wider publication. It is for these stakeholders to then decide whether they wish to begin the laborious, expensive, and somewhat risky exercise of land promotion. Even the well versed professional land promoting companies, some of whom are also housebuilders, struggle to direct politically motivated local planning authorities to allocate, often piecemeal, land for development in a least worst-case strategy.

It is often prohibitively costly for a landowner to undertake the meaningful work required to demonstrate land is sustainably located, capable of taking the amount of development being proposed; and not in conflict with any interested party or wider development strategy that may or may not be found sound at the subsequent examination in public. It is also highly duplicative and costly to administer in terms of limited planning resource. The conflation of all these costs is absorbed ultimately into the land value prices in the costs of promotion, risk of failure as well as successful acquisition of a planning permission.

All of this follows at least three public consultations, council cabinet approvals, and a detailed assessment of the evidence relied upon to inform a strategy determined by political willingness to see development in certain locations.

If one was to apply the current, reactive, way the planning system is usually applied within the average local planning authority to a single development plot, it is entirely plausible that before a house is built that plot will have been through 21 stages of public and political engagement:

1. A Local Plan making process, with at least four public consultation events and an examination in public.
2. A development plan document-making process with at least three public consultation events and an examination in public.
3. A supplementary planning document making process with at least three public consultation events.
4. A cabinet approval process.
5. A neighbourhood plan making process with three consultation events and a referendum.
6. A planning application process with two public consultation events and a planning committee.
7. An appeal process with one consultation period and an inspector decision.

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**“Planning should begin with a systematic and objective approach to defining the right place for development via an assessment of sustainability.”**

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#### THE RIGHT DEVELOPMENT IN THE RIGHT PLACE (CONT.)

##### **Recommended mitigation:**

The planning system does not need additional complexity; it should be simplified but strengthened.

Planning should begin with a systematic and objective approach to defining the right place for development via an assessment of sustainability that is blind to land ownerships or other factors. This needs to be accompanied by an assessment of constraints, existing utility/infrastructure capacity, economic opportunity and localised housing demand and need assessment at the strategic level of scale (i.e. a County/Unitary/Mayorality) and should empirically test alternative option and impact scenarios. Such analyses can be supported by spatial intelligence technology which should be rapidly and effectively adopted to support public authorities in the decision making. Strategic scale planning should underpin local plan making, and should be undertaken prior to the land allocation process. If undertaken effectively this could provide certainty and obviate challenge, leading to reduced delay and greater public buy in.

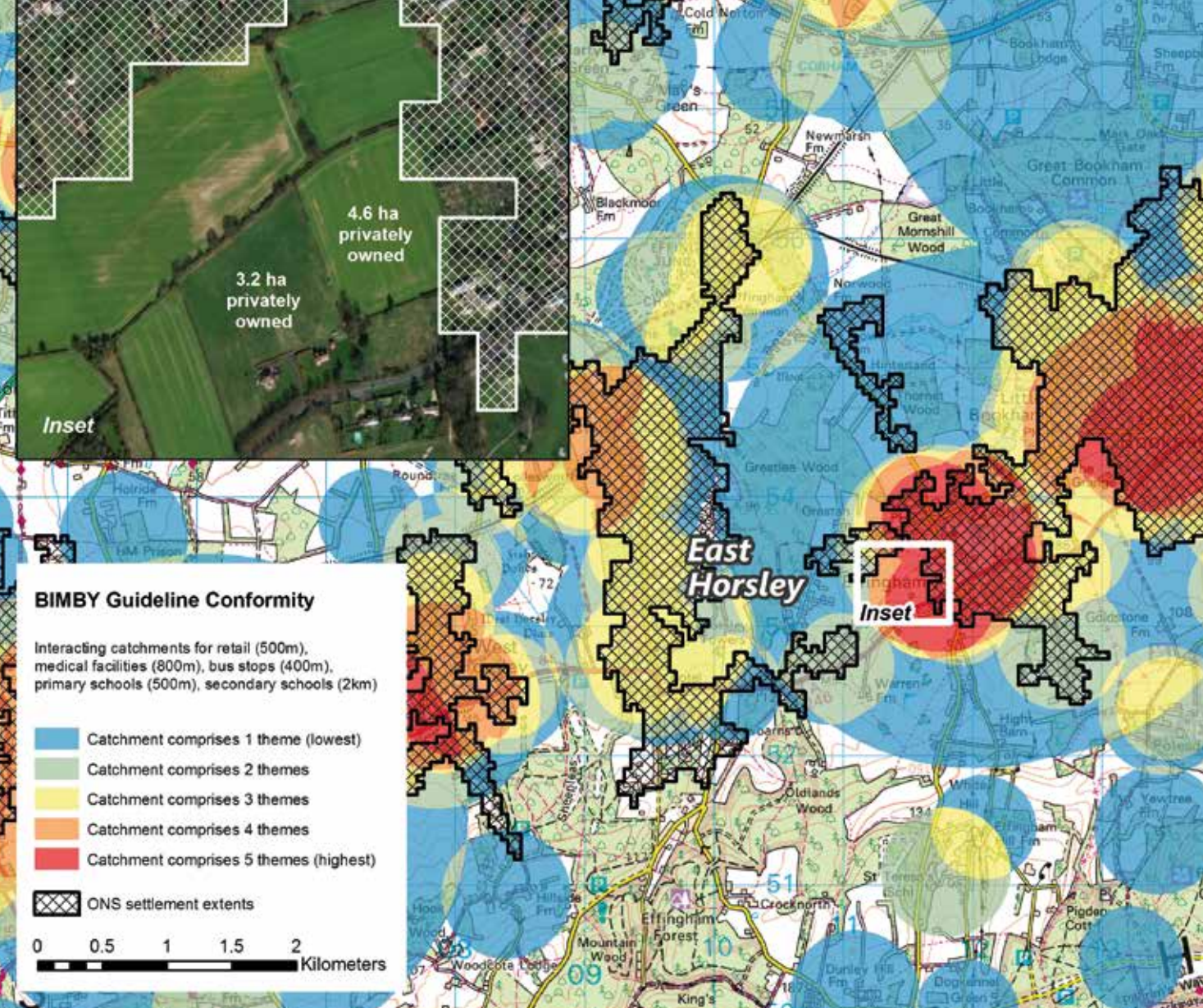
This could create a presumption in favour of development in certain locations as defined by a strategic higher tier authority, from which Local and/or Neighbourhood Plans can respond to in order to define the vision for development.

Localism would remain with stakeholder engagement (e.g. via Enquiry By Design, BIMBY, charrettes), at all levels of planning scale, encouraged by the probability of development coming forward in a given sustainable location. In this system, the ‘right’ development must simply be the amount, type, and location that meets the requirements in evidence to achieve the Brundtland definition of sustainability. The ‘right’ place must extend beyond the timeframe of political cycles and be deep-rooted in expert-witness level evidence.

Intelligent geospatial information systems (GIS) can be used not just to map the sustainability credentials of existing areas, but also of the impact of future strategic infrastructure projects. GIS offers an objective and accurate means to dynamically model sustainability and identify areas that can accommodate development in the most efficient way.

Such spatial intelligence could be deployed to identify the areas with the greatest potential for walkable neighbourhoods, where the need for housing was greatest whilst minimising the need to reinforce existing infrastructure, and capture most economic benefit. The technology is there to achieve this, although the accuracy of the conclusions remain constrained by the availability of good quality data from the public sector.





Prototype application of BIMBY within a Geographic Information System, prepared by Knight Frank Geospatial

#### THE RIGHT DEVELOPMENT IN THE RIGHT PLACE (CONT.)

A presumption in favour of development mitigates the risk of planning refusal and in turn, the requisite returns from planning permission would reduce. In this way, reducing the risk of planning is the most efficient way to reduce the cost of land for development.

Once the 'right' place for the right development has been defined objectively, the Local or Neighbourhood Plan making process should then engage with the relevant landowners directly or at least facilitate other keen and interested parties, developers, and land promoters to create a relationship with those landowners and to bring that land forward.

Regional cities, such as Bristol, have adopted this neighbourhood level framework approach. The delivery of critical infrastructure

and sustainable urban living, work, recreation and education is coming forward at a pace with charrettes being the preferred method of communication with key stakeholders, community groups, cabinet members and other influential parties.

Neighbourhood Plan areas are becoming designated as a consequence of early engagement directly with landowners and communities. The early identification of key issues and the vision and objectives being crystallised at the soonest opportunity within the plan making process allows the buy in of key stakeholders, politicians, the public, and allows for the community engagement process to be proactive and meaningful.







**KEY ISSUE: TAX TREATMENT OF COLLABORATION AGREEMENTS****ISSUE**

The landowners are happy to consider collaborating with the local authority, but they are concerned by the different tax treatments.

**Current position:**

The landowners have three options, as follows:

*1. Equalisation agreements:* An equalisation agreement allows neighbouring landowners to share the receipts of land sales in proportion to the acreages/values of land sold rather than based on the independent single asset land value. This can smooth receipts when a development takes place at different times over land in different ownership. The agreement will set out the proportion of each receipt that each landowner will receive. From a taxation perspective, this can result in a double charge if the land is sold in a different proportion to the percentages set out in the agreement.

For example, if Party A sells their land and is paid by the developer, but Party A has to pay an agreed proportion, Party A is taxed on the full receipt with no deduction for the amount paid to Party B. Party B is taxed on their share as well. It also makes access to Entrepreneurs' Relief and Business Asset Rollover Relief difficult.

*2. Land-pooling:* Following the judgement in the case of *Jenkins v Brown*, it is possible for landowners to pool their ownership so that instead of owning 100% of their land they own a percentage of the whole. That percentage will then dictate the split of the proceeds of any land sale. This avoids the double tax charge that

can be an issue under equalisation agreements. The land pool can, under current HMRC practice, be set up without charges to CGT or SDLT. There is some doubt, however, whether the current practice is correct and some doubt as to whether HMRC's views will change in the future.

Once the land pool has been set up, access to Entrepreneurs' Relief or Business Asset Rollover Relief on the proceeds of land sales can be difficult unless a common entity can be set up involving both landowners to continue to use the land in a trading business.

Land-pools are often used over bigger development sites. These may well take several years to build out and as such, inheritance tax becomes a concern for the landowner. Agricultural property relief will give some comfort, but as this is limited to the agricultural value, it will normally leave a large exposure to IHT on the hope value of the site.

Access to Business Property Relief over the area of land now owned, but not previously owned, can be difficult unless the landowners form a common entity to farm the entire site. Any land that does not form the development, when the land-pool trust is wound up, must be transferred out of the bare trust in the proportions under which the land-pool was initially set up to avoid tax charges. This can result in neighbouring landowners taking areas of land that was not theirs before the land-pool was set up.

#### TAX TREATMENT OF COLLABORATION AGREEMENT (CONT.)

*3. Cross Options/Restrictive Covenants:* The final method employed to ensure that joint development land sales can be shared proportionately between landowners is to use either cross options or restrictive covenants. Very broadly, each of the landowners selling their area of land makes a payment to the other under the option, or to lift the restrictive covenant, to allow their land to be sold. The major issue in this respect is that the imposition of the restrictive covenant or the granting of the cross option can result in a capital gains tax charge on creation. If the development land has already accrued significant value by, for example, being part of the local plan, then the upfront capital gains tax cost can be significant and would undermine the commerciality of the arrangement.

#### **Recommended mitigation:**

A solution to the issues on collaboration agreements could be considered. This would be to bring the current land-pooling trust into the statute so there is no doubt about its taxation status.

Consideration should also be given to extending Business Asset Rollover Relief and Entrepreneurs' Relief to receipts from a land pooling trust, if the land in question would have qualified before the trust was established.

Consideration should also be given to extending the current replacement property provisions for agricultural property relief and business property relief to interest in land-pooling trusts, so that the current IHT consequences are mitigated.

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“The landowners will later reflect that they were not sufficiently aware about the length of the development process.”  
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The landowners are beginning to think about the legacy they can create not only in terms of housing development, but financial security for their children. While they have concerns about the partial loss of the family farm, which has been handed down from the husband's father and grandfather, they are hopeful that the monies received from the 100 acres going into development will help their family diversify their income.

They consider themselves relatively young and they are in good health. They will later reflect that they were not sufficiently aware about the length of the development process, but currently they expect that IHT will not be an issue during the life of the development.

