



Land Governance in an Interconnected World

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Capturing land value uplift to deliver infrastructure and affordable housing in a market economy – recent experience in UK.

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Abstract

Following the financial crash governments increasingly have been looking for ways to recoup the costs of infrastructure and other public goods. A key policy measure has been based on the capture of land value uplift arising either from public planning decisions or from the actual provision of infrastructure. Based on recent UK experience the paper addresses a number of the issues surrounding what is understood as 'betterment'. It emphasises the importance of having effective land value capture measures to deliver the New Urban Agenda but also advises on potential pitfalls. Three measures adopted over the last ten years are reviewed with the conclusion that the current regime is overly complex and not achieving its policy objectives.

Key Words: Value, Capture, Planning Agreements, Viability



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1. Land value capture

Following the financial crash 2007/08 governments increasingly have been looking for ways to recoup the costs of delivering infrastructure and other public goods. A key policy measure in the built environment sector has been based on the capture of land value uplift arising either from public planning decisions or from the actual provision of infrastructure. The UK government in particular has sought to move the provision of what previously was delivered through public undertakers into the private sector. Based on recent UK experience this paper addresses a number of the practical issues surrounding what is understood as ‘betterment’ and emphasises the importance of appropriately formulated land value capture measures to deliver the New Urban Agenda (NUA). Successfully delivering the NUA will be dependent on adequately funded infrastructure provision.

The concept of land value capture however it may be formulated is not new and arises from ideas about capturing unearned income or windfall profits which have been generated as the by-product of public acts or regulations. Managing and allocating the use of land is but one example. Such measures may lead to land rationing in the public interest. The resulting increase in land values through restricted availability accrues as a windfall profit to the landowner.

Numerous philosophers/economists have written about this including David Ricardo, Henry George, and Adam Smith. Winston Churchill in 1909 referred to the rewards of rising land values flowing to the landowners at the expense of taxpayers. He also noted this resulted in a loss of competitiveness to the nation. Since the beginning of the twentieth century, the issues raised have become ever more acute with recurring failed attempts to address them. (Ryan-Collins et al. 2017)

This paper is set against some important backdrops and previous UK experiences. There have always been fundamental questions raised such as whether land value is community generated and therefore 100% of the increase in value should accrue to the community. On the other hand is it a return on risk to the landholder who may hold the land as an investment asset exposed to the risk of the economic cycle?

Previous attempts

The evolution of policy in this area is informed by the UK governments’ earlier attempts to capture land value uplift. Initially through the 1947 Town and Country Planning Act, followed by the Land Commission 1967, Community Land Act 1975 and Development Land Tax 1976, all of which measures were repealed because of either complexity in operation and unintended consequences or both. The present (Conservative) government has been mindful not to repeat the experience with previous measures which in some cases brought the land market to a standstill and ultimately failed to achieve the intended objectives.

Yet the fundamental principles underlying the process are well known and understood in the sector. They formed the basis of funding for the garden city movement and again with the post-war New Towns Programme in the UK. Land value uplift created through the designation of areas for development enhanced land values and created a pool of resources which could then be invested in infrastructure supporting the creation of sustainable communities.

The critical question is what are appropriate measures to achieve this in our market economies which also enshrine the right to private property. As our political economies become increasingly more dependent on delivering goods and services through market



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mechanisms, how can this land value uplift best be captured without undermining the development motive itself.

The current UK regime emerged from an attempt to introduce what was termed a 'Planning Gain Supplement' applied as a tax at the point where land increased in value on receipt of planning permission. This was seen by the development sector as a direct land tax and rejected in favour of a development levy more directly related to the provision of infrastructure to service development land.

Ultimately what emerged was a hybrid system combining mandatory neighbourhood based levies with planning agreements which were site specific and discretionary in nature.

Issues raised

Land value capture raises ideological issues about whether such a measure is politically acceptable in the first place. It raises technical land appraisal issues in devising a suitable method for implementation. The challenge is not peculiar to emerging markets; it is also experienced in developed economies. Nor is it confined to economies where the land is primarily in private ownership, it can be found in countries where the majority of the land is in state ownership. Regardless, land owners/developers tend to be asset value maximisers whether they are private or public owners. In the political economy of 'free markets', policy making and public decision taking have tended to reflect this reality.

