



## **Consultation on Proposal to introduce Existing Use Value Amendment Homes for Scotland Response to Andy Wightman MSP**

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### **Summary Position**

Homes for Scotland (HFS) has raised concerns, shared by the delegated powers committee, that the Planning (Scotland) Bill is introducing a legislative framework for an Infrastructure Levy without the detail being available to see whether it would be beneficial in practice, and would overcome infrastructure barriers to housing delivery.

The same issue would arise were the Bill to be used as a hook for other new methods of land value capture. The work of the Scottish Land Commission (SLC) is at an important but early stage. The SLC is seeking to take a thorough, evidence-based approach to its work and is seeking a workable set of proposals that, they acknowledge, will almost certainly need to be different in different parts of Scotland and which, in any case, will need to be accompanied by infrastructure delivery mechanisms and significant new resource within local authorities if they are going to be effective in closing the gap between housing demand and supply and helping to tackle rising house prices. Achieving consensus will be vital to the success of any land reform measures. That consensus needs to extend to stakeholders, not just political parties, to avert the risk of significant delays in the delivery of new homes.

HFS is engaging pro-actively with the SLC and will continue to do so.

### **Response to Consultation Questions**

<p><b>1. What is your view on whether the uplift in land values accruing as a consequence of actual or anticipated planning consent should be captured at least in part for the public good?</b></p>
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Part of the uplift in land values accruing because of planning and development activity is already captured through contributions made under section 75 agreements as well as through tax, and of course through affordable homes built and funded. This is particularly true in respect of residential developments as the section 75 contributions made continue to increase in volume and to cover an ever-wider range of provisions.

It is also important to acknowledge the public good inherent in development itself. It is clearly in the public interest for development to take place to meet housing need and demand (for both affordable and market housing).

In making policy changes it is essential to be mindful of the balance between the capture of land value for public interest use, and the risk of landowners' incentive to sell being so diminished that overall land supply is affected by the policy.

We note that the Scottish Law Commission has undertaken a comprehensive review of the compulsory purchase system in Scotland. This identified the piecemeal nature of CPO legislation as one of its weaknesses, and recommended a comprehensive updating of the legislation. Any changes to the CPO system of compensation would be more appropriately addressed as part of the wider and ongoing CPO review process, rather than as an adjunct to the Planning (Scotland) Bill.

One of the findings of the review (which is supported by the Compulsory Purchase Association) is that where an enhanced land value is given to a landowner who is subject to a CPO, this can speed up the process of acquiring land. If existing use value was less than market value then landowners may increasingly be opposed to the compulsory acquisition of their land. This could delay or frustrate the release of land for housing.

**2. Do you agree that the power to acquire existing land at its existing use value should be available in the circumstances described in the proposed amendment?**

No. There is no evidence to support the premise that this proposal would help solve the problem of infrastructure delivery and help increase the supply of new homes of any type.

It is not clear that there is a requirement for the proposed change or whether it would be beneficial in practice.

No information has been provided on how existing use value would differ from the receipts landowners could/do get through from compulsory purchase now. We understand that landowners do not receive full market value for their land and that hope value is not necessarily as far removed from existing use value as may be being assumed. In that case there would be little to be gained, receipt wise, from this change.

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The proposal is unlikely to be of significant benefit in places where land values are low. Acquisition of land by local authorities in such circumstances, albeit in good faith, would simply transfer delivery barriers, burdens, risk and responsibility, from the private to the public sector.

The rules on CPO already discount value attributable to the CPO scheme, i.e. the "no scheme world". If land is designated as a SDZ and was to be compulsorily acquired to deliver that scheme, then the value attributable to the designation would be discounted under existing rules in any event.

Powers to acquire land – whether at existing use value, future potential value, or somewhere in between, will be ineffective (or at best limited in effect) if there are not clear accompanying provisions compelling local authorities to deliver the development required – and significant support available to them to help them do so.

