

Housing, Communities and Local Government Committee

Oral evidence: Land Value Capture, HC 766

Monday 4 June 2018

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Members present: Mr Clive Betts; Bob Blackman; Helen Hayes; Kevin Hollindrake; Andrew Lewer; Jo Platt; Mr Mark Prisk; Liz Twist; Matt Western.

Questions 78 - 174

Witnesses

I: Daryl Phillips, Chief Executive Planning Lead, District Councils' Network, Joint Chief Executive, Hart District Council; John Wacher, Strategic Planning Manager Viability, Greater London Authority; Councillor Martin Tett, Leader, Buckinghamshire County Council.

II: Christopher Price, Director of Policy and Advice, Country Land and Business Association; Philip Barnes, Group Land Director, Barratt Developments; Paul Brocklehurst, Chair, Land Promoters and Developers Federation.

Examination of witnesses

Witnesses: Daryl Phillips, John Wacher and Councillor Martin Tett.

Chair: Good afternoon. Welcome to the witnesses and everyone else. Thank you for coming to our second evidence session in our inquiry into land value capture. Before we come over to you, I just ask members of the Committee to put on record any interests they have that may be relevant to this inquiry. I am a vice-president of the Local Government Association.

Liz Twist: I employ a councillor in my office.

Helen Hayes: As do I.

Jo Platt: As do I.

Kevin Hollinrake: As do I.

Bob Blackman: I am a vice-president of the LGA.



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Andrew Lewer: I am a vice-president of the LGA and I have a reference in the register of interests to Drakelow Development Holdings as well.

Mr Prisk: I am a fellow of the Royal Institution of Chartered Surveyors.

Q78 **Chair:** It is over to you, if you would just say who you are and the organisation you represent.

John Wacher: I am John Wacher, strategic planning manager at the Greater London Authority. I deal with viability in the mayor's planning team and also chair the London authority's viability group.

Daryl Phillips: I am Daryl Phillips, the joint chief executive of Hart District Council, and I am the DCN lead on planning.

Cllr Tett: I am Martin Tett. I am leader of Buckinghamshire County Council, and I am also the LGA spokesman on housing, transport and environment.

Q79 **Chair:** Thank you all for coming this afternoon. I suppose the obvious first question is about, from where we are at now, whether section 106 and CIL are adequate measures for capturing increase in land value. Do they give local authorities sufficient money to provide the infrastructure that developments often require?

Daryl Phillips: The answer is that they do not capture land value. They were not intended to capture land value in their setting up. Section 106 obviously has changed over the years, for good and bad. Although the title "planning gain" was used many years ago, it has moved away from planning gain. It is now very closely regulated by the CIL regulations in terms of pooling, but also the objective is now all about infrastructure, and it is very limited in what you use it for, in terms of narrowness. It is narrowed down, where you have to account for everything for it, quite rightly so. It was never set up to capture land value, but to deliver infrastructure that makes unacceptable development acceptable, so it has quite a clear remit.

CIL was introduced as a land tax or roof tax, following Milton Keynes's example. It has its benefits, but it is shown not to—and does not expect to—provide all the funding for infrastructure. It says that in the original regulations. It is a tool to get value, but both of them were never expected to deliver anything more than infrastructure, and CIL probably less than section 106 in delivering infrastructure in its own right, because of the way the CIL regs are constructed and what they are seeking to do. They are both of value, but you have to be careful about what we mean by land capture, as opposed to infrastructure. Neither will deliver all the infrastructure, because they have various components.

Q80 **Chair:** In the point you made there, you are basically saying that they are about trying to make development acceptable that otherwise would not be acceptable, but not to bring any wider benefits to the public purse because of land value going up.



Daryl Phillips: That is correct.

Q81 **Chair:** Do you have any points you want to make?

Cllr Tett: I would basically support that, in terms of land value capture. It is not about capturing the value of the land for its own sake. This is all fundamentally about making development easier and bringing forward more land. It is making it acceptable to the public. In many cases, you will find the public will accept development if the right infrastructure is in place. Many of you will have been to public meetings on housing sites. The first thing your public will ask you is, "Where is the infrastructure"? That is the massive constraint that local government faces at the moment.

If we do not get the money from central Government from things like the Housing Infrastructure Fund or whatever, which is a useful start but does not carry the full scale of the issues that we have, we are really constrained. We do not have the money locally to provide that infrastructure, so if we cannot capture it from the development itself, either via 106 or via CIL, then our ability to meet the needs of local residents is just not there.

The other thing is that, quite frankly, even if you could mitigate to some extent currently, we need to make sure that these places actually work. It is not about doing the bare minimum. You have to make sure that these places actually work for the future, so when they are built and the housing estates go up you do not find the junctions are congested, the doctors' surgeries are not there and so on, which leads to all the complaints after the development has taken place. I for one do not want to be somebody in 10 years' time who looks back and says, "Who on earth allowed that to happen?" which is the danger we face at the moment.

John Wacher: From the GLA's perspective, the use of section 106 and CIL is important, particularly in view of the scale of housing growth, transport infrastructure and other forms of infrastructure necessary to support the growth of London in a sustainable way. However, it is unlikely to be sufficient to meet that scale of growth on its own. That is partly for the reasons that we have discussed already, but also because we are probably not using them as effectively as we could be. A return to a plan-led system where local authorities have the tools at their disposal to be able to implement the policies that have been adopted through the plan adoption process will enable them to secure higher levels of planning obligations and CIL.

Part of that is about setting out clear requirements in plans and having those flow through into land values, so that those are things that cannot be reduced through the application process or through alternative means like permitted development rights. The result of that, arguably, is an increase in land values and a failure to capture that uplift in land value that results from the grant of planning permission, through improved



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transport infrastructure or whatever it may be. I would agree that the starting point is making good places. The outcome can be capturing some of that uplift in land value or, looking at it another way, the level of land value uplift is not as much as it would be without those requirements, because those requirements are necessary to gain planning permission in the first place and to create good places.

Cllr Tett: Could I just add one thing, which I think is implicit in my colleagues' replies? The problems with CIL and 106 are numerous, but just one of them is, when you get down to discussions with developers, what you always find is the issue of viability. Everybody says, "There is just not enough money left to fund all of the things you want".

Chair: We are going on to viability in just a second, so we will follow that point up.

Cllr Tett: I just wanted to make sure that was not missed.

Q82 **Chair:** Just to come back, there was an article in the *Huffington Post* the other week that said, "It is all right, local authorities saying they need more of this land value capture to provide infrastructure, but they are sat on £375 million of 106 payments they simply have not spent, so is this not just asking for money that is not going to benefit anyone, at the end of the day, because it will not get spent?"

Daryl Phillips: That is a fair comment, although £375 million in one respect is a drop in the ocean for infrastructure purposes, but let us put that to one side, for the sake of it. Yes, local authorities do get money in, and, providing it is in a ring-fenced and accountable account, it should be available for anyone to see that money is available. If a developer is arguing with a local authority about funding schemes, they should be able to take that into account: the money the authority is already holding. My authority deliberately does a ring-fenced account and it is open so people can see where the money is.

On the issue about money, it is a snapshot at a moment in time, obviously, because money is spent and coming in at different rates. The difficulty that we have—a prime example is one in my area—is that we have 1,500 homes going in on one site. It is a project build plan over 15 years, to build it out. The county, for example, has £300 million of that for highway improvements. They have taken the approach that says, "We cannot commit all the money on day 1, because, first, it is phased. Secondly, let us say the traffic modelling is modelling only, and of course you have to watch and see what happens to traffic as the scheme builds out, to see where traffic goes and what improvements are actually needed. They are not all about the big road improvements; there are also the small adjustments to stuff". The county is saying, "You cannot spend the money on day 1 when you do not have all the traffic in front of you. You do need to phase it out". They will ask for the phasing out.



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Also in the legal agreement there are payback times, so the money will go back, if they have not spent it within time. That particularly happens with education and public transport initiatives. There will be clawbacks to make sure the developer gets the value back. My position is that, yes, there will be money in accounts. It should be accounted for, quite rightly so. Developers should know what it is being spent on, and others who can see what money is in the account should be able to challenge why they have to pay any more until that money has been absorbed. We need to make more transparency about it, and some authorities are.

Cllr Tett: Just to support what Daryl said on that, the LGA has done some analysis on this figure that appeared in the *Huffington Post*. Of that £375 million, all but £100 million is already allocated, so it is all earmarked against specific schemes that are either waiting to come forward or not. We are really talking about the extra £100 million. A lot of the big accounts are actually around London, where you have major schemes that are multimillion and quite often are waiting through a process in terms of actually being delivered. This number is a big headline in the *Huffington Post*, clearly, but when you look at it in detail it is not a big issue.

Q83 **Kevin Hollinrake:** Just to Mr Phillips, I think I might have misheard this, but in the Chair's question about section 106 and CIL, I think you said neither of those is capturing the value of land. They are just paying for infrastructure to make developments acceptable. Surely you will concede that section 106 requirements for affordable housing, for example, significantly depress the value of land and therefore share it with the community. Is that not the case?

Daryl Phillips: That is one benefit of the section 106. In terms of the affordable housing provision, we can have a big debate about whether affordable housing is right or wrong in its own right. Of course, yes, you do want to provide affordable homes, not just the market houses that meet the market demands because there is demand for others to be housed. Yes, they will have an effect on land value. This is where CIL goes wrong. CIL is looking at viability in its own right. Of course, if you cannot make a scheme viable—

Q84 **Kevin Hollinrake:** Put viability to one side. Assuming the policies that are put there are adhered to, you accept that is reducing land values, and therefore capturing some of the values of that land.

Daryl Phillips: CIL would not do that.

Q85 **Kevin Hollinrake:** No, section 106.

Daryl Phillips: Section 106 is one benefit, but not all schemes need section 106 for affordable homes.

Q86 **Kevin Hollinrake:** The question was about section 106 and CIL. You accept then section 106 is capturing the value of land.



Daryl Phillips: Where there is affordable housing provision that is of public benefit, yes, I agree that. That is on section 106.

Q87 **Matt Western:** Just to pick up on that, I wondered if you could illustrate this in terms of the uplift in value to give some context. I guess around the country the absolute value term varies, of course. In percentage terms, what sorts of figures are we talking about in the uplift, say from a field and then once it is granted. What sort of multiple are we talking?

Cllr Tett: Interestingly enough, I asked that question before I came in. We just looked at the latest published HCLG numbers, which go back a couple of years. I will say that quite frankly. An average for the UK of agricultural land, greenfield site, is £21,000 per acre¹. For land excluding London with planning permission for residential, it is £1.95 million. That gives you an idea of the uplift.

Matt Western: £21,000 to £1.95 million.

Cllr Tett: £21,000 to £1.95 million. Those are the government statistics.

Q88 **Matt Western:** That is a staggering uplift.

Cllr Tett: It is. I will be honest with you: it surprised me, because I knew it was tens of thousands to over £1 million. To find it is quite such a large uplift even surprised me, but that was a government statistic, so it must be correct.

