

RICS JOURNALS

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# What street eating reveals about planning policy

**LAND JOURNAL**

First published 20 January 2022



**Did pavement licences save UK high-street cafes during the lockdowns, or are they antisocial and inconsiderate? Councils and communities and professionals must collaborate to resolve this neighbourhood dilemma**

By Tony Mulhall

During a lunch break in central London, I enviously remarked on patrons of an adjoining public house enjoying their drinks on the pavement below in the sunshine. Aghast, one of my fellow participants denounced the practice, adding that the publican was probably in breach of their licence.

These express two quite different views of the city. In one, buildings act as an armature enabling the city to flex as circumstances change. In the other, buildings act as a corset keeping everything under control. Both positions could be right in different circumstances.

As we engage with COVID-19 restrictions, however, we may wish to reflect on what we want from our cities and buildings. How flexible do we want our urban areas to be? And do we want to resolve differences locally or through central government?

Businesses, community groups and local authorities around the UK have shown imagination and initiative during the pandemic. Central government also supported the hospitality sector by allowing use of outdoor spaces in the Business and Planning Act 2020.

### Case study in Camden

For instance, a simple initiative that began in Belsize Village in the London Borough of Camden soon extended to other locations in the area. Belsize Village Streatery enabled local cafes and restaurants to serve food and drink at 44 tables with 88 chairs in a small, paved public space from 8.00am to 9:30pm throughout the week. It started in summer 2020 to support hospitality businesses, and continued with periodic extensions. At the time of writing it is seeking a permanent licence.

The borough describes a streatery as a car-free outdoor dining space for restaurants, cafes and other businesses to place tables and chairs on the pavement while enabling pedestrians to pass safely. Such dining arrangements are typical of southern European cities, but they have now become ubiquitous, albeit temporary, in the UK. This particular space was created by the permanent closure of one end of Belsize Terrace as a traffic calming measure in the 1990s, which had proved controversial at the time.

Until recently, licences for this kind of use were typically refused by UK local authorities. Although introduced last year as a public health measure to support business, such arrangements could now be embraced simply because they are enjoyable. On the other hand, the UK climate does not lend itself to comfortable outdoor eating year-round. Once people feel safe enough to eat inside they may do so, and street dining will become seasonal.

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## Issues with pavement space use

As communities reflect on their needs, the use of existing small spaces or the creation of new ones could rise up the political agenda. Neighbourhoods are increasingly questioning the need for much of their existing road space, which may also prompt extensions of pavement space.

Whole traffic lanes and parking bays have been closed to accommodate dining tables for months. Will locals now seek to make these permanent, if not throughout the year then at least seasonally?

If so, there are technical and community issues to resolve in changing the status of public highways and pavement space.

- Permanent closure of a public road, referred to in legal terms as stopping up, is a lengthy process that involves consultation with the local community. It is usually carried out under section 247 of the Town and Country Planning Act 1990 or section 116 of the Highways Act 1980.
- The right to use an existing public space temporarily for dining is conferred by a licence from the local authority. This usually applies to the pavement area adjoining a cafe or restaurant and is a much more convenient process than using space not adjoining the premises, although it requires regular renewal. It also entails consultation with the community.
- There is a distinction between a pavement licence adjacent to the premises and licensing an area some distance away.
- Given the risk of terrorist attacks, the need for public security while eating is heightened. Users and authorities will want reassurances about personal safety.

The original application for Belsize Village Streatery and the licence extension to the end of September 2021 was overwhelmingly supported in the local public consultations. It also had cross-party support from councillors and the borough itself, even benefitting from Community Infrastructure Levy payments. The borough continues to pursue this initiative by granting licences in other locations.

But a few people, including some long-term residents of the area, opposed the idea.

Neighbourhoods  
are increasingly  
questioning the  
need for much of  
their existing road  
space

They wrote to local newspapers claiming that:

- the space belongs to the public rather than a few private businesses
- once indoor dining was restored, there was no continued justification for the streatory
- restaurants already occupying pavements with tables and chairs are forcing pedestrians on to the road
- Belsize Village Estate, a community interest company (CIC) linked to Belsize Village Association, does not represent the village and its residents, and has no authority to market the area.

This points to legitimate though opposing views about how a local area should evolve and adapt. So there needs to be a way to consider the views of those who may not favour such change.

## Need for community consultation

The UK planning system is important to strike the balance between public and private interests. Consultation is vital to this process. The closer and more immediate the change is to the community, the more likely individuals are to be affected and express a view.

It is also important to recognise the variety of interest groups in a local area, each with its own response to an initiative. In this case, the local business community formed the Belsize Village Business Association. This group evolved into Belsize Village Estate CIC, which took the initiative in establishing the streatory.

A CIC operates to benefit the community it serves. Such companies are not strictly non-profit, so they can and do provide a return for investors. However, their purpose is primarily to benefit the community.