What constitutes fair leverage of land for this purpose will therefore depend on whether the perspective is that of the homeless, the land owner or indeed the public organisation responsible for effective land administration and infrastructure. Ultimately the policy and legal frameworks within which such measures are promulgated are to be resolved within the political sphere. Once the policy is decided the technicalities of how such measures are to be implemented in practice require careful drafting and considerable technical expertise.

Three policy measures

This paper mainly addresses some the technical issues associated with leveraging land assets for infrastructure and affordable housing. It is about the application of policy in practice. However policy and practice in this area are inevitably intertwined and reference to policy development will be made as contextual background.

The paper looks at three related approaches in the UK. In combination or separately these approaches have been implemented as a form of 'land value capture' regime associated with either the granting of development rights through the planning permission system or the clawing back of land value benefits accruing to land owners where beneficial infrastructure is being provided.

A key understanding in the current regime is that the cost of these obligations should not impact on the viability of development and deter necessary development schemes from coming forward. Setting the level of the levy or obligations is therefore an important part of the process enabling delivery in a market economy.

The policy makers' expectation is that by land purchasers recognising the need to meet the cost of obligations associated with these measures at an early stage, they will adjust their land bids accordingly. In this way the measures are expected to bear down on prices being paid for land. If all other potential buyers in the market recognise the explicit cost implications of obligations on a particular site at an early stage in the bidding process the price should still reflect a competitive return but at a lower price point.



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The ‘package’ of measures identified for consideration is as follows:

1. Section 106 Agreement (Planning Act 1990) A discretionary measure through which developers contract to deliver site specific planning obligations (e.g. affordable housing) to mitigate the impact of development.
2. Community Infrastructure Levy 2010 (CIL). A mandatory development levy assessed on an area wide basis to provide local infrastructure.
3. Major Infrastructure Levy 2010. A mandatory development levy assessed on an area wide basis supporting delivery of strategic infrastructure (Crossrail 1)

2. Taxation v Planning Measures

Two overriding themes have been running in this discussion in the UK for almost a century. Should betterment be captured through a tax collected by the UK Treasury or should it be a local government levy associated with the planning system to be collected locally for the benefit of the local area? This paper examines the latter i.e. measures promoted and implemented through the planning system in the last decade.

A further distinction is recognised within planning measures adopted i.e. the distinction between discretionary planning requirements and mandatory planning requirements as part of the same package of measures.

It is argued here that the discretionary nature of some planning measures in the UK system although providing flexibility where specific site conditions require it will inevitably fail to impact on land values as the policy intends. This contrasts with both the certainty of prescriptive taxation type measure in terms of extent of liability and the ability to know the exact liability in advance.

In its deliberations on Land Use Planning in 2006 ‘the Barker Review considered whether alternative tax measures could be used to effectively capture land value uplift. The Review found that capital gains tax inadequately captured value uplift owing to the availability of reliefs and allowances. A broader land value tax (LVT) was deemed inconsistent with the planning system, which currently determines the value of land. It was argued that introducing LVT would also produce widespread repercussions for the broader tax system and local government finance. The Government agreed with this analysis. (HMT p.9)

Almost ten years after the current system was introduced the criticism by the sector is that government has been attempting to impose a tax on land through the planning system rather than through the taxation system.

Harnessing land assets to deliver infrastructure and affordable housing in a market economy presents a challenging issue in land management. It seeks to balance the rights of the individual land owner with the interests of the collective community to achieve an equitable outcome. It seeks to maintain an active property market through which the raw material for development – land – is delivered. It also seeks to do this while taking account of the option of the land owner to not release land if the perceived return does not meet ‘market’ levels.

Within these issues there are technical challenges which will play out differently in different economies. There are also political ideological challenges about the extent to which markets can or should be relied upon to deliver essential public goods and who should pay for them.

