RTPI
Royal Town Planning Institute

RTPI response to HCLG committee inquiry on land value capture

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Introduction

1. Creating and sustaining great places requires significant investment in physical, social and environmental infrastructure. This includes transport, schools, hospitals, open space, and more. Where significant sums of public money are involved in this investment, and especially in the current economic and political climate, it is important to develop strong mechanisms to ensure that those who benefit from infrastructure provision are paying a fair share for the cost of its development and implementation.

2. Our response considers existing methods of land value capture and concludes that they do not adequately capture increases in the value of the land. It then suggests some ways this could be rectified. However before doing that it is important to make a few general points:

    a. Not all uplifts in land value come from the land changing use (e.g. through housebuilding). A large amount of uplift is captured by landowners who do nothing with their land, in particular through rising house prices, which are often the result of public investment.

    b. New developments lead to new requirements for infrastructure and planning obligations are a crucial way of funding these. However developer contributions were designed to mitigate the immediate impacts of development, *not* to maximise land value capture for the public, *nor* to replace mainstream public investment. Reliance on planning obligations, especially for affordable housing, produces pressures and responsibilities which the system was not designed to take on.

    c. Land value capture varies on the type of land, for example greenfield and brownfield. On the latter it is much more complex as significant amounts may need to be spent on demolition and/or remediation, meaning lots more risk and uncertainty.

    d. Land value capture will always be more effective in areas with high land values than areas with low land values. This means that it can exacerbate regional inequalities if measures are not taken to prevent this.

    e. Using captured uplifts to mitigate the impacts of development will make development more popular. It will also provide incentives for councils to pursue development and will thus help address the housing crisis.

Are current methods, such as the Community Infrastructure Levy, planning obligations, land assembly and compulsory purchase adequate to capture increases in the value of land?

3. The RPTI does not believe currently methods of land value capture are adequate. We believe that there should be a fairer way of sharing land value uplift between landowners and the community, to fund the housing and infrastructure the country needs. It's also important to recognise that the main existing methods were only ever designed to mitigate the impacts of development. More comprehensive land

value capture would require policy instruments designed specifically for that purpose.

4. Current approaches only capture a fraction of the total unearned uplifts in land value, often insufficient to mitigate the impact of development. This matter is now urgent as data from the NAO illustrates. In 2014/15 it was estimated that in 2014/15 land value uplift from gaining planning permission amounted to £12.38bn whilst 106/CIL receipts combined were £2.70bn - less than a quarter. In the longer term, the Centre for Progressive Capitalism estimated that the amount lost could total £185bn over the next 20 years.[1]

5. Current methods generally attempt to capture uplift from developers, as opposed to landowners, to whom the main uplift accrues. This problem lies at the root of problems around viability negotiations as described below.

Section 106 obligations (S106)

6. S106 of the TCPA 1990 covers planning obligations, empowering local planning authorities (LPAs) to put certain obligations on developers. LPAs can capture some of the uplift in land value associated with the development, either by obliging the developer to deliver infrastructure or other services (including affordable housing), or by specifying an amount to be paid to the authority. One of the main advantages of S106 is that it is negotiated on a site-by-site basis and thus allows significant flexibility to deal with specific issues (e.g. infrastructure requirements) and market conditions.

7. However it also has a number of flaws. Because it's based on a particular moment in time obligations can end up being set at too high or too low a level, depending on what happens to the market. Accordingly there are high transaction costs associated with negotiating viability and a lack of consistency which produces uncertainty.

Community Infrastructure Levy (CIL)[2]

8. CIL was developed in an attempt to simplify planning obligations. In essence the idea was that setting an area wide levy after an area wide viability assessment would result in more certainty and less negotiation. The levy should be set at a level which maximises land value capture whilst not harming development. CIL has been used successfully in some areas. The funding of Crossrail in London is most often cited, but significant sums have been collected in other areas for example the south-west of England.

9. However, CIL has not been adopted in many local authorities and has several weaknesses. The viability assessments of CIL are also vulnerable to changes in the market. CIL is not mandatory and has not been picked up everywhere so it has not improved consistency. Finally it has shifted some risk from developers to local authorities by making the latter more responsible for funding infrastructure (though this does have the benefit of increasing councils' capacity to deliver infrastructure).

