

DERBYSHIRE COUNTY COUNCIL

**MEETING OF CABINET MEMBER – HIGHWAYS, TRANSPORT AND
INFRASTRUCTURE**

11 March 2021

Report of the Director – Economy, Transport and Environment

**CONSULTATION BY THE MINISTRY OF HOUSING COMMUNITIES AND
LOCAL GOVERNMENT ON THE RIGHT TO REGENERATE: REFORM OF
THE RIGHT TO CONTEST**

(1) **Purpose of Report** To inform the Cabinet Member of Government's consultation entitled, 'Right to Regenerate: Reform of the Right to Consent'; to consider the implications for Derbyshire County Council for its role and responsibilities as an owner of public sector land; and to seek approval to provide a formal response to the consultation on the basis of the summary comments set out in this report and the more detailed response set out in the Appendix attached.

(2) **Information and Analysis** The Ministry of Housing, Communities and Local Government (MHCLG) has published a consultation entitled, 'Right to Regenerate: Reform of the Right to Contest' which sets out proposals to provide greater rights and powers for the public, businesses and other organisations to purchase local authority owned land.

The document highlights concerns that longstanding vacant, derelict or underutilised land can have a significant impact on the attractiveness of a local area, acting as a focus for anti-social behaviour. Since 1980, the public has been able to request that the Government considers whether certain publicly owned land is unused or underused and, if so, directs that it be sold.

In 2011, this power was incorporated into the portfolio of community rights as the Community Right to Reclaim Land and was extended to other public bodies such as the Greater London Authority, Transport for London and the British Transport Police.

In 2014, the power was brought together with the Right to Contest, to make it simpler for the public to request the disposal of public land. Strand 1 of the Right to Contest applies to Central Government land and is administered by the Cabinet Office; Strand 2 powers, are administered and exercised by the Secretary of State for Housing, Communities and Local Government.

This latter strand was designed to be an ‘intervention of last resort’, enabling anyone to ask Ministers to order a public body to dispose of land or property on that land, if they think the land is unused or underused and the public body has either refused to do so or not engaged.

This current consultation document suggests that most requests come from members of the public, rather than community groups or companies, and relate to small plots of land. At present, the [right is promoted on GOV.UK](#) and some local authority websites. The consultation proposes to empower people to challenge the inefficient use of public sector land in their communities and to bring it into better economic use, including housing. The document states that Government is consulting on the effectiveness of these requests as it considers reforms to make the process more efficient and more transparent.

Government believes that reforming the Right to Contest and relaunching it as a new ‘Right to Regenerate’ could provide a quicker and easier route for individuals, businesses and organisations to identify, purchase and redevelop underused or empty land in their area. In turn, a strengthened right would support greater regeneration of brownfield land, boost housing supply and empower people to turn blights and empty spaces into more beautiful developments. Government is consulting on whether reforms to the right could lead to it being utilised more effectively and more widely.

The consultation paper sets out a number of questions relating to the effectiveness of Strand 2 based on the following themes:

- Increasing the usefulness and effectiveness of the right
The Government is seeking views on the usefulness of the right, as well as potential reforms to increase effectiveness. Respondents are asked to consider how the right is used by private individuals, as well as organisations.
- Making it clearer when land is unused or underused
The Government is considering publishing a definition of land that is unused or underused, to help guide people in making applications.
- Extending the scope of the right
The Government is interested in views as to whether extending the right to include unused and underused land owned by town and parish councils would also increase the effectiveness of the right in optimising land usage across England.
- Land where a public body has an intended use
The Government is considering incentivising temporary uses by ordering sales where temporary uses cannot be identified (see further details below)

- A greater role for local authorities

The Government is inviting views as to whether it should require applicants making a request under the right, regarding local-authority-owned land, to demonstrate that they have contacted their local authority before making a request.