In considering the adoption of any of the measures referred to in this paper policy makers firstly need to recognise the institutional frameworks in which they have evolved. They need to:



- (a) Consider whether their national policy framework is comparable to that in which the measure was promoted
- (b) Consider whether their local planning framework is comparable to that in which the measure was promoted
- (c) Understand the extent to which these measures have achieved their objectives in the context in which they have evolved,

3 National policy framework

Emerging from the financial crisis the UK government focus was on minimising public borrowing. Additionally government was keen to reduce excessive regulation. A major part of governments motive was to remove what it considered to be policy and regulatory impediments to growth.

Principal among these interventions was the reduction of 1,000 pages of national planning policy to fifty seven pages. This created a new National Planning Policy Framework (NPPF) intended to create an enabling policy environment. Primarily this was about delivering more urgently needed housing. At the time the UK needed an average of 250,000 dwellings per annum almost double the 120,000 being built then.

The shift in emphasis in government policy to a more de-regulated and development oriented stance was highly contested. Government's assertion that the 'presumption in favour of sustainable development' was the golden thread running through the framework was described by opponents as a thin veil for a 'presumption in favour of development' of any kind.

Within this broad definition some very specific statements are made in the NPPF about what constitutes sustainable development. In particular the policy emphasises the deliverability of planning objectives focusing on harnessing the private sector. Para 173 of the NPPF emphasises the importance of delivering sustainable development through ensuring planning obligations don't compromise viability.

'Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, **provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.**' (Para. 173 NPPF) (Author's emphasis)

Although by law the system is 'plan led' clearly the mechanism for delivering the objectives of the statutory plan were increasingly intended to be through the operation of the market. Making viability a material consideration clearly conveyed that intention.

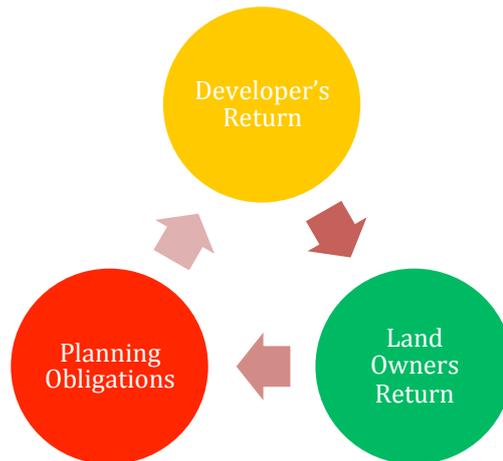


Figure 1 – Satisfying requirements for delivery

Maintaining the business case for development through assuring competitive returns to the developer and to the landowner left only one other part of the equation to flex – the planning obligations.

4. Local Planning Framework

In the UK development is planned and managed through what is characterised as a ‘plan-led’ system operated at local authority level. The principle is that the decisions upon planning applications should be made in accordance with the adopted development plan, unless there are other material considerations (viability) that may indicate otherwise. (Town and Country Planning Act 1990)

In a recent study commissioned by the Royal Town Planning Institute (RTPI) on the ‘The Value of Planning’ the planning context within which the land market operates has been conceptualised as follows:

‘Planning provides an important context for decisions taken by other market actors. These include landowners, developers, investors and others involved in making places change. Shaping markets sets the context for the individual decisions of market actors. It is as much about opening up opportunities as closing them down. Indeed, shaping markets works best when it encourages market actors to see benefit for themselves in meeting policy objectives. In successful ‘plan-shaped markets’, it thus becomes ‘worth it’ to produce more sustainable forms of development since markets shaped by planning create added value for market actors as well as for the wider community. The term ‘plan-shaped markets’ is thus used as shorthand for land and property markets that operate more efficiently and equitably, precisely because the individual decisions of market actors are influenced by the planning context set by government.’ (Adams & Watkins 2014)

While the primacy of the plan led system is recognised, turning planning objectives into reality becomes dependent on a viable property proposition which in turn means maintaining the business case for development. Flexibility in the application of policy by planning authorities is seen as an important enabler of development.

