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Zoning and urban development control.

A strategic analysis of land and real estate markets regulation

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Résumé

In France, the local use plan, called « *Plan Local d'Urbanisme* », includes zoning rules which are juridically binding, while, for example, “*plans in the UK are not part of the law but are made under the law*” (Cullingworth, Nadin, 2006, p3). But it appears that even in France, the actors involved on real estate and land markets contribute to create new flexible ways to use and apply the rules of law. For local authorities, it constitutes an opportunity to control and finance urban development, including public equipments, social housing, qualitative urban design...

In this presentation, we show that this approach of housing markets enable us to better understand why and how local public authorities in France contribute to write land use plans, and then negotiate its application, even if the zoning plan is supposed to be legally binding. It appears that the rules of law have a major impact on social relations between actors who contribute to produce housing. But neither this rules of law, nor economical laws, eradicate other forms of regulations, which can only be understood by paying more attention to the ways actors interact on land and housing market.

Keywords

Land market, housing market, land policies, local plan, zoning, strategic analysis, housing developer, land owner, local authority.

Introduction

Zoning rules are, in France, included in the land use plan, the *Plan Local d'Urbanisme* (PLU), which constitutes a fundamental document in terms of land and housing developments. But the land use plan is not just a law. It also expresses, with some other planning and political documents, the local authority's project in economical, sociological and environmental terms. However, in this paper, we will mainly focus on the zoning rules. In France, these rules are juridically binding, while, for example, “*plans in the UK are not part of the law but are made under the law*” (Cullingworth, Nadin, 2006, p3). Thus, English public authorities in charge to grant planning agreements¹ have latitude to judge the opportunity and the forms of the development, while

¹ In this work, we will use the terms planning application and planning agreement to speak about the French « permis de

in France this freedom is supposed to be nil in order to avoid any arbitrary judgments.

However, it appears that the French local authorities are negotiating the application of the rules of law contained in the PLU, even if the national law supposes that the zoning plan is legally binding. We will see that the actors who ask for a legislative liberalisation are not always private actors. Private and social housing developers are clearly asking for clear and strong rules in order to regulate the housing and land markets. In the same time, the local authorities introduce flexibility. But we will see that their rooms for manoeuvre change both in time and in space, which explain why local authorities “plays” with the rules of law in different ways depending on periods of time and on locations.

Our study is based on a work realised within an urban environment, the perimeter of the Lyon Urban Community (the “Greater Lyon”). 30 interviews has been realised with public and private developers, local authorities and bankers, as part of a doctorate started in 2011.

Zoning and housing markets regulation, elements of method

Following Mark Granovetter, we consider that the markets are, above all, social constructions. It means that the interactions between individuals cannot be studied only through land and housing prices. We do not subscribe to the idea that a market provide a spontaneous organisation of financial exchanges. It means we have to find a way to *“theorised the economic activity as a social fact, in which the modes of coordination are diverse and cannot be reduced solely to a coordination organised around the information expressed by market prices”* (Steiner, 2005).

We define markets as a theoretical space of concurrence socially organised, they establish links between actors which concern the access to goods and services which exist in limited quantity. The existence of a market is linked to the way economical and political exchanges which compose the market are structured. This means that the markets are social structures. To analyse this process, we base our analysis on the concept of *“concrete action system”* developed by Michel Crozier and Erhard Friedberg: *“a concrete action system cannot be opposed to a market, he always include it. Every concrete action system constitutes a market to the extent that it defines and structures a space of concurrence and of negotiated exchanges around the selling and buying of rare behaviours needed by the participants and which, to continue, itself need a regulation which is created by bargaining”* (Friedberg, 1992). With this citation, we can see emerging the main question, these of the regulation, which we define as the creation of the rules which allows a concrete action system, and thus to the market, to keep its coherence in spite of the fact that each actor has divergent interests.