- Presumption in favour of disposal

The Government is seeking views on whether the Secretary of State should apply a presumption in favour of disposal when considering applications under the right, establishing clearly that disposals will be ordered unless there is a compelling reason not to do so.

- Publicity and reporting

To improve transparency around these requests and assist with record-keeping, the Government is considering placing requirements on local authorities to publicise and report on requests to buy publicly owned land (see further details below).

- Right of first refusal

The Government is considering introducing a 'right of first refusal' to those who make the request recognising that they may need additional time to prepare a bid. This would usually be for market value and would be for a limited period of time. The right of first refusal would be imposed by the Secretary of State as a condition of disposal at his discretion

- Conditions attached to disposals

The Government is inviting views on whether conditions ought to be imposed on the disposal of land (for example, that a sale could only be to someone with the intention to redevelop a site).

Details of the consultation and the consultation document can be viewed at the link <https://www.gov.uk/government/consultations/right-to-regenerate-reform-of-the-right-to-contest>

Key implications for the County Council in its role and responsibilities as owner of public sector land

From the County Council's point of view as owner of a significant amount of land, paragraphs 16, 17 and 20 of the consultation are of particular interest as set out below which highlight that:

“16. Many requests to purchase local authority land are refused as the public body indicates that it has an intended use for the land. This may mean some sites are left unused or underused for some time until those plans materialise.

17. The Government is considering incentivising temporary uses by ordering sales where temporary uses cannot be identified. This would help minimise

blight until sites are put to better long-term use and help to keep neighbourhoods vibrant and productive especially in town centres and urban areas.

20. To improve transparency around these requests and assist with record-keeping, the government is considering placing requirements on local authorities such as:

- quarterly reports by a designed local authority officer on the number of preliminary enquiries made;*
- requiring the display of physical and electronic publicity where a request has been submitted for the release of a site;*
- requiring local authorities to publish all requests, together with their outcomes and reasoning, on their websites.”*

At the outset, it should be acknowledged that the Right to Contest has not been a significant issue or problem for Derbyshire County Council. The County Council has a well-established ‘Non-Operational Asset’ review process involving consultation by the Director of Property with relevant Council departments, to establish why property was acquired, the reasons for retaining it, what future uses may be either planned or considered acceptable and whether or not any constraints on the use may exist. Whilst not published, the assessments are retained.

The same system is used to assess requests to purchase land or property received from the public or businesses and details are provided to any approaches from the public or businesses on why the Council wishes to retain the land or property and where disposal for sale has not been agreed. The system is efficient and transparent and the majority of approaches that are made to the Council to purchase land are for relatively small-scale plots such as surplus highway land or highway verge.

The County Council also works collaboratively with its district and borough councils through the Local Plan process to identify land in the Council’s ownership that it is necessary to retain or safeguard for future development, particularly longer-term development such as: new highways infrastructure; highway improvement schemes; new schools or expansion to existing schools through its Notified Site procedure; or new/expanded adult and social care provision and development.

It is important to recognise that the Council does acquire and retain land for long-term projects, for example the White Peak Loop. This is a multi-user trail that may require complex land negotiations, design preparations, planning consent and construction and can take many years to bring to fruition. The Council has also ‘notified’ many sites in the County for future use for education purposes where the site may not be required for development in the

short-term but where future pressures on school place capacity may arise and necessitate new or expanded schools provision.

In addition, One Public Estate partnerships across the country have shown the value of working together across the public sector and taking a strategic approach to asset management. At its heart, the programme is about getting more from the Council's collective assets - whether that is catalysing major service transformation such as health and social care integration and benefits reform; unlocking land for new homes and commercial space; or creating new opportunities to save on running costs or generate income. Assets may be surplus to requirements of a specific partner, but may be held due to their potential to contribute to, or unlock, locality based partnership projects, rather than for individual bodies.

