Challenge of Capturing Socially Generated Land Values: Principle versus Practicality

Abstract

This paper provides a review of past attempts to harness the uplift in land values arising from granting planning permission to better understand the current difficulties of the use of land value capture. The scheme has been the most successful approach to date, but the theoretical fundamentals are fudged and there are substantial policy variations between localities: a victory of practicality over principle. We argue that a tax on development value would be more effective whilst maintaining the principles of taxing socially generated land values.

1. Introduction

There is a continuing international policy debate about how to best to harness high land values for the public good. The current use of planning obligations in the UK has been subject to increasing scepticism about its effectiveness (Stephens, 2019). This issue has gained traction recently as there is a political consensus that more housing is required One way to increase affordable housing is to better harness the uplift in land value from the granting of planning permission (Aubrey, 2018). A recent House of Commons committee noted:

> "For decades, (UK) governments have sought to capture increases in land value, but with limited success. When considering new mechanisms for land value capture, it is vital that we learn the right lessons from the past." (HOC, 2018, p47)

Taxing socially generated land values has been considered for more than a century, although policies designed to harness them were implemented only after World War II. This question is sometimes referred to as the 'betterment' problem, and more recently as 'planning gain' or 'land value capture'.

This paper assesses the different attempts at capturing socially generated land values in the UK. Land values are primarily 'socially'-generated by surrounding economic activities, the provision of infrastructure required to make a site viable, and crucially by the state's ownership of development rights. Consequently, uplift in land value can be justifiably taxed (Prest, 1981).

We begin by locating the UK's approach within an international context in order to distil its special characteristics. An explanation of research methods follows in Section Three. Sections Four and Five examine the history of the UK's approach and individual initiatives respectively. Conclusions follow in the final section.

2. Locating the UK's approach in an international context

At the outset it is useful to locate the UK's approach to land value capture in an international context as this helps to highlight its special features. We may distinguish between countries that operate public leasehold systems and those that, like the UK, operate freehold systems.

We would expect land value capture to be most straightforward in public leasehold systems, such as China where all urban land is held on a leasehold basis from the state. Local long-term land use planning provides a framework for the choice of plots for sale together with use and development restrictions (such as the floor-to-area ratio) of greenfield and brownfield redevelopment. These land units are then auctioned to private developers (Cai et al, 2013). Developers may seek to influence what infrastructure contributions are required when the detailed plan is being drawn up. Requirements are therefore established before any auctioning occurs (Liu and Zeng, 2019). Genuine negotiations are exceptional, but have been used in urban villages to enable use rights to be transferred directly to developers without first transferring them to the state (Liu and Zeng, 2019). In Hong Kong like the rest of China, all land is similarly granted on a public leasehold basis. A lease modification premium is chargeable to acquire additional rights for land redevelopment. The premium is equivalent to the enhancement in current land value (Hui et al, 2004).

A similar position exists in Singapore where most land is leasehold with the government as the predominant landowner, owning approximately 85 percent of land. Leaseholders may be required to pay a 'development charge' if they wish to increase the density of the land or change in its use. This development charge varies by area and land use type and is updated every six months (URA, 2019a). The development charge was formerly known

as the 'differential premium' (Hui et al, 2004). The government can also compulsory purchase land for (re)development via the Singapore Land Authority. This land is then allocated by way of open public tender (URA, 2019b).

In these Asian countries where there is public ownership of land it is in theory relatively easy to collect socially generated land values with clearly explicit rules on land value capture. Outside of Asia Canberra, the capital of Australia, is an isolated case of all land publicly owned with long private leaseholds. Bourassa et al (1997) demonstrate by reference to a study of the city that the valuation practicalities in such a system are not as straightforward as they appear, with potential weak incentives for development.

In freehold systems one way to approach land value capture is the compulsory purchase or public acquisition of land prior to (re)development. This is broadly the approach applied in Germany and known as "Land Readjustment". Local authorities temporarily combine through a voluntary basis the ownership of land earmarked for new (re) development. The land in a designated area is pooled by owners. The local authority assesses land values before (existing use) and after the "readjustment". The original landowners have their land returned to then on completion of the scheme, but the authority retains the increase in value up to 30% for greenfield and up to 10% for brownfield land (Crook, 2018).

The procedure has been applied over many decades as a means of sharing the cost of infrastructure between developers and the local authority. This mechanism permits the local authority to fund the costs of land preparation and infrastructure and to shape the nature of development. The community

via the local authority may also make a 'profit' from the uplift in land value although this is generally confined to high land value areas (Crook, 2018).

