Take Back Control – Planning

A city exists in a physical space. The nature of that space permits and constrains what we can do within it. Taking control of the city entails taking control of its space.

Land was once at the heart of the radical agenda. Following the industrial revolution, attention swung to control of the means of production understood as the physical capital of factories and machines. But land is back on the agenda. It now accounts for over half the value of UK non-financial assets. Land ownership is highly concentrated and soaring land values have driven inequality. Labour has published a report entitled *Land for the Many*[1], edited by George Monbiot. This is not party policy but it contains ideas that could become so, such as a land value tax or community land trusts.

The ownership and control of land is a huge subject. Today I will look narrowly at how some aspects of planning promote the interests of the Few rather than the Many. In a rapidly growing city like Cardiff, planning is central to how our urban environment evolves. This is not about small homeowner enhancements. City development is driven by companies for profit, with large corporations leading the way. Planning law is intended to reconcile the interests of developers with wider community interests. It often fails to do so.

The early decades of the industrial revolution experienced an urban crisis as workers were crammed into overcrowded factory towns, with little or no sanitation. Disease was rife and mortality high. A few enlightened factory owners, such as the early socialist Robert Owen, built model towns, but these were exceptions. The British state took no responsibility for housing conditions until late in the 19th century.

Local authority responsibility for urban planning started with the Housing and Town Planning Act[2] in 1909. Further legislation followed. The post-war Atlee government passed a New Towns Act[3] in 1946, and then the Town and Country Planning Act[4] in 1947. Often ignored in assessments of Labour's record, the 1947 Act was a major achievement, setting the planning framework that still applies today. Local authorities were required to define planning policies and proposals had to apply for permission.

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[1] labour.org.uk/wp-content/uploads/2019/06/12081_19-Land-for-the-Many.pdf
[2] en.wikipedia.org/wiki/Housing_Town_Planning_%26c._Act_1909
[3] www.legislation.gov.uk/ukpga/1946/68/contents/enacted
[4] www.legislation.gov.uk/ukpga/1947/51/enacted

The 1947 Act went further. It not only regulated the right to develop land but sought to nationalise it. Section 69 stated that a development charge should be paid before any operations started, with section 70 specifying that the Central Land Board should consider the increase in land value resulting from planning permission. There are caveats but the principle is clear. Planning permission is a public good, the value created by which should go to the community, not to the landowner. The Conservative government abolished development charges in 1953 and the Central Land Board the following year[5], re-privatising the gains from planning permission, which in prime locations can increase the value of land a hundred-fold or more. No government has restored these charges.

Section 106 of the Town and Country Planning Act 1990[6] empowers local planning authorities to impose planning obligations on a developer as a condition of granting permission. These may be specific site requirements or a cash sum payable to the authority, enabling it to carry out work mitigating the impact of the development, such as roadworks for access or extra school places.

Of particular interest is the use of s106 to oblige developers to include, or contribute towards, affordable housing. What is defined as "affordable" is often beyond the reach of many but even this commitment is still being dodged. Some developments are excluded, even when planning law allows this. Cardiff does not ask for affordable housing payments on Purpose-built Student Accommodation, although Oxford does. Developers usually oppose on-site provision but when Council asks for a commuted payment instead, this is rarely obtained.

Taking the UK government definition of affordability as a reduction of at least 20% on market prices, plus the Cardiff Local Development Plan (or LDP)[7] obligation that residential developments should include 20% affordable homes on brownfield sites or 30% on greenfield, this contribution should be 4-6% of the value of a development, plus that implied by other obligations. Instead, we see an "s106 dance", whereby an application is sent around departments, who each dutifully calculate a contribution, the total is added and presented to the developer, who then claims it will make the proposal unviable, the District Valuer agrees, the Planning Officer recommends zero or token payment, and the Planning Committee meekly accepts that.

