

# Neighbourhood Planning 2015

**Presented by**  
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Raising the Bar  
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# Neighbourhood Plans

- Introduction
- Overview
- Some of our experience of Neighbourhood Plans to date

# Neighbourhood Plans

- Origin in Localism Agenda and the (then) opposition Green Paper
- Emerged through the Localism Act
- We now have significant experience of Neighbourhood Plans, their production, Examination and (some of their) consequences for the planning system, including impacts upon appeals
- Ministerial Statement amending recovery criteria (10 July 2014, renewed July 2015)
  - >10 units plus submitted NP proposal to the LPA

# How Many Neighbourhood Plans Today?

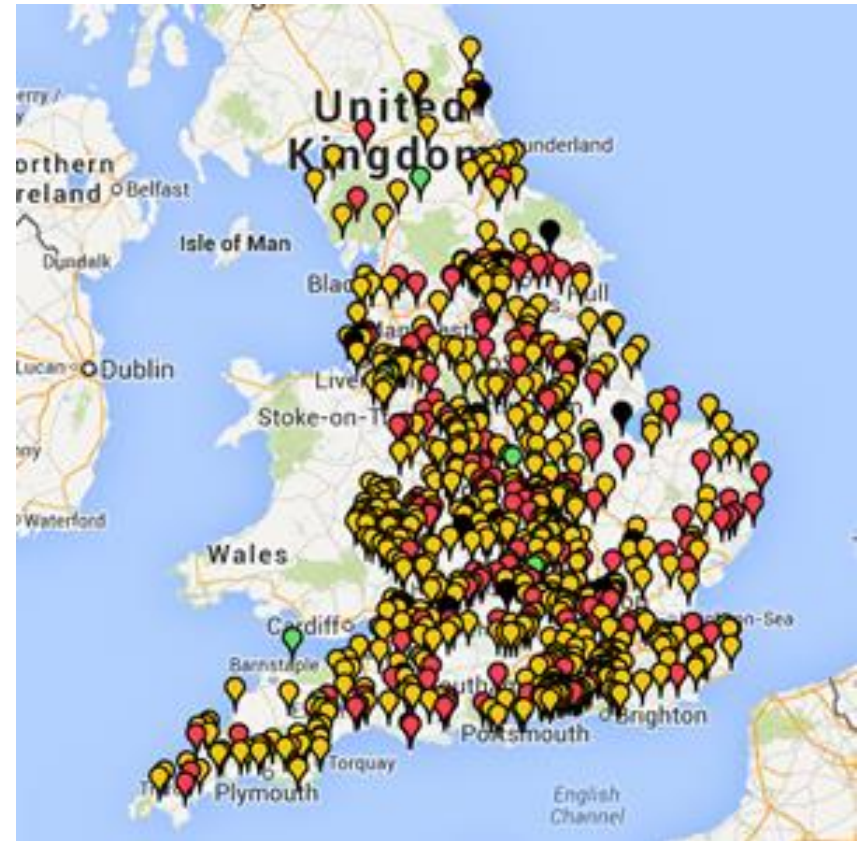
Over **60** Neighbourhood Plans made to date from 2013 to 2015

**Dec 2014:** c. 1200 areas  
5 million people

**Sept 2015:** c 1500 areas  
6 million people

**Sept 2016...**?

**Sept 2017...**?



# Overview

- Mission Impossible, Catch-22 and Other Plot Twists
- Some cases to consider
- *R(Crane) v SSCLG* [2015] EWHC 425 (Admin)
- *R(Gladman) v Aylesbury Vale DC* [2014] 4323 (Admin)
- *R (Woodcock) v SSCLG* [2015] EWHC 1173 (Admin)
- *R(DLA Delivery) v Lewes DC* [2015] EWHC 2311 (Admin)

# The Neighbourhood Planning Ideal

“Neighbourhood plans allow local people to get the right type of development for their community, but the plans must still meet the needs of the wider area. **In most cases we expect this will mean that neighbourhood plans will have to take into account the local council’s assessment of housing and other development needs in the area.**” DCLG Website



