CHAPTER SIX

Recoupment via Ownership

In this chapter we consider LVT as an available choice of capital exactions in line with government policies for land use and development. We first consider the policy of recoupment of development value via ownership, sometimes known as land banking, which is not, strictly speaking, the same as levying taxes, but is a means of land value capture for the benefit of the community. Although not previously unknown, this process gained impetus in the immediate post–World War II years. Hence, we treat it as an historical precursor to the other, later attempts at value capture.

In the planning and development of towns and regions, public-sector acquisition has a far-ranging role in advancing a government's social, economic and political objectives. Governments can recoup development land value by forward purchase of real estate on the part of an acquiring authority, ensuring value capture to the community by positive and advance action. To view this process in its wider scope we first examine examples in overseas countries, and then we compare and contrast those efforts with past and present U.K. procedures.

Overseas Practices

United States

Large-scale land acquisition (and subsequent disposal) was instrumental in opening up the United States during its westward development, with a view to passing the land on to the private sector. As Strong (1979, 26) describes, after the creation of the U.S., all new acquisition of land was carried out by the federal government. The new land, outside of Texas and Hawaii, became part of the national public domain. All told, between 1803 and 1867, 1.8 billion acres, or 79 percent of the present area of the U.S., passed into the public domain. The average cost of the bought land was four cents per acre. The U.S. government's prevailing policy, at least for the first 100 years of the public domain, was that it was

desirable and urgent for the nation to expand its land holdings and that the land should be committed to private ownership.

Strong also points out:

> The government's disposal policy was shaped by several factors, whose relative weights varied over time. These factors were: the desire to get land settled and into productivity as rapidly as possible, the need for revenue for the federal treasury, the need for dispersed settlement of the West to provide a place for immigrants and to increase safety from the Indians, the commitment to reward soldiers with land, and the aim of promoting self-sufficiency in the newly formed states. (1977, 27–31)

A prime example of U.S. governmental disposal policy, in an endeavour to "open up" the country and make the West more accessible to settlers, is the gifting of land to railroad companies. Between 1850 and 1900 some 91 million acres were so given by federal grant and another 49 million acres were donated by the states. But the government's hope to profit from rising land values in adjacent retained land proved illusory, and it did not even recover the value of the land given to the railroads. Nevertheless, the rapid settlement of the country, and its consequent effects on the nation's development and prosperity, can be claimed as the most important returns to the government on the railroad-land investment.

Although government policy up to the close of the nineteenth century dictated that public-domain land should be returned to private hands as rapidly as possible, Strong (1979, 34) explains that the twentieth century saw a reversal of public policy. An increasing recognition of the finiteness of land resources and of the interconnections between land uses led to increasing support for public ownership and public control of land use. With a growing understanding that, while vast, U.S. land, water and mineral resources are not limitless, and that some of these resources have been squandered and others soon will be exhausted, a conservation ethic has taken root and is spreading.

The U.S. has begun to use public acquisition to deal with the inadequacies of past practices in private development. According to Roberts:

> Only recently—and invariably because of widespread urbanization and ecological concerns—have these inherited notions of property rights experienced erosion. This change has manifested itself in . . . the concept of private ownership of land shifting to account for the inadequacies of past practices to deal with the abuses of private development. The list of insults is long and shameful and the consequence has been that conservation concerns have succeeded to a new position in the priority of considerations regarding the use of land. (1977, 202)

In line with these aspirations for public acquisition, Kehoe (1976, 3) argues that community ownership of land would result in a radical alteration of the basis

of current urban social and economic order. He points out that land ownership has been and still is the mainstay of individual wealth, social worth and political influence in a community. Taking this argument still further, Penalosa contends in Kehoe (1976, 9) that there is still another consequence of the private ownership of land: the systematic impoverishment of the poor. However, the other side of the argument is that it is the impossibility of acquiring an interest in land that still prevents ordinary individuals in many undeveloped countries from accumulating even modest levels of capital wealth.

France

Public-sector acquisition has been valuable in strengthening land-use controls in France. Strong (1979, 142) particularly describes the designation of large areas as zones in which acquisition could occur, with restrictions on the actual purchase of lands more critical for development, farming or resource protection. These approaches result in a rough sort of equity that dampens the grosser excesses of speculation while leaving the bulk of land transaction in private hands. Currently France is attempting to affect the use of all land in urban areas by enacting zoning-type regulations, but there have been some doubts about the efficacy of this procedure. As a coordinating measure, both large-scale development and the preservation of open land have relied on the land-banking process to control the future use of the land, which for the most part has been positive.

