



ADEPT response to MHCLG consultation
Right to regenerate: reform of the right to contest
March 2021

Introduction

ADEPT is a professional association that represents executive 'directors of place' from county, unitary and combined authorities, along with directors of local enterprise partnerships, sub-national transport bodies and corporate partners drawn from key service sectors. More than two thirds of households in England rely on services provided by ADEPT members including housing, environmental and regulatory services, planning, development, culture, and highways and transport. ADEPT represents its members' interests by proactively engaging Government on emerging policies & issues, promoting initiatives aimed at influencing government policy, and through the sharing of best practice, professional networking and development opportunities. Our strategic priorities include climate change and the environment, infrastructure and communities; and place-based funding.

Q1: Do you consider the Right to Contest useful?

Yes, in principle. We consider it is right for the public to have the ability to seek clarity and challenge public sector bodies on their land holdings where it would appear they are not being put to productive use.

We would urge caution, however, where this relates to land holdings owned by local authorities. We are keen to ensure short-term gains do not hinder delivery of a longer-term vision and the proper planning of an area. By their very nature, regeneration projects are long term initiatives and local authority land assembly schemes can take many years to come to fruition due to fragmented original ownership and legal structures. As drafted, the policy set out in the consultation document could result in assets acquired or held pending redevelopment being targeted and potentially lost by the proposed legislation. With the new Permitted Development Rights around conversion to residential development, there are concerns that developers could target land/buildings held by the local authority for future regeneration schemes could be sold to create private sector profit rather than for community or strategic economic development benefit. This is particularly relevant as we look to rebuild the economy post-pandemic. We will need to take stock of the long term impacts on town centres, especially in relation to retail and office space, plus the uses supported by those.

We would question why this change is being sought now and what exactly the new legislation is seeking to achieve, offset against the additional burdens (staff and financial) that will be placed on already overstretched local authorities delivering significant economic development and housing delivery initiatives, potentially jeopardising or delaying their delivery.

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

No.

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

Yes. Any definition should ensure that it captures those scenarios where there is a long-term strategic requirement for sites being held. This may be for local planning, service requirements, or to ensure that best value is captured from any future transaction. It should specifically exclude the following:

- Land and property acquired or held by local authorities to deliver housing, economic development, regeneration and/or transport schemes.
- Green field land including but not limited to public open space and amenity land on residential estates.
- Civic assets.

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

Yes. In principle it is right for the public to have the opportunity to clarify that these bodies are managing their land holding effectively for their community. However, it needs to be recognised that town and parish councils may not have the resources to deal with this.

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

Yes. In principle the government should consider incentives for the temporary use of unused land. However, the proposal in the consultation that land would be forcibly sold if no temporary uses can be found is not really an incentive.

Any incentives should ensure that they do not impede the long-term future use or frustrate the ability for the land to be brought forward for its intended strategic use. Any changes should ensure that the understanding of what is considered to be temporary use is defined, and that the ability to gain possession is unchallengeable and not subject to additional burden or cost on the local authority. This should encompass temporary lettings to community/charitable organisations without the need to re-provide facilities as part of any future planning applications.

On the opposite side of the argument is that this should be left to local authority discretion. Most local authorities now have the commercial acumen and financial incentive to maximise income producing opportunities from their assets, whether held for the long or short term. Incentives to assist and facilitate such opportunities should be considered.

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

Yes. Local authorities are best placed to deal with initial enquiries and respond accordingly. This initial engagement should reduce the number of applications made that are then refused. Additionally, this allows local authorities to be aware of interest in their land holdings and be able to factor this into their dealings with that asset accordingly.

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

No. Each proposal should be dealt with in its specific context and circumstances. A presumption in favour of sale may also lead to perverse or speculative requests being made and limit the ability to resolve at a local level. Again, to reiterate, it is important that local authorities are allowed to strategically plan the delivery of services to meet the needs of their local communities. The holding of land/buildings to meet those future needs is a fundamental part of that process and it is right that they retain the ability to manage those requirements without undue external influence.

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

Yes. While there is a resource implication in managing this process, it is agreed that this would provide visibility of enquiries made, outcomes and reasoning, which is appropriate. However, the need for quarterly reporting is questioned given the low number of requests to date. An 'as and when' requests are made would seem more appropriate.

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

No. This might not lead to the best outcome for the site and could be considered unfair to third parties. If this is introduced the purchaser / requester should be responsible for the cost of an open market valuation for the site. Local authorities have other statutory obligations that they must meet when disposing of land including s123 of the Local Government Act 1972. Additionally, it would be wrong to exclude the ability for other interested parties to make representations/bids as part of any disposal process. There may also be existing pre-emptions or conditions in place which should take precedence over any applicant under the Right to Contest.

Please also include what you believe would be a reasonable timeframe for the expiration of the right of refusal:

3 months from receipt of open market valuation. Working with communities to regenerate sites is a much better model of community led development than a 'first right of refusal'. Community groups are likely to find themselves in competition with private developers for sites who are more likely to be properly resourced (staff and finance) to undertake the process.

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

Yes. If a change of use is required planning permission should be obtained in advance of disposal, and evidence of funding for proposed redevelopments provided to the council. The council should be able to impose such restrictive covenants that is required in accordance with good estate management practice.

There should be a right for local authorities to buy back the land at the price sold in the event that no redevelopment proceeds, for example within 12 months after the granting of planning permission. Purchasers should have to pay local authorities' legal and surveyor fees and all associated costs.

Any proposals must ensure that any new housing delivered through this meet the highest quality, safety and sustainability standards. Any terms or conditions on disposal should be site specific. The

local authority have the best knowledge of what terms or conditions are appropriate and reasonable for the specific site. Any terms and conditions applied will impact on the value and there would be a requirement to ensure that compliance with statutory obligations to meet best consideration can be adhered to. Given the local authority are required to respond to any scrutiny of the disposal taken, the decision process as to what conditions are applied and the subsequent quantified value implication should rest with the local authority.

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

Consideration should be given to including long stop dates for delivery/development where a Right to Contest order for disposal is issued. Without this the land may remain unused or underused but outside of any government/local authority control. Where the long stop date is passed the local authority should be able to acquire the site at the price originally paid and then hold for future use or remarket as appropriate.

Any decision under the Right to Contest process should take in to account any title or legal matters. The local authority may be best placed to provide resolution of these matters rather than a private individual or group and the timescale for the site to be brought forward for use would be more efficient than if a disposal order was issued.

However, the Right to Contest process would not be required if direct government grants were provided to local authorities for them to bring brownfield sites back into beneficial use via a co-ordinated and strategic approach in line with local planning policies.