



## URBAN LAND REFORM BRIEFING PAPER NO 7

### RESPONSE TO SCOTTISH GOVERNMENT REPORT TO ITS 'LAND REFORM REVIEW SOUNDING BOARD' ON ITS RECENT HOUSING AND REGENERATION CONSULTATION

November 2015

#### Introduction

In May 2014, the [Land Reform Review Group](#) (LRRG) submitted a lengthy and detailed report to the Scottish Government entitled '[The Land of Scotland and the Common Good](#)'. Although most of the report covered mainly rural matters, some important recommendations were made with a much stronger urban focus, both in Part 2 on compulsory purchase and pre-emption rights and in Part 5 on urban renewal and new housing. However, rather than include these recommendations in the Land Reform (Scotland) Bill, currently before the Scottish Parliament, the Scottish Government decided to undertake a [separate process of consultation](#) in August and September 2015. These recommendations also have relevance to the Scottish Government's current [Review of the Scottish Planning System](#).

This paper has been drafted by those most closely connected with the original LRRG's recommendations on urban land reform – **Professor David Adams, Ian Cooke, Richard Heggie, Bob Reid and Dr Madhu Satsangi** – to provide their response to the [Scottish Government's report](#) on the outcome of that consultation. For the sake of brevity, the paper does not seem to summarise all that is contained within that report, so should be read alongside it.

Our essential message in responding to that report is that the case for all the LRRG recommendations on urban land reform remains strong and worthy of serious consideration by Scottish Ministers. Indeed, we believe that if the Scottish Government is serious in its desire to tackle the land problems of Scotland, both urban and rural, it should now proceed towards their implementation, whether through statute or by other appropriate means.

#### Setting the consultation findings within the broader evidence

In summary, the recent Scottish Government consultation report found that "The Land Reform measures all had some merit with different potential impacts, but more detail was required on all the proposals to gain support". As might be expected, important concerns and reservations, alongside varying degrees of support, were raised with most of the proposals. These need to be considered carefully, not least because they can help take what's proposed to the next stage by anticipating what might otherwise be unintended consequences. Crucially, however, we do not believe that any of the consultation findings have undermined the case in principle for these Land Reform measures. On the contrary, what has emerged will be helpful in refining the various measures so that they can make an important practical difference to the way in which Scotland's land resources are deployed, especially in its urban areas.

Before we turn to how the measures should now be taken forward, it is important to draw attention to three important pieces of research which, although not mentioned in the report, provide additional evidence for taking the Land Reform measures forward. The first is the Scottish Government's own commissioned work on [Delivering Better Places in Scotland](#), which investigated how eight exemplar places around Europe have been developed. It confirms the importance of public leadership, land assembly, long term vision, skills and resources etc., all mentioned in the report to the Sounding Board. Coincidentally, 'Delivering Better Places' was launched at a major conference held at the Dynamic Earth in Edinburgh in January 2011, where the opening address was given by Alex Neil MSP, then Minister for Housing and Communities.

The main findings from Delivering Better Places were reinforced and elaborated by the second report entitled '[Delivering Great Places to Live – 10 propositions aimed at transforming placemaking in Scotland](#)' written by Stuart Gulliver and Steven Tolson and published jointly by RICS Scotland and the University of Glasgow. It argued that by acting as the 'prime mover' within development partnerships, the public sector can make development happen where it would otherwise not do so, or ensure higher quality development, where mediocre development might otherwise occur.

The third piece of research was an earlier and more substantive study of 'Land Ownership Constraints to Urban Redevelopment' undertaken between 1995 and 1998, led by David Adams and funded by the Economic and Social Research Council to the tune of £150,000. It investigated 80 major redevelopment sites in four British cities – Aberdeen, Dundee, Stoke and Nottingham. Although the research findings were published more than a decade ago, we have no reason to believe that they are out of date. Indeed, as far as we are aware, this remains the most substantive research undertaken in this area. Moreover, the recent Scottish Government consultation, in highlighting the significance of 'unrealistic expectations of owners', 'the process by which land is valued', 'issues of land value on balance sheet', 'ransom strips, 'unwilling sellers and multiple owner negotiations' confirms many of the findings of this earlier research project.