On a key example of large-scale land banking in the Marseilles area, Strong further comments:

> One can say that the land question acquisition program moved rapidly and smoothly, evidencing considerable cooperation among the state, local government, and the private sector. Buying large tracts in advance of public awareness of development plans established market value; this, combined with the existence of the eminent domain power, made it possible to buy the land at reasonable prices. State initiatives in providing the bulk of the funds for land acquisition, in authorizing direct state acquisition, with its state-local-private sector management, have been critical. So, too, has been the leadership exerted by the Marseilles Chamber of Commerce and Industry. (1979, 209)

The Netherlands

Public acquisition was essential in the Netherlands for providing the infrastructure needed for housing in the low-lying land reclaimed from the sea. It also became significant for controlling land price on disposal. For decades most Dutch municipalities customarily have bought land a few years in advance of development, prepared it for development, and then sold or leased the actual development sites, retaining a substantial portion of the land for roads, parks and community facilities.

In the Netherlands, the long experience of municipal land acquisition of the urban-extension type has so affected expectations that speculation in development land is considerably restricted. The Dutch land-acquisition procedure is based on the Expropriation Act, which gives municipalities the power to expropriate land located in an area of an approved extension plan on the basis of existing market prices for current land use (Lichfield and Darin-Drabkin 1980, 200). This basis means that land need not be acquired far in advance of need, since the acquisition is in accord with current use, thus holding down carrying costs.

Strong (1979, 100) also confirms that, as part of this process, land banking has been used as a first step towards plan implementation, making it possible to provide housing sites at moderate cost and to develop land in an efficient and orderly manner. Intentions to garner increases in land value for municipalities have not always been effectively realised. In any event, landowners recognise that little, if any, opportunity for speculation exists, and because they generally believe that municipalities pay a fair price for land, they acquiesce to municipal proposals.

Sweden

In Sweden land banking has historically been the principal tool for implementing urban development for medium and large Swedish cities. Strong cites the following prime example:

> The city of Stockholm alone has acquired 138,000 acres since 1904, at a price of approximately $110 million. Its holdings outside of the city are twice as large as the area of the city itself. Most development in the region occurs on land held by the public for several decades and bought at or near farm value. (1979, 43)

British Practice

As a background to the history of the British system of recoupment via purchase, it is illustrative to quote the findings of the Uthwatt Committee on the subject:

> It should be observed that, although the system of recoupment enables a public authority to recover the whole or part of the increased value given to neighbouring lands by the execution of public works (as is the case under existing statutes), it is not strictly an application of betterment. The principle of betterment is that the public authority are entitled to require the owner of land increased in value by their works to pay over in money part of the increase which he hereby enjoys. In the case of recoupment, however the authority buy outright the land likely to be enhanced in value by their proposed works, paying the owner its current market value, and any profit they are able to make by developing or selling it is entirely theirs; there is, therefore, no need to ascertain how much of the profit is attributable to increase in value due to particular works and how much to other causes, and the major difficulty of the existing betterment system is avoided. (1942, 116–117)

Bearing this in mind, we now examine further the various forms of recoupment via ownership appearing over the years in Britain.

Pre–World War II Compulsory Acquisition

Historically, the clearest example of justification for compulsory acquisition is the royal prerogative to take land for the defence of the realm in times of emergency, while compensating the land's owners in full. Another example is the "inclosures" of land mandated by private local acts of Parliament in the eighteenth and nineteenth centuries; these procedures were eventually formalised under the Inclosure Act of 1845. Of the more than 4,000 inclosure acts that were passed in the eighteenth and nineteenth centuries,[1] the great majority were private acts. The objective of the earliest legislation was to facilitate the inclosure of common land, but by 1876 perceptions had changed: the Commons Act of that year emphasised the regulation of commons rather than inclosure, and the inclosure movement slowed. In 1913 a select committee of the House of Commons concluded that "regulation of commons as distinguished from inclosure would be everywhere beneficial to all the interests concerned" (DEFRA 2000, iv), and the last application for inclosure under the inclosure acts was made in 1914.