“one of the most exciting innovations of the Government’s localism agenda”

# The Development Plan Guarantee

- “One of the principal objectives of neighbourhood planning is to increase the rate of growth of housing and economic development in England. Coupled with a system of powerful financial incentives (see below), neighbourhood planning will achieve this by enabling neighbourhood communities to exercise real power in respect of the design and precise location of the development that takes place in the neighbourhood area. Moreover, in order to guarantee that neighbourhood planning cannot lead to a lower rate of growth, a neighbourhood plan will only be able to advocate an equal or greater quantity of growth in housing or economic development than is established in the development plan.” Localism Bill Impact Assessment 2011

# The Localism Bill Debates (2011)

- Greg Clark MP, Planning Minister promoting the Bill:

“On the first set, it was clear from our extensive discussions that the national planning policy framework and its responsibility for lower-tier plans should be explicit and in the Bill. It is absolutely our intention that everything conforms to that, so that there is a trickle-down through the whole process.

**One test of the soundness of a neighbourhood plan – as the hon. Gentleman knows, that is a requirement for it even to go to a referendum – is that it has to be consistent with the local plan, which itself has to be consistent with national policy. We are clear, therefore, that that thread needs to run through everything, and the examination arrangements need to reflect that.”**



# The Basic Conditions: The Development Guarantee via the NPPF

- 8(2)(a) Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the [plan];
- (d) The making of the [plan] contributes to the achievement of sustainable development;
- (e) The making of the [plan] is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- (f) The making of the [plan] does not breach, and is otherwise compatible with, EU obligations; and

# NPPF 16

“16. The application of the presumption will have implications for how communities engage in neighbourhood planning.

Critically, it will mean that neighbourhoods should:

- develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development;
- plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan; ...”

# NPPF 184

“184. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.”

# So How Hard Can It Be?

“[I]f there is an up-to-date neighbourhood plan in place, and a developer wants to do something outside those plans, unless it has the support and agreement of the community **that should be the hardest thing they ever try to do. It should be pretty much impossible to achieve.**”

Brandon Lewis MP, Planning Minister, 5 March 2015



# Secretary of State Refusals

“Broughton Astley”  
(APP/F2415/A/12/2183653),  
“Sayers Common”  
(APP/D3830/A/12/2189451),  
“Malmesbury”  
(APP/Y3940/A/13/2200503),  
“Devizes”  
(APP/Y3940/A/13/2206963),  
“Winslow”  
(APP/J0405/A/13/2205858),  
“Rolleston-on-Dove”  
(APP/B3410/A/13/2209697)