Q89 **Matt Western:** It kind of gives some context to this whole debate really, does it not? One of the issues—and, Mr Tett, you touched on it a little bit earlier—is this whole question about viability and the frustrations expressed by local authorities in terms of delivering against the need, whether it be affordable housing infrastructure or whatever it may be, and how developers are using that as an excuse to get out of certain obligations. In your views, will the suggested approach being aired in the Government's consultation actually address these issues effectively?

Cllr Tett: What is required is a very clear, easily understood and very visible methodology for calculating viability. At the moment, it is very much down to individual developers, individual sites and so on. Talking about local developments I am aware of, you have developers coming in quite often armed with armies of property experts, accountants and so on. Quite often on the other side you will have a local council struggling to man its planning department with the resources it has now got, trying to engage in that sort of debate. It really is an uneven debate at the moment in many councils.

What we need to see in some of these proposals is something that really captures that land value but is actually very transparent in terms of the public. I am not totally convinced at the moment that would be the case. There are still a number of exemptions being proposed. We need to make sure those are covered off as well.

¹ The witness subsequently corrected this figure to hectares.



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John Wacher: From the Mayor of London's perspective, there are a number of aspects of the draft NPPF and PPG that are positive and reflect on some of the practice that we have seen over recent years. In particular, there is the intention to reduce the level of viability testing at application stage, to introduce greater transparency—something that the mayor has been seeking to do within London—and to ensure that policy requirements and abnormal development costs are reflected in land value. That is particularly relevant for our debate today, because benchmark land value is one of the most contested aspects of the viability process. Related to that, the emphasis on starting at existing use value, which is in the draft PPG, is a positive step forward as far as we see it.

Some of the areas that we think could do with some further attention relate to the renewed focus on plan viability testing. From the GLA's perspective, the plan viability testing process largely works relatively well. It is about ensuring delivery of the plan as a whole. It is the focus on viability at application stage where we have seen some of the difficulties arise after plans have been adopted. Our view is that is where the focus should continue to be.

In relation to that, some of our concerns relate to the method for determining the premium over and above the existing use value. The draft guidance refers to this being based on land transactions. In a sense, that is bringing back into play a market value approach, which has introduced some circularity within the process. Essentially, that means that plan requirements are not priced in when land is purchased. When those land prices are used to inform land value in a viability assessment, it makes it almost inevitable that the policy requirements come out as being unviable. That is why I referred to returning to a plan-led system rather than a viability-led system, which is arguably what we have had in recent times.

The other two issues relate to profit. It is unprecedented for national guidance to set out a particular figure for developers' profit. It has always been accepted practice that profit should be a factor of risk and should be determined on a case-by-case basis. Finally, proposals that review mechanisms that enable authorities to revisit viability, where it has been argued that the plan requirements cannot be provided at planning application stage should go down as well as upwards, are cause for concern for the mayor. We think they will work to undermine confidence in the planning process and actually discourage authorities from granting consent where schemes genuinely are not able to meet the level of policy requirements up front.

Daryl Phillips: It will improve the situation, without doubt. It provides more clarity as it goes through. The difficulty on all measures on viability to start with is what your benchmark is. If you start from existing land use value, there is no reason why someone should not make a profit, someone along the line. I do not think you want to stop a developer



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making a profit, because they are ones who are providing the houses and taking the risk. There is no reason why a landowner releasing land should not make profit as it goes.

The key part you start with is what the value is when you get down to viability arguments. If you start at market value, it is a competitive market and the market value is always behind. That is where it distorts the price. The price paid for land should always reflect what the policy position would be in what you would get planning permission for. That is where the use value is of more value to viability assessments. I would not want to put anything in there that stopped someone selling land for a profit or someone building on land for a profit.

Profit needs to be negotiated through. There is nothing at all wrong with making a good profit. If it is expense of the benefit from a development, in terms of the infrastructure, affordable housing, et cetera, that is something we should be looking more closely at. Once you get past that then you can be looking more positively at the development.

Q90 Matt Western: It is interesting, is it not? From what you are saying, clearly there is the land, but it is the added value that is the remit of the authority. They are the ones who add the value and then the developer comes along. At the moment it seems to be very skewed towards the developer, and the planning authority gets very little share out of them adding value, do you not think?

Daryl Phillips: I would not say planning authorities. I would say the community gets very little share out of it.

Matt Western: Yes, represented by the planners.

Daryl Phillips: There are two bits. There is existing land. You never start from agricultural value anyhow. Most land that is allocated for development or looking to be allocated for development is under option, in the south-east in particular, which creates a value already. That is almost like a contract that has already skewed the financials by having options, which we will not know about. Of course, once you then allocate it through the local planning system, by that point the value is significantly increased. There is nothing in between to pick up added value. All you can look at is viability but not the added value.

Cllr Tett: Can I just add one bit to that? It is an interesting question, because the LGA has looked at other countries. You may be familiar with Germany. If you look at Germany, for example, the situation there is, when the local council zones an area for development, the value of that land is frozen at the agricultural rate. All the uplift that is generated by the public policy decision is captured for all infrastructure in that locality. It is a different system. It may be one that is not politically acceptable in this country, but it is certainly one that all parties in Germany subscribe to.



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Q91 Matt Western: It is what I was kind of referring to and it does seem to work there very well, in terms of giving better integrated planning. In terms of the delivery of affordable housing, do you know what we are running at? Is that a figure you may have, across the UK, from the LGA?

Cllr Tett: I should know, and I have to be honest with you: I cannot call it to hand immediately. We can provide that number straight afterwards. It is easy to find.

Q92 Helen Hayes: The GLA's written evidence highlighted the mayoral community infrastructure levy, which was introduced in 2012 to raise funds for Crossrail. How applicable might this model be to other projects and to other areas outside of London, particularly as a means of funding infrastructure?

John Wacher: The mayoral community infrastructure levy was one of the first community infrastructure levies to be brought into effect. We found that has been an effective source of funding for Crossrail. The mayoral CIL rates are being updated through a revised charging schedule, which is due to be considered at examination in public later this year. The intention is to use that to fund Crossrail 2. The mayor is required to use his CIL to fund strategic transport, and he has decided to focus on Crossrail in particular, although could fund other strategic transport projects through mayoral CIL 2, as we are calling it.

We found that there are benefits to identifying single large items of infrastructure that are highly visible. It is clear what the money is going to be spent on. It has helped to increase the acceptability, which is something that the CIL review found when considering the impact of mayoral CIL in London. We are aware that the Government proposals include rolling this out in other parts of the country. We cannot see a reason why this should not be carried out, but I will leave it to colleagues to comment further on its applicability elsewhere.

Cllr Tett: I have a comment from outside London. The LGA supports the principle of some form of strategic infrastructure levy. I guess there is the obvious case that outside London it has applicability, for example, potentially on the Oxford to Cambridge corridor, which is talked about a lot now. There you need some specific infrastructure that may cross boundaries between local authorities.

I guess the question that has to be assessed is whether that strategic infrastructure levy and the project you are talking about is growing the total size of the cake that is available to the public purse for infrastructure, or whether in fact this simply becomes a zero-sum game, where the cake stays the same size and all you are doing is moving money from one part of the public sector to another. Somebody—it may be a combined authority mayor in one case; it may be the leader of a council in another—has more money, but a district council or somebody else has less money as a result of that. That is the debate that would have to be had.



Q93 **Helen Hayes:** That also relates to the earlier comments about viability, I suppose.

Cllr Tett: Yes, absolutely. It goes back to the whole issue of viability.

Daryl Phillips: You could extend the model. It would need to be modified to reflect where you are. Things like Crossrail are quite interesting, because, in my case, it extends outside London and ends up in Reading. What is not captured is the public investment in Crossrail is increasing property prices around Reading, and yet there is no mechanism to capture any of that. Public investment is having a benefit and we need a way of picking some of that up as well, because that is a benefit from the public.

Q94 **Helen Hayes:** Arguably, also a disbenefit, in relation to people who might be priced out of the housing market in Reading as a consequence of that.

Daryl Phillips: It is not necessarily just housing. Do not forget commercial values go up as well, so there is prosperity coming back into value from that point of view. Yes, when house prices and land values rise there is always a disbenefit that is attached to that in terms of pricing ability and affordability. I understand that.

Q95 **Helen Hayes:** The GLA estimates that mayoral CIL represents approximately 1% of gross development value. Is the rate for land value capture simply set far too low?

John Wacher: The rates for mayoral CIL have been set with a view to meeting the viability tests within the national planning policy framework, but also having regard to the other requirements within the development plan, within the London plan, particularly affordable housing. The rates at which they have been set reflect that balance of priorities and, as we discussed earlier, that the impact on affordable housing is probably much more significant, in terms of impacting on land values. The rates are relatively modest. We have found that over the course of the last few years there is no evidence to suggest those have impacted on viability. There is enough room left for affordable housing to be negotiated through section 106. We are also mindful of the need for other forms of infrastructure through borough CILs and local mitigation through section 106 as well.

Daryl Phillips: One of the challenges of CIL is to try to find the optimum rate where most development will pay. It is always going to be on a conservative basis to try to pick up the maximum amount. Once you have fixed it, you are then stuck with it for a period of time because it is not so easy to change. It does not reflect land price changes going up or down during that period of time. CIL is quite a good tool in terms of a blunt tool. It gets returns, but the challenge is getting it at the right level. One day it may be at the right level, but the next day it may not be. It is that fine balance between what is viable and what is not to get the maximum out of CIL.



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Cllr Tett: I just refer you to my answer to your last question. It is a question of whether you can actually see that the CIL increases the overall size of the public cake that is available, or whether in fact all you are doing is redistributing it between different authorities. It will vary in different cases. Crossrail 2 may well be a good example of where the property uplift along the line actually means that there is more value generally available. Other cases may not.

Q96 **Mr Prisk:** Can I turn to the question of compulsory purchase orders? This is interwoven with much of this subject. Mr Phillips, the network that you represent has described compulsory purchase orders as being a very powerful tool. I think many people would share that view. Some of the evidence we have seen suggests that it is not used by as many authorities as it might be. To your knowledge, how many authorities use CPO powers? What is holding the others back?

Daryl Phillips: CPO is a powerful tool, because, effectively, you are taking someone's land, although there are processes to follow. The problem about the process is it is an administrative nightmare to actually do it and the risk with it is substantial. As a very tiny example, in my district we have been trying to CPO a derelict public house for four years and we are still waiting for the Secretary of State's decision. There are issues of why that is, but it is about bringing landowners, et cetera, together and agreeing values.

CPO is good when you want to bring land together to create a development site. That is not necessarily about capturing land value. That is making a deliverable site where you can build it out. There is a slightly different emphasis on why you would be doing CPO powers. CPO does not capture land value at all, because it ends up at the value you have to pay for if planning permission had been granted. Once you are on that basis, CPO is not looking at land value. It is purely paying the market value for the land.

