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SCOTTISH LAND COMMISSION  
COIMISEAN FEARAINN NA H-ALBA

# COMMISSIONED REPORT

## **An assessment of historic attempts to capture land value uplift in the UK**



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# Summary

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An assessment of historic attempts to capture land value uplift in the UK

**Commissioned Report No.:** 002

**Contractor:** Colin Jones, James Morgan and Mark Stephens  
The Urban Institute, Heriot-Watt University

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*For further information on this project contact:*  
Shona Glenn – Scottish Land Commission  
Tel: 0300 244 4452

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## EXECUTIVE SUMMARY

### Background

In 1947 development rights across Great Britain were nationalised, meaning that from then on landowners required planning permission to develop sites. It also meant that refusal to grant permission no longer merited compensation and that in future the uplift in land value arising from planning permission would belong, at least in part, to the state. Various attempts at 'capturing' at least some of the uplift in land values through taxation have been made since 1947, but these have proved to be contentious and, for the most part, have not lasted.

Legislation supporting a system of negotiated developer contributions has been operational in England and Wales for almost 30 years, and for more than two decades in Scotland. Nonetheless, most of the uplift in land values arising from planning permission remains uncaptured by the state. An increasing emphasis on infrastructure for economic competitiveness, and a commonly held view that some other countries handle land value capture more effectively than in the UK, has increased interest in this issue. The establishment of the Scottish Land Commission reflects this interest, and this report reviews the various attempts at capturing some of the development gains associated with planning permission since 1947, the experience in the Netherlands, China and Canada, and identifies lessons that policy makers could learn from these experiences.

### Main findings

- Past attempts at land value capture have failed largely due to the absence of political consensus to support them. The lesson is that political consensus, based on an understanding of the principles underpinning land value capture, should be established before any major initiative is taken. Connected to this, schemes should be seen to be fair in order to command public consent.
- Under-resourced schemes have failed or have failed to be as effective as they might have been. It is important for there to be adequate numbers of staff with the right skills to make any system of land value capture to work. This might imply national level support for planning authorities or service sharing, particularly between smaller authorities.
- Compulsory purchase has underpinned some of the more successful attempts at capturing land value capture in the UK and elsewhere in Europe. Local authorities must have sufficient financial capacity to purchase land and provide infrastructure up-front. Borrowing rules and private-public partnerships can help to share risks as well as costs, but a national fund might be required to support development in areas of low land values, or contaminated sites.
- Compulsory purchase by local authorities is likely to be of limited success in capturing land value uplift unless it can be purchased at existing use value, or at least some way below market value. The European Convention on Human Rights (ECHR) permits expropriation of property when it is in the public interest. In such cases compensation should be paid, and there has been extensive litigation on 'public interest' and on the appropriate compensation. Currently the law across the UK bases compensation on market value. It is desirable that this issue is clarified since some other European countries appear to interpret market value closer to existing use value than is the case in the UK. Such clarification might include legal advice and a detailed examination of practice in other countries that are signatories to the ECHR.
- A key strength of the current system of planning obligations is that land value uplift is captured locally and its benefits are visible locally. In contrast the use of a central agency was not effective and led to conflict with local authorities. As is the case in

other countries, land use planning and land value capture are best dealt with together by local government.

- Limiting land value capture to paying for infrastructure needs arising from specific sites limits its scope on high value sites whilst potentially leaving low value sites unviable. This suggests that the benefits of land value uplift arising from a site should be capable of being shared across a local authority area.
- The scope for land value capture varies greatly between different areas, according to land values. This risks leaving authorities with low value land less able to meet infrastructure needs. There is therefore a case for benefits to be distributed between authorities, perhaps through the adjustment of central government grant.
- Site-specific negotiation of developer contributions are being undermined by an unequal balance of power between planners and developers, whilst standard tariffs must be set either to 'undertax' high value sites or render lower value sites unviable. Experience from other countries suggest that market-like mechanisms such as auctioning serviced land are more effective in extracting land value uplift whilst maintaining viability.
- Attempts at land value capture have focussed on uplift at the point that planning permission is granted, and in some circumstances at the point it is sold. This neglects the uplift in land value that currently developed sites enjoy due to economic growth or the provision of publicly-funded infrastructure. There is therefore a case for considering the use of recurrent land value taxation as a complementary means of capturing land value uplift.

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The authors are responsible of any errors of fact or judgement.

## 1. INTRODUCTION

### 1.1 Background and aim of report

In 1947 development rights across Great Britain were nationalised. Since then political consensus has supported the implication that there is no need to compensate landowners if an application for development is refused, and the contrary view that this represents 'the fundamental flaw in the present regime' Pennington (2002, p. 16) is found only on the fringes of politics.

However, there has been little consensus over two further implications arising from the nationalisation of development rights:

- The state, rather than the landowner or developer, owns the uplift in the value of the land, so has the right to capture the whole of the resulting uplift in land value;
- Where the state compulsorily purchases land from a private landowner, it can do so at existing use value (for example as a field) rather than its intended use value (e.g. for housing).

Consequently, the various attempts by governments to 'capture' some or all of the uplift in the value of land arising from the granting of planning permission have often been hotly contested, and have not generally survived changes in government.

Although the current systems of planning obligations (negotiated between developers and local authorities on a site-by-site basis) and Community Infrastructure Levy (in England and Wales) have been more successful than previous attempts at land value capture, they leave most of the uplift in land value uncaptured. With infrastructure needs assuming a central role in economic competitiveness, and the growing view that some other countries use land value capture more effectively than in the UK, there has been growing interest in revisiting various approaches to land value capture.

This report reviews the various attempts that have been made by successive post-war UK governments to capture some of the development gains associated with residential planning permissions for the public purse and to identify what lessons current policy makers could learn from this experience.

### 1.2 Scope of the report

Attempts at capturing increases in land value arising from public works date back to the fourteenth century, and were applied to land owners to help pay for recovery from the Great Fire of London of 1666 (Prest, 1981). Issues of land ownership and tenure became central issues in the nineteenth century, particularly in rural Ireland and Scotland. Interest in land values and their taxation was prompted by Henry George's *Poverty and Progress* (1879) and became a key divide in British politics as many Liberal and radical politicians argued that 'betterment' (the increase in the value of land or property arising from the efforts of the tenant or wider community) should be taxed. The principle of taxing betterment was introduced in the UK's first planning act in 1909 and was extended in the inter-war period. However, taxing betterment was applied in only a handful of cases before 1939, whilst the balancing possibility of compensating landowners for losses arising from the refusal to allow development greatly limited planning authorities' ability to act (Prest, 1981).

More explicit attempts at capturing increases in land values arising from planning permission began only after the Second World War, and followed the work of the Uthwatt Committee (1942) and subsequent White Paper (1944) which recommended that development rights be

nationalised. This implied that the uplift in land value arising from planning permission belonged to the community and could be taxed, and that the refusal to grant permission to develop did not merit compensation.

This report focuses on the measures that have been adopted since 1945 in an attempt to capture increases in land values arising from planning permission. It examines each of the following schemes in order to establish what lessons can be learned to inform future policy in Scotland:

- Development Charge contained in the 1947 Town and Country Planning Act
- Land Commission and Betterment Levy launched in 1967
- Development Gains Tax introduced in 1973
- Community Land Act 1975 and Development Land Tax implemented in 1976
- Planning Obligations since 1991 through Section 106 agreements in England and Section 75 agreements in Scotland since 1997
- Community Infrastructure Levy introduced (in England and Wales) from 2008

The review of measures applied in the UK since 1945 is supplemented with evidence from three other countries with diverse approaches to land value capture: the Netherlands, China and Canada.

### **1.3 Research approach and methods**

The research team examined each of the initiatives listed in section 1.2 above according to a standard template within a pro-forma. The team first established the objectives and rationale that underpinned each scheme. For each of them the study provided details of its practical application including: who was legally responsible for paying the tax, who collected it, the rate at which land value uplift was taxed, and at what stage in the development process it was paid. The logic of each tax scheme was also examined, and in particular the research sought to differentiate between the nominal tax payer (i.e. the person or body who is legally responsible for paying the tax) and the actual incidence of the tax. For example, a developer may have been legally responsible for paying a tax, but in reality all or part of it could be passed on to the original landowner through a reduced price, or to the occupiers of the completed development through higher prices.

The research team made an assessment of the extent to which each scheme met its objectives, and whether there were unintended consequences. To understand why a scheme succeeded or failed, each was reviewed in the context of the political, planning policy and property market environment at the time. Consequently, the team were able to consider whether the role of the macroeconomy and the property cycle played a crucial role in explaining the effectiveness of the schemes. The research also examined the experience of Scotland separately from England probably for the first time, where evidence was available.

This part of the study was primarily a desk-based exercise that drew on a range of sources including academic books and peer reviewed papers, government publications (such as White Papers), evaluations, research reports, Parliamentary debates, select committee reports, and published statistics.

A roundtable discussion was held on 16<sup>th</sup> February 2018 under the Chatham House rules to discuss the themes that emerged from the pro-formas with experts and representatives of key players in the development process. The purpose of the Chatham House rules is to facilitate open information exchange and discussion by preserving the anonymity of the

participants and their affiliations therefore, they have not been listed in this report. The report was informed by this discussion.

The research team also examined how land value capture operates in three other countries, which were selected to provide a diversity of experience. The Netherlands operates a zoning system, and was known to operate a system of land value capture with similarities to the German model which has received most attention in UK literature. Canada also operates a zoning system, but its general approach to public policy is perhaps more similar to the UK. Finally, the team examined China where, as is the case in some other south east Asian countries, urban land is nationalised. The information is based on reports provided by country experts according to a standard template. The discussion represents the team's own assessment.

#### **1.4 Structure of report**

The report examines each of the six schemes employed since 1945 to capture land value in chapters 2-7. The experiences of the Netherlands, China and Canada are examined in chapter 8. A discussion of lessons learned follows in Chapter 9. Conclusions and implications for policy development in Scotland are drawn in Chapter 10.

## **2. DEVELOPMENT CHARGE**

### **2.1 Context and Aims**

Labour's land policies after 1945 arose from the policy discussions begun during the late 1930s and World War II. The extensive and uncontrolled growth of suburbs in the 1930s and the persistent problem of industrial decay in the peripheral regions generated a political consensus about the lack of planning. Planning during this period was still at an embryonic stage and primarily took the form of zoning green field land for development. The weakness of the planning system stemmed also from very bureaucratic procedures and small local authorities with little power. This was highlighted by the fact that at that time if development was restricted by the planning system then local authorities were required to compensate land owners on the basis of the most profitable use to which the site might otherwise have been put (Cullingworth and Nadin, 1997).

The new policies were therefore designed to resolve not only the weakness of the planning system but also the so-called compensation and betterment problem that at that time was intertwined with it. The policies also reflected a zeal by the Labour Government to make fundamental change so that policies enacted by the 1947 Town and Country Planning Acts including a separate one for Scotland (Town and Country Planning Act (Scotland)) were viewed as a step toward land nationalisation and the ending of land speculation.

### **2.2 Details of Policy and its Implementation**

The 1947 Town and Country Planning Acts required all local authorities to create plans for future development and all landowners to obtain planning permission before developing their land. The legislation nationalised development rights: a key event that has not been challenged subsequently by mainstream political parties. More contentiously the Acts assumed any increase in 'development value' (see Glossary) as a result of planning permission was generated by the community and so accrued to the state, not the individual landowner. A 'Development Charge' was therefore introduced on this basis that any increase in value arising from the granting of planning permission should be paid to the state. The charge collected 100% of this increase in value and was paid by the purchaser.

The amount of Development Charge payable was calculated by taking the assumed sale price of a property if it was confined to its present use, i.e. 'existing use value', and then deducting this from the value of the property with permission for its development potential to be realised. Note that the charge did not just apply to land but also to buildings. The definition of 'development' was not just limited to building on vacant sites and the re-development of existing buildings. The term also encompassed the change of use of buildings from one business to another. There were 22 such classes of business. A change of use within a class was not deemed to be "development", but a change from one class to another required planning permission. The granting of planning permission in turn generated the liability to a Development Charge.

A Central Land Board was established to collect the Development Charge. The Development Charge came into effect on 1<sup>st</sup> July 1948. Any uplift in the value of land arising from planning permission was taxed at 100%, reflecting the fact that development rights had been nationalised. It was anticipated that this would result in all land transactions being at existing or current use value (prior to planning permission). Lowering the price of land in this way was expected to make it easier to provide public housing, the need for which had been made particularly acute by the war, as well as parks, schools and other public buildings. At the same time, the money raised by the new Development Charge was expected to provide local authorities with additional means to meet these needs.

The scheme was conceived as land nationalisation so it was all encompassing including small plots of land and all planning permissions. The result was that there was a large bureaucratic task with many betterment charges ultimately assessed as zero. For example in 1950-51 out of 9011 potential Development Charge submissions 76% were assessed as ineligible or zero (Central Land Board, 1951). Many owners of small plots of land who had bought them with a view to building a house, received a Development Charge which doubled the price they had paid for the land. This was because the existing use value was deemed to be nominal.

The nationalisation of development rights and development land values were 'compensated' for by a national fund of £300m for land owners affected. This was an arbitrary sum, of £11.4bn in 2018 prices, to be paid to those with loss or depreciation of development value as a result of the legislation. It was not intended to provide full compensation but a hardship payment. The lump sum was presented as an act of grace on the grounds that nobody had a right to compensation. Compensation for those deprived of development rights was originally to be paid on the basis of one third of 1939 values (based on logic from the Uthwatt Committee report) but it was decided this was difficult to justify. Instead, eventually a lump sum was decided upon.

The £300m compensation fund was overseen and paid out by the Central Land Board. Initially three years were allotted to the valuation of claims. Once these claims had been collated and any arbitration of disputes resolved the task in the fifth year would be the apportionment of the £300 million and the discharge of the payments. The distribution of payments was to be completed by 1<sup>st</sup> July 1953 (although this deadline was missed). The final date of application was 30<sup>th</sup> June 1949 by which there were 935,000 applications. The task of assessing compensation was huge. Anyone could put in a speculative claim if they owned land.

Compensation was to be paid only in cases where the loss of development had occurred rather than where it was simply a threat. Previously it covered hypothetical losses, say for example someone claimed they planned to build a factory on their land in the future. The £300m was allocated between claimants in proportion to the loss of development value. With the total sum as an aggregate ceiling it was estimated in 1952 that this would provide for payment of 80 pence in the pound (Cullingworth, 1980), although some house builder claimants were paid 100% (see unforeseen consequences below).

There were a total of 808,889 actual determinations of value for compensation undertaken. Of this total 354,287 were deemed to have no development value; 12,741 claims were excluded as too small and in the remaining 441,861 (55%) the aggregate of development values determined was £387,366,924. This figure is higher than the original target because of commitments made to builders who had land banks. For Scotland there were 104,011 determinations issued, of which 75,070 had no development value, 5,222 were excluded as too small and so almost 80% of claimants in Scotland received no pay-out. The remaining 23,719 represented an aggregate of development values of £15,454,597 (£586m in 2018 prices).

### **2.3 Attainment of Objectives**

The legislation was very complex and although the basic theory was simple its regulations were interpreted inconsistently by valuers, who lacked precise criteria for arriving at development values or establishing 'existing use' value. This led to many appeals. Special rules had to be drawn up for the valuation of municipal development such as open spaces or buildings and universities. There were a number of exemptions from the Development Charge for housing conversions, housing for agricultural workers, charities, Crown land and local authorities. It necessitated the recruitment of a large number of valuers.

