ADDITIONAL VIABILITY TESTING

FOR

COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE (CIL)

BY

PURBECK DISTRICT COUNCIL

REPRESENTATIONS

BY

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1.0 INTRODUCTION

1.1 Following the suspension of the Examination into the viability testing for the Community Infrastructure Levy Charging Schedule ("**CIL**") by Purbeck District Council, the Examiner has requested that the Council test real site examples and thereafter consult the Examination participants on the findings.

1.2 In that regard, two specific questions are raised.

1) Do you agree with this assessment?

1.3 The answer to this question is no.

2) Do you agree that sufficient sites will come forward to meet the Council's housing target?

1.4 The answer to this question is also no, subject to the caveat that because the viability testing methodology is in my opinion flawed the ability of sites to deliver the level of proposed CIL is in question.

1.5 Before I comment specifically on the further testing carried out by the Council's advisors in this matter, it is I believe important to understand the very basics of site viability in relation to how the imposition of CIL, together with other planning obligations including in particular affordable housing, impact on development land economics.

1.6 The imposition of all types of planning obligation are in effect a tax on the landowner. The landowner is often not the developer. A developer will factor in to any development appraisal a profit level based upon market circumstances. The effect of planning obligations does not therefore relate to a developer. He takes his profit in accordance with the market.

1.7 What therefore happens is that the land value becomes the variable against which planning obligations are then imposed.

1.8 If the extent of that "tax" is too great landowners will withdraw their land from the market and deliverability will as a consequence be affected.

1.9 History shows that various attempts have been made to in effect tax development gains from land, all of which have resulted in the land being withdrawn from the market. I attach as **Appendix A** an article by V H Blundell with reference to historic attempts to capture development gains between 1947 and 1976. This article provides a commentary on the background against which the imposition of planning obligations and CIL should be measured. I also attach as **Appendix B** an extract from the Barker review which also deals with similar points. The recommendation on page 87 suggests that a planning gain supplement should be introduced but again states that the tax rate should not be set so high as to discourage development.

1.10 The question therefore of what that level of tax should be is the overriding issue against which this CIL examination should be considered.

2.0 SPECIFIC SITE TESTING

2.1 Following the Examiners request that specific site should be tested, the Council's advisors have carried out viability appraisals on 12 sites within the District. In doing so they have used their own bespoke modelling techniques which I believe are flawed.

2.2 Dealing however, with the site specific testing, the difficulty with this is that in trying to provide evidence for a policy based on actual sites, unless one takes into account all the site specifics then the methodology is flawed.

2.3 What the Council's advisors have done is to ignore any abnormal costs of development and as a consequence each site where there are abnormal costs cannot be considered as providing a sound basis for considering the viability or otherwise of that site. This issue is highlighted in relation to the provision of SANGS in previous representations to the Council. The Council's response was that modelling actual sites to assess what will happen in reality ensures that the hypothetical base from which the CIL rates are derived is robust. On the contrary, unless all the inputs to specific sites are used then necessarily the methodology is flawed.

2.4 The model that is used by the Council's advisors is also flawed and cannot be used as a basis for a correct appraisal of any site.

2.5 There are two fundamental errors in the modelling which make their approach irrelevant. These relate to the lack of any financing obligations i.e. interest on land purchase and construction and the fact that there are no timescales against which the income generated and the costs incurred are measured. It is simply an incorrect methodology if one does not include any such costs.

2.6 All sites, without exception, have a financing implication. If the methodology does not include finance then it cannot be correct.

2.7 The methodology also suggests that all of the houses developed are sold on the first day and similarly all of the costs of construction take place on the first day. It is obvious that such methodology is incorrect and as a consequence the credibility of the methodology under which the Council's advisors have modelled any site is in my opinion entirely questionable.

2.8 There are additional small items within the modelling that are considered inappropriate e.g. an assumption that the Code for Sustainable Homes costs will be covered by house price inflation together with the lack of any costs for bank arrangement fees or legal fees in selling the dwellings mean that the acceptability of such modelling is questionable.

3.0 BENCHMARK OF VIABILITY

3.1 The Council's advisors rightly confirm that this issue is "the trickiest factor". Their assessment of what is viable is based upon two benchmarks one of which is agricultural value and the other is a suggested "going rate" of £0.5 million per acre (£200,000 per acre).

3.2 What is not clear however, is whether or not this benchmark of viability on either basis is on a gross acreage of a development or the net area.

3.3 This is particularly important on those sites where the provision of a SANG is relevant. The provision of a SANG will often be on third party land and as a consequence that must be valued at an appropriate rate to ensure that it is part of the development scheme. The Council's position is that it would be valued at an agricultural value. This is unrealistic and as a consequence shows a flawed and naïve approach to viability testing.

3.4 Of more fundamental importance however, is the underlying approach that viability is related to a multiple of agricultural value. This is wholly incorrect and contrary to the RICS Professional Guidance on such matters. The Council's advisor is an RICS member and as a consequence he should be taking specific note of the Professional Guidance.

3.5 It is accepted that members are not always required to follow the recommendations, but the Guidance clearly states that:-

> *"When members do not comply with the practice recommended.......they should only do so for good reason. In the event of a legal dispute, a Court or Tribunal may require them to explain why they decided not to adopt the recommended practice".*

3.6 I attach as **Appendix C** extracts from the RICS Guidance Note. Paragraph 3.4.1 highlights that an approach to viability has been to adopt current use value plus a margin, but this is specifically advised as being inappropriate. It is therefore in my opinion entirely wrong for the Council to have a CIL policy based upon a benchmark of viability which is in direct conflict with the best practice guide of the RICS who are the acknowledged experts in this matter.

3.7 What is therefore appropriate? Paragraph 3.4.2 of the Guidance Note and paragraph 3.4.3 are the key paragraphs in this respect.

3.8 Within paragraph 3.4.3 it clearly states that the Residual Land Value, ignoring any planning obligations and assuming a planning permission is in place for the relevant development, and the Current Use Value represents the parameters within which to assess the level of any planning obligations. This is key to understanding viability.

3.9 The grant of a planning permission increases land value in most circumstances from its Existing Use Value to an alternative figure. If one ignores planning obligations in their entirety, this is a pure development land appraisal. The imposition thereafter of planning obligations which detrimentally affect land value must therefore reflect the uplift in value between those two parameters.

3.10 The NPPF and the Harman report on the viability of Local Plans, both clearly state that the landowner should obtain a competitive return. In order to obtain a competitive return a landowner has to be a willing seller. If therefore he is "taxed" to an extent that makes him unwilling to participate in the development process he becomes an unwilling seller and as a consequence the site is not deliverable.

3.11 This issue has been tested at a Planning Inquiry at Shinfield, Reading, under appeal reference APP/X0360/A/12/2179141 where the Inspector clearly addressed this issue and accepted that my own approach as the Expert Witness for the Appellant in that case of sharing the uplift in value 50/50 between the Council in respect of their planning obligations and the landowner in respect of a competitive return was appropriate. I attach as **Appendix D** the relevant extracts from that appeal decision relating to what is an appropriate competitive return.

3.12 If therefore one follows that logical methodology, the modelling techniques used by the Council's advisors are entirely inappropriate.

4.0 SUMMARY AND CONCLUSIONS

4.1 I have set out above specific reasons why the Council's revised methodology of site assessment does not in my opinion show that the underlying assessment of what is an appropriate level of CIL is robust.

4.2 Testing specific sites within the District without including all of the site characteristics is inappropriate. If site specific testing is considered appropriate it is necessary to include all site costs and not base a policy on only part of those costs.

4.3 The model used by the Council's advisors is naïve and flawed without properly recognising any charge for interest or a methodology that reflects the time in developing a site both in terms of sales and build costs.

4.4 Finally, the benchmark against which viability is tested is flawed. It is not supported by the RICS Guidance on viability and does not give a competitive return to a landowner thus meaning that sites will not be deliverable.

4.5 For all the above reasons therefore, I reiterate the answers to the questions raised namely:-

A) I do not agree with the assessment made by the Council in relation to site specific viability testing.

B) As the methodology and benchmarking is flawed, I do not believe that sites will come forward to meet the Council's housing target.

Signed... Signature hidden

N L Jones BSc FRICS ACIArb

Date...13. 12. 13...