Proposals such as the Belsize Village Streatory will also be subject to local development plan policies. Groups looking to take similar initiatives will need the support of ward councillors – just as Camden supported the streatory – as they are ultimately responsible for implementing such plans.

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By Peter Home

There may also be a neighbourhood forum with its own plan to consider. As the streatory sits in the Belsize conservation area, the forum may be a consultee in the planning process on developments that might change the area's character.

Other interest groups may have legitimate views as well. Belsize Park Association has existed for more than 40 years, and has advocated on community issues from traffic management to affordable housing.

## Place, planning and policy

As the streatory shows, communities face many issues when adapting to changes in consumer behaviour, market conditions and public expectations.

Approving the use of public space by private commercial purposes is understandably contentious. Related government policies on residential uses in commercial areas or the intensification of commercial activities in mixed-use areas come with potentially damaging side effects. How can a balance be struck between competing interests? Who should take the final decision?

Mitigating potential conflicts between different uses ahead of development is one of the recognised benefits of the UK planning system. The issues can be considered in the context of the particular place, and a decision taken in the round.

As central government relaxes constraints, the rights of local residents to peaceable enjoyment of their public spaces and their homes still need protecting. Permitted development rights (PDRs) are one of the ways to enable the urban economy to adjust to COVID-19 and post-COVID-19 conditions. But balanced against this is the benefit of enabling commercial enterprises to trade in areas designated for that purpose.

RICS has consistently advised on the risk of undermining healthy high streets and local centres with nationally imposed measures that could unintentionally accelerate decline. High street conditions around the UK are not uniform and a universal approach is not appropriate.

New commercial incentives arising from the relaxation of existing policies may result in the opposite of what they intend. For instance, the introduction of permitted development rights to change lower-value commercial into higher-value residential uses could in some areas hasten commercial decline.

A recent survey by Property Week found that a significant number of London boroughs intend to introduce article 4 directions lifting the government's retail to residential PDR measure locally. This is despite the secretary of state's advice that such limits should only be placed in exceptional circumstances.

In the RICS commercial survey in summer 2021, most members suggested local oversight of relaxations in planning restrictions would ensure there are no unintended consequences. All of this seems to indicate that the final decisions on such proposals should be taken by the local authority.

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# Bridging the drone skills gap

**LAND JOURNAL**

First published 16 December 2021



**Drones offer an increasingly easy and affordable for geospatial profession to collect data. But surveyors and clients need to understand the technology to make the most of it**

By James Pick

As drones are becoming more widely accepted, they offer a vital tool for surveying businesses. The usual benefits of mass data collection at speed are well known. But the rich photogrammetric data sets offer a different perspective for surveyors' clients.

Working in sales has given me insight into the way professionals are using drones. I believe we are only at the start of the mass adoption of the technology in surveying.

The [original digital version](#) of this article includes video footage.



However, photogrammetric workflow and principles only tend to be taught to surveying and mapping students. This means surveyors in other disciplines do not always yet understand how to collect good-quality data with drones. Neither do they learn about the fundamental principles of photogrammetry.

With drones becoming more accessible and relatively cheap compared to other surveying equipment, this knowledge gap has increased. As a surveyor, I can help clients understand platform and sensor differences and capabilities, flight planning, area to be surveyed and geospatial data outputs. Some surveying companies are unaware that the imagery collected can be used to generate point clouds, meshes and other outputs.

## Using the right tools

Drones are just another tool. But they are a valuable complement to other forms of data collection.

Surveyors are sometimes frustrated when drone operators talk about collecting survey data, or refer to themselves as surveyors. But the same happened when laser scanners were introduced. It's only amplified with drones because of their affordability.

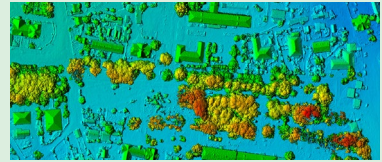
Surveyors' clients are primarily concerned with price, but the geospatial profession needs to educate them about what drones can offer. We should create a cohort of intelligent clients who understand the capabilities – and commensurate costs – of good, accurate information. They ought to understand what a professional firm needs if it is to supply what is expected.

## Changing role of surveyors

Our role as surveyors is changing. After I graduated in surveying and mapping science, I collected data in the field, processed it, then created and issued drawings. That was the end of the job. But geospatial data has never been so important as it is now.

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By Tomas Blaha

We are not just collecting data for our own outputs and storing it on servers for a few years. It is now being used in multiple departments and benefiting different people from shareholders to project managers, from health and safety inspectors to groundworkers. This data is chargeable, and clients are more than happy to pay the surveyors who host it.

