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Viewpoint

Land for densification: how land policy and property matter

Land policy for densification

The housing crisis has evolved as one of the major challenges for many European cities (Fields and Hodkinson, 2018). While reasons for high demand and the corresponding shortage are manifold (Haase et al., 2013), the pressure to provide more housing is increasing. The perceived mismatch of supply and demand affects not only the affordable housing sector, but also the middle segment is under pressure. Despite regional and national differences, the shortage spans the self-owned and rental sector as well, and it is not just restricted to city centres and its urban fringes in metropolitan areas. As a consequence of the shortage, but also driven by relatively cheap mortgages and other factors (Meijer and Jonkman, 2020), in most major cities and metropolitan areas, land prices are currently rising in such a way that it is becoming increasingly difficult to finance residential and commercial development. In other words, housing provision is an urgent planning challenge in many countries across Europe (Wetzstein, 2017).

At the same time, the reduction of land uptake for urban development – sometimes referred to as land thrift, reducing land take, or land consumption – is a policy goal in many countries (Kretschmer et al., 2015; Davy, 2009; Marquard et al., 2020); it is even embedded in the Sustainable Development Goals (SDG), where the ‘ratio of land consumption rate to population growth rate’ is one of the indicators of SDG 11. The motivations to reduce land uptake for urban development encompass environmental concerns (Marquard et al., 2020) and the preservation of agricultural land (Vejchodská and Pelucha, 2019). Despite the different motivations, most European countries and the EU agree on the need to reduce land uptake (European Commission, 2011).

Urban growth, fostered by the perceived housing shortage, and land thrift policies are in clear conflict over the scarce resource of land. Urban densification is therefore regarded as a solution and favoured by many spatial planners (Claassens et al., 2020). While there are conceptual discussions on the definition and measurement of densification (Jehling et al., 2020), densification is often conceived as the opposite of urban

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sprawl (Broitman and Koomen, 2015); urban sprawl representing mainly residential areas with low density, are perceived to be overconsuming land. Sometimes, a distinction is made between soft and hard densification (Touati-Morel, 2015; Dunning et al., 2020). Soft densification describes the intensification or conversion of existing buildings, such as the change of office buildings to apartments or subdivision of houses. Hard densification refers to new constructions, such as redeveloping urban brown-fields or adding new buildings within the urban fabric. We understand densification as any increase in dwelling numbers within the existing built-up area. But for all forms of densification it seems that it is difficult to govern with traditional planning and land policy approaches (Dembski et al., 2020).

The responsible management of land is thereby one of the core competencies and tasks of spatial planning. Spatial planning therefore needs to face the challenges of increasing housing supply whilst making sustainable use of scarce land. The provision of building land for densification is not merely an administrative, but above all a land policy issue. In the current debate on building land provision, this political question is often pushed into the background by the discussion about the effectiveness of spatial planning instruments or the acceleration of planning processes (Hartmann and Hengstermann, 2020; Gerber et al., 2018; Hengstermann, 2019). Spatial planning needs to face the political challenges of dealing with land to manage the sustainable use of scarce land. This requires a broad debate on instruments of land policy and its strategic use.

Planning law and densification

Two characteristics of planning make the implementation of densification difficult, i.e. the embedded idea of functional separation and the intrinsic growth orientation of planning. Modern town planning emerged in response to the overcrowded and unhealthy living conditions in industrialising towns and cities in the eighteenth and nineteenth centuries by trying to improve human health conditions with close links to the sanitary movements (Benevolo, 1967). This was taken to the extreme by the functionalist movement, as expressed in the Charter of Athens, which argued that the main activities – dwelling, work, recreation and circulation – should not mix (Mumford, 1992). This functional separation is also present outside Europe: the separation of land uses to avoid nuisance was coined in the US Supreme Court decision from 1926 on the village of Euclid against Amber Realty Co. by saying that planning is about avoiding nuisances: ‘a nuisance may be merely a right thing in the wrong place, – like a pig in the parlor instead of the barnyard’ (Euclid vs Ambler Realty Co., 1926). This led in the US context to Euclidian zoning (Sclar et al., 2020). So, the underlying rationale of functional separation is based on utilitarian notions of avoiding harm and in the US context also the libertarian notion of protecting existing

property rights (Davy, 2012). In Europe, functional separation was pushed by: the economic upturn during the 1950s; changing lifestyles; the middle-class appetite for automobiles; and the subsequent rational-comprehensive approach to rebuilding after the destruction of cities during the post-Second World War period. This functional separation is deeply embedded in most planning laws (Hall, 2014; Sorensen, 2015), as many modern European planning laws have been adopted in the post-war era. Functional separation is also reinforced by environmental legislation that introduced national standards in response to environmental problems, creating conflicts between environmental quality and spatial planning (Roo and Miller, 1997), which has proven challenging for mixed-use development (van Stigt et al., 2013).

In addition to functional separation, planning laws are also largely growth oriented. In the time of industrialisation-driven urbanisation, many nineteenth-century cities radically expanded spatially without regulation. This resulted in a need to manage growth in order to keep cities functioning. So, next to the functional separation, managing urban growth was considered one of the key challenges of spatial planning, based on surveying and property rights regulations. This growth orientation, i.e. growth as an inherent logic of spatial planning, was also largely driven by an increasing demand for housing and other land uses. Consequently, many planning systems with their planning laws and instruments are traditionally growth oriented. The debate on shrinking cities (Davy, 2006), the challenges of Dutch cities in times of economic crisis (Buitelaar, 2010), and debates on reducing land uptake (Davy, 2009) all illustrate the growth dependency of urban development.