Parker and Doak described the discretionary nature of the planning system in the UK by comparison with countries which have a much more prescriptive planning system. ‘The ‘planning systems operating in the UK exhibit considerable flexibility and local interpretation



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in ‘filling out’ the general requirements of the plan led approach. Such discretion in terms of decision making and the accepted ability to add or refine policy handed from above is tolerated in order to ensure that local requirements and experiences are given attention. This ensures that the general thrust of policy is more likely to be accepted on the ground. (Parker, Doak, 2012)

This then is the discretionary planning institutional framework within which policy is intended to be implemented. Through this is to be delivered:

- Affordable housing and infrastructure to mitigate the impact of development at a site level
- Infrastructure to service the neighbourhood
- Infrastructure to service the site

This is the context in which planning obligations and infrastructure levies imposed on development are intended to be funded through developers paying less for land in an open competitive development land market.

Being aware of the political, economic and planning frameworks within which these measures operate is important to understanding subsequent decisions. The application of policy in this context is re-examined through reviewing a development proposal in Section 8 illustrating the competing if not contradictory policy objectives being pursued by central government and local authorities.

5. Planning Agreements (S106)

The first case study measure recounted here is colloquially known in the UK as a ‘Section 106 Agreement’. The Town and Country Planning Act 1990 provided a measure which enabled the planning authority to enter into an agreement with the developer to contribute to the funding of essential infrastructure and affordable housing to mitigate the impact of development being proposed. A Section 106 Agreement was the exclusive way of capturing ‘land value uplift’ until the introduction of the Community Infrastructure Levy referred to in the next section.

Section 106 agreements, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focused on site specific mitigation of the impact of development. S106 agreements are often referred to as ‘developer contributions’ along with highway contributions and the Community Infrastructure Levy (CIL). Their funding is intended to come out of the value of the land but the actual level of obligation agreed is not usually known until long after the land price has been fixed.

Since the introduction of CIL the common uses of planning obligations now are to secure affordable housing, and financial contributions to provide site specific infrastructure. In principle the terms are flexible and can be negotiated with local authorities on an individual basis. They can cater to the different aspects of a particular development as opposed to CIL which is a non-negotiable levy.

Criticism of Section 106 agreements

Since their introduction Section 106 agreements have however been the subject of criticism and have led to practical issues for both local authorities and developers, including the following:



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- Lack of transparency with confidential aspects of the agreements closed from public view though not official scrutiny.
- Cost of obligations not known until much too late in the process when land values may already have been agreed
- The completion of a Section 106 agreement is often delayed due to lengthy negotiations sometimes jeopardising the development scheme.
- Planning obligations are not always being used for the purpose for which they were originally intended, which is to address the unacceptable impacts of development.

Section 106 agreements have had the benefits of flexibility for both developer and local authority being able to respond to the specific requirements of the site. The uncertainty of the outcome and the lateness in the process of that decision means that it is not being effectively fed back into land prices being negotiated at the outset.

6. Community Infrastructure Levy (CIL)

The second case study measure for capturing land value uplift being considered is the Community Infrastructure Levy introduced in 2008 in response to dissatisfaction with how the Section 106 Agreements regime had evolved.

The principle on which CIL was established was that those responsible for new development should make a reasonable contribution to the costs of providing additional infrastructure to meet the needs arising from the development. By standardising the approach towards contributions in an area in contrast to the highly bespoke Section 106 system, CIL was intended to be fairer, faster, more certain and transparent system of securing such contributions, operating alongside S106 which then had limited application.

The underlying funding principle was that by knowing the infrastructure contribution in advance developers would take explicit account of the costs in agreeing a price for the land acquisition.

The introduction of CIL was optional for local authorities but the regulations were designed to encourage its take up by restricting the future use of Section 106 obligations. Where CIL was adopted by the local authority, Section 106 obligations were scaled back to address only the site specific issues required to make the development acceptable in planning terms.