One of our roles is to get this data into people's hands in a straightforward way. How can we combine data sets from different sensors to provide a complete package to end users, without them needing software or powerful computers? This is getting easier, with cloud base viewers. Now we can send a link to a customer who can see all the data without having specific software.

Drones are not the right tool for every job. But when they can be used, they should be. And I can help survey businesses that want to integrate them into their established workflows. The videos below show drones in action and some of the outputs that can be achieved.



## RICS offers professional drone guidance

RICS has recently published the sixth edition of its [Earth observation and aerial surveys](#) global guidance note. This contains advice and professional guidance on the use of drones for geospatial data collection.

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# What the emerging BNG market means for you

LAND JOURNAL

First published 7 December 2021



**The Environment Act transforms biodiversity net gain from a concept to a mandatory requirement. How will it affect developers and landowners?**

By Kieron Gregson

In recent years, biodiversity net gain (BNG) has soared up the political agenda. The [Environment Act 2021](#) obliges developers to demonstrate at least a 10% net gain in biodiversity for all sites they build.

The act will ensure the planning system supports and protects the natural environment. Planning applications in England will now be subject to pre-commencement conditions for developers. To fulfil these, they will need to assess the type and state of habitat at the site of the proposed scheme.



A planning condition attached to the permission then obliges them to submit plans to enhance biodiversity by at least 10%. These plans must result in a measurable improvement in biodiversity across the development and maintain it for at least 30 years.

Where a 10% increase cannot be achieved on site, developers can improve biodiversity on other land. Alternatively, they could pay for an improvement off site or buy statutory credits to pay for the creation of new habitats. The act states that enhancement schemes may be enforced through section 106 obligations or conservation covenants.

## Metrics and mechanisms

**Biodiversity Metric 3.0** measures losses and gains resulting from development and clarifies how landowners and developers measure the BNG units for the habitats they create. The biodiversity change is calculated by reference to the Biodiversity Metric, which uses a number of calculations to assess the biodiversity created by moving from one land use to another across a set area.

The update modifies and refines metric 2.0. Among other changes, it simplifies condition assessments and changes the way woodland and intertidal habitats are assessed. It adds sections allowing advanced or delayed creation or enhancement of habitats post-development, introduces a GIS integration data tool, and streamlines the process for calculating BNG on smaller sites. It also confirms that developments progressing under the former metric should continue to do so.



BS 8683 meanwhile sets out requirements for designing and implementing BNG. While not covering the provision of BNG, it offers a framework to show that a project has followed UK-wide good practice from design to legacy.

The requirements in the act, for developers to demonstrate at least a 10% net gain in biodiversity for all sites they build, will be phased in over a two-year transition period. The move to a mandatory system should, in theory, provide a more streamlined and transparent approach. However, most developers, building owners and managers are still not sure how it will work in practice.

Although details are still emerging, biodiversity credits and conservation covenants will be central to the new system. The conservation covenants will ensure that the natural benefit in a BNG plan is secured on the relevant site, binding the land in an agreement indefinitely.

The act also sets a preference for biodiversity enhancement on the site itself. Therefore, developers planning off-site BNG need to show that on-site options have been exhausted.

## How off-site BNG might work

Where on-site BNG is not possible or financially viable, developers could partner with farmers and landowners who have scope for off-site provision. A farmer might, for example, take land out of arable production and create woodland or a wildflower meadow.

Natural England is developing a register of land used for BNG. This public document will enable users to connect every site with the development to which it relates. As well as ensuring transparency, this will minimise the risk of the same parcel of land obtaining BNG credits for more than one scheme.

Where offsetting is not achievable through private agreements, the government will allow developers to pay into a central fund. This will be used to finance larger-scale, nationally important biodiversity projects.

To administer the new policy framework, local authorities will require specialist advice on ecology, biodiversity calculation, valuation, verification, and site management.

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Advice will likewise be needed on implementation options and ongoing management. Trusted verification bodies, such as The Land Trust, will then be used to manage schemes over the 30-year period.

## BNG: opportunities and considerations

Commercially, those who own and control land can benefit from the supply of biodiversity units. A range of bodies are expected to offer donor sites, including local authorities, wildlife trusts, farmers and private land and property owners.

Those who can provide such sites in a local plan period will be in a strong position to help developers offer off-site BNG. Sites could be designated for biodiversity net gain – similar to the process of land being designated as a Suitable Alternative Natural Greenspace (SANG) which is greenspace that is of a quality and type suitable for use as mitigation to offset the impact of new residential development.

Some schemes are already being pursued. For instance, agricultural land and some areas alongside both road and rail infrastructure schemes are being converted into a variety of parks, sustainable urban drainage systems, gardens and wildflower meadows.

As well as having a positive environmental impact, green spaces boost mental health and well-being. People living in towns and cities are therefore prepared to pay a premium to live near such spaces. [Research](#) by the Office for National Statistics in 2019 found that houses and flats within 100m of public green spaces are on average £2,500 more expensive than those more than 500m away. So perhaps even for developers looking to maximise profits, a development being green may actually increase values.

