

Consultation response - Right to Regenerate: reform of the Right to Contest

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About the District Councils' Network

The District Councils' Network (DCN) is a cross-party member led network of 187 district councils. We are a Special Interest Group of the Local Government Association (LGA) and provide a single voice for district councils within the Local Government Association. District councils in England deliver 86 out of 137 essential local government services to over 22 million people - 40% of the population - and cover 68% of the country by area. District councils have a proven track record of building better lives and stronger economies in the areas that they serve. Districts protect and enhance quality of life by safeguarding our environment, promoting public health and leisure, whilst creating attractive places to live, raise families and build a stronger economy. By tackling homelessness and promoting wellbeing, district councils ensure no one gets left behind by addressing the complex needs of today whilst attempting to prevent the social problems of tomorrow.

General comments

We welcome the opportunity to respond to the Government on the matters included in this consultation. The District Councils' Network has a number of concerns if these proposals are introduced by the Government, as set out below:

- The DCN recognises the Government's objective to increase the efficient use of land for larger sites by enabling individuals, businesses and organisations to acquire public sector land in order to deliver new housing and better economic use. Nevertheless, it should be noted that the funding constraints on Districts over recent years may well have led to such land within their portfolios already having been brought forward if viable by way of asset management strategies or the planning system. Therefore we cannot imagine that significant additional land will be released through the government's proposals. In fact, we are concerned the proposals could strip cash-strapped councils of further assets that could provide income regarding their long-term use. The DCN would welcome greater clarity from Government about the scale of land to be released in the context of this initiative.
- If the government really wants to look at freeing up underused and unused land, then it isn't clear why land owned by central government is excluded from the consultation. District councils would welcome working closely with central government to provide assistance with releasing their land assets through Strand 1.
- Government should also be looking at land banking by private developers. With 9 in 10 planning applications approved by councils, and more than a million homes given planning permission but not yet built, it is the housing delivery system that is broken, not the planning system.
- The government needs to put more emphasis on developers not bringing sites forward. Local authorities should be given greater powers to intervene where the market is failing – either allowing them to bring sites forward themselves through a more effective CPO process and financing/funding system, or to pass sites on to

more willing developers perhaps with a focus on SME builders. Local authorities or the government should have the power to impose penalties on developers that don't deliver, such as charging council tax on properties that remain unbuilt after a specific period of time, say 18 months.

Specific comments on the proposals

- We note the proposals suggest a new reporting role for local Councils as part of the Right to Regenerate. Any increased involvement will lead to additional costs for Councils which would need to be funded either through central Government support or a fee attached to the sale of any public sector land released through this initiative. This would lead to legal contractual arrangements to be established between public sector bodies to fund this initiative and a significant time resource. As they stand, these proposals would see an additional and disproportionate administrative burden for districts, with no extra resources promised.
- One area of additional work that may be generated for example, is through additional enquiries from interested parties seeking to purchase land, leading to increased pressure on Councils to respond and have an up-to-date record of public sector land ownership across their areas. Whilst the One Public Estate project identified the extent of publicly owned land this information would need to be updated. Furthermore the sharing of land ownership information can have commercially sensitivity issues, with any enquiries not exclusively relating to public sector land which would lead to increased resources needed to reply, and dissatisfaction when the customer is told that it is not owned by the public sector, no action can be taken through the Right to Regenerate and it is not possible to share any landownership details due to General Data Protection Regulations.
- In terms of delivering public sector land for better economic use and new housing there are no guarantees that the individual, business or organisation would actually develop any acquired land in the short term. Unless the Right to Regenerate provides a timescale and strict conditions at sale which are legally binding on the purchaser there is the potential for land to continue to be under-utilised. What powers would districts be given to deal with this in this instance? Districts would welcome further information from the Government on the legislative approach to support the Right to Regenerate, which could include a route for the land to return to public sector ownership if it is not developed within a specific timescale. It is crucial that the developer commits to delivering new development on land acquired quickly to avoid another example of land banking assets.
- Whilst the general public may identify land to be regenerated, which may or may not be in public ownership, there can be multiple reasons why it might currently be under-utilised including being part of a wider regeneration project or longer term strategy of land assembly, providing net biodiversity value / informal green space, legal covenants, provision of utilities such as high pressure gas pipelines / flood alleviation programmes etc..
- The government is considering introducing a presumption in favour of disposal, but it will be critical to consider whether the land is suitable for permanent uses in the first place. Therefore, the local planning authority should be engaged by an interested party on a fee-based approach in order to establish further details about the land's suitability.

Responses to the consultation questions

Q1: Do you consider the Right to Contest useful?

Yes/No – please provide a reason for your answer.

Response = Based on the limited number of times that the Right to Contest has been used, alongside the fact that only one example has been delivered, it is not considered that the current process is useful for better economic uses and new housing.

Q2: Do you think there are any current barriers to using the right effectively, and if so, how would you suggest they be overcome?

Yes/No – please provide details.

Response = We would refer you to responses from individual districts, though there would appear to be barriers to its effectiveness, not least the need to engage directly with central Government and the fact it should only be used as a last resort to release land from a public sector body which is not inclined to release its asset. Alongside the limited likelihood of the Right to Contest being successful, it is unsurprising that the number of cases is limited.

We would like to see government focus its efforts on land banking by private sector interests. Reforms to the Compulsory Purchase process are needed to allow local authorities to bring about meaningful change for their communities, in a timely and cost-effective manner.

Q3: Would a definition of unused or underused land be useful, and, if so, what should such a definition include?

Yes/No – please provide details.