In the formative era of the nineteenth century, the majority of compulsory-acquisition activities were carried out by private companies; this process endured for more than 50 years. Thus, at the beginning of the Industrial Revolution, the use of compulsory powers was tailored to serve private interests, albeit to supplement public-interest goals. A prime example of this process was when the construction and growth of the early railways necessitated the application of compulsory powers, as Millichap explains:

> The expansion of the railways in the early part of the nineteenth century first prompted the substantial growth in the application of powers of compulsory acquisition. With their need for relatively straight tracks and wide curves, railways were particularly susceptible to economic extortion by owners of land along proposed routes, and powers of compulsory acquisition soon became essential to economic development as a corollary both to their peculiar needs and to the obligations to the public which they were forced by Parliament to assume. Similar considerations apply equally to gas, electricity, water and sewerage undertakings; all require powers of compulsion, for all involve both the acquisition of land for exclusive use for the erection of main installations, and the acquisition of lesser interests, such as rights over other people's land, for the laying of pipes and cables. (1999, 1–2)

1. See also *Rural Rides*, collection of essays by William Cobbett, published in 1830, which originally appeared in the *Political Register*, recording actual observation of rural conditions (standard ed., 3 vols., by G.D.H. and M. Cole, 1930).

To enable local authorities to buy the land they needed for public works without having to pay extortionate prices, Parliament enacted the first Lands Clauses Consolidation Act in 1845, which achieved a more unified acquisition process and a unified code of compensation. This was followed by the Acquisition of Land (Assessment Compensation) Act (1919) and the Acquisition of Land (Authorisation Procedure) Act (1946), which eventually ensured standard procedures of compulsory acquisition of almost universal application. This act originally applied mainly to acquisition by local authorities, but later acts have substantially widened its scope to include acquisition by government departments.

Post–World War II Compulsory Acquisition

Since World War II, Britain has captured a great deal of the increases in land values through public acquisition of land for development or redevelopment and subsequent renting or leasing. In this way, increases in land values flow to the public purse.

In Britain public authorities are given wide-ranging powers to buy land for any "planning purpose"; this departs from other countries' restrictions on land use for "public purposes" (Heap 1996, 321–322). In this chapter we focus on those occasions where public purchase has been employed to recoup rises in land value through public development to the community (on a leasehold or freehold basis). This includes the redevelopment of bomb-damaged and obsolete areas after the war (TCPA1944, TCPA1947); the building of some 30 new towns, starting in 1946 (NTA1946); the expansion of existing towns (TDA1952); and the redevelopment and regeneration of obsolete areas by government-appointed urban development corporations (LGPLA1980).

Town and Country Planning Act, 1944 (TCPA1944). Heap (1996, 321–322) explains that, despite its title, the major portion of TCPA1944 dealt not with planning but with land acquisition and new powers of acquiring land compulsorily (and, in exceptional cases, very speedily) for a variety of purposes, in areas of extensive war damage ("blitzed" areas) and areas of bad layout and obsolete development ("blighted" areas). This act introduced the important new concept of positive town planning, by empowering local planning authorities to undertake themselves the actual development of their own areas. It also introduced the "1939 standard" for compensation levels payable on the compulsory acquisition of land, a standard later abolished by the Town and Country Planning Act, 1947 (TCPA1947), and replaced by the principle of compensation based on the value for its existing use only.

New Towns Act, 1946 (NTA1946). NTA1946 provided for the creation of new towns by government-approved development corporations. Since 1946 some 30 new towns, each with its own corporation, have been established in Britain after land was designated for their sites by the government. The corporations were empowered to acquire, by agreement or compulsorily, any land within the designated area, any adjacent land that was required for the development of the town, or any other land required for the provisions of the town (Lichfield 1956, 243–244). The compensation code governing these transactions was identical to that governing any local authorities carrying out redevelopment under the Town and Country Planning Acts of 1944 and 1947. Corporations were also empowered to dispose of land, generally at market value, that they considered expedient for securing the development of the town.

Thus, the new-town corporations had the ability to capture development value for the benefit of the community, having acquired land under the earlier provisions, mainly under TCPA1947, based on existing use. But later the Town and Country Planning Act, 1959, and the Land Compensation Act, 1961 (LCA1961), provided that compensation would be the market value of the land, subject to the modification that the acquiring authority would not pay any increase or decrease in the value of the acquired land if the increase or decrease had been brought about by the scheme of development that gave rise to the need for compulsory purchase (Heap 1996, 330).