A more [recent study](#) from the Land Trust aimed to quantify on a national scale the value added to properties near the charity's sites. It finds that house prices are uplifted by an estimated £394m near trust-managed green space.





Public support for nature also means many developers are aware of the reputational value of mitigating environmental damage, and of demonstrating how new schemes can enhance biodiversity.

However, mandatory BNG will invariably create complications and costs for developers in terms of money and time. If the 10% uplift is to be achieved on site, this decision may affect the number of dwellings built which could even affect the feasibility of the schemes themselves. Off-site donor sites then need to be purchased or leased. Additional costs for maintenance and management or a reduction in the net area that can be developed will all have an impact.

In a rapidly changing market and with so much detail still to be confirmed, it is not easy to know what to do now. Assessment of the development proposals against assets owned or planned will enable developers, landowners and land managers to consider the question of on-site or off-site viability at the outset.

Two recent announcements have clarified how BNG policy might work. In July, Natural England and the Department for Environment, Food and Rural Affairs updated Biodiversity Metric 3.0. The following month, BSI published BS 8683: Process for designing and implementing Biodiversity Net Gain. Specification.

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# Three schemes offer new subsidies for farmers

LAND JOURNAL

First published 3 December 2021



**Defra is introducing three new environmental land management schemes that will shape English agricultural policy to suit our needs and reward farmers for contributing to the environment**

By Gavin Ross

Defra is designing its three new environmental land management schemes in partnership with the people who will use them, to ensure the schemes work for them, as well as achieving the government's environmental goals.

Our aim is for farming and the countryside to support environmental, biodiversity and climate change targets by protecting and enhancing the natural environment. And our future policy will help farmers continue to provide a supply of healthy, home-grown produce to high environmental and animal welfare standards. We know that productivity and farming sustainably go hand in hand.

To achieve this, we are making changes including phasing out direct payments. We will maintain current average levels of investment in farming of £2.4bn per year in England over the life of this Parliament. All funding released from reductions in direct payments will be reinvested into new schemes, primarily ones that provide environmental and climate outcomes.

There will be an evolution from the old system to the new, not an overnight revolution. We will learn from new approaches and evolve parts of our policy framework – improving and developing over time. The changes will happen over a seven-year agricultural transition period, from 2021 to 2027, giving farmers and land managers time to prepare and adapt.

### Why Defra is introducing the environmental land management schemes

Farmers and land managers are not always properly rewarded for their contribution to our environment. The actions they take now can help to preserve our natural landscapes and natural capital for future generations – something that benefits us all. We believe the protection and enhancement of our environment should be considered the preeminent public good, providing value for farmers, land managers, the public and taxpayers.

Our new environmental land management schemes will reward farmers and land managers for providing public goods and they will help to achieve many of the aims of the UK government's 25-year environment plan. These are the environmental public goods we've identified for these schemes:

- clean and plentiful water
- clean air
- reduction in and protection from environmental hazards
- mitigation of and adaptation to climate change
- thriving plants and wildlife
- beauty, heritage and engagement with the environment.

We believe the protection and enhancement of our environment should be considered the preeminent public good, providing value for farmers, land managers, the public and taxpayers



## Introduction to the three schemes

The three environmental land management schemes are:

The Sustainable Farming Incentive will pay farmers for simple actions that encourage environmental outcomes. It will accelerate the large-scale adoption of more sustainable approaches on all types of farms, building on the excellent practices that are already happening. We're designing the scheme to be accessible, relevant, and attractive to the widest possible range of farmers – to support at least 70% of eligible farms to take part by 2028.

Local Nature Recovery will focus on providing the right things in the right places, based on locally developed plans such as the Local Nature Recovery Strategies and will factor in the views of local people.

The Landscape Recovery scheme will focus on landscape and ecosystem recovery through long-term, land-use change projects.

The way we pay for public goods will be different – with less prescription, more choice and flexibility. The length of the agreements will be flexible according to what farmers and land managers want to provide through their agreements. There is more detail on the future schemes and other policy changes in our [Agricultural Transition Plan](#) published in November 2020, as well as in the [June 2021 update](#).

## Timings

We've been carrying out [tests and trials](#) on the schemes since 2018, and these will continue throughout the transition period to the end of 2027. The first [Sustainable Farming Incentive pilot agreements](#) started in November 2021, with farmers across England helping us to develop and test parts of the scheme before they're added to the live service. Next year we will start to roll out core elements of the scheme – expanding them until the full offer is available from 2024.