It is of concern, therefore, that proposals in the consultation which would effectively give the Secretary of State powers to order sales of 'underused' land in such circumstances, could dis-incentivise local authorities from taking a strategic longer-term view for major projects and schemes and potentially, could render such proposals almost impossible to deliver. For example, schemes such as the White Peak Loop could be greatly affected by the forced disposal of critical sections of the route that are currently planned for completion but difficult to deliver in a timely manner. An identified use for Council land may also be subject to the need for establishing partnerships and/or bids for funding which might be complicated and lengthy to get in place, or where there are particular constraints affecting the land that may need to be overcome to deliver a particular project or scheme.

In this respect, the granting of temporary uses for local authority land could conflict with the planned or intended future use of the site or require additional expenditure by the Council to undertake remedial works to ensure the land, once its temporary use has ceased, is in an appropriate condition for its intended end use. Certain uses, once established on a temporary basis, may also be difficult to remove or ensure that the occupant ceases the use in the timescale required by the Council, which may require lengthy and costly legal intervention and potentially delay the delivery of key projects that are of significant public benefit. Temporary uses often come at a similar cost to longer-term use, where land and buildings have to be made safe, due diligence completed and uses managed as an operational asset.

The timing of the proposals are of particular concern. The County Council's Property Services Division has just initiated the Council's Property 2025 Vision, which sets out that every Council land and property asset will have been reviewed and have an asset plan attached to it over a five year rolling programme. So far all assets have been categorised as being held for one of five different reasons and Property Services Officers have prioritised those assets they wish to review in the first year according to a number of markers. These include things like high holding costs, substantial maintenance

liabilities, lack of fitness for purpose and lease breaks for example. Other assets will be reviewed further in the programme.

Under the Government's proposals in the consultation, it is possible that the County Council will be challenged to dispose of assets before Officers have had chance to do their own due diligence and understand whether there is a need for the asset, or it presents an opportunity to the council. Assets may end up being prioritised for review, simply to ensure that they are not left vulnerable, even though they may be low priority by all other indicators.

There are also questions over what constitutes a reason for holding an asset. The detail on what will constitute a robust defence against forced disposal will be key. An asset plan will set out the opportunity and future proposals, but the County Council may not have the resource to deliver it in the short-term, but does that mean the Council would be forced to sell it?

There are concerns, therefore, that the principal challenge is likely to come from developers and other profit making organisations. There are a number of routes already in place for community groups to express an interest in an asset – Thriving Communities, Community Asset Transfers etc. The likelihood that these challenges will come from groups who had not thought to approach the County Council before about the sale of its assets is therefore likely to be slim.

It is also important to recognise that not all publicly owned land is capable of being developed. The Council owns a lot of land within rural locations that is not always suitable or capable of being redeveloped due to restrictive planning policies in district and borough local plans (e.g. green belt). It will also be important to ensure that any proposed use for a site that is released for sale should be in keeping with good planning principles and be appropriate to its location and context. Addressing climate change issues and 'good growth' principles will be critical in this regard.

If the proposals are introduced, it is considered important that where there is intervention from the Secretary of State to force land to be sold, there needs to be a 'test of certainty' of the proposed future use, preventing purely speculative purchase of land from local authorities. This would be particularly relevant to the case of private developers who could acquire land for an intended public benefit but then bank it for many years without bringing it forward for public benefit and then selling the land at a significant profit.

In terms of the consultation document's proposals for publicity and reporting, it is considered these requirements would not be detrimental to the Council provided the detail required for reporting of enquiries/claims is not too onerous. As noted above, the Council has a well-established 'Non-Operational Property' assessment process in place that would enable the Government's requirements for publicity and reporting to be implemented. If there is a need

for reporting, however, it is considered that details of enquiries should be published and reviewed annually to identify when land has been disposed of, or if the status of any land has changed and is now available or unavailable. The quarterly reports proposed in the consultation are considered too onerous and of little tangible benefit given the number of enquires to purchase land that are received by the Council.

