

Written evidence submitted by the Northern Housing Consortium [LVC 051]

About us

The Northern Housing Consortium (NHC) is a membership organisation that works with local authorities and housing associations across the North to advance the cause of housing. Our membership covers around 90% of all housing providers in the North. The NHC brings its members together to share ideas, and to represent their interests and to ensure they are heard at a regional and national government level. Our member organisations have contributed to this response.

Introduction

Many areas of the North have a good supply of developable land, steadily growing demand, interest from investors and a pro-development approach from local leadership. Investors see potential in the North. The region has a strong offer for business yet despite this, the gap in gross value added between the North and the rest of the UK is significant.

There are still not enough new homes in the right places in the North and many people are now struggling to access the type of housing they really want. In particular there are concerns over the use and quality of existing stock – with some areas remaining unpopular and low value even when geographically close to places of economic prosperity.

We are pleased to be able to contribute to an analysis of best fit models to achieve land value capture.

Q1. Are current methods, such as the Community Infrastructure Levy, planning obligations, land assembly and compulsory purchase adequate to capture increases in the value of land?

- 1.1 The ability of public sector bodies to purchase land for new homes at anything less than residential value is a critical point and lies at the heart of the housing crisis.
- 1.2 One issue that has come up time and again with our members is the investment needed to bring brownfield land to market. The complexities of each site, its potential use and viability as well as the specifics of the local market and cost to the public purse make it difficult to manage as a single programme and we have heard how this is just not working in parts of the North. Addressing this has been cited as being perhaps the single most important immediate measure that could be taken to accelerate the delivery of new homes in the North.
- 1.3 Regional land markets differ and interventions must have the flexibility to account for regional variation. A one size fits all approach is neither useful nor likely to be successful. Unlike London and the South East where land value uplift can make a more significant contribution to costs, the short-to-medium-term land values in the North are not there to trigger market-led solutions in

many places. Tackling this could help ensure that the infrastructure needs of higher market areas are less directly in competition for national funding with the needs of other parts of the country where land values are lower.

- 1.4 Residential land valuations across the North have seen fluctuations in value in the last 20 years, spiking in 2004, and are now on average double the 1998 value meaning that local authorities frequently find themselves unable to proceed in open market competition. Whilst some of this valuation spike is fuelled by "hope" value, these residential land values are unaffordable for the public sector.
- 1.5 There are areas of the North that have been gaining momentum however, these areas can be sited alongside low value brownfield sites which retain concentrations of deprivation. So, we have seen in the past year, urban land values in Manchester become particularly attractive with a rise of 24%, compared with 4% for the UK. Strong house price growth in this relatively affordable market has supported the increase with a forecast for house prices to grow by 17-18% over the next five years, compared with 14% for the UK. Yet, this is not reflective of many places across the North where land values have not recovered from the financial downturn.
- 1.6 Investment in sites in the North by Homes England is starting to help to increase the number of developers in the market and investment in sites has helped grow confidence in the development market. NHC members have previously commented that government support in terms of investment and a stronger interventionist role from Homes England is needed to ensure land with marginal viability is brought into use so we are encouraged by the new role for Homes England. We await the impact of their new role to support this.
- 1.7 Despite this growth, land values in the three regions of North East, North West and Yorkshire and Humber are currently half the England average per hectare. There are areas of the North where the values are not sufficient to drive a market-led solution. Consideration needs to be given to what should be done in areas where deprivation is concentrated but the land values are not sufficiently attractive to developers to make the business case for investment.
- 1.8 Land value capture is not a solution in itself to pay for all infrastructure needs but it can be structured to support a fairer distribution of the costs of infrastructure between the public and property owners who receive windfall gains. Achieving this does not need a raft of new powers or regulation. Evidence suggests that, policy makers should focus on streamlining the system and supporting local planning authorities to build on their negotiating and monitoring skills to enable S106 successfully to deliver infrastructure and housing for the local community. Primarily it needs a new way of doing business and reform underpinned by longer term approaches to investment returns.
- 1.9 In evidence from our members, it is reported that it is difficult for the planning system to capture land value uplift using Section 106 agreements (S106), and the Community Infrastructure Levy (CIL) and has limitations where significant

new investment is required or as an approach to convince local residents that the existing infrastructure issues will be resolved. We feel caution is required before inventing alternatives to the current methods with changes that potentially act as a disincentive to secure planning permissions. But elements of the current methods are not a reliable source of gain even were the system to work as intended.

