The local political economy of the regulatory state: Governing affordable housing in England

Abstract

Regulatory governance involves the use of heterogeneous mechanisms to extract welfare gains from market-based processes. While often viewed as a depoliticisation mechanism, we here explore a distinctly political manifestation of regulatory governance. Our study focuses on the governance of affordable housing in England, specifically on local authorities’ use of ‘Section 106’ (S106) powers to compel private developers to include affordable housing in new developments. We show that, following the financial crisis, the governance of affordable housing shifted from a partisan to a valence issue. As the crisis increased the issue salience of affordable housing, left-wing authorities’ hitherto higher tendency to intervene eroded in the midst of a broad-based increase in S106 deployment. In addition to extending insights into the political economy of regulatory state intervention, our findings shed valuable light on the undersupply of affordable housing in England.

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Introduction

It is widely accepted that, over recent decades across advanced-industrialised countries and beyond, formerly integrated ‘provider’ states have morphed into more complex ‘regulatory’ entities (Majone 1994, 1997). Whereas much literature on the regulatory state has focused on the operations of (quasi-)independent regulatory agencies, recently a ‘regulation for welfare’ perspective has introduced a broader focus of analysis. For Levi-Faur (2014) and Haber et al (2016), studies of regulatory governance should pay closer attention to the full range of mechanisms used by the state to shape outcomes achieved through market-based processes. Existing studies typically view regulatory governance as offering insulation from political influence.[[1]](#footnote-1) Here, in finding that affordable housing has shifted from being a partisan to a valence issue, we offer a counterpoint to these visions of regulatory governance as depoliticised.

We define an issue as ‘partisan’ where there are significant differences in political parties’ positions on or engagement with the issue. A ‘valence’ issue, in contrast, is characterised by inter-party similarity of position or engagement, and competition over performance.[[2]](#footnote-2) In exploring affordable housing’s shift from a partisan to valence issue, we shed light on the process of issue transformation. Our findings suggest an interaction between issue salience and issue transformation; as the financial crisis raised the salience of affordable housing as a policy issue, parties regardless of orientation expanded their deployment of S106 powers. While left-wing authorities displayed a higher propensity toward S106 use in the pre-crisis period, this distinction was eroded post-crisis by a generalised increase in levels of intervention. In testing the influence of a range of political economy factors on observed S106 outcomes, we also establish that sub-optimal housing market performance also significantly shapes authorities’ recourse to S106; where income-to-house prices were higher, authorities displayed enhanced use of S106. This finding suggests that local authorities are driven by relatively affluent constituents’ concerns, with S106 use rising when the home-owning aspirations of relatively affluent constituents are being frustrated by higher income-to-house price ratios. We find no evidence of authorities responding to parallel concerns of less affluent voters, with shortages of social rental accommodation (an issue of concern to less affluent constituents) exerting no influence over S106 deployment. By focusing on the sub-national level, our study advances a regulatory governance literature that often privileges the national and trans-national.

The provision of affordable housing in England represents an archetypal case of ‘provider’ to ‘regulatory’ transformation.[[3]](#footnote-3) Where once local authorities directly supplied rental accommodation at sub-market cost, now a range of mechanisms are used across national and local government to steer outcomes within increasingly market-based systems of provision. Through S106, authorities are able to compel private developers to include affordable housing in new-build developments. Although authorities’ decisions are taken in the shadow of an overarching policy framework, at local authority level there is significant room for flexibility and discretion regarding the deployment of S106 power. Existing studies of local authority planning processes are unclear as to the drivers of these local authority-level outcomes, and present little sense of whether and how local councillors shape the conditions attached to planning application approvals.[[4]](#footnote-4) The new empirical detail we present in this regard constitutes a significant contribution from the paper. The importance of this contribution is enhanced by the chronic under-supply of affordable housing within the English housing system.[[5]](#footnote-5)

We develop our overall analysis through the following structure. In the first section below, to contextualise our contribution, we outline the contours of existing literature on the regulatory state. In the second section, we begin to lay the foundations for our empirical analysis by introducing expected drivers of local authorities’ use of discretionary market-constraining power, as derived from a broad range of Political Science and Political Economy scholarship. In the third section, we provide overviews of the legislative and institutional structures surrounding English local authorities’ involvement in the governance of affordable housing. Through the fourth and fifth sections, we provide an explanation of data sources and methods used, and then present and discuss our results. The concluding section of the paper offers a recap on the core insights developed through the paper, and reflects on the relevance of these findings.

Local political economy and the regulatory state: Extensions to existing literature

There is broad-based agreement that the relationship between states and markets has been fundamentally reconfigured over recent decades. Studies of the rise of the regulatory state have sought to clarify in detail the institutional relationships brought into being in differing spheres of public policy and public administration, and to identify factors shaping variations in patters of change. However, within this literature we see limited focus on local-level dynamics within these structures, and a prevailing tendency to characterise regulatory governance as a depoliticised process.

 Majone’s (1994, 1997) work on the rise of the regulatory state highlighted the increased importance, since the 1980s, of mechanisms of rule-making, monitoring, and enforcement within Western Europe governments’ toolkits. As privatisation moved formerly state-owned utilities and services into the realm of the market, existing and new agencies began to use regulation rather than direct control over taxation and spending priorities to make purposive interventions. Contributions from Levi-Faur (2005) served to identify the potentially global nature of these transformations, and to also bring the dynamics of ‘re-regulation’ into sharper relief against dominant narratives of the withering-away of the state under ‘globalisation’ and ‘neo-liberalism’. The rise of regulatory governance structures have now been catalogued across Latin America (Jordana and Levi-Faur 2005, Levi-Faur and Jordana 2006), Asia (Mok 2008, Jayasuriya 2009), and lower-income states of the global South (Dubash and Morgan 2012, Clegg 2017).

Much literature on the regulatory state directs attention specifically to the regulatory agencies that have been established to shape the behaviour of market-based actors (e.g. Heims 2015, Heims 2017, Jordana et al 2018, Pérez Durán 2018). Through this paper, we build on Levi-Faur’s (2014: 600) argument that the boundaries of the regulatory state ‘are wider than are usually understood’, and his advocacy that we explore ‘the ever-expanding and diversifying dimensions of the administrative state’. In doing so, we hook into a body of ‘regulation for welfare’ scholarship now seeking to map the wide range of mechanisms through which contemporary public policy is operationalised (e.g. Liesering and Mabbett 2011, Haber 2015, Haber 2017, Haber et al 2018). In line with this scholarship, we present the framework surrounding the S106 powers, through which local authorities have the capacity to constrain private developers’ behaviour, as a manifestation of regulatory governance.

