

An aerial photograph of a rural landscape in England. The foreground is dominated by large, vibrant green fields. A winding path or road cuts through the fields. In the middle ground, there is a cluster of houses and a larger building complex, possibly a school or community center. A large, brown, plowed field is visible in the center. The background shows a village with many houses and a church spire, surrounded by more green fields and trees.

# Grounds for Change

**The case for land reform  
in modern England**

**Shelter**

# Contents

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<b>4</b>	<b>Introduction</b> Polly Neate – Chief Executive, Shelter
<b>6</b>	<b>Using land reform to save the countryside</b> Crispin Truman – Chief Executive, CPRE
<b>10</b>	<b>Using land reform for the public good</b> Clive Betts MP – Chair, Housing, Communities and Local Government Select Committee
<b>14</b>	<b>Using land reform to deliver more social housing</b> Rose Grayston – Policy Manager at Shelter
<b>20</b>	<b>Using land reform to create places people love</b> Will Tanner – Director, Onward
<b>24</b>	<b>Using land reform to unleash a new housebuilding industry</b> Alastair Parvin – Chief Executive, OpenSystems Lab
<b>30</b>	<b>Using land reform to build quality homes in Rural England</b> Andrew Potter – Chief Executive, Hastoe
<b>36</b>	<b>Using land reform to fund large scale development projects</b> Thomas Aubrey – Advisor to the Centre for Progressive Policy
<b>42</b>	<b>Using land reform to drive a boom in municipal house building</b> Councillor Leo Pollak - Cabinet Member for Social Regeneration, Great Estates and New Council Homes, London Borough of Southwark
<b>48</b>	<b>Using land reform to transition from British exceptionalism to Direct Planning</b> Nicholas Boys Smith – Director of Create Streets
<b>52</b>	<b>Using land reform to solve the housing crisis</b> Kate Henderson – Chief Executive, National Housing Federation
<b>56</b>	<b>Using land value capture to increase build-out rates</b> Daniel Bentley – Editorial Director, Civitas
<b>60</b>	<b>From vision to reality: Amending the 1961 Land Compensation Act</b> Rose Grayston – Policy Manager at Shelter

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# Introduction

**A home is a fundamental human need and a basic moral right, as vital as education or healthcare. Yet, for decades we have failed to build sufficient numbers of homes that people can afford to live in.**

The human cost of this failure is something we see every day in our services across the country. I have met families whose babies can't crawl because there isn't enough floor space in the one "temporary" room they have lived in for months on end. Older people putting up with conditions that damage their physical and mental health and make their futures painfully uncertain just when they need security the most. Young people whose rent is so high the idea of saving for a deposit is laughable.

At Shelter we campaign hard for changes to benefits, legislation and behaviour that will help ease this national emergency. But at its root lies something much bigger: something that, if it changed, would once again allow us to claim to be a society of opportunity. Our commitment to social housing.

In January of 2019 Shelter published the report of its independent commission on the future of social housing. Bringing together commissioners from across political parties and all backgrounds, this landmark report set out recommendations covering increased tenant power, improved regulation and most importantly the delivery of significantly more social homes.

Is such a transformation possible? The report concluded that not only was it possible; it is vital if we are going to rescue the country from the housing emergency and its devastating effects on our communities. It identified some of the changes needed to get there. One of the most significant changes needed is land reform.

Land is central to building homes. Whether we build social homes, market homes, flat-pack homes or traditional bricks and mortar we need to have the land to do it on. Yet, in the last 20 years the value of land has risen by 544%.<sup>1</sup> And high land prices have very real consequences for people and communities. They mean:

<sup>1</sup> Office for National Statistics,  
The UK national balance sheet  
estimates: 2017, 2018

<sup>2</sup> Onward, Sharing land value with  
communities: An open letter, 2019

- It is almost impossible to build the social homes we desperately need;
- New developments are less likely to have community infrastructure like schools and parks;
- Homes get delivered slowly at a time when they are so urgently needed;
- Design and quality suffer—meaning we create places that local people resent rather than appreciate;
- Public money for homes is diverted into landowners' pockets when it could create public assets that appreciate and earn income through rent.

Over the last 50 years we have created a system where almost every scrap of land for new communities and homes is maximised to deliver the highest possible return for the landowner. Almost all land value—which is created by infrastructure, communities and the granting of planning consent—flows to the landowner. But if we shared that value more evenly between communities and the landowner we could address our housing emergency and get back to doing development better.

Luckily, politicians, campaign groups, think tanks and charities are already calling on the government to take the action that is needed to bring down land prices.<sup>2</sup> It's time for government to act decisively.

That's why Shelter has put together this collection of essays which answer one simple question from many points of view. The question is:

### **What could be achieved in a world where land comes into development at a lower value?**

The result of this: a collection that showcases just some of the desire for change that now exists.

- In his essay on community support, Will Tanner of the think tank Onward lays out the need to improve the places we build with better design and more community infrastructure if we are to tackle the resentment people currently feel towards housebuilding.

- The Campaign to Protect Rural England examines how our current land market is a threat to the countryside.
- And Clive Betts MP, Chair of the Housing, Communities and Local Government Select Committee, draws on the excellent report his committee published in 2018. Highlighting in particular how in places like Germany the approach to land supports the delivery of high-quality new places, rather than preventing it as it does in England.

For Shelter, with 127,000 children spending last Christmas homeless and 3.1 million families now bearing the brunt of the housing crisis, we desperately need a long-term programme of social housebuilding. And land reform is a key element to making this a reality. And in the final essay, my expert Shelter colleague Rose Grayston explains precisely what needs to change, with a clear call for reform of the 1961 Land Compensation Act.

This is the outdated law that explains why land prices in England are so high today, and it is having an impact that the politicians who created it 60 years ago would never have expected or intended. I fervently hope that this essay collection will help show the support that exists for this change and encourage the government to act.

The scale of the suffering caused by a shortage of safe, secure and affordable homes should give any government the courage to take bold action, both to lower the cost of land and then to build the next generation of social homes that we so desperately need if we are to truly solve our national housing emergency.

The need for change has rarely been so clear.



**Polly Neate**  
Chief Executive, Shelter



# Using land reform to save the countryside

**Crispin Truman – Chief Executive, CPRE**

Everyone who loves the English countryside is familiar with the cost of bad development. Drive down almost any A-road in the country and you are likely to see featureless identikit houses, forming soulless commuter estates. You could be in Surrey or Somerset, Norfolk or Northumberland. Developments of homogenous, unaffordable homes can make it impossible to tell.

**Our current housebuilding model is broken. It leads to sprawling, piecemeal development, making a fortune for some landowners and developers and doing little to address the root causes of the affordability crisis affecting so many low and middle income families. Reforms to the way the land market operates could help to change all this.**

For too long, land has been treated as a speculative asset. Decades of rising house prices have entrenched expectations of future rises. Together with the expansion of mortgage credit, this has increasingly led us to think of houses as sources of financial security, rather than places to live, bring up families, and put down roots. And all that lending directed at land and property has driven up prices dramatically. The Ministry for Housing, Communities and Local Government now estimates that a typical hectare of agricultural land in rural England increases in value around 108 times with the granting of residential planning permission, from £22,300 to £2.4 million.<sup>1</sup>

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## 108 times

jump in the value of agricultural land when it receives residential planning permission

With so much money at stake, is it any wonder that many landowners seek to sell their land to the highest bidder? Or that large developers are willing to pay huge sums, safe in the expectation that land and property prices will continue to rise, allowing them to recoup their costs later?

In theory, some of this enormous increase in value should be shared with communities through the Section 106 and CIL systems. However, successive Governments have weakened planning rules and dramatically slashed funding for local housing and planning departments. A weak planning system makes it easier for the largest housebuilders to overpay for land — outbidding smaller builders, public bodies and housing associations — and then cut back on design standards, energy efficiency and affordable housing provision, on the grounds that they would make the development ‘unviable’. CPRE’s joint ‘Viable Villages’ report with Shelter in 2018 found that rural sites where a financial viability assessment was used after planning permission had been granted saw a 48% drop in the number of affordable homes built compared to local targets.<sup>2</sup> While government’s rules on viability were tightened up following our campaign,

<sup>1</sup> MHCLG, Land Value Estimates for Policy Appraisal May 2017 Values, 2018.

<sup>2</sup> Grayston, R. and Pullinger, R., Viable Villages: Closing the Planning Loophole that Undercuts Affordable Housing in the Countryside, 5 March 2018.

landowners and developers still have too much control over how much affordable housing gets built.

Our broken land market means that developments are increasingly sited where there is the greatest profit to be made, rather than in the most sensible and sustainable locations. For example, it is usually more profitable to build on greenfield sites, rather than pay the remediation costs associated with brownfield development. So new estates spring up outside settlement boundaries, while former industrial sites in town and city centres stand idle.

**This profit-driven system is also why simply building more homes will not solve the housing crisis.** Yes, we need to build more. But if we are to lose precious countryside, let it be to well planned developments, where the profits from rising land values are invested in public green spaces, walking and cycling infrastructure, community facilities, and well-designed homes that people can afford to live in, rather than accruing primarily to landowners.

Reforming the way that compensation is paid to landowners in cases of compulsory purchase could help us create developments which minimise lost countryside and maximise the public good. At present, the 1961 Land Compensation Act dictates that if a local authority compulsorily purchases land, it must pay the landowner 'hope value'; that is, the amount of money that the land would command with residential planning permission which it does not currently have. Given that land can increase in value more than a hundredfold when planning permission is granted, 'hope value' is often too high a price for cash-strapped councils to pay.

**Removing 'hope value' to bring down the cost of land would allow local authorities to assemble land for their own ambitious housing schemes.** They could then masterplan developments and sell serviced plots to private developers to fund the provision of infrastructure and social housing.

The potential for this kind of development is huge. It could lead to the regeneration of urban brownfield sites in a way that meets the housing and transport needs of people who live and work in our cities, rather than serving up block after block of luxury flats and pricing out existing communities. It could support the creation of high density new settlements and urban extensions, with good public transport links and a high proportion of low-cost homes. Such settlements could house more people, more cheaply, and with less reliance on cars, than the haphazard profit-driven developments which increasingly infringe upon treasured green spaces across the country.

Moreover, compulsory purchase orders would not need to be used often to provide an effective check on land price inflation. In combination with the new compensation arrangements, the threat of compulsory purchase would likely be enough to incentivise landowners to sell at a fair price, closer to existing use value, and could eventually bring down land values across the board.



Source: Rob Deutscher from Melbourne, Australia [CC BY 2.0 (<https://creativecommons.org/licenses/by/2.0>)]

We only have to look to the Continent to see what is possible. In Denmark, the new town of Ørestad was developed on the outskirts of Copenhagen through a partnership between national government and the city government of the capital. Built around a Metro line, it comprises a mixture of commercial space, private residential development and social housing, and around 70% of residents use public transport to get to work. Other examples of settlements funded by municipal authorities harnessing land value uplift can be found across Germany, France, the Netherlands and Scandinavia.<sup>3</sup> There is no reason why we could not plan similarly ambitious projects in Britain.

Speculative development is ruining our countryside. Meanwhile, enough suitable brownfield sites exist for over a million new homes, but they are underutilised.<sup>4</sup> Land compensation reform could help give us higher quality developments on more sustainable sites. In the long run we would lose less countryside and enjoy better places. And, as communities start to get more of the things they want from new developments, it might even mean that we could look forward to a less fraught and oppositional planning process.

<sup>3</sup> O'Brien, N. and Tanner, W.,  
Green, Pleasant and Affordable,  
Onward, 2018, pp.26-27.

<sup>4</sup> CPRE, State of Brownfield 2018:  
An Analysis Demonstrating the  
Potential of Brownfield Land  
for Housing, February 2018.



# Using land reform for the public good

**Clive Betts MP – Chair, Housing, Communities  
and Local Government Select Committee**

Land values increase for many reasons, not least from economic and demographic growth. But some of the most significant increases in land value arise from public policy decisions, in particular the granting of residential planning permission and the provision of new infrastructure.

The land value increases we are talking about are not small. Government statistics show that agricultural land granted planning permission for residential use increases in value, on average, from £22,300 to £2.7 million per hectare – around 120 times.<sup>5</sup>

There arises, therefore, a moral and political question: who should be the beneficiaries of these increases and in what proportion? Should it be the person who owns the land, but who potentially did very little to contribute to the windfall profit? Or should the community, through local authorities and central government, seek to claim the greatest share?

In 2018, the Housing, Communities and Local Government select committee, a cross-party group of backbench MPs in the House of Commons which I Chair, held an inquiry into this very issue.

