

THE NETHERLANDS:
FROM PUBLIC TO
PRIVATE
DEVELOPMENT
WITHOUT LOSS OF
CONTROL



Summary

The Netherlands: From Public to Private Development without Loss of Control

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Background

The Universities of Glasgow and Liverpool were commissioned to assess experience from other European countries in the role of housing land allocation and assembly in enabling the delivery of high-quality affordable housing and placemaking. This report has been prepared as part of the project 'Housing land allocation, assembly and delivery: Lessons from Europe.

Main findings

- The Netherlands has long been lauded by planners and researchers across Europe for its ordered, integrated and mostly attractive new development, accomplished through the public sector actively shaping real estate development.
- The past 25 years have seen the public development model recede from its former primacy, however, to be replaced by what has been termed 'organic development', which in the Netherlands is seen to embody urban change that is essentially private sector led.
- The standards of housing and placemaking in the Netherlands have not suffered from the transition to this more collaborative model.
- This is due to the continued public control over the ultimate form taken by development, including its urban form and placemaking qualities.

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1. INTRODUCTION

The Netherlands is, within the rest of Europe and beyond, widely seen as a country in which planning is venerated (Bontje, 2003; Pojani and Stead, 2014). This perception seems to be based not only on the apparent effectiveness of Dutch planning but also on the extent to which the Netherlands is planned. Both lines of reasoning are usually traced back to the origins of Dutch planning in hydrological engineering and land reclamation and the centrality of this – and therefore of land-use planning – to the national identity. Foreign admiration for the Dutch attitude towards, and aptitude for, planning is expressed by Dutt and Costa (1985: 1, quoted in Faludi, 2005: 444): “The Netherlands is decidedly the most planned country among the European nations. ... Such a state of affairs is a product of circumstances created by harsh environmental constraints, a challenging history, sociocultural forces, hard economic necessities, and the size of the country”. An alternative view holds that “because of their strange landscape, the Dutch are a nation of spatial neurotics” (Winner, 2000: 47).

After its relationship with hydrological engineering, Dutch planning is perhaps chiefly known outside of the Netherlands for its strategically planned spatial development, seen as being highly successful in applying spatial organising principles to the national urban layout (Hall, 1966; Janssen-Jansen, 2016). Indeed, a key English language text on Dutch planning has the title *Rule and Order* (Faludi and Van der Valk, 1994). Planning concepts such as the Randstad and the Green Heart, used to order urban development at the national scale, have entered into common usage (Faludi, 2005) in a similar way that the Green Belt is a British planning policy whose currency goes beyond the world of planning practitioners. This is an admiration that is, then, based more on non-statutory than statutory plans, though these non-statutory plans are effectively only guiding principles that inform land-use designations and what is ultimately built. Such tangible outcomes of planning relate directly to the statutory plan-making and active interventions that are, in the Netherlands, almost always undertaken at the municipal level. It is these activities that are the focus of our investigation, as it is largely through these that housing land allocation, assembly and delivery are controlled.

The Netherlands is a small and densely populated country in north west Europe, with a population of 17.4 million, that is characterised by its use of land reclaimed from the North Sea and the flat topography that results from this (Figure 1). Around half of the Dutch population is concentrated in the Randstad, the cluster of cities in the west of the country that can be seen on the map as including Amsterdam, Utrecht, Rotterdam and The Hague. The two largest cities in the Netherlands are Amsterdam, the capital, and Rotterdam, though the national parliament is located in The Hague. The Netherlands’ urban spatial structure is unusual in being concentrated within a grouping of cities that are closely spaced and well connected by road and rail. The Netherlands has experienced steady population growth over past two decades, having had a population of around 16 million in 2000. Economic growth was strong in the years leading up to the Global Financial Crisis, and recovered well following it, with the Dutch economy experiencing an expansionary phase prior to the Covid-19 pandemic (OECD, 2018).



Sebastian Dembski. Source: BRT, CC-BY-4.0 Kadaster

Figure 1: Spatial structure of the Netherlands with main cities and exemplary case study (underlined).

2. HOUSING DELIVERY AND PLACE QUALITY

2.1 Dwelling stock and construction

The rate of new additional housing units rose from 48,668 in 2012 to 70,716 in 2019, with the latter figure comparable to the rate of housebuilding from 2000 until the Global Financial Crisis, though lower than that of the mid-1990s, when new additional dwellings were delivered at more than 90,000 per year (Figure 2).

Owner-occupied housing (including properties owned outright and on which a mortgage is payable) make up around 60% of all housing, while housing associations own around 30% of Dutch housing stock, with this figure increasing to 40% in Amsterdam and Rotterdam (Nijskens and Lohuis, 2019). Between 1945 and 1986 social housing as a proportion of total housing stock increased from 10% to a high of 46%, since when it has been in gradual decline (Elsinga and Haffner, 2020). Alongside this, owner occupation grew from 45% to 60% of total stock between 1990 and 2014 (Statistics Netherlands, 2014). The private rented sector has also undergone something of a revival, especially in the larger cities, with more than 20% of total transactions in Amsterdam between 2014 and 2019 being in the private rented sector (Nijskens and Lohuis, 2019).

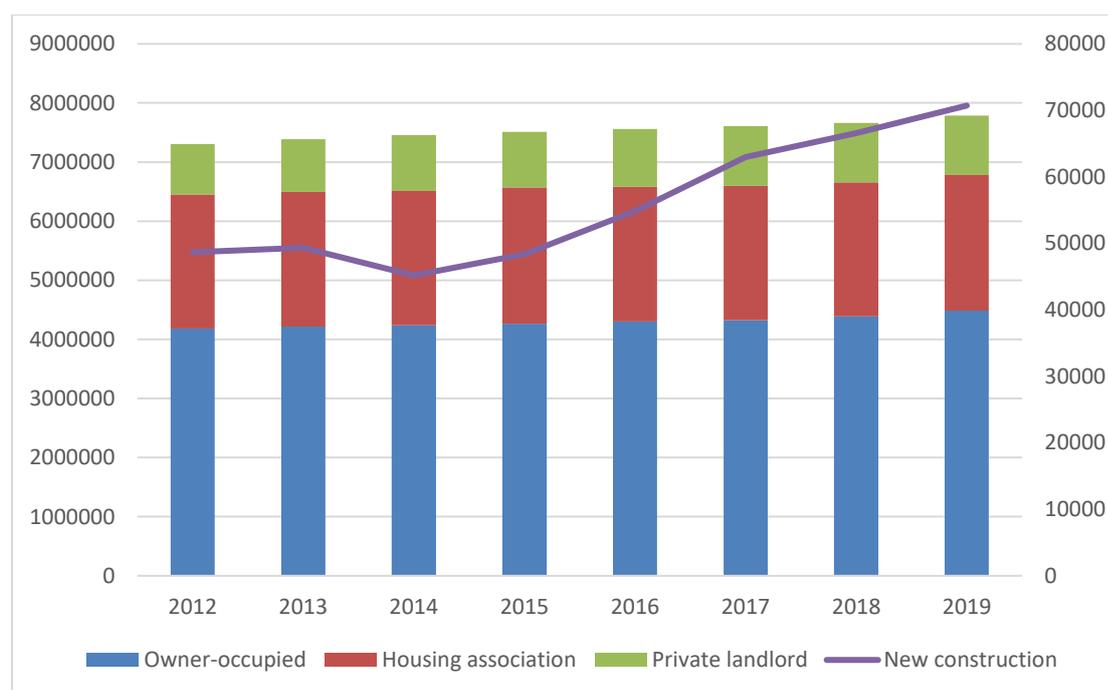


Figure 2. Dwelling stock and construction, 2000–2018 (Source: Statistics Netherlands).