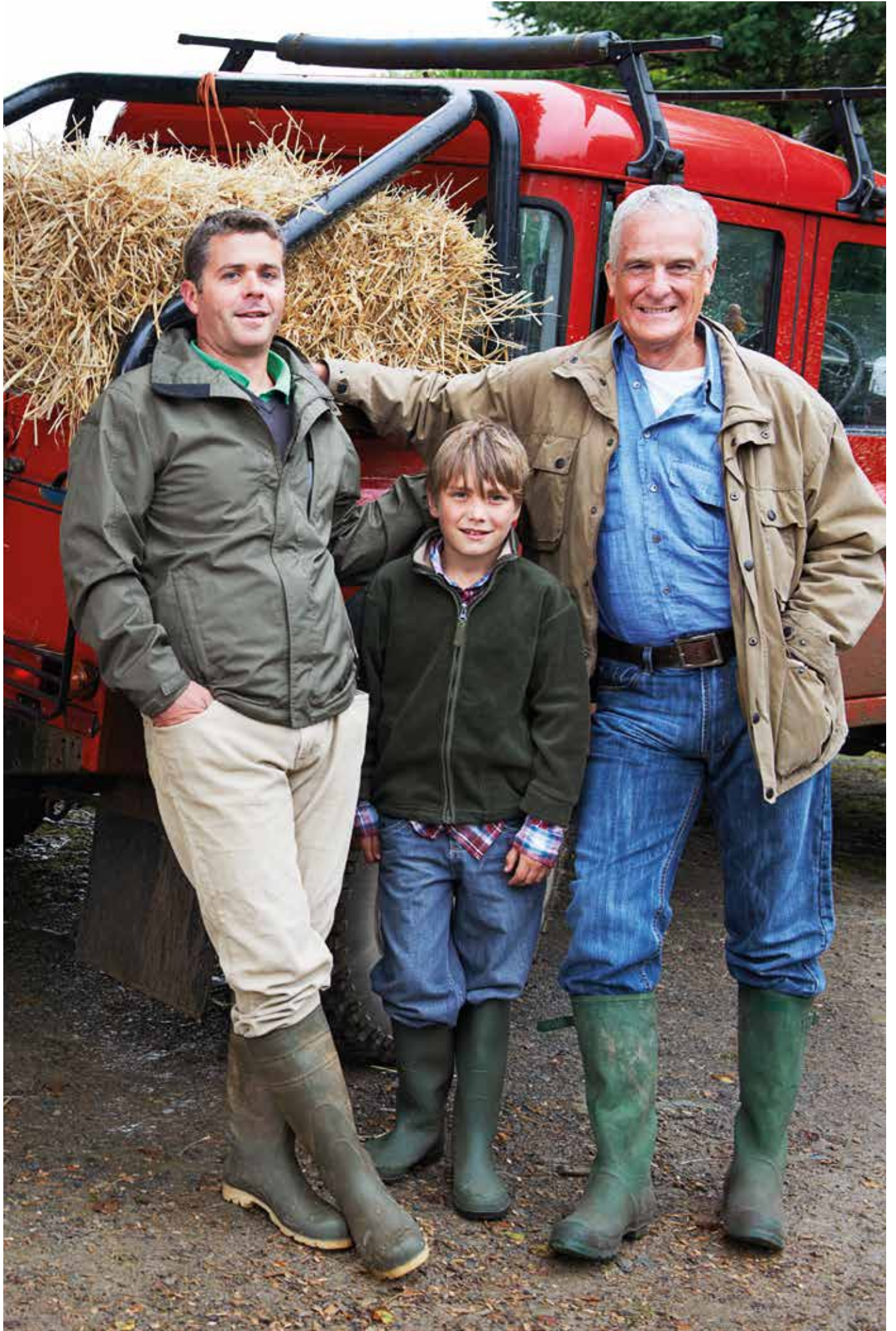
At present, they also have no intention of selling the land in order to buy another farm, or any qualifying asset, so they do not expect Business Asset Rollover Relief to be worthy of consideration.

By process of elimination, the landowners conclude that a land pool is likely to be the most suitable option for them although they are concerned about the level of control they are going to be ceding to the local authority. As the scale of the opportunity has grown, so has their determination to deliver a high quality development. They view themselves as a custodian of the land and begin to research the successes of other high quality schemes around the country.

They recognise that if they own a percentage of a total development site, then their control is going to be proportionally diluted. Although they are not aware of voting rights within a land pool arrangement, their and the local authority's landownerships are equally sized, so they can envisage a situation in which they share equal control over the entire site.

While the landowners are developing a strong personal relationship with the Head of Property at the Local Authority, when they meet, it is clear that there is divergence in their corporate aspirations. The landowners impress their desire to seek a legacy development, while the Local Authority confirms it is beholden to 1) best consideration legislation, 2) a requirement to repay wider-local authority debt, and 3) to housing targets – which it has missed for the past two years.







Despite his personal desire to co-steward a high quality development, the Head of Property describes that this could be in conflict with their need to achieve best consideration. They confess that while they would like to remain involved in the development they may be required to crystallise the value of the allocation, or planning permission, and dispose of the site in its entirety as soon as possible. The best case, they consider, would be an outright sale to a master developer, who would then invest in infrastructure, and undertake the phased disposal of parcels to volume housebuilders. They point to a number of master developers who are doing good work around the country, placemaking and setting high quality standards.

The major difficulty they face is that best consideration legislation does not necessarily provide allowance for maximum long-term value or legacy deal structures. In this way, it is also challenging to justify capital expense on infrastructure beyond what is considered 'normal' as the additional returns are often difficult to justify. They concede that this outlook is unlikely to lead to the most inspiring masterplan and will instead provide a bias towards standard house types and undistinguished community spaces.



**“The land was owned by Salford Council but available by way of the development agreement...The landowner had already decided that the land should be brought forward for development but critically the price paid was agreed to be its residual value without a minimum price. This ensured that the quality of design wasn't restrained by the cost of the land.”**



MUSE DEVELOPMENTS (TIMEKEEPERS SQUARE)



*Timekeeper's Square, Salford*





**KEY ISSUE: BEST CONSIDERATION****ISSUE**

The landowners want to curate the development to meet their vision, but the local authority wants to realise the value of the land up-front. The local authority's argument revolves around the need to realise best consideration as provided for by The Local Government Act 1972, S123, which states that:

*“Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.”*

**Anecdote:**

Officers dealing with property transactions may come under political pressure from Members. They will either seek to get the best deal in terms of money received by the local authority, or to get the best deal in terms of money and affordable housing, or other community infrastructure, on offer. This will likely be above the minimum requirement in planning terms.

Therefore, the definition of best consideration can depend on the political make-up of the area in question and perception of 'the deal'. Where the local authority in question is not solely interested in 'best price', its officers are constrained by the best consideration duty in S123 Local Government Act 1972. However, best price is not always required – recently the London Borough of Ealing had a sale at best consideration quashed by the courts because it had not fully considered all the issues. This provides precedence for sales at less than best consideration to be permissible in certain circumstances.

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**“The landowners want to curate the development to meet their vision, but the local authority wants to realise the value of the land up-front.”**

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Roussillon Park, Chichester



## KEY ISSUE: BEST CONSIDERATION (CONT.)

**Recommended mitigation:***1. Best Consideration and Legacy Development*

Usually, a Government body has a cost of finance that is below the finance rate incurred by a private organisation seeking to acquire land for development. All being equal, this differential will ensure that a local authority will stand to receive a higher consideration from investing land into a Public-Private-Partnership without realising an up-front land value, but instead taking either a share of profits, or a share in the value of sold homes, or indeed completed homes in lieu of consideration. The best consideration question is therefore key if public sector land is to form the raw material for high quality developments, and could form a means to delivering cost-efficient affordable housing.

The duty to obtain best consideration is not a duty to obtain that consideration instantly. Money up front and an offer of overage has been held to be not incompatible with the duty of best consideration (R. (*on the application of London Jewish Girls High Ltd*) v *Barnet LBC* [2013] EWHC 523 (admin)). Best consideration in relation to a site for development, and valuation for the purposes of S123 of the Act, will also have to take into account updates to the National Planning Policy Framework on viability and the need to submit policy compliant schemes – design policies may take on greater importance in light of the recent publication of National Design Guidance.

Where there are doubts about best consideration being achieved, officers will need cover to justify a disposal at (monetary) undervalue. In the London Borough of Ealing case, the court confirmed that:

*“...benefits that could not be taken into account in assessing the consideration were the creation of affordable housing homes and payments promised under Section 106 to offset the costs to the local authority created by the completion of any development, as they represented payments to offset the costs of development, not elements that related to the sale of the land.”*

Disposals at undervalue can be permitted and is provided for in S123 of the Act where the Secretary of State consents. If the Council do insist on requiring money up-front, they should be shown evidence of what a policy compliant scheme can support and the benefits of going further in terms of design and quality of accommodation that will be provided on an affordable basis. If the result of that is a sale of land at undervalue, a careful valuation exercise will need to be undertaken.

The Secretary of State has confirmed (see Circular 06/03: Local Government Act 1972 General Disposal Consent 2003) that consent will not be required for any disposal of land where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (“the undervalue”) is £2,000,000 (two million pounds) or less. The

caveat is that the Consent depends on “securing the promotion or improvement of the economic, social or environmental well-being of its area.” To that end, a legacy development will need to have a sound case showing that wellbeing will be promoted. If a legacy development scheme requires a greater than £2m undervalue this would require Secretary of State approval.

The Consent is clear that: “...once an application for a specific consent is submitted, the Secretary of State is obliged to make a decision on the proposed disposal on its merits.” In order to do so the Secretary of State will require, amongst other things “a summary of the proposed transaction, noting the reasons for disposing at an undervalue, the key terms and any restrictions to be imposed by the authority.”

The key point here is that if a legacy development cannot show that it would meet the duty for best consideration, it must be able to show that it will improve the economic, social or environmental wellbeing of its area.

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**“Greater consideration should be given to who is bringing forward proposals for a scheme and their track record of delivery, both in terms of quality and quantum. At the moment, anyone can turn up and promote a large site with no regard for their track record elsewhere (good or bad) or indeed whether they have any experience at all of promoting and delivering successful new communities.”**

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ZERO C (ROUSSILLON)



**“The Council developed an Area Action Plan which included community engagement in the masterplanning phase. Further public consultations have enabled community input to reserved matters and community garden aspects of the development.”**



COUNTRYSIDE PROPERTIES (BEAULIEU PARK)

#### KEY ISSUE: BEST CONSIDERATION (CONT.)

An element of persuading a Council that a sale at undervalue would be acceptable might be by reference to the public sector’s equality duty. This is where a proposed scheme would contribute to the reduction or elimination of discrimination, such as non-ghettoisation, advancement of equality of opportunity, and the fostering of good relations between different people – i.e. by design and by promoting community cohesion through the mixture of occupiers and tenure.

In the medium term it would be helpful if Government guidance was updated on where sales at undervalue, in order to facilitate placemaking, can take place, especially where it would further the goals of the Public Sector Equality Duty or meet established local need of some kind.

In the long term, reform of S123 of the Local Government Act 1972 must be considered so that Councils can lawfully consider matters relating to the social, economic, and environmental wellbeing of their areas when considering “best” consideration.

#### *2. Best Consideration and Legal Structuring*

The benefits of a day one freehold disposal for both a developer and a landowner are acknowledged. The freehold interest in the land offers the most immediate and readily understandable security, and many landowners have legitimate reasons for wanting an early capital receipt. However, there may be no good reason to opt for this legal structure.

Development agreement and lease structures do not preclude the payment to the landowner of an initial capital sum, whether as a lease premium or otherwise, notwithstanding the payment of overage or an ‘agreed distribution’ on housing disposals or at certain milestones. There is a myriad of ways to structure a residential development transaction, and landowners should be made fully aware of the options available at the outset of the promotion journey – not least the uplift in the aggregated sum payable to the landowner across the lifespan of the scheme as homes are sold and successful ‘placemaking’ is achieved.



*Timekeeper's Square, Salford*

Similarly, the Local Authority's debt position places an emphasis on all departments to recoup capital receipts from assets where possible. This means that the Head of Property will face pressure to derive an upfront capital land value as quickly as possible to repay escalating borrowing costs.

Finally, he bemoans how he is beholden to outdated and unproven housing targets. Despite his efforts over the past few years, and even with the advent of Homes England grant, there are only certain areas in the district that large-scale development appears viable. As such, the Local Authority has missed its housing targets. In this sense, they will need to deliver the maximum number of homes on the site in the quickest possible time. In the past, this has meant selling land parcels of between 100 and 200 homes to volume housebuilders, who each compete to maximise their sales velocity in order to fulfil their capital employed-driven financial criteria.

Having met with the Local Authority, the landowners are not happy to pool their land and instead will agree to collaborate and co-promote, but not under a formal arrangement. This means they will both have complete control in the short term but will ultimately need to submit two planning applications in conjunction with each other and before that will need to enter into an agreement that equalises the wider site's infrastructure costs.

Realising that they will need to fund their own call for sites submission they approach a technical consultant to seek quo-

tations for a transport statement, landscape and visual impact assessment, flood risk assessment, Phase 1 habitat survey, tree survey, minerals assessment, town centre uses, and air quality impact assessment. They are surprised when the quotes for the technical studies require them to pay approximately £50,000, but what is more concerning are the quotations for the second phase studies which go up into the hundreds of thousands. Their planning consultant explains the sequential nature of planning, and that getting through the call for sites will open all sorts of options to them. It is a big sum of money to put at risk, but their chances are relatively high, and the upside could be significant. They have a long conversation about the pros and cons, but the one deciding factor was that they both felt it was their one chance to leave something substantial behind and to leave their mark.

After a long process of pulling together their submission, it is listed on the Council's website with several other smaller sites around Fineborough. The landowners' land is included alongside the Council's and together they jump off the page as the most significant and most likely to be successful. The landowners are excited, and yet reading the local newspaper the following week their hearts sink when they read that a local group has been established to oppose the development. Suddenly they feel the whole community is against them and worry they have done the wrong thing.

The Planning Inspector approves the Local Plan and the land receives its allocation.

## 6.0

## STRATEGIC BRIEF

YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
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Following the site being included within the Local Plan, the landowners start to receive calls from promoters, agents and developers who are interested in their selling or buying their land.

They start to think about what their next steps are:

- **Can they do it themselves?** What are the costs of planning? What are the risks of planning?
- **Do they need a promoter?** Can the land support a promoter? Will they have the control they want if they work with a promoter?

The landowners decide to meet with the local authority estates department again. The local authority repeats their offer to collaborate and offer to co-sponsor the planning application. They also throw around some scary sounding numbers in the meeting. The landowners are put in touch with a few planning consultants who mention figures ranging from £500,000 to £5 million for an outline planning application.

The landowners considers that their land going forward for promotion has an underlying value of approximately £1 million (£10,000 per acre over 100 acres) leaving the 200 acres remaining to be farmed to have a value of approximately £2 million. They agree that they will not accept a charge on the residual farmland as they need to preserve that for future generations, but they would be prepared to borrow against the land going forward for development.