In the Netherlands local authorities applied a similar active land policy from 1945 to 2008 whereby a large proportion of development took place on land that would be bought at market value, serviced and then sold on to developers. This policy came unstuck with the global financial crisis. In 2008 the Physical Planning Act heralded a more passive approach to planning that introduced the formal obligation for developers to pay a contribution toward infrastructure costs (Buitelaar and Bregman, 2016). Since then it has also been possible for local authorities to enjoin with a voluntary agreement with developers to finance large infrastructure. Muñoz Gielen and Lenfrerink (2018) estimate that only one-quarter of municipalities employ developer contributions to pay for large-scale infrastructure, and even then these do not fully compensate for the loss of municipal finance. Legally, public value capture is limited to cost recovery but there is a widely held view that such policies have not been successful (Buitelaar and Bregman, 2016; Muñoz Gielen and Lenferink, 2018).

Charges for infrastructure costs in the Netherlands are therefore now recouped directly from developers and this approach is also applied in Germany for developers building on their own land (Crook, 2018). Other examples of charging developers for infrastructure costs include 'impact fees' in the USA (Burge and Ihlanfeldt, 2006), These impact fees are one off levies that are applied based on a predetermined formula set by a local government unit, and paid by property developers during the permit approval process. They are used for the provision of social infrastructure services including roads, schools, parks, and libraries, as well as water and sewers. They are not universally applied by local government (Burge and Ihlanfeldt, 2006).

Similar mechanisms apply in provinces of Canada requiring developers providing social infrastructure on rezoning including parks, known for example as Community Amenity Contributions in British Columbia (Jones et al, 2018).

Land value capture has also been applied specifically towards meeting individual rail transit schemes in Hong Kong and Tokyo. In Hong Kong, where there is a public leasehold system, the rail operator 'bought' the land around proposed stations at existing use and then 'sold' on completion of a station at a higher value. In Tokyo where there is a market freehold system land owners adjacent to proposed stations pool their land to mutual benefit within a state defined framework to distribute the benefits between themselves and the rail company. It is similar to the German 'Land Readjustment' noted above. While this broad approach to rail infrastructure funding based on land value capture is generating interest elsewhere in the world, such as India, the financial benefits represent only a minor contribution to the total costs (Suzuki et al, 2015).

This brief review has demonstrated that around the world most land value capture schemes are aimed as a means to fund infrastructure costs, sometimes encompassing social facilities. There are two essential approaches – directly charging developers or a process of land pooling through public purchase. Schemes designed purely to harness socially created land values are confined to countries with public leasehold systems. The UK appears to be almost unique as a country with a market freehold system in seeking to tax this uplift in value (except perhaps Columbia and Israel linked to zoning changes), and therefore there may be lessons to be learnt for a global audience.

3. UK Overview and Research Method

Over the decades in the UK there have been a number of tax initiatives to capture increases in land values arising from the granting of planning permission. However, there are numerous practicalities to the taxing of the uplift, linked to reducing incentives to bringing land forward for development, the valuation of land, who should pay the tax and when.

Drawing on a range of historical contemporary sources, this paper seeks to draw lessons from the past for assessing the current use of land value capture. It builds on a report by the authors to the Scottish Land Commission (Jones et al, 2018). It chronicles the theoretical basis, effectiveness and practical differences of UK land value capture initiatives since World War II. It compares experiences of historic approaches to evaluate the current system of planning obligations of developers, using the following framework. For each scheme, the study provides detail of its practical application noting specific workings including for example the rate of taxation, how the tax was collected, and when in the development process. Each scheme is reviewed in the context of the political, planning and property market environment at the time. The role of the macroeconomy and the property cycle is a key focus on the assessment of each scheme's effectiveness. This issue has often been ignored in previous assessments.

4. History of UK Tax Initiatives

Rapid urbanisation in the nineteenth century with its rise in land values on once agriculture land stoked the argument for a 'betterment' tax on socially generated value. The principle of taxing betterment was introduced in the UK's first planning act in 1909 and was extended in the inter-war period. However, the tax was applied in only a small number of cases before 1939, because planning was constrained by the possibility of compensating landowners for losses arising from the refusal to allow development (Cullingworth and Nadin, 1997). It was only after the Second World War that

concerted efforts were made to capture some or all of the development gains associated with residential planning permissions:

- Development Charge contained in the 1947 Town and Country Planning Act
- Land Commission and Betterment Levy launched in 1967
- Development Gains Tax introduced in 1973
- Community Land Act 1975 and Development Land Tax implemented in 1976
- Planning Obligations since 1991 through Section 106 agreements in England and Section 75 agreements in Scotland since 1997
- Infrastructure Levies introduced in England Wales in 2010.

