Our common estate: Planning for land in large-scale urban development

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Abstract This paper explores the role that land plays in the process of large-scale urban development, with a particular focus on England. In doing so, it looks at the role that both strategic and non-strategic land can play in the process. It considers the current context and identifies the need for new development models to come forward. The paper proposes one

means by which public-sector land, a ‘common estate’ to the extent that assets are held indivisibly by various public-sector organisations for the provision of goods and services, could be better deployed to help address the housing delivery challenges faced.

Keywords: *Housing, urban growth, strategic land, public-sector land, Garden Cities, Great Estates*

INTRODUCTION

Since 2007, many advanced economies have gone from boom to bust and back again. In the UK, this process constituted the longest and deepest economic recession since the 1930s. Throughout this period, the situation in the country’s housing market has consistently been of concern. There is a clear nationwide shortfall in housing delivery. Nowhere is this more acute than in London, where the Mayor’s recently published ‘Further alterations to the London Plan’ sets housing targets for the city’s Boroughs totalling 42,389 dwellings per annum; some 6,600 short of what is required to meet the city’s assessed need. Furthermore, this is in the context of historically low building rates, with 24,694 London homes constructed in the average year from 2004 to 2008, despite an average of 58,167 being permitted.[1] The key issue is therefore how the UK might deliver urban development that could sustainably accommodate economic and demographic growth. Hall and Ward aptly identified the same question in their recently republished ‘Sociable cities’, which led them to think it necessary to reinvent the Garden City for the 21st century, in the form of the Sustainable Social City.[2] This paper considers that challenge with particular regard to the large-scale release of strategic[3] and non-strategic[4] land, and the contribution that strategic public-sector landholdings can make to housing supply.

THE CHALLENGES FACED

The UK Government has made clear its intentions to address the housing shortage, with Prime Minister David Cameron stressing at the Conservative Party conference in October 2015 his view that“we need a national crusade to get homes built”.[5] The inability of the housing provision system to deliver an appropriate number of affordable, good quality homes in the right locations that meet both need and demand is therefore understandably making headlines. Various measures have been announced attempting to rectify matters. In London, where the population is expected to grow by some 2,000,000 people over the next 15 years, the Chancellor set out plans in February 2015 to help deliver 400,000 new homes by 2025.

This is to be supported by a London Land Commission (LLC). Based at the Greater London Authority (GLA), it will be tasked with identifying enough surplus public-sector land to ensure that all new homes can be built on brownfield land.[6] Whether in London or elsewhere, however, public land release can only be part of the solution.The severe systemic failure in housing provision serves to highlight the numerous hurdles facing those who would strive to provide a built environment that is more socially, environmentally and economically sustainable.

The current position is, *mutatis mutandis*, similar to what Howard was facing when he wrote 'To-morrow: A peaceful path to real reform',[7] subsequently reprinted as 'Garden Cities of to-morrow'.[8] The fact that we continue to grapple with similar challenges indicates why it should come as little surprise that his key messages resonate with us today. Indeed, Howard's legacy resonates so strongly that the UK Government announced a programme of "locally led garden cities" in April 2014. In launching its prospectus, the government stated that "building on the historical Garden Cities concept, and a legacy of new town development we can be rightly proud of, we want to support localities in delivering inspirational new Garden Cities fit for the 21st century".[9]

Contemporary British planning rhetoric successfully emphasises that "good design is … indivisible from good planning",[10] but does not fully address the extent to which such latent design potential can be unlocked within the current financial environment and planning system, with land being an integral consideration. Howard's genius was that he understood the role that money and land played. He recognised that what was required was a completely new way of habitation, underpinned by a new urban development investment model which would supersede vested land interests. Indeed, Hall recognised that the key to Howard's approach 'was that the citizens would own the land in perpetuity'.[11] As an early form of 'crowdfunding' with low returns over long periods, it is fair to say that this did not work terribly well. It does, however, represent an ingenious approach that reflects a deep understanding of the process of creating value through the development of land. Furthermore, it represents an attempt to capture the significant long-term enhancement of that value when development facilitates a high quality of habitation.

Howard's proposal is therefore deeply political. He understood that there were at least two key issues that needed to be tackled in urban development; the way in which that process is structured and coordinated, and the risk–return allocation between the stakeholders involved. What is required is therefore a development environment that provides certainty

where possible, reducing perceived risk and increasing returns at the same time. Any such modern approach will almost certainly be equally deeply political.

