

A Century of Unsuccessful Attempts at Value Capture? An Analysis of the UK's Track Record

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Abstract

The UK has used a variety of devices to try to capture the increase in land value resulting from demographic or economic growth or consent for a change land use to a more valuable one. The Finance Act 1909 was strongly influenced by the ideas of Henry George. It proved difficult to implement but was abolished when the government lost power. Subsequently town planning acts in 1947, 1967 and 1975 and 1976 brought in betterment levies and powers for local authorities to acquire land. In each case the legislation was brought in by Labour governments and abolished by Conservative ones with evidence of development being held back in the expectation that the measure would be short-lived. Implementation in each case was complex. The 1990 Planning Act allowed the imposing of planning obligations and contributions from developers and a community infrastructure levy has sought to make this more systematic and predictable. Against the problems of these measures revaluations of business rates, stamp duty land tax payable by buyers and capital gains tax on sellers have encountered much less political opposition or implementation problems. These measures suggest that although betterment levies can be difficult to collect other taxes can perform similar functions.

Keywords: value capture, betterment, land taxation, planning obligations, recurrent taxes

Introduction

David Ricardo (1821, paragraph 2.2) observed that the term rent is used in two contrasting ways. In an everyday sense “the term is applied to whatever is annually paid by a farmer to his landlord.” In a technical sense, though, this conflates two quite different ideas. There is what Ricardo describes as being the economic rent, “that portion of the produce of the earth, which is paid to the landlord for the use of the original and indestructible powers of the soil.” Landlords though commonly provide significant fixed capital used by tenants in the form of buildings, drainage, reclamation works, fencing, internal roads, and the like. What tenants pay for the use of these is a reward for the capital invested by landlords rather than the use of land and should be regarded as interest on that capital plus profits as a reward for entrepreneurship and the risk borne by the landlord that investment will not attract tenants. The rent offered by would-be tenants might therefore increase for two distinct reasons. One is that the landlord has undertaken additional investment in fixed capital thereby making the property more attractive for tenants. Alternatively, higher bids by tenants may reflect an increase in demand for scarce land. In this case the landlord reaps the benefits even though he has contributing nothing towards the creation of the land. The value of the land can be expected to reflect the capitalisation of expected future rents less management costs and could increase as a result of either of these processes.

Landlords' incomes and wealth could be enhanced as a result of general economic growth, population increase, or urbanisation to none of which owners have contributed nothing. They may be the lucky beneficiaries of the inelastic supply of land resulting in prices rising when demand increases. Henry George (1880) argued that taxes on land would not reduce production as the value of land

“does not express the reward of productionIt expressed the exchange value of monopoly. It is not in any case the creation of the individual who owns the land; it is created by the growth of the community. Hence the community can take it all without in any way lessening the incentive to improvement or in the slightest degree lessening the production of wealth” (p 413).

To follow the Ricardian argument, such taxes have to be designed to fall just on land. If they fall on fixed capital supplied by the landlord, there could be an impact on production since capital is mobile and could be directed towards different types of investment if taxes cause there to be a disincentive to invest in any one area. Henry George went further and argued that taxes on land could increase production by reducing land speculation since no-one could afford to hold land that was being taxed but was not in use. He further advocated land being in public ownership.

A case can be made for taxing increases in the value of land on the grounds of equity – that the increase has come about as a result of the actions of society rather than the entrepreneurship of landlords. Such taxes should be neutral with no impact on the supply of land. The question is whether such taxes can be imposed in practice. In particular, can they be designed so that they do not fall on the product of landlords’ investment in fixed capital? Can the increase in value be defined with legal precision and in ways that enable assessments to be made? Does the society have the capacity to assess and collect the tax?

These questions are explored through a case study of taxes on land value increases imposed by the United Kingdom since 1909. During this period there have been six major attempts at extracting taxes or levies on the increase in value of land coming about from economic or demographic growth or permission to change the use of land so as to permit development. The paper examines how successful these attempts have been and the issues that have been encountered. The UK is a particularly interesting example because of its long history of initiatives in this area and because the country has no shortage of capacity to levy property taxes. It consistently raises more in property taxes each year as a proportion of its gross domestic product than any other country.

