HOME BUILDERS FEDERATION

Compulsory Purchase Consultation Team
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Compulsory Purchase Compensation Consultation

Thank you for consulting on the proposed changes to the compensation rules for the compulsory purchase of land by agencies of the State. The following response is provided by James Stevens, Director for Cities, on behalf of the Home Builders Federation (HBF).

The Home Builders Federation (HBF) is the representative body of the home building industry in England and Wales. The HBF's member firms account for some 80% of all new homes built in England and Wales in any one year, and include companies of all sizes, ranging from multi-national, household names through regionally based businesses to small local companies. Private sector housebuilders are also significant providers of affordable homes, building 52% of affordable homes supplied in 2020/21.

This response for the Home Builders Federation has been completed by James Stevens. Contact details are provided below:

Question 1: Respondent details:

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General overview

One of the chief concerns of the HBF is to ensure a steady supply of land to the market to support housing delivery and meet the housing needs of the public. HBF, consequently, is cautiously supportive of the Government's intentions to change the compensation rules for compulsory purchase subject to safeguards to ensure that land that is within the control of a landowner or developer actively seeking a planning permission for that land, will not be subject to compulsory purchase (CP) at existing use value (EUV) or a percentage above this.

Compensation at EUV, or at a percentage point above that, should not be deployed to compete with land in the control of a landowner or developer actively promoting a site for development. CP powers should be used sparingly.

We operate within a plan-led system. Consequently, most of the land in sustainable locations to support housing delivery in the next 10-15 years is either being promoted actively by a landowner or developer or is allocated in a local plan. Such sites, by definition, are judged to be developable or deliverable. The Government should be careful to avoid jeopardising the delivery of such sites by giving a direction on hope value with the threat of acquisition through CP at the proposed rates of compensation. This would create uncertainty, conflict, and, most importantly. would militate against increasing the supply of new homes in England.

CP at the proposed rates of compensation should apply only to the most intractable sites – namely those where effective land assembly is delayed by one or two landowners acting unreasonably.

HBF acknowledges that CP powers can assist with assembling land and help with the delivery of planning objectives. For example, in the case of stalled developments or where allocated site is not bought forward for development after many years, CP can help and would contribute to local plan targets if the developer is struggling to assemble a site. Intervention here, by Homes England for example, would have legitimacy. The establishment of an independent body would be useful to ensure that there is not a landowner or developer already involved, seeking to progress a scheme for the same use in the local plan, but delayed because of a disagreement about the planning objectives to be secured on the site. This independent arbitration is necessary to avoid a local authority applying reasons to refuse permission, to frustrate the development, with a view to acquiring the site at a later point.

However, there are significant downsides to the proposals. These downsides relate to both the procedures around seeking a direction from the Secretary of State which are unclear and the public benefits purported to justify confiscating land at EUV or at some percentage point above that.

There is a significant risk relating to the role of local planning authorities as plan-makers and decision-takers which we need to flag, including the ability they have to award themselves planning permission[1]. There is the risk that through the planning controls they make and enforce that they could restrict the number of homes planned for via plan-making and by denying planning permission on other sites through decision-taking, they can inflate the value of the land that is allocated for housing. By subsequently acquiring these at existing use value, or a value at some percentage point above EUV, they will be able to profit from the monopoly they enjoy through planning. Indeed, under these proposals, a local authority could grant itself planning permission first (in fact, in order to obtain CPO powers is would almost always need to do so) and subsequently use the CP powers to acquire land at EUV within the area it has planning permission for, notwithstanding that the dispossessed landowners could potentially have brought a scheme forward on their own land.

This might strike some advocates of CP at EUV as far-fetched, but these are possibilities. This was why it was necessary for the Land Compensation Act 1961 to define the terms of compensation to reflect future scheme value. Therefore, while we acknowledge the

[1] Enabled by The Town and Country Planning General Regulations 1976 (SI 1419) made under the Town and Country Planning Act 1971, subsequently amended by The Town and Country Planning General Regulations 1992 (SI 1492)

occasional benefits of CP when deployed as a last resort, HBF is concerned by the Government's intention to move away from the existing principles.

Ensuring that owners are compensated to reflect a prospective planning permission is an important safeguard against potential abuse of CP powers by the State.

There is also a risk that the public benefits that are assumed and cited to justify the changes to compensation – for example, a net increase in housing supply above current levels, or additional contributions through planning gain – will not materialise, either as a consequence of public-sector inefficiencies, or because these CP schemes will displace the development of other sites meaning that the gains are limited, or for reasons of political expediency if CP is deployed merely to avoid the allocation of other land.

