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LAND OF HOPE OR GLORY?



The Government is on a mission to have a generational impact on housebuilding and construct 1.5 million homes during the next parliamentary term: this will be challenging but the questions posed in the recent NPPF consultation confirm the Government's belief that interventionist measures are necessary to achieve this target.

This note considers the ever-evolving case for the Government to intervene in the housing market using compulsory purchase powers and further changes to hope value compensation and considers the likely consequences of such actions in the context of recently published research.

INTRODUCTION

In November's Social Housing Annual Conference and Inside Housing Development and Regeneration Summit, Angela Rayner, the Secretary of State for Housing, Communities and Local Government, admitted the target of 1.5 million homes this parliament is more challenging than anticipated. Therefore, all eyes are on the Government's use of interventionist methods including the controversial use of compulsory purchase powers to unlock more housing.

The Levelling Up and Regeneration Act 2023 ('LURA') – introduced under the previous Tory administration – provides for a direction to be sought, as part of a compulsory purchase order (CPO), for 'hope value' to be limited/removed from the payment of compulsory purchase compensation to claimants. This is in circumstances where the scheme provides affordable housing, health or education uses and sets out the public benefits in a Schedule of Commitments.

The industry expects the Government to go further than the previous administration and the awaited Planning and Infrastructure Bill is odds on favourite to be the vehicle to deliver the changes.

THE CASE FOR INTERVENTION USING COMPULSORY PURCHASE

The New Economics Foundation ("NEF") Policy Briefing note published on 20 November 2024 and titled "Building Hope, how land reforms will help deliver the homes we need" appears to have been rolled out at the conference as 'the evidence base' for the benefits of hope value reform.

The NEF report makes a series of claims as follows:

- Rising land values have fed into rising prices and rents;
- Landowners are incentivised to hold land with planning permission as an asset;
- Hope value rules add significant risk that CPOs become bogged down in lengthy and expensive legal proceedings, often dissuading local authorities from issuing them in the first place. All this makes it far harder to purchase land at the scale required to build the volume of homes needed to tackle the housing crisis;
- Obtaining approval from Whitehall (i.e. the Secretary of State approval for a direction to limit the payment of hope value under s190 of the Levelling Up and Regeneration Act 2023) adds an additional layer of bureaucracy to the process.

The NEF report promotes the idea that landowners and/or developers are controlling the supply of land to maintain or control prices which feeds into the cost of housing. In addition, interventionist methods involving compulsory purchase can be improved further to capture more value from development and assist delivery of the housing that the country desperately needs.

NEF concludes that hope value reform can achieve either:

- £4.5bn of public grant savings (in the delivery of 90,000 social homes per year) can be achieved through hope value reform; or
- the construction of an additional 27,000 social rent homes a year.

Both conclusions assume that, as part of the Government's 1.5million homes ambition, the land for 78,300 social rent homes per annum (i.e. outside of s106 contributions) can be funded using compulsory purchase powers and an accompanying direction to remove the payment of hope value to claimants instead of reliance on housing grant.

THE CASE FOR NOT USING COMPULSORY PURCHASE AND COMPENSATION CHANGES

We have been here before, haven't we?

Labour's attempt to nationalise development through the Town and Country Planning Act 1947 sought to capture the betterment of land value through a Development Charge and pass it onto communities rather than landowners. The Development Charge was complicated and costly and – rather than cheapening the cost of land and make it more readily available – had the opposite effect with landowners sitting tight on bringing forward land for redevelopment and also resisting compulsory purchase.

Similarly, the Betterment Levy introduced by a new Labour government under the Land Commission Act 1967 effectively charged the gains on "net development value" at 100%: this resulted in land being less readily available and delivered only around 20% to 40% of the expected tax revenues as landowners held onto land rather than undertake development. And the Community Land Act 1975 and the Development Land Tax Act 1976 were failures best forgotten.

We see the following problems with the removal of hope value this time around through the compulsory purchase process:

Delay: the compulsory purchase process can take a minimum of 18 months from the gathering of information and preparing draft CPO documents through to the implementation of the powers.

The objections stage deals with the reasons why a compulsory purchase order should not be confirmed. This is done in the context of the existing compensation regime putting claimants in the same position 'as far as money can'.

Directions to limit or remove the payment of hope value will only serve to increase the resolve of landowners to object to compulsory purchase orders made with such accompanying directions.

Supply: according to the NEF report *"there is a further risk that expanding these reforms could discourage landowners to bring forward land for development..."*

This is a key concern for the development industry and may lead to the unintended consequence of land promoters thinking twice about the prospect of investing hundreds of thousands of pounds in planning and associated consultancy fees if there is a risk of the compensation payable for land being based on existing use value.

This unintended consequence is to be weighed against the hope value provisions potentially contributing an additional 27,000 social rent homes (i.e. just under 30% of the overall target) and so the government needs to give careful consideration to how this will affect the ordinary workings of the land market given what it referred to as inelastic land supply.

Risk: the NEF report concedes that attempts to limit the payment of hope value to landowners who have land compulsorily purchased will "likely face legal challenge."

The human rights issue is not to be underestimated, particularly as the scheme underlying the compulsory purchase order will have to be shown to be unviable and in need of a hope value direction to 'plug the gap'. A direction will therefore put an acquiring authority on the back foot when setting out its intention to dispossess owner/occupiers of their land for the public good.



Secondly, and as pointed out recently by Meyric Lewis KC in a recent seminar, is the provision going to fall foul of 'state aid' rules if an acquiring authority is making a CPO to enable a private developer to bring forward a scheme?

It remains to be seen who has the appetite to test the legality of provisions in the existing LURA s190 and any additional statutory provisions that the Government decides to lay before parliament. Homes England are the most obvious candidate possessing compulsory purchase powers but the appetite to use them, even after Matthew Pennycook MP's rousing September letter to the outgoing Chair of Homes England, may not be great.

CONCLUSIONS

It remains to be seen whether the compulsory purchase provisions to limit payment of hope value under the LURA and any additional provisions introduced by the new Government will be the 'shot in the arm' that the housing crisis needs.

The appetite for using compulsory purchase powers varies between acquiring authorities and it is unrealistic to assume the land needed for all social rent units that are funded by grant can/will be acquired using statutory powers. For this to be remotely possible, it would need Homes England to be leading the way and we do not observe that the appetite exists within the organisation at this time.

Is the overall benefit of this removal of hope value from the payment of compensation being exaggerated by NEF? It is unclear at this stage whether its model gives any consideration to the potential delay and cost of using compulsory purchase powers.

Finally, compulsory purchase practitioners are broadly against the powers being used as the principle of 'equivalence' in compensation will be breached. For the past 180 years, the compensation code has required the full market value to be paid for land taken (which includes hope value where applicable) under a confirmed CPO.

With the benefits stated in the NEF paper of questionable merit, it is unclear that the changes to the payment of hope value under the compensation code will assist the Government in meeting its ambitious housing target.

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