You would have to change the CPO regs to look at a different basis for what the value of land would be to make it attractive to local authorities. They will use it on major schemes to bring a site together. That is without doubt. Sometimes you have to use it. It is seen by most authorities as a last resort, unless you have a lot of money that you can spend now. It does not capture land value in its own right. It just brings the site together, and you have to share that value with those you have taken the land from. It is meant to leave the landowner no disbenefit from being there in the first instance. I would argue it is a tool more about making sites available rather than actually taking the value of the land away, because you have to account for that. You should not be making a profit out of it.

Q97 **Mr Prisk:** . I will come on to something else in a second. Just briefly on that point, do you feel that the use of CPO powers simply for trying to compel a landowner to do something for the community, the pub acquisition, should be distinguished from perhaps maybe the original



concept for CPOs, which was really about land assembly and regeneration and so on? Those two elements should be more clearly distinguished in the law and perhaps the administration around them made different.

Daryl Phillips: That would be the correct way of doing it. We have to incentivise ourselves to use it and see the added value that it would be.

Cllr Tett: Just to support Mr Phillips for a second, whenever I have talked about CPOs locally my officers do a sharp intake of breath. They are regarded as being costly, time-consuming and nearly always controversial. There are very few winners when you get into a CPO debate. Quite frankly, often the time taken means you are way past the desired timescale you want. Sometimes you can use the threat of a CPO to initiate or stimulate, act as a catalyst in a discussion with a landowner but very rarely do we certainly see them through, because of the complexity of them.

The key thing is you have to go back to the whole issue of land value capture, which is the premise of this Select Committee. It does not really help there. The whole issue of the Land Compensation Act of 1961 is that hope value is effectively built into the CPO price that you will be paying, so you are not really getting round the issue of how you capture the money for the public good. As Mr Phillips has said, you are maybe facilitating the construction of a site or the compilation of a site. It does not get round the issue of how you get sufficient money into the development to help with the overall provision of infrastructure.

Q98 **Mr Prisk:** On that, if I may, Councillor Tett, the LGA pointed out to us in written evidence that you would like to see CPO powers changed so that councils could capture a greater proportion of the uplift of land value. I think Mr Phillips referred to that point as well. How do we do that? How do we distinguish carefully between the EUV—existing use value—and hope value to allow you to achieve that?

Cllr Tett: I think the mechanism by which it would be done—and it is a relatively simple thing—is you would need to amend the Land Compensation Act. If you could do that, that would make a significant change. I understand there are complexities in doing that because it affects all land.

The other thing we would like to see, in terms of speeding up the process, is maybe a default by which the local planning authority or a parallel authority, maybe in the case of the district or the county or whatever, has the ability to actually confirm that CPO, subject to the potential for the Secretary of State to call in that decision if they thought that was inappropriate. There has to be some mechanism for speeding up this process because at the moment it is a blunt tool.

Q99 **Mr Prisk:** Do you feel it is the calling-in process or just the processes before you get to that stage that is the principal administrative barrier?



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Cllr Tett: In terms of the speed, it is long and complex. The case that was just mentioned, in terms of these things dragging on for years, is not atypical. If we could inject a process whereby the local authority or a reputable independent local body could actually make that decision quickly and simply, with, as I said, safeguards in terms of the Secretary of State being able to intervene if they felt that was inappropriate, that would certainly speed the process up. In terms of capturing value, which is a separate point, you would have to look at how you amend the Land Compensation Act in terms of removing the hope value that you would get built into a CPO. Otherwise, you are not gaining any of the extra value.

Mr Prisk: We have the pleasure of a number of distinguished lawyers coming to see us in due course.

Cllr Tett: I am sure colleagues from the development community will tell you all the reasons why this is completely unfair and unjust.

Q100 **Mr Prisk:** Indeed. Can I ask a more practical question? If you had the more streamlined process, as a local authority how would you fund the acquisition of that land?

Cllr Tett: Quite frankly, I do not think the acquisition of the land is such a big issue. If you got the potential to assemble land and then it is developable, the forward funding of that could be done either from council reserves or, if necessary, from borrowing. It is not so much that. It is the question really of assembling the land and the time taken for it that is the big constraint at the moment. Again, you may have a view on it.

Daryl Phillips: I would favour the joint venture approach, where local authorities work in partnerships with a developer and a promoter. Through using the powers and using their finances, you can bring together a project. It is not just about the local authority having to acquire the land for its own purposes. It ought to be about what the wider good will be of the joint venture approach as well, where both parties take the risk. Sometimes, the developers need that risk being shared across the board. Joint ventures are a good idea anyhow for development, but they would certainly help with compulsory purchase if you had a partner with you and you were not just left exposed on your own.

Cllr Tett: Joint ventures are becoming somewhat controversial in some parts of the country.

Q101 **Mr Prisk:** Just so I am clear, you are suggesting that you would compulsorily purchase the land and then enter into a joint venture with the party you have just bought the land from.

Daryl Phillips: In process terms, I would actually work with the joint venture earlier.



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Q102 **Mr Prisk:** You would see it as an alternative to CPO.

Daryl Phillips: Yes.

Q103 **Mr Prisk:** In this context, would you see CPO as the large stick that you would have behind your back, as it were?

Daryl Phillips: Yes, and be open about it. As Councillor Tett pointed out, sometimes the threat of a CPO brings someone to the table to discuss it. The classic example I have is our neighbouring authority of Basingstoke when it did its regeneration of its town centre. It served the CPO first and then did the joint venture. By having the CPO out there it got everybody round the table, because it was clear what they were going to do.

Q104 **Mr Prisk:** At the moment, it is a powerful tool. You were suggesting it is such a pain in the neck that you do not want to do it.

Cllr Tett: The threat.

Daryl Phillips: The threat.

Cllr Tett: If I could just use a similar example in my own area, in Buckinghamshire, we had a landowner who would not come to the negotiating table. They held a strip of land that was needed for a road that unlocked a large housing site. The threat of a CPO persuaded them to come forward. The price they got for it was still very high, but it facilitated the whole process and brought forward the development at speed. Otherwise, either they would have held out for a long period of time, or we could have dragged out a CPO over many years. As it was, the threat of it facilitated the whole discussion.

Q105 **Mr Prisk:** As it stands, it actually works reasonably quickly. Is that just contradicting what you said at the start?

Cllr Tett: No, let me be clear. There are two different things here. We are talking about whether the CPO is effective at bringing forward land that might otherwise remain unavailable. It can do that. The threat of it can do that. I am not sure in practice it does very well. In terms of unlocking land value capture, it does not do that. You still have to build into the compensation that you pay the hope value on that land that might be realised, and the reason you are CPO-ing it is in most cases because it is going to unlock a development site. That will be part of the price you pay.

Q106 **Mr Prisk:** I was just obviously focusing on the national picture, but is there a London view?

John Wachter: Yes. Just to add to those two different components of acquiring the land and then the land value uplift, we see some of the changes brought forward in the Neighbourhood Planning Act 2017 as being positive. That is particularly in relation to the no scheme world, which gives greater scope to capture more of the uplift in land value



associated with public sector intervention. The mayor intends to apply these provisions in London. It is probably too early to see the effect of those at the moment. However, those changes are relatively modest and the mayor is supportive of more fundamental reform to CPO to enable more of the uplift in land value to be captured as a result of investment in transport infrastructure and to enable affordable housing delivery.

A new report has recently been published about land assembly and recommends some further amendments to the CPO process to make it quicker and easier to implement. That includes specific proposals within London, which we think are important to deliver the scale of housing that we need to see coming forward. There are various issues.

It is obviously a difficult technical area, but we think that further guidance would be useful in terms of the interplay between the public sector equality duty and the compensation code and reforms to the approach to compulsory purchase as a last resort than actually its use particularly when allocating sites for land acquisition. The availability of that as a procedure should be more readily at the disposal of local authorities to bring landowners together to voluntarily bring forward land for development without necessarily needing to be able to use it, although it needs to be a more effective process if it is used.

Q107 Mr Prisk: Would the mayor like significantly greater CPO powers?

John Wacher: Yes. Given the scale of housing needed in London, there are various measures proposed in there where the mayor could play a greater role. There is also a need for resourcing within the courts as well to enable them to go through that process, and possibly a scaling down of the process of dealing with compensation as well for the less complex cases.

Daryl Phillips: The other part is the cultural issue. Compulsory purchase is seen as taking someone's land. From a political point of view—and I mean small political, in terms of district council and councillors—they do not like the feeling of that. You have to bear that in mind because they see it as a challenge. They will see the opposition to it and they will take the consequences of that. We are having a theoretical discussion about major infrastructure development, where CPO is highly appropriate if you need to bring it together. If you start going down into small-scale stuff, there is a political dimension to that, which we all need to account for.

Q108 Chair: Just joining the two ideas up together, if you had a change to 1961 Act on the valuation basis to take the hope value out, presumably the stick that you might then have with the threat of a CPO might enable you to get better terms from a joint venture scheme, if that was the alternative. The two could work together.

Clir Tett: Yes, you can bring the two together. They are separate but they are related, insofar as one would help you capture more of the



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value, and the threat of the other would enable you to bring forward sites more easily. By the way, I completely agree with Mr Phillips that, depending upon the specifics of the site, as I said earlier, these are controversial. You will have lots of headlines about how granny's farm is being stolen from her by the council, who want to put large housing estates all over it, and "she loved this land" and all the rest of it. These are really difficult decisions, so therefore the threat of a CPO is probably the most important thing.

Speeding up the process so it becomes a real threat that can be delivered, as opposed to somebody realising that actually, from the council's point of view, it is just going to take too long and be too costly, et cetera, to implement, would be important. Were the Select Committee minded, we think some proposals that sped up that process for CPOs and some reform of the Land Compensation Act would be beneficial.

Q109 Bob Blackman: Moving on, I think you have all raised the issue that the existing schemes or existing ways of raising money do not raise enough money for the infrastructure changes that need to be taking place. Given that just some reform may not actually deliver what you would like to see, what methods would you like to see in terms of capturing the value of land? If you could itemise those, that would be very helpful to the Committee. This is your opportunity for some blue-sky thinking.

Cllr Tett: This is really difficult, if I am honest with you. If it was easy everyone would have done it years ago. You get into the whole issue of the political acceptability of change. I know at the moment there are probably issues with putting legislation through Parliament anyway. All these things will be factors. You could go and blue-sky, and Mr Western and I exchanged discussion about Germany earlier.

You could move to what is actually a completely acceptable system across parties in Germany, of saying, "Quite frankly, the value of your land as an agricultural estate is what it is. When the public decision makes it worth something multiple times, the value of that is actually taken by the public, not by the private individual". That is a really big step from where we are today, a massive step from where we are today, but it is one option.

You could find maybe a halfway house that splits that in a more mechanistic fashion, or you could look to reform the existing system. That is predominantly what we have already discussed, so changes to CPO, changes to CIL, removing some of the exemptions on CIL, removing some of the exemptions on 106 as well, like the pooling restrictions that are currently in place. That would improve the current system. There is also more visibility of the viability assessments and the exact mechanisms by which they have been calculated, and, if I can go back to my earlier point, a more level playing field between local authorities and developers. Because local authorities are so cash-strapped, our planning departments are anaemic by comparison with the very well staffed



departments that developers can put forward, and I do not mean that in a totally disrespectful way.