Still following the works of Michel Crozier and Erhard Friedberg, the notion of power is major in our analysis. They define it as *“a negotiated exchange of behaviours between participants of an organised system”* (Friedberg, 1993). The power of an actor, i.e. its capacity to act freely, comes from its capacity to control uncertainty areas which surround its activity. To achieve this, he mobilises and exchange resources with other actors. The most he’s controlling this resources, the most powerful he is on the markets.

construire ». This agreement is delivered by the communes, because it has to be signed by the mayor. But its “instruction”, i.e. its analyse to see if it respect the zoning plan, can be made either by communes, groups of communes (intercommunalités) or by the French state (this service is offered by the state to the communes which ask for it, but will end at the end of the year 2013).

To be as autonomous as he can, a housing developer has to evaluate the most precisely he can the floor area he will build. The more floor area he sells, the more its operation revenues will be. A developer evaluates how much he can spend to buy land plots by calculating the difference between the turnover of the operation (the addition of all the apartment sells) and the relatively fixed costs (construction costs, taxes, marketing). It means that the more its turnover will be on the operation, the best we will be placed to buy the land to its owner.

Two main components limit the developer's capacity to evaluate in advance its turnover (and then, to buy the land before the construction starts):

- The number of clients and their wishes. What the developer is afraid of is to have unsold apartments while the building works are already completed;
- The allowed level of floor area and effective amount of the construction costs which depends from what the local authority allows. These elements, in France, are supposed to be known once the national construction rules and the zoning plans are voted because they are legally binding. We will see in this paper that the local authorities' behaviour re-introduce uncertainty on this points.

Which are the power relations, the political games and the rules that frame the interactions between actors? Above all, in the terminology used by JD Reynaud, which are the links between the "autonomous regulations", created by the way the social system is organised², and the "control rules", i.e. the rules of law? (Reynaud, 1997, p211) Which are the links between, on one hand, the production of the rules of law and, on the other and, the effective production of the city?

The enforcement of the law: a redistribution of resources between actors

The application of zoning: the birth of an uncertainty area to control for housing developers

As we said, zoning rules contained in the French Plan Local d'Urbanisme are juridically binding. Either the planning application is legal and the planning agreement have to be deliver, or it is illegal and the agreement have to be refused. However, as Guilhem Dupuy already showed, the public authorities re-introduce margins of interpretation in order to have an influence on the size and on the forms of the operations (Dupuy, 2010, p13). During our interviews, this fact was often evocated and denounced by housing developers:

Interviewed: When this is the local authority which examine the planning application, we say, here it is, we want to ask for a planning permission, and then, that's when the corrida begins. The guys we meet say, - no, you mustn't do like this. - Yes, but the PLU tell us that we have to do... - Yes, but you'd rather do like this instead. So, it gives birth to... to multiples, one, two, three, four, five consultation commissions of architect-adviser³. Sometimes, it goes fine, something it goes very badly.

² In the rest of this paper, we will speak about "endogenous rules". The term autonomous suggest that there is a barrier between "autonomous rules" and "control rules". We think that it is not the case.

³ The "architect-adviser" (*architectes-conseil*) are architects which are paid by the Greater Lyon and "which are made available for the member's communes of the Greater Lyon in order to study the integration of the building projects which are challenging with regards to the precious characteristics of the urban pattern, to their localisation, and so on" (public employee, interview 3, 03/04/2013)

Interviewer: There is a large part of negotiations? Even if...

Interviewed: I mean that there are some PLU's interpretations... which are inadmissible. There is a PLU which exists, we should apply it. (housing developer, interview 1, 23/01/2012)

The local authorities in charge to deliver planning agreements re-introduce some negotiations with housing developers, both in quantitative (floor numbers, site covering) and qualitative terms (nature of the materials, size of the apartments and of the green spaces). They act in this way in order to be more autonomous in the social system and have an effect on the urban development in even if the French law suggests that local authorities are not supposed to have any latitude on planning application analyses.