THE DEVELOPMENT MODEL

It is a testament to Howard's ingenuity that his proposed solution was equally 'out of the box' as his overall vision: the ownership of land, bought at existing use values (ie agricultural prices with no hope value priced in) in the open market by shareholders from the general public, would be retained by a community trust, which would assume the development risk and then capitalise upon the uplift in land prices on the reversion of leases to repay the finance costs. In spite of the problems that this model faced with shareholder expectations, the benefits of this approach, as still recognised by the Town and Country Planning Association, are that 'as these debts were gradually paid off and as land values rose, the money could be increasingly invested in community assets and services, building up what we might think of as the Garden City "mini-welfare state"'.[12] Indeed, this is similar to the approach taken with the New Towns programme immediately following World War II, where land was acquired at existing use value with an allowance made for compensation determined by the Lands Tribunal. Howard's model sounded good in theory and did work well in the long run but, as with the UK's three subsequent phases of New Towns, was faced with commercially unsatisfactory short-term returns. Hall subsequently highlighted that "we have never, from Letchworth onward, come near Howard's vision of a self-governing, self-financing commonwealth".[2] Arguably, we had never come near that vision before Howard's time either although by the end of the 19th century Britain had experience of the 'Great Estates' model.In these instances land was typically gifted by the monarch.

The 20th century's New Towns programmes continue to inspire across the globe, although they have also attracted well-founded criticism. This has not, however, prevented thought being given to other 'Unified Landownership' proposals such as the Strategic Land Investment Model (SLIM), Sociable City/21st Century Garden City, Millennium Communities and Eco-Towns.In their fully disaggregate version, these models do not preclude a separation between initial landowner, promoter, investor in land servicing and infrastructure, and final freeholder. However, there is nothing to stop more aggregated structures from emerging.

Indeed, the Great Estates and New London Estates incorporate a model where all these roles and functions are often performed by one single entity, the freeholder of the estate itself. The key operational issues for each actor are the risk and uncertainty attached to the

role they play in the development process and returns required to make these acceptable. The elephant in the room, of course, is the role of the state in all its guises.

It may seem strange that such models for developing large land parcels under single ownership are not more widespread. The advantages appear to be substantive in terms of efficiency and effectiveness as well as in terms of returns. If transaction costs can be efficiently internalised, the requirement for superior returns can also be relaxed accordingly.Research by Patricia Canelas[13] shows that active management of spatially clustered properties, as in the Old and New London Estates leads to a better long-term risk/return profile. The Prince's Foundation[14] has also argued that, although patchy, existing evidence suggests that 'sustainable urbanism' can accrue significant long-term economic gains to property owners as well as important social and environmental benefits.

In academic terms, there is very little research to suggest why these models are not more widespread, but the lessons from practice suggest that the structure of investment and business strategy that underpin development play a crucial role. Generally speaking, organisations such as pension funds or life insurance companies look to make investments premised on low-risk income and capital growth over the long term. This mindset has driven Legal & General, for example, to reorganise its property and infrastructure activities into a single 'real assets' division and pool £15bn of institutional capital to invest in UK housing and infrastructure. House builders, however, typically look to secure their return not from income, but from disposal. Their key drivers are therefore more closely related to profit on gross development value or profit on cost. Commercial and mixed-use developments also commonly look to internal rates of return or return on investment. The important point to note is that the type of development that actually takes place depends heavily on the type of organisation that brings it forward and the manner in which that organisation employs its finances.

In the UK, where in 1999 only 40,286 people owned land worth over £1,000,000 with a total acreage of approximately 28 million acres, but approximately 16.8 million private homeowners owned 2.8 million acres,[15] understanding the behaviour of different actors and the structure of local land markets is of paramount importance to establishing potential solutions. Indeed, much of this land is concentrated in the control of a handful of institutions (insurance companies, the Forestry Commission, the MoD and the like) as well as the Church, the Crown and historic family estates. Many of these organisations quite understandably have their own aspirations for their land and do not therefore intend to bring a large number of sites forward for development in the short-term.

Imagine a landowner in a location where there would be adequate demand. What could they do with their land? Four options are identified in Table 1.