Typically, both the regulatory governance and the regulation for welfare strands of literature present these governance networks as relatively ‘depoliticised’ operational structures. The creation of market-based governance networks and the ‘roll-back’ of direct levers of state provision is viewed as being part of a distinctly political project to restructure the nature of government (e.g. Peck and Tickell 2002, Brenner et al 2003). However, the everyday operation of these networks is commonly held to be take place beyond direct influence from political actors. Following Flinders and Buller (2006: 54), we take ‘depoliticisation’ to refer to this insulation of a governance process from political influence. Flinders (2004) argues that the accelerated shift from government to governance in the UK from the late 1990s was an intentional act of depoliticisation on the part of the New Labour government. Papadopoulos (2017) and Snaith (2017) explore the role of European Union networks as multi-level mechanisms of depoliticisation. Benish et al (2017: 316) sum-up existing literature on the regulatory state as presenting visions of ‘a neoliberal state of limited government by third-party proxies’.

Turning to literature on sub-national processes, we continue to receive a similar picture of regulatory governance serving to insulate against political influence.[[6]](#footnote-6) Predominantly, scholarship on sub-national governance tends to focus on the city as a favoured unit of analysis. (e.g. Reed and Bruyneel 2010, Donald et al 2014, Paul 2005, Jonas and Pincetl 2006). Within this sub-set of urban-level studies, contributions have identified decentralised processes as offering significant scope for depoliticisation (e.g. Miraftab 2004, Beveridge 2012). There is some literature on local government in England that is framed in relation to debates over regulatory governance; contributions, in general terms, serve to confirm the existence of a regulatory governance-type transformation in local policy processes (e.g. Cochrane 1991, Goodwin and Painter 1996, Imrie and Raco 1999, John 2014, Gardner 2017).

Amongst the limited literature on the local governance of housing and planning in England, we see little detail on the extent and nature of political influence over outcomes. Prominent contributions from Toke (2003, 2005) have demonstrated the capacity of stakeholders including parish councils and local residents to shape outcomes over wind farm applications, but do not include a focus on more explicitly political factors. Concentrating specifically on the local governance of housing, Ball et al (2008: 5) note that our understanding of the drivers of observed outcomes remains under-developed. In charting the transformation of affordable housing from a partisan to a valence issue, we both extend understanding offered of the governance of housing and planning in England, and offer a broader counter-point to the prevailing vision of regulatory governance as depoliticised.

Explorations of partisanship, valence, and issue transformation have recently taken place within literature on political parties and environmental politics. This scholarship features substantial dispute over whether the environment has shifted from a partisan issue characterised by party difference, to a valence issue characterised by similarity of inter-party approach to and engagement with green agendas (cf. Pardos-Prado 2012, Carter 2013, Carter and Clements 2015, Farstad 2018). Here, we transpose this focus on partisanship and valence to the study of affordable housing, and suggest that salience plays an underlying role in issue transformation from a partisan to a valence issue. In the concluding section of the paper, we return to and expand upon these overarching contributions to the literature on regulatory governance.

Within the literature on regulatory governance and the regulatory state, we find limited exploration of the drivers of discretionary intervention. As such, to identify potential drivers of local authority use of S106 powers around which to orient our empirical analysis, in the following section we incorporate a broader body of Political Science and Political Economy scholarship.

Discretionary intervention and the local regulatory state: Expected drivers of variation

From our review of relevant Political Science and Political Economy literatures, we identify four potential drivers of variation in propensity to deploy discretionary power to intervene in market structures. Overall, from this literature we derive an expectation that local authorities’ deployment of S106 powers over private developers will be positively related to left-wing political orientation, to market buoyancy, to the existence of evidence of sub-optimal market outcomes,[[7]](#footnote-7) and to the salience of affordable housing as a policy issue. We outline these expectations below.

A focus on the influence of political orientation on institutional performance can be traced to Downs’ (1957) seminal study. Understanding of the interaction between institutional structures, party politics and policy outcomes has been developed through a large body of scholarship on partisan effects in Political Science and International Studies.[[8]](#footnote-8) Given that a willingness to intervene in markets to shape distributional outcomes is generally a characteristic of left-wing political ideology (Laver and Garry 2000, Dinas and Gemenis 2010), it may be expected that left-oriented authorities would be more likely to deploy interventionist capacity. Analyses of the ‘golden age’ of the welfare state in industrialised democracies provide support for this argument, with longer periods of left-wing government being associated with the creation of more extensive welfare states in the post-1945 period (Esping-Andersen 1985, van Kersbergen 1995, Garrett 1998).[[9]](#footnote-9) Elsewhere, evidence that left-wing parties systematically favour constraints on markets is a little more mixed. Zohlnhofer and Obinger’s (2003) finding of no partisan effect on the scale of privatisation proceeds across Organisation for Economic Cooperation and Development member states is contrasted by subsequent analysis from Obinger et al. (2014), which found left-wing governments to be less likely to engage in wholesale privatisation. Focusing on local-level partisan effects, Allers et al.’s (2001) study of municipal taxation in the Netherlands revealed left-wing orientation to be associated with higher tax rates. On balance, this overall literature leads us to expect left-wing political orientation to be associated with a higher propensity to intervene to (re-)shape market outcomes. This consideration generates the following hypothesis:

H1: Local authority political orientation is associated with the propensity to deploy S106 power, with higher left-wing representation increasing the use of S106.

The underlying intuition here is that a higher level of left-wing representation may provide a higher capacity for left-oriented representatives to directly shape S106 content. This may be done formally, through councillors’ inputs into the local authority Planning Committees that ultimately sign-off on planning applications,[[10]](#footnote-10) or through more informal influence over the council’s planning officers. Planning officers themselves may also respond to the perceived preferences of their Planning Committee, thereby ‘self-policing’ towards more heavily interventionist outcomes for more heavily left-wing committees.

