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By Felicia Rankl,
Michael Benson

Unfinished housing developments

Summary

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Summary

The need to build new homes is a common topic of political interest. However, local news reports have highlighted concerns that developers may not finish housing developments or the infrastructure necessary to support them, such as roads.

The issue of unfinished housing developments was raised in a parliamentary debate in October 2022. A December 2022 debate focused on the related issue of unadopted roads and the lack of facilities for new housing estates.

This briefing covers England and the devolved administrations.

Planning issues: Permission and obligations

To build new housing, planning permission from the local planning authority (LPA) is required. Planning permission expires within three years in England and Scotland (or five years in Wales and Northern Ireland) if construction has not started. Once construction has started, however, there is little an LPA can do to force it to be completed.

Powers available to local planning authorities

There are certain powers at LPA's disposal, however, that they can use to encourage developers to finish building developments. LPAs can:

- issue a completion notice threatening to revoke planning permission.
- attach conditions to planning permission, such as a time limit on when construction must start. LPAs cannot attach conditions requiring a development to be carried out in its entirety and to be completed.
- require a landowner to carry out clean-up works if the condition of an unfinished housing development is affecting the amenity of an area.
- as a last resort, use compulsory purchase powers to buy a development. There must be a compelling case in the public interest, and these powers must be confirmed by the relevant Secretary of State.

It is up to the LPA whether to use these powers; constituents cannot compel them to use them.

Delivering infrastructure

To mitigate concern about the potential impact of a proposed development on local infrastructure, an LPA can negotiate an agreement with a developer (called a "section 106 agreement" in England). A developer will agree to deliver certain obligations, such as building a new road or paying the LPA money to do so. If a developer does not deliver the infrastructure or payments they agreed to deliver, an LPA can:

- carry out the works itself and recover the costs from the developer.
- seek a court injunction to require the developer to comply with their agreement (in England, Wales and Northern Ireland).

Planning reforms (England)

The Levelling Up and Regeneration Act 2023 strengthens some of the powers that LPAs in England have to deal with unfinished housing developments. Once the government has brough these provisions into force, developers of residential developments will be required to notify the LPA when they start construction and provide annual updates on development to the LPA.

The 2023 Act will also give LPAs in England the power to refuse to consider planning applications from developers who have not completed previous development or carried it out unreasonably slowly.

Unfinished roads

MPs and news reports have highlighted instances where residents move into new houses, and the developer declared bankruptcy before completing the roads serving the homes. These roads may be in a poor state. Because the council are reluctant to 'adopt' these roads and become legally responsible for their maintenance, and residents can be left liable for often expensive road upgrades.

Powers available to local authorities

Councils are not obliged to adopt an 'unfinished' road, or to bring it up to adoptable standard, unless a developer makes certain agreements and has paid financial bonds to the council. However, councils in England and Wales can:

- make a voluntary advance agreement with a developer to adopt a prospective road, once built, under section 38 of the Highways Act 1980 (potentially including a bond).

- require a developer to pay a mandatory Advanced Payment Code (APC) bond (which can be used to make up roads if a developer defaults on the building work) under sections 205 to 218 of the 1980 Act.

The government has published a guidance document on road adoption for use by councils, developers and house-buyers in England. It advises house-buyers to check if a section 38 agreement is in place when purchasing a new-build home. It also provides advice on what to do in case of a dispute.

Frontager liability to bring roads up to standard

If there is no section 38 agreement or APC in place, a council can bring a road up to adoptable standard in agreement with the frontagers (the people who own property 'fronting' the road), under sections 205 to 218 of the 1980 Act. This means that the road is adopted by the council.

However, the frontagers would be required to pay for and agree to such works, making this "an unpopular and potentially complex process".

Devolved administrations

The Highways Act 1980 also applies in Wales, although the Welsh Parliament can amend the law for Wales. The Welsh Government has published a good practice guide for developers and councils, aimed at reducing the creation of unfinished roads in Wales.

Further legal and historical background can be found in the Library briefing Private, or 'unadopted' roads in England and Wales.

Different legislation applies in Scotland and Northern Ireland although many of the same problems around unfinished roads exist there as well.

Other issues: Building standards and utility connections

Standards for building work

Minimum standards for building work are set out in the building regulations. When carrying out building work, a developer must seek and obtain building control approval from the local authority (or a registered private-sector organisation or individual in England and Wales).

The local authority will assess whether the building regulations are met and, on completion of the building work, issue a certificate. Their role is to ensure that technical standards are met, however, not to monitor build quality or supervise the construction process. The responsibility to ensure that a home is built to required standard and that there are no defects ultimately rests with those carrying out the work (that is, the developer or the builder).

If building work contravenes the building regulations, a local authority can prosecute the person who carried out works and/or require a building owner to fix faulty building work. It is up to the local authority whether to use these powers; constituents cannot compel them to use them.

Connections to utility supply

The responsibility for making sure that a housing estate is connected to utility services, such as water, sewerage, gas and electricity, and for making sure that works meets set industry standards rests with the property developer.

Utility service providers have a statutory duty to provide connections to their network when requested by a landowner or occupier. However, they are not at fault if a developer does not carry out the works to make a connection.

1 Background: What is an unfinished housing development?

The government has repeatedly set out an intention to "build more homes" so "everyone – whether they aspire to homeownership or not – can have a high-quality, affordable place to live". The government has said these homes need to be "accompanied by the right infrastructure".[1]

Local news reports[2] and debates in Parliament[3] have argued, however, that even where developers have permission to build new homes, they might not necessarily finish them or build the infrastructure necessary to support them.

1.1 What does it mean if a development is "unfinished"?

There is no definition of what it means for a housing development to be unfinished and no data on how many housing developments are unfinished.

The term "unfinished" may describe a range of issues that residents and/or neighbours might encounter if a housing development is not constructed as expected:

- A developer might only build part of the proposed housing development, for example, only four homes instead of ten.
- Infrastructure to support a development, such as roads or sewers, might not be built or meet required standards. As a result, the infrastructure cannot be "adopted" and maintained by public authorities.

1 Department for Levelling Up, Housing and Communities (DLUHC), Communities put at heart of planning system as government strengthens Levelling Up and Regeneration Bill, Press release 5 December 2022; see also: Conservative and Unionist Party, 2019 Manifesto (PDF), page 31; DLUHC, Levelling Up and Regeneration: further information, May 2022

2 For example: 'Horrendous': Mulbury Homes goes bust and abandons £6.5m. Euxton building site leaving around 36 properties unfinished, Lancashire Post, 19 February 2022; Call for action over 'unfinished' housing development at Silsden, Keighley News, 9 September 2021; More than 30 developments remain unfinished in Liverpool, Liverpool Echo, 29 July 2021 [accessed 21 February 2023]

3 HC Deb [Unfinished housing developments] 28 October 2022; HC Deb [Unadopted roads] 1 December 2022

- Shared communal open spaces, such as green spaces or play areas, might not be landscaped or left unplanted.
- The quality of building work might be substandard.
- Utility connections to electricity system and sewerage services might be insufficient, faulty or unsatisfactory.

This briefing does not cover land-banking (failure to implement planning permission) or slow build-out (failure to finish building a development in a timely manner), although these issues are linked to unfinished housing developments. A Library briefing on Tackling the under-supply of housing in England provides further information on these issues.

This briefing also does not discuss ways to seek redress for defects in newly built homes. A Library briefing on construction defects in new-build housing provides further information on these issues and solutions.