Furthermore, we are familiar with the theory relating to the 'unearned increment' and the arguments of John Stuart Mill et al, that helped to establish the theory of betterment and the justification for the capture of land value uplift following the improvement of areas as a consequence of investment by government in infrastructure and services etc. However, compelling as this theory once was – and it was integral to the justification of the 100% betterment levy in 1948 – it has underestimated the positive action by housebuilders in creating value for the public, through its investment in affordable housing, transport communication, green spaces, construction of schools and hospitals etc. Indeed, and increasingly, many public goods associated with new developments are provided by housebuilders.

It is also likely that these proposals may undermine the confidence of the private sector in investing in complex projects. Lenders will be more wary if there is the risk of CP at EUV or EUV plus. This is likely to affect negatively the appetite of lenders to fund complex regeneration / development schemes and the make it harder for the private sector to assemble sites for delivery. It will make lending more difficult to secure and more expensive, with an effect, in turn, on the viability of projects.

For these reasons, HBF is opposed to any changes that might limit the ability of landowners / developers to receive compensation in full to reflect the prospective development value of the land to be compulsory purchased.

However, if the Government is determined to proceed with these changes, it must introduce safeguards to ensure that any schemes acquired through CP would provide genuine additional public benefits and it does not displace land already being promoted actively by landowners and/or developers. It should also define suitable timescales for the delivery of those benefits.

Paragraphs 16 and 17

We note that the effect of the change being proposed is that landowners / developers will only get Appropriate Alternative Development (AAD) when there is a Certificate of Appropriate Alternative Development (CAAD) although a Tribunal can still find that a claimant has hope value under the changes set out at paragraphs 16 and 17.

We have concerns with the proposals at paragraph 16 of the Consultation. The proposals and the procedures relating to this are unclear and undeveloped although the proposals appear to be designed to make it less likely that a claimant will be able to show Appropriate Alternative Development (AAD). Consequently, the HBF has concerns about: (1) the resourcing of local planning authorities who struggle already with maintaining a development management service; (2) the ability of local planning officers to get the basis of the assessment correct; and (3) the time and cost of appealing a refusal of a Certificate of

Appropriate Alternative Development (CAAD) to the Tribunal if the local planning authority has misunderstood the brief.

We have no confidence in the ability or capacity of local planning authorities to ensure that this new system will operate fairly and efficiently. As such, we have misgivings with the changes proposed.

Questions on further reform

Question 3: Do you agree that there are schemes where capping or removing the payment of hope value will increase the viability of certain schemes and/or increase the public benefits delivered through the schemes? Please provide details and where possible examples of schemes.

The consultation signals – it does not consult – the Government's intention to change the rate of compensation payable by the government and its agencies when it confiscates the private property of others. As the consultation document states, the rate of compensation, until now, has been set by:

"Rule 2 of section 5 of the Land Compensation Act 1961 (LCA 1961) defines this as the amount which the land if sold on the open market by a willing seller might be expected realise…"

and also:

Section 14 LCA 1961 makes provision for taking account of actual or prospective planning permission in assessing the open market value under rule 2. Value attributed to prospective planning permission is sometimes referred to as "hope value".

HBF is concerned by the Government's intention to move away from these principles. Ensuring that owners are compensated to reflect a prospective planning permission is an important safeguard against potential abuse by the State as plan-maker and decision-taker. This is the risk that the State could acquire land at EUV but subsequently allocate and grant itself planning permission to develop this land for a more valuable new use.

We would query also the public benefits purported. Any public benefits could be outweighed by the deleterious effect of these proposed reforms on housing supply overall if CP schemes merely displace other activity including other allocations for housing – schemes that local authorities would otherwise have to had to allocate and approve to deliver against plan targets. Allocating land for housing is unpopular politically in more affluent areas and local government will be interested in more expedient routes to assemble land to avoid harder political decisions. This risk increases in local authorities without up-to-date local plans that provide up-to-date assessments of need and if the Government abandons objectively assessed housing needs or the Standard Method that establish important benchmarks for local authority performance. Without targets it is difficult to measure the public benefits.

If the Government is to pursue these changes to compensation, then it must establish safeguards and measures to ensure the alleged public benefits are provided and are genuinely additional, not displacing activity that would already have occurred otherwise (at the same or greater speed). Part of this will require the Government to ensure that housing targets are established based on objective evidence, and that these are achieved and exceeded in all parts of the country.