The Development Charge introduced under the post-war Labour government followed from the Uthwatt Committee (1942) that recommended the nationalisation of development rights. Consequently, the uplift in land values arising from planning permission were treated as belonging to the community so could be taxed, and that the refusal to grant permission to develop did not merit compensation. This betterment tax was seen as a way to end land speculation. However, the Conservative Government elected in 1951 saw the Development Charge as an impediment to housebuilding and abolished it for development begun on or after 18th November, 1952.

In the mid-1950s a building boom started with the post-war rebuilding of the economy, also bringing a rapid rise in land prices and fears of property speculation. The Labour Party placed the Land Commission as a central element of its 1964 electoral programme to establish a 'new Britain' (Weiler, 2008). The Land Commission began life in April 1967 with two very different but complementary functions. First, it was as a public corporation tasked with buying all land needed for development. Second, in the short term it was to

be a revenue collection agency of the Betterment Levy on development value when land was sold in market transactions. The Land Commission purchased land on a net of tax basis, i.e. market value less the Betterment Levy applicable (Weiler, 2008).

The political dimension to these policies can be seen by the abolition of the Development Levy and Land Commission in July 1970, a month after a Conservative Government was elected. Land transactions were then by default subject to capital gains tax that had been introduced in 1965. Taxing of land transactions returned to the position that applied between 1965 and 1967. However, a dramatic boom in residential and commercial property values in the early 1970s brought again increasing public concern about speculation with some offices were kept empty even though land values were rising (Fraser, 1984).

The Conservative Government came under pressure to address inflationary pressures exacerbated dramatically by oil prices quadrupling in November 1973. In December it introduced greater restrictions on personal loans, public expenditure cuts and a Development Gains Tax (Fraser, 1984). The government lost power in February 1974 and the Development Gains Tax was continued as an interim measure by the subsequent Labour government. The tax was based on the principle that development gains would be treated as income. For individuals realised development land gains were taxed at their marginal income tax rate and for companies such gains were taxed at the corporation tax rate. It was collected as part of general taxation procedures linked to Capital Gains Tax (Prest, 1981).

The Labour Party pledged to tackle the commercial property boom in its 1974 election manifestos. The White Paper, 'Land', in September 1974 preceding the legislation stressed the links between planning and betterment to ensure

an effective planning system (HM Government, 1974). The argument was based on the restrictions on planning caused by the market price of some land, and that land in private ownership could be a resource that is not at the disposal of the community.

The White Paper proposed that the acquisition and disposal of development land be the responsibility of local authorities (except in Wales). The land to be acquired would be that which the local authority viewed as required for (re)development over the next ten years. It was argued that local authorities' acquisition of all land required for private development in this way would permit more positive and comprehensive planning (HM Government, 1974).

Eventually local authorities would have a duty to purchase all development land. However, the government realised that transitional arrangements were necessary. During this period local authorities would pay for the land at market price minus a new Development Land Tax. This new tax was a tax on 80% of the difference between development value and current use value, and was to replace Development Gains Tax. The principle of the policy was that the community was to benefit from increases in development value, while the scheme would leave the private owner in the same position whether a person sold to a local authority or to a private purchaser (HM Government, 1974).

In 1979 the incoming Conservative government soon repealed the Community Land Act, but retained the Development Land Tax, albeit at a lower rate of 60%. At that time, there appeared consensus as it also announced it would not be reducing it again during the lifetime of the Parliament. Nevertheless, Conservative MPs continued to lobby for its abolition and the 1985 Budget did just that.

During the 1980s there was a sea change from the post-war period when most infrastructure was paid for by the state to a position that local authorities increasingly applied 'planning obligations' on private developers to pay for it. Previously obligations on developers had existed as a rarely used mechanism, and Catney and Henneberry (2019) see their emergence as a movement towards neoliberalism. In England the legal basis for these obligations was codified by the 1990 Town and Country Planning Act (and subsequent amendments), and are commonly referred to as 'Section 106 Agreements'. The equivalent legislative basis for planning obligations in Scotland is the 1997 Town and Country Planning (Scotland) Act, where the term 'Section 75 Agreements' is used.

The use of planning agreements brings together funding of infrastructure and services at a local level and the capture of development value. They include the requirement to provide or fund 'affordable' housing. Part of the motivation was the promotion of 'mixed' communities through 'affordable' and market housing on the same site. A parallel initiative emerged in the United States during the housing boom of the 2000s in the form of "inclusion zones". In these zones developers provide a percentage of affordable housing usually on a mandatory basis, but sometimes they receive an incentive in return (Mukhija et al, 2015).

