

Brownfield bonanza

Peter Kershaw identifies the key areas for public sector collaboration in maximising development and land disposal opportunities



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'We are now seeing strategic partnerships of local authorities working together across their previously traditional and restrictive political boundaries as well as individual local authorities striving to deliver major economic development schemes to transform their local economies.'

Independent estimates indicate that the public sector may hold around c40% of all developable sites in the UK and around c27% of all brownfield land suitable for housing. In medium-sized county towns, local mapping data also indicates that anywhere from c50% to c70% of some high streets could be owned by the public sector.

These estimates highlight a political and planning landscape where significant new development and land disposal opportunities in highly sustainable and attractive locations are beginning to crystallise for investors, developers and public sector land owners.

Central government

After government initiatives to encourage the sale of disused or inefficient central and local government land and assets, through the One Public Estate programme and the Right to Contest, were further strengthened earlier in 2016, investors, developers and public sector land owners have been carefully positioning themselves to try and take full advantage of the opportunities emerging from this ambitious approach to managing land and property in the public estate.

The recent strategy announced by Sajid Javid to accelerate house building using public sector land has also widened the scope of the opportunities available. At the annual Conservative Party conference the Secretary of State for Communities and Local Government announced that:

... we will pilot a new initiative: Accelerated Construction on public land. We will take government-owned land and

partner with contractors and investors to speed up housebuilding. We will create new supply chains using offsite construction. And we will encourage new models of building to make houses that people want, more cheaply and at pace. These measures will allow us to get started on 15,000 homes by 2020. We will get more homes built, more quickly.

He also announced that:

... we will bring forward a package of measures to encourage urban regeneration and to build on brownfield land. We want to radically increase brownfield development and bring life back to abandoned sites. That means delivering high quality housing for families, bringing new energy to our high streets and town centres, abandoned shopping centres being transformed into new communities, and increasing density of housing around stations to build homes that people want to live in.

The One Public Estate programme

One of the primary aims of the One Public Estate programme is to allow surplus public sector land to be used as a key source of revenue by local authorities by allowing councils to generate capital receipts from land sales (if this is thought to help improve or rationalise public sector service delivery). It is a scheme which can lead to land and buildings being sold, shared, used for income generation or used for an alternative use.

The third phase of the One Public Estate programme was launched in December 2015 and saw the programme delivered at a far greater pace – and at a far greater scale – than

we have ever previously witnessed. Over 100 councils in 24 partnerships joined together to use their assets more efficiently and to deliver ambitious projects to drive forward major service transformation and to stimulate economic growth.

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The Right to Contest gives people the right to challenge the government over its management of the public estate.

Phase 5 of the scheme commenced in September/October 2016 and together with Phase 4 marked new application strands, which offer local authorities the opportunity to finance more integrated and customer-focused services through co-location and land disposals.

In a rare interview for the publicsectorexecutive.com website in August/September 2016, Bruce Mann (executive director of the Government Property Unit) emphasised the level of interest in the One Public Estate programme by being quoted as saying that:

What we've learnt is: there's an immense amount of appetite and potential, and that's really fabulous...

and:

To put it in simple, practical terms, we've received more applications than we can fund.

A key aspect to the programme's continued success has been ensuring that all planned schemes are respectful of pre-existing local plans, growth strategies and regeneration goals.

The Right to Contest

In 2014 the government also introduced a powerful 'Right to Contest'. The Right to Contest gives people the right to challenge the government over

its management of the public estate and this right extends to businesses, local authorities and also members of the public. It can often represent an opportunity for investors, developers or communities to push for certain public sector sites to be released for development.

Through exercising their Right to Contest, people now have a formal mechanism to alert the government to any public sector land which they feel could be put to a more efficient use. They can fill in a Right to Contest form so long as they believe that:

- the land is owned by a central government department or one of their arms' length bodies;
- the site is potentially surplus or redundant;
- the site could be put to better economic use; and
- there are no plans to bring the site back into use.

The government further strengthened its support for the Right to Contest in 2015 when indicating in its joint 2015 Spending Review and Autumn Statement that:

The Government will also strengthen the existing legislation around Right to Contest to allow local communities to challenge the use of land and property that is in use by Local Authorities – not just property that is empty or under-used – where these assets could be made surplus and put to better use.

Individuals can request a Right to Contest form by emailing righttocontest@cabinet-office.gsi.gov.uk.

Accelerated construction

Accelerated construction is a new approach the government is using which, it is understood, will see homes built more quickly than traditional

developers might normally achieve, and on public sector land.

Sites will be identified within the government's portfolio which can be built on by 2020. Where applicable, the government will deliver outline planning permission and undertake the costs of some remediation work to reduce development risks on their sites.