The second characteristic we examine relates to market buoyancy and the *rentier* state. The concept of the *rentier* state has traditionally been applied to contexts in which government revenues are dominated by natural resource-related flows. In studies of such cases, attention is typically placed on states’ attempts to extract payment from market actors in return for access to natural resources (Yates 1996, Beblawi and Luciani 2016). A subsection of literature has sought to explore the mechanisms through which control over access to markets functions as a parallel source of regulatory power. Drezner (2007) shows how a state’s capacity to exclude an enterprise from its large market can serve to generate transnational regulatory influence, as external producers willingly comply with market rules to avoid being locked-out of a lucrative economic area. Damro (2012) has explored parallel dynamics in relation to the EU. The more attractive their market is to potential suppliers, the stronger the state’s ability to shape private actors’ behaviour. A number of studies have explored the intersection between control over access to large markets and political agency by focusing on taxation, with work in this area suggesting that states with larger markets enjoy greater capacity to increase corporate tax rates.[[11]](#footnote-11) Extrapolating out, we can derive an expectation that the more attractive a market is to potential suppliers, the higher a political actor’s capacity to extract side-payments. As such, we develop the following hypothesis:

H2: Local authority market buoyancy is associated with the propensity to deploy S106 powers, with authorities with more buoyant local markets more likely to deploy it than those with less market buoyancy.

The underlying intuition here is that, where the local market is buoyant, councillors and their officers may be emboldened to push for higher S106 contributions through negotiation processes.

 The third factor examined in our analysis probes the responsiveness of local authorities to sub-optimal market outcomes.[[12]](#footnote-12) The public interest theory of the state holds that governments will intervene in market processes where evidence of undesirable outcomes exists (Stigler and Friedland 1962, Stigler 1971, Baron and Myerson 1982, Baumol 2004). In probing the relationship between states and poorly-performing markets, this public interest theory body of scholarship adopts an expansive conceptualisation of sub-optimal market performance; this conceptualisation typically encompasses scenarios in which overall welfare can be enhanced through state intervention (Hantke-Domas 2003: 166).[[13]](#footnote-13) Empirical work from Hefetz and Warner (2004), Kodrzycki (1994), Hirsch (1995), Warner and Hefetz (2003), and Girth et al. (2012) broadly suggests that governments are more likely to intervene in markets where they believe that markets are functioning poorly. Drawing on these insights, we develop the following hypothesis:

H3: The existence of sub-optimal local market performance is associated with the propensity to deploy S106 powers, with authorities experiencing poorer market performance more likely to deploy it than those experiencing better market performance.

Again, the underyling intuition is that the causal pathway may run through local politicians or planning officers. Local politicians may be acting in response to constituent interests, and planning officers to their perceptions of councillors’ preferences.

 The final factor we derive from existing literature relates to issues salience. Studies of policymaking processes demonstrate that, given limited time and resources, politicians are forced to prioritise their attention between a wide range of competing issues. Salience is defined as the relative importance attached to a given issue (e.g. Epstein and Segal 2000, Oppermann and Viehrig 2011, Spendzharova and Versluis 2013), and has been identified as significantly shaping approaches to policy implementation across transnational, national, and sub-national levels (Fenno 1974, Mayhew 1991, Toshkov 2007, Versluis 2007). Drawing on these insights, we develop the following hypothesis:

H4: The salience of affordable housing as a policy issue is associated with propensity to deploy S106 powers, with propensity to deploy S106 rising during times of higher salience.

 In common with the other causal pathways, again issue salience may function directly through local politicians responding to constituent concerns, or indirectly through planning officers’ adjustments to perceptions of councillors’ preferences. Before moving on to discuss our operationalisation of these hypoetheses, we first offer a brief overview of the planning system in England to contextualise the case study.

Local authorities and the regulatory governance of affordable housing

In the decades after 1945, local authorities grew to become major providers of affordable housing in England. The need for post-war reconstruction and to accommodate a rapidly-expanding population pushed housing up central governments’ agenda through this period, and local authorities provided central government a stable partner with the institutional capacity to deliver high volumes of units. By providing access to subsidised loans and grants, and mandating that a set contribution to building costs be made through locally-collected rates, central government could ensure that output targets were delivered (Cole and Furbey 1994, pp.59-63). There was substantial local variation in housing management practices, rent charges, and the extent to which rates were used to subsidise rents. However, this local authority housing was provided at below-market rates to lower-income groups, and came to be regarded as an important social good provided by the state (Malpass 2005, pp.83-90). By 1980 around 6.5 million homes – 30 percent of the UK’s total stock of housing – came in the form of local authority-supplied affordable rental accommodation (Stephens 2013, pp.200-1).

 It was through the 1980s that local authorities’ role within the English housing system began to transform. Under ‘Right to Buy’ legislation introduced at the start of the decade, existing tenants were given the opportunity to purchase accommodation from their local authority at below market price. Cumulatively, around 1.8 million homes have been transferred through this route. Towards the end of the decade, additional legislation served to incentivise local authorities to sell stock to Housing Associations, which are typically non-profit and quasi-private organisations. Since 1988, around 1.3 million homes have been transferred through this route. With these dynamics, from 1981-2014 the prevalence of owner-occupancy, private rental, and rental through Housing Associations in the English housing system all increased substantially, while rates of local authority provision declined by around two-thirds (see Figure 1).

Figure 1: English dwellings by tenure (thousands)

Source: DCLG Live Tables. DCLG Official Website, available at <https://www.gov.uk/government/statistical-data-sets/live-tables-on-dwelling-stock-including-vacants>. Accessed 14th March, 2017.

 Beyond this transformation in ownership patterns, the role of local authorities in the supply of new housing has also shifted over time. With central government directing resources to Housing Associations and imposing strict limits on local authorities’ capacity to borrow to fund construction, these previously-important direct providers of accommodation effectively exited from new-build activities. From a figure of almost 75,000 in 1981, new-build completions by English local authorities throughout the 2000s ranged from a high of 490 to a low of 60 units (see Figure 2). However, this stepping-back from the direct provision of affordable housing was accompanied by the creation of a new regulatory lever through which to compel market actors to increase their supply of affordable accommodation.

Figure 2: English local authority new-build completions

Source: DCLG Live Tables. DCLG Official Website, available at <https://www.gov.uk/government/statistical-data-sets/live-tables-on-house-building>. Accessed 24th August, 2017.

