

# Right to Regenerate: reform of the Right to Contest

POS response to current consultation

## 1. Planning Officers Society

POS is the single credible voice for public sector planners, pursuing good quality and effective planning practice. The Society's aim is to ensure that planning makes a major contribution to achieving sustainable development in ways that are fair and equitable and achieve the social, economic and environmental aspirations of the community.

We operate in three main ways:

- As a support network for planners in the public sector
- As promoters of best practise in planning
- As a think tank and lobbying organisation for excellence in planning practice

Where we can, we will work across the sector to craft proposals that have widespread support from the people who operate the planning system at the coalface: landowners, developers, agents, legal, local authorities and politicians. We will be both radical and practical as we look for solutions to tangible problems that will make a real difference to crucial areas. Our objective is to improve the planning system to enable it to deliver its key aim of sustainable development. It is within this context that we have set out this advice to Government so we can plan together for a better future.

## 2. Right to Regenerate: reform of the Right to Contest

### Responses to the consultation questions

#### Q1: Do you consider the Right to Contest useful?

Maybe

It is important to consider that only one site has been disposed of using this process. Therefore, it is questionable whether this process can have a positive impact on housing

delivery. The Government should weigh up the resources required within Local Authorities to facilitate the process, with potentially little result.

From the evidence in the consultations POS would urge that communities' expectations are managed throughout this process. From the evidence shown many sites are already designated in the Local Plan. Hence potentially building false hope and communities considering they will be able to buy a site of their choice.

If Government decides to continue with the Right to Regenerate, it could provide some benefits with the proposed changes included in the consultation. For example, first refusal to the group who has made application for land to be taken to the open market and then a requirement for the land to be developed.

**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

Although Local Authorities would be best placed to answer this directly. It is likely that the process is not fully understood or well resourced considering applications are received infrequently.

A barrier to using the right effectively is the necessary engagement with Government and that public sector bodies are not inclined to release assets. Public sector assets are constantly appraised to be used more effectively, this may include a period of an asset appearing to be underused. With the pending Environment Bill public sector land will be used to accommodate off site Biodiversity Net Gain mitigation projects, this may appear underused but would in fact be providing a very valuable role required over a 30 year period.

The process relies on a lot of resource in the community to put forward these applications. It is not clear how representative of the wider community an application needs to be, this could create tensions allowing those with the resources (skills, time and money) to put forward an application potentially over others in the community without the necessary resources. POS suggests a Community Impact Assessment is completed when reviewing these proposals.

As an alternative to the current proposals POS suggests government focus on reforming the Compulsory Process legislation further to include a Compulsory Selling Order, applicable to privately owned land. Previous reviews commissioned by the Government have concluded that house builders are inclined to deliver homes at a rate that suits their business aspirations. A Compulsory Selling Order would help to tackle land banking and competitors acquiring land to protect their own business interests. These changes are likely to have a bigger impact than solely focusing on private sector owned land.

POS has written a paper setting out our suggested changes to the CPO process including introducing Compulsory Selling Orders

[https://www.planningofficers.org.uk/uploads/news/POS%20Manifesto\\_7%20CPO\\_Feb17.pdf](https://www.planningofficers.org.uk/uploads/news/POS%20Manifesto_7%20CPO_Feb17.pdf)

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

No

A proposed definition is not included, any proposed definition should be consulted on further.

However POS would urge that the assessment of unused or underused land remains with the Local Authority, as local context is important. A blanket definition across the country is unlikely to be appropriate. For example, an area which struggles with viability to build homes may appear under utilised, but is not in fact appropriate for housing (due to land constraints e.g. contaminated land, flood plain etc).

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

No

Few Parish Councils will have the specialist or legal resources to facilitate the Right to Regenerate. The assets a Parish and Town Council have are very important for health

and wellbeing, as well as community cohesion. Opening them to this proposal could put them under threat.

For the reasons highlighted there can be multiple reasons why land might currently appear 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. This process need to manage the communities expectations.

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

Yes with appropriate support

‘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. If this constitutes development then a planning application should be submitted and assessed appropriately.

However, this process needs to be resourced. Local Authorities do not have surplus budgets to direct towards meanwhile uses. A sufficient funding stream should be made available to facilitate this. An effective approach could be to encourage Parish and Town Councils to support these meanwhile uses. It is unrealistic to add a new burden such as this without adequate support and funding.

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. It must be made clear that any temporary, meanwhile use is just that, and cannot create a precedent or argument to become permanent where a properly planned permanent use is envisaged.

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

Yes, with additional resourcing

This proposal could save time especially on a request that might not be likely to meet the threshold. However, it may have unintended consequence of less serious requests being made which are not properly prepared and lead to wasting time rather than saving time.

POS is concerned that this may see additional enquiries coming to already stretched Local Authorities and we are not convinced that this additional burden is appropriate especially considering the list of public sector bodies included in the Part X which it would be applicable too.

**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

If there is land appropriate for redevelopment Local Authorities should be encouraged to develop this themselves. This would have a more meaningful impact on housing delivery than the current proposals.

<https://www.rtpi.org.uk/research/2019/july/local-authority-direct-delivery-of-housing-ii-continuation-research/>

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 Local Authorities be given to deal with this in this instance?