2.2 Cost and tenure of housing

The rate of growth in house prices has been much more marked than the rate of growth of construction, increasing by 57.2% between 2000 and 2020 (Statistics Netherlands, 2020a). This gap between house price inflation and housing delivery may point to a causal relationship between the two, as rate of construction may have failed to keep up with new household formation (OECD, 2018), especially given the concentration of labour in existing urban agglomerations. An alternative, potentially complementary, explanation would be that,

as elsewhere in the world, demand for housing is income elastic and price inelastic, leading to a cycle of increasing investment in housing and increasing returns to housing assets (Maclennan and Miao, 2017). Stephens (2017) notes that home ownership has in the Netherlands undergone a process of financialisation akin to what has occurred in the UK, with persistently low interest rates and available mechanisms for equity release. In a related vein, Haffner and Boumeester (2010) argue that the rise in house prices during the early 2000s may be partly due to the owner-occupied sector maturing at that time, a development previously delayed by the size of the social rented sector. The rate of house price inflation has been regarded as a troubling issue since the mid-1990s, by which point demand for owner-occupied housing had been on an upward trend for several years, following a period of rising national income, sustained low interest rates, relaxed mortgage lending, and increasing rates of household formation (Priemus and Louw, 2003; Verhage, 2003).

2.3 Development industry

Similar to the UK case, housing development is dominated by large players who engage in volume building, with smaller firms active at the regional scale. Developers accustomed to a model of large-scale building on greenfield sites have been forced to adapt to a brownfield focus but are still keen to acquire greenfield land for development, given its usually greater profitability (O'Brien et al., 2020). They face a varying level of acceptance of this from municipalities, though national government has shown greater willingness to accommodate this demand in recent years. Unlike in the UK, land is acquired by developers only with a view to development, with little to no market in land trading between developers. There is an increasing degree of speculative land acquisition around the major cities, with acquisition by developers undertaken either with a view to gaining approval from municipalities for a future development project or taking forward development in partnership with municipalities. As can be seen in Section 4, the distinction between these alternatives is not as stark as might be assumed from a Scottish perspective, as the ultimate form of the new development is almost always determined collaboratively between developer and municipality. There are some significant landholdings in private hands under the ownership of large developers and institutional investors.

2.4 Affordable housing

Affordable housing is provided by housing associations, which traditionally operated within what has been termed the 'golden triangle' of state subsidy, municipal land supply at sub-market prices, and housing association building and management (De Kam, 2007). Under the active land policy, municipalities would address social housing need by selling plots to housing associations, who were also able to develop market housing in order to subsidise their social housing developments. Housing associations remain as major players in development, acting in conjunction with municipalities and private developers on larger sites and frequently entering into land swap deals orchestrated by municipalities. However, the 2008 Spatial Planning Act for the first time enabled municipalities to allocate land specifically for social housing in a land-use plan, removing some of the motivation for their practice of selling land to housing associations, while in 2012 national government severely curtailed their ability to sell market housing (Buitelaar et al., 2017).

3. THE DUTCH PLANNING SYSTEM

The Dutch planning system was categorised in earlier typologies of European planning as sitting within a Napoleonic (Newman and Thornley, 1996) or a comprehensive integrated (CEC, 1997) planning tradition. These groupings are based on the identification of 'legal families' and functional types, which intersect in the Dutch case to identify a civil law legal system producing legally binding land use plans. This can be contrasted with Scotland's planning system being based on common law (although Scotland's legal system combines common and civil law) and using non-binding land use plans. The Dutch and Scottish planning systems lie, in this analysis, at either side of a distinction that has elsewhere been drawn between zonal and discretionary planning systems (Booth, 1995). In this interpretation the Dutch planning system prepares land use plans that zone land for particular uses and development attributes, such that developers are at the same time legally bound to adhere to the plan and are granted legal certainty to develop according to the plan. By contrast, the Scottish planning system prepares plans that are merely indicative of the plan-preparation body's intentions regarding future patterns of development, and includes these intentions among a range of considerations in determining what development can and cannot take place in a decision that is deferred until the point at which a planning application is received.

The divergence between zonal and discretionary planning systems is, however, much more nuanced than it at first seems. In fact, a number of European planning systems that formally draw up legally binding zonal plans, including the Netherlands, Germany and Switzerland, have more recently been categorised as practicing 'neo-performative' planning (Janin Rivolin, 2008; Berisha et al., 2020). This form of planning entails the award of development rights not in a pre-prepared general land-use plan covering the whole municipal territory but in a small-scale detailed plan that is finalised only following negotiation with developers (Janin Rivolin, 2008). The term 'neo-performative' is in reference to the notion that planning in the style practiced in Britain is 'performative', in being responsive to development initiative, and is contrasted with the traditional understanding of zonal planning systems as 'conformative', to the extent that they require development to conform to the land use plan. The distinction of primary importance in the comparative analysis of the practice of planning is arguably that between performative, or development-led, and conformative, or plan-led systems. This distinction is not inherently systemic, but cultural, as the Dutch planning system can be used to implement either plan-led or development-led urban change.

3.1 Administrative structure

There are in the Netherlands two tiers of elected government below the national scale: provinces, of which there are 12, at an average population of 1.5m; and municipalities, of which there are 355, at an average population of nearly 50,000. At the national scale planning and housing presently sits within the Ministry of the Interior and Kingdom Relations. There is also, at the national level, a research and advisory agency which, until 2002, sat within the same Ministry as planning and housing but since that time has functioned as a government funded think tank, now called the Netherlands Environmental Assessment Agency. Local Planning Authorities within municipalities are relatively well-funded and

benefit from being able to charge plan-preparation fees, including legal fees and land surveys, to developers via planning gain agreements.

There are also a number of public and semi-public bodies whose activities affect the urban and physical environment, such as the National Agency for Transport and Public Works and the Ministry of Agriculture (Needham, 2014), that do not directly relate to the plan-making and implementation process and will therefore not be dealt with here. There are others however, such as housing associations and the municipalities' estates departments, that are considered relevant to our study and will feature in subsequent sub-sections.