Since development rights now belonged to the state, the legislation allowed the state to purchase land at its existing use value – something of key importance. Local authorities could even ultimately pay less through the Act if the land value of the subsequent use was lower than its existing use. The Central Land Board had compulsory purchase powers, but land ownership was only to be temporary. Once purchased (at current use value) the Board was expected to dispose of the land by private sale or auction at market value. This activity was subject to specific instructions by the relevant government minister. The Board made only up to 35 confirmed compulsory purchase orders. Although land acquired for public purposes from 1948 was purchased on the basis of its current use value land plots with development value which were sold privately attracted higher prices. On 29<sup>th</sup> October 1958 this distinction was removed by the 1959 Town and Country Planning Act. Thereafter, local authority acquisition of land became on the basis of market value, i.e. no longer tied to existing use value.

## 2.4 Unforeseen Consequences

There were a number of unforeseen consequences. The theory of the Act was that all land transactions would be at existing use value as there was a 100% tax above that. However, owners were reluctant to sell at existing use value and only weeks after the initiation of the Development Charge the Central Land Board reported that land was still being widely offered at full development value. The Chairman of the Central Land Board also noted as early as October 1948 that sales of building land had dried up. The Government responded by proposing that the ‘sellers strike’ should be broken by the Central Land Board compulsorily acquiring land. However, it was only prepared to use its compulsory purchase powers to support purchasers who wished to buy specific land plots at existing use value and as a result development was being held up. In other words, the Board only applied its compulsory purchase powers in a responsive mode. While there were many requests (but only 24 in Scotland (Cullingworth, 1980)) for the Board to use their powers in this way the number of actual instances was very low, a maximum of 35 in all. The threat of compulsory purchase as a way of policing the land market did not therefore materialise.

Faced with these difficulties of negligible sales in July 1949 the government asked civil servants to suggest amendments to the Act(s). In its 1950 report the Central Land Board accepted that the Act(s) had failed to establish a market in land at existing use value. It noted,

*‘The evidence available to the Board of prices paid for land for development suggests that sales at or near existing use value are more the exception than the rule. To a large extent this is due to the severe restriction on building. Building licences are difficult to get and the developer who has been fortunate enough to obtain one is often willing to pay a much inflated price for a piece of land upon which to build. In other words, a “scarcity value” attaches at present to the possession of a licence. The theory that the development charge would leave the developer unwilling or unable to pay more than existing use value for his land is not at present working out in practice, especially since a would-be house-owner who pays building value to the seller of the land, as well as a development charge to the Board, is still paying less in the total cost of his house than he would have to pay for an existing house with vacant possession.’*

Many developers were willing to pay a hope value premium, representing the increase in the value of the land if it subsequently received planning permission. Part of the reason was the lack of political consensus as the Conservative Party was against the Development Charge. Many land owners were content to wait until a change of government, when they expected the legislation to be repealed.

The key influence on development over this period, and hence on land sales, was time limited building licences introduced in 1940 that were heavily rationed. Although following World War II there were many bomb sites ripe for development and rising demand for housing and commercial/industrial property the system of building licences, capital issue controls together with a shortage of building materials meant that there were many barriers to development. There was virtually no commercial development between 1945 and 1950 in Scotland (Cullingworth, 1980), with most of the new housing that was built was in the public sector, a direct result of government policy (Jones and Murie, 2006).

New development was therefore discouraged, and there was more profit to be made by improving property up to the limit of a change of use than extending and being subject to the Development Charge. Empty sites could be used as car parks and site owners could leave land idle without incurring any tax in the expectation of an eventual Conservative Government. Rather than ending land speculation, the Development Charge actually encouraged it.

Overall land values tended to be above current use values partly because of scarcity caused by building licences, partly because the values of existing buildings influenced the viability of development and land prices, and partly because the Central Land Board's powers of compulsory purchase designed to enforce use values were applied infrequently. The post-war building restrictions meant that land transactions were significantly reduced, an effect that was exacerbated by sellers waiting for a change of government and the subsequent abolition of the Development Charge.

There were also issues relating to builders with land banks that were not initially fully realised and this led to a rise in the £300m compensation fund. Some land held by builders as a reserve for building purposes before 7<sup>th</sup> January 1947, the date of publication of the Bill, attracted a payment representing full compensation for any loss of development value. As this payment was not to be made until 1<sup>st</sup> July, 1953, it was agreed that any development charge that became payable in the meantime could be postponed until the accrual of the compensation payment. Development values for the purpose of claims against the £300 million had to be assessed on the basis of prices current immediately before the publication of the Town and Country Planning Bill in January 1947, but the Development Charge was assessed on the basis of prices current at the time when the development was about to take place. Virtually all compensation claims were processed by 1955, including those from builders where any Betterment Charge could be set against compensation for loss of development value.

Finally, the Development Charge created a number of absurdities and injustices that served to undermine its credibility:

*'The Press reported numerous examples of the effects which the regulations were having on would-be developers, on those whose use changed from one class to another, and on those who innocently thought that they did not come within the scope of the regulations. One typical example was of a factory owner who was discouraged by the Development Charge from building on land that adjoined his factory. Instead, he erected two goal posts on the land, for his workers to play football. This was deemed a development, and charges were imposed on the goal posts. Another was of a man who bought his disused air raid shelter from the local Council. He was refused permission to use it as a tool shed unless he paid a Development Charge.'* (Blundell, 1993, p. 4)

## 2.5 Assessment and Lessons

The total development charges collected were £16,980,358, made up of £12,572,388 collected while the 1947 Act remained fully in operation and £4,407,970 afterwards. In addition £9,694,101 was assessed and not collected but set off against the value of compensation claims for loss of development value explained below. The total of development charge assessed was therefore £26,674,459 (£744m in 2018 prices). The percentage of this total sum collected in Scotland is unclear but for 1950-51 it was 3.7% (lower than that of any region in England or Wales) compared with 23% in Greater London where land values were highest and development pressures greatest (Central Land Board, 1951).

The 1947 Acts provided the basis for modern planning but the amount of Development Charge collected was undoubtedly disappointing compared with what was originally expected. The collection of the Development Charge was too all embracing involving small plots of land that not only made the collection extremely cumbersome it also created hardship for these owners. The lack of political consensus at the time meant that the Development Charge stymied land transactions although the weak development activity was more likely the result of the shortages of building materials and restrictions caused by building licences.

The Conservative Government that came to power in 1951 saw as its priority the rebuilding of Britain and in particular expanding the number of houses built. The Government announced in November 1954 the lifting of all building restrictions setting off a ten year development boom especially in London (Rose, 1985). The Development Charge was seen as an impediment and was abolished for development begun on or after 18<sup>th</sup> November 1952. The powers of the Board to acquire land were also abolished at the same time. The Board was disbanded on 1<sup>st</sup> April 1959 once it had completed its tasks of assessing and collecting taxes and distributing compensation payments.

### **3. LAND COMMISSION AND BETTERMENT LEVY**

#### **3.1 Context and Aims**

From 1960 rising land prices and property speculation came increasingly to public prominence. The post-war property boom that started in the mid-1950s as the country was rebuilt also brought a rapid rise in land prices and developments that were subject to critical comments in both the press and Parliament. It also brought ostentatious wealth as the most successful property developers became celebrities. Property companies for the first time gained their own section in the *Financial Times* shares listings. The value of shares in these property companies rose from £103m in 1958 to £800m in 1962 (Fraser, 1984).

In 1960 Hugh Gaitskell, the Labour Leader, denounced the Tories for what he called the 'land price scandal'. At its 1961 conference Labour approved a major new policy statement, *Signposts for the Sixties*, that included the creation of a Land Commission to 'purchase the freehold on which building or rebuilding was authorised' at somewhat over its 'use value'. The land would then be leased back to the developer 'on terms which ensured that the community obtained the benefit of a future rise in the value of the land' (Weiler, 2008).

The political environment supporting public intervention was given further impetus in July 1963 with the publicity from the *Rachmanism* scandal involving exploitative residential landlords. In the successful 1964 election campaign the Labour Party put the Land Commission as a central element of their electoral programme to establish a 'new Britain' (Weiler, 2008). A 1965 White Paper promoted the Land Commission by reference to planning decisions resulting in unearned land values. In the Government's view it was wrong that planning decisions should benefit land owners in this way and that desirable development should be frustrated by owners withholding their land and speculating on higher values. The Government's land policy was framed as securing land for the implementation of planning, and ensuring that a substantial part of the development value created by the community accrued to the community. It also envisaged that the cost of land for development would be reduced by this policy as if the purchaser paid hope value this would ultimately be taxed, increasing the land cost (HM Government, 1965).

#### **3.2 Details of Policy and its Implementation**

The Land Commission began its operations on 6<sup>th</sup> April 1967 with two very different but complementary functions. First it was as a land trading corporation and second a revenue collection agency for the Betterment Levy. These two functions were inter-related. Given the impracticability for the Land Commission to buy all land needed for development a Betterment Levy was charged when planning permission was granted or when land was sold and development value was realised (see next paragraph). While betterment was reintroduced there was no revival of the issue of compensation (and nor has there been since).

The levy payer was the seller of land (in the 1947 Act it was the purchaser). The levy was calculated using a complicated formula based on 'development value'. The levy rate was set at an initial rate of 40% which the government intended to increase to 45% and then to 50% at reasonably short intervals. These increases never happened. 'Development Value' was defined in the legislation as the increment in the value of land which is due to the likelihood of its being put to a more profitable use than its current use. This might stem not just from the existence of a planning permission; but the Act also noted that land might also have development (hope) value as a result of the market's judgement of the possibility of obtaining permission.

In a sale of land 'development value' was defined by taking the sale price and deducting a 'base value', derived in one of two approaches whichever is the more favourable to the levy payer. The first base value was 11/10<sup>ths</sup> of the current use value of the land. The second approach took the price paid on a previous occasion when the land was sold. The latter approach did not apply to land purchased between 23<sup>rd</sup> September 1965 and 5<sup>th</sup> April 1967. Allowances were also made for improvements by the owner which had increased the value of the land.

The acquisition of land by the Land Commission was on a net of tax basis, i.e. market value less the Betterment Levy applicable.

Towards the end of 1967, the Commission made representations to the Minister about the disproportionately high cost of dealing with small transactions and recommended legislation providing for exemption in cases falling below a specified limit of market value. In addition the Commission noted that evidence was accumulating that the levy was causing difficulties, and in some cases hardship, to a number of levy payers, who carried out small transactions. Many of these were unaware of the full extent of the liability they were incurring for the levy. These transactions included small plots of garden sold for development, houses with development value that had been sold by owner occupiers moving elsewhere and houses built on land previously given or bequeathed to their owners, or sold to them at a nominal price. To address these issues and to secure economies in levy administration the Government amended the Act in April 1968 including waiving unpaid levy assessments below £1,000 (Land Commission, 1968).

### **3.3 Attainment of Objectives**

The Land Commission suffered from the scale and complexity of its task. First, there were some 1–1.5 million land transactions each year, of these around 10% gave rise to betterment levy. In addition, there were also approximately 500,000 applications for planning permission. Each compulsory purchase order took between six months to two years to negotiate and had to be agreed by the Inland Revenue Office (Weiler, 2008). At the time there were only a limited number of valuers in the Inland Revenue Office with numerous other demands on their time. There were also the costs of staffing of the Land Commission (Land Commission, 1968).

The scale of the task was exacerbated by the need for public accountability and constraints on decision making. Complexity was made worse by bureaucracy. It could not purchase large areas of land without discussions with local authorities and Ministry of Housing officials about a 'planning strategy' for the area (Weiler, 2008). The Commission did not seek to acquire land suitable for immediate development and already in the hands of builders, if it was likely to be brought into development in the near future. In its first report it set out its thinking. In theory if house builders were holding excessive land banks the Commission could apply its acquisition powers to effectively transfer some of this land to builders who were likely to develop it immediately. In doing so it was minded to favour small builders. It could do this by competitive tender amongst selected firms who could demonstrate they were able to carry out development in a reasonable time. Alternatively, it could on occasion acquire land on behalf of a particular firm, for example if the plot was required to complete a scheme which was being carried out by the developer in question, or where the developer could show that he had been negotiating unsuccessfully for the land over a long period, without competition from other firms. It could also buy land on behalf of a local authority in a similar way. In both these latter cases there would be a charge (Land Commission, 1968).

Given its resources and the complex processes, the Commission decided to use compulsory powers sparingly. If there was an objection it was subject to a public inquiry. The first, held on 18<sup>th</sup> October 1968, related to the proposal to acquire 52 acres of land at Killearn, near

Glasgow, from a builder who, in the opinion of the Commission was not developing his land holdings quickly enough (Land Commission, 1969).

The framework for its acquisition activities was set by the government. In England and Wales the Commission was asked to use their land acquisition powers to ensure that the levy did not lead to a shortage of land, particularly for private house building. In particular, the government stressed the pressure of demand for housing land in London and the Home Counties, the West Midlands and the North West of England. While making it clear that the provision of housing land was its first priority, the Minister of State also requested that it make key sites available for mineral working, for housing associations on concessionary Crownhold terms, and to buy land for comprehensive schemes of development, involving a mixture of private and public development and affecting the interest of more than one public authority (Land Commission, 1968).

The Secretary of State for Scotland was more ambitious and asked the Commission to provide an even greater proportion of land for private housing, wanting to see the annual output raised by about 50% above its then level. The Commission was also to undertake land assembly in some of the more important central redevelopment schemes, and also in the expansion of existing towns (Land Commission, 1968).

One problem identified in Scotland by the Commission at the time was that much of the land suitable for housing development was in the hands of a small number of companies, that had accumulated very large stocks, and that some redistribution was going to be necessary to address the Secretary of State's plans (Land Commission, 1968).

In the second year of its activities the Commission began to supplement proposals of the local planning authorities in outer metropolitan London by finding land independently and making it the subject of applications for planning permission and draft compulsory purchase orders (Land Commission, 1969). In the year to 31<sup>st</sup> March 1970 these steps resulted in draft compulsory purchase orders relating to eight sites totalling 1,375 acres of land (although not all were supported by local planning authorities and four were subsequently rejected). Similar activities progressed in the West Midlands and the North West but again there was a lack of buy in by some local authorities (Land Commission, 1970).

In Scotland during the financial year 1969-70, 286 acres were acquired and 162 acres sold. The activities included:

- 146 acres bought on behalf of Ross and Cromarty County Council for the establishment of large-scale community/industrial project in the Invergordon area;
- land was acquired for the second phase of a 99-acre site in Edinburgh to be developed with private housing, primary schools and a community and shopping centre;
- an 87-acre site for private housing in Stirling;
- parts of an area in Stirlingshire for comprehensive development to implement a plan for the expansion of an existing village;
- a site for industrial use in West Lothian; and
- a compulsory purchase order was made on 31<sup>st</sup> March 1970 in respect of 422 acres at Erskine in Renfrewshire to establish a new community (Land Commission, 1970).

These land acquisition activities suffered to a degree by an underlying conflict between local authorities and the Commission caused by an overlap of roles. Not all local authorities cooperated and some objected to the scale of development that the Ministry of Housing/Commission proposed for their areas. The Commission's role in supporting local

authorities in the promotion of development was diminished/impossible when they did not want any help (Weiler, 2008).

Not surprisingly the Land Commission failed to achieve its acquisition goals set out in the original White Paper. By the end of the first year no land had been purchased, but there were a few plots in the process of acquisition. By 31<sup>st</sup> March 1969 the Commission had acquired only 946 acres of land and sold six acres. Land acquisition accelerated in the third year and during 1969-70 the Commission bought a further 1,261 acres and sold 312 acres. Although activity accelerated in year three, by the time it was wound up in 1970 it had acquired only 2,800 acres of land whereas it had been projected to acquire 50,000 acres annually (Land Commission, 1970).

### **3.4 Unforeseen Consequences**

The Labour government's land strategy was well trailed so builders had bought land in advance of its implementation. Land purchase for new development was brought forward by the White Paper in 1965. As a landowner became liable for "chargeable acts" after 6<sup>th</sup> April 1967 this also led to a rush to start token 'development' before this deadline by digging holes or trenches, or laying foundations. The result was a prolonged period of stagnation in development land sales in 1967.