This would require the following safeguards:

1) the ability to compulsorily purchase (CP) at a rate below full hope value should not be available in local authority areas without an up-to-date local plan. This is necessary to ensure that local authorities without an up-to-date local plan - who have failed to allocate land for housing for many years, who consequently have contributed directly to the unaffordability of housing in their area - should not be allowed to profit from this neglect of their public duty. Such local authorities and other public agencies should not be allowed to seek a direction from the Secretary of State or deploy CP to capture the inflated development value that has been caused by the scarcity of housing land supply in their area enabled by the (in)action of the local authority.

2) that any local planning authority / public agency embarking upon a CP scheme, if providing housing, will provide that housing in addition to the target/requirement in an up-to-date adopted local plan. In other words, any housing provided should be additional – contributing to an overall national target, not local ones (for example, this had been the concept supporting the ‘Eco-Towns’ of the 2000s). This would address the possibility of local authorities deploying CP merely to avoid allocating other land for housing and the unpopular political choices associated with this. It also avoids the risk of no net gain in housing supply associated with the Government abandoning any objective assessment of housing need, or the Standard Method, and the five-year housing land supply discipline, and replacing this with capacity-derived housing requirements at the local authority level. This is necessary to ensure that the public benefits of CP schemes are demonstrable;

3) CP schemes should provide a net increase in additional affordable housing, exceeding the number of affordable dwellings that might have existed previously, and provide new affordable housing at the same rate or greater than the local plan requirement. This would accord with the Government’s own objectives to increase the supply of much needed affordable housing. This safeguard is necessary to avoid local authorities disapplying their own local plan polices, or applying their own local plan policy requirements more leniently to their own schemes to optimise profitability;

4) that any compulsory purchase scheme where residential development is proposed rehouses incumbent renters / leaseholders within the new scheme. This is necessary to guarantee the public benefit;

5) hope value should remain uncapped if the scheme the local planning authority is proposing is broadly similar in the land uses proposed to that promoted by landowner or developer;

6) whatever the purpose or type of the CP scheme, the payment of hope value should be guaranteed where a developer is involved. The involvement of a developer is a sure indication that the scheme for the site would have been progressed without the need for CP. Options, or other land contracts, will establish what the intended use was to be as the basis for calculating the hope value. Land contracts between landowners and developers will usually stipulate this;

7) any uplifts in planning gain captured through CP should be ring-fenced to deliver defined public services on the site or in the locality. The difference between EUV and hope value should be accounted for and publicised to allow scrutiny and ensure that the benefits are measurable and secured for the public good. These public benefits should correspond to items identified in Infrastructure Delivery Plans that will be introduced via the Levelling Up and Regeneration Bill; and

8) a system of consultation and appeal should be established to enable the purported public benefits to be scrutinised and assessed by an independent assessor. This would ensure that the public benefits are genuine and measurable.

Question 4: Please provide any comments you may have as to the proportionality of capping or removing the payment of hope value balanced against the delivery of public benefits. Please provide any examples you have where you believe the public benefits would be such that it would be proportionate to impose such a cap or removal of hope value to a scheme.

We are generally opposed to the capping or removal of hope value for the reasons stated above. We are not convinced that this reform will necessarily improve outcomes for the British public if the enhanced powers are used to progress favoured regeneration schemes while the planning regime is used to suppress competition from other eligible sites. The net result could be fewer and more costly homes for the British public.

If the Government does intend to implement this proposal, it must introduce safeguards to ensure the public benefits are genuinely additional and measurable. We have suggested these measures above in our response to question 3.

It is also the case under current arrangements, and those proposed, that the developer is not entitled to compensation for all costs they have expended to date in promoting a scheme - a scheme which could have been for uses judged as Appropriate Alternative Development. The current and new system should compensate the developer as well as the landowner.

Question 5: Do you have evidence of the extent to which hope value is currently claimed/paid generally in compulsory purchase situations? Please provide details and where possible any evidence that you have as to whether hope value is more likely to be paid on particular types of schemes, for example from urban regeneration schemes to greenfield schemes or from housing schemes to transport schemes.

As stated above, we are sceptical about the public benefits claimed that would justify acquiring sites at EUV or with a cap except in cases of unreasonable behaviour by a landowner who might be preventing an allocated site from progressing.

Where a site in under the control of a landowner or developer who is keen to progress the scheme, CP by an acquiring body would provide no guarantee that the local authority will deliver benefits better than a developer could, or faster than a developer, as local authorities are poor generally at delivery. Costs are more likely to overrun, especially where a locally led development corporation needs to be established and funded. The value captured is most likely to be squandered.

The new town experiment in North Essex is an example of how public purse was drained with nothing to show. These locally-led new towns promoted the same sort of proposals as developers but with very weak business plans. The local authorities involved were unable to defend the delivery timetables at examination.