Finance Act (1909-10), 1910

In 1909 the Liberal Government introduced what was described as being the “People’s Budget”. It increased income tax on unearned incomes and introduced a supertax of 2.5% in the pound on incomes of over £5,000 per annum, taxes on motor vehicles and petrol, and four new duties on land. A 20 percent tax was imposed on the increase in the incremental value of land, payable on its transfer, sale or lease, or on the death of the owner, or every fifteen years in the case of land held by corporate or unincorporated bodies. A tax of 0.21 percent was imposed on the capital value of unimproved land on which building was held back for speculative purposes rather than being used to best advantage. A tax on mineral reserves of 0.21 percent was imposed on the open market value of the mineral rights. A duty of 10 per cent was levied on the benefit to the lessor at the termination of the lease. The tax on the increase in the incremental value of land should be read in conjunction with the Housing, Town Planning Act 1909. This permitted the planning authority after the approval of a town planning scheme to recover from any person whose property was increased in value as a result of a scheme half of the increase, with disputes about the amount and method of payment being resolved through arbitration. The Finance Act allowed any capital sum paid to a local authority as a deduction from the increase in value for the incremental value duty so that this should fall only on the remaining 50 percent not taken by the local authority.

The duties on land were a clear attempt to tax landed wealth and provoked a political backlash from the landed aristocracy and gentry. Although the government had a majority in the elected House of Commons, it was in a minority in the hereditary House of Lords, where the opposition Conservative Party, supported by the landed aristocracy, had a majority. By a convention that was at that time more than two centuries old, the House of Lords was not supposed to block finance bills, taxation being the responsibility of the elected lower house. Nonetheless the House of Lords prevented the Finance Bill from becoming law, provoking a constitutional crisis. The Finance Act (1909-10) only became law after a general election was called on the issue of “Peers versus the People,” in which the Liberal Party was returned to government, though with a greatly reduced number of seats and dependent on Irish Nationalists for a majority, and a threat by King Edward VII – which in the event did not have to be carried out - to use the royal prerogative to create sufficient government-supporting peers to enable the bill to be passed by the House of Lords. (Hattersley, 2004, chapter 8; Dangerfield, 1935). Behind the politics of class warfare was a philosophy of the role of landowners derived from Henry George that provided intellectual support and justification for the new taxes on land (Short, 1997, chapter 2).

Implementing the tax was complex with key terms, like “transfer on sale” not being defined. A contemporary solicitor, Walter Boas (1910) thought that the term included all transfers other than for nominal consideration or gifts but this was never tested. The interests in land to be taxed included not just freeholds but other interests, including copyhold and leases of more than 14 years. The tax could fall on the transfer of any of these and so fell in effect on partial disposals of freeholds. The duty was not charged on agricultural land providing the land had no more value than its market value for agricultural purposes. Smaller houses under owner occupation were exempt.

The duty required the *assessable site value* of each property to be assessed, that is the value of the bare site, subject to existing restrictions after allowance was made for works and the costs of preparing for development. This was found by taking the *gross value*, that is the open market value in the highest and best use if sold free from incumbrances and deducting any part of the value attributable to capital expenditure for improving the value of the land for building or for business trade or industry. This implied that an assessment had to be made of the development potential of every parcel. Each parcel had to be valued as at the antecedent date of 30 April 1909. This had to be done in a country in which there was no land register except in London and limited other areas and no cadastre. There was not shortage though of valuation capacity. In 1909 a Valuation Office had been created as a branch of the Estate Duty Office and this was augmented to carry out the valuation by additional temporary and permanent staff. By September 1911, 504 temporary valuers had been recruited and accounted for one-quarter of the Valuation Office staff (Short, 1977, chapter 3). The Valuation Office had access to maps at 1: 2,500 scale drawn up by the Ordnance Survey that showed each parcel. Parochial assessors of income tax were recruited as land valuation officers to identify hereditaments. They were able to draw upon data from local rates to identify owners, occupiers and properties. Owners and their agents were obliged to complete detailed forms giving detailed information about each property. By asking about past sales of properties, a database of comparable transactions was built up.