Yet, what the earlier ESRC research also provides is a clear identification and conceptualisation of these various constraints and a measure (albeit obtained through sampling) of their scale and significance. A peer-reviewed paper published in one of the top academic journals in the field<sup>1</sup>, for example, concluded that such ownership constraints had disrupted plans to use, market, develop or purchase 64 of the 80 sites over a five-year period and that this had impacted not simply on the spatial pattern of development but also on the overall quantity produced. The immediate consultation results must therefore be set in the context of these, and other longstanding research findings, which highlight the need for effective urban land reform in Scotland. Indeed, we consider the urban land reform agenda is so central to making development work better in Scotland that it should be considered no less a priority by the Scottish Government as the rural land reform agenda.

On this basis, we now respond to Section 4.4 of the Scottish Government's report to the Sounding Board, where each of the Land Reform measures is considered.

## **Compulsory Purchase**

The consultation raised longstanding concerns around compulsory purchase law and practice and expression optimism that the Scottish Law Commission work in this area should make it easier for local

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<sup>1</sup> Adams, D., Disberry, A., Hutchison, N. and Munjoma, T. (2001) Ownership constraints to brownfield redevelopment, *Environment and Planning A*, **33**, 453-477.

authorities to understand and use this tool. We hope this will be the case, but it is important to remember that we have been here before on several occasions in the past. For example, in 2001, the former Scottish Executive commissioned and published an 80 page review of [Compulsory Purchase and Land Compensation](#), undertaken by Ian H Murning, Dundas & Wilson and Montagu Evans. We are not aware that its detailed recommendations were taken forward. Subsequently, between 2009 and 2011, the Scottish Government itself embarked on a detailed review of compulsory purchase procedures, setting up a [website](#) and eventually producing the new Circular 11/06 on [Compulsory Purchase Orders](#).

While all this previous work will hopefully expedite consideration of any recommendations produced by the Scottish Law Commission, experience suggests that we should not necessarily expect the longstanding deficiencies in compulsory purchase to be rapidly resolved. Legislation is likely to be complex and its interpretation will need to be tested in the courts. More importantly, even if compulsory purchase law and procedures were indeed to be modernised, this alone would not necessarily ensure widespread use of compulsory purchase to resolve ownership constraints. It is clear that significant issues would remain to be addressed around political will and financial support. By all means, let's do all we can to improve the compulsory purchase regime, but let's not use this prospect, however immediate or distant, as an excuse not to proceed with other land reform measures. We shall therefore comment no further on what we consider spurious arguments that rights of pre-emption, majority land assembly and compulsory sale orders are unnecessary simply because the same ends could be achieved through compulsory purchase.

### **Right of Pre-emption**

Several concerns were raised in the consultation about the proposed right of pre-emption, especially in relation to its possible misuse and potential blight effects. The comment that "Many people felt unable to make a decision on this measure without fully understanding how it would work" seems to be entirely fair. Indeed, of the nine LRRG recommendations considered in the consultation, rights of pre-emption were perhaps the least detailed in the original LRRG report.

That said, it would not take too much work to think through this measure more fully. There would, for example, need to be clear and consistent procedures through which rights of pre-emption were initiated and registered to avoid blight, misuse and other potential side effects. Such rights might, for instance, be linked to the development plan process, both to encourage forward thinking by local authorities, and to ensure that their justification in the public interest was properly tested. Thought would also need to be given to whether pre-emption rights were time-limited or open-ended. Now that the consultation has identified the main issues that must be resolved with this proposal, it would seem appropriate for the Scottish Government to produce or commission a short report (perhaps drawing on what can be learnt from relevant international experience) that sets out how this measure could be made to work in Scotland.

### **Housing Land Corporation**

What seems to have emerged from the consultation is a broad consensus that there needs to be step-change in the delivery of housing and regeneration, and that access to effective land supply will be crucial to achieving this. According to the Scottish Government report, there appeared to be little appetite, however, for a national solution to this problem with the fear that a Housing Land Corporation might impose a 'one size fits all' approach, undermine local democracy, and lack the necessary sensitivity on rural issues. To be fair to the Land Reform Review Group, however, it has to be said that the original report envisaged that the HLC would work "alongside local authority planners", and that it "would

operate within planning guidelines and this would ensure a meaningful partnership with the relevant local authority” (page 136 of the LRRG report). In relation to rural housing, the report talked about the need to “address very localised, specific housing need” (page 140) and to work in “close liaison with housing development agencies” (page 141). It is therefore possible that some of those who commented negatively on the proposed HLC in the consultation had not read the LRRG report or fully understood the kind of body it had in mind. Its essential role as a much-needed national agency facilitating significantly higher levels of housing development in Scotland may therefore have been lost on some of those involved in the recent consultation.