LABOUR'S FLAWED LAND ACTS 1947-1976

V. H. Blundell

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Introduction

Since 1945, many attempts have been made by both Labour and Conservative governments to pass legislation which would have direct or indirect bearing on land economics. Most of that legislation, from Labour's Town and Country Planning Act of 1947 down to the Conservative introduction of the Community Charge in the late 1980s, produced very important side-effects which were obviously not expected. These side-effects arose through a failure properly to appreciate certain fundamental economic principles, including the very meaning of the word "land".

Land reformers of various kinds have long contended that the adverse effects of the land tenure system prevailing in England and Wales, and also (with some important variations) in Scotland, lead directly and indirectly to a wide range of social and economic problems. Among these are high costs of housing, homelessness, unemployment, high taxation and recurrent industrial depressions. The present publication is primarily concerned with those particular aspects of the "land question", although some reference will be made to other aspects as well.

In the early part of the 20th Century, agitation for land reform became a major political issue. In 1903, the Conservatives enacted some important land legislation relating to Ireland, whose effects, good and bad, are visible in both the north and the south to this day. A few years later, their Liberal successors attempted to assess land values in Scotland as a preliminary to taxation, but were frustrated by the House of Lords. The land taxing clauses of Lloyd George's 1909 Budget inaugurated one of the most intense periods of political controversy in modern history. There was continuing interest in land reform in the inter-war years: substantial legal reforms achieved by the Conservative government in 1925; the derating of agricultural land in 1929; the effort of the Labour Government in 1931 to assess and tax land values; and the unsuccessful London Rating (Site Value) Bill of 1938.

We are here concerned with legislative measures which have been made, or attempted, since 1945. It will not consider all legislation which has some bearing on land - that would be an almost impossible task - but only the legislation which was primarily intended to secure for the community some of those land values which were created by the community, but in practice were captured by private individuals. It is the view of the author that in many - perhaps most - of these cases Parliament was motivated by creditable principles, but that the effects actually produced were widely different from those intended, and sometimes the very reverse, through a misunderstanding of the underlying economics. If Britain is to undergo a further spate of land legislation in the future, it is important that the strengths and weaknesses of past measures should be clearly understood, in order that avoidable errors should not be repeated.

Definition

The word "land" will be used repeatedly. The term is here usually employed in its economic sense, to cover all natural resources. In actual pieces of legislation, however, the word is used in its legal sense, which includes buildings and other developments set upon land. These two usages of the same word must perforce be followed, but it is important that the reader should appreciate the ambiguity.

The Town and Country Planning Act, 1947

i. The background

In the first half of the 20th Century, both the Labour and Liberal Parties were more or less formally committed to land value taxation. A considerable number of Conservatives, including Winston Churchill, showed much sympathy with the idea as well. When the Labour Party came to power in 1945, it was eagerly expected by many of its supporters, and by land reformers generally, that land value taxation would be introduced.

The Town and Country Planning Act which was passed in 1947 is famous for a number of its provisions. It greatly strengthened the control of local authorities over planning and land use. These elements of the Act are important, but they lie rather outside the present study. The provisions which are most relevant here are those which concerned "betterment" values.

The Act brought together the recommendations of the Scott, Barlow and Uthwatt Reports, which drew attention to the high cost to local authorities and government corporations of acquiring land for development. These Reports noted that, as soon as development was mooted, a "cloud" of value descended on the designated area, and up went the price of land. This "cloud" of land speculation followed the planners around the country.

If planning decisions by public authorities gave rise to increased land values, it was argued, then the "betterment" of land value should pass to the community, and not to the landowners. Hence a "betterment" charge should be levied. All increases in land values which were not related to planning permission, however, were to be excluded from this charge. The architects of the Act claimed that it would end land speculation, force land into use, and ensure that increased land values arising from the release of land for development accrued to the community.

ii. Provisions of the Act

The basic provisions of the Act which are relevant here were as follows:

a. The right to develop land became a state monopoly, and permission to develop, or change the use of, land had to be bought from the newly-created Central Land Board. The definition of "development" was therefore not confined to construction on vacant sites and the re-development of existing buildings. It also included the change of use of buildings from one business to another.

b. When "development", within the special meaning of the Act, required planning permission, it attracted a Development Charge. The Act, however, laid down twenty-two classes of undertakings or occupations which were to be considered as of a similar nature.

   A change of use within a class was not deemed to involve "development", and was therefore exempt from Development Charge. But a change of use from one class to another required planning permission and, if granted, attracted a Development Charge. As an example, shops as such were not a single class of use. The class into which a shop was placed depended on what it sold. A person could not change from

selling sweets to selling meat, or vice versa, without planning permission - which, if granted, made him liable to a Development Charge.

c. The method of calculating the amount of Development Charge payable was to take the assumed selling value of a property if it was confined to its present use – "existing use value", as this was called - and deduct this from the value of the property with permission for its development potential to be realised. The difference between the two values was taxed at 100 per cent.

d. A sum of £300 millions was made available as compensation to land owners who could claim hardship because their land was ripe for development, but the Central Land Board had refused them the right to develop.

The Act was passed in August 1947, and the planning sections took effect shortly afterwards. The rest of the Act, which included the Development Charge (s.61) came into effect in July 1948.

iii. Weaknesses of the Act

Although the Act was clearly an attempt to capture land values for the people, it had many practical defects. Anomalies and absurdities abounded, and even before the legislation came into operation many people in the professions concerned with development and use of land and buildings were alarmed at the complexity of rules, regulations and Orders. Mr Silkin, Minister of Town and Country Planning, admitted in a debate in the Commons (26 May 1948) to having second -or even third - thoughts on this "highly intricate matter". So complex was the Act that civil servants were sent round the country to address meetings on the workings of the Act for the benefit of those in local government and the professions who had to interpret, advise on, or administer the regulations.

But there were other defects of a more fundamental character. In the first place, the development charge which was intended to deprive the landowner of communally-created increases in land values fell only when the land was developed or redeveloped. Increases in land values arising from other causes remained with the landowners. In practice the vast majority of land value increases was of this kind, and these were therefore lost to the community.

In the second place, development was discouraged, since there was more profit to be made by improving property up to the limit of a change or use than improving or building beyond that level, when it would attract a Development Charge. The same applied to empty sites, which were used as car parks or for similar purposes. Idle land as such attracted no charge, and so site owners were encouraged to keep it idle, in the hope that - with a change of government - the financial provisions of the Act would be repealed.

A third weakness was that the Development Charge applied to the developed site as a "property", and not to the land itself. The greater the development the greater the charge, irrespective of the value of the land as a separate factor. This weakness seems to have derived from a fundamental misunderstanding of the nature of land values. These are determined not by the actual use to which a piece of land is put, but by its potential use in the mind of a prospective purchaser. People will often pay a great deal of money for a piece of land which is more or less derelict, because they think that they can use it in a way which will bring them profit.

Finally, landowners who had been refused the right to develop their land - whether or not they were entitled to a share in the £300 millions compensation - were disposed to withhold it from

sale, in the speculative hope that it would increase in value without, of course, attracting the Development Charge. Thus land speculation, so far from being ended, was actually encouraged.

iv. Operation of the Act

As the Act came to be applied, a chorus of criticism and condemnation arose. Some, but by no means all, of this criticism was politically inspired. The Act was simply not working as the legislators had intended. There were examples from all over the country of frustration resulting from extortionate Development Charges, inconsistent rulings and valuations, absurd decisions, and differing interpretations of the regulations.

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

Many owners of small building plots who had previously bought them to build a house, faced a Development Charge which doubled the price they had paid for the land - the existing use value of which was deemed by the Central Land Board to be purely nominal. Valuers had no firm criteria for arriving at development values. They depended on the estimated value of the completed buildings, less the "existing use" - a vague and indeterminate concept. Many valuers had to back-track on their estimates when challenged on appeal.

Valuations under the Act were subjective and often perverse because of the underlying fallacy that the value of a plot is determined by what it is used for, or what is put upon it. Thus, two plots of land which on the market would fetch the same price had, by this reasoning, different values when used for different purposes.

At the root of these various defects was the fact that "land" was considered in its legal meaning, which included buildings and other improvements, and not in its economic sense, as natural resources alone. Thus the Development Charge was aptly named: it was a tax on development and use of land, not on the land itself.