Daryl Phillips: There are a number of comments. We can always go back and look at the legislation that went behind new towns, which also looked at land value capture. It allowed some profit to be made when land was being taken, but also reinvested the land value capture back into the settlements that it was trying to build. The key part is what you are going to do with the money that you gain. I do not think it should be just a revenue-generating resource. It should go back into infrastructure and making the community that you are trying to build, which is more than just infrastructure.

Some of the new settlements that are coming forward now are using new town corporation stuff, but it needs to go further down, because it stops at a certain level. My authority is looking at a 3,500 new settlement, but it will not have the development corporation back-up when it goes into trying to achieve the land acquisition and value capture, which it is keen to try to do.

The other part is to go back to look at the way infrastructure that has been funded brings property value increases down the line. It is done in the States. Singapore is the classic example where they went in and they put the infrastructure in, and then immediately taxed down the line as the value was coming up. Then they could assess what the land value capture was, back to our point about Reading, et cetera. There is something in that that allows that.

The key part is that the money has to be reinvested in a very open and transparent way. It must not be revenue-generating for the sake of revenue. It has to go back into the infrastructure and the community. If we lose sight of that and just take it as a taxing regime, that would be a mistake when it goes through.

Cllr Tett: It would just discredit it.

Daryl Phillips: Those are my two proposals.

John Wacher: In addition to the points raised before about stronger powers for compulsory purchase and public acquisition of land, the mayor has been arguing for more devolution of property taxes in recent years and has agreed a pilot to secure a greater amount of business rate retention. We think that is a positive step forward. However, further devolution could be achieved through enabling the Mayor of London to retain a greater proportion of stamp duty so that the mayor is less dependent on funding from Whitehall to secure the infrastructure and housing that we need in London.

A range of other proposals have also been set out in the written evidence produced by Transport for London and the GLA and in a range of reports undertaken over the last couple of years. Some of those relate to more



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transport-related projects. I think my colleague from Transport for London referred to some work carried out on DRAM, which is the auction model for securing sites. However, we found that different types of land value capture are more appropriate in different areas or for different purposes. That particular model probably will not be that useful in London.

However, the mayor has committed to continue to work with the Government to look at further sources of land value capture to supplement section 106 and CIL. In the short term, more effective use of section 106 in particular is something that could be done within the current legal framework. We have a prime opportunity, through the draft NPPF and draft planning practice guidance at the moment.

Q110 Bob Blackman: In your written evidence, the GLA referred to cultural issues about changes to the capture of land value. Could you just explain further what those issues are and how you would seek to overcome them?

John Wacher: Yes. First, as I was referring to, the property tax system that we have does not naturally capture land value uplift in a particularly targeted way. A lot of the taxes that we have are dealt with nationally, rather than at a local level, so do not necessarily provide that incentive at a local level to secure additional development. The direct impacts and benefits of that development are not felt at a local level, which can impact on local support for development.

Furthermore, around the issue of compulsory purchase we have already touched on some of the issues around property rights and the challenges to amending the legislation over recent years. As I mentioned, some of the recent changes are positive, but are relatively modest in their scale. There is potential to go further to make that a more effective solution.

Finally, land value changes are local and can vary in scale and type. Property markets vary within London from street to street, let alone from London to the rest of the country. It is very difficult to determine a single form of land value capture that is appropriate that will secure sufficient funding. It is a difficult thing to do but can supplement other processes.

Q111 Bob Blackman: I was going to come to all three of you on this. As I think, Councillor Tett, you referred to at the beginning, to the Chair's opening, one of the issues is about the difference in value of agricultural land to housing land, for example. There will be all sorts of designated land for industrial, light industrial, warehousing or retail use, all of which will have a value. If planning permission is granted that changes the designation of that land, the value of that land changes at the same time. What view do each of you have about what should be done about that? That is a decision taken by a planning authority, which will then change the value of that land. It can change in the area plan for the local authority, which suddenly creates a big increase in the value of that land for the owner of the land, probably through no action of theirs. Should



anything be done, and should the Committee look at what should be done about capturing that value and then using the value to invest in any infrastructure changes that may be necessary?

John Wacher: From my perspective, dealing with this within the context of the planning system, the most effective thing that could be done is to ensure that policy requirements that have been adopted in a development plan are as clear and certain as possible, so that those can be factored in when purchasing land. Essentially, there is an uplift in land value when you change use from industrial to residential, and we are looking at the uplift in value being tempered, in effect, by the requirements of the plan, because you only secure the uplift in land value if you secure your planning consent.

In other words, it is planning that determines land value, rather than what we have had through a viability led system, where land value has been determining the planning outputs. That is something that could be quite easily dealt with through the national planning policy framework, through planning practice guidance. Our note of caution around that is the reference to land transactions, which really brings the market transaction through the back door. Providing that certainty, through national guidance, through industry guidance, through local authorities, and having that as the framework through which the planning system operates, means that we are delivering the places that we want to be delivering and that we are delivering the requirements of the plan that local communities expect to be delivered after they have been through an examination process.

Q112 **Bob Blackman:** What happens if there is a recession and the land values change downwards?

John Wacher: There are already sufficient safeguards within the planning system to accommodate that. The fact that we do allow for viability testing on a site-specific basis means that schemes that are in genuine difficulty can still get through. No one wants to make a development unviable or stop it coming forward, but it is about the balance in terms of the emphasis of that. It is rebalancing the current system so that the objectives and needs of the three key players, the landowner, the developer and the community, are more even. That is the opportunity that we have now within the planning system but actually within these wider forms of land value capture through CPO.

At the moment, arguably that balance is meaning that communities are missing out. We are missing out on the opportunity to secure housing that people can afford and the infrastructure to support wider development.

Cllr Tett: Just to come in on that discussion, there are a number of scenarios in terms of Mr Blackman's question. I would just like to come in on that discussion. For example, if the land was purchased during a downturn in the market then that surely should be taken into account in



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terms of the price that then is paid to the landowner. You have that flexibility within a free market economy to effectively reflect that downwards. If you had bought the land at a time when the market was quite buoyant and you had come to an agreement maybe with the local authority then the market dips down, one of the things you have to recognise is that most large housing developments do not sell all their houses on day 1.

What happens is these houses are built progressively over a long period of time. There is the ability within a normal building cycle, which can last five or 10 years on some major estates, to take into account the ups and downs of the market. We had an example in the Aylesbury area where there was a downturn on a major estate. As a council, we forward-funded some of that infrastructure. Tied into that was an agreement with the developer that when the market picked up we would get that money reimbursed by the upturn in the market, so these things can be managed through.

Daryl Phillips: Land value is determined by supply and demand, is it not, up to a point? We live in a world where it is a competitive world in terms of marketplace. There is nothing wrong with a developer or a landowner making a profit. Otherwise, you would not have them supplying the land and making it available. We need to recognise that. "Profit" is not a dirty word. It is the level of profit that is the issue.

You are right that land values do change over a period of time. Going back to the basic principle, it is that we need to make sure that, as you rightly pointed out, the policy requirements are met. That is the basics of that, because you are asking for that. If you are talking about added value that you want to take from it, you have to be clear about what you are taking it for and why. It is not just a matter of saying, "I want to tap into it". You need to know what you are going to use it for. That is not beyond the wish of anyone to do that. We could do that in a proper way, as long as it is done openly and transparently and accountable for it all.

There is an advantage in working with people to look at the value of land coming out. It is when you look at the rights and wrongs of the scheme where land values will change given circumstances. Build-out rates may change because of recessions, et cetera, or there may well be value in the land that reflects unforeseen circumstances in terms of land conditions, et cetera, which is not a surprise. It does happen and that ought to be reflected in it.

I have a classic example of a developer on a large site, 1,500 homes, where the developer says it cannot provide the 40% affordable homes that is our policy requirement. That is a fair comment. They cannot do it. We have gone through the viability issues. It is nothing to do with the land value itself. They would be building negatively if they had to build the 40%. The land value issue and the viability is an agreed position. However, the build-out rate is 15 years, so we have review mechanisms



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in the section 106. Based upon sales, because you are only modelling what you think will happen, that allows for the review to come back in to say that, if they are succeeding in certain sales, there are incentives to share the value that they gain, and then we can plough it back into the system. It has been lightened to allow them to go out there but not get off the hook.

If you do it today, in 10 years' time the situation may be quite different. Also, it takes into account if value goes even more down that they can then also come back to talk about the section 106. It is a two-way process. We cannot always take the benefit without accepting that the value will go down. That requires skilled negotiation. It is not rocket science.

- Q113 **Chair:** I have one point. Mr Phillips, you said that you had to be clear what you were going to use any money that you got out of this process for. Why? Surely if the issue is by indicating that land that is farmland can now be used for housing, that is a public decision, a decision of a public authority. Why should the public authority have to say, "We are entitled to that value of land, not for anything to do with the infrastructure at that particular site but because it is right that we get the benefit as a public organisation, on behalf of the public in general"?

Daryl Phillips: I accept that argument. It is quite a strong argument, but I still think you ought to be accountable for why you are taking this extra value and how you calculate it.

- Q114 **Chair:** Calculating it is one thing. Deciding what to do with it is another, is it not?

Daryl Phillips: You are correct. It is the public benefits to granting the planning permission or the allocation in the local plan, but you are still taking someone's land value, at the end of the day. It is their land—

- Q115 **Chair:** It is arguable. You are taking the land value, but you have actually given them the extra value in the first place, have you not?

Daryl Phillips: Yes, and as long as it is a fair and equitable land value, take out of it. I still think that, from a public point of view, unless you want to just treat it as general taxation, you need to be clear where that money is going to go. For the public who see you take it, there is a danger we move into this dangerous world of, "We are taking money because the value is so great that is almost like a bribe", if I put it very politely in inverted commas. It is not, but the danger is you are granting permission for the value of the land, rather than what it is actually going to deliver. If you are going to take money and use it, you should be very clear what you are doing with it.

Cllr Tett: Could I just put the other side of that for a second, if I may, very quickly? As a local councillor, I very rarely come across cases where there is so much money we do not know what to do with it. If I did, I would probably note it in my diary. I always have the exact opposite.



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For us, there are live cases where we just cannot find the money now to build the schools.

Q116 **Chair:** If you changed the 1961 Act you might end up in a position where there was more money.

Cllr Tett: There is just a real problem with the money and the viability to build the required secondary schools in an area, or the affordable housing. There are so many cases where viability is challenged after the planning permission is given and the developer comes back and says, "You know I agreed to that affordable housing? Sorry, I cannot do it now". I rarely come across the case that Mr Phillips mentions.

Q117 **Kevin Hollinrake:** Mr Phillips, you mentioned before a developer that was being asked to deliver 40% affordable housing and it could not afford to do it on a site, but that had nothing to do with the land value. Did they pay nothing for the site?