[5] www.legislation.gov.uk/ukpga/Eliz2/2-3/72/contents
[6] www.legislation.gov.uk/ukpga/1990/8/contents
[7] www.cardiff.gov.uk/ENG/resident/Planning/Local-Development-Plan/Pages/default.aspx

Wales Online[8] has calculated that across 25 sizeable Cardiff proposals, initial s106 calculations totalling £21m shrunk to just £3.75 by the time permission was granted. As an example[9], the s106 due on a scheme for 206 private flats on Dumballs Road was calculated as £3.56m but the developer claimed any payment would make it unviable, before offering £396k as a sweetener for the Committee, which then approved it in June 2018. Affordable housing is the main loser in these cases.

Once viability is considered, then s106 contributions can be squeezed out by inflated land values, a cost to the developer that reduces the anticipated margin out of which these payments could be made. Worse, as Shelter[10] has shown, repeatedly allowing s106 payments to be negotiated down itself stimulates the rise in the price of land by making it more valuable to developers, who are then willing to pay extra for it. Big landowners gain at the expense of those who need homes.

A local authority can impose a Community Infrastructure Levy (CIL), although in Cardiff this is stuck between Council and Welsh Government. A CIL has the advantage of being a fixed percentage not subject to negotiation. It could apply to all developments, including student housing, where delays to CIL have cost Cardiff Council several million pounds. A CIL could also support city-wide initiatives, such as grassroots culture. But it would not solve everything. S106 would still be needed for local impacts, such as parks. A CIL cannot contribute towards affordable homes, so s106 viability would still be in dispute.

In any case, we need to ask why Cardiff Council is reluctant to impose payments on developers. We do not need lazy assumptions about "backhanders". Nor does the Planning Committee have to accept an Officer recommendation at the risk of judicial review. The Committee must give reasons for decisions but an LDP can provide that. Welsh Government's Planning Policy Wales[11] says applications which comply with an up-to-date plan should be assumed to be viable. Cardiff's LDP says affordable housing is necessary; it should not be treated as optional.

Exceptional site circumstances can justify viability assessment, but in Cardiff this has become standard practice to avoid LDP obligations. Nor are negotiations open book, although Welsh Government expects this. Large developments often need the active participation of Council or Government, who may themselves own some of the land

[8] www.walesonline.co.uk/news/local-news/cardiffs-missing-millions-developers-asked-16745257
[9] planningonline.cardiff.gov.uk/online-applications/applicationDetails.do 17/02404/MJR
[10] england.shelter.org.uk/data/assets/pdf_file/0010/1434439/2017.11.01_Slipping_through_the_loophole.pdf
[11] gov.wales/planning-policy-wales para 4.2.21

or provide essential infrastructure. Public authorities are not just passively performing their legal duty but actively making choices.

This is not only a Cardiff problem. Development is seen as vital for growth, jobs and housing, and authorities are reluctant to impede this. If a developer threatens to pull out, Councils will fold. Local authorities let themselves be intimidated by large corporations, who could go elsewhere or just abandon a project. But a more robust approach is possible.

Concerted action across public authorities could prevent developers playing off local councils against each other. Land values would then fall, ending the massive transfer of wealth to large landowners. Welsh Government could do more by insisting local authorities follow approved LDPs and by lifting borrowing limits. But its powers and capacities are constrained. Extra funding is needed for infrastructure and housing. Commercial projects can easily relocate to England. Action is needed at the UK level and only a Labour government can provide that.

That does not relieve Cardiff Council or ourselves from the need to tackle local issues, such as the regeneration of Dumballs Road[12], south of Cardiff Central station. Under discussion for 20 years, this should provide at least 2000 new homes. Cardiff Council rightly insist this includes 450 council homes, urgently needed locally. Predictably, the developer is resisting both this requirement and demands that the scheme should include affordable workspaces for small businesses. There will also be arguments over environmental sustainability. We should not leave this matter to councillors.

If we are to take control of the city, then activists will have to engage with the planning process. This can seem daunting and campaigns can lose, as with Gwdihw. But the developers can be beaten, as they have been on Womanby Street, the Mynachdy Institute, or Dumballs Quay in Cardiff Bay. Saying no is not enough. Defending Mynachdy entails advocating a community alternative. Dumballs Road regeneration presents challenges for both housing supply and cultural strategy.

We need our own plans for our city and a willingness to fight for those.

[12] cardiff.moderngov.co.uk/mgAi.aspx?ID=13631#mgDocuments&LLL=0