Although the valuation of properties for the new taxes proceeded well, legal problems were encountered with the valuation of agricultural properties so that final valuations were not lawfully served on taxpayers. Initially the government was faced with heavy set up costs and tax revenues were expected to build up slowly. The result was a significant annual deficit

throughout the life of the duties, even after taking into account the beneficial effect they had on increasing the yield from estate duties (Tucker, 1915). War in 1914 disrupted the preparations for the tax. By the time hostilities had ended the Conservatives were back in power. The Finance Act 1920 abrogated the land value duties and the Finance Act 1923 repealed the provision by which all deeds and instruments conveying and assigning land and all leases were supplied to the Inland Revenue. It meant that the Inland Revenue no longer received information about the price at which each property was sold or the rent and premium of every lease so that it was no longer able to compile the database of comparable valuations. When the duties were repealed, those who had already paid them were able to claim repayment. The valuations made for the taxes continued to be used in the 1920s for the purposes of compulsory purchase compensation and for estate duty (inheritance tax) valuations (Smith, 1924, pp19-20).

Town and Country Planning Act 1947

The General Election of 1945 saw a Labour Government elected by a landslide. The key task was post-war reconstruction but this had to take place against a backdrop of austerity due to the financial situation the country was in. The Government was committed to physical planning as the means of recovery. There was an ideological rejection of the free market economic policies that many of its supporters blamed for recessions and mass unemployment during the interwar years. To this end, many of the wartime controls were retained and others added. A key aspect was the Town and Country Planning Act 1947, which limited the rights of property owners to carry out developments and imposed a development levy on increases in the value of land that came about from community action rather than investment by developers. The Town and Country Planning Act, 1932 had enabled local authorities to recover 75 percent of betterment from owners, with the potential for deferment until it was realised, but seems to have been little used. According to the Uthwatt Report (1942, p. 123) this was due to the difficulty of proving that value had increased as a result of the operation of a particular provision in a planning scheme and calculating the extent to which any increase in value was due to this.

The Act expropriated development rights. Owners were entitled to compensation from a fund of £300 million for the loss of development rights as determined by a Central Land Board. Thereafter compulsory purchase would take place at existing use rights valuations. Property owners would have to apply for permission to carry out material development or changes of use. Minor developments covered by the General Development Order and changes of use within use classes were permitted. Physical planning was seen to be a national issue rather than a local responsibility, with the Ministry of Town and Country Planning having been created in 1943 to create a framework in which planning would be centrally coordinated. The Act reorganised the number of local planning authorities reducing them from 1,441 to 145 (de Smith, 1948). This was part of a wider reorganisation of local government focussing responsibilities for services like education and the police on the counties and county boroughs. Local planning authorities were required to create development plans within two year with the plans being revised every five years. Prior to this few local authorities had such plans. When a local planning authority granted planning permission, no work could be carried out until a development charge had been paid to the Central Land Board. The charge was to depend on the increase in value resulting from the grant of permission. The development charge did not apply to government departments, statutory undertakers (utility companies) with respect to their operational land, local authorities for land held for statutory duties, and land held on charitable trusts but none of these was eligible for compensation from the £300 million fund.

The Central Land Board could acquire land compulsorily but not develop it itself as the measure was not intended to result in the nationalisation of land (de Smith, 1948).

