

The mayor, the developer and low-cost home ownership

Negotiations between developers and local representatives in housing programmes

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At a time when controlling housing prices has become a national priority, a recent study carried out by Guilhem Dupuy shows that the manner in which national measures are implemented at the local level is the principal issue at stake in formal and informal negotiations between developers and local representatives. By means of such practices, which border on illegality at times, they work together to elaborate housing programmes and then contribute to shape housing supply on local markets. Their criteria, however, do not always coincide with those required by national policies.

Public debate on current trends in the property market, regularly rekindled by events such as the official announcement of the new interest-free loan, the *Prêt à Taux Zéro Plus* (PTZ+)² programme by the French Secretary of State for Housing Benoist Apparu, or the publication of the latest price index, generally revolve around a single idea: housing is a government issue. Indeed, this viewpoint is shared by laymen and professionals alike.

It cannot be denied that the residential property market relies heavily on government incentives to support demand and on favourable borrowing conditions: in the market for new housing, nearly three quarters of all sales in 2009 benefited from governmental aid (tax rebates or aid for low-income, first-time buyers).

However, it is important to recall that all national policies designed to facilitate home buying are

conditioned by local allocation policies: since 2007, the doubling of interest-free loans and the *Pass-Foncier*, a property ownership deal delivered by the employers' fund [1% logement³], the combined effect of which constitutes a powerful tool to assist first-time buyers, cannot be triggered before local aid, even in small amounts, has been secured beforehand.

In this context, empirical analysis of local housing policies proves vital to an understanding of how subsidised home buying actually works in practice, especially with a view to making the system fairer and more efficient. A recent survey conducted by the National Agency for Housing Information⁴ attempted to chart the various negotiation models employed by local housing sector actors, the first among these being local authorities and property developers. The idea was to confront this issue head on and to analyse these models without leaving out any of those practices, official and unofficial, which determine its coherence.

What is a negotiation?

For the main part, property development activities are focussed on urban and suburban areas.

As a general rule, the cornerstone of negotiations is the granting of a building permit by the relevant authority (commune or intercommunal structure). According to statute law, the granting of such a permit is not a discretionary competence but one belonging to the commune. The authority responsible for granting the permit verifies the compatibility of the application with the various urban planning documents pertaining to the development rights associated with the land. (such as the Local development plan⁵, etc..), and grants permission automatically if such compatibility is established. In most urban areas this permit leads, for sizeable projects at least, to complex negotiations tending to render the granting of the permit by the local authority discretionary – that is to say, strategic. The goal is that the project respects not only the conditions written down in the planning rules currently in force in the area, but also the « *non-written clauses* » deriving from public authority: the shared costs of equipment or facilities, various constraints on the forms and types of housing, and above all any quotas for rented social housing or price-controlled, first-time home purchases. These constraints can be perceived as factors of uncertainty liable to compromise the setting up of development programmes. The survey has shown that these negotiations always aim to selectively reduce this uncertainty.

The key moment of the process is just prior to the application for a building permit. Local authorities and developers need to ensure that at the official moment when the initial application is made, the permit granted be in conformity with the non-written clauses. This implies a variety of interactions the occasion for which is never lacking on a local level: professional networking among developers, telephone contacts, formal and informal meetings, and socializing at conferences, seminars and drinks, where for one reason or another most of the key public and private actors are gathered in one place. In this way, the developers are well informed of the unwritten clauses “of a public order”, so to speak, which apply equally to most projects. To take an example, in the Paris region (Île-de-France) a developer explained as follows: *“We know that wherever we build, at least 20% will need to be social housing”*.

Moreover, developers are required to ensure themselves of the development rights attached to the land on which they plan to build. The entire financial balance of the project depends on , these rights as well as the buying price proposed to the owner of the land. Should the project exceed a certain scale, developments rights cannot be taken as zoning data from the local plan. As a rule it is discussed directly by the parties involved: for this reason the town planning schemes for large communes are far less stable than those of small communes, since they are continuously revised in the course of public or private programmes.

This exploratory phase takes the form of a double bilateral discussion: with the local authorities, as we have seen, and with the owner of the land, who is contacted at the same time. It often happens that a deal is reached when the actual density authorised for the land is not yet known. To reduce the level of uncertainty, the land is always sold with an escape clause (on condition, that is, that the building permit is obtained under the terms formerly agreed upon), and there are several types of contract with prices based on several possible densities, while the actual density authorized is yet unknown – the mayor must then negotiate with the developer and the owner, who both have an interest in high density projects.