Planning agreements have proved to be durable having continued in operation to the present day under successive governments. In addition, the Community Infrastructure Levy (CIL) was introduced in 2010 in England and Wales. CIL is a national scheme and involves a set charge per square metre to enable private sector provision of infrastructure. Initially it was proposed as a cost of development rather than a tax on land value uplift, although there is a degree of interaction (Barker, 2004).

5. Assessment of Individual Initiatives

In this section we provide an assessment of individual initiatives against a number of criteria. These include the aims of the policies, their longevity, the ways in which they were implemented (e.g. national, local), the influence of economic/property cycles, the amounts raised, whether they met objectives and their unintended consequences.

5.1 Development Charge 1947

Labour's land policies after 1945 were designed as a step toward land nationalisation and the ending of speculation. A 'Development Charge' was introduced on the basis that any increase in value arising from the granting of planning permission should be paid to the state. The charge collected 100% of this increase in value and was paid by the purchaser. A Central Land Board was established to collect the charge. It was anticipated that this would result in all land transactions being at existing or current use value (prior to planning permission). By lowering the price of land in this way it would make it easier in particular to provide public housing. At the same time, the money raised by the Development Charge would support meeting housing needs.

As the scheme was conceived as land nationalisation it encompassed small land plots and all planning permissions. The result was a large bureaucratic task with many charges ultimately assessed as zero. For example, in 1950-51 out of 9011 potential Development Charge submissions 76% were assessed as ineligible or zero (Central Land Board, 1951). Many owners of small plots, bought with a view to building a house, received a Development Charge in effect doubling the price of the land. This was because the existing use value was deemed to be nominal.

The Central Land Board had compulsory purchase powers, but land ownership was only to be temporary. Once purchased (at current use value) the Board was expected to dispose of the land by private sale or auction at market value. However, it was only prepared to use compulsory purchase powers to support purchasers when development was being held up. In other words, the Board only applied these powers in a responsive mode. The Board made only up to 35 confirmed compulsory purchase orders.

The theory of the Act was that all land transactions would be at current use value as there was a 100% tax above that. However, owners were reluctant to sell at existing use value. In its 1950 report the Central Land Board (1950) accepted that a market in land at existing use value had failed to materialise. The key factor was time limited building licences introduced in 1940 that were heavily rationed (Blundell, 1993). There were many bomb sites ripe for development and rising demand for housing and commercial/ industrial property, but the system of building licences combined with capital issue controls and a shortage of building materials meant that there were many barriers. There was virtually no commercial development between 1945 and 1950 for example in Scotland (Cullingworth, 1980), with most of the new housing in the public sector, a direct result of government policy (Jones and Murie, 2006).

Overall land values tended to be above current use values partly because of scarcity caused by building licences, partly because the values of existing buildings influenced the viability of development and land prices, and partly because the Central Land Board's compulsory purchase powers were applied infrequently. The post-war building restrictions meant that land transactions were significantly reduced, an effect that was exacerbated by sellers waiting for a change of government and the subsequent abolition of

the Development Charge. Rather than ending land speculation, the Development Charge actually encouraged it.

One short term legacy was that the purchase of land for public purposes was based on its current use rather than the market value until 1958. This in itself was a mechanism for capturing socially generated land values. However, ever since local authority acquisition of land has been on the basis of market value.

5.2 Land Commission and Betterment Levy

The Land Commission became operative in April 1967. The Betterment Levy was charged when planning permission was granted or when land was sold and development value was realised. The levy payer was the seller of land (in the 1947 Act it was the purchaser). The levy was calculated using a complicated formula based on 'development value'. The levy rate was set an initial rate of 40% that the government intended to increase to 45% and then 50% after reasonably short intervals. These increases never happened. 'Development Value' was defined in the legislation as the increment in the land value which is due to the likelihood of its being put to a more profitable use than its current use. This might stem not just from the existence of a planning permission; but the Act also noted that land might also have development (hope) value as a result of the market's judgement of the possibility of obtaining permission.

The Land Commission suffered from the scale and complexity of its task. Collecting the Betterment Levy involved over 100,000 transactions a year with also approximately 500,000 planning applications. The compulsory purchase of development land when necessary took at least six months (Weiler, 2008). Many transactions were also very small, garden plots for development. As a

result of further legislation to address these issues unpaid levy assessments below £1000 were waived (Land Commission, 1968).