This had knock on effects for the collection of the Betterment Levy so by the end of the first financial year the assessed levy amounted to only £1.6m, and collection to £0.5m. Over the three years to 31<sup>st</sup> March 1970 assessments of Betterment Levy (together with interest) amounted to £48.7m. There were some reductions of assessments as a result of settlements of counter-notices and other causes that amounted to £2.1m. Collections summed to £29.7m, leaving a balance of £16.9m uncollected as at 31<sup>st</sup> March 1970. The collection of Betterment Levy was therefore muted. Instead of the £80m expected in a full year, only £15m was raised in 1968-69 and in the following year only £31m.

In Scotland the absolute figures for the net levy and as a percentage of the UK were:

1967-68	-
1968-69	£373,299 (2.5%) £6.3m in 2018 prices
1969-70	£612,800 (2.0%) £9.8m in 2018 prices

These figures almost certainly reflect the relatively low land values in Scotland.

### **3.5 Assessment and Lessons**

It can be argued that that the low level of Development Levy collected reflected the weakness of the Land Commission. Given that the Land Commission was having difficulties in meeting its goals this probably gave rise to uncertainty about its future. It may well have led to a reluctance of landowners to part with their land, anticipating a change in government or the abolition of the Development Levy. As land became less, rather than more, readily available, this would have tended to raise the price of what land was available.

However, it is also important to set the land market in a wider context. It was a period of modest economic growth with quiet commercial development activity constrained by the lack of finance and its rising cost. A credit squeeze was introduced in 1968 and subsequently tightened. Government constraints on commercial development through Office Development Permits from 1964 also reduced commercial development opportunities in the South East of

England. On the other hand there were industrial development grants in the peripheral English regions, and in Scotland. Town centre redevelopment of shopping schemes were popular (Fraser, 1984). House prices rose nominally by around 20% between 1967 and 1970 but in real terms there was no change (Denman, 1971). The flat-lining of house prices in real terms occurred despite the land constraints identified by the Commission. In other words it was a relatively calm housing market.

As noted above, the Commission soon realised that the 'land problem; at the time was a shortage of land allocated in development plans for immediate development. This was particularly an issue for the areas around the major metropolitan areas in the South East, West Midlands and North West. At the end of its first year the Ministry was in discussions with the Commission and the planning authorities of the Home Counties about the possibility of allocating more land for housing and bringing it into development through the Commission (Land Commission, 1968).

This finding exposed the fallacy of the reasoning behind the establishment of the Land Commission. It had been presumed that the land problem in the form of high land prices was created by land speculators withholding land. The rationale for the design of the Land Commission had been mistaken, and instead at the time it was the reluctance of local authorities to designate development land that was the main problem. It was also a major obstacle to the Commission. The thinking behind the Commission had evolved at the end of a property boom when undoubtedly there had been speculation. The error was to assume this as an inherent problem rather than a cyclical phenomenon.

The task for the Land Commission was much greater than the government had envisaged primarily because of the high costs of dealing with small land transactions. The scope of the Commission was too all embracing and many of the levies on these small land transactions caused hardship for the owners. The taxing of small land plots was also unpopular with the public.

Arguably the Land Commission was based on faith without a full understanding of the workings of the land market, careful investigation of the scale of the administrative task and the relationships with local authorities. It can be argued on the other hand that the Land Commission as set up was a pale reflection of the original more ambitious model, emasculated by objections from government departments. Labour's 1970 manifesto did not mention it but the 1974 White Paper published by the next Labour Government blamed its failure on the fact that the planning system was not changed at the time to accommodate the Commission, it should have not had to deal with small claims, and it did not have sufficient time to achieve its goals. The Development Levy and Land Commission were abolished on 23<sup>rd</sup> July 1970 just a month after a Conservative Government was elected.

## **4. DEVELOPMENT GAINS TAX**

### **4.1 Context and Aims**

After the demise of the Land Commission land transactions were subject to Capital Gains Tax, a new tax that had been introduced in 1965. This meant that the taxing of land transactions returned to the position that applied between 1965 and 1967. Following an expansionary fiscal and monetary policy from September 1971 there was a rapid boom in residential and commercial property values, on a scale greater than in living memory. The boom continued through 1973 despite a rent freeze, and there was increasing public attention on the speculation that saw, for example, individual office values rising despite deliberately being kept empty (Fraser, 1984).

In the Budget speech of March 1973 the government announced the intention to bring in a land hoarding charge, and the details were set out in a White Paper the following month. It was to be levied if a development was not completed within four years after outline planning permission or three years after detailed planning permission was granted. The annual charge was to be set at 30% of the capital value. The specific impetus behind the proposal was that residential planning permissions were being granted at a much faster rate than housing was being developed, especially in the South East of England. These plans were never implemented probably because of the many weaknesses exposed by the subsequent debate, particularly deferring applying for planning permission. Nevertheless, the proposal was significant as it was the first time that a Conservative government had acceded to the idea of a differential land tax (Prest, 1981).

Meanwhile the Conservative Government came under increasing and more urgent pressure to address the inflationary pressures in the economy exacerbated dramatically by the quadrupling of oil prices in November 1973. The same month with industrial action by energy workers and miners, the government announced a state of emergency and increased the minimum lending rate to 13%. On 17<sup>th</sup> December it undertook a mini-Budget that brought greater restrictions on personal loans, public expenditure cuts and a tax on development gains (Fraser, 1984).

The government lost power in February 1974 and the Development Gains Tax was continued as an interim measure by the subsequent Labour government. It was included in the Finance Act 1974. The tax was based on the principle that development gains would be treated as income. For individuals realised development land gains were taxed at their marginal income tax rate and for companies such gains were taxed at the corporation tax rate. It was collected as part of general taxation procedures linked to Capital Gains Tax (Prest, 1981).

There was also a first lettings tax levied on shops, offices or industrial properties. This did not have a formal name as it essentially was equivalent to an amendment to capital gains tax. In a sense it brought forward tax liabilities that would be applicable once the building was sold. Capital Gains Tax was charged if more than 25% of the floor area of the whole chargeable building was let after 17<sup>th</sup> December 1973.

### **4.2 Details of Policy and its Implementation**

Development Gains Tax was applied after 17<sup>th</sup> December 1973 and followed the principles and procedures for Capital Gains Tax. It had three alternative arrangements for payment linked to the difference between acquisition and disposal costs.

There were a number of exemptions for small tax payments. For example if the aggregate amount or value of the net proceeds were less than £10,000 then the recipient was exempt from the tax. This ceiling rose to £20,000 for a deceased person.

If a land owner made losses on sale then the person could get tax relief on the basis that the disposal price was less than the current use value at the time of its acquisition or if acquired before 6<sup>th</sup> April 1965, its current use value at that date (introduction of Capital Gains Tax).

The Act made it clear that any shareholders of companies or other property investment vehicles were liable to the Development Gains Tax if their interests were sold/disposed of after 17<sup>th</sup> December 1973. Transitional arrangements were also set out for property purchases in the process as at 17<sup>th</sup> December.

### **4.3 Attainment of Objectives**

The tax proved to be an irrelevance. The November and December policy measures of 1973, that encompassed Development Gains Tax, brought to an end the consumer boom that had been the fundamental prop to the property boom through generating rising rent values. With the economic climate deteriorating, high interest rates, capital and rental values falling, building costs rising at the order of 25 to 30% a year and liquidity problems of developers there was only minimal development activity initiated after December 1973. "Even at nil site cost most (commercial) development would still not have been profitable" (Fraser, 1985, p. 397). There was also a slump in the housing market caused by a mortgage famine. Over the life of this tax development activity across all sectors was moribund.

### **4.4 Assessment and Lessons**

The timing and brevity of the tax meant that it had no impact. The main lesson is that the revenue from these types of taxes are very dependent on the property cycle.

## **5. COMMUNITY LAND ACT 1975 AND DEVELOPMENT LAND ACT 1976**

### **5.1 Context and Aims**

In the light of the early 1970s commercial property boom and well publicised land speculation over this period, the Labour Party emphasised tackling this issue in its 1974 election manifestos. The White Paper, 'Land', in September 1974 that preceded the legislation emphasised the links between planning and betterment to ensure an effective planning system (HM Government, 1974). This occurred notably because of the restrictions on planning caused by the market price of some land and the fact that land in the hands of private owners could be a resource that is not at the disposal of the community. It drew lessons from the previous Labour attempts to capture betterment, concluding that a central agency is too far removed from people and local planning authorities and that an inflexible scheme can only be self-defeating.

The White Paper therefore proposed that the acquisition and disposal of development land be the responsibility of local authorities (except in Wales). The land to be acquired would be that which the local authority viewed as requiring development or redevelopment generally over the next ten years. It was argued that local authorities acquisition of all land required for private development in this way would permit more positive and comprehensive planning (HM Government, 1974). It also built on the experience of local authorities acquiring much inner city land to undertake comprehensive redevelopment plans as a result of slum clearance beginning in the 1960s (Weiler, 2008).

Eventually local authorities would have a duty to purchase development land. However, the government realised that transitional arrangements were necessary. During this period local authorities would pay for the land at market price minus a new Development Land Tax. This new tax was a tax on 80% of the difference between development value and current use value, and was to replace the Development Gains Tax. The principle of the policy was that the community was to benefit from increases in development value and the operation of the scheme would leave the private owner in the same position whether a person sold to a local authority or to a private purchaser (HM Government, 1974).

### **5.2 Details of Policy and its Implementation**

The Community Land Act came into effect on 6<sup>th</sup> April 1976. Local authorities were given the power to acquire land for public ownership, by agreement or by compulsory purchase. The Secretary of State could dispense with a public enquiry as preliminary to a compulsory purchase order. Local authorities, having acquired land, had the responsibility of seeing that it was developed, either by themselves or by others. Exemptions from acquisition included single houses for owner occupation; buildings used in agriculture and forestry; and development related to the extraction of minerals. The government estimated that there would be an increased staff requirement (including operation of Development Land Tax) of 1,400 jobs in the Inland Revenue and 12,750 at the local level (Prest, 1981).

Local authorities were to buy land for development at just above current use value (i.e. development value minus 80% tax on uplift) and sell at development value. To ensure that the local community retained a share of any future increases in value this disposal was to be on a leasehold basis that provided for rent reviews. This leasehold arrangement would apply to commercial and industrial development. Land for residential purposes was to be sold off, either freehold, or via a building licence granted to the builder. Owner occupiers who bought new houses on this land were given the freehold. The land was to be purchased within five year rolling programmes to build up land banks to have sufficient development or redevelopment for up to ten years ahead.

To begin with local authorities would undertake this activity on a voluntary basis during a transition period leading up to a full duty to purchase development land. The transition period was attributed to a shortage of skilled manpower to manage the system so that it would not be possible to move immediately to the new system in full. In the transitional period both land with planning permission on the day of the White Paper and land owned by builders on that date were to be normally excluded from municipal acquisition under the scheme. Developers were also to be able to continue to make planning applications and carry out development although local authorities would have an opportunity to consider whether to acquire land themselves before they granted planning permission. The power of local authorities to acquire land would become mandatory when a Duty Order was made by the Minister (HM Government, 1974). This order was never made.

The cost of buying land, including costs of administration and interest payments, etc., would be financed initially by borrowing, and would be repaid from the proceeds of disposals at a higher price. Ultimately, purchases would ideally be paid for directly by the monies raised by disposals. Initially at the end of a financial year 70% of any surplus was to be paid to the Secretary of State. In 1978 this percentage was reduced to 50% (Prest, 1981).

The tax was charged when development value was realised on a (part) disposal of land (including the granting of a lease), but any development value realised by the carrying out of development was also liable to tax. It was planned that the tax rate was to increase progressively in line with the build-up of local authority programmes of acquisition and disposal of land for development. However, the significant increase in municipal land purchase never happened, so the tax rate was never raised above 80%. When the Conservatives came to power the rate was reduced to 60% (Prest, 1981).

The tax was collected through the Inland Revenue and there were rules put in place for its interaction with Capital Gains Tax. The precise definition of the tax was that it was charged on the difference between disposal price (or market value where tax is chargeable on the carrying out of development) and a "base value" whichever was the highest of:

- the price paid for the land plus any increase in current use value since the date of acquisition;
- current use value at the date of disposal plus 10%; and
- the price paid for the land plus 10%.

These uplifts were increased to 15% in 1980 by the then Conservative Government. These percentages presumably reflected the contribution of the owner to development value. There were a complex set of rules for the collection of the tax covering the entities liable; definition of development; exemptions for small amounts, owner occupiers, agricultural and forestry land and public bodies; annual allowances before tax was liable; and gifts.

### **5.3 Attainment of Objectives**

The legislation suffered a mortal blow as a result of the weakness of the economy. The 1970s were a period of turmoil and in October 1976 there was a sterling crisis that led to a loan of £2.3bn from the International Monetary Fund in December. Inflation was at 14.7%, in late 1976, down from 25.9% the year before, and unemployment was 1.3m. The IMF loan came conditional of budget cuts of £2.5bn which brought significant impacts for local authority spending (Fraser, 1984). These unforeseen changes in the fiscal environment meant that the land purchase plans received a heavy setback in December 1976. A central government guidance note announced that the previous borrowing limits for local authorities to buy land had been reduced by almost half (Blundell, 1994).

In its final year of operation only the community land accounts of six Scottish authorities for the year 1979-80 showed cumulative surpluses, amounting in total to £1,822,881. These six authorities were:

- Dunfermline District Council (£1,048, 519);
- Lothian Regional Council (£6,800);
- Edinburgh District Council (£685,508);
- Midlothian District Council (£9,419);
- Kyle and Carrick District Council (£49,574); and
- Western Isles Islands Council (£23,061).

Of the remaining authorities only Clydebank and Stirling District Councils had not bought any land (House of Commons, 1982).

It is unclear how much revenue was generated by the tax. When the Chancellor of the Exchequer announced its abolition he made the following statement,

*'My final proposal for reform concerns development land tax. This is a particularly complex tax, which was introduced in response to the problem of soaring land values at a time of high inflation. Its chief practical effect is to discourage the bringing forward of land for development. This disincentive effect will grow as the gap widens between the 60% rate of development land tax and a corporation tax rate which is on the way down to 35%.*

*'I have therefore decided to abolish development land tax altogether, with immediate effect. At the same time, I propose to cancel all deferred charges under the tax. The net cost will be some £20 million in 1985-86 and £50m in a full year. That compares, incidentally, with a collection cost of some £5m a year. Development gains will, of course, continue to be subject to income tax, corporation tax and capital gains tax, in the same way as any other income or capital gains.'* (Lawson, 1985)

#### **5.4 Assessment and Lessons**

The Community Land Act was a failure and much of this can be attributed to the external macroeconomy. The policy of land purchase was almost still born given the dramatic cuts in local authority borrowing just two months after it was initiated. The initiative also required local authorities to purchase land of their own volition. From the Scottish statistics it is clear that there was a differential buy in by local authorities. The government never invoked the duty of local authorities to purchase development land as provided for in the Act. On 21<sup>st</sup> May 1979 the scheme was repealed with the election of a Conservative Government, and community land accounts were closed on 31<sup>st</sup> March 1980.

The Chancellor's statement in 1985 on the abolition of Development Land Tax indicates that the tax did have a net financial take to the Exchequer of around £45m at a time when the property market was on an upward trend. The scale of the gross tax does not seem to be large relative to the annual value of transactions suggesting it was of limited impact on the market. The Chancellor suggests that continuing the tax given the lowering of corporation tax would discourage development.

The question often raised of such taxes is that they delay bringing land for development. The answer depends at least partially on whether land owners expect it to be abolished or amended. During the term of the Labour Government up to 1979 the political dispute was not about the existence of a Development Land Tax but at what rate. The previous Conservative Government had implemented equivalent legislation but effectively at a lower rate of tax. The Labour 80% tax rate was seen as too high by the Conservatives who

reduced it to 60%. This disagreement may have led to some disincentive to sell prior to 1979. Yet there was at this point a consensus that there should be a development land charge higher than capital gains tax. Darlow's text book on development appraisal published in 1982 notes that the tax is now expected to be a permanent feature (Darlow, 1982).