1.2 Why are developments unfinished?

There are different reasons why a development might be unfinished. Market changes might shift demand or need for particular types of homes so that a developer may no longer wish to complete a development. They might pick the most profitable parts to complete, leaving the rest incomplete.

A developer or one of their contractors might also run into financial difficulties or go bankrupt, which means that they are no longer able to complete the development or build the infrastructure to support it.[4]

1.3 What is the impact of an unfinished development?

Partially completed or unfinished development can prevent land from being used to its full potential by local authorities and the wider community. A local authority might not be able to fulfil local housing needs because prospective residents cannot move into unfinished homes.

Unfinished housing developments can also result in visually unattractive sites, which may harm the amenity of an area and adversely affect nearby property

[4] Michael Lloyd, Build or bust: mitigating contractor insolvency risk, Social Housing, 6 October 2022 [accessed 13 February 2023]

value. This may reduce investment in an area. Unfinished housing developments have also been linked to anti-social behaviour.[5]

In a debate in the House of Commons on October 2022, Helen Morgan MP (Lib Dem) also spoke of the "untold distress and emotional strain" that unfinished developments can cause. She noted that those living in unfinished developments worry "about everything that could go wrong" and spend "an enormous amount of precious time" and money on resolving the situation.[6]

A housing development might be habitable, but the infrastructure to support it (for example, roads) might not be built to required standards. This might make the development an unattractive place to live, leaving some homes unoccupied. This might also mean that public authorities are not willing to "adopt" the infrastructure. As a result, residents might have to meet the cost of incomplete works.[7]

In a debate in December 2022, Andrew Selous MP (Con) highlighted issues linked to unadopted infrastructure, including a "lack of street lights, parking enforcement, pedestrian crossings, pavements, and speeding restrictions".[8]

5 For example: Concerns over 'unfinished housing developments' in Oldham, Oldham Times, 18 August 2021; Concerns raised over unfinished Derry housing development, BBC News, 4 April 2022 [accessed 13 February 2023]

6 HC Deb [Unfinished housing developments] 28 October 2022, c660

7 For example: The Persimmon estates left unfinished for years where people claim they can't sell their homes, Wales Online, 8 November 2018; Home-buyers' anger at unfinished roads, BBC News, 25 October 2015 [accessed 13 February 2023]

8 HC Deb [Unadopted roads] 1 December 2022, c1069

2 Planning permission and obligations to deliver infrastructure

The local planning authority (LPA) is usually the borough, district or unitary council for the area.

To carry out any kind of development, such as building housing, a developer must obtain planning permission from the local planning authority (LPA). The LPA is responsible for deciding whether development can go ahead. If the LPA is satisfied that a development fits with its local plan and is an acceptable use of land, it will grant the development planning permission.[9]

Unless otherwise agreed, planning permission will expire if no "material operation" takes place within three years of it being granted.[10] Any kind of construction work is considered material operation, including the "digging of a trench" which will form the foundations of a building.[11]

There are no time limits within which a development must be finished, however. Once construction work has commenced, an LPA has little power to force it to be completed. This section sets out the tools an LPA has at its disposal to encourage developers to finish building a housing development and the infrastructure to support it.

2.1 Expiration of planning permission

If an LPA does not believe that a development will be completed "within a reasonable period", it can issue a completion notice under section 94 of the Town and Country Planning Act 1990. A completion notice threatens to revoke planning permission after a specified period (of no less than 12 months).[12]

At that point, any further construction work on the site would require another application for planning permission. A developer might wish to avoid having to re-apply for permission, as it costs money and a new application might not be approved. Carrying out development without permission could result in enforcement action by the LPA.[13] A completion notice does not guarantee that an unfinished development will be finished, however.

9 Section 57 of the Town and Country Planning Act 1990
10 Section 91 of the Town and Country Planning Act 1990
11 Section 56 of the Town and Country Planning Act 1990
12 Section 94 of the Town and Country Planning Act 1990; DLUHC and Ministry for Housing, Local Government and Communities (MHCLG), Enforcement and post-permission matters, last updated July 2019, para 70
13 DLUHC and MHCLG, Enforcement and post-permission matters, last updated July 2019

A completion notice must be confirmed by the Secretary of State for Levelling Up, Housing and Communities (DLUHC). It can also only be served once the deadline for commencing development (as set out in the conditions attached to planning permission) has passed.[14] The Levelling Up and Regeneration Act 2023 contains provisions to remove these requirements (see section 3).

2.2 Use of planning conditions

There are no time limits for when a development must be completed. LPAs can attach conditions to planning permission to pre-empt certain problems, however, and to encourage developers to complete developments.

An LPA can use planning conditions to set a time limit for when development must commence. If no condition is imposed, planning permission must by law be implemented within three years.[15] The government's National Planning Policy Framework (NPPF; see box 2) encourages LPAs to shorten this period to force developers to start construction "in a timely manner".[16]

1 National Planning Policy Framework (NPPF)

The National Planning Policy Framework (NPPF) sets out the government's planning policies and how it expects them to be applied. It is a "material consideration" for LPAs when they decide individual planning applications and provides a framework for LPAs to draw up their local plans.

An LPA can also use planning conditions to require a development to proceed in a certain order or require a particular element of a scheme to be finished for the building to be occupied. For example, where a scheme includes both offices and homes, an LPA could prevent the offices from being used until the homes are finished.[17]

However, planning conditions cannot be used to require a development to be completed.[18] This is because planning conditions have to meet six "tests" set out in the NPPF, including that they have to be necessary and enforceable.[19]

Requiring a development to be carried out in its entirety fails these tests, as government guidance on the use of planning conditions explains:

> Conditions requiring a development to be carried out in its entirety will fail the test of necessity by requiring more than is needed to deal with the problem

14 Sections 94 and 95 of the Town and Country Planning Act 1990
15 DLUHC and MHCLG, Use of planning conditions, last updated July 2019, para 27
16 DLUHC, National Planning Policy Framework (NPPF), last updated December 2023, para 81
17 DLUHC and MHCLG, Use of planning conditions, last updated July 2019, para 8
18 DLUHC and MHCLG, Use of planning conditions, last updated July 2019, para 5
19 DLUHC, National Planning Policy Framework (NPPF), last updated December 2023, para 56

they are designed to solve. Such a condition is also likely to be difficult to enforce due to the range of external factors that can influence a decision whether or not to carry out and complete a development.[20]

Failure to adhere to planning conditions

Failure to adhere to conditions attached to planning permission is considered a "planning breach" that can result in enforcement action by the LPA. For example, an LPA can use an enforcement notice or a breach of condition notice to make a developer comply. Failure to comply with these notices is a criminal offence that can result in a fine.[21]

Whether to pursue enforcement action is up to the LPA. The NPPF advises LPAs to "act proportionately" in responding to planning breaches.[22]

Government guidance further information on the use of planning conditions and the enforcement powers of LPAs.

2.3 Other powers: Clean-up works and compulsory purchase

Where a stalled development has a serious impact on the surrounding area, or there is a compelling case for the local authority to take over, LPAs have various discretionary powers to deal with unfinished housing developments:

- They can require a landowner to carry out clean-up works to address conditions that are adversely affecting the "amenity" of an area.
- They can compulsorily acquire land to develop, redevelop or improve it where there is a compelling case in the public interest.

Whether they use these powers is up to the LPA; residents cannot compel them to use them.

Where an unfinished development poses a danger to the surrounding area, an LPA also has powers to require a landowner to secure a property or take emergency action. A Library constituency casework article, Unsightly and derelict housing, provides further information on their discretionary powers.