Thus, we observe that private actors in the housing markets are asking for strong zoning rules, even if these rules are supposed to lower their freedom to buy land wherever they want, and to build whatever they want on their plot. We are, in this example, touching to a confusion which can sometimes be made between deregulation and suppression of every rules of law. If one or several private actors are asking for deregulation, it is not, in our example, to introduce flexibility in the application of the law. On the contrary, it is to suppress any flexibility. If housing developers ask for strict rules of law, it is because it limits the chances of interpretation, and thus, of negotiations and appeals. The main element is not the absolute number of rules of law, it is to know if the rule is flexible in its application or not. If it is, it means that the housing developer will have to be ready to negotiate with local authorities, and then, to be ready to face several new zones of uncertainty when he build his financial schedule.

Thus, the way the zoning rules are written in a local use plan modify the “cartography of uncertainty areas” to be controlled by each actor involved on land and housing markets. Thus, it also changes the power of each actor on these markets. We know with Crozier and Friedberg (1977) than actors raise resources to control these “uncertainty areas” and increase their margin of manoeuvre. For housing developers, a negotiable and flexible zoning plan will increase two uncertainty zones, which is why they ask for strong rules. This two zones are created because:

- A flexible rules means that the number of square meters which will be allowed to build can always change. It thus makes it more complicated for a developer to estimate its global revenues from the operation, and thus, the amount he can mobilise to buy the land.
- Multiples interpretations of the rules of law facilitate the possibilities of appeals on planning permissions. This slows down the operations and can threaten their financial equilibrium.

These two zones of uncertainty cannot be control by the developers. As a consequence, their financial partners (banks or other partners which directly finance the operations) are considering these elements as a threat, which lower the developer’s capacity to control their financial resources and thus, their power on the markets. We then understand why developers “fight” against flexibility in rules applications.

During the periods where real estate prices are rising, developers can stand this uncertainty, because they are able to mobilise other resources as a counterweight. Firstly, the credit or other forms of financing are easier to find. Secondly, and mainly, there is a relative easiness for developers to find clients, which means that, thanks to the French juridical principle of “VEFA”⁴, the money they get from their clients is paid quickly

⁴ The VEFA, *vente en état futur d'achèvement*, is an off plan property sale for multi apartment's owners operations. This literally means “sale in a future state of completion”. This is a contract, which constitutes an important protection for both the customers and the developers. The contract provides for a payment schedule based on works progress, which

and on the pace of the building construction, and also that they can eventually rise the price of the apartments they sell, in order to finance to the public authority new requirements. On the contrary, when real estate prices are going down, these resources become complicated to mobilise.

That's why the social system which structure the relationships between actors on the land and housing markets, largely change between periods of economic crises of booms: « *power relations within the development process vary significantly between boom and bust* » (Adams, Tiesdell, 2013, p99).

Handling the rules of law, a tool to control urban development?

For the local authorities, we saw that a zoning plan which is partly flexible constitutes a resource. The most the rules are debatable, the most the local authorities, in charge to deliver or not the planning and building agreement will be powerful:

In the way local authorities are working, at least in big cities, never, never you will ask for a planning agreement without a politic agreement. You'll never ask for a planning agreement only by applying the rules of the PLU. If you do so, you are sure to be refused; the mayor will never sign a planning agreement like this. (Housing developer, interview 10, 24/02/2012)

However, it appears that the power of the local authorities is not without any limits. There are four elements which limit their capacities to "play" with the rules of law.

First, to be able to use this card, the local authority needs enough skilled workers. They have to be able not only to control the legality of an application, but also to negotiate with developers.

Secondly, the national law, which, in a centralised state like France, has to be the same everywhere and for everyone, does not allow a mayor to refuse a planning agreement if the application is conformed to the Plan Local d'Urbanisme. However, other parameters have to be taken into account. Indeed, it is not in the developer's interest to make its image worse in a commune: "*a developer which does not answer to political demands is menaced to see all its next planning applications systematically rejected*" (Pollard, 2011).