The Act had been influenced by the Uthwatt Report (1942), which had considered compensation and the recovery of betterment, particularly in the light of what would be needed for post-war reconstruction. The Report was concerned about how reconstruction could take place with land in multiple ownerships, hence the perceived need for compulsory purchase to unlock development potential, and how reconstruction might be handicapped by compensation and betterment. It saw betterment as a “floating” value that might settle on one area of land when a town expanded but might equally settle elsewhere on equally suitable land. The developer was extracting the betterment potential from the locality, leading to what the Report regarded as being “overvaluation”. It put forward the argument that ownership did not bring unfettered rights. Restrictions could be imposed without compensation “based on the duties of neighbourliness” (p.21). Compensation should only arise where the restrictions amounted to expropriation. It put forward the idea of a compensation fund for the acquisition of general development rights. It proposed establishing a base line of development values and then a levy every five years of 75 percent of the increase in the annual site value in its existing use using the rating system, which is also assessed on an annual and not a capital basis. This removed the problem in the 1932 Act of needing to prove that an increase of value was due to a specific planning approval. The reward for any improvements undertaken by the owner would come from the 25 percent not taken and an allowance of 4 percent of the capital cost of improvements. In a note of dissent, James Barr, one of the committee members and a President of the RICS, argued that for urban properties “the allocation of “value of the site” and of “structure” is difficult – if, indeed, not impossible –except on an arbitrary basis” (p.169). He expected the financial results to be disappointing given the difficulties and costs of administration as well as discouragement of enterprise.

The election of a Conservative Government in 1951 saw the abolition of that part of the Act dealing with the development levy and the Central Land Board in 1953 though it was not until the Town and Country Planning Act, 1959 that market value was restored as the basis for compulsory purchase compensation. It is interesting to note that the Conservative Prime Minister in 1953 was none other than Winston Churchill, Lloyd George’s radical ally in the 1910 Finance Act. These changes left a situation in which an owner received no compensation if denied planning consent and lost the potential development value but there was no levy on those who benefitted from the enhancement of the value of their property through the granting of planning permission (Duerksen, 1976). However, the 1947 Act remains the basis of the present town and country planning system. It overturned the 1932 legislation that required local authorities to pay compensation to developers where they deprived them of development rights by refusing consent in favour of such rights not existing until consent had been granted. The process for granting planning permission enables neighbouring owners affected by developments to make objections and for the community to express its views. Successive governments have complained that this process impedes development, particularly of housing and major infrastructure, but it enjoys wide public support.

The Land Commission 1967

In 1964 a Labour Government was returned to power for the first time since 1951. Initially it was constrained from introducing radical policies due to the slender overall majority it enjoyed in the House of Commons. However, a general election in 1966 saw it gain a working majority. One of the products of its new-found strength was the Land Commission Act 1967. The Act reflected a belief in the importance of planning as a means of securing economic growth and

that a significant part of the gains from increases in the development value of land should belong to the community that created it.

“For centuries the claim of private landowners to develop their land unhindered and to enjoy the exclusive right to profit from socially created values when their land is developed has been questioned, especially when the land is sold to the community which itself has created the value realised. The view that control over development must be exercised by the community is not now seriously disputed and it is generally accepted that the value attached to land by the right to develop it is a value which has substantially been created by the community. A growing population, increasingly making their homes in great cities, has not only made effective public control over land indispensable; it has also made indefensible a system which allows landowners or land speculators wholly to appropriate the increases, often very large, in the value of urban land resulting either from government action, whether central or local, or from the growth of social wealth and population” (UK Government, 1965, paragraph 1).

The Act can be said to represent a return to the ideas of the Town and Country Planning Act 1947. The main objectives, as set out in the 1965 White Paper, were to ensure that the right land was available at the right time for the implementation of national, regional and local plans and “to secure that a substantial part of the development value created by the community returns to the community and that the burden of cost of land for essential purposes is reduced” (paragraph 7).

The Act created a Land Commission that had compulsory purchase powers to secure the early development of land and to acquire land required by a public body or to be disposed of to local authorities, housing associations, or on concessionary terms for private housing. The Commission bought at current use value plus compensation for contingent losses and a share of the development profits. In order to avoid creating a two-tier market – the price paid by the Land Commission and the unrestricted market price – the Act created a development levy on all transactions. The implication was that the Land Commission would buy at the current market value less the development levy. Sales to private buyers would result in the vendor paying the levy. It could only buy development land, in other words land where there had been a planning decision that it was suitable for material development, either because planning permission had been granted, or the land was allocated in a development plan, or was the site of a new town or housing clearance area. The Commission had to follow the normal procedures for compulsory purchase, including the need for confirmation by the minister and the rights of objectors to be heard. The expectation was that the threat of compulsory purchase would bring forward development rather than land being hoarded. When land was disposed of by the Commission, it was through the new tenure of Crownhold under which the Commission could repurchase the land without paying compensation for any future development value. The absence of any hope value should have meant that it would have been able to sell land for development at less than the market price, so particularly house-builders could obtain land from the Commission at concessionary prices.