3.2 Main legislative frameworks

Planning in the Netherlands as it is practiced today is shaped by the Spatial Planning Act 1965, to which multiple amendments were made before a new Spatial Planning Act came into force in 2008. While the 2008 Act is characterised by some as a radical departure (Needham, 2014), it nevertheless fundamentally works with the same administrative and plan-making structure as existed under the 1965 Act. A new Environment and Planning Act is due to come into force in 2022 which aims to simplify the plan preparation process by integrating the complex regulatory landscape of environmental and planning law within a single piece of legislation and an integrated set of procedures. The Crisis and Recovery Act 2010 anticipated some of the reforms that will come into force with the Environment and Planning Act. We will discuss present practice, which relates mainly to practice since 1965 and changes introduced by the 2008 Act, alongside wider institutional changes to planning and housing delivery in how they relate to placemaking, as they arise in the sections below.

3.3 System of plans

Since the 1965 Act, planning in the Netherlands has operated through a vertically coordinated (as opposed to a hierarchically ordered) system of plans produced at national, provincial and municipal levels. Within this system, higher tiers are able to exert influence over lower tiers, but unlike in a strictly hierarchical system there is generally some discretion in how lower tiers respond to this influence (Needham, 2014). There was a shift in hierarchical relations between the 1965 Act and the 2008 Act from a system of hierarchical oversight, in which municipal land use plans had to be approved by provinces, towards one in which national and provincial tiers take on a stronger determinative role at the municipal scale themselves. This involves their making indicative plans (structure visions), which may or may not influence municipal plan-making, and provincial governments issuing management ordinances, which must be taken account of in municipal land use plan preparation. Where vertical relations break down, problems can often be solved by consultation between tiers of government, though provincial ordinances enforce municipal compliance. National and provincial tiers also have powers to prepare their own small-scale binding land use plans (see Section 3.3.3), which they can use to bypass the municipal binding land use plan. This has, perhaps unsurprisingly, proven to be a controversial matter within central-local relations over the years, evidenced by vacillation between positions of centralisation and decentralisation on this matter between the 1965 Act, the 2008 Act, and the 2010 Crisis and Recovery Act. The present position (which will continue after the new

planning act due to come into force in 2022) is that binding land use plans and binding ordinances that affect property rights of owners and users, and which must be taken account of in land use plans, can be issued by higher tiers without requiring the agreement of the municipality (Roodbol-Mekkes et al., 2012).

Recent surveys of Dutch planning are keen to point out that, in spite of the level of attention garnered by national planning, especially through its use of planning concepts and reports, which often come in English translations, it is in fact at the municipal level that urban development 'on the ground' is shaped (Needham, 2014; Janssen-Jansen, 2016). Nevertheless, national government has since 1960 shaped spatial development patterns through its National Policy Documents on Spatial Planning, which have introduced such spatial strategies as those of 'concentrated de-concentration' and the VINEX national housebuilding programme of the 1990s onwards. The subsections that follow set out the current, post-2008, system of plans.

3.3.1 The Structure Vision

National, provincial and municipal governments produce non-binding structure visions (*structuurvisies*) that guide development indicatively by visual and written means. Structure visions can also be produced for sectoral policy areas such as transport and energy. The purpose of the structure plan is to set out the intended spatial pattern of development for the area covered, which acts as a framework to guide public investments and sectoral policies (Needham, 2014). Municipalities frequently produce small-scale structure plans, known as 'area visions', in order to set out their ideas and intentions for a particular site or area. This is done with a view to informing private parties who may be interested in a development opportunity and as a means to setting out public expectations and private costs.

3.3.2 The Land Use Plan

The land use plan (*bestemmingplan*) is a legally binding document that functions as a zoning plan for a municipal area or part thereof and can be regarded as the most important document in Dutch planning. Since 2008 it can be imposed by national and provincial government (in which case it is called an *inpassingsplan*), but is almost always prepared by municipalities, which are obliged to issue land use plans to cover their whole territory and typically do this by using multiple plans for different parts of that territory. Any development proposal that conforms to the land use plan automatically has planning permission by law, though an environmental permit (*omgevingsvergunning*) (so-called because it combines permissions for a range of changes to the physical environment in addition to the development of land and construction of buildings) must be granted prior to development taking place. Land use plans must cover uses and activities that can take place within the plan area, as well as setting out rules that underpin these. Detailed street layouts and building forms, including height and massing, can be (though do not have to be) covered, enabling local planning authorities to closely control the shape of new development in terms of how this contributes to place quality. Up until 2008 the land use plan could only determine aspects of development deemed to be 'spatially relevant'. This meant that, for example, housing or retail uses could be specified but that the plan could not influence tenure or type

of shop. This restriction has been seen as a key motivation for municipalities following an active land policy (see Section 3.3.4) as a means to ensure that social housing could be built. Correspondingly, since the 2008 Act broadened the scope of influence of the land use plan to include a wider variety of aspects of development, social housing can be specified in a land use plan, reducing the incentive for municipalities to pursue an active land policy. Land use plans must be revised every ten years, with the sanction of withholding the right of the municipality to charge building fees after the ten-year point has passed incentivising this.

Land use plans tend not to be used to steer development. Rather, separate land use plans are typically used in either a conservation capacity, to preserve the nature of an existing urban area, or as a means of codifying in law a change of land use set out in a development application (Buitelaar et al., 2011). As such, urban change in the Netherlands is generally not plan-led but development-led (Buitelaar et al., 2011; Tennekes, 2018).

3.3.3 The Project Plan

The project plan (*projectbesluit*) was introduced in the 2008 Act but is essentially a continuation of the pre-2008 practice of granting exemptions from the binding land use plan, known as 'Article 19 exemptions'. Before 2008, where a municipality wished to permit a development that was not in accordance with the binding land use plan it would typically do so by granting an exemption from the plan. Planning by exemption was entirely discretionary and could be done without justification on the grounds of planning concerns (Needham, 2014), whereas the project plan requires the municipality to produce a plan and therefore to formulate a planning justification. Article 19 exemptions could also be used by higher tiers of government to bypass municipalities, as was the case for example with the fifth runway at Schipol Airport, which national government imposed on a reluctant province and municipality.

Project plans enable municipalities to permit development proposals without having to go through the more extensive procedure of amending or preparing a land use plan. Originally the land use plan was to have been changed within one year of the project plan being issued, under the threat of being unable to charge building fees, with the effect that between 2008 and 2010 project plans were only sparingly used Buitelaar et al. (2011). This stipulation was removed, however, by the 2010 Crisis and Recovery Act, with the aim of easing planning procedures. Prior to this amendment, the ability of national government to impose developments on municipalities had been limited because the stipulation that municipalities had to incorporate the project plan within the land use plan allowed them to engage in procedural disruption and delay. Following the amendment, imposition of unwanted development from above is back on the table.

Whether the project plan or the small area land use plan is used in conjunction with new development, the underlying rationale is the same: ordinarily the development proposal comes first and the plan comes second.

