

# Challenges for LPAs

---

Mike Kiely

Chair Planning Officers Society

HBF Planning Conference 20 September 2017

POS

Planning Officers Society

# Today's potential agenda

I could talk about:

- NPPF Review
- CIL Review
- Local Plans Expert Group Report
- Housing White Paper
- Local Plans and Statements of Common Ground
- OAN methodologies
- Fees
- Permission in Principle
- Starter Homes
- Alternative Providers
- Residential DCOs
- Planning conditions & s14 of Neighbourhood Planning Act 2017
- and more ...

... but I only have 30 minutes (including Q&As)!

POS

# Today's actual agenda

So, instead I will concentrate on two things that I think could help LPAs and housebuilders to increase the supply of housing:

- The housing crisis: can CPO help?
- The viability game: can we solve it?

POS

# The housing crisis & CPO

- The housing crisis: what's the real problem
- Can the current CPO regime help?
- What are the chances of success?
- What do we need to change?
- Three key changes:
  - Helping LPAs to be more proactive
  - Is there a need for a new model: CSO?
  - Compensation & hope value

POS

# The housing crisis

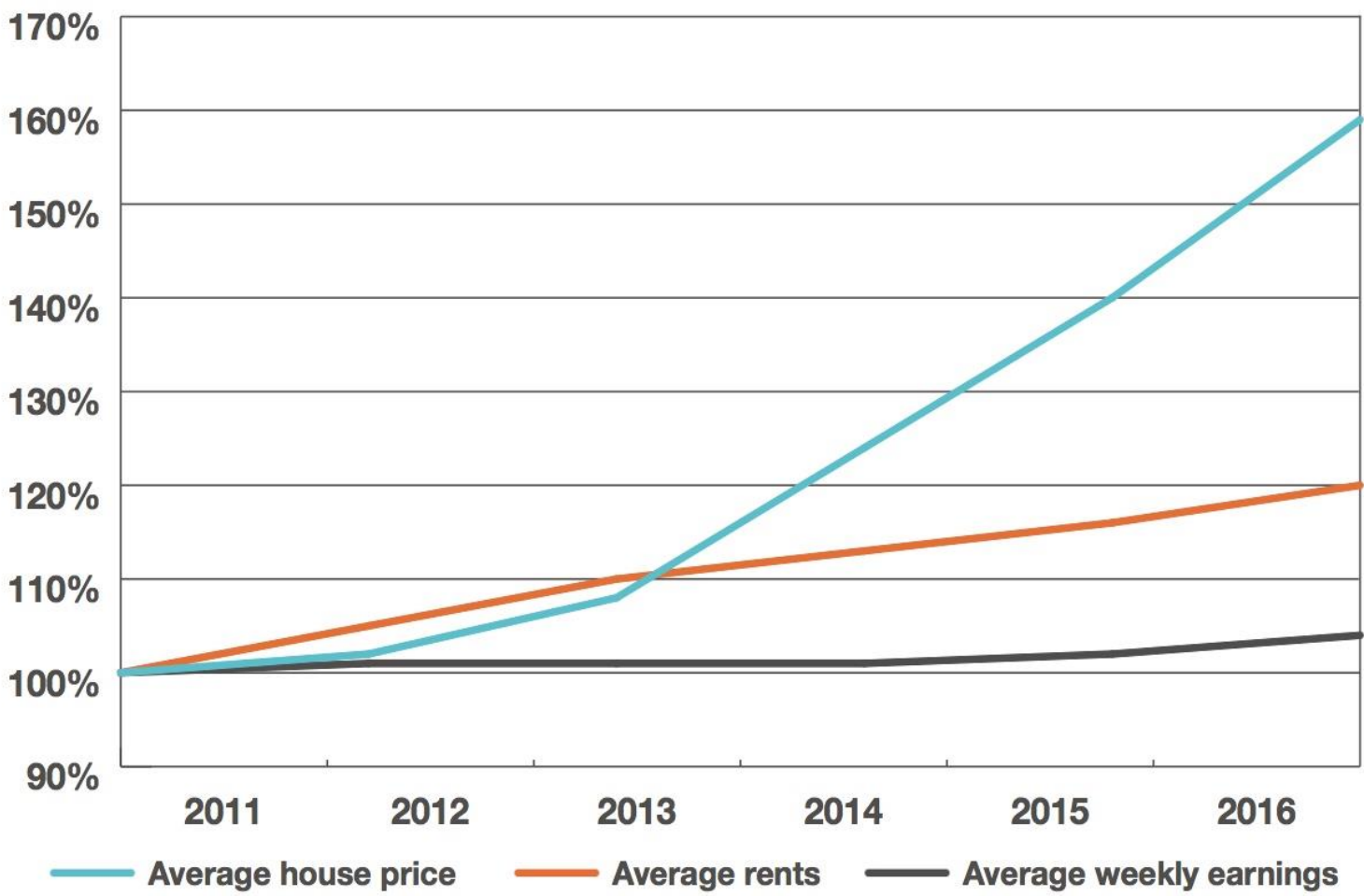
“Our broken housing market is one of the greatest barriers to progress in Britain today”

