

Housing, Communities and Local Government Committee

Oral evidence: Land Value Capture, HC 766

Wednesday 5 September 2018

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Members present: Mr Clive Betts (Chair); Mr Tanmanjeet Singh Dhesi; Helen Hayes; Kevin Hollinrake; Andrew Lewer; Teresa Pearce; Mr Mark Prisk; Liz Twist; Matt Western.

Questions 253 - 303

Witnesses

I: Kit Malthouse MP, Minister of State for Housing, Ministry of Housing, Communities and Local Government; Simon Gallagher, Director of Planning, Ministry of Housing, Communities and Local Government.

Examination of Witnesses

Witnesses: Kit Malthouse and Simon Gallagher.

Chair: Good morning, Minister. Thank you very much for coming to our final session on our inquiry into land value capture. Just before we go over to you, we have to put one or two things on the record from members' point of view. We have two new members: welcome to Tan and Teresa. You have interests to declare, which are as per your register of interests, but is there anything else you would like to add to those?

Mr Dhesi: Thank you, Chair. They are as per the register of interests.

Teresa Pearce: They are as per the register of interests, but I also employ a local councillor in my office.

Chair: Other matters that may be relevant to this inquiry are that I am a vice-president of the Local Government Association.

Andrew Lewer: I am a vice-president of the LGA as well, and I have an interest in the register for Drakelow Development Holdings.

Kevin Hollinrake: I employ a councillor in my office.



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Helen Hayes: I do too.

Liz Twist: I employ a councillor in my office.

Q253 **Chair:** Those are our various interests that may be relevant to this inquiry. Minister, thank you very much for coming this morning. It is your first visit to this Committee and appearance before us. I do not want to worry you but, within a few weeks of your predecessors coming to the Committee, they sort of moved out of their positions, but I am sure that is complete coincidence and we look forward to many further sessions with you on important subjects, and this is an important subject. Would you like to introduce your official this morning as well, Minister?

Kit Malthouse: I brought Simon Gallagher along with me, who is the technical brain behind quite a lot of this stuff. Obviously while the inquiry is very welcome and an area of interest at the moment, there is quite a lot of technical detail behind it, which I know, with your expertise, you will want to delve into, so I thought it was a good idea to have a bit of a sidekick around some of those technical aspects.

Q254 **Chair:** Welcome to you, Mr Gallagher, as well. Minister, in the 2017 Conservative Party manifesto, there was a very clear statement that, "We will work with private and public sector house builders to capture the increase in land value created ... making it both easier and more certain that public sector landowners and communities themselves benefit from the increase in land value from urban regeneration and development". What did the Government have in mind once they got elected on that manifesto?

Kit Malthouse: As you will no doubt have appreciated, Chair, over the years there has been quite a lot of build-up of scar tissue around the operation of the current system. On the development side, the local authority side and the community side, there was a sense that the system was complex and that it injected delay. Also there was a lack of transparency, particularly for the public sector and local communities, about what the current system was contributing to their local area, so I suspect that the manifesto commitment was in response to that. Frankly, it also did what any good Government should do, which is to keep an open mind about whether there should be reform in a particular area and whether there were better ways of conducting a transaction.

Q255 **Chair:** That was a question; I was looking for an answer, really. What is the intention to make this manifesto commitment deliver in practice?

Kit Malthouse: There are some solid things that we have introduced recently, not least through the NPPF changes to viability, to increase the level of certainty going into a development situation, shifting viability from a local contribution basis away from the decision-making process more towards the plan stage.

Q256 **Chair:** We are coming on to viability in some detail in due course. Is there anything else?



Kit Malthouse: Changes to viability; trying to reduce complexity on the local authority side, particularly through Section 106, which is related to viability but also about what local authorities can do with Section 106; increasing an element of market responsiveness, so changing some of the indexation and the ability of local authorities to trim CIL, in particular to different activities; and then also increasing transparency, making viability publishable so local people can see more realistically what they are getting for the planning permission, but also so there can be an exchange of information across local authorities, so that we can get more consistency around contributions.

Q257 **Chair:** In essence, it is about tweaks and changes to existing systems, rather than anything very interesting and new.

Kit Malthouse: Certainly there are tweaks and changes, and we are trimming the sails to try to shift things. I think the changes to viability, which we can talk about later, are quite significant and will be pretty fundamental in the changes.

Q258 **Chair:** There is nothing brand new here.

Kit Malthouse: There are one or two other things, so expanding the idea of the Mayoral CIL, so that combined authorities could look at strategic infrastructure tariffs across their areas, will be a big new thing when that rolls out, hopefully. What the implications will be for some of the ambitious plans we have for places like the Oxford and Cambridge corridor may have a significant impact too. The history of this issue has been that apparently small changes and indeed large changes can have very significant impacts on the operation of the market. While the measures themselves may seem of a technical nature and to be trimming the sails slightly, history will tell us that the impact may be profound.

Chair: You are not going to tell us this morning that the Government have a brand new mechanism for capturing an increase in value.

Kit Malthouse: I am not, no.

Q259 **Mr Prisk:** We have had both written and oral evidence that developers are gaming the system. It is well known in anecdotal terms in the marketplace. They are gaming the system so that they can avoid meeting their obligations. In practice—and you have touched on this issue—how will reforms to the NPPF stop that?

Kit Malthouse: It is a very good question and, I have to say, in a previous life as a Member of the Treasury Select Committee, we also looked at the housing market and, in particular, this issue and how the structure of the viability test allowed some of that—“gaming” may be a strong word—manipulation to minimise the community contribution and maximise land value. It might, in the past, have created an incentive to overpay for land on the basis that you have a limit at the top, in terms of the market price for the house that you are producing. Therefore, all the other moving parts have to fit into that overall price. The moving part



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that is most negotiable, most complex and most likely to be squeezed, given the incentive for the local authority to produce housing, is necessarily the contribution.

Moving the Section 106 requirements in particular to the plan stage, so there is absolutely clarity, or more clarity, about what is required for a particular development in terms of contribution to an area, means that that number becomes less negotiable. As a developer goes into considering a development, actually, the land price becomes more movable. Therefore, the contribution can be maintained at the price it is more likely to be and also it means that, further down the line in developments, you find that developers come back for another bite of the cherry and renegotiation. That clarity will start to remove some of that ongoing negotiations as well.