3.3.4 Other Land Policy Instruments

Public land development is the means by which the great majority of new housing was delivered in the post-war period until the 1990s and is still a very common strategy used by municipalities. Public land development involves the public sector (in fact almost always local authorities) actively seeking to have housing constructed on land that they themselves have identified and assembled. Municipalities acquire land (typically at market values, though compulsory purchase is sometimes used), make a development plan and subsequently a land-use plan to formalise this, service the land with infrastructure, and sell plots to housebuilders at prices inclusive of servicing costs (Van der Krabben and Jacobs, 2013). Local authorities have tended to conduct their land investment and development activities through estates departments or, more recently, arms' length municipal development companies, providing a degree of separation from the local authority itself. These typically have many years' accumulated experience and are seen as being well-resourced and professional (Needham, 2014). Partly in order to satisfy demand for housing, and partly to benefit from economies of scale, public land development has traditionally resulted in large-scale integrated developments built on greenfield sites. They are typically stylistically uniform in layout and urban form and re-use building styles across the site (Lefcoe, 1977), as is common in the UK. Unlike in the UK, however, development follows a masterplan that accords to planning principles while architectural design is often specific to the site.

Compulsory purchase is permissible where the landowner cannot demonstrate that they are able to develop according to the land-use plan, this being effective in all aspects, rather than simply in terms of land use. There is also a proviso that the landowner has sufficient land to realise the plan's intentions, thereby warding against infill development. However, there are caveats to this. One is that the landowner may be a developer, in which case they are able to prove that they are able to develop. A second is that, as noted in Sections 3.3.2 and 3.3.3, detailed land-use plans are often only prepared in relation to new development once a development proposal is made. Finally, compulsory purchase is procedurally longwinded and involves substantial compensation, leading to a reluctance on the part of municipalities to use it, though it is seen to function as a threat in the background to market transactions (Korthals Altes, 2014).

Pre-emption gives the municipality the right to be offered land or property before other buyers, should it be put up for sale. Pre-emption has been possible for urban renewal since 1981 but was only rarely used until the early 2000s, at which point it was made available for use on greenfield land. Between 2000 and 2006 use of pre-emption increased markedly, with the quantity of land covered by the policy almost doubling over this period (Segeren, 2007).

3.4 Conclusion

In terms of planning legislation and the planning system, Dutch planning has not changed drastically since the 1960s, albeit successive National Policy Documents on Spatial Planning have altered the strategic orientation of development over that period, while the 2008 Act

introduced some adjustments that are significant enough to be effective upon planning practice. Regarding the means by which new housing is delivered, on the other hand, the past 25 years have seen more drastic changes. The active land policy, through which municipalities used public land development to assemble and develop large integrated sites from which plots were sold to housebuilders and housing associations, dominated housing production between World War II and the mid-1990s. Since then, excepting the interruption of the Global Financial Crisis, land values have been on a steady upward curve, following a lengthy period of rising incomes and low interest rates that raised demand for owner occupied homes, encouraging private land acquisition. Furthermore, the provision for municipalities to allocate land for social housing in land use plans that was introduced in the 2008 Act, together with the rising value of housing association assets since the 1990s, have removed a key incentive underlying the active land policy: that the development of social housing required that housing associations be provided with subsidised land by municipalities (Buitelaar, 2010). Consequently, the doctrine of large-scale integrated urban development has been replaced by that of small-scale, incremental 'organic development' led by private actors (Buitelaar and Bregman, 2016). According to Woestenburg (2018: 802), "a planning system that is known for delivering an outstanding level of spatial quality is more than ever under pressure".

But has the placemaking orientation of planning been cast aside along with these changes to the development process for housing? Two points are worth noting in this respect. First, a turn towards private-led organic development has entailed a greater brownfield focus and a reduced level of land consumption. This accords with a long-term national preference for compact development (Janssen-Jansen, 2016) but may be beginning reach its limits as developers seek greater profits and municipalities seek greater volumes and land value to capture. Second, the decline of the active land policy appears to be somewhat exaggerated. The use of public land development continues to be widespread, with many sites that have long been in public ownership still in the development pipeline.

This exposition of the administrative structure, legislative frameworks, and system of plans and instruments underlying planning sets out the public context for rules and interventions into spatial development. As will become clear in the following sections, however, this public context should not be taken as overly determinative of development outcomes. This is because in the Netherlands, as in cases elsewhere, it is not only the functions of the public sector that matter in determining what is built and, as a consequence, overall place quality, but of the private sector too. The following section sets out how public and private sectors form different combinations of investment and activity to deliver new housing development in the Netherlands.

4. HOUSING LAND ALLOCATION, ASSEMBLY AND DELIVERY IN THE NETHERLANDS

The formal planning process by which land is allocated for development, assembled and on which housing is constructed has changed little since the introduction of the Spatial Planning Act 1965. However, the shift away from public to private land assembly and development discussed in Section 3.4 demonstrates how planning institutions, such as legal frameworks, are not always able to determine planning practice. In the Netherlands it is a change in the roles played by public and private actors in the development process that has altered the development process for housing, rather than any changes to the planning system.

4.1 Identification of opportunities: Who decides where to build and what is the process?

Identification of locations for housing development can be made by national, provincial and municipal tiers of government by means of indicative structure plans prepared at these levels. The national government uses structure plans to set out national scale policy areas such as transport infrastructure, and has in the past used them to indicate housing growth areas at a broad scale, as was the case for the VINEX programme. The role of national government has generally been much more based on specifying principles for housing location rather than specific locations. Indeed, for the VINEX programme, the national government identified those cities where sites were to be developed, whereas most of the specific locations for housing were identified by municipalities (Janssen-Jansen, 2016). Since the 2000s the Dutch proclivity for nationally determined strategic orientations, such as housing growth areas and the Green Heart, has been muted by a prevalent desire to decentralise spatial planning to the provinces and municipalities (Zonneveld and Evers, 2014). This tendency is seen to underpin the 2008 Act and the forthcoming Environment and Planning Act.

Provinces may exert much greater power over where housing can be built, either by preparing indicative structure visions – though these can be ignored by municipal land use plans – or by issuing management ordinances for all or selected municipalities within their area, which must be adhered to by municipal land use plans. There is a substantial degree of variety in provincial interest in housing locations, with some provinces leaving the matter very much to municipalities and others keeping a close control over how many houses may be built in each settlement (Needham, 2014). Ultimately it is the land use plan that dictates where housing can be built in a legally binding way. While all three tiers of government can prepare land use plans, this has only been the case since 2008, before which only the municipality was able to do so, and this division of labour has largely continued since then (Needham, 2014). Municipalities also use structure visions to indicate housing locations, using the identification of sites within them to invite development interest. Where municipalities pursue an active land policy, sites will usually only be indicated once the municipality has acquired a substantial part of the land to avoid competition.

