SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Land Value Capture

The shortage of affordable housing currently afflicting parts of the UK – and the difficulty of funding the infrastructure needed to enable land to be developed for housing – means that policy makers across the UK are increasingly looking at land value capture as a potential solution. But with so many voices in the discussion, it is helpful to take a step back and ask – what is it all about?

Publicly Created Land Value

The value of land depends largely on what it is used for and where it is located. Well-connected land in locations where people want to live, which is well served by public amenities is more valuable than land without such advantages. But these advantages are often not created by the land-owner or occupier but by society – or public agencies acting on behalf of society. Collectively publicly created increases in land value are referred to as "betterment".

Betterment:
any increase in the value of a parcel of land that can be attributed to factors other than the effort or investment of the owner or occupier.

Development value:
the increase in land values arising from the proposed development of a parcel of land, including changes in its use as a result of planning consent.

Broadly speaking betterment occurs for three main reasons:

1. as a result of infrastructure improvements – (e.g. investment in roads, schools, utilities and other public amenities);

2. when planning permission is granted that enables land to be put to a higher value use for which there is need or demand (e.g. residential development rather than agriculture); and

3. wider societal changes, such as improvements in the local, or national, economy that make a particular area more desirable to live in.

Many people believe that, because such increases are created by society, that society as a whole should be able to capture some of the benefits. This notion of capturing publicly created increases in land value is at the heart of discussions about land value capture.

What is land value capture?

Land value capture is a concept rather than a specific policy proposal and as such can mean different things to different people.

Increasingly however, the debate around land value capture is focusing on mechanisms for securing a share of the benefits delivered by public investment in infrastructure to offset the costs of their provision (i.e. the first source of betterment identified above). The next steps of our work on land value capture will therefore involve looking at these mechanisms in further detail.

Land Value Tax & Land Value Capture

Attempts to capture land value typically focus on uplifts generated by public investment in infrastructure or the granting of development rights (i.e. the first two sources of betterment identified above). Land value tax is intended to capture uplifts generated by wider societal changes as well. This is why the Scottish Land Commission will also be investigating the potential for land value taxes as part of our work.

Both land value tax and land value capture are assessed on the basis of land value but land value tax is usually levied annually while land value capture is triggered by an event, such as planning permission being granted.

The Importance of Viability

A crucial consideration in any discussion of land value capture is the issue of viability and where value is to be taken from (i.e. the land owner at the point of sale or the developer at the point of development). If public authorities seek to capture too much value from a development then there is a risk that the site could become commercially unviable (which could stall development) or might not be brought forward by the land owner for development in the first place. On the other hand, if public authorities are too cautious in their approach then they could miss out on funding that could be used to support vital infrastructure. There are a multitude of factors that determine viability making this an on-going challenge for planners and developers alike – but to be successful it is vital that any future system of land value capture learns from experience.

Lessons from History: Taxing Betterment

One approach to capturing betterment, which has been tried in the UK on a number of occasions in the decades following WWII, is to tax development value directly. These attempts did not last for various political and practical reasons and in some cases resulted in less land being brought forward for development. It is important to learn lessons from this experience. That is why, as a starting point for our work on land value capture, the Land Commission commissioned research looking at what we can learn from the UK's historic experience.

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A key conclusion from this work is that previous attempts failed in part because they did not command widespread **political consensus**. In the past land owners simply delayed bringing land to market until there was a change in government and betterment taxation was repealed. With politicians of all persuasions now talking up the potential of land value capture, political consensus may now be easier to achieve than in the past.

Another important lesson from the past is that under-resourced schemes have failed. This means that **adequate numbers of staff – with the right skills – will be crucial** for making any system of land value capture work.

A third lesson from our work to date is that a key strength of the current system of planning obligations is that land value uplift is captured locally and its benefits are visible locally. This contrasts with previous ineffective attempts involving the use of a central agency, which led to conflict with local authorities. This implies that, as is the case in other countries, **land use planning and land value capture are best dealt with together by local government**. This may involve active partnership between the public and private sectors in taking forward major developments.

A final – and important – lesson from history is that **the scope for land value capture varies greatly between different areas**. This is because market demand for housing, and therefore residential land values vary greatly from region to region. In areas where land values are low the scope for land value capture is therefore much more limited. This has important implications for large areas of Scotland where residential land values are low and suggests that different approaches for funding infrastructure are likely to be required in different areas.

Current Practice: Planning Obligations

Over the last three decades planning obligations have emerged as the main policy mechanism for securing developer contributions toward the costs of development. Planning obligations, (known as section 75 Agreements in Scotland and section 106 Agreements in England and Wales), enable local authorities to negotiate directly with developers to secure contributions to mitigate the effects of development. This may be in the form of a financial contribution to the local authority for a specific purpose related to a development, in the form of physical infrastructure and/or as contributions to affordable housing.

There are however strict limitations about what planning obligations can be used for, which limits their use as a land value capture mechanism. Planning obligations must for example be necessary to make the proposed development acceptable in planning terms and must also relate directly to the proposed development. This means that planning obligations currently cannot be used to help finance wider community infrastructure needs.

Planning obligations have also been criticised being relatively complex and for creating uncertainty within the development process, which makes long-term decision making more difficult.

New Towns

New Towns were one of the UK's more successful historic experiments with land value capture. This model involved government designating specific areas of land for the development of new towns and resulted in the development of five new towns in Scotland after the end of WWII. For each of Scotland's five New Towns, a public development corporation was established that purchased land, drew up a comprehensive masterplan for the town, and then built the necessary infrastructure using money borrowed from the Treasury. The corporations then granted planning permission on the sites they owned and sold them to developers, using the uplift in land value to repay the loans.

The Role of Compulsory Purchase

Up until 1963 the success of the New Towns model was underpinned by the ability of public authorities to acquire land via compulsory purchase at or near its existing use value. Today the legal framework around compulsory purchase means that public bodies are now no longer able to do this. Some people suggest that changing the rules around compensation to enable public bodies to acquire land at existing use value would make it easier for public bodies to capture uplifts in land value to pay for essential infrastructure.

Our initial work suggests this may well be part of an effective approach but we need to address the immediate questions this raises and consider when it may be effective, how it fits as part of a wider proactive role for public authorities and whether there may be any unintended consequences that should be considered.

One important issue is the question of property rights. Under current rules, where land is acquired through compulsory purchase in the UK, compensation is required to reflect the value that the land owner might expect to realise on the open market if the land were to receive planning permission. Some argue that to change this would infringe land owners property rights – specifically the right to peaceful possession of property that is enshrined in the European Convention on Human Rights (ECHR). However, the fact that other signatories to the ECHR (notably Germany) do appear to be able to acquire land at existing use value suggests that this issue may have been overstated. That is why the next steps of our work will involve investigating and clarifying the position in relation to human rights and compensation.

Another issue is that regional variations in land value mean that this approach is likely to be less effective in some parts of Scotland – so different solutions will be required for different areas.

Existing (or Current) use value:

Often equated to agricultural land value, existing use value is the value at which land would sell on the open market assuming it could only be used for its existing use in the foreseeable future.

The Need for a More Collaborative Approach

Finding these solutions will require a more collaborative approach to development in which planning authorities and the development industry work together in pursuit of the public interest. Making this work will require public authorities to take a much more proactive approach to place-making than has been the norm for many years – but it will also require active support from the development industry. That is why, in taking forward our work on public interest led development, the Scottish Land Commission is actively engaging with partners from both the public sector and the development industry to try to identify collaborative approaches that will work.

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