Rt Hon Theresa May MP (Prime Minister)  
Housing White Paper February 2017

“If you always do what you've always done, you will always get what you've always got”

Albert Einstein (maybe)

POS



Generation rent  
or generation “no  
chance”!

House price, rent,  
and wages in action  
2011-2015  
(percentage)

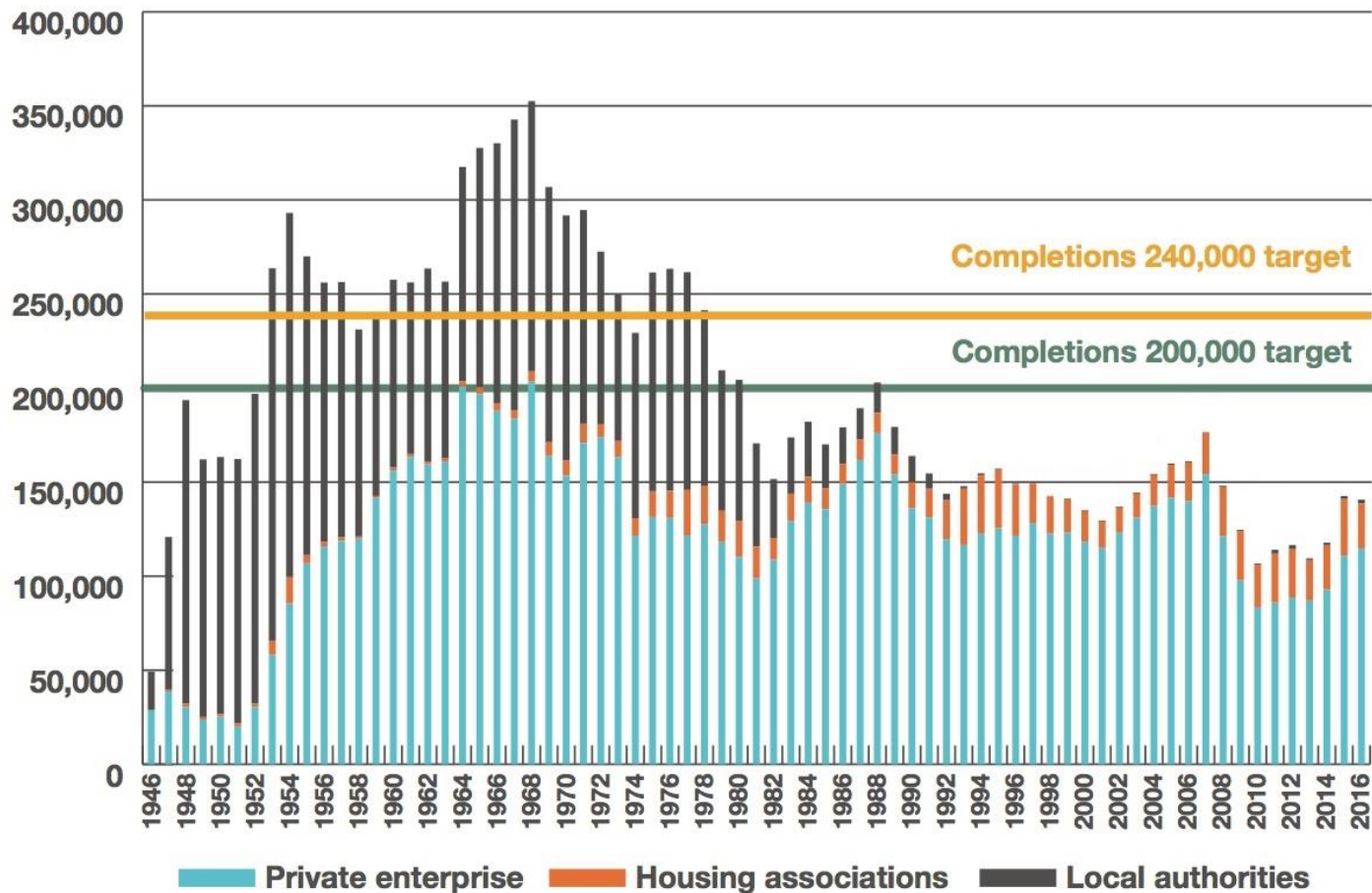
AHP to AAE ratio  
used to be 3:1

Average in England  
now nearly 8:1  
(HWP)

Average in London  
now over 14:1  
(Guardian)