Over the course of our six-month inquiry, we heard from academics, experts, campaigning groups, local authorities, landowners, developers, practitioners, legal experts and the Government. We received formal written evidence from close to a hundred individuals and organisations, as well as extensive correspondence.

We listened to the evidence and, across party lines, came together to agree unanimous conclusions.

Alongside recommendations to reform existing developer contributions and the CPO process, one of our most significant conclusions concerned the Land Compensation Act 1961. We said:

**We believe that the Land Compensation Act 1961 requires reform so that local authorities have the power to compulsorily purchase land at a fairer price. The present right of landowners to receive ‘hope value’—a value reflective of speculative future planning permissions—serves to distort land prices, encourage land speculation, and reduce revenues for affordable housing, infrastructure and local services.<sup>6</sup>**

<sup>5</sup> Excluding London and before planning obligations are considered; MHCLG Land value estimates for policy appraisal 2017, <https://www.gov.uk/government/publications/land-value-estimates-for-policy-appraisal-2017>, 24 May 2018.

<sup>6</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/766/766.pdf>

The first generation of New Towns owed much of their success to the ability of Development Corporations to acquire land at, or near to, existing use value and capture uplifts in land value from the infrastructure they developed and subsequent economic activity to reinvest in the local community.

It is our view that reform of the *Land Compensation Act 1961*, alongside the enhanced CPO and land assembly powers that we recommended, would give local authorities the power to acquire land at a fairer value, build a new generation of garden cities, towns and villages, and capture uplifts in land value to provide new infrastructure and public services.

We had hoped that our report could be an opportunity for the Government to engage with and open-up the debate on land value capture. We were disappointed, therefore, that the Government did not take the opportunity to make some bold decisions in the ambitious and forward-thinking way we had hoped. As is often the case with our reports, the Government chose instead to err on the side of caution.

While it is reassuring that the Government has not ruled out reform of the Act and say they remain open to considering practical improvements to the framework, we believe that the Government should be bold and act now.

The Government told us that any changes to current framework should “not distract from delivering a better housing market”. We agree; the Government’s main priority should be housing delivery. We are in the midst of a housing crisis and it is vital that the Government is able to meet its target of building 300,000 new homes every year.

But the two are not mutually exclusive – our proposals can help with this. We believe the Government should reflect on the role that land value capture can have in boosting housing supply and, in particular, delivering more affordable housing. Reform of the *Land Compensation Act 1961* would provide a real incentive for local authorities to get on and build the housing that this country desperately needs.

During our inquiry, the Committee visited Amsterdam and Freiburg. We met with national and local policy experts, politicians and industry groups to see how things work there and were impressed by what we saw.

Much of the success of the high-profile developments in Freiburg and Amsterdam rested on the fact that a substantial proportion of the land was already owned by the public sector. The local municipalities were able to capture increases in the value of the land by selling, or leasing, sites to developers, and using the profits to reinvest in the infrastructure and public services made necessary by the planned developments.



In the Vauban district of Freiburg, for example, we heard that the land value that was captured by the local municipality covered almost the entire €95 million cost of providing infrastructure (including a school, streets and public transit) to the 34-hectare site. Ownership of the land also gave Freiburg and Amsterdam significant control over the types of housing to be constructed by developers, allowing them to require a certain proportion of affordable or social housing.

Of course, it is too simplistic to say we should just copy the German or Dutch model, ignoring the wider legislative context and different planning systems. But it shows what can be achieved with political will and government backing, and there is still much that can be learned from these examples. We called on the Government to reflect on the experience of Freiburg and Amsterdam to ensure that, where land is put forward for residential development, the maximum value is captured for new infrastructure and public services.

It is a vision, too, of what could be achieved here through reform of the *Land Compensation Act 1961*. With new powers to assemble land at a fairer value, local authorities in this country would be able to rediscover their housebuilding heritage, capture increases in land value themselves, and invest the profits into the communities they serve.

Through our inquiry, we saw that there is a growing consensus, from across the political spectrum and beyond — including Shelter — that reform of the *Land Compensation Act 1961* is crucial if we are to deliver the new housing and infrastructure that we all agree the country needs.

We call on the Government to support our cross-party recommendations and seize this opportunity to give local authorities the powers and funding they need to build the next generation of garden cities, towns and villages.



# Using land reform to deliver more social housing

**Rose Grayston – Policy Manager at Shelter**

**A**lmost everyone now accepts that the housing market is broken. The government's 2017 Housing White Paper identified the high cost of housing, to rent or buy, as one of the greatest barriers to progress today – and one that hurts ordinary working people the most.<sup>7</sup>

There is a range of factors behind the housing crisis we face today. But if the government is looking for a historically-proven way to provide homes to all who need them, by far the most efficient, effective and well-understood vehicle would be a major programme of social housebuilding.

Reporting earlier this year, Shelter's commission on the future of social housing gathered a raft of evidence on the benefits of social housing for those who live in it today.<sup>8</sup> Social housing is designed to be affordable to those who need it, and as such is only tenure affordable to minimum wage earners across much of the country.<sup>9</sup> Where social renters pay on average 31% of their income on housing costs, this rises to 41% for private renters,<sup>10</sup> who face such high costs that one in five of them have cut back on food to pay the rent.<sup>11</sup> Social housing is the only tenure where rents are low and stable enough to give households on modest incomes the breathing room to save money each month<sup>12</sup> – whether for a deposit to own their own home or any other aspiration. Finally, unlike in private renting, tenancies are usually secure, so residents of social housing can't be turfed out on a landlord's whim.

Social housing is too often associated with tower blocks, lifelong unemployment or 'antisocial behaviour'. But to those who live in it, it means simply this: genuinely affordable, decent housing with secure tenancies so that people on ordinary incomes can live and raise their families in dignity.

We then have to ask the question: why shouldn't the millions who find themselves struggling with high rents and poor security in the private rented sector have this same opportunity?

While the benefits of a new generation of social housing are clear, how we get there is often seen as a tougher question. However, it doesn't have to be. By reforming the broken land laws at the heart of our current housing crisis, we can control the costs of development and make room for significant social housing supply alongside market supply.

7 Fixing the Broken Housing Market, DCLG, February 2017

8 Building our future: A vision for social housing: The final report of Shelter's commission on the future of social housing, 2019

9 D. Baxter and L. Murphy, Priced out?: affordable housing in England, IPPR, 2017; S. Corfe, The Peabody Index: Tracking the financial experiences of London's social housing tenants, Social market Foundation, 2018, p. 17

10 MHCLG, English Housing Survey, 2016/17, Annex Table 1.13

11 YouGov, survey of 3,978 Private renters in England, online, weighted, July–August 2017

12 K. Webb, Fair Rent Homes: An affordable alternative for hard-pressed renters, Shelter, 2017, p.18



Peabody Trust Housing in London, established by philanthropist George Peabody. This estate is still popular today, and like many similar high density mansion blocks, has been maintained as social housing. Peabody said that the aim of the organisation would be to “ameliorate the condition of the poor and needy of this great metropolis, and to promote their comfort and happiness”.

## Affordable land for social homes

Land is usually the single biggest cost in building homes. It makes up 70% of the cost of a market home,<sup>13</sup> and was responsible for 74% of the increase in UK house prices between 1950 and 2012.<sup>14</sup>

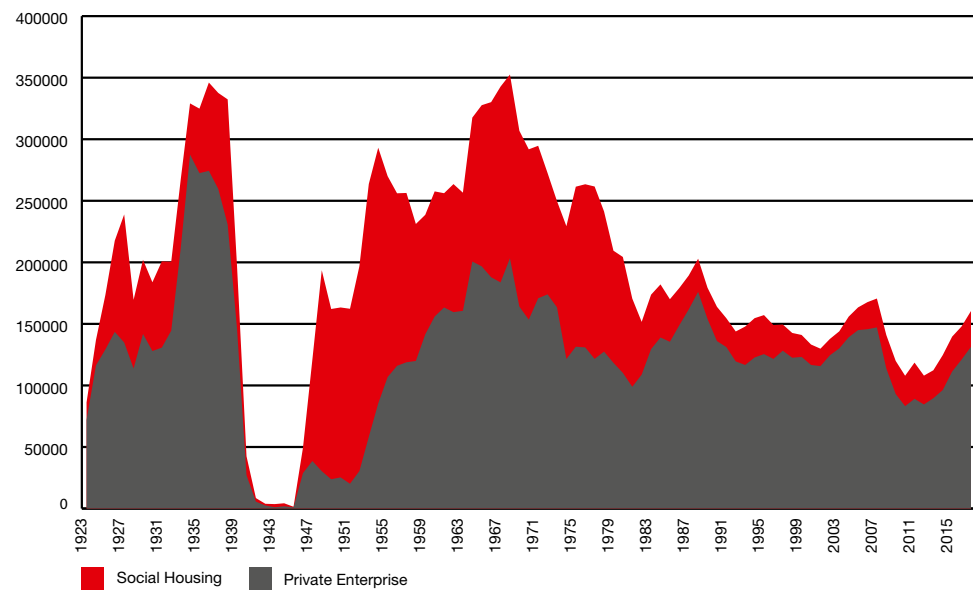
But things weren't always this way. Social housebuilding in the immediate post-war period benefited from legislation which decoupled its land costs from those prevailing for market housing. This stabilised the costs of developing social housing, avoiding land market inflation and providing a secure supply of affordable land on which truly affordable housing could be built. As a result, social housing providers achieved high-quality, well-planned developments that were able to build out at record speeds, and that are still well-loved by their residents today. In the three and a half decades after the end of the Second World War, between them councils and housing associations built 4.4 million homes, at a sustained average rate of more than 125,000 a year.<sup>15</sup>

<sup>13</sup> Office for National Statistics, The UK national balance sheet: 2017 estimates, 2017, Figure 3

<sup>14</sup> K. Knoll, M. Schularick, T. Steger, “No price like home: global house prices, 1870–2012”, The American Economic Review, 107.2, 2017, pp. 331-353

<sup>15</sup> The total between 1946-80 was 4.405 million at an average of 125,861 a year. MHCLG, House building: permanent dwellings started and completed, by tenure, Live Table 244

**Figure 1: new build social housing completions since 1923<sup>16</sup>**



Source: historical housing statistics; Holman

While public money has built many social homes over the years since the modern land market was defined by the 1961 Land Compensation Act and subsequent case law, local authorities have often been forced to compromise on quality, design and density to cope with escalating land prices. Whenever governments have invested more public money in social housing, land prices have increased sharply because landowners have known they can charge as much as the government is willing to pay.<sup>17</sup> The system-built tower blocks of the 1960s were in part a way of coping with rising land prices by fitting as many homes as possible on the same amount of land. In 1963, Hackney Council pleaded that the 'lack of building sites and the ever increasing cost of site purchase left the Council with no alternative but to build higher'.<sup>18</sup>



Image: Hackney housing. Source: iStock

<sup>16</sup> B. R. Mitchell, *British Historical Statistics*, Cambridge University Press, November 2011 (1923–1945) and MHCLG, *House building: permanent dwellings started and completed, by tenure*, Live Table 244 (1946–2017)

<sup>17</sup> See D. Bentley, *The Land Question: Fixing the dysfunction at the root of the housing crisis*, Civitas, 2017, p.48; N. Keohane, N. Broughton, *The Politics of Housing*, Social Market Foundation report for the National Housing Federation, 2013, p.49

<sup>18</sup> P. Foynes, "The Rise of High-Rise: Post-War Housing in Hackney", *Hackney history*, vol. 1, 1995, p. 31



Compromises on conditions and quality—and, most tragically, on safety—were made to bridge the gap between land sold at market prices and the ambition to deliver homes at affordable prices. Truly aspirational social housebuilding programmes require rules to make sure land comes into development at a low cost.

## Land reform: the foundation of a new generation of social housing

**Today, access to land is a major constraint on social housebuilding in England. A recent Savills survey of housing associations found that ‘availability of land’ was by far the biggest constraint on them building more homes.**<sup>19</sup> For councils not currently delivering housing, ‘lack of land’ is the leading reason.<sup>20</sup> Councils that are delivering housing cite ‘lack of land’ as the second most important barrier to delivering more, just slightly behind the Housing Revenue Account borrowing cap, which government recently scrapped.<sup>21</sup>

Social housing providers in 2019 either need an unusually affordable source of land – for example land owned by a public body with an interest in seeing social housing built, such as a local authority – or they must find the money to compete with those buying land to build the most profitable kinds of homes for sale. Evidence gathered by the National Housing Federation from its members shows that providing social housing is often impossible under these circumstances.