The government also wishes to diversify the market by partnering with new entrants, SMEs, custom builders and offsite manufacturers. By using their land as equity rather than expecting an upfront receipt, the government lowers the developer's risk and overcomes issues with access to finance.

The programme is currently under development and full details are anticipated to be announced by the government in due course.

Land ownership

Private and public sector land owners are panning the planning landscape for mutually shared development and land disposal opportunities.

If you are unsure about who owns land or property you can often find out by:

- contacting the assumed land owner for confirmation;
- checking whether the land or property is included in the Public Land Database;
- checking the Electronic Property Information Mapping Service website;
- checking the local authority website; or
- using the services of the Land Registry.

Opportunities

Early planning consultancy advice is important to help seize finite development and land disposal opportunities involving public sector land.

The strengthening of the government's narrative towards public sector land sales – at a time of housing under-supply and widespread economic uncertainty affecting construction prior to formal Brexit negotiations – indicates that this could be a watershed moment of

opportunity for investors, developers and public sector land owners with aims to help the government in regenerating underused areas of public estate to transform local areas, stimulate economic growth and improve service delivery.

Naturally these opportunities are finite, and for public sector land owners and neighbouring land owners to maximise the development and disposal potential of their land, it is important that they:

- consider collaborating with each other on joint schemes to potentially bring forward larger combined sites which would help maximise their planning opportunities and those of the local community – this could unlock planning opportunities for private sector land owners and their public sector neighbours over and above what they could each achieve on their own; and
- consider the merits of procuring planning consultants and planning law experts at an early stage in their discussions to ensure that the potential for sites to be formally allocated and considered in emerging local authority local plan processes are not missed, and in order to try and optimise planning consents.

If the land which interested parties own or are looking to acquire or sell for future development is located in areas where local authorities are still finalising their local plans, it is imperative that they act swiftly to start participating in local authorities' local plan making and 'call for sites' consultations before their deadlines expire. Interested parties should ensure that they consider making formal representations to the council through their procured planning consultants, in order to make strong and persuasive arguments justifying why they believe a particular area or parcel of land should be designated in the local plan for a specific desired future use.

Their procured planning team, as well as being on board early to make policy representations to local authorities in relation to emerging local plans, will also then be primed and ready to act on future instructions to help guide projects forward through all stages of the planning system, from pre-

application discussions with councils and architects through to submission of planning applications; engagement with local communities and politicians; s106 and CIL negotiations; and planning committee representations. If their procured planning consultants also have local and national political experience in their ranks, they will also be well placed to assist with any long-term political monitoring requirements.

Private sector landowners should be giving careful consideration to what

to gain planning consents to optimise the potential value of their land, when reflecting that:

We all know we want to see more housing in this country. If you want to see more housing, either as a politician, as a local community or as a developer, the easiest way to do that is to have the community more accepting of development, and communities are accepting of good-quality development of an appropriate type in an appropriate place.

Early and effective stakeholder engagement increasingly holds the key to successful planning and land disposal outcomes.

they can do now to better position themselves to take full advantage of land development and disposal opportunities, and also to ensure that they have the capacity and essential skill sets within their teams to promote their sites for development and to try and achieve optimum planning consents.

This could necessarily involve consideration of collaboration with private sector planning consultants and law firms and/or setting up additional partner panels. Utilising private sector skill sets is likely to be increasingly important for NHS and foundation trusts to maximise the development and disposal potential of their surplus sites and to unblock planning constraints, and also for local authority development companies and property investment portfolios who often need to have separation between their asset management divisions and their planning departments.

Power shifting

Early and effective stakeholder engagement increasingly holds the key to successful planning and land disposal outcomes.

Brandon Lewis, the former Minister of State for Housing and Planning, previously provided oral evidence to the Department for Communities and Local Government Select Committee in the Planning and Productivity Inquiry, setting out where the hearts and minds of local communities are likely to be won and lost when landowners seek

As a local resident also previously once said to me:

This piece of land in the village is like Grandma's wedding ring – we will only support it being handed over to whom we feel we can genuinely entrust it to.

With neighbourhood planning continuing to advance at pace in the current Parliament, and with many local authorities still finalising their local plans and five-year housing supplies, a shifting of power is taking place away from Whitehall and into the hands of local communities and local councils at all levels. This ultimately represents a clear and present danger to the interests of landowners not fully engaged in the ever-changing planning system.

Further planning threats and opportunities on the horizon

With a new White Paper expected before the end of the year and further planning reforms anticipated, the upcoming Autumn Statement on 23 November 2016, local authority and mayoral elections in 2017, and formal Brexit negotiations on the horizon leading to economic and political uncertainty, there has never been a more important time for public and private sector land owners to be fully 'engaged' with the planning system and planning case law (and fully 'engaging' with each other, with local communities and with private sector planning and legal experts). ■