Town Development Act, 1952 (TDA1952). TDA1952 was passed in order to facilitate pre-existing arrangements with the new towns for housing overspill population and to provide an additional method whereby "large cities wishing to provide for their surplus population shall do so by orderly and friendly arrangements with the neighbouring authorities" (Lichfield 1956, 226). For land that was acquired in an approved town-development scheme, the operating authority had the powers of compulsory purchase under the 1944, 1947 and 1961 acts referred to above, as well as rights of disposal, appropriation and development.

Although town-development schemes governed by TDA1952 were introduced and processed in different formats and with differing participants than those of the new towns, the prospects for development value capture by the operating authority were similar, and both processes are prime examples of recoupment via ownership.

Comprehensive Development: Town and Country Planning Act, 1947 (TCPA1947). Under TCPA1947, a local planning authority could initiate the development of any area by defining it as an area of comprehensive development (CDA) in the development plan. A CDA was defined as an area that should be developed or

redeveloped as a whole for the purpose of dealing satisfactorily with extensive war damage or conditions of bad layout or obsolete development; for relocating population or industry or replacing open space in the course of the development or redevelopment of any other area; or for any other purpose specified in the plan (Lichfield 1956, 203). Once a comprehensive development area had been designated and approved by the government minister responsible, the local authority could purchase the land, by agreement or by taking compulsory powers of acquisition. Compensation under TCPA1947 would have been based on existing use or, later, under LCA1961, at market value, disregarding the effects of the scheme on that value.

Under this arrangement, local authorities disposing of land had the opportunity to capture development value. Many of the important CDAs involved redevelopment on major town centres; in these cases, local authorities were encouraged to enter into partnership schemes with commercial development companies. These partnerships generally involved granting a ground lease to the developer (usually for 99 years, but sometimes for even 125 years) under the condition that the developer would fund and build an agreed scheme.

In the early partnerships, local authorities concentrated on achieving ground rents to cover their outlay costs, including their borrowing charges. But gradually, as local authorities gained experience and expertise, the formulae for the calculation of appropriate ground rents became more sophisticated and evened up the financial expectations of the respective parties. It then became usual that the developer would receive a required minimum return on approved outlay, and the local authority would obtain a guaranteed minimum ground rent based on a residual deduction from an agreed estimate of the developer's eventual rentals for the completed scheme. However, if that estimate of rentals was to be exceeded, upon completion the excess would usually be shared; this would then be built into the ground rent payable to the local authority. Initially, it was normal to fix such a ground rent for long periods without review, but over the years, as awareness of the prospects of rising values grew, it became standard practice to introduce more frequent rent reviews into the ground lease, thus securing to the local authority an increasing share of value capture.

Local Government, Planning and Land Act, 1980 (LGPLA1980). LGPLA1980 broke new ground in the sphere of land development and planning control by empowering the Secretary of State to designate an area of land, usually derelict and run-down (often the inner core of an old town), as an "urban development area" and to establish an urban development corporation to regenerate the area (Heap 1996, 460).

These corporations were given powers to acquire, reclaim and dispose of

land and other property and to carry out building and other operations for the benefit of the schemes undertaken. They could acquire land by agreement or compulsorily by vesting under the compensation provisions of LCA1961, which specifically excluded any increase in the value of the acquired land brought about by the scheme itself, so the corporations had opportunities for development value capture that were similar to those afforded new towns and town-development operations. A number of corporations were founded in various towns, each with its own special act. The case of London Docklands illustrates this process.

The London Docklands Development Corporation (LDDC) was established on 2 July 1981, under the provisions of s. 136 of LGPLA1980, in response to the severe economic, physical and social damage caused to East London by the closure of London's docks. As described in LDDC (1998, 1), the London Docklands Urban Development Area (UDA) covered eight and a half square miles (2,146 ha.), extending six miles (10.8 km) down river from London Bridge to the south and Tower Bridge to the north, and comprised parts of the London boroughs of Southwark, Newham and Tower Hamlets.

The LDDC's strategy has been to correct market failures and to create the circumstances and, in particular, transportation infrastructure in which private investment would fund the economic regeneration of London Docklands, while improving the social infrastructure and public amenities from their low base.