The Commission soon realised that the 'land problem; at the time was a shortage of building land allocated in development plans (Land Commission, 1968). This finding exposed the fallacy of the reasoning behind the establishment of the Land Commission. It had been presumed that the high land prices were created by land speculators withholding land, but it was actually the reluctance of local authorities to designate development land. It was also a major obstacle to the Commission as many local authorities did not want to cooperate. The thinking behind the Commission had evolved at the end of a property boom when undoubtedly there had been speculation. The error was to assume this as an inherent problem rather than a cyclical phenomenon.

It is also important to set the land market in a wider context. It was a period of modest economic growth with quiet commercial development activity constrained by the lack of finance and its rising cost. A credit squeeze was introduced in 1968 and subsequently tightened. House prices rose nominally by around 20% between 1967 and 1970 but in real terms there was no change (Denman, 1971).

At the same time as the housing market was stable builders had also bought land in advance of development requirements as the Labour Government's strategy had been well trailed, following the White Paper in 1965. As a landowner became liable for "chargeable acts" after 6th April 1967 this also led to a rush to start token 'development' before this deadline by digging trenches, etc. The result was a prolonged period of stagnation in development land sales in 1967. This had knock on effects for the collection of the Betterment Levy so by the end of the first financial year the assessed

levy amounted to only £1.6m, and collection to £0.5m. Over the three years to 31st March 1970 assessments of Betterment Levy (together with interest) amounted to £48.7m. The collection of Betterment Levy was therefore muted. Instead of the £80m expected in a full year, only £15m was raised in 1968-69 and in the following year only £31m.

It can be argued that that the low level of levy collected reflected the weakness of the Land Commission. Given that the Land Commission was having difficulties in meeting its goals this probably gave rise to uncertainty about its future. It may well have led to a reluctance of landowners to part with their land, anticipating a change in government or the abolition of the Development Levy. As land became less, rather than more readily available this would have tended to raise the price of what land was available.

5.3 Development Gains Tax

Development Gains Tax was applied after 17th December 1973 and followed the principles and procedures for Capital Gains Tax. The tax proved to be an irrelevance. The policy measures of late 1973 ended the consumer boom that had been the prop to a property boom. With the economic climate deteriorating, high interest rates, capital and rental values falling, building costs rising at the order of 25 to 30% a year there was only minimal development initiated (Fraser, 1984). There was also a slump in the housing market caused by a mortgage famine. Over the life of this tax development activity across all sectors was moribund. The timing and brevity of the tax meant that it had no impact. The main lesson is that the revenue from these types of taxes are very dependent on the property cycle.

5.4 Community Land Act and Development Land Tax

The Act came into effect in April 1976. Local authorities were given power to acquire land by agreement or compulsory purchase. Local authorities, having acquired land, had the responsibility of ensuring it was developed, either by themselves or others. Exemptions from acquisition included single houses and buildings used in agriculture (Prest, 1981). Local authorities bought land for development at just above current use value (i.e. development value minus the Development Land Tax, 80% tax on uplift) and could sell at development value. To ensure that the local community retained a share of future increases in value this disposal could be on a leasehold basis. This leasehold arrangement would apply to commercial and industrial development. Land for residential purposes was to be sold off, either freehold, or via a building licence to the builder. The land was to be purchased within five year rolling programmes to build up land banks to have sufficient (re)development for up to ten years ahead.

The legislation suffered a mortal blow as a result of the continuing weakness of the economy. In October 1976 there was a sterling crisis that led to a £2.3bn loan from the International Monetary Fund. The loan came conditional on budget cuts of £2.5bn which brought significant impacts for local authority spending (Fraser, 1984). These unforeseen changes in the fiscal environment, just two months after the Act became operative, meant that land purchase plans received a heavy setback. A central government guidance note announced that local authority borrowing limits to buy land were reduced by almost half (Blundell, 1994).

Development Land Tax continued under the subsequent Conservative Government until 1985. It was conceived in a period of highly speculative activity in the property market that led to a partial political consensus (except the rate of collection), and it survived for nearly ten years. It required very complex legislation and it was complicated to collect. It operated during a period of severe property market volatility that hampered its revenue generation. The economy was the dominant influence on

development activity not the tax. When the Chancellor of the Exchequer abolished it he indicated that it raised a net annual income of £45m, suggesting it was of limited impact (Lawson, 1985).

