

■ CHAPTER ELEVEN

Future Recoupment via Ownership

We now consider the prospects for implementing LVT in the form of value capture opportunities, the first of which is recoupment via ownership: virtually a process of land banking by public authorities, usually in advance of long-term development proposals, thus preempting the accrual of value for the benefit of the community (Grant 1999, 62).

Compulsory-Acquisition Difficulties

The compulsory purchase order (CPO) process (eminent domain in the U.S.), as a means of ensuring land assembly from fragmented ownership in all cases where voluntary negotiation fails, has limitations. A report commissioned by the Department of the Environment, Transport and the Regions from the City University (DETR 1997c) identified the following difficulties:

- lengthy time scales;
- user dissatisfaction with the CPO process and outcome;
- problems with the current dispute-resolution procedures in the CPO process;
- the blighting effect of CPOs that are not implemented;
- the conflict-ridden nature of the CPO process; and
- the resistance of a very high proportion of local authorities to the use of CPO powers.

Follow-up Events to the City University Report

Review by DETR

In June 1998 the DETR instituted a fundamental review of the laws and procedures relating to compulsory purchase, compensation and the disposal of compulsorily purchased land. An advisory group, whose membership embraced the spectrum of professional competence and relevant interests, published an interim report (DETR 1999a) containing recommendations for wider dissemination and discussion; a final report (DETR 2000b) was issued in July 2000.

The main thrust of the findings was to confirm that the current compulsory purchase arrangements are basically sound and that there are adequate safeguards to protect the rights of those whose property is taken away from them. However, it was recognised that the existing legislative base is complex and convoluted, and the review therefore recommended consolidating, codifying and simplifying the law, preparing new compulsory purchase and compensation legislation, and bringing it before Parliament at the earliest opportunity. The report also recommended that the open market value of land should remain the normal basis for determining the compensation payable for the land taken.

Law Commission

In December 2000, following discussion with the Law Commission, the DETR and the Lord Chancellor's Department approved terms of reference for a preliminary study to identify the likely features of a project to take on board the government's intended review of reported difficulties in the existing compulsory purchase system. Subsequently, the Law Commission published a preliminary report, which stated:

There is general agreement that current law and practices are cumbersome and convoluted. The long lead-time not only generates uncertainty and financial loss for the current landowners but it also makes the procedure unattractive to potential investors as a means of assembling land for major infrastructure or regeneration schemes. (Law Commission 2001, 1)

The Law Commission made it clear that its paper was in line with the conclusions of the DETR review and assumed the preservation of the principal features of the existing system together with improvements.

Planning Green Paper

Following the above initiatives, the government published a discussion document entitled *Planning Green Paper: Planning Delivering a Fundamental Change* (ODPM 2001) that invited comments on certain planning proposals, including compulsory purchase and compensation. The government later published its response to these invited comments (ODPM 2002a), which confirmed certain main proposals (relevant to this chapter) that are to be followed up by the government:

- further collaboration with the Law Commission to reform the law on compensation and implementation in order to introduce “clear, unambiguous, consolidated and codified legislation”;
- greater powers to be given to local planning authorities to enable them to acquire land for the purpose of carrying out “development, redevelopment or improvement which they consider will be for the economic, social and/or environmental benefit of its area”; and

- additional compensation to owners and occupiers of acquired properties as affected by compulsory-purchase orders “by providing for an additional ‘loss payment’ in recognition of the compulsory nature of the acquisition.”

Planning and Compulsory Purchase Bill

Part 7 of the Planning and Compulsory Purchase Bill, introduced in the House of Commons in December 2002, deals with the reform of the compulsory purchase system as set out in the government’s green papers mentioned above.¹ It amends the existing power of local authorities, joint planning boards and National Park authorities under section 226(1)(a) of the Town and Country Planning Act of 1990 to compulsorily acquire land that is suitable for and required in order to secure the carrying out of development, redevelopment or improvement. Local authorities will be able to acquire land by compulsory purchase if they think that it will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land, on condition that such acquisition will be of economic, social or environmental benefit to their area. Part 7 also makes provision for a new statutory scheme, which, subject to certain exceptions, provides for additional “loss payments” for owners and occupiers not entitled to receive payments under the home loss scheme set out in sections 29–33 of the Land Compensation Act of 1973.