The development levy was recognition that it was impractical for the Commission to buy all development land but the levy should have ensured that a share of the increase in value came back to the community. The levy was set at 40 percent of the increase in value, though the intention was that it should rise over time to 50 per cent. Increases in development value were excluded from capital gains and corporation (profits) tax as the levy was to be the main tax on development value. Liability was incurred when development value was realised so this was not a tax on theoretical gains in value with all the issues that would have then arisen concerning the liquidity of owners and their ability to pay. Six cases gave rise to the levy becoming

chargeable, of which the most important was the sale of land or assignment of a lease. This case accounted for 88 percent of the assessments and 88.5 percent of the gross charges (Land Commission, 1968, 1969, 1970). The levy was charged on the difference between the market value and the base value. The base value was the current use value or the price paid for the land. Allowance was made for expenditure on improvements or the acquisition of ancillary rights that increased the base value. The charge was a personal one on the taxpayer and did not follow the land if sold. If development land was resold at a higher price, additional levies could be charged. Assessments were undertaken by the Valuation Office, government valuers, who were part of the Inland Revenue and who carried out rating assessments and valuations for capital taxes. Appeals against the amount of the levy were heard by the specialist valuation court, the Lands Tribunal, which also heard appeals against rating and compulsory purchase compensation decisions.

The levy was not just on private owners. Local authorities were exempt on land for social services but not where they undertook commercial development. The government was exempt but the Duchies of Cornwall and Lancaster were not. Statutory undertakers (the utility companies) were exempt only on their operational land. Charities were exempt on their functional and permanent endowment land (the properties that they were barred from selling). Persons building single residences as their prime residence and after 1969 small transactions were also exempt.

The Land Commission was headed by Sir Henry Wells, a past president of the Royal Institution of Chartered Surveyors and the chairman of the Commission of New Towns. It got off to slow start because, as it noted in its 1968 report, builders had restocked before the Act came into force, so no land was actually acquired in its first year. It acquired just 2,207 acres during its three-year life and generated £29.7 million in net charges. In 1970 the incoming Conservative Government abolished the Commission and repealed the legislation.

The 1967 Act was a complex piece of legislation. As well as introducing new terminology associated with the development levy, it also made use of definitions from planning legislation, particularly the Town and Country Planning Act 1962. Central to this is the concept of “materiality”, the point at which any alteration of a building or the use of land is such as to constitute development. Minor developments permitted under the General Development Order were not classified as being material. As one contemporary observer noted, if one takes a complicated and much litigated area of law such as planning and then treats it as a tax measure, “it is not surprising that complication is piled on obscurity until the result is in places well-nigh incomprehensible” Garner, 1977, p. 303).

There was no shortage of capacity to implement the levy. The Land Commission was able to draw upon the expertise of the professional valuers from the Valuation Office as well as well-qualified voluntary experts who sat on its regional committees. The levy was difficult to evade. Conveyance documents could only be presented in court if stamp duty had been paid and the document stamped. In those pre-registration days, no buyer would take the risk of being dispossessed of his property by not having conveyances stamped. Solicitors who carried out conveyances, were obliged to send to the Valuation Office “particulars delivered” for each conveyance so the Valuation Office had a comprehensive database of comparable transactions. The cost of collecting the levy was high at 25 percent of revenue in 1968/69 and 12.5 percent in 1969/70 (Land Commission, 1970), so it could be argued that the tax was not an efficient one. The main problems the Commission encountered were probably political. During the 1960s the Conservative party had received donations from the major house-builders and

construction companies who feared that a Labour government might nationalise the construction industry. Expectations that a change of government would result in the abolition of the Commission and the levy could have resulted in land being held back from development with planning consent not being sought. The Conservative Government that came to power in 1970 repealed the Act in 1971.