5.5 Planning Obligations

The most recent attempt at land value capture has been the use of obligations on a developer in return for planning permission. Provision of affordable housing is the primary community wide obligation. These agreements in England have contributed significant numbers of affordable homes and a high proportion of such housing over the last decade or so (Lord et al, 2018). However, planning obligations in England have had a marked geographical pattern. Land value uplift is greatest in the south/ south-east, so that obligations play only a significant role in providing affordable housing in these areas (Burgess and Monk, 2016). Similarly, a Scottish study finds that more than half of developer supported affordable housing units are in urban areas where land values are high, while small towns and rural communities hardly benefit (Scottish Government, 2012).

Affordable housing obligations are expressed as a percentage of the housing to be built. Research suggests that targets in local plans in England vary from 10-50% (Crook et al, 2016) with current government guidance recommending a 10% minimum (MGLGC, 2019). There is also guidance on minimum plot-size thresholds, and contributions may take the form of payments, where on-site provision of affordable housing is not feasible. However, the policy is implemented at the local level so there is scope for interpretation, and indeed Manchester for some years completely undermined its own rules, allowing large developments to proceed without affordable housing (Pidd, 2018).

Unlike previous land capture schemes obligations are therefore in many cases effectively negotiated (previous schemes had mechanisms to dispute valuations but not the tax rate). This in turn raises a number of questions. First, if there are not clear rules set by an authority on obligations it undermines the effectiveness of the tax to lower the price paid to the original landowner. The cost of the obligations may actually be passed on to future owners (Jones and Watkins, 2009). Second, there is no clear assessment of the percentage increase in land value that is captured. Aubrey (2018) estimated that the average percentage from planning permission is around 25-27% in England, but McAllister et al (2018) put the figure at 45-65% from a study of London, 2005-2017. An investigation by a House of Commons committee concludes that the figure is around 50% without any real evidence (HOC, 2018).

A key issue is that local planning authorities do not have the skills to set benchmarks for affordable housing obligations that relate to development viability (Jones and Watkins, 2009; HOC, 2018). Individual outcomes will depend on the extent of knowledge possessed by different parties and their relative negotiating skills (Robertson and Clandillon, 2015). A consultancy industry specialising in reducing developers' planning obligations has grown up (Stephens, 2018). Sayce et al (2018) argue that this contributes to a 'power imbalance' between planners and developers. They found that in London the levels of affordable housing provision have fallen despite large rises in land values and house prices since the market bottomed out in 2009. They conclude that developers, given new regulations introduced in 2012 (see below), may over-bid for land knowing that they can compensate by negotiating a reduction in affordable housing levels.

Negotiations around viability are therefore a major issue. Academic research on appraisal practices used in viability tests finds them inconsistent and sometimes flawed (Crosby, et al, 2013), and lacking in transparency (Sayce, et al, 2017). Sayce, et al, (2018) argue that,

> *'Viability testing, through the use of development appraisals, is a complex process and one that is capable of manipulation through the use of a wide variety of input data, which may remain hidden from public scrutiny and undeclared unless the matter proceeds to appeal.'* (p. 5)

Market conditions are also a key variable in the viability equation. The use of residual viability appraisals to establish planning obligations are very dependent on timing (Crosby et al, 2013) and in a rising market underestimate developers' profits (Sayce et al, 2018). In this context it is important to note that planning obligations were introduced at the beginning of a long upturn in house prices that developed into a boom, reaching its peak at the end of 2007 (Jones and Watkins, 2009). The property bust following the global financial crisis exposed this issue. Obligations agreed at the height of the house price boom generated severe financial difficulties for developers as house prices fell.

Subsequent changes in English regulations, with a new National Planning Framework in 2012 (CLG, 2012) allowed many previously agreed Section 106 obligations to be renegotiated in the light of changed market conditions. The detail of these changes provide for a guaranteed return to developers, importantly, making obligations the 'residual' rather than the land price in a development financial appraisal (Crosby, 2019). Such a change fundamentally undermined the basis of the land value capture process.

The government has subsequently responded by changing the guidance in 2018 with a clear return to the essential principles that local policy

requirements should be set out so they can be accurately accounted for in the price paid for land (MHLGC, 2018). The most recent planning guidance also states that viability statements should be publicly available (MHLGC, 2019) in response to past criticism. Nevertheless the essential negotiation process remains.

Despite the flaws in development appraisals and a negotiation process that favours developers obligations in England have been more successful in capturing increased land values arising from planning permission than previous approaches. The visibility of the fruits of planning obligation in the area that the development occurs also helps to secure acceptance from the community. However, it is unclear what percentage of socially generated land values have been collected through obligations. The acceptability to developers is probably because of the relatively low tax rate compared to previous schemes. Nevertheless lack of transparency, ostensibly because of commercial confidentiality, serves to reduce the legitimacy of the system. It has left many unanswered questions.

