

Land value capture: a new consensus

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1. A new consensus appears to be forming around land value capture, which emphasises the effective working of the planning system.
2. A coalition of interest groups and policy bodies wrote to the Secretary of State for Housing, Communities and Local Government, James Brokenshire, on 20th August 2018 (the Onward letter) seeking three things: effective policing of contributions under planning obligations; a stronger role for local authorities in bringing forward sites; and changes to compensation rules so that ‘that local authorities should be able to compulsorily purchase land at fair market value that does not include prospective planning permission, rather than speculative “hope” value’.¹ The coalition’s intentions on the latter point have been more fully explained and very heavily qualified by Shelter in a blog on 21st August 2018.²
3. Shelter say that compensation for the compulsory purchase of land should be based a scheme ‘to meet housing need – i.e. with very high proportions of affordable housing, exemplary design and great transport links and service’. On this assessment ‘A fair price must reflect the use to which land will actually be put, in the national interest’. This ‘fair market value’ is said to be distinguished from ‘a scheme with the highest house prices and the least social housing possible, skimping on size standards, quality and investment in transport and other infrastructure’. What Shelter are seeking is a land valuation based the potential for a development which is well designed, meets its infrastructure requirements and provides sufficient affordable housing. Of course, current planning policy from the national level downwards is that any planning permission should ensure that developments do all three.³ This is presently reflected in the levels of compensation paid when land is compulsorily purchased.
4. Compensation for land acquired falls under three main heads:⁴
 - The market value of the land
 - Loss payments
 - Disturbance (essentially loss of profit and expenses)
5. Only the first is important for present purposes. The Land Compensation Act 1961 section 5 rule 2 is to the effect that compensation is paid on what the land would have sold for in the open market.⁵ This value may derive from the existing use and condition of the land, referred to as existing use value, or from the potential for its development. The value with development potential is affected by two principal factors:
 - What planning permission has been, is likely to be or can be assumed to be granted?
 - What will the market pay for that land in that location?
6. Existing planning permissions can be taken into account along with any planning and any prospect of another planning permission being granted on the assumption that the

¹ <http://www.ukonward.com/landreform/>

² http://blog.shelter.org.uk/2018/08/land_reform/

³ National Planning Policy Framework (2018), para 34 (infrastructure and affordable housing), chapter 12 (design). Size standards may also be imposed: see NPPF para 127, footnote 46.

⁴ Disputes about compensation are resolved by a judicial tribunal, the Lands Chamber which is part of the Upper Tribunal.

⁵ An exception is that if the land is in a use which does not have a market value, such as a church, then compensation is paid for the cost of establishing another building for that use (equivalent reinstatement): section 5 rule 5.

compulsory purchase scheme has been cancelled.⁶ A certificate of appropriate alternative development ('CAAD') may be granted identifying development which could be expected to be approved, with a general indication of any conditions or planning obligation which the planning obligation could be expected to be subject to.⁷ Any assumptions about planning permission would be based on what would be approved having regard to planning policy, including expectations as to affordable housing, design and infrastructure. For example, the Lands Chambers granted a CAAD on a site in Carmarthenshire providing that grassland creation, affordable housing and open space provision would have been required for a housing scheme.⁸

7. Even if planning permission is assumed or considered to have been likely to be granted, the value given to that has to be determined. Planning permission might be approved for very high specification homes in a low price area, but the compensation would reflect what the local market would pay for such properties and so what the land would be worth with the ability to construct them. Broadly valuation is carried out by looking for the sale price of development land with that potential or by a residual valuation, calculating the land value by deducting the developer profit and build costs from the value of the likely scheme. In both approaches affordable housing and infrastructure costs would be reflected in the valuation. The value would also exclude the effect of the scheme which is the reason for the compulsory purchase.⁹
8. The usual expectation of the parties would be that the Lands Chamber would apply the infrastructure and other obligations contained in the local policies¹⁰ and would take a great deal of persuading that an exception should be made.
9. Compensation for compulsory purchase is therefore based on the value of land with its current use or any prospect of a planning permission being granted which meets policy requirements including good design, affordable housing and infrastructure. That is, what would be acceptable on the land in the public interest. A compensation claim based on 'the least social housing possible, skimping on size standards, quality and investment in transport and other infrastructure' would be expected to fail.
10. So Shelter's aspirations for compulsory purchase compensation are already met. Market value is assessed under the Land Compensation Act 1961 on the basis of the potential to develop in the public interest as they propose. There is therefore no need to amend the legislation.
11. The position of the coalition, as explained by Shelter, is a welcome change from previous suggestions of reducing compensation to existing use value or a figure based upon that and so discounting the development potential, where it exists. Those proposals were heavily criticised in my paper *Land Value Capture*¹¹ where I also pointed out that changing compulsory purchase compensation would not affect values paid in the vast majority of land transactions which are entirely voluntary.

⁶ Land Compensation Act 1961, s 14.

⁷ Land Compensation Act 1961, s 17. A recent example of the application of these principles by the Lands Chamber in a CAAD appeal is *Boland v Bridgend County Borough Council* [2016] UKUT 0174 (LC).

⁸ *Bonnell and Morgan v Carmarthenshire County Council* [2014] UKUT 0413.

⁹ Land Compensation Act 1961, s 6.

¹⁰ For example, *Michael v Salford City Council* [2016] UKUT 0370 (LC) at para 102.

¹¹ <http://www.compulsorypurchaseassociation.org/land-value-capture.php>

12. Substantial contributions are being made by development to affordable housing and infrastructure, with commitments of £6 billion being made in 2016-2017,¹² in addition to payments towards general taxation. Changes to the government's *Planning Practice Guidance* are intended to increase these figures by giving greater support to contribution requirements in local plans and by ensuring that viability assessments, which are used to seek to justify reductions, are published and based on assumptions which favour policy-compliant schemes. The Onward letter is right to give support to these reforms.
13. Similarly, the role of local authorities in land assembly is long established, but needs to be encouraged. Compulsory purchase can be used where part or all of a development site is held by an owner who is unwilling or incapable of bringing forward an acceptable development. More widely, local authorities have substantial landholdings and are also seeking to use their capital resources for property investment. They are well-placed to use their funds to develop land in their areas which promote their social and economic objectives in addition to providing a financial return. The focus needs to be, as with the work of Homes England, on overcoming any obstacles to the speedy delivery of sites.

¹² *Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2016-17* (MHCLG), totalling up planning obligations, section 278 highways agreements and Community Infrastructure Levy.