

CPRE briefing - How 'land promoters' exploit legal loopholes at the expense of communities and the countryside

This short briefing sheds some light onto how self-styled 'land promoters' make lucrative profits by exploiting the planning system and working against local wishes.

At the Campaign to Protect Rural England we have long been aware that some businesses exist solely to profit from a perfect storm of a widely acknowledged housing shortage; political pressure for housebuilding of any kind; the massive unearned financial rewards landowners receive as a result of gaining planning permission; and weaknesses in the planning system.

This is of concern to CPRE because undermining the planning system often results in developments in unsustainable locations - including in areas that are supposed to be protected from development - destroying the character of the countryside and rural towns and villages. Such practices also undermine confidence in the planning system, not only for the individuals and community groups that engage positively with local plans or make the effort to produce their own neighbourhood plan, but also for those landowners and developers who have worked in good faith with the community and pursued their projects through the planning process.

Land promoters persuade landowners to allow them to pursue planning permission on their land for a 20-25% share in the profits once it is sold on for development, without having to bear any risk of investing in land or building a development themselves. As a result of the lack of risk and the high potential profits, land promoters are able to operate on a 'no win, no fee' basis, which is highly tempting to landowners, especially those who don't have confidence engaging with the planning system.

The only regard land promoters pay to planning constraints, such as protected landscapes and settlement boundaries, is in how to get around them - usually by targeting areas that are unable to demonstrate a five year housing land supply. In these circumstances, the National Planning Policy Framework (NPPF) prescribes a presumption in favour of sustainable development - the loophole at the heart of this story which, compounded by a vague definition of 'sustainable development', allows promoters to argue that the demand for housing overrides factors such as environmental or community concerns.

This loophole in effect encourages land promoters to focus their speculative planning applications on councils that they see as having a weak planning policy framework - as a result of not having a local plan or not being able to demonstrate a five year supply of housing land; the promoters know that they stand a good chance of winning planning appeals in such places. Worse than this, the outcome of land promoters' activities in planning appeals and legal decisions often serves directly to delay plan preparation, weaken the application of existing plans, and undermine councils' reasonable claims to having a supply of housing sites, thereby increasing the potential for further predatory actions.

Land promoters' activities lead to unnecessary work and expense for already hard-pressed local planning authorities, as well as anxiety and uncertainty for people who live in the communities affected.

This paper brings together existing information on these practices, and combines this with new data on how promoters are pushing the planning appeal system to its limits.

Ultimately, it is up to the Government to ensure that planning policies reinforce local democracy and remove the potential for disproportionate profits that motivates land promoters; these businesses should not be given opportunities to engage in speculative behaviour that sacrifices beauty and local character. A stronger, more democratic planning system would make it possible for land promoters to bring forward housing that meets the need of communities, while still providing the opportunity for a reasonable return for developers and landowners.

New evidence: appeals and housing land supply

CPRE undertook analysis of appeal decisions concerning four land promoters, between 1 April 2012 and 31 August 2017. The analysis sought to establish what proportion of appeals were successful, and how appeal decisions are influenced in regards to the respective local authority's five year supply of housing land. The four land promoters that were assessed were: Gallagher Estates (5 cases), Gladman Developments (140 cases), Richborough Estates (10 cases) and Welbeck Land (9 cases). Cases were identified by searching for land promoters as appellants in the Planning Resource Compass database.

This identified 164 cases in total, but represents the tip of the iceberg; Gladman alone says it achieves planning permission for more than 10,000 homes a year.¹ Planning inspectorate appeal decision documents were read to find the inspectors ruling of the local authority's five year housing land supply (5YHLS), whether the land promoters challenged the housing land supply and the reasons for challenging it where relevant.

Of the cases analysed, 54% were allowed. By comparison, the Planning Inspectorate's statistics show that for many years around one third of all planning appeals are allowed, and for housing proposals the average is slightly less at around 28%. This suggests that promoters' tactics are successful in terms of winning appeals.

Promoters overwhelmingly pursued appeals where the relevant local authority's 5YHLS is insufficient, with 121 of 164 appeals referring to areas without a demonstrable 5YHLS. This purposefully speculative strategy is common for land promoters.