5.6 Infrastructure Levies

It is generally agreed that the Community Infrastructure Levy (CIL) introduced in 2010 has not worked effectively because of its practical complexity and its large exemptions (HOC, 2018). In fact many authorities in the north of England have declined to operate it because it was too expensive to administer (CIL Review Team, 2016). A study found that CIL generated on average only 2% of the market value of a development project (Reading University and Three Dragons, 2017). A government review (CIL Review Team, 2016) recommended replacing it with a 'Local Infrastructure Tariff' that would be non-negotiable applicable to all developments, together with a 'Strategic Infrastructure Tariff' to be applied for major infrastructure projects (similar schemes elsewhere in the world, see earlier).

The latter proposal is based on the special CIL imposed by the Mayor of London, applicable to all commercial development, to contribute to the funding for a specific piece of infrastructure. This is the Crossrail rail link currently being built across the city, mainly underground. The logic of the charging scheme is based on the differential benefits that are generated to localities (GLA, 2016). This levy was set as a rate per square metre on the size of each commercial development at a relatively low level, and applied across the city, in a tapered fashion with three rates - central, inner and outer London. Unlike other such UK levies there are no exemptions.

This Mayoral CIL began in 2010 and was initially targeted to raise £300m over seven years (GLA, 2016). By the end of the financial year 2017-18 the cumulative monies collected were just short of £500m (GLA, 2018). Arguably its success was based on its mandatory and simple nature. Furthermore closer examination of the scheme reveals that it is not actually a contribution towards infrastructure costs but a tax on the likely increase in property values generated by the rail link (tax falling with distance from it).

6. Discussion and Conclusions

Most of recent policies aimed at capturing the uplift in land values have centred on funding infrastructure costs. The exceptions are some Asian countries with public leasehold systems and the UK that have sought to tax socially generated land values per se. The Asian countries have an advantage because public leaseholds enable significant control of land use change. In the UK the freehold land system together with its flexible passive planning system sets substantial challenges for land value capture. An overview of the UK's long history of land value capture schemes is provided in

Table 1 that emphasises both the role of the economy. This importance is a key element of the reappraisal of these initiatives given by this paper.

Land value capture has historically been contentious in the UK with a lack of political consensus. Commentators have argued that, as a result, landowners simply wait for a change of government, thereby emphasising the role of these initiatives in deferring development. In fact the low level of development/land sales in early schemes was mainly the consequence of the state of the economy/ property market. Very often new land value capture initiatives were introduced after a property boom and implemented during a slump (see Table 1).

In the 1970s a formative consensus began to emerge with Development Land Tax that continued until 1985. After a brief legislative interlude there has been broad agreement over the use of planning agreements/obligations since 1990. Planning obligations benefitted from both a political consensus and a benign property cycle from 1991 until the end of 2007 that provided the base for their acceptability. It can be argued that the approach has been more successful in capturing land value uplift than previous national, 'compulsory' initiatives. However, there are many questions about the efficacy of the scheme,

These surfaced in the aftermath of the global financial crisis when private housing completions and land values fell significantly. The approach arguably failed this first stress test. Various government measures were introduced to support it as many development projects struggled to cope with obligations committed to in the boom. More fundamentally the bust shone a light on the practices of obligations and 'viability' tests. The reliance on obligations to provide affordable housing has also shown its limitations as it is dependent on the state of the local housing market. There may be large

parts of the UK were the uplift is minimal, and there is no mechanism for redistributing to low value areas (Raynsford, 2018).

An unresolved issue since 1947 has been the appropriate level of land value capture taxation. The theoretical basis for capturing increases in values is dependent on the view that land value is in part socially generated with the landowner passive. Nevertheless, it is also accepted that the skills and energies of a landowner can also create value. The rate needs to be set to ensure motivation for landowners to develop. The evidence on the appropriate rate from the various schemes is difficult to assess because the dominant influence on the level of development activity is the economic/property cycle. Tax rates have differed in each initiative but obligations definitely have the lowest rate of capture of any of the schemes.

There is therefore an unanswered question as to whether the current obligation system is capturing enough land value uplift. This issue is exacerbated as obligations are negotiated. There is also a lack of consistency in its application with many local authorities lacking expertise, so that rates of capture are subject to substantial variation. These arrangements are in stark contrast to previous approaches where there was a national agency in place collecting a tax that had clear if complex rules.