But what of the claims that the Act would cheapen land, make it more readily available, and end speculation? Many landowners refused to part with their land, even under threats of compulsory purchase. They sat tight, awaiting new legislation, or a change of government. They had nothing to lose. Compensation for loss of development rights was indeterminate and they were not interested in parting with land at present-use value. Estate Agents reported that the supply of building land for sale had declined, and that when land was available its price was usually well above current-use value.

v. Partial repeal of the Act

A Conservative government took office in 1951, and in December 1952 the financial provisions of the Town and Country Planning Act were repealed. This ended the Development Charge, and also the obligation of the Government to distribute compensation to landowners.

Another provision of the Town and Country Planning Act, which has not been discussed above, had given public authorities the power to acquire land compulsorarily in certain circumstances. This was no new principle in English law, and had many precedents in - for example - the Canal and Railway Acts. In some cases, land had been acquired under the Town and Country Planning

Act 1947 at less than its market value. This state of affairs was also altered by Conservative legislation. A new Town and Country Planning Act was passed in 1959, which entitled the landowner whose land was compulsorarily acquired to receive the market value, including any increases in market value arising from development plans.

The Land Commission

i. Principles

In 1964 the Labour Party returned to power, and in 1966 it received an increased majority. This gave it the opportunity to legislate once again for the recovery of betterment values, and to extend the powers of compulsory purchase of land.

There was no attempt to restore in their original form those clauses of the Town and Country Planning Act 1947 which the Conservatives had repealed, but an important new measure, the Land Commission Act, was passed in 1967. Its aims were said to be "to secure that the right land is available at the right time for the implementation of national, regional and local plans", and "to secure that a substantial part of the development value created by the community is returned to the community and that the burden of the cost of land for essential purposes is reduced.

ii. The Land Commission Act, 1967

To achieve these objectives, several legislative changes were made. The Act was long and complicated, but the following is a summary of its principal provisions.

1. A Land Commission was set up, and given wide powers to acquire land in advance of requirements, so that it could be available "at the right time". The Commission also received powers to manage land, and to sell or lease land at full market value - or, if need be, on concessionary terms (Part II of the Act).

2. A Betterment Levy was imposed at a uniform rate - initially 40% of the development value - when land was sold, leased or realised by development. It was intended to increase this proportion later by stages. Liability for the Betterment Levy was subject to certain allowances, exceptions and exemptions. The money was collected by the Land Commission and paid into the Exchequer (Part III of the Act).

3. A new form of land tenure, Crown Freehold, was created, which was qualified by covenants reserving to the Commission future increases in values arising from development or redevelopment. Where a concessionary Crown Freehold was sold for housing, a covenant prevented the house owner from selling at a profit representing the difference between the market value and the concessionary value of his holding.

As with the Development Charge under the 1947 Act, liability for the Betterment Levy awaited action by the landowner. In this case it was the sale or lease of land, or the carrying out of "material development" - a term defined in Section 99(2) of the Act.

The added value which the owners expected to gain by developing, selling or leasing their "land" was termed the "net development value". This value was arrived at by deducting a complicated "basic value" (essentially, the current use value) from the market value. When this calculation revealed a realisable value, a "chargeable act" or event arose. "Chargeable acts" included the sale, lease or development of land; compensation for revocation of planning and other permission; grant or relief of an easement; and certain other "chargeable acts" designated by Ministerial Regulations.

iii. Operation of the Act

A landowner became liable for "chargeable acts" after the first "appointed day", 6 April 1967. Thus there was a rush to start work before the deadline. This often entailed digging holes or trenches, or laying foundations, as token evidence that development had started before the appointed day.

There followed uncertainty in the land market, which was reflected in the reluctance of landowners to part with their land. They might wait for a change in government and the abolition of the Betterment Levy. For owners of developable land, waiting was often no problem. Land, they observed, always increases in value in the long run. They had nothing to lose. Instead of more building land becoming available for development, there was less. The decline in supply tended to raise the price of what land was available. It was reasoned that since in many cases the retention of 60 percent of development value was not sufficient to make their land available, they would be still less likely to do so when the levy increased as planned.

Thus the objects of the Act were not being realised. Land was less, rather than more, readily available, and the proceeds of the levy fell far below that expected. Instead of the £80 millions expected in a full year, only £15 millions were raised in 1968-69 and in the following year only £31 millions.

Sir Henry Wells, Chairman of the Land Commission, came under fire, particularly from builders, who complained that land was not forthcoming as promised. According to the property correspondent of the Observer, 1 December 1968, Sir Henry had threatened to resign because of unfair criticism. "...I am tired of being nagged by builders. I am trying to help," he said, and blamed the planning authorities for not releasing more land.

During the life of the Labour Government of 1964-70, criticism of the Land Commission continued. It was labelled unjust, wasteful, and too complex to understand properly - even by professional advisors. And the Betterment Levy was self-defeating, in that realisation of its objects depended largely on action by landowners - whose interests were often better served by taking no action at all.

iv. Repeal

The Land Commission and the Betterment Levy were eventually abolished by the Conservatives after they came to power in 1970. Subsequently a land hoarding tax, aimed at penalising people who had obtained planning permission for their land but had not proceeded with the development, was proposed, but came to nothing. Then in 1973 came the collapse of property prices, and many land speculators burned their fingers and were in serious straits.

The Community Land Act 1975 and the Development Land Tax Act 1976

i. The two Acts

Labour's third post-war attempt to regulate, control and manage land development and to collect development value for the community, took the form of two linked but separate measures.

The first was the Community Land Act 1975, which had objects along the same lines as its predecessors: "to enable the community to control the development of land in accordance with its needs and priorities". The second was the Development Land Tax Act 1976, whose objects were the same as those of the Development Charge and the Betterment Levy: "to restore to the community the increase in value of land arising from its efforts".

ii. The Community Land Act

This Act, which came into effect on 6 April 1976, was considered by many to be a half-way house to land nationalisation. Local authorities were given the power to acquire land for public ownership, by agreement or by compulsory purchase. The Secretary of State was empowered to dispense with a public enquiry as preliminary to a compulsory purchase order. Local authorities, having acquired land, had the responsibility of seeing that it was developed, either by themselves or by others.

The price to be paid was the market price, less any Development Land Tax (see below) payable by the owner. Thus the basis was current use value, which would exclude any "hope value" of the land being later developed for other purposes. The power of local authorities to acquire land became mandatory when a Duty Order was made by the Minister. The cost of buying land, including costs of administration and interest payments, etc., would be financed initially by borrowing, and would be repaid from the proceeds of disposals. Ultimately, purchases would be paid for directly by the proceeds of disposals.

Land for commercial and industrial development was to be made available on ground leases, of normally not more than 99 years. Land for residential purposes was to be disposed of either freehold, or by way of a building licence granted to the builder. Eventually the freehold would be conveyed to the house owner.

iii. The Development Land Tax

The Act which introduced this tax came into effect in August 1976. Unlike the other Act, this was based on proposals for taxation of development gains which had first been made by the previous Conservative government.

The tax was to be administered by the Inland Revenue authorities, and operated in conjunction with Capital Gains Tax. It was charged on the realisation of development value. This could occur either by disposal of an interest or by "deemed disposal" on the carrying out of development. The tax was 80 per cent of the gains realised, except for allowances for low gains. It was intended that the rate should eventually be raised to 100 per cent.

The net development value to be taxed was the proceeds of disposal, less the highest of three basic values - a convoluted formula which roughly equated with current use value. There were exceptions, exemptions, allowances, conditions and special cases - all set out in 94 pages of explanatory notes containing examples, calculations and expositions to guide those who either had to deal with the Act or to advise others.

iv. Criticisms of the two Acts

Conferences organised by professional bodies to explain and interpret the two Acts, and to conjecture how they would work, were held in several towns. Speakers and audiences alike were highly critical, revealing the uncertainty and frustration engendered by this land legislation. Most of the criticism was levelled at the Community Land Act. The Conservatives promised to repeal it; but they were willing to go along with the Development Land Tax if it was nearer 60 per cent instead of 80 to 100 per cent.

v. Fate of the two Acts

The Community Land Act ran into difficulties after the Government's spending cuts of December 1976 reduced the borrowing capacity of local authorities by £70 millions. This severely restricted their acquisition of land, as there were no other funds available for the

purpose. Meanwhile, pressure for repeal continued. A typical comment came from the President of the Incorporated Society of Valuers and Auctioneers: "Any suggestion that the Act should be retained and amended because the threat of repeal causes a greater level of uncertainty, should be opposed. A bad Act is a bad Act. A house of cards is no sounder because it has mosaic tiles on it." (Estates Gazette, 2 April 1977).

