

Public Land contributing to New Towns and Other Strategic Sites: Consistency of Land Valuation

Purpose of this note

Its purpose is to focus on the circumstances in which New Town Development Corporations or other public sector led promoters of strategic development sites acquire land by transfer or negotiated sale from other public bodies. Because land assembly on this scale will always attract public attention and raises important public interest issues, it is important that the valuation of both public and private land, whether by agreement or compulsorily, is consistent and fair to both classes of landowner. With the prospect of 'no hope value' directions capable of being made for private land, how will transfers or sales of public land be treated on the basis that public land cannot be compulsorily acquired?

The aim should be to minimise any grounds for legal challenge from private landowners who may claim that public landowners are being treated more favourably. Any challenge of that kind will undermine both the progress of the development and trust in the promoter.

Arising from research carried out by a group of real estate practitioners and public interest organisations campaigning for reform of the 'best consideration' rules for the disposal of land by public bodies, it has become clear that there are a number of minor but nevertheless impactful divergences between the conditions of sale for principal councils, Mayoral Development Corporations, Homes England, and government departments. The following notes outline our understanding and some questions and possible solutions.

1... Voluntary Sales and Transfers

Assumption: It is a reasonable legal principle to assume that public bodies selling land on terms that aim to realise that body's statutory objectives would be deemed to be achieving 'best consideration', whatever the actual price is offered for the land, providing normal procurement rules are observed.

Government Departments and NDPBs

Section 5.4 on Assets Disposals in the Government Functional Standard for Property requires that:

- *When government assets under any tenure become surplus to requirements, they should be evaluated for disposal including transfer into new uses, giving precedence to uses that are government priorities.*
- *Organisations owning freehold property should maintain a strategy for disposals that includes assessing the potential of their existing assets for alternative beneficial uses. Options under consideration for disposal should be included in the strategic asset management plan (see 4.3.3) to facilitate cross-government appraisal of potential portfolio reconfiguration.*

These clearly imply that any alternative use of public land should optimise public policy objectives. It also calls for "Active disposal strategies (to) allow for...marketing to obtain best value." At a meeting with the Government Office for Property in 2022, 'best value' was confirmed to mean 'market value'. They acknowledged our understanding that disposals to other parts of government could not satisfy the 'any willing purchaser' criterion of 'market value', and should strictly use 'equitable value' as the basis of value, viz. "a value between knowledgeable and willing parties that reflects their respective interests" However, they felt that 'market value' was more widely understood. This is inconsistent with the Government Financial Reporting Manual which draws extensively on 'fair value' (the International Financial Reporting Standard equivalent of 'equitable value' in tangible asset valuation).

Principal Councils selling land held for planning or housing purposes meet the conditions of the assumption and are able to sell land on terms that secure development that meets the relevant statutory objective, e.g. the building of affordable housing, the need for which is properly evidenced.

Principal Councils selling other land are covered by the requirement to obtain 'best consideration' (s.123 Local Government Act 1972), regardless of the future use of the site desired by the disposing authority. The basis of valuation in these cases is established as 'market value', which must include any possible use of the site that might secure a planning permission, whether or not it meets

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disposing authority's ambitions. The benchmark for a Red Book 'market value' assessment has often been characterised as 'any crap scheme...poor quality...with homes crammed on the site'. At the very least, in a range of legal opinions, 'market value' has come to be accepted as one that assumes a level of deliberate or incidental non-compliance with policy, as in the judgement in the Parkhurst Rd case 2018 which contains two important principles of law:

- that whatever price is paid for the land would be 'no justification for allowing development that does not properly meet policy requirements and objectives', and
- that 'limited weight' should be attached 'to the Red Book exercise' which did not properly reflect the effect of policy objectives on land value.

MHCLG and RICS have subsequently issued new viability guidance. However, that judgement does not yet, perhaps, impact more widely on valuation practice, including the understanding of s.123 LGA 'best consideration'. The regulatory capacity of the courts, the planning system and improved valuation practice must be relied upon to establish useful precedents over time that help condition market valuations of private land that do 'properly reflect policy'. However, for public land, it should perhaps be taken as a standard expectation that any sale of land, whether for a particular purpose or simply a disposal of surplus assets, should be optimally compliant with relevant policies.

Homes England's powers of sale for land owned by them are covered in Section 10 2008 Housing and Regeneration Act. When considered at the Committee Stage, both MPs and Lords were concerned that the definition of 'best consideration' was insufficiently clear to enable Homes England to optimise the achievement of its statutory objectives through land sales. Despite the Minister's assurances at the time, and the subsequent issue of two General Consents on 'Less than best consideration' (2009 & 2023), it is still not 100% clear in any publicly available policy document that the assumption above is satisfied.

2... Hope Value Directions

Where land is put forward for a direction to the SoS to ignore 'hope value', the valuation criteria must exclude all prospective planning permissions. However S.190 LURA 2023 only applies to land covered by the service of a CPO and would not cover situations in which public land is being transferred or sold voluntarily to the NTDC or other public led promoting body.

Proposal: [This group has previously proposed to Ministers that...] In primary and/or secondary legislation and/or guidance, it should be established that any sale of land by principal councils, Mayoral Development Corporations, Homes England should optimise the achievement of public policy objectives (as specified) and that 'best consideration' will be whatever the actual price is offered for the land, providing normal procurement rules are observed. The Radix Housing Commission has recommended the 'optimal use duty' should be extended to all public land.

Question 1: Should any public land being assembled for a New Town or large strategic development be valued at a) No Hope Value, b) Benchmark Value, or c) 'Best Consideration' (that meets the 'properly reflects policy' test and/or proposed 'optimal use duty') as assessed by an independent valuer?

Question 2: If an SoS Direction to ignore 'hope value' is given on private land being acquired in a designated NTDC or other strategic development area, will it be deemed to apply to any public land in the designated area, without the need for a further direction, and will public bodies be explicitly absolved from seeking 'best consideration'/'market value'?

NB: This note does not cover the potential for the original owners of public land to enter into a land partnership agreement which does not require the immediate transfer into the ownership of the assembling authority: or Treasury accounting treatments of asset value impairments that impact (usually negatively) on departmental RDELs.