LAND VALUE CAPTURE

Sharing the increase in the value of land when planning permission is granted

April 2020

Authors

Katie Barrett

Riki Therivel

Ian Walker

Executive Summary

New developments are not providing enough infrastructure, affordable housing or climate mitigation and adaptation measures. This is because of escalating land prices, developer profits, and the current funding mechanisms available to cash strapped local authorities that provide only part of the money needed. This leaves them scrambling for additional government funding. It often comes with strings attached, like Oxfordshire's £215 million Growth Deal (when £9 billion are needed) in return for providing 100,000 new homes.

POETS consider there is scope for capturing more of the big increases in land value when planning permission is granted for development. The amount that landowners and developers receive should be reduced and returned to the public purse for infrastructure, social and environmental improvements. This paper draws evidence from a wide variety of sources to highlight the fundamental issues and potential ways forward. We appreciate there are many complex questions which need to be resolved through further discussion. However, we feel it is time that the government made significant changes if it is to deliver its ambition of 300,000 new homes a year with infrastructure and services fit for the 21st century.

Introduction

1. POETS are concerned that new developments are not providing enough of the infrastructure, services and affordable homes needed for the well-being of people who live and work in Oxfordshire. At the same time landowners are benefitting inordinately from selling their land for development keeping about 50% of the increase in land value arising from the granting of planning permission. In April 2017 average values of farmland in Oxfordshire were £25,000 a hectare, compared to estimated residential land values of between £4.03 million in the Vale of White Horse and £6.2 million a hectare in Oxford.[1] These valuations make no allowance for the provision of affordable housing or infrastructure costs.[2] 'Land value capture' seeks to ensure a fairer distribution of the uplift in value between the landowner, local communities and the government.

2. Meanwhile the public are less and less accepting of development as, for instance,

- Not all the necessary infrastructure is provided
- Climate mitigation and adaptation measures are not funded - a critical point now that both national and local governments have recognised the climate emergency
- Housing is unaffordable, due to a significant extent to the price of land. This has both social and economic repercussions especially for affordable homes - which POETS have set out in other papers[3]
- Environmental and social impacts are not properly mitigated. This is important if the government is to stick to its commitment in the Environment White Paper that all development should result in net environmental gain.

There is a growing consensus that a greater share of the uplift in land value resulting from planning permission should help fund the necessary measures listed above.

3. The focus of this paper is about returning to the public purse some of the big increases in land value when planning permission is granted for development – particularly for housing. However, land values also increase with economic growth and greater spending, and the provision of new infrastructure including new transport links (such as the new rail station at Water Eaton north of Oxford). The impact of planning permission on land values is particularly marked in prosperous areas of high demand and where the supply of land for development is tightly restricted (such as the South East). POETS consider there is a need for radical changes to planning policy and national taxation to capture a much higher proportion of the often significant increase in land values if the government is to meet its ambition of 300,000 new homes a year by the mid-2020s, and secure funding for infrastructure and affordable housing.

How increases in land value are currently captured

4. Previous attempts to secure more of the uplift in land value by introducing some form of development taxation[4] have, in the main, been unsuccessful because landowners held onto land in the hope that a change of government would lead to the repeal of the legislation: in the event this is what happened. The main exception was the first generation of new towns in the 1940s, which owed much of their success to the ability of development corporations to acquire land at, or near to, existing use value. They were able to capture uplifts in land value from the infrastructure they developed and subsequent economic activity, to reinvest in the local community. However, the Land Compensation Act 1961 enshrined the right of landowners to achieve 'hope value' for their land when it is compulsorily purchased by a public authority, based on the amount they can expect with any justifiable prospect of planning permission.

5. Today Section 106 agreements (S106 or planning obligations) and the Community Infrastructure Levy (CIL) are the main mechanisms local authorities use to secure public benefits, although neither are specifically designed to capture uplift in land value. S106 agreements are between a developer and the local planning authority and aim to meet the cost of providing new infrastructure, services and affordable housing made necessary by a specific development.[5] The CIL is a locally-determined, fixed-rate development charge to help finance the cumulative impacts of development, with all but the smallest developments contributing. It is a voluntary levy that local authorities can choose to introduce. Charitable organisations - which in Oxfordshire include the universities, colleges and private schools - are exempt from CIL.