Q260 Mr Prisk: That begs the question of how you enforce it. Clearly, if there is a gap between when the plan is adopted for a particular development area in a locality, and when that development is brought forward in detailed planning, time will have elapsed and the market might have gone up or down. Therefore, the opportunity for the developer to bring forward adjustments, whether they are gaming or not, manipulation or not, will still be there. How do you enforce that? I do not know whether that is something the Department has looked at in detail.

Kit Malthouse: This is always the challenge in these situations. How do you maintain flexibility in a long-term development in a market that is moving around? Also, frankly, how do you maintain flexibility across a country that does not have one homogenous property market? It has a series of different markets that all operate in different ways. In the market of which I have most experience—the London market—there is more capacity for flexibility in other factors. If the market changes, if you have a Mayor who is keen on towers, you can put a couple of more storeys on the tower and that will fill the gap. In other markets, the margins for manoeuvre are much finer, so you want to maintain a bit of flexibility but, in the end, enforcement and resolve will be down to the local authority, largely. It will be down to how firm it is willing to be about its requirements, balanced against its desire to see a site coming out.

The shift in plan-making means that there is less negotiation required upfront, so a developer has some clarity and more of the risk is shifted to them and the landowner in particular so that, if there is an issue in the market later, the local authority is able to say, "We are very firm. We were clear with you about what we want in terms of contribution. The person who should be shifting is the landowner. You need to go back to them and get them to sharpen their pencil about what they are willing to take for the land in order for the proposal to go ahead". Your hope is that you are far enough down the line in that situation that cost is invested and the developer is likely to say, "Okay, this is what I will do, because I want to proceed".



Q261 **Mr Prisk:** Are you planning to test and monitor how this operates?

Kit Malthouse: Yes, absolutely. We are constantly testing and monitoring all the changes that are going through, not least because one of my primary objectives is to get as many houses built as fast as possible—as many well-designed, good, sustainable houses built, but as fast as possible—so monitoring the impact on the market and on activity levels is key. These are quasi-taxes; they are impositions upon a transaction. It is generally the case that large capital taxes on discretionary transactions do not encourage activity. This is one of those situations of plucking the goose with the minimum of hissing, so we have to monitor it very carefully as we go.

Simon Gallagher: Just to add on that one, if I may, one of the things we have been very careful to do is to develop this in close consultation with local government and the industry. We published the draft guidance on viability alongside the draft National Planning Policy Framework in March and had intensive conversations with people in various parts of the sector, in order to help us refine that. We are going to carry on those conversations, because it is really important, exactly as you say, to understand how this is operating in practice.

Q262 **Mr Prisk:** Do you think the reforms mean that now assessments on an individual site basis will no longer be necessary?

Kit Malthouse: The more granular data we can get the better we can see but, as I say, it will operate in a different way in different markets. That is the issue. For example, the introduction of the Mayoral CIL in London has been, as far as I can tell, relatively painless. Whether a combined authority CIL elsewhere is going to have the same impact is not clear, because the market dynamics are different elsewhere. We will have to monitor it on a relatively granular basis, yes.

Q263 **Kevin Hollinrake:** I will use the word “gaming”, because that was the word that was used by the Department in its initial consultation on building homes in the right places. Some of the evidence we have taken has suggested that around 50% of affordable housing requirements that should have been the policy of the local authorities have been avoided through viability assessments, so I absolutely welcome the changes of the strengthening in this. In clause 57 of the NPPF, it still allows for the possibility of a viability assessment at application stage. Why is that?

Kit Malthouse: Obviously we want to try to maintain an element of flexibility. The broad plan is that, if you comply with the laid-out contribution requirements, you do not have to go through a viability assessment. If you do not, the local planning authority would like to have a look and see why not. There may be perfectly legitimate reasons why you cannot: the land might be significantly contaminated and there might be heavy cost under the ground that requires addressing, which might trim the viability of the case. In my distant past, I was a commercial property developer and I am very aware of the risks and the



risk curve on development that occur, so maintaining some flexibility around that seemed desirable.

Q264 **Kevin Hollinrake:** You said earlier in your remarks that the developer should go to the landowner and say, "Actually, you are taking less". Part of this scenario could be that the land has already been purchased by the developer and he says, "Oh my God; I have paid too much. Remediation is required now. I cannot develop this site". You or I might reasonably say, "Well, that is tough. You have paid too much. Develop it anyway". The developer might then say, "No, I am not going to develop it because I am going to lose money on it". What do we do then?

Kit Malthouse: It is a very good question. The trouble in some markets, such as the London market, is certainly that the current system has not encouraged a realistic land value being offered. The viability test has encouraged the overpayment of land and, in some ways, may have ramped it up because of the various factors that occur. It is very rare that a local authority says, "I am sorry; you are going to lose money on this site". I guess there will be situations where that has to occur and where a local authority will say that. They have to rely on the fact that whoever owns the site has invested capital that is therefore not yielding some kind of return. They would have to take a view about whether they want to cut their losses or accept a realistic site for the land to get it away. Given the mixed nature of landholding and the fact that there is cost and capital committed, you would hope that there would be a realistic view, but that would be for a local authority to decide.

Q265 **Kevin Hollinrake:** Is that not the point? The local authority might think, at that point, "My God. I have this huge site that underpins my five-year land supply and this is all going to fall apart now. It leaves me open to all kinds of different gratuitous or inappropriate applications on other sites. I am going to have to wear it". That is what the developer is going to bank on: the fact that the local authority is going to give in. As well as what has already been proposed, should we not be looking to beef up the powers of the local authority, at that point in time, to say, "Develop it or else we will CPO it, at a fair price, based on the original requirement for affordable housing or other infrastructure requirements", for example? Should we not do that?

Kit Malthouse: It is certainly the case in the NPPF that we have tried to increase the pressure on both sides of the equation to make development happen. On the local authority side, the new Housing Delivery Test is putting pressure on. On the other side, we have encouraged local authorities to go for shorter timeframes on planning permission to consider, once the planning permission runs out, alternative use for the sites. A lot of developers will allow a permission to run out and then rely on the fact that it is going to be renewed because it is a strategic bit of land, so there is a bit of pressure we can put on that. In compelling cases, CPO may be appropriate. As a Conservative politician, I am naturally nervous about the spot nationalisation of land.



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Kevin Hollinrake: You are only talking about fairness here, are you not? We are not talking about requisitioning land. We are talking about enforcing local authority policy and the policy that was promised by that developer at the start.

