

## RESPONSE TO CLG SELECT COMMITTEE INQUIRY ON LAND VALUE CAPTURE

### HIGHBURY GROUP ON HOUSING DELIVERY

The Highbury Group is an independent group of specialists from public, private and independent sectors from housing, planning and related professions which prepares proposals for Government and other agencies on policy options for optimising the output of housing including affordable housing.

#### **Key issue**

The first point that we would like to make is that any review of land value capture needs to be considered within the wider context of land ownership, housing policy, planning policy and development economics. The most effective method for the public sector to benefit from land value uplift is for the public sector, whether it be local planning authorities, sub-regional or regional bodies or national government or a publicly controlled development corporation, to acquire land for development on the basis of its existing use value. This has the advantage that the public sector not only controls the use of development land far more effectively than is possible through the use of planning powers, but also that the public sector rather than landowner or private developer or speculator can benefit from any uplift in land value. It is important in this context to recognise that land value uplift is derived not solely from a planning consent but can arise from a number of factors including adjacent development and the zoning or allocation of a site in a statutory planning document for a specific land use which is of higher value than the existing use. Land and development value can increase as a result of a shortage of land designated for a specific purpose or from a shortage of the development for which land can be used. This applies to the greatest extent in relation to housing development, especially in parts of the UK where there is extensive unmet effective demand for housing, both for occupation and for investment.

#### **Q1 The effectiveness of current methods**

Current methods are largely ineffective. This partly because there are conflicting objectives. The central objective of **Community Infrastructure Levy** is to raise funds from development value to support public infrastructure, primarily transport and social infrastructure. This was introduced mainly to act as a replacement for public funding which was reduced for reasons of national public expenditure control and from a perception (not adequately supported by the research evidence) that planning obligations were ineffective in capturing value uplift arising from planning consent. As an optional levy, each local planning authority who wishes to apply CIL (as not all have chosen to do so) sets its own levy. Consequently, CIL operates on an inconsistent basis, even in relation to neighbouring local authority areas with comparable development values. Moreover, the practice of CIL implementation has demonstrated that in many areas, CIL receipts have been insufficient to fill the infrastructure funding gap. As CIL can be used on a local authority wide basis (in accordance with the criteria specified in the regulation 123 statement) there is no explicit relationship between the use of CIL receipts and the specific development on which CIL is levied. In contrast with planning obligations there is no benefit to the value of a specific scheme from the CIL payment – CIL in effect being a tax. As a fixed charge, CIL cannot reflect the development economics of a specific scheme. There is a risk, that given scheme

development economics vary on a scheme by scheme basis, that a levy can be high and compromise either scheme viability or the delivery of planning policy objectives, such as affordable housing or too low in terms of failing to maximise public benefit from a high value scheme. In that CIL is a fixed charge it cannot reflect changes in costs and values over time. While a CIL rate can be revised, as this has to proceed through a formal consultation and public examination process, CIL cannot be revised to meet short term changes in the market. While the CIL review led by Liz Peace proposed a nationally consistent basis for the levy based on scheme value, the Government has decided not to take this forward as it would override decisions made by hundreds of local planning authorities and would therefore be inconsistent with the Government's advocacy of localism and decisions on planning being made at a local level.

**Planning obligations:** The main purposes of planning obligations are twofold; a) to ensure a scheme is compliant with planning policy and b) to mitigate any negative impacts of the development. The first criterion is used to ensure provision of adequate public transport, open space or affordable housing. As public resources for affordable housing, transport infrastructure and other community services have been increasingly constrained, local authorities have increasingly sought to use planning obligation to fund these services. While in law, these should relate directly to the scheme proposed, planning obligations may in practice be used to contribute to funding deficits in existing provision within a wider neighbourhood. Planning contributions now often include funding for education and health services, though demands for these services may exist independently of those generated by the residents of a specific new development. While there is a case for planning obligations being used to supplement public resources, in recent years there has been increasing dependence on planning obligations to substitute for reduced public investment. In adding cost to a development, such obligations may increase the price of private housing within a development. The Government has therefore sought to constrain the use of planning obligations by local authorities and to reduce what has been seen as a 'burden' on developers and development. The introduction by the Government of the viability (ie profitability) of a development to the developer has led to planning applicants being able to challenge planning obligations perceived as 'onerous'. The appeal mechanism introduced after the 2008 Global Financial Crisis has therefore weakened the ability of local planning authorities to obtain sufficient obligations to ensure policy compliance. The Government has also sought to exempt schemes which are only marginally sub-market (up to 80% of market value or market rents) from planning obligations and CIL which has limited the ability of a local planning authority to support the required transport and social infrastructure within a development which includes such units. There is evidence that the output from planning obligations is reducing, despite the fact that in most of the UK development values have increased in recent years, especially in London and the south east. There has also been increasing use of off-site contributions to affordable housing, which has in some cases been problematic where the local planning authority has had difficulty identifying a site on which affordable housing can be developed. Moreover, with the reduction in public funding for social rented housing, there has been an increased use of planning obligations to provide forms of sub-market housing other than social rent\*.

**Land assembly and Compulsory Purchase:** Current mechanisms for CPO are inadequate because of the requirement on a public body to pay market value. While recent legislation sought to return to the 'no scheme' principle of the 1947 Act, this has not discounted the value arising from the land use allocation of a site in an adopted plan which generates 'hope value'. There remains a difficulty with public bodies having sufficient resources to acquire

land for development, even where the acquisition cost is constrained. With local authorities being under financial constraints, many are selling public land rather than acquiring private land, and in order to maximise receipts may be actually waiving their normal planning policy requirements. Central government bodies have targets to deliver both receipts and maximise housing numbers from disposal of surplus land, both of which mitigate against the use of public land for sub-market housing.