Any initial deterrence was reduced by the state of the economy in the mid-1970s. Commercial property development was very limited with a property slump between 1974 and 1977 (Fraser, 1984). The scale of private sector housing completions was about the long term average and council house building in decline a transition to a lower norm in 1980s.

There was another recession in 1980-81 and the Table 5.1 shows its influence on private house building. Council house building over this time reflects a government shift in policy away from this sector. The commercial property market held up reasonably well during the latter recession but was not immune. Overall the economy was the dominant influence on development activity not the tax.

**Table 5.1 Annual Scottish and UK Housing Completions in the Private and Council Sectors**

Year	Private		Council	
	UK	Scotland	UK	Scotland
1975/76	153,060	11,970	160,400	19,110
1976/77	158,360	16,300	150,970	13,240
1977/78	138,360	12,630	108,540	9,210
1978/79	161,600	16,570	90,010	7,770
1979/80	148,100	15,250	67,450	6,910
1980/81	102,180	9,680	44,430	5,440
1981/82	120,150	11,030	28,640	2,900
1982/83	145,280	12,140	38,340	3,970
1983/84	179,300	15,200	38,960	2,820
1984/85	165,650	14,630	30,450	2,380

**Source:** Department for Housing, Communities, and Local Government Housing Construction Statistics Live Table

Overall it is difficult to assess the impact of Development Land Tax. It was conceived in a period of highly speculative activity in the property market that led to a partial political consensus (except the rate of collection) and it survived for nearly ten years. It is clear that it required very complex legislation and it was complicated to collect. On the other hand the legislation was well crafted. It was abolished by a government committed to reducing taxation at a time when the property market was relatively stable and the spectre of land speculation dimmed.

In 1979 the incoming Conservative government kept the tax but lowered the basic rate to 60% on 12<sup>th</sup> June. At that time, it also announced it would not be reducing it again during the lifetime of the Parliament. Nevertheless, Conservative MPs continued to lobby for its abolition and the Budget on 19<sup>th</sup> March 1985 did just that.

## 6. PLANNING OBLIGATIONS

### 6.1 Context and Aims

During the 1980s, the UK, under a Conservative Government, moved away from a mixed economy towards the free market. This precipitated a change from the post-war period when most infrastructure was paid for mainly by the state, to a situation where state investment was reduced for a variety of political and economic reasons. This raised new challenges for both developers and local authorities in providing the necessary infrastructure to support development. The shift towards a greater reliance on the private sector has been maintained by subsequent administrations.

Local authorities increasingly turned to using 'planning obligations' to pay for off-site infrastructure requirements arising from developments. Crook et al's extensive research on planning obligations has been brought together in their edited book on planning gain (Crook et al 2016). They observe that prior to the 1980s planning obligations on developers had existed as a rarely used mechanism for regulating elements of development that were beyond the scope of planning conditions. These contractual agreements trace their history back to legislation in the 1930s and also the 1947 Acts. However, during the 1980s, agreements were increasingly used to mitigate side effects of development by obtaining funds from developers to pay for off-site infrastructure and other community benefits. Planning obligations began as a series of local initiatives, promoted by innovative local authorities in England to address such practical problems that would otherwise render a proposed development unacceptable. Their purpose was also extended to include the provision of affordable housing, also within the context of diminishing public funding.

In England the legal basis for such planning obligations was codified in Section 106 of the 1990 Town and Country Planning Act (and subsequent amendments), and they are now commonly referred to as 'Section 106 agreements'. The history of planning obligations is rather different in Scotland, where there was not such a 'bottom up' movement. The equivalent legislative basis for planning obligations in Scotland is Section 75 of the 1997 Town and Country Planning (Scotland) Act (subsequently amended), hence the term 'Section 75 Agreements' is more commonly used in Scotland. S75 Agreements are not the only form of planning obligation: so-called Section 69 Agreements are often used in relation to roads.

A motivation for the legislation in both England and Wales and in Scotland, and for subsequent guidance was to preserve the integrity of the planning system, for example, in avoiding the impression that planning agreements could be used to 'buy' planning approvals for schemes that might otherwise have been rejected. The later inclusion of planning obligations within the scope of the Nolan Committee, the UK Government Committee on Standards in Public Life established in 1994, was indicative of the seriousness with which such fears have been viewed (Crook, 2016).

National practice guidance on the use of Section 106/75 Agreements has also been a means of ensuring that their scope remained consistent with the need for them to relate to the planning application as this relationship can be stretched, most obviously in provisions for affordable housing, the need for which does not arise directly from the development of market housing. A further incentive for central government intervention was to bend local practice towards meeting national objectives, notably the promotion of mixed and balanced communities through affordable housing and market housing on the same site.

Planning agreements are now a significant aspect of the development system in England and Wales, and Scotland, setting out obligations for say a house builder that have prescribed the nature of development (e.g. including affordable housing), compensation for

damage caused by development (e.g. loss of open space) or mitigated its impact (e.g. on public transport or road infrastructure). The use of planning obligations brings together the capture of development value and the funding of infrastructure and services at a local level (Crook et al, 2016).

## **6.2 Details of policy and its implementation**

Planning obligations involve a formal agreement between the local planning authority and a developer to overcome obstacles to the provision of off-site infrastructure, and may also refer to provision of community benefit or affordable housing.

### *6.2.1 Policy tests*

In both England and Scotland, a planning obligation has to meet a number of tests. It is notable that the wording of the National Planning Policy Framework in England and the guidance in Scotland is often identical in this regard. In both countries an obligation must be *necessary* to make the application acceptable in planning terms. It must relate to infrastructure needs that arise *directly* from the proposed development, although this impact may be *cumulative*. There is also a *proportionality test* which requires obligations to reflect the size and nature of the proposed development.

### *6.2.2 Affordable housing provision*

In both England and Scotland infrastructure needs encompass affordable housing where there is an identified need for it in the local plan. It has become accepted that affordable housing is a reasonable obligation provided that the need is demonstrated and included in the Local Development Plan. A consequence of this approach is that local authorities must calculate housing need and so there is a requirement for authorities to carry out local housing needs assessments, now described as Objectively Assessed Housing Needs (OANs) in England and Housing Demand and Needs Assessments (HDNAs) in Scotland. Objectively assessed needs are used to calculate associated housing targets at a local authority level and site specific planning agreements contribute to meeting these targets.

In the 2003 version of Scottish Planning Policy, a level of affordable housing of 25% of units was included as a 'benchmark'. In the current version this has been weakened to 'generally no more than 25% of the total number of houses.' (Scottish Government, 2014, para. 129). A survey by the Chartered Institute of Housing published in 2008 (reported by Shiel and Battye, 2014) found that seven councils had no affordable housing policy, four allowed for a higher proportion of affordable homes than 25%, and five had a policy where the quota was generally less than 25%. More recent research by Shelter Scotland found that 'very few' authorities have policies where the expected level of affordable housing exceeds 25% (Shiel and Battye, 2014).

In England, the Government has suggested that a minimum expectation of 10% affordable housing units be adopted in the planning framework. Research suggests that the targets in local plans tend to vary from 30-50% (Crook, 2016).

### *6.2.3 Site thresholds*

In England, national guidance suggests that affordable housing obligations should apply to sites of 10 or more properties, except in rural areas where they may be applied to sites of five or fewer units. In Scotland, guidance suggests that on-site provision of affordable housing is normally appropriate for sites of 20 or more units, although this may be lower in rural areas. It further suggests that developer contributions may take the form of payments on sites where on-site provision is not feasible.

#### *6.2.4 What constitutes affordable housing?*

Affordable housing covers a range of housing types in England. Currently these are: social rented housing, affordable rented housing (which is a product specific to England, which allows rents to be fixed up to 80% of market levels), intermediate housing (low cost home-ownership products such as shared ownership). The UK Parliament legislated in 2016 to include Starter Homes as a form of affordable housing for planning purposes, but policy reverted to emphasise the more traditional types of affordable housing listed above (Wilson and Barton, 2017).

The range of affordable housing products that are encompassed in the Scottish system is wider than in England. For planning purposes it is identified as 'housing of reasonable quality that is affordable to people on modest incomes' (PAN 2/2010). Affordable tenures are identified as including a wide range of housing types including social rented, low or mid-market rent, low cost home-ownership products (shared ownership and equity) discounted sales and unsubsidised entry level homes.

#### *6.2.5 Delivery*

In both England and Scotland planning obligations relating to affordable housing (and indeed other forms of developer contribution) may be delivered through a variety of mechanisms. For housing these include: direct provision and sale to social landlords, subsidised or gifted land, and direct sales to private individuals. It is also possible to make the contribution in cash, although generally on-site provision is preferred. A significant advantage of agreements is that they are contractually binding and are enforceable against future owners.

### **6.3 Attainment of objectives**

#### *6.3.1 Affordable housing provision through planning in England*

Table 6.1 shows that Section 106 Agreements in England have contributed significant numbers of affordable homes and a high proportion of all affordable housing, but the number fell markedly after the global financial crisis and had not recovered by 2013/14. A characteristic of this mechanism for delivering affordable housing is that it is pro-cyclical, whereas the traditional reliance on government grant tended to be counter-cyclical.

**Table 6.1 Affordable Housing Completions in England, April 2004-March 2014**

Year	Affordable Housing Completions	Affordable Housing Completed through S106 (AH)	S106 as a percentage of all AH
2004/05	33,154	18,175	55
2005/06	39,108	23,869	61
2006/07	39,808	25,838	65
2007/08	48,208	27,273	57
2008/09	51,525	32,286	63
2009/10	51,858	29,065	56
2010/11	55,909	28,972	52
2011/12	52,790	16,963	32
2012/13	37,250	15,645	42
2013/14	43,451	16,193	37
<b>Total</b>	<b>453,061</b>	<b>234,279</b>	<b>52</b>

**Source:** HSSA Section N, HCA and DCLG Live table 1011

The latest figures indicate that Section 106 Agreements supported 18,200 affordable homes in England during 2016/17 (a sharp rise from 12,900 the previous year), and these represented 43% of the total (Stephens, et al, 2018). Half of these were at 'affordable' rents, 36% low-cost home-ownership whilst only 14% were for social rent (ibid). Tenancies at 'affordable rents' were introduced in England after 2010 in order to stretch subsidy further than with traditional social rented housing, so 'affordable' rents are higher than social rents. Most housing provided through Section 106 Agreements received no government grant, although housing associations clearly also use their own resources to make up for lack of government grant.

Researchers suggest that planning obligations in England have had a marked geographical effect. Land value uplift is greatest in the south/ south-east of the country, with the result that planning gain plays a valuable role in making affordable housing viable in these areas (even though public subsidy is also required). One study, for example, found Section 106 completions accounting for 21% of affordable housing in the North West and 63% in the East, with a bunching of high figures in the South and low levels in the North (Brownhill et al, 2015). They have also tended to increase provision of shared ownership and other low cost home ownership products, partly because the per unit 'subsidy' is less than on traditional social rented housing, but also because the developers believe that such housing will have less negative impact on the value of their main product (Rowley and Crook, 2016). To some extent, therefore, planning obligations facilitate the creation of mixed communities.

### *6.3.2 Affordable housing provision through planning in Scotland*

The Scottish Government does not routinely collect statistics on affordable housing supported by Section 75 Agreements. However, a survey covering 2007/08-2011/12 provides a good idea of how it has worked.

**Table 6.2 Affordable housing by type of primary contribution, Scotland<sup>a</sup>, 2007-2012**

		Entirely Public	DC <sup>b</sup> Land	DC Units	DC discounted sales	Other DC	Total DC	Scotland
2007/08	Applications	159	24	46	13	19	102	<b>261</b>
	Units	4,264	515	876	87	119	1,597	<b>5,861</b>
2008/09	Applications	152	25	48	31	23	127	<b>279</b>
	Units	4,657	792	963	167	452	2,374	<b>7,031</b>
2009/10	Applications	163	11	44	20	32	107	<b>270</b>
	Units	4,152	450	1,122	113	706	2,391	<b>6,543</b>
2010/11	Applications	117	12	42	17	24	95	<b>212</b>
	Units	4,422	382	1,578	73	193	2,226	<b>6,648</b>
2011/12	Applications	83	9	44	14	21	95	<b>171</b>
	Units	3,043	120	1,375	67	162	1,724	<b>4,767</b>
Total	Units	20,538	2,259	5,914	507	1,632	10,312	<b>30,850</b>
	% of Units	67%	7%	19%	2%	5%	33%	<b>100%</b>

a) Excludes Highland for all years

b) Developer Contribution

**Source:** Affordable Housing Securing Planning Consent Survey, 2011/12

Table 6.2 indicates over this five year period developer contributions supported the provision of one-third (10,312) of the 30,850 affordable homes built across Scotland over the period 2007/08-2011/12. The peak years were 2008/09-2010/11 when more than 2,225 units of affordable housing were provided each year through developer contributions, although the smaller number delivered in 2011/12 represented 36% of the total affordable homes supplied that year. The most common form of developer contribution was the provision of units.

**Table 6.3 Affordable housing units by type of contribution and planning authority 2011/12**

	Non DC <sup>a</sup>	DC Land	DC Units	DC discounted sales	Other DC	Total Developer Contribution	Total Affordable	Developer Contribution as % all affordable
Aberdeen City	0	0	30	16	0	46	46	100
Aberdeenshire	30	2	118	22	0	142	172	82.6
Angus	49	39	68	0	32	139	188	73.9
Argyle & Bute	12	0	0	0	8	8	20	40.0
Cairngorms	-	-	-	-	-	-	-	-
Clackmannanshire	16	26	0	0	0	26	42	61.9
Dumfries & Galloway	136	0	0	0	28	28	164	17.1
Dundee City	130	0	0	0	0	0	130	0
East Ayrshire	67	0	0	0	0	0	67	0
East Dunbartonshire	0	0	119	0	0	119	119	100
East Lothian	83	0	118	0	0	118	201	58.7
East Renfrewshire	0	0	32	0	0	32	32	100
Edinburgh	707	0	713	0	0	713	1,420	50.2
Eilean Siar	0	0	0	0	0	0	0	0
Falkirk	16	0	0	0	32	32	48	66.7
Fife	63	0	81	14	10	105	168	62.5
Glasgow	626	0	0	0	0	0	626	0
Highland	-	-	-	-	-	-	-	-
Inverclyde	84	0	0	0	0	0	84	0
Loch Lomond & The Trossachs	0	0	0	4	0	4	4	100
Midlothian	83	0	43	0	0	43	126	33.3
Moray	0	10	0	0	4	14	14	100
North Ayrshire	85	0	0	0	0	0	85	0
North Lanarkshire	237	0	0	0	0	0	237	0
Orkney Islands	63	0	0	0	0	0	63	0
Perth & Kinross	22	0	33	11	6	50	72	69.4
Renfrewshire	196	0	0	0	0	0	196	0
Scottish Borders	34	0	20	0	42	62	96	33.3
Shetland Islands	44	0	0	0	0	0	44	0
South Ayrshire	0	14	0	0	0	14	14	100
South Lanarkshire	0	0	0	0	0	0	0	0
Stirling	4	29	0	0	0	29	33	87.9
West Dunbartonshire	39	0	0	0	0	0	39	0
West Lothian	217	0	0	0	0	0	217	0
<b>Scotland</b>	<b>3,043</b>	<b>120</b>	<b>1,375</b>	<b>67</b>	<b>162</b>	<b>1,724</b>	<b>4,758</b>	<b>36.2</b>

a) DC: developer contribution

**Source:** Affordable Housing Securing Planning Consent Survey, 2011/12

Table 6.3 indicates the geographical diversity of developer contributions in the single year 2011/12, which was in the aftermath of the financial crisis. As many as 12 of Scotland's planning authorities did not receive any affordable homes through developer contributions. Of these Glasgow, where 626 units of affordable housing were provided without developer contributions, is the largest. In contrast, Edinburgh, where 707 affordable homes were built without developer contributions, gained a further 1,420 units with the support of developer contributions. In six authorities all of the affordable housing built in 2011/12 was supported by developer contributions. These patterns are likely to be attributable to factors including land value, levels of private development and the policy and practice of individual planning authorities.