Thirdly, to "play" with the rules of law is easier when developers can handle the uncertainty it creates, which is mainly the case during economical booms. This means that for public authorities, these booming periods are both major opportunities to control urban development and to finance public equipments, but, in the same time, they aggravate what became common to call the housing crises, with a widening gap between wages and house prices.

Finally, the local authority has to handle the resource provide by a flexible zoning plan with precaution. To decide to play with the rules of law can become a dangerous game, which works only until the uncertainty it creates for other actors is not too big. If the "gap" between the rules of law and the new rules the local authority is setting becomes too wide, it can start to exclude some or all of the housing developers from the local market. The former can, to defend themselves, threaten to stop to operate in this area, on this market:

The day where we are in front of the architect - adviser and that he tells you, listen, you have the right to build five storeys, but by no way you will do so, you will build four storeys. Then, you decide either

provides funds for the developer at the pace the operation is built. The contract must also have a bank guarantee insurance .of successful completion.

to close the file, or to accept the demand. You don't have the choice. (housing developer, interview 3, 31/01/2012)

In front of a threat to leave by one housing developer, the local authority can try to activate the free competitions between developers. But the formers, at a certain point, can argue that the new rules imposed by the public authorities are becoming too unfavourable for them, which would mean that they collectively retire. This means that the local authority also plays a risky game. It confirms that every social system has an "organisational slack" (Friedberg, 1993, from Cyert and March, p75). This slack allows a system to tolerate a non optimal organization of the resources between actors. I.e. that a social system has slack which allows the effective rules of the games which regulate the system (what we called the "endogenous rules") to adapt themselves with regards to the rules of law. But this slack has an end, where some actors will not support anymore the uncertainty created⁵. On the opposite, to suppress any slack can stop the production: if the rules of law are completely strict, non negotiable or convertible, means to bind developers hand and foot, which would become incapable to adapt to any minor changes of the markets.

What is the best way to control urban development between setting strong and non negotiable rules, or soft and adaptable rules? It appears that the answer to this question cannot be the same everywhere and at every time. The actor's behaviours are contingent (Friedberg, 1993, p231). This means that these behaviours differ in time and in space, as circumstances change. In the opposite way, the circumstances, i.e. the state of the markets, changes because of actor's behaviours.

For public authorities, the choice between setting negotiable or non negotiable rules can quickly become very complicated. That is why it's important to set a clear and strong political project: the zoning rules are only a tool among others. Thus, their application will not be same if the main political objectives is to regulate land and housing prices, or to avoid any public deficit, or again to fight against sprawling. This means that the behaviour of the public authority, as any other actors implicated, is eminently strategic.

The city is a chessboard

Because the rules which frame the social system which lead to the creation of new housings are always changing, it means that there is no universal law of market equilibrium, no fixed or pre-determined scientific or juridical law. Because the actor's behaviours are contingent, the rules always changing and contradictory between them. *"The rules are neither pure constraints, nor only, to speak with economist's words, imposed costs by one of the agent to the others to equalise a bit the exchanges. They are not, neither, purely contractual rules which are conformed to the mutual interests of the participants and which can be explained, because of this, by a pure instrumental rationality. [...] The rules always result from a negotiation through which are exchanged behaviours which are needed by other actors to pursue or realised their objectives. This negotiation does not need to be formalised or exposed. [...] Then, the rules always are the temporary, precarious and problematic conclusion of a power struggle"* (Friedberg, 1997, p179 à 181). This observation

⁵ We can make the analogy with climbing, where the climber has to trust the person which slackens the rope. If the slack is big, the climber is completely free to move, but paradoxically, this situation can paralyse him, because he knows that if a problem occurs, he won't be able to mobilise any other resource to soften its fall. In the same way, the most a local authority wants to "slacken the rope constituted by the rules of law, the most the housing developer imagine that it's fall will be hard if he falls down.

applies to rules of law, but also to “endogenous rules”, i.e. the ones which actually frame the social system, i.e. also the land and housing markets. Thus, the urban development cannot be reduced to a purely economical or political process. Both aspects always interacting. Cities develop partly from public objectives, projects and rules of law, but neither urban plans, nor rules of law build cities. This building is the result of a game in which many people and organizations are involved (Healy, 2006, p65).