4.2 Land assembly: Who assembles the land and what is the process?

Multiple modes of land assembly coexist in the Netherlands, with variations between and within local authority areas, as well as over time. The traditional active land policy practice of public land development involved clandestine assembly of land by municipalities, who were typically able to buy sites at market value before servicing them and selling plots to housebuilders. Private developers began to enter the market as land prices, and therefore returns on house sales, increased during the 1990s and following the VINEX programme's ex ante identification of sites, which disrupted municipalities' strategy of assembling land without advertisement. The dominant role played by the land-use plan and the municipality's monopoly power over the award of planning permission, though, has meant that private land assembly and development is always closely controlled by planners, and frequently involves some degree of municipal ownership in combination with private ownership. There is now no single, or indeed dominant, model through which land is assembled. Rather, there are various different approaches taken between and within municipalities. Common to all approaches is that municipalities continue to ensure that new development conforms to their own wishes, over those of developers.

In what has been called the *building claim model* (Priemus and Louw, 2003) developers acquire land on a site on which they are aware that a municipality has an interest in building on and use this leverage to sell their land back to the municipality in exchange for an option to build somewhere on the site. The municipality then develops the site in the same way as it would in a standard model of public land development, though it must sell a given number of plots, perhaps in a particular location on the site that has been negotiated, to the developer holding the option to buy. Developers are inclined to sell their land back to the municipality rather than developing themselves because of a desire to gain from the value created by the integrated public land development.

The *joint venture model* involves a public-private company whose ownership is divided between a municipality, a developer, and in some instances a housing association. The joint venture receives land from both parties, develops and services it with basic infrastructure, and develops or sells zoned plots, after which any profits are shared and the company is wound up. Where the *joint venture model* differs from the *building claim model* is in the balance of incentives facing the municipality. Because the municipality and the developer benefit from the profitability of the joint venture, the former may face the dilemma of trading off potential profit against the achievement of planning goals, in an invocation of the so-called 'two hats dilemma' in which the municipality is simultaneously regulator and developer (Needham, 2014).

While the *building claim model* and the *joint venture model* contain the essence of an active land policy, in as much as the municipality is attempting to realise its planning and housing aims in a proactive way, the *concession model* moves away from this towards a more passive approach. In this case the planning process is led by a developer acquiring land and proposing a development to the municipality. The fit of the proposal with the intentions of the municipality is assessed and a negotiation between municipality and developer takes place,

the results of which are codified in either a land-use plan or a project plan, the latter of which will ultimately be formalised in a land-use plan. The division of labour between public and private parties regarding servicing and infrastructure provision is formally set out in a private law contract that also implicitly sets out the degree of risk-bearing by each actor.

The difference between active and passive planning is not always clear cut. For example, in certain instances a municipality might seek to direct and shape a new housing development by preparing a plan for a particular location, inviting developers to submit applications and testing these against the plan before awarding or refusing permission. Developer-led proposals typically involve a high degree of cooperation between developer and municipality, with the municipality not only contributing in plan preparation but also making a significant contribution to project management (Heurkens and Hobma, 2014). This might be regarded as stemming from both the cultural embeddedness of the 'polder model' of corporate decision making among stakeholder groups and the utility of municipal development expertise built up over several decades of public land development. While in theory the municipality is the public authority with responsibility for the content and form of new urban development, in practice the plan has input from both municipality and developer. Crucial in negotiated planning is that "the public competency of changing the land-use plan becomes the key trump card of the municipality in its private law negotiations with developers" (Tennekes, 2018: 102).

4.3 How is planning permission given and what is the role of place making in the process?

The Netherlands fundamentally operates a zonal, rather than a discretionary, planning system, therefore the award of planning permission is implicit in the adherence of a development proposal to the stipulations in the land-use plan. However, as we have noted, it is only rarely the case that land-use plans are prepared prior to the formation of concrete intentions to develop by either public or private actors. Typically, a developer will approach a municipality with a development proposal, which will be assessed against the wishes of the municipality. If these wishes are broadly met by the proposal, negotiations will take place between the municipality and the developer regarding the precise contents of the development proposal, which will be codified in a legally binding land-use plan or project plan, which itself will ultimately be translated into a land-use plan.

4.4 Servicing: Who services the land and pays for infrastructure?

Cost recovery and value capture over and above costs are both possible in the Netherlands, though land value capture via planning law is strictly restricted to cost recovery. Public land development allows municipalities to recover costs and, where available, capture land value increase, by including these in the price of plots sold to housebuilders. For private development, municipalities may recover costs under public law or by private contract. In the case of public law, a land use plan and associated cost recovery developer contribution scheme must be prepared for the plan area, in which a standardised list of costs is used to calculate developer contributions. Using private law, servicing can be undertaken by either or both of the developer and the municipality, with cost recovery undertaken by means of

private contracts and not being limited to a government inscribed list of costs as in the case of the public law instrument, which is seen by municipalities as inflexible. Value capture over and above costs is also possible, being dependent upon the share of the value increase that can be negotiated between the municipality and the developer (Tennekes, 2018). Whether a public law instrument or a private law contract is used is largely dictated by whether urban change is led by the preparation of a land use plan for the development by the municipality ('plan-led development'), or by a proposal for development, which might be made by the municipality or by a developer ('developer-led development'). Where development is planned, the land use plan expresses the desires, in terms of land uses, urban design and servicing, of the municipality, and sets out those costs that will be incurred by the municipality in a cost recovery plan and developer contribution scheme. Where development is developer-led, the land use plan is generally negotiated between the municipality and the developer, allowing for private law contracts to be prepared prior to a change to the land use plan. As noted in Sections 3.3.2 and 3.3.3, plan-led development is rare in the Netherlands. Indeed, between 2008 and 2011 97% of cost recovery agreements were by private contract (Buitelaar et al., 2012, cited in Tennekes, 2018).

4.5 Urban form and the transition from active land policy to organic development

Housing and places take on certain formal characteristics that reflect the processes of land allocation, assembly and delivery that underpin them. Housing developments delivered through public land development tend to be large in scale, building on the benefits of economies of scale in land servicing that are especially evident in the land drainage that is often required in the west of the Netherlands. Large-scale greenfield development undertaken in an environment in which the municipality effectively has a monopoly over land offers the advantage of controlling for negative externalities produced by rival developments, as are widespread in small-scale brownfield development. Responding to the Dutch preference for closely controlled and ordered spatial development (Faludi and Van der Valk, 1994), public land development offers full and direct control over urban growth, while private sale contracts to housebuilders offer greater control to municipalities over the nature of housing than do land use plans (Buitelaar, 2010). Indeed, contracts of sale being voluntary agreements under private law, municipalities are free to include a range of stipulations providing they can find developers who will agree to them (Needham, 2014). As the product of this array of conditions and decision-making, housing developments delivered under active land policy are notably uniform in layout and composition, with a high degree of repetition in urban form and building style (Lefcoe, 1977).

The emergence of new models of private developer-led development that have come to complement the (albeit quite substantial) residual practice of public land development and other forms of active land policy has had an effect on the form of new residential areas. This has been evident in two overlapping respects: in a focus on brownfield sites and in what has been termed 'organic development'. The intention of the VINEX housebuilding programme had been to deliver compact and well-connected development at scale and was implemented alongside the proscription of new out-of-town retail developments (Evers, 2002). This was in part a response to the 'concentrated de-concentration' set in train by the

Second Physical Planning Memorandum (VRO, 1966), which was by the 1980s seen to have caused the suburbanisation of Dutch cities (Schwanen et al., 2004). While some VINEX sites were built out within the existing urban fabric, the programme was characterised by the considerable majority that were located on greenfield sites adjacent to growing cities, and the net result of the wave of urban expansion that it fostered was a reaction against greenfield development and a consequent focus on urban brownfield development.