They arrange a meeting with their bank who, in light of their long-standing relationship, is prepared to provide a secured loan of to

50% of the value of the development land. The landowners have a good idea of what the land is worth as farmland (c. £10,000 per acre) but do not have handle on its value with an allocation. The bank manager confirms that, whilst strategic land can sometimes trade at a premium to agricultural value, the bank would not lend against hope value and so this would be disregarded in any valuation. They conclude that a loan of £500,000 could be arranged at competitive rates. Above that, the loan would be unsecured and at bridging finance rates of approximately 10%.

The landowners also call a contact they were given at Homes England but are kindly asked to come back when they have a planning permission.

Whilst they have set themselves £500,000 as a budget for the planning application, they are fearful of spiralling costs and contemplate a scenario where their finance rate increases to 10%. This cost of the finance makes the timescales of the planning application critical. Doing some reading around the subject, the landowners come across a useful study on planning timescales called 'Start to Finish: How Quickly do Large-Scale Housing Sites Deliver?' by Lichfields. The evidence from the past suggests a site like theirs is likely to take almost six years to obtain approval, and they have been told anecdotally that the planning system is getting slower and slower. They start to play out a scenario where it takes a decade to get planning permission and the cost spirals above the £500,000 budget. They shudder at the thought that their financing cost will roughly equal their hard costs over that period. Then it occurs to them that there could be a different party in power in a decade with different policies and they should not presume they will be successful.





*Nansledan, Cornwall*

BUILDING IN BEAUTY



*Tornagrain, Inverness*



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**“Doing engagement properly is very time consuming and costly, a fact not completely understood by government. Obtaining planning permission is very expensive; we spent £3.5 million on an Environmental Impact Assessment.**

**These are huge costs when you consider that the value of our houses sold is currently not even covering the cost of the infrastructure.”**

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MORAY ESTATE (TORNAGRAIN)

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**“Navigating the system is complex and expensive – more so for complex mixed-use schemes which aren’t to a standard pattern. You are told that if you bring forward a good quality scheme you will get a quicker and cheaper route through planning, but the opposite is true; every part of the system is designed to process standardised developments.”**

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MORAY ESTATE (TORNAGRAIN)

That said, they have heard people refer to gaining planning permission as winning the lottery so are hopeful there should be some upside in the event of being successful. Their research into the likely uplift leads them to the concept of benchmark or threshold land values. As they understand it, the benchmark value is the value which their planning permission will be judged against. If the value of the planning permission exceeds the benchmark value, they can expect greater contributions towards the local community, but if the value of the planning permission is lower than they can expect less contributions and lower affordable housing requirements. Therefore, a viability assessment should ensure that the value of the land with planning permission is ipso facto the benchmark land value. They trawl the Local Authority’s website to find the CIL viability recommendations which includes an assessment of the appropriate benchmark land value. It includes this extract:

*“We judge that a minimum land value per gross acre would be approximately £75,000 to £100,000. This benchmark offers a multiple of approximately 10 times existing use value and aligns with evidence that has been observed elsewhere within the region. At this level, the results indicate that the sites could withstand up to a maximum of circa 15% of affordable housing. It is unsurprising that only a modest level of affordable housing is likely to be viable on the sites given the scale of strategic ‘opening’ infrastructure costs the sites will need to absorb and the prolonged delivery timescales that affect cashflow.”*

This seems proportionate and fair to the landowner; they start with £10,000 per acre, puts it all at risk through a planning application but could stand to be left with a development worth £100,000 per acre, or £10 million. At the upper end of the scale of planning cost they might only be making a 2x return for risking everything. They remain anxious about potential costs and thinks to themselves that they would much prefer a system where their costs and risks were lower and in return, they would accept a lower benchmark value.



**“There is a farcical lack of communication and common policies between almost all authorities, statutory and county despite incredible support of a very competent district council. The Environment Agency and county council were nothing short of a disgrace and, between the two, delayed implementation by nearly a year. Using the EA as an example, one small slither of land at the southern end of the site was shown as being in the floodplain. At the same time there is a large culvert running underneath the site – which slopes heavily from north to south. The EA decided that they needed to know what would happen if the northern end of the culvert was blocked and after many months the EA agreed to meet to demonstrate the type of hydraulic modelling they required. This was followed by 3 months of modelling, 3 months of testing and eventually after a further 3 months the EA approved our scheme. All the model had proved was that, even in England, water flows downhill.”**



ANONYMOUS

#### KEY ISSUE: COST OF PROMOTION

##### ISSUE:

The cost to promote land for sustainable residential development is prohibitively expensive for most landowners. It disincentivises landowners from participating in development and encourages them to relinquish control at any early stage. It is typical for the costs of planning applications to exceed the underlying value of the land. Promoters and strategic land departments within house-builders regularly describe hard costs of £500,000 to £5 million, but they are often ignoring the internal resources that support the application. Landowners do not benefit from this internal resource and regularly spend significantly more.

The costs tend to spiral when additional reports are required to respond to advice received from statutory consultees. Costly technical reports are required to respond to the exhaustive

validation checklists – National and Local – and these are why planning is often referred to as a ‘tick-box’ exercise.

The present approach to administering a planning application, reliant on validation checklists, inaccessible pre-application advice from statutory consultees and lack of engagement by planning officers, gives rise to a significant amount of reports that require negotiation over the setting of a scope of works. The detail required to draw out mitigation that in some cases is already standardised, and a lack of access to officers especially where the authority is not unitary, all contribute to the expense of the planning process.







**“Rather than ticking boxes, Local Planning Authorities should be encouraged to get back to being planners and shape long-term positive outcomes.”**



#### KEY ISSUE: COST OF PROMOTION (CONT.)

##### **Recommended mitigation:**

The planning officer’s opinion and the advice received from statutory consultees needs to be measured against the likelihood of any issues arising from a proposal. Where possible, the requirement for additional surveys and reports should be left to the approval of reserved matters.

Many matters that form part of the validation checklist could be dealt with through more detailed plan making or holistic preparation of a planning toolkit, which might include a sustainability map, in evidencing local plans and allocations.

Rather than ticking boxes, Local Planning Authorities should be encouraged to get back to being planners and shape long-term positive outcomes.

Nationally Significant Infrastructure Projects and large-scale Environmental Impact Assessment projects aside, where the “Rochdale Envelope” approach to planning is not required, the issues relating to development can be known unknowns at very early stages in the development process. This could be established via a new tier of evidence gathering and publication alongside Local Plan making that serves to make the delivery of planning applications more efficient and less of a cost burden.

By creating a planning toolkit and sustainability map beyond the policy maps at local plan preparation stage that provides additional detail and evidence, any future planning applications can be informed by that material and reduce the cost burden on applicants.

An example of where this works in principle is the Environment Agency’s Flood Maps for Planning. Evidence is used to automatically populate a map to establish zones. This allows development to come forward with a proportionate approach to dealing with flood mitigation depending on which zone it falls within. At local plan-level, should an allocation be made, and the EA are engaged it is feasible that the flood risk issue is capable of being mitigated if more detailed work had been carried out to address any issues with the allocation. At planning application stage there ought not to be any requirement to address the flood risk issue as it has already been ratified and consulted on through the allocation process.

A planning toolkit and sustainability map would be a snapshot in time that identifies areas that have the best criteria for ensuring sustainable development. A series of layers would be produced identifying a number of key attributes and this map would form the baseline assessment of any allocation. Once the baseline conditions have been identified and allocations made then a light touch desk-based review of those sustainability criteria could form the evidence base for any planning application.

This tier of evidence gathering, and publication would be best delivered in a statutory, Local Planning Authority, coordinated, joint manner alongside local plan making and would require an additional clause within the National Planning Policy Framework to invoke change.

The landowners decide to press on with their own application setting themselves the budget of £500,000 to do so. They revert to their planning consultant and they agree they will project manage a series of tenders on behalf of the landowners covering the below list.

- **Masterplanning architect.**
- **Technical consultant,** to include energy, sustainability, drainage, utilities, gas risk.
- **Highways consultant,** to include transport assessment and travel plan.
- **Ecology consultant,** to include arboricultural, flood risk, surface water drainage, soils, archaeology/geophysical, heritage, landscape/visual, rights of way.
- **Cost consultant.**
- **Development/valuation consultant.**

Following an initial review, the technical consultant prepares a short report detailing a number of initial concerns including the need for power capacity reinforcement to provide power for an additional 1,000 homes. There is a need to establish and commission a new 11Kv primary substation and install 33Kv cable to the site. A highways report details the need for local road capacity enhancement and a proposal to provide access to the site via a new roundabout and a length of spine road. The reports feed into a first draft infrastructure cost plan which concludes the eye-watering figure of £45 million.

# £35m

The anticipated infrastructure cost burden placed on the proposed development







*Tornagrain, Inverness*





**“Councils are unrealistic about what can precede development. Grandiose infrastructure schemes imperil housing by over-exposing the landowner/developer.”**



MORAY ESTATE (TORNAGRAIN)



**“Analysis in 1993 showed that the substantial, initial infrastructure costs created a negative cash flow until year 9, with a potential ‘end-value’ of just under £6m.”**



ERNEST COOK TRUST (FAIRFORD LEYS)

**KEY ISSUE: COST OF INFRASTRUCTURE****ISSUE**

The cost to prepare land for residential development is prohibitively expensive. Costs to upgrade networks can be borne by a single project when they benefit a wider community.

The cost of infrastructure is a hidden cost because it is often not seen; it is the cost of the grid reinforcement, the utility upgrade, the commuted sums, the junction improvements on the other side of town, or the contributions to community projects, schools, libraries and the like.

We have collated cost plans from 20 major sites to evidence the cost of infrastructure. When expressed on a per acre basis, barring one (more costly) outlier, the costs fall consistently in the range £460,000 to £930,000 per acre, with an average of £690,000 per acre, £51,000 per home or £550 per sq m. There is no apparent correlation with geography implying that the infrastructure cost is relatively consistent across the country.

CIL is the Government's preferred means of collecting developer contributions to infrastructure investment which has been identified as necessary to support the development of an area. Whilst only 58% of authorities are engaged with CIL, the average CIL rate for residential development is currently £95 per square meter.

For many smaller developments that plug into existing infrastructure this will be their sole contribution to the sub-regional infrastructure, this is in stark contrast to the major development sites that, on average, contribute 579% more (£550 per sq m).

These figures serve to illustrate the point that major projects are shouldering a disproportionate burden of infrastructure cost. This is compounded by a timing factor in that infrastructure costs will be expended long before houses can be sold. Infrastructure costs have a significant impact on viability and in many parts of the country make it impossible to realise a viable policy compliant project.

COST PLAN HEADING	SPLIT	INFRASTRUCTURE COST	
		PER ACRE (NET)	PER HOME
SITE PREPARATION	7%	£50,000	£4,000
TRANSPORT INFRASTRUCTURE	25%	£175,000	£13,000
UTILITY INFRASTRUCTURE	17%	£115,000	£8,000
COMMUNITY INFRASTRUCTURE	29%	£197,000	£15,000
GREEN INFRASTRUCTURE	8%	£53,000	£4,000
PROFESSIONAL FEES	8%	£58,000	£4,000
DESIGN DEVELOPMENT	6%	£42,000	£3,000
<b>TOTAL</b>	<b>100%</b>	<b>£690,000</b>	<b>£51,000</b>

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**“If there is too high an early infrastructure burden which delays the first income then the viability of the project will be questioned.”**

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COUNTRYSIDE PROPERTIES (BEAULIEU PARK)





Beaulieu Park, Chelmsford



**KEY ISSUE: COST OF INFRASTRUCTURE (CONT.)****Recommended mitigation:**

The cost of major infrastructure items should be equalised across all new developments within a sub-regional geography through an appropriate CIL regime.

Major sites should be encouraged to deliver local community benefits based on evidence of local need. The cost of these benefits should be assessed within the context of a Section 106 Agreement to ensure that the project is not unnecessarily burdened by comparison to the relevant CIL regime.

Care needs to be taken not to have grandiose infrastructure requirements. Local Authorities need to be mindful of the impact on major projects. Whilst the projects are large, that does not mean they can contribute any more, pro rata, to infrastructure.

Valuations of major sites need to carefully consider the cost and timing of infrastructure within a discounted cashflow methodology. The Garden Cities Large Sites (GCLS) financial model developed by ATLAS (and now offered by Hyas Associates) adopts this methodology.



**“Any scheme needs to be viable and deliver a financial return for the developer if it is to be brought forward successfully. By default, if these cannot be met then the project will not commence.”**



COUNTRYSIDE PROPERTIES (BEAULIEU PARK)



*Beaulieu Park, Chelmsford*







## 7.0

## VIABILITY

YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
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The development consultant provides the landowners with a financial model that sets the anticipated serviced land sales against the infrastructure cost plan of £45 million, or £650,000 per net developable acre, assuming 70 of the 100 acres are developable. The comparable evidence for serviced land sales in the area suggests approximately £800,000 per net developable acre could be achievable for land with an affordable housing provision of 15%, so for every acre sold there is a nominal profit of £150,000, or £10.5 million in total.

The infrastructure costs are front-end loaded, and the project is not forecast to break-even until the ninth year that infrastructure works begin. The valuation calculates the NPV of the cash flows and concludes a Market Value of £3.2 million for the land. The figure is far below their expectations of a ten times uplift from agricultural value and given it would be politically unacceptable to reduce the affordable housing provision further, they cannot see how a ten times uplift can be achievable unless the infrastructure cost budget can be reduced.