6. In addition to these local arrangements that benefit the area in which the development takes place, nationally collected taxes and charges such as corporation tax, capital gains tax, stamp duty and business rates capture some of the profit for the public purse.

The effectiveness, or otherwise, of the current system

7. In 2016-17, local authorities and developers agreed S106 and CIL contributions of £6 billion to the cost of infrastructure and affordable housing in England.[6] However, these do not get close to providing all the infrastructure or social and environmental benefits needed. London alone has been found to require £4.9 billion a year for affordable housing.[7]

8. The National Audit Office considers that the system to get contributions from developers towards the cost of infrastructure is not working effectively.[8] When the CIL was introduced it was estimated to have the potential to raise an additional £1 billion a year for local infrastructure by 2016.[9] However, in 2016-17 it generated receipts of only £286 million in England and a further £137 million through the Mayoral Levy.[10] In January 2019, only 47% of local authorities had introduced the levy, predominantly in areas where land values were higher. Some authorities were deterred by its complexity or because the cost of collecting it would be more than they would acquire from CIL.

9. S106 obligations are also being undermined by the use of viability assessments from some developers to avoid the need to meet local plan policy requirements for infrastructure and affordable housing. In 2013 the government, in an attempt to increase the stalled building rates after the global economic recession, required local authorities to reduce previously agreed affordable housing levels in S106 agreements if sites were found to be not 'viable', or face appeal. In 2016/17 in almost two-thirds of planning authorities, developers renegotiated planning agreements, most commonly to reduce the type or amount of affordable housing required.[11]

10. Changes to the National Planning Policy Framework (NPPF) and associated guidance on viability[12] aim to address some of the problems associated with S106 viability. They require viability to be tested at the plan-making stage, with developers setting out the levels of affordable housing they intend to build at an early stage. A significant change is that the price paid for land is no longer a justification for failing to accord with relevant policies in the plan. Viability assessments must also be made public. We consider that these changes will be beneficial, but need to be evaluated to see if they are maximising returns for public benefit. However, we are concerned the government's viability tests assume that a developer will make a remarkable 15-20% return on their investment.[13]

How more land value could be captured

11. In autumn 2018, a Commons Select Committee on land value capture[14] recommended wide-ranging reforms to capture more of the uplift in land value. These are summarised below.

    Improving existing mechanisms by

    a) Increasing local authorities' capability to negotiate S106 obligations.
    b) Reforming CIL to simplify the process and remove exemptions, or replacing it with a low rate tariff applicable to all developments.
    c) Increasing the use of local authority compulsory purchase powers.
    d) Introducing Strategic Infrastructure Tariffs to fund major infrastructure projects in combined authority areas; these would be similar to the Mayoral CIL used in London to help fund Crossrail.
    e) Extending local authorities' ability to borrow money for infrastructure projects against the anticipated increase in tax receipts resulting from the infrastructure.

    Legislative reforms including

    f) Removing compensation to landowners based on 'hope value'.[15] The committee considered 'hope value' serves to distort land prices, encourage land speculation on privately as well as compulsorily purchased land, and reduce revenues for affordable housing, infrastructure and local services.
    g) Simplifying the compulsory purchase order process to make it faster and less expensive for local authorities to use.

    Developing alternative approaches by

    h) Learning from experience in Germany and the Netherlands in developing publicly owned land, where local municipalities capture increases in the value of the land for investment in infrastructure and public services by selling, or leasing, sites to developers.
    i) Introducing innovative pilot projects to allow local authorities to tailor approaches to their local circumstances.
    j) Addressing how existing properties benefit from development and public investment in infrastructure.

12. The Committee noted that the most successful local planning authorities had well defined local plans which set out clear expectations of what is required of developers and the professionalism and resources to ensure that obligations are met in practice. They recognised the need to improve capability in local authority planning departments with the provision of additional resources, training and advice. The Committee took the view that a well-defined local plan would, by requiring infrastructure, services and affordable housing, create lower market values for land. They also considered that reform of the Land Compensation Act 1961 - allowing local authorities to acquire land at a fairer price (although this is not defined) - alongside simpler compulsory purchase and land assembly powers would provide a powerful tool for local authorities to build a new generation of new towns, as well as extensions to, or significant developments within, existing settlements. The compulsory purchase reforms they suggested would give greater

powers to local authorities to assemble land and, in so doing, achieve a higher level of control over development in their areas.