Effect on Compensation Levels for Land Taken

There have been no fundamental changes in the general level of compensation for land compulsorily acquired, apart from the additional loss payments proposed above. As described in Chapter 6, the Land Compensation Act of 1961 provided that compensation shall be the market value of the land, subject to the modification that the acquiring authority shall not pay any increase or decrease in the land’s value if it was brought about by the development scheme that prompted the compulsory purchase (Heap 1996, 330). Thus, the scope for recoupment of development value via purchase for ownership under compulsory-purchase rules is limited to any increase in value between the land’s market value with the benefit of the development scheme and without the benefit of the scheme.

Existing Practices for Land Assembly

The limitations of the CPO process make it difficult to create a climate of partnership and consensus. Even when the political will among the local planning authorities makes the CPO option viable, the delays and risks of the process often deter the private sector. Other routes to assemble land by persuasion are difficult to apply in a strategic way and often fail to achieve satisfactory land assembly,

1. The progress of this Planning and Compensation Bill is recorded in Appendices C and D.

but a complementary approach that builds on the strength of each may provide an answer.

The complementary approach outlined in this chapter draws upon research reported in a discussion paper selectively released by the Urban Villages Forum of the Prince's Foundation in February 2001 (UVF 2001), concerned with the potential contribution of the process known as land pooling to the land assembly problem.²

Land Pooling

As things stand, if a public authority wishes to acquire land for recoument via ownership, it will do so by private contractual agreement or by CPO. But there is another way to achieve some of the objectives of acquisition for comprehensive development, redevelopment and possibly some recoument without the authority gaining complete ownership of the property. This approach is known generally as *land pooling*, *land readjustment* or *land consolidation*.

Land pooling is when landowners combine their interests in order to participate in land assembly, servicing and disposal in accordance with a plan. Since some help is needed from government, the process is called *assisted land pooling*. It involves the initiatives and skills of the private sector in land assembly, yet it leaves landowners with a stake in their landownership, if they so wish. Assisted land pooling is new to Britain but has been adopted extensively in other countries (Doebele 1982; Larsson 1993; Liebmann 1998).³

The discussion paper reviews specific ways that land pooling could complement existing compulsory-purchase and voluntary routes to land assembly, particularly in situations where compulsory-purchase powers for land assembly may be limited or unavailable and where public-sector finance for doing so is non-existent or constrained. The research suggests that assisted land pooling could be as effective in Britain as anywhere else in encouraging development, redevelopment and rehabilitation in accordance with planning hopes and expectations. It is argued that this would be achievable by a suitable vehicle, tailored to British requirements. The research proposed such an authorised framework, which would aim to persuade owners to participate in joint action for successful land assembly for development or redevelopment.

2. The discussion paper is based on research commissioned by Linklaters & Alliance, DETR, and the Urban Villages Forum (later the Prince's Foundation). The research was led by research director Nathaniel Lichfield, and the rest of the team included: Owen Connellan, Denzil Millichap, Stuart Black, Ray Archer and Dalia Lichfield. Tim Dixon, director of research at the College of Estate Management in Reading, prepared the discussion paper. Its contents represent the views of the study team and do not necessarily reflect the views of the funding bodies.

3. These implementations were researched in detail, with the assistance of numerous local experts acting as country correspondents, for the discussion paper (UVF 2001).

Recommended Process for Land Pooling in Britain

The findings in the discussion paper (UVF 2001) as reviewed by Connellan (2001a; 2002b) regarding assisted land pooling are as follows.

Assisted Land Pooling

A legitimate and efficient system of assisted land pooling will:

- actively promote partnership;
- produce a fair and equitable sharing of profit and risk among willing and unwilling landowners;
- have a decision-making framework that is speedy, fair and efficient in its outputs and processes;
- address issues of acquisition and disposal values and property rights; and
- leave social and environmental issues to the political process of planning.

Lessons from Other Countries

Assisted land pooling has achieved these objectives in other parts of the world via a wide spectrum of mechanisms, categorised as:

- entirely voluntary, conceived de novo, for achieving land assembly by agreement among owners (analogous to U.K. practice in the private sector);
- public-authority inspired, controlled and compulsorily effected (German model);
- voluntary but having recourse to an authorised framework (French model);
- authorised framework designed on majority rules (overriding dissenters and enforcing participation) and instigated by a nucleus of owners (Japanese model).