This means that the rules which explain why one or several actors take the decision to build a new project are the result of negotiations between actors, which in return, establish new “endogenous rules” to the market. If an actor estimate that this new rules are too unfavourable for him, he risks to leave the system, or will pretend he will, as we already explain earlier in this paper.

In order to manipulate in their favour the terms of the rules which frame the exchanges, the actors mobilise their resources (Friedberg, 1993, p138). Each actor (public authority, housing developer, land owner...), “*will make full use of the resources gained from the labour, land and markets in attempting to influence decisions in the political market*” (Adams, Tiesdell, 2013, p97).

This means that land and housing markets are structuring spaces of negotiation and game between actors. The regulation of this game is not given by one person who imposes its rules to the others through the law; it results from a constant bargaining. Therefore, the rules are created collectively; their binding character comes from the fact that they are the condition of a community, of a collective action (Reynaud, 1997, p96). That is why Thierry Vilmin is comparing what he called the “urban development system” (“*système d’aménagement urbain*”) to a chessboard (Vilmin, 2008). This means that the evolution of a city in time and space can be understood only by linking the evolution of the urban development system and of the actor’s behaviours. The actors and the system structure and re-structure each others permanently, like the players strategy and the configuration of the board in a game of chess.

We emphasize that we absolutely do not intend to limit the importance of the rules of law which are contained in zoning plans in France. They still fix major limits and constraints, which also mean that they provide resources: for the actors which are able to play with these rules. This is these behaviours which continuously structure who is acting on housing markets and then, the way the city is developing. But neither the rules of law, nor economical laws, eradicate other forms of regulations, which can only be understood by paying more attention to the ways actors interact on land and housing markets.

Land use plan and urban development control

To set a real estate operation, a constant search for areas of autonomy for the developer

For housing developers, a loss in net floor area they are allowed to build compare to what they originally forecast is a constraint. This reduces their capacity of action. We will see in this part of the paper that they mobilise other resources to deal with this uncertainty, in order to re-create some margins of autonomy, and then, some possibilities to act freely.

It appears in our interviews that the majority of housing developers deplore that the negotiations with local authorities are not real negotiations, but one way talks. Some developers use terms as “fight”, “corrida”, “trench warfare”, or again “inquisition”:

It’s like inquisition you know when we are making a planning application. [...] This is a real job, but it is not at all an exact science. I.e.. that we don’t come to apply something which is written in the PLU.

That's why it takes 6 to 8 months to set an application. Actually, we are always going there, trying, doing this, re-do it. We are cash cows! Do a model, do a 3D view, do this thing... We say OK, but take your decision now! But, you know, we manage to do it, but it's hard. It's complicated and it's not even just that it's that hard. (housing developer, interview 13, 07/06/2012)

Housing developers do not incriminate the fact that planning agreements are delivered by the local authorities.

They themselves recognise that they may be wrong about some interpretations of the rules contained in the land use plan. What they complain about is that the public authorities do not only control the legality of their applications. This fact, because of the reasons we exposed earlier, lowers their autonomy. However, developers don't speak about this uncertainty as the most binding one (to find a parcel of land and enough clients are more risky), for two main reasons.

First, a French commune is bound by the existence of the national urban planning law. To exceed too much its "official" role can expose her to a call to order by the State, represented by the prefect. Also, the developer can threaten to appeal in justice if he considers that the commune overtake too much its legal role. This means that the gap between the rules of law, which are public and known by everyone, and the endogenous rules created by the interactions between the actors and the system, are not only resources in the hand of the public authority to control urban development, as we saw earlier, but can also be a weapon in the hand of the actors (Crozier, Friedberg, 1977, p88). In this case, this is the actors which are subordinated to the rules of law who threaten to demand a full respect of the zoning rules which are annoying the superior (the commune), which himself set the rules. *"The subordinates can hide behind it (the rules of law) against the arbitrariness of their superior. If they know how to apply the rule, the superior will be helpless against them"* (Crozier, Friedberg, 1977, p89). But the weapon is double-edged for the developers. As we have already seen, keep a good relationship with a local authority also is an essential resource for a developer. It risks to don't be the case any more if he attacks the commune in a court.