Clean-up of sites that affect the amenity of an area

Under section 215 of the Town and Country Planning Act 1990, LPAs have the power to require land to be cleaned up where its condition adversely affects

20 MHCLG, The use of conditions in planning permissions: circular 11/1995, July 1995, para 18; DLUHC and MHCLG, Use of planning conditions, last updated July 2019, para 5

21 Planning Portal, Failure to obtain or comply with planning permission, undated

22 DLUHC, National Planning Policy Framework (NPPF), last updated December 2023, para 59

the amenity of the area. The term "amenity" is not further defined; according to a 2017 court judgement it is concerned with "questions of aesthetics".[23]

Whether the condition of a building or land is affecting the amenity of the surrounding area is "a matter of fact and degree". It will depend on the condition of the site and its effect on the surrounding area.[24]

These powers could be used to address a variety of issues, including problems caused by "semi-complete" developments. The scope of works that an LPA can require a landowner to carry out is wide. It can include minor works, such as "planting, clearance, tidying [...] repairs and repainting", but also major projects, such as demolition or re-building.[25]

Where a landowner does not clean up the site, section 219 of the Town and Country Planning Act 1990 gives LPAs the power to undertake the clean-up works do it themselves and recover the costs from the landowner. Failure to comply with a request to clean up a site is an offence that can result in a fine up to £1,000.[26]

Compulsory purchase of land

As a last resort, an LPA can use compulsory purchase powers under section 226 of the Town and Country Planning Act 1990 to unlock development. If a development is unfinished because the developer has run out of money, then the "only practical step" may be for the LPA to take ownership of the land.[27]

To justify compulsory purchase, an LPA must make a compelling case in the public interest and pay compensation to the landowner. The amount of compensation payable is governed by a "compensation code" (as set out in the Land Compensation Act 1961, the Land Compensation Act 1973 and the Compulsory Purchase Act 1965). A compulsory purchase order must also be examined and confirmed by the relevant Secretary of State.[28]

Government guidance on compulsory purchase procedure and compensation process provides further information. There is also detailed guidance on the procedure to obtain a Compulsory Purchase Order (PDF).

23 Designing Buildings, Section 215 of the Town and Country Planning Act 1990, last updated October 2020; Lisle-Mainwaring R v Isleworth Crown Court & Anor [2017] EWHC 904 (Admin)

24 Section 215 of the Town and Country Planning Act 1990; Office of the Deputy Prime Minister, Best Practice Guidance: Section 215 (PDF), January 2005

25 Office of the Deputy Prime Minister, Best Practice Guidance: Section 215 (PDF), January 2005

26 Sections 216 and 219 of the Town and Country Planning Act 1990

27 Section 226 of the Town and Country Planning Act 1990; MHCLG, The use of conditions in planning permissions: circular 11/1995, July 1995, para 61

28 DLUHC, Compulsory purchase and compensation: Guide 1 - procedure, December 2021

2.4 Planning obligations to deliver infrastructure

To mitigate concerns about the impact of a proposed development and make a development acceptable in planning terms, an LPA can negotiate a section 106 agreement with a developer.[29] As part of this agreement, a developer will agree to deliver certain "planning obligations" if they are granted planning permission for their development.

These obligations may take the form of financial payments, which the LPA can use to fund additional infrastructure for an area. Alternatively, a developer might agree to build the infrastructure, such as a road, themselves.

Government guidance provides further information on the use of planning obligations. A Library briefing, Planning Obligations, also provides further information.

Enforcement of planning obligations

If a developer does not comply with a section 106 agreement, that is, if they do not deliver the infrastructure or payments they agreed to deliver, an LPA has two formal enforcement powers. Under section 106, it can:

- carry out the works itself and recover the costs from the developer.
- seek a court injunction to require that the developer comply with their agreement.[30]

These are discretionary powers, however, so an LPA does not have to use them. If an LPA seeks an injunction, a court will decide whether it is appropriate to enforce an agreement.

If a developer agreed to pay financial contributions, a section 106 agreement will likely detail the penalties for late payment (such as interest on top of the agreed amount). An LPA can also pursue unpaid financial contributions in court as debt.[31]

Because planning obligations are registered as local land charges, they are linked to land (rather than the person developing the land). This means that planning obligations can be enforced against both the developer who entered the agreement with the LPA and against any subsequent owner of the land.[32]

29 Section 106 of the Town and Country Planning Act 1990
30 Section 106 of the Town and Country Planning Act 1990
31 Local Government Lawyer, Varying and enforcing s106 obligations, 24 June 2020
32 Planning Portal, Conditions and obligations - The decision-making process, undated [accessed 24 January 2024]

2.5 Devolved administrations

Because planning is a devolved matter, there are some differences in the powers of local authorities to prevent unfinished housing developments. Across the UK, however, local authorities have limited powers to force a developer to finish a housing development. This section sets out some differences and similarities.

A Library briefing, Comparison of the planning systems in the four UK countries: 2016 update, provides further information on how planning legislation and policy operate across the UK.

Completion notices

Across the UK, local councils can issue completion notices, threatening to revoke planning permission if a development (that has already begun) is not completed within a specified period (usually 12 months).[33]

To take effect, a completion notice must be approved by Welsh Government and the Northern Ireland Executive. The Scottish Government only needs to confirm a completion notice if an objection to the notice is lodged.[34]

Use of planning conditions

Across the UK, LPAs can use planning conditions set a time limit for when a development must begin. If no conditions are imposed, permission expires within three years in Scotland and England. In Wales and Northern Ireland, permission expires in five years.[35]

LPAs cannot impose planning conditions that would require a development to be completed in its entirety anywhere in the UK. A planning circular by the Scottish Government explains that such planning conditions would be difficult to enforce. For example, if "the reason for failure to complete is financial difficulties experienced by the developer" or "an estate of houses is left half-complete [...] due to market changes", a completion notice would likely not succeed or not be desirable, according to the planning circular.[36]

Delivery of infrastructure

If developers do not deliver the contributions they agreed to with the local authority, LPAs in England, Northern Ireland, and Wales can force them to

33 Section 94 of the Town and Country Planning Act 1990; Section 62 of the Town and Country Planning (Scotland) Act 1997; Section 64 of the Planning Act (Northern Ireland) 2011

34 Section 62A of the Town and Country Planning (Scotland) Act 1997

35 Section 91 of the Town and Country Planning Act 1990; Section 58 of the Town and Country Planning (Scotland) Act 1997; Section 61 of the Planning Act (Northern Ireland) 2011

36 Scottish Government, Planning Circular 4/1998: the use of conditions in planning permissions, 1998, para 16

comply through a court injunction.[37] In Scotland, however, these agreements are not enforceable by a court injunction.

Other powers: Clean-up works and compulsory purchase

In Wales and Scotland, a local authority can require a landowner to address conditions that are adversely affecting the amenity of an area. If they fail to do so, local authorities in Wales can carry out the works themselves and recover the costs from the landowner; local authorities do not have these powers in Scotland.[38]

As a last resort, local authorities across the UK have compulsory purchase powers which they could use to tackle unfinished housing developments. Like in England, compulsory purchase orders have to be confirmed by the relevant government and those whose land is taken are entitled to compensation.

[37] Section 106 of the Town and Country Planning Act 1990; Section 75 of the Town and Country Planning (Scotland) Act 1997; Section 76 of the Planning Act (Northern Ireland) 2011

[38] Section 215 of the Town and Country Planning Act 1990; Section 179 of the Town and Country Planning (Scotland) Act 1997

3 Reforms to planning powers

The government is making a number of changes to planning law with the Levelling Up and Regeneration Act 2023. The Act includes provisions that would strengthen the powers of local planning authorities (LPAs) to prevent and address unfinished housing developments.