**“We have lost out on several sites all across the East of England, South East and East Midlands. In so many cases, this has been because the eventual winner has built far fewer affordable homes than we planned to, which allowed them to pay more up-front for the land.”**<sup>22</sup>

**Staff from Grant Union Housing Group**

The levels of direct investment which would be needed to purchase land at today’s market prices and then use it to build social homes at affordable prices would be considerable. In reality, if government increased grant for social housing without also reforming the land market, this additional demand for land would be factored into its cost—making it even more expensive. Because of this, the problems of financing social housing are bound up with the problems of accessing the land on which to build it. It is not enough to pour more money into a broken system. At the same time as we increase public investment in social housing, government must also act to reform the broken market for land. **Public money for social housing must be used to build the homes we urgently need – not siphoned off into an already bloated land market.**

<sup>19</sup> Savills Research, The Savills Housing Sector Survey 2018, 2018, p.9

<sup>20</sup> J. Morphet and B. Clifford, Local authority direct provision of housing, National Planning Forum and Royal Town and Country Planning Institute, 2017, p. 52

<sup>21</sup> Ibid., p. 55

<sup>22</sup> National Housing Federation, ‘Landowners make £13bn profit in one year, as high land prices stifle affordable housing’ September 2018

The prize of reform is great. Work from Civitas has estimated reforming the Land Compensation Act 1961 could slash 38% off the total development costs of a new scaled up programme of social housebuilding across England. This would reduce the total cost of a building a new social rent home from £354,478 to £217,643 in outer London and from £381,103 to £254,925 in inner London.<sup>23</sup>

Beyond delivering financial savings and more predictable development costs, reforms to bring down the cost of land for social housebuilding will wrestle back control over what is built. For decades, our ambitions for social housing have been boxed in by land traders' rising profit expectations. 'What is needed' has been less important than 'what is possible' in a broken market. Social housing providers have been forced to compromise on location, design, affordability and every other aspect of housing development in an attempt to keep some supply flowing through social housing's darkest days. In a world where the price of land reflects what will be built on it, communities will have far more freedom to define development outcomes for themselves. These social homes will then become the foundations of strong communities, replacing a failed generation of revolving-door private tenancies.

<sup>23</sup> D. Bentley, "Reform of the land compensation rules: How much could it save on the cost of a public-sector housebuilding programme?", Civitas, 2018

# Using land reform to create places people love

**Will Tanner – Director, Onward**

If you were to construct a system to maximise resentment towards new housebuilding, the British land system would probably come close.

For decades, new homes have been encouraged in places that communities are most likely to oppose development, in designs that jar with local styles, without proper consultation with communities, and with insufficient investment in the infrastructure that local people understandably expect alongside housing.

The root causes of undersupply are often thought of as ideological – entrenched local opposition to new development or political resistance to reform of Britain’s planning controls. In fact this opposition is often practical, based on where, how and what we have tended to build, and whether value from development accrues to the community or developers and landowners.

None of this is to suggest that Britain builds anywhere near enough homes. We do not – despite delivering 222,000 new homes in 2017/18 – and we have not done so for many decades.

**Between 1970 and 2015, Britain built half as many homes as France, despite having a similar population and long-run growth rate.**<sup>24</sup> This is equivalent to 7.8 million fewer homes or every home in Greater London, Scotland and Wales put together.<sup>25</sup> Perhaps unsurprisingly, house prices rose twice as fast this side of the Channel over the same period and in some parts of the country housing is now unaffordable for most people in their twenties and thirties.

It does, however, tell us that we need to think differently if we want to fix the ever deepening housing crisis in this country. While academics are right to point out that planning controls have constrained supply of land for new development, politicians are also right to have resisted the temptation to ‘let rip’ due to well-grounded fears of urban sprawl, ribbon development and the loss of valued landscapes. We need a new model that is practical and non-adversarial.

A new approach put forward by Onward last year would refocus the plan-making process away from its current passive and sequential approach – in which landowners choose which land to bring forward, usually on the edge of existing settlements – towards an active policy that starts from the question of which land would be most acceptable to local residents and best for new development for the local area.

<sup>24</sup> O’Brien, N. and Tanner, W., *Green, Pleasant and Affordable*, Onward, 2018

<sup>25</sup> Ibid.



This kind of master-planning, which is common in Europe but rare in Britain, would likely favour standalone settlements over piecemeal development on the edge of existing towns and villages, and allow for schools, roads and doctors surgeries to be installed alongside new homes. People are less likely to object to new homes built according to a plan that existed when they bought their home. **In this vision, infrastructure can be planned properly to accommodate new residents, rather than squeezed into new extensions pushed up against existing homes.**

Since the end of the New Towns programme and Docklands Development Corporations, Britain has built no significant planned communities. In the last few years, local and central government have started to consider new planned communities, including garden towns and villages across the country, but even then, the approach is limited and the sites relatively small in number.

Most importantly, an active approach to place-making would help fund the infrastructure that communities so desperately want by capturing more of the land value when planning permission is granted. At present, three quarters of land value accrues to developers and landowners, to the tune of around £10 billion a year.<sup>26</sup> This is despite the fact that more than a quarter of developments between 100 and 999 homes and a full 7% of developments of over 1,000 homes paid no Section 106 or Community Infrastructure Levy at all.<sup>27</sup> The experience of other countries suggests what might be achieved: the Netherlands manages to capture around 90% of the gains in some cases.<sup>28</sup>

Achieving this kind of change will require ministers to be bold and reform “hope value” — the additional putative value of the land with planning permission — which has inflated land and housing prices since it was included in the 1961 Land Compensation Act. Hope value is one of the reasons why the cost of land has risen twice as fast in Britain as in France in the last 45 years, and one reason why land for new towns is often prohibitively expensive or complex to be viable.

To achieve this, ministers should consider amending the 1961 Land Compensation Act to give local authorities powers to buy land at closer to agricultural prices and use the uplifted value gained from planning permission to fund new infrastructure. This is what happens in the Netherlands, where local authorities would have a right to CPO the land if a landowner does not release land needed for the fulfilment of a local land plan. There will be some, especially Conservatives, who fear this could become a tool for state control and land appropriation. In practice, however, the experience of the Netherlands suggests that because local authorities have strong clear powers, CPO does not actually have to be regularly used in practice, as landowners tend to strike voluntary agreements.

In practice, there are local authorities and developers who have found ways to capture value for the community within the existing system – and with less risk for lengthy litigation. For example, some developments include ransom strips owned by the local authority which are released only when developers meet their commitments for building community

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## £10.7 billion a year

land value that accrues to  
developers and landowners

26 Aubrey, T. Gathering the windfall: How changing land law can unlock England's housing supply potential, Centre for Progressive Policy, 2018, p.3

27 O'Brien, N. and W. Tanner (2018), Green, Pleasant and Affordable, Onward.

28 Aubrey, T. Gathering the windfall: How changing land law can unlock England's housing supply potential, Centre for Progressive Policy, 2018, p.12



Image: Nansledan

infrastructure investment, from schools to local roads. This is an effective way of ensuring communities benefit from development, but it is the exception. Reforming the 1961 Act would make land value capture the rule.

A shift from passive development to active place-making could be complemented by other policies to support better local authorities. Last year, Onward recommended that the Government should create an independent support network for councils with major new developments, incorporating the expertise of groups like the Prince of Wales' Foundation for Building Communities. If ministers are serious about facilitating new development in places residents support, this remains a priority.

A place-making approach based on local infrastructure investment would almost certainly generate far more homes. In Nansledan, local residents initially resisted plans put forward for a new thousand unit development on the edge of Newquay. Yet after considerable engagement with local people businesses about what and where the development would be, and who would build it, the local community agreed to a 4,000 unit urban extension. The way to turn NIMBYs into YIMBYs is to listen.

There is no doubt that Britain needs more homes. Younger generations are priced out of the market and it is clear the political consequences of their absence of capital are profound. For the Government, making up the lost ground of fifteen-years of declining homeownership and rising real rental costs must be the first priority.

The problem with development is not that we have too much or even that we have too little, although we clearly do build too few homes. It is that our housing and planning system encourages new build houses when it should be incentivising newly planned places – complete with infrastructure paid for by land value uplift and supported by communities who have been consulted.

There is no silver bullet to the housing problem but getting local people to support local homes is a good place to start.

# Using land reform to unleash a new housebuilding industry

**Alastair Parvin – Chief Executive,  
OpenSystems Lab**

**A**llowing communities to capture the value that they create through the planning system won't just unlock billions to invest in community infrastructure. It will also allow Britain to build more and better homes.

It was the writer Mark Twain who once gave the timeless piece of investment advice: "buy land, they're not making it anymore." What's fascinating about this adage is that it is witty, astute and completely wrong.

Actually, we make land all the time. To understand how, we first need to ask ourselves a simple question: where does land value come from? Why is it that one piece of land is worth more than another? The mud in Westminster is no better than the mud in Warwickshire, but it is worth millions more.

That additional value comes not from the land itself, but from the location it gives the owner access to, and their right to use it.

The moment we, through our local councils, give planning consent for homes on a site, or connect it to infrastructure, its value instantly leaps to many millions per hectare – its price now determined not by its crop yield, or its value for industrial production, but by the value of the homes you can fit onto it.

In that moment we are, in effect, creating new land.

**In recent decades, we have allowed this leap in value to be captured entirely by the landowner, who then sells the land for as much as someone can afford to pay for it. The problem is, that – by definition – is a price that most people can't afford.**

## **The Section 106 model**

In recent decades, governments have tried to square this circle using what can essentially be described as a 'compensation' strategy. Landowners are allowed to capture the land value increase, in the hope that a percentage of their profits can be clawed back as compensation through 'Section 106' agreements or the 'Community Infrastructure Levy' (CIL).

Governments are now realising that this mechanism simply doesn't work. It has failed.



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## 3,878% inflation

of UK house prices since 1971

### Why has it failed?

Its most obvious failure is that today, all homes are unaffordable to an increasing number of people, even “Affordable” ones. Since 1971, house prices in the UK have inflated by 3878%, far outstripping our earnings.<sup>29</sup>

The common explanation for this is that we didn’t build enough homes to keep up with demand, and that, in turn, was because we didn’t create enough new land, but the reality is more complicated than that. In truth, the undersupply of new homes was not the only driver. In addition, an oversupply of mortgage credit played a significant role; new money created by banks in the form of cheap loans (a story familiar to anyone who has seen the film *The Big Short*). Because families could borrow more, they had more to spend, so prices began to inflate. Soon, capital began to ride the wave, speculating on land and property, pushing prices higher still. So began a vicious cycle of land inflation and rising household debt.

As prices have inflated, a growing percentage of the population have found themselves left behind: too poor to buy, but not eligible for social housing. They are stuck in cramped, crumbling homes, or forced into homelessness. Councils have been pushed into a permanent state of emergency. Even those who can afford to rent or buy find themselves paying as much as half of their monthly income to landlords or lenders, just to have a roof over their head; money that would otherwise be saved or spent in the real economy.

**The cost doesn’t just fall onto society and the economy. It also falls onto government. In 2019, the UK housing benefit bill will have risen to £23.4bn.<sup>30</sup> That’s more than we spend on police, roads and military equipment put together. About £9bn of this is paid straight on to private landlords, which inflates rents even higher.<sup>31</sup>**

### A man-made housing crisis.

But the Section 106 model has another, deeper flaw, one that is not widely understood.

The fact that we allow land value to be captured by the owner creates a market for a class of companies whose business model consists of buying land, getting planning permission, building homes and selling the properties onto the second-hand homes market, capturing the uplift as profit. We call some of these companies ‘developers’ or ‘housebuilders’ – but the reality is that building homes is only incidental to their business. In reality they are land traders.

These land-trading intermediaries effectively lock-down all available development land, since they are the only players who have the cash in their pocket to bid for it.

<sup>29</sup> UK House Prices since 1952, <https://www.google.com/url?q=https://www.nationwide.co.uk/-/media/MainSite/documents/about/house-price-index/downloads/uk-house-price-since-1952>.