To give farmers flexibility, we are running Countryside Stewardship and the Sustainable Farming Incentive in parallel. You can be in both at the same time and can apply for new Countryside Stewardship agreements until February 2023, with the last agreements starting on 1 January 2024 – after that, the

full offer for the three environmental land management schemes will be available. We plan to start a phased rollout of Local Nature Recovery from 2023, with piloting happening from 2022.

We'll launch at least 10 Landscape Recovery pilot projects between 2022 and 2024, to provide more than 20,000ha of wildlife-rich habitat. We're publishing more information on this later this year.

## Focus on the Sustainable Farming Incentive

The Sustainable Farming Incentive is the first of our new schemes to launch. In 2022, we will start to roll out core elements of the scheme, expanding them until we have the full offer available late 2024. By rolling out the new scheme in an incremental way, we can expand and improve it as we go – learning from our pilot.

The core elements of the Sustainable Farming Incentive that will be available in 2022 are the:

- arable and horticultural soils standard
- improved grassland soils standard
- moorland and rough grazing standard
- annual health and welfare review.

There is more detail on these elements in the June 2021 update. At the moment, the update provides only indicative payment rates – but we will publish more information later this year.

## Eligibility

When the Sustainable Farming Incentive launches in 2022, the environmental standards will be open to farmers who are eligible for payments under the Basic Payment Scheme (BPS). The Annual Health and Welfare Review will initially be available for all commercial cattle, pig and sheep keepers who are eligible for BPS.

Farmers in existing agri-environment schemes will be eligible too, and you can participate in more than one environmental land management scheme – once they're all available – but we will not pay someone twice for the same activity, and you can't carry out contradictory actions on the same area of land.

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By Fiona Mannix

Over time, we plan to extend the scheme to a broader range of farmers. We will test and develop how to do this through the scheme pilot and our ongoing tests and trials.

## Get involved

We developed the Sustainable Farming Incentive scheme and its standards with input from a range of farmers and other experts.

We are grateful to everyone who has worked with us so far for their time and commitment. Your involvement will ensure our schemes work in practice, and achieve our environmental and climate change goals. We plan to continue our engagement this year. Please [email the co-design team](#) if you are interested in working with us.

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# Can landownership be fair in net-zero Scotland?

LAND JOURNAL

First published 7 January 2022



**Will green lairds monopolise Scottish land to offset their carbon emissions? Or can the nation achieve more equitable landownership? A recent Holyrood debate explored emerging trends**

By Fiona Mannix

In late September, Holyrood debated a Labour motion from Rhoda Grant on community landownership. It focused specifically on community wealth and the emergence of so-called green lairds, private investors who buy land in Scotland with the primary aim of offsetting emissions.

The debate covered recent developments in the land market and the different motivations of purchasers. MSPs noted the growing emphasis on purchases for climate-related reasons – which they feared is likely to mean that a small number of people will end up owning most of the land.

They expressed concern about private landownership in Scotland, which is highly concentrated compared with other countries.

Politicians also addressed the country's unregulated land market, and what some see as the commodification and financialisation of the climate emergency. The Highlands and Islands are at the forefront of these new forces.

One of the actions of the Highlands and Islands Enterprise Strategy is to explore natural capital and net zero opportunities. There is concern that some of this natural capital might be privatised and commodified ostensibly to mitigate climate change by offsetting carbon emissions, through tree planting for instance, while carbon continues to be emitted elsewhere.

There are calls from Labour for the Scottish government to consider regulation and public expenditure controls to achieve greater equity in the land market and share the benefits of public policy. The government is also urged to prioritise greater community ownership of land and built assets. This can build community wealth and empower them to respond to the climate emergency.

Recent purchasers of land include BrewDog. The beer producer wants to offset its carbon emissions, promote its green credentials and win investors by purchasing thousands of hectares in the Highlands. Standard Life Investments Property Income Trust has also just bought thousands of hectares in the Cairngorms national park. Meanwhile, asset management firm Gresham House is promoting a £300m private investment targeting Scottish forestry.

In this context, the Scottish Labour Party and the Scottish Government are committed to a public interest test for landownership. Grant's view is that 'We need to protect the public interest by acting especially on off-market land purchases. The Scottish Land Commission needs powers to act on land monopoly issues and to better enable public interest purchases. We need to make observing the [land rights and responsibilities statement](#) statutory and its expectations much firmer.

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We need to protect the public interest by acting especially on off-market land purchases."

Rhoda Grant

‘We need to consider capping the total public subsidy of any large-scale landowner, and we need to see the uplift in the value of land effectively underwritten by public subsidy clawed back for public benefit. We should act on Community Land Scotland’s suggestion for a community wealth fund, and we need to task Co-operative Development Scotland with promoting co-operative and mutual ownership of land in Scotland.’

## SNP committed to land reform legislation

During the debate, Emma Roddick of the SNP said she is proud to have been elected in May last year on the strength of a manifesto that included a specific commitment to land reform legislation. She explained a community empowerment act would be brought forward by the end of 2023.

