



Tackling Root causes Upstream of
Unhealthy Urban Development

In control of the law: power asymmetries among actors in urban development and their ability to control the legal determinants of health

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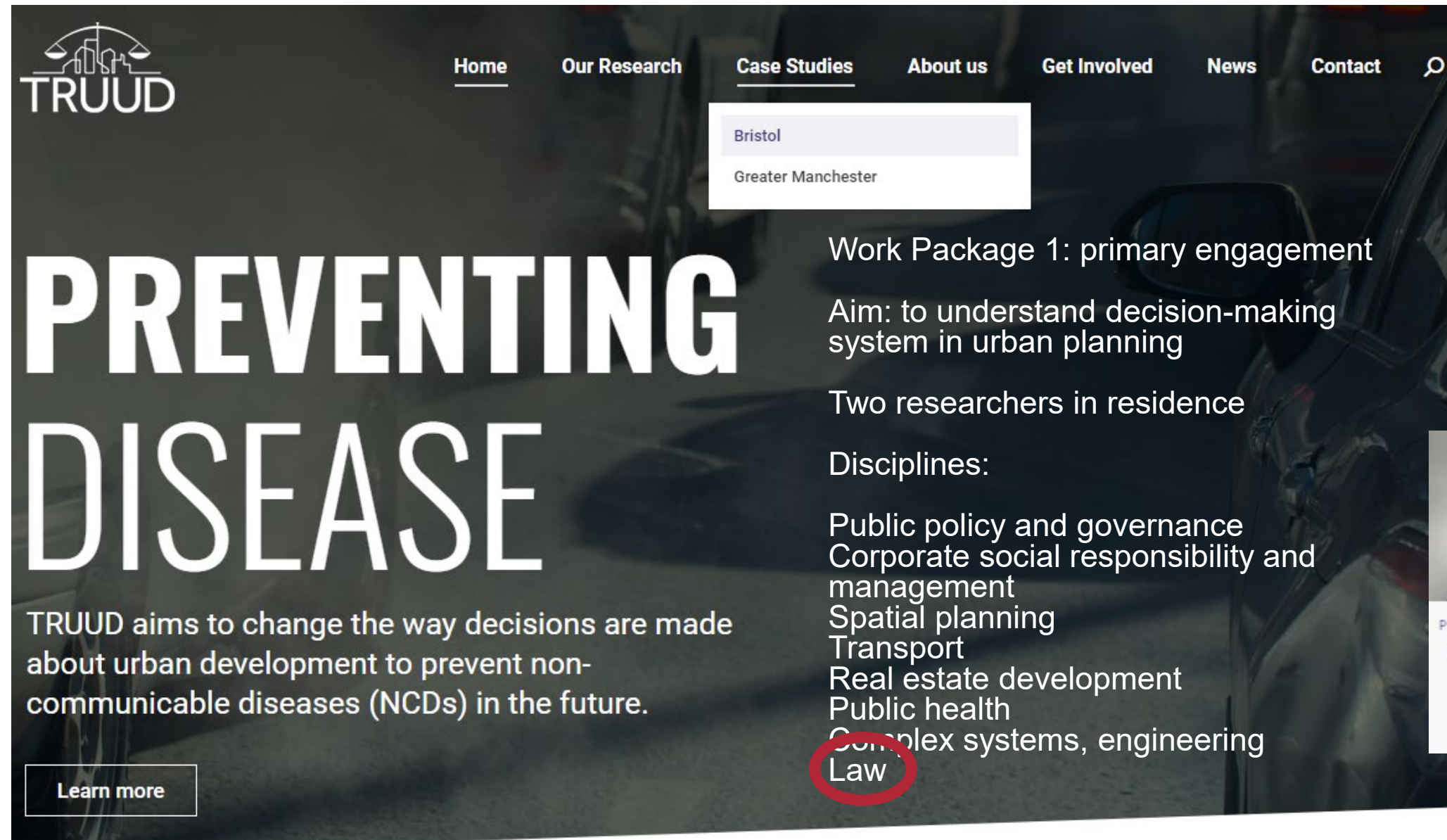


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The screenshot shows the TRUUD website with a navigation bar at the top containing links: Home, Our Research, Case Studies, About us, Get Involved, News, and Contact. The 'Case Studies' link is active, and a dropdown menu is open showing 'Bristol' (highlighted) and 'Greater Manchester'. The main content area features a large heading 'PREVENTING DISEASE' on the left and a detailed description of 'Work Package 1: primary engagement' on the right. The description includes the aim, researchers, and a list of disciplines. The word 'Law' in the disciplines list is circled in red. A 'Learn more' button is located at the bottom left of the main content area.

