International Municipal Lawyers Association

Advancing Excellence in the practice of Local Government Law

Retrofitting Our Cities For the 21st Century

Development Consent and Land Assembly

IMLA International Committee Webinar Series

Tuesday, April 4, 2017

Shared Problems, Shared Solutions


HANDS ACROSS THE SEA.

Our Panel

- **Michael Humphries QC**
  - Francis Taylor Building
    - London



- **Dwight Merriam, FAICP**
  - Robinson & Cole LLP
    - Hartford



Retrofitting Our Cities for the 21st Century – An Overview

- Competition between cities in a global economy
- Advantages and challenges for older cities
- Some questions for our planning systems
  - are our planning systems fit for purpose?
  - are we delivering
    - housing?
    - work places?
    - transport?
    - utilities?
- Some reflections on shared problems and shared solutions

Competition Between Cities in a Global Economy

- **How will cities compete in the 21st Century?**
  - **affordable high quality housing**
  - **high specification commercial space**
  - **education/knowledge hubs**
  - **communications systems**
  - **local/national/international transport links**
  - **"destination" retail and cultural centres**
  - **focussing on high quality of life**
  - **stable and fair political/legal/taxation systems**
  - **and, most importantly:**

    attracting great people and companies

Competition Between Cities in a Global Economy

- The role of the planning system in 'facilitating' cities fit for the 21 century
  - enabling development of homes and work places
  - allowing easy movement and communication
  - providing infrastructure to support people and activities
  - mediating between competing land uses
- But the planning system cannot itself
  - create quality of life
  - create stable and fair political/legal/taxation systems
  - attract great people and companies
    - that is an outcome of everything else…

Advantages for Older Cities

- Large (fairly settled) populations
- Established commercial centres
- Great retail and cultural facilities
- Leading universities
- Range of housing opportunities

Challenges For Older Cities

- Dense urban fabric (few large development sites)
- High land values
- Expensive housing of variable quality
- Ageing infrastructure
  - transport/utilities/communication systems
- Historic buildings and open spaces that need to be protected
- Tightening environmental controls
- Well-organised pressure groups

Some Shared Problems… How Can We:

- Create affordable housing in cities with high land values?
- Get people moving around and between densely populated urban areas?
- Accommodate population and economic growth within acceptable environmental limits?
- Provide infrastructure to support 21 century expectations in old (and sometimes ancient) cities?
- Achieve 'buy in' from local politicians and communities?

Some Questions for our Planning Systems

- Are our planning systems “fit for purpose”?
- Are we delivering
  - housing?
  - work places?
  - transport?
  - utilities (electricity, gas, water, sewerage)?

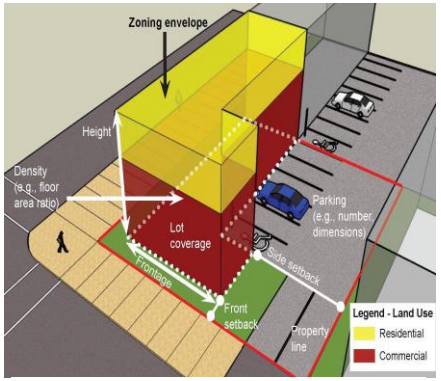
Are Our Planning Systems "Fit For Purpose"?



"Oh, yes, you need specific credentials to be a town planner."

Are Our Planning Systems "Fit For Purpose"?