One policy she is particularly excited by is the presumption towards community buy-outs of land. She said this will help not only to increase diversity in landownership but also ensure local people are involved in deciding how their land is used.

Roddick added that she favours restoration of the natural environment by rewilding. However, she said lairds and MSPs alike must keep in mind that true restoration of the Highlands will include the reintroduction of people as well.

## Conservative highlights benefits of private investment

Conservative MSP Dean Lockhart noted how the motion highlighted the need to transition to net-zero carbon in a fair and sustainable way, and that the UK will have to invest £50bn a year in this process. He mentioned some of the private-sector investments already cited by Labour and maintained that the benefits of these should be highlighted.

‘For example, Standard Life Investments has a project to restore woodland and peatland areas over almost 1,500 hectares and to plant 1.5 million trees, with between 50 and 100 people working on the project over the next six years, using land that has no existing agricultural or other value. Such land use and the benefits that come with that investment are to be encouraged. It is not just the private sector that is directing money and investment towards such areas. The Scottish National Investment Bank has invested £50 million in a managed forest growth fund, which aims to capture 1.2 million tonnes of CO<sub>2</sub> over the next 20 years.



‘Those are just some examples of how public and private investment can help to deliver necessary reforestation, rewilding and peatland restoration, all of which will be vital to meeting our net zero targets. Without such investments, the public sector would not have the capital available to meet the necessary targets.’

Lockhart also said that the scale of investment required to meet the net-zero targets presents huge opportunities for community and public landownership, and will bring much-needed investment and jobs to rural Scotland.

## Labour advocates for greater community ownership

Mercedes Villalba of Labour maintained that land is a public good and a natural resource that should serve Scotland’s common interests. However, she believes the current system of land ownership operates at the expense of the social, economic and environmental benefits land offers.

Villalba said she could not therefore welcome the growing trend for wealthy individuals and corporate interests seeking to use land for greenwashing. She thinks it is not a sign of growing corporate responsibility or the rich engaging with the realities of the climate emergency. Instead, she said it represents an unjust transition and a further transfer of wealth and power at the expense of working communities and Scotland’s natural environment.

She added that if Holyrood is serious about tackling the climate and ecological crises, it is time to redistribute land. She did then welcome the SNP’s commitment to a public interest test for land transfers. More radical proposals such as caps on private landholdings and a land value tax must also be considered, she said.

Villalba’s fellow Labour MSP Paul Sweeney emphasised the importance of building community wealth, which is important to urban as much as to rural areas. This can redirect wealth into local economies and put control back in the hands of communities, he maintained.

## Minister foresees environmental and economic opportunities

Minister for environment, biodiversity and land reform Màiri McAllan said Scotland can afford to be ambitious given the ample potential of its natural environment to sequester greenhouse gases from the atmosphere and support biodiversity.

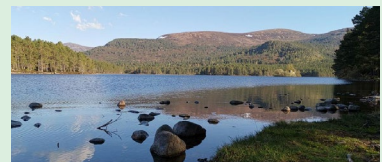
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But she thinks there are no simple answers, and Scotland must pursue its ambitions in a way that complies with the Human Rights Act 1998, particularly around the right to own property and the consequences of compulsory purchase.

She said private investment will be essential to Scotland's net-zero ambitions. It can play a positive role when done responsibly, paying regard to the rights of communities.

'Nature-based solutions are critical to meeting our net zero objectives. A just transition to net zero can provide real opportunities for rural and island communities, including green jobs in tree planting, peatland restoration and renewables, as well as in the means by which we tackle fuel poverty. We will need a blend of private and public investment to realise those benefits, because, frankly, the public sector cannot do that alone. We must seize those opportunities and mitigate the risks at the same time.'

McAllan said Scotland's continuing land reform will make further substantial progress during this parliamentary session. She maintained that the forthcoming land reform bill will help to address some of the challenges raised in the debate.

'Tackling climate change fairly, supporting empowered communities to thrive in rural and urban Scotland, and continuing to redress Scotland's historically unfair patterns of land ownership are some of the most important issues that we, in the Government, and members across the chamber face. It is up to us to deliver for the people of Scotland a fairer, greener, more equal future, and I very much look forward to working with members on that.'

While there was no consensus among the politicians on a number of points such as the extent of the merits of private investment, what was clear throughout the debate was that the transition to net zero will have consequences for the Scottish land market as a result of the new investor base.

It will also affect the land itself with the subsequent transformation in land use. This might include for example, more tree planting, peatland restoration, planting more bioenergy crops and adopting low carbon farming practices.

### **RICS and land price information**

The Scottish Land Commission has commissioned a report into the nature and value of current rural land sales in Scotland. This will be crucial in considering the implications of new natural capital and carbon value in the land market.