How it works

The CIL levy is a non-negotiable fixed charge (per sq. metre) on the development of new floorspace. Money collected from CIL can be spent on a broad range of infrastructure identified as necessary to support the wider development and growth of the area such as roads schools, flood defences and health facilities.

As part of its implementation the government made successive changes to the regulations and guidance governing CIL partly to reflect new policy directions and partly to address technical issues raised by councils and developers. Amendments have been made every year since CIL was introduced creating an unstable and increasingly complex regulatory regime.

With increasing criticism a review of the operation of CIL was commissioned by government and a report published in 2016. It found that local authorities were slow to adopt it with 130 authorities (approx. 1/3 out of a total of 375), mainly high value locations charging CIL. A summary of the findings below shows a pattern emerging of a split between high and low



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value areas and a split between those whose priority is affordable housing and those where it is not:

- Some of the 88 additional authorities preparing a CIL abandoned the idea of charging CIL after consultation.
- Authorities that have operational CILs are concentrated to a large extent in more affluent areas where market and land values are higher
- Over half of CIL adopters were from London and the south-east of England i.e. high value locations.
- Main reasons cited by authorities for not progressing towards adoption of CIL were actual or perceived lack of viability and the prioritisation of affordable housing delivery over and above infrastructure provision.
- About 10% of those who are implementing CIL provided positive comments
- The impact of CIL payments on large housing developments was also criticised

Funds generated for infrastructure

The CIL Review (2016) believes that CIL is not raising as much money as was envisaged by Government.

- Based on the expectations of approx. £470 million to £680 million per annum the figure of £170 million for 2015 falls short of expectations.
- Some authorities have received as little as 50% of what they expected.
- CIL is yielding between 5% - 20% of the funding required for new infrastructure
- CIL in some authorities is being set at a relatively low level to accommodate the development of the least viable proposals resulting in lost revenue as some developments pay less than under the previous system
- In many cases local authorities have adopted a zero or very low rates for other commercial uses as a means of encouraging economic growth
- Government has sought to support certain types of development by exempting them from CIL
- The effect of many exemptions is that fewer types of development have to carry the remaining burden of CIL which raises an issue of fairness and lack of viability

CIL does not seem to be capable of providing a nationwide solution to infrastructure funding being adopted mainly in high value areas to the exclusion of lower value areas. Although it is early to comment on this, there is evidence that CIL is also not raising sufficient revenue to contribute effectively to the funding of the infrastructure needed to support development. A further consequence is that this infrastructure is not being delivered in a timely manner.

7. CIL Major Infrastructure

The third and final measure considered here is the use of CIL for Major infrastructure. The only exception to the negative responses to the general CIL was the London Mayoral CIL introduced to contribute to funding London Crossrail 1 an east/west underground rail line. This is a specific single rate levy in conjunction with Crossrail's S106 payments covering all development and set at a relatively low level to contribute to funding for a specific piece of infrastructure, costing c. £15 bn. In the CIL Review this was frequently cited as a success story.

Under the Crossrail funding agreement with Government the London mayor expects to raise £600 million from developer contributions towards the funding of the Crossrail project. This is via a combination of Crossrail S106 payments together with a Mayoral CIL. The last construction year for Crossrail is 2018/19. To coincide with this, the overall target is for £600



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million to be collected by 31 March 2019. As at February 2017 £342 million in mayoral CIL and £96 million in Crossrail S 106 has been received (more than two thirds of the way to the target figure).

In its annual update 2016 Transport for London (TfL) reported that Mayoral CIL receipts (in combination with Crossrail S106 payments) are considered to be on track to make the target contribution towards the funding of Crossrail. It reported no evidence that Mayoral CIL rates were having an adverse effect on development activity across London that requires a reduction in MCIL rates.

It also reported that the potential effect of mayoral CIL rates on affordable housing delivery was not discernible and therefore there was no reason to change MCIL rates on this account

In conclusion the report stated that the MCIL rates set initially have not impacted adversely on strategically important facilities. It went on to state that there appeared to be potential scope for future increases, particularly in respect of residential rates.