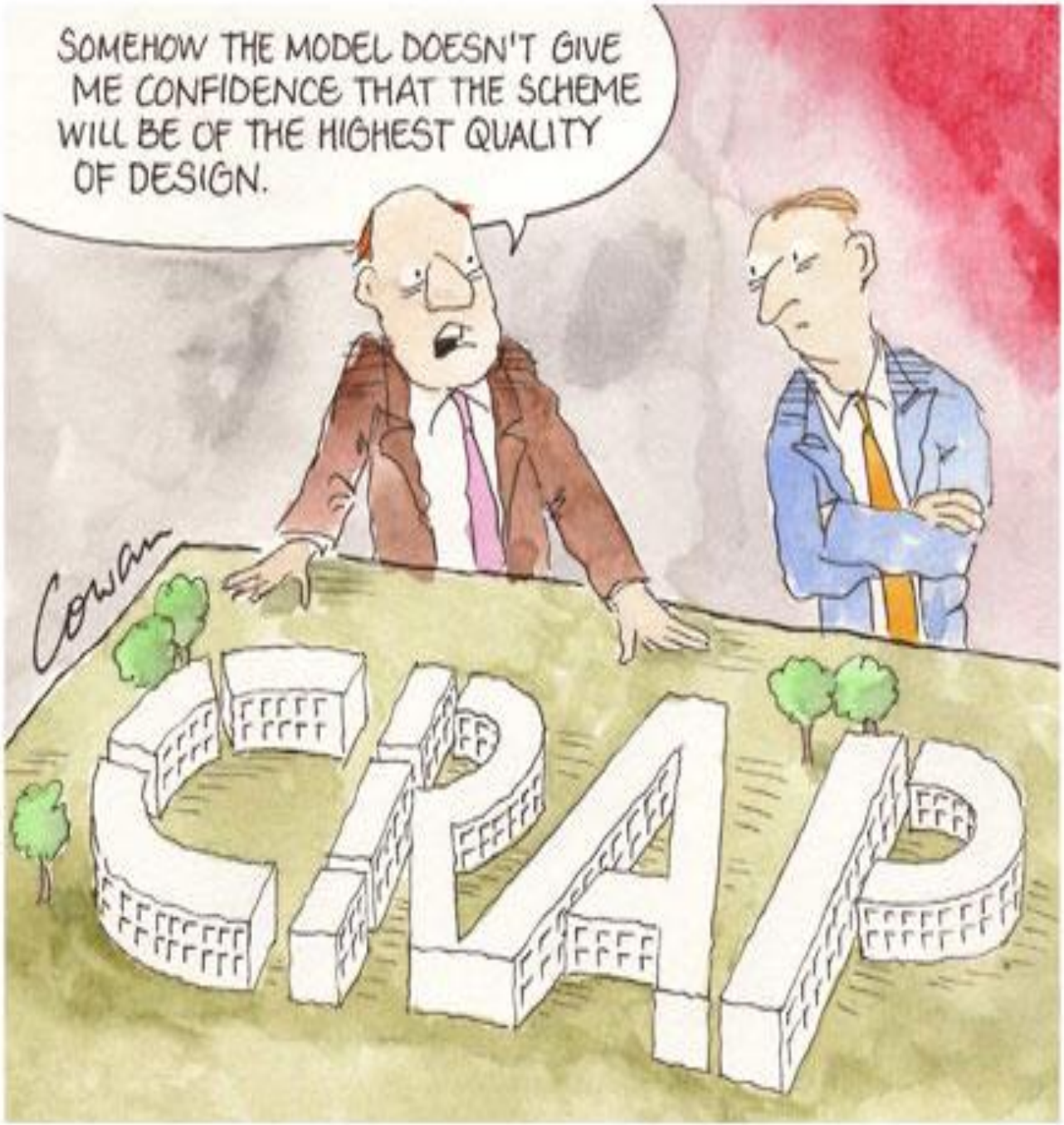
- Some issues
  - creating certainty and speed in decision-making
  - setting a framework for development
    - role of policy (if any)?
  - respecting our cultural heritage
  - taking account of environmental effects
  - dialogue with local communities
  - public access to environmental information
  - rights of appeal



Communities and Local Government

www.communities.gov.uk
community, opportunity, prosperity

National Planning Policy Framework


SOMEHOW THE MODEL DOESN'T GIVE ME CONFIDENCE THAT THE SCHEME WILL BE OF THE HIGHEST QUALITY OF DESIGN.
Cowan
CRAP

Are Our Planning Systems "Fit For Purpose"?



- US Successes
  - fast track permitting for certain uses
  - zoning overrides and burden shifting
  - unified development codes
  - Constitutional and statutory protection of property rights
  - brownfield investigation, remediation, development incentives
- US Failures
  - "floating" zones and planned unit developments
  - making the developer "eat the carrot"
  - rights of appeal to courts
  - federal and state laws
  - eminent domain misuse and inadequate compensation
  - fracking and groundwater policies
  - environmental justice
  - remediation standards

Are Our Planning Systems "Fit For Purpose"?



- UK Successes
  - clear hierarchical policy framework
  - strong protection of historic assets and green belt
  - sophisticated EIA procedures
  - separate infrastructure planning system
  - new Housing and Planning Act 2016 initiatives
    - permission in principle (hopefully)
- UK Failures
  - planning policy often restrictive and out of date
  - local planning authorities are under-resourced
  - decision-making can be slow and uncertain
  - public consultation often inadequate
  - strong 'nimby' culture
  - legal challenges to decisions are widespread

Are Our Planning Systems "Fit For Purpose"?



- **Lessons Learned**
  - **speed and certainty in decision-making are key**
    - **efficient planning authorities require adequate funding**
    - **principle that development acceptable should be established early**
  - **clear and up-to-date planning policy can provide an important framework for developers and manage community expectation**
  - **environmental impact assessment is an important aid to decision-making; but should not be an end in itself**
  - **community "buy-in" can be essential**

Housing


I SEE NO PROBLEMS. WE CAN GET LOTS MORE OF THESE HOUSES INTO THE SOUTH-EAST
Cluff

Housing




November 18, 2015 4:59 pm

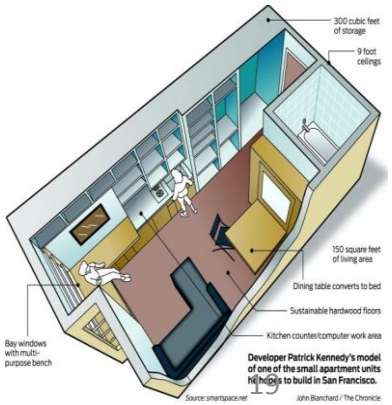
Landlords attack conversion of London offices to homes