‘Organic development’ is the term used to describe development that is ‘bottom-up’, small-scale, that takes place not according to an overall plan of how development at a larger scale will proceed but rather is the product of multiple separate development decisions (Dembski, 2020). It implies a different role for planning, from that of active, top-down interventionist player, to risk-averse regulator, more reliant upon statutory planning powers than active intervention (Buitelaar and Bregman, 2016; O’Brien et al., 2020). This means that there is, in contrast with public land development, and therefore with much of the inherited conception of planning and development in the Netherlands, no defined goal or end point and in fact an inherent uncertainty as to the future nature of what is built beyond the individual small-scale development (Buitelaar et al., 2014). Related, though not analogous, notions are ‘the spontaneous city’ (Buitelaar et al., 2014), ‘emergent development’ (Cozzolino et al., 2017) and ‘the self-organising city’ (Buitelaar et al., 2017). Accordingly, urban development that is self-organising is said to emerge from the spontaneous interactions of local stakeholders (Portugali, 2000), and aims to be more resilient than large-scale public development, both financially and in its being dynamically adaptable to changing external conditions, as well as to consumer demand and preferences (Buitelaar et al., 2017).

In both its urban form and its development process, organic development is not integrated in an overall planned way, again in contrast to public land development. This contrast is set out in respect to the development process in Table 1 by Buitelaar and Bregman (2016), in which the gradual process by which areas come together under the guiding hand of local government in organic development is contrasted with the project-driven, blueprint-based approach of top-down municipally orchestrated ‘integrated development’. In respect to urban form, active planning policy delivers new development that is integrated with regard to land uses and is large in scale, thereby producing development that goes some way to being self-contained, meaning that local residents are provided with sufficient local shops and services (Tennekes et al., 2015). Organic development follows a logic closer to that of urban regeneration, in which brownfield sites are re-inserted into the urban fabric, meaning that the uniformity of street layouts common to public land development is not possible. The extended timeframe of organic development and involvement of different developers means that the uniformity of housing styles found in large-scale public-led developments is replaced by a more heterogeneous array of designs.

The tendency of Dutch planning to favour ‘rule and order’ (Faludi and Van der Valk, 1994), exemplified most strongly in its large-scale public land development projects, appears on the surface to break down in the face of organic development. The influence of a renewed interest in Jane Jacobs’ theories of urbanism on Dutch planning thought (Buitelaar et al.,

2014; Cozzolino et al., 2017) seems to point to a shift from order to disorder, but is this really the case? The products of organic development are, as outlined by Buitelaar and Bregman (2016), much less integrated than those of public land development, but tend to retain a coherence of form and function. This by no means disordered urban form can perhaps be explained by the still prominent role of the municipality in organic development, as related in academic case studies.

Table 1. Contrasting features of integrated and organic urban development (Source: Buitelaar and Bregman, 2016)

Features	Integrated urban development	Organic urban development
Approach	At once	Gradually
Scale of development	Large	Small
Type of management	Project management	Process management
Plan type	Blueprint	Strategic
Developer type	Large developers	Small developers and individuals
Local authority role	Active (and risk prone)	Facilitative
Development and phasing	Sequential	Mixed

The two case studies that Buitelaar et al. (2014) describe as organic development are both led by the local authority, in each case a municipal project manager leading the preparation of a development plan to be marketed to private developers. The inherent contradiction between a development being both local planning authority-led and organic is embodied in the authors' use of the phrase 'controlled spontaneity'. In fact, what is described in Dutch planning as being 'organic' or 'emergent' is perhaps only so relative to the very long-term integrated planning underlying public land development. The authors attribute this to the continuity in the institutional framework for planning that remains unaltered in spite of the arrival of popular discourses such as that of organic development. But while the municipality is still firmly in control, its aim is to achieve the apparently oxymoronic practice of 'designed spontaneity' by making a land use plan for the area whose rules are open enough to mix uses and to promote a particular atmosphere, for instance by reusing ex-industrial buildings, but closed enough to prevent the sort of default urbanism that might result from minimalist zoning rules.

Cozzolino et al. (2017) describe the case of Oosterwold, an experimental large-scale greenfield example of organic development at the edge of Almere, where the municipality has chosen to minimise the extent of regulation by which developers are bound and in particular to reduce the number of location-specific regulations. In this way they have adjusted their focus from the design of a new place to the emergence of a new place out of the separate decision-making of multiple different developers. But crucial in this and in the

two cases explored by Buitelaar et al. (2014) is that the shape of the overall development has not been left entirely to the aggregated decision-making of the full range of market actors, as would occur in an unconstrained market. Rather, it has been very deliberately shaped and constrained through the design of rules and thereby the shaping of the decision-making environment of developers (Adams and Tiesdell, 2013). Most importantly, in all three cases the municipality has gained and/or maintained ownership of the land.

But just how much new development is organic? According to one of our interviewees, 60–70% of new development is on brownfield land, though this of course does not necessarily imply that it is organic. In a survey of new housing and mixed-use development projects in The Hague between 2008 and 2015, Buitelaar et al. (2017) found over time a decreasing scale of developments, a decreasing number of projects with the municipality as a developer, and an increasing involvement of end-users. These trends point towards a growing proportion of new development being organic, though the continuing strong role of the municipality in planning for new development on brownfield and greenfield sites was emphasised by another interviewee.

Indeed, Dutch municipalities have not abandoned their preference for an active land policy in response to these challenges. Instead, they have sought to maintain control of housing land allocation, assembly and delivery by alternative means that have entailed a fuller engagement with the development industry and a more extensive use of land use plans. Most local authorities formally set out their land management strategy in land policy memoranda, a policy document that functions as a rule book, or a 'municipal land use manual' (Woestenburg et al., 2018), setting out how land is managed *in principle* (Van Oosten et al., 2018) and the degree of policy discretion from this *in principle* position. In practice, the document determines whether and under what circumstance the local authority can use an active land policy. This guidance not only shapes municipal action but also provides certainty to landowners and developers regarding municipal decision-making. The memoranda are prepared to inform financial planning, on which public land development can make a sizable impact, whether negative or positive, but inevitably impacts on planning policy. As much as most local authorities set out their position in land policy memoranda, they tend to be flexible about the mode of land management that they use and will vary their decision-making according to circumstance (Woestenburg et al., 2018).

The characteristics of urban form in Dutch housing development that have most obviously changed in the transition from a dominant active land policy to a mixed approach, including a combination of public land development and organic development, are its scale and, in a related vein, its uniformity. As much as active land policy continues to be practiced extensively, the large-scale integrated developments of the VINEX policy years have been replaced by smaller, incremental development that is not easily distinguishable from private developer-led organic development. The feature of Dutch planning that most closely controls the urban form of new development is not the degree of public development but the binding land use plan and the municipality's ability to use its withdrawal as a bargaining chip in public-private negotiations over planning and development.