It is also important to bear in mind that two high-level independent reports recently came to a similar conclusion to the LRRG on the need for a national delivery body. The first was the report of the [RICS Scotland Housing Commission](#) entitled ‘Building a Better Scotland’, published in July 2014. The Commission, which brought together leading figures from Homes for Scotland, RIAS, RICS, RTPI, Shelter, academia and elsewhere, considered detailed written evidence and held a series of investigative hearings. The findings of the LRRG and the RICS Scotland Commission were more recently endorsed by [Shelter’s Commission on Housing and Wellbeing](#), chaired by the former Auditor-General for Scotland and involving other senior figures with widespread practical experience. It seems to us important at least to set the conclusions of these expert commissions alongside the results of the recent consultation.

On this basis of all this evidence, we remain convinced there is a strong case for some form of national agency, but with local sensitivity. While it is probably unnecessary to make the case for local sensitivity, the national dimension appears to require further justification. We think there are three important issues here. First, there needs to be better national intelligence on exactly what constitutes effective supply (in contrast simply to land allocated for development by the planning system) and on how best to achieve this. If Scotland can succeed here, there are national economic benefits to be achieved in better controlling house price inflation and promoting affordability. Secondly, it seems that the most pressing problems around effective land supply are concentrated in particular parts of Scotland. So rather than spread action across 32 local authority areas, a national body would be able to direct resources to where they might have most impact. Thirdly, and associated with this, skills and expertise available to address these issues in the public sector are known to be limited, and they are likely to be better deployed in a co-ordinated manner than spread across 32 local authorities.

The report to the Sounding Board states that “It was generally agreed that it was hard to make a final decision before knowing what remit and resources the corporation would have”. However, now we know more about the concerns that would have to be overcome for the HLC proposal to work well, there would seem considerable benefit in the Scottish Government bringing together some of those involved in the LRRG, RICS and Shelter reports with senior civil servants to see if a detailed brief could be produced for the HLC in a way that delivers a national focus while addressing those concerns. At least, Ministers would then have before them a clear proposal on which it would be possible to reach a political decision.

## **Majority Land Assembly**

Again, concerns were expressed in the consultation over the practicalities of this measure, and the extent to which it would operate in the public interest, rather than merely to the benefit of particular private interests. But there were also some positive comments reported around its potential to help promote large strategic developments and resolve problems around ransom strips. It would seem quite possible to scope out this measure in more detail in a way that would maximise the benefits and minimise the

concerns. In doing so, some thought would need to be given to the role of the Courts, Lands Tribunal for Scotland and the planning system in determining the precise way in which MLA would operate. For even if all the current problems around CPO were to be magically resolved tomorrow, MLA offers the opportunity to resolve assembly problems, as the report to the Sounding Board rightly notes, at a cost borne by the private sector, not the local authority.

It is pertinent here to note that, in its recent evidence to the Scottish Parliament's Rural Affairs, Climate Change and Environment Committee, the Scottish Property Federation mentioned that it is currently consulting its members on the MLA proposal. In this context, we suspect the type of developers with significant experience of land assembly were probably under-represented in the recent Scottish Government meetings. With MLA, the devil is of course in the detail, but taking account of the points raised in the consultation, it would be helpful to bring together senior expertise with planning, development and legal expertise across the public and private sectors to work up the proposal in more detail.

### **Urban Partnership Zone**

There appears to be substantial support for this measure, although some confusion of what it might add to current best practice and whether this needed to be formalised. These questions were addressed in the original LRRG report, but again it would have been unreasonable to have expected those attending the consultation events to have read the report in detail. As the report makes clear, there would need to be some limited adjustments to legislation, policy and practice to ensure full implementation of the UPZ concept.