Kit Malthouse: Yes, I understand that.

Q266 **Kevin Hollinrake:** Local authorities are very nervous about CPO, because of the complexity and the cost of that, but should we not provide some more support for local authorities to take that firmer step where this abuse is occurring?

Kit Malthouse: Yes, and there were changes made to the CPO regime at the end of last year to streamline and smooth, and I hope we will see some of that come through over time. We just have to be very careful about CPO: it is a last resort; the vast majority of these situations are resolved by negotiation. We want to make sure that, even in a CPO situation, a landowner is paid the same money as if it had sold the land voluntarily. All those kinds of things are important, because the ability of the Government to confiscate assets is a problem in a capitalist society, so we have to be careful about that, but I hear what you say. Certainly in my experience and in my area, there are sites where, frustratingly, you would like to see some kind of action, but we would like to see how the current changes to the CPO and to viability bed in before we look at anything more.

Simon Gallagher: I would perhaps add one specific example, because I agree with giving local authorities more of a toolkit. One of the things we have published alongside the National Planning Policy Framework is a new set of planning practice guidance for viability. Some of that is designed to give local authorities more tools to strengthen their hand in those negotiations. I am particularly pleased that there is a sentence we include in there that says, "Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan". Things like this are designed to give the local authority more tools in those conversations.

Q267 **Kevin Hollinrake:** Would you support greater CPO powers for local authorities?

Kit Malthouse: That is not a terribly fair question. Anyway, let us see how the current changes to CPO get on. Given my primary objective, I am keen that landowners that are blocking significant development for inexplicable reasons are given lots of reasons why they should comply, but stepping over the line of confiscating their land is very serious. We obviously do it, but the vast majority of these situations are negotiated out and that is how it should be.

Q268 **Helen Hayes:** Just picking up from that last phrase that a vast majority of issues are negotiated out, is that not the problem with viability assessments? Across the country, genuinely affordable housing is being



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negotiated out of the planning system. I am very concerned about the Government's intentions still to allow site-specific assessments for precisely that reason. Actually, parts of local government—I mention the previous Mayor of London—have been complicit in that system. They have encouraged developers to use viability assessments as a means of minimising their affordable housing obligations.

It is very important for the Committee to understand where, Minister, you think the assumption lies on viability assessments. Is the assumption in favour of the obligation of developers to fund infrastructure and affordable housing, or is the assumption in favour of the data and the evidence that developers can bring to bear, from whatever source, by paying whoever they like to provide that data that, somehow, they cannot afford those obligations? This is an absolutely critical issue at the heart of our planning system.

Kit Malthouse: Broadly the answer is that the assumption is towards the former, and that is what the proposed reforms are designed to try to encourage. You are correct: of the £6 billion or so that has been raised, just over £5 billion comes in the form of affordable housing. You would expect them to say, but I am not sure it is a fair characterisation to say, that the prior holder of the office of City Hall was complicit in using viability tests, so we would discourage that. Nevertheless, it has been the case, and it was certainly the view that we developed on the Treasury Select Committee, that the viability test was a problem. If you asked everybody from Kate Barker to David Orr to various people, they would say there is an issue around the ongoing negotiability of it.

Creating a prior level of expectation and certainty—standardising some of the elements of the test but, nevertheless, retaining the ability to be flexible particularly where there are marginal difficult sites, where there might be unexpected cost or, indeed, in the face of sudden market fluctuations, which we have seen in the past—given that our overriding concern collectively should be to build more houses, seemed to be quite a sensible trimming of the sails and a shifting of the emphasis. As Simon said, there is this sentence that the changes in land value or the price paid should not impact on the contribution that is made, and developers know upfront what contribution is expected.

Simon Gallagher: The Minister said something important there, which was very much in our thoughts when we were developing the proposals. There are two challenges: one is getting an original agreement between the local authority and the developer; the other one is whether that will stick over time and how to deal with the fact that the world moves on. One of the reasons why we decided not to go for mandatory viability at the plan stage was exactly the reason the Minister said. The first was it is really important that, in order for the landowner to have that conversation, they need to have a precise policy that is clear and up to date from the local authority. If the local authority does a generic, "Across all sites we expect 25%", but there are specific sites where there are particular challenges, you need to have a bit of flexibility at the



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margins. The other bit was that, quite often, some of these plans are old and have been devised for different market circumstances. It is important that there is some flexibility to adjust when the market moves, which it has a track record of doing.

Kit Malthouse: It is certainly the case that we do not necessarily want to remove the ability for local political democratic decision-making in these areas. Particularly in London where you will have an interest, the flexibility or otherwise around a contribution envelope may determine levels of activity. These things are fundamentally an imposition on a development and, if you are completely inflexible about your requirements, you are going to start to choke off some activity. You need to be flexible around them because, although we have different markets in this country, there are also different housing markets within London that react in a different way and have different metrics in their viability assessment. Maintaining the ability for locally elected democratic politicians to be flexible around their objectives and developer objectives seems desirable, at the same time as shifting towards a more certain outcome and removing the delay and the uncertainty around negotiation seem sensible too, to a certain extent.

Q269 **Chair:** Just to follow up on a couple of points, the point Mr Gallagher has made about markets changing is a good reason why local plans should be updated more regularly. I think you have made that point before in the Committee. Given one of the objectives of this change in policy is to try to capture more of the uplift in value for the public purse, have we got a starting point of where the Government think the current uplift in value is, a figure against which we can look at any further increases?

Kit Malthouse: That is a good point, actually, whether we have worked at a measurement metric of whether it is working or not. There is the overall amount of £6 billion that we are currently raising against the volume that we are building.

Q270 **Chair:** Might we be able to have a note on this?

Kit Malthouse: Yes, I am more than happy to write to you about what it might look like. Some of the issue will be to do with expansion of use. For instance, we are seeing more local authorities now adopting CIL. We are up to 67% of local authorities that either have it or are contemplating it. It would be interesting to see if the strategic infrastructure tariff gets taken up and how that looks. The Mayor is considering the Mayoral CIL 2 for Crossrail 2, so there will be an element of organic growth and then policy growth.

Chair: Viability is a particular problem around 106 and affordable housing, and that is where the issue first occurred.

Kit Malthouse: We will drop you a line about how we are going to measure it.



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Simon Gallagher: The only thing I would say is that the actual value uplift is related to individual sites. We can do quite good averages, but whether they capture individual sites exactly is really challenging, because you need site-by-site data.