The 2023 Act received Royal Assent in October 2023; however, relevant provisions in the Act to change planning law require regulations to be brought into force. The government has not set out a timetable when it intends to bring forward these regulations.[39]

3.1 Commencement and completion notices and annual progress reports

The Levelling Up and Regeneration Act 2023 contains provisions which the government said will "ensure developers build out the developments for which they already have planning [permission]".[40] Specifically:

- Section 112 will remove the restriction that completion notices can only be served once the deadline for a development to commence has expired and the requirement for them to be confirmed by the Secretary of State.
- Section 111 gives the government the power to introduce commencement notices. Developers will be required to notify the LPA when they intend to start building work. Failure to comply will be an offence that could result in a £1,000 fine.
- Section 114 will require LPAs to attach a condition to planning permission for certain residential developments to require the developer to provide annual progress reports to the LPA.[41]

Regulations will set out for which types of developments commencement notices and annual progress reports will be required and the form of these reports.

39 Section 255 of the Levelling-up and Regeneration Act 2023
40 HCWS415 [Update on the Levelling Up Bill] 6 December 2022
41 Section 111 to 114 of the Levelling Up and Regeneration Act 2023

Reaction

During passage of the Bill, Conservative and Labour MPs expressed support for commencement notices and the changes to completion notices.[42] The Shadow Minister for Housing and Planning, Matthew Pennycook, called them "sensible" provisions.[43]

The CPRE (formerly the Council for the Protection of Rural England) said that progress reports could help to make developers accountable.[44] The Local Government Association (LGA) welcomed the provisions but suggested the government could go further. It proposed levying penalties on developers for "withholding land".[45]

Other stakeholders criticised the measures in the Act, arguing that they would "change very little". Ivy Legal, a planning enforcement company, argued that these notices "don't do what they say on the tin in that they don't have the result of forcing developments to be completed". It said the Act was a missed opportunity "to make completion notices a tool that truly has teeth". Town Legal, a planning law firm, also contended that commencement notices had "no teeth in relation to binding a developer to timings or delivery rates".[46]

3.2 Taking past developer behaviour into account

Levelling Up and Regeneration Act 2023

Under sections 70A to 70C of the Town and Country Planning Act 1990, LPAs can already decline to determine applications in certain circumstances. For example, they can decline "substantially similar" applications on sites for which they have refused permission at least twice in the past two years.[47]

Declining to determine an application means that an LPA does not have to assess the application to determine whether to grant or refuse permission.

Section 113 of the 2023 Act contains provisions to add section 70D to the 1990 Act, to allow LPAs to decline to determine applications from developers who did not finish the developments or carried out development "unreasonably" slowly. This will apply to developers who carried out the development and to persons connected to developments.[48]

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42 HC Deb [Levelling Up and Regeneration Bill] 8 June 2022, c846; c884

43 PBC Deb [Levelling Up and Regeneration Bill, Eighteenth sitting] 6 September 2022, c589-590

44 Joey Gardiner, How the Levelling Up bill would change the system: 10. Tools to force developers to complete schemes more quickly, Planning Resource [subscription required], 13 December 2022

45 LGA, Levelling Up and Regeneration Bill, 9 December 2022

46 Joey Gardiner, How the Levelling Up bill would change the system: 10. Tools to force developers to complete schemes more quickly, Planning Resource [subscription required], 13 December 2022; Hogan Lovells, Levelling-up and Regeneration Bill – when things don't quite go to plan, May 2022

47 Sections 70A to 70C of the Town and Country Planning Act 1990

48 Section 113 of the Levelling Up and Regeneration Act 2023

Further proposed reforms

Separately to the Act, the government said it will make changes to planning regulations, national policies and guidance.[49] It consulted on proposed reforms to national planning policies between December 2022 and March 2023 and responded to the consultation in December 2023.[50]

In the consultation, the government proposed allowing LPAs to take past developer behaviour into account. It said that, although planning decisions should generally be based on the merits of a proposal, there were "instances where personal circumstances can be taken into account". It proposed:

- allowing LPAs to decline applications by developers who have a track record of "past irresponsible behaviour".
- making "past irresponsible behaviour" a 'material consideration', so LPAs would be able to formally consider it when making decisions.[51]

The government noted that some respondents to its consultation expressed support for the proposed changes on the basis that "existing enforcement powers and local authority resources were inadequate to tackle the problem of poor behaviour by developers". Other respondents questioned "how such a proposal might work in practice", however, and how irresponsible behaviour would be defined and assessed. They said that there was a need for a robust definition to prevent decisions being subject to legal challenges.[52]

The government did not state whether it would take the proposed reforms forward. It said it would consider views expressed in response to its consultation "carefully in any future policy development".

Penalties for developers

In its report on its inquiry into the government's White Paper on the Future of the Planning System in England, the Housing, Communities and Local Government (HLCG) Committee recommended that the government should set time limits on when a development should finish and impose penalties if a developer exceeded those time limits.[53]

The government's response to the report in June 2022 did not comment on whether it would set time limits or impose penalties.[54] However, in December 2022, the government said it would consult on imposing financial penalties on

49 DLUHC, Levelling Up and Regeneration: Further information, May 2022
50 DLUHC, Levelling-up and Regeneration Bill: reforms to national planning policy, last updated December 2023
51 DLUHC, Levelling-up and Regeneration Bill: reforms to national planning policy, December 2022, Chapter 5, paras 19-22
52 DLUHC, Government response to the Levelling-up and Regeneration Bill: reforms to national planning policy consultation, last updated December 2023, questions 30-31
53 HCLG Committee, The future of the planning system in England (PDF), paras 117-120
54 DLUHC, Government response to the Levelling Up, Housing and Communities Select Committee report on The Future of the Planning System in England, June 2022, paras 39-41

companies that fail to deliver housing.[55] This consultation has not yet been published.

Reaction

Various Conservative and Labour MPs welcomed the proposal to allow LPAs to take developers' past behaviour into account, but some called on the government to go further.[56]

Clive Betts (Lab), the chair of the Levelling Up, Housing and Communities Committee, said LPAs should be able to "take account of failures to observe [planning] conditions" when looking at future planning applications. Dame Maria Miller (Con) criticised some developers for not building homes to the "required quality, leaving many residents having to seek significant remedial works".[57]

Stakeholders had mixed views about whether some developers with poor track-records should be prevented from submitting planning applications.

Some organisations, such as CPRE, said that LPAs should be able to decline applications from some developers. The chair of Planning Officers Society, however, questioned "where denying permission gets you".[58] A planning lawyer also expressed concern that, if LPAs could decline applications from certain developers, it could undermine "the fundamental planning principle that planning permissions [...] are not attached to specific developers".[59]

3.3 Delivery of infrastructure: Infrastructure levy

Part 4 of the 2023 Act gives the government the power to introduce a new charge on development, the infrastructure levy (IL), to replace the current system of developer contributions. Receipts will go towards funding local infrastructure, such as affordable housing, schools, GP surgeries, and roads, to supply a new development.[60]

The infrastructure levy would replace the community infrastructure levy (CIL) currently in operation. The CIL is an optional charge LPAs can choose (but are

55 HCWS415 [Update on the Levelling Up Bill] 6 December 2022; DLUHC, Communities put at heart of planning system as government strengthens Levelling Up and Regeneration Billl, 5 December 2022

56 HC Deb [Levelling Up and Regeneration Bill], 13 December 2022

57 HC Deb [Levelling Up and Regeneration Bill], 13 December 2022

58 Joey Gardiner, The implications of legislation that would allow councils to ignore applications from slow builders and demand progress reports from others, Planning Resource [subscription required], 19 December 2022 [accessed 31 January 2023]

59 Joey Gardiner, The implications of legislation that would allow councils to ignore applications from slow builders and demand progress reports from others, Planning Resource [subscription required], 19 December 2022 [accessed 31 January 2023]

60 Part 4 of the Levelling Up and Regeneration Act 2023 ; DLUHC, Levelling Up and Regeneration: Further information, May 2022

not required) to impose on developments. LPAs will be required to introduce the new infrastructure levy but rates would be set locally. The levy would not replace section 106 agreements entirely, but in future section 106 agreements would be used to support the delivery of only the "largest sites" .[61]

Between March and June 2023, the government consulted on the technical design of the infrastructure levy. Alongside the consultation, it published a research paper it commissioned on the potential effects of the levy.[62] At the time of writing (24 January 2024), the government has not yet responded to the consultation.