Conor Sullivan

Share Author alerts Print Clip Comments



- Some issues
  - identifying sites in a dense urban environment
  - affordability
    - low income families/young professionals/ gentrification
  - appropriate housing mix
    - micro-units/tiny houses/integrating residential types
  - residential units as an investment type
    - overseas investments/Airbnb/buy-to-let
  - identifying sustainable locations for new housing
    - mixed use areas/public transport hubs
  - office conversions



Housing



- US Successes
  - zoning overrides
  - impact fees
  - infrastructure support
  - regulatory acceptance
  - form-based codes
- US Failures
  - integration
  - low income
  - gentrification
  - alternatives to the automobile

Housing



- UK Successes
  - affordable housing as percentage of developments
  - higher densities in inner city areas
  - integration with transport links
  - re-use of brownfield sites
  - “starter homes” initiative (hopefully)
- UK Failures
  - failure to meet housing demand
  - housing very expensive in many cities (esp. London)
  - landbanking
  - buy-to-let has inflated prices
  - overseas investment purchases creating 'dead' areas

UK Case Study: Battersea Power Station





UK Case Study: Battersea Power Station

- Large underused development site
- Former Battersea Power Station - Grade 1 listed building
- Major residential-led development
- Extension of Northern Line (London underground) but, issues over
  - high proportion of overseas (investment) purchases
  - most units are expensive