Daryl Phillips: Sorry, he did pay for the value of the site. He had already had a planning permission for a large warehouse development, which gave it an existing use value. The value uplift between the warehouse permission and the residential scheme was marginal. Therefore, if you added the 40% affordable homes on to it he would not achieve the value to secure the site from the developer who owned it for warehousing purposes. Therefore, we had to compromise on value.

Q118 **Kevin Hollinrake:** Why did he not just build the warehouse then, if he could do just as well by doing that, rather than have to go through the process of negotiating with you?

Daryl Phillips: The need for housing was far greater, so we pushed for having a housing scheme come back in.

Q119 **Kevin Hollinrake:** He wanted to build a warehouse and you did not want him to, basically.

Daryl Phillips: I think he realised he could get more value out of a housing scheme. That is why we have the review mechanism to make sure.

Q120 **Kevin Hollinrake:** Is that not the point? The delivery of the 40% affordable housing would certainly decrease the value of the site, but it would not decrease it down to nothing. Is not the principal problem around this that developers are paying too much for the sites and therefore they cannot deliver the 40% affordable housing?

Daryl Phillips: There is something in what you say, but we had a landowner who was prepared to sit on the land for investment purposes, because they had already borrowed against the warehousing scheme and would not have been prepared to sell.

Q121 **Kevin Hollinrake:** Is that not where a CPO might come in, realistically? You are still allowing some hope value. The conversation seems to be



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talking about hope value or no hope value. Surely a fair hope value would be what we are seeking to establish, which would include the 40% affordable housing. Then you are capturing some of the value for the land, as you admitted earlier, through the section 106.

Daryl Phillips: The CPO would not have helped us, because we would have to procure it at existing use value, which would have been the value of the planning permission that was granted for the warehousing scheme.

Q122 **Kevin Hollinrake:** You said it would be more or less the same whether it was warehouse or housing.

Daryl Phillips: If you put 40% affordable homes on the site, it would have been less.

Chair: Thank you all very much for coming this afternoon and giving evidence to us.

Examination of witnesses

Witnesses: Christopher Price, Philip Barnes, Paul Brocklehurst.

Q123 **Chair:** Welcome and thank you very much for coming this afternoon to give evidence to the Committee. Could I just ask you to say who you are and the organisation you are representing today?

Philip Barnes: I am Philip Barnes. I am the group land and planning director at Barratt Developments.

Paul Brocklehurst: I am Paul Brocklehurst, the chair of the Land Promoters and Developers Federation as well as chief executive of Catesby Estates plc.

Christopher Price: I am Christopher Price; I am director of policy at the CLA, the Country Landowners' Association, as was.

Q124 **Liz Twist:** As highlighted in Barratt Developments' written evidence, the current system of CIL and section 106 faces accusations that the unearned value uplift to landowners is too great and comes at the expense of affordable housing and other planning gains. Is that a fair accusation? Perhaps you would like to start, Mr Barnes.

Philip Barnes: We have heard that the level of infrastructure the country needs is such that the funding that is being produced from section 106 and CIL is arguably not enough to fund all of that new infrastructure. From Barratt's perspective, in terms of new housing, the University of Liverpool study calculated that it generated £6 billion of investment, of which £4 billion was on affordable housing. It was around about £33,000 per house. There is no doubt there is a lot of value being captured for the community good.



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The issue with CIL is that there are issues, in that only 43% of authorities have CIL. That creates inconsistency and confusion if you are a national housebuilder. It is also a very complicated process by which to arrive at a CIL, involving a public examination that can be quite off-putting to many players. There are uncertainties about where the CIL levies are actually being spent.

Paul Brocklehurst: It is unfair that section 106 and CIL are not delivering both infrastructure and affordable housing. I can give a couple of recent examples. First, there is a site in the south Midlands, which is a reasonable high-value area. If you took a site that had a consent for the total number of units and then worked out what it delivered in terms of affordable housing, which was 33%, the section 106 payments and section 278 for offsite road works, effectively the value captured in that mechanism was 47% of the gross land value.

What that does not take into account is that the landowner would then end up paying tax on their gain on the property as well. Over 50% is going into the public purse or is for the benefit of the community. Another example that was rather spooky when we worked it out this morning was, again, in Oxfordshire, where the percentage was exactly the same. It had 40% affordable housing, which is policy-compliant affordable housing. Again, a high level of the value was being captured.

I accept that the word "fair" is subjective, but it is a high figure that is being captured. I am not saying that using section 106 and CIL is a perfect mechanism. I would broadly agree with the GLA representative, in that we have a plan-led system and there are ways to make the section 106 and CIL more effective than they currently are. Some of that may well be down to council resourcing at the time of putting in place their local plans. I suspect the Chair may take the same view that he does not want to discuss viability straightaway, but the issue is that viability is different between urban schemes and greenfield schemes. It is different for parts of the country perhaps in certain areas of the north of England, where house prices and land values are a lot lower. There is more of an issue in terms of being able to deliver the full community benefits.

Christopher Price: "Too great" is the phrase you used. That is rather a value phrase; it is not a technical phrase. You have to be careful about putting loaded judgments on to this.

If I could just refer back to what was said in the previous session, Mr Weston asked about the scale of the uplift and some government figures were quoted back. Those figures included the cost of the section 106 and CIL. They were therefore inflated to allow for those. That was not the amount of money the landowner got and nor is it the amount of money the landowner would have expected to get on the open market. That is clear from the notes to the document that was being discussed.



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Going back to your specific question, is it too great? The way in which developers go about budgeting for their development is through what is called residual value. They will do that by looking at the money they could expect to get from the development and from that they will deduct various costs, including the CIL and the section 106. What is left leaves the residual value. That is there to go and make up the developer's profits plus what the landowner gets. The CIL in that is a fixed amount; the section 106 will depend on various factors. In part it will depend on the need for infrastructure to support the development, and no-one disputes that that should be paid for. The rest largely comes down a bargaining between the planning authority and the developer. It is not quite who blinks first, but there is an awful lot of variation in that.

The amount that is left to the landowner in the end has to be sufficient for it to be worth the landowner's while to engage in that. There is a whole range of factors that will influence whether or not he or she wants to go down that route. In part, it will be the fact that when you sell land you lose it forever. Most landowners work on a multigenerational sense. Are you happy to be without that income in perpetuity? Does capitalising the value compensate for that? It is not, I would suggest, whether it is too great; it is whether it provides a sufficient incentive for the landowner to want to participate in what the developer is proposing.

Q125 Liz Twist: It seems we have two quite different views here: there is a view from developers like Barratt, who say, "Yes, perhaps it is too great", yet from your perspective as representatives of landowners you are saying, "No, it is a reasonable amount".

Christopher Price: The point I am trying to make is that there are so many variables that it is difficult to say overall whether it is right. From the landowner's perspective, those are the factors that he or she will be taking into account when deciding whether they want to go ahead.

Paul Brocklehurst: All I was going to say is that what I highlighted in two instances is an effective tax rate of 47% on the land and then, in addition, potentially the landowner paying capital gains tax on the receipt. The tax rate is over 50%. At the moment, that is the highest tax rate there is in the country at this point in time in terms of income or capital gains.

It is certainly one argument to say that it is reasonable. I did not make the judgment as to what was reasonable or unreasonable. In one sense, it is a public policy decision as to what is reasonable, but we operate as a country of private property ownership and you are trying to encourage those people to bring forward their land through the planning process and capture that value but also deliver a public benefit. That is where the debate is. Potentially, people are not paying that, but in a lot of instances they are.

Going to one point as well, while I remember, there were figures quoted for the agriculture value of £21,000 per acre and £1.95 million. They



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would be per hectare, so in new money. In old money, they would probably be £8,000 or £9,000 an acre, and divide the other by two and a half. It is still a large uplift; I cannot deny that.

Q126 Liz Twist: That uplift has come because the local authority has done something either through planning decisions or identifying land.

Paul Brocklehurst: I understand the view, but of course in the normal course the landowner or his representatives have actually had to spend money through the local planning process and to risk capital to bring forward their land to get to the point of allocation. Yes, there is a decision made by the local authority through the examination in public, but, actually, most land is brought forward with somebody on board to show that it is actually deliverable. They would show that it does not have flooding issues, that it is not impacted by landscape designations, that it does not have heritage designations and therefore is not constrained. Somebody is risking capital to get to the point of an allocation.

Q127 Liz Twist: But they must think it is worth risking that capital.

Paul Brocklehurst: I accept that. Yes, I accept that.

Philip Barnes: I would just reiterate what Paul said. From a Barratt perspective, securing a local plan allocation is a highly competitive process. It stems from a local authority saying, "We need these houses". That is not for developers to make profits but because there are households that need to be housed. When you come through that process and you get a planning permission, the landowners get an uplift but there are also obligations on you as a housebuilder to deliver infrastructure, schools, open spaces and affordable housing.

The question of the uplift, from Barratt's perspective, is determined by the local plan. If the local plan policies are clear and explicit in what is being required from the development, we will buy the land on the basis that it will be delivered. If there is no local plan, if there is no CIL, if there is an affordable housing target but it is an aspiration rather than a requirement, then it is more difficult for us to judge how we buy the land. Where that is clear and where the policies will create a great place, the obligation is on Barratt to deliver that great place to meet the requirement of the policy to produce new houses for new households that are emerging—population growth.

Q128 Matt Western: You were all picking up on this figure and looking at the £21,000 per hectare, as you qualified it, and the £1.95 million. You were saying that includes CIL and section 106. You must have stripped that figure out, then. What is the actual figure that goes to the farmer on average against those same numbers?

Christopher Price: I do not have those figures in front of me. I am just recalling the notes that went with the calculation in the government



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guidance. The point is that it will vary enormously. Location will have a significant impact.

Matt Western: I understand. It was just the average figure that we were quoted.

Christopher Price: Without knowing the precise example, it is difficult to say what the landowner would have ended up with out of all of that.

Q129 **Matt Western:** He was quoting average figures across England earlier.

Paul Brocklehurst: I think so, yes. What I was not clear on was whether that was a gross land value prior to payment of section 106 and CIL and affordable housing, or whether it was a net value after the payment. If you take my example, in certain areas of high housing demand it would seem to suggest that the tax rate is in the order of 45% on that land. If it was a gross figure, it would be half of that number that they would be getting as a landowner.

The trouble is that a figure was quoted, and I am not sure whether it was taken before payment of section 106 or after it. If it was after, I would expect the landowner to get a large proportion of that figure.

Q130 **Matt Western:** This is something I am very keen to establish, Chair. It is really important. You were suggesting quite extensive costs to establishing whether you could plan or build on some land. How expensive is it?

Paul Brocklehurst: It would be many hundreds of thousands of pounds or potentially of that order to bring forward land through the local plan process and potentially not to succeed. It is high risk within the planning system. You have a rationed product, which is land. It is not the land that is rationed; it is the consent that is rationed and has been for a very long time. Of course, what drives house prices is the land price. We have been under-delivering on housing for 30 or 40 years, which has therefore driven up land values.