13. The Government, in responding to the select committee in November 2018,[16] expressed its commitment to capturing increases in land value to reinvest in local infrastructure, essential services and housing. It accepted that further reform to the CIL was needed, and in September 2019 brought forward reforms to reduce complexity and allow local authorities more flexibility in the use of receipts. It agreed there is scope for central and local government to claim a greater proportion of land value increases. However, it noted that changes to land value capture can have profound impacts on the land market if landowners decline to sell their land for development. Its immediate priority was to evolve the existing system of developer contributions, but it was open to exploring further reforms in the medium term. POETS consider that, with major development now being planned to 2050, a thorough assessment of further reforms should be done now.

14. The government in 2018 introduced legislation to allow the creation of locally-led new town development corporations under the oversight of local authorities.[17] In 2019 the government proposed a new round of development corporations with funding totalling £10 million to enable councils to develop locally-led proposals to deliver more new towns and economic growth opportunities.[18] If it is properly planned, implemented and regulated, this initiative has the potential to capture some of the increase in land value from development. POETS support this initiative provided there is genuine local involvement (see our paper on democratic deficit[19]).

15. The Conservative Manifesto 2017[20] supported the idea of land value capture, but the 2019 Manifesto[21] only referred to introducing a stamp duty surcharge on non-UK resident buyers. Sajid Javid, the former Conservative Chancellor, backed a ‘morally justifiable’ new tax on landowners with the uplift in values being shared equally with local authorities.[22] It remains to be seen whether the government will bring forward any proposals to capture more of the uplift in value.

16. Of the other political parties, the Labour election manifesto 2019[23] included a proposal to establish an English Sovereign Land Trust, with powers to buy land more cheaply for genuinely affordable housing.[24] Labour also said they would review the option of a land value tax on commercial landlords. The Liberal Democrats’ manifesto proposed replacing Business Rates in England with a commercial landowner levy based solely on the land value of commercial sites rather than their entire capital value.[25] The Green Party[26] proposed a new developers’ duty to ensure that a greater share of the profits that are created when new homes are built goes to local authorities for social and environmental improvements.

17. At the sub-regional level, government[27] has endorsed the National Infrastructure Commission (NIC) proposals for large scale development in the Oxford-Cambridge Arc, which could include up to a million new homes and an expressway.[28] The NIC has recommended that local authorities be allowed to levy a city-regional CIL.[29] The government has said [30] it is working to support local authorities to develop the most effective mechanisms for capturing uplift in land values to reinvest in their

areas. Although it said it would report back to the Committee at the end of 2019, despite our inquiries there is no indication that this work is progressing.

18. As part of the Oxfordshire Housing and Growth Deal the government asked the local authorities to consider the use of a strategic infrastructure tariff to help capture additional land value uplift across local authority boundaries. [31] If any significant development is to be pursued in the Oxford Cambridge Arc, it is important that the relationship between a possible regional CIL in the Arc and a strategic infrastructure tariff in Oxfordshire is clarified before further major development is confirmed.

Conclusions

19. A fundamental problem is the inability to fund effectively all the infrastructure, services and affordable housing that is needed. The Oxfordshire Housing and Growth Deal stands to provide less than 3% of the £9 billion funding for infrastructure that the local authorities themselves say is needed. An additional pressing need is funding to mitigate and adapt to the climate emergency including, for example, to reduce carbon emissions from the nation's new and existing housing stock. Capturing more of the uplift in land value could be a key way of securing more of that necessary funding.

20. There is an appetite across most political parties and in many organisations[32] to secure more of the increase in land value for the public purse. From past experience it is clear that it must have cross-party support if reforms are to endure; be simple to implement without complicated exceptions or viability processes; and strike the right balance between securing more funding for public investment whilst not discouraging landowners from bringing land forward for development.