Community Land Act 1975

Labour back in power in 1974 sought once again to enact powers for communities in the form of local authorities to control the development of land in accordance with its priorities and for the community to benefit from the increase in land values that it had generated. The result was the Community Land Act 1975. In many respects it was similar to the Land Commission except that there was to be no central body. Central bodies were considered to be too remote from the community and from the consequences of planning decisions, though there was a Land Authority for Wales. Central direction would only come from the minister being required to be the body to approve a compulsory purchase acquisition. Rather development land would be acquired by local authorities. This did raise questions as to whether local authorities had the capacity to perform the role required of them. Many of them did not have in place the structure plans that should have identified development land.

The Act permitted local authorities to acquire land compulsorily where the land was deemed by the authority to be suitable for “relevant development”, a much wider power than previously when compulsory purchase had to be for a specific purpose and with fewer rights for objectors. However, the Secretary of State could exempt classes of land from the category of “relevant development”. Regulations exempted land on which planning consent had been granted up 12 September 1974, small industrial units with a total floorspace of up to 15,000 square feet, other developments with a total floorspace of up to 10,000 square feet, such as small housing development, material changes of use, mining and mineral workings, and development for agriculture and forestry. As one contemporary observer noted, the government seemed to have learned the lessons of the unpopularity of trying to extract betterment levy from small developments under the Land Commission and the problems some owners in such cases had in raising the cash to pay the levy (Wilkinson, 1976, pp. 315-16). Increases in the value of land occasioned by planning permission were to be returned to the community through a development land tax. Owners who sell privately during a transition period would pay this tax. Owners selling to local authorities would receive market value less the development tax. After the transition period land was to be sold on a current use value basis. Local authorities were expected to borrow the money from central government to buy the land. When the land was disposed of 30 percent of the surplus was to go to the local authority, 30 percent to those local authorities whose land accounts were not in surplus, and 40 percent to central government.

Given the fierce opposition the Community Land Act encountered during its passage through Parliament, it was no surprise that the Conservative Government that came to power in 1979 abolished it. In fact, the complex machinery required for the Act to be successfully implemented was never really put in place. As some contemporary observers noted, if the intention was to tax betterment, there were other taxes capable of doing this including capital gain tax (first introduced in 1965) on the increase in value of an asset between buying and selling less improvement costs and corporation tax on developers’ profits. The incoming government did make use of more localised versions of the 1967 Land Commission for regeneration of urban areas, probably the most successful of which was the London Docklands Development Corporation. LDDC was established with a clearly defined set of objectives – to realise the development potential of land released as a result of the transition in shipping from traditional

cargo handling to containerisation and roll-on roll-off ferries. Much of the land was already in public ownership by bodies like the Port of London Authority and the then nationalised utility companies. The area was divided into different local authorities requiring a combined approach and its location close to the City of London made it a valuable national resource. The area was poorly served by land-based transport facilities and much of the land was contaminated. LDDC and similar bodies had powers of compulsory acquisition. They could invest in infrastructure, decontaminate the land, lay it out for development, and then sell it on to commercial developers. The process of preparing the land for development meant that there was the potential for uplift in values, which development corporations have been able to realise. The model has continued to be used. For example, the Olympic Delivery Authority used a similar model for delivering the venues for the London Olympic Games, which were intended to kick start the regeneration of the Stratford area of London. Many local authorities have been able to follow this model for their own areas; using their powers of compulsory purchase to assemble development sites in area in need of regeneration; developing a developing brief, which is then put out to tender; their communities then share in the betterment through leasing the land to developers and planning obligations on developers. One could therefore argue that the model behind both the Community Land and Land Commission Acts has proved to be a viable one when adopted piecemeal for specific localities, sometimes through the use of existing powers and sometimes through the creation through legislation of public bodies with limited objectives and lives.

