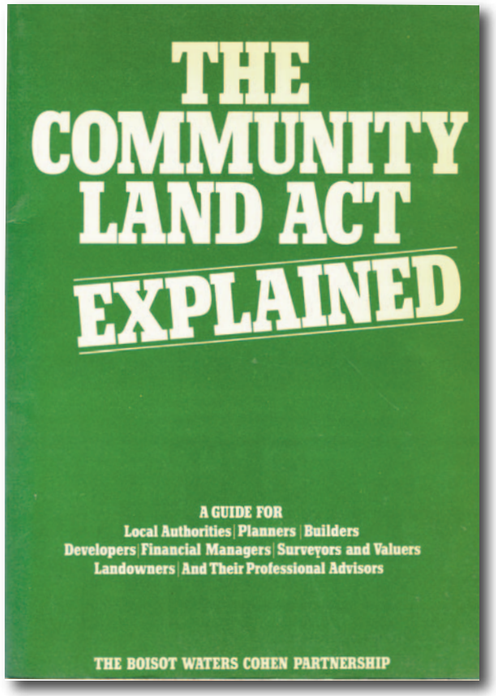
Land value capture – can we get it right this time?

Nigel Moor examines the background to this latest attempt at land value capture

Previous attempts at land value capture

A recurring issue since modern town planning restrictions were introduced in 1947, has been how to capture some of the increase in development value for the community of land granted planning permission. If we exclude its use by Charles II to help rebuild London after the Great Fire, there have been five serious attempts to try and capture some of the betterment (best described as recouping the increase in private site value caused by public works). The first attempt was the Liberal Party's Finance Act 1909, usually referred to as Lloyd George's 'People's Budget', in which he wanted to see a 20 per cent tax on land value increases, where land in urban areas increased in value. This led to the rift with the House of Lords, whose landowning members opposed the measure, and the introduction of the Parliament Act, which prevented the upper house trying to sabotage legislation from the House of Commons.

There then followed Lewis Silkin's development charge contained in the Town and Country Planning Act 1947, the Land Commission Act 1967 and the development levy contained in the Community Land Act 1975. Decades later the Community Infrastructure Levy (CIL) introduced by Gordon Brown`s Government in April 2010. This has transmogrified from the original idea of a tariff on development, then the planning gain supplement (PGS), through to its current much modified form where it is determined in relation to the economic viability of a scheme. The final revision to the CIL was not opposed by Conservative MPs who withdrew their amendments that had threatened to defeat the Bill, and successive Conservative governments have persisted with CIL.



RIGHT:
An early work by your editor!

The Infrastructure Levy

The Planning White Paper promised a reform of the under - performing levy and the current system of planning obligations by a nationally set, value-based flat rate charge (the 'Infrastructure Levy'). The aim was to raise more revenue than under the current system of developer contributions, and deliver as much, if not more, on-site affordable housing. Although most of the promised reforms in the White Paper are now firmly in Michael Gove`s waste paper basket, the Infrastructure Levy (IL) emerges in the Levelling up and Regeneration Bill, as a seismic change from previous Tory policy on land value capture. The IL differs from CIL as the rates will be set as a percentage of the final gross development value (GDV), as opposed to the current system which is based on floor space. This now looks like a traditional tax and it could be argued as more ambitious than even Lloyd George attempted.

It will be a mandatory scheme, as opposed to the discretionary CIL, and rolled out nationally over several years, on a "test and learn" approach. The legislation makes an exception for the Mayoral CIL in London, which will be permitted to continue alongside the IL. The Bill by inserting a new clause into the Planning Act 2008, cleverly ensures that the legal basis for the IL, is based on existing legislation, which should enable it to be introduced relatively quickly. The Mayoral Community Infrastructure Levy (MCIL) is a fairly unique arrangement which allows charges to be applied to all planning permissions in London granted from 1st April 2019. This finance is used to fund Crossrail 1 (The Elizabeth Line), and would also finance Crossrail 2 if ever built. Local planning authorities in London are responsible for calculating the MCIL charge and collecting it on behalf of the Mayor. MCIL is separate to Local Community Infrastructure Levies (CILS), which may be set and implemented by each local planning authority to raise funds for local infrastructure projects.