The cost consultant leads a workshop session with the team, and the only cost that can reasonably change is the budget for contributions through the Section 106 Agreement. The landowners realise that the cost and risk of planning does not justify the anticipated uplift in value and concludes it is foolhardy to progress the project alone.

They decide to revert to the Local Authority. Their proposal is to collaborate within a land pool, but only on the basis that they both sign up to legal recitals defining the vision for the project. They present the following recitals:

- 1. The parties wish to ensure that any development creates a sustainable high quality and attractive neighbourhood for future generations integrating with the existing neighbourhoods.*
- 2. A Community Management Trust (CMT) will retain long-term interests in the scheme to ensure public realm and other elements of the development are maintained to the highest standards.*
- 3. The parties will use sustainable materials in the design and construction process including (but not limited to) restricting fossil fuel heating, using low-embodied carbon materials, reusing existing buildings, minimising water demand, and use vehicle charging points with a view to achieving the highest energy efficiency target (EPC A/B) and achieving a biodiversity net gain.*
- 4. The Masterplan will be advanced on the basis that the new development will so far as possible integrate with adjoining neighbourhoods through the provision of amenities that can be enhanced or shared, with attractive streetscapes and public areas and with a development that encourages the use of cycling and walking and transport other than cars.*
- 5. The parties will establish a site-wide Design Code, which will be adhered to by all future reserved matters applications. This will seek to use the standards considered appropriate to achieve highest levels of workmanship, allow for innovative design, incorporate technology enhancements and consider biodiversity.*
- 6. The parties will establish a Community Code which will be protected through estate stipulation.*
- 7. The parties will ensure that best consideration is achieved as required by The Local Government Act 1972, S123, whilst acknowledging that best consideration may be achieved over the longer term.*







**“The land ownership was spread among a large number of family members and trusts. An early decision, influenced by practical and more crucially tax considerations, was to set up a family owned development company.”**



NEWHALL PROJECTS LIMITED (NEWHALL)

The Head of Property compliments the landowners for the clarity of their vision. He referenced a growing body of evidence that was showing that best consideration could be achievable over a longer timescale and felt that, so long as the best consideration reference was in the recitals, they should be something the Local Authority could sign up to.

The landowners disguise their relief. They discuss a few headline commercial points including the working assumption that the land interests would be pooled 50:50. They both acknowledged the viability challenges caused by the cost of infrastructure. The Local Authority raise how they might be able to lead a Housing Infrastructure Fund (HIF) bid on behalf of the land pool which should be able to bridge the viability gap.

The landowners are reassured that they have the political influence of the Local Authority alongside them, and feel much less financially exposed.

They want to ensure the development is structured in the most efficient way from a tax perspective. They want to stay involved in the project and ensure a high quality outcome. They consider that their interests will be most closely aligned with future development partners if they share in the profit or value created at the development. Having consulted a tax accountant they realise that they will be paying their marginal income tax rate for any share in future receipts. At the moment, their household marginal tax rate is approximately 21% but any additional income for the farm will be taxed at the higher tax rate of 40%. The land is in their personal ownership and they are advised that if they sell the land they can benefit from 100% Business Asset Rollover Relief if they buy more farming land with the proceeds.

The landowners are bemused why they can benefit from a tax rate of 0% if they sell the land now, but will be taxed at 40% if they decide to take the entrepreneurial step of participating in a development project.







**KEY ISSUE: TAX INCENTIVES****ISSUE**

The current tax regime encourages landowners to pursue option and sale arrangements for the promotion phase of projects, then to sell development land up front rather than participating in the development for the longer term.

1. **Ongoing involvement** increases the risk of a proportion of the receipts being charged to income tax at rates potentially over 40%. This is to be compared to the current capital gains tax rates of 20%, or even 10% if the land forms part of a business and the qualifying criteria for Entrepreneurs' Relief are met.
2. **Any share of development** profits that are charged to income tax do not attract Business Asset Rollover Relief in contrast to capital receipts on the sale of land used for business purposes, which is reinvested in other business assets.
3. **The timing of taxation liabilities** is also currently a deterrent for participating in the ongoing development as in some circumstances a tax charge can arise when the intention to participate in the development is formed. On a large-scale development, this can create real issues.
4. When land is sold in a number of phases but significant upfront costs have been incurred, tax relief is spread over the development as it progresses, leading to a significant timing difference between when the costs are incurred and when tax relief is obtained. This can create particular issues when loans to finance work on initial stages are repaid from early development receipts.

Further taxation issues surrounding development land can be summarised as follows:

- Timing of tax liabilities on true joint ventures.
- Uncertainty over when the transactions in land rules will be applied.
- Loss of capital gains tax reliefs on profits charged to income tax under the transactions in land rules.
- Clearance procedure for transactions in land often only available at the point where re-negotiation would be difficult.

**Land sale:** If a landowner sells land used in their farming business to a developer, with or without planning permission, the receipt is likely to be taxed to capital gains at a rate of 20%. If that land forms part of their business and certain other qualifying criteria are met, then the rate of tax can be reduced to 10% if a valid claim to Entrepreneurs' Relief is made.

If the proceeds of that disposal are applied in purchasing new land that it is used in a trading business, then any capital gain can be rolled over into that new land allowing reinvestment without deduction of tax.

◆◆

**“The current tax regime encourages landowners to pursue option and sale arrangements for the promotion phase of projects, then to sell development land up front rather than participating in the development for the longer term.”**

◆◆

*Barton Quarter, Nottingham*



**KEY ISSUE: TAX INCENTIVES (CONT.)**

If land is either committed as equity to a JV or is released over an extended time frame, this can soften cash burn at outset of project, enabling available funds to be applied elsewhere. This minimises the risk to the development and potentially eases the early stage funding requirement.

There is a financial incentive to the land interest to adopting such a patient position, as has been shown elsewhere, provided a 'place making' development approach is adopted. It is possible to achieve a higher market value for the land if the landowner agrees for the payment to be spread over a number of years to assist with the developer's cash flow, and to benefit from land value uplift through the delivery of amenities and place quality. If the capital receipt is paid over instalments, it is possible to pay the capital gains tax in instalments (limited to a period of 8 years) if certain criteria are met.

Clearly, however, the landowner loses control of the development as the freehold passes to the developer under the initial contract.

This loss of control can have a negative impact on the quality of the development as the developer is free to re-negotiate any placemaking aspects of the development and concentrate on delivery of the maximum number of homes and the greatest

margin. The effect of this is often that land and property values are not in fact enhanced through later phases, and in this situation a landowner who has agreed to defer payments may find themselves in an adversarial position with the developer who may look to negotiate land values downwards. Opposition between the developer and the local authority and community is further compounded in a situation where the affordable component has been compressed and community facilities and amenities either deferred or negotiated away on basis of viability.

**Joint venture:** If a landowner remains fully involved as a property developer whether on their own account or via a joint venture agreement then the taxation position is very different. The land as a fixed asset of their farming business is appropriated to trading stock of the development trade.

This appropriation results in a deemed disposal of the asset for capital gains tax purposes at market value. The taxation liability falls on 31 January following the tax year in which the appropriation takes place.

This can in many circumstances lead to the position of a dry tax charge because a liability has arisen, but no funds have yet been received from the development project.



## KEY ISSUE: TAX INCENTIVES (CONT.)

This is currently recognised in the taxation framework by allowing the gain arising to be deferred into the cost of the development stock. However, this relief is unattractive because when the houses are eventually sold the capital gain rolled over is bought back into charge but at the higher income tax rates. Depending on the profits of the development trade, this can leave the landowner worse off than a straight sale.

Where a development is carried out to high specification with potentially lower margins the problem is accentuated.

**Building lease / licence:** Where a landowner does not want to take the same degree of risk associated with entering into a full development trade, but wants to stay involved to a lesser extent, building leases are employed.

A building lease structure normally involves an upfront payment by the developer with a share of gross development receipts going forward. The lower the upfront payment, the higher the level of receipts.

As the landowner retains the freehold greater control is maintained.

From a taxation perspective, however, there is chance that the receipts to a certain extent may be charged to income tax under the transactions in land rules.

These anti-avoidance provisions are designed to tax capital receipts to income where those receipts result from a development activity. They are widely drafted and so could be applied in a number of these arrangements.

The effect of the rules is to charge to income tax any receipts of the landowner beyond the market value of the land when the intention to develop is first formed.

HMRC's guidance on the application of these rules state that they should not be used as an alternative tax treatment in straightforward transactions involving the sale of land that falls short of constituting a trade.



Roussillon Park, Chichester



**KEY ISSUE: TAX INCENTIVES (CONT.)**

There is also a formal clearance procedure available for taxpayers who think that these rules may apply to a proposed transaction, or a transaction that has already taken place.

That said commercial negotiations have normally progressed to an extent that the clearance procedure for a proposed transaction may well highlight the issue but timing will mean that there is little that can be done about it.

**Recommended mitigation:**

Tax treatment should equalise the tax treatment of land vested as patient equity with current option/sale arrangements. HMRC should allow for rollover relief on income and consider an efficient ‘wrapper’ to bring together land and infrastructure investment within a corporate structure with satisfactory tax treatment for all parties, and to encourage stewardship.

1. The timing of the taxation liabilities in true joint ventures could be addressed by amending the current relief, which defers the capital gain into the trading stock cost. The relief could be amended so that the capital gain is frozen rather than deferred and comes back into charge at capital gains tax rates when actual receipts are achieved from the development. This would avoid the conversion of capital gains into income tax receipts.
2. The vagaries in relation to the application of the transactions in land rules could be better set out in HMRC’s guidance. It is also worth noting that currently the split of receipts between income tax and capital gains tax is determined when the intention to develop is first formed. For smaller landowners, who cannot obtain planning permission themselves and rely on their development partner to obtain it through the building lease arrangement, the market value used would be the market value before planning permission. Larger landowners, who can obtain planning themselves, will have a higher market value benchmark, which reduces the overall tax burden.

3. The increased receipts that the landowner receives are not really a share in the profits of the development but just a reflection that the landowner can afford a higher price for the land as they do not need to finance the acquisition through bank borrowing. This is similar to how a higher price is achievable when capital gains tax is paid in instalments.
4. To address the issues where building leases are employed and HMRC contend that the transactions in land rules do apply, the Market Value used to determine the proportion of receipts charged to income tax or capital gains tax should be the Market Value of the land when the properties are sold.
5. Consideration should be given to the extension of Business Asset Rollover Relief and Entrepreneurs’ Relief to receipts under building lease arrangements.
6. A solution to the issues on collaboration agreements could be considered. This would be to bring the current land-pooling trust into the statute so there is no doubt about its taxation status. Consideration should also be given to extending Business Asset Rollover Relief and Entrepreneurs’ Relief to receipts from a land pooling trust, if the land in question would have qualified before the trust was established.
7. Consideration should also be given to extending the current replacement property provisions for Agricultural Property Relief and Business Property Relief to interest in land-pooling trusts, so that the current IHT consequences are mitigated.

Following receipt of the tax advice, the landowners decide to transfer the 100 acres of development land out of their personal ownership and into a limited company registered at Companies House. This fits with their ambition to diversify the family’s income. They do not expect to receive dividends from the company but hope that future profit share from the development will be reinvested into other investment assets.

◆◆  
**“Tax policy should equalise the tax treatment of land vested as patient equity with current option/sale arrangements.”**  
 ◆◆

8.0

## PROGRAMME TIMESCALES

YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
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The collaboration agreement with the Local Authority takes much longer than the landowners expected. The heads of terms for the land pool were quite quick to agree, but there was so much bureaucracy and legal complexity that it took 12 months to execute. Most of the time seemed to be spent waiting for the next relevant committee approval with the Local Authority. It felt like progress was always being made, but when they looked back it was shocking to find that a year had passed. They are now entering the third year since they found out about the Local Authority's call for sites.

They remember the research which showed on average it takes six years for planning approval. Their development consultant says

it will then take 12 months to bring on a development partner, 12 months for them to get reserved matters approval and start on site, and then another 12 months before they sell the first occupations. Whilst that is when the occupations start offsetting the cost of the infrastructure, the development consultant's financial model shows that it will not be for another 8 years (9 from construction start), and so it is forecast to be 20 years between project inception and its break-even point. This is when it dawns on them that they will be in their 60's when the company first receives a profit, and there's a chance they might not even live to see the project completed.



**“As a concept, the project began in 1995 and we are now only just about half way to completion in terms of unit numbers, but in terms of duration there are about 10 years remaining of the project.”**



NEWHALL PROJECTS LIMITED (NEWHALL)





*Newhall, Harlow*







◆◆  
**“The [landowner] had spent 25 years trying to get planning.”**  
 ◆◆

STOCKBRIDGE LAND (BARTONS)

◆◆  
**“[The] planning application took 5 years from submission to determination.”**  
 ◆◆

COUNTRYSIDE PROPERTIES (BEAULIEU PARK)

◆◆  
**“The LPAs were probably unaware of the difficulties involved in bringing forward the site for development and that it would take 8 years for the initial outline planning application to become a reality. It is probable that if the site had been in multiple ownerships it may never have been built out.”**  
 ◆◆

ERNEST COOK TRUST (FAIRFORD LEYS)

◆◆  
**“The landowner recovered their invested funds 10 years from the start of construction and 20 years from the start of the project.”**  
 ◆◆

MORAY ESTATES (TORNAGRAIN)

## KEY ISSUE: SPEED OF PLANNING

### ISSUE

The length of time it takes to secure planning approval is over twice as long for larger schemes – just over six years for developments of more than 2,000 homes. In comparison, it takes less than two and a half years for schemes with under 500 homes.

The time taken to obtain planning and deliver housing is far longer than viability assessments or valuations make allowances for.