**Table 6.4 Affordable housing units by type of contribution and by Urban/Rural classification, 2007/08-2011/12**

Urban/Rural Classification	Entirely Public	% of all Public	Developer	% of all Developer
Large Urban Areas	10,584	50.0%	3,984	35.7%
Other Urban Areas	5,578	26.4%	2,197	19.7%
Accessible Small Towns	1,052	5.0%	1,421	12.7%
Remote Small Towns	847	4.0%	416	3.7%
Accessible Rural	1,522	7.2%	2,363	21.2%
Remote Rural	1,569	7.4%	789	7.1%
<b>Scotland</b>	<b>21,152</b>	<b>100.0%</b>	<b>11,170</b>	<b>100.0%</b>

**Source:** Affordable Housing Securing Planning Consent Survey, 2011/12

Table 6.4 suggests that developer contributions affect the geography of affordable housing provision. Thus half of all affordable units funded by public subsidy only were located in large urban areas, and a further 26.4% in other urban areas. However, only 55.4% of affordable units supported by developer contributions were located in these areas. Rather, affordable housing units supported by developer contributions are disproportionately located in accessible rural areas (21.2% against 7.2% of entirely publicly funded units) and accessible small towns (12.7% against 5.0%).

**Table 6.5 Affordable housing units by type of contribution and by deprivation decile, Scotland, 2007-12**

Deprivation Decile (SIMD 2009)	Entirely Public	% of all Public	Developer	% of all Developer
Most Deprived	5,827	27.5%	627	5.6%
2	4,104	19.4%	373	3.3%
3	2,593	12.3%	723	6.5%
4	1,423	6.7%	865	7.7%
5	2,031	9.6%	2,419	21.7%
6	1,716	8.1%	984	8.8%
7	1,866	8.8%	1,277	11.4%
8	826	3.9%	2,531	22.7%
9	658	3.1%	662	5.9%
Least Deprived	108	0.5%	709	6.3%
<b>Scotland</b>	<b>21,152</b>	<b>100.0%</b>	<b>11,170</b>	<b>100.0%</b>

**Source:** Affordable Housing Securing Planning Consent Survey, 2011/12

Similarly, affordable housing supported by developer contributions is more likely to be located in less deprived areas than is affordable housing supported by public subsidy alone (Table 6.5). Thus almost 60% of affordable housing supported by public subsidy alone was built in areas located in the bottom three deprivation deciles. In contrast, one-third of affordable housing supported by developer contributions was built in areas located in the third and fourth lowest deprivation deciles. These differences undoubtedly reflect the relative scope for developer contributions according to land value, as well as developers' preferred areas of operation.

**Table 6.6 Affordable housing units by type of contribution and by tenure, Scotland, 2007-2012**

<b>Affordable Housing Tenure</b>	<b>Entirely Public</b>	<b>% of all Public</b>	<b>Developer</b>	<b>% of all Developer</b>	<b>% of All Affordable Units</b>	<b>% of Total Tenure Public<sup>2</sup></b>	<b>% of Total Tenure Developer<sup>2</sup></b>
RSL <sup>a</sup> : Rent	14,209	67.2%	4,523	40.5%	58.0%	75.9%	24.1%
RSL: LCHO <sup>b</sup>	1,938	9.2%	1,001	9.0%	9.1%	65.9%	34.1%
LA: Rent	3,165	15.0%	532	4.8%	11.4%	85.6%	14.4%
Discounted sale <sup>c</sup>	20	0.1%	610	5.5%	1.9%	3.2%	96.8%
Other Affordable	144	0.7%	224	2.0%	1.1%	39.1%	60.9%
Unknown	1,676	7.9%	4,280	38.3%	18.4%	28.1%	71.9%
<b>Scotland<sup>d</sup></b>	<b>21,152</b>	<b>100%</b>	<b>11,170</b>	<b>100%</b>	<b>99.9%</b>	<b>65.4%</b>	<b>34.6%</b>

- a) Registered Social Landlord
- b) Low Cost Home Ownership
- c) To private individual
- d) Excludes Highland

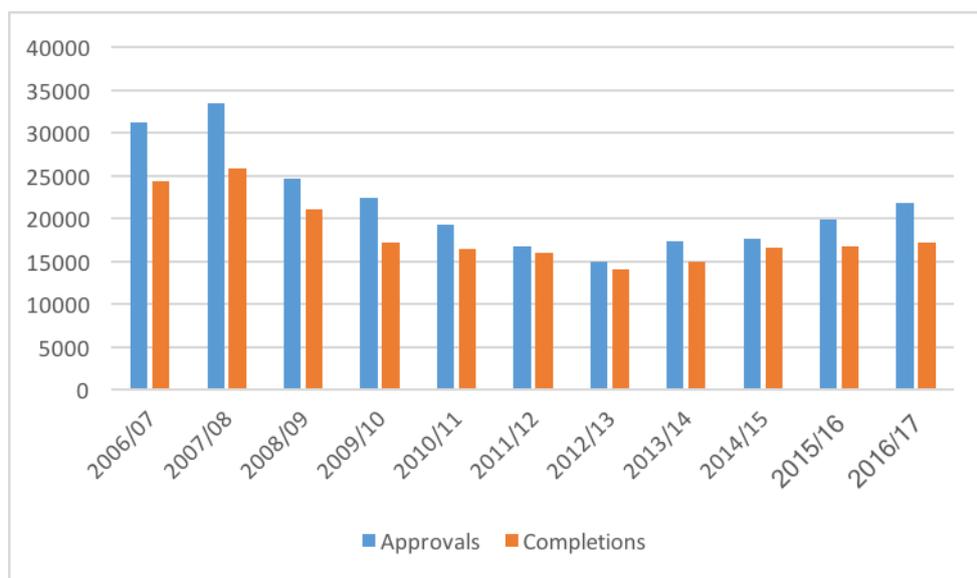
**Source:** Affordable Housing Securing Planning Consent Survey, 2011/12

Table 6.6 suggests that developer contributions are more likely to support Low Cost Home Ownership (LCHO) and discounted sales to individuals than is public subsidy which is more heavily focussed on rental housing provided by housing associations and local authorities. Nonetheless 40.5% of affordable units supported by developer contributions are for rent. These figures should be treated with some caution as almost 40% of affordable units supported by developer contributions could not be categorised.

Although the Scottish Government no longer publishes statistics on the role of planning obligation in the provision of affordable housing, the recent review of planning in Scotland suggested that such provision has been in decline, and that the proportion of major sites with legal agreements in place had declined from 33% in 2013/14 to 22% in 2014/15. The review claimed that S75 agreements were 'stretched to the limit' and that they are likely to double the decision making timetable on major sites (cited in Stephens, 2018).

Recent research from England found that whilst negotiations over S106 agreements can add delays to the planning process, these are often required to ensure policy compliance. The authors concluded that, 'delay [is] best understood as an outcome of a discretionary planning system where developer contributions are intimately bound up with site-specific context, mitigation and development viability.' (Lord, et al, 2018 p. 9) Nonetheless, in each UK nation, the numbers of housing plots with detailed planning permission in place has consistently exceeded the number of housing units actually built (Stephens, 2018). The total for Scotland is 38,945 over the period 2006/07-2016/17 (Figure 6.1).

**Figure 6.1 Housing units securing detailed planning approval and permanent dwellings completed, Scotland, 2006/07-2016/17**



**Source:** Glenigan New Housing Pipeline Q2 2017 and ONS (Live Table 209), from Stephens, et al, 2018

#### 6.4 Who pays?

A key issue is how the costs of planning obligation are distributed between different parties. Although the landowner at the time of planning permission is formally liable, it is also possible that the liability is passed on to the original landowner through a lower price being offered for the land (Jones and Watkins, 2009). However, the landowner would have little incentive to sell land if they received none of its development value (Crook and Whitehead, 2002).

It is also possible that a developer might be able to pass the liability on to the purchasers of the properties through higher prices, although this is likely to be difficult since the houses sold on a particular development are part of a much larger market dominated by second-hand sales. Rowley and Crook (2016) suggest that large developers operating in local authorities with clear policies and consistent practice are best able to pass the liability on to the original landowner. They also believe that smaller builders, which tend to purchase land that already has planning permission, are less adept at shifting the liability on to the original land owner through a lower selling price. However, as the housebuilding industry becomes more concentrated, it is likely that more of the cost is borne by the original landowner (ibid.).

There is doubtless much variation between individual sites, depending on the extent of knowledge possessed by different parties, their relative negotiating skills and market conditions. Further, particularly in England, the balance of power between developers and local authorities may have shifted since the introduction of a new National Planning Policy Framework in 2012, which may have affected the answer to the question, 'who pays?'

##### 6.4.1 Viability tests in England

Viability is a core consideration in planning obligations, as the system recognises that landowners need a financial incentive to bring forward land for sale and to develop it. In England the National Planning Policy Framework of 2012 was intended to encourage

development and to increase housing supply. It requires developments to be 'economically viable' and allows for landowners and developers to make competitive returns. Further, between 2013 and 2016, in an effort to restore viability to sites that had become 'stalled' as a result of the recession, the legislation was amended to allow an appeal against a refusal by a local authority to renegotiate planning obligations.

Whilst target levels of affordable housing through S106 Agreements are part of the local plan, these are negotiated for each site, and it is at the site-specific level that questions of viability are hotly contested (Crosby and Wyatt, 2016). Viability negotiations relate to both the overall quantity of the contribution sought from a developer and also the timing of payment, with phased contributions being a necessary and beneficial characteristic of many planning agreements, especially on larger sites. These negotiations around viability have been a major source of dispute and viability has always been a controversial aspect of planning obligations.

Research has suggested that appraisal practices used in viability tests are inconsistent and sometimes flawed (Crosby, et al, 2013) and often lack transparency (Sayce, et al, 2017). Sayce, et al, (2018) argue that,

'Viability testing, through the use of development appraisals, is a complex process and one that is capable of manipulation through the use of a wide variety of input data, which may remain hidden from public scrutiny and undeclared unless the matter proceeds to appeal.' (p. 5)

It has also been argued that the use of residual viability appraisals as a basis to establish planning obligations are very dependent on timing (Crosby et al, 2013) and in a rising market underestimate developers' profits (Sayce, et al, 2018). It follows that the converse is also likely to be the case. A consultancy industry of firms specialising in reducing developers' planning obligations has grown up (Stephens, 2018). Sayce, et al, 2018 argue that this contributes to a 'power imbalance' between planners and developers. Moreover, they found that in London the levels of affordable housing provision on sites has fallen despite large rises in land values and house prices since the market bottomed out in 2009. They conclude that developers may over-bid for land in the knowledge that they can compensate by negotiating a reduction in the levels of affordable housing provision, in effect passing on the risk of development to the state (a conclusion also reached by Crosby, 2017).

Although the impact of viability assessments is most far-reaching in London, the issue is not confined to London. Grayston (2017) found much lower levels of affordable housing provision on sites where viability appraisals were used, and identified significant reductions in affordable housing provision in cities including Birmingham, Manchester, Leeds and Bristol.

Sayce, et al (2018) make a series of recommendations for the reform of the current system of planning obligations. They suggest that negotiated obligations could be replaced by a fixed 'tariff' with site level viability testing reserved for exceptional cases (for example when infrastructure or site preparation costs are unusually high), or abolished altogether. The definition of the viability threshold should be revised, clearer guidance given on determining the developer's return, as well as greater transparency of viability assessments should they be retained. Finally, they call for greater support and training for planners and inspectors to help to level the playing field.

#### *6.4.2 Viability tests in Scotland*

Scottish Planning Policy (Scottish Government, 2014) addresses viability in these terms:

*'Planning authorities should consider the level of affordable housing contribution which is likely to be deliverable in the current economic climate, as part of a viable housing development.'* (para. 129)

Applicants in Scotland have the right to request that developer contributions be revised after they have been agreed. Moreover, they also have a right of appeal should the local authority refuse to modify an agreement. Collar and Hamilton (2012) state that, 'The modification / discharge procedure could be a saviour for development sites over-burdened by developer contributions agreed in times of much higher land values' and suggest that planning authorities are 'sympathetic' to these cases. However, we have not identified any research on the extent to which developers have attempted to negotiate reduced planning obligations on grounds of viability, nor the extent or outcome of appeals.

## **6.5 Overall value of planning obligations**

Overall, recent assessment suggests that planning obligations in England have been more successful in capturing increased land values arising from planning permission. Rowley and Crook (2016) estimated that in 2007/08 (admittedly a rather good year) Section 106 Agreements raised £4.8 billion, vastly more than the £172 million raised in 1952, £356 million in 1969/70 and £174 million in 1983/84 (all figures in 2007/08 prices). The most recent estimate for England put the value of planning obligations and Community Infrastructure Levy at £6 billion in 2016/17 - an increase in real terms of 50% since 2011/12 (Lord, et al, 2018). However, these figures do not reveal the extent to which land value uplift is actually captured. One of the representatives who attended the roundtable convened to support this research provided an estimate that planning obligations combined with Community Infrastructure Levy payments (see next chapter) and public land sales capture only around one-quarter of the total uplift in land value created.

A study by McMaster and U'ren (2008) from 2004/05 to 2006/07 found that Section 75 Agreements in Scotland were worth some £65.75m, with other forms of agreement bringing the total to £159.1million. The largest components within this figure were housing (£32 million) and road infrastructure (>£30 million). Other infrastructure supported by planning obligations included education, public transport, community facilities and environmental improvements (e.g. open space).

Adjusting for population size the estimate of £159.1 million sum would represent roughly £1.6 billion for purposes of comparison with England, where the value of planning obligations was placed at almost £5 billion in 2008 (see above). Of course there is doubtless land value to be captured in Scotland even on a pro-rata basis, but estimates of the extent to which land value uplift in Scotland is captured by planning obligations is not available. At the roundtable discussion undertaken as part of this study an estimate of only 8% was suggested for the Edinburgh city region, which again is lower than estimates for England. However, the English figure includes Community Infrastructure Levy, which does not (yet) exist in Scotland.

The lower 'take' from planning obligation in Scotland may also reflect a finding of an evaluation by Robertson and Clandillon (2015). They suggested that practice regarding planning obligations was still being developed in Scotland. Lack of skills and capacity in planning departments and fragmentation between different agencies responsible for infrastructure were highlighted as being weaknesses in the application of the system. The authors recommended that Section 75 process be streamlined with the use of template agreements, the establishment of dedicated planning officer to lead negotiations on planning obligations in each local authority, and improvements in the techniques employed to identify the cumulative impact of developments.

## 6.6 Assessment and Lessons

Planning obligations differ from the other methods of land value capture employed in the UK since 1945. They were, in England at least, an innovation by local authorities seeking to find ways of paying for off-site infrastructure needs as public funding became scarce, and were subsequently formalised in planning legislation and guidance across England and Wales, and in Scotland.

The underlying principle is the hypothecated employment of development gain in order to finance off-site infrastructure needs arising from a development. These needs have been extended to include a variety of forms of affordable housing. Planning obligations also differ from previous attempts at land value capture, in that they are negotiated between the developer and the local authority. Developers are protected by the requirement for contributions to respect the viability of the development and for the contribution to infrastructure to be proportionate.

The visibility of fruits of planning obligations in the areas that the development occurs seems to help to secure acceptance from the community, although the impression that planning permission has been 'purchased' is sometimes difficult to dispel.

Planning obligations have delivered a substantial proportion of all new affordable housing in both England and Scotland, and has to an extent contributed to the creation of mixed communities. The use of planning agreements to provide affordable housing has become normalised for local planning authorities, national government and the development industry, although an important caveat is that many Scottish local authorities do not use them, often (but not always) because of the limited extent of land value uplift in some areas. Nonetheless, in both Scotland and England they have altered the geography of affordable housing provision, making it viable in higher cost areas and diversifying the range of affordable housing types.