Compulsory Purchase Orders (CPOs)

10. CPO powers enable local authorities to purchase land without the consent of the landowner. CPOs were crucial to the development of New Towns as local authority development corporations were able to purchase land, develop the New Towns, and then use the resulting uplift to cover much of the cost. Indeed, CPO works best where the purchasing authority is well funded to do organise CPOs, to assemble the site and develop

[1] Thomas Aubrey, 'Market prices and the housing crisis,' Centre for Progressive Capitalism, http://progressive-capitalism.net/2017/10/market-prices-housing-crisis/
[2] See also, RTPI response to CIL review (2016), http://www.rtpi.org.uk/media/1651346/RTPI%20CIL%20questionaire%20response%202016%20final.pdf

infrastructure, then sell on serviced plots at a prices that captures the increased value. This approach is common in Holland.[3]

11. However in the UK subsequent legal developments resulted in the inclusion of hope value in the purchase prices. This means LPAs had to buy the land for significantly more than its existing use value (e.g. agricultural or brownfield). This undermined the value of CPO as a tool for capturing uplifts in land values. At present CPO is rarely used by Local Planning Authorities (LPAs) as very few councils have the experience needed for successful implementation of CPO.

Viability

12. Developers generally value land according to what they see as its market price. This is meant to approximate the sales price, minus a 'competitive return' for the developer, the build and marketing costs, and any planning obligations. Those who ascribe the highest value are most likely to secure the land. If the project subsequently proves to be unviable, they will often be able to renegotiate their planning obligations to a lower level, since this is supported by the NPPF.[4] This means a reduction in the uplift captured for the public.

Centrally collected taxes: capital gains tax and stamp duty

13. Land sold to a builders is taxed at 10-28% through capital gains tax (with an exemption for primary residences). Stamp duty is charged on property purchases at between 2%-12% (rising in bands with the sales price) above a threshold. However, none of this income goes to pay for infrastructure near the development, instead going into general taxation. This means it does not help mitigate the immediate impacts of development.[5] This also means it does not provide an incentive for local authorities to promote development. Finally, it does not capture the majority of uplifts in value, especially given the exemptions.

What new methods may be employed to achieve land value capture and what examples exist of effective practice in this area, including internationally?

14. The RTPI recommends conducting a comprehensive review of land value capture and local government finance. This should consider both improvements to existing methods of capturing developer contributions to mitigate the impacts of development, and new and more comprehensive systems. There should also be further steer from MHCLG and other departments about the relationship between infrastructure expectations from planning gain and infrastructure provided through general taxation.

Improving planning obligations to mitigate the impacts of development:

Improving S106

15. We favour retaining S106 as it allows flexibility. It would operate most effectively if solely aimed at mitigating the impact of particular developments, with additional measures in place to fund other required services. However in the current climate this is not feasible, since the Government has made a choice to mostly fund affordable housing through these contributions rather than through grant support. Another improvement would be to improve

[3] RTPI (2015), Planning as a market maker, http://www.rtpi.org.uk/media/1562925/rtpi_research_report_11_planning_as_market_maker_november_2015.pdf
[4] DCLG (2012), National Planning Policy Framework, paragraph 173, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf
[5] For discussion of this in relation to London see: London Finance Commission (2017), 'Devolution: a capital idea', https://www.london.gov.uk/sites/default/files/devolution_-_a_capital_idea_lfc_2017.pdf

allow local authorities to clawback higher than expected uplifts over the life of the development.

Improving CIL

16. We believe it is worth retaining as it is useful in some places and does not appear to be preventing schemes from coming forward.

Improving viability

17. National policy should make it clear that there has to be a very good reason (i.e. exceptional circumstances) to diverge from the developer contributions specified in the locally adopted Plan policy. The flexibility in the planning system is not there in order to underwrite developers' poor land buying decisions and landowners' aspirational values. We also need clear guidance on land valuation, which makes it clear that a starting point should be the Existing Use Value of the land (EUV+) rather than the open market rate.

Tax Increment Financing (TIF)

18. TIF is a way of borrowing against future tax revenue to fund infrastructure upfront. It allows local authorities to fund improvements by borrowing against future business rates income that should be created by the regeneration and development. It has its own set of issues, but should be available as an option. Local authorities can apply to HM Treasury to retain an uplift in business rates for a period (usually 25 years) and use part of the present value of this sum to fund infrastructure or decrease blight in development areas.[6][7]

More comprehensive approaches to capturing land value uplifts from development

Land assembly

19. Land assembly by local authorities is key to help delivering development, particularly large scale housing. The RTPI strategic planning paper Delivering Large Scale Housing recommends that there is a need for local authorities to take a greater role in land assembly if they are to realise their vision for their local economy.[8] However this may also require CPO reform (see below).
    a. *International example:* The German, French and Dutch approach is for local authorities to buy the land, front fund the infrastructure investment and then sell the land in parcels to developers and keep the land value uplift to fund the initial costs.[9][10]