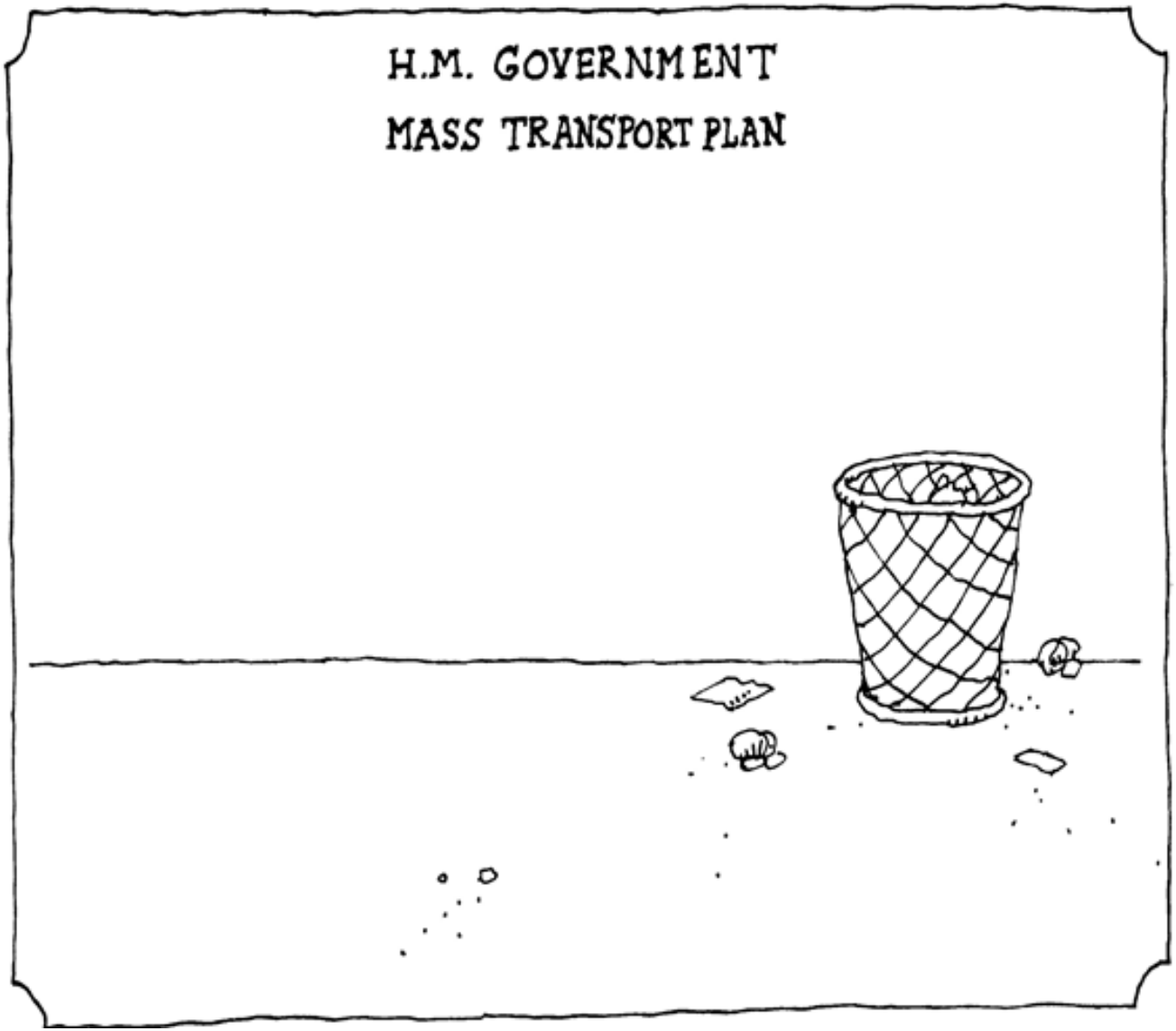


Housing



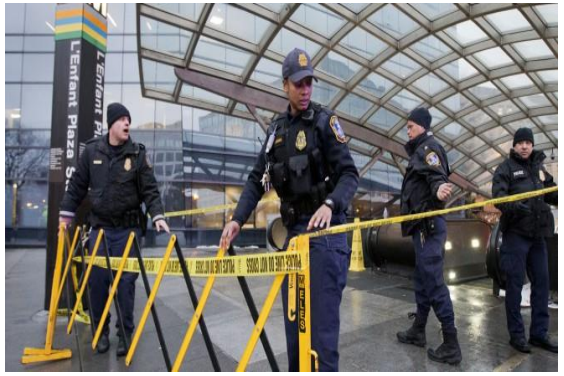
- Lessons Learned
  - reducing personal vehicle movements will become increasingly important
    - higher densities will be required around public transit nodes
    - more public transit nodes will be needed
  - we need to incentivise developers to bring forward a percentage of “low cost”/starter housing as part of residential schemes
  - greater strategic thinking is needed about infrastructure support for inner urban housing
  - very high land values distort housing supply and will need to be managed
  - individual residential units as an investment vehicle should be discouraged

Transport



Transport





- Some Issues
  - local highway congestion
    - and its effects on journey times and air quality
  - overcrowding on public transport
  - creating new transport corridors in dense urban areas
  - international transport links
    - ports and airports
  - congestion charging
  - bus and cycle lanes
  - accommodating driverless vehicles





Transport



- US Successes
  - transit-oriented development
  - millennial decision-making
  - increased rail
  - busways
  - Megabus
  - Uber and the like
- US Failures
  - long-haul passenger rail
  - infrastructure maintenance
  - land use regulation around transit stations
  - little regard for climate change