Chair: How you are going to monitor whether the new measures are effective is key.

Kit Malthouse: It will also be quite interesting, when the transparency comes in, to see between authorities how they are getting on with the negotiation. If some authorities are achieving fundamentally better contributions than neighbouring authorities, you will have to ask questions about why.

Q271 **Chair:** In terms of the slightly longer term, presumably one of the objectives is that, if developers understand that there is a degree of certainty in the system, local authorities are not simply able to be bullied into lower levels of affordable housing. Eventually the message might get through that they should be paying less for the land in the first place.

Kit Malthouse: That is exactly right. The whole idea, not just here but also in terms of wider planning reform, so the local plans and neighbourhood planning, is to remove this notion of speculation and negotiation. It is to try to inject more certainty into the system, which I hope will deal with a lot of the bureaucracy and delay, so people can just get on and develop.

Chair: I cannot let the opportunity go by, before I hand over to Andrew, to say that the Committee recommended in its report in the 2010 Parliament that there should be greater transparency around viability assessments. We are pleased the Government have got there eventually.

Q272 **Andrew Lewer:** Just pushing back a little bit on something you have just said about CIL, we had Liz Peace come and see us in May, who chaired the CIL review group. She came to speak to us with a fairly heavy note of disappointment that her review group had recommended that the Government “park CIL and do something different”. She told us that she was “disappointed” that those recommendations had not been accepted. Why did the Government and the Department not accept some of those more fundamental recommendations within the CIL review group and particularly not take up the recommendation about a local infrastructure tariff?

Kit Malthouse: We have consulted on some of the changes that they recommended—some of the changes around pooling and some technical changes. In particular, we are introducing this idea of a strategic infrastructure tariff, which is not that dissimilar from what they recommended. Some of the more fundamental proposals would require primary legislation, so there is a natural resistance to getting some of that through, but I guess our general approach is that incremental change, market assessment and monitoring are probably sensible, given



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where we are in the cycle and what our objective is, rather than a wholesale change. My mind remains open to some of that stuff; I am more than happy to think about it in the future. I have not yet had a chance to sit down with her and talk about the issues that she is raising and I am more than happy to do so.

As I say, I would quite like to see how the strategic infrastructure tariff rolls out for combined authorities, how that works and what the impact is. Obviously it will be set at a rate that does not necessary impact on local borough contributions, but we would like to see what the interaction is between the two. The other thing about the CIL review recommendation was that it was a bit of a one-size-fits-all. Given the dynamic nature of the UK property market, I am not convinced that one-size-fits-all is going to work. It might work in one area and choke off activity in another.

Simon Gallagher: Absolutely, and just to add on that one, one of the challenges that the CIL review team found was that we did not have enough data on exactly the questions that the Chairman has asked us about land value uplift in order to be able to model what the impact of that would be. One of the things we did straight after the review was to commission an update of some of our research on the value of developer contributions, because we need to have the information so that I can assure the Minister, when I advise him, about the viability impacts in different places. One of the things that we then got from the research that we published earlier this year is a bit more of that information. That should equip us, in answering the Chairman's earlier question, to provide some advice on the viability impacts on the margins of doing any policy change. Again, the bit that worries me is that, actually, the viability impacts of any change would depend on the local level. The question I am just asking myself and the data is whether this is sufficiently granular to provide that sort of information and advice to my Minister.

Q273 **Andrew Lewer:** Further to that, you referred to the larger amount of uptake of CIL, but Liz Peace's view was slightly different and thought that the complexity of CIL led to it only having a limited uptake by local authorities. Additional to that, you refer to the strategic CIL for strategic combined authorities, but there will obviously be strategic infrastructure need in areas that are not blessed with a third tier of local government, have the combined authorities and so on, so is there some way to take up some of her views, in the way that you have referred to, to address that as well?

Kit Malthouse: There are a number of ways that we are coming at that issue. We are changing the rules on the pooling of Section 106, so there is greater ability for local authorities to effectively use Section 106 as a specific CIL. Obviously it has to be attached to the site from which it is obtained but, if they can pool around a number of sites, it will help. From the other side, we are using the Housing Infrastructure Fund to produce some of the infrastructure that is required for some of those strategic



areas, where there are a number of authorities that may not formally be combined but are coming together to try to make arrangements, so there is lots we can do. It should not be forgotten, in terms of land value capture, that quite a lot of uplift is captured through the standard taxation system, which is then recycled through things like the HIF, the Affordable Homes Programme and all those kinds of things.

Q274 Andrew Lewer: In specific answer to something you have just touched on, which was the consultation on supporting delivery through developer contributions, that closed in May. Do we have a timescale for when the results of that consultation may make their way through?

Kit Malthouse: We are chewing on it at the moment. I cannot give you a date at the moment. I am relatively new in office, so I am trying to consider that alongside quite a lot of other stuff, but we would like to get it out as quickly as possible. We just need a bit of time to chew on it.

Andrew Lewer: It would be helpful for this Committee to keep that under review as well, to assist you with that.

Kit Malthouse: Absolutely keep the pressure up on me, by all means.

Q275 Mr Prisk: Following on, clearly the policy shift is away from individual assessments and towards the plan-making stage. I am not alone in being a Member who has roads and communities where the cumulative impact of different developments neighbouring one another means that the opportunity to get strategic investment in infrastructure and public services is always lagging the houses being built. This creates a significant problem not only for the community, but also in their acceptance of the need for those homes. I suspect other Members have a similar problem, where we have lots of bitty sites, but the cumulative impact is not represented in the way in which value is captured. Given you are shifting policy now to pull back towards plan-making, are you prepared to think about whether we can look at that broader question? It is vexed but it is an important one if development is to be more acceptable to our constituents.

Kit Malthouse: It is a very important point and what lay behind the changes to the pooling arrangements of Section 106. We have to be slightly careful about the interplay between CIL and 106, and when starts to substitute for the other, because they are all factored into this viability test and they all come out of the equation, but it is a very pertinent point. One of the issues is around cash flow. We may need a new junction. In my constituency I have lots of houses coming, but they will come over the space of the next 20 years and, by the end of it, I will need a new junction on the motorway or certainly an upgraded junction. At what point do developers start to pay?

We see that in other areas. It is certainly the case that one of the breaks on development is the "last in pays" on electricity. You see in central London a strain on the electricity system and you need a new substation.