Source: Land Registry 2016; ONS 2016; ASHE 2016





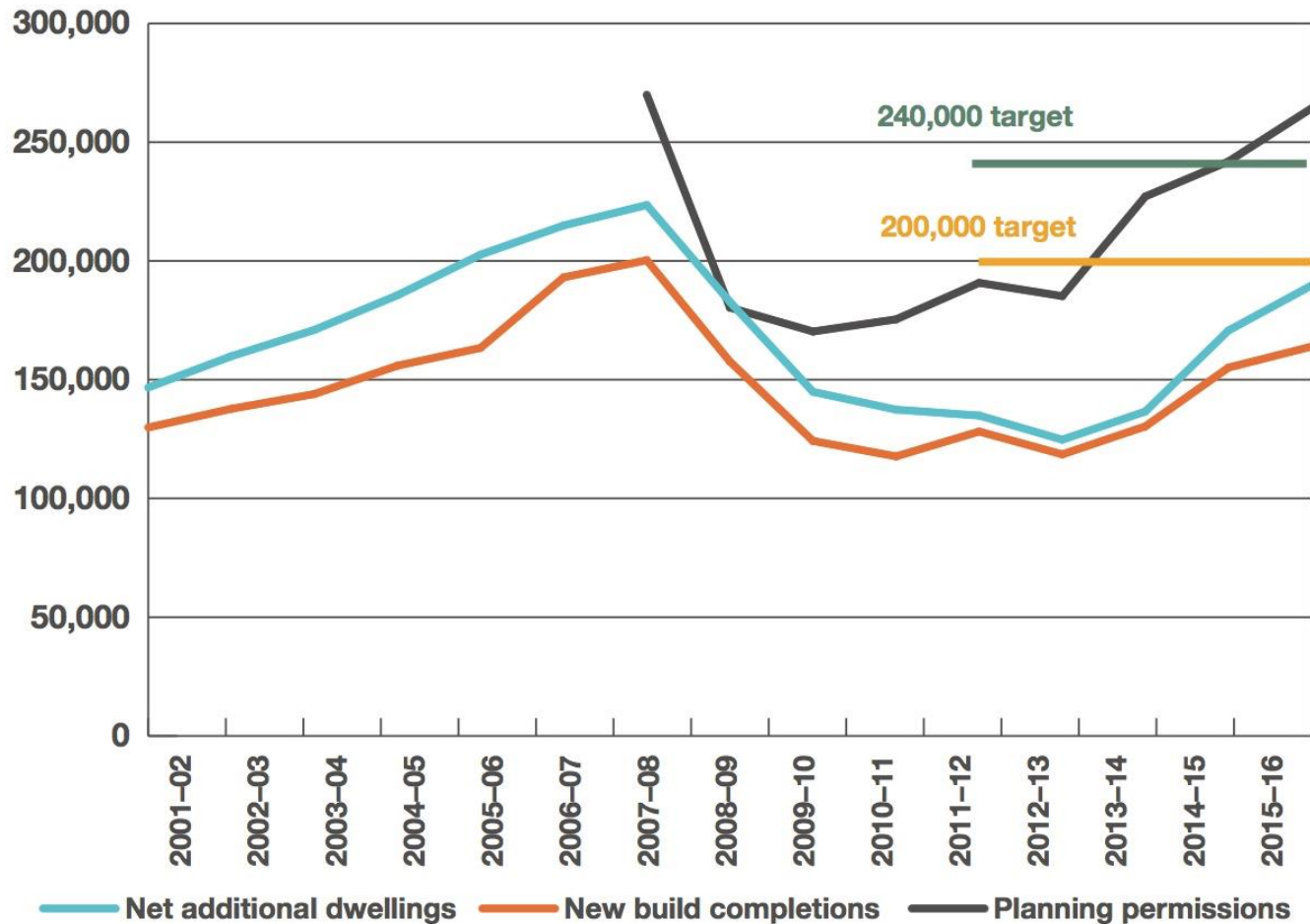
We're not building enough houses

Number of historic housing completions in England, by provider type, 1946 to 2016

History shows us how to fill the gap!

Source: DCLG 2017b; DCLG 2017c

POS



We are granting enough planning permissions

Number of new build completions, net additional dwellings and planning permissions in England, 2001-02 to 2015-16

So what's going on – only 2/3 of permissions being built?

POS

Source: DCLG 2017b, Glenigan and HBF 2017



# How can CPO help?

- We're not building enough homes
- We are granting enough planning permissions
- Housebuilders don't land bank (generally)
- The data tells us that someone is, so we need to either get them to develop or take the land off them and give it to someone who will
- Land is not a commodity that you can do with what you like – you have responsibilities as a land owner
- In a housing crisis someone with housing land needs to build houses on it!

POS

# The challenges that need to be solved

- Helping LPAs to be more proactive
- The need for a new model: CSO
- Compensation and hope value

POS

# How would it work?

A new CPO power with two tests

- The land has to be a “housing site”:
  - it has Planning Permission
  - It is a Local Plan or Neighbourhood Plan allocation
  - It has Permission in Principle
- It has not been developed within a set time:
  - this could be the life of the planning permission: eg three years
  - or the reduced period suggested in the Housing White Paper for non-delivering developers – this gives that provision teeth!