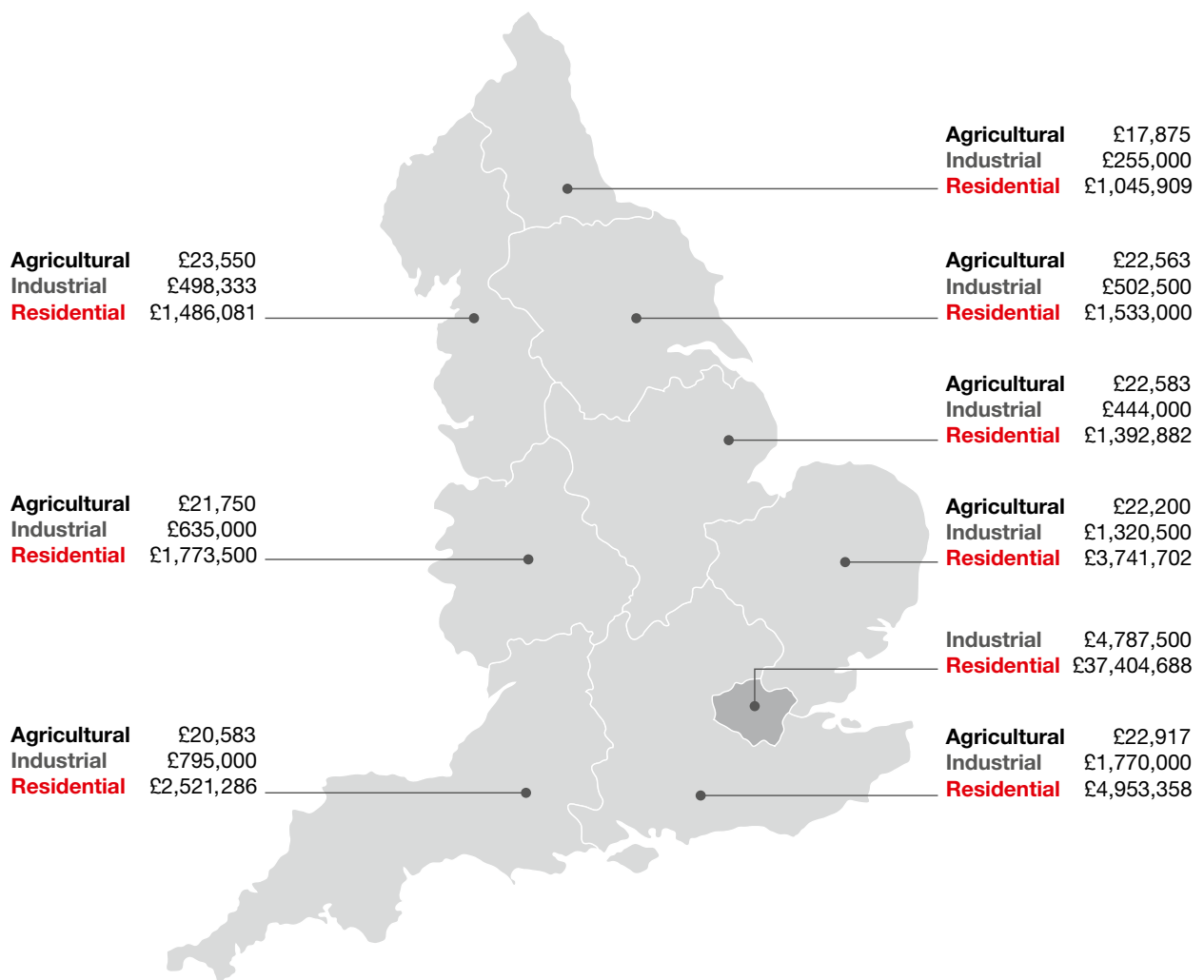
<sup>30</sup> OBR - <http://obr.uk/forecasts-in-depth/tax-by-tax-spend-by-spend/welfare-spending-housing-benefit/>

<sup>31</sup> <https://www.theguardian.com/society/2016/aug/20/private-landlords-9bn-housing-benefit-taxpayers-national-housing-federation-report>

This is a big problem, for four reasons.

1. **Land traders will never, ever build a sufficient number of homes to meet demand.** If they did, prices would fall. Instead, they deliberately hold back development and trickle new properties onto the market to keep prices high. Asking them to build more homes is like asking diamond traders to produce more diamonds. This has now been well articulated in the Letwin review's 2018 draft analysis.<sup>32</sup>
2. **Land traders only really build when and where land values are rising.** In areas without rising prices, on small sites, or where the value has already been traded-up, it makes more sense for them to sit on the land and wait for its value to go up. This perpetuates the North-South divide.

### Value of a hectare of land in English regions by planning designation



Source: MHCLG Land value estimates for policy appraisal 2017, 2018.

<sup>32</sup> Rt Hon Sir Oliver Letwin MP,  
Independent Review of Build Out  
Rates Draft Analysis, 2018, pp.12-14

3. **The short-term nature of land traders' business model means that they take no financial interest in the performance of the homes and neighbourhoods they create as places to live.** In fact, they have a structural incentive to build the cheapest, least energy-efficient homes that they can; all crammed into barren dormitory neighbourhoods. This is one of the great open secrets of our current housing system. We all agree on what we want from our housing: quality, sustainability, diversity, economic prosperity and community resilience, and yet we have outsourced the production of our cities to an industry that aims to deliver the exact opposite.
4. **Our dependence on Section 106 and CIL to deliver public goods has put the planning system into a kind of Faustian Pact with the land trading market, where councils are forced to constantly lower the bar while land traders negotiate-down their contributions.** Central government is forced to provide subsidies to the land traders to ensure more homes get built, such as Help to Buy. Meanwhile, voters have become habituated to a kind of tacit corruption, whereby schemes that manifestly do not meet planning policies are nonetheless granted planning permission because public officials are so desperate for what few "mitigations" they can get. This has had the effect of eroding public trust in development and planning, ironically making it politically almost impossible to bring new land forward for development. And so the trap comes full circle, and shuts.

## Land value capture

The key to escaping this cycle lies in that one, simple realisation: that those billions of pounds of land value are created not by landowners, but by all of us, through our common consent for development. All the landowner has to do — in the words of Winston Churchill — is 'sit still'. We create 100% of that value, and yet we have been getting only a small percentage (about 27%) of it back. We have been begging for crumbs under our own table.<sup>33</sup>

Restoring this key principle of the planning system; giving councils the power to purchase land at its original low price and then releasing it into the market or building social housing on it will allow communities to capture billions to invest in community infrastructure, without government spending a single penny.

But that alone will not increase the quantity or quality of homes we build. Sell it on only to land traders through auctions, and we will see the same delays, the same expensive, low quality development, the same community resistance.

Yet there is another housebuilding sector. One that is popular. One that will build as many homes as it can, as soon as it can. One that will always build the best, most sustainable and most affordable homes that it can; and will employ the most innovative methods possible to do it.

<sup>33</sup> Aubrey, T., *Gathering the windfall: How changing land law can unlock England's housing supply potential*, Centre for Progressive Policy, September 2018, p.7



Image above: Graven Hill in Oxfordshire.  
Source: <https://www.gravenhill.co.uk>



Image left: Older Womens Co-Housing  
Source: Housing Futures primary research and OWCH (2016)

## Unleashing a new housing industry

In a sensible world, the best people to bring new land to the market are councils. **However, the best people to build and maintain the homes on top of that land are the families and communities who will live in them, maintain them, raise their children in them, and pay the heating bills.** That means individual families, groups of friends, businesses, community enterprises, housing associations.

Land value capture is an opportunity to create a dedicated land market for those sectors, by selling or leasing new land directly to them; sometimes at a fixed, advertised price; sometimes deferring payment; sometimes as “community land”, ensuring that properties remain affordable in future.<sup>34</sup>

The result would be to unleash a whole new housebuilding industry, creating hundreds of thousands of jobs, transforming cities, restoring trust, meeting Britain’s housing needs, and creating places that even in a hundred years we will still be proud to call home.

<sup>34</sup> <https://www.opensystemslab.io/affordableland>

# **Using land reform to build quality homes in Rural England**

**Andrew Potter – Chief Executive, Hastoe**



**B**uilding in Rural England is all about the land price. If you can bring the cost of land down, you can build more social and affordable housing and make developments of much higher quality. As housing policy becomes increasingly complex, we seem to have lost sight of this simple fact.

## Rural Exception Sites

As Chief Executive of a specialist rural housing association, I am aware we have two advantages in developing affordable homes in rural areas. Firstly, there is more space for new development and sites are less likely to need serious remediation work. Second, we benefit from the 'rural exception site' policy.

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**What is a rural exception site?** It's a model where small sites, on the edges of villages, can be released for development on the condition that the homes are kept affordable in perpetuity, are prioritised for local people and meet a local need. This 'triple lock' criteria keeps the land value very low – around £10,000 per plot – as the focus is on social homes, not homes for open market sale. Moreover, the fact the sites would not be released for housing on any other condition reduces 'hope value' for the land.

In effect, rural exception sites are a form of zoning for affordable housing. It links the land price to the type of housing needed by the local, rural community.

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In the last five years, Hastoe has built 472 affordable homes on 46 separate rural exception sites across southern England, providing homes for families unable to afford homes on the private market. But without access to land at the low values a rural exception site provides, we wouldn't have been able to access the land market. On a level playing field, private developers nearly always win. And that means more market homes, with affordable housing contributions squeezed and quality compromised.

As the name suggests, the rural exception site model is an 'exception' to planning policy and can only be used in certain circumstances. However, the model gives a clue to how we could bring down the value of development land in England and increase the number of affordable homes. We need to protect this model and see how its principles can be rolled out more widely. Instead of the focus

being on the returns to the landowner, the type of homes needed by the community should dictate the price of the land.

The Letwin review's final report from October 2018 got part way there.<sup>35</sup> It recommends a far greater diversity of tenures (social rent, affordable rent, shared ownership etc.) and strong design codes to limit the uplift in land values to ten times the existing use value, rather than the multiples of hundreds we have seen recently.

But the Government could be more ambitious. Apart from the question of whether such a system would work, Letwin only focuses on relatively large sites over 1,500 units. Although some new settlements and extensions in rural areas are this size, most rural developments are smaller than that. Requiring every development to have a much greater diversity of tenure would bring down land values across Rural England and leave more cash for a better quality of development.

The Government should also reverse its decision to not require affordable housing contributions on sites smaller than 10 homes. Small sites are more common in rural areas, and are important for gradually growing existing villages. This rule raises land prices and reduces the number of affordable homes in Rural England. Reforming this policy would reduce land values on small rural sites, as local authorities would be able to mandate a greater number of affordable homes to be built.



<sup>35</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/752124/Letwin\\_review\\_web\\_version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752124/Letwin_review_web_version.pdf)



### What could Rural England do with lower land values?

We already know the ill-effects of high land values in Rural England. Joint research for Shelter and CPRE in 2018 shows a 48% cut in affordable housing in rural areas through the ‘viability loophole’, as developers bid high prices for development land and try to cut back on everything else.<sup>36</sup> These viability rules have been improved, but there are still plenty of opportunities for gaming the system, whether by using today’s more limited viability system or by influencing councils’ planning policies downwards. Developers also try to cut back on quality to justify the high land prices they have paid. Energy efficiency standards and design standards get dropped in a bid to cut costs.

### But if land values were lower, closer to the price of rural exception site land, what would be the effect in Rural England?

Firstly, we could build far more energy efficient homes. Nearly one in seven households in rural villages, hamlets and isolated dwellings is in fuel poverty. The average rural fuel poverty gap is £726 (compared to £353 nationally).<sup>37</sup> Lower land values would release cash to build to a far higher energy efficiency standard and substantially cut fuel bills and carbon emissions.

<sup>36</sup> Grayston, R. and Pullinger, R., *Viable Villages: Closing the Planning Loophole that Undercuts Affordable Housing the Countryside*, 2018.

<sup>37</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/782147/02\\_Statistical\\_Digest\\_of\\_Rural\\_England\\_2019\\_February\\_edition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/782147/02_Statistical_Digest_of_Rural_England_2019_February_edition.pdf)

At Hastoe, we always build to a higher energy efficiency standard than Building Regulations and have built more than 100 Passivhaus homes on rural exception sites. Passivhaus is an ultra energy-efficient building technique that focuses on air-tightness and reducing thermal bridges to help retain heat. This requires excellent attention to detail as Passivhaus homes have to be certified to prove they are built as promised. Our first Passivhaus scheme in the village of Wimbish, Essex, has recorded fuel bills as low as £130 per year.



Building to this standard comes at a premium. But lower land values would mean we could spend more to build to far higher energy efficient standards every time – as close to Passivhaus as possible. This could become the norm across Rural England, helping to abolish rural fuel poverty once and for all.

We could also focus far more on quality design. This is one of the most powerful weapons we have in boosting support for new rural housing. Rural England wants affordable homes that are sensitive to the local vernacular. If you get this right, communities often ask for more.