 It is Section 106 of the Town and Country Planning Act 1990 that provided the legislative underpinnings for local authorities’ regulatory governance of affordable housing construction. S106 provides local authorities with the power to impose obligations to ensure that proposed development activities cohere with the aims set out in the authority’s local development framework. Obligations can be used to offset the increased demand that a development will bring on local authority-provided services, such as leisure facilities, road maintenance, or school places. Planning obligations can take the form of one-off payments to support the authority’s provision of the affected services, or of in-kind contributions (for example, the inclusion of children’s play spaces within a new residential area). For an authority to include contributions relating to the inclusion of additional affordable homes in a development, an up-to-date development framework and associated local housing needs survey is required. In addition, central government guidance suggests that such contributions should be sought only on sites involving the construction of 15 or more homes. Affordable housing mandated under S106 may take the form of accommodation that is either rented or sold at rates below prevailing market prices (Monk et al. 2006, p. 2, Everett and Smith 2016, p.4, Fears et al. 2016, pp. 5-6).[[14]](#footnote-14)

 In the years following the Town and Country Planning Act 1990, the use of S106 powers to oblige developers to increase their supply of affordable homes expanded substantially. By the close of the 1990s, around 10,000 affordable homes were being completed each year under S106 obligations. From 2005-10, an average of 26,000 affordable homes were completed each year under S106 obligations, accounting for over 50 percent of total affordable home completions in each of these years (see Figure 3).[[15]](#footnote-15) The remainder of affordable housing supply comes largely through Homes and Communities Agency-supported developments, and developer-led action. Housing Associations constitute a major non-Section 106 provider of affordable housing for rent and individual ownership.[[16]](#footnote-16)

Figure 3: Affordable housing supply

Source: Data from Brownill et al. 2015, p.27.

 Local authorities’ use of S106 obligations have, then, become a major lever within the governance of affordable housing provision in England. While the turn towards S106 remains under-examined in existing academic literature, two Joseph Rowntree Foundation-commissioned reports (Monk et al. 2006, Brownill et al. 2015) present valuable insights. Monk et al. present a review of the content of S106 agreements from 2000-05. A central focus in Monk et al. is the divergence between the requirements for S106 affordable housing in agreements signed on the one hand, and the housing eventually delivered on the other. They suggest that larger developments are particularly prone to slippage in affordable housing delivery, with the tendency to amend plans and sub-divide schemes between contractors leading to re-negotiations with local authorities and generating complexity in monitoring performance against the original agreement. Brownill et al. (2015) use mixed methods to assess the extent to which S106 affordable housing was being delivered to ‘in poverty’ groups, defined as those with incomes below 60% of the median. Overall, their quantitative analysis suggest that ‘[b]y and large (…) larger S106 numbers are being delivered to more deprived areas’ (Brownill et al. 2017, p.37). Their case study insights suggest that institutional capacity and political commitment ‘influence the effectiveness of S106 in delivering affordable homes’ (Brownill et al. 2015, p.68).

 Our analysis builds in particular on Brownill et al. (2015). In seeking to explain variation in local authority use of S106 powers, we develop Brownill et al.’s focus on sub-optimal market performance as a driver of behaviour. As noted below, we parallel Brownill et al. by adopting a deprivation-based measure of sub-optimal housing system performance, and we extend this dimension by also including an additional home ownership-based measure of market sub-optimality. Our focus on partisan effects serves to examine the qualitative findings presented in Brownill et al.’s study, and our focus on *rentier* capacity and issue salience offer additional extensions. In the section below, we outline the data sources and methods used in our analysis, before providing an overview of our results.

Data and methodology

The data for our dependent variable, local authorities’ discretionary use of S106, was taken from the National Archives’ Housing Strategy Statistical Appendix (HSSA).[[17]](#footnote-17) This shows the number of S106 affordable housing units included in large planning agreements during a given year (as mentioned, small developments are excluded from S106 powers (see Everett and Smith 2016, p.3)). An alternative measure could have come in the form of data on the number of affordable housing units *completed* during a given year that had been placed in planning agreements through S106 powers. However, there is a lack of robust data on such S106 completions (on these data limitations, see Monk et al. (2005) and Brownill et al. (2015)). We therefore focus on use of S106 powers at the planning stage rather than the total number of S106 units actually delivered. Using the number of S106 units included in planning agreements also gives us a more accurate picture of local authorities’ willingness to intervene, showing their intentions as opposed to outcomes which are sometimes outside their scope of powers. However, even at the planning stage the data available is imperfect, with a recognised need to develop better and more coherent housing statistics (ONS 2018). As such, for our dependent variable we use the only data available, which is the HSSA figure (the number of S106 units included in large planning agreements during a given year) divided by the total number of large development applications received by a local authority in the same year.[[18]](#footnote-18) This figure captures the average number of affordable units mandated per large planning application in a given year.

One caveat for this measure comes from our inability to differentiate between the type of ‘large residential planning application’ being received by local authorities. It is possible that some authorities will consistently receive higher numbers of applications for very high-volume developments, which would likely lead to an inflation of their average number of S106 units per application.[[19]](#footnote-19) Using S106 units as a proportion of the number of units being proposed as a dependent variable would solve this issue; however, as data is not available on the volume of housing being proposed in a given application, we are unable to generate such a fine-grained measure. This caveat is partly offset by the likelihood that authorities receiving applications for high-volume developments would also receive relatively high numbers of applications overall, which would counter-balance this inflation of the average S106 value. We also guard against this issue by removing outliers (i.e. cases in which the dependent variable is more than three standard deviations away from the mean). A second caveat for this measure is that the actual cost to the developer of a unit of social housing will vary substantially; a unit that is reserved for social rent will recoup a lower return than a unit that is reserved for affordable ownership (Roger Hannah 2018). Given that the HSSA does not disaggregate according to the type of affordable housing included in S106 agreements, we are unable to incorporate this factor into our model.

Data limitations acted as a constraint on the timeframe that could be covered by our dependent variable. Data on the volume of S106 housing signed-off in planning agreements is available via the National Archives from 2005 through to 2011.[[20]](#footnote-20) Changes in reporting practices mean that after 2011, data is not comparable.[[21]](#footnote-21) Data is also not available on the total number of large residential planning applications received by local authorities (the denominator for our dependent variable) in 2010 and 2011. As such, in combination these data limitations limit the focus of our analysis to local authorities’ propensity to deploy S106 powers in the five-year period 2005-09. However, given the presence of the finance crisis and associated disruptions to the housing market, this is nevertheless an interesting and important period to explore.

