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The calculative turn in land value capture: Lessons from the English planning system

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ABSTRACT

For over three decades, negotiated planning obligations have been the primary form of land value capture in England. Diffusing and evolving over the last decade, a significant policy innovation has been the use of financial calculations to estimate the extent to which policies on planning obligations for actual, proposed development projects and in plan making affect the financial viability of development. This paper assesses the extent to which the use of financial appraisals has provided a robust, just and practical procedure to support land value capture. It is concluded that development viability appraisals are saturated with intrinsic uncertainty and that land value capture that is based on such calculations is, to some extent, capricious. In addition, clear incentives for developers and land owners to bias viability calculations, the economic dependence of many viability consultants on developers and land owners, a lack of transparency, contested or ambiguous guidance and the opportunities created by input uncertainty for bias are further failings. It is argued that how viability calculations are applied has been, is being and will continue to be shaped by power relations.

1. Introduction

In England, for over three decades planning obligations have been the main mechanism by which the community has been able to capture some of the uplift in land values 'released' by planning permission. Since around 2005, there has been an incremental but major shift in how policy regarding planning obligations has been formed and how planning obligations are negotiated for individual development schemes. This has involved financial viability becoming a central consideration in planning policy making and development management. In essence, ostensibly to ensure that development is deliverable, a viability test involves a quantitative calculation of whether policies regarding planning obligations compromise a "competitive" financial return to the land owner and the developer. In a period of high levels of policy innovation and/or volatility in the English planning system, this has been a fundamental change in the planning regime. In policy making, the main application of financial viability modelling has been in the formation of local planning policy regarding planning obligations (mainly requirements for non-market housing provision and contributions to education, health, infrastructure and other community facilities). Following the introduction of the Community Infrastructure Levy in 2012, local planning authorities were also required to apply financial viability tests to assess whether it would compromise deliverability. For specific development schemes, viability calculations have been at the nexus of community opposition to proposed major regeneration projects. It is the scheme, rather than policy making, level that is the main focus of this paper where issues of methodology and process in viability calculations have been extremely controversial (see Colenutt et al., 2015).

In the context of development management, particularly where a proposed development does not comply with policy, viability tests are increasingly being used as the basis for negotiating (and re-negotiating) planning obligations for individual proposed development projects. Whilst *prima facie* viability appraisal might seem like a straightforward, technical test, in practice it has proved very contentious. Providing an impression of technocratic rationality, development viability appraisal can be conceptualised as a calculative practice that has become increasingly embedded in the English planning system. A common attraction of quantification and technical models is that they appear to involve an apparently value neutral process. However, their use can be associated with a tendency for unquestioning, institutionalised trust in numbers and, by reconfiguring subjective and contestable judgements as pseudo-scientific, may permit essentially political processes to be

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presented as technical procedures (Mennicken et al., 2008). Given their implications for the allocation of land value uplifts between communities and land owners, the application of these apparently technocratic procedures has become increasingly controversial. In July 2015, Boris Johnson, the Mayor of London, described financial viability assessments as "something of a dark art". In this paper, the focus is on the operational issues that have emerged in the application of viability calculations in the English planning system.

There is limited codified knowledge on the use of viability tests. A great deal of what we 'know' about the role of viability tests is based upon the fragmented, often impressionistic, observations of market participants and planning professionals and case studies of specific schemes. There has been no systematic research into the extent and nature of the use of viability tests in development management processes. Similarly, there is little explicit knowledge on the procedures in place to evaluate viability appraisals. How consistent and rigorous are evaluation procedures? Do local authorities and the Planning Inspectorate have the necessary expertise to adjudicate on viability issues? Tension between the commercial confidentiality of developers and community participation in and the transparency of the planning process has been a particularly controversial issue with a number of adjudications by the Information Commissioner's Office.

This paper provides a formative, process evaluation of the introduction of financial viability criteria into development management via the use of development viability calculations. The approach to evaluation is 'realist' in that the objective is to establish what it is about the policy that works (or does not work), for whom and in what circumstances? Whilst the use of viability appraisal models has become increasingly controversial, there has been limited evaluation to date of the application of these calculative procedures. It also needs to be acknowledged that, given the ideological and distributional salience of this issue, researcher objectivity is problematic. Indeed, most academic researchers engaged in this area have been involved in writing guidance and advising governmental, professional and/or community organisations. As such, the contribution of academics such as Peter Wyatt and Bob Colenutt has been both performative and analytic or descriptive.[1] Given this point and limited documented empirical research, the evaluation draws substantially on an element of participant action research. Whilst there are varying degrees of 'insiderness', the researcher's participation in a range of relevant events and meetings, personal relationships with key participants and contributions to various consultation exercises provided multiple points of access to key concerns and perspectives on the topic. This access, in addition to a review of documented analysis, empirical research and inference, informs this evaluation.