When the Conservatives came to power in 1979, they soon repealed the Community Land Act and reduced the Development Land Tax to 60 per cent. The Development Land Tax was eventually repealed in the Finance Act 1985.

Summary

Post-war Governments, particularly Labour Governments, have repeatedly legislated with the object of making more land available for use, bringing down land prices, curbing speculative profits arising from the implementation of regional and national plans, enabling local authorities to acquire land cheaply and collecting for the community those land values which were created by the community. A great many people whose politics were not Labour have sympathised strongly with these objects.

Yet legislators who have attempted to deal with such problems have been unwilling to look beyond expedients like betterment levies, bureaucratic control of land use, and semi-nationalisation. Although the Acts were eventually abolished by political action, this was nothing more than the *coup de grace* to legislation which was manifestly not achieving the objects for which it was originally introduced.

The Acts failed for a variety of reasons.

In the first place, they were complex pieces of legislation, and the more complex a law is the more likely it will be riddled with anomalies and unintended side-effects.

In the second place, there has been real confusion about what the word "land" means in different contexts, and people who sought to produce an effect on land in one sense of the word often in practice produced a completely different effect.

Thirdly, the legislators have been preoccupied with the speculative profits made by dealers and developers. This has led them to concentrate on capturing some of the gains which arise at the point of development and sale, or when planning permission is granted. Yet the value of land at any time does not differ in any essential from subsequent increases in land value. The value is merely the aggregate of increases which have accumulated since the time when land had no market value, and should not be treated differently from more recent increases. All that a betterment levy or similar expedient does is to tap the pool of land value at a point in time and to draw off a little; but in general it keeps the status quo.

Fourthly, there was no attempt to harness the self-interest of landowners. Instead of inviting cooperation, the Acts provoked resistance or inertia.

Fifthly, the effect of the post-war land legislation on all three occasions (1947, 1965, 1976) was to deter development and the better use of land, to encourage land hoarding by owners and to produce an artificial scarcity of sites.

An effective and satisfactory way of achieving the essential objects which the three post-war Labour Governments all seem to have had in mind would have been to levy a tax on all land

values - vacant land included, and regardless of its state of development. The value of different sites of land vary enormously according to a variety of factors which (unlike the value of improvements) have nothing to do with the activities of the landowner or his predecessors in title. These factors include fertility, the presence of minerals, ease of communications, proximity of towns, and the kinds of use permitted by planning and other environmental legislation. These factors would all be taken into account in assessing the tax.

A full exposition of the theory and practice of land-value taxation may be found elsewhere - but, briefly, its virtues are as follows.

1. It treats all landowners alike.
2. It takes cognisance of increases or decreases in land values at revaluations.
3. It is a natural and buoyant source of revenue.
4. It is payable irrespective of the actual state of development, and acts as an incentive for owners of idle land for which development is lawfully permitted (e.g. in decayed inner cities) to develop it or put it on the market.
5. The tax cannot be avoided or evaded.
6. Land would be cheaper to buy and dearer to hold. As more land was made available, its price would fall, and therefore houses, etc., would be cheaper to buy.

The success of any measure of land reform will depend not so much upon what it sets out to accomplish, but on how strictly it conforms to the principles and logic of land economics.

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Contributing to development

Summary

- The Review has considered various fiscal measures that might have an impact on housing supply.
- Taxing land values to raise the cost of not bringing land forward for development is unlikely to yield additional residential land supply given the effect of the planning system in both determining land values and restricting the use to which land can be put.
- Tax measures could be used to affect developer behaviour by altering the relative costs of certain development choices to better reflect the externalities, for example by encouraging brownfield development.
- However, given the low price elasticities of demand and supply in land markets, tax measures are unlikely to yield large behavioural effects and planning remains the best method of resolving externality problems and affecting developer behaviour.
- As noted in the Interim Report, land and housing markets involve the generation of (often substantial) economic rents. Given that tax measures are unlikely to affect behaviour in land markets, they can have a powerful role in capturing economic rents for the wider community with relatively little distortionary impact.
- Government should actively pursue measures to share in windfall development gains accruing to landowners so that increases in land values can benefit the community more widely. Capturing part of these values will provide a funding stream for a number of other policies that will support increasing housing supply.
- There are several options for capturing such windfall development gains including: development gains taxes, changes to the VAT regime and a system of developer contributions levied at the granting of planning permission.
- The Review has considered these, and believes the Government should consider the granting of planning permission as a suitable point in the development chain in which to levy a charge based on local land prices that aims to capture part of the windfall development gain. Given the structure of the land and housing market, such a move would allow the cost of the contribution to fall largely on the landowner and avoid impacting on house prices.
- It is generally true that taxation of anything tends to reduce its supply – however in the case of land, it is the restrictions of the planning system that are the main constraints on land use for housing. The effect of the package of measures in the Review as a whole is expected to increase supply.

INTRODUCTION

[illegible] The Interim Report considered the influence that various policy levers might have on the supply of houses, noting that a number of taxes impacted on housing and land market decision making. In the case of tax measures as an economic instrument, there are a number of possible objectives they might have in relation to housing:

APPENDIX B

- They can influence developer behaviour by altering the costs and benefits of particular choices. This could have the effect of promoting environmental goals, for example, by discouraging some types of development and encouraging others.
- Taxes can extract economic 'rents' – the unearned windfall that accrues to landowners when land is designated for residential use. This has primarily been the rationale for development and land taxes in the past. Capturing this 'development gain' could, in principle, allow it to be used to deliver the benefits of development to the wider community and support other housing policies.
- The supply of land could be stimulated by using tax to raise the 'opportunity costs' of holding land in order to compensate for the wider costs of not using suitable land for development, which are borne by society at large.

As the Interim Report noted, it is important to remember that government interventions in markets typically involve trade-offs between competing objectives. It is often the case that even the best designed market intervention will be unable to achieve all desirable outcomes. Similarly, with the tax measures considered by the Review, there is no one fiscal instrument that could achieve all the potentially desirable objectives described above.

It is rightly assumed that, in general, taxation of any activity, good or service tends to reduce its supply, all things being equal. Therefore, the use of tax measures in relation to the development of land and housing could reduce the supply of both.

That said, there are two justifications for the Review proposing tax measures in relation to housing supply:

- Tax policies are part of a package of reforms and should not be looked at in isolation. Combined with policies to promote the supply of land, planning permissions and affordable housing, the result should be an increase in the amount of new housing overall, compared to a situation with no tax. Indeed, many of these policies might not be possible without additional revenue to recycle.
- If Government is to reform the planning system to bring forward more land for development, it will increase the potential for unearned windfall development gains that can be made by landowners (including developers) from selling land for residential use. Consequently, there is a strong case for Government to consider the use of tax measures to allow the community to share in the increase in development gains its actions will create.

TAX AS AN ECONOMIC INSTRUMENT

As discussed in the Interim Report, policy instruments to correct market failures, such as subsidies, regulation or fiscal measures, can often be interchangeable. Following this, rather than use regulation to deal with externalities (the uncompensated costs or benefits of an action imposed by one person on another) it is often preferable to use the price mechanism. This can be for a number of reasons:

- Economic instruments affecting the price mechanism allow for the internalisation of external costs, in line with the 'polluter pays' principle. Price signals are changed so that business is encouraged to restructure away from producing more environmentally damaging products.

- It gives the polluter flexibility in how they respond to the changed incentive structure, with scope for innovation and/or greater technological development. Tax can, therefore, be an economically efficient way of achieving positive behavioural change.
- Regulation often applies uniform requirements across diverse industries and is rarely sensitive to individual circumstances.

4.6 Tax measures, and their interaction with the price mechanism and subsequent impact on market behaviour, merit careful consideration given their potential ability to facilitate more socially optimal market outcomes.

TAX, BEHAVIOUR AND INCENTIVES TO DEVELOP

4.7 The Review has identified land supply as the major constraint on housing growth. One possible source of land supply constraint could be an unwillingness of landowners to bring their land forward for residential development.