As for our independent variables, the data on the partisanship of the local authority was taken from the Elections Centre dataset on ‘Council Composition’.[[22]](#footnote-22) As we are interested in the effect of left-wing political orientation, we focus on the share of Labour representatives in the local authority. To measure this, we use the share of Labour representatives in a given year. A figure of zero equates to an authority with no Labour representation, whilst a figure of 100 equates to an authority that was fully Labour. This use of the left-wing party’s share of seats as a way of operationalising a study of partisan effects is in line with existing literature (Allen and Scruggs 2004: 504).

The length of negotiations between a local authority and developer over S106 conditions varies substantially. Crook et al (2002: 23) estimate the typical length to be between 18 months and three years. To capture the interaction between the partisan orientation variable and our outcome variable through these extended windows of negotiation, we use a rolling three-year average of the share of Labour representation. As such, when considering S106s signed-off in 2005, we are interested in the impact of average Labour share through the period 2003-05. When considering S106s signed-off in 2006, we focus on average Labour share in 2004-06, and so on. The intuition here is that partisanship in the three-year period preceding a given observation of S106 propensity will influence that observed outcome.

To measure local housing market buoyancy, we use the volume of private housing construction in a given area. The data is taken from the Department of Housing, Communities and Local Government dataset on the completion of new-build housing at local authority level.[[23]](#footnote-23) While data on house prices are used elsewhere as a measure of buoyancy (e.g. Frappa and Mesonier 2010), here we are specifically interested in the attractiveness to developers of a given local authority area. By presenting the revealed willingness of developers to build an a given area, the volume of private housing construction captures effectively the attractiveness to economic agents of the local housing market over which the local authority has power of access. We again adopt a rolling three-year average, guided by the expectation that local authority *rentier* capacity throughout the S106 negotiation period will impact on S106 outcomes.

To measure the extent of local housing market sub-optimality, we use two indicators – the affordability of house prices within the area, and unmet demand for affordable rental housing. Affordability of house prices is measured using Office for National Statistics data on the ratio between median house prices and earnings.[[24]](#footnote-24) On this measure, a higher value indicates less affordability; for example, a score of three denotes an average house price at three times the average wage, a score of four denotes four times the average wage. Unmet demand for affordable rental housing is measured using the number of households on the local authorities’ waiting lists provided by the Department of Housing, Communities and Local Government.[[25]](#footnote-25) With these two measures we again adopt a rolling three-year average, the intuition being that concern over sub-optimal market outcomes throughout the S106 negotiation period will shape propensity to deploy this form of market intervention.

The above variables are comprised by independent observations for each local authority in a given year. When operationalising our final variable, issue salience, we apply a national-level approach. Our underlying assumption is that, with the emergence of the finance crisis in 2007, the salience of affordable housing as a policy issue rose across the board for local authorities. The rationale for this assumption is that through 2007, as banking credit dried up, we see significant reductions in the volume of mortgages being granted to first-time buyers (Clark 2011). We also see that, from this time, the negative impact from the ‘credit crunch’ on first-time buyers’ ability to find affordable owner-occupation housing began to gain public prominence (Communities and Local Government Committee 2009: 5). We use a dummy-variable to capture this transformation. The pre-crisis years 2005-06 are given a value of 0 for all local authorities, to reflect the lower issue salience of affordable housing during this time. For 2007-09, the years within our timeframe that follow the emergence of the financial crisis, a value of 1 is given to all local authorities to reflect the higher issue salience. Epstein and Segal (2000: 67) note that studies of issue salience and policy outcomes are forced to rely on relatively ‘imprecise surrogates’ when operationalising the concept. While we acknowledge the imperfect nature of our operationalisation, the raft of national-level housing policy initiatives that followed the crisis enhances the plausibility of our suggestion that the 2007-09 period represents one of higher issue salience for affordable housing.[[26]](#footnote-26)

Results and discussion

As Table 1 shows, the average discretionary use of S106 amongst cases included in the dataset ranges from zero to 33.18, with a mean of 3.67 and standard deviation of 5.02. In other words, from 2005-09, local authorities on average mandated that just-under four affordable homes be built per large residential planning application received.

Table 1: Model 1, all cases (2005-09), descriptive statistics

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Observations | Minimum | Maximum | Mean | Std. Deviation |
| S106 prevalence | 1149 | 0.00 | 33.18 | 3.67 | 5.02 |
| Left-wing orientation | 1149 | 0.00 | 85.87 | 21.98 | 21.42 |
| Housing waiting list  | 1149 | 14.00 | 92702.00 | 4536.70 | 6604.81 |
| Housing affordability (income-price ratio)  | 1149 | 2.41 | 14.85 | 7.06 | 1.53 |
| Market buoyancy (construction)  | 1149 | 36.67 | 2986.67 | 393.77 | 302.97 |
| Pre-/post-financial crisis | 1149 | 0 | 1 | 0.621 | 0.485 |

Running an OLS regression to see what explains this variation, we get the following results. Model 1 includes all cases from 2005-09. Overall, Model 1 is significant (F(6,1142) = 21.981, p<.000), and explains around 10 percent of the observed variation (R2=.103). We see that, over this timeframe, the rate of construction and house price affordability had a significant effect on authorities’ propensity to deploy S106, with higher rates of new-build activity and higher income-to-price ratios (i.e. lower affordability) being associated with a higher use of S106. We see also that issue salience, as measured by our financial crisis-related dummy variable, had a significant and positive association with S106 outcomes.[[27]](#footnote-27) Given the significance of the salience measure, we can assume that the pre- and post-financial crisis periods are significantly different. We therefore run separate regression analyses for these periods, to probe these different dynamics. Consequently, Model 2 presents an analysis of pre-crisis cases from 2005-06, and Model 3 covers the post-crisis 2007-09 period.