Christopher Price: It is the other way around, is it not? The house price dictates the land value.

Paul Brocklehurst: Yes, but of course the house prices are dictated by how many housing are available on the market at any point in time. If you build more houses, you will get lower prices.

Christopher Price: But then what people are prepared to pay for a house is dependent on the state on the economy. It becomes circular.

Paul Brocklehurst: Absolutely, yes. I do accept that.

Philip Barnes: From the Barratt perspective, there are four different types of land value. If you imagine a site, there is what we call an unconstrained greenfield land value, which would be the whole of that site with no infrastructure obligations and no affordable housing, and that



might be a pound for the whole thing. That is unconstrained greenfield value, as we call it. There is then what we call the NDA—the net developable area. That may only be half of the site. Obviously, half of the size means half the value of the unconstrained price. There is then what we call the constrained price, which is the actual price that the landowner will receive once we have factored in what we need to fund in the local plan policies for affordable housing, infrastructure and education, et cetera. That takes you to the fourth price, which is the net developable price paid, constrained, reflective of obligations, which is what Mr Price's clients will get.

I just worry that some of the figures we are hearing are about the first of the four rather than the fourth of the four.

Q131 Matt Western: For the net developable area that you just described, for example, you said it was half. If only half was available because there was some problem with the rest of the site or the land parcel, you would be pricing that in, would you not? If you take an option on some land, you will have an idea of what the potential is for that land.

Philip Barnes: When a site is allocated, there is a red line around the site. We do not know exactly what the open-space requirement will be; we do not know exactly what the extent of the flood mitigation will be; we do not know exactly the extent of the archaeological requirements; we do not know whether there are ecological set-offs or landscaping requirements. For us, we look at that unconstrained price. I am not able to contradict, but I do wonder whether that £1.95 million a hectare is the unconstrained greenfield price, which is not the price the landowner gets, once you have taken off your deductions in terms of the space and taken off your deductions for your obligations.

Q132 Chair: To go one step back, assuming it is farming land—agricultural land—the farmer has probably sat there and got a significant uplift for doing absolutely nothing. You come along, as Barratt, and buy the land and then you take the rest of the risk in terms of what you may then be able to do and what constraints there are. You paid the price to the farmer, who is now sat there doing less work than before and who gets quite a handsome return, does he not?

Philip Barnes: No Committee member should be under any illusions: we prefer low land prices to high land prices, but what we hate more than anything else is a risk that the supply of land, our only raw material, could be threatened by changes that may mean that Mr Price's clients are unwilling or reticent to bring land forward. At the moment, housing delivery has gone up 74% in four years; Barratt's delivery has gone up 55% in five years. We have been tasked by the Government to deliver more homes. We are trying to respond. Part of that has been an increasing supply of planning permissions being granted, and that has led to sites coming to the market.



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We love low land prices; we are just nervous about landowners choosing not to secure those permissions and allocations and bring their site to market. It is our only raw material.

Q133 Liz Twist: Is there much evidence at present of that supply slowing down or landowners sitting back?

Philip Barnes: It is a really good question. I would answer it in two ways. Normally in history you see land prices virtually tramline house sales prices. I am sorry, Paul, but I am going to have to agree with Christopher. As a housebuilder, the second-hand housing market sets the house prices. We are price-takers; we are not price-setters by the amount we build. That is the Barratt position; feel free to come back on it.

What you have now is that, because there are so many more consents on the market due to NPPF—I know people in this room were involved in the drafting of that—you have sort of severed that relationship. It is not a tramline. Land prices are moderating; they are less than sales price increases. That is a good position to be in. What I would not want to see is fewer consents and less housing coming forward, because land prices would then go up again, which is not what Barratt wants to see.

Paul Brocklehurst: The only thing I would add, rather than getting into that debate, is that the land prices that landowners get when they are selling to housebuilders, yes, are affected by house prices, but the build-cost inflation the housebuilders are experiencing will be a key factor in the net land price.

Philip Barnes: Yes, absolutely.

Paul Brocklehurst: Therefore, at certain periods, as may be the case just at this point in time, there is perhaps a slowing of certain areas of house prices but an increase in build-cost inflation. When speaking to colleagues in housebuilders, they say it is running at 6%. The thing that gives is obviously the land figure.

Q134 Liz Twist: Again, following on this thread of value, in previous evidence sessions we have heard different estimates—we have talked about them today—about the proportion of land-value uplift retained by landowners once planning permission is granted, i.e. once the consent has been given. The estimates have varied a lot from 50% to 75% being retained by the landowner. What would your estimate be? I know you have already talked about this a bit in your previous answers.

Christopher Price: It is so difficult to come up with figures, because you need to have an awful lot of data to be able to go and work out averages. A lot of that data just is not known. I am not sure you are ever going to get to that. Earlier, somebody mentioned the point that neither CIL nor section 106 are fundamentally about capturing land value; they are intended for other purposes, although they overlap with the capture of land value. That also serves to go and complicate matters. You cannot



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really put any great weight on any figures that anyone comes up with in this space.

Q135 **Liz Twist:** But you have experience of working with landowners and developers. You must have an idea of what kind of range we are talking about.

Christopher Price: If they are being economically rational, they will want to go and participate if they get what they regard as being “a competitive return”, but that will depend on an awful lot of circumstances.

Philip Barnes: I would caution against a figure. Take a greenfield site and a brownfield site, for example. Build costs are incredibly different. Within brownfield sites, you could have a clean one versus a contaminated one. Build costs will be hugely different. It might be sloping versus flat. It really would be quite difficult to say, “On average, the landowner gets such-and-such”. However, you have asked me to. If you look at that unconstrained greenfield value, I do not think the landowner ever gets more than 50% of that from the Barratt perspective.

I did a survey of all our 21 non-London English divisions, on how many times we get involved in a viability negotiation or dispute. We only ever have any discussion on viability with a local authority in about 15% of cases. I dug into why that was and what happened in those 15%. We always buy the site on the basis of, “That is the policy; deliver it”. We do not want to be in a year’s negotiation. We just want to buy it, give the landowner his money and start building houses. Those 15% were where the policy changed after we had done a deal with the landowner and we went back to the landowner and said, “Affordable housing has gone up from 10% to 20%; we can only give you 50p rather than a pound”, and the landowner may say, “I do not want 50p. You can go and negotiate it down to the 10% that you promised me”. Policies change. We all deal with that. That is life, and you get on with it.

The other interesting thing was that it was nearly always in the north that we had viability disputes. You have to remember that CIL is mandatory; there is no wriggle room on that. You have to pay that; it is the law. Once you have paid your CIL, in the north, if you are then into a discussion on affordable housing and the land value is low and it might even be falling, then the landowner might not accept that there is a land value at all to fund this development. To generalise, we are generally able to buy sites and deliver the policy in the south. In the north, it can be a bit trickier because sales value and resulting land values are so much lower.

Paul Brocklehurst: I have given you an indication, but those were sites in the south Midlands with strong house prices. It would be different in other parts of the country. The figures would range with regional location. As Phil said, for brownfield urban sites you would often end up with some different issues to overcome in terms of maybe remediation,



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contamination and those kinds of issues. The generalisation that I make on the basis of some of the examples in those areas of around 50% is probably correct.

Q136 **Liz Twist:** So there is a variable picture according to region and site.

Paul Brocklehurst: Yes.

Philip Barnes: Yes, very much so.

Q137 **Liz Twist:** From the developer's point of view, it is also about knowledge of what the planning constraints are in detail.

Philip Barnes: Absolutely, yes. You can get figures on how many sites came forward and delivered all the obligations. This is when it is happy days; it is a nice place; people are happy living there. You could probably have a look at the ones where they say, "They tricked us on the affordable housing and they got away with this", giving a Barratt perspective on that. No one is measuring the sites that Barratt and others have not done because we cannot get a land value at all, or one the landowner is happy with.

Q138 **Liz Twist:** What would be a fair proportion of land value uplift for the public sector to take or for the landowner to retain?

Christopher Price: You cannot talk about fairness. It is about what the market will demand and what you are trying to achieve, which brings us back very much into the space we were talking about before. It is about what will provide a competitive return for the landowner to want to go and bring the land forward. That will depend on a whole variety of factors.

The one thing that will help in all of this, which I cannot emphasise too strongly, is basically what Philip has been saying: it is the importance of having certainty in the plan so that everyone knows where they stand. If we had that degree of certainty—i.e. not just a plan in place but a plan that was specific on what was required and where—it makes it so much easier for everyone to know where they stand, what is expected of them and how much things are worth so we do not have the sort of uncertainty or the type of viability challenge we have been talked about so far.

Paul Brocklehurst: What is fair is that the sites and the development are seen to deliver the appropriate level of infrastructure for the community. In many cases, that comes through the plan-led system. As the representative of the GLA said, the section 106 and CIL mechanism can allow you to do that. There are examples during the formation of a local plan process where the interaction of certain bodies that provide local infrastructure is not helpful to the local plan and the local authority developing the local plan.

At times, for instance, with all of the changes to NHS structures, sometimes clinical commissioning groups should be more proactive



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during the local plan process to identify the impact of new development on a particular area in terms of the physical infrastructure it needs. I rarely see that in local plan processes, and it is quite disappointing if that impact is not being captured. That is what makes the development appear fair: if people can see that it delivers the required infrastructures.

Q139 **Liz Twist:** Yet we have heard other witnesses say today that even the CIL and the section 106 may not cover all the infrastructure needs required.

Paul Brocklehurst: I have just identified one particular one where I would probably agree with people that in some instances that would be the case. During the formation of a local plan, there is nothing stopping people from providing evidence to show the impact of new development on a particular service. That is what people should be encouraged to do. As I say, the GLA were identifying that as a potential within the existing structure to identify the infrastructure requirements that are needed within a community that is impacted by development and to make sure they are appropriately captured.

Philip Barnes: There will never be enough to meet all the needs—

Chair: We probably need to move on now to how we might reform CIL and section 106, if that is alright.

Q140 **Andrew Lewer:** In the written evidence that the Land Promoters and Developers Federation provided, you said you thought the current system was actually working adequately enough and there is no need to introduce an alternative system for capturing land value. Do you make that statement because you think the current system works well for landowners?

Paul Brocklehurst: As I say, having given examples, I would argue that it captures value for a local community. As I have just said, I am not saying that it is a perfect system. More can be done. The starting point is that it captures a large amount of value in terms of affordable housing delivery, in terms of section 106 and in terms of those areas that have CIL. Phil highlighted that unfortunately only 43% of local authorities have CIL charging schedules in place. They are not actually taking advantage of that. There is more that can be done around the edges around certain infrastructure requirements.

At the moment I do believe that it provides the basis of a land-value capture mechanism, which is effectively what it is. It looks to be delivering in certain areas of high demand an equivalent taxation rate of potentially in excess of 50%.

Q141 **Andrew Lewer:** We will come to the edges in a moment. I will just ask you both the same and then I will come back to the edges, as it were. Do you think the current system works well because it works well for landowners?