[INSERT TABLE 1 NEAR HERE]

All the options in Table 1 occur in the UK, as they do in many other countries across the world. To an extent, they are also cyclical, in that one may hold onto land until they are ready to develop it. Not many major landowners would decide to develop entire new communities when they own a large amount of land without one or more partners to share the risk. Similarly, owners of 'self-build' or 'windfall' plots often lack the finance and expertise necessary to bring these forward. Yet, in 'Option 3', transactions are also relatively rare; thus developers (promoters and house builders even more so) have managed to corner the market across entire cities.[16]

Could it be that the cultural and financial attractiveness of Option 4 is enough of an explanatory factor to explain why more development does not happen? For some owners, such as family estates, this is inevitably the case, as their primary motivation is not development oriented. There are also undoubtedly challenges: NIMBYism, the perceived magic of 'Country Life' and a tight approach to spatial regulation through the planning system are often enough to explain why Options 1–3 take time to come off. In reality, however, many people will be exploring these development options and awaiting the appropriate moment to take a scheme forward where it is appropriate and the political will exists to see development happen, but this is by no means an expedient process. Peter Hall discussed many of these matters at length in the 'Containment of urban England',[17] highlighting the creation of new planned communities as a key feature of the post-1947 planning apparatus.

There is a wealth of evidence suggesting that the planning system is responsive to policy changes and applications for permission.[18] While it might take a while to secure permission to build,[19] it is normally granted for proposals that accord with the development plan (unless a case can be made otherwise), as long as the applicant has the time and resources to pursue it. Notwithstanding its advantages, a side effect of the discretionary nature of the UK planning system is that it makes it more resource intensive for new actors to enter the development industry. The inherent uncertainty of the UK planning system has time and cost implications for the development process, which ultimately need to be offset by higher sales values, although much of the response is likely to sit outside the remit of

planners in private or public practice. Yet it is important to note that, while there were 131,060 housing completions in England over the period June 2014–2015,[20] there were 203,810 homes permitted from March 2014 to March 2015.[21] Clearly, if the total number of homes permitted were constructed, the issue of housing delivery would be far less acute.

Whether private- or public-sector developers, the working assumptions commonly remain focused around the financial return from a site as opposed to the social benefits that might be secured, for example by an increase in the number of homes delivered. It should not therefore come as a surprise that not all permissions are built out. Moreover, planning permissions are themselves tradable commodities with scope to be renegotiated and no obligation to build. As with any other commodity, whether homes are built or not, ultimately depends upon what else is available in the market alongside the financial assumptions that underpin development, not least around the amount that can be paid for land and the exit values needed to support this. In addition to this, current shortages of labour and materials,[22] which have been typical aftermaths of previous downturns in the UK property market[23], make it unlikely that – even if we wished to – we could build out the houses for which permission exists. Notwithstanding these shortages, planners need either to permit dramatically more homes or significantly improve (by whatever means possible) the prospect of those that are permitted being constructed. More research could perhaps shed some light onto how the application to construction conversion ratio could change and into the likelihood of these additional permissions being for sustainable communities.

The intra-war years give us a good indication as to what would happen if development rights were to be reassigned to land and spatial regulation (through the planning process) were to be substantially relaxed or removed altogether. The system established in 1947 was not a historical accident; it was a radical intervention to address some very real concerns about urban development (and the betterment and compensation issues associated with it), but one that also recognised that new communities will have to be created in order to accommodate a growing economy and population. It is for this reason that the 1947 Planning Act was preceded by the 1946 New Towns Act: there was a deliberate attempt to deliver development while preventing sprawl (although the no-growth assumptions of Patrick Abercrombie's plans for London have since been proved plainly wrong).[24] The New Towns programme also addressed this conundrum via state intervention in the land market. Other advanced capitalist countries have historically resorted to

1. A more distributed pattern of landownership combined with a process of attaching development rights to land during the plan-making process, thus reducing planning uncertainty and the discretionary nature of their planning systems; to begin with, this lowers barriers to entry for potential developers.
2. engaging the state as intermediary landowner and provider of infrastructure and land servicing with higher risk assumed and more value captured by the state: the long-term capacity of the state to reflate its economy via monetary measures is the ultimate guarantee against the financial risks assumed
3. promoting the provision of public goods in urban development during the plan-making process.

Frequently, all of the above apply simultaneously. In order to tackle the inevitable development pressures that such approaches instigate, many countries put in place a programme of channelling development into planned city extensions and new medium-size towns well integrated into regional transport networks, along the lines of Hall's 'Sociable city'.[2] The UK is an advanced capitalist country, which currently combines a quite effective urban containment approach with no serious provisions for channelling growth and a discretionary planning system. An institutional framework for directing growth, be it through organised large-scale development or otherwise, that exists elsewhere would be key in resolving the current crisis. Hall's proposals[2] for reinstating the principle and practice of creating new planned communities via (a) effective planning, (b) effective land preparation agencies and (c) appropriate funding mechanisms; therefore remain more relevant than ever. It seems, however, that there are serious obstacles in the way of such an approach.