- Subject to the other CPO tests, then that would be sufficient justification to win a CPO

POS

# Establishing the housing sites

- LPAs want to be more proactive in unlocking sites with housing potential
- There will be a presumption that housing sites should be built out
- We must guard against owners taking away their ball
- LPAs should have the power to issue a PIP unilaterally if a site does not have planning permission or cannot be allocated in a plan because the owner is landbanking
- The landowner can appeal the unilateral PiP
- This enables the principle of developing a site for housing to be established

POS

# Compulsory Selling Order

- Getting a back-to-back partner, negotiating the Indemnity Agreement and the Land Transfer/Development Agreement (depending on which model you are following) takes forever and costs £££££s in legal fees
- Could a solution be a Compulsory Selling Order (CSO)?
- The LPA could do this on their own – much quicker and cheaper
- The outcome (following the same basic procedure as CPO) would be a requirement to sell the land at a specified minimum sales price
- The price would be set as part of the CSO process and would be EUV with no premium
- Any hope value is for the market to realise when the land is sold

POS

# How would it work?

Two suggestions for how to handle the sale of the land

- Public body model:
  - Land is transferred to CSO promoting body
  - They can sell or develop land
  - Owner compensated at end of process (with an overage arrangement for the development option)
- Market model:
  - Open market sale process overseen by CSO body or an independent body