Reaction

The infrastructure levy would be based on the gross development value, that is, the value of a property at the point of sale. Some Conservative and Labour Members expressed concern that using this value would mean that payments were not made until a development was finished.[63] The then Minister of State for DLUHC, Marcus Jones, stated the gross development value would allow LPAs to account for increases in the value of land.[64]

The LGA urged the government to reconsider the timing of the charge at the point of sale, arguing that infrastructure should be delivered "upfront", not on completion of a development.[65] The Chartered Institute of Building (CIOB) expressed support for the infrastructure levy but also questioned the "trigger points in which a financial commitment is provided".[66]

The Shadow Minister for Housing and Planning, Matthew Pennycook, argued the infrastructure levy would create "a system where infrastructure required to support development will not be in place when it is needed".[67] Marcus Jones, responded that LPAs would be able to borrow against future receipts or use past contributions to fund infrastructure provision upfront.[68]

61 DLUHC, Policy paper: Levelling Up and Regeneration: further information, 11 May 2022
62 DLUHC, Technical consultation on the Infrastructure Levy, March 2023
63 PBC Deb [Levelling Up and Regeneration Bill, Nineteenth sitting] 6 September 2022, c648-649
64 PBC Deb [Levelling Up and Regeneration Bill, Nineteenth sitting] 6 September 2022, c651-652
65 LGA, Levelling Up and Regeneration Bill, 9 December 2022
66 Chartered Institute of Building (CIOB), CIOB submits response to the Levelling Up and Regeneration Bill Public Committee Call for Evidence, August 2022
67 PBC Deb [Levelling Up and Regeneration Bill, Nineteenth sitting] 6 September 2022, c606
68 PBC Deb [Levelling Up and Regeneration Bill, Nineteenth sitting] 6 September 2022, c651-652

4 Unfinished roads

MPs and news reports have raised instances where residents move into new houses, and the developer or builder declares bankruptcy before the roads serving them have been completed.[69] Because the roads may have been left in a poor state, the council may be reluctant to adopt them and residents can be liable for expensive road upgrades.

In England and Wales, once a road is 'adopted' by the local highway authority (usually the unitary or county council), it becomes a public highway that is "maintained at public expense".[70] This means that the council becomes legally responsible for its maintenance.

Councils can therefore be reluctant to adopt roads unless they are first brought up to a standard that they deem acceptable. Councils are not obliged to adopt an 'unfinished' road, or to bring it up to adoptable standard, unless they have made a prior agreement with a developer, sometimes backed by a financial bond paid by the developer. Councils can choose to carry out works to bring the road up to adoptable standard, but the cost would be payable by the 'frontagers', those who own the land fronting the road.

The following information relates only to England and Wales. However, similar issues around unfinished housing developments and roads have also been raised in Scotland and Northern Ireland, which are discussed in sections 4.5 and 4.6 of this briefing.

Further legal and historical background can be found in the Library briefing Private, or 'unadopted' roads in England and Wales.

4.1 Section 38 agreement

In England and Wales, a council can make an advance agreement with the developer to adopt a prospective road, once built, under section 38 of the Highways Act 1980.[71] Alternatively a developer can simply offer a road up for

[69] As an example, see Birmingham Mail, 'We're trapped' - Life on unfinished new-build estate where home values plummeting, 19 October 2022; HC Deb [Unfinished housing developments] 28 October 2022; HC Deb [Unadopted roads] 1 December 2022

[70] Section 41 of the Highways Act 1980

[71] Section 38 of the Highways Act 1980

adoption by a council after it has built it, under section 37 of the 1980 Act.[72] After adoption, the council would then become liable for maintaining it.

A council has no power to insist that a developer enters into a section 38 agreement. However, developers may see it as a more desirable option than using section 37 because it commits the council to adopting the road. Until the council adopts the roads, the developer (or whoever owns the properties fronting the road) is responsible for its maintenance.[73]

A section 38 agreement can also include a bond to be paid from the developer to the council, to be used in case the developer declares bankruptcy. The bond would then go towards the cost of making the road up to adoptable standard. Government guidance notes that people planning to purchase new-build homes may wish to clarify a section 38 agreement is in place.[74]

According to the Welsh Government's Unadopted Road Taskforce, section 38 agreements "can be clearly advantageous to a highway authority but may be costly for landowner/developers as a fee will be payable for securing a bond and developer may not be of sufficient credit worthiness to procure a bond".[75]

4.2 Advanced Payment Code

In addition to a section 38 agreement, a council can also require a developer to pay a bond (which can be used to make up roads if a developer defaults on the building work) through the Advanced Payment Code (APC) under section 219 to section 225 of the 1980 Act. Unlike a section 38 agreement, an APC bond is not a voluntary agreement and councils can issue them as they see fit.

However, there are strict timescales that the council must adhere to when issuing an APC bond notice (within six weeks of building regulations approval being served).[76] As a result, the use of APC bonds is inconsistent across the country.[77]

If both a section 38 agreement and an APC bond are in place, the section 38 agreement would oblige the council to adopt the road upon completion, and the APC would ensure the council has the funds to complete the roadworks if the developer is unable to.

72 Section 37 of the Highways Act 1980
73 Birmingham City Council, Apply for an S38 agreement, undated [accessed 8 February 2023]
74 DfT Guidance, Adoption of roads by highway authorities, August 2022, p9
75 Welsh Government Unadopted Roads Taskforce, Unadopted roads in Wales: preliminary review, July 2019, p20
76 Section 220 of the Highways Act 1980
77 Welsh Government, Unadopted roads in Wales: preliminary review, July 2019, p8

Welsh Government guidance for APC bonds

The Welsh Government's Unadopted Road Taskforce recommended a good practice guidance should be used by all councils in Wales, which the Welsh Government accepted.[78] This good practice guidance (PDF, see Appendix 3) advises that councils consult internally between their planning and highways divisions at an early stage, and before approving a planning application, to determine if an APC is necessary.

The guidance also advises that if a new road is going to serve at least five properties, then an APC notice should be served. This means that building work cannot begin until the developer pays an APC bond (equivalent to the total costs of construction of roads to adoptable standards as determined by the council). During this process, the council can also negotiate a section 38 agreement.[79]

4.3 Frontager liability for roads

In the event that there is no section 38 agreement or APC in place, a council can bring a road up to adoptable standard in agreement with the frontagers under sections 205 to 218 of the 1980 Act, called the "Private Street Works Code".[80] This means that a road then becomes a highway maintainable at public expense.