- 1.10 The use of negotiated S106 agreements has undoubtedly increased the number of affordable homes each year on sites being developed by private house builders and overall, it has enabled a wide range of planning agreements which support local communities to be negotiated effectively. 65 per cent of councils said most of their social and affordable housing was delivered via s106. In earlier times, house builders would only have built homes for sale on the land that they secured. A housing association would have produced segregated social housing and, perhaps, some shared ownership housing on whatever land was left for it to buy. Amongst the Northern planning authorities there are good levels of monitoring the agreements on planning obligations and, where robust monitoring systems are in place, almost everything that is agreed is eventually delivered.
- 1.11 In the North and Midlands, S106 has been used mainly to produce mixed tenure through forms of low cost home ownership. However, because there are lower land values, the increase in value when land is designated for housing can be much less and with the result that S106 can deliver fewer affordable homes.
- 1.12 For example, the value of direct payment obligations paid to local planning authorities is £582k per LPA in the North West as against £5.8m per LPA in Greater London. While there has been a continued increase in the number of obligations per local authority in the Northern regions and planning authorities in those regions achieved more obligations for each agreement they negotiated, the total value of agreed planning obligations secured in the three Northern regions secured was 10% of the total value of all obligations in England - £2,672m worth of affordable housing and other infrastructure with London, the South East and East secured over two thirds (68%).¹
- 1.13 Unfortunately, the impact of S106 has been undermined by developers being allowed to challenge S106 agreements following a 'viability assessment' and has given developers licence to reduce or eliminate affordable housing provision. For example, in Wakefield, where the development on the site of Pontefract General Infirmary was required to deliver 30% affordable housing. Viability assessments cut this to 5% – 6 out of 124 homes. The National Planning Policy Framework (NPPF) retains viability assessments as a permanent planning feature.
- 1.14 There is evidence that local authorities are taking whatever steps they can to try to protect the viability of schemes so that they can actually go ahead and at the same time protect the legitimate needs of the community. These measures

¹ CLG The Incidence, Value and Delivery of Planning Obligations in England in 2007-08

include ongoing reviews of obligations and deferring payment arrangements. Our local authority members tell us they need a system that is streamlined so that they do not have to spend precious local authority resources on lengthy negotiations. The negotiation and delivery of obligations requires a range of high level skills on the part of planning authorities and unfortunately, in many authorities, these skills risk being lost as capacity and skill is lost in planning departments. Where authorities do not have the resources to spend on the negotiations, they lose out on the benefit that S106 provides.

- 1.15 A fundamental concern with respect to the S106 approach has been the extent to which contributions depend on levels of market activity and on the economic environment. It relies on the strength of the house-building industry, with affordable housing cut to secure a greater profit for developers, with planning gain reduced and negotiated away.
- 1.16 Additionally, pooling restrictions make it difficult to collect meaningful sums, which make S106 agreements an unsuitable form of capturing land value uplift. A further drawback is the lack of transparency in relation to the community interest. We understand the rationale that pooling can ensure land is brought forward and that it can encourage SME builders into the market and welcome efforts to diversify delivery, however pooling restrictions are an unnecessary complexity that have been raised by NHC members and limits key infrastructure investment. If small builders are to be encouraged into the market place then it is imperative that these constraints arising from this restriction are adequately addressed through the removal of restrictions to the 'pooling' of S106 contributions in certain circumstances.
- 1.17 One of the objectives behind the introduction of the CILs was to move away from the negotiated nature of the S106 agreements and speed up the negotiation process. Overall, it would appear that the use of CIL in developer contribution negotiation has speeded up the development process.
- 1.18 By comparison to S106, CIL is regarded as a more transparent mechanism to secure developer contributions. By contrast to S106, CIL monies can be pooled to deliver infrastructure that is not directly related to the development from which the monies are secured. For example, it would be reasonable to pool all CIL contributions gathered from developments across a city towards a new road, or even to pool contributions across several authorities to deliver cross-boundary infrastructure requirements. There are no time limits by which CIL monies must be spent, which offers greater opportunities to gather sufficient monies to deliver the required infrastructure. The fundamental objective is that the required infrastructure is deemed critical to deliver the growth requirement.
- 1.19 However, as CIL schemes are complex to develop and sustain, they are not mandatory, and council planning staff numbers are reducing leaving reduced capacity, fewer than half of local planning authorities have set one up.

In the North, the councils that have published their CIL plans as at 31 October 2017 are:

- North East - 4 out of 12 local planning authorities
- North West – 14 out of 39 local planning authorities
- Yorkshire & Humber – 14 out of 22 local planning authorities