# Mission: Impossible?



# 25, 35, 40, 50, 60, 70 Missions....



# Catch-22

**"Catch-22 says they have a right to do anything we can't stop them from doing.**

**.... "What does it mean, Catch 22?  
What is Catch-22?"**

**"They don't have to show us Catch-22,... The law says they don't have to."**

**"What law says they don't have to?"**

**"Catch-22".**

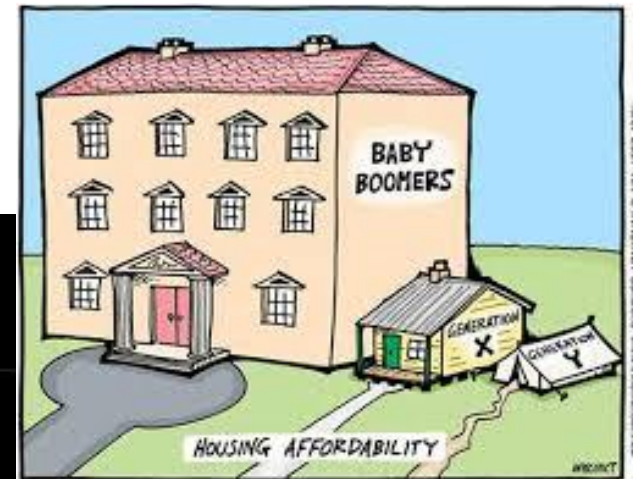


# Catch-22 Defined

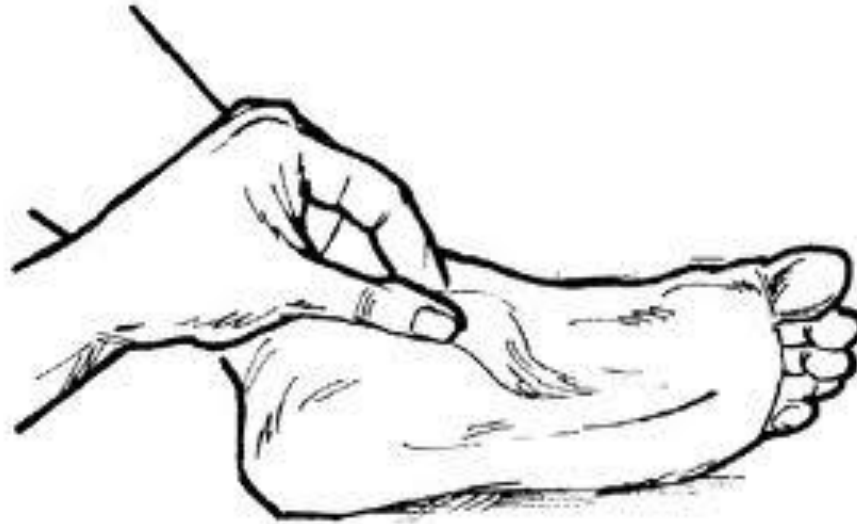
- “a concern for one's safety in the face of dangers that were real and immediate was the process of a rational mind.”
- “a paradoxical situation from which an individual cannot escape because of contradictory rules.”
- “one of the best-recognized ways to describe the predicament of being trapped by contradictory rules”
- “A vacuous bi-conditional”

# The Neighbourhood Plan Catch-22

- A Neighbourhood Plan only requires light-touch examination to generate constraint policies that are automatically out of date but any conflict with those policies is to be accorded very substantial negative weight....



# Light-Touch Examination



# Light-Touch Examination

- “Whilst the Basic Conditions require the examination of neighbourhood plans against, for example, guidance issued by the Secretary of State, they do not require examination against recent High Court judgments.” (Broughton Astley Report)
- [i]t is not my role (nor is it within the scope of my dull brain) to consider whether the Neighbourhood Plan would be inconsistent with an emerging development plan once it is adopted sometime in the future (Winslow Report)
- “There are interested parties...who consider that land should be allocated on the basis on much more significant growth. However, there are no adopted strategic policies upon which to base a more significant growth strategy.”

# Light-Touch Examination

- “The limited role of the Examiner which was to assess whether the Basic Conditions had been met.” (BDW, [81])
- "the only statutory requirement imposed by Condition (e) is that the neighbourhood plan as a whole should be in conformity with the plan as a whole. Whether or not there was any tension between one policy in the Neighbourhood Plan and one element of the emerging Local Plan was not a matter for the Examiner to determine.” (BDW, [82])
- “Whereas a local plan needs to be "consistent with national policy", by contrast the function of an examiner, most importantly, in relation to a Neighbourhood Plan is to determine whether the plan meets the "basic conditions" (BDW, [84])

# The Illusion Evaporates

**Woodcock, [137]:**

- “The level of scrutiny of the plan in response to these objections, which scrutiny might be described as somewhat superficial, apparently accords with the statutory scheme and policies governing neighbourhood planning. What is not to be found in the Examiner's Report is any finding as to whether more housing land needed to be allocated in Sayers Common, and in any event whether 120 houses could be accommodated there without any detriment.”

# The Illusion Evaporates

Woodcock, [137]:

- “If, however, upon reflection it is thought by the Secretary of State that issues of this kind ought to be dealt with in the examination of a neighbourhood plan *to the level of scrutiny that could properly found a prematurity objection in a planning appeal* (see paragraph 134 above), then consideration needs to be given to amending the NPPF and PPG (and possibly the legislation) so as to extend the ambit of the process for preparing and examining neighbourhood plans.”
- Note *DLA Delivery*

# Very Substantial Negative Weight





# Very Substantial Negative Weight

- *Crane v SSCLG* [2015] EWHC 425 (Admin)

“23. The Secretary of State considers that the lack of a 5 year housing land supply and the contribution that the appeal proposal would make to increasing supply weighs substantively in favour of the appeal.