5 EXEMPLAR PROJECT: ANNA'S HOEVE, HILVERSUM

Anna's Hoeve is an urban development project in the fringe of the town of Hilversum, which is located between the cities of Amsterdam and Utrecht. With an area of 13 hectares and approx. 550 dwellings, it is one of the largest residential development areas in Hilversum. The site became available when the Water Board through the replacement of a wastewater treatment works by a modern installation which required less space. Anna's Hoeve is therefore not a greenfield site development despite its situation in the urban fringe (Figure 3). The site has a long history, but the focus will be on the development of the current project in delivering affordable and commercial housing in an attractive estate.



Figure 3. Aerial view of the site before planning and boundaries of the plan (Gemeente Hilversum, 2012).

5.1 Land Allocation and Assembly

Hilversum is surrounded by protected nature areas, so there are no opportunities for large-scale urban expansions so typical for other Dutch medium-sized towns. When the site became available it was identified as an opportunity of residential development within the built-up area in the *Structure Plan 2015* from which was approved in 1999. However, the site was not actually developed until after the approval of the 2013 Structure Vision (Figure 4).

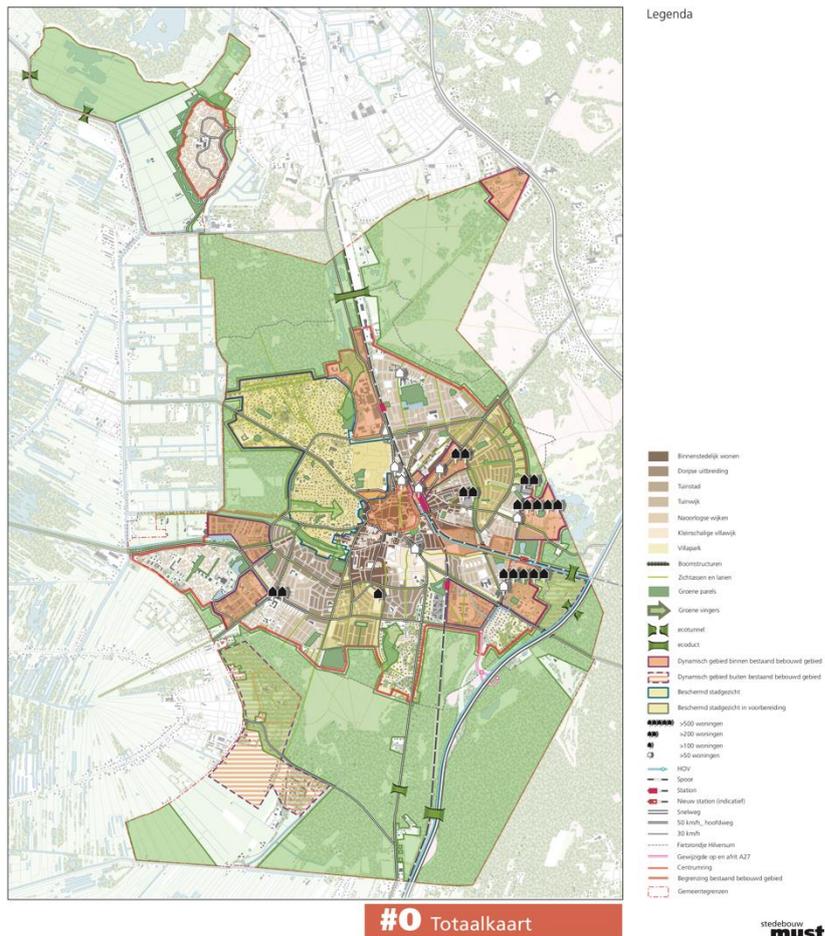


Figure 4. Structure Vision 2030 (Gemeente Hilversum, 2012).

The problems in bringing the site forward, however, were influenced by difficulties in the planning of the new wastewater treatment works and soil remediation. The restructuring of the wastewater treatment works has a history of more than a decade, as the original plans for the wastewater treatment works had to be revised multiple times. Initially, the Water Board opted for a compact installation using membrane bioreactors, but in a very late stage this plan failed for financial, technical and legal reasons. The Water Board therefore had to resort to a slightly larger conventional wastewater treatment works. This also meant that the approved land use plan from 2006 became obsolete. The Water Board and the municipality also agreed to share the additional planning costs of €5.3m. With the final plans for the wastewater treatment works in place, though with a slightly reduced residential programme, planning could go ahead.

Soil contamination proved another obstacle for developing Anna's Hoeve – the area was partially used as landfill site for the infiltration of sewage. The top layer of contaminated soil was removed and used to form an artificial hill of 25m. In 2003 the Province, the municipality and the Water Board agreed on the funding with the Province covering the lion share of the €29.5m (Press Report 8 October 2003). Soil remediation was largely completed by 2011. The costs of land remediation were formally separated from the residential development,

though implicitly there was an expectation that Anna's Hoeve would recover some of the costs. The reasons to separate them were primarily to reduce complexity.

The site had two landowners: the Water Board, which owned the land of the wastewater treatment works, and the municipality owning the rest, in particular the sports complex. Once an agreement had been reached on the final location of the wastewater treatment works land was exchanged between the Water Board and the municipality, and the sports complex was restructured on a reduced site.

5.2 Place Making

The municipality wanted to develop a new residential area that would withstand the test of time and therefore decided to commission a tender for a masterplan, providing a framework for the development of a number of large building plots to be developed independently. It formulates desirable and essential criteria, including carbon neutral buildings and a diversity of tenure with one third affordable or social housing and 40 per cent single-family dwellings (Gemeente Hilversum, 2011).

The winning plan by De Zwarte Hond was providing an open and flexible framework for the development of the area with a strong focus on public and green spaces (Figure 5). Because the building programme was explicitly left open, the development of public spaces, in particular green infrastructure proved even more important. The public space was realised by the municipality, which developed specification based on the masterplan.

Given the framework approach of the masterplan, the development of green infrastructure is key for the spatial quality of the neighbourhood. Anna's Hoeve is surrounded by a vast nature reservation. The green infrastructure connects the existing city with the surrounding nature. Most of the public green spaces were planned with a natural appearance and low maintenance. The area also involves a number of playgrounds, which require more intensive maintenance.



Figure 5. Masterplan Anna's Hoeve providing a framework for the development of building plots (Source: DeZwarteHond, 2012).