However, the frontagers would be required to pay for and agree to such works, so this can be "an unpopular and potentially complex process".[81]

Finally, section 230 of the 1980 Act empowers councils to order the frontagers to carry out repairs to an unadopted road which are "needed to obviate danger to traffic".[82] It also allows councils to carry out the work itself if the order is ignored and to recover the expenses incurred from the frontagers.

4.4 Welsh and UK Government comment

Wales

The Welsh Government commissioned an Unadopted Roads Taskforce to consider the issue in 2018. The taskforce identified 25,000 kilometres of unadopted roads in Wales, with around 2,600 kilometres serving five or more properties ('residential roads'). It estimated the average cost of making up a

78 Welsh Government, Written Statement: Response to the report and recommendations from the Unadopted Roads Taskforce, 21 October 2020
79 Welsh Government, Unadopted roads in Wales: final report, October 2020, p18, Appendix 3
80 Sections 205 to 218 of the Highways Act 1980
81 Welsh Government, Unadopted roads in Wales: preliminary review, July 2019, p7
82 Section 230 of the Highways Act 1980

road to an adoptable standard to be around £600 per linear metre. It found that, while it would be too expensive to make up all unadopted residential roads in Wales, it was important to not make the problem worse by allowing more unwanted unadopted roads to be created.[83]

To this end, the taskforce recommended a good practice guide for councils and developers in Wales (which can be found in Appendix 3 of the Unadopted roads in Wales: final report, PDF), and for the Welsh Government to consider providing financial assistance on a pilot basis to address unadopted roads. The Welsh Government accepted these recommendations in October 2020.[84]

The taskforce also noted that the Senedd Cymru/Welsh Parliament "has competence to legislate to amend the law relating to the adoption of highways in Wales, should it consider it appropriate to do so".[85]

England

In England, the Department for Transport (DfT) updated its guidance on road adoption in 2022. This is intended for use by councils (in England), developers and house-buyers.[86] The guidance includes some advice on what to do in case of a dispute between parties.[87]

The problems with unfinished residential roads have also been raised in the UK Parliament. In response, the government has said it is for councils to decide if and when to use bonds for housing developments; that developers should make house-buyers fully aware of the maintenance arrangements for new roads; and that the Local Government Ombudsman can be used for complaints if councils have not followed the correct legal processes.[88]

The then Minister of State in the Department for Levelling Up, Housing and Communities (DLUHC), Lucy Frazer, said in a debate in December 2022 that it was important to note that not all residents wanted or needed their roads to be adopted. Problems arose when residents were unaware of their road's unadopted status but were suddenly expected to pay for its maintenance:

> It is worth saying that the local highways authority cannot of course always adopt a road on a new development each and every time, not least because that may not be what residents themselves want. The road may also be incomplete or not built to the right standard, and the drainage may not yet have been adopted by the appropriate body. For whatever reason, when a road is not adopted by the local highway, liability for maintenance automatically falls to those who own the properties facing the road. What that looks like may vary depending on the housing development, but by and large estate rent charges are the main way in which residents pick up the tab for a

83 Welsh Government, Unadopted roads in Wales: final report, October 2020
84 Welsh Government, Written Statement: Response to the report and recommendations from the Unadopted Roads Taskforce, 21 October 2020
85 Welsh Government, Unadopted roads in Wales: preliminary review, July 2019, Page 21
86 DfT Guidance, Adoption of roads by highway authorities, August 2022
87 DfT Guidance, Adoption of roads by highway authorities, August 2022, p54
88 HC Deb [Unfinished Housing Developments: Consumer Protection] 18 October 2022, c666

road's maintenance. The problem arises when homeowners are unexpectedly slapped with bills to maintain roads they did not even know they were responsible for and, worse, when they challenge the estate rent charges, they find that they have limited rights to do anything about it.[89]

4.5 Scotland

Planning, housing and road policy are fully devolved in Scotland.

A similar process to England and Wales regarding the adoption of roads is followed in Scotland, although councils there are described as 'roads authorities', and the Roads (Scotland) Act 1984 applies.[90]

In Scotland, developers wishing to construct a new road must obtain 'construction consent' from the relevant 'roads authority' (usually the local council) under section 21 of the 1984 Act.[91] It is an offence to begin any construction of the road until construction consent is given.[92]

A road will generally not require consent if it serves five or fewer dwellings; in these circumstances it will be considered a private access road instead.[93]

Consent will only be granted where the proposed roads meet set design criteria, for which there is national guidance provided by the Society of Chief Officers of Transportation (SCOTS), as well as any local criteria set by the council.[94] The council may require the developer to pay a 'road bond' which makes available money to the council to be used, if needed, to construct or complete the road.[95] When consent is granted and the road is completed, the developer may then apply for the road to be adopted.

The Welsh Government's Unadopted Roads Taskforce has said that the law around road adoption in Scotland is "clearer" than the law in England and Wales, and it reduces the risk of low-quality residential roads being built.[96]

Despite the clearer law in Scotland, some of the same problems around low-quality unadopted residential roads have been reported in the media and

89 HC Deb [Unadopted Roads: New Housing Estates] 1 December 2022, c1074
90 Roads (Scotland) Act 1984
91 Section 21 of the Roads (Scotland) Act 1984
92 Section 22 of the Roads (Scotland) Act 1984
93 Welsh Government, Unadopted roads in Wales: preliminary review, July 2019, Page 20
94 Society of Chief Officers of Transportation in Scotland, SCOTS guide for the Road Construction Consent and Road Bond process [PDF], undated [accessed 9 February 2023]. See East Lothian Council, Road Construction Consent process, undated [accessed 8 January 2024] for an example of local council criteria for road construction consent.
95 Society of Chief Officers of Transportation in Scotland, SCOTS guide for the Road Construction Consent and Road Bond process (PDF), undated [accessed 9 February 2023], para 3.1
96 Welsh Government, Unadopted roads in Wales: preliminary review, July 2019, Page 20

raised by local councils, such as home-owners facing large road maintenance bills, or vehicles risking greater damage.[97]

4.6 Northern Ireland

Planning, housing and road policy are fully devolved in Northern Ireland.

The Department for Infrastructure (DfI) is the sole 'road authority' for the whole of Northern Ireland (rather than individual councils, as is the case in Great Britain), and different legislation applies.[98]

Similar to the procedures in Great Britain, developers wishing to build residential roads must first make an agreement with the DfI under article 32 of the Private Streets (Northern Ireland) Order 1980.[99] This agreement may involve payment of a bond. The agreement should say that, upon satisfactory completion of the road, the roads become public roads.

In a 2021 debate, members of the Northern Ireland Assembly highlighted problems with poor-quality residential roads that had long been scheduled for adoption, as well as resourcing issues at the DfI leading to backlogs in adopting roads, even when a bond had been paid. Members reported that in some cases, homeowners on poorly maintained, unadopted roads are unable to sell their property, buyers can be unable to obtain a mortgage, and sellers sometimes have to accept a lower price or a cash-only purchase.[100]

97 Angus Council Communities Committee, Unadopted Road Policy Update (PDF), 23 February 2021; The Herald, Thousands of Scots in legal limbo as roads unadopted, 15 July 2019

98 In Northern Ireland the laws around road adoption are set out in the Private Streets (Northern Ireland) Order 1980 and The Private Streets (Amendment) (Northern Ireland) Order 1992, see Department for Infrastructure, Private streets determination, undated [accessed 7 February 2023]

99 Article 32, Private Streets (Northern Ireland) Order 1980

100 NI Assembly Deb [Unadopted Roads] 1 June 2021

5 Standards for building work

5.1 Building regulations

Most building work that is carried out in England has to adhere to building regulations, under the Building Act 1984 and Building Regulations 2010.[101]

Building regulations apply primarily when constructing new buildings (and sometimes when making changes to existing buildings). They apply only during building work; standards for existing buildings will therefore usually depend on when they were built.[102]

Generally, building regulations set standards that need to be met rather than the way they need to be achieved. They do not prescribe which methods, materials and technologies should be used.