Lastly, the consultation narrowly focuses on publicly owned land and should be widened to include land held by the private sector. There should be a recognition that privately held land can also undermine regeneration. Land in private ownership can frequently impinge on regeneration plans, particularly in relation to high street and town centre renewal. Absent landlords and/or land purchased as part of a portfolio often mean that that landowners can block or blight localities with a refusal to co-operate. In these instances the requirement to sell should also be an obligation applied to the private sector.

The Council's proposed responses to the 11 questions are set out in the Appendix to this report and are framed in the context of the issues outlined above.

(3) **Financial Considerations** None directly as a result of this report but, if the proposed reforms of Right to Contest are implemented by Government, then there could be significant financial implications for the Council in terms of capital receipts and delivery of the capital programme.

(4) **Legal Considerations** The recommendation in this report is made in the context of the requirements of Strand 2 of the Right to Contest 2014 and having full regard to the Council's responsibilities and services, including its current planning functions under the provisions of the Localism Act 2011, Planning and Compulsory Purchase Act 2004, and Town and Country Planning Act 1990.

(5) **Property Considerations** As set out in the report.

(6) **Social Value Considerations** The current National Planning Policy Framework describes the purpose of the planning system as being '*to contribute to the achievement of sustainable development*', with three overarching objectives:

The social objective is to support strong, vibrant and healthy communities by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations, and by fostering a high quality built environment, with accessible services and open spaces that reflect current and future needs and needs and supporting communities health, social and cultural well-being.

The economic objective is to help build a strong, responsive and competitive economy by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth, innovation and improved productivity, and by identifying and co-ordinating the provision of infrastructure.

The environmental objective is to contribute to protecting and enhancing Derbyshire's natural, built and historic environment, including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.'

In this instance, supporting and enabling delivery of these objectives is core to social value considerations and the spirit of the proposed reforms to the Right to Consent. The report however highlights the potential issues and tensions between the Council's social value objectives and those of the community and Government.

(7) Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health and transport considerations.

(8) Key Decision No.

(9) Call-In Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(10) Background Papers Held on file within the Economy, Transport and Environment Department.

(11) OFFICER'S RECOMMENDATIONS That the Cabinet Member:

10.1 Agrees the draft response to the consultation as set out in summary in this report and in detail in the Appendix.

10.2 Authorises the Director – Economy, Transport and Environment to take account of any further comments and considerations (in consultation with the Cabinet Member) prior to submitting a response to Government on the Right to Regenerate: Reform of the Right to Consent.

Tim Gregory
Director – Economy, Transport and Environment

Appendix 1

RIGHT TO REGENERATE: REFORM OF THE RIGHT TO CONTEST

Consultation Response on Behalf of Derbyshire County Council (DCC)

Q1: Do you consider the Right to Contest useful?

DCC considers that the right is useful as it has the potential to enable the use of land / property that might otherwise be unused, and therefore contribute to regeneration. However, there should be no predetermined right to build and development of the land should be considered through the normal planning process.

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

Exercising of the right by individuals who do not have the ability to enact any change would render the right ineffective at bringing about change. It is considered important that there needs to be a test of certainty of the proposed future use, preventing purely speculative 'compulsory purchase' of land from Local authorities. Where the reasoning for retaining the land is contested, for example, by a speculative developer, this could force the sale of land in an urban area, with a possibility that the developer then sits on the land and waits 10 years and then sells it on at a profit, without achieving any regeneration benefits during those 10 years or guaranteeing any further into the future.

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

Yes a definition of what is determined to be 'under-used land' would be vital. It would also be useful to know who determines whether or not the use of the land meets the tests for being designated as 'under-used'? No clear definition could lead to protracted and expensive legal costs for all parties without realising any community benefit / regeneration.