24. He considers that the harm and conflict with the Harborough Core Strategy in relation to landscape character and the appearance of the area are nowhere near sufficient to outweigh the benefits of the proposal in terms of housing supply.”

# Very Substantial Negative Weight

- 25. However, in view of [the NPPF] policy that neighbourhood plans will be able to shape and direct sustainable development, he places **very substantial negative weight** on the conflict with the Neighbourhood Plan even though this is currently out of date in terms of housing land supply ahead of its review in 2018.
- 26. The Secretary of State considers that the adverse impacts of the appeal proposal, especially in terms of the conflict with the Broughton Astley Neighbourhood Plan, would significantly and demonstrably outweigh the benefits in terms of increasing housing supply. He therefore concludes that there are no material circumstances that indicate the proposal should be determined other than in accordance with the development plan."

## Paragraph 14: “Out of Date”

- [58] “As the court has held, out of date policies of this kind are **likely to command little weight** (see, for example, the judgment of Males J. in *Tewkesbury Borough Council v Secretary of State for Communities and Local Government* [2013] EWHC 286 (Admin), at paragraphs 13 and 20, and observations made by the court in several other cases – *William Davis Ltd. v Secretary of State for Communities and Local Government* [2013] EWHC 3058 (Admin) (at paragraph 33), *Cotswold District Council v Secretary of State for Communities and Local Government* [2013] EWHC 3719 (Admin) (at paragraph 72), *South Northamptonshire Council v Secretary of State for Communities and Local Government* [2014] EWHC 573 (Admin) (at paragraphs 38 to 47), and *Grand Union Investments Ltd. v Dacorum Borough Council* [2014] EWHC 1894 (Admin) (at paragraph 78)).

# Paragraph 14: “Out of Date”

## Crane v SSCLG [2015] EWHC 425 (Admin)

- [71]: “As I have said, Mr Hill points, for example, to an expression used by Males J. in paragraph 20 of his judgment in [Tewkesbury Borough Council](#) – “**little weight**” – when referring to “relevant policies” that are “out of date”. In [Grand Union Investments Ltd.](#) (at paragraph 78) I endorsed a concession made by counsel for the defendant local planning authority that the weight to be given to the “policies for housing development” in its core strategy would, in the circumstances of that case, be “**greatly reduced**” by the absence of a five-year supply of housing land.”

# Paragraph 14: “Out of Date”

Crane v SSCLG [2015] EWHC 425 (Admin)

- [71]: However, the weight to be given to such policies is **not dictated by government policy** in the NPPF. Nor is it, or could it be, **fixed in the case law** of the Planning Court.
- It will vary according to the circumstances, including, for example, the extent to which the policies actually fall short of providing for the required five-year supply, and the prospect of development soon coming forward to make up the shortfall.

# Paragraph 14: “Out of Date”

Crane v SSCLG [2015] EWHC 425 (Admin)