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[6] This review from the Scottish Futures Trust covers pilot schemes in Scotland. Scottish Futures Trust (2013), 'Tax incremental financing: a review of approach to date' https://www.scottishfuturestrust.org.uk/storage/uploads/Tax_Incremental_Financing_-_Review_of_Approach.pdf

[7] This UK case study considers the use of Tax Increment Financing to fund the Northern Line Extension. Placemaking Resource (2014) https://www.placemakingresource.com/article/1325425/case-study-using-tax-increment-financing-fund-northern-line-extension

[8] RTPI (2013), Delivering Large Scale Housing, www.rtpi.org.uk/media/630969/RTPI%20large%20scale%20housing%20report.pdf

[9] RTPI (2015), Planning as a market maker, http://www.rtpi.org.uk/media/1562925/rtpi_research_report_11_planning_as_market_maker_november_2015.pdf

[10] RTPI's (2017) response to the Housing White Paper also considers additional options, http://www.rtpi.org.uk/media/2346620/RTPI%20Housing%20White%20Paper.pdf

Compulsory Purchase Orders (CPO)[11]

20. CPO should be used more widely with the intention of capturing the unearned uplift in value of land. The Land Compensation Act 1961 should be reformed to enable local authorities and other public bodies to purchase land at close to existing use value. In addition to allowing local authorities to assemble sites more easily, and capture uplifts in land value for the public, this should also encourage landowners to release land more readily and with less expectation of hope value.
21. There might lead to conflict with enshrined valuation practice as in RICS guidance, which allows open market value to take into account potential development value. One way to overcome this could be to designate the land as within a New Town area and then set the valuation rules for land in that area. However, this is still likely to be very controversial as we discuss in Q3.
22. It is also considered that authorities who have been successful in using CPO, such as Birmingham City Council, have been able to do so because they have been well resourced in the past. This has allowed them to have a team of experts dedicated to the CPO process, which has resulted in freeing up of land for much needed housing and infrastructure development. This is a key point which ties in to the wider need for lack of resourcing in planning departments.

Development land tax

23. As discussed in Q2, a major issue with relying on developer contributions is that they are paid by the developer rather than the landowner, despite the latter being the main beneficiary of uplifts in land value. Taxing landowners directly would have the added benefit of avoiding viability negotiations around planning obligations, since uplift would be captured at the point of sale to the developer. Though this would not wholly resolve issues around who funds new infrastructure.
24. The taxable amount would be everything above the existing use sales price as determined by a transparent existing land use evaluation. The tax level could be based on what was needed to encourage release of land. The level of this tax would have to vary depending on the land use - for example residential use would be taxed at a higher rate than industrial use.

More comprehensive approaches to capturing land value from all property

25. It seems arbitrary to capture increases in value stemming from landowners releasing or developing land for more productive uses, and not to capture increases in value for which the property owner has done nothing. The following are potential ways of capturing value for the public from all land.

Land value tax (LVT)

26. The introduction of a land value tax could enable the public to capture the value of land for the public in a far more comprehensive way. The UK currently taxes property lightly compared to other jurisdictions. In Manhattan, a flat can face an annual tax of $40 per

[11] See also RTPI response to consultations on Further Reform of the compulsory purchase system (2016) http://www.rtpi.org.uk/media/1819494/cpo_consultation_response_may_16.pdf and Improvements to Compulsory Purchase Processes (2015) http://www.rtpi.org.uk/media/1375889/CPO%20consultation%20response%20full%20including%20questionnaire.pdf

$1,000 value. A LVT could also counteract speculation on land which has driven up prices and contributed to the housing crisis.[12]

a. *International example*: Denmark has an annual property tax of 1% up to about £360,000 (3.04m DKK) and then 3% over that.

Council tax

27. Reforming council tax might also be substantially easier than introducing an entirely new system like land value tax. If domestic rates had been retained rather than being abolished in 1991, Band H homes would be attracting rates of three times the current Council Tax (at 2014 prices). To reform council tax in order to raise more income from property, Government should explore:

    a. Revaluation - reassessing property values to ensure properties are in the right band

    b. Adding several higher value bands

    c. A steeper increase in cost as you rise up the bands to make them more progressive

    d. A value-based tax above a certain threshold (e.g. properties above £2m would pay the top band council tax plus 3% of the remaining value above £2m)

Business rates

28. As with council tax, business rates are a form of property tax which could be developed to capture more of the value associated with use of that property. To fund Crossrail, a 'business rate supplement' (2% on non-domestic property values with a rateable value of more than £55,000) was raised on companies within London, as a contribution based on the projected economic benefits of the project. This is expected to raise £4.1bn.[13]

29. *International example - Hong Kong*: The Hong Kong Metro was part funded by capturing market driven uplifts inland value from property located in the vicinity of the network. Dramatically reducing the need for any upfront borrowing to fund the investment.[14]

Primary homes exemption from capital gains tax

30. Primary residences are currently wholly exempt from capital gains tax. Since the sale of primary residences forms a huge part of property sales, and house prices have risen so much in recent decades, this represents a huge amount of lost tax.