Transport

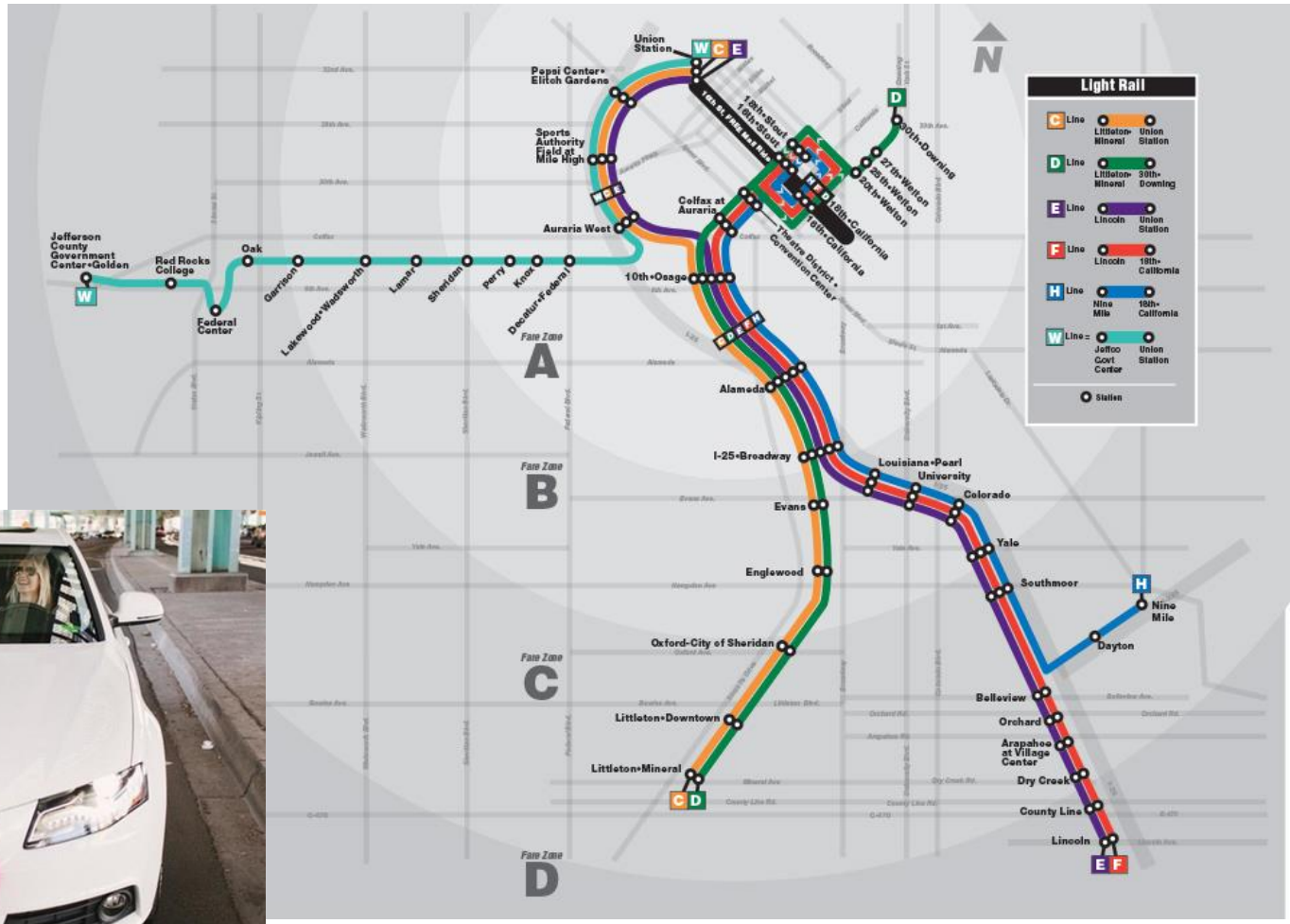


- **UK Successes**
  - **Planning Act 2008 and hybrid bills delivering major transport schemes between cities**
  - **congestion charging in London**
  - **dedicated bus and cycle lanes in inner cities**
  - **increased use of rail between cities**

- **UK Failures**
  - **uncertainty over airport policy is delaying better international links**
  - **road congestion and resulting delays continue**
  - **public transport congested at peak periods**
  - **congestion causes air pollution**

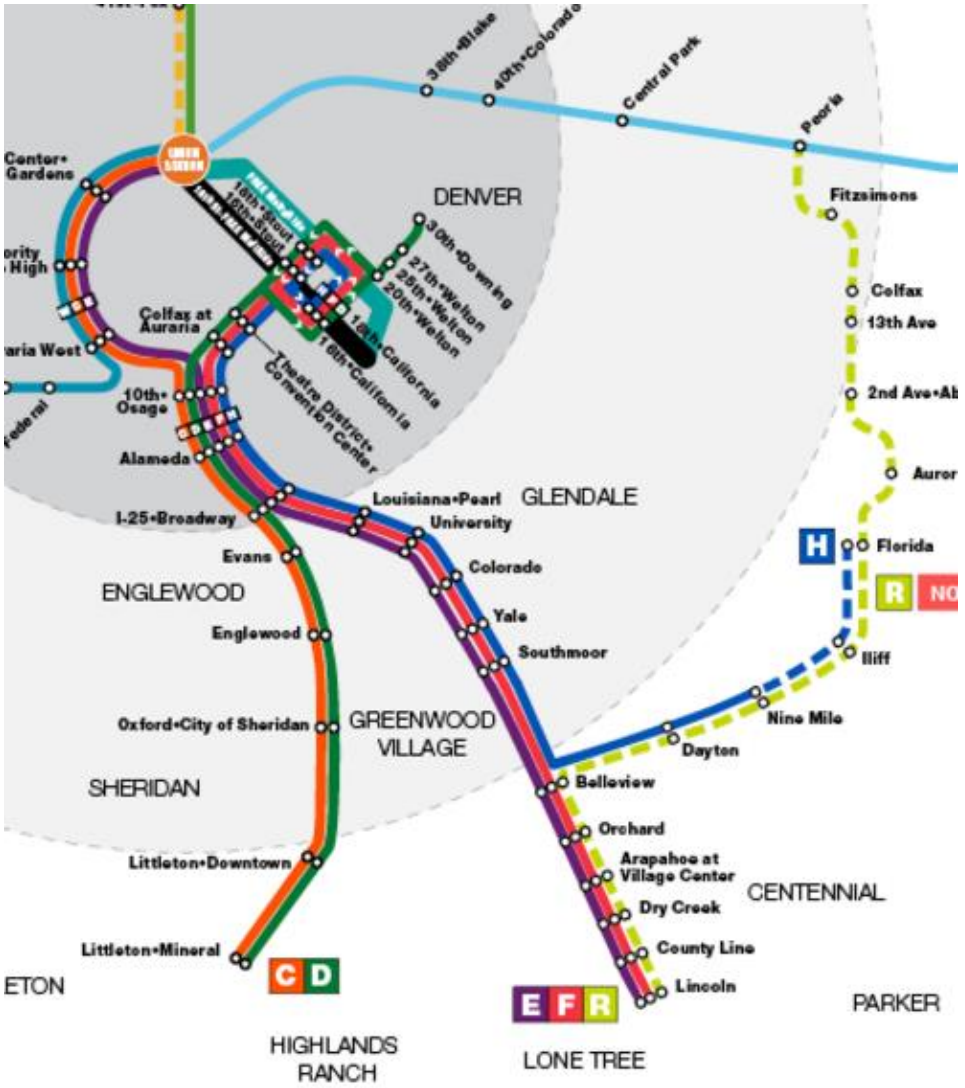
US Case Study: Lyft to Light Rail





US Case Study: Lyft to Light Rail

- Free rides to stations
- "First mile-last mile" problem
- City of Centennial, Colo.
- Funded by PPP
  - $200,000 Centennial
  - $200,000 Southeast Public Improvement District
- 6-month trial