Secondly, which is the main point, the housing developers handle this uncertainty by transferring it to another actor: the initial land owner. Indeed, the developers do not, in France, buy "cash" the land. They sign with the original land owner a sale agreement (which is a legal contract in French law, known as a "promesse de vente"). This agreement contains a financial amount for the transaction, a penalty clause in case of withdrawal of the developer, and several suspending conditions, i.e. conditions which, if it appears that they happen or are true, allow the developer to withdraw from the sale agreement. These suspending conditions have a major role: they transfer on the landowner the uncertainty contained in each of these conditions - for example, a land pollution which was not known, the finding of bank loans by the developer to finance the operation, a certain amount of pre-commercialisation of the flats, or the obtaining of the planning agreement. The challenge is, for each actor, in this case the developer and the landowner, to move the lines of the rules contained in the sale agreement, in order to move the maximum of uncertainty on the other's shoulders. To achieve this, some developers multiply the number of conditions in exchange of a very high financial offer. Others announce a lower financial offer, but in exchange, they limit the number of conditions and promise to the landowner that, if they buy the land, it will be done without new negotiations compared to the initial offer:

You know, when we buy land at a too expensive amount, which is the case of our colleagues, for some of them... when we say something, we keep to our word. If I say, I'll buy 100 bucks, in two years, if it's the crisis, I'll still buy 100 bucks. It happens quite often that colleagues, even big ones, are blocking building plots. There's so much competition, so they buy 300 bucks higher than anyone else, and they know from the beginning that they'll have to renegotiate the price, because the landowner, in two years, with a bit of luck, he already bought another home, he already spent the money he had only fictionally. [...] If you want... me, in my sale agreement, I have five suspending conditions. But in fact, I've only one real, it's the planning agreement. I've seen some others, they have a sale agreement... which goes from little "a" to little "u". There are 22 suspending conditions! (Housing developer, interview 13, 17/06/2012)

Besides the differences of strategies between developers, a major element mentioned in this interview is that the most important suspending condition, found without exception, is the condition to obtain the planning agreement. Thus, if the developer loses some floor area or has to face other additional costs - caused by the demands of the city or by petitioners⁶ - the developers turns on the landowner. In other words, the developers convince landowner on a purchase price based on what the zoning rules allows on floor area, but they also introduced a contract legally binding (because the sale agreement is signed in front of a notary) the fact that they may not apply what the rules of law, contain in the land use plan, allows them to do:

When we sign a sale agreement with landowner, we have a suspending condition with a minimal floor area requirement. Today, for example, let's say we bought the plot for a minimum floor area of 3000m². So in the consulting with the architect-adviser, we cut our project and we are told, yes indeed, theoretically you do 3000, but in practice this is 2000, in this case, the suspending condition isn't remove and we can... (Housing developer, interview 12, 21/03/2012)

The financial uncertainty created by the negotiations between the developer and the local authority around the effective implementation of the rules of law is transferred to the initial landowner. For the developer, the area of uncertainty is not nil, but becomes very limited:

The risk area between the sale agreement and the effective purchase of the land, I wouldn't say it is low. Of course it exists, but its consequence is small. Its consequence is to generate operating loss from investments of works we ourselves did. This can be two or three years of work that can be lost. But it's only time, and time is money... but it's only time (Housing developer, interview 7, 17/02/2012)

If the developer does not manage to negotiate a new price with the landowner, he will try to mobilise other resources, which will turn into other sources of financing. He can ask to banks, or raise the price of the flats

⁶ In France, people have two months to contest planning agreements. Even if a developer has the right to start the works if the planning agreement is under investigation by the justice, he will not do so. This may cause long delays (one or several years) before the operation's works begin. To avoid these delays, some developers try to find constructive or financial agreements with the petitioners, but they denounce this practice as a "racket".

he is selling⁷. This mobilisation of new resources can be quite easy during economic booms. But if the developer cannot, neither negotiate a new land price, not find other funds, he simply retires from the operation. This threat to completely withhold its land offers might have an effect on the landowner, especially if he is waiting for a long time to get this money to finance another project. In this case, the landowner does not have many resources to resist to the new low price the developer is offering.