POS

# Selling the land and implementation

- When the land is sold, the market could offer more, which would be the realisation of any hope value that really exists
- The owner must accept the minimum sales price set in the CSO
- The new owner will need to develop the site within a set period
- The period for implementation would be determined as part of the CSO process
- This should take into account whether there is a detailed scheme in place or not
- If not implemented within the period, the land reverts to the CSO body
- The process starts again: CSO body can develop or sell the land

POS

# Compensation and hope value

- We need to leverage more of the value created by the scheme into supporting development implementation, especially for enabling/supporting infrastructure provision
- Land value capture is a challenge and not paying some (realistic) hope value is not human rights compliant
- There should only be two compensation options available to CPO landowners:
  - Existing use value; or
  - If the owner considers that there is a higher [hope] value, a residual valuation on the CPO scheme is carried out to generate the land value
- We could then dispense with Certificates of Appropriate Alternative Development and all that carry on

POS



# Conclusions on CPO

- Existing CPO powers may not always work in tackling residential landbanking
- A new specific power could help if it was designed properly
- Both a specific power and a simpler process could be powerful tools
- Like CPO generally, the new power would not have to be used very often because the threat of its use alone will change behaviour in the market

POS

# Solving the viability game

In order to tackle the delivery of Affordable Housing via the planning system, you have to understand and fix the funding regime it operates within.

The part of my presentation will cover:

- What is the policy position on viability?
- What has happened since the recession?
- How can we fix it?
- What would a new policy look like?

POS

# Viability and the NPPF

It is a strong theme throughout the document:

- Meeting housing need
- Evidence base for plans
- Ensuring the vitality of town centres
- Balancing harm to heritage assets
- Decisions in DM

It's clearly a material planning considerations – if people do not make money, development will not happen

But it is also clear that this consideration has to be balanced against other material planning considerations

POS

# Viability in development plans

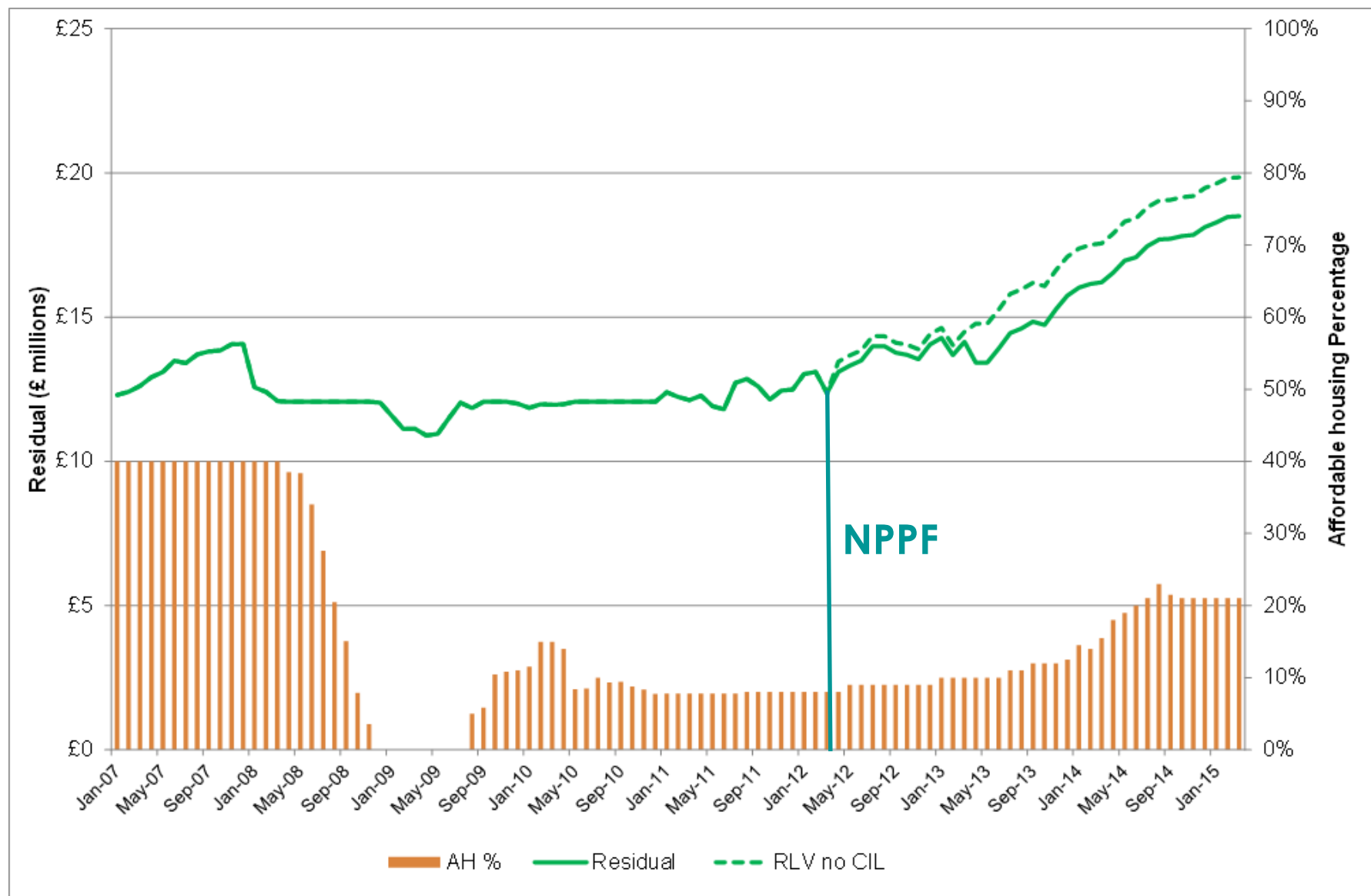
- Para 159 Housing & SHLAA
  - Prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic **viability** of land to meet the identified need for housing over the plan period
- Para 173 Ensuring **viability** and deliverability
  - You mustn't have too many obligations because they could fail to ...
  - ... provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable
- Viable, viably or viability are in fact mentioned 19 times in the NPPF, but interestingly not in the decision-making part!