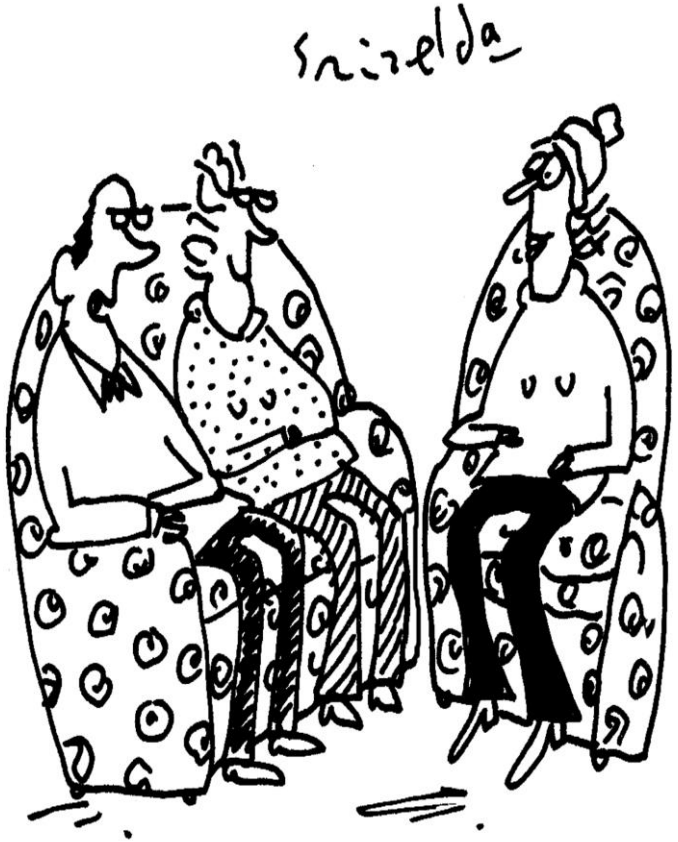


Transport



- Lessons Learned
  - it's hard to create new transport corridors in dense urban areas
  - the emphasis will need to be on
    - tunnels
    - cycle and bus lanes
    - frequency, reliability and smart technology (e.g. transport apps)
  - reducing air quality problems will become a central theme
    - this will strongly incentivise low emission vehicles
  - road user charging is an important tool
    - and can be used to drive AQ improvements and reduce congestion
  - the effects of driverless vehicles on road demand will need to be understood

Utilities



"We only cut our CO2 emissions
to piss off the utilities companies."

Utilities



- Some Issues
  - particular problems of linear infrastructure projects
    - tunnels/overhead lines/cable ducts etc.
  - private utilities
    - some consequences of privatisation for public acceptance
    - powers of compulsory purchase/eminent domain
  - regional/national benefits vs local impacts
  - construction impacts for major projects in urban areas
  - public engagement





Utilities



- US Successes
  - renewable energy incentives
  - state-level decision making
  - federal incentives
  - state and local programs
  - separating sewers from storm water
- US Failures
  - electric grid
  - pipelines
  - micro-grids
  - coal-fired plants
  - public opposition to wind-power and solar
  - “all or nothing” nuisance and policy power decision making
  - adapting to climate change

Utilities



- UK Successes
  - strong government commitment to new infrastructure projects
  - Planning Act 2008 is delivering major projects
  - National Policy Statements for infrastructure projects
  - the new National Infrastructure Commission
- UK Failures
  - difficulty of balancing national/regional benefits against local impacts
  - lack of community acceptance of major projects
  - opposition to compulsory purchase by private (often foreign-owned) utility companies
  - compensation for compulsory purchase