What are the possible advantages and disadvantages in adopting alternative and more comprehensive systems of land value capture?

31. We would like to see as much of land value uplifts as possible to go to the public. Landowners should receive only enough to prevent land being held back and/ or to avoiding needing CPOs to be the norm. A more comprehensive system would be more equitable and progressive. At the minimum systems should capture sufficient uplift to support the provision of properly planned infrastructure, quality places and legacy arrangements.

32. Aside from enabling the delivery of quality places, a strong reason for undertaking a fundamental review of land value capture would be to make development more popular. Better land value capture would increase the quality of new development and improve

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[12] For more information see RTPI Head of Policy Richard Blyth's article on 'A land value tax for London', https://www.london.gov.uk/sites/default/files/land_value_tax_submissions_redacted.pdf#page=76

[13] https://www.london.gov.uk/what-we-do/business-and-economy/promoting-london/paying-crossrail-business-rate-supplement

[14] RTPI (2014), 'Transport Infrastructure Investment: capturing the wider benefits of investment in transport infrastructure' http://www.rtpi.org.uk/media/816110/capturing_the_wider_benefits.pdf

physical and social infrastructure for nearby existing residents. It would send a strong message that landowners and developers and communities all get to share the benefits of development and land value increases.

Practical barriers to more comprehensive systems of land value capture

Landowners withholding land

33. Previous attempts to capture land value have led to developers withholding land from the market until the measures were repealed. Obviously this would be less of a concern for taxes that applied to all land, or where effective CPO powers were available. However it is worth recognising that even with CPO reform such as was described above, landowners will not simply acquiesce to CPOs where they do not see a substantial planning gain. Thus political capital and public support will be needed.

Administration and implementation

34. Introducing major reforms would not be straightforward. In particular, a land value tax would require accurately and regular assessment of land values. Reforms would also need to be clear and quick enough to avoid speculation and transaction shocks. They would also need to consider existing option agreements and uplift clauses.

35. Comprehensive and transparent information on land and the land market would be a great help in solving these issues. Recent moves to opening up the Land Registry and the foundation of the Geospatial Commission are welcome in this context.

Political barriers

36. Almost any improvement to land value capture would face opposition from some landowners, and some forms would face much wider opposition. One positive of better land value capture would be a probable reduction in land prices. Thus potential opposition might not just be from large and wealthy landowners, but also a home owning population which generally feels entitled to the wealth increases stemming from rising house prices.

37. The Government would need to find ways to win support for changes, ideally by promoting their benefits. A transparent review entertaining all the options discussed here might be one way to gain public confidence. It is also important that any changes would be designed so as:

    a. to be progressive - with relatively higher charges for those with more property wealth, and,

    b. to have safeguards against excessive impacts on individuals - for example ensuring that negative impacts on the ‘asset rich, cash poor’ are mitigated as far as possible. This could mean rolling up tax obligations until sale or inheritance in some cases.

Possible human rights objections

38. Particular concerns have been raised that CPO at existing use value or close to it would breach landowners’ Article 1 rights to protection of property. This claim is based on the idea that the value of the property is what it could sell for on the open market. This would include additional value reflecting the hope that the land would rise in value in the future (for example if it secured planning permission). However since CPO at close to existing use value is standard practice in several European countries it is likely this objection is not insurmountable.

What lessons may be learned from past attempts to capture the uplift in value?

39. Cross-party reforms are far more likely to succeed. This is because single party initiatives to make major changes are regularly undone. Both the betterment levy of the Land Commission Act 1967 and the development land tax of the Community Land Act 1976 were introduced by Labour governments, and scrapped by the succeeding Tory government.[15]

40. Where local authorities are provided with incentives to develop they will respond to them. Before the removal of domestic rates each new home in an area meant more revenue for the council and new permissions were far more popular. This is a far cry from widespread antipathy to development amongst some local politicians we see today. Better land value capture could lead to more incentives for and thus support for development.

41. The greater the complexity of reforms, the greater the opportunity for creative avoidance from landowners. New approaches should be simple and transparent, and there must be direct enforcement and accountability.

[15] David Adams et al (2016), Delivering the Value of Planning, RTPI, http://www.rtpi.org.uk/media/1915891/rtpi_delivering_the_value_of_planning_full_report_august_2016.pdf