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

No

This is an additional administrative burden. If pursued by government, districts should be supported by additional funding resources to deliver this new demand.

Any publicity requirements should be digital. Government through all legislation should be moving away from paper consultations and supporting those without IT access to be able to access items via libraries etc. rather than supporting a hard copy and digital approach.

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

Yes

This would help to empower local communities and may increase the uptake in using this process.

This could be challenging if a 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.

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

Unless the Right to Regenerate provides a timescale and 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.

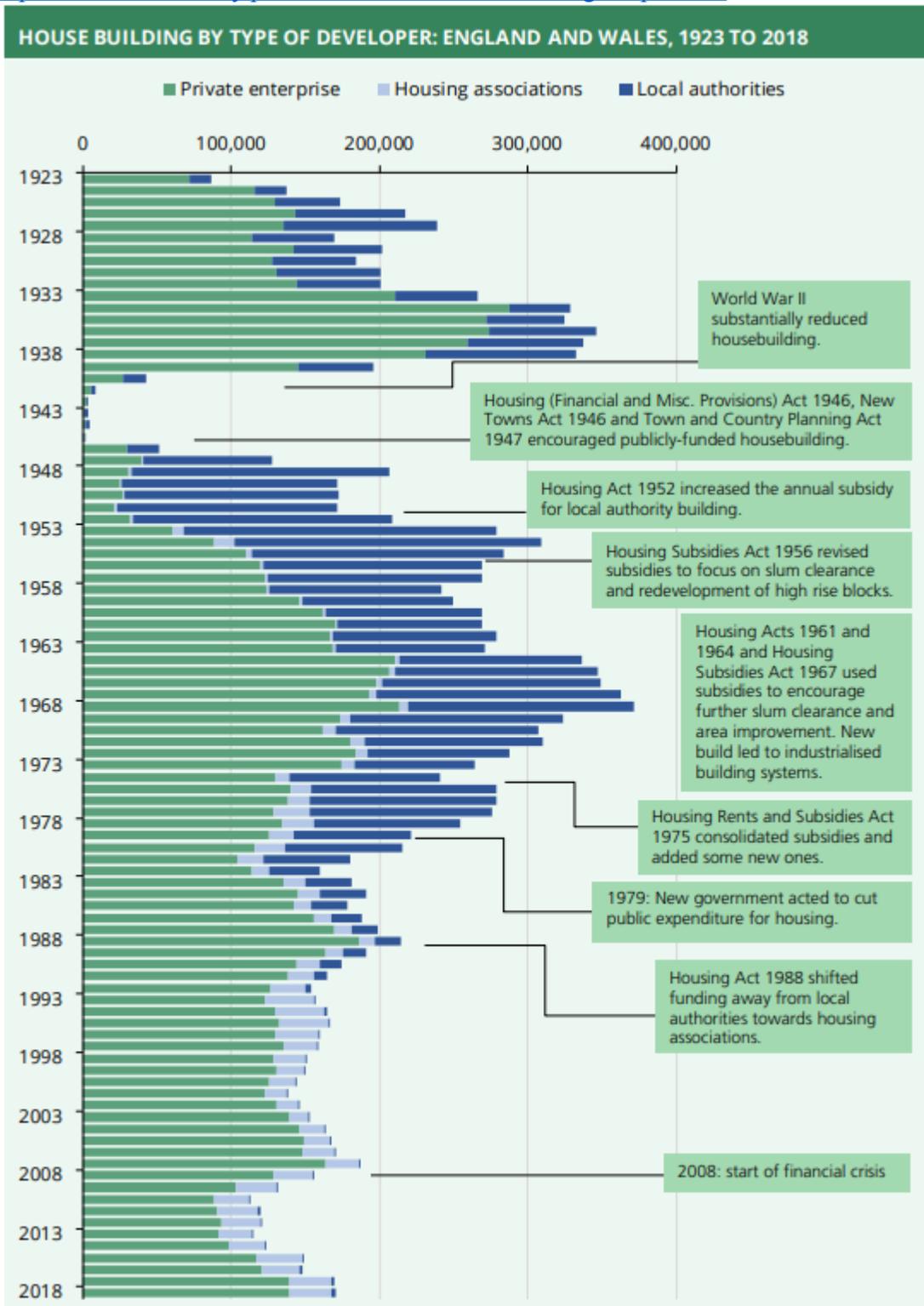
POS would welcome further information from the Government on the legislative approach to support the Right to Regenerate, which could include a route for the land to return to public sector ownership, or for the land to be put back on the open market if it is not developed within a specific timescale

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

Yes

Government should support Local Authorities to develop their own housing, including using land this consultation is referring too this is the main way that housing delivery target could be met. This is explained further in a research briefing paper focused on tackling the under-supply of housing in England. The image below shows the housing delivering dropping when Local Authorities. This proposal could limit the options for Local Authorities to build new homes. Government should focus supporting Local Authorities with the tools and finance needed to deliver homes.

<https://commonslibrary.parliament.uk/research-briefings/cbp-7671/>



Sources: B.R. Mitchell, *British Historical Statistics*; MHCLG, [Live Tables 244 and 245](#)  
 Notes: Data is for financial years from 1923/24 to 1944/45, then calendar years. See data download for full notes.