Whilst planning obligations are of limited use in areas where house values are relatively low, it is also the case that their success particularly in the period up to the financial crisis was facilitated by rising property prices. Whether planning obligations were attracting further anticipated rises in land prices rather than purely the uplift in land value at the point of permission being granted is unclear. Planning gain has raised more in value for the benefit of the public than previous attempts at land value capture. However, it is probable that it does not capture a large part in land value uplift. It is clear that the ability of local authorities to negotiate planning obligations depends on the extent of their skills and knowledge. Where developers are better resourced and more experienced, they are likely to have the upper hand in negotiations. They also have the likely advantage of greater knowledge concerning the financial viability of a site than does the local authority.

The use of planning obligations is also limited by the economic cycle. They are not robust as a source of 'revenue' in market downturns, as fewer sites are brought forward and some permitted sites become stalled. Arguably this does not matter if the infrastructure costs associated with a site have not yet arisen. However, it also means that the provision of affordable housing has become to an extent pro-cyclical, whereas historically it has tended to be more counter-cyclical during recessions when it was more dependent on government subsidy.

Finally, the recent use of viability assessments by developers since the introduction of new planning guidance in 2012 to reduce their planning obligations (for example in terms of the number and type of affordable housing units) has become a source of conflict and controversy in England. A consultancy industry has grown up marketing itself on its ability to reduce planning obligations. Lack of transparency relating to commercial confidentiality may

serve to reduce perceived legitimacy of the system. Moreover, local government may be at risk of becoming the de facto guarantor of developer profits. The evidence suggests that planning obligations are becoming less effective in capturing land values in England.

In Scotland, the reduced proportion of large sites supporting planning obligations may also suggest that developers are becoming less tolerant of planning obligations. Certainly their arguments that planning obligations can be onerous and slow development is reflected in the planning review that preceded the current Planning Bill.

Although planning obligations have been more successful than previous attempts at land value capture, it seems that much uplift in the value of land arising from planning permission is left uncaptured. It would be useful if research were to be commissioned to establish the total value of land value uplift arising from the granting of planning permission, and the extent to which current mechanisms are effective in 'capturing' it. Moreover, the consensus around it appears to be weakening and recent evidence suggests that they may be becoming less effective as a method of land value capture.

## **7. COMMUNITY INFRASTRUCTURE LEVY**

### **7.1 Context and Aims**

The Community Infrastructure Levy (CIL) was brought in by a Labour Government in the 2008 Planning Act but implementation continued under Coalition and Conservative Governments, despite initial scepticism from the Conservatives during the 2010 general election campaign. CIL applies to England and Wales with some differences that have not been explored here.

CIL arose out of dissatisfaction by central government with the operation of Section 106 planning agreements. This dissatisfaction related to delays in the planning application process, increasing complexity, and potential unfairness where schemes fell below size thresholds and so did not contribute any obligations (CIL Review Group, 2016). Part of the problem was that the local benchmark contributions were a moveable feast and developers did not know precisely what their contribution was going to be at the outset. The negotiation was also complicated in England by the way the planning obligations are expected to perform two financial roles, as a contribution of infrastructure associated with the development and as a tax on the planning gain. Barker (2004) proposed that these roles be explicitly separated through the creation of a distinct tax called Planning Gain Supplement (PGS). This tax would be set nationally and bring at least partial clarity to expected developer contributions. Some local authorities, such as Milton Keynes, had developed tariffs with standard payment levels for contributions and central government considered developing a national PGS tariff. After PGS had been widely discussed and consulted upon, it was abandoned in favour of CIL, a locally based tariff system.

CIL aims to capture an element of the 'planning gain' arising from granting planning permission which was additional to Section 106. CIL is *not* a replacement for Section 106 but is complementary to it. CIL is also designed to be additional to core public funding of infrastructure. It is intended to allow a more strategic view of infrastructure than Section 106 and also to be fairer, in that more developers would contribute as there would be a very low threshold; and make for more equitable contributions amongst developers generally. CIL's simplicity is designed to make it quicker and more transparent. In practice, this simplicity has never been achieved; it was eroded by amendments to the original proposal including exempting some types of development, including self-build and giving relief to others, such as affordable housing.

### **7.2 Details of Policy and its Implementation**

CIL is now part of a mixed system of tariffs and negotiated Section 106 contributions. CIL may be used for a variety of purposes necessary to support wider development and growth of an area including roads, schools, flood defences and health facilities. Section 106 payments are scaled back where CIL is operated to prevent double charging. The relationship between CIL and Section 106 is important. A 'Regulation 123 list' identifies infrastructure projects on which CIL might be spent. The key distinction is that CIL can be used for more strategic infrastructure while Section 106 is maintained for infrastructure requirements arising from specific sites. In practice, the distinction is not as clear with a wide variety of practice in different authorities. Infrastructure not on the 123 list could be funded by Section 106. CIL explicitly cannot be used to provide affordable housing and Section 106 continues to provide affordable housing. The inability to use CIL for affordable housing makes it a lower priority than Section 106 for some local authorities.

CIL is set and collected by local government, at the local planning authority level. It is discretionary but compulsory for developers and non-negotiable once it has been implemented. It is due when full planning permission is granted and work has started. The CIL levy is a fixed charge (per square metre) on new floorspace. It is based on a 'charging

schedule' of rates for the levy drawn up by the local authority and subject to consultation. Government guidance advises that rates may vary within a single local authority area to take account of differences in viability (DCLG, 2013). Rates can vary by size and type of development and a study by Heriot-Watt University and Three Dragons (2017) also found some larger schemes may be exempted from CIL and rely solely on section 106 payments. Lord et. al (2018) found that CIL was used on smaller sites, with 42% of CIL value raised from sites of less than 10 units (compared with 8% for S106 value).

The local authority must use the funds collected for infrastructure in its area. Charges must be consistent with local plans and be consistent with National Planning Policy Framework policies. Appropriate and effective implementation of CIL is therefore dependent on up-to-date local plans and infrastructure planning. A portion of CIL is distributed at a neighbourhood level. Local charging and allocation of CIL receipts to fund projects within the local authority area increases its acceptance by developers. Neighbourhood allocation of resources responds to the national localism agenda in a way which is likely to make communities more open to development in their area.

Local planning authorities must strike a balance between the need for infrastructure and the viability of development across their areas. Exemptions have included justifiable types of development such as self-build. There is a significant variation in rates set, with examples of 'high residential rates' of £120 per m<sup>2</sup> and £365 per m<sup>2</sup> in neighbouring authorities (CIL Review Group, 2016).

### **7.3 Attainment of Objectives**

The CIL levy is still not fully operational and has been used predominantly in London and the South East. However, the number of local authorities using CIL continues to grow and by the end of 2016/17 133 out of possible 339 (39%) were charging CIL (Lord et. al, 2018). Others were in the process of setting up schemes, giving a prospective coverage of 60% of authorities, although some of these may not continue to implementation (CIL Review Group, 2016) and there is evidence of authorities across England concluding that it was unsuitable in weaker market areas after having explored the possibility. Notably, CIL was found not to be viable in some areas where S106 was being used successfully, leading to fears that its introduction might have an adverse effect on revenue (Lord et. al, 2018).

The CIL Review Group (2016) estimated that CIL was raising much less than originally anticipated over the first few years of its implementation. It was estimated to have raised approximately £170m in around five years to the end of March 2015 compared with an original estimate of £4,700m to £6,800m over the first 10 year period. However, the CIL contribution has grown substantially and it appears that initial estimates are now exceeded, albeit, with a very uneven national distribution. In 2016/17, 6,500 planning permissions were granted with CIL as the only obligation and a proportion of a further 4,000 which had obligations including both CIL and S106. Overall, in 2016/17 £945 million was collected via CIL (Lord et. al, 2018).

Certainly in the early years, expectations for funds that would be raised by CIL were overestimated and significantly less infrastructure was provided through CIL than anticipated. It was not raising sufficient amounts to 'contribute effectively to the infrastructure needed to support development...' (CIL Review Group, 2016). As a result of this, infrastructure was not being delivered on time. Transfer of risk from large developers who might wish to build out infrastructure to less skilled, especially small, local authorities is also reported to have delayed infrastructure delivery. A further factor in the lack of delivery of infrastructure, even with increased value being collected, is the delay in the funds being spent (Lord et. al, 2018). This may be inevitable in delivering CIL's aim of providing more strategic infrastructure but points to a weakening of the link between levy and development

project which has been important in the acceptance of S106 by the development industry. To the extent that this is the case, there may be a need for education and a build-up of experience of strategic infrastructure being delivered through time.

In 2016/17 CIL accounted for only 15% of the value of planning obligations from CIL and S106, with S106 still by far the largest source. It is notable that during the period, 2007/8 to 2016/17 the proportion of planning obligations going to affordable housing rose from 53% to 68%. As CIL cannot be used for affordable housing, this may be a significant element in the continued high proportion of S106 in the total. Recent research has suggested a complex relationship exists between the adoption of CIL, use of S106 and overall levels of developer contributions, with 45% of local authorities believing that CIL had increased net developer contributions whilst 27% thought it had reduced the overall level (Lord et.al, 2018).

#### **7.4 Assessment and Lessons**

The simplicity and transparency of CIL were seen as key objectives but changes brought in, more or less from the start, including exemptions, made it complex and this has to an extent undermined its original objectives. Rates relate to broad-brush development typologies and are said to be unresponsive to markets and, necessarily, to individual site viability. This variety and apparent inconsistency of rates, and the number of exemptions, have made the scheme hard to implement. Its lack of sensitivity to viability can also put marginal development at risk and it has been suggested that authorities over-compensate for this by setting low rates and failing to recoup as much planning gain as might be possible.

The adoption of CIL has been concentrated in more affluent areas, especially in the South and in London. Lord, et. al (2018) found that CIL was most effective in small, straightforward sites in high demand areas. Perceived viability issues have been cited as reasons for not pursuing it in some less affluent areas. Given the comparatively low land values in many parts of Scotland, including remote areas and more deprived urban areas, a variable pattern of implementation could be expected if a similar scheme were to be adopted in Scotland.

CIL tends not to be applied to many types of non-residential use or to be fixed at very low levels for non-residential development in order to encourage economic development. A survey found an average of 93% of value being raised on residential, 3% on retail and 3% on office developments (Lord, et. al, 2018). (This figure is not dissimilar to S106 where 95% was being raised from residential sites.)

The 2016 Review of CIL found support for the original intentions of the scheme rather than the more complex scheme which was now in operation. Both local authorities and developers found that this complexity made the system difficult to use. Significantly, CIL has not generally been found to speed up planning permissions because much of the delay relates to site specific negotiations (Lord et. al, 2018). However, CIL has advantages over national tariff systems in that it retains a link to particular infrastructure in the area where it is collected.

## **8. INTERNATIONAL EXPERIENCE**

The UK is not alone in having made attempts to capture (some) of the uplift in the value of land arising from planning permission. But how do other countries approach land value capture? And are there lessons that the UK could learn from them? Whilst a full evaluation of international experience is outwith the scope of this report, this chapter is intended to provide a 'flavour' of different approaches, and where Scotland and the rest of the UK sits in this context.

This chapter provides an overview of how land value capture operates in three other countries, which were selected to provide a diversity of experience. The Netherlands operates a zoning system, and was known to operate a system of land value capture with similarities to the German model, which has received most attention in UK literature. Canada also operates a zoning system, but its general approach to public policy is perhaps more similar to the UK. Finally, experience in China was examined, where, as is the case in some south east Asian countries, urban land is nationalised.

The information in this chapter is based on pro-formas completed by country experts, with some supplementary information provided by other experts in the case of Canada (see also section 1.3, and Acknowledgements).

### **8.1 The Netherlands**

#### *8.1.1 Planning System*

The whole of the Netherlands is covered by legally-binding land use plans. These may cover both land use and building design within use classes. The level of prescription is determined by the planning authority with the result that some plans are very flexible whilst others are very strict. However, it is possible for a planning authority to alter the plan in response to an application that is contrary to it, to allow the development although it is contrary to the plan, or refuse it. The planning authority is responsible for granting both permission to change land use *and* building consent.

#### *8.1.2 Land Value Capture*

Most land is privately owned. There are three strategies for capturing land value.

##### **8.1.2.1 Active land policy (ALP)**

Under the ALP the municipality acquires the ownership of the land and services the area before selling plots to developers (including housing associations). It is enforced by a pre-emption right, and the municipality may compulsorily purchase the land if the owner is unable to develop it. Public-private partnerships can be used but have been used less frequently following the financial crisis. This strategy is most commonly used in new urban areas, as the risks to the municipality are greater in established urban areas.

##### **8.1.2.2 The Amsterdam variation policy (AVP)**

In some cities, notably Amsterdam, the municipality retains ownership of the land and leases it to the users. This increases the municipality's ability to extract land value as it can exert its rights as the owner of the land (private law) in addition to its role as the planning authority. This approach has been used in the redevelopment of old harbour areas.

##### **8.1.2.3 Private development**

In cases where a development is led by a private developer, it will apply to the planning authority for permission to change use if required. It is possible that the land owner will negotiate for building permission, but the developer (if different) may do this on their behalf.

### 8.1.3 Extracting Land Value

#### 8.1.3.1 Active Land Policy

Where the planning authority employs an ALP, it is able to capture some of the increase in land value. However, this is limited because the owner cannot be forced to sell the land at (say) agricultural use value. Rather, the price reflects the future use of the land. In the case of compulsory purchase, a judge sets the price based on future land use. However, in practice, the planning authority is in a strong negotiating position because it can choose whether or not to change the land use plan. It can also establish a pre-emption right (first option to buy) or purchase it before the owner anticipates a change to the land use plan.

#### 8.1.3.2 Private developer (land use change yet to be granted)

The most common approach, and one that can apply when a site remains in private ownership, is one of negotiation often before the land use plan is changed to allow the development. A payment in expectation of a change to the land use plan is permitted by the Spatial Planning Act. The developer contribution (which may be financial or in-kind) can be related to the provision of on-site infrastructure, off-site infrastructure including that not directly related to the development, provided it is identified in the municipal strategic plan.

#### 8.1.3.3 Private developer (land use change already granted)

Where the land use plan has already been changed, the extent of land value capture is limited to the recovery of public costs arising from the development up to the uplift in the value of the land arising from its changed use. This is the least commonly used approach. The costs are set out in a special plan for the area which is agreed by the municipality. Central government regulations specify the type of costs that can be included. They include roads, parking, green areas, water storage and sewerage. Social housing and child care, for example, are *excluded*. The agreement can be enforced through the planning authority's ability to withhold building permission until payment is received. The system is sensitive to the type of housing that might be developed – so the scope for developer contributions is less when the development is for social housing than for open market housing. In these cases, the payment is always financial (rather than in-kind).

### 8.1.4 Effectiveness

It appears that the ALP and pre-land use change negotiated contributions are the most effective strategies for extracting land value uplift. Post-land use change negotiations are disliked by municipalities because it is costly to draw up a special plan, and is less flexible than the other approaches (for example in terms of what the contributions can be used for).

However, central government dislikes the pre-land use change negotiated agreements because it may encourage the “sale” of the change of land use rights. There are at present draft regulations that propose to limit land value capture to the amount needed to recover related infrastructure costs – as is currently the case with post-land use change contributions. The proposed change is motivated by a desire to facilitate development in the climate following the financial crisis. However, developers as well as municipalities are critical of the proposals as they are likely to increase transaction costs.

## 8.2 Canada

### 8.2.1 Planning System

Within this federal system, land policy rests with provinces, although local authorities are the main planning authorities. As in the Netherlands, Canada operates a zoning system, which means that the principal focus of land value capture centres upon rezoning land use to permit a higher value activity.