Given the lack of expertise within local authorities / acquiring bodies in implementing such scheme coupled with labour-shortages in critical skill sets, would any of the putative public benefits be realised? Delays in public schemes are commonplace. The hope value captured would be wasted quickly.

Moreover, at a national level, as we have argued above, there is no guarantee that these reforms will result in an increase in housing supply if they substitute private-led schemes for ones led by public agencies, with no additionality.

Question 6: Do you think the public benefits of capping or removing hope value is more likely to arise in particular types of scheme? Do you think any solution to this issue should be limited to particular types of scheme or apply across all types of compulsory purchase situations? Please provide details in support of your answers.

We do not support removing or capping hope value. If the Government is determined to progress its changes then safeguards are needed to ensure that the public benefits associated with CP are assessed and are additional and measurable. We have suggested what these should be in our response to question 3.

The development value of some residential schemes will have increased following public investment in public transport, such as the construction of the Elizabeth Line in London. In these cases it would be legitimate for the State to capture some of this uplift and there are already effective value capture mechanisms to do this, such as the CIL and the London Mayoral CIL that legitimately captured value derived from the extensive public investment in Crossrail.

If the Government insists on these reforms then it would be necessary for it to ensure capping or removing hope value for CP sites would result in schemes providing benefits that are additional to any local plan requirements, including housing targets.

Questions on consultation proposal

Question 7: Do you agree with the proposal to address this through the issue of directions for specific schemes as set out in this consultation?

We disagree with the basic premise that landowners / developers should be deprived of their hope value.

We find it difficult to comment on this question because so little information is available on when and how the directions would be used. As such we cannot comment on their fairness or appropriateness. We have, however, raised above our concern about the capacity of local authorities to respond for a request for a CAAD, and the potential for political manoeuvring through planning to frustrate the issuing of these.

It is likely that these proposals will generate conflict and could militate against the delivery of large-scale regeneration schemes, depriving everyone of the public value created by such schemes.

Also, we see no justification for reducing the rate of compensation payable because the local planning authority judges a site as unlikely to get planning permission, but then awards planning permission for that site acquired subsequently by itself or another public acquiring body.

Question 8: Do you agree with the proposal that the directions could cap the payment of compensation at existing use value or at a percentage above existing use value (excluding the payment of compensation under other heads of claim)?

No. As we have explained above, there is a considerable risk of abuse associated with this proposal. For political expediency local planning authorities could suppress housing supply from competing sites and CP land it favours. This would inflate also the development value of sites a local authority or other public body intended to acquire by compulsory purchase.

If the Government does intend to implement this proposal, it must introduce safeguards to ensure the public benefits are genuinely additional and measurable and deliverable at a pace faster than the private sector. Hope value should be uncapped and reflect the market value of the land acquired.

Question 9: Please provide any comments you may have as to: (1) whether it will be possible to identify certain, deliverable public benefits in applying for directions; (2) how it will be possible to link those public benefits to value captured.

Any benefits derived from capturing a larger share of the uplift in development value by seizing land at EUV could be outweighed by the cost to the British people of the continuation of the ongoing and worsening housing crisis – a problem that will become entrenched further as the supply of land for housing is restricted by many local authorities.

Local authorities could have an interest in tightening this supply further to benefit from the increase in development values on those sites it intends to CP.

We should be mindful also that enhanced CP powers could affect adversely residents in places where the acquiring authority intends to purchase using a CPO to clear them out of the way from realising a regeneration objective. The Government will be aware that there is very little housing stock available, with historically low vacancy levels, and house prices rising rapidly, householders subject to CPO may struggle to find alternative accommodation, not only near to where they had lived, but anywhere. The Government should ensure that safeguards are in place to ensure than all residents can be reaccommodated in the subsequent scheme.

To avoid this, the Government should introduce safeguards. Any housing secured through CP schemes at EUV or capped levels of compensation should be additional in net terms to local plan targets. Any housing provided on CP sites should contribute towards a national target rather than a local authority target. Public bodies should be required to provide a higher level of affordable housing than any percentage target in the local plan, as required by the London Plan on publicly owned land. Existing tenants / leaseholders should be rehoused in the new scheme.

Hope value in full should be paid for schemes that are broadly similar to the scheme proposed by the acquiring body.

Question 10: Do you think that an acquiring authority should have to consult with affected landowners before seeking a direction from the Secretary of State?