Table 2: Model 2, pre-crisis cases (2005-06), descriptive statistics

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Observations | Minimum | Maximum | Mean | Std. Deviation |
| S106 prevalence | 435 | 0.00 | 20.34 | 2.10 | 2.69 |
| Left-wing orientation | 435 | 0.00 | 85.87 | 24.22 | 22.11 |
| Market buoyancy (construction)  | 435 | 40.00 | 2986.67 | 378.95 | 278.58 |
| Housing waiting list  | 435 | 522.00 | 71306.33 | 4039.59 | 5727.34 |
| Housing affordability (income-price ratio)  | 435 | 2.41 | 10.69 | 6.83 | 1.51 |

Table 3: Model 3, post-crisis cases (2007-09), descriptive statistics

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Observations | Minimum | Maximum | Mean | Std. Deviation |
| S106 prevalence | 714 | 0.00 | 33.18 | 4.63 | 5.80 |
| Left-wing orientation | 714 | 0.00 | 85.70 | 20.62 | 20.88 |
| Market buoyancy (construction)  | 714 | 36.67 | 2953.33 | 402.80 | 316.75 |
| Housing waiting list  | 714 | 14.00 | 92702.00 | 4839.56 | 7073.11 |
| Housing affordability (income-price ratio)  | 714 | 3.03 | 14.85 | 7.21 | 1.53 |

Table 4: Explaining variation in local authorities’ discretionary intervention on affordable housing provision

|  |  |  |  |
| --- | --- | --- | --- |
|  | Model 1:Coefficient (standard error) | Model 2:Coefficient (standard error) | Model 3:Coefficient (standard error) |
| Left-wing | 0.013 (0.009) | 0.021 (0.008)\*\* | 0.008 (0.013) |
| Market buoyancy (construction) | 0.001 (0.001)\* | 0.002 (0.001)\*\* | 0.001 (0.001) |
| Waiting list | -0.000011 (0.000026) | -0.000044 (0.000027) | 0.000001 (0.000036) |
| Affordability (income-price ratio) | 0.780 (0.112)\*\*\* | 0.683 (0.101)\*\*\* | 0.837 (0.168)\*\*\* |
| Salience (financial crisis dummy variable) | 2.262 (0.293)\*\*\* | ~ | ~ |
| x2 | 21.981\*\*\* | 10.571\*\*\* | 5.909\*\*\* |
| R2 | .104 | .110 | .040 |

Note: \*p < 0.05; \*\*p < 0.01; \*\*\*p < 0.001.
All VIF scores are below 1.8, i.e. no problems of multicollinearity.
All models control for location (Predominantly Rural, Significant Rural, Predominantly Urban) using 2001 Census data. Recoding (1-3) from rural-urban. Displays no significant effect.[[28]](#footnote-28)

 Model 2 demonstrates that, in the pre-financial crisis period, local authority political orientation, rates of new-build construction, and house price affordability had a significant effect on propensity to deploy S106 powers. The model is significant (F(5, 429) = 10.571, p<.000), explaining 11 percent of the observed variation (R2=.110). In this period, the more heavily left-wing an authority, the higher the volume of affordable housing that was mandated per large residential planning application. Higher new-build construction rates and income-house price ratios were also associated with higher propensity to deploy S106. Model 3 shows that significant changes occurred in the relationship between variables following the onset of the financial crisis. Here, we see that house price affordability is the only factor that exerts a significant influence over the outcome. The explanatory power of Model 3 is substantially lower than either of the preceding models, explaining only four percent of the observed variation (R2=.0.40), but is nevertheless significant (F(5, 708, 5.909, p.<.000).

The above results demonstrate significant variation in the drivers of local authority propensity to deploy S106 powers pre- and post-financial crisis. Prior to the emergence of the financial crisis we see that the deployment of S106 was a partisan issue, with the propensity to intervene rising for more left-wing authorities (as predicted by H1). Through 2005-06 propensity to intervene was also underpinned by *rentier* capacity, with buoyant local markets being associated with more use of S106 (as predicted by H2). We find the predictions of H3 to have been partially fulfilled in the 2005-06 period, with local authorities responding to low levels of house price affordability by turning to S106. The lack of a significant relationship between local authority housing waiting lists and deployment of S106 planning powers, on the other hand, suggests that the policy tool is being used in response to the concerns of more affluent populations. Housing waiting lists capture a need for social housing from less affluent populations, while the income-to-house price ratio relates to more affluent populations’ capacity to access owner-occupation. The prediction of H4 was confirmed for 2005-06, with a significant and positive relationship between salience and S106 propensity.

 After the emergence of the financial crisis, the deployment of S106 begins to display characteristics of a party competition issue.[[29]](#footnote-29) Through 2007-09 we see a substantial rise in the average deployment of S106, from 2.10 in the earlier period up to 4.63. In the context of this generalised increase the expectations of H1 are confounded, as left-wing orientation is no longer significantly related to S106 use. The expectations of H2 are also confounded, as market buoyancy is no longer significantly related to S106 propensity. It is possible that, during this later period, increased issue salience meant that authorities regardless of partisan orientation felt pressure to act on affordable housing, and to do so increasingly speculatively even when enjoying lower levels of *rentier* capacity.

We should note that changes in the structure of the construction industry may have also contributed to the rise in the number of S106s being mandated per application in the post-crisis period. Following the crisis, the industry became increasingly dominated by a small number of large firms, firms whose operations typically favour larger-scale developments (HBF 2017). This structural change may plausibly have increased the average number of houses being included in large residential planning applications; part of the increase in S106 per application may, therefore, be accounted for by this dynamic. Our inability, due to the data shortages noted above, to present a fine-grained analysis of these dynamics serves to again highlight the need for more consistent and comprehensive data collection in this field.[[30]](#footnote-30)

Conclusion

Through our paper, we have presented an extension to existing literature by offering a counter-point to the prevailing image of regulatory governance as depoliticised process. In identifying the drivers of variation in local authority deployment of S106 powers to compel market actors to include additional affordable housing in new-build developments, we have revealed the inherently political nature of the observed outcomes. Whereas in the pre-financial crisis period affordable housing presented as a partisan issue, in the post-crisis period we see it shifting into a valence issue. We identify issue salience as a factor that helps explain this transformation of issue-type; in the aftermath of the crisis, as the prominence of affordable housing rose substantially, local authorities regardless of partisan orientation moved to increase their deployment of S106. By highlighting the consistent influence of local house price affordability on the use of S106 and the lack of effect from housing waiting list size, our findings also suggest that local authorities are responsive to the concerns of more affluent constituents.