The planning system administered in England has the ability to deliver forward planning and planning applications much quicker than it presently does. Under the present system, it is plausible for a single plot to have been through 22 rounds of public and political consultation and decision making before a permission is granted.

The main issue with this system is that its administration provides opportunity for delays to be built into the process of plan making and decision taking. Statutory consultees can influence the pace of both arms of planning to the detriment of hitting agreed timescales, statutory deadlines and completion of milestones.

Planning applications require interrogation by statutory consultees that have other responsibilities and duties to administer. Their information requirements are often not standardised and the availability of advice is not often standing advice. The impact of data and information gathering from these consultees is perceived as slowing down the process. This is often more impactful the larger the development proposal.

The use of planning performance agreements (PPA) is becoming routine and it has become difficult to secure any response without one. In this way PPAs have created a cost to achieve the same level of service.

The other impact to the pace of delivery for planning permissions is the time taken to agree the Section 106. Community Infrastructure Levy allows some planning obligations to be drawn at various trigger points once permission has been granted, and the process of defining those monies is transparent, upfront and managed prior to the permission being granted. Section 106 is a process that often is not begun until after the planning committee pass their judgement. The reason for this delay in progressing Section 106 is invariably the additional and potentially abortive cost of a solicitor.



**“We were commended by the RTPI for commitment to [Enquiry by Design]. Place making and Community Engagement are critical to success. The community has been at the heart of the process, with 50 people undergoing an urban design course, before helping to identify prospective partners and developing master plans for their locality. They visited several locations to view architectural designs and estate layouts, and then had the opportunity to put forward ideas.”**

**“Residents felt a sense of pride to see the finished houses, knowing that they had played an essential part in the design process. Around 150 others became Street Representatives, to ensure local views were heard. This helped create a sense of local ownership and enjoyment in participating.”**

**“Participation increased trust and empowered communities to be involved, take part and design their future neighbourhoods.”**



SALTWELL ROAD, GATESHEAD - HOME GROUP



Defining the most sustainable locations for development within BIMBY (example from Workshop 2, Activity 2a)



**KEY ISSUE: SPEED OF PLANNING (CONT.)**

**Recommended mitigation:**

The introduction of 'permission in principle' begins to remove the detail and risk involved in achieving a planning permission and the programme for this process seemingly allows the 8 week target date to be routinely achieved. Permission in principle circumvents the requirement to engage more fully with statutory consultees and to focus the planning application process onto the main and fundamental issue of whether in principle development as proposed is capable of being acceptable. It removes or reduces a number of matters inherent within the planning system that cause delay, cost and complexity:

1. Cost
2. Risk
3. Time
4. Administrative burden
5. Resource requirement
6. Procedural complexity

To be effective, it is critically dependent on higher tier planning (i.e. at the County/Unitary/Mayorality level) having been undertaken to establish the strategic parameters for growth across a wider geography that is compliant with the NPPF's objective of delivering sustainable development.

This small-scale intervention is in its infancy, however, it is a positive intervention in that it has clear benefits to applicants and local planning authorities if it is used as intended.

The permission in principle route has applicable lessons learned to be transferred into Local Plan making and future decision

taking on strategic sites. The main delays to achieving a planning permission come from interaction with statutory consultees, the setting of a scope and subsequent review of technical reporting, and the integration of the delivery programme with other statutory responsibilities that authorities administer. Reducing the burden of these processes will inevitably reduce the amount of time it takes to achieve a minded to grant stage of a planning permission.

To reduce the impact of external parties' ability to cause delays, the up-front access of key personnel and the early provision of necessary information (through standing advice or use of government owned data models) will inevitably improve the pace of delivery of applications.

If Section 106 was brought into the discussions at an earlier stage, it would be possible to have this agreement detailed and prepared for assigning once committee has approved and the decision is drafted. The reduction in Section 106 negotiation time will demonstrably improve the pace of decision-making and the granting of planning permissions.

The legal system is expensive to administer and requires clear instruction. The earlier in the process the more likely there is to be benefits to the delivery programme. A separate procedure to deal with Section 106 could be laid out that has the effect of being undertaken alongside the latter stages of the planning application process.

Integration with the community was a core principle established in the legal agreement between the landowners and the Local Authority. Both parties agree that the community need to have a voice in how the masterplan is formed. Having discussed some options, they agree to an Enquiry by Design (EbD) process.

The Local Authority communicates their decision to use EbD to the local opposition group and it quickly becomes apparent that they were thinking along similar lines. Since the allocation in the Local Plan, the local opposition group had realised that attempts to block development were futile. Instead, they should help to shape the development through a Neighbourhood Plan which they were going to create with grant funding and using a 'Beauty in my back yard' (BIMBY) process, as advocated by the Prince's Foundation.

They both agree it would be sensible to park their application for grant funding and instead participate through the EbD.

Through good early consultation with the local community, they gain local support even if there are still a few objectors who make quite a lot of noise. Local stakeholders also responded well to the landowners' idea of establishing a Community Management Trust (CMT).

Despite the support of the community and the Local Authority, the process of preparing a planning application is incredibly complex and time-consuming. The modelling of surface water run-off and transport movements both takes a long time and is surprisingly expensive. The ecology surveys are equally time consuming and expensive, and on two occasions the data created was deemed out of date and the surveys had to be re-done.

The landowners seek advice about retail and employment components. The advice is that a development of 1,000 homes would only sustain a small retail offering once mature, and that there is no demand for employment space in the town. This advice is substantiated and yet the landowners are aware that working practices are changing and demand might change over time within a maturing community. They decide to provide areas within the masterplan where employment uses could grow in the future. They also plan a multi-use community facility that could readily be applied as a community hall, community kitchens and co-working offices.

The landowners' budget of £500,000 is matched by the Local Authority and they just manage to keep to the £1 million budget. After three years of work, the application is lodged and thirteen weeks later receive a resolution to grant (RTG) planning subject to a Section 106 Agreement. The Local Authority and the landowners host a small gathering with their consultants to celebrate the milestone.

The RTG included a heads of terms of a Section 106 Agreement and so both parties were reasonably hopeful of executing an agreement in a timely manner. As part of the RTG they had signed up to a deadline for signing the Section 106 Agreement of six months from the date of the RTG. This seemed more than enough time and they jointly appoint a solicitor to prepare the agreement. The Section 106 negotiation becomes embroiled in a negotiation surrounding security for the payments, and the make-up of the board of the CMT. Eventually, after extending the deadline three times, the Section 106 is executed eighteen months later, and the decision notice finalised at the end of the Judicial Review period.



*Cafe on the Green, Poundbury, Dorchester*





## 9.0

# PARTNERSHIP

YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
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The landowners and the Local Authority now have the planning permission for what they now refer to as ‘Fineborough Park’. They have created a website detailing the masterplan and vision for the development proposal.

They are receiving many calls from housebuilders and master developers, which is flattering, but they are concerned

about progressing talks when they have so much more work ahead of them.

Now that the Section 106 and s278 agreements are signed, they have greater certainty over the total infrastructure budget, which has risen to £50 million, 50% of which will need to be spent in the first 4 years of the project.





This financial burden seems so intimidating. The development consultant's financial model suggests the value is below the benchmark land value and should therefore be considered at the cusp of viability, at best. They start to consider a few different options:

- They could borrow money, secured against the value of the land with planning permission, in order to fund the infrastructure cost. Now that they have planning permission, the Homes England HBF team are happy to meet. They seem concerned by the collateralisation given the infrastructure cost is far in excess of the land value. They also raise the fact that the landowners have a low creditworthiness. These factors combine to make them uncompetitive and can only offer the joint venture a loan margin of 6.5% over base rate.
- The Local Authority can borrow money through the Public Works Loan Board (PWLb) that would not need to be secured against the land, and at a rate of 0.6% (above the gilt rate, and currently a total interest rate of 1.4%). The Local Authority says it has the capacity to introduce some PWLB funds to the project, but it certainly could not stretch to the full infrastructure budget and they should see PWLB funding as only part of the potential solution.
- They could seek grant funding from Homes England's Housing Infrastructure Fund (HIF) which, although a costly and time-consuming process, could plug the viability gap in the project. They have a positive meeting with the HIF team, but it quickly becomes clear that they would expect the bid to be capped at £10 million. Even with PWLB, this could only be part of the solution.
- They could find a 'master developer' partner to manage the infrastructure delivery and dispose of serviced development parcels. They meet with a specialist in this field and they refer to a revolving facility they had recently arranged with Homes England HBF at 1% reflecting their PLC covenant strength. They are an impressive company and are focussed on provision of early-stage infrastructure such as schools. Their business model is based on the ideas of the Strategic Land Investment Model (SLIM) advocated by the Prince's Foundation and others. In the infrastructure phase, they control the behaviour of housebuilders through a design code although the landowners are not completely convinced by the quality of all the examples cited.
- They could enter into a partnership with a delivery partner. They have a meeting with a developer who seems to share their quality aspirations and they propose a building lease structure. The idea being that they would pay a premium that repays them for their planning costs and sums to fund any early-stage infrastructure items, but that most of their receipts would be deferred to a percentage of every home sold. The delivery partner explains that the overall receipts can be higher because they are paid when houses are sold, and that the landowner will also share in the benefit as values hopefully increase.



**“With the overriding interest in good design by the landowners and the sense of legacy on the land belonging to the farming family, it would have been difficult to find a partner able to share in that driver. Most partners willing to invest in such a large project would want to have control and would also have a strong commercial interest. This would inevitably have led to numerous compromises to the design criteria in the face of regulatory authority and housebuilder pressure.”**



NEWHALL PROJECTS LIMITED (NEWHALL)

<sup>2</sup> Delivering Sustainable Urbanism – SLIM, A Strategic Land Investment Model



## KEY ISSUE: INFRASTRUCTURE FUNDING

## ISSUE

We have already seen that the cost of infrastructure is overly burdensome and front-end loaded. The costs can be compounded by expensive finance rates and short-term loans, which force participants into joint ventures with larger corporate investors and dilute ambitions of quality.

Should private sector landowners wish to obtain finance for infrastructure they may be able to source it from existing banking relationships; however, banks are usually reticent to lend where the loan security is land. Development land is seen as an illiquid asset that cannot deliver a reasonable income within a short

timeframe. By contrast, existing vacant housing can be rented and generate an income to cover a loan. Many banks suffered from loans secured against development land in the financial crisis of 2007-2008 and do not want exposure to this market again.

The restrictions in the lending market secured against development land is viewed as market failure by Homes England, which has entered the lending market as the lender of last resort. The margin matrix illustrated below shows the minimum margin available on Homes England's assessment of the creditworthiness of the applicant and the collateral offered to support the loan:

CREDITWORTHINESS	COLLATERALISATION		
	HIGH	NORMAL	LOW
Strong	0.60%	0.75%	1.00%
Good	0.75%	1.00%	2.20%
Satisfactory	1.00%	2.20%	4.00%
Weak	2.20%	4.00%	6.50%
Financial Difficulties	4.00%	6.50%	10.00%

**“Alconbury Weald has enabling works and infrastructure funded by a loan from Homes England. The result? To their credit Urban and Civic have a strong commitment to investing in upfront infrastructure and a high quality environment – they are one of the good guys trying to do the right thing – but they are working with four housebuilders in a race to repay loans and secure their returns on investment. Whilst it is a big step up in quality it is not a mixed use, walkable community.”**

ANONYMOUS

The matrix reflects an institutional investment grade assessment of creditworthiness under State Aid rules. The collateralisation reflects the loan-to-value (LTV) ratio available which therefore relates to the underlying asset; however, the creditworthiness relates to the applicant. The details of creditworthiness test is unclear but will take into account factors beyond simple covenant strength, such as exit risk and sales recycling, which

will not necessarily favour a landowner participating in a single development. In our experience two seemingly identical loan requests – both offering <50% LTV and both with comparable net assets on their balance sheet – could receive a dramatically different margin offer depending on whether the applicant was a corporation or a landowner.