So when building more rural housing – affordable or open market – lower land values will leave more cash for quality design. Clay pantiles, stone walls, flint and brick exteriors – all these elements are expensive. **But a lower cost for land leaves more cash for homes to be built in a style that reflects the heritage of our villages and the desires of rural communities.**

Third, lower land values leave more room for more affordable homes of all types – social rent, shared ownership, etc. In good development, the horse is put before the cart as the tenures the community needs are decided first and the land price reflects this – rather than the other way around, as now.

**House prices in rural areas are 20% higher than the national average but wages are lower.<sup>38</sup> There is a desperate need for more affordable housing to allow more young households to remain in rural areas and to keep rural communities viable. Lower land values – much like the rural exception site model – would help to achieve this.**



Image: Graven Hill in Oxfordshire. Source: <https://www.gravenhill.co.uk>

<sup>38</sup> <https://static.halifax.co.uk/assets/pdf/media-centre/press-releases/2017-10-02-rural-housing-review-30-september-2017-housing-release.pdf>

## Conclusion

When Aneurin Bevan was Minister for Housing he said to a conference of rural authorities in 1946:

‘While we shall be judged for a year or two by the number of houses we build, we shall be judged in 10 years’ time by the type of houses we build’.

The same is true today. A focus on securing land at lower values will help to deliver the quality, energy efficient and affordable housing that Rural England badly needs.

# Using land reform to fund large scale development projects

Thomas Aubrey – Advisor to the  
Centre for Progressive Policy



**T**o increase the rate of housebuilding, particularly for social and affordable housing, Britain needs to increase its investment in infrastructure, thereby opening up land for more homes. One of the key challenges for large scale development projects is how to fund the necessary infrastructure.

Infrastructure is expensive, challenging to implement due to its complexity, and is generally characterised by revenue streams lagging many years behind large-scale upfront expenditure.

Given these issues, there is a clear need for the state to play a central role in ensuring that large scale infrastructure is delivered to improve the nation's housing stock as well as enabling its citizens to exchange goods, services and ideas.

In his seminal work *The Wealth of Nations*, Adam Smith wrote that to erect and maintain public works was one of the three main duties of the Sovereign or Commonwealth as the profit could never repay the expense to any individual or small number of individuals. Smith qualifies this by arguing that each public work should be able to generate its own revenue streams which should be captured by local administration to ensure that the tolls/taxes are paid to cover expenses only.<sup>39</sup>

In many respects the post war new town developments were a textbook case of how to use the public sector balance sheet to help manage the risk of such projects. Crucially, these investments were able to provide citizens with affordable housing connected to places of work. Furthermore, the new towns were able to generate income streams from social housing as well as the selling off land with planning permission to largely defray their own expense. **According to the Town and Country Planning Association, the £4.75bn of loans made by the Treasury to the New Town Development Corporations were repaid by 1999.**<sup>40</sup>

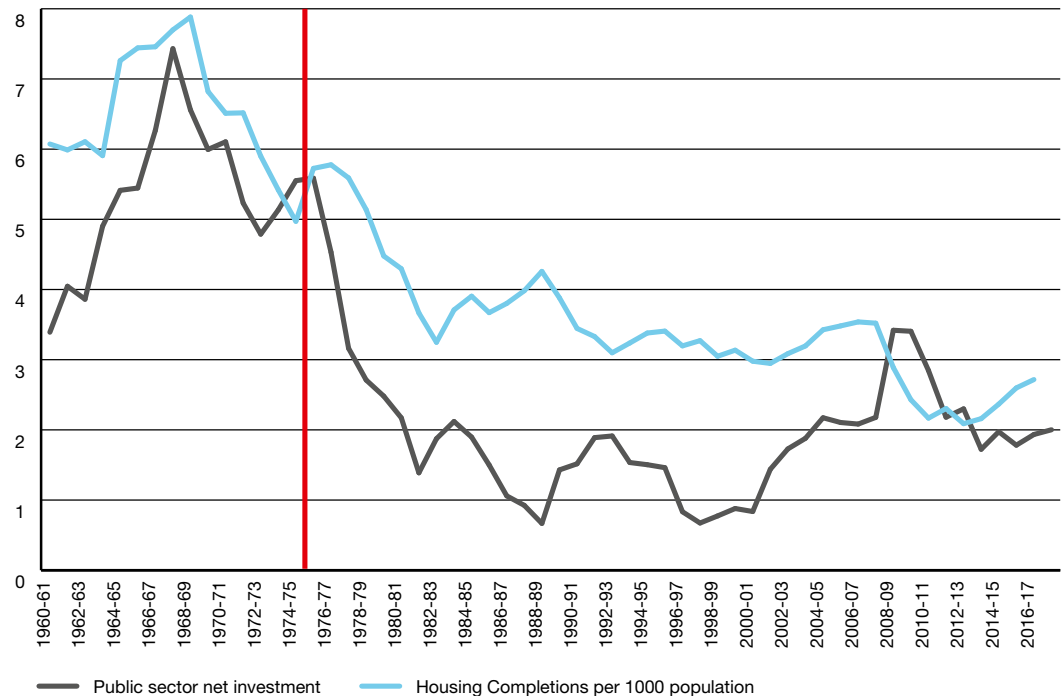
This approach to public-led investment for the second and third generation new towns had a significant impact on the level of housebuilding. As shown in chart 1, between 1960–75, public sector net investment averaged 5.4% of GDP, peaking at 7.4% in 1967. This is one major reason why housing completions per 1000 of population averaged 6.5 during the period.

Between 1976 and 2016 the average level of public sector net investment fell by two thirds to only 1.9% per annum. The increase in 2009 to over 3% was mainly due to the fall in GDP rather than any major increase in investment. This significantly lower level of investment was accompanied by a drop of nearly 50% in housing completions per 1000 of population to just 3.4.

<sup>39</sup> Adam Smith, *The Wealth of Nations* 'of the expense of public works and public institutions'

<sup>40</sup> New Towns and Garden Cities, TCPA 2015 (Including asset disposals)

**Chart 1: UK public sector net investment vs UK housing completions per 1000 population**



Source: MHCLG, OBR, ONS, CPP

There are many reasons behind this dramatic shift. Crucially, the deterioration of the macroeconomic environment from the mid-1970s, when high inflation combined with high and variable real interest rates, negatively impacted the finances of local authorities. This provided the backdrop for the 1980s culture of restricting local authority expenditure. Research indicates that there was less demand in the mid to late 1970s to build social housing, with local authorities requesting fewer approvals for subsidy than the Department for Environment offered them.<sup>41</sup>

One other issue that has been largely ignored in the literature is the Myers vs Milton Keynes Development Corporation (MKDC) case in 1974. The MKDC along with the other new towns acquired land at just over twice agricultural values. This was because the land designated for new towns was not thought to have 'hope value' or any value outside of the scheme itself. This was a key success factor as the uplift in land values played a significant role in funding the initial infrastructure.

However, in 1974 the Court of Appeal upheld that Myers should be awarded 20% of residential value. This ruling both reduced the financial viability of undertaking large scale projects and increased the risk due to the uncertainty of land values. Since this ruling, no further new towns have been formally designated and the large-scale developments that have been undertaken have generally been much smaller than those of the new towns. This can be seen by the lower housebuilding completions per 1000 of population.

<sup>41</sup> Holmans, A., *Housing and Housing Policy in England 1975 - 2002, 2005*



Poundbury in Dorset. Source: iStock

Although development projects do unlock land values using Section 106 and the Community Infrastructure Levy (CIL), estimates by the Centre for Progressive Policy (CPP) indicate that about 27% of the total uplift is directly captured, and when tax is taken into account around 42%.<sup>42</sup> This leaves around £10.7bn per annum that is not being tapped to help fund new infrastructure and affordable housing.

In the rare examples where the landowner is a public authority, projects can tap into the full amount of uplift in land values to produce exemplary development. The North West Cambridge Development, built on university land, and Poundbury in Dorset, built on the Prince of Wales' land, are recent examples. By contrast, where private land needs to be acquired and assembled for a development, then the requirement to pay 'hope value' will reduce financial viability and increase uncertainty in land values, thereby increasing the risk of the project. For this reason, large-scale, ambitious projects do not often come forward at all. New housing must instead be built where it can be served by existing infrastructure, itself increasingly under strain.

<sup>42</sup> Aubrey, T., Gathering the windfall: How changing land law can unlock England's housing supply potential, Centre for Progressive Policy, 2018, pp.7-9

<sup>43</sup> MHCLG, Reforming developer contributions: Technical consultation on draft regulations, 2018

So what options are there if the country is to return to higher rates of infrastructure investment and affordable housing delivery? The current Conservative administration is focussed on tweaking Section 106/CIL payments to increase the amount captured. However, the policy proposals appear to mostly create additional complexity for a limited incremental income stream.<sup>43</sup>

Another approach, touted by the Labour opposition during the 2017 General Election, is to invest £500bn of funds raised centrally into various projects including housing and infrastructure. However, such an approach does not necessarily solve the underlying issue. Firstly, without the project management discipline which is brought about by linking funding to specific local projects and cash flows, the risks to projects are likely to escalate. Secondly, merely hoping that investing will increase tax revenues is a risky strategy and may well lead to higher interest rates, thereby increasing the costs of servicing the debt, leading to a fall in future investment.

A third option is to amend the 1961 Land Compensation Act to remove prospective planning, building on the Pointe Gourde principle and more recent shifts in development contributions to reduce land values. This would eliminate 'hope value'<sup>44</sup> thereby increasing certainty of land values and improving the financial viability of large-scale projects. Such a reform would enable local development corporations to embark on a wave of large-scale developments. Landowners would still play an important role as risk sharing partners, but they would no longer be able to benefit from prospective planning permission without having to take some risk, and not until the infrastructure costs had been paid for.

This is particularly important for large scale infrastructure projects such as the West of England Joint Strategic Plan and Crossrail II, both of which have ambitious plans for more housing. However, they are currently unable to proceed due to funding issues. If they had access to the full uplift in land values to fund infrastructure, it ought to be able to help fund around 50% of the total infrastructure costs.<sup>45</sup>



<sup>44</sup> This would require the removal of subsections (4) to (8) of section 14, section 17, section 18 and section 19

<sup>45</sup> Aubrey. T, Funding the Infrastructure and Affordable Housing for the East West Corridor, 2017

Integrating transport and housing is critical to accelerate housing building as it can provide better local amenities for existing local residents, enables greater scale in housebuilding and can provide the necessary connectivity to ensure that the new homes are connected to jobs.

**CPP analysis indicates that an extra £214bn could be deployed to invest in infrastructure and affordable housing over the next 20 years by removing prospective planning permission from the land compensation arrangements.<sup>46</sup>** As Adam Smith recognised, when the market is unable to meet the demand for things such as infrastructure and affordable housing, then the state has an obligation to intervene. The new towns demonstrated that the uplift in land values played a central role in ensuring that the developments were financially viable. Local economies must be empowered to embark upon a new wave of investment in infrastructure and affordable housing.

<sup>46</sup> Aubrey, T., Gathering the windfall: How changing land law can unlock England's housing supply potential, 2018

# Using land reform to drive a boom in municipal house building

**Councillor Leo Pollak – Cabinet Member  
for Social Regeneration, Great Estates  
and New Council Homes, London  
Borough of Southwark**



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## 750 new homes

delivered by Southwark council

Following the lifting of the Housing Revenue Account (HRA) borrowing cap and increase in grant funding made available through the Mayor of London, Southwark, like many other local authorities across London and the country, is now building council homes at volumes not seen in well over 40 years.

Since our programme began 4 years ago, Southwark council has steadily rebuilt the skills of a volume housebuilder and has now delivered over 750 new homes (of which 635 are at council rents), with an additional 2000 in the pipeline either under construction or in planning and consultation across more than 70 sites. We are now undertaking another site sweep across our limited land holdings to identify new council housing development opportunities at maximum possible densities.

However, with over 20,000 people on our social housing waiting list, including more than 2,000 children growing up in temporary accommodation in our borough, we are determined to carve out every extra power we can to not only expand and accelerate our programme further, but to become a major contributor to new housing supply in the borough.

Southwark, like other densely-built urban boroughs, will need to expand its land holdings significantly to maintain a continuous pipeline of new homes, and to meet our generational commitment to deliver 11,000 more council homes by 2043. While we have begun the process of identifying and bidding for new development sites<sup>47</sup>, the extortionate asking prices offered on the open market mean any successful bids would make a significant hit on the viability of future schemes and impose a further burden on an already constrained budget for housing investment.