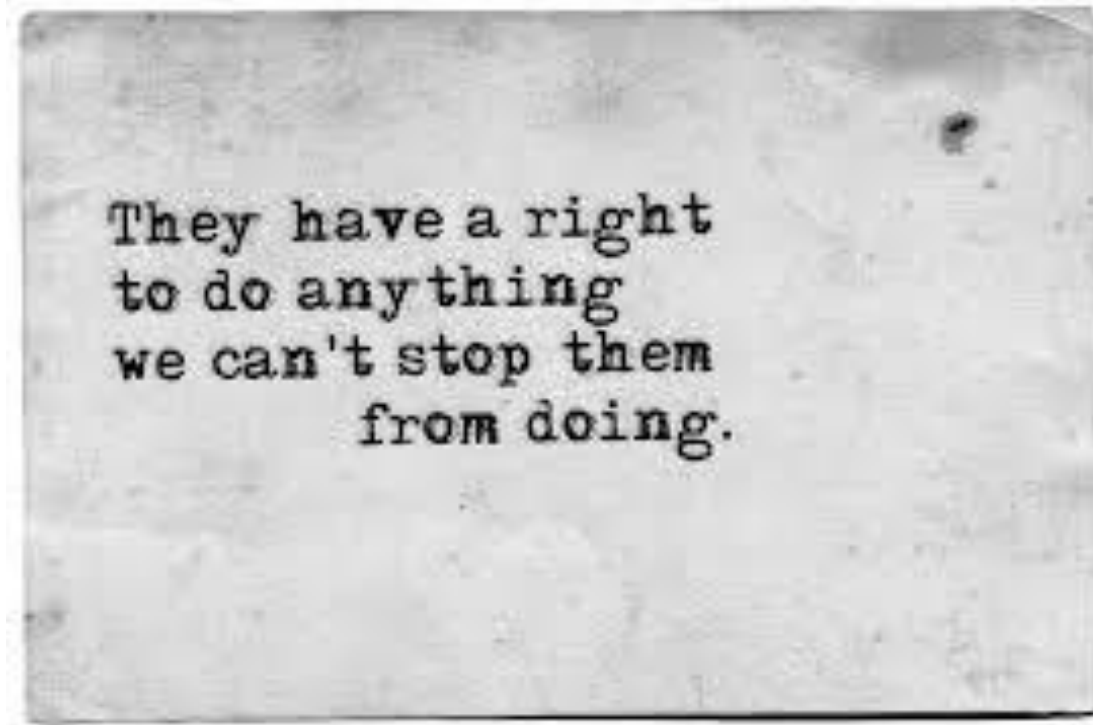
- [71]: “[N]either paragraph 49 of the NPPF nor paragraph 14 prescribes the weight to be given to policies in a plan which are **out of date**. Neither of those paragraphs of the NPPF says that a development plan whose policies for the supply of housing are out of date should be given no weight, or minimal weight, or, indeed, any specific amount of weight. One can of course infer from paragraph 49 of the NPPF that in the Government’s view the weight to be given to out of date policies “for the supply of housing” will normally be less, often considerably less, than the weight due to policies which provide fully for the requisite supply.

# Paragraph 14: “Out of Date”

## Woodcock v SSCLG [2015] EWHC 2311 (Admin)

- [114] I conclude that paragraphs 14 and 49 do apply to the housing supply policies in a draft development plan, including a draft neighbourhood plan, and therefore should have been applied in the present case when assessing the weight to be attached to those policies in the Neighbourhood Plan and to any conflict with such policies.
- [115] Even if a contrary view were to be taken, so that paragraph 49 does not apply to housing supply policies in an emerging plan, logically it would nevertheless be necessary for the decision-maker to assess how much weight should be given to those policies, and that must involve taking into account the lack of housing land and the clear policy imperative in paragraphs 47 to 49 that a sufficient supply of land should be identifiable at all times.

# *Wednesbury* Threshold and Automatically Out of Date





# Settlement Boundary Policies

**Policy 2: A Spatial Plan for the Town:** “Proposals for housing development outside the Winslow Settlement Boundary will **only be granted in exceptional circumstances.**”

**Policy 3: Housing Allocations:** “**Proposals for housing development outside the Winslow Settlement Boundary will not be supported** unless they require a countryside location and maintain the intrinsic character and beauty of the countryside.”

455 houses from 2014 to 231 on population of 4650

VAP Target: 400 up to 2031

VAP Inspector: “Substantial mismatch” between housing and employment figures

# Winslow: Settlement Boundary Policies

J/53: “policies which determine the amount of housing required and the location of the housing”

J/55: “the amount and location of housing within Winslow”

J/58: “policies dealing with the use and development of land for housing, including policies dealing with the location of a proposed number of new dwellings”.