All building plots can be accessed via a single residential road, which crosses the main road traversing the area (Figure 6). The combination of a single residential road with integrated parking means that most of the neighbourhood is virtually car-free. The municipal policy on parking prescribes a minimum number of parking places depending on tenure and location (ranging from 1.45 places per dwelling for social housing to 1.85 for up-market housing, including visitors). The public parking spaces provide the majority of required spaces (on average 20 places per plot), but any additional parking needs to be realised by developers on the building plots; pooling of parking requirements is possible. A number of footpaths connects the area for pedestrians. Each building plot needs to have a publicly accessible footpath in east–west direction. Public transport accessibility of the neighbourhood is currently poor, but like in nearly all Dutch cities, there is an excellent bike infrastructure. The planned bus express line will also improve accessibility in the future.



Figure 6. Access and Parking Strategy and street profile (Source: Gemeente Hilversum)

The project involved two main land use plan (Figure 7), one for the wastewater treatment works (approved in 2010) and the other for the residential neighbourhood (approved in 2013). The latter has been revised twice on minor components in 2018 and 2019 respectively. Our main interest is in the land use plans for the residential areas.

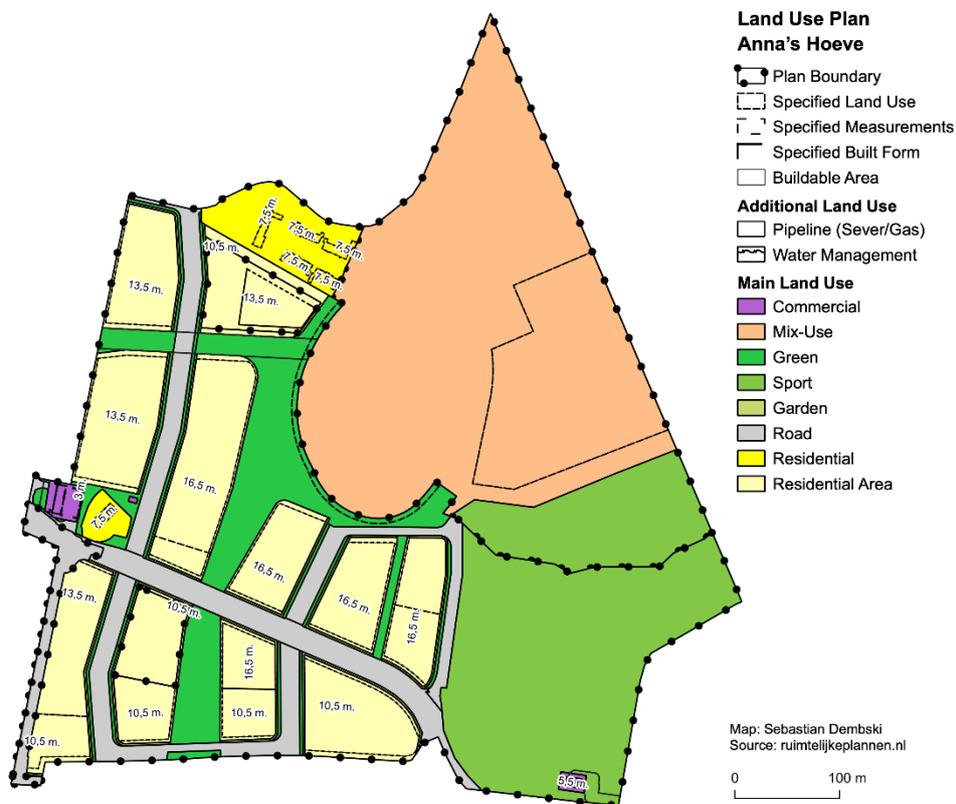


Figure 7. Land Use Plan Anna's Hoeve.

The land use plan formed the final piece of the jigsaw. It is a legal translation of the basic elements of the masterplan and provides planning permission for landowners if their proposals confirm with the plan's regulations. It is also the result of a consultation process with developers and market research with self-builders, as well as a general public consultation, which resulted in some changes, including the reduction of the maximum building height from 25m to 16.5m.

The land use plan Anna's Hoeve was explicitly kept relatively broad to allow for a flexible planning process. Because all land was owned by the municipality, all requirements of the masterplan could be secured via private contracts as part of the land transactions. So, the land use plan mainly established the main land uses and the rules, in particular establishing maximum building heights per plot, a minimum quota of 30% affordable housing.

The two revisions involved further corrections of the maximum building heights. As none of the realised projects utilised the maximum building height of 16.5m, it was considered necessary to reduce the building height in the remaining plots to 10.5m to ensure that buildings on these plots remain in keeping with the other plots. Given the provincial plan for a new express bus line which will affect some of the unbuild plots in the southwest of the plan area, another amendment seems unavoidable.

Developing Anna's Hoeve involved significant public investments in public infrastructure. This required a coordinated approach between public investments in public spaces and the phased release of land for development. Land was released per plot via tenders in a phased approach, 27 in total. Most plots have a designated tenure but are well mixed over the whole area (Table 2). Six plots (56 parcels in total) designated for individuals to design and build their own house and two plots were designated for building collectives, resulting in 32 dwellings in total. The last two plots are currently tendered, with one being designated for mid-price market rent. So far, a total of 433 dwellings have been realised, with at least one third being affordable after development of the last two plots.

Table 2. Tenure (Source: Website Anna's Hoeve).

Owner-occupied			Rent	
Developers	Collective	Individual	Private	Reduced
110	32	56	57	178



Figure 8. 15 flats and 8 homes realised by a collective with communal garden (top left); 38 social-rental single family homes (top right); 6 single family homes realised on individual plots (second row left); 33 owner-occupied single family homes (second row right); soil heap (third row left); pleasantly designed playground on the soil heap (third row right); underground bin containers (bottom left); high-quality permeable paving of residential roads and parking (bottom right) (Photos: Sebastian Dembski)

6 CONCLUSIONS AND LESSONS FOR SCOTLAND

The Netherlands has long been lauded by planners and researchers across Europe for its ordered, integrated and mostly attractive new development, as well as its ability to implement nationally devised spatial strategies and planning concepts effectively across its national space. Much of this range of achievements was accomplished through the public sector actively shaping real estate development, either directly, in the case of new housing developments, or indirectly, as national spatial goals were achieved via a direct link between national spatial planning and local housing development. The past 25 years have seen the public development model recede from its former primacy, however, to be replaced by what has been termed 'organic development', which in the Netherlands is seen to embody urban change that is essentially private sector led. The external observer must interpret this interpretation with a grain of salt, however, noting that the shift from public to private activity is very much a relative one, and that new housing development is very much shaped by public and private actors in collaboration.

That standards of housing and placemaking in the Netherlands have not suffered from the transition to this more collaborative model is heartening for those seeking achievable reforms to Scottish housing delivery. While an entirely public sector-led model of land assembly and housing delivery might seem unachievable in a nation that has long been reliant upon the private sector in its housing provision, the combination of public and private input presently practiced in the Netherlands offers a more attainable possibility. For this to work requires public control over the ultimate form taken by development, however, including its urban form and placemaking qualities. This means local planning authorities being able to make decisions over the content of development proposals and plans without developer's having a right to appeal to a higher decision-making body. It also means local planning authorities having the capacity to prepare development plans, although this work is often contracted out to urban design practices in the Netherlands.

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