Finance and control urban development by playing with the law enforcement

The whole mechanisms we speak about is well known and create a form of recovery of the planning gains created by new housing developments. Indeed, the items which are traded with the developers are finally supported by the initial landowners, not by the clients, the public authority or the developer. We should nevertheless specify that this practices are not “contract zoning” in a sense where the public authorities is allowed to trade floor area against urban quality, social housing or green spaces. In France, it is strictly forbidden to build more than what the land use plan allows. This means that the negotiations we are speaking about concern demands to not densify too much, by fear of the reactions from the neighbours of the new buildings and to use high quality materials. This negotiation does not include negotiation on the financing of public equipments, which means that we are not exactly in the same system than the one created by the agreements made under the “section 106 of the Town and Country Planning Act 1990” in the UK, but we are close to some practices known as “exactions” in the USA.

This negotiations between the public authority and the developers take place “in private”. That is why they can be seen by some planners and by the inhabitants with suspicion (Adams, Tiesdell, 2013, p257), like *“hidden practices, which are the antithesis of democracy”* (Vilmin, 2010) because they open the door to arbitrary decisions. They indeed contravene to the practice of law in France, which claim that the rules must be known in advance, and must be the same for everyone. It can also give the sensation that the “real” rules are known only by few people, which then control the development of the city without taking care of the regulation provided by the rules of law, which where voted by elected people. But it appears that *“urban growth is neither made against the regulation, nor out of it: It is precisely the regulation which frames the urban growth. The regulation is not monolithic; there are inevitable contradictions in its manifestations, in its speeches, its actions and in what it authorizes to do without expressing it. The regulation reflects, frames and synthesized the contradictions between actors”* (Guarnay, Albrecht, 2008). The city develops not against, or in spite of the will of one or several actors. If there are shifts on the application the rule of law, it is because one or more actors benefit from them (and others suffer). It means that where it appears that the behavior of the actors appears to be determined by their legal environment, this behavior may in fact be caused by deliberate choices to “play” with - or against - the laws that contribute to structure the social system.

Would it be possible to formalized this practices and to say openly that the zoning rules are negotiable, instead of staying in this “half-way” system? It appears that it is what the Lyon Urban Community (Greater Lyon) is already doing in its land use plan. The way rules are written deliberately creates margins of interpretation (public employee, interview 3, 03/04/2013), which oblige developers to get some informations about which are the intentions of the public authority before they start any development This is a way, for the public authority, to open an area of discussion, and then to control the development of city, operation by

⁷ Which would mean that what the public authorities ask to the developer don't lower the land prices, but have an inflationist effect on real estate prices.

operation.

A capacity to negotiate that differs in time and spaces

We saw that the transfer of the financing of urban development on landowners has a major limit: the risk of withdrawal of the owner, then of the developer, which would stop the housing production. This means that to authorise negotiation based on the zoning rules has, as a consequence, to base the production of the city on present market climates. But we have seen that markets, like any other social construction, are unstable. For the public authority, regulate the housing production - and the urban development in general - by playing with zoning rules is thus a random game.