In the short term, however, there may be some merit in running a pilot UPZ to test out the exact nature of these adjustments. It would be essential that any pilot involves the Scottish Government working directly a local authority – indeed they might be value in the Government first setting out what input it would make to the UPZ pilot (only part of which would need to be financial) and inviting expressions of interest from local authorities. We remain confident that a formalised UPZ measure would make a major contribution to facilitating development in Scotland, but acknowledge that in the case of such new initiatives, initial demonstration projects are often important in highlighting their potential and generating subsequent interest.

### **Compulsory Sale Order**

This proposal was always likely to be controversial and so it has proved! That alone might be reason enough why the Scottish Government decides not to proceed with it. But that would be unfortunate and would not dim the controversy over hardcore vacancy and dereliction. Crucially, the Government will need to decide whether or not it agrees with the LRRG (page 123) that “there comes a point when it is no longer in the public interest for an owner to retain land and property indefinitely, without use of sale.”

Some of the concerns raised in the consultation are relatively straightforward to handle, while some of more complex. For example, fear that CSOs could be used to stop development, and the relationship with the Community Right to Buy etc. can be readily addressed through the inevitable policies and procedures that would need to accompany any legislation. CSOs would of course place certain responsibilities on local authorities (although perhaps not as many as some fear) but only if authorities chose to make use of the powers in the conviction that tackling hardcore vacancy was an important local priority.

The more complex issues concern the intended absence of any reserve price at auction, and the detrimental impact on those owners and lenders whose view of land value turns out to be over-optimistic. These issues require a fine balance to be drawn between public and private interests, as indicated in the above quote from the LRRG, and this is not likely to be resolved until the proposal is worked up in more detail. For example, with further discussion, it may well be possible to resolve the issue of reserve price in a way that does not fundamentally undermine the principle of CSOs, but is ECHR compliant. This suggests that the way forward is to try to refine the CSO proposal in the light of comments received during the consultation and see what needs to be done to make it workable.

In this context, it is welcome to see some support expressed for CSOs, especially for small-scale plots of land and derelict or empty buildings. There could be an argument that this is where any new powers should start, although one would hope that any statutory definition of small was not over-restrictive. Some of our own conversations around CSOs in recent weeks have generated broader support than perhaps suggested in the responses to the consultation, especially from community-based interests. It is also worth noting that in its recent evidence to the Scottish Parliament's Rural Affairs, Climate Change and Environment Committee, Community Land Scotland states that "within the Land Reform Review Group report it was suggested a power be given to local authorities, to approve a 'compulsory sale order' in circumstances where it was regarded as necessary to see a change of ownership because of blight or stagnation of the use of the land in question, as an additional option to CPO or community purchase. Such a power would be entirely consistent with the objectives of this Bill and should be considered at this time too."

As this suggests, the LRRG proposal for Compulsory Sale Orders has begun to spark an important debate in Scotland around the rights and responsibilities of those who own hardcore vacant and derelict land. In this context, it would seem that the Scottish Government could now make an important contribution to the debate by working up the CSO proposal in more detail. One possible component of such work might be to issue a public invitation to local authorities, community bodies and other interested parties to identify land or buildings that they consider have been vacant or derelict for far too long. These examples could then be used as a valuable test bed, against which to develop the practicality of the CSO proposal.

## **Public Interest Led Development**

The case for more PILD appears to have been widely supported in the consultation. No doubt the Scottish Government will now be thinking how PILD can best be encouraged and how the important issues around leadership, vision, skills and finance can be addressed most effectively. There is already a significant body of recent research that can be drawn upon to help in this, including the Delivering Better Places in Scotland report, mentioned earlier. But there is probably a need to bring all this thinking together in some form of best practice guidance and to develop a range of workstreams, for example around leadership training, for priority action in the immediate future. Moreover, the other Land Reform measures outlined above can play an important role in assisting PILD and it is important that all these tools are made available for use as necessary.

## **Summary**

The publication of the Land Reform Review Group report in 2014 has provided Scotland with a rare opportunity to address significant problems of land ownership, management and development across the country. The Land Reform (Scotland) Bill, as currently drafted, represents only a partial response to those problems. Further action on land reform is now urgently needed as set out in this paper.