4.8 One option could be to use taxation as a method of incentivising land to be brought forward for development in the first place. Land could be taxed according to its market value and land that had a high value, and was therefore in greatest demand for use, would attract a higher tax liability to encourage its development, or its most efficient use. Since the most profitable of these possible uses would often be residential development, this could increase the amount of land that landowners wish to sell for housing development overall.

The scope of land value taxation

4.9 Several options for land value taxation have been submitted to the Review. For example, land value taxes could be levied on:

- all undeveloped or vacant land across the country;
- land allocated for development in local authority development plans;
- land with outline planning permission; or
- land with full planning permission.

National land value taxation

4.10 The impact on housing supply of national land value taxation at an acceptable rate would be limited. A large amount of land in the UK would never be suitable for development at all, and so taxing such land would not produce additional land supply for residential development, or indeed commercial or industrial activity. However, if low value land were to be excluded from the system this issue could be avoided.

4.11 Importantly, the ability of land to be used for housing supply is ultimately a function of the planning system, which explicitly aims to select only that land most suitable for residential development. It could be considered unfair to tax the value of land in order to create an incentive for residential development, but then to deny the possibility for such use, either permanently or for a number of years, through a restrictive planning system.

4.12 There would also be a question as to whether to tax land as a proportion of its non-residential (current) value, or whether to tax it at the assumed residential value it would attain following successful navigation of the planning system. This demonstrates the important fact that the planning system itself determines the value of land. On the one hand, taxing the land at current value would provide little incentive to sell, since the tax liability would likely be small; however taxing land at its assumed residential value would generate substantially larger liabilities, but no guarantee as to when – or indeed if – the land would eventually attain planning permission, again raising a concern about the fairness of the tax.

4.13 Significantly, as has been explored at length in this Review, landowners who sell their land for residential use are typically the recipients of large windfall development gains. Therefore, using a land value tax to further incentivise landowners to sell their land for residential use, and further encourage developers to build on it, may have little effect given the structure of cost and benefits that would exist anyway.

4.14 A national land value tax would also require additional administrative resources in order for a national land ownership and value register to be created. Given the volatility of land prices over recent years, regular valuations would be needed in order to tax accurately the underlying value of land assets. Such a system would not be impossible to envisage, however – the Interim Report noted that Denmark operates a system of nationwide land taxation[1]. Indeed, given the information shortages concerning land ownership and land value in the UK, there are arguments for a more comprehensive land registry in any case.

Land value tax, allocations for development and planning permission

4.15 Land value taxation might be more appropriately levied on land already considered suitable and desirable for development, such as land allocated for development in the local plan, or land that has achieved some form of planning permission. In this case the tax would clearly reflect the social value placed on the development of that site. It would add to the incentives that would exist for landowners to bring the land forward for development in any case.

4.16 However, once again land value taxes levied on land allocated for development in a local authority development plan, or subject to planning permission, raise issues of fairness. The local authority decides which pieces of land are allocated for development and, therefore, which are liable for a tax, and subsequently uses the sequential test to decide which pieces of land should be brought into the system first. Once land had formally entered the planning system, the local authority would also be able to influence the rate of progress of the application as it moves through the various stages of the planning process.

4.17 Landowners responding rationally to the tax, and attempting to facilitate building on their land to meet their tax liability, may therefore find that their application is delayed for a number of reasons beyond their control.

4.18 This problem might be overcome to a degree, since the tax liability could conceivably be 'frozen' at the point at which a planning application is made, in order to avoid penalising landowners for delays occurring within the planning system, over which they have no control. However, in practice, this could lead to a perverse outcome whereby landowners affected by the tax lodge numerous speculative – and possibly hopeless – planning applications in order to halt the build up of a tax liability. Such a situation would likely neither increase the supply of developable land, nor raise revenue, but instead end up weighing down local planning systems.

[1] p. 117, *Barker Review Interim Report* (2003).

Taxing land with only outline planning permission raises further possibilities for perverse effects. Given that a decision to lodge an application for outline planning permission rests with the developer, there would be scope to delay the application until the developer believed they had the best chance of having their application decided quickly, and thus their tax liability reduced. This may lead to more development control happening 'off the record' in informal discussions, since developers would not wish to have their land formally designated as 'outlined' for development before clearing up as many development issues as possible.

Vacant brownfield land and value taxation

One possible area where land value taxation may be useful relates to brownfield land allocated for development in local plans. Most land would typically not need incentivising for development through value taxes, given the potential gains available to landowners anyway – as discussed above. However, the Interim Report noted that brownfield land was more likely to require expenditure on remediation and decontamination. Depending on the cost of such remediation, this could make it more profitable to leave the land vacant.

Imposing a tax on brownfield land left vacant may have the effect of changing this decision and tilting the balance in favour of redevelopment. Government already has a number of policies designed to encourage the redevelopment of currently unused brownfield land, including the contaminated land tax credit and grant scheme, and the tasking of regeneration agencies, such as English Partnerships, with purchasing and assembling brownfield land. The Review recommends further reforms in this area, as outlined in Chapter 3, and once these reforms have had time to take effect there may be merit in considering whether they would benefit from being operated alongside a brownfield land value taxation scheme.

Land value taxation and the wider economy

Most land value taxes, therefore, appear to be of limited use in stimulating the supply of land for housing given the nature of the planning process. That is not to say that land value taxes could have no part to play in the wider economy. The combination of a potentially wide tax base and the fact that land is physically 'fixed', which makes avoidance and concealment of the asset and its tax liability very difficult, point to land value taxation as a good method for raising revenue without distorting behaviour; indeed, it could encourage better behaviour. Such taxes may also have a useful role in recapturing for the public purse part of the uplift in land values that can occur as a result of public investment. Furthermore, some advocates of a land value tax view such a method of taxation as increasing social justice. However, the broader merits of the greater use of land taxation lie beyond the scope of this Review.

pp. 67-68, *Barker Review Interim Report* (2003).

Box 4.1: Current land taxation regimes

It is important to note that taxation of housing and land sits within an established fiscal framework which taxes expenditure, assets and income in varying ways to achieve numerous policy aims. New taxes aiming to affect the fiscal position of land and housing must be sensitive to the existing regime.

Landowners will pay tax on the income arising from the use of land, either through corporation or income tax in the same way as any individual or corporation. In addition, land sales are subject to stamp duty and, following reforms to stamp duty rules, must now be recorded at the Land Registry.

Where land is sold, owners are subject to capital gains tax (CGT), which aims to tax part of its increase in value. However, for a number of reasons CGT does not always capture the full extent of windfall gains associated with the selling of agricultural land for residential use. The availability of roll-over relief (which allows certain reinvested gains to be deferred) and taper relief (which can substantially reduce the effective tax rate applying to a capital gain) mean that many landowners who benefit from these reliefs face a low tax liability.

In addition to this, there are likely to be large capital losses, possibly totalling billions of pounds, in the agricultural sector, which could be offset against CGT liabilities, as well as yearly personal allowances (£7,900 for 2003/4) and an indexation allowance for periods of ownership from March 1982 to March 1998.

The cumulative impact of these features is that windfall development gains accruing to landowners are often not fully exposed to CGT. As such, the amount of revenue CGT raises from sales of agricultural land for residential development is small. Estimates suggest that the yield from all agricultural land and buildings disposal, following reliefs and offsets against previous losses, was approximately £50 million in 2000/1. This total would also include CGT revenue from sales of land not intended for subsequent residential use, and is therefore an overestimate of the actual CGT revenue resulting from sales of land for residential development.

[illegible] Thus the taxation of land to bring forward additional residential land supply would yield limited results and may, in fact, only succeed at the cost of introducing elements of inequity. However, the price mechanism could be used in other ways to affect land use behaviour. For example, there may be possibilities for tax to have a greater role in affecting the market behaviour of landowners and housebuilders where development is already proposed.

TAXATION AND BEHAVIOURAL CHANGE

[illegible] Prices could play a role similar to that of regulation – in this case the planning system – in changing market behaviour so as to address externalities and reach a more socially optimal outcome. For example, tax measures could affect the relative price of building on greenfield and brownfield land, so as to reflect society's preferences for reusing previously developed land.

[illegible] Economic theory suggests that taxation as a means of affecting land use behaviour will tend to be effective if there are high price elasticities of supply and demand for the land being taxed[3]. However, these elasticities are low in the market for housing in the UK[4]. Since land is a key factor of production in the housing market, price elasticities of demand and supply for housing are a good proxy for ascertaining the same elasticities for land.