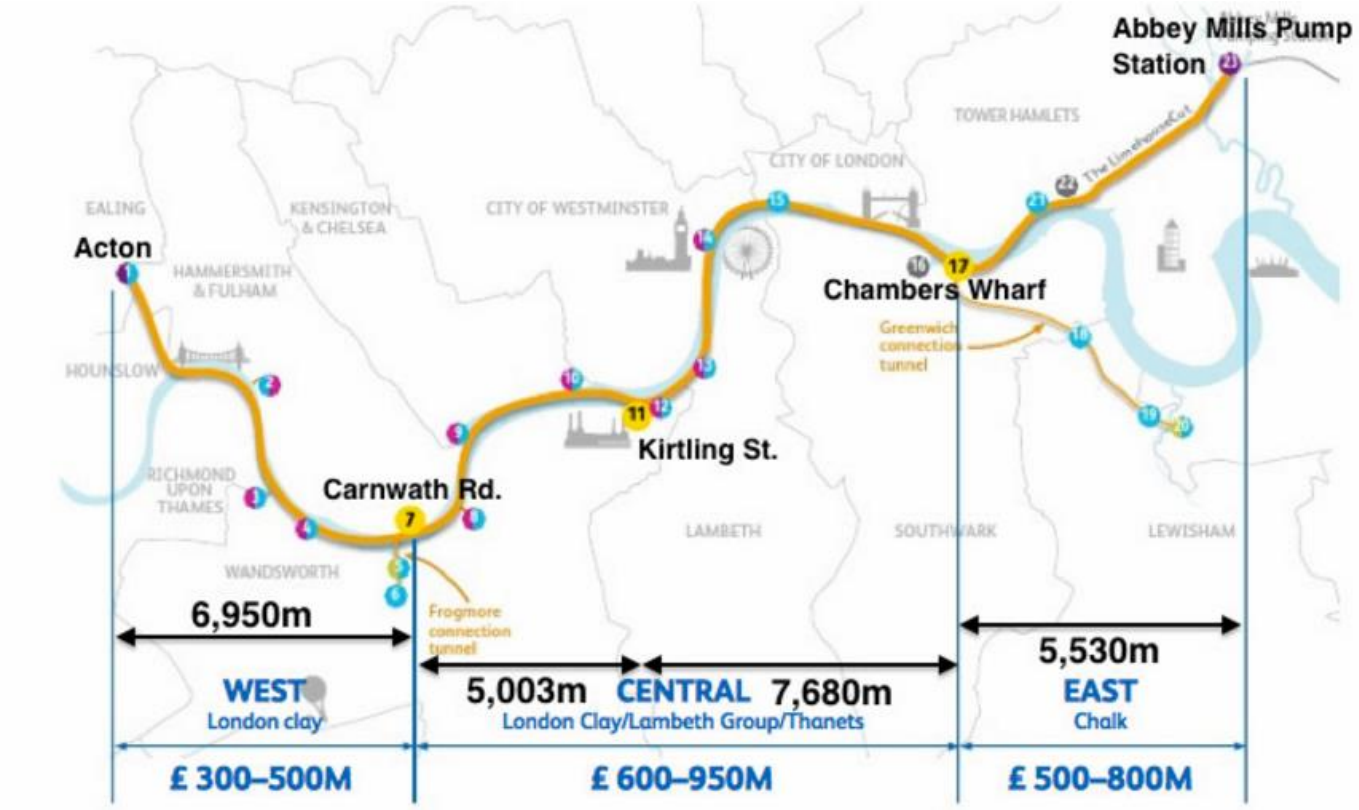
UK Case Study: The Thames Tideway Tunnel



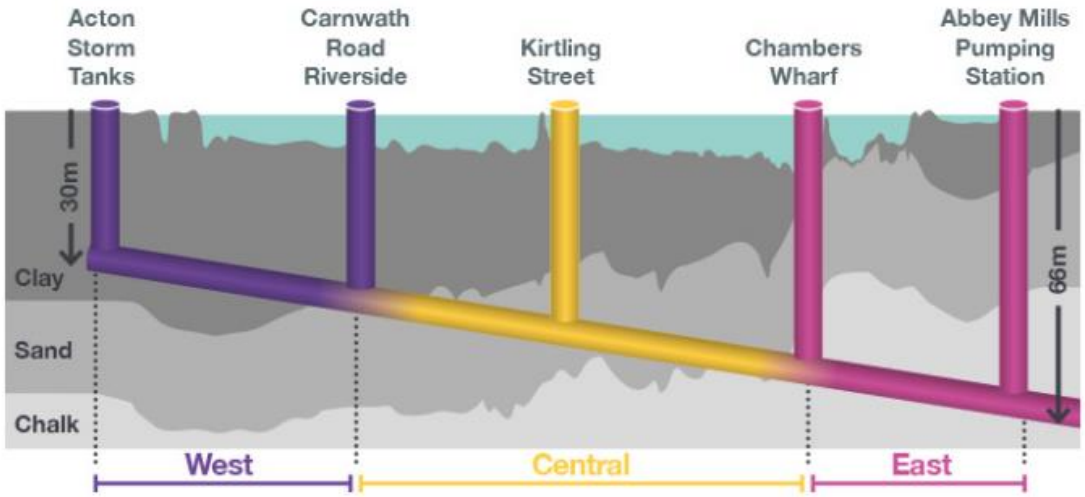


UK Case Study: The Thames Tideway Tunnel

- **Hugely important environmental project**



- **Development within 14 local authority areas**
- **Major construction activities on tightly constrained sites for up to 6 years**
- **Sensitive environmental issues, including construction noise and ground settlement**
- **“Safeguarding orders” to prevent other development of sites before project granted development consent**
- **legal challenges to secretary of state's decision to grant development consent**