8. A Hybrid System in operation.

At the outset the distinction between capturing land value uplift through a conventional taxation system or alternatively through the planning system was made. The one which has now evolved through the planning system in the UK comprises a mandatory levy (CIL) at local authority and London regional level with a discretionary S106 agreement measure for affordable housing and site specific mitigation operating alongside. In this sense it is a hybrid of mandatory and discretionary measures.

Clearly the mandatory part of the system has the effect of ensuring contributions are obtained and therefore operates with the certainty of a tax. The discretionary measure is negotiative and therefore flexible to respond to local policy priorities as they fall to be determined on any particular site.

Development example – application of policy

The following development proposal provides an opportunity to look at the application of policy at site level. It provides an insight into the conflicting objectives between national and local government as well as the trade-offs exercised as part of the normal administration of planning.

The planning application relates to a site in an inner London Borough Council where there is a significant unmet need for affordable housing. The council has an affordable housing target of 50% of all new housing to be achieved across all sites including those where 100% of the housing delivered is affordable.

Parkhurst Road Limited sought planning permission for residential development on a .58 ha. former UK Ministry of Defence (MoD) site in Parkhurst Road, London. The site was bought for £13.25 m following a public tender exercise by the MoD attracting 26 bids. The submission proposed 112 dwellings, but the application was refused by the council on three grounds, including inadequate affordable housing provision as proposed in a draft Section 106 agreement.

On appeal from the local council's decision the key decision for the planning inspector was "whether the proposal complied with policy objectives relating to the provision of affordable housing". Framed another way had the developer taken sufficient account of the land value capture objectives of the council to support its affordable housing policy.



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Using affordable housing as a proxy for land value capture in summary the inspector accepted that 14% affordable housing leveraged through the S106 measure satisfied the policy objectives setting the land value capture at this level rather than the 50% affordable housing which the council claimed was deliverable based on a land valuation of £4.98m. (Land Journal, 2016)

Table 1

Establishing benchmark value, Parkhurst Road, London N7; MoD site sold by public tender with obligation to achieve “best consideration”

Reference	Value	Affordable housing (AH) and obligations
Winning tender May 2013	£13.25m	
Under-bidder – registered provider (housing association)	2% below winning bid – £12.98m	
Other under-bids	Within 13% of winning bid, say £11.5m	
Financial viability appraisal, June 2014 – 112 dwellings [25% reduction on earlier submission]	£13.0m	21% AH by habitable room [14% by unit] £2.54m [section 106, Mayoral CIL, Islington CIL]
Unsolicited bid Taylor-Wimpey May 2015	£15.75m	
Independent CBRE Valuation May 2015	£15.5m	Assumed 25% AH in a scheme of 125 units
London Borough of Islington viability appraisal based on the proposed scheme	Not in excess of: £9.35m £7.32m £4.98m	AH by floor area: 32% 40% 50%
London Borough of Islington notional existing use value	£750,000	

Table 1 Valuation data (RICS Land Journal 2016)

Market Conditions v Planning Policy

Table 1 shows the various valuation figures relied upon in the assessment of viability. The question was which of these figures should be the relevant land value benchmark for assessing viability in a market economy and therefore for the level of affordable housing (land value capture) to comply with policy.

In his decision report the Planning Inspector emphasised the need to take account of market signals in accordance with national Planning Practice Guidance (PPG 2014) supported by professional guidance produced by the Royal Institution of Chartered Surveyors (RICS 2012). He concluded that the evidence did not suggest that a reasonable landowner would have an incentive to release the land for development at any of the values put forward by the planning authority.



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The Inspector found that the appellant's land value figure of £13.25m reflected policy requirements to achieve the 'maximum reasonable amount' of affordable housing.

The planning authority sought to legally challenge the decision through a judicial review process but the government lawyers rejected the attempt, emphasising the discretionary nature of planning decision making. They advised 'that policy statements should not be construed as if they were statutory or contractual provisions'. They referred to a leading High Court decision where the judge stated "Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or contract ... Development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment".