In a recent High Court case involving Gladman Developments, Gladman Development's Director, David Gladman, said: 'We normally only target local authorities whose planning is in relative disarray and vulnerable to quick planning application for a suitable site. [... Gladman] comes into its own where local authorities are in a state of flux, whilst they either have no up-to-date local plan or, temporarily, they do not have a five-year supply of consented building plots.'²

Yet, land promoters do not shy away from targeting land where councils do have robust plans and a demonstrable 5YHLS. Given the Government's emphasises on localism and the primacy of up-to-date local and neighbourhood plans and housing land supplies, there should be very few circumstances where it is appropriate for a centrally-appointed planning inspector to overrule the decision of the local planning authority. Despite this, nearly a third of appeals where the local authorities had a 5YHLS were approved (Table 1).

Table 1: Proportion of approvals or dismissals for appeals in the context of five year housing land supply (5YHLS) of 164 cases³

	Approved	Dismissed
With a 5YHLS (35)	31%	69%
Without a 5YHLS (121)	60%	40%
No ruling on 5YHLS (8)	62.5%	37.5%

Of the 11 cases where the local authority had demonstrated a 5YHLS and the appeal was still approved, the majority involved land promoters challenging the council's demonstration of a 5YHLS. Reasons land promoters gave for challenging the 5YHLS included suggesting that sites allocated for

¹ Gladman (2018) Home page. <http://www.gladmanland.co.uk/>

² Birmingham Civil Justice Centre. (2016) Available at: [http://www.falcon-chambers.com/images/uploads/news/Gladman_Developments_v_Sutton_2016_EWHC_1597_\(Ch\).pdf](http://www.falcon-chambers.com/images/uploads/news/Gladman_Developments_v_Sutton_2016_EWHC_1597_(Ch).pdf)

³ For the purposes of understanding the weight given to housing land supply in appeal decision-making, Table 1 uses the ruling planning inspector's opinion (or Secretary of State where decisions were 'called-in') on whether the council could demonstrate a five year supply, rather than the arguments of the council or land promoter.

housing were not all deliverable or that expected build-out rates were over-optimistic. This demonstrates that land promoters are not only targeting areas where plans are in 'disarray', but they are also using the appeal process with the deliberate aim of undermining plans that are up to date.

Despite planning inspectors generally upholding the view that the councils had a 5YHLS, some then disregarded this as a factor with statements including: 'Accepting that an area has a five year housing land supply does not necessarily preclude a scheme from being sustainable development or mean that it would be inherently harmful.' And: 'As greenfield sites, the land is not of the government's preferred type, and as the council has a five-year housing land supply, it is not necessarily needed at this particular time [... but would] contribute to building a strong, responsive and competitive economy.'

Experienced land promoters, such as Gladman, that can afford expensive lawyers and multiple appeals, often win the fights against local authorities at appeal, leaving them confident in their ability to gain planning permission that goes against local wishes. For example, Gladman's website states: 'Whilst we try to achieve planning permission locally, sometimes for a variety of reasons this is not possible and the site is refused permission at planning committee. This is nothing to worry about; on average around two thirds of our sites go through the appeal process.'⁴ Meanwhile, councils are retreating from the appeals process due to high expenses and perceived low chances of winning: standing up for their own policies is seen as an unmerited expense.

When looking at Gladman exclusively (Figure 1), the majority of appeals they submitted were for sites where the respective local authorities could not demonstrate a 5YHLS, yet even those that did have a 5YHLS had a success rate of over 25%. It also seems that Gladman are happy to take risks on sites that are less likely to receive planning permission, as demonstrated by the level of dismissed appeals.