**We would suggest that there are a number of principles upon which reforms to the current system of planning obligations and CIL should be based:**

- \* ensuring that a specific development covers the cost that it imposes on neighbouring communities. Consistent and clear planning policies coupled with planning agreements and CIL can achieve this. This would then constrain land value.
- \* ensuring that the assumption of a profit return on developer investment, in terms of the viability assessment, is reasonable. The current norm assumption of 20% return on value is not consistent with the notion of a competitive return. Appropriate pricing of land is essential if development capacity is to be optimised
- \* making sure that the cost of public investment in infrastructure that leads to increases in land value is properly captured. Local fiscal means are a good approach since that can then tax the increase in value in all properties rather than those that are redeveloped. Business rates could be used more to achieve some of this but are increasingly ineffective. Council tax caps/bands have effectively prevented housing stock value changes being captured. If tax is not used then land ownership is a second best alternative but to work properly there will need to be statutory changes to the compensation assumptions to disregard the value increase associated with the public infrastructure. Planning policy/CIL can work but are far more limited in their ability to capture value, although high CIL zones around Crossrail stations, for example, could be used.

## **Q2 New methods**

Local planning authorities and, where appropriate, other statutory public authorities, should be empowered to compulsorily acquire land suitable for development to meet public policy objectives as stated in an approved development plan. This will be primarily but not solely for housing purposes. Legislation for compulsory purchase needs to be amended to empower such public bodies to acquire land at existing use value. In order to enable such land to be acquired by negotiation, with use of new CPO powers to be in effect a reserve power, the government should publish guidance on the appropriate premium payable by a public body for development land additional to existing use value. This would be a higher proportionate premium in relation to land which had a low existing use value – for example agricultural land, with a much lower proportionate premium in relation to higher value land – for example land in commercial use. One option would be to allow a landowner six months to agree to sell land identified by the planning authority on the basis of existing use value with the appropriate premium, but with the reserve power for the authority to CPO on the basis of existing use value with no premium becoming effective should agreement not be reached within this timescale.

Local planning authorities, when giving planning consent for private development, should be able to impose conditions on the use of development relating to effective occupation, rental levels and sale (and resale) price to ensure that the development, or an element of the development, meets specific affordability objectives in the longer term.

Local authorities should be empowered to take an equity stake in any development for which planning consent has been granted. This could be on the basis of a fixed proportion of the value increase on an annual basis, or as a share of developer profit arising from sale and resale of housing units.

Local planning authorities should be encouraged to attach a condition within planning consent for larger schemes (for example schemes over 500 units or where the scheme build out will take longer than three years) requiring reviews to be carried out at appropriate intervals of the development economics of the scheme both in relation to costs, sale or rental values, or the availability of direct or indirect public subsidy, to enable amendments to the consent in order to optimise the quantity and quality of appropriate affordable housing output. This may include revisions to bedroom size mix, tenure and built form of phases of the consent which have not been built out. This also enables a review of scheme content to reflect any changes in effective market demand.

### **Q3 Advantages and disadvantages of alternative methods.**

This is covered in the responses to questions 1 and 2. Attention should be given to the experience of land assembly and development both in terms of the British New Town experience and the role of Development Corporations, but also in terms of the experience in other countries. This is covered in the separate submission by Nicholas Falk or URBED and the forthcoming Greater London Authority report on European experience: *Capital Gains*.

### **Q4 Lessons from past attempts**

It should be noted that the maintenance of planning policies which require specific development on specific sites (for example affordable housing) and which specify the nature of development (for example in relation to density or mix of dwelling types) have a significant impact on land value. Where a landowner is aware that such planning policy requirements may be negotiable, there will be a higher expectation of a land receipt. Where a developer is aware that planning policy requirements are negotiable, including on the grounds of viability, there will be a willingness to pay more for the land acquisition. Relaxation of planning policy therefore has inflationary effects. For planning policies, including the use of CIL and planning obligations, policy must be both maintained and consistently applied. The limited success of previous regimes has been partly attributable to expectation by landowners and developers that policies will either be abandoned (as in the case of the 1947 Act provisions repealed in 1951 and the 1976 development land tax provisions repealed in 1985) or substantially modified (as in the case of planning obligations and CIL).

Note: The views and recommendations of the Highbury Group as set out in this and other papers are ones reached collectively through debate and reflect the balance of member views. They do not necessarily represent those of all individual members or of their employer organisations. The group's core membership and previous statements and research presentations are on the group's website:

<https://www.westminster.ac.uk/highbury-group-on-housing-delivery>

\* see London Assembly (2012). Review of Mayoral Planning Decisions

<https://www.london.gov.uk/moderngov/documents/s8757/Appendix%201%20-%20Review%20of%20Mayoral%20Planning%20Decisions.pdf>

Joseph Rowntree Foundation (2015) Rethinking Planning Obligations

<https://www.jrf.org.uk/report/rethinking-planning-obligations-balancing-housing-numbers-and-affordability>

RICS (2015) Financial Viability Appraisal in Planning Decisions

<http://www.rics.org/uk/knowledge/research/research-reports/financial-viability-appraisal-in-planning-decisions/>

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