This system of control can help to create better places, which fit to public's objectives, but in quantitative terms, if housing prices fall down, housing developers won't be able to mobilise other resources to continue de face every requirements and still propose financial offers which fit to landowner's wish. That is the situation that England has know at the end of the 2000's, which finally pressed the Cameron government, in august 2012, to launch a consultation toward local authorities, developers and landowners, in order to renegotiate the agreements done between 2007 and 2010 under the section 106 of the Town and Country Planning Act 1990⁸. It shows that a new uncertainty area has emerged for developers, who claim they cannot any more mobilised their "client resources" to face all the requirements of the local authorities which were set under the section 106 agreements - which, as we saw earlier on, also constitute an uncertainty for them.

On the contrary, to set a strict and binding rule, with no "organisational slack", means that the urban quality created by developers will stay equal, whatever the economic climate is. However, it also creates the risk to quantitatively block the production during periods of crisis. It is one of the risks the housing developers spoke about in our interviews. In Lyon, a new public measure set in 2011 imposes to every housing developer to sell, in some areas of the city, from 20 to 30% of the floor area they build to social housing developer (*bailleurs sociaux*). It rises the share of social housing in neighbourhoods where there are needed and where social housing developers cannot provide enough resources to build housing by themselves. However, it generates the risk to base the production of social housing on free housing market.

Between a large flexibility and binding rules, the choices to make by public authorities are highly political and differ from one neighbourhood and one period of time to the other. But in spite of its importance, this issue remains largely absent from public debates in urban planning, even if it is closely related to the question of who is paying the urban development between the taxpayers, the landowners and the inhabitants (as clients and users of their apartments)? Local authorities are not bound by the market. They are one of the main actors in it and have the power to use land and urban planning policies to modify the financial equilibriums between actors. *"It remains to public authorities to define to what extend they want and can modify this equilibriums [...] in order to achieve the projects they are the most expecting, that the market do not realised spontaneously"* (Castel, Jardinier, 2011).

⁸ □ DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT, *Renegotiation of Section 106 planning obligations, Consultation*, London, August 2012, 12p.

Conclusion

We saw that neither the rules of law, nor scientific laws govern the evolution of land and housing markets, and then, the way the urban space is produced. This does not mean that it does not exist any structuring elements. It rather means that it is a set of rules that structure the actor's behaviours. In return, these rules continuously change because of actor's actions. In other words, the rules of law, binding or not, always constitute opportunities and constraints for the actors in their struggle to mobilise resources to the most autonomous as they can. *"Like any control, it (the rule of law) has deep effect on social relations. But it does not suppress all other forms of regulation. On the contrary, the rule of law is closely connected to exchange, conflict and negotiation with the endogenous rules. The effect of control does not make a clean sweep of the autonomous rules"* (Reynaud, 1997, p211).

Julie Pollard showed that *"local interactions [...] can turn upside down the formal national regulation (i.e. the national rules of law) in the housing sector"* (Pollard, 2011). We saw in this paper that it can also be the case with local rules, for example with zoning rules contained in the land use plan. This may perplex a system's outsider, like any citizen, who can see that local authorities contribute to negotiate a rule, supposedly binding, that they themselves decided to write and vote. Local authorities are acting this way in order to integrate public equipments, high quality public spaces and buildings, social housing, environmental quality... But achieving these goals requires to raise funds and to interact with many actors. This means that they have to deal with many uncertainty areas. To control some of this uncertainty, they transfer a part of it on housing developers shoulders, thanks to the rules of law and the way they are applied. Then, developers try to do the same, i.e. to get rid of this uncertainty by transferring it on landowners and other people who finance the operation. If this method of financing and control of the development seems fair, because the public authority "only" levy a part of the planning gains generated by its initiative, it should be used with caution. On the one hand, urban spaces regulation should not rely only on new housings, equipments and public spaces development. A new neighbourhood never reaches the degree of urbanity as an old one. On the other hand, to base this production on the fact to "play" with the application of the rules of law, in an "English tradition", obliges the public authorities to integrate the fact that land and housing markets are social constructions, which means that they are inevitably spatially and temporally unstable.

For social scientists, it is fundamental to keep in mind that the rule of law and its application cannot be study separately from market mechanisms. Urban studies cannot ignore the contingent nature of land and housing markets.

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