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The person who is developing the block at the moment has to pay for the new substation, so it changes the viability on the development. There is a cash flow issue there that needs to be looked at as well, particularly with these large strategic developments. That is going to come into focus for things like Ox-Cam-Milton Keynes, where we have decades of work to do. Either you collect it and put in the infrastructure or you put it in and then collect it. We have to think about those issues; you are quite right.

Simon Gallagher: I have just two points. One is that the Community Infrastructure Levy was explicitly designed at the time to be something that deals with the cumulative impact of development. Whether it does or not, we have a tool that is designed to do that, because it is able to collect revenues, in a way that Section 106 cannot, that are not spent specifically on that site, which is quite important. The other thing is that, as part of the plan-making process, we are encouraging local infrastructure plans, so that local authorities more clearly and transparently set out their aggregate infrastructure requirements, which will pick up those cumulative impacts. That will then enable them to think about how they are going to finance this through combinations of CIL, Section 106 and other resources.

Kit Malthouse: We have seen the business rate supplement used in London around some of the Underground extensions and what have you, so there is a variety of tools that can come into play, but they still do not overcome this cash flow issue.

Chair: Just to be absolutely clear, the Peace report's recommendation about a local infrastructure tariff is not going to happen.

Kit Malthouse: It is not for the moment, no. We remain open-minded. We would like to see how the current thing works, see what happens around the strategic infrastructure tariff, where that is introduced, and keep it under review.

Simon Gallagher: As a practical point on that, to do the local infrastructure tariff, which would take CIL rate setting away from local authorities and move it nationally, would require primary legislation. What we are doing is a package of reforms that require secondary legislation. As the Minister says, our mind is not closed, but we want to get on with the stuff that we can do a little bit more easily and in short order.

Q276 **Mr Dhesi:** I would like to ask about the development of new towns. Minister, the Government's recent announcement that councils across the country will be able to seek approval to launch new town development corporations was widely welcomed. However, many witnesses have highlighted that they will not have comparable powers to previous generations of new town development corporations. In your opinion, are existing borrowing and CPO powers sufficient to make new town development corporations successful?



Kit Malthouse: I certainly hope so. We have put a huge amount of political weight behind the idea that we need a series of new towns in particular parts of the country and, frankly, gone out and asked ambitious local authorities for their ideas about where more may be. There was a particular issue identified with the local buy-in and leadership around new towns. Quite a lot of it was essentially directed from Whitehall, rather than being directed locally, and the regulations I took through just before recess helped to correct that. I have to say I am not aware that there is going to be a lack of any particular power around getting this thing through but, if there is in the future, I remain open-minded about the changes that are required. Fundamentally, our interests are aligned. We want to see these things built, so we will co-operate with whoever wants to build them.

Q277 **Mr Dhesi:** The Government also made several reforms to CPO powers through the Neighbourhood Planning Act 2017. Have you or your Department had any evidence on how those amended powers have been used?

Kit Malthouse: To be honest, we have not yet. It is a bit early to say. We have not had that many transactions go through yet, so we cannot really draw any conclusions from the way it is working at the moment. We will keep it under review as we go and, if it looks like there is being a break on development, we will have to review it but, for the moment, it is too early to say.

Simon Gallagher: The rules only came into force almost exactly a year ago in September 2017. Given the time for a significant number of compulsory purchase orders to go through the system, we have a very small sample size to look at, at the moment. We are keeping an eye on this very closely and we will keep everybody posted on that.

Q278 **Mr Dhesi:** There was an announcement on 4 June 2018, when the Government said, with regard to new towns, "Held accountable by councils, the development corporations will be expected to involve communities in their projects". However, my own experience as a councillor in Gravesham is with regard to the Ebbsfleet Development Corporation and the new town that was proposed there. It was my feeling, among many other councillors and local community groups, that local councils and community groups were in effect being sidelined. The corporation comprised various individuals who did not have intricate knowledge of the local areas. They came in and, in effect, imposed their will on local councils and people. Local councils, by the way, only had one councillor each on such corporations. How can we get to what the Government announced? How can these corporations be held accountable by councils and how can we have more and effective involvement of communities?

Kit Malthouse: This was exactly the point behind the changes that just went through before the recess. The idea is that, first of all, the proposal itself should be generated from the local area. We have asked people if



they have ambitious ideas and where they want to do them, and are giving them a vehicle that is created by the local area and has governance that reflects the local area. Frankly, when the plan comes forward for approval—it all has to come to the Department for approval—it should not only have a business plan, a strong likelihood of deliverability and all the rest of it, but also show strong evidence of local community engagement. This is critical.

You are absolutely right that there is strong acceptance derived locally and that involves a proper comprehensive engagement plan that—perhaps you may be right—has been absent in the past. This shift towards local generation and local leadership is going to be key. Obviously you will want expertise on the board, but you will also want heavy representation, particularly in areas where several authorities are involved in bringing the plan together. Hopefully, the plans that come through will reflect all of that.

Simon Gallagher: As a point of fact on the timing of this, legislation on the new town development corporations was incorporated in the Neighbourhood Planning Act 2017. Ebbsfleet predated that and we did not have that legislation at our disposal at the establishment of the Ebbsfleet Development Corporation model.

Q279 **Helen Hayes:** Many witnesses have told us during the course of this inquiry that the reason that new towns were successful in the past was that they could purchase land at near to existing use value. However, since the 1961 Land Compensation Act, landowners have also been entitled to be paid hope value to reflect the value of future planning permissions. Does the 1961 Land Compensation Act need to be amended in order to for the latest generation of new towns to be successful?

Kit Malthouse: Given the changes that went through at the end of last year, which fundamentally were amendments to that Act, we do not think so for the moment. We would like to see how the current system starts to operate. We have moved now to a situation where compensation is based on a pre-scheme. We are essentially trying to maintain a situation where you are compensated for your land on the same basis as if you have sold it voluntarily, but not necessarily with the benefit of the scheme that the local authority is sponsoring and putting in. That seems to me to be a sensible balance, so we will see where we get to on that. If there are still issues once that beds in, we can have a look at the 1961 Act again. We have to be slightly careful in these situations not to choke off land coming forwards or create a legal game of jeopardy where everything gets snowed up in Supreme Court challenges.