<u>Proposed actions for central government</u>

21. The government needs to take action to secure more funding from the uplift in land value. Whilst the effectiveness of S106 and the CIL process must be kept under review, changes are needed that go beyond simply improving existing mechanisms. In particular we consider the most important reforms needed are:

    a) Changing the Land Compensation Act 1961 to remove compensation to landowners based on 'hope value' and giving clear guidance on how 'a fair price ' for land should be calculated – whether it be existing use value plus a premium, or a price that reflects the cost of providing infrastructure, services and affordable housing as well as capturing a proportion of the remaining profit to be used for other local priorities
    b) Simplifying the compulsory purchase process to make it faster and less expensive for local authorities to use
    c) Giving local authorities the proper resources to use these powers and enable them to carry out their role in planning and development effectively
    d) Fully assessing the alternative options proposed by the Select Committee (paragraph 11 above) with a view to implementing one or more of them in the next two years; and reporting back on its findings

e) Keeping under review the effectiveness of the changes to the NPPF on viability assessments for S106 agreements and the 2019 changes to the guidance on CIL
f) Assessing whether developer profits of 15-20% are reasonable in high price areas where large areas of land are involved
g) Removing some of the recent increases in what is defined as permitted development (e.g. the conversion of existing offices to residential use) which have reduced what conditions and planning obligations can secure while not reducing the services and infrastructure required to support the development
h) Changing building regulations to require that all new buildings are zero carbon by 2030
i) Evaluating how securing more of the uplift in land value could help the government meet its commitment to direct more funding to the areas that are less prosperous than London and the South East
j) Exploring other mechanisms, including changes to property taxation to provide additional funding for local authorities and investment in tackling climate change, environmental and social improvements and affordable housing. Even if much of the uplift in land value is captured it is unlikely to be enough to fund everything that is needed. Increases in taxes from these sources could be ring-fenced to provide infrastructure, environmental improvements and genuinely affordable homes that will benefit subsequent as well as the first occupiers.

Proposed actions for local authorities in Oxfordshire

22. Oxfordshire's local authorities should work together to

a) Prepare a well-defined plan for Oxfordshire to 2050 with effective participation of local communities and clear democratic accountability that sets out the infrastructure, affordable housing and associated requirements needed to service the increased population, with realistic costings and who is responsible for funding and delivery
b) Explore the potential for introducing a strategic infrastructure tariff or county-wide CIL for Oxfordshire
c) Seek early resolution of the relationship between securing developer contributions for Oxfordshire and those for the wider Oxford-Cambridge Arc if the government pursues major development there
d) Explore the potential use of locally led development corporations, provided there is clear local accountability to avoid any democratic deficit
e) Examine ways of securing more of the uplift in land value including sharing expert staff or using independent consultants who do not work for the private sector
f) Use the experts proposed in e) above to advise on the costings put forward by developers in viability assessments
g) Keep pressing central government to introduce the changes outlined in paragraph 21 above.

23. Local authorities should also

a) Have up-to-date local plans that set out fully the infrastructure, services affordable housing required on all large sites
b) Have up-to-date charging schedules and rates for CIL
c) Ensure they have the skills and capacities to fully use the potential to negotiate S106 obligations and secure CIL.

24. The reforms above would enable local authorities to

a) Compulsorily purchase land at a fairer price, which could be a powerful incentive for land owners to sell, particularly if they would otherwise incur the costs of challenging a compulsory purchase of land allocated in an adopted local plan or seeking compensation significantly above a fair price
b) Assemble land for local authority led development corporations or trusts or disposal to developers or local builders
c) Secure significantly increased funding that will enable the delivery of well-planned development along with the infrastructure, affordable homes, environmental improvements and climate mitigation and adaptation measures that the country needs.

References

[1]Ministry of Housing, Communities & Local Government (MHCLG), 24 May 2018, Land Value Estimates. In 2016 the price of land accounted for 70% of the cost of a new home (Office for National Statistics, 2017, UK National Balance Sheet Estimates).

[2] MHCLG, 24 May 2018, Guidelines for use: Land Value Estimates. The valuations were undertaken using a truncated residual valuation model. This involves valuing the proposed development and deducting the development costs, including allowances for base build cost, developer's profit, marketing costs, fees, and finance to leave a "residual" for the site value. The figures provided assuming nil Affordable Housing provision are hypothetical, and in most local authorities such a scheme is unlikely to obtain planning consent. The figures on this basis, therefore, may be significantly higher than could reasonably be obtained for land in the actual market. Agricultural land values are provided for hypothetical sites which are typical for the region. These values exclude any uplift from 'pony paddock' markets or hope value, therefore representative values appropriate for a commercial agriculture user.