<sup>3</sup> Homes England Home Building Fund, What does it cost?, 17 May 2018  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/708514/180517\\_What\\_does\\_it\\_cost.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708514/180517_What_does_it_cost.pdf)

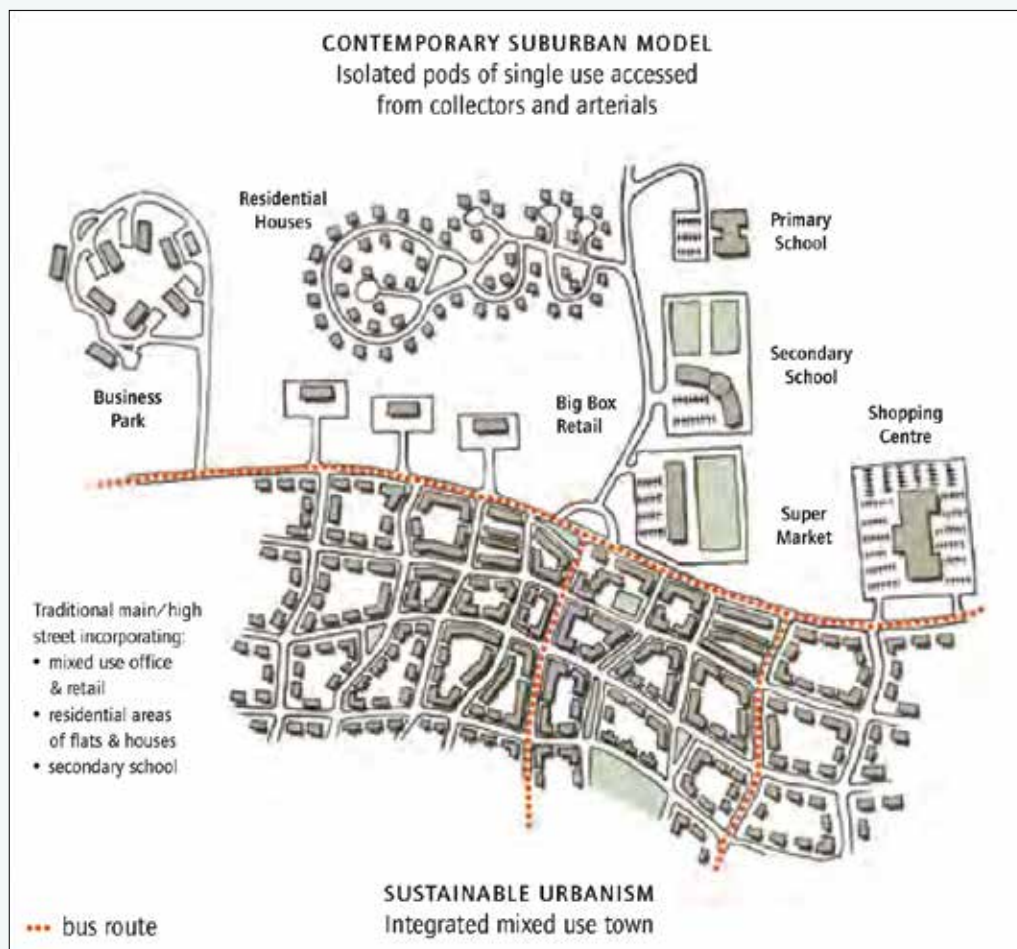
**KEY ISSUE: INFRASTRUCTURE FUNDING (CONT.)**

The differential could be as much as a corporate developer being offered 0.6% to 1.0%, and a landowner offered 4.0% to 6.0%. This differential is a strong incentive for the landowner to partner with a corporate entity, which may be advantageous from a delivery perspective, but may also dilute the stewardship ambitions of a landowner.

The funding terms offered are relatively short-term designed to encourage rapid delivery. In our research we have witnessed examples where this has changed the behaviour of the master developer away from building sustainable settlements towards high volume housebuilding. Many commentators believe that there should be no conflict between maximising absorption rates and the building of sustainable settlements. However, those that have experience of building sustainable settlements tell us that the two are in conflict with each other. It is important that we address this point or measures to accelerate development may have the unintended consequence of reducing quality.

The reason accelerating developments is in conflict with building sustainable settlements is not down to the time it takes to build a house, but in the time it takes re-establish a fully-fledged new place; i.e. to foster employment, attract businesses and a range of amenities.

Employment is an essential ingredient of sustainable walkable settlements, as is perfectly articulated by this well known graphic. Valuing Sustainable Urbanism and subsequent reports link value uplift in development strongly to the delivery of mixed use components. We have also identified funding scarcity attaching to the delivery of mixed uses. This needs to be urgently addressed. Equally innovative delivery models that recognise the need for the core of settlements to intensify in use overtime as occupation intensifies and populations build up, needs to be addressed in masterplanning new settlements.





*Brace of Butchers, Poundbury, Dorchester*





**KEY ISSUE: INFRASTRUCTURE FUNDING (CONT.).**

Poundbury is a good example of a maturing urban extension where great effort has been made to stimulate and provide space

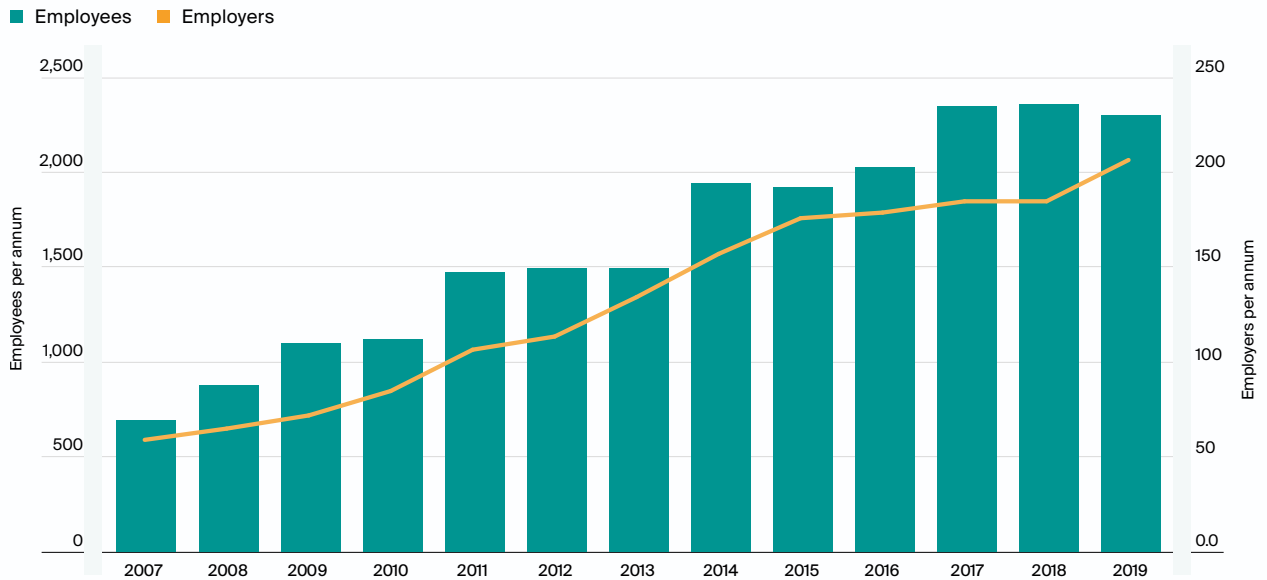
for non-residential uses. This is obvious from the masterplan when we highlight non-residential uses.



**KEY ISSUE: INFRASTRUCTURE FUNDING (CONT.).**

Furthermore, when we analyse the growth of employment at Poundbury we can see that its growth is slow and steady and does

not happen overnight. It is for this reason that funding need to support the longer-term ambitions of sustainable settlements.

**Employment at Poundbury**

Source: Duchy of Cornwall

**Recommended mitigation:**

Consideration should be given to a means to neutralise the favourable grant and lending rates enjoyed by certain entities. Previously unviable Public Sector owned land can be made viable with HIF grant, whereas private sector owned land cannot. Corporate landowners can access lower lending margins than private landowners. The system favours those than have a larger balance sheet and makes it much harder for private landowners to participate in development.

Consideration should be given to funding opportunities if State Aid rules no longer apply following Brexit such that regeneration equity or gap funding might be supplied in areas of market failure or in need of transformational development.

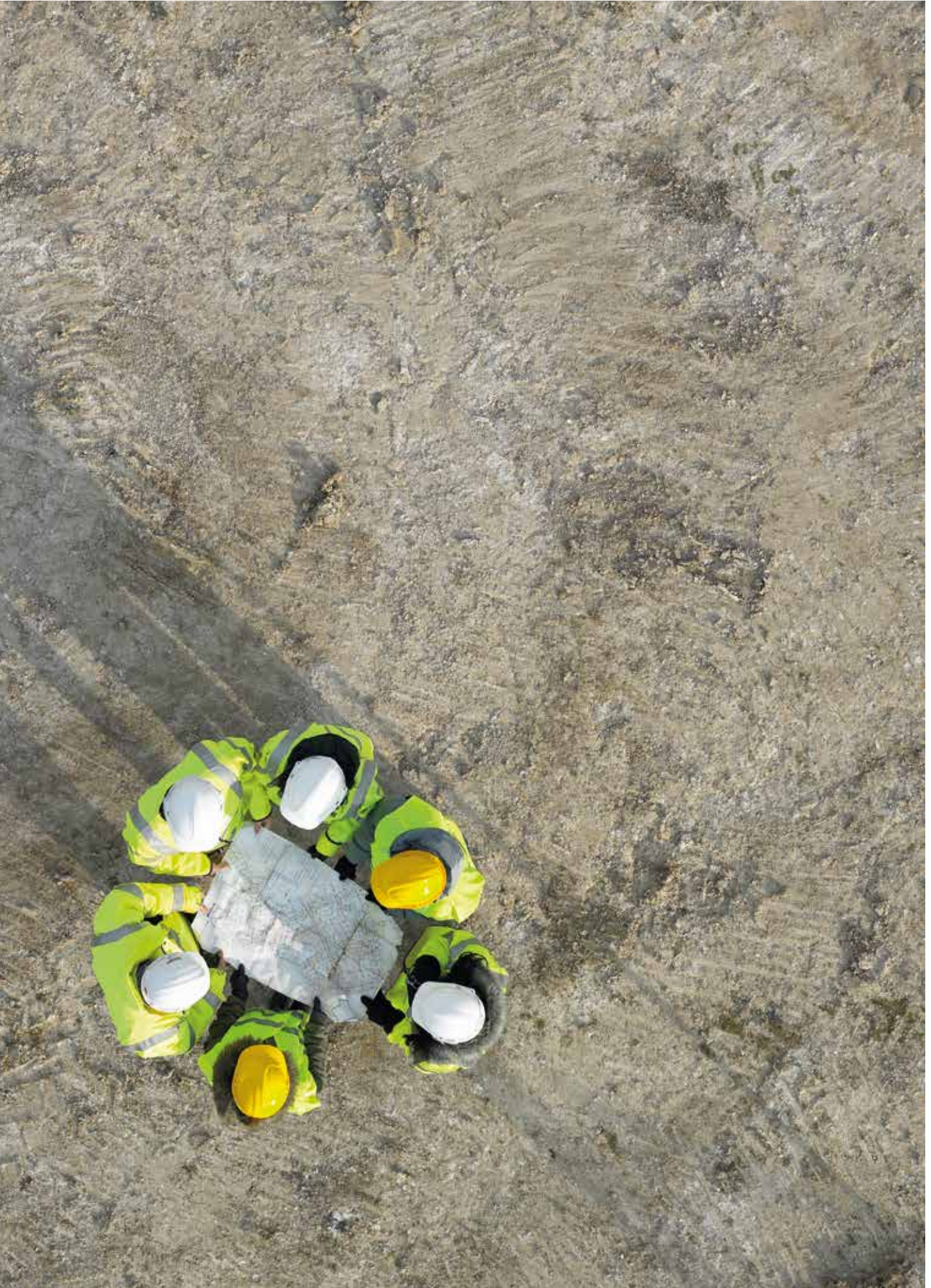
Consideration should be given to a Patient Capital Fund to provide long-term lending at competitive rates, with flexible repayment options (e.g. tariff repayments when homes are sold), and where developments meet certain criteria that encourage good quality sustainable settlements.

The challenge of funding new build mixed-use elements of new settlements should be specifically addressed both through funding measures and also through innovative place making that recognises the needs for high street and town centre functions to intensify and change over time.

**“Good sustainable growth takes time but doesn’t need to limit overall delivery rates as you can develop in different locations. It would be preferable to have two Poundburys rather than one Cranbrook.”**

DUCHY OF CORNWALL (POUNDBURY)







◆◆

**“There could perhaps be a system of experienced, arm’s length, professional teams assembled to be assigned to large projects and funded, for example, by a percentage of sales as the project develops – a type of ‘design roof tax’. This would greatly assist the inexperienced landowner up against the well-funded, well-experienced might of the housebuilder industry and the often intransigent regulatory authorities.”**

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NEWHALL PROJECTS LIMITED (NEWHALL)

Although they would like to maintain full control, the landowners and Local Authority realise they are not the right people to deliver the infrastructure. They are attracted to working with a master developer but recognise the trade-off between benefitting from their experience and needing to concede control and influence the master developer.

They decide to seek a delivery partner under a building lease structure. It allows them to be repaid for their planning application costs whilst leaving the value of what they had created in the project. The private sector partner will fund and deliver the lion’s share of the infrastructure, and by sharing in end values they will all be aligned in a common goal to build value over time. It would have been less attractive in the landowners’ personal ownership for tax reasons, but now it is structured through a company it seems to work well. They are also comforted by the fact that they keep the freehold interest until homes are sold. As well as giving them security over payment, this also gives teeth to their proposed design controls.

The Local Authority and landowners have a discussion about the retention of the affordable housing in the project. Both are interested in investments in the project that take their interest beyond the end of the development phase whilst being a benefit to the community. The Local Authority will be subject to Right-to-buy (RTB) legislation which undermines its attraction as a long-term investment. The landowners would not have sufficient standing to become a Registered Provider or manager of social housing. They decide to put it on the back-burner for now but in discussion with a future development partner will hope to find a vehicle that protects the Local Authority from RTB.

In advance of approaching the market, the landowners and the Local Authority instruct their consultants to prepare a draft design code, community code, and a technical briefing pack.

They run a mini-tender to identify a development partner. The response is excellent. They are told that paying for the land when

homes are sold helps drive their returns on capital employed, which they are repeatedly told is a key financial metric. A few of the shortlisted partners have experience in infrastructure and housing delivery, but also have strong philosophies of delivering high quality housing. It is particularly pleasing that some smaller developers and new entrants have come forward, encouraged by the lower up-front costs of the building lease structure.

Through the process of identifying a delivery partner, the prospective partners are invited to provide feedback on the draft design codes. This feedback is then captured within the final iterations of the design code, which is a document that both parties are happy to comply with and protects their interests.

A preferred partner is selected, and they execute an agreement for lease (AfL), which is the umbrella legal agreement providing for a series of building leases across the development land. The partner pays a premium of £1 million, which is shared 50:50 between the landowners, and the AfL provides for a distribution payment of 25% of the value of each home when sold.