Utilities



- **Lessons Learned**
  - **strategic thinking required to meet long term infrastructure needs**
  - **clear consenting and land assembly powers essential**
  - **linear utilities hard to retrofit in large cities**
  - **land assembly problematic given scarce sites; land valuable and infrastructure a LULU**
  - **construction impacts can be greater than operational impacts for large projects**

Reflections on Shared Problems and Shared Solutions

- Do we have any shared solutions to the shared problems posed earlier?
- If so, what are they – and do any of you have better solutions?



How Do We Create Affordable Housing In Cities With High Land Values?

- Moderating land values for housing will involve excluding alternative more valuable uses
- Non-planning tools will be required to “take the steam” out of the housing market
  - targets will include “buy-to-let”/overseas investment
- Residential developers will have to be encouraged to bring forward “affordable” housing
- House building rates will need to be increased
- Landbanking will need to be penalised

How Can We Get People Moving Around and Between Densely Populated Urban Areas?

- Focussing development on public transit nodes
- Increasing frequency, reliability, comfort, speed on public transit
  - bus lanes not only improve bus times, they reduce road space for cars
- Network of cycle lanes will reduce congestion and improve public health
- Taxis/Uber/car sharing etc. have a role to play (and require few central area parking spaces)

How Can We Accommodate Population and Economic Growth within Acceptable Environmental Limits?

- Reducing the carbon footprint of large cities will be a major challenge for the 21st century
- Likely to involve
  - creation of more sustainable, resilient building forms addressing global climate change
  - significant changes in transport modes
  - more tele-commuting
  - major move towards non-carbon energy sources
  - reductions in personal energy/water/waste usage
- Our planning systems will have to respond to and facilitate these changes

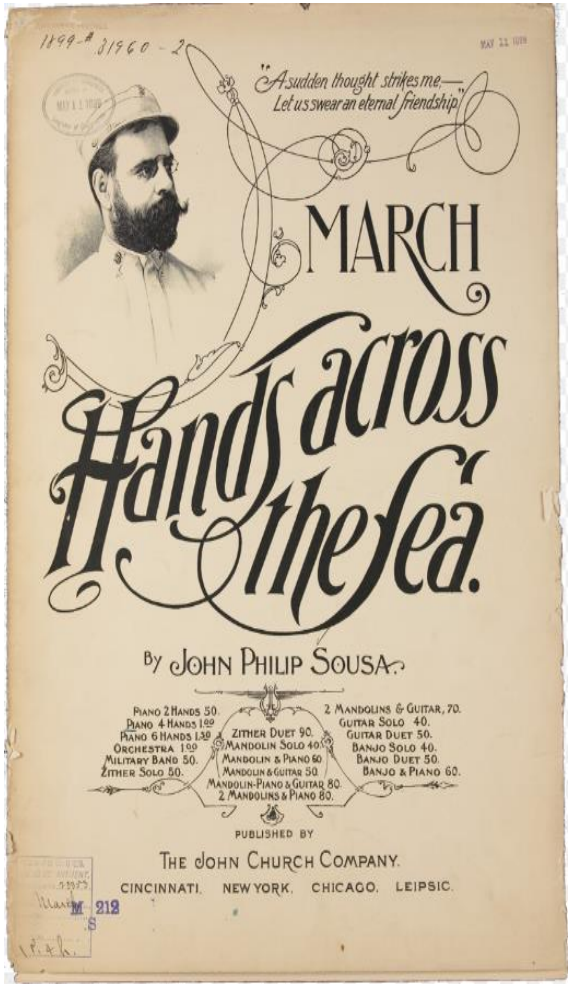
How Can We Provide Infrastructure to Support 21st Century Expectations in Old (Sometimes Ancient) Cities?

- **Utility companies will need to be incentivised to bring forward 'difficult' inner urban infrastructure schemes**
- **Strong consenting and land assembly powers will be required**
- **Potential development sites will have to be "safeguarded" to stop alternative development**
- **Community impacts will need high levels of mitigation**
- **Mechanisms will be needed to overcome "short term" solutions**

How Can We Achieve "Buy In" from Local Politicians and Communities?

- Understanding that development rarely brings direct benefits for local communities, but it often brings direct impacts
- Recognising that genuine engagement means sharing information and open-minded scheme optioneering
- Focussing on maximising benefits and mitigating impacts
- Land assembly compensation above open market value to reflect "compulsion"

Q and A



Sousa prefaced the score with a quotation from the English diplomat, John Hookham Frere (1769-1846):

"A sudden thought strikes me; let us swear eternal friendship."