Types of local systems

The recent renewal of local policies to assist first time, low-income home buyers has led to the appearance of different negotiation systems.

We can observe two archetypes: the “planning” authorities, where the constraints on housing

programmes have been the focus for *framework-negotiations* involving the local authority and operators, and which go beyond the framework specific to the programmes; and the “negotiating” authorities, where, while certain general constraints do exist, most of these are worked out within the framework specific to ongoing programmes. These archetypes do not really correspond to concrete examples, but allow us to define the case of a town situated between the two extremes.

Brest Métropole, to take one example, illustrates what a framework-negotiation system is. This metropolitan authority has long enjoyed full powers as far as urban planning is concerned. Basing its expertise on efficient local observatories, local government regularly organizes a « *trans-communal conference of housing sector actors* », bringing together local representatives, technical services, developers, social housing landlords, building contractors, and banks, to define local policy objectives. This conference sets up and organizes the « *workshops* » of Brest Métropole which bring together specialists to negotiate on more specific issues or projects under way. These working groups lead to a contractualisation⁶ of objectives and of the ways and means under discussion. This contractualisation should not be understood in a formal sense: it will not lead to formal procedures such as the *Zone d'aménagement concerté (ZAC)*, the French comprehensive development scheme. It is simple, at times merely verbal.

This negotiation process virtually amounts to a joint elaboration of development projects: it eliminates uncertainties and the asymmetrical flow of information in return for narrower profit margins for the developer. Indeed, in Brest, all the programmes include 50% of rented social housing and/or price-controlled, first-time home purchases.

By contrast, the archetype of the “negotiating” local authority is characterized by a negotiation process by trial and error. The different parties involved alter their behaviour and their demands along the way, according to the nature of the project and prevailing market conditions. The balance of power is not clearly defined but has tended to lean one way: in the first decade of this century, the sharp increase in housing prices has made developers’ complaints over costly constraints seem highly dubious in the eyes of local representatives. On the other hand, since the start of the economic crisis in 2008 and the Recovery Plan (which broadened eligibility for the “Pass-Foncier” home buying scheme and doubled interest-free loans for new housing) the developers have been leant a more sympathetic ear by elected officials. The steep fall in anticipated demand has encouraged developers to demand financial aid for property buyers from

local authorities, and to accept price constraints which burden the programmes. The developers have become insistent in demanding such measures and in partnership with the bank *Crédit foncier*, metropolitan districts, and the Departmental Agencies for Housing Information⁷, have incited communes to take increased advantage of these instruments.

In this system, uncertainty is reduced by ongoing discussions, but never vanishes entirely: developers and local government have an interest in preserving grey areas, the former to retain profit margins from one project to the next, the latter to retain ample room for negotiation by exercising its strategic monopoly in the administration of land ownership rights. This is why one can speak of a *selective* reduction of uncertainty.

Aid for low-income home buyers: Still searching a purpose

Above all, local systems of negotiation seek to reconcile the conflicting interests of the local housing stakeholders. In some cases, the solutions found and agreed to by the parties involved remain quite far from the common interest in the strict sense.

The case of low-income home buyers is a good illustration of the flaws in local systems of negotiation. In fact, when local governments set up a programme to assist low-income home buyers, there is considerable diversity in the planning constraints that result. The local vision behind these policies systematically combines aid to first time buyers and controlled delivery prices for private programmes associated with such measures.

The constraint of controlled prices can be written or unwritten. As a rule, it is unwritten although everyone knows about it. However, a number of documents bare its traces: first of all the articles of the Local Housing Plans, but also the deliberations of local council meetings, which may impose this type of constraint. In such documents, these constraints never appear on their own: as a rule they complete planning regulations in which the controlled price clause is status law, like the Pass-Foncier, the PSLA, the ANRU zones⁸, and even the ZAC, the provision of common land, or the policy of compensation for excessive land prices, as in Aix-en-Provence or Rennes. In the course of these projects, the local government intervenes financially in the programme report to compensate for any loss of revenue due to the ceiling on delivery prices. This set of measures is usually sufficient to back a policy of controlled price quotas on all private programmes, including those which do not benefit from direct subsidies.