NEW GREAT ESTATES

We may need to start the process with something much less ambitious yet both simple and effective: a 'Great National Estate' or, on a smaller and more regional scale, separate 'Garden City Estates' and a 'Greater London Estate'.[25]

Creation of a Great National Estate, or variations of this, could facilitate development today by using public sector assets to establish a built legacy for future generations in a manner that harnesses the asset, while recognising the manner in which most development assets come forward. In replicating a traditional 'Great Estates' model, there would be little risk or capital outlay for the landowner, who would also receive a capital receipt (from the

lease), income (from the ground rent) and capital growth (from the reversion). Importantly, when considering long-term objectives, the landowner would also have flexibility to control the type of development that comes forward. The leaseholder, if any, would be able to develop the land and to profit from the disposal of that scheme. If acquired with the benefit of a planning brief (or, more restrictively, subject to covenants on the land), to guide future development, they would also have increased certainty as to what was achievable, reducing planning and financial risk, thereby enhancing the 'planning gain' that could be returned to the community.

Take, for example, how a 'Greater London Estate' might work. As part of the LLC, the GLA would undertake due diligence of a number of properties, working with other public bodies to ensure coordination in the disposal of their sites. The proposed approach would involve those sites identified for disposal being passed to a new, independent but publically accountable Greater London Estate. The Estate would manage the process, acting with the flexibility to determine the most appropriate planning and property approach to each site. Disposal monies received could be passed back to the public-sector owner, with the Estate's long-term running costs derived from the annual income generated by each asset it controlled.

The vast majority of sites that were taken into the new Greater London Estate would be released to the development sector on a long-leasehold basis. In certain limited situations, however, where the Estate did not feel leasehold disposal was appropriate, sites could be sold either on an Unconditional or Joint-Venture basis with profit-sharing agreements overseen by an independent client monitor to validate the costs and profit. In these instances, the capital return could simply be passed directly back to the appropriate public sector owner.

Those sites that the Greater London Estate retained within its portfolio would be valorised in a similar, if modernised, manner to that applied by the historic Great Estates. The Greater London Estate would work with the local planning authority (LPA) to prepare a planning brief for the site. These documents would be prepared jointly, to clarify aspirations for the property and provide a basis against which a future planning application could be bought forward. This might, for example, provide details on acceptable uses, scale and massing. It could also be adopted by the LPA, if desired, to provide greater planning weight or in other circumstances be reflected in covenants on the land; perhaps requiring either a specific type of development or time-frame for delivery.

Once the planning brief had been agreed, the site would be made available on the open market to potential purchasers. The brief would provide a degree of certainty as to what was achievable, ensuring that bids were received on a comparable basis, but also that they

could be more competitive. This improved competitiveness would arise because the greater certainty provided would reduce planning risk to a private developer; meaning that aspirations on viability (affordability, height and design) could be balanced against the speed of delivery. Disposing the site on a 'subject to planning' basis would further reduce any perceived purchaser risk, as the Greater London Estate would only secure its financial returns once planning permission had been granted.

Leases for each site would be issued for a typical term of 150 years where it came to residential land, or longer subject to market requirements, fitting closely with the current leasehold system. This would enable new homes and commercial space to be constructed and disposed under existing legislation, in a manner appropriate for both developer and purchaser. Thereafter, in instances where residents of future housing were unable collectively to extend their leases, for reasons of disunity or insufficient funds, responsibility for the property would revert to the Greater London Estate once these expired. The Estate could then actively manage the future of these properties, much as the existing Great Estates do, in a manner that responds to and works within the Leasehold Reform Acts.

Leases granted would also allow a 'First Right of Refusal' to the Greater London Estate on commercial elements of mixed-use sites. This would enable the Estate to buy back retail and office components as an investment, should it wish, to create an income stream going forward. Such purchases could be funded by, or offset against, the ground rent achieved.

While the Greater London Estate would take time to establish, particularly in terms of its operational and administrative remit, the model could be employed immediately on any public sector land without legislative change. It could be applied easily and with confidence that it would be attractive to the market. The capital growth could deliver best value for the public purse in the longer term, while the income achieved from ground rents and/or commercial investment elements would provide an income that could contribute to the establishment and running of a self-sustaining Greater London Estate in the future.