PREVENTING DISEASE

TRUUD aims to change the way decisions are made about urban development to prevent non-communicable diseases (NCDs) in the future.

[Learn more](#)

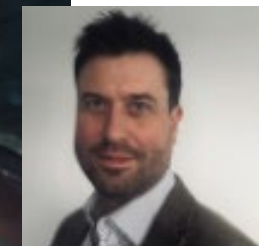
Work Package 1: primary engagement

Aim: to understand decision-making system in urban planning

Two researchers in residence

Disciplines:

- Public policy and governance
- Corporate social responsibility and management
- Spatial planning
- Transport
- Real estate development
- Public health
- Complex systems, engineering
- Law**



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The legal within the social determinants of health

The Lancet Commissions

Public Health

Closing the gap in a generation: health equity through action on the social determinants of health

Michael Marmot, Sharon Friel, Ruth Bell, Tanja A J Houweling, Sebastian Taylor, on behalf of the Commission on Social Determinants of Health

The Commission on Social Determinants of Health, created to marshal the evidence on what can be done to promote health equity and to foster a global movement to achieve it, is a global collaboration of policy makers, researchers, and civil society, led by commissioners with a unique blend of political, academic, and advocacy experience. The focus of attention is on countries at all levels of income and development. The commission launched its final report on August 28, 2008. This paper summarises the key findings and recommendations; the full list is in the final report.

*Lancet 2008; 372: 1661-69*See *Editorial* page 1607See *Perspectives* page 1625Department of Epidemiology
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‘The conditions in which people are born, grow, live, work and age.’

Critical role in shaping outcomes of
non-communicable diseases

The legal determinants of health: harnessing the power of law for global health and sustainable development

*Lawrence O Gostin, John T Monahan, Jenny Kaldor, Mary DeBartolo, Eric A Friedman, Katie Gottschalk, Susan C Kim, Ala Alwan, Agnes Binagwaho, Gian Luca Burci, Luisa Cabal, Katherine DeLand, Timothy Grant Evans, Eric Goosby, Sara Hossain, Howard Koh, Gorik Ooms, Mirta Roses Periago, Rodrigo Uprimny, Alicia Ely Yamin*

Executive summary

Health risks in the 21st century are beyond the control of any government in any country. In an era of globalisation, promoting public health and equity requires cooperation and coordination both within and among states. Law can be a powerful tool for advancing global health, yet it

drawing on identified areas for reform, as well as principles of good governance and the right to health, we offer seven concrete recommendations for action.

Legal determinant 1 states that law can translate vision into action on sustainable development. The UN Sustainable Development Goals (SDGs) present a bold

Lancet 2019; 393: 1857-910

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See *Comment* pages 1781 and
1782


‘This Lancet Commission articulates the crucial **role of law in achieving global health with justice**, through legal instruments, legal capacities, and institutional reforms, as well as a firm commitment to the rule of law.’

The legal determinants of health and urban development

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Supplement Article



Law and urban governance for health in times of rapid change

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“Governance” encompasses both the formal organization of management capacity, responsibility and authority within local government and the broader networks of influencers—NGOs, businesses, informal citizen groups—that shape policy decisions and implementation.’

The concept of law ‘includes legal texts like constitutions and statutes, but also the formal policies of public and private institutions, the implementation/enforcement practices of legal agents and *the beliefs about the law prevailing among those subject to it.*’

Our aim: to broaden and deepen how the legal determinants of health are understood and represented in public health and urban planning discourses, practice, and policy-making and implementation.

Legal framework of urban development decision-making in the UK

Adapted from Burris' typology of laws

Planning law (also incidental law)

Statutes, e.g.

Town and Country Planning Act
1990

Planning Act 2008

Compulsory Purchase Act 1965

Regulations, e.g.

Building Regulations 1948

**National Planning Policy
Framework (England)**

Incidental laws

‘Body of law that has little or no explicit link to health but nonetheless may influence or mediate other social determinants of health.’ – Burris & Lin 2021

Environmental regulations, e.g.

Clean air

Retrofitting of buildings

Habitats regulations

Infrastructural laws

‘Establish the powers and duties of institutions and agents in the health or broader governance system.’ – Burris & Lin 2021

Contract law

Corporate law

Procurement

Public law, e.g.