2. Viability as a policy construct

In this paper, the introduction of financial viability criteria into planning policy formation and development management is framed as a policy innovation. Whilst policy making is often understood to involve explicit articulation of activities undertaken by government, often through legislation, to achieve outcomes, policy can also be tacit or implicit and, rather than being formally stated, can be inferred from practice. It may even involve a decision to be inactive. The introduction of financial viability criteria into planning policy formation and decisions does not fit easily into a rationalist policy formulation model such as the 'Rationale → Objectives → Appraisal → Monitoring → Evaluation → Feedback' cycle. Lindblom's (1959) depiction of ad hoc, incremental, policy evolution by a 'muddling through' process of trial-and-error reflects the (almost certainly) unintended consequences of the introduction of financial viability criteria into the planning system. In this specific context, the 'morphogenesis' of the policy as it has mutated in form and grown in scope and scale has created 'winners' and 'losers' (Pawson et al., 2005). In turn, as the policy of applying financial criteria has evolved and grown in scope and scale, there has also been a process of policy learning by central government policy makers, local planning authorities, professional institutions and community activists among others.

It is difficult to identify an explicit theory or rationale for the policy change. Central government planning policy makers did not make it explicit (at least to the public) how they believed that this policy instrument was going to work before its implementation. The underlying policy theory seems to have been implicit. Within the broad objective of increasing the supply of both non-market and market housing, the policy of financial viability testing seems to have been introduced in order to promote development stalled by the 'burden' of planning obligations that was rendering it financially unviable and ensure that sites were not allocated for development where it was not financially feasible to develop. Viability modelling could also provide a basis for local authorities to demonstrate that their policies on planning obligations were consistent with appropriate economic incentives for land owners and developers. The rationale for the use of viability calculations seems to have been to provide an objective mechanism for calculating the amount of planning obligations that could be generated by a project. It is unlikely that the policy of introducing financial viability criteria into planning decisions was initially designed to achieve some of the outcomes that have emerged. Indeed, it is difficult to identify any conventional policy design at all.

Given the scope and scale of the policy of using financial viability appraisals in planning decisions and policy making, an assessment of the outcomes of this policy change is particularly challenging. Many assumptions about appropriate measures, causal mechanisms and timescales would be highly contestable. As in most policy innovations, a major problem in evaluation is the absence of valid counterfactuals. It is widely assumed that the introduction of viability appraisals has enabled developers to decrease the level of land value capture through planning obligations than would otherwise have occurred. However, it is extremely challenging to robustly estimate whether observed outcomes are the products of policies changes. In addition, as noted above, the policy has evolved and expanded in scope over time. As such, the focus of this paper is on the process rather than the outcomes.

It is also important to appreciate the wider housing policy context in which the policy of using viability calculations in planning has emerged. Arguably the calculations and related guidance on their application could easily have evolved to favour the interests of the community. At a presentation in 2015, Duncan Bowie (a former advisor on housing policy to the Mayor of London) outlined how, in the period 2001–2003, he pioneered ago the use of viability modelling. In 2001–2003, his aim was to provide a robust evidence base that could demonstrate that a planning policy of requiring provision of 50% non-market housing could be feasible in many areas of London. When viability appraisals initially emerged in negotiations on planning obligations, generally developers were (and remain) reluctant to 'open their books' and were resistant to the viability process. In 2006, planning guidance from central government was exhorting local planning authorities to be more pro-active in seeking planning obligations and "to recognise that such obligations will increasingly be viable on new housing developments". However, the Coalition government (and its Conservative successor) formed

[1] For instance, Bob Colenutt has appeared as appeared as an expert on viability issues before the Greater London Assembly Planning Committee and has appeared as a witness on viability issues at Freedom of Information tribunals. Peter Wyatt is a member of the RICS Committee that produced the RICS' *Financial Viability in Planning* guidance and continues to be involved in drafting updated guidance.