[3] Meaning that the demand for, and supply of, land is sensitive to a change in its price.
[4] pp. 39-41, *Barker Review Interim Report* (2003).

4.26 This suggests that the behavioural impacts resulting from the imposition of a tax would not be sufficient to ensure that decisions about which land to bring forward for development reflected the value that society places on that land. For instance, taxation alone is too blunt an instrument to ensure that brownfield land is developed in preference to greenfield. Because of the individual nature of each site this function is best carried out by the planning system[5]. However, it is still worth designing tax measures which might yield useful, if limited, behavioural changes. Reforms to ensure the planning system is better able to perform the difficult balancing task of reconciling the social costs and benefits of residential development in particular locations are thus of great importance.

SUBSIDY, BROWNFIELD AND ECONOMIC BEHAVIOUR

4.27 Though tax is unlikely to have a significant effect on market behaviour, then other economic instruments – for example subsidies – could be used more extensively to influence landowner and developer behaviour, for example, in altering the relative attractiveness of greenfield and brownfield land.

4.28 To this end, the Government has already introduced a contaminated land tax credit and grant system designed to lower the effective cost to developers of building on contaminated brownfield land that would otherwise prove economically unviable to develop.

4.29 Brownfield land is typically more difficult and costly to assemble and build on than greenfield land but it typically offers greater positive externalities, for example through urban regeneration. Information from the National Land Use Database suggests that there currently exists over 60,000 hectares of brownfield land – much of which has lain derelict for long periods of time. Regenerating such land would offer opportunities for new housing development and thus increase supply.

Recommendation 25

Government should consider the extension of the contaminated land tax credit and grant scheme to land that has lain derelict for a certain period of time. This should be done on the basis that extra public money levered into the market through such a scheme would encourage genuine new investment in brownfield remediation, and not simply subsidise development that would take place in any case.

4.30 The use of subsidies to aid the regeneration of brownfield land that has been derelict for a number of years will bring positive benefits, as discussed. However, care must be taken in the design of such a scheme, that does not reflect the value that society places on that land to ensure this does not generate a perverse incentive for landowners to leave land derelict for longer than they otherwise would, in order to qualify for such tax credits and grants.

[5] Although regulatory systems can themselves use information provided by prices to inform and enhance decision making.

TAXATION AND ECONOMIC RENTS

The above analysis suggests that in bringing forward land for development and influencing the use of land already proposed for development to deal with externalities, tax measures alone may not be able to generate the desired market outcomes, given the current structure of land and housing markets in the UK.

Tax measures by themselves are not likely to affect market behaviour, combining this with the existence of economic rents means that taxation could have an important role in capturing value without overly distorting behaviour – although, as mentioned, there is merit in trying to ensure that any such tax reflects externalities.

Development gain

The Interim Report discussed the nature of economic rents and their interaction with housebuilder residual values. Rents are the extra amount paid by purchasers for a good over and above its next most profitable use. When considering land and housing markets in the context of taxation, these are a natural focus for attention and demand serious consideration.

Development rents are created as a result of a public agency, namely the decision by a local authority – acting on behalf of the wider community – to grant residential planning permission for a piece of land. They are not attributable to the efforts of landowners to improve their land assets and increase their value through private investment and improvement. This means that:

- since development rents are publicly created, it is right that the wider community appropriate a share of the value that their actions generate; and
- in the context of increasing housing supply, ensuring that a share of the development gain flows to the community can also have a vital role in providing funding for other policies which promote housing supply.

The following examples, using Valuation Office Agency data, indicate the scale of the potential development gains available to landowners from selling agricultural land for residential use. These values may, in fact, be an underestimate of the actual average price as they include a reduction in value for assumed Section 106 contributions, which are likely to apply only to larger developments.

Table 4.1: Agricultural and residential land values in selected regions of England, 2003

Region	Value of arable agricultural land per hectare (£)	Value of bulk land for residential use per hectare (£)	Ratio of agricultural to residential land price
North East	7,534	1,230,000	1:163
East Midlands	7,450	1,770,000	1:238
South East	9,122	2,760,000	1:303

Source: Valuation Office Agency Property Market Report, Autumn 2003

pp. 115-116, *Barker Review Interim Report* (2003).

4.16 The existence of economic rents is particularly evident in relation to greenfield development. Greenfield land is typically easier to build on in comparison to brownfield land. Brownfield land often carries costs of remediation, complexities relating to the multiple ownership of sites and greater logistical difficulties in construction which reduce its potential value. It also carries higher alternative use values than greenfield land, for example as commercial or industrial enterprise.

4.17 Therefore, while there will always be exceptions, it is fair to say that development gains are more obviously present on greenfield land in comparison to brownfield development. This would imply that greenfield economic rents could be taxed at a higher rate, since there is a larger and more certain development gain to be captured. Differentiating the capture of windfall gain between greenfield and brownfield also tilts the playing field in the right direction to promote environmentally desirable behavioural changes.

4.18 Land, like most other assets, is already taxed through the capital gains tax regime. However, the existing system, which aims to incentivise and promote the efficient use of productive capital, does not sufficiently capture windfall development gains. There is, therefore, a case for extending the taxation of development gains resulting from land sales through different methods.

4.19 The Review has considered a number of possible taxation policy options that can capture windfall development gain, and also go some way to changing economic behaviour so as to achieve a more socially optimal outcome. The taxes considered here include:

- development gains taxes, including their past operation and how they might work in the future;
- VAT on new houses built on greenfield land; and
- a development contribution payable upon the granting of planning permission.

4.20 The rest of this chapter reviews these taxes and analyses their potential impacts.

DEVELOPMENT GAINS TAX

4.21 A number of contributors to the Review have advocated the re-introduction of a development gains tax (DGT) as a method of capturing windfall development gain.

Previous development gains taxes

4.22 The Interim Report noted that past attempts at levying development gains taxes had failed. These taxes, introduced by both the main political parties at different times in the post-war period, suffered from a number of problems which hampered, to a greater or lesser degree, their ability to deliver on their objectives:

- Credibility: landowners did not necessarily believe that the tax would remain and held land back from development in the hope that incoming Governments would repeal the tax, and thus higher windfalls could be received in the future. Such a belief can, in part, be self-fulfilling, since by holding back land from development and campaigning against 'ineffective development taxes', landowners create the very situation that leads to the tax's withdrawal.

- Complexity: an ideal DGT would seek to capture that proportion of the increase in land value attributable to a change of use to residential development. Such a process involves multiple valuations and was inevitably difficult to achieve in practice. Aside from the logistical and resource implications of such a task being undertaken on a national scale, it was frequently difficult to assess the true value of land at the various stages in the absence of a market transaction.

- Poor targeting: the taxes were often poorly targeted. In practice larger landowners and speculators could avoid the tax, leaving smaller landowners to form the majority of the tax base. This led to the perception that the tax was 'unfair' and disproportionately affected smaller landowners.

- High effective tax rates: some liabilities generated by these measures approached 100 per cent of land value. This hugely increased landowner incentives to hold back land and await a policy change, as well as further opening up accusations of unfairness.

Box 4.2: Previous development gains taxes

The Interim Report noted that previous Governments had introduced various DGTs in the past in an effort to share development gain more widely.

The 1947 'Development Charge' was the first attempt to tax windfall gains from land development. The charge was levied at 100 per cent of the excess value attributable to the granting of planning permission, relative to the existing use value on the date the development began. However, the effect of the tax was to reduce land coming forward for development, and the revenue raised was substantially lower than expected.

The 1967 Betterment Levy aimed to capture value above 110 per cent of existing use value, so as to provide an incentive to sell by allowing some development gain to be made. The charge was introduced at 40 per cent with the stated intention of raising it higher. However, among other problems, the complexity of the legislation allowed many developers and landowners to avoid paying by 'establishing' that work had begun prior to the charge's introduction and again, the measure raised far less money than was initially expected.

The 1973 Development Gains Tax aimed to extend the CGT regime by taxing as income gains accruing from disposals of land possessing development potential at rates of up to 82 per cent for individuals, and 52 per cent for companies. However, rapidly changing market conditions, and a change of Government to one with different development gain ideas soon after the tax's introduction, meant that the measure had little time to exercise an influence on the land market.