Local Government Act 2010

Equality Act 2010

Health and Social Care Act 2012

Our case study on urban development and the public's health

Who defines and controls 'the legal'? Political and commercial controls

123 semi-structured interviews conducted online in 2021



Seven disciplinary teams with expertise in urban planning, transport, public policy, public health, real estate, management



Two additional teams sent their own questions and analysed the data from their own disciplinary perspective: public engagement and **law**



Stakeholder groups: local planning authorities, national government, developers, consultants, real estate investors



Two inclusion criteria:

- the individual's understanding of the urban development system;
- and/or their influence in the system



Local planning authorities are not equipped to deal with the discretionary decision-making system

- LPAs decide on each planning application individually, their decision is informed by the **Local Development Plan** and the **National Planning Policy Framework**
- But LPAs **lack time, financial resources and legal expertise**
- They cannot truly weigh health matters against other considerations

“I don’t get too involved with lawyers if I can help it, to be quite honest, we have very limited capacity at the city council, unless we’re in a big mess, I don’t get them involved.”

Health is separate from the planning decision-making process:

“[I]t comes throughout the process, but I wouldn’t say it’s particularly well joined up or a guaranteed route each time. It’s not a set process or a set legal review that you would follow for it.”

Local planning officers lack confidence in legal matters

- Complex legal and regulatory environments governing urban planning
- Coupled with lack of resources in LPAs

“Thinking about inclusion and diversity, the protective characteristics, I guess there’s legal framework around that and I’m actually not quite sure how it works within the council but is that a legal framework?”

- This was perceived by actors in the private sector:

“[W]hat we tend to do for quality purposes is put together Q&A documents where you have all your legal questions answered in plain English [...] So that’s something we normally do as well to assist the council because the council is made up of normal people. You know some of them may have a legal background but most of them are just normal people [...]”

The risk of legal challenges influences decision-making

- Innovative interpretation of the law in favour of the public's interest carries **disproportionate risks of being challenged and having to pay expensive costs**

“[L]ocal authorities are very strapped for cash, and they can't really afford to fight appeals. So quite often, to be quite frank, not very good developments get through [...]”

- Leads to a sort of **bias in favour** of planning permission, unless it clearly contravenes local or national planning policies:

“There have been cases where those costs have been hundreds of thousands, I think once probably over a million. So that's the thing that keeps us in check, if that makes sense? So as people on the committee, we might want to turn down a particular development but we might know that actually they'll appeal and if they win the appeal we might be in for costs and the public finds that really hard to understand. (...) we know it's a rubbish development but it ticks all the boxes, the developer will appeal, and it'll cost the council a load of money.”

Uncertainties in legal interpretations by the planning inspectorate

- **No clear guidance** on what ‘health’ ought to be in urban planning, and how it should weigh against other considerations
- Planning inspectors may **reach different conclusions** in reviewing a planning decision

“(There is) a question in the minds of planning officers as to whether a planning inspector would uphold a rejection of a complaint on health grounds. So they might well feel that they could understand the objection, they might even sympathise with the objection, but they didn’t feel they could necessarily advise the committee to endorse the objection when they were not sure if the planning inspector would uphold that. They felt the planning inspectors would go down more conventional approaches rather than take account of the health issue.”

Unequal access to legal expertise creates power asymmetries

- Local planning officers approve planning applications that ‘tick all the boxes’
- Large property developers have the financial resources to access quick, good quality legal expertise (e.g. through internal counsel or yearly flat fee to law firms)

“I think there is a danger that we see planning as the silver bullet to almost anything really. (...) We obviously have financial constraints (...) we’re in a very different position as the developer from the way that we are as the local planning authority.”

“We pay a considerable amount of money to lawyers to make sure that we actually address all these issues because they can be about the procurement process to make sure we’re following that and they can be around the planning process to make sure that we are following the guidelines to engage with the community and involve the planning application as it goes through the process.”

Power asymmetries amongst property developers

- Complexity of the legal and regulatory urban planning environments
 - Coupled with expensive legal fees
 - Restricts smaller companies to enter the market and **strengthens dominance of largest property developers**
-
- Allows large property developers to **'game' the law**
 - E.g. legal tactics to offer low-cost or shared ownership instead of social renting to fulfil the obligation towards provision of affordable housing:

“We’ve made what used to be a simple process and that’s why there were lots of property developers, we’ve made it quite big and complicated. Now you could argue we’ve made it big and complicated for very good reasons (...) But you make it very difficult for people to enter the profession when you make it big and complicated.”

“Away from conventional social renting, towards low-cost home ownership, or shared equity or some of these other sorts of things, which allows a developer to fulfil their obligations if you like to provide affordable housing but not actually provide housing that’s particularly affordable.”