Development Land Tax

The years 1971-73 saw a boom in property prices. As well as a significant increase in house prices, commercial property prices rose substantially, creating public perception that there were individuals who were becoming very rich from unearned increases in values. This was coupled with inaccurate news stories of office blocks being kept deliberately empty to take advantage of rising property prices. The then Conservative Chancellor of the Exchequer proposed in 1973 to tax development value with certain gains being taxed at income tax rates for individuals (maximum rate 83 percent) or corporation tax for companies (maximum rate 53 percent). Leasing of non-residential property was to be treated as a part disposal under capital gains tax. That government fell before the measure could be implemented but it was adopted by the incoming Labour Government as an interim measure until the Community Land Act came into force (Duerksen, 1976). The Development Land Tax Act 1976 imposed a charge of 80 percent on disposal or development of the difference between disposal proceeds and the base value. The base value could be 110 percent of the acquisition cost plus improvement costs or 110 percent of current use value plus improvement costs. The measure was complex conceptually requiring 94 pages of explanatory notes. The incoming Conservative Government reduced the rate to 60 percent in 1979 and abolished it 1985.

Planning Obligations and the Community Infrastructure Levy

The Uthwatt Report (1942, p. 114) identified a long running argument that public bodies should recover from owners the benefits received from infrastructure. This could be through direct charges, the setting off of compensation for partial compulsory acquisition against increases in value of the remaining part of an owners' land, or recoupment through acquisition of land adjacent to the improvements that can subsequently be sold. The recovery does not have to be in cash but could take the form of a payment in kind whereby an owner agrees to provide a facility of public benefit to offset the impact of his development on a community. The legal basis for doing this was established by Section 106 of the Town and Country Act, 1990. This permits a local planning authority to enter into an agreement with any person with an interest in land in their area for the purpose of restricting or regulating the development or use of land.

The agreement can be enforced against the owners of the land and is a charge on the land. Essentially these are private agreements between a local authority and a developer in which the developer agrees to undertake works or make a contribution to offset the detrimental effects of his development. For instance, the developer of a shopping centre might mitigate the impact of the development on traffic by paying for a bus interchange or a retail park developer paying for a bypass or flyover to prevent traffic congestion. Housing developers might contribute towards the provision of social housing, including donating land or making a financial contribution. Loss of amenities might be compensated by the provision of, say, a library, community centre, or doctors' surgery. They should not involve the "sale" of planning consents.

A circular in 2005 introduced constraints on the use of planning obligations. It made it clear that the obligations were required to be necessary and directly relevant to the development and "fairly and reasonably related in scale and kind to the proposed development" but "should never be used purely as a means of securing for the local community a share in the profits of development, i.e. as a means of securing a "betterment levy"" (Office of Deputy Prime Minister, 2005). The Local Government Finance Act, 1988 had removed the power of local authorities to set and collect rates in business properties. Instead the rates were set by central government and the proceeds pooled and distributed to local authorities according to perceived expenditure needs rather than in accordance with how these were generated. This broke the link between local authorities and their business communities so that local politicians no longer were faced with the potential need to balance the adverse impact of commercial or industrial developments against tax revenues as their revenues were not adversely affected by rejecting planning applications. Section 106 agreements might otherwise have provided an alternative source of revenue had their use not been constrained.

The use of planning obligations was further restricted by the Planning Act, 2008, which introduced Community Infrastructure Levy (CIL). The levy is a charge that local authorities in England and Wales could use to fund infrastructure. Planning obligations could continue to be used to mitigate the impact of new developments but once a levy had been adopted, planning obligations could not be used to provide infrastructure intended to be funded by the levy. The National Planning Policy Framework (2012, paragraph 204) reinforced the idea that planning obligations should be sought only where they were necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. These tests were set out as statutory tests in the Community Infrastructure Levy Regulation 2010 (paragraph 122). CIL developed from experiments by local authorities like Milton Keynes to develop tariffs on new development to provide certainty of funding for local authorities and cover development costs for developers as well as contributing to the range of infrastructure and community facilities development, particularly of housing can give rise to. A section 106 agreement that provides for one facility can ignore the wider impact of a development. Negotiating them raises questions as to whether local authorities have the capacity to identify what can afford to provide by way of amelioration of the schemes, particularly when faced with pleas of poverty and claims that the imposition will cause the scheme to cease to be viable. Local officials find themselves negotiating with experienced commercial managers. Although some of the intentions behind CIL may have been to rein in the use of planning obligations as a means of securing betterment, they have not been problem-free. CIL can raise more revenue from a larger development than would be likely to be negotiated in the form of a planning obligation. Where levied per unit, as in housing developments, the response by developers can be to build fewer larger units so that CIL is

reduced as a proportion of the value of each unit. CIL may not bear any relationship to the viability of development.