Where this model becomes more interesting and potentially most influential is at the 'Great National Estate' or 'Garden City Estate' level, where income could provide the basis for low or completely unleveraged land purchases (using long-term investor funds when required). These would expand the Estate's land portfolio and could operate counter-cyclically. This land portfolio could allow the Estate to realise a sustainable urbanism approach, drawing inspiration from the 'Sociable City' idea. It could allow the public sector

to build up its know-how without crowding out the private sector from development, and address the issues arising out of the short-term perspective of other development actors.

CONCLUSIONS

The main arguments and issues in this paper point to a few key conclusions. First and foremost, there is a need for the British public sector to take a more active role in urban development than it currently does. This does not require it to assume a full-blown developer role but, eventually, delivery is what matters. Policies can be tweaked and renamed, but fundamentallymore homes need to be built. The delivery of numerous new sustainable communities, aptly described as '21st century Garden Cities' by Peter Hall, is a key mechanism that could accommodate growth atthe scale and speed currently lacking in the UK.

A mechanism that could provide new sustainable communities, be it urban extensions, large infills or new towns, is therefore necessary in order to offer one among many complementary mechanisms aimed at accommodating economic and demographic growth. While the UK does not currently have such provisions, we do have incentives for development actors to focus on the short-term profitability of their activity. In fact, the logic of the long-term investor and the logic of the house builder are not necessarily compatible except where these are linked (ie where one brings forward the site through planning, and the other actually builds it out, or one provides the land and another the funding).

There are ways in which the state can become actively involved in the land market, based on a self-sustaining model of long-term income generation. The creation of a Great National Estate, or variations thereof, may be just the framework to instigate change, at least in the way that surplus public sector land is managed. The example set could undoubtedly be followed by others and the expertise developed would usefully affect planning practice at national and local scale.

Finally, it is important to recognise that such considerations are generational. If a solution to delivering large-scale urban development is to be found, there is no time to waste before starting to think and talk creatively. New communities of the size and number required to tackle current housing problems will take several years to become reality, even if the decision to progress was taken today. Encouragingly, in the words of Peter Hall, 'we did it once … we knew how once. We can do it again. What is needed is the will and the imagination — and a huge political push'.[26]

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Table 1: Development options available to a landowner

	Strategic land	**Non-strategic sites**
Option 1: Retain control of the land and develop it in-house, retaining full control of the development value chain but taking the full development risk.	For a single organisation both to release the land and deliver development upon it requires time and expertise, both of which require significant financial outlay. The strategic nature of large sites has more significant time and cost implications.	These sites are often owned by smaller organisations or lower net worth individuals. The resources required in terms of both finance and expertise are, relatively speaking, still significant and can be prohibitive for those seeking to custom-build or self-build.
Option 2: Enter into agreement with a promoter or developer,	Attractive where one party controls the land and the other has	Depending on the size of the site in question (and consequently the

retaining partial control of the development value chain, sharing the development risk and profits with another party.	access to finance. The total time and investment required is equivalent to that of Option 1 (albeit the risk and return is shared).	returns involved), it may be difficult for a landowner to attract the interest of a development partner. The total time and cost is equivalent to option one (albeit shared).
Option 3: Sell the land for development (limited control of the development value chain). Financial security over the capital receipt to be obtained, but limited benefit of any uplift in value unless overage can be agreed.	The lowest risk option for a landowner, as it guarantees a capital receipt. But the amount received will be less than if they had shared in the risk of development (either in terms of time or cost) through options 1 or 2. This sale could be either unconditional or conditional, for example, Subject To Planning Such an arrangement may be less attractive for larger plots, against which development finance could be secured.	The lowest risk option for a landowner as it guarantees a capital receipt. But the amount received will be less than if they had shared in the risk of development (either in terms of time or cost) through options 1 or 2. This sale could be either unconditional or conditional, for example, Subject To Planning Such an arrangement may appeal to those with small plots, against which leveraging debt carries a more significant risk.
Option 4: Hold on to the land (no or limited development value chain).	The land will not be progressed for development and might instead be used for agricultural, tourist, leisure and related activities. The land could nonetheless be promoted through the development plan process, accruing greater certainty and hope value. The costs attached to promoting a strategic site are, however, still likely to be significant.	Land will not be progressed for development and might instead be used for agriculture, leisure uses and personal enjoyment. Land with scope for more than 10 units could potentially be promoted through the development plan process, accruing greater certainty and hope value. The cost of promotion of a smaller site may be relatively small by comparison with the potential uplift in value.

Source: Authors