Whilst the AfL is with a single lead development partner, it envisages assignments to other development companies to create a rich diversity of product and tenure types. Through discussions during the tender, they agree to pre-approved lease assignments to a single-family housing provider (who will offer 80 homes as a private rented product), to a registered provider (who will own and manage 150 affordable homes), to a custom-build housing specialist (who will offer 100 customised homes), and a retirement housing specialist (who will operate 150 homes for over 5s). That leaves 520 homes for the lead development partner to build and sell.

By the time the AfL contract is completed the process has taken 12 months.





**“A fabric first approach was developed for housing. The cost of additional elements and a lack of perceived value from consumers and mortgage providers limited appetite to provide more.”**



COUNTRYSIDE PROPERTIES (BEAULIEU PARK)



**“Code for Sustainable Homes Level 4 was deemed an aspirational requirement at the time, but added to build costs.”**



HOME GROUP (SALTWELL ROAD)







Newhall, Harlow



**“Design and control were of prime importance, the latter absolutely necessary to achieve the former. Previous experience of a large development on our own land (Church Langley), where good design was promised, but not secured by us and hence never achieved, was a very strong influencing factor; we would not allow this to happen second time round. We were also convinced that good design and high quality materials would lead to better land values, more than offsetting the higher planning and other costs involved.”**

**“Design compliance is crucial to Newhall and from the beginning (and to varying degrees of detail) the design codes referred to above were included as positive covenants in the land sale agreements. This has enabled a very effective and we think essential way to achieve compliance. It provides a lever to the landowner which is stronger, more site-specific and more enforceable than many, often under-resourced, Councils are able to provide.”**



NEWHALL PROJECTS LIMITED (NEWHALL)



10.0

## ARCHITECTURAL VISION

YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
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The architectural vision began within the EbD process. The views of the community were balanced by the site's parameters and thereafter captured within the Design and Access Statement (DAS) as a key document within the outline planning permission.

The process to get to this point had been exemplary by most standards, but the landowners were not overly excited by the masterplan that was taking shape. It still felt quite generic. They asked themselves whether they could see it being protected as a conservation area in 100 years' time, and they honestly did not believe that it would. They had hoped to do more to establish a compelling architectural vision at the outset, but the costs had been too high, so they had taken an incremental approach.

The project's sustainability credentials were touched on in the planning permission and had since been fleshed out in the Design Code. As a team, they believe in the integrity of a fabric first approach where good quality homes would deliver long-term efficiencies to the occupier.

Changes to the building regulations have been sign posted and they were very conscious that fossil fuel heating systems may not be permissible for long, but the development partner explained that buyers had concerns over the noise of alternatives such as air-source heat pumps. Given that they had an interest in the project until it was finished, they felt that decisions that increased their short-term costs could still be justified if they led to greater value in the future. This allowed them to make quite progressive

decisions about the future performance of the housing. That said, they felt that efficient gas-saver boilers should be used for the first phase, and they hoped that technology would respond to building regulations in time for future phases.

The proposals within the design codes are quite innovative in terms of highways. Initially the Highways Authority are not supportive, but they finally agreed a kerb-to-kerb adoption strategy for the primary and secondary roads. This gave the development greater flexibility in terms of providing street trees.

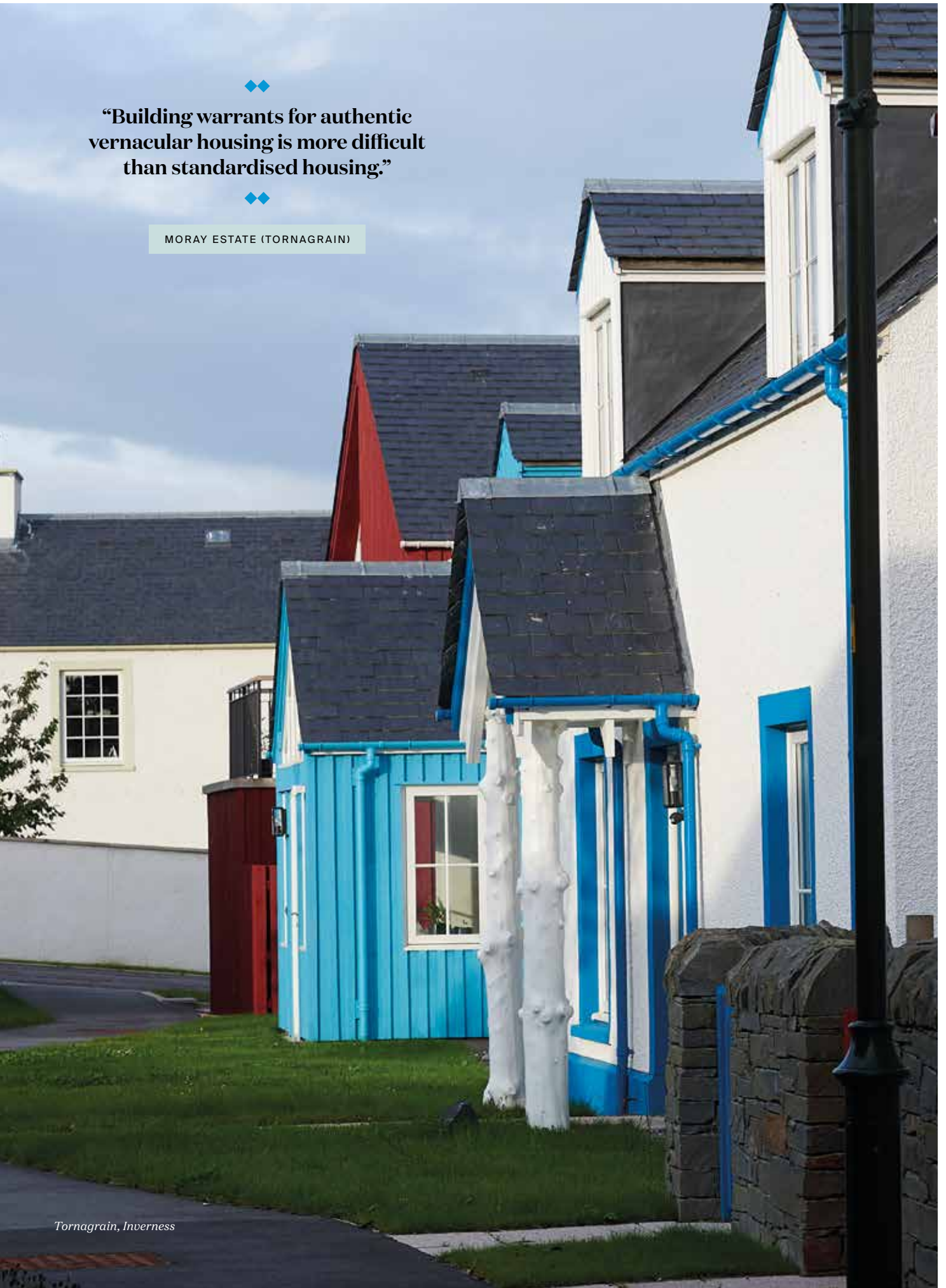
The development partner uses the design code as a pattern book to inform the reserved matters applications. The first phase designs are worked up and the landowners approve them before being submitted for approval with the local authority.

Separately from the design code, the landowners and the development partner agree a set of estate stipulations, which emanate from the community code. These control future residents from undermining the look and feel of the development. All parties support this approach and a market test suggests future buyers will respond positively as well.

RMA is granted in tandem with the first phase highway works getting underway. Detailed construction drawings take a bit of time, but 12 months after the AfL is signed works begin in earnest on building the housing.

◆◆  
“Building warrants for authentic  
vernacular housing is more difficult  
than standardised housing.”  
◆◆

MORAY ESTATE (TORNAGRAIN)







**“[The masterplanning architect was]... of crucial importance to the project. The very first appointment by the landowners was an urban design/masterplanning architect. It was seen as the key to all the other stages and also key to assisting and the passing on of knowledge experience to the landowner; key also to maintaining confidence in the 'pioneering' approach adopted and in fighting the many battles with the planning authority and with the often very blinkered housebuilding industry.**

**The selection of the master planner took time and followed long interviews and discussions with a shortlist of approximately 10 practices.”**



NEWHALL PROJECTS LIMITED (NEWHALL)





**“We probably wouldn’t have done Grandhome without the offer of support to bring in Andrés Duany of DPZ.”**



GRANDHOME TRUST (GRANDHOME)



**“I believe that the masterplan for the development broadly produced... a development of character and good quality design that has created a distinct community of mixed age groups. Residents are already moving up and down the ‘housing ladder’ into larger or smaller houses within Fairford Leys to stay within its community.”**



ERNEST COOK TRUST (FAIRFORD LEYS)

#### KEY ISSUE: MASTER PLANNING

##### ISSUE

The up-front cost of exceptional masterplanning design can be prohibitive. Landowners are likely to take a more incremental approach which may not lead to the best possible masterplan.

There are a number of aspects of masterplanning where taking a bespoke high quality approach does not fit within an inflexible standardised system. Examples include:

- Warranties being unavailable for non-standardised housing.
- Adoptable Highways needing to comply with strict criteria.

Developers are unlikely to be early adopters of more sustainable technologies. Buying land for development is essential for the continuation of their business and they will be unsuccessful if sustainability philosophies increase their build costs above others.

##### Recommended mitigation:

Consideration should be given to government sponsored masterplanning on a pilot project basis.

This was successful in Scotland where the offer to fund DPZ inspired the landowner to progress a high quality development at Grandhome in Aberdeen which is now being built out. Equally through a public/private partnership mechanism, local authorities could use their access to competitive funding to help fund an optimal masterplan and mutually agreed infrastructure strategy, safeguarding their investment through taking a charge, or equity stake.

Building Regulation is required to meet sustainability goals whilst establishing a level-playing for developers. Consideration should be given to supporting warranties on non-standard new build housing.



11.0

## DELIVERY

YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
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The delivery partner builds out the first phase and it is warmly received by the local market. They sell 15 houses in the first launch event which is considered remarkable in that location given market conditions at the time.

The landowners, working with their masterplan architect, had applied for a 'Building with Nature' accreditation during the planning application, and are now accredited with the Full Award (Excellent). The first houses are A-rated as part of their Energy Performance Certificate (EPC) assessment.

Imagery from the development has been picked up by press, and a few articles are starting to be written highlighting the different approach they have adopted. They are invited to attend a Landowner Legacy event by the Prince's Foundation.

After the first six months they compare notes with others in the locality and discover that they have sold far more than others. The landowners are thrilled with the market response and believes it endorses their overall approach.

The first phase of the development is nominated for the RIBA Stirling Prize.

The houses pay £200 per annum as a service charge to fund the CMT's expenditure. The hope was that the costs would rise broadly in line with the number of units, but the reality is that the costs increased rapidly and there is a significant funding shortfall. The buck stops with the landowners, but they have insufficient funds to cover the cost. The development partner is happy to fund the

cost so long as it receives an offset against future distribution payments. The landowners are happy to accept this proposal.

The private housing is being sold at a 15% premium to the local market, which covers the additional cost of the high quality materials. Even so, it is relatively expensive for the area and the sales velocities are showing signs of slowing. The rental housing will not be coming on the market before the third phase, so the parties agree that a cheaper private product will be offered in the second phase to enhance overall absorption rates. Some savings can be found in the externals by using reconstituted stone in parts. The development partner proposes the use of plastic rainwater goods which would have a cost saving over the powder-coated aluminium product they used in the first phase. Nevertheless, the landowners deny its use based on the reference to the use of low-embodied carbon materials in their legal recitals. More savings are found in the internal specification.

The Registered Provider is offering homes at a 20% discount to market rents, but the landowners wish they could control the housing and offer deeper discounts. They think they would have been a good landlord. They wish the viability of the project could have justified a higher proportion of affordable housing.

The agreement for lease provided the flexibility for the landowners to elect to take back homes in lieu of distribution. The Local Authority did not elect to do so, but the landowners did. Ultimately, they were able to keep 28 new private homes, which provide an income to the company they established.



Newhall, Harlow



**KEY ISSUE: STEWARDSHIP****ISSUE**

“Delivering a successful new community requires a clear understanding of how assets generated by the development process will be managed in perpetuity.”

This is a quote from Guide 9 of the TCPA practical guides for creating successful new communities. Planning for the long term has historically been an afterthought to the detriment of the places that have been created with a volume over value approach sometimes being adopted.

Landowners fail to recognise the long-term responsibilities associated with ensuring the success of the community and often do not consider what it might take to achieve it. There is no “one size fits all”; each community is unique. There are a range of options for the legal and governance structure: some more complicated than others, some more community led than others, some more restrictive in respect of how funds can be obtained or spent.

However, landowners are often unaware of the options that are available to them. Often they are unwilling to stay remain involved as a long-term stakeholder. This is representative of their lack of commitment to the continuing success of the place.

Too often, therefore, a robust estate management strategy is ignored.

**Recommended mitigation:**

A study should be commissioned to establish who is doing what and how well it is working. Identifying lessons learnt, including the older stewardship style developments and garden villages and cities.

Where exemplary results have been achieved, the best practise should be modelled.

Landowners need to work better together on neighbouring plots. They should be obliged to consider the setting up of community trusts as a consortium to share one vision which ties in with the local plan and which enables the delivery of a coordinated sustainable infrastructure package including movement, water, waste, digital energy and green infrastructure. Having individual solutions is time consuming, expensive and often divisive, as well as often delivering inadequate infrastructure solutions. A trust with more members will have a broader reach and level of engagement with people feeling connected across a widespread area.

A variety of facilities can be planned, duplication leads to under use and an inefficient infrastructure provision and urban footprint. Strategic delivery of facilities across a network of locations encourages sustainable movement from place to place, development that is greater than the sum of its parts and more cohesive communities. The planning system should demand what is really needed over a broader area rather than a repetitive request for a community centre or sports pitch.