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

Yes, town and parish council land should be included if the intention is to enable regeneration and removal of an eyesore. There could be benefits in extending the scope of the right to include land owned by town and parish councils. Effectively this could become a register of land that might be available for development and this could be seen as being beneficial for community based projects where the recycling of this land might be more beneficial than greenfield development. An important caveat to this view, however, is that to bring this type of land forward for development its use should have clearly defined public benefit.

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

It is important to recognise that County Councils do acquire and retain land for long-term projects, for example, the White Peak Loop, which is a multi-user trail where the creation of a usable and valuable public resource can take many years to put together as and when land / sections of the route become available. Ordering sales of 'under-used' land in such circumstances would greatly dis-incentivise local authorities having a strategic longer-term view / goal and render such proposals as virtually impossible to deliver. Schemes like the White Peak Loop could be greatly affected or even rendered impossible by the forced disposal of a small section of the route if in a difficult location to by-pass. An identified use for the land may also be subject to the need for securing partnerships and / or funding which might be complicated or where there are particular constraints affecting the land that may need to be overcome.

In this respect, the granting of temporary uses for local authority land could conflict with the planned or intended future use of the site or require additional expenditure by a public body to undertake remedial works to ensure the land, once its temporary use has ceased, is in an appropriate condition for its intended end use.

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

Yes, an initial contact / conversation by a member of the public or organisation with a local authority might prevent unnecessary claims, when longer-term plans for an area of land could be explained and justified by the local authority. This should include both authorities in two tier areas, due to differing land ownerships. This may also pick up land which has an intended end use, but not included within a Local Plan such as notified sites for safeguarding for education purposes or highways schemes that are currently not included in some local plans.

Consideration needs to be given, however, to what is meant by 'contact' before a request is made to a local authority. It is difficult to appreciate what might be the difference between an informal and formal request. The questions could be equally involved and require significant input in formulating a response whether they are formally or informally requested. This needs to be clarified by Government as to what is meant by 'contact'. It is considered that any form of contact by an individual or organisation to a local authority is made a formal process so that a proper audit trail can be established of the contact and the local authority's response to avoid any misinterpretation or future misunderstanding of what has been agreed between the two parties.

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, it should be assumed that the land has some use to the local authority as owner, the requirement should be to demonstrate that there is no reasonable prospect of use. Land is often retained by local authorities to address local issues. Local authorities should reserve the right to make local judgements regarding the reallocation or re-use of this land.

It may be worth considering a presumption in favour of a temporary use while awaiting delivery or implementation of the local authority's intended use, subject to this not affecting the potential of the authority enacting the intended use in the future.

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

It is considered that the need for publicity would not be detrimental to the County Council provided the required reporting of enquiries / claims is not too onerous. DCC has a well-established 'Non-Operational Property' assessment process involving consultation by the Corporate Landlord/Property Division with relevant departments, to establish why property was acquired, what future uses may be either planned or considered acceptable and whether or not any constraints on use may exist. While not published, the assessments are retained. The same system is used to assess requests to purchase land or property received from the public/businesses. Publishing a pre-emptive list, setting out why all council land has been acquired could be an onerous task and of little tangible benefit. If at all, this list should be published and reviewed annually to identify when land has been disposed of, or if the status of any land has changed and is now available or unavailable.

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

A right of first refusal may reduce the local authority's ability to benefit from disposals in a time when disposals are potentially a valuable and needed source of income for Councils.

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

Any conditions imposed on sales must be to ensure that the land does actually come into use and does not remain under-used for future speculative development, possibly benefiting the new owner rather than the public estate. There should be a legally binding agreement in place for the development of the land before it is disposed of. Local communities should have a clear understanding of why public owned land is being disposed of and the public benefit of any disposal.

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

Yes. It is important to recognise that not all publicly owned land is capable of being developed. Derbyshire County Council owns a lot of land within rural locations that is not always capable of being redeveloped due to restrictive planning policies in district and borough Local Plans. Any proposed use for a site should be in keeping with good planning principles and be appropriate to location and context.