Q280 **Helen Hayes:** Many witnesses, including Shelter and the TCPA, have told us that the no-scheme rules, in their view, are not sufficient to exclude hope value and all of the problems that that brings. Are you looking at that evidence and are you open to the possibility of further reform in the near future?



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Kit Malthouse: I have reviewed the evidence that you have seen so far and watched some of the hearings, and, yes, we will keep an open mind. As I say, it is too early to say how this is operating. The history of this attempt at land value capture is not brilliant in terms of stimulating activity.

Q281 **Helen Hayes:** We have also had a variety of different perspectives from different witnesses on the question of whether the removal of the right to hope value would be compatible with the Human Rights Act and the European Convention on Human Rights. I wonder whether you have a view on that, Minister, and whether there is a human rights issue here.

Kit Malthouse: I am not a lawyer but, as I said earlier in my evidence, I am very focused on this idea that property rights are a fundamental human right and that overriding them should be in extremis and with compelling reasons. There are undoubtedly going to be cases that go through the courts in the future, so that will be for the justices to decide.

Helen Hayes: With respect, Minister, it is a little more nuanced.

Kit Malthouse: We do not think so in the current system, hence why we have proposed it. We have an obligation to consider the human rights implications and we think the balance is right.

Q282 **Helen Hayes:** This debate is not about the fundamental principle of property as a human right; it is about very specifically whether landowners have a human rights entitlement to a speculative value on the potential future of their land under circumstances broadly unknown. There are a variety of legal opinions, and I just wonder whether you have looked at those legal opinions and what your conclusion is based on them.

Kit Malthouse: I have not personally looked at the legal opinions, but no doubt the Department has, and has made an assessment. I have been reassured that what is proposed is compliant, as far as we are concerned. All of this debate hinges on what market value means and, if an individual is selling land voluntarily and the market perceives that there is future benefit likely to accrue to that land, it will pay more than the current use cost. That seems to me a good basis on which to start a valuation. If you have a willing buyer and a willing seller, what price will they realistically settle on as it stands? For the Government to seek to take that land at a discount to that situation might create difficulties.

Simon Gallagher: It is just worth adding something to what the Minister was saying. The compulsory purchase law, as it exists, contains no automatic right to any form of hope value. It is not registered as part of the conversation. The two questions are what the no-scheme value of this is and what is called equivalence in the compensation code. Does this provide a price that is equivalent to what they would have got without compulsory purchase, as an open-market transaction? That will apply differently in different circumstances. If there is a pre-existing



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planning permission on that site or it is in a local plan for further development, the valuation for that will probably be different from if there is no such planning permission. That is one of the principles that the compulsory purchase law and compensation code provide for.

Q283 **Kevin Hollinrake:** Am I right in saying that no scheme, as defined in the Neighbourhood Planning Act, does not mean no hope value?

Kit Malthouse: That is correct.

Q284 **Kevin Hollinrake:** On Mr Gallagher's point, even if that site does not have planning permission or is not in a local plan, even in a compulsory purchase situation, it could and probably would change hands at a market price that would reflect the developability of that site.

Kit Malthouse: Yes.

Q285 **Matt Western:** Just to follow on, we recently visited Freiburg and Amsterdam. It was interesting that the city authorities there were saying they have the power to compulsorily purchase or acquire land at a price that excludes the cost of any infrastructure to make development viable. Is that something we should do here?

Kit Malthouse: To be honest with you, that is broadly where we are trying to get to. Having the no-scheme rules come in gets us to that position. If the plan is to compulsorily acquire some land because the local authority is or the Government are putting in a junction on the motorway that makes it viable, it is acquired at a price that is pre that junction, so as if the junction did not exist. Those are the changes that went through at the end of last year. I think that is correct, is it not?

Simon Gallagher: Yes, it is. I should perhaps say that the changes that went through as part of the Neighbourhood Planning Act in 2017 were not fundamental changes to compulsory purchase principles. They were the codification of what had been the product of case law and substantial bits of statute over a number of years. That no-scheme principle that the Minister describes has been a longstanding principle of compulsory purchase law.

The thing I would add in response to the question there is that the German and Dutch planning systems are very different, in their fundamental natures, from the UK's planning system or certainly the English planning system, which I know best, with much fewer individual decisions on individual sites and much more of a zoning model. That allows very different models of development. It is very difficult to take out one element and apply it independently of the wider planning context.

Q286 **Matt Western:** One of the advantages, and correct me if I am wrong, goes back to this point where we have this issue with CIL and adjoining developments. If you are looking at it as a plan for a zone, it is far easier to make sure that that infrastructure gets delivered in a joined-up way.



Kit Malthouse: That is certainly true. If you have a completely centrally mandated and directional planning system, you remove elements of the ability of people to speculate. You also remove the ability of people to innovate, have new ideas and bring stuff forward that otherwise would not come forward. We have not historically operated that more authoritarian system, shall we say, which says it will be here and will not be anywhere else. Therefore, the price of the land effectively becomes undisputed, if you like. There is no hope value because it is going to be there and nowhere else. Therefore, the ability for speculation and negotiation is removed. Now, there are downsides to that approach as well.

Q287 **Matt Western:** Would you accept, Minister, that one of the real problems that we have in this country, as evidenced in other countries as well—you used the word “speculated”—is the problem of speculation? People are land banking. They are taking options or pre-options on land, which takes that land out of the equation until that developer deems it right, which causes the problems that we have seen for decades.

Kit Malthouse: This is an issue that has been looked at in the Letwin review and we would like to wait and see the evidence. I do not necessarily have a perception that we have a shortage of land coming forward. The question is whether it gets developed when it comes forward and whether there are artificial restrictions in the system that either make it easier to restrict land and, therefore, feed it into the market on a controlled basis or whether this is the proper execution. If you were a large housebuilder, you would naturally land bank. You would want a supply chain of land that, going forward, you can make available. Striking the balance there is a tricky one.

Simon Gallagher: Some of the changes that we have introduced elsewhere in the National Planning Policy Framework and also through the Neighbourhood Planning Act are trying to get more plans in place that start from honest assessments of need and are designed to give a bit more certainty to the market and to the communities, and critically to the communities in each area, about where the development is going to be.