Real accountability lies towards the company and its shareholders

- Confidence in legal matters
- Primary accountability of Directors towards shareholders (**Companies Act, section 172**)
- Coupled with a weak accountability system in property development (**defect liability period 6-12 months**)
- Short-term gains over long-term health savings
- **Supply chain issues**
- Ways around accountability (e.g. non-disclosure agreements and incentive payments to residents)

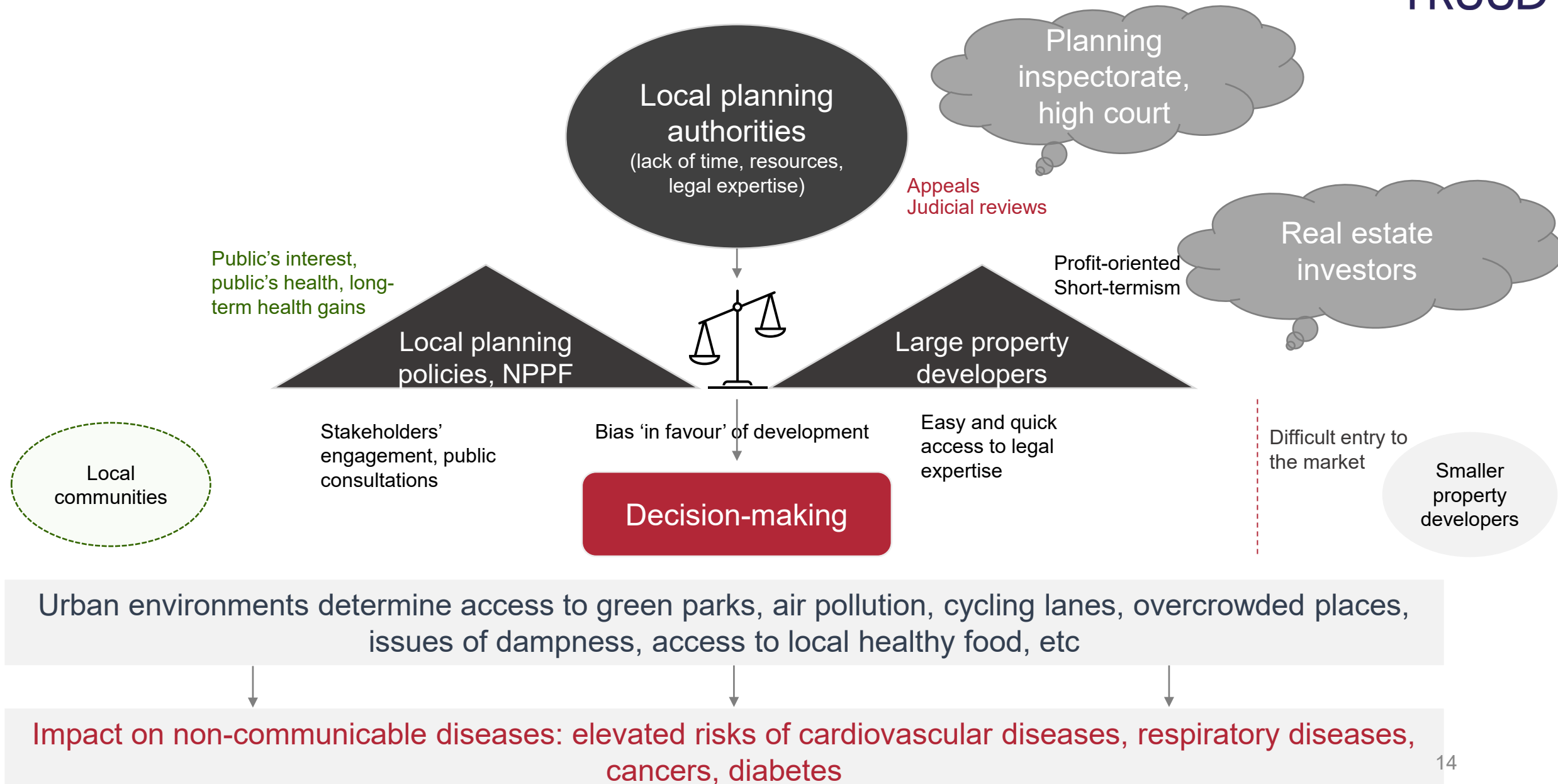
“[T]he **pressure comes from the financing** and it’s the backers who are saying, “well, we entered a contract, we expect you to get this done by, I don’t know, the 1st April and if you don’t, you’re in breach of contract”, and that often, much more than discharge and planning conditions, is the driving force behind stress on development.”

“If you’re a long-term investor, you understand that that devalues your place and it’ll impact you in the long term, but actually most people building, they’re only liable for it for a year after it’s built and **then they’re out, so it’s not their problem.**”

“The unit that [company] came and checked did have it [fire-proofing], and sporadically, some of the apartments do, but some of them don’t, so I don’t think it was deliberate

So, who controls 'the legal'?

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Weblink: <https://mrc.ukri.org/research/initiatives/prevention-research/ukprp/>