Nansledan, Cornwall

◆◆

**“We found it necessary to employ a Clerk of the Works to pick up on what would otherwise be never-ending breaches of the design guidelines.”**

◆◆

MORAY ESTATE (TORNAGRAIN)



*Poundbury, Dorchester*

The landowners, now in their mid-40s, has been on a 10 year journey. From having aspirations of diversifying the family farm with glamping accommodation, they have instead stewarded their land to begin delivery of 1,000 homes.

Although they are aware there will be more surprises to come, they reflect on the lessons they have learned in the decade they have been working on Fineborough Park. Although they are immensely proud of what they have been able to achieve, their overriding emotion is one of relief.

They tell friends that the process has been like a run on a treadmill where the more risk they took the faster the treadmill got. Their

decision to consider the call for sites was the moment they stepped on; their commitment to steward a high quality scheme was the moment the treadmill was turned up, and the numerous legal, tax, planning, architectural, and crucially financial challenges they faced all increased the speed at which they had to run.

These moments, where their involvement in the stewardship of the land deepened, were all also moments they had the opportunity to step off and sacrifice their vision. By deciding to stay the course, they hope – without any real foundation – that they have maximised the value of their land. They know that, given the circumstances, they have delivered as high a quality scheme as was possible.



## 12.0

# SUMMARY OF RECOMMENDATIONS

The narrative within this study has been informed by the questionnaire responses we received. They have provided a variety of opinions, on a wide range of sites, in different parts of the country, from different stakeholders. We have drawn evidence from consistent themes which we have been explored with expert input from Knight Frank LLP, The Farrer & Co LLP, Saffery Champness LLP, and SAY Property Consulting LLP.

The major themes to emerge from the study revolve around the reactive nature, cost and speed of the planning process, the burden that infrastructure places on large-scale development, and a tax system that disincentivises landowner participation. We have also examined best consideration legislation and masterplanning and stewardship best practise.

	ISSUE	RECOMMENDATION
<b>PLANNING: THE PROCESS IS REACTIVE</b>	In order for a local authority to be aware, let alone consider the merits of, land within their jurisdiction, they are reliant on land being promoted. This is a reactive process which leads to a distrusting and confrontational system where NIMBY-ism is commonplace.	<p>Planning should begin with a systematic and objective approach to defining the right place for development. Geospatial information systems can be used not just to map the sustainability credentials of existing areas, but also of the impact of future strategic infrastructure projects via an assessment of sustainability that is blind to land ownerships or other factors. This could create a presumption in favour of development in certain locations as defined by a strategic higher tier authority, from which Local and/or Neighbourhood Plans can respond to in order to define the vision for development.</p> <p>Localism would remain with stakeholder engagement (e.g. via Enquiry By Design, BIMBY, charrettes) encouraged by the probability of development coming forward in a given sustainable location.</p>
<b>PLANNING: THE PROCESS IS PROHIBITIVELY EXPENSIVE</b>	The cost to promote land for sustainable residential development is prohibitively expensive for most landowners. The costs tend to spiral when additional reports are required to respond to advice received from statutory consultees causing disproportionate costs. It disincentives landowners from participating in development and encourages them to relinquish control at any early stage.	GIS capabilities should be extended beyond the allocation tools, to create a planning toolkit and sustainability map. Once the baseline conditions have been identified and allocations made then a light touch desk-based review of those sustainability criteria could form the evidence base for any planning application. This would allow any future planning applications to be informed by that material and reduce the cost burden on applicants.
<b>PLANNING: THE PROCESS IS SLOW</b>	<p>Under the present system, it is plausible for an application to have been through 22 rounds of public and political consultation and decision making before a permission is granted.</p> <p>Accordingly, the length of time it takes to secure planning approval is over twice as long for larger schemes – just over six years for developments of more than 2,000 homes. In comparison, it takes less than two and a half years for schemes with under 500 homes.</p> <p>What is more, the use of planning performance agreements (PPA) is becoming routine and it has become difficult to secure any response without one. In this way PPAs have created a cost to achieve the same level of service.</p>	<p>As the main delays to achieving a planning permission come from interaction with statutory consultees, reducing the burden of these processes will inevitably reduce the amount of time it takes to achieve a minded to grant stage of a planning permission.</p> <p>A permission in principle would focus the planning application process onto the main and fundamental issue of whether in principle development as proposed is capable of being acceptable. It removes or reduces a number of matters inherent within the planning system that cause delay, cost and complexity</p> <p>In addition, if Section 106 was brought into the discussions at an earlier stage, it would be possible to have this agreement detailed and prepared for assigning once committee has approved and the decision is drafted. The reduction in Section 106 negotiation time will demonstrably improve the pace of decision-making and the granting of planning permissions.</p>



	ISSUE	RECOMMENDATION
<b>INFRASTRUCTURE: THE BURDEN IS UNFAIRLY PLACED ON LARGE SCHEMES</b>	<p>The cost of grid reinforcement, utility upgrades, commuted sums, junction improvements, contributions to community projects, schools, libraries and the like are prohibitively expensive.</p> <p>Large schemes bear the cost to upgrade networks when they benefit a wider community.</p> <p>CIL is the Government's means of collecting developer contributions to infrastructure investment in order to smooth the requirement for investment that has been identified as necessary to support the development of an area.</p> <p>The average CIL rate for residential development is currently £95 per square meter. For many smaller developments that plug into existing infrastructure this will be their sole. This is in stark contrast to the major development sites that, on average, £550 per sq m. This is 579% more.</p>	<p>The cost of major infrastructure items should be equalised across all new developments within a sub-regional geography through an appropriate and fully enforced levy.</p> <p>Major sites should be encouraged to deliver local community benefits based on evidence of local need. The cost of these benefits should be assessed within the context of a Section 106 Agreement to ensure that the project is not unnecessarily burdened by comparison to the relevant CIL regime.</p> <p>Care needs to be taken not to have grandiose infrastructure requirements. Local Authorities need to be mindful of the impact on major projects. Whilst the projects are large, that does not mean they can contribute any more – pro rata – to infrastructure.</p>
<b>INFRASTRUCTURE: IT IS DIFFICULT TO SECURE FUNDING</b>	<p>The cost of infrastructure is overly burdensome and front-end loaded. The costs can be compounded by expensive finance rates and short-term loans, which force participants into joint ventures with larger corporate investors and dilute ambitions of quality.</p>	<p>Consideration should be given to a means to neutralise the favourable grant and lending rates enjoyed by certain entities.</p> <p>Consideration should be given to a Patient Capital Fund to provide long-term lending at competitive rates, with flexible repayment options (e.g. tariff repayments when homes are sold), and where developments meet certain criteria that encourage good quality sustainable settlements</p>
<b>TAX: COLLABORATION AGREEMENT TAX TREATMENT IS RESTRICTIVE</b>	<p>There is no solution to the issues on collaboration agreements.</p> <p>Equalisation agreements face issues with double charging if the land is sold in a different proportion to the percentages set out in the agreement.</p> <p>Land pools can, under current HMRC practice, be set up without charges to CGT or SDLT but access to Entrepreneurs' Relief or Business Asset Rollover Relief on the proceeds of land sales can be difficult unless a common entity can be set up involving both landowners to continue to use the land in a trading business.</p> <p>Cross options or restrictive covenants can result in a capital gains tax charge on creation which can be significant and would undermine the commerciality of the arrangement.</p>	<p>A solution to the issues on collaboration agreements could be considered. This would be to bring the current land-pooling trust into the statute so there is no doubt about its taxation status.</p> <p>Consideration should also be given to extending Business Asset Rollover Relief and Entrepreneurs' Relief to receipts from a land pooling trust, if the land in question would have qualified before the trust was established.</p> <p>Consideration should also be given to extending the current replacement property provisions for agricultural property relief and business property relief to interest in land-pooling trusts, so that the current IHT consequences are mitigated.</p>

# SUMMARY OF RECOMMENDATIONS

	ISSUE	RECOMMENDATION
<b>TAX: PARTICIPATING IN DEVELOPMENT IS TAXED MORE HEAVILY THAN OPTION AND SALE ARRANGEMENTS</b>	<p>The current tax regime encourages landowners to pursue option and sale arrangements for the promotion phase of projects, then to sell development land up front rather than participating in the development for the longer term.</p> <p>Why is it that a landowner who wishes to remain involved in development, potentially with high quality, legacy development aspirations, is penalised versus someone who sells to a promoter or major housebuilder?</p>	<p>Tax treatment should equalise the tax treatment of land vested as patient equity with current option/ sale arrangements.</p> <p>HMRC should introduce rollover relief on income and consider an efficient 'wrapper' to bring together land and infrastructure investment within a corporate structure with satisfactory tax treatment for all parties, and to encourage stewardship.</p> <p>We have also provided seven more detailed recommendations relating to the treatment of land sales, joint ventures, and building lease/licences.</p>
<b>BEST CONSIDERATION: THE LEGISLATION IS OUTDATED AND IS NOT ALWAYS PROPERLY IMPLEMENTED</b>	<p>The Local Government Act 1972, S123 is a duty to obtain best consideration but it is not a duty to obtain that consideration instantly. This is not often properly understood.</p> <p>Where legacy development cannot show that it would meet the duty for best consideration, there is not adequate provision to show that it will improve the economic, social or environmental wellbeing of its area.</p>	<p>In the medium term it would assist if Government guidance was updated on where sales at undervalue, in order to facilitate placemaking, can take place, especially where it would further the goals of the Public Sector Equality Duty or meet established local need of some kind.</p> <p>In the long term, reform of S123 of the Local Government Act 1972 must be considered so that Councils can lawfully take into account matters relating to the social, economic, and environmental wellbeing of their areas when considering "best" consideration.</p>
<b>MASTERPLANNING: THE VALUE OF UP-FRONT MASTERPLANNING IS NOT REALISED</b>	<p>The up-front cost of exceptional masterplanning design can be prohibitive. Landowners are likely to take a more incremental approach which may not lead to the best possible masterplan.</p>	<p>Consideration should be given to government funded masterplanning awards and to supporting warranties on non-standard new build housing.</p>
<b>STEWARDSHIP: TOO LITTLE RESOURCE IS DEDICATED TOO LATE</b>	<p>Too often, regardless of their exit strategy, landowners or developers spend an inadequate amount of time creating a robust estate management strategy which considers the TCPA's three principles of success:</p> <ul style="list-style-type: none"> <li>iv. Planning for Long Term Stewardship</li> <li>v. Paying for long-term stewardship</li> <li>vi. Running a stewardship body</li> </ul>	<p>A study should be commissioned to establish who is doing what and how well it is working. Identifying lessons learnt, including the older stewardship style developments and garden villages and cities. Where exemplar results have been achieved, the best practise should be modelled.</p> <p>The planning system should demand what is really needed over a broader area rather than a repetitive request for a community centre or sports pitch. In this way, landowners need to work better together on neighbouring plots. They should be obliged to consider the setting up of community trusts as a consortium to share one vision which ties in with the local plan.</p>



## 13.0

## ACKNOWLEDGEMENTS

We wish to acknowledge the contribution made by the following in preparing this report:

**Knight Frank LLP**

Headquartered in London, Knight Frank is a multi-disciplinary property consultancy with more than 500 offices across 60 territories and more than 19,000 people.

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Farrer & Co is an independent law firm offering expert legal advice founded in their extensive experience of legacy projects.

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### **Saffery Champness LLP**

Saffery Champness are a top 20 firm of Chartered Accountants and Registered Fiduciaries whose concept of service is to solve problems, take advantage of opportunities and turn advice into action.

### **Alex Simmons**

Alex has commented on the taxation factors as part of this report and highlighted taxation issues facing landowners when making the decision whether to sell their land to a developer or to stay involved longer term as development partners.

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### **Respondents:**

Listed below are developers and landowners who have responded to our questions. Their responses have been invaluable in supporting the Building Better, Building Beautiful Commission:

- Nicholas Tubbs & Ben Bolgar  
*Bartons (Nottingham)*
- Andrew Carrington  
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- Ben Murphy  
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- Joe Cook  
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- Kim Slowe  
*ZeroC (Roussillon Park, Chichester)*
- Iain Jamie  
*Hopkins Homes (Trowse Newton)*
- Tim Wray  
*Keepmoat Homes (Allerton Bywater)*



## 14.0

## IMAGE CREDITS

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57	Poundbury, Dorchester	Cafe on the green	Duchy of Cornwall (L)	© Duchy of Cornwall
59	Newhall, Harlow	Chase Tower	CALA Homes (D)	© Newhall Projects
63	Poundbury, Dorchester	Brace of Butchers	Duchy of Cornwall (L)	© Duchy of Cornwall
66	General Image	Architects brief on site	-	© Photo_Concepts
68	Beaulieu Park, Chelmsford	Local Centre at Beaulieu Park	Countryside Properties (D)	© Countryside Properties
69	Newhall, Harlow	Phase 1 housing at Newhall	Newhall Projects (L/D)	© Newhall Projects
71	Tornagrain, Inverness	Tornagrain homes	Moray Estate (L)	© Ben Pentreath
72	Fairford Leys, Aylesbury	Fairford Leys Masterplan	Ernest Cook Trust (L)	© John Simpson Architects
75	Newhall, Harlow	Fusion (Sheppard Robson)	Bellway Homes (D)	© Newhall Projects
76	Nansledan, Cornwall	School child	Duchy of Cornwall (L)	© Duchy of Cornwall
77	Poundbury, Dorchester	Holmead Walk	Duchy of Cornwall (L)	© Duchy of Cornwall



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