Since 1981, as a result of the LDDC's endeavours, the population of London Docklands has increased from 39,400 to more than 80,000, and the number of jobs has risen from 27,200 to 72,000. Some 21,600 new dwellings have been built and 2.3 million square meters of new commercial buildings have been completed, spurring an increase in the number of businesses from 1,000 to 2,450. Public investment of £1.799 billion has generated £6.5 billion of private investment. However, the regeneration of Docklands is far from complete; despite the massive improvement so far, it will take decades to realise the full potential of the area and to eliminate all of the dereliction and decay.

Considered as an act of positive regeneration combined with development value capture, London Docklands is an outstanding example of what can be achieved by the process of recoupment via ownership. But the process is ongoing, and the story is not complete. From the government's viewpoint, the greatest and the most worthwhile return on its investment in the project is the overall economic regeneration of London Docklands.

Key Features

To summarise the main process of recoupment via ownership in post–World War II Britain, which Grant has described as "pre-empting the accrual of value," we can do no better than to quote his succinct exposition of some of the key features:

> The legislative scheme for new towns exempted the development corporations from having to pay enhanced land values when acquiring land in their designated areas. In calculating compensation, the valuer was entitled to assume that planning permission would be granted for the development for which the land was being acquired (e.g., housing, commercial, industrial), but to do so in a "no-scheme world," ignoring the whole of the new-town development that was taking place, and hence the services that the scheme was bringing to the area. This had the effect of enabling the corporations to acquire land net of betterment, yet being able in due course to sell land on at market value. A similar formula was extended in due course to the town expansion schemes [under the Town Development Act 1952]. It was later applied also to urban development corporations, but its application within existing urban areas was to prove more difficult than for Greenfield sites. Projects to provide infrastructure some time after the designation of the area also confronted the problem that investment expectations had already risen (which indeed was one of the objectives of the exercise), yet the land that was needed for, say, a new road scheme, could be acquired only at the lower statutory value. (Grant 1999, 62)

Other Forms of Recoupment

Britain has also captured value from the nationalisation of natural resources such as coal (CIA1949, OCA1958), oil/gas (GPPA1944, CSA1964), both offshore (OGEA1982) and on-shore, and the spectrum of radio waves. Nationalisation of underground deposits of coal, with compensation paid to the owners, was initiated in the Coal Act of 1930. This enabled the National Coal Board to grant licenses for the use of the nationalised rights subject to obtaining a planning permission. The same system applies to open cast mining, which began during World War II, but no compensation was paid to the landowners, although restoration of the surface was the responsibility of the promoters.

For oil/gas, the government assumed ownership of both on-shore and offshore deposits. It was thus able to grant licenses to explore and, when appropriate, to operate, and to garner income in the form of royalties from the drilling operators.

These principles were also applied to licenses for the use of the spectrum of radio waves. The income was secured as a result of open auction bidding by intending licensees to run the next generation of mobile phones. In April 2000 the auction for the next third-generation (3G) mobile phone licenses in the U.K. resulted in a £22.47 billion (US$35.4 billion) windfall to the British government, and an even higher figure of £30.4 billion (US$46.1 billion) was subsequently achieved by the German government for its grant of similar licenses (as reported by BBC Business News).

However, this over-propitious start may well have heralded some unforeseen consequences: BBC Business News (2000, 1) also reported that after the

early end of Italy's auction of third-generation mobile phone licenses, the Italian government was left with the unwelcome prospect of pocketing far less from the sale than it had hoped. Overall, the story of 3G license auctions across Europe has been one of unpredictable results and widely varying fortunes: the U.K. and German governments both raised billions of dollars more than they had anticipated, but an auction in the Netherlands fell flat, generating little more than one-quarter of what the government had hoped.

Future Prospects

Difficulties currently exist in Britain in applying public acquisition towards securing development land capture; compulsory acquisition as a purchasing process has fallen out of favour for a number of reasons. In Chapter 11 we consider future prospects of recoupment via ownership, in the light of prospective changes to the compulsory-acquisition process recently anticipated by the British government.

Summary

We have looked at the various ways governments can recoup value (usually termed *development value*) by ensuring early ownership of land or of any other national asset capable of accruing such future value. We now identify and consider other LVT measures directed toward capturing capital value for the benefit of the community.