J/59 and at J/65: “policies dealing with the use and development of land for housing” plus “for example, policies indicating the areas to which development should normally be directed or the allocation of land for particular purposes”,

J/67: “use or development of land...for housing”

# Winslow: Settlement Boundary Policies

J/59, the judge contrasted two situations for the purposes of paragraph 8(2)(e): **“That condition is dealing with a situation where there are in existence strategic policies and they are contained in a development plan document and there is a conflict between those policies and the policies contained in a neighbourhood development plan. The condition is not dealing with a situation where there are no strategic policies dealing with particular issues contained in a development plan document. The condition is not worded in terms that a neighbourhood development plan cannot include policies dealing with particular issues unless and until a development plan document is brought into existence containing strategic policies on such issues.”**

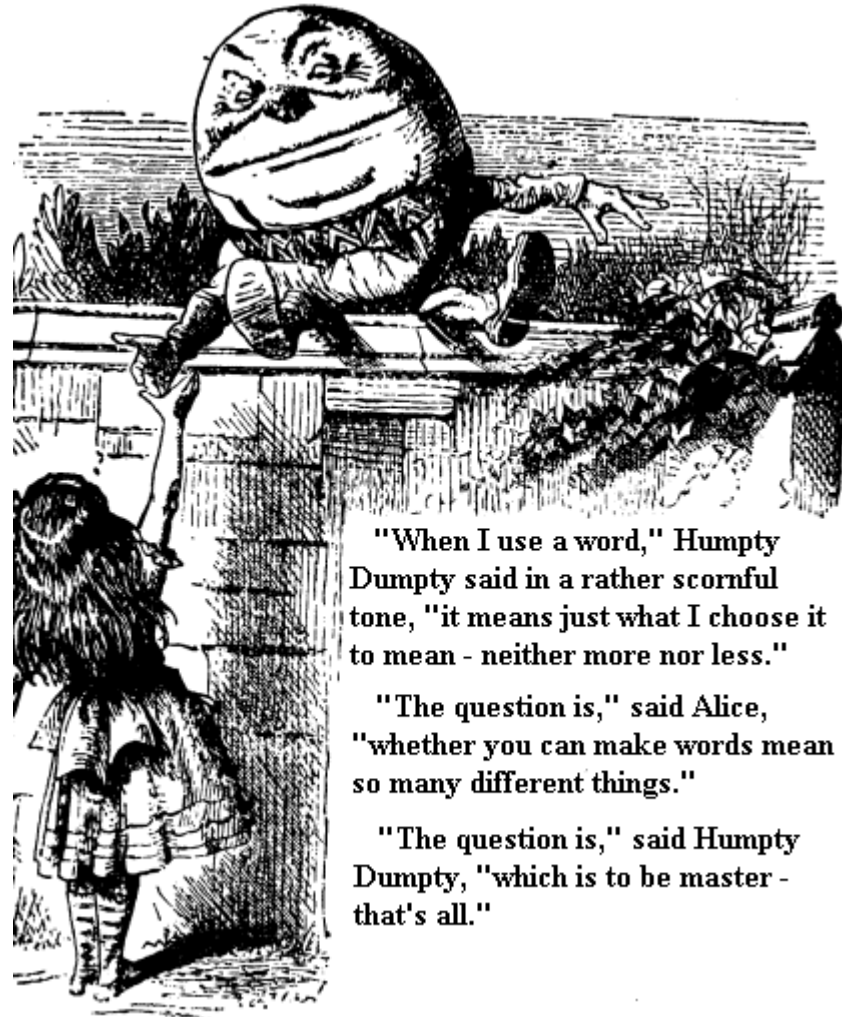
# Winslow: Settlement Boundary Policies

J/25: NPPF 47 is “primarily addressed to local planning authorities. It is giving them guidance on what the Framework calls the Local Plan (that is, the development plan documents) should include to achieve the aim of boosting housing supply significantly.”

J/73: NPPF 47, 156 to 159: “Those, and other paragraphs, are not addressed to a qualifying body preparing a neighbourhood plan which may include policies relating to the development and use of land in their area” ... “qualifying body is not, however, involved in the process of preparing a development plan document dealing with those issues”.