Conclusions

The century-long search in the UK for a means of securing part of the betterment created by economic or demographic growth or from the granting of planning consent for the benefit of the community has failed to produce any schemes that have stood the test of time. The history has been one of short-lived experiments. The latest, the Community Infrastructure Levy, only introduced in 2010 has, so far managed to produce no fewer than five sets of amendments to the original regulations. At first sight the failure to develop policy in this area is surprising. The UK has a highly developed system of government capable of implementing complex regulations and not shortage of valuation capacity. It does not shy away from taxing property but raises the highest proportion of its Gross Domestic Product of any country in property taxes.

Three reasons can be advanced as to why betterment taxes have not taken in the UK. Firstly, as the above history has shown, there has been no consensus as to the desirability of taxing the increase in property values resulting from economic and demographic growth. Successive Liberal and Labour Governments have introduced measures which have been repealed by subsequent Conservative ones.

“If nothing else, the history of betterment recapture attempts in England shows that a national consensus on the subject is needed not only for the sake of developers but also for local government, planners, environmental groups and the public.....Because no consensus was reached before the legislation was introduced, it had little hope of surviving the changes of governments” (Duerksen, 1976, p. 75).

Opponents have learned that one only needs to be patient and the irritation from a betterment tax will disappear. Developers can hold back development with confidence that they will not have to come to terms with a new measure.

Secondly, the measures have been fearsomely difficult to legislate. All the attempts have produced lengthy and complex legislation with ample scope for litigation in the search for loopholes and potential for devising avoidance devices. At the heart of the problem is the difficulty of taxing something which cannot be directly observed. Following from Ricardo, the aim is to tax the economic rent but not to discourage investment by taxing improvements. Yet property is leased or sold as a package – the land and the fixed capital and buildings. Trying to assess what the economic rent is under these circumstances is challenging. Unimproved land for development is in units that is very different from those actually occupied by businesses and households making a poor comparable for valuation. Valuers are faced with trying to work out what the unimproved value is by applying what can be arbitrary deductions to the developed value.

Thirdly, and perhaps surprisingly, the UK has been able to tax increases in value using taxes that are not generally associated with value capture. As these taxes form part of the normal tax regime and are not specifically concerned with taxing increases in land value, they do not seem to have attracted the same level of political opposition. They have not run into the same operational problems in defining the tax base or in collecting revenue. Business property is subject to a recurrent annual tax, non-domestic nation rates. These are levied on occupiers and the tax base is the annual (rental) value. They are revalued every five years to their market value on the basis of a standard tenancy. For most properties, there has been little alteration in the interim so that any increase (or fall) in the market price reflects changes in demand. There

is a question of who the effective taxpayer is and the extent to which tenants are able to shift the tax back on the landlords. The rating system has been present since the mid sixteenth century, so whilst not popular, is deeply embedded in the culture. Stamp duty (currently called stamp duty land tax) is a property transfer tax payable by buyers of property. It has existed since the 1690s and is also deeply embedded in the tax system. Capital gains tax was introduced in 1965 and is levied payable by the seller on the difference between the purchase and sales price. There are allowances for improvements and, in the past, for inflation and there is exemption for households on their prime residence. Both stamp duty and capital gains tax are payable at the time of sale when buyers can raise finance or sellers have cash. The lesson appears to be that value capture can be undertaken using more general taxes, particularly ones embedded in the tax system so that operational problems are avoided and they are not likely to be abolished in the short term. Developers plan on the basis of their continued existence rather than hold back development in the expectation that the levies will be short lived.

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