[3] https://www.poetsplanningoxon.uk/downloads.html.

[4] These included the 'Development Charge' introduced by the Town and Country Planning Act 1947, which was effective from 1948 to 1951; the 'Betterment Levy' introduced by the Land Commission Act 1967, which was in force between 1968 and 1970 and the Development Gains Tax, introduced in 1973, and the subsequent 'Development Land Tax', introduced by the Development Land Tax Act 1976 which was in force between 1976 and 1985.

[5] Developments of 10 units or fewer and less than 1000 sq. m floor space are exempt from the requirement to contribute towards affordable housing

[6] National Audit Office, 8 February 2019, Planning for New Homes. The National Audit Office noted that the actual contribution developers make will be lower as developers will not build everything that local authorities approved, and developers may renegotiate lower contributions during the build.

[7] Mayor of London, 2019, Landmark report shows £4.9bn a year needed to deliver affordable homes

[8] National Audit Office, 8 February 2019, Planning for new homes.

[9] Ibid.

[10] The Mayor of London Community Infrastructure Levy was introduced in 2012 to help finance Crossrail.

[11] MHCLG, 5 March 2018, Supporting housing delivery through developer contributions, para 29.
[12] MHCLG, July 2019, National Planning Policy Framework (NPPF)
[13] MHCLG, 2019, Viability Guidance
[14] www.parliament.uk/business/committees/committees-a-z/commons-select/housing-communities-and-local-government-committee/news/land-value-capture-report-published-17-19/
[15] The *Land Compensation Act 1961* requires the payment of compensation to landowners taken to be the amount which the land, if sold in the open market by a willing seller, might be expected to realise with this amount to include any justifiable prospect of planning permission being granted on or after date of acquisition for development on the relevant site or on other land. It is this building in of the prospect of some future planning permission that is sometimes referred to as 'hope value'.
www.parliament.uk/business/committees/committees-a-z/commons-select/housing-communities-and-local-government-committee/news/land-value-capture-report-published-17-19/
[16]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/760031/Cm9734_land_value.pdf
[17] MHCLG, June 2018, Guidance on the New Towns Act 1981 (Local Authority Oversight) Regulations 2018.
[18] www.gov.uk/government/news/next-generation-of-new-towns-and-economic-growth-opportunities-to-be-developed-levelling-up-every-region.
[19] POETS, December 2019 Democratic Deficit.
www.poetsplanningoxon.uk/poets_democratic_deficit_report_081219.pdf
[20] https://s3-eu-west-1.amazonaws.com/2017-manifestos/Conservative+Manifesto+2017.pdf
[21] https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf.
[22] Liam Halligan, 2019, Home Truths, Biteback Publishing. Reported in
www.telegraph.co.uk/business/2019/11/18/sajid-javid-backs-morally-justifiable-tax-landowners-tackle/.
[23] https://labour.org.uk/wp-content/uploads/2019/11/Real-Change-Labour-Manifesto-2019.pdf
[24] https://labour.org.uk/wp-content/uploads/2019/06/12081_19-Land-for-the-Many.pdf
[25] https://www.libdems.org.uk/plan
[26] www.greenparty.org.uk/assets/images/national-site/political-programme-web-v1.3.pdf.
[27] MHCLG, 2019, The Oxford-Cambridge Arc: Government ambition and joint declaration by Government and local partners.
[28] National Infrastructure Commission, November 2017, Partnering for Prosperity. A new deal for the Cambridge-Milton Keynes- Oxford Arc.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/799993/OxCam_Arc_Ambition.pdf.
[29] Ibid.
[30]
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/760031/Cm9734_land_value.pdf
[31] Oxfordshire authorities and HM Government, March 2018. Oxfordshire Housing and Growth Deal – Outline Agreement, https://www.gov.uk/government/publications/oxfordshire-housing-deal
[32] Signatories to an open letter in August 2018 to the House Of Commons Select Committee on Land Value Capture included the Campaign for the Protection of Rural England, Chartered Institute of Housing, Civitas, Generation Rent, the Institute of Public Policy Research, the Local Government Association, the National Housing Federation, the National Landlords Association, the New Economics Foundation, Onward, and Shelter. Sharing land value with communities: An Open Letter, Onward,20 August 2018