This exercise of judgment is a key part of the operation of the NPPF. It requires making balancing judgments about a broad range of sustainability factors in areas of different economic value and at different stages in the economic cycle, with the priority of delivering development. It is this discretionary aspect of S106 agreements that is both helpful in terms of delivery but problematic in terms of a policy to capture land value uplift.

How policies are implemented in practice is an essential part of the feedback loop informing land values. In the disposal of their own lands both national government and local governments have taken land value maximising approaches to public land sales. Planning decisions by planning authorities taking account of all of these trade-offs both within the local authority and outside it have rarely met the aspirational affordable housing target set in policy.

Stakeholder criticism

Criticism has come from community groups and other stakeholders that public decision makers have conceded affordable housing (land value capture) in favour of increased public revenue where public sites are being sold and in favour of deliverability in the case of private sites.

Research undertaken for a number of London boroughs in 2016 argues that the NPPF is unintentionally inflating land values and having a significant negative impact on affordable housing provision (Sayce et al 2017).

Since the financial crash in 2008, average London prices have nearly doubled and according to one of the sources for the London borough's research, land values have risen by 150%, yet annual new affordable housing supply in the capital has dropped by 37%.

In the depths of the recession it was understandable that sites may not be able to deliver significant amounts of affordable housing because of lack of viability. For many stakeholders this is less easy to comprehend as the market recovered and viability should have improved.

The policy expectation was that rises in property values should have enabled the provision of more affordable housing rather than reduce its provision. In other words with rising property prices, local authorities were expecting to capture an increased amount of land value uplift.

In reality although dwelling prices rose, the residual value created was absorbed into the land value, through a highly competitive land market bidding up land prices. Bidders recognising a flexible affordable housing requirement, adopted a level generally perceived as the boroughs' actual delivery target, something in the order of 25%.



Although the need for affordable housing has been well evidenced at 50% of total housing requirement, the question arises as to whether the sector has now reached the limit of what affordable housing is deliverable alongside private housing without impacting housing delivery more generally.

Conflicting objectives

The decision in this planning appeal reveals the tensions in the planning system between the desire to capture land value uplift on the one hand and the need to maintain the business case for development on the other. Overriding national policies emphasise the need for plans to be deliverable; but being 'deliverable' through the private sector requires maintaining the business case, which comes down to a question of viability in each case.

It was stated at the outset that land asset owners tend to be value maximisers and none more so that government departments raising money through land sales. The seller of the land in this case the Ministry of Defence was required to achieve 'best consideration' i.e. the highest price attainable. Thus the national government objective to maximise land values contrasted sharply with the objective of the planning authority to maximise affordable housing through bearing down on land values.

Similar potential conflicts in policy objectives are revealed when considering the comparable evidence submitted to support the valuation figures. An adjoining borough agreed to a higher price for development land it was selling in return for a reduced level of affordable housing provision.

The Parkhurst Road development proposal gives further insight into the inconsistency in application of policy when a decision on a re-submitted application was again refused on affordable housing grounds. On appeal a different Planning Inspector took the view that the £13.25m (adjusted to current values at the time of hearing) was an overpayment for the site and that the appropriate figure should be significantly lower in the order of £6.75m. (Planning Inspectorate 2017).

Such differing conclusions drawn about the application of policy on the same site give rise to questions about how reasonable it is to expect that such a policy can bring consistent responses on land pricing.

Although the details recounted here pertain to a particular site they are not uncommon and have given rise to significant challenges to the application of policy at site level. So much so that government is currently reviewing related aspects of the NPPF with the intention of reformulating policy to reduce the scope for viability based challenges on individual sites.

9. Detailed Conclusions

There are many conclusions to be drawn about the measures addressed here from both a policy and a practice perspective. The following conclusions mainly address application in practice and its outcomes:

1. One of the key underlying objectives of this policy was to bear down on land prices. The current regime would seem to have failed in this objective.
2. The CIL process is overly complicated to set up and in combination with S106 measures complex to administer effectively with each particular development proposal.
3. Where the levy has been applied separately to large scale infrastructure it has been effective.