The problem is that the controlled price homes built within the framework of these negotiation systems combining official policies and unofficial clauses are usually sold through somewhat closed channels, following procedures implemented by the local governments themselves, which seek to promote criteria of “*local preference*”. To illustrate this notion, a developer who took part in campaigns to raise awareness of home buying schemes in the small districts of bigger metropolitan areas had this to say: “*The Pass-foncier packages which work are those which contain illegal clauses*”. This view is generally shared by the urban planning services in metropolitan areas. Mayors, who frequently display scant awareness of how such measures work, and sometimes ignore their very existence, are only willing to employ them if it is in their political interest to do so. Privileged housing arrangements are granted to certain members of the community, and waiting lists are rigged to suit the commune’s preferences, a practice which, being discriminatory, is in fact illegal. The conditions for becoming a first time, low-income home owner at controlled prices are generally somewhat obscure: the preferences of the commune are a point of contention between town councils and inter-communal organisations which are not always included in the allocation process, a fact which underlines the difficulty of giving a global definition to common interests in housing districts.

In fact it is often a case of favouring deserving citizens. Anything goes when it comes to managing waiting lists: information meetings in the homes of handpicked individuals, the publication of official announcements in municipal newsletters just before the commercialization of the programme has officially begun, etc.

In the Paris region in particular, where cheap accommodation is an extremely rare commodity, the lack of professionalism in the management of allocation procedures leads to frequent aberrations: one among many examples is the case of company executives in the real estate company itself, naturally the first in the know, who buy the controlled price properties to offer tax-free rentals. This is not strictly illegal, but the political objectives completely miss their target.

This somewhat unfair management of public money should not be held up as the general rule: practices are very diverse. In large urban districts, where negotiation systems are well-established, political objectives are laid out more clearly, generally on the more relevant metropolitan scale, and allocation procedures are fairer and more firmly established.

Future assessments of PTZ+, re-centred on stringent market areas, should take account of the full

range of these practices to assess the effectiveness of government initiatives. This is all the more important since, with the merger of the Pass-Foncier and the PTZ+, many systems will need to be re-thought: the attribution of the PTZ+ no longer depends on local government but it is too early to gauge the extent to which this measure will bypass local policies. One thing is certain: the sharp increase in housing prices goes against local systems in that it favours non-cooperative strategies: current price levels are felt by local authorities to be indecently high, and these latter, not over-concerned by the economic effectiveness of the constraints they append to the programmes, rush to satisfy the demands of panic-stricken locals. The developers bank on further price increases and strong demand and reduce cooperative ventures with local authorities to a strict minimum. In periods of economic decline, on the other hand, cooperative strategies are favoured by private actors who seek out clients benefiting from government-funded home buying schemes. In a context of renewed price increases - despite dire warnings from local government and observers - the need remains for local negotiation systems which are stable in the long-
PSLA : Prêt Social Location-Accession: Loan for social rentals and first-time home purchases;
Zones ANRU : Zones administered by the *Agence Nationale pour la Rénovation Urbaine* (National agency for urban renewal) term, and capable of influencing global price indexes instead of artificially protecting a handful of properties from rising prices.

To find out more:

- Dupuy, Guilhem. 2010. « Le maire, l'accèsion sociale et le promoteur. La négociation entre élus locaux et promoteurs : une analyse stratégique », *Habitat Actualité*, Paris : ANIL, February 2010.

http://www.anil.org/fileadmin/ANIL/Etudes/2010/analyse_eluslocaux_promoteurs.pdf

- Website of ANIL, Agence Nationale de l'Information sur le Logement : <http://www.anil.org>

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1 The *Prêt à Taux Zéro Plus* (interest free loan Plus) replaces the former *Prêt à Taux Zéro*.

2 Housing contribution equivalent to a 1% tax on wages paid by any company with 20 or more employees.

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- 3 Agence Nationale de l'Information sur le Logement (ANIL).
- 4 The Plan Local d'Urbanisme (PLU) the Local urban development plan at the municipal level.
- 5 Notion that usually refers to the process for government organisation and public bodies, sometimes associated with the private sector as well, to contract to deliver public services.
- 6 Agence Departementale de l'Information sur le Logement (ADIL)
- 7 *PSLA : Prêt Social Location-Accession*: Loan for social rentals and first-time home purchases; *Zones ANRU*: Zones administered by the *Agence Nationale pour la Rénovation Urbaine* (National agency for urban renewal).