The more councils can spend their monies on building new homes rather than on deadweight land transactions, the further we can go in delivering the kinds of homes that residents actually need. Yet in the midst of a land speculation frenzy—a Great South London land rush—our job as builder and as planning authority in maintaining the link between real-world housing needs and housing supply in our borough is made unnecessarily difficult. The valuation and compulsory purchase system recognises the right of landowners to speculative value which results from events and actions created by public policy and public investment; the ‘hope value’ that dramatically inflates the value of land has a particularly pernicious effect in boroughs like Southwark.

<sup>47</sup> Ann Moss Way and flexibility to acquire sites for council housing development, 23rd January 2019, Southwark council <http://moderngov.southwark.gov.uk/documents/s79805/Report%201%20Ann%20Moss%20Way%20Rotherhithe%20London%20SE16%201TL.pdf>



Camberwell Fields, Southwark. Source: Alamy

To better document this, we have been keeping a log of real land transactions, asking prices and existing use values (as used for viability testing) on sites allocated for housing development in our local plan, as part of an evidence base to help Government assess the scale of the problem.

Three recent hope value horror stories from Southwark illustrate the scale of the challenge:

1. A site in the centre of our borough, adjacent to land we own, became available to buy through a blind auction and would have allowed us a more coherent development plot, meaning we could increase the number of council homes on this site from 80 to roughly 200. The existing use value was set at £1.5m, and after much internal discussion with our surveyors we put in a bid of £5.5m—a premium on the existing use value equivalent to around 18 council homes—which would have added around £50k cost per home. The site eventually sold for £8.5m, meaning the council couldn't develop it itself. The winning bidder would then be tempted to overdevelop the site with inappropriate height and massing (similar schemes across the road had negative resident feedback), dilute affordable housing and infrastructure contributions, or simply leave it empty and undeveloped for many years until market conditions improve. At the time of writing the winning landowner is now trying to sell the council the site for £12m plus.
2. A large site in the east of the borough near the proposed site of a new Bakerloo line station had an estimated existing use value of around £5m. When the land owners put the site up for auction they offered a guide price of £25m, and then withdrew it on the basis they could achieve a higher price later on with a more advantageous policy environment.
3. Sites with recently consented permissions on Old Kent Road, the focal point of a major regeneration in our borough, include 313–349 Ilderton Road, whose viability assessment reported a development deficit of £4.6m and existing use value of £1.9m. This site is now for sale at £15m. Similarly, the developer of 134–140 Ilderton Road recently reported an existing use value of £2.5m, and now seeks to sell for £10m.
4. A major site in the north of the borough that could accommodate over 1,300 homes was acquired for a figure estimated at over £120m. After several years of close partnership working with the council our respective viability consultants reached a stalemate as a proposal that featured zero social rented homes was judged to be over £110m short of a policy compliant position. This resulted in the first major planning application of its size refused in Southwark's history, with existing use values posted at £35–£38m. At the time of writing there are no plans to bring the site forward again.

In each of these cases land value, density pressure and viability in a high demand area tug at one another.<sup>48</sup> An unregulated market for land creates a ratchet effect that treats planning permissions and site allocations like any other kind of tradeable commodity, dissociated from the council's imperative of meeting local housing needs, securing sums for social infrastructure and ensuring good growth.

For this reason Southwark, like other serious house-building councils, is calling on Government to revise the 1961 Land Compensation Act to ensure that new land holdings can be secured on terms that reflect the affordable nature of what we mean to build – affordable land for affordable housing – with a compensation formula defining the market value against the existing use.

It is worth impressing too that this is not historically unusual: the 1941 Uthwatt report<sup>49</sup> describes similar methods of land value capture to reconstruct housing stock marked by slum conditions and unaffordability, and the subsequent 1947 system of nationalised land use and developer betterment survives to this day, albeit in a compromised form.

Compensation reform has moved back into the policy mainstream in recent months, with calls from inner city and rural council leaders alongside developers for caps on land speculation to support build out and affordability. This should be seen as a reflection of the impact the dysfunctional land market has on communities, as well as the validity of questioning super profits in the land market.

Oliver Letwin's 2019 review of build out rates<sup>50</sup> goes part of the way to identifying the problem and perverse incentives at play. Permitting excessive 'hope value' would mean developers either stack up unaffordable homes that claw back the speculative premium they have paid and avoid meeting the 'diversity' of housing needs, or they would just sit and wait on their site (sometimes for many years) until values caught up. However, when it came to recommending a cap to land compensation sums as a multiple of a site's existing use value, the Letwin review only makes recommendations for agricultural to residential contexts, at odds with Government's housing policy goal of 'fixing the broken housing market ... [and] planning for the right homes in the right places'<sup>51</sup> 'as captured in exacting housing supply targets and delivery tests in high value, high demand inner city boroughs like Southwark.

Until these inconsistencies are resolved, the Government will continue to preside over a dysfunctional housing economy that permits super profits while avoiding the fundamental drivers of our housing crisis.

Southwark isn't hanging around waiting for these changes – we are already developing the practical tools that would support such a reformed land trading and viability testing system, including a *Viability Benchmarking Model*, developed with FutureGov, that would standardise the inputs and underlying data sources that inform cost

48 Sayce, S., Crosby, N., Garside, P., Harris, R. and Parsa, A., *Viability and the planning system: The relationship between economic viability testing, land values and affordable housing in London*, 2017

49 Expert Committee on Compensation and Betterment (Uthwatt Committee) <https://discovery.nationalarchives.gov.uk/details/r/C8776n>

50 Rt Hon Sir Oliver Letwin MP, *Independent Review of Build Out Final Report*, 2019 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/752124/Letwin\\_review\\_web\\_version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752124/Letwin_review_web_version.pdf)

51 MHCLG, *Planning for the right homes in the right places: consultation proposals*, 2017

value and yield figures that viability consultants manipulate to plead their client's case.

Further to this, we are systematically logging and recording all known real-world asking prices and sales transactions, and all known existing use values on development sites towards developing a *Land Value Register* for sites allocated for residential development. This could be used to create either a formal cap for surveyors and developers in the land trading system, or better still, provide a basis for local authorities to support more rational land assembly for the purposes of affordable housing, either from itself or another builder.

# **Using land reform to transition from British exceptionalism to Direct Planning**

**Nicholas Boys Smith – Director of Create Streets**



'You cannot ask men to stand on their own two feet if you give them no ground to stand on'

Iain Macleod

Somewhere over the last century we lost the knack of building the types of places in which people most want to live. So many discussions of 'how to solve the housing crisis' end up in desiccated discussions of 'land values' or 'planning gain' or 'units consented' that it is easy to forget this simple truth. We are building homes and settlements for future generations.

But the public don't forget this. In poll after poll they tell us that most of them would rather live in an older home than a new one.<sup>52</sup> And if you don't believe they mean it, the pricing data backs this up. Over the last 30 years, pre-1919 homes have increased in price faster than modern homes in much of the country; twice as fast in London. And in an exhaustive survey of every single residential sale in London in 2016, the 'heritage premium' for living in a traditional residential neighbourhood or proximate to a listed building was up to seven times larger than the 'new build' premium so beloved of estate agents. Housebuilders may know how to sell detached homes in cul-de-sacs at a steady rate. They probably don't know how to maximise land values in the long term: or provide the types of mixed use, seamlessly mixed tenure, richly detailed, conventional street pattern that best aligns with popularity, health, walkability and public support.<sup>53</sup>

We need to rediscover the skill of building these types of settlement again. But this is not just a matter of design. It is also a matter of planning reform and (the other side of precisely the same coin) land values. The social enterprise that I run, Create Streets, has written case studies on some of the very few new settlements which somehow seem to 'square the circle' and achieve higher value, higher density, more support and higher levels of affordable housing.<sup>54</sup> So have Shelter.<sup>55</sup> And we have both made the same observation. In every case, the primary role was not played by a publicly quoted developer but by a body who was able to take a longer term view on 'when they got their money back.'

Frankly, it is often only possible, at present, to build great places if you own the land at an eighteenth century book value. This is absurd. It is admirable that some public bodies, ancient landowners, neighbourhood groups and well-endowed charities both wish to and can build beautiful new neighbourhoods. (Though, far more third or public sector developments fail). However, we cannot run a system in which

52 See Boys Smith, (2016), *Heart in the Right Street*, pp 85-90 for a summary of the polling data.

53 See Iovene & Boys Smith (2019), *Of Streets and Squares*. Forthcoming.

54 For example, Boys Smith & Toms (2018), *A place to call home* describes the development of the Nansledan urban extension to Newquay.

55 Shelter (2017), *New Civic Housebuilding*. See above all pp 72-83.

the market is so chronically incapable of building the best places.

“It is not,” wrote Adam Smith, “from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest.”

We have broken the link between self-interest and public-interest. How do we reconnect it?

The key fact is that in historic and comparative terms, the UK has a very strange planning governance and process. And this really matters. The right to develop in the UK has been nationalised, with uncertainty of what will be permissible. In much of the world, the right to develop is merely regulated, very often with greater clarity about what is permissible. We rely more on development control and less on rules. Put differently, we are (trying to) run a bespoke system (discretionary decision-making) for a mass product (housing). We allocate for individual sites on a case by case basis rather than zoning more widely for what is, and is not, permissible. We have less clarity, more discussion and fewer rights to develop land or build new homes.

All this matters because the slow process and reduced clarity increases planning risk and the uplift in value (‘planning gain’) when consent is ‘won’ (a telling phrase). This poses a major barrier to entry to smaller developers, self-builders, build-to-rent providers and third sector developers. It is not an accident that the UK has a consistently and increasingly more concentrated development sector. In Britain about 10 per cent of homes are built by self or custom build (versus a European average of 50 per cent); and 34 per cent of the construction market is made up of smaller firms. (In Germany it is 50 per cent, in Denmark 73 per cent).<sup>56</sup>

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## 10% of homes

in Britain are self-built  
or custom build



Image: Rieselfeld in Germany

<sup>56</sup> Boys Smith, (2018), More good homes Making planning more proportionate, predictable and equitable, p.26

Here are a few linked suggestions to move to a simpler, more predictable planning system with less uncertainty on land prices and more ability to capture (reduced) 'planning gain' to fund infrastructure or social housing.

- **Move from an unpredictable 'bespoke' system to one of more predictability and consistency in most cases.** As is the case in most of the developed world, we should move from a planning permission-led system to a building permit-led system in the majority of development situations. To construct via a building-permit approach would require strict adherence to a very clear (but limited) set of rules on betterment payments and design. Ideally this would be entirely aligned to strict and clear building regulations. If these rules were followed then approval would be a matter of course with post-construction verification wherever possible.<sup>57</sup> This should speed up the development control process exponentially, help set land prices, free up planners to focus on real planning and limit planning risk which acts as a critical barrier to entry for smaller developers and non-volume house-builders. Building permits would be particularly appropriate for smaller and more straightforward sites.
- **Set a non-negotiable pre-set percentage payment to local government for infrastructure spend and affordable housing** to escape the protracted delays, costs and legal wrangling over Section 106 negotiation.
- **Move from allocation of sites to zoning on rules** to permit greater clarity on what development is possible and to intensify use in a far greater range of places.
- **Emphasise the role of public land** in ensuring housing supply over the next 15 years. This is the only place where you can dodge the 'land price bullet' and get building. The state should continue to release land for development. It should do so via Joint Ventures as well as through outright sale.
- **Help public sector bodies play a more active role in land assembly** by strengthening compulsory purchase orders and making it easier to buy land at a fair market value.

By creating a simpler, more popular, differently ambitious but more predictable planning system, direct planning would reduce the high risks and extreme gradients in planning gain that bedevil the current discretionary approach. Land reform has a key part to play in this. If we did this, we would be making planning and land value capture more proportionate, predictable and equitable, enabling us to create the great places of the future. That would be good.

<sup>57</sup> The essential corollary of post-construction verification would need to be a sufficiently robust process of verification with severe sanctions for those breaking the terms of the fast track building permit. Building permits might 'evolve' out of several existing mechanisms such as Local Development Orders or Permitted Development.

# Using land reform to solve the housing crisis

**Kate Henderson – Chief Executive  
National Housing Federation**

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*England is short of four million homes. Homes for homeless people and people living in temporary accommodation. Homes for young professionals stuck in the expensive and insecure private rented sector. Good quality, affordable family homes, and homes to meet the needs of older people, anyone with disabilities, or people who need a little extra support. We all know someone touched by the housing crisis, but it doesn't have to be this way. What if the Government supported one small change to legislation which would transform the ability to build more social housing, and deliver all types of housing more quickly? Let's imagine.*

*If we're to house everyone in housing need, we must build 340,000 homes a year, including 145,000 for social rent and other affordable tenures<sup>58</sup>. Housing associations currently build a quarter of all new homes<sup>59</sup>, but they are desperate to do more. The Government can help by addressing the high cost of and unequal access to land which currently exists.*

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## What's gone wrong?