# Winslow: Settlement Boundary Policies

J/75: Local Planning Authorities must “ensure that an up-to-date Local Plan is in place as quickly as possible”, but that does not impose a limitation (in the absence of such a plan) such that “a neighbourhood plan, cannot in the interim, put in place policies for its area”

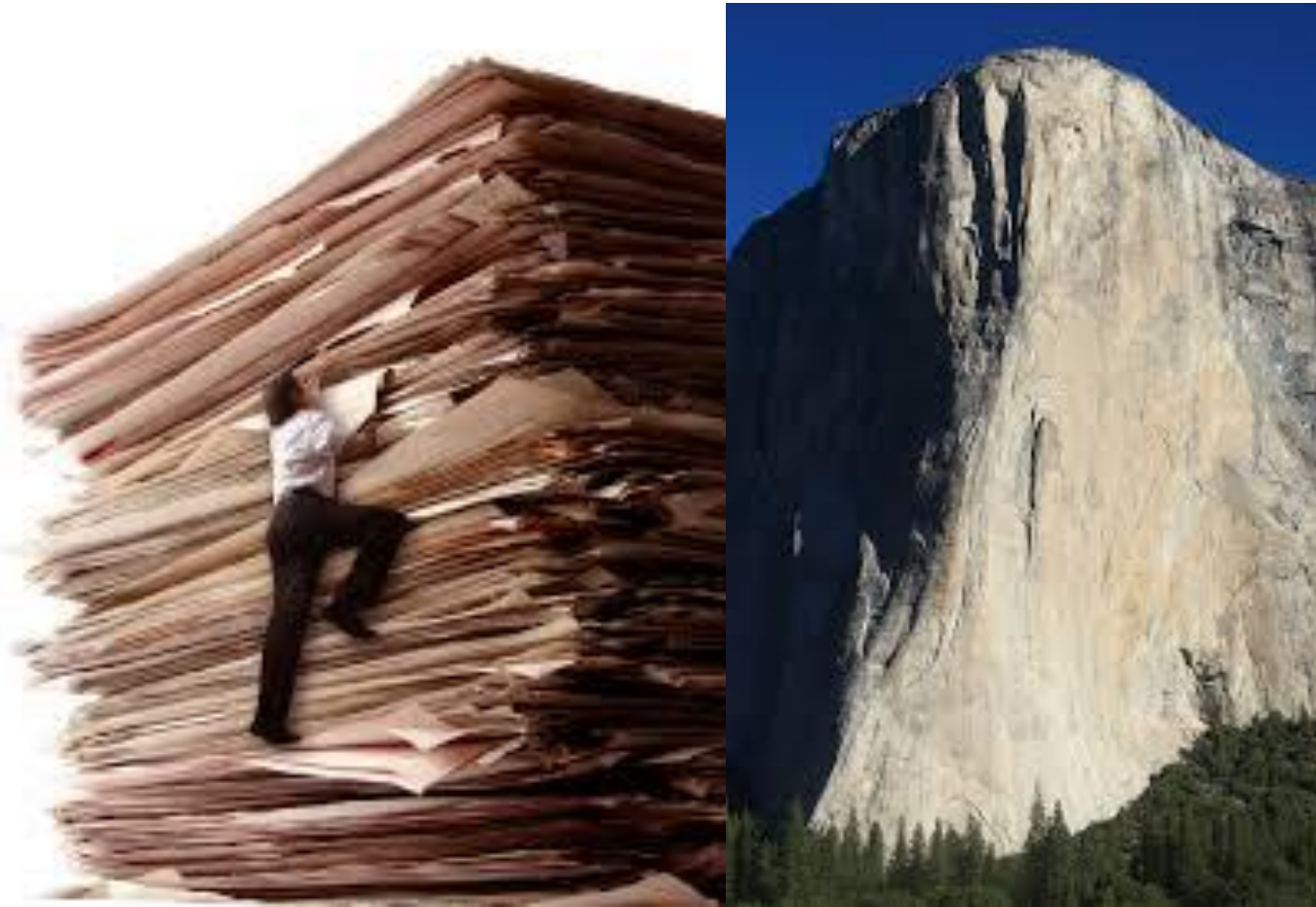


"When I use a word," Humpty Dumpty said in a rather scornful tone, "it means just what I choose it to mean - neither more nor less."