Kit Malthouse: As I said earlier, they are about ramping up the pressure on both sides to make sure that this stuff gets developed out quickly: shorter planning permission, timeframes down to two years and the ability to consider alternative use if you are not going to develop it out as a house. Also, when granting permission, there is the ability to look at whether a developer has delivered on permission in the past, as to whether you grant planning permission. Some of those things will start to increase. We have a very large number of undeveloped permissions in the UK. Primarily, I would like to start to see them being developed out. In some sectors, particularly among housing associations, access to land is sometimes difficult, because they compete against the private sector. As for whether more land generally needs to be made available across



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the piece, I do not necessarily see a shortage of land being made available. Would you say there is?

Simon Gallagher: It depends on the places.

Kit Malthouse: It depends where it is.

Q288 **Matt Western:** We often think about the developers being just housebuilders, but so much of this land has also been taken as options by supermarkets and other commercial operators, which is actually preventing the local authorities from delivering the schemes that they choose to. I am sure you are looking at that too. Coming on to that point, one of the things that the city of Amsterdam does is to make developers pay for an option to develop public land, such that they have to complete that within a two-year period; otherwise they pay a penalty. Is that something you would consider?

Kit Malthouse: When you are in a situation where you have a developer on public land, having some kind of performance metric would seem to me pretty standard. I was not intimately involved with any of the schemes when I was at City Hall but, if TfL was developing out on some of its land, I would be very surprised if they did not contractually have some kind of performance metric to make sure that it was developed out quickly. Other than in a bare sale of the land, I would find it quite odd, where a local authority or some public authority is disposing of land specifically for the purposes of construction, if they did not have some kind of contractual requirement to get it developed. Often, a lot of those arrangements have some kind of overage attached to them. At the end of the deal, there will be a reckoning-up about whether the land price could be augmented by an overage, so there will be a requirement on them to get the thing developed. I would expect, therefore, rather than having some kind of mandate centrally, sensible local authorities will be doing something not dissimilar on public land.

Q289 **Chair:** Maybe this is an opportunity to give local authorities examples of good practice. It is an interesting one, where the developer forfeits the complete amount of the option it has paid for if it does not get it on track within a certain time.

Kit Malthouse: Certainly when you look at sites that involve Homes England, it will be doing exactly that. There will be a performance basis on that. There is a model emerging now, certainly in large-scale residential development—I have one in my constituency—of the notion of a master developer, which is effectively appointed by the local authority on a local site. They have sub-developers that are given portions of the large site to develop and they are given more dependent on performance. For the one in my constituency, there is probably 10 years of work there. The idea is that you have 10 years of work as long as you perform on each site that you are given. If you do not, they will find somebody else.

Q290 **Chair:** Coming back to the previous point about the development paying



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for the infrastructure that is needed to sustain that development, I recognise that there is a difference in the German and Netherlands planning systems and their more zonal approach to planning, but certainly larger sites in this country—and we go to the new towns as the largest example—are never going to be deliverable by the public sector with all the infrastructure that is required from them unless the private sector developments there pay, through the purchase of land, sufficiently to enable that public infrastructure to be built. Is that model not perfectly reasonable to try to achieve?

Kit Malthouse: It is perfectly reasonable for the public and the private sector to partner up, to put in place the infrastructure that makes the development happen. The challenge is where that money comes from. We can have direct contributions, which the reforms we are putting through are trying to streamline, increase, make more transparent, consistent and certain. Hopefully, that will increase the amount. Also, do not forget—we mentioned this slightly earlier—that there are indirect contributions too. The landowners that benefit from an uplift in value will pay capital gains tax, corporation tax or whatever it might be. That is naturally recycled through things like the infrastructure fund that will make a contribution towards the infrastructure.

A partnership between the two is great and appropriate. The question is how much negotiation there is about the proportion that is paid by each. I guess the point I was trying to make earlier is that that changes from site to site. In London, there is quite a lot of capacity for the private sector to fund Crossrail 2, fund Crossrail itself and get quite a high proportion of affordable housing. In Doncaster, that is less the case.

Q291 **Chair:** It is, but is it not true that new towns would never have been built in this country with the rules as they stand at present? They were built because the land could be bought up at its value before the new town was declared. Therefore, when it was sold on to developers, that uplift in value paid for the roads, the schools, the hospitals and everything that went to make the new town viable.

Kit Malthouse: Yes, some of them were.

Simon Gallagher: As part of the call for cases that we have done on new towns, we are encouraging communities to develop exactly those sorts of models. We are looking forward to seeing some of the business cases and business models that come forward. These will be developed by local communities, which are starting to produce business cases, looking at the nature of the land arrangements. If that was already a site in their local plan and there was a developer lined on to it, that would be a different model than if they are considering that site for the first time.

Kit Malthouse: Also, during that era we were in a different political environment. We were certainly in a different legal environment in terms of the human rights aspects of whether the Government can just steam



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in and say, "I am taking your land". All these things have changed very significantly since then.

Q292 **Chair:** The European Convention on Human Rights was around when most of the new towns were being developed, was it not?

Kit Malthouse: It certainly was, but there was not the level of activity legally around the European Convention on Human Rights. Nevertheless, we were in a different situation. Of course, the other thing to bear in mind during that period is that, broadly, the approach the Government took towards development choked off pretty much all activity. The Wilson Government that put in place quite a lot of this stuff effectively choked off all private sector activity.

Q293 **Chair:** Sorry, the Wilson Government did not build the new towns.

Kit Malthouse: No, but there was a swathe of activity through the 60s and 70s that resulted in a reduction in private sector activity.

Chair: No, the new towns were developed in the 40s and 50s, most of them. Some of them were before the war. Never mind.

Kit Malthouse: There were some in the 70s.

Q294 **Teresa Pearce:** Morning, Minister. There has been a theme through what you have said. You have talked about changes to viability, the NPPF. You have talked about the NPPF putting pressure on both sides. You have talked again and again about local authorities and their powers. However, local authorities now have powers but many of them, especially in London, do not have the resources to use them. Do you have any concerns that many local authority planning departments are under-resourced to actually bring in the changes we want to see?

Kit Malthouse: Obviously we want them to have the capacity to do it. We have just agreed an uplift in planning fees and the income that they can take. I think we are consulting on another increase at the moment to try to give them the capacity to do that. In future, if it looks like there are capacity issues, we will have to think about what assistance we can give to make these things happen.

Q295 **Teresa Pearce:** I look forward to you pressuring the Chancellor for more funding for planning departments. The Committee has taken evidence from the National Infrastructure Commission and Transport for London, who appear very keen to increase the use of different methods of land value capture. Given your reply to the Chair at the beginning that, at the moment, we are tweaking and changing the current system, rather than bringing in something new, how will the Government and you support the National Infrastructure Commission, Transport for London and others in devising new mechanisms to capture land value?