The planning system, the developer-led 'speculative' homebuilding model, and the laws around land ownership and purchase have created a dysfunctional land market. Outside of London agricultural land in England becomes around 120 times more expensive simply from receiving residential planning permission<sup>60</sup>. This makes it much more expensive to build homes for social rent. We urgently need to put this right.

It's time to change the law to make it possible for public bodies like local authorities to be able to buy land more cheaply. A small change to the 1961 Land Compensation Act to allow the compulsory purchase of land at much closer to existing use values, would bring down prices across the land market.

Every pound spent buying land means one less to spend on building more social homes, or investing in communities and services. It's also expensive for government, because high land prices mean that to make housing affordable land costs have to be subsidised by public grant. Over the next spending review period we'll be calling on government to commit the grant necessary to deliver 90,000 social homes per year<sup>61</sup>. But cheaper land would help in the struggle to build the homes we need.

As Sir Oliver Letwin's recent review recognised, the way to deliver homes more quickly on large sites is to build a wide range of house types and

58 Heriot Watt University, Housing Supply Requirements Across Great Britain [https://www.crisis.org.uk/media/239700/crisis\\_housing\\_supply\\_requirements\\_across\\_great\\_britain\\_2018.pdf](https://www.crisis.org.uk/media/239700/crisis_housing_supply_requirements_across_great_britain_2018.pdf)

59 Housing associations delivered 26% of housing new build in England in 2017/18. Source: NHF Supply Data survey, 2017/18; MHCLG house building completions, Table 209.

60 Excluding London, and before planning obligations are considered; MHCLG Land value estimates for policy appraisal 2017, <https://www.gov.uk/government/publications/land-value-estimates-for-policy-appraisal-2017>, 24 May 2018. When London is included, this jumps even higher, with land becoming up to 275 times more expensive.

61 National Housing Federation, <https://www.housing.org.uk/press/press-releases/england-short-of-four-million-homes/>

tenures and appeal to many different markets simultaneously. Speeding up housing delivery in this way would make a big difference to achieving the Government's target of building 300,000 homes per year. But it won't happen until land is available more cheaply.

### **It doesn't have to be this way: making the future a reality, today**

Let's imagine it's 2025 and the Government has amended the legislation so that land values are closer to existing use values. What would the benefits be?

To set the scene we've created a fictional housing association called County Homes which manages around 5,000 homes in the Midlands. Demand for housing and land increased rapidly during the noughties and resumed post-financial crisis. Limited capacity in the region's district councils meant that land identified for housing tended to be concentrated on relatively few, large sites controlled by large private developers who built slowly and negotiated down their affordable housing and infrastructure contributions.

There was soon a chronic under-supply of good quality affordable homes (particularly for families), increasing homelessness and reliance on privately rented homes. The housing benefit bill rose as a result. Things began to change when the laws around land purchasing were reformed a few years ago.

### **The resident's story**

Ann is 78 and she has just moved into a new purpose-built apartment building, built on land that her housing association bought when the law changed, and land prices fell. As Ann became older she found that her old house was too large and no longer suitable for her needs. She lived there alone and often felt isolated. Despite having applied, Ann had been on a waiting list for more suitable housing for a number of years.

Now she has her own flat with access to communal facilities. She can get the care and support she needs in the flat while maintaining her independence, receiving guests, and having a great social life. And she knows her old home now has a family living in it who need the space.

Once a week Ann goes to the social club at the new community centre nearby, run by the housing association. She can get help using the computers, and emails her grandson to tell him how happy she is with her new home. County Homes is particularly pleased to be able to deliver these community facilities. Access to more affordable land has created the financial space for the association to keep them going, when a few years ago they looked set to close.

### **The development director's story**

As Development Director for County Homes, Ali loves building things. Until



a couple of years ago, however, there weren't too many local opportunities in the not-for-profit sector. Apart from the largest, housing associations tended not to have the financial muscle or skills to build up a decent land portfolio, nor attract the most talented development staff.

Everything changed when government reforms meant more land became available at lower prices. Not every council has used the power to compulsorily purchase land at closer to existing use values – but the ripple effect of high profile, early cases prompted landowners in areas of tight supply to act before they were targeted. As landowners' value expectations moderated, their willingness to sell increased. Holding out for “ransom” values is risky when there's a chance of being CPO'd. Councils have also been better able to insist on Section 106 contributions which fairer land values make more viable.

Ali has been able to establish a talented team of specialists who understand the development process, know how to work effectively with both councils and landowners, and share County Homes' values. County Homes' board have the reassurance of skilled people they can trust to deliver.

### **The housing officer's story**

Vic, a long-serving housing officer with County Homes, deals with everyday issues facing tenants, from repairs, arrears, reports of anti-social behaviour, and requests for housing. He gets huge satisfaction from resolving people's problems and delivering a good service to County Homes' customers. But this wasn't the case before the Government changed the law on the land market.

Over decades, the association's housing officers grappled with the challenges of local demand for housing outstripping supply. The association was increasingly less able to offer places to the rising numbers of people at risk of homelessness, or to help growing families to find more suitable properties. Vic also spent much of his time dealing with complaints from tenants about the poor quality of their new developer-built homes.

It took a couple of years for the effects of the change in the law to filter through, but the association is now building more new homes, including their first homes for social rent for many years. It's also forced private landlords to up their game, meaning fewer evictions and fewer people seeking Vic's assistance. The quality of the new build homes has improved with more money to invest. Vic and his colleagues know they are doing more good for more people.

It's remarkable to see the knock-on benefits from one small change in the law. If as a society we value social housing, and if together we are to fix the housing crisis, we need the land to build on and substantial long-term government investment to do so. Housing associations stand ready to deliver. Government must now act and do its part to free up access to the affordable land we need. It's not hard to imagine, so let's make it happen.

# **Using land value capture to increase build-out rates**

**Daniel Bentley – Editorial Director, Civitas**

**W**hy would a site of 1,187 new homes, once planning permission is in place and construction is underway, then take a decade to build? That is the projection at Trumpington Meadows in Cambridgeshire where, in four of the first six years of development, annual output was no more than 100 units. Trumpington Meadows is not unique or even unusual, but one of 15 large building sites Sir Oliver Letwin visited as part of his review of build-out rates for the Treasury. Across all of those sites, the median time taken from the first start to the final completion was, he found, 15 and a half years. Sites were built out at an average rate of just 6.5 per cent of total units each year.<sup>62</sup>

The Letwin review was set up in 2017 to investigate an issue that has been puzzling policymakers for several years. Why, given the surge in planning consents since the early 2010s, has there not been a commensurate increase in housebuilding? Planning permissions for more than 370,000 new homes were granted in 2017, but completions have struggled to hit even 200,000 per annum. There is always going to be a lag between permissions and completions, but nobody seriously expects annual housebuilding to get anywhere near 370,000 in the present course of events. The answer – which has been rediscovered by Letwin but could be found in any number of studies from the past decade – is that builders build homes not as fast as is technically feasible, but as fast as they can sell them at existing market prices.

This is a function of the way that land is traded for housing development. For every new home that is brought to market, the developer has had to purchase the plot of land on which it sits. Prospective development land is valued according to the most profitable use a site may be put to in any given location. Take the gross development value of a scheme, deduct the costs of construction and the developer's margin, and what is left is the residual land value which will be paid to the landowner. To acquire the land, a developer must produce the highest residual land value – and therefore the most profitable scheme. Two important implications arise from this. First, certain types of housing – usually that targeted at more affluent buyers – will be more profitable than others. Second, building slowly will usually be more profitable than building quickly; flooding a local market risks depressing prices and therefore the returns on the scheme itself.

<sup>62</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/752124/Letwin\\_review\\_web\\_version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752124/Letwin_review_web_version.pdf)

So new-build homes will tend to focus on a certain size and form, and they will be priced in line with – or even at a small premium to – the equivalent homes in the local second-hand market, even if it then takes 10 years to build just under 1,200 homes. Letwin called this 'the value-unaffected rate

of sale', and it helps explain not only why development appears to proceed so slowly, but also why the supply of new housing rarely seems to weigh on current prices. It is because developers need to sell on the land they have purchased at a value at least equal to the price they paid for it. There is no opportunity in this model to pursue a price-cutting strategy.

This has major implications for the government's hopes of raising housebuilding output to more 300,000 homes a year, a roughly 50 per cent increase on recent years. It means that however much land is opened up for housing – whether by declassifying sections of greenbelt or installing transport infrastructure between Oxford and Cambridge – that land will only be built out at a rate that supports current house prices. To break this cycle and build homes at a faster rate, land would need to be fed into the development pipeline at lower values. But given that it is the developers themselves who bid the land up to present values, how can this be achieved?

The key lies in setting and enforcing planning policy requirements that developers must then price into the land. This already happens to an extent with Section 106 (S106) agreements, which stipulate how many of the homes must be classed as 'affordable'. There is a cost to this in the difference between the return on a market-sale home and an 'affordable' home, which reduces the potential gross development value. This cost is ultimately borne by the landowner in a lower land price. Estimates suggest that S106 agreements and the Community Infrastructure Levy (CIL) together push down residual land values by around 27%,<sup>63</sup> depending on the scheme and the location.

The same could be done in the context of build-out rates. Rather than land values reflecting the returns that might be expected under existing, drawn-out rates of build, they could reflect the returns developers might expect if they had to build and sell at a quicker rate. This could include, as Letwin has proposed, a wider range of types and tenures of housing that would tap additional pockets of demand and might be absorbed by the market more quickly. It might even include contractual obligations that require developers to have certain numbers built to a given timeframe: developers would then have to work harder for sales, and price them more competitively against the second-hand market.



<sup>63</sup> Aubrey, T., Gathering the windfall: How changing land law can unlock England's housing supply potential, Centre for Progressive Policy, September 2018, p.7

All of these conditions would have to be priced into the land. If sales prices were to deviate from the profit-maximising status quo then development values would have to be lower and so is the land value. This need not be a big concern for developers: as long as they can themselves purchase the land at this lower value, their margins will be unaffected. The difficulty lies in convincing landowners to sell for the lower valuation.

They are already tested on what they will bear in this regard by existing S106 and CIL requirements, and there is fine line between what landowners will and will not put up with. It is doubtful whether policy requirements could be increased very much further without prompting them to withhold land until demands are moderated once more. Letwin's quite ambitious plan is for land profits to not exceed more than 10 times its existing use value; this would be equivalent in many parts of the South East to reducing the residual land value by upwards of 90 per cent.

**"It is simply implausible to expect landowners to happily and voluntarily enter arrangements of this kind proposed by the Letwin review."**

Most would simply walk away from a sale and hope to sit out the policy.

The only way to impose policy requirements at the level Letwin envisages would be if they were underpinned by the threat of compulsory purchase, and it is a route he advocates. But there is much uncertainty here, which is thrown up by the 1961 Land Compensation Act. If land is compulsorily-acquired, it is not valued in line with the scheme for which the compulsory acquisition is being made – with faster build-out rates and more affordable housing, say. The landowner must be compensated for the value of the land in the 'no-scheme world', according to what he or she would have done with it were the local authority not seeking to acquire it for its present purposes. In that no-scheme world, the landowner would have pursued the more profitable scheme – with the same drip-feed of identikit executive housing that is so familiar at present. If the government intends for policy requirements always to be priced into compensation awards in compulsory purchases, then it must clarify that by reforming the 1961 Act.

In this world, residual land pricing could confidently be turned to the advantage of local planning authorities. They could then set much more ambitious policy requirements, including speedier build-out rates and a greater diversity of homes at a wider range of price points. Those requirements would be priced into the value of the land by those developers bidding for it. And landowners would know that those values, while lower than what they can command at present, would be the best they can hope for. Only then could we expect housebuilding output to more closely match the rate at which planning consents are granted, as large-scale developments would be built out at the rate that is technically feasible.

# **From vision to reality: Amending the 1961 Land Compensation Act**

**Rose Grayston – Policy Manager at Shelter**



**T**hese essays reflect a range of visions for what could be achieved through land reform: more social homes affordable to all; faster build-out rates to drive up overall housing supply; well-designed housing that comes with the services and green spaces to turn “units” and “stock” into thriving communities people will want to live in and next to. These visions are not pipe dreams. In fact, such outcomes are the natural results of good planning with communities and their interests at its heart. But right now the legislative framework governing development in England contains a critical barrier to building successful places. This barrier stands in the way of any of these visions becoming a reality. This final essay will explain how one law stands between us and the good development we all want to see, and how we can fix it.