# Viability in DM decision making

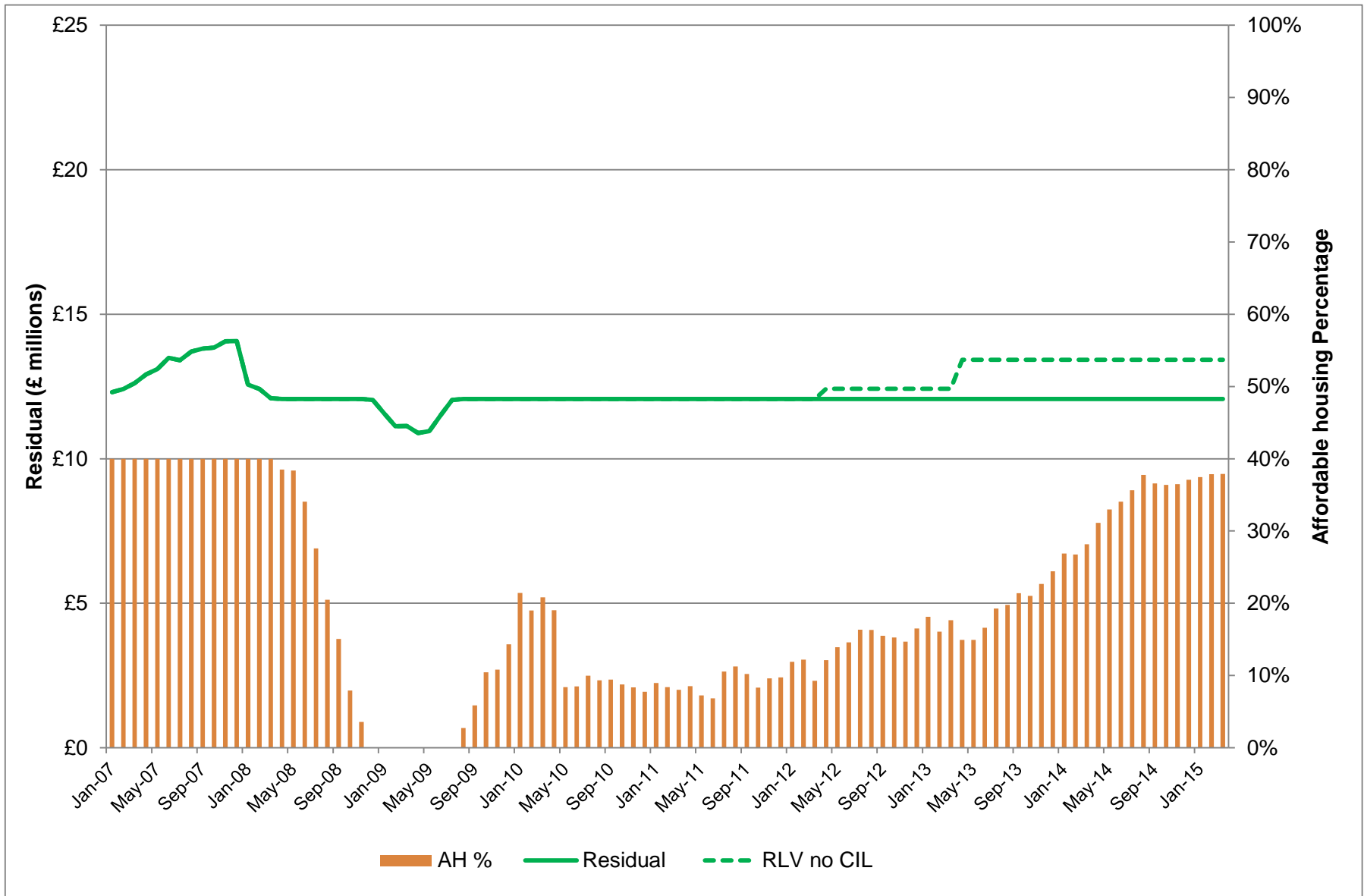
- The viability of a development is a material planning consideration to be weighed in the balance
- In dealing with housing developments:
  - CIL is compulsory
  - S106 mitigation is necessary or will be refused if harm is caused
  - AH is a policy requirement and the victim of the viability game
- We can see this in the data