- 1.20 Reforming the CIL system to be simpler and faster may increase its implementation rate. However, a simpler system has drawbacks when capturing land value uplift from changes of use to residential is an approach that is likely to need to be supported by detailed viability evidence; the very type of evidence that has slowed down CIL rate implementation.
- 1.21 We have concerns that where the CIL is introduced in areas with low land values in the North, the risk is that it will be set too low as local authorities do not want it to discourage development. This means that in an upturn, when the uplift in land values is much higher, local authorities will have missed out on the opportunity to fund and provide infrastructure and services.
- 1.22 A welcome reform is the greater support for the use of Compulsory purchase orders (CPO) for site assembly. The ambition to capture the value of land should be central to how compulsory purchase works in the future. While the changes in the Neighbourhood Planning Act go some way towards simplifying the CPO process, we consider that it does not go far enough in assisting acquiring authorities to capture meaningful land value increases. This is because the change will not address the fundamental issue of cost of compulsory land acquisition being too high.
- 1.23 Reforming compulsory purchase should mean that the landowner receives a fair price for the land rather than an inflated price that incorporates a 'hope value' based on what their land could be. Changing CPO to allow local authorities to purchase non-residential land at current use value could help deliver considerable numbers of affordable homes. How significant this CPO reform might be will depend on how big the savings are in purchasing at below market value. The prospect of large savings and extensive use of new CPO powers could prove to be significant for councils and in high housing demand areas but modest reforms may have little impact.
- 1.24 In summary, we support reform of the current methods. We welcome moves to clarify and simplify CPO, and recognition of the role of devolved administrations to acquire land for strategic developments in the public interest. Genuinely strengthening CPO where planning permissions have expired and development has not commenced could make CPO faster and simpler and enable the capturing of land value uplift. We believe the existence of strong CPO powers incentivises landowners to negotiate reasonable prices rather than to hold out for the additional 'unearned increment'.
- 1.25 A single clear, transparent and robust viability process is needed to provide local planning authorities with the tools to ensure developers build out sites at a given rate, and so that developers are clear of their obligations when purchasing land. Currently developers can over pay for land knowing that they

can negotiate minimum S106 infrastructure and affordable housing contributions on viability grounds.

- 1.26 If the current methods are retained and reformed, the merging of S106 into a refocused CIL would potentially avoid protracted viability negotiations, based around two overlapping planning gain mechanisms, and thus speed up the planning process capturing both infrastructure and affordable housing.
- 1.27 Reform to the CIL and the removal of restrictions to the 'pooling' of section 106 contributions in certain circumstances is required. The CIL regime must be simplified and we await further proposals on allowing authorities to set rates which "better reflect the uplift in land values between a proposed and existing use"², rather than setting a flat rate for all developments of the same type.
- 1.28 The cumulative effect of reform of current methods is likely to be a more flexible regime which ensures that land is released at values that guarantee the viability of projects. It is important to recognise the financial relationship between CIL, affordable housing and other S106 obligations. When considered together they ensure a balanced and equitable approach.
- 1.29 Land value capture is not a panacea to pay for all infrastructure needs. But it may be able to play a role in ensuring a fairer distribution of the costs of infrastructure between general tax payers and property owners who receive windfall gains. It could help ensure that the infrastructure needs of London and the South East – where land value uplift can make a more significant contribution to costs – are less directly in competition for national funding with the needs of other parts of the country where land values are lower.

Q2. What new methods may be employed to achieve land value capture and what examples exist of effective practice in this area, including internationally?

- 2.1 We would support methods that were in line with international best practice. There are lessons to be learned from our European neighbours to ensure that the uplift on land values is retained by the public sector, rather than being gifted to speculative developers that often do not need or seek to have the long-term interests of the community in mind to deliver a profit.
- 2.2 In fact, most methods that are successful elsewhere already exist in some form in the UK and there is merit in reviewing whether they could be made to work better, adjusted to become more effective or be modified to enable them to be used more widely. In some cases it may be about how methods work together, or unintentionally undermine intended outcomes.
- 2.3 One of the most common methods in adopted in other countries involves some form of tax on land values. We would urge further work by economists, tax practitioners and the property industry to consider all of the issues experienced

² Autumn Budget 2017

in introducing a land tax system to investigate a feasible system including consideration of those countries which have adopted a LVT for many years and have modified and reformed it over time such as Denmark and New Zealand.

- 2.4 There is certainly merit for reform of the current regime for taxing both land and property and introducing a more progressive and more economically efficient tax than stamp duty (“*among the most inefficient and damaging of all taxes*”³). As well as removing the current perverse incentives of imposing heavier tax on properties that change hands more often thereby deterring mobility amongst home owners, a ‘housing tax’ could give local councils a larger, less regressive revenue source and strengthen local accountability.

Q3. What are the possible advantages and disadvantages in adopting alternative and more comprehensive systems of land value capture?