"The question is," said Alice, "whether you can make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master - that's all."

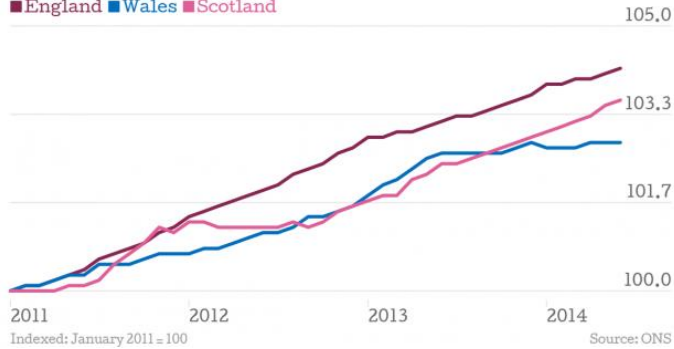
# The Scale of the Challenge



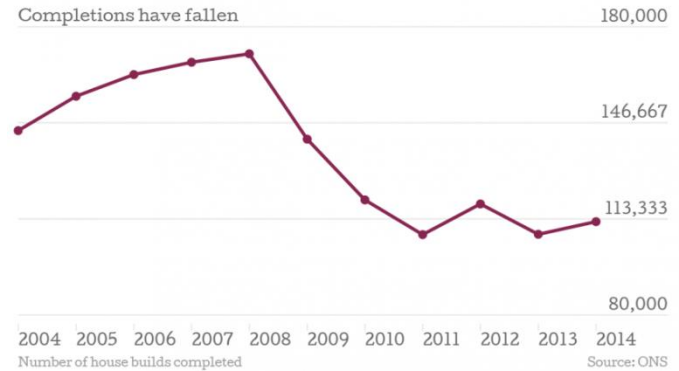


# The Policy Trajectory

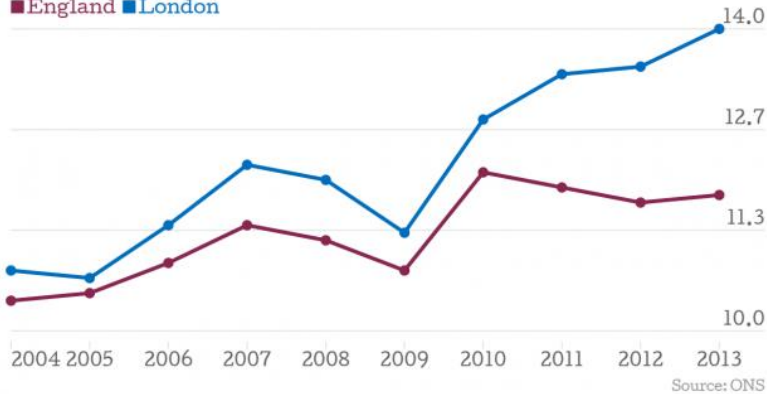
House prices have been rising  
 ■ England ■ Wales ■ Scotland



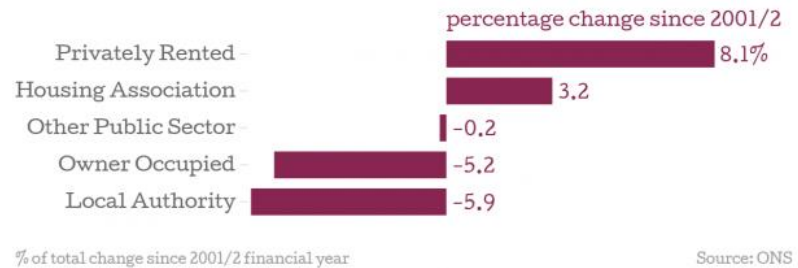
Completions have fallen



London's house price to earnings ratio has outstripped England's  
 ■ England ■ London



The make up of the dwelling stock has changed too



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