POS

# The numbers tell the storey



# What could [should] have happened



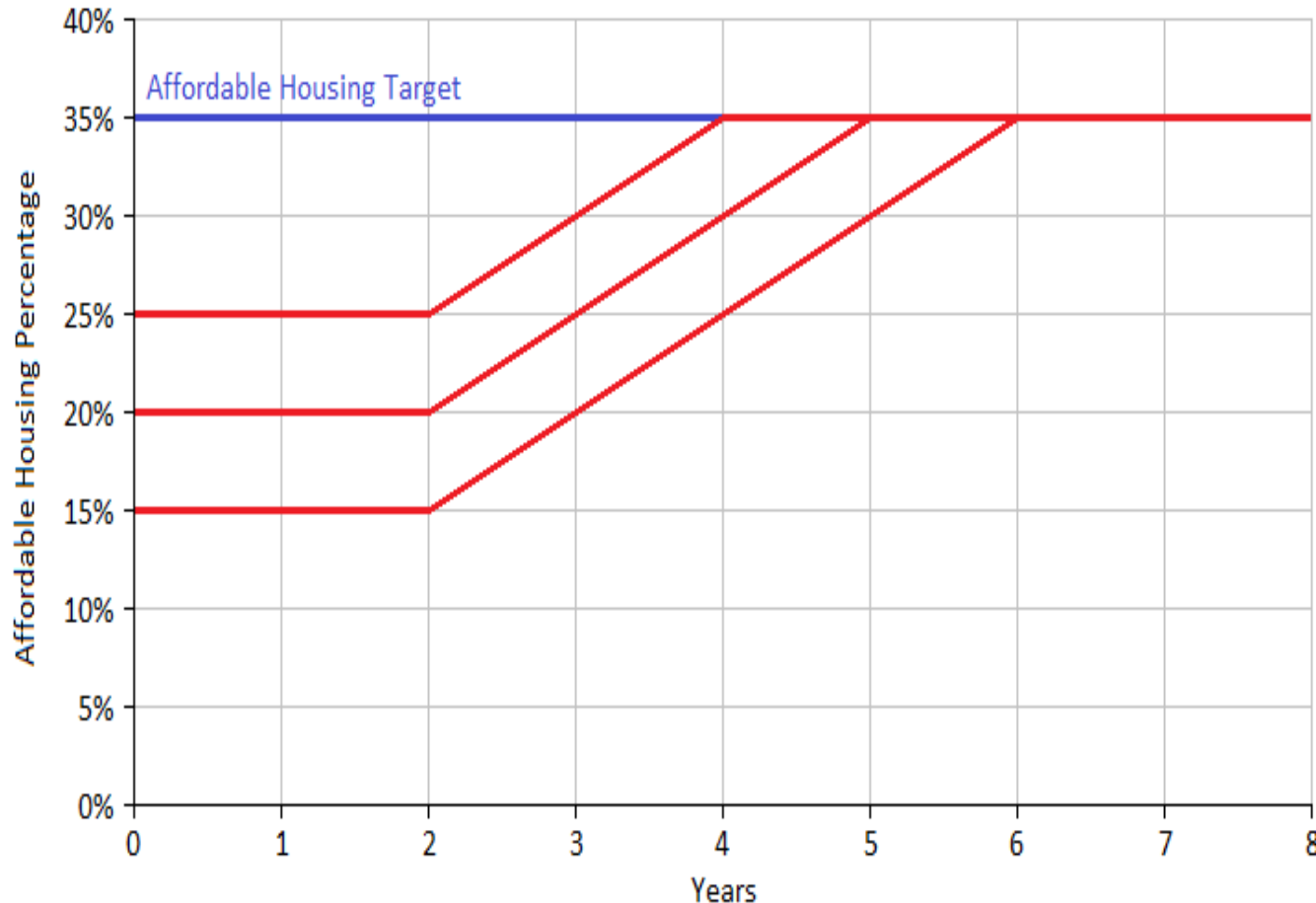
# How can we fix it?

- New York proposed a fixed compulsory affordable housing level of 25% if flats are affordable to 60% of median income or 30% if flats are affordable to 80% of median income (Washington Post 20.08.15)
- Could we do the same?
- If there is cross-party support to genuinely deliver the optimum level of housing (including affordable) the planning system can alter the operation of the market
- We did it before when we introduced Town Centre First policies in 1990s

POS



# A new policy lead approach



- Fixed AH %
- Starts at average AH % delivered in an area since NPPF published: March 2012
- Increases @ 5% per year until you achieve Development Plan level
- In the chart it is assumed @ 35%

# POS

# Conclusions on viability

- Viability is a theme running through the NPPF
- This is understandable given that stuff doesn't happen if people lose money
- However, the balance in the NPPF is not right – its wording allows the viability game to be played by inflating land values – empirical evidence demonstrates this
- AH is generally the victim
- A new approach could fix the problem
- Cross party support would be needed
- There are signs that it is being recognised:  
GLA SPG, Housing White Paper & current DCLG consultation

POS

# Thank you

## Contact details:

- 07545 837279
- mskiely@gmail.com
- uk.linkedin.com/in/mskiely
- The POS paper “Compulsory purchase: three essential improvements” is available from:  
[http://www.planningofficers.org.uk/downloads/pdf/POS%20Manifesto\\_7%20CPO\\_Feb17.pdf](http://www.planningofficers.org.uk/downloads/pdf/POS%20Manifesto_7%20CPO_Feb17.pdf)
- The POS paper “Delivering Affordable Housing in a more effective way” is available from:  
[http://www.planningofficers.org.uk/downloads/pdf/POS%20Manifesto\\_5%20Affordable%20Housing\\_Jan16.pdf](http://www.planningofficers.org.uk/downloads/pdf/POS%20Manifesto_5%20Affordable%20Housing_Jan16.pdf)

# POS