### 8.2.2 Extracting Land Value

#### 8.2.2.1 Community Amenity Contributions

The principal mechanism by which many local authorities seek to extract land value uplift is through Community Amenity Contributions (CACs). These have similarities with the UK's systems of planning gain. They are negotiated between the developer and the local authority, and in principle they are directed at addressing negative effects arising from the development.

The starting point is the infrastructure requirements arising from a development. These are decided on the basis of two principles. Under the principle of *nexus*, a direct link to the development, required infrastructure is paid for by the developer. Under the principle of *proportionality* the contribution should reflect the likely use of the infrastructure by residents of the new development.

These principles appear to be malleable in practice. Needs that arise less obviously from a development, including affordable housing, heritage conservation and other public facilities located elsewhere and serving the whole community, may be supported by CACs.

#### 8.2.2.2 Inclusionary Zoning

There is an active debate in Canada around using Inclusionary Zoning (see glossary) as a means of capturing some uplift in land values to secure affordable housing. There are some examples, mostly in British Columbia, although the largest programme is in Montreal. A survey by Focus Consulting suggested that the policy was generally on large sites, with thresholds much higher than in the UK. For example, Montreal has reduced its threshold from 200 units to 100. Contribution rates vary from 5% to 30% (in Montreal), and affordable housing may take the form of rental or low cost ownership (Focus Consulting, 2016). The contribution often takes the form of land on a site, but the ability to utilise it also depends on the subsidised housing programme in the jurisdiction. Particularly on smaller sites, the contribution may take the form of cash.

### 8.2.3 Effectiveness

There is no overall assessment of the effectiveness of the Canadian system of CACs. As in the UK, the system appears to be tolerated by developers. There are complaints that development is deterred by CACs, particularly since the charge is payable up-front, and that it increases the complexity of the planning process. It has also been suggested that smaller developers are especially exposed to CACs, and some smaller projects that larger developers may not be interested in (such as filling a gap site) may not take place.

The outcomes of Inclusionary Zoning agreements have been 'relatively modest' (Focus Consulting, 2016) – amounting to 7,000 units in Montreal and 2,500 in Vancouver.

## 8.3 China

### 8.3.1 Planning system

Urban land in China is nationalised and its use regulated by the Ministry of Land and Resources (MLR). However, land use rights have been increasingly privatised under a process that began in the late 1970s. The state retains the ownership of land, but the land use rights can be transferred to a private entity using an arrangement akin to leasehold, which, for residential property, is generally for 70 years. The importance of such 'leases' has grown as the state (and state owned enterprises) have retreated from the direct provision of housing. Local government is the main planning authority.

### 8.3.2 Extracting Land Value

There are two main approaches to land value capture.

#### 8.3.2.1 Tender and auction

Land value uplift associated with the award or transfer of use rights is extracted through a one-off payment by the developer to local government on the point of transfer. The process of transfer is through the auctioning of use rights, and this is subject to approval by the MLR. In principle the Chinese system ought to be efficient at extracting land value uplift as potential users compete against one another, suggesting that the developer wishing to use the land for its highest use value will outbid their rivals. The system implies that it is not necessary for the local government to estimate the scope for planning gain, even though it is likely that developers do estimate the maximum residual land value that they are willing to bid for. The price is paid to the local government in the form of cash, and is paid up-front, which may necessitate a loan from a bank.

#### 8.3.2.2 Negotiation

Sometimes local government may negotiate the price for land use rights to be transferred to a developer on a 'lease'. It is not unusual for local governments that are keen to attract private investment to provide cheap land or infrastructure to encourage development. Land value may be foregone, but this approach (the provision of cheap land) was famously successful in turning Shenzhen from a small fishing village in the late 1970s into a city of tens of millions.

### 8.3.3 Effectiveness

The Chinese system of tender and auction has been successful during the early part of the country's economic transition by allowing land value to be captured by local government and by incentivising local government to bring land into development at its highest use value. However, the system is not immune to some unintended consequences. Would be developers may acquire land banks, and instead of developing them wait for land value to rise and then sell the remainder of the lease to another developer. Meanwhile local government may withhold land from development in order to increase the scarcity value of the land that it chooses to release. The system has not prevented the property price boom with the result that housing has become chronically unaffordable for much of the population. The state in effect has a very large stake in the property market and little incentive to take action to limit price growth. The system also incentivises the bribing of local government officials.

## 8.4 Lessons for Scotland

Land value capture is used extensively in each of these countries.

In Canada and the Netherlands the main underlying principle is to address negative impacts, i.e. to pay for on and off-site development costs arising from a development. However, beyond this the systems appear to be pragmatic. In some circumstances in both the Netherlands and Canada, land value capture can be used to contribute towards general infrastructure costs that do not arise directly from the development – echoing one of the key motivations for the Community Infrastructure Levy. The approach to using land value capture to pay for affordable housing varies. It appears to be permitted in Canada, but in the Netherlands where rezoning has already been granted it may not be used for affordable housing. However, under other routes, such as Active Land Policy it can. Only in China is land value capture used as unrestricted revenue. (Indeed it is the most important source of income for local authorities.)

The methods for determining payments vary. In principle the Active Land Policy in the Netherlands should be effective in extracting the uplift in land value as the serviced site may be sold on the open market. (Of course a municipality may decide to forgo the revenue associated with its highest value use by specifying that it be used for a lower value use such as social housing.) In the same way the Chinese system of auctioning land use rights is in principle effective as potential developers are invited to bid. Other mechanisms used in the Netherlands and Canada are more often based on negotiations, and in that sense more akin to UK practice.

Systematic evaluations of these systems are not available, but they allow the Scottish and wider UK experience to be located on a spectrum. The Chinese system sits at one end of the spectrum with land value capture used as a form of taxation, and extraction dependent on auctioning. The system in the Netherlands land value capture occupies an intermediate position, with its use primarily directed at meeting infrastructure costs arising from developments, and hybrid methods of extracting land value. Although there is no single scheme in operation in Canada, overall it operates the weakest system of land value capture. Scotland and the rest of the UK can best be positioned somewhere between the Netherlands and Canada.

There are some clear lessons for Scotland. One is to highlight the viability of auctioning/bidding as a mechanism for extracting land value. Provided the market is competitive, these ought to be effective in reducing or removing the problems of unequal information that local authorities encounter when negotiating planning agreements. However, whilst systems that employ competitive bidding for land use rights or serviced sites ought to be the most effective in capturing land value uplift, they have limitations.

In the Netherlands, municipalities have found that active land policies are most effective in 'new' urban areas, i.e. on green field sites. Brownfield or inner city sites can be too risky, and public-private partnerships are less commonly possible following the financial crisis. In China, the system can still lead to land banking by developers hoping to make speculative gains, and there are wider risks in the state in effect buying into the rising property market by becoming so reliant on it for revenue.

In Canada and the Netherlands the systems of land value capture appear both to be at least tolerated by developers. In Canada, developers appear to be happy when the market is rising. Central government in the Netherlands wishes to alter the system so that in all cases the required infrastructure costs place a cap on the amount of land value uplift that is captured – which would bring it into line with Canada.

In the Netherlands the AVP system enables Amsterdam to use its municipal ownership of land together with planning powers to extract land value and to undertake strategic redevelopment.

## 9. LESSONS LEARNED

This chapter discusses the lessons from the various development land capture initiatives since 1947 and broadens the discussion to consider potential change. It is also informed by a Round Table (see Chapter 1) about the application of the current system of planning obligations and possible ways in which policy might evolve. This discussion reflects some of the key issues that arose from the research and the Round Table.

### 9.1 Appropriate Level of Compensation for Public Acquisition

There were three attempts by Labour governments to compulsorily acquire land on a strategic basis. The first two involved national agencies and the latter centred on local authorities. In all three cases the land was acquired on the basis of market value less the betterment tax. In the system introduced after 1947 the 100% Betterment Charge meant that the land owner only received existing use value without any potential uplift from planning permission. The subsequent schemes via the Land Commission introduced in 1967 and the Community Land Act in 1976 applied rates of 40% and 80% respectively (and employed different detailed formulae).

The appropriate level of compensation if land is acquired by a local authority or a public sector agency has been a continuing question. This debate has intensified in recent years with the current housing crisis leading to calls for the building of significantly more affordable housing. To reduce the costs to the public purse one solution canvassed has been changing the basis of compensation payments for compulsory purchase from market value to existing use value. This position has been endorsed notably by the Royal Town Planning Institute (RTPI, 2017). It would return compensation rules back to those applicable in the 1950s.

When the Betterment Charge was abolished in 1952 existing use value continued as the basis for compensation from public bodies until late 1958. From 1948 to 1958 land owners were compensated at below market/ development value even if the land could be sold in the private market at a higher price. To what extent this is deemed fair has been contentious and a political question. It partly depends to what extent development land value is socially generated with the land owner passive or the result of activity by a land owner to create value. However, it is fair to say that the distinction was not popular and politically difficult to justify at the time. The 1965 White Paper noted that,

*'This two-price system was so clearly inequitable that the Government were forced to eliminate it and this they chose to do by the Town and Country Planning Act 1959 which restored market value as the basis for compensation on compulsory purchase.'*  
(HM Government, 1965, para. 5)

The current position is principally set out by the 1961 Land Compensation Act that requires payment at market value. Subsequent legislation required compensation to be paid at current market value net of tax when it was applicable as explained above. Payments do not take into account any potential obligation under planning agreements.

The European Convention on Human Rights (ECHR) permits expropriation of private property by the state when it is in the public interest to do so. In such cases compensation should be paid. The ECHR attempts to balance property rights against the wider public interest, and there has been extensive litigation on 'public interest' and on the appropriate basis for and calculation of compensation (Allen, 2010). It is clear that the matter is not as straightforward as is sometimes suggested. It is desirable that this issue is clarified since some other European countries (including the Netherlands, as detailed in Chapter 8) appear to interpret market value closer to existing use value than is the case in the UK. Such

clarification might take the form of legal advice, and a more detailed examination of practice in other countries subject to the ECHR.

## **9.2 Setting the Appropriate Level/Rate of Taxation**

One of the most problematic issues since 1947 has been the appropriate level of land capture taxation required to ensure that land owners are still incentivised to bring forward land for development. This is partly related to the source of land value increases noted above but is also linked to providing incentives for development. The 100% Development Charge clearly provided no motivation. The evidence from the various schemes is difficult to assess because the dominant influence on the rate of development activity is the economic/property cycle. A key finding of this review is that the macroeconomy is often far more important than any development tax in determining the rate of property development.

In the specific context of planning obligations, the developer contribution is negotiated and the relationship to the increase in land values difficult to assess. The 'tax' is generally regarded as quite low relative to previous attempts. There is a lack of consistency in its application with some local authorities lacking expertise. Some may be too timid in their expectations and others over optimistic. There are examples where local authorities increase their required obligations as a development progresses to the consternation of builders. Given that planning agreements are based on a negotiation this inevitably slows the development process, although sites with detailed permission persistently come forward at a greater rate than houses are completed.

The issue with the current planning agreement system is whether it is capturing enough land value uplift. A remarkable feature of the use of agreements has been the readiness of developers to embrace the system. It can be argued that the approach has been more successful in capturing land value uplift than any of the national, 'compulsory' initiatives which preceded them. However, research shows there are many unanswered questions about the efficacy of the scheme, and there are signs that developers are finding ways of reducing their contributions and consensus may be threatened.

## **9.3 National vs Local Schemes**

It can be argued that planning agreements have been more successful than previous schemes, partly because local communities see the benefits and builders see a direct relationship with their developments. Nevertheless, there are still issues about phasing, both of infrastructure and payments. They also have the advantage of flexibility, with affordable housing expectations in local development plans being informed by assessment of housing need, whilst the actual number delivered reflects the specific circumstances of a site, as well as the prevailing economic conditions.

Planning agreements as currently constituted are arguably too narrowly focused on individual sites and lack a strategic vision for a neighbourhood or town. This was a key justification for the Community Infrastructure Levy. However, a national level scheme might be required for major infrastructure projects.

## **9.4 Ensuring the Tax is seen as Legitimate**

The theoretical basis for the public capture of increases in land values is dependent on the view that land value is in part socially generated with the land owner passive. Nevertheless, it is also accepted that the skills and energies of a land owner can also create value. This latter point is the case against a 100% tax on increases in land values as applied in the 1947 Development Charge. The problem remains as what rate below 100% is legitimate.

Subsequent attempts at land capture have been lower but again have not achieved political consensus.

Interestingly, the Development Land Tax introduced under a Labour Government with a rate of 80% was continued under the subsequent Conservative Government but with a rate of 60%. In other words, it was accepted that land gains should be taxed at a higher rate than Capital Gains/Corporation Tax. When it was abolished the reasons given by the Chancellor of the Exchequer were that it was too complicated to administer and the rate was too high relative to the 35% Corporation Tax at that time.

Since then gains from land transactions have been subject to general taxation. Developers subject to planning obligations when appropriate can off-set these costs against tax. There is also the balance between fairness and deterring development. Given the longevity of planning agreements and the relative lack of criticism from industry it appears that the aggregate effect seems not too onerous.

However, the theoretical fundamentals of planning obligations seem fudged, especially with regard to the incorporation of the role of affordable housing. Research has also shown that the development appraisals at the centre of the calculation of obligations lack credibility. There is a case for reappraisal of the approach.

There is another dimension to legitimacy in terms of who should pay this type of tax? The 1947 and 1967 legislation suffered politically from incorporating small plots of land, many of which involved building individual houses. The tax collected was very small in absolute terms but it created significant hardship and was very expensive to collect. Past experience suggests that any tax should be subject to a minimum value threshold that certainly excludes land owners building sole housing units.

## **9.5 Establishing a Political Consensus**

Many of the schemes to date have suffered from a lack of political consensus and as a consequence have been short lived, and they were often based on faith. The lessons are that any future changes need to be evidence based and have a strong political base to ensure longevity. In the past, expectation of a reversal in the medium term encouraged land owners to defer land sales and development until there was a more attractive tax regime. This effect particularly hit the land market in the late 1940s and possibly in the late 1960s, although prior land sales may have risen in anticipation of the policy. Political consensus provides certainty in terms of planning and tax policy to land owners and developers to enable them to make long term decisions. It is also a prerequisite for the success of any policy.

There also needs to be a consensus between key players in the land market, house builders, local authority planners and government, about the way forward. Any new initiative is likely to produce some losers but if the bulk of society is supportive that is likely to drive a strong consensus. However, consensus will not last unless it delivers something better than the present position, so it is important that any change is seen to be more beneficial than the present arrangements. The planning obligations system has now been in place for more than two decades so to abolish it would carry risks.

This report shows how grand ideas have failed in the past due to half-hearted implementation. Moreover, securing a broad political consensus in advance of implementing any future initiative is an important contribution to success.

## 9.6 Enabling Strategic Planning

The three land value capture initiatives of Labour Governments in the 1940s, 1960s and 1970s were all conceived as supporting strategic planning. In contrast planning obligations/CIL, while appropriate to fund local social infrastructure do not meet more strategic large scale (re)development that may require new substantial transport infrastructure such as a link road. Developers too have funding difficulties in providing infrastructure at a strategic scale.

In the UK this has been historically undertaken by new town development corporations or urban development corporations. In these instances, the public agency initially owns the land and provides the infrastructure, treats polluted land etc., and creates marketable land plots to provide a base for private development. These public expenditures can be (partially) recouped by the subsequent rise in land values. There are examples in Europe, such as in the Netherlands, where this approach has been used for major suburban extensions to cities.

A similar approach could also be used for strategic planning in Scotland. This could be a way of speeding up housing development and building houses in rural areas where there is little uplift in value from planning permission. Such an approach could incorporate a land delivery agency along the lines of the 1967 Land Commission.