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Christopher Price: If you start off by looking at what CIL and section 106 are for, if they are both done properly then, yes, they do work. As we heard earlier on in the previous session, the challenge is that the bargaining power of the planning authority as opposed to the developer is not always equal and the planning authority does not, with the best will in the world, have the negotiating resource to challenge the developer's proposals effectively, which makes things a bit messy.

In terms of section 106 being there to mitigate the effect of a development and CIL being there to provide infrastructure, then there is no reason why, if properly resourced, they should not both be able to work, but do remember that they are there for those two purposes. They are not there as a mechanism for capturing land value uplifts.

Philip Barnes: As I say, housebuilders are not huge fans of high land prices, but the system needs to work well for landowners. If they do not sell their land, we do not have our raw material. That is our biggest concern. To me, it is all about whether the land is priced right. The local plan has to get all of the infrastructure it needs, plus there is a contribution to cumulative infrastructure impact in the wider area, and we have talked about the mayoral CIL. If it is doing that and it has all the right policies, et cetera, to me the land is priced right. We are building; the landowner is bringing it to the market; the community is having its policies achieved. That is off the back of a public examination where everyone can put their evidence in locally and have their say.

What would not work, to me, is a blunt percentage uplift. I have spoken about how all sites are different. If there is a blunt percentage uplift, and if you do not deliver you could end up with a CPO, it is not going to maintain the momentum we have at the moment.

Q142 **Andrew Lewer:** Let us look at those edges, then, and look at something less blunt. Let us talk about reforms you would like to see within the current system if we took that route instead of something more fundamental. What are those changes within the current system you think you would like to see to make things better?

Paul Brocklehurst: I have indicated that people, as it appears the GLA are looking to do, should use the existing system to identify fully all of the impacts of development and consequent infrastructure requirements and put an evidence base in the local plan to support that. Secondly, there are things that were raised by the Local Government Association and the District Councils' Network with which we would agree. CIL pooling regulations and the pooling regulations are overly restrictive and inflexible. They make their lives difficult, and they make it difficult for developers who want to agree to an infrastructure contribution. I would be supportive of their measures in that regard.

One of the other interesting issues is where we have local authorities, planning authorities and the interactions with county councils. Unitary authorities where the highways department and the planning authority



effectively have a common purpose can often speed up the process and get to the point of the actual infrastructure requirement a lot sooner.

Christopher Price: A lot of the factors to be considered have already been discussed. As I say, the important point is that the landowner gets a competitive return for bringing land forward. That must be the main determining factor, because without that nothing else will happen. How can we make things move more smoothly? We can ensure there is a robust and detailed local plan in place. That is not saying, "Up to 50% affordable housing" or whatever, but giving an actual figure so that people have a degree of certainty.

There was some talk in the previous session about reforming the Land Compensation Act so that you deduct some or all of the hope value. That seems to us to be anathema. Hope value is part of the value of any asset. It is not something that just applies for the purposes of CPO compensation; it is something that applies to the valuation of any land. It seems bizarre to ignore it in just this one context because the state is trying to achieve something. Look at other factors.

There is also the apparent assumption that compulsory purchase is an easy, straightforward and neutral thing to do; it is not. Making a compulsory purchase order is a very drastic step to take. It is effectively the state saying that it knows better what to do with your land than you do. I am sure you will have had constituents who from time to time have come to you saying, "My land is being compulsorily purchased," or, "My land is being threatened by compulsory purchase." They will have been traumatised by it. In a previous incarnation, I used to make quite a lot of compulsory purchases, so I have seen it from both sides of the equation. It is not a great thing to do.

It is also therefore, quite rightly, expensive and time-consuming. It should not be that easy to go and take people's land off them. It is far better, I would suggest, to work on a more conciliatory approach, where the planning authority, the developer and the landowner come together in a type of joint venture model to try to see what can be done. That is happening on some of the larger estates, where people are all working together with a common aim, rather than with something that is much more grounded in conflict.

Philip Barnes: My evidence said that we supported the CIL expert group report of 2016. That proposed abolishing CIL and replacing it with a simpler system. In preparation for today, I dug deeper into the Government's proposals in the 2017 Budget, which is retaining CIL but simplifying it. Barratt would be willing to engage in that and help to design a system that would work for all, rather than major disruptive change at this point in the cycle.

Andrew Lewer: We have touched upon this subject already, but I want to see whether there is anything you want to add on developers' approaches to viability assessments. There is this idea that developers



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buy land at a price that does not reflect local planning obligations because they expect them to be reduced or avoided and then show that the development is unviable at that rate. Do you agree that that is a widespread problem? Will the changes to viability in the NPPF consultation address that more effectively?

Philip Barnes: I was expecting the question, "Do you overpay for sites and then game the system?" As I have said, only 15% end up in any form of viability negotiation for the reasons I have outlined, so I do not recognise that from Barratt. In terms of the changes, again, I talked about that. We are broadly supportive, but you can tell from the responses today that we are concerned about this EUV Plus being too blunt and the effects it could have on the land market.

Paul Brocklehurst: We are just about to publish a piece of research, which interestingly is not dissimilar to Phil's own internal research. In terms of the outline planning consents gained by our members, only 19% at the reserved matters stage have been renegotiated. That covers a period where we have had a recession and changes in local housing markets. I do not believe that it is perhaps such a big issue. What I do recognise is that it is more of an issue in urban areas, where a site has existing use values, which would be commercial use values, so potentially industrial use, offices and a variety of other uses. Somebody has therefore bought the site unconditionally and set the price within their calculations or their own profit appraisal.

There has already been case law relatively recently that is putting pay to those discussions. It was only five or six weeks ago involving the London Borough of Islington, who won a case brought by a developer. Basically, the judge said, "No, you will have to go back on these viabilities. Somebody will have to relook at them, but the council's position was perfectly appropriate". That will have an impact on the whole viability debate.

Christopher Price: I do not have anything to add to that.

Q143 **Matt Western:** Just on the existing use value, do you often find that people understate the value to release the land, or is it the opposite? Have you come across that?

Paul Brocklehurst: In terms of greenfield land, it is very difficult to do it, because greenfield land has an agricultural value. In terms of the proposed changes to the NPPF and as coming through in the proposed amendments to the national planning practice guidance, effectively a viability will be done at the time of allocation of the site. For greenfield land, that is a relatively simplistic one. It could be different for urban sites, because what you will find is, going to Phil's point about whether he overpays for sites, that some people may well overpay for sites but that may just be bad timing. They may judge a market cycle incorrectly; they may have intended to do a retail development and then the retail market changes. Therefore, they try to do a residential development and it



impacts on the value of the land.

What is happening though—you can see it clearly in this recent court case—is the ability for developers to make those arguments is being limited. It is being limited by the courts. In fact, the judge suggested that the Royal Institution of Chartered Surveyors should go back and look at the valuation methodologies it uses for these purposes. In certain instances, those opportunities are not there or will not be there.

Q144 **Kevin Hollinrake:** I am not picking up on any particular developer on this, but I am surprised at some of your points on viability assessments. You will be aware of the CPRE research from 2015 and 2016 that looked across a number of local authorities and established that around 48% of affordable homes had been obviated by means of viability assessments. You seem to think it is not a problem, but the evidence seems to suggest otherwise.

Philip Barnes: I can only give you a Barratt perspective, and I gave you the figures on that. In my day-to-day job, I do see situations where a local plan says, “We have a target of 40% affordable housing”, and the evidence base behind it says, “We should be asking for 20%”, and then the policy then says, “However, if you cannot afford 40%, we will go into a negotiation”. There will be some developers—a lot of developers—who will enter into that negotiation to reduce that figure down. To me, that is as much a problem with the clarity of the policy.

Q145 **Kevin Hollinrake:** Yes, you referred to that earlier. It is a very good point. You raised it earlier. You talked about targets in terms of affordable housing contributions. Would you be much more comfortable with a simple, “That is what it is; just deliver it”, rather than something you could negotiate.

Philip Barnes: Yes, with a huge caveat: that the target motivates landowners to bring land forward. In London, Barratt supported the 35%. You give 35%; there is no negotiation. Barratt, with Berkeley Group, were supporting that. We think it is starting to work well. You cannot bring that in in Sunderland or Doncaster. 35% is not going to fly; it is not going to be of value there.

Paul Brocklehurst: All I would say is that the same piece of research will highlight that 72% of the members outline planning consents have policy-compliant affordable housing delivery. I suspect there are certain exceptions that are regionally based, which highlights some of the impacts on values in certain areas.

Q146 **Kevin Hollinrake:** The message is that you are happy to be policy-compliant. That is good. In terms of the Land Compensation Act 1961, Mr Price, you have already commented on this; you think it is unfair to apply a “no hope value” situation to that.

Christopher Price: It is not fairness. The worry is that it will remove the incentive for landowners to bring the property forward.



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Q147 **Kevin Hollinrake:** The CLA described it as “iniquitous”, which is about fairness, is it not?

Christopher Price: No, I think when we talked about iniquity we were talking about the CPO process in its entirety, not the particular proposal, but I may be wrong on that. That is taking into account both the human cost and the human rights issues.

Q148 **Kevin Hollinrake:** Do you think compulsorily purchasing land without hope value is fair or not?

Christopher Price: It is unfair.

Philip Barnes: You have lawyers coming in, and they will give you a better answer than a housebuilder. In a former life I gave expert witness evidence at quite a few CPO inquiries. The human rights angle was always front and centre of the council’s case. I was usually acting for the council. If you interfere into someone’s right to the enjoyment of their possessions and then you do not pay them the market value, that is an unreasonable interference. That is my memory of those cases.

Q149 **Kevin Hollinrake:** Touching on that point, how do the Netherlands and Germany get away with that, then? That is what they do.

Philip Barnes: I am absolutely not an expert on Germany, but from what I know that is a system of zoning whereby the state comes along and zones your land. You are a farmer, you are farming away, you are fine, and then you are zoned for housing and your value is frozen.

Chair: It is a bit like a local plan.

Q150 **Kevin Hollinrake:** Yes, is that not a local plan?

Philip Barnes: I have looked into it a bit. Our system is not just coming along and zoning. There is a competitive process whereby PINS decides which are the best sites to be allocated and then the plan is declared sound. The state cannot just say, “It is mine”.

Q151 **Kevin Hollinrake:** But the state could do that. We could move to a zone-led system. Should we do that?

Philip Barnes: I just worry the state might pick the wrong site early in the process.

Q152 **Kevin Hollinrake:** Germany and the Netherlands manage it. They seem to do it quite happily. What the Germans can do, I am sure we can do.

Philip Barnes: I am going to bow to bigger experts on Germany and the Netherlands.

Paul Brocklehurst: I am sure some of the lawyers will have extensive views on what is right and wrong about CPOs. I agree with Phil but one comment I would make is that the Netherlands and Germany have a lesser cultural affiliation with the principle of private property ownership. A lot of residential properties are rented.



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Q153 **Kevin Hollinrake:** You think it is cultural, not legal. Is that your evidence?