- 3.1 A more comprehensive system of land value capture is likely to create better market conditions, as instead of the private sector competing over control of the land market it would compete over the quality of house-building developments, creating a more diversified market for housing supply and tenure type. Overall, this will have a stabilising influence on the broader market, slowing down the pace of land price growth. This, in turn, will create opportunities to diversify the construction sector as SME house-builders will have improved access to land in a less inflated market.
- 3.2 In defining a more comprehensive system, the housing aspects of devolution deals offers significant potential in terms of the transformation of place with mayors having the power to establish combined authority-wide Housing Companies, using them to bring land to market for social and affordable rent and using mechanisms to capture public value from the land.
- 3.3 These sub-regional administrations will be ideally placed to consider how new and innovative products and delivery models might contribute to meeting affordable housing need. This could include the reform of CPO to enable the purchase of land at a lower value and the funding of affordable housing at lower costs.
- 3.4 Combined authorities could build on the success of local authorities in setting up local housing companies (LHCs) as vehicles for bringing land to use, capturing value for residents. This enables the public sector to purchase the land, grant itself planning permission and then either sell it to developers at its residential value, thereby collecting the increase for the state, or keeping it in public ownership to generate a permanent revenue stream and/or to provide affordable accommodation at much less cost than currently.

³ Tax By Design: The Mirrlees Review IFS

- 3.5 Establishing a similar mechanism at a combined authority level will allow them to be bolstered by the mayor's compulsory purchase order powers. The combined authority could retain the value of the land, securing a long-term income stream which can be reinvested into other projects or paid out in dividend to the combined authority. Areas in the North requiring significant regenerations may find a Mayoral Development Corporation to be the most effective holding on to some or all the value of the land in the long term.

Case Study: Sheffield Housing Company - set up in 2011 as a partnership between Sheffield Council, Keepmoat and Great Places Housing Group. The council's principal purpose in setting up the company was strategic place-shaping. During the decade 2000-2010 the council had repeatedly tried and failed to secure private investment in the renewal of social housing estates, including diversifying tenure. The company was set up:

- *directly* to achieve regeneration goals by building and selling properties for market sale in hitherto mono-tenure social housing areas on sites which had previously been cleared of non-viable council housing
- *indirectly* to encourage private sector involvement by proving the concept and supporting higher land valuations. This remains the council's principal motivation. However, since inception, and reflecting the council's financial position, the council now has a stronger interest in securing early financial returns from projects. It has also appointed a dedicated cross-disciplinary team

The company aims to build 2,300 new homes over 15 years. Four years into the plan it has built 293 new homes, 193 bought outright and 70 affordable rent.⁴

- 3.6 As they become more established, there is evidence that local planning authorities are finding ways of being more creative through their local housing companies, for example, by exploring the options for utilising S106 for new housing developments. We believe the government should support innovation and flexibility in the use of contributions through delivery vehicles.

Q4. What lessons may be learned from past attempts to capture the uplift in value?

- 4.1 In looking at lessons from the past, one of the major programmes of post-war planning were the New Town development corporations which had supreme powers of acquisition and powerful leadership. We heard compelling evidence from our members that the key to strengthening local markets and development at scale is strong civic leadership. This is seen as essential in raising the quality of place, which in turn will drive further long-term investment.
- 4.2 The early versions of the New Town corporations enjoyed exceptionally favourable arrangements for land purchase at existing use values and were effectively able to acquire all the land needed to build new towns. Adapting

⁴ Delivering the renaissance in council-built homes: the rise of local housing companies - The Smith Institute October 2017

similar principles today would seem to hold good in the face of the housing crisis through an effective delivery option for local authorities and Combined Authorities.

- 4.3 Councils have long campaigned to be able to purchase land at a price which is close to its existing use, and to be able to capture increases in land value in order to fund further delivery of affordable homes and infrastructure, and for greater transparency on land ownership.
- 4.4 It is inherent in land markets that value from public investment in, for example, new train stations or better schools is returned to the landowner, leaving little potential return for the wider community. Local planning authorities therefore have limited ability to influence the land market and putting the entire responsibility onto the local planning authorities ignores the incentives landowners have to hold on to sites. There are few if any incentives for landowners to sell land at any scale for less than market value. General rises in land and property values create 'hope value' for landowners and this encourages retention of land until its value has increased.
- 4.5 The current system has the means to correct this without the regulations becoming even more complex and adversarial. By resetting and clarifying S106 obligations, local planning authorities can help to ensure that landowners will be more realistic about the price of their land, that developers are less likely to overpay for it and then find they cannot meet S106 obligations, and that where there is a planning-related land-value uplift the authority captures a share of it. Local planning authorities can also elect to defer S106 or CIL payments until development is completed and even (where the development involves homeownership products) until all homes are sold. This approach can be particularly helpful in 'de-risking' development by smaller housing associations and SME developers.
- 4.6 Any attempt to address the housing crisis must include measures to change incentives in the land market, and secure land at low cost. We welcome any acknowledgement that lower land costs will be key to building more and better homes. The ability to assemble land at a lower value means that it will cost less to fund a new programme of building. It will also ensure that the rise in the value of land, created by the public investment, actually benefits the public with affordable housing and infrastructure.

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