Functional separation and growth-based urban expansion both contradict the idea of densification. Two ideals promote densification: First, the compact city and smart growth debate (Mora and Deakin, 2019; Jenks et al., 1996), with its demand for more mixed uses in cities (Jabareen, 2006); second, the ideal of being thrifty with land and reducing land uptake, driven by environmental concerns (Marquard et al., 2020; Hartmann and Gerber, 2018). The latter is supported by new arguments on post-growth planning (Savini et al., 2022). These two ideals contradict the pedigree of planning laws, i.e. that the compact city debate opposes the idea of functional separation of land uses (Korthals Altes and Tambach, 2008) and that the land thrift debate contradicts urban growth. Environmental norms are often experienced as constraints in urban densification and lead to additional complexity where development is more fragmented, but careful consideration is needed before reducing environmental norms (Dembski, 2020).

Strategic land policy instead of instrumental activism

The bias towards functional separation and the growth orientation of planning helps explain why contemporary planning laws seem to struggle to facilitate densification.

Influenced by philosophical pragmatism, in which immediate purposive action by the state was instrumental to its legitimation, revising planning legislation and the introduction of new instruments has become a typical reflex of many legislators without reflection on public norms (Salet, 2018). Examples are the amendments made to building obligations (Hengstermann and Hartmann, 2021) and the introduction of the ‘urban area’ in German planning law (Baumgart, 2019), but also the introduction of land readjustment in Portugal and the Netherlands (Condessa et al., 2018).

The inherent assumption that the provision of new instruments in planning law will lead to its application in planning practice builds on the intuitive belief that ‘a better alignment between institutions, organizations, and policy objectives should induce better coordination and thus better outcomes’ (Bolognesi et al., 2021, 912). Tamanaha (2010) warns of an instrumental use of legislation and stresses that law is not an instrument to pursue political objectives. Bolognesi et al. (2021) show how instrumental activism may lead to unintended consequences and even ‘institutional complexity traps’ (Bolognesi et al., 2021). On a more pragmatic level, empirical studies show that the mere introduction of new public policy instruments does not necessarily lead to an application of such instruments in practice. Albrecht and Hartmann (2021) show this for the case of flood risk management in Germany. The Dutch reform of the Spatial Planning Act had little bearing on planning practice, which soon adapted to the new instruments (Holtslag-Broekhof, 2018; Buitelaar et al., 2011). In England the expansion of permitted development rights enabled the change of use of existing buildings without planning permission, which resulted in densification, but the type, quality and location of housing was not necessarily what national policy aimed to achieve (Clifford et al., 2020). In addition, local authorities lost out on valuable planning contributions that would normally be required to pay for public services and affordable housing (Ferm et al., 2021). Swiss legislators introduced added land value capture as a mandatory instrument in planning law in 1979; however it took until 2019 until all cantons actually implemented it (Hengstermann and Scheiwiler, 2021).

This is not to conclude that planning law does not need to be adjusted, if necessary, but it needs to be carefully explored if existing instruments might also be sufficient to achieve the policy objectives. Neo-institutional research points at other factors than missing policy instruments, such as specific local regulatory arrangements (Debrunner and Hartmann, 2020) or different rationalities of involved stakeholders (Shahab et al., 2021).

In addition, studies on the implementation of densification point at a strong role of long-term strategic land policy rather than instrumental activism. Meijer and Jonkman (2020) show how the municipal strategy of land policy within the same institutional framework can make a substantial difference in achieving policy objectives. Nevertheless, very few planning systems take advantage of this approach, although the legal instruments needed have been available for decades in most countries (Gerber

et al., 2017). Elvestad and Holsen (2020) confirm the pivotal role of private property rights in the context of densification in Norway, and Valtonen shows how development-led planning in Finland is dependent on property rights (Valtonen et al., 2017).

Ultimately, it can be concluded that urban densification – due to its specific requirements for land in already developed areas and the need for mixed land-use – is dependent on land policy that is able to deal with complex property rights. At the same time, planning law, with its inherent bias towards functional separation and urban growth, seems to contradict the idea of densification. The seemingly logical step towards legal reforms with the introduction of new public policy instruments for individual planning problems bears risks of institutional complexity traps and it does not always fit the practical requirements of spatial planning. Successfully realising densification rather requires long-term strategic land management to deal with the complexity of property rights.

This viewpoint argued that densification is important to solve the housing (affordability) crisis present in so many countries whilst also delivering on the UN SDG goals and their ambition to significantly reduce net land take. We acknowledge the challenges for planning to make densification happen due to more fragmented property rights in the built-up area compared with urban expansions and the tradition of functional separation that is inherent to most planning systems to prevent environmental harm. Policymakers and legislators are quick to call for a reform of the planning system which has resulted in tinkering with the system. Whilst some reforms may well have strengthened the applicability of existing planning instruments to reach public policy goals in promoting densification, in many cases the reforms lack institutional reflection and are at best a form of symbolic politics or micromanagement that do not make a dent in delivering urban densification. Most planning systems include a wide-ranging set of land policy instruments that have the potential to enable densification. We argue that instead of tinkering with the planning system on an ever more frequent basis it is important to understand the conditions under which these instruments are used for strategic land policy.

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