

## Briefing Paper 11: Building Under Licence

- Build under licence schemes were pioneered by the New Towns but can also be used by other public sector bodies, including Homes England.
- They can be applied to public sector land or to land which has been compulsorily purchased by the public sector.
- The developer never pays for the land but instead is given a licence to build on it.
- When properties are sold revenue to the developer is based on a share of total cost (including an agreed profit margin) and the public body takes the rest of the revenue including the market value for the land.
- This reduces risk and upfront costs to the developer and gives the public sector body more control over the finished product that is available through use of planning obligations and conditions.

### Introduction

Build under licence schemes were a proven technique used by Development Corporations and Homes England to maximise return to the public purse, enforce development standards and minimise risk of sites with planning consent standing undeveloped.

The Development Corporation acquired land at existing use value through Compulsory Purchase, drew up a planning brief and marketed the site for development on a build under licence basis, so that the builder did not pay for the land upfront, but developed and sold the units whilst having a licence to develop.

When a purchaser bought a property the payment was split proportionately between the builder and the Development Corporation based on the relative value of the construction work and the land. This mechanism improved the builders' cash flow and ensured that the Development Corporation benefited from any increase in property prices during the construction period.

### Milton Keynes Development Corporation

The MKDC licence scheme worked by holding back the freehold until satisfactory completion of the property, making enforcement of standards much easier than via planning. The model not only enables a significant level of control but secures land value capture into the future. The price is a high initial outlay (by the public sector in buying up the land - and stronger powers to do so) and then delayed but increased capital receipts.

Successful operation of a build under licence scheme requires long term commitment by both the public sector landowner and local housebuilders and private developers. The licence agreement does rely on

developers having confidence in the market since, without having ownership of the land, they can't sit on land but can only build or not build with penalties (if they didn't keep to their programme). So in Milton Keynes the relationship between the Development Corporation and the Developer Forum was very important. At MK this was honed to such a degree that many developers preferred the licence system as they felt supported and were only funding working capital.

Another key point, which MKDC ensured, was ready availability of mortgage funding, liaising with the major funders to secure lending criteria which reflected the economic prospects the corporation was generating.

Good professional relationships were at the heart of successful operation of the Build under Licence scheme. Agreed targets for annual site releases were set by MKDC working with the Developer Forum, using the Development Corporation's projection of job increases and housing demand and the house builders' sense of market conditions. The chosen target was always stretching rather than limited by market demand.

The Developer Forum was also used for some policy matters. For example, when MKDC developed the Milton Keynes Energy Cost Index, which later became the National Home Energy Rating, it was discussed with the Forum, at a meeting to which all active developers in MK were invited. Having discussed the implications the Forum gave their support to the MKECI being a mandatory part of every site brief. The HBF and its Director Roger Humber played a leading role in reaching this agreement.

### **Northstowe Cambridge**

At Northstowe, phase 1, 440 homes, Homes England limited the builder to drawing down only 50 plots per phase under a Lease, only releasing the individual freeholds on sale of each plot, with Overage and Quality Controls built in, thus preventing the builder from selling on, profiteering or slowing down delivery.

The contract stated if the builder did not complete x units by y time then they would be in breach of the contract.

One developer of a 440 unit scheme went bankrupt after 37 units and the build under licence arrangement ensured that Homes England had retained freehold of the outstanding 403 plots and could market the site to another developer.

For Affordable Housing, schemes the land should either be under a lease or sold freehold to the RP as they will not be able to raise capital or charge the units if development is under a licence.

### **Further reading**

<https://www.centreforcities.org/publication/restarting-housebuilding-iii-new-towns-and-land-value-capture/>