To provide guidance on how to meet the requirements set out in Building Regulations 2010, the government publishes Approved Documents.[103] There may be other ways to meet the requirements, however, than following the examples and solutions set out in the Approved Documents.

Responsibility for compliance

When carrying out work that is controlled under the building regulations, a developer needs to obtain approval from a building control body: either the local authority or a private-sector organisation or individual.[104]

Through periodic site inspections and, sometimes, approved plans, a building control inspector will determine whether building work complies with building regulations. They will issue a certificate if they are satisfied, after taking all "reasonable steps", that building work meets the required standards.[105]

This certificate is not a complete guarantee that building work is done to the required standards, however. The role of building control bodies is to ensure

101 Building Act 1984; Building Regulations 2010; DLUHC, Manual to the Building Regulations, July 2020

102 Further information on what is considered "building work" for the purpose of the building regulations is set out in the Manual to the Building Regulations (PDF), pp27-32.

103 DLUHC and MHCLG, Approved Documents, last updated December 2021. Archived versions of the Approved Documents are available on the website of the National Archives.

104 The Building Safety Act 2022 requires privately approved inspectors to register with the Building Safety Regulator. They will be known as "building control approvers".

105 DLUHC, Manual to the Building Regulations, July 2020, p56

that technical standards are met; they are not responsible for monitoring overall build quality or supervising the construction process.[106]

Ultimately, the responsibility to ensure that a home is built to the required standard and that there are no defects rests with those carrying out the work.

5.2 Enforcement powers of local authorities

A local authority has a general duty to ensure that building work in its area complies with building regulations. If building work is not in line with the standards set out in regulations or those carrying out the work do not obtain building control approval, a local authority has enforcement powers that it can use at its discretion:

- prosecute the person who carried out non-compliant building work (for example, the builder or developer) under section 35 of the Building Act 1984. The person responsible for the breach may be liable to an unlimited fine and/or two years in prison.

- serve an enforcement notice to require a building owner to fix or remove non-compliant building work under section 36 of the Building Act 1984. If the building owner does not to comply with the notice, the local authority can fix the work itself and recover the costs from the owner.[107]

Concerns about non-compliance with the building regulations should be directed to the local authority; however, it is up to the local authority whether to pursue enforcement action against building regulations violations.

Time limits on enforcement

Until October 2023, a local authority could only pursue prosecution up to two years, and require remedial work up to 12 months, after the completion of the building work.

The Building Safety Act 2022 extended the time limit to ten years for remedial work and scrapped the time limit for prosecutions. These changes took effect in October 2023 and do not apply to work carried out before then.[108]

Further enforcement powers

The Building Safety Act 2022 also gives local authorities further powers to tackle non-compliant work. As of October 2023, a local authority can require

106 DLUHC, Manual to the Building Regulations, July 2020, page 24; Local Government and Social Care Ombudsman (LGSCO), Building control: I have a problem with the council's handling of a building control matter, August 2022

107 Sections 35 and 36 of the Building Act 1984

108 Section 39 of the Building Safety Act 2022; Schedule 5(31) of the Building Safety Act 2022; Building Safety Act 2022 (Commencement No. 5 and Transitional Provisions) Regulations 2023

such work to stop until the issues have been addressed or require non-compliant issues to be fixed by a certain date.[109]

Local Government Ombudsman

Once they have exhausted their local authority's complaints procedures, constituents may be able to refer to matters to the Local Government Ombudsman. The Ombudsman can "only rarely" help with building control matters, however, because local authorities are not directly liable for defective building work.[110]

The Library briefing Building regulations and safety provides further information on where the building regulations apply and how they are enforced.

5.3 Devolved administrations

Building regulations are devolved. Standards for performance are set by the devolved administrations, and local councils (or district councils in Northern Ireland) are responsible for administering them and ensuring compliance.

Wales

In Wales, standards for building work are also governed by the Building Act 1984 and the Building Regulations 2010.[111] The Welsh Government provides further information on the building regulations in Wales.

Before carrying out works that are controlled under the regulations, developers must get approval from their local authority or a privately approved inspector.[112] Failure to do so can result in enforcement action.

As in England, local authorities are responsible for ensuring compliance with the building regulations. They can prosecute builders who carry out faulty building works and require that owners remedy them.[113]

109 Section 38 of the Building Safety Act 2022, which added Sections 35B and 35C to the Building Act 1984; Building Safety Act 2022 (Commencement No. 5 and Transitional Provisions) Regulations 2023

110 LGSCO, Building control: I have a problem with the council's handling of a building control matter, August 2022

111 Welsh Government, Building regulations: approved documents, last updated 20 December 2022

112 Welsh Government, Guide to building regulations, December 2021, section 5

113 Welsh Government, Guide to building regulations, December 2021, section 6

Scotland

In Scotland, building standards are governed by the Building (Scotland) Act 2003 and the Building (Scotland) Regulations 2004. Further information can be found on Scottish Government's website on building standards.

Before carrying out works that are controlled under the regulations, a building owner must obtain a "warrant" from the local authority, which confirms that the proposed works meet relevant standards. On completion, the building owner must submit a "completion certificate". A home can only be occupied once a local authority has accepted this certificate.[114]

Failure to comply with the regulations can result in enforcement action by the local authority. It can require that building works are altered to comply with the building standards and, if the owner fails to comply, the local authority can fix the works itself and recover the costs from the owner. A local authority can also prevent the occupation of a home until it meets building standards.[115]

Northern Ireland

In Northern Ireland, standards for building work are governed by the Building Regulations (Northern Ireland) 2012. Further information on the requirements can be found on the websites of local councils.

A developer must submit building plans to the local council when carrying out major building work. A building control officer from the local council will then carry out site inspections to ensure that works comply with the plans.[116]

Where they discover works that do not comply with the building regulations, a building control officer can serve a "contravention notice", requiring that the faulty works are altered or removed within a certain period. [117]

114 Scottish Government, Building standards: procedural handbook, September 2019, sections 3 and 6
115 Scottish Government, Building standards: procedural handbook, September 2019, section 7
116 Building Control Northern Ireland, Advice & Guidance, undated [accessed 11 January 2023]
117 Building Control Northern Ireland, Advice & Guidance, undated [accessed 11 January 2023]

6 Connection to utility supply

Utility service providers must provide a connection to their networks where these are requested. The infrastructure to connect to a utility service may be set up either by the operator themselves or by the developer (or a contractor on their behalf).

The responsibility for making sure that housing is connected to utility services, such as water, sewerage, gas and electricity, and for making sure that works meets set standards rests with the developer, however. Utility providers are not at fault if a developer does not carry out the works to make a connection.

6.1 Water and sewerage services

Provision of water supply and drainage system

In addition to setting standards for the fire safety, ventilation and energy efficiency of buildings, building regulations also set requirements for the connection to water and sewerage services and for electrical installations.