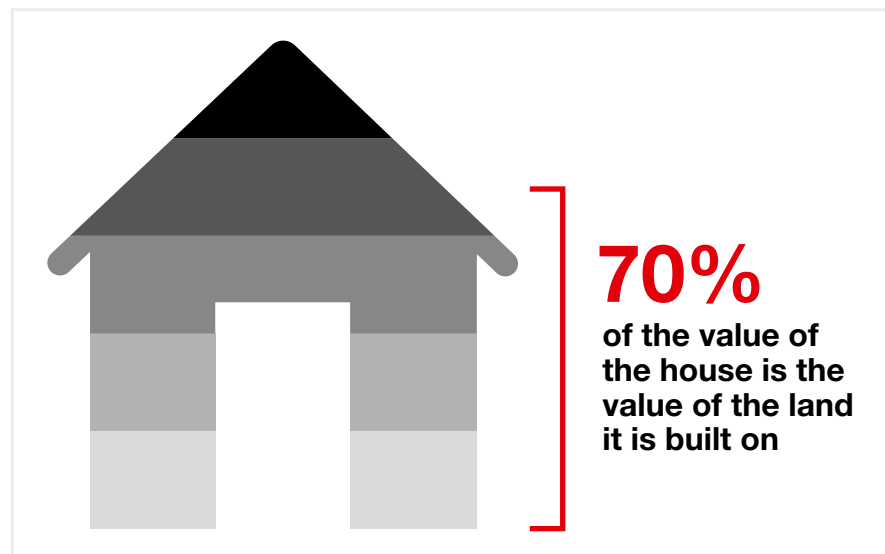
### **The Land Compensation Act 1961: a barrier to good development**

In our housebuilding system, a landowner can always choose to hold their land back from development in the hope of a better price tomorrow. Land has unique properties which mean that, in the absence of regulatory intervention, its value tends to rise over time interspersed by spectacular booms and busts. Over the last seventy years, land values have seen dramatic long-run increases, and across the UK have grown by 544% since 1995 alone.<sup>64</sup> As a result, holding out for a brighter tomorrow is often a landowner’s most rational option.

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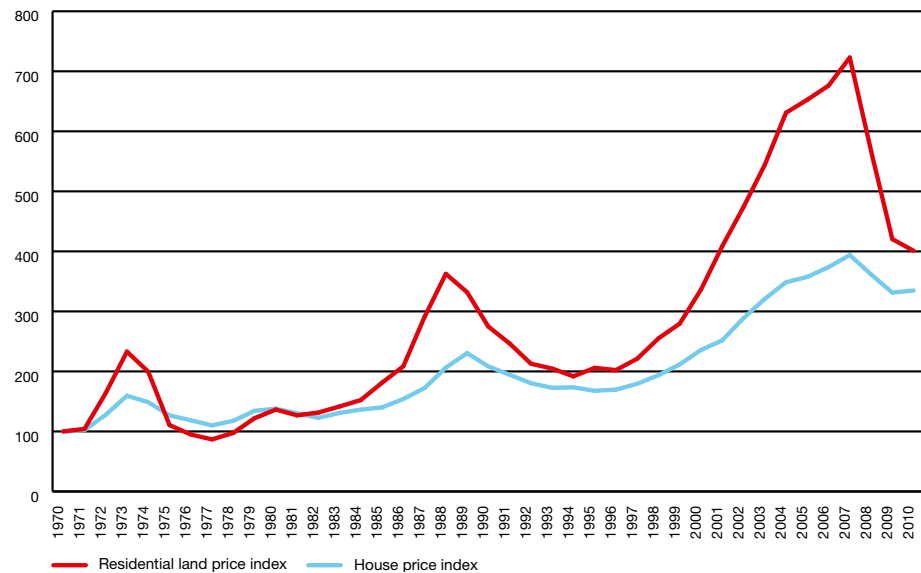
**544% increase**

of land values in the  
UK since 1995



<sup>64</sup> Office for National Statistics,  
The UK national balance sheet:  
2017 estimates, Figure 3, 2017,  
[https://www.ons.gov.uk/  
economy/nationalaccounts/  
uksectoraccounts/bulletins/  
nationalbalancesheet/  
2017estimates](https://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/bulletins/nationalbalancesheet/2017estimates)

**Figure 2.2: Residential land and house price indices, inflation-adjusted, 1970-2010 (100=1970)<sup>65</sup>**



Sources: Vallis, Holmans, DCLG/VOA, ONS

If a landowner does not want to sell their land into the speculative housebuilding system, it is possible for a public body to purchase it using a Compulsory Purchase Order (CPO). The public body would need to have a strong public interest reason to do this against a landowner's will, as is only right. The problem is that the compensation rules for land purchased in this way have set a high bar for how land is valued across the market. This is because the Land Compensation Act 1961 (and a raft of problematic case law) enshrines a landowner's right to 'hope value' in cases of compulsory purchase by a public body in England.

Under the 1961 Act, a landowner can obtain a Certificate of Alternative Appropriate Development (CAAD) saying what planning permission might one day have been granted to the land in the absence of the proposed CPO scheme. The difference between the value of the land in its real, current use and the theoretical 'hope value' determined in this way can be enormous. As we have seen, land in agricultural use can jump in value by over a hundred times when it obtains residential planning permission.<sup>66</sup> While compensation awards are moderated to reflect the risk that the theoretical planning permission in question would not actually have been given, this risk is shrinking in areas of high housing need.

Recent governments have responded to England's deepening housing crisis with measures to increase the amount of land earmarked for residential development, such as the requirement for councils to demonstrate a 'five-year land supply'. Permitted Development Rights have also been extended, removing the need for some kinds of development to get planning permission at all. Such a system offers wide scope for landowners to argue they would have been able to build market housing on their land in the absence of a CPO, and therefore receive the highest possible price for their land.

<sup>65</sup> Reproduced with the kind permission of Daniel Bentley and Civitas; Sources: Vallis, Holmans, DCLG/VOA, ONS

<sup>66</sup> MHCLG, Land value estimates for policy appraisal 2017, 2018

As one recent legal judgment noted, ‘There might be questions about whether in the real world any developer would commit finance to such a project, or how attractive the housing would be to potential occupants’,<sup>67</sup> but the CAAD regime ‘requires the planning status of the land to be determined in the abstract, isolated from the market considerations which in the end will determine value for compensation purposes’.<sup>68</sup> The value of compensation is then determined using data from real land transactions that are deemed to be comparable to the site in question, assuming it had a planning designation it has not actually received.

As a result, compensation is based on lucrative market-led residential development values. In reality, the demand for these kinds of homes is limited by the ongoing crisis of housing affordability ravaging the country. In reality, a lack of reliable mechanisms to fund the transport and other infrastructure needed to build homes on the land in question may make it undesirable or inappropriate for housing development in the absence of a CPO. **But land compensation is not based on the real world. Rather it is based on a land of make-believe and theoretical planning permissions arising from out-dated legislation.**

By giving landowners an entitlement to compensation based on the value of theoretical planning permissions, the 1961 Act effectively sets a floor on the price of land based on the most profitable uses imaginable.

The landowner’s choices are:

Sell	Wait
Sell land now based on current prices for the most profitable scheme.	Wait and almost certainly get more for the land later. If land is CPO’d the landowner will still be paid a price based on the value of the most profitable alternative scheme.

We know we can’t deliver good development, or meet the government’s target of 300,000 new homes a year, by building only the most profitable kinds of schemes. There are not 300,000 households a year ready, able and willing to purchase homes at these high prices – meaning these homes will not get built, and more and more people will be without a home of their own.

Yet alternative forms of development cannot break through the financial barrier of the Land Compensation Act 1961. A council, mayor or community group wanting to build an ambitious new settlement in the style of Letchworth Garden City or the post-war New Towns would find themselves paying for land at a price which then made it impossible to deliver the scheme as planned – at least not without ever-increasing public subsidy. If they tried to CPO the land, they would be faced with a compensation bill based on the same unaffordable price, predetermining what can be built, at what price and at what pace.

**The slow progress of Ebbsfleet ‘Garden City’ demonstrates the problem well. Twelve years on from the start of construction, and despite multiple tranches of taxpayer funding, it has eked out only around 1,400 of its planned 15,000 homes.<sup>69</sup>**

<sup>67</sup> *Rooff Ltd v Secretary of State for Communities and Local Government, England and Wales Court of Appeal (Civil Division)*, 18 April 2011, paragraph 38

<sup>68</sup> *Ibid.*, paragraph 42

<sup>69</sup> Total number of new homes: 1358 <https://ebbsfleetdc.org.uk/> (accessed 22/02/2019)

## The limits of the current system

In theory, it might be possible to suppress the values at which land comes into development without amending the Land Compensation Act 1961, by increasing developer contributions through the Section 106 and Community Infrastructure Levy systems. This would increase the amount of affordable housing and infrastructure provided as part of developments, ‘capturing’ more of the value created by planning permission to deliver more of what communities want.

However, this approach faces some hard limits. Policies on developer contributions are determined not by what communities want to see from new development, nor by the severity of the housing crisis in a given area. Rather, they are the result of negotiations between councils, landowners and developers, with landowners able to simply take their land off the table and halt development at any time.

The government’s planning policy is clear that the policies set as part of the Local Plan process ‘should not undermine the deliverability of the plan’.<sup>70</sup> Policies should be set at a level which ensures that landowners and developers will prefer to participate in housing development rather than hold land back. If a local planning authority tried to achieve more ambitious policies, it would likely find itself unable to meet its requirement to demonstrate a ‘five-year land supply’ or to satisfy the recently-introduced ‘Housing Delivery Test’. In either case, the ultimate consequence is a ‘presumption in favour of sustainable development’: meaning any planning proposal that does not conflict with central government’s top-line planning rules must be approved. In other words, plan-makers must find a level of land value capture landowners and developers can live with, or they will lose their powers to set policy on these matters. **We can ask our local representatives for all the infrastructure and social housing we like, but under the current system it won’t happen unless landowners agree.**

Ultimately, the 1961 Act upholds a landowner’s right to withhold their land from development until they are offered the price they think is right. But landowners have overwhelmingly decided that the price they require to sell is a high one – so high that new housing developments must maximise market sale homes – unaffordable to most and often built with compromises on design and quality – to achieve the required gross development value to make development ‘viable’. The problem is that we, as a society, are increasingly finding that the development provided in this way is simply inadequate to meet public needs.

## The solution: redefine market value for compensation purposes

To move forward and improve our ability to capture rising land values for the benefit of communities, we must change the incentives in the land market. Reforming the Land Compensation Act 1961 to exclude consideration of theoretical planning permissions would reduce CPO

<sup>70</sup> MHCLG, NPPF, 2018, paragraph 34

compensation to something much closer to the value of land in its existing state, with its existing planning permissions.

The effects would be felt far beyond land purchased using CPO. Because land traders know that 'hope value' is protected in current legislation, they price it into their trades. In the same way, a reformed compensation code would remove the 'hope value' floor from the land market. Land trades would reflect the risk of CPO without 'hope value', allowing land values to fall from their current high.

As such, the world created by this reform would not be one in which communities relied on CPO to purchase land for good development. In countries with compensation codes more in line with this proposal, such as the Netherlands, CPOs are not particularly common.<sup>71</sup> Both sellers and purchasers of land have strong incentives to avoid the adversarial process of CPO where possible. Yet without the high bar of 'hope value' in land compensation rules, landowners have far more incentive to compromise with communities who want to see their local areas developed with their interests at heart. This might mean selling land at values to enable good development. Alternatively, a landowner could retain ownership of their land, allowing it to be used for good development in exchange for a long-term profit through rental income, instead of the massive up-front windfall returns at the heart of the current housing crisis. In this world, the landowner's choices are:

Participate	Sell	Refuse
Participate in good development, putting land in as equity for a long-term return	Sell at a fair price, which includes an incentive to sell and is above the value of CPO compensation	Refuse and risk having the land CPO'd without 'hope value'

**Removing the 'hope value' floor on land values is critical to enabling the good development this country needs and deserves. Everyone has the right to a fair price for their land. A fair price must reflect the use to which land will actually be put.**

<sup>71</sup> Needham, B. 'The Search for Greater Efficiency: Land Readjustment in the Netherlands', in Y. Hong and B. Needham (eds.) *Analysing Land Readjustment*, 2007, p.117

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