Scotland's Rural College, in partnership with land agents Savills and Strutt and Parker, with support from RICS will publish the report in the spring.

RICS and RAU have now published their Farmland Market Report and Farmland Market Directory covering January to June 2021. Forthcoming editions of these publications will include additional questions about natural capital and the land market. RICS/RAU are always interested in having more contributors to these publications to ensure the data compiled is as representative of the market as possible.

Contact [fmannix@rics.org](mailto:fmannix@rics.org) if you would like to contribute.

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- Environmental management
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# Three changes to CPOs could unlock more housing

**LAND JOURNAL**

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**The Planning Officers Society recommends improvements to the compulsory purchase regime to help local authorities provide more sustainable housing in a timely way**

By Mike Kiely

Local planning authorities are subject to two government tests for housing supply. First, they must demonstrate that they have a five-year supply of suitable land. Second, they must pass the Housing Delivery Test (HDT).

The five-year land supply must be set out in the local Plan and it must comprise housing sites that are deliverable. The National Planning Policy Framework (NPPF) says 'to be considered deliverable, sites for housing should be available now, offer a suitable location for development now [...] with a realistic prospect that housing will be delivered on the site within five years'.



In essence, sites with detailed planning permission that are not major developments are considered suitable, unless there is evidence to the contrary. All other sites with major detailed planning permissions, all outline planning permissions, permissions in principle and sites on brownfield land registers are not suitable, unless there is evidence that houses will be built in the next five years. For sites without planning permission the bar is even higher. These are tough tests.

The HDT meanwhile is set out in the NPPF and measures the net number of homes built in a local authority area against the number required. The secretary of state publishes the results each year.

Criteria for the HDT are as follows.

- Councils must provide at least 95% of their housing target to pass the test.
- Councils that supplied between 85% and 95% must assess why they missed the target and make plans for remedial action.
- Councils that provided between 75% and 85% must also identify a buffer of 20% more land – in addition to their five-year supply – and develop an action plan.

Those whose rate is less than 75% of the target fail the test and the 'tilted balance' in paragraph 11(d) of the NPPF applies to all DM decision-making. This means that local plan policies relating to housing development are considered out of date. Planning applications for housing will then be judged against the NPPF in most circumstances.

## Assessing the tests

The Planning Officers Society (POS) accepts that housing should be a priority in the planning system. It also agrees there should be sanctions against local authorities that do not have an up-to-date plan, or a poor record of decision-making for housing developments. But these tests go way beyond that by punishing councils for factors beyond their control.

After all, councils do not build housing – developers do that. Furthermore, owners and developers can game the system by not bringing forward brownfield sites, thereby failing the tests. This enables greenfield sites that are cheaper and easier to work with to come forward through the tilted balance process.

The government's response to these complaints is that local authorities should be proactive when it comes to housing provision. It says that local authority planning officers should be discussing the sites with the owners and developers to ensure housing completion rates are maintained.

However, an owner or developer that has decided to slow down housebuilding on a site or not to build will have done so for commercial reasons. The decision would not have been taken lightly. No amount of pleading by the local authority is likely to change their minds.

If the government is unwilling to alter these tests to make them fairer, then POS maintains it should give planners the tools to be proactive. That means if an owner or developer is unwilling to bring a housing site forward and complete housing at a reasonable rate, then the local authority should have the power to acquire the site so another party can provide the housing, including the council itself.

POS recommends three changes to the compulsory purchase regime to enable this.

- a specific new power to serve compulsory purchase orders (CPOs) on housing sites
- an alternative to the CPO process
- a review of the compensation regime.

### Using CPOs to secure land for housing

Local authorities need to be able to use CPOs where land is a designated housing site and development has not come forward after a specified period. Such circumstances should be sufficient to justify making a CPO under the Acquisition of Land Act 1981.

Sites where this power could be exercised would include:

- a site with a valid planning permission
- a site with an appropriate permission in principle
- a specific site allocation in a development plan document, including a neighbourhood plan or brownfield land register.

The specified period could be three years, to match the life of a planning permission.

If the government is unwilling to alter these tests to make them fairer, then POS maintains it should give planners the tools to be proactive

The risk with this approach is that developers would not put sites forward for local plan allocations, or would not apply for planning permission or permission in principle on land that they wished to hold. There could also be problems with stalled local plan allocations that need to move forward. We need an effective tool to deal with these.

A POS paper on the subject of permission in principle argued that local planning authorities should be able to issue a such a permission unilaterally. This would establish the principle of developing a site for housing despite an obstinate landowner. Landowners would still have a right of appeal.

This specific power is necessary because a local authority is unlikely to succeed with the current CPO tests in these circumstances. Essentially it must be necessary in the public interest to compulsorily acquire land. The unilateral permission in principle and reset CPO test would be powerful tools for authorities want to be proactive about encouraging additional housing in their area.