The Royal Institute of Chartered Surveyors (RICS) Housing Commission (2014) proposed this type of approach, suggesting that it could be a way of providing in-house expertise that many local authorities do not have. Such an agency could also control the social infrastructure, type and mix of tenure of housing built in the designated development areas via a master plan. It could also support a planning perspective that is wider than just demand and the allocation of land, and could provide the power to change the land market and make somewhere more attractive to live by putting in the infrastructure etc. and creating balanced communities.

The evidence presented in this report, however, shows that similar national schemes in the past have not been especially successful. A particular barrier to this approach would be the relationship between the agency and local authorities. As the Land Commission found, local authorities can be reluctant to work with such a national body because it is perceived as taking away their powers and authority. This issue would be very sensitive.

**There are also many questions about how Scotland would transition from the current developer-led delivery model (with minimal public intervention in private house building) to one in which a public agency takes on significant responsibility for delivering infrastructure and planning. What effect would this have on home building companies operating in Scotland today? What short to mid-term impacts on current attempts to close the gap between housing need/demand and supply would there be?**

**The activities of such an agency would need to be complementary to land identified by house builders for development, and be a true addition to supply. Alternatively, perhaps a national agency could be a catalyst to achieve joint ventures, possibly including the land owner as in the German model. Such initiatives would include large-scale public led developments that are receiving growing interest in Scotland.**

## 9.7 Enabling Development Viability

Property cycles dominate development viability and activity and hence the collection of tax on changing land values. Unfortunately, many of the land capture initiatives previously implemented in the UK coincided with severe property downturns. The timing of these

downturns are difficult to identify in advance. During the period of this study they occurred in the mid-1970s, at the beginning of the 1980s, at the end of the 1980s/beginning of the 1990s and 2008-2009. Unfortunately there is no evidence on the income generated by Development Land Tax over the nine years of its life to 1985. The planning obligations approach was fortunate in that it started in 1991 at the beginning of a long upturn in the economy and the property market and had time to be bedded in and honed. Any future initiative would need to be given time to establish itself through a property cycle.

Public agencies in the past have gained and suffered from their timing of land purchases. The London Docklands Development Corporation was set up in 1981 and purchased land at the bottom of the property cycle with a view to regenerating the area. It then saw its land value dramatically rise in the 1980s property boom as it stimulated development in the area. It encouraged the government to set up more urban development corporations toward the end of the decade but they bought land at the top of the cycle and when unable to reproduce the level of success.

## 10. CONCLUSIONS

This chapter draws out the main findings about what works and what does not, and goes on to suggest ways in which these could be used to inform the future development of any new land value capture initiative in Scotland.

### 10.1 Principles and practice

The underlying principle for land value capture lies with the nationalisation of development rights, which occurred in Great Britain in 1947. Whilst the principle that the refusal of planning permission does not merit compensation has been accepted, there has been far less consensus concerning the 'capturing' of increases in land values arising from planning permission.

This largely explains why most schemes introduced by Labour governments have not lasted. Their supporters would argue that before they could be shown to work they were abolished by the incoming Conservative Government. However, there is evidence that lack of consensus also inhibited the operation of schemes because the prospect of their abolition (or alteration) on change of government affected landowner and developer behaviour.

The Development Charge (introduced in 1947) was affected by the 'sellers' strike' (although the system of building licences was more important); and the operation of the Development Land Tax (introduced in 1976) may have been affected by the prospect of the rate at which it was charged being reduced by a future government (as indeed it was). A related problem arose from the ability of landowners and developers to anticipate the introduction of a tax, as occurred with the Land Commission's development tax when developers purchased land in advance of its introduction in 1967.

The economic cycle may have had a greater impact on the operation of land value capture schemes. The Land Commission/Betterment Levy, and the Development Gains Tax were introduced in the wake of property booms that had led to widely perceived speculative excesses, but by the time they were introduced the cycle had turned. The late 1960s was a period of relatively slow economic growth and a more restrictive fiscal stance, affecting the Development Tax. The Development Gains Tax was rendered irrelevant by the aftermath of the oil crisis. The mid to late 1970s was a period of large real falls in property prices and budget cuts reduced the impact of the Development Land Tax. Had they remained in existence, then doubtless the schemes would have had a greater impact.

The operation of land value capture schemes has also been generally inhibited by being inadequately resourced in terms of staff. The initial Labour schemes were introduced as part of a belief in land nationalisation and as a result were too ambitious. Both the Central Land Fund and the Land Commission were unable to cope with the volume of smaller transactions, and in the case of the former by almost one million compensation claims. The result was that they had short term problems and were unable to meet expectations.

Schemes involving compulsory purchase by local authorities or state agencies were also hindered by lack of resources. This was most clearly demonstrated by the Community Land Act of 1975, which envisaged that local authorities would be given a duty to acquire land in order to build up land banks. However, the severe cuts to local authority borrowing permissions following the IMF crisis of 1976 greatly restricted their ability to do this.

Finally, there were clear problems arising from the operation of a central government agency, such as the Land Commission, and its relationship with local authorities.

## 10.2 Current practice

The current system of land value capture, which has evolved into planning obligations, has commanded political consensus since its formalisation first in the 1990 Town and Country Planning Act in England and Wales and the Town and Country Planning (Scotland) Act 1997. The collection of betterment is paid by the land purchaser/developer through a negotiation. Its relative success in terms of political durability and revenues raised have been attributed to its local, site specific, and negotiated nature.

A further reason for its relative success is that whilst the uplift in land value arising from the conferment of planning permission is the source of the developer's contribution (in cash or in kind), the rationale is to pay for off-site infrastructure costs arising from the development, shifting the costs to the community arising from a development back to the developer. The international review undertaken as part of this study found that the schemes operating in the Netherlands and Canada are also aimed at meeting the costs of infrastructure, rather than simply as a source of revenue, as is the case in China where urban land is nationalised.

It is difficult to interpret the logic of the use of planning obligations, as the legislation provides for, to help to provide affordable housing to address a cost incurred by the community. The international review suggested that it is also a 'grey area' in the Netherlands, where under some schemes affordable housing is permitted, and others it is not. In Canada the principle that applies is that developer contributions should be directly linked to infrastructure and service costs arising from a development and these should be proportionate to the anticipated use by future residents. Nonetheless, there are examples of affordable housing being supplied under inclusionary zoning policies, sometimes as part of densification policies.

The Community Infrastructure Levy (CIL) has been phased in in England and Wales since 2008, and is provided for in the current Planning Bill in Scotland. It is intended to broaden the range of developments that contribute to infrastructure needs. It differs from S106/S75 in not being tied to being used to pay for infrastructure needs arising specifically from the development of a site. In England and Wales rates are set by the local authority, but they are not site-specific or negotiated. Consequently, CIL has been characterised as being 'intended to operate as a kind of progressive tax on land values' (Gurran and Bramley, 2017, p. 136).

Whilst a high degree of political consensus operates around the system of planning obligations, it has been criticised for its weak theoretical rationale, its complexity and the use of flawed development financial appraisals, and delays arising from the negotiation process. Their effectiveness is dependent on the level of socially generated land values that are linked to absolute land values. The statistics suggest that uplift in development values are highest in the cities and in the context of the UK, the South East of England. There may be large parts of Scotland where the uplift is minimal and the administration costs of the system high. In addition, the reliance on planning obligations to provide affordable housing has its limitations as it is dependent on the rate of private house building and the state of the housing market. This can be seen clearly in the number of affordable houses generated in this way over the economic cycle.

The residential construction industry suffered greatly from the global financial crisis, and various government measures were introduced to support it. However, it also raised the issue of 'viability' tests. Legislation in England allowed for developers of such sites to request that the planning obligations be reduced in order to restore viability to a site, and there remains provision for this in Scotland.

Some high profile examples of reductions in affordable housing obligations in England have given rise to the suspicion that developers are exploiting the system to their own benefit,

whilst other research suggests that viability effectively shifts development risk onto the state. The international review undertaken to support this study suggested that the market can be an effective mechanism for extracting land value uplift without having to rely on negotiations in which the developer is likely to be better informed than the planning authority, either through the auctioning of land use rights (China) or the open-market sale of serviced land (Netherlands).

However, there are limitations to a public agency's ability to take risks itself by purchasing and servicing land upfront as the experience of urban development corporations tasked with regenerating areas of cities demonstrates. The experience of the Netherlands suggests that this is more viable on green-field sites than on brownfield ones, and must in any case mean that the public agency carries a good deal of risk of the future land value falling if the property cycle turns down. The private sector has reportedly become less willing to share risks by developing sites with local authorities since the financial crisis.

Further, there is an increasingly common view that current mechanisms capture only a small part of land value uplift arising from planning permission, and that given the limitations of the current tax base, land value capture will need to be used more effectively in order to fund major infrastructure projects and affordable housing. For example, one participant in the workshop discussion suggested that in England about one-quarter of the uplift in land value from planning permission is captured through s106 and CIL, and that is the most that can be expected through these mechanisms.

The current arrangements also place the burden of land value capture at the point of development (previous approaches have also collected it when land was sold). However, one of the principal arguments advanced in favour of a recurrent land (or land and property) tax is that it could capture increases in land value arising from infrastructure development carried out after the development had been undertaken. Such a tax would greatly broaden the tax base relating to rising land values and could conceivably broaden the types and scale of infrastructure project that could be funded, including major transport investments.

### **10.3 The way forward: What works?**

The experience of previous (and current) attempts at capturing land value uplift in the UK and the experience of some other countries provides a good idea of what does and what does not work. The following factors arise from this study that could help to inform the development of any new land value capture mechanisms in Scotland.

#### *10.3.1 Political consensus*

Without political consensus any scheme of land value capture is likely to be 'gamed' by landowners and developers anticipating reversal when the government changes. It is also likely to be reversed by a future government. Further, political consensus is required to ensure that any new initiative is given sufficient time to become properly embedded and to withstand the impacts of the economic and property cycle on its scope. In Scotland it is therefore important that political consensus is established before any major reforms to or replacement of the existing system of land value capture are undertaken. This is most likely to be achieved if there is a common understanding of the underlying principles that support the scheme, and that the operation of the land market is properly understood by the agencies charged with implementing the policy. Moreover, schemes should be seen to be fair in order to command public consent.

#### *10.3.2 Resourcing: skills and staff*

Any scheme must be adequately resourced in terms of staffing and skills. This has been a major weakness with some previous instruments, and it is widely recognised that different local authorities have varying capacities and expertise to negotiate planning agreements.

In Scotland there are many small local authorities in terms of population. Of the 32 Scottish local authorities only two have populations over 500,000 and only six have populations over 250,000. In contrast eleven have populations under 100,000 and four have fewer than 50,000 inhabitants. An effective system of land value capture must have regard to the capacity of local authorities to implement it, and this could mean that a central agency offering centralised services, or service sharing between local authorities on a regional (or city region) basis would be required. The service sharing merger of local authorities' option may not be practical since the geographical size of many of them is also great, whilst the island authorities are remote.

### *10.3.3 Resourcing: compulsory purchase and servicing sites*

Compulsory purchase is often a feature of land value capture schemes, either to ensure that development occurs when landowners are reluctant to allow it, or where local authorities are taking the strategic lead in providing serviced sites. In order to achieve this, local authorities require adequate borrowing powers. These might be achieved through agencies owned by local-government, but even then changing the public accounting rules in line with European practice would be required to prevent such borrowing scoring as public expenditure. Public-private partnerships have been used in the Netherlands to reduce risk to the local authority on brownfield sites, but even then private developers have been more reluctant to agree to these since the financial crisis. A national fund might be required where an authority cannot afford to do so itself. If such an approach were to be taken it would need to be recognised that there would be high set up costs of any new policy before any new income is generated.

### *10.3.4 Human Rights and compulsory land purchase*

How much the state pays when it purchases land, for example for the purpose of servicing it and selling on, is clearly crucial to the viability of the approach. It is sometimes suggested that changing the law in Scotland to allow the state to purchase land below market value would contravene the European Convention on Human Rights (ECHR). The ECHR attempts to balance property rights against the wider public interest, and it permits expropriation of private property by the state when it is in the public interest to do so. In such cases compensation should be paid. There has been extensive litigation on 'public interest' and on the appropriate basis for and calculation of compensation, and the matter is not as straightforward as is sometimes suggested. It is desirable that this issue is clarified since some other European countries (including the Netherlands) appear to interpret market value closer to existing use value than is the case in the UK. Such clarification might take the form of legal advice, and a more detailed examination of practice in other countries subject to the ECHR. Moreover, whatever the basis of valuation, experience also suggests that it should be conducted on the basis of clear and consistent valuation rules, without which it is likely to appear to be unfair.

### *10.3.5 Implementation*

While there are economies of scale associated with managing land capture, that imply a central agency or service sharing would be desirable, the evidence presented in this report suggests that collection and distribution should be the responsibility of local authorities. This is widely seen as being a key strength of the present obligations system. This was also the lesson learned from the experience of the Land Commission in the 1960s. In the other countries examined in this report, local authorities are also responsible for implementing land

value capture policies. The success of any new initiative is therefore likely to be dependant on land use and land value capture being part of the same local process.

#### *10.3.6 Distribution within local authorities*

Another lesson is that the capacity for land value capture is likely to be limited if it allows only for site-specific infrastructure. If the principle underpinning land value capture is limited to paying for site-specific infrastructure then only partial capture is likely to be achieved on high value sites, whilst other lower value sites will remain unviable as the uplift in land value will not cover the cost of site-specific infrastructure.

#### *10.3.7 Distribution between local authorities*

The scope for land value capture varies greatly between authorities. In some remote authorities and others in the Central Belt with large amounts of contaminated land, additional support is likely to be required to pay for infrastructure. This might be achieved through inter-authority distribution of land value capture revenue, or, more likely through the adjustment of government grant.

#### *10.3.8 Mechanisms for extracting land value uplift*

Land value uplift is currently extracted by negotiation between local authorities and developers in the case of planning agreements and by standardised tariffs in CIL. Both these mechanisms are likely to 'undertax' land value uplift. This is due to asymmetric information and flawed development financial appraisal techniques (and better-resourced developers) in the case of negotiated contributions. There is also the need to set the charge at a level that will not inhibit development at the lowest level of land value uplift in the authority area in the case of a standard area based charge. Both first principles and international experience suggest that market mechanisms such as auctioning serviced land are likely to be more effective in maximising land value capture whilst maintaining viability.

#### *10.3.9 Land value taxation*

Current mechanisms for land value capture focus on capturing value at the point of planning permission for development, and on some developments at point of sale (through Capital Gains Tax). In contrast, the increase in land value of sites that have already been developed for commercial or residential use arising from the general growth in the economy, and the provision of additional infrastructure remains largely untaxed. The Commission on Local Tax Reform (2015) concluded that the idea of a land value tax was 'promising' (para. 13.13) and could play a role as part of a portfolio of local taxes in Scotland. From the perspective of land value capture, a land value tax should be considered alongside mechanisms that seek to capture land value at the point of planning permission.

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## **ANNEX 1: GLOSSARY**

### **Betterment**

A rise in land value that is not attributed to the owner's efforts and is therefore deemed an unearned increment in value.

### **Crownhold**

Under this land tenure the Land Commission set up in 1967 had the power to dispose of land it owned subject to restrictions on future development to preserve to the Commission all development value.

### **Current Use Value**

The value of land for the current use such as agriculture.

### **Development Value**

The value of a plot of land sold for development rather than say agriculture. This value is higher than the current use value.

### **Hope Value**

The increase in the value of the land above that of the current use if it subsequently received planning permission. Land sold with hope value may not be sold at the full development value because the purchaser is taking a risk that planning permission may not be achieved.

### **Inclusionary Zoning**

Term used in North America to describe planning policies that require or provide incentives to developers to provide affordable housing in a new residential development.

### **Planning agreement**

The name given to the agreement between a developer and planning authority to give legal force to a planning obligation.

### **Planning gain**

The difference in value of land prior to and after planning permission.

### **Planning obligation**

Private agreements made between local authorities and developers and can be attached to a planning permission to make acceptable development which would otherwise be unacceptable in planning.