Response = We note the government has not put forward any proposed definitions – if the consultation indicates this is something that districts indicate would be useful, then further engagement with districts will be important. We also believe that any definition needs to recognise local diversity, and provide local flexibility.

Any definition of unused or underused land should reflect that set out in the Glossary of the National Planning Policy Framework, as set out below:

“Previously developed land: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.”

Q4: Should the right be extended to include unused and underused land owned by town and parish councils?

Yes/No – please provide a reason for your answer.

Response = Whilst it may be considered appropriate to extend the Right to Regenerate to Town and Parish Councils it is important to provide additional funds and resources to the relevant public sector body dealing with enquiries and reporting on such activity. Few Parish Councils will have the specialist or legal resources to facilitate the Right to Regenerate. In addition for the reasons highlighted there can be multiple reasons why land might currently be under-utilised including being part of a wider regeneration project or longer term strategy of land assembly, providing net biodiversity value / informal green space, legal covenants, provision of utilities such as high pressure gas pipelines / flood alleviation programmes etc.

Q5: Should the government incentivise temporary use of unused land which has plans for longer term future use?

Yes/No – please provide a reason for your answer.

Response = In theory, incentivising temporary use of unused land may be appropriate in certain cases it is crucial that such permission is channelled through the planning process to ensure that the temporary use can be adequately considered in the wider context and through engagement with local communities.

There may be a number of reasons why temporary use may not be appropriate, for example access, health & safety, environmental constraints, neighbouring uses and pressure on existing infrastructure. Whilst the Government may wish to direct sale of land where temporary uses are not appropriate it will be necessary to ensure permanent development can be delivered on unused land, facilitated by a planning consent.

'Meanwhile' uses as a means of bringing vacant and under used sites back to life, in advance permanent development can be positive. Such an approach can often bring a new dimension and vitality to the local area – for example where sites are used for temporary sports pitches, 'pop up' shops and facilities or markets for local traders.

Q6: Should the government introduce a requirement for local authorities to be contacted before a request is made?

Yes/No - Please provide a reason for your answer.

Response = Whilst this requirement could save time being wasted on progressing with the process of asset release that might not be likely to meet the threshold, as well as promote dialogue with those interested in developing land we are concerned this may see additional enquiries coming to already stretched district councils. Although local authorities may have land assets there are other public sector bodies included in the Part X list resulting in an additional burden of responding to requests.

Q7: Should the government introduce a presumption in favour of disposal of land or empty homes/garages where requests are made under the right?

Yes/No- Please provide a reason for your answer

Response = Whilst in theory the presumption in favour of disposal of land may be considered appropriate in order to release underused land for economic use or housing, it is important to consider whether the land is suitable for permanent uses in the first instance. Therefore the local planning authority should be engaged by an interested party on a fee-based approach in order to establish further details about the land's suitability.

In terms of delivering public sector land for better economic use and new housing there are no guarantees that the individual, business or organisation would actually develop any acquired land in the short term. Unless the Right to Regenerate provides a timescale and strict conditions at sale which are legally binding on the purchaser there is the potential for land to continue to be under-utilised. What powers would districts be given to deal with this in this instance? Districts would welcome further information from the Government on the legislative approach to support the Right to Regenerate, which could include a route for the land to return to public sector ownership if it is not developed within a specific timescale.

Q8: Do you agree that the government should require these publicity measures where requests are made under the right?

Yes/No- Please provide a reason for your answer

Response = Whilst publicity measures may be useful in advertising to others interested in developing public sector land we are concerned this is an additional administrative burden on already stretched district councils, and if pursued by government, districts should be supported by additional funding resources to deliver this new demand.

Q9: Should government offer a 'right of first refusal' to the applicant as a condition of disposal?

Yes/No – Please provide a reason for your answer. Please also include what you believe would be a reasonable timeframe for the expiration of the right of refusal.

Response = In terms of empowering local communities to enable enhanced services and facilities in specific areas it would be appropriate for the Secretary of State to retain the option of a right of first refusal, noting the financial constraints on community groups.

Nevertheless, this should not be applied if the community group is in partnership with a private sector organisation with the resources available to meet these requirements as it would disadvantage other interested parties in the process. It is considered that a reasonable time-frame of 12 months be given to enable funding bids to be completed.

If Government is serious about enabling communities to bring back previously used sites into use, they should make available resources for community groups to prepare feasibility studies, business plans, etc. in order that they can produce a viable, sustainable alternative for the land. Expecting community groups to act like developers without any resources is entirely unreasonable.

Q10: Should the government impose conditions on the disposal of land? And if so, what conditions would be appropriate?

Yes/No - Please provide a reason for your answer.

Response = Unless the Right to Regenerate provides a timescale and strict conditions at sale which are legally binding on the purchaser there is the potential for land to continue to be under-utilised. Therefore it would be appropriate for conditions of sale to include time-frames for when the site will be developed, confirmation that planning consent for the new use has been achieved and a viability assessment completed by the purchaser. Furthermore Councils would welcome further information from the Government on the legislative approach to support the Right to Regenerate, which could include a route for

the land to return to public sector ownership if it is not developed within a specific timescale

Q11: Do you have any additional suggestions regarding reforms that could improve the effectiveness of the Right to Contest process?

Please explain your answer.

Response = The DCN would request that its [submission to the Government's consultation on "Supporting Housing Delivery & Public Sector Infrastructure"](#) is considered alongside this response. In particular the Government's proposals to enable prior approval of uses to be changed to residential with limited factors for consideration, rather than through planning consent, may well undermine the objective of the Right to Regenerate seeking to ensure sites are put to better long-term use and help to keep neighbourhoods vibrant and productive especially in town centres and urban areas.