Kit Malthouse: The key thing for us to do is to remain open-minded. We are happy to look at new things. The development rights auction model that TfL want to pilot and that we have looked at, we have co-



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operated in trying to put in place. I do not think they have actually used it yet, but their ability to do that is supported and we would like to give it a try. We want to see where we get to on this stuff, remain open-minded about other people's ideas. I am more than happy to look in more detail, for instance, at Amsterdam, although we think it is not necessarily compatible with the way we do planning in this country. We want to remain open to ideas. There are a lot of houses that need building. There is a lot of infrastructure that is going to have to be paid for. We need to find a way to pay for it, and remaining open-minded as to how seems sensible going forward.

Simon Gallagher: On the development rights auction model we worked with Transport for London for, TfL has concluded that it does not work in some circumstances and has published a report on that. The National Infrastructure Commission published its national infrastructure assessment, I think, in July, and made a number of recommendations, some of which are exactly the stuff that the Minister has been talking about. Pooling restrictions on Section 106 contributions was the first recommendation, so we are on that. The Government are required to respond to that report and will do so to the timetables required.

Q296 **Teresa Pearce:** Minister, as a previous member of the GLA and part of the mayoral team, you know TfL pretty well, I would imagine. They have brought forward the idea about having a transport premium charge. Do you have a view on that?

Kit Malthouse: No, I do not. How would that work?

Q297 **Teresa Pearce:** They have talked about areas, particularly in London, where there is an increase in value because of new transport infrastructure, and looking at somehow capturing that value for new people who move in.

Kit Malthouse: There is the business rates supplement, which it sounds very similar to. I will have a look at it and see. It was news to me that they are bringing that forward. They have looked at funding particular transport infrastructure by impositions, whether upon the business community or generally the property community, whether that is Crossrail 2, Crossrail 1, the extension of the Northern Line, or whatever it might be. My experience is that TfL is pretty innovative on this stuff and I would be happy to look at it.

Q298 **Liz Twist:** Minister, this inquiry has focused on capturing increases in land value arising from granting of planning permission for new developments. However, much more significant revenue would be raised through a mechanism that captured land value increases on existing properties. Would the Government consider proposals for a transaction-based system of land value capture on existing properties, as suggested in evidence by Transport for London?

Kit Malthouse: By transaction-based, do you mean like a capital gains tax? These would be Treasury matters, I guess, if you are looking at a



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wider taxation base. It might be slightly above my pay grade to comment on that particular approach. I would point out that we have a transaction-based profits and capital tax, called capital gains tax, which applies to quite a lot of property transactions at the moment, or corporation tax if it is within a limited company.

Q299 Liz Twist: You said that is an issue for the Treasury. Can I ask you for your thoughts on how the Ministry of Housing, Communities and Local Government interacts with Treasury to ensure that your objectives of increasing development and increasing housebuilding are met through that taxation system?

Kit Malthouse: We have almost hourly interaction with the Treasury around the particular proposals. Quite rightly, because we are spending huge amounts of Government money on the various programmes that we have, they take a significant interest in what we do. I was in a meeting just yesterday with the Chancellor to talk about some of our issues, so we have strong contact with them all the time. To be honest with you, our objectives are aligned, in terms of getting more, better, faster housebuilding.

Q300 Liz Twist: Your focus is on the housebuilding and development side of it. Are there occasions when that leads to differences in approach, and how would you resolve those?

Kit Malthouse: Not thus far, but it is early days. Both Departments take an interest in the overall health of the market, because the health of the market has a direct impact on the amount of capital that is deployed in that market. The amount of capital that is deployed has a direct impact on the number of houses that are built. Our interests are very closely aligned and thus far I have not seen any reason to believe that there is anything other than glutinous co-operation.

Q301 Liz Twist: You do not feel sometimes that the Treasury can be a brake on what the Ministry wants to do in developing new properties.

Kit Malthouse: The Treasury performs an extremely important function, which is to be both a challenge and a test to spending Departments. We have to bear in mind that, although we have our own policy objectives in terms of building houses, improving safety and all those kinds of issues, nevertheless there is a wider economic environment in which we are operating, which the Treasury naturally has responsibility for. Although things are much better than they were, we are still spending quite a lot more money than we have, so they naturally want to test everything we do to make sure that it is value for money, sensibly deployed and going to produce the results that we say it is going to produce. To me, that seems eminently reasonable and sensible.

Simon Gallagher: As the former head of a Treasury spending team, I would say there should always be a little bit of tension between the Department and the Treasury because the Treasury is there to ask those difficult questions that the Minister asks about value for money, impact,



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outcomes and effectiveness of policies. That should be conducted in the proper spirit, and that is what we have at the moment, with an excellent Treasury team that we work with as a Department.

Q302 Kevin Hollinrake: It may not be a very fair question because I know you are not in the Treasury. We did invite a Treasury Minister, I think, who could not attend. The question really relates to a wider look at land values and the tax around that system. You mentioned one way of capturing wider increases in property values through capital gains, but, as you know, capital gains taxes do not apply to your own primary residence. Other people have suggested to the inquiry that we should have some kind of general land property tax or the kind of property tax that relates to values, which is somehow adjusted over time. What would your view be on that? Should we be trying to capture the value on property, ongoing, as it increases?

Kit Malthouse: From a transactional point of view, I think you took evidence from various bodies that the overall tax take on transactions was something like 50%.

Kevin Hollinrake: That was on land, I think.

Kit Malthouse: One of the things we have talked about in the last few days is whether anybody has ever done any analysis of what the tax take is, on a transactional basis. Whether there should be an ongoing land tax is way above my pay grade. You are tempting me down a path that would get me into trouble.

Q303 Chair: Go on then. What is your view?

Kit Malthouse: As I said at the start, my general sense is that large capital taxes on transactions rarely encourage activity.

Chair: Minister, thank you very much for being with us this morning and for answering our questions. We will hopefully produce a report for your consideration in the not-too-distant future.

Kit Malthouse: I will look forward to it.

Chair: "Shortly" I think is the normal ministerial term for these things, but hopefully shortly in our description actually lives up to the name.

Kit Malthouse: Thanks a lot.

Chair: Thank you for joining us.