The appropriate rate of land value capture is also an important consideration for the level of compensation when land is acquired by a public body. The debate about this question has intensified in recent years with the current UK housing crisis bringing calls for the building of significantly more affordable housing. To reduce the public costs one solution canvassed has been changing the basis of compensation payments for compulsory purchase from market value to existing use value.

This position has been endorsed notably by the Royal Town Planning Institute (RTPI, 2017). Such an arrangement would assume the difference between the two values is socially generated with a tax applied at a 100% rate. It would return compensation rules back to those applicable between 1952 and 1958 as noted above. The 1958 change to paying compensation at market value occurred because the former distinction was deemed inequitable and politically difficult to justify at the time (HM Government, 1965). The HOC committee on land value capture examined this issue in some detail. It noted that while there were human rights issues it concluded on a middle way, followed in the Netherlands and Germany. Its approach would see compensation paid to landowners taking into account social infrastructure costs (HOC, 2018).

These questions give rise to a research agenda linked to adapting the current approach, namely

- Viability tests have been put under the microscope, and there is a case for developing a national standard 'formula',
- Studies have found different tax rates for obligations. There needs to be a full assessment based on the experience across all regions of the UK,
- The land value uplift from planning permission varies by type of area and region, but there is a complete knowledge vacuum on such differences,
- What is the impact on land values, and who actually pays the 'tax' – landowner, developers or future owners?

Answers to these questions would make obligations more equitable and improve their efficiency.

An alternative model to collecting and generating social value is a public development agency, employed previously by new town development and urban development corporations. In these instances, the public agency

initially buys the land and provides the infrastructure, treats polluted land if necessary etc., and creates marketable land plots for private development. The cost of initial land purchase reflected current use ignoring future plans. These public expenditures can be (partially) recouped by the subsequent rise in land values (Jones, 1996). It is similar to the international models reviewed earlier, although these do not employ a dedicated agency.

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In contrast to these schemes, the use of planning obligations remains an enigma. Although this approach has been the most successful (and arguably practical) land value capture mechanism to date in terms of raising funds, its theoretical basis was always fudged. Further, with unequal negotiation strength between developer and local authority, and the variation in local policies unrelated to the spatial pattern of land values, it is far from perfect. It represents a victory of practicality over principle, but principle had arguably failed in past schemes.

The policy swings following the global financial crisis, first to rescue developers and then to rescue the underlying principles of capturing socially generated land values have undermined the credibility of obligations. Despite another call for local authorities to gain greater expertise to administer the tax by a House of Commons committee (HOC, 2018) this is unlikely to occur. It is time for a rethink.

Since there is a consensus that a greater proportion of socially generated land values should be captured, there is a case for reviving the principle of employing an explicit monetary rate applied administered by a central agency. A central agency would benefit from specialist expertise and permit equitable distribution between areas. It would remove the contrived link with the provision of local affordable housing. In this respect the London Mayoral Infrastructure Levy paves the way with a very successful rules-based tax on

development size. A tax on development value (rather than size) would be just as easy to administer and allow for subsequent post-hoc adjustments reflecting the (localised) property cycle. It would be a practical solution that upholds the principle of taxing socially generated land values, without the tortuous rules of previous schemes.

Table 1 Evaluation of Land Value Capture Mechanisms

Scheme	Years	Aims	Design	Administration	Mar
Development charge	1948-52	Capture social-generated land values Lower land values through threat of compulsory purchase to current use value	100% tax on increase in value from planning permission Paid by purchaser	Central Land Board	Scop priva shor licen Land
Betterment Levy	1967-70	Capture socially-generated land values Limit speculation	40% tax on increase in value from planning permission Levied on seller	Land Commission	A cre and Rath shor barr reso
Development Gains Tax	1973-76	Capture capital gains from development Limit speculation	Tax levied on sale of land and charged at an investor's marginal tax rate	Treasury	Timi at er
Development Land Tax	1976-85	Capture socially generated land values to enable local authorities to pay for development at a low price	Land taxed at 80% of difference between development value and current use	Treasury	The polic land Unfo with The enjo but expe
Planning Obligations	1990-	To pay for infrastructure required by development plus affordable housing	Site-specific negotiations between developers and local authorities. Tax 'rate' is relatively low, estimated as 27% by Aubrey (2018). It has raised more than formal taxation regimes.	Individual local authorities	Intro in ho by th It su ques and

Community Infrastructure Levy (only in England)	2010-	To help pay for general (not site specific) infrastructure needs	National framework. Standard charges set by local authorities	Individual local authorities	Abou adop little antic almo The muc

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