Successful land pooling schemes in other countries share an element of compulsion from authorities. The French and Japanese models are of particular interest because they combine and integrate voluntary and compulsive elements. Although these versions of assisted land pooling differ, all share these characteristics:

- knowledge and advice on the land pooling process are readily available;
- schemes are acceptable to the planning/local authority;
- schemes are economically viable, either in terms of market economics or with the aid of subsidy;
- schemes are backed by a required majority of owners with any dissenting minority disempowered;
- sufficient incentives for landowners, by way of either expectations of profits or reallocation of acceptable plots, as well as safeguards for risk avoidance and ultimate tax benefits;

- public authorities' requirements for exactions of any land, such as planning gain, impact fees, and the like, are not so demanding as to negate the incentives to owners and development organisations;
- development organisations are involved in schemes from the beginning, underwriting the risks and organising economical, efficient and effective development processes;
- the process for determining compensation (i.e., share apportionment, plot reallocation, or buying out dissenters) is acceptable and rapid, within minimum scope for disputes between affected parties; and
- recommended schemes must be sufficiently all-embracing and flexible to accommodate complex political factors.

Applying Assisted Land Pooling in Britain

Certain key issues must be considered in developing a suitable vehicle and framework for land pooling in Britain:

- parties will buy into the joint action if they expect favourable terms (compensation, profits, relocation, tax benefits, etc.) or if they fear being left behind as the scheme goes forward;
- if a required majority is in favour of a plan that is acceptable to the planning authority, the residual minority cannot abort the scheme;
- dissenters should be dealt with on an equitable basis (i.e., no less favourably than under compulsory acquisition); and
- owners (on any composite redevelopment scheme) should be able to avoid risk by involving a development organization early in the process as an active participant and an acceptor of risk—which will obviously mean sharing profits with that organisation.

Recouping Development Value from Land Pooling

The obvious advantage of land pooling, for public authorities, is that the desired planning and development of a particular area can be achieved without the delays and expense of compulsory-acquisition procedures, in which the public authority is exhaustively involved. The planning authority can also secure other benefits for the public within the development scheme, such as land for infrastructure, roads, green spaces, communal use and low-income housing, as well as finance resource land (land for resale to provide operational capital for the project). Some of these methods are analogous to planning gain procedures and may be considered as forms of value capture but hardly as recoupment via ownership, as the public authority in a land pooling scheme usually serves as a facilitator rather than as a purchaser of the land required for the scheme. The

value captured would take the form of the comprehensive development that would not otherwise arise.

If an authority seeks significant financial recoupment, it has to become more involved in the process and thus be able to claim a larger shareholder stake in the process on behalf of the public, with a commensurate participation in the shareholders' profits from the venture. However, it is important that a public authority's requirements not become too onerous, because the cooperation and participation of owners depends on their expectations of realised equity to themselves.

In the German model of land pooling, public authorities increase equity share via greater involvement in the process, including positive action in land readjustment and purchase where necessary. It operates through a procedure of land readjustment known as *Umlegung*, which involves subdividing land with respect to location, shape and size according to development and micro-zoning plans and other building laws; providing land for development facilities (transport, parks and green areas) from all owners equally; and maintaining the basic substance of landownership (Doebele 1982, 180). Stages of this complicated procedure are outlined in Annexe 7 to this chapter.

Although the process is a form of compulsory land readjustment carried out by local authorities in order to realise development and micro-zoning plans, it can be initiated before development and zoning plans have even been inaugurated. Originally, these powers for readjustment only applied to plots of undeveloped land, but in more recent decades, the law has been broadened to include developed properties. Similarly, the application of *Umlegung* has expanded from its original application to residential development sites and is now proving especially applicable to industrial and commercial areas and other mixed-use developments (Doebele 1982, 180).

Summary

Recoupment via purchase is one of the complementary methods of value capture, but unlike other methods, it is not strictly a form of taxation but an act of public policy that ensures that future land value growth is captured for the benefit of the community.

The British government has proposed ways to deal with the difficulties of compulsory purchase through its green-paper consultations and in Part 7 of its latest Planning and Compulsory Purchase Bill,⁴ but the suggestion of land pooling as a new way forwards for land assembly for major developments is still unresolved.

4. See Appendices C and D for updates on these measures (now contained in the government's latest Planning and Compensation Bill) and their progress through Parliament.