Yes. A process should be established to allow landowners to appeal against the issuing of a direction by an acquiring authority to seize land through CP. An independent inspector should adjudicate considering factors such as local plan production and evidence of housing need, and infrastructure requirements, and the ability of the public body to deliver a scheme more quickly than the market. This is necessary to establish is there is a genuine public interest case to acquire land at EUV capped or not.

Question 11: Do you agree that issuing directions should only be to schemes where the acquiring authority is also a public sector entity?

Yes. This is necessary to ensure that those responsible for decisions to seize land, and the public benefits arguments that supported these decisions, are accountable to the electorate.

Question 12: It might be possible for landowners to seek a planning permission so that development value applies under section 14(2)(a) LCA 1961 circumventing any cap applied under a direction. Do you think it should be possible for the directions to cap development value for any planning permission which falls under section 14(2)(a) where that planning permission is made after the "launch date" of the scheme or after the date the directions are issued if later? The launch date is defined by section 14(6) LCA 1961.

No. The issue here is that Local Planning Authority (often the same body as the promoting LA for the CPO) may use many planning and non-planning related reasons to refuse or delay a planning permission to pave the way for a CP or an application for a capping direction.

It is the industry's experience that refusals for political reasons are common for the reasons we have outlined in response to question 3. This risk increases if acquiring authorities will be able to seize land at less than market value.

The cost to individuals and SMEs of these proposals will be particularly acute. The cost and expense to the landowner of having to a) contest a capping direction and then b) a CPO would be considerable. It would be costly for the local authority also. It would delay the process considerably and make it more costly for all involved. As it is unclear if there will be any right of appeal against a capping direction, this would force a landowner down the costly judicial review/statutory challenge route. It would be unwise to create a system that adds time and cost to the process especially as this has the potential to erase any of the purported public benefits.

As argued above, the Government would need to put in place mechanisms to ensure that the purported public benefits are genuine, additional and measurable. Applicants would also need to be able appeal so that they can receive hope value in full especially if the proposed new use is broadly similar to the one promoted by the landowner / developer. By this we mean that if an application was made before the 'launch date' and refused by the LPA, but subsequently granted on appeal, the applicant should receive the 'hope vale' uncapped.

Question 13: Do you have any further comments as to how the process of seeking and issuing directions might work?

It is difficult to comment on the directions without more details about how these will be used and how value will be determined.

However, we are concerned about the role of the Secretary of State in the issuing of directions. This is because s/he will not be a wholly independent party – the Government's motivation, like other public acquiring authorities, will be to minimise the hope value payable to the landowner / developer. This is why we are opposed to intention remove hope value or reduce this to a percentage point above EUV.

Establishing an independent body to determine value and to scrutinise the public benefits claimed, and if necessary, to ring-fence those public benefits to ensure they are delivered, would be helpful.

Question on alternative proposal

Question 14: Do you think the proposals should go further and automatically limit the payment of hope value in compulsory purchase more generally or in relation to specific types of schemes? Please provide details and justification as to why you think it would be in the public interest to go further and what public benefits could be delivered if hope value was limited. Examples of types of schemes, for example regeneration, you think any further general application should apply to would also be helpful.

No. We are concerned about the decision to move away from the compensation principles established by the Land Compensation Act 1961, especially if the Government does not establish safeguards to prevent abuse or to ensure public benefits over and above those that would have been delivered by the market.

It is one of the conundrums of the UK planning system, as identified by the late Sir Peter Hall in his survey of the effect of the UK planning system[2], that in its role in identifying and allocating land for development through a local plan the state increases (or sometimes decreases) its development value. The remedy is not to enhance the power of Government to seize this land at EUV, or a capped level, but to increase the supply of land to provide housing through more outlets[3]. Increasing the supply of land through the planning system would assist with affordability by reducing the cost of land. Conversely, changing compensation to EUV or a percentage above this without addressing the underlying problem of land-rationing through the planning system would allow acquiring authorities to benefit financially from the continuing unaffordability of housing in England and Wales.

This may not be the intention, but it is the consequence of the planning system imposing limits on the supply of land for various purposes.

We question whether these changes to the CP process are really necessary and whether they will result in more land coming to the market to deliver more public benefits than are already being provided by the market. For these reasons, we consider that it is extremely unwise for the Government to move away from the compensation principles established by the Land Compensation Act 1961, but if it does so, it must introduce strict safeguards.

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[2] Peter Hall, et al: The Containment of Urban England (2 vols, Allen and Unwin, 1973)

[3] See for example *Land Taxation and Land Prices in Western Australia*: report by the Committee appointed by the Premier of Western Australia on the Taxation of Unimproved Land and on Land Prices. Perth, Western Australia, January 1968, pages 26-29.