The introduction of the Infrastructure Levy (IL) of itself does not get to grips with the problems currently experienced in two – tier county areas outside London. Here the current CIL system is in paralysis. County Councils are denied financial contributions to transport and education as district councils, who recover CIL, >>>

Dr Nigel Moor is a retired chartered town planner and a former town, district and county councillor

RIGHT:
The entrance to Paddington Station on the Elizabeth Line, financed in part by the MCIL. Photograph Source: Morley von Sternberg Building Magazine.

>>> squirrel it away, earmarked for affordable housing.

County Councils require around 80 per cent of developer contributions to finance education, transport and other services required for new housing. Currently some county councils are receiving little or no contributions from CIL. The problem is exacerbated in these areas as many councillors are "twin hatters " serving on both county and district councils with divided loyalties. If the county councils were to have a similar arrangement to the MCIL, then contributions to transport and education could be secured, leaving the balance to be used for affordable housing and to offset negative impacts caused by the development using s.106 agreements.

RIGHT:
Fernwood Village, Newark, Nottinghamshire. S.106 Agreements are particularly important for these large new village schemes so as to improve community facilities.

>>> **Calculating the Levy**

As the IL is to be introduced over a number of years, houses permitted under the existing system and liable for s.106 or CIL payments will continue to make payments as before. The Bill grants powers to cease the use of s.106, but government has made it clear that these agreements will have a retained role in the planning system. These include where infrastructure is specifically required for the operation of a site, such as the mitigation of flood risk. The levy will not now be set nationally as mooted in the Planning White Paper, but determined and collected locally. Affordable housing is to be included in the levy, whereas now it is delivered via s.106 agreements and not by CIL. To help councils work out how the levy should be spent, they will be required to prepare "Infrastructure Delivery Strategies ".

Anticipating criticism from the development sector a policy paper issued alongside the Bill advises that the method of calculating the levy will allow developers to price in the value of contributions when they buy land. The aim here is to ensure that the increased financial contribution to affordable housing and other benefits from the new system, comes from the landowner through the increased value from development, and not the public purse.

The inescapable conclusion is that landowners cannot continue to receive the amount of increased land value they previously enjoyed. Previous attempts to introduce a development tax have eventually been stalled by opposition from landed interests. Until now the Conservative party has always opposed a development tax both on ideological grounds and the more pragmatic view that it will stall and frustrate the development land market. The Bill marks a fundamental change.

A need for political consensus

It is worth looking back at previous attempts to capture land value. Silkin`s development charge was abolished by the subsequent Conservative government and the financial gain, called betterment, was instead subject to capital gains tax, which simply went to the Exchequer. Paradoxically, New Labour finally got CIL onto the statue book, as the 2008 recession gathered pace. This has been the recurring feature of all these attempts by the Labour Party to recoup betterment. They have occurred on the cusp of a recession and come to naught. There is also the risk that the development land market will simply stall, whilst landowners sit it out, in the hope that the IL will ultimately fail. Those of us with long memories will recall this was the fate of the Community Land Act of 1975 introduced by Harold Wilson`s government. The land market closed down, anticipating a change of government, and a repeal of the Act, which subsequently proved to be the case after 1979.

As the IL is to be introduced over a number of years, it raises the intriguing question of what will be the approach of the other political parties to this new attempt at land value capture? A political consensus on this would be the best way of ensuring that the development land market remains functioning. Landowners and their advisors would have no choice but to accept that the IL is unlikely to change, and would have to be included in land valuations, when concluding sales agreements with developers. Progress of the Bill though parliament will reveal whether this is wishful thinking, or whether yet again land value capture, which could achieve so many positive benefits for our local communities, is again cursed by our adversarial political system. ■

LEFT:
Aerial Photograph of Fernwood from the north source: hugofox.com

Dr Nigel Moor began his career in London with the Covent Garden Planning Team and since been active in local politics. His new book England`s Future - the impact of politics on shaping the environment – is to be published by The Book Guild this October. You can read extracts at https://nmpanning.blog