The Development Land Tax was charged on each occasion of the realisation of development gain flowing from disposals of land after August 1976. The tax contained several different features to its predecessors. These include levying the charge not only on actual sales, but also on assumed disposals where development projects began on land without a preceding land sale. There were also numerous exemptions from the tax. However, the complexity of the tax led to a proliferation of avoidance regimes and resulted in the tax falling disproportionately on smaller landowners, leading to allegations of unfairness.

[illegible] These are important lessons for policy makers. Any tax on the uplift in land values must have credibility, relative simplicity and be perceived as reasonable, or landowners may withhold land in the expectation of policy change, or engage in elaborate strategies to avoid paying.

Recommendation 26

Government should use tax measures to extract some of the windfall gain that accrues to landowners from the sale of their land for residential development.

Government should impose a Planning-gain Supplement on the granting of planning permission so that landowner development gains form a larger part of the benefits of development.

The following principles might be considered:

- Information would need to be gathered as to the value of land proposed for development in each local authority. Sources of data could include actual transactions and/or Valuation Office Agency estimates as to the land prices in various local authority areas.
- Government would then set a tax rate on these values. This tax rate should not be set so high as to discourage development, but at a rate that at least covers the estimated local authority gain from Section 106 developer contributions and provides additional resources to boost housing supply.
- The granting of residential planning permission would be contingent on the payment of the supplementary planning contribution of the proposed development.
- Government may want to consider the operation of a (substantially) lower rate for housing development on brownfield land, and the possibility of varying rates in other circumstances, e.g. for areas where there are particular housing growth strategies, or where other social or environmental costs may arise.
- A proportion of the revenue generated from the granting of planning permissions in local authorities should be given directly to local authorities. Government should also amend the operation of Section 106 planning obligations, as set out in Chapter 3, to take account of this new charge.
- The Government may want to consider allowing developers to pay their contributions in instalments over reasonable time periods so as to ensure that housebuilder cash flow pressures are sufficiently accounted for.

The introduction of a tax would need to be accompanied by transitional measures to ameliorate the impact on developers already engaged in land sales contracts that were drawn up before this charge was introduced, or for those who hold large amounts of land already purchased, but where planning permission has yet to be secured.

Box 11: Site Value definition

Site Value either as an input into a scheme specific appraisal or as a benchmark is defined in the guidance note as follows:

'Site Value should equate to the market value[6] subject to the following assumption: that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan.'

Box 12: Site Value – area-wide assessments

When undertaking Local Plan or CIL (area-wide) viability testing, a second assumption needs to be applied to the above:

'Site Value (as defined above) may need to be further adjusted to reflect the emerging policy/CIL charging level. The level of the adjustment assumes that site delivery would not be prejudiced. Where an adjustment is made, the practitioner should set out their professional opinion underlying the assumptions adopted. These include, as a minimum, comments on the state of the market and delivery targets as at the date of assessment.'

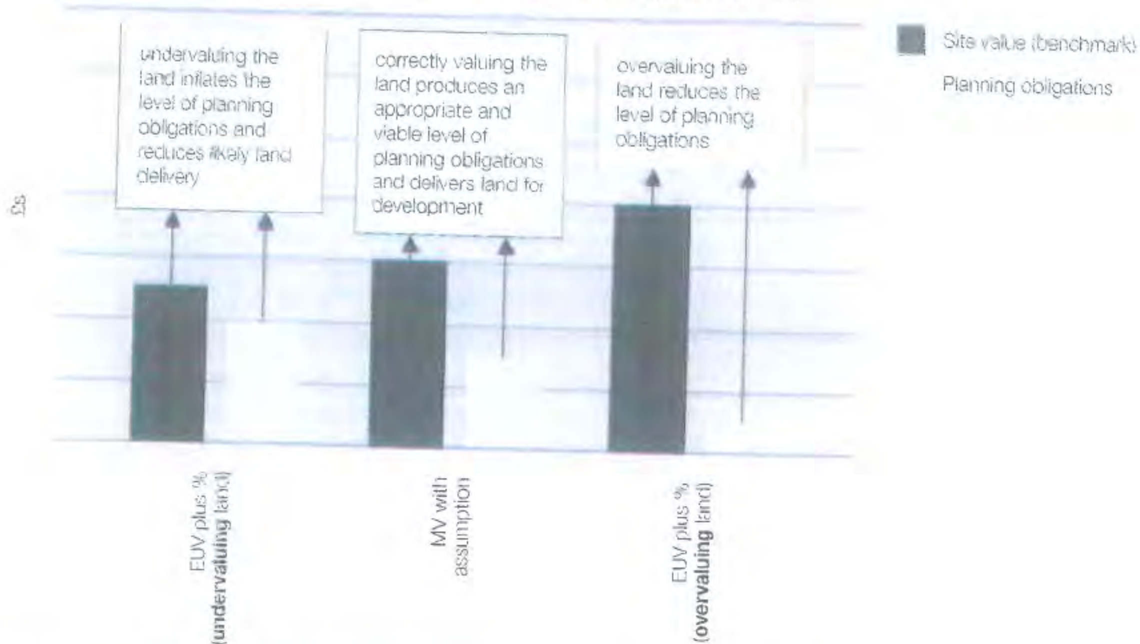
3.4 Site Value approach (including an allowance for developer's return as a cost of development)

3.4.1 To date, in the absence of any guidance, a variety of practices have evolved, which are used by practitioners to benchmark land value. One approach has been to exclusively adopt current use value (CUV) plus a margin or a variant of this, i.e. existing use value (EUV) plus a premium. The problem with this singular approach is that it does not reflect the workings of the market as land is not released at CUV or CUV plus a margin (EUV plus). The margin mark-up is also arbitrary and often inconsistently applied in practical application as a result. Figure 3 (overleaf) illustrates how EUV plus a premium can over-value and under-value sites compared to market value with an assumption, and the resultant impact on planning obligations that can be viably afforded. Appendix E sets out further detail on why a CUV approach is not recommended. It is of course possible to show how Site Value (as defined in the guidance), when it has been established, can be disaggregated and expressed in terms of 'CUV plus a premium'. This guidance recognises that some practitioners and users may find this helpful as part of the decision taking process. Again Appendix E comments upon this further.

3.4.2 In a market without planning obligations, the maximum value of a development opportunity would be the residual value of the site with the proposed planning permission after development profit and all development expenses have been deducted from the GDV of the proposed scheme. In this situation, if this value was above the CUV (defined in Appendix F, Glossary of terms) of the site, landowners are more likely to deliver a site for development. The level of uplift arising, which would result in land being released for development, could vary considerably between individual sites.

3.4.3 The residual land value (ignoring any planning obligations and assuming planning permission is in place) and current use value represent the parameters within which to assess the level of any planning obligations. Any planning obligations imposed will need to be paid out of this uplift but cannot use up the whole of this difference, other than in exceptional circumstances, as that would remove the likelihood of the land being released for development.

Figure 3: Market value (with assumption) v existing use (plus)



3.4.4 For a development to be financially viable, any uplift from current use value to residual land value that arises when planning permission is granted should be able to meet the cost of planning obligations while ensuring an appropriate Site Value for the landowner and a market risk adjusted return to the developer in delivering that project (the NPPF refers to this as 'competitive returns' respectively). The return to the landowner will be in the form of a land value in excess of current use value but it would be inappropriate to assume an uplift based on set percentages as detailed above and in Appendix E, given the diversity of individual development sites.

3.4.5 The Site Value will be based on market value, which will be risk-adjusted, so it will normally be less than current market prices for development land for which planning permission has been secured and planning obligation requirements are known. The practitioner will have regard to current use value, alternative use value, market/ transactional evidence (including the property itself if that has recently been subject to a disposal/acquisition), and all material considerations including planning policy in deriving the Site Value.

3.4.6 The assessment of Site Value in these circumstances is not straightforward, but it will be, by definition, at a level at which a landowner would be willing to sell which is recognised by the NPPF.

3.4.7 Sale prices of comparable development sites may provide an indication of the land value that a landowner might expect, but it is important to note that, depending on the planning status of the land, the market price will include risk-adjusted expectations of the nature of the permission and associated planning obligations. If these market prices are used in the negotiation of planning obligations then account should be taken of any expectation of planning obligations that are embedded in the market price, or valuation in the absence of a price. In many cases, relevant and up-to-date comparable evidence may not be available, or the diversity of development sites requires an approach not based on direct comparison. The importance, however, of comparable evidence cannot be over-emphasised, even if the supporting evidence is very limited, as seen in court and land tribunal decisions.