 We present these insights into the local political economy of the regulatory state as a point of entry for further research. The relationship between states and markets has undoubtedly become more complex with the embedding of regulatory networks of governance in recent decades. We know that politics shapes the way in which markets are incorporated into the delivery of public services; in particular, Gingrich (2011) has shown that left-wing governments tend to structure markets as mechanisms to enhance welfare state legitimacy, and right-wing governments to limit state provision and empower market actors. Here, we have demonstrated that politics also shapes outcomes within a given regulatory state-market constellation, with issue salience shifting local authority behaviour. While a challenge to gain analytic traction over, we know from existing studies that issue salience shapes the way in which local and national actors engage with a given policy issue (e.g. Epstein and Segal 2000, Spendzharova and Versluis 2013, Klüver and Sagarzazu 2016). This relationship between issue salience, politicisiation, and regulatory state outcomes is deserving of further research. It seems plausible that the underlying relationship between rising issue salience and issue transformation from partisanship to party competition may be repeated elsewhere. Shifts in European political parties’ approaches to environmental issues as described by Carter (2013) seem, for example, to display these dynamics.

 Given the chronic under-supply of affordable housing within the English housing system, we view as positive the transformation of S106 deployment from a partisan to a valence issue. We welcome the fact that, through the later years of the timeframe we have considered, a broad-based increase in S106 propensity served to erode the hitherto higher rates of intervention demonstrated by left-wing authorities. We very much regret the fact that data shortages mean that our analysis ends in 2009, and that we are unable to explore whether S106 remains a valence issue, or whether there has been a reversion to the earlier patterns of partisan difference. S106 constitutes a quantitatively important mechanism through which affordable housing is supplied within the English housing system, and the inability to systematically study the issue constitutes a democratic deficit. We strongly welcome the ONS commitment to support improvements in this regard (see ONS 2018, 2019b).

We regard our finding that S106 seems to be aligned with more- rather than less-affluent constituents’ interests as important, and as requiring redress. Given the enhanced tendency of more-affluent constituents to vote, and the enhanced capacity of more-affluent groups and individuals to shape policy agendas and outcomes at both local and national levels,[[31]](#footnote-31) this finding should perhaps not be surprising. Nevertheless, given the current tendency of rents to rise significantly faster than incomes, and for larger proportions of younger cohorts to remain within the private rental sector,[[32]](#footnote-32) it is important that in the future S106 be more closely aligned with the needs of the less affluent. Further investigation of the governance of affordable housing can inform this re-orientation, and advance our broader understanding of the intersection of the state and the market in shaping outcomes in this area.