For England, Part G of the Building Regulations 2010 states that a cold-water supply must be set up for "any place where drinking water is drawn off". A supply for hot and cold also needs to be set up for sinks in areas where food is prepared and for sinks, showers and baths in bathrooms.[118]

Further, Part H requires that homes in England must have a drainage system that can carry foul water to a public sewer (or a private sewer that connects to a public one). Where it is not "reasonably practicable" to connect a home to the sewerage system, a cesspool, wastewater treatment system, or septic tank could be provided as an alternative.[119]

Devolved administrations

Similar requirements apply in Wales as in England.[120]

In Northern Ireland and Scotland, regulations also set similar standards for the removal of wastewater from a building through a drainage system. They

[118] MHCLG, Sanitation, hot water safety and water efficiency: Approved Document G, March 2016
[119] MHCLG, Drainage and waste disposal: Approved Document H, December 2010
[120] Welsh Government, Building regulations: Approved documents, last updated December 2022

do not include the same requirements for the supply of hot and cold water, however. They require only the provision of sanitary facilities.[121]

Connection to water and sewerage services

The Water Industry Act 1991 requires water suppliers in England and Wales to provide water mains to supply premises in the area they serve and sewerage undertakers to provide sewers or drains to connect premises to the sewerage network.[122] Alternatively, a developer could build a private sewer and request that it is "adopted" by a local authority under a "section 104 agreement". This means it would become a public sewer and be maintained at the expense of the sewerage undertaker.[123]

Water and sewerage companies are not required to adopt connections that do not meet set design standards. [124]

Scotland and Northern Ireland

Under the Water (Scotland) Act 1980 and the Sewerage (Scotland) Act 1968, Scottish Water is required to provide a water supply to the point where it can be connected to domestic pipes if it can be done at reasonable cost.[125]

The Water and Sewerage Service (Northern Ireland) Order 2006 also requires Northern Ireland Water to offer a public watermain for domestic purposes. However, the person requesting the connection may have to pay for it.[126]

6.2 Electricity supply and gas installations

Safety of electrical work and gas installations

Building regulations also cover the safety of electrical work in England and Wales: all electric installations must comply with the requirements set out in Part P of the Building Regulations 2010. The people who might use, maintain, or alter electric installations must be protected from fire and injury, including

121 Scottish Government, Building standards technical handbook 2020: domestic, December 2020; Building Control Northern Ireland, Technical Booklet P: Sanitary appliances, unvented hot water storage and reducing the risk of scalding, October 2012

122 Sections 41 and 98 of the Water Industry Act

123 Sections 102 and 104 of the Water Industry Act 1991

124 Section 42 of the Water Industry Act

125 If Scottish Water refuses to connect a domestic pipe to the public supply, for example because of cost or location, it is possible to appeal this decision at the Directorate for Planning and the Environment is possible. For further information, see Citizens Advice's Getting a water supply.

126 Article 79 of the Water and Sewerage Service (Northern Ireland) Order 2006; Article 161 of the Water and Sewerage Service (Northern Ireland) Order 2006. For further information, see Northern Ireland Water, Wastewater services: Article 161 Agreement, undated [accessed 21 February 2023]

from electric shocks.[127] Similar requirements apply for the safety of electrical work apply in Scotland as in England and Wales.

The safety of gas installations in England, Scotland and Wales is governed by the Gas Safety (Installation and Use) Regulations 1998, rather than by the building regulations. The regulations are enforced by the Health and Safety Executive (HSE) in Great Britain.[128]

Northern Ireland

In Northern Ireland, the Gas Safety (Installation and Use) Regulations 2004 sets out standards for gas installation.[129] There are no regulations governing the safety of electrical work in Northern Ireland.[130]

Connection to electricity and gas supply

In Great Britain, electricity network operators and gas transporters must offer a connection to their service if a landowner (or occupier) requests one:

- The Electricity Act 1989 requires distribution network operators (the companies that control the electricity infrastructure) to make and maintain connections where these are requested by the landowner.[131]
- Similarly, the Gas Act 1986 requires companies that control the gas infrastructure (which are known as "gas transporters") to develop and maintain gas pipeline systems. So far as "it is economical to do so", they must respond to requests to connect premises to those systems.[132]

The person who requests the connection will pay for at least part of it. If a developer does not pay for the connection, the service provider is not required to set up the connection at its own expense.[133] Electricity network operators and gas transporters are also not required to make a connection where they are prevented from doing so by circumstances beyond their control.[134]

Northern Ireland

The Electricity (Northern Ireland) Order 1992 also requires electricity network operators in Northern Ireland to offer a connection where requested.

However, the Gas (Northern Ireland) Order 1996 does not place the same duty on gas transporters in Northern Ireland.[135] This is because the gas network in

127 MHCLG, Electrical safety: Approved Document P, January 2013
128 Gas Safety (Installation and Use) Regulations 1998
129 Gas Safety (Installation and Use) Regulations (Northern Ireland) 2004
130 Scottish Government, Building standards technical handbook 2020: domestic, December 2020
131 Section 16 of the Electricity Act 1989, as amended by the Utilities Act 2000
132 Section 10 of the Gas Act 1986, as amended by the Gas Act 1995. For developments that are situated within 23 metres of a gas main, a gas transporter is required to lay the pipework for the connection itself. For premises that are further away, the landowner is required to supply the pipework.
133 Section 19 of the Electricity Act 1989; Section 11 of the Gas Act 1986
134 Section 17 of the Electricity Act 1989; Section 10 of the Gas Act 1986
135 Article 19 of the Electricity (Northern Ireland) Order 1992; Gas (Northern Ireland) Order 1996

Northern Ireland is not as expansive as the network in Great Britain; most homes in Northern Ireland are not connected to the gas network.

6.3 Disputes about connections

In Great Britain, the electricity and gas industries are regulated by Ofgem, and the water and sewerage industries are regulated by Ofwat. A dispute about a connection may be referred to Ofgem or Ofwat, who might determine the dispute, or refer the matter to arbitration.

In Northern Ireland, the regulator is the Utility Regulator.

Utility service providers are not required to provide a connection where a developer has failed to make a request, pay to set up the connection, or build connections to the required standard. Ofgem and Ofwat cannot intervene in those cases.[136]

Constituents who find that a gas or electricity connection is not set up may wish to contact their local electricity distributor or gas network operator. Citizens Advice provides guidance on how to get a home connected to a gas or electricity supply. Further information on requirements can also be found:

- on Ofgem's webpage on Connect to gas or electricity.
- on Ofwat's webpage on getting a water and sewerage connection.

6.4 Broadband connections

Telecoms operators do not have a statutory duty to provide broadband services. The government amended building regulations for England in 2022 requiring developers to install gigabit broadband connections in newly built residential properties, up to a commercial cost of £2,000 per connection.[137]

As of 26 December 2022, developers who apply for building regulations approval in England must set up:

- the infrastructure necessary to deliver a gigabit-capable connection up to a network distribution point (or as close as practicable where a developer cannot access the land up to the distribution point); and
- subject to a £2,000 cost cap per dwelling, a gigabit-capable connection.

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136 Ofgem, Guidance on the determination of disputes for use of system or connection to energy networks, April 2017; Ofwat, Complaints and disputes we can help with, undated [accessed 21 February 2023]

137 Building etc. (Amendment) (England) (No.2) Regulations 2022

- where a developer is unable to secure a gigabit-capable connection within the cost cap, developers must install the next-fastest technology connection available.[138]

The requirements apply only to all newly built properties that are, in whole or in part, intended for residential use. They do not apply to new residential properties that are created through a material change of use (for example, where a business or an office is converted to a residential property).[139]

[138] This change followed multiple consultations: DMCS, New Build Developments: Delivering gigabit-capable connections, March 2020; DCMS, New build developments consultation: Delivering gigabit-capable connections, September 2022

[139] DCMS, New build developments consultation: Delivering gigabit-capable connections: Government response, September 2022

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