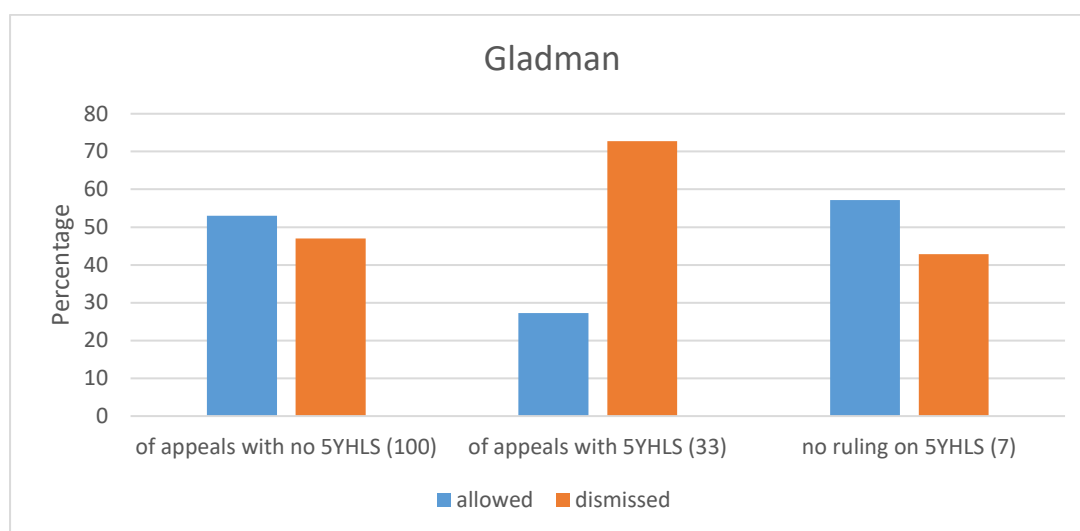


Figure 1: percentage of Gladman appeals cases that were allowed or dismissed in the context of a 5YHLS

Political context:

The Government sees speculative development as a symptom of not having local plans in place, and to a certain extent condones the practice as a means to encourage councils to produce plans; their main proposal to address the problem is to ensure that councils have plans.⁵ However, this research has demonstrated that even when authorities have a five year housing land supply, speculative development is often still approved.

⁴ Gladman Land. How it works; appeals process. Available at: <http://www.gladmanland.co.uk/how-it-works/>

⁵ DCLG (2017) *Fixing Our Broken Housing Market*. The Housing White Paper. <https://www.gov.uk/government/collections/housing-white-paper>

Furthermore, while CPRE agrees that councils should have plans, this alone is not always enough to ensure that housing is built at a fast enough rate to meet council's own targets. Currently, a plan is deemed 'out-of-date' as soon as housing completions dip below the target delivery rate, even by one house, thereby opening the floodgates for speculative applications.

Current Government proposals do not recognise that the main driver for speculative development is not the absence of plans or the need to build houses, but the desire to make profit from developing land that hasn't been rationally and democratically identified as appropriate for development. Land promoters are likely to find some way of exploiting any measures to improve the planning system, as long as the uplift in land value remains such an irresistible temptation.

Conclusion

Communities welcome good development that follows local and neighbourhood plans, but land promoters actively work against local wishes for the sake of their own profit. National planning policy allows and even encourages land promoters to do this through loopholes in the NPPF. This research has shown that even in cases where local authorities had an up to date 5YHLS, one in three cases are approved. In the majority of these cases, land promoters sought to undermine authorities further by openly challenging authorities' housing land supply. This, and other forms of speculative development, have lost communities' faith in the planning system. Changes must be made to close these loopholes in national planning policy to ensure the planning system facilitates developments that are needed and approved by local communities, rather than assisting demand driven development to line corporate pockets.

Recommendations

In order to reduce the potential for harmful speculative development proposals, the Government must:

- **Follow through on commitments in the Housing White Paper to reduce the potential for speculative development.** Where, as a result of the failure of developers to build-out existing sites or seek permission on sites identified in development plans or brownfield registers, the five year housing land supply for an area dips below the expected level, councils should be given time to remedy the situation. For example, councils need time to kick-start stalled developments or bring in new operators to promote existing sites before the presumption in favour of sustainable development creates the need to grant planning permission for new sites. If the councils' actions are not successful, then sites for new developments should be identified strategically through an accelerated local plan process, and not on a first-come-first-served basis by speculators.
- **Cap local plan housing targets at a level that is actually deliverable in terms of the capacity of the housebuilding industry.** This would make it feasible for housebuilding targets to be met.
- **Instruct the Planning Inspectorate that, where a local plan is up to date and 5-year housing land supply is reasonably demonstrated, that the decision on whether to approve or refuse planning permission should lie solely with the local planning authority.** The only exception should be if the proposal in question unequivocally accords with all the relevant policies of the development plan.
- **Reform the way in which the property market works so that the uplift in value of land as a result of planning consent is not so significant as to be irresistible to speculators.** This should be done while still retaining a reasonable expectation of return for landowners, compatible with providing homes that are affordable to local people, mitigating the impacts of development and providing the infrastructure necessary to support it.