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1. Following the regulation for welfare literature, throughout the paper we use the term ‘regulatory governance’ in this more expansive sense. [↑](#footnote-ref-1)
2. These definitions draw on those offered in Farstad (2018: 704). [↑](#footnote-ref-2)
3. For the purpose of this paper, we take an expansive definition of ‘affordable housing’ to refer to *low-cost accommodation whose provision is influenced by regulatory intervention to serve people whose needs are not adequately met through the commercial housing market.* This definition is in line with statutory definitions provided in the Housing and Regeneration Act 2008 and the Housing and Planning Act 2016 (for overviews, see Fears et al. 2016: 4-6). [↑](#footnote-ref-3)
4. Reflections on the discretionary power of local authorities over this form of planning decision is provided by, for example, Flemming and Short (1984) and Ball et al (2008). [↑](#footnote-ref-4)
5. See, for example, Wilson and Barton (2018). [↑](#footnote-ref-5)
6. Within literature on regulatory governance, the local level remains somewhat under-explored. The most prominent contributions on the ‘rescaling’ of regulatory governance have tended to focus on shifts in decision-making power ‘upwards’ and ‘sideways’ to supra-national institutions or quasi-independent agencies respectively (cf. Rhodes 1994, Shaw 2000, Marsh et al. 2003). [↑](#footnote-ref-6)
7. As is detailed below, sub-optimality and buoyancy are not mutually exclusive features of a given market. In short, sub-optimality refers to the under-provision of housing that is affordable and accessible, whereas buoyancy refers to the volume of new-build construction. [↑](#footnote-ref-7)
8. For a useful review, see Schmidt (1996). [↑](#footnote-ref-8)
9. While investigations into more recent dynamics suggest that the partisan influence on social spending levels has declined over time (Huber and Stephens 2001, Kittel and Obinger 2003), Allan and Scruggs (2004) find partisanship to have had a significant influence over levels of unemployment and sickness benefit across industrial democracies throughout the period 1975-99. [↑](#footnote-ref-9)
10. Further detail is provided in the section below on local authority Planning Committees and planning officers. [↑](#footnote-ref-10)
11. Within this literature, enterprises are found to judge that the higher demand from larger states’ larger markets will allow for higher prices and higher overall profits. Consequently, gaining access to a large and buoyant market makes corporations more willing to opt-in to higher tax regimes (Haufler and Wooten 1999, Ottaviano and va Ypersele 2005, Sanjo 2012). [↑](#footnote-ref-11)
12. As noted in the introductory section of the paper, market buoyancy and market sub-optimality are not mutually exclusive conditions. Markets can simultaneously be buoyant (in terms of offering significant opportunity for profit-generation) and generators of sub-optimal outcomes (as defined here in terms of iniquitous distributional patterns that permit scope for welfare-enhancing intervention). [↑](#footnote-ref-12)
13. This conceptualisation is much broader than the understanding of market failure often employed within Economics, which tend to focus on equilibrium distortions generated by factors including monopoly, asymmetric information, and externalities. For the avoidance of confusion, we use the term ‘sub-optimal market performance’ rather than ‘market failure’ throughout the paper, and use the term in the more expansive sense offered by the public interest theory literature. [↑](#footnote-ref-13)
14. Affordable housing mandated under S106 may specifically take the form of ‘social rental’ (with guideline rates set through the national rent regime), ‘affordable rental’ (with rents not exceeding 80 percent of the local market rates), or ‘intermediate housing’ (including homes for sale through shared ownership and low-cost homes for sale). See Department for Communities and Local Government Official Website, available at <https://www.gov.uk/guidance/definitions-of-general-housing-terms>. Accessed 24th August, 2017. [↑](#footnote-ref-14)
15. As is made clear by Monk et al. (2006) and Brownill et al. (2015), the comparability over time of S106 completion data has been significantly questioned owing to changing operational definitions of affordable housing, changing reporting requirements from central government, and changing recording practices by local authorities. As such, Figure 3 is presented as an indication of overall trends. [↑](#footnote-ref-15)
16. For an overview of affordable housing supply, see Ministry of Housing, Communities and Local Government Table 1000: Additional affordable housing provided by type of scheme, England. Ministry of Housing, Communities and Local Government official website, available at <https://www.gov.uk/government/statistical-data-sets/live-tables-on-affordable-housing-supply>. Accessed 25th April, 2018. For an overview of the changing role of Housing Associations within the English housing system, see Clegg (2019). [↑](#footnote-ref-16)
17. Section N: Provision of Affordable Housing, Column HSN17aa: Granted Planning Permission. National Archives official website, available at [http://webarchive.nationalarchives.gov.uk/20120919151731/http://www.communities.gov.uk/housing/housingresearch/housingstatistics/housingstatisticsby/localauthorityhousing/dataforms/](http://webarchive.nationalarchives.gov.uk/20120919151731/http%3A//www.communities.gov.uk/housing/housingresearch/housingstatistics/housingstatisticsby/localauthorityhousing/dataforms/). Accessed 4th July, 2017. [↑](#footnote-ref-17)
18. Taken from the Department of Housing, Communities and Local Government Table P131: Planning applications decided, granted, and speed of decisions, by development type and local planning authority, Column: All major decisions, number. National Archives official website, available at [http://webarchive.nationalarchives.gov.uk/20121103072007/ http://www.communities.gov.uk/planningandbuilding/planningbuilding/planningstatistics/developmentcontrolstatistics/](http://webarchive.nationalarchives.gov.uk/20121103072007/%20http%3A//www.communities.gov.uk/planningandbuilding/planningbuilding/planningstatistics/developmentcontrolstatistics/). Accessed 4th July, 2017. [↑](#footnote-ref-18)
19. To illustrate this point, if local authority ‘a’ consistently received applications for developments of around 100 houses, one might expect the number of S106 units per application to be in the 10s; if local authority ‘b’ consistently received applications for developments of around 20 houses, one might expect the number of S106 units per application to be in the single figures. [↑](#footnote-ref-19)
20. For reasons of parsimony, I use ‘2005’ to refer to the financial year 2004/05. Unless otherwise noted, all references to a given year of data observations refer to the corresponding financial year. [↑](#footnote-ref-20)
21. From 2005 through to 2011, data on the use of S106 planning powers was collated in the Housing Strategy Statistical Appendix. Under the HSSA Section N, Column 13a records ‘Provision of affordable housing through planning obligations: Number of units granted planning permission’. From 2011/12, data on Local Authority-level affordable housing provision was collated through the Local Authority Housing Statistics (LAHS) compendium. LAHS Section I, Columns i10a-i10f provide disaggregated data on total number of affordable housing units granted planning permission, and Section I Columns i11a-i16a provide data on in-year developer contributions received in the form of free land and a range of financial contributions. LAHS does not include data on the number of new units granted planning permission under planning obligations. [↑](#footnote-ref-21)
22. Column: Lab\_Share. The Elections Centre official website, available at <http://www.electionscentre.co.uk/?page_id=3802>. Accessed 5th July, 2017. [↑](#footnote-ref-22)
23. DHCLG Table 253: Permanent dwellings completed by tenure and district, Column: Dwellings completed by private enterprise. DHCLG official website, available at <https://www.gov.uk/government/statistical-data-sets/live-tables-on-house-building>. Accessed 5th July, 2017. [↑](#footnote-ref-23)
24. ONS ‘Ratio of house price to residence-based earnings’ dataset, Table 5c: Ratio of median house price to median gross annual residence-based earnings by local authority. ONS official website, available at <https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoresidencebasedearningslowerquartileandmedian>. Accessed 7th July, 2017. [↑](#footnote-ref-24)
25. DHCLG Table 600 Numbers of households on local authorities' housing waiting lists by district. DHCLG official website, available at <https://www.gov.uk/government/statistical-data-sets/live-tables-on-rents-lettings-and-tenancies>. Accessed 5th July, 2017. [↑](#footnote-ref-25)
26. For overviews of shifts in housing policy through this time, see Bochel and Powell (2016), and Jacobs and Manzi (2017). [↑](#footnote-ref-26)
27. To check the robustness of this finding, we re-ran the model this time including only 2008 and 2009 in the sample of cases classified as demonstrating higher issue salience. Given no meaningful change to the results, our confidence in the robustness of this relationship between salience and S106 propensity is further enhanced. [↑](#footnote-ref-27)
28. Data on local authority classification taken from Department for Environment, Food and Rural Affairs ‘Census 2001 Rural Urban Classification’ series, ‘2001 Local Authority Classification – pre-April 2009 Boundaries’ dataset, ‘Classification’ column, available at <https://www.gov.uk/government/statistics/2001-rural-urban-definition-la-classification-and-other-geographies>. Accessed 5th December, 2018. [↑](#footnote-ref-28)
29. Decisions taken when operationalising our independent variables make is difficult to clearly differentiate between ‘pre-‘ and ‘post-‘crisis dynamics. Given our use of three-year rolling averages, this line in the sand is inherently blurred; outcomes from 2007 are paired with independent variable measures from 2005-07 (i.e. mainly from the pre-crisis period), and outcomes from 2008 are paired with independent variable measures from 2006-08 (i.e. partly from the pre-crisis period). To enhance the extent to which we are able to identify pre- and post-financial crisis changes, we re-ran our 2007-09 analysis using contemporaneous independent and dependent variable measures. A rationale for this revision is provided by the suggestion in existing literature that re-negotiation of planning agreements became increasingly common as the impact of the financial crisis became apparent (Housing, Communities, and Local Government Select Committee 2018: 20). In line with this tendency, the negotiation timeframe for S106 may have been constricted post-crisis. The results generated by the use of contemporaneous outcome and independent variables are not meaningfully different from results generated by Model 3. However, this revision enhances the confidence with which we can discuss ‘post-‘financial crisis dynamics. [↑](#footnote-ref-29)
30. The Office for National Statistics’ commitment to extend and harmonise data collection in relation to housing and planning in England should lay foundations for fruitful future analysis of the policy area (ONS 2018). [↑](#footnote-ref-30)
31. See, for example, Gilens (2012). [↑](#footnote-ref-31)
32. See, for example, Weekes 2018, Hoolachan and McKee 2019, and ONS 2019. [↑](#footnote-ref-32)