The suggestion that a compromise position could be taken forward, whereby the landowner shares in some measure of the uplift, cannot be assessed to any meaningful degree without further detail.

The powers proposed would be random in their effect, prejudicing some landowners significantly while other landowners in similar circumstances would remain unaffected.

The premise on which the proposed amendment is based, i.e. that land values are inhibiting development, is highly questionable and is without an evidence base.

### **3. Are there other circumstances in which such a power should be available?**

Not at present. The Scottish Land Commission's work may reveal such opportunities, but these should be looked at in the context of a fully worked up and evidence-based package of measures that extend to the delivery of infrastructure, that clearly enable an increase in the delivery of new homes, and which can work for all of Scotland (albeit through different approaches in different areas, recognizing the varying challenges).

The use of compulsory purchase powers to unlock sites for development already plays a role in housing delivery, and a number of local authorities are using their CPO powers for this purpose. See, for example, North Lanarkshire Council's regeneration schemes in Cumbernauld. The costs associated with these orders (including compensation to landowners) are underwritten by the promoting developer.

### **4. What are the human rights implications of the proposal?**

It is for the Scottish Government and Parliament to determine if proposed legislation is compliant with the HRA. However, compliance with the HRA is not of itself evidence of a suitable or effective policy.

There is a risk that delivery of land would be delayed or stopped altogether while any HRA related legal issues were resolved.

The proposal considers only the compulsory acquisition (into public ownership) of land coming through SDZs. However, other land will also need to be brought forward for development by landowners outwith SDZs to meet housing need and demand. All development requires access to infrastructure, including utilities and schools. Utilities and education authorities are subject to their own regulatory requirements and controls limiting their ability to give preference to any particular landowner or developer. Taking land into public ownership would not, of itself, resolve infrastructure delivery issues, nor could it secure preferential treatment from utility providers and other statutory bodies.

It is not possible to meaningfully test the effectiveness of these proposals in the absence of an analysis of the interaction with other relevant statutory controls.

The proposal refers to it being "predicated on the assumption that the public sector will lead development". Consideration would need to be given to the impact of this approach on existing home building businesses and the wider supply chain. Scotland is failing to build enough homes and there is a role for the public and private sectors in addressing this shortfall. It would be counterproductive to actively prevent or discourage commercial home builders from helping to address this shortfall.

Home builders in Scotland are accustomed to being relied on as the main deliverers of new homes. That is a role the public sector has been increasingly happy to let them play and successful businesses have grown within that environment which employ many people and make a significant contribution to the public purse through taxation, as well as delivering both market and affordable homes and making significant infrastructure contributions.

Landowners are accustomed to releasing land to facilitate the future supply of new homes and other development that population and other socio-economic change requires and which the planning system entreats all potential delivery agents to provide in the current and long-term public interest. They are also accustomed to being able to do so to re-invest that part of the profit which remains from the land sale once taxes have been paid and planning obligation and other abnormal costs have been taken account of. In most cases they will rely on that income for sustaining or growing other operations.

There are also landowners who lead large scale developments, such as Tornagrain and Chapelton of Elsick, working with the home building community to deliver high quality developments at-scale. In many cases they provide the 'patient finance' that has been identified as being important to the successful achievement of higher development quality. For many of these landowners there will be no land value realized for many years into the development. Given the scale and timescales involved they have to accept very high levels of risk that the home building community might struggle to bear given the shorter-term nature of their sources of finance. Local authorities would struggle to take on that risk.

There is a real danger that this proposal would dissuade landowners from getting involved in the development process in any form. If that proves to be the case then a very important strand of housing delivery would be lost.

The proposed approach would change compulsory purchase arrangements for just a small proportion of Scotland's land, meaning differing compensation / reward arrangement being in place in different circumstances. Landowners would be affected arbitrarily based on where they happen to own land and what the local authority in their area proposed to do with it.