Paul Brocklehurst: I am making the comment. I am not saying that is the reason. Some of the reason why we might have our CPO laws is driven by our cultural affiliation with the right to private property ownership and to get adequately compensated if somebody is trying to take that off you.

Q154 **Kevin Hollinrake:** Have you had any advice on this point about the Human Rights Act?

Paul Brocklehurst: I have not. I understand you have lawyers next week. Enjoy it.

Christopher Price: There are certainly legal opinions that back up what Phillip was just saying. There is this idea that if you are taking agricultural land for development value, you pay the development value and not the agricultural value, if you want to be compliant with human rights.

Q155 **Kevin Hollinrake:** I will pose the same question to you, Mr Price. How do Germany and Netherlands do it? They are ruled by the same jurisdiction in terms of the European Court of Human Rights.

Christopher Price: They are ruled to some extent by the same jurisdiction. They are subject to certain aspects of European law, but they also make a lot of their own laws themselves.

Q156 **Kevin Hollinrake:** Yes, is that not the point, though? Can we change the law and amend the Land Compensation Act?

Christopher Price: I am sure we can change all the laws so we are like Germany and the Netherlands, whether or not that is the right solution or the right way to resolve this issue.

Q157 **Kevin Hollinrake:** But legally you think it is possible, from what you are saying.

Christopher Price: There are so many factors that are unknown in how German property and tax law operates. To go and pick out one element for discussion is going to be misleading.

Q158 **Kevin Hollinrake:** You do not have a legal position on that. Has the CLA taken legal advice on that?

Christopher Price: I am aware of the legal advice that Philip is referring to, and there are a number of barristers' opinions circulating around that say that, but it has never been tested in the courts as far as I am aware, and of course it is only really the courts that can decide these things.

Q159 **Kevin Hollinrake:** We have had quite a discussion on hope value today and the different aspects of that. How easy is it to determine what hope value is?



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Christopher Price: In 2003, the Law Commission did a comprehensive review of all this and they looked at all of what is called the no-scheme world, of which is this part. They did not find that there was any problem with hope value in terms of deciding what it is and putting a value to it. You may say that you do not like it as a concept, but, in terms of putting a figure to it, it does not seem to be something that is that difficult. As I said before, it is not something that just applies in this context; it applies to the valuation of anything—any land in any context.

Q160 **Kevin Hollinrake:** Yes, there is a slight difference here in that the state putting limits on developments, as it does through local plans, does inflate land prices, does it not? The state is having an influence on the price in the first place.

Christopher Price: Yes, but you would take into account the hope value when you have to pay tax on the land or whatever; it seems odd that you would not take it into account when the state wants to acquire the land.

Q161 **Kevin Hollinrake:** Does anybody else have a comment in terms of determining hope value? Is that a fairly straightforward process? Does the system work okay in terms of that generally?

Paul Brocklehurst: I suspect it is not a straightforward process, and I suspect there are many factors, including timing. At what point do you determine the level of hope value? Is it the hope value before any mention of the land coming forward in a planning process or is it at the point just before adoption of a local plan or at the point of an adoption? The hope value changes during that cycle, but I suspect there are plenty of people who have come up with a formula for trying to calculate it.

Philip Barnes: For Barratt, we always look at the Shinfield West decision, which basically said that once you have got to that constrained land value, what the landowner has got in his hand, the uplift is split 50/50 between the community and the landowner. That was a court decision; we tend to rely on court decisions. Then you have the 2017 appeal decision—the Secretary of State decision in Swindon. It mirrored exactly that approach. For Barratt, I am not saying it is easy, but that is what we use, day to day, in formulating land bids and negotiating with landowners and then negotiating with planning authorities.

Q162 **Kevin Hollinrake:** Thinking about your comments earlier, you made the point a couple of times that you are not nervous about land prices; you are nervous about landowners. I quite understand that. We have to make sure the supply is coming through. You also said that developers should be policy-compliant. You would say that the hope value should include compliance with a policy, should it not? We do know that developers are sometimes gaming the system. I have had that experience in my own constituency with significant situations. I am sure Barratt would never do that, but I have had other developers do it.

Would a simple solution be to reserve those CPO powers or perhaps to de-allocate permissions on a site if you do not deliver policy-compliant



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developments? At that point you could simply say, "Actually, if you are not going to deliver the 40% affordable housing that is part of our local plan, we will step in". You could CPO it or threaten CPO at that point. At that point, the developer can decide to sell it with hope value. Hope value is included in that, because you have policy compliance. Section 106 has not taken all the value; it has taken some of it. You could step in and potentially CPO it or you could actually decide to develop it at that point.

Philip Barnes: Paul mentioned the Islington case, and it is moving that way, and the lawyers will talk to you better than a housebuilder could.

Q163 **Kevin Hollinrake:** You would be pretty comfortable about that as a situation.

Philip Barnes: We would be worried about a transition. If we have bought a site and that is imposed on us, we have already bought it on the basis of those policies. You have to think about transition. What do we do about sites we have already bought and paid for? I do not know. I do not have the answer to that, but, in theory, if we are all buying land with more certainty, the landowner is motivated and we are meeting the policies, that has to be the way forward.

Q164 **Kevin Hollinrake:** Mr Brocklehurst, would you be comfortable with that position?

Paul Brocklehurst: As I say, the court cases are taking us to that point. The local plan system needs an evidence base to support the level of affordable housing. For instance, some larger sites might deliver wider benefits, additional benefits, highways infrastructure and more schooling that offsets affordable housing. Subject to those kinds of caveats, yes.

Q165 **Kevin Hollinrake:** Mr Price, are you comfortable with that as well?

Christopher Price: Yes, it just keeps coming back to having a robust local plan.

Q166 **Matt Western:** I want to pick up on something. All of you were saying just how important legal precedent is and so on, but so is the market. If you have one field where a neighbouring developer has managed to get 15% affordable housing on a viability, you could find yourself actually arguing a similar position, could you not?

Philip Barnes: Is it green? Is it brown? Is it flat? Does it slope?

Matt Western: They are identical fields

Philip Barnes: If they were identical fields, yes, you would. For Barratt, if we see a court decision or an appeal decision where we are being asked for 30% affordable housing and there is an identical planning permission for 15%, we would be asking the authority why we are being charged 30%.

Q167 **Matt Western:** Recent case law plus precedents are two important



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parameters that you work with, then.

Philip Barnes: I am repeating Mr Price, but that should not happen. If the policy is right, if the policy is for 30%, that guy should have been paying 30%. If the policy is 15%, it will be 15% and we want to pay 15%.

Q168 **Matt Western:** Can I pick up something from the Barratt written evidence? Barratt was arguing that history shows that efforts to force landowners to sell land at existing use value are bound to fail and that land will simply not come to market. You have been saying this throughout the evidence. Is there any level between existing use value and market value at which landowners might be more willing to co-operate?

Philip Barnes: Yes. I would go back to the fact that for Barratt the land value is the unconstrained greenfield, then there are all the constraints you have to take off it, and then there is a difference between what the landowner will get and what it is worth as agricultural land. We have always been cognisant of the Shinfield West decision that it would be split 50/50, but what you cannot do is split all of that 50/50, because what if you have to do a roundabout, a train station or a school? The other side does not have to do anything.

Q169 **Matt Western:** Just looking at the past, Barratt has been around for a good many years, has it not?

Philip Barnes: It is our 60th birthday this year.

Q170 **Matt Western:** Were you involved in the development of Milton Keynes at all? My understanding was that existing use value did come into play there.

Philip Barnes: Ask the lawyers. I am a housebuilder. The legislation was 1961. Other than phase 1 and 2, all of the new towns came in pursuant to hope value, so they all had to pay existing use value plus a hope value to reflect a market value.

I guess the issue there is that it is more like a German system where the Government have said, "There has got to be a new town here". There is or there is not. The no-scheme world is no new town; the scheme world is a new town. It is valued on a no-scheme world, so it is existing use value. That is not the world I live in, where there are 10 different potential allocations around a city and we are all competing for it. Just because the state owns this one and it is viewed as sustainable and a good location does not mean to say that this one is not.

Q171 **Chair:** I thought the new towns came in at existing use value.

Philip Barnes: Milton Keynes was designated—

Q172 **Chair:** Milton Keynes was a bit later. All the original new towns came in on the basis of existing use value. They would never have been built



otherwise.

Philip Barnes: I will go in here to take another look at it. I was reading it this morning.

Chair: Do you want to follow on with the original question?

Paul Brocklehurst: I am sorry. What was the original question?

Q173 **Matt Western:** It was whether there were any lessons from the past that we could be learning from in terms of our recommendations, where, say, existing use value had worked successfully.

Paul Brocklehurst: As Phil says, there seems to have been an intervening period. I suppose the time at which the new towns were being formulated initially was at a point close post-war where the imperatives seemed different and any exercise to try to use existing use value within some form of direct land tax has led to landowners effectively withholding and waiting in the expectation that the taxation system would change. The timing seems to have been different for the initial basis and the national imperative. It is interesting that you choose Milton Keynes, because Milton Keynes did have—it might still use it—effectively a roof tax basis, which works very effectively.

One of the other changes that might be useful to local authorities is a restriction on their ability to forward-fund using CIL commitments on allocated sites, so they could deliver infrastructure early in the expectation that they were going to get roof taxes or CIL payments back from sites. That would be useful. The Milton Keynes roof tax is a properly evidenced, plan-led taxation system that seems to work very well.

Christopher Price: I have two points. In the post-war period, remember that about half the housing was being built by the state whereas now it is all being built by the private sector.

Q174 **Matt Western:** Is that wrong?

Christopher Price: No, I am saying it had a direct impact on the dynamics of housebuilding. It meant there was building going on according to need rather than fluctuating according to the ups and downs of the market. It meant there was a body of builders who would always have an amount of work; therefore, we did not have the consolidation into the small number of large developers we have now. It is quite a big factor that you have to bear in mind when you are looking at the history of it.

Another point is on most of the examples we hear about with the 1947 Act and the Land Commission Act 1967 and other similar things. Paul referred to them as imposing land taxes. They were not land taxes; they were development taxes. There is a difference. One taxes any uplift in the value of land, and that is it; the other taxes development. If you tax develop, people do not develop. That is why an awful lot of those early



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attempts did not happen. That is a slight oversimplification, but that is the impact they had. People just waited for another Government to come in that did not believe in development taxes, and they disappeared.

Philip Barnes: These are the figures I have, Chair. The first new towns were designated between 1946 and 1950. They were able to take advantage of the pre-1961 restricted compensation regime between 1947 and 1958. The next five were designated between 1961 and 1964. The final six, including Milton Keynes, were designated between 1967 and 1970. Half the new towns were built without being able to exclude hope value. This is from notes of a presentation given to the Compulsory Purchase Association law lecture by Richard Harwood QC. I do not know whether he is one of the lawyers coming.

Chair: He is obviously giving evidence to us now anyway.

Philip Barnes: I will supply that in writing and follow up. Would that be useful?

Chair: That would be very helpful. Thank you very much for coming to give evidence to us today. That has been very helpful to the Committee.