## A simpler alternative to CPO

In most cases, councils do not have the funds to buy land themselves as part of a CPO process. They enter either a development agreement or a land transfer agreement with a developer in what is commonly called a back-to-back arrangement. This is where the council uses its powers to acquire the land and the developer effectively funds the process through an indemnity agreement.

These arrangements generally needed to be procured through a process that follows the Official Journal of the European Union (OJEU) rules. Following Brexit, there will no doubt be a similarly complex process to replace this in due course.

Under such arrangements, the time taken to procure the right partner and negotiate the various agreements can be as long as, or even longer than, the CPO process itself. It is not surprising then that councils can be unwilling to go down this road.

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POS believes there should be an alternative route, particularly where councils' aim is to unlock sites that have development potential and the problem is the owner's recalcitrance rather than site assembly issues in a town centre regeneration scheme.

One solution could be a compulsory selling order (CSO). Local authorities could do this without a development partner, so it should be quicker and cheaper. The process would be similar to a CPO, but the outcome would be an order to sell the land with a specified minimum price. That price would be the existing use value, and set as part of the CSO process.

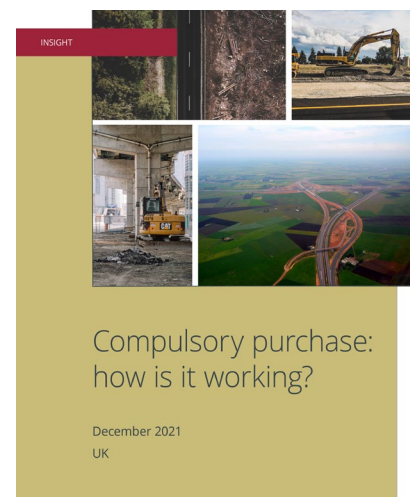
The sale of the land needs careful consideration. POS has suggested two alternative approaches: a public body model and a market model, set out in our paper Compulsory purchase: three essential improvements. These are designed to ensure that the landowner receives at least the existing use value, and any hope value would be obtained through a market sale and what the buyers are willing to pay.

It is often the case that CPOs are effective as a threat as much as an actual process. The same would apply with CSOs. Landowners would know that they cannot simply withhold land that is needed for development. Local authorities would have a simpler, more accessible process to tackle any landowners that drag their feet. It would speed up the provision of housing and give the public sector an effective tool to tackle land banking, particularly when combined with a new CPO-enabling power.

To further incentivise owners, the date for the CSO valuation could be the same as the date planning permission was granted or a permission in principle was issued. This would remove any potential uplift from rising land values for speculators over the period where the site is not being developed. It would also deter land banking.

## Modernising the compensation regime

Land value capture is a challenge, and failing to pay a realistic hope value would not comply with human rights with respect to Article 1 of the First Protocol: Protection of property. When land is compulsorily acquired the owner is entitled to fair compensation, which should include a realistic element of hope value. However, the regime that deals with hope value is cumbersome and has had unintended consequences.



### **RICS encourages debate about CPO**

RICS has recently published an insight paper on compulsory purchase *Compulsory Purchase: How is it Working?* It asks fundamental questions about the practice in the 21st century. Compulsory purchase plays and will continue to play an important role in our economy as we develop our infrastructure, regenerate communities, and ensure provision of housing and essential public services and utilities.

In a CPO scenario, alternative uses that the landowner has never previously pursued suddenly become much more viable and valuable than the current use. These theoretical scenarios of appropriate alternative developments can be esoteric and obscure. There must be a better way to compensate owners that has the public interest at its heart.

POS believes that where the CPO scheme has a clear market value, there should only be two compensation options available for CPO land and property owners. One would be the existing use value.

If the owner considers that there is a higher hope value, however, the amount would be the total value of the CPO scheme less the cost of providing it, including supporting infrastructure and a suitable contingency. An independent and appropriately qualified third party could arrive at a reasonable residual land value in such cases. Our understanding is that such an approach would comply with human rights.

Only where the CPO scheme is a public works development, such as a power station or road, with no real market value that an approach like the certificate of appropriate alternative development may still have a role. However, POS would advise that any alternative uses the landowner has not hitherto pursued need careful justification. Public interest may be best served by an existing use-value approach.

POS maintains that reconsidering the compensation regime along these lines would give landowners appropriate compensation when it is in the wider public interest to bring forward the CPO scheme. This method would use the uplift in land value from the grant of planning permission to ensure the CPO development, particularly its necessary supporting infrastructure, is delivered. In a time of constrained finances, this is an important consideration.

If the changes set out in our paper were implemented, POS believes that the CPO regime would be more accessible and useful for local authorities. It would enable us to be more proactive in providing sustainable development that meets the needs of our communities.

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