There are therefore significant potential impacts on the human rights of a number of sectors which no clear prospect (and certainly no guarantee) that significant public benefits would arise as a result.

## **5. What are the financial implications of the proposals?**

It is difficult to gauge this without knowing where and to what extent planning authorities might choose to use these powers. However, the financial considerations that we would expect to see covered in the impact assessment / financial memorandum for this provision would include:

- Impact on landowners or others with an interest in land which could be compulsorily purchased using this power. To include impact where land has previously been purchased / otherwise invested in in good faith and where purchase at existing use value would not cover the cost of previous purchase or investment.
- Financial burden on local authorities of seeking to replace private sector activity / fill any gap in private sector activity relating to the removal of delivery barriers, the preparation of serviced land, the funding of infrastructure and the cost of development itself (including new homes), where that is the intended purpose of the purchase.
- The impact of any change to the way in which s75 of the TCPSA 1997 would be applied to land identified as an SDZ and purchased by the planning authority using these powers.
- The way in which delivery of development, or serviced land, in SDZs, would be funded and financed in the period before any income has been generated through land value capture.
- Consequential impact on landowners reliant on the future sale of land to sustain or grow businesses.
- Any anticipated financial benefit to home builders and other developers through opportunities arising on land which cannot currently be delivered through the market.

To enable any of the above to be monetized it would be necessary to know how much use each local planning authority would make of the new powers, what the difference would be between the cost of compulsory purchase under current arrangements and, in the context of home-building, what net impact the changes are expected to have on the number of new homes being built in a typical year. Changes to compensation payments, if that is anticipated, would also need be costed and could have significant negative impact on businesses and private individuals.

**6. Do you agree that the proposal should be included within the Planning (Scotland) Bill?**

No. It assumes a simple fix to a complicated problem and pre-empts the work of the Scottish Land Commission which is being undertaken on a sensible timescale which allows for consultation and collaboration with all affected and interested parties and to ensure any detailed recommendations will work in practice without giving rise to unintended consequences. Might, for example, the loss of hope / development value result in significantly increased disturbance claims in some cases?

**7. Do you foresee any specific challenges in drafting legislation to enable this provision to be introduced?**

Even if a choice were made between the two options proposed, the Planning Bill is still under a scrutiny and will likely be subject to significant and wide-ranging amendments. It is not clear what the final provisions on Simplified Development Zones (SDZ) will be. If the proposals are linked to SDZs then strong opposition may arise about stages – i.e. when the SDZ itself is promoted, and then subsequently when a CPO follows. This could be very off-putting for authorities.

It is unclear whether SDZs are to be limited to sites allocated in development plans. Whether or not the legislation compels it, it is likely site allocations would be the first port-of-call for local authorities scoping potential opportunities to use new SDZ powers. Sites identified in housing land audits and sites with unimplemented planning permission are also likely to be looked at. Finally land which has previously been promoted but rejected, or which has never been formally considered for its planning and development potential may also begin to look more attractive. How would legislation differentiate between such sites and determine a fair means of valuing land in different circumstances? Would any previous land transactions and the valuation methods used then be considered? I.e. the circumstances of the current ownership, such as length of ownership, acquisition costs etc. How would transitional arrangements be dealt with?

It would also be necessary to define exactly what is being proposed, as the current wording ‘land which local authorities are intending to develop’ does not necessarily match the sentiment of what the proposals seems to be intended to achieve. If local authorities are acting in a facilitator role and putting in infrastructure to enable the development of land by others, this would not meet that definition.

The term 'public interest purpose' would also be open to a wide variety of interpretations and the simple listing of the types of development which might fall within the definition would not overcome that challenge.

On a final note, we refer to Simplified Development Zones or SDZs throughout this document but note the Minister's proposal to rename these areas as 'Masterplan Consent Areas'.

Tammy Swift-Adams

Director of Planning

15 June 2018