3.4.8 This guidance has sought to reflect more appropriately the workings of the market. With a definition of viability established, it has been considered appropriate to look at terms the industry is familiar with, rather than invent new ones. Accordingly, the well understood

definition of market value has been adopted as the appropriate basis to assess Site Value, subject to planning policy as set out above in both site specific and area wide assessments.

3.4.9 It has become very common for practitioners to look at alternative use value (AUV) as a land value benchmark. This will come with its own set of planning obligations and requirements. Reviewing alternative uses is very much part of the process of assessing the market value of land and it is not unusual to consider a range of scenarios for certain properties. Where an alternative use can be readily identified as generating a higher value, the value for this alternative use would be the market value. Again, comparable evidence may provide information to assist in arriving at an AUV. Accordingly, in assessing the market value of the land there may well be a range of possible market values for different uses, which could be applicable to the land and buildings, from current use through to a number of alternative use options, each having its own planning obligation requirements. These will be used to derive the 'market value with assumption' (the option with highest value being the Site Value) for input into a viability assessment.

Box 13: Site Value and comparable evidence

The assessment of Site Value with assumption is not straightforward but must, by definition, be at a level which makes a landowner willing to sell, as recognised by the NPPF. Appropriate comparable evidence, even where this is limited, is important in establishing Site Value for scheme specific as well as area wide assessments.

3.5 Date of assessment

3.5.1 The date upon which the planning authority, or the Secretary of State, (see below) resolves to grant or refuse a planning application is the date upon which all relevant information is considered. In practical terms, reports and supporting documentation are prepared well in advance of this date. It follows that the 'appraisal date' should be carefully considered and agreed. If the viability assessment is provided pre-application, then the date of the assessment will clearly be prior to the submission of an application. The viability assessment may subsequently require updating when the application is submitted. If the viability assessment is submitted with a planning application, the date of the application (not the date of registration) may be the appropriate date but it is important to note that the decision of the LPA on a planning application needs to be based on the material considerations at the date of determination, hence the conclusions of a viability assessment undertaken at the date of application will still hold good at the date of decision. Viability assessments may, therefore, occasionally need to be updated to market movements during the planning process.

3.5.2 There are occasions where the appraisals will require revisions. In certain circumstances, as a result of, for example, fundamental market changes or changes in density of the scheme, between submission of the viability assessment, application and consideration by the planning authority, it will be necessary to review and update the appraisal. This should, however, relate to changes in the market, or changes specific to the scheme, that would not have been known at the time of the original submission. Where there is a planning appeal, the date should be agreed between the parties or taken as the date of the hearing/written representations.

Box 14: Date of assessment

Viability assessments will usually be dated when an application is submitted (or when a CIL charging schedule or Local Plan is published in draft). Exceptions to this may be pre-application submissions and appeals. Viability assessments may occasionally need to be updated due to market movements or if schemes are amended during the planning process.

3.6 Other material issues

3.6.1 Actual purchase price

3.6.1.1 Site purchase price may or may not be material in arriving at a Site Value for the

£2.75m; from this it is necessary to subtract the cost of decontaminating the land. This gives a benchmark SV of £1.865m, a figure revised from the Council's original evidence to take account of the agreed costs of decontamination. I am concerned about this approach in that the Council has failed to demonstrate that there is any market for such a substantial office development here. Indeed, the only recently completed (2009) office development of comparable scale, The Blade in Reading, is still largely vacant.

63. Overall, therefore, there is a difference between the parties of about £500,000 (£2.3m compared to £1.8m) in the benchmark land value. Neither figure is wholly watertight. The appellants' calculations are partly based upon a comparable site which differs from the appeal site in a number of important respects (location, access, scale) resulting in a need for subjective adjustments to the achieved sale figure. The Council's valuation is based upon an office development for which there is no proven demand. Overall, however, as the appellants have significantly reduced their site value to take account of the various differences between the sites, this seems a more reasonable approach than using an office development for which there appears to be little or no demand.

Competitive return

64. Determining what constitutes a competitive return inevitably involves making a subjective judgement based upon the evidence. Two very different viewpoints were put forward at the Inquiry with the appellants seeking a land value of £4,750,000 which is roughly the mid-point between the EUV/CUV and the RLV with planning permission for housing and no obligations. This ties in with the 50:50 split between the community and the landowner sought by the appellants. The Council considered that a sum of £1.865m would ensure a competitive return; that is to say the Council's calculation of the EUV/CUV.

65. Paragraph 173 of the *Framework* says that the costs of any requirements should provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable. The paragraph heading is "Ensuring viability and deliverability"; it is clear that its objective is to ensure that land comes forward for development. I am not convinced that a land value that equates to the EUV/CUV would provide any incentive to the landowner to sell the site. Due to the particular circumstances of this site, including the need to remediate the highly significant level of contamination, such a conclusion would not provide any incentive to the landowner to carry out any remediation work. There would be no incentive to sell the land and so such a low return would fail to achieve the delivery of this site for housing development. In these circumstances, and given the fact that in this case only two very different viewpoints on what constitutes a competitive return have been put forward, the appellants' conclusions are to be preferred. In the scenario preferred by the Council, I do not consider that the appellants would be a willing vendor.

Viable amount of Affordable Housing

66. The RICS GN says that any planning obligations imposed on a development will need to be paid out of the uplift in the value of the land but it cannot use up the whole of the difference, other than in exceptional circumstances, as that would remove the likelihood of land being released for development. That is exactly what is at issue here in that the Council's valuation witness, in cross

examination, stated that a landowner should be content to receive what the land is worth, that is to say the SV. In his opinion this stands at £1.865m. I accept that, if this figure was agreed (and it is not), it would mean that the development would be viable. However, it would not result in the land being released for development. Not only is this SV well below that calculated by the appellants, there is no incentive to sell. In short, the appellants would not be willing landowners. If a site is not willingly delivered, development will not take place. The appellants, rightly in my opinion, say that this would not represent a competitive return. They argue that the uplift in value should be split 50:50 between the landowner and the Council. This would, in this instance, represent the identified s106 requirements being paid as well as a contribution of 2% of the dwellings as affordable housing.

Unilateral Undertaking

67. The appellants submitted the UU at the Inquiry having failed to come to an agreement on a bi-lateral Undertaking with the Council. The Council stated that its reason for not signing a bi-lateral agreement was due to the fact that the Undertaking does not make provision for all of the disputed off site highway matters relating to sustainable modes of transport. I have taken account of the Council's concerns regarding the UU; the Council has not suggested that any of these concerns invalidate it.

68. As set out above, not all the provisions are necessary or compliant with CIL Reg 122 or with the provisions of paragraph 205 of the *Framework*. Of the matters in dispute I have concluded that the contribution towards the provision of £747,000 towards the construction of the SERR complies with CIL Reg 122 and the *Framework*. Concerning the sustainable travel modes contribution I have concluded that Link 1 is not necessary but that Links 2 and 3 are necessary and so also compliant. Only part of the bus stop improvement contribution is justified and needs to be included. This is partly covered by a condition as the UU makes no provision towards bus stops 5 or 6. I have found that contributions towards sports halls and swimming pools are not necessary but that the contribution of £348 per dwelling (less one dwelling) towards country park provision and improvement is necessary.

69. Concerning the other elements of the UU which are not in dispute, the submitted evidence justifies the amenity open space, the children's play area contribution, the junior, infant and primary education contributions, the secondary school and secondary school sixth form contributions, the library contribution, the pitches and recreation ground contribution and the need for a travel plan. With regard to the Special Protection Area SAMM contribution, in the light of the conclusions of the Secretary of State in the Shinfield West decision dated 8 November 2012 I conclude that a contribution is necessary and compliant with CIL Reg 122 and the *Framework*.

70. I conclude on this issue that, allowing the landowner a competitive return of 50% of the uplift in value, the calculations in the development appraisal allowing for 2% affordable housing are reasonable and demonstrate that at this level of affordable housing the development would be viable (Document 26). The only alterations to these calculations are the relatively minor change to the s106 contribution to allow for a contribution to country parks and additions to the contributions to support sustainable modes of travel. These changes would have only a limited impact on the return to the landowner. The development would remain viable and I am satisfied that the return would remain sufficiently