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4. Some sites may be impacted by the three regimes so the cumulative effect of measures to capture land value uplift must be taken into account to avoid undermining viability
5. The current measures constitute a hybrid regime combining mandatory tax like measures with non-mandatory measures. Where development viability is an issue the mandatory measures are complied with but the discretionary measures may be negotiated away.
6. The amount of funding being raised in some cases is not material in terms of the overall funding need.
7. Compared with an effective land tax which would be certain, unavoidable and cheap to collect this regime is complex, time consuming to administer and uncertain in its outcomes.

10. General observations

In the context of the New Urban Agenda, land value capture arrangements would seem like an obvious potential source of funding to deliver supporting infrastructure. This however is a complex area combining law, administration, property valuation, politics and planning. It will only be relevant to apply it in areas where there is land value surplus to capture. Additionally, any new regime being introduced should be designed around the capabilities and resources available to implement it.

In setting up a land value capture system it is important to recognise that there may be a choice of operating it through the taxation system or through the planning system. Careful consideration should be given to the merits and disadvantages of these choices.

It is important to understand fully the national policy context in which it is being developed i.e. the ideological underpinning for the policy and its political acceptability. It is equally important to understand how this national policy might be applied through the planning administration system in terms of resources, expertise and new capacity that may be necessary to implement it.

Understanding the distinction between mandatory measures and discretionary measures will be essential to determining what the reasonable expectations of meeting the revenue objectives and the likelihood of being able to bear down on land values if that is a policy objective.

The current regime was put in place as the UK was emerging from recession. It sought to introduce certainty for developers in predicting the cost of infrastructure obligations, through CIL. On the other hand it retained some of the flexibility of the previous system by keeping a negotiative S106 regime for site specific requirements enabling delivery to be preferred over land value capture.

For some the retention of the S106 measure was a surprise but whether it was retained deliberately or inadvertently it has provided a necessary level of flexibility to respond to specific site conditions to ensure delivery. This flexibility has at times been at the expense of delivering affordable housing.

Effective delivery of the New Urban Agenda through land management, planning, construction and development will place considerable demands on skills capacity and resources particularly in relation to land values and the funding of infrastructure. RICS has been engaged with a number of professional coalitions seeking to advance international standards in these areas.* Adoption of these standards is intended to improve the quality of



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outcome, increase transparency and reduce risk. They are intended to build capacity to support implementing policy measures like 'land value capture' and enable the assessment of outcomes more rigorously.

The limits to constructive ambiguity

To ensure a successful outcome to introducing a land value capture regime would seem to be about striking a balance between gaining sufficient and certain revenue to contribute to financing the infrastructure and other public benefits, at the same time as leaving enough potential to maintain the developer's business case and a functioning land market. So a concept of land value uplift sharing may be a more positive approach.

To appeal to diverse and sometimes conflicting stakeholder interests policies in the area of land, planning and city administration are frequently couched in ambiguous terms. This may be helpful in achieving some form of consensus and adoption but is extremely unhelpful in terms of the application of the policy. Formulating policy with an understanding of the requirements for implementing it effectively will be a pre-requisite for successful adoption. Attempts in this area are littered with unintended consequences.

The experience with 'land value capture' operated through the planning system in the UK has evolved into a complex and highly contested area of practice, placing significant demand on skills and a need for high quality transactional evidence. Given this experience in a mature land market, emerging markets should be wary about introducing measures which have such high skill demands accompanied by reliance on high quality information.

Since government accepted the recommendations of the Barker Review in 2006, rejecting a land tax measure there has been a major financial crisis followed by a housing crisis. It may now be time to re-think the government's position.

A simple direct land taxation regime removing this potential for ambiguity in policy formulation and bringing clarity to its application of policy may be more effective at achieving the objectives particularly in emerging economies where information and skill resources may be weak.

*International Standards apply in the following areas: International Construction Measurement Standards (ICMS), International Ethical Standards (IES), International Financial Reporting Standards (IFRS), International Land Measurement Standards (ILMS), International Property Measurement Standards (IPMS), International Valuation Standards (IVS).



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