

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

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Overview of our response

The New Economics Foundation welcomes the opportunity to respond to the proposals put forward in the government's "Right to Regenerate: reform of the Right to Contest" consultation. We share the government's commitment to better uses of public-sector land and assets, particularly given mounting evidence of poor outcomes from recent public land disposals.¹ We also share the government's concern, as set out in the consultation document, that longstanding vacant, derelict or underutilised land can have a significant impact on the attractiveness of a local area. Worryingly, research also indicates that the presence of such land in a community is associated with poor health outcomes,² and extensive research into the impacts of vacant and derelict land in Scotland has uncovered a range of harms across health, environmental, economic and community indicators, including increased levels of anxiety, poorer life expectancy and increased incidence of crime and anti-social behaviours.³

However, we would emphasise that these harmful effects exist whether vacant, derelict or underutilised land is owned by a public sector body specified in Schedule 16 of the Local Government, Planning and Land Act 1980, another kind of public sector body, the private sector or the third-sector. Indeed, fragmented patterns of land ownership in England mean a derelict site and the land around it will often be split between different owners of different sectors.⁴ Redeveloping the part of a site that happens to be in a particular form of ownership in isolation carries a high risk of missing out on potential "marriage value" from a strategic development across the entire site, which in many cases would also offer the opportunity for high-quality mixed use development. Tackling the problems caused by vacant, derelict and underutilised land and

¹ See, for example, Housing of Commons Committee of Public Accounts, "[Sale of public land: One Hundred and Tenth Report of Session 2017–19](#)", 2019

² Bambra, C. and Robertson, S. and Kasim, A. and Smith, J. and Cairns-Nagi, J.M. and Copeland, A. and Finlay, N. and Johnson, K., "[Healthy land? An examination of the area-level association between brownfield land and morbidity and mortality in England](#)", 2014, Environment and planning A., Vol. 46, pp. 433-454.

³ Peter Brett Associates & SLC, "[Vacant and Derelict Land in Scotland: Assessing the Impact of Vacant and Derelict Land on Communities](#)", 2019, Scottish Land Commission, pp. v-vi

⁴ See, for example, the case of Hull's notorious Lord Line building

delivering its best use therefore necessitates a joined-up approach for improving land use across different ownership arrangements, underpinned by a definition of vacant, derelict and underutilised land which can be applied across different forms of ownership – not a piecemeal approach dealing solely with land owned by Schedule 16 public bodies.

Understanding vacant, derelict and underutilised land

A significant amount of data relating to land is collected by central government, local authorities, combined authorities and non-departmental public bodies. However, this data is generally held disparately by the bodies which ‘own’ it – and although the information is collected, it is not necessarily available or accessible to the general public. While England does not therefore currently store reliable data on vacant, derelict or underutilised land and its ownership in one place, it is extremely likely that a far greater quantity of such land exists in private ownership, across a greater range of neighbourhoods. This is because of the much larger amount of land held in private ownership overall and in every community across the country,⁵ but it is also the result of divergence in the policy approach to vacant, derelict or underutilised land depending on whether it is owned by public or private interests.

Decades of government policy with respect to public land has seen an estimated 2 million hectares move from public ownership since the end of the 1970s, primarily into private ownership. This represents around 48% of all the land across Britain that was held in public ownership by the end of the 1970s, or 10% of Britain’s total land mass.⁶ Policies incentivising or forcing disposals of public land identified as surplus have also driven more efficient uses of land which has remained in public ownership – in part as a strategy by which public bodies can avoid disposing of their land and other assets, by developing new and better uses which ensure sites will not be considered surplus. For example, research from the Royal Town Planning Institute in 2019 found that 95% of local authorities directly delivering housing were building on their own land.⁷

In contrast to the policy framework for public land, England has a notable lack of policy mechanisms for disincentivising private owners from keeping land in a vacant, derelict or underutilised state. This is one reason why numerous policy changes in recent years aimed at driving up the supply of land permissioned for market sale-led residential schemes have not produced commensurate increases in either housing supply or affordability. Under the current planning system, local authorities can grant planning permissions to land in private ownership, but they have limited tools to incentivise or force the owners of that land to implement those planning permissions. Research from Shelter shows that between 2011/12 and 2017/18, the number

⁵ HM Land Registry, “[Open data revolution: harnessing the power of land ownership insights](#)”, 2018

⁶ Brett, C., *The New Enclosure: The Appropriation of Public Land in Neoliberal Britain*, 2018, p.249

⁷ Morphet, J. and Clifford, B., [Local Authority Direct Delivery of Housing: Continuation Research](#), RTPI, 2019

of planning permissions for new homes granted annually more than doubled, reaching 382,997 – more than enough to meet the government’s aim of 300,000 annual net additions in theory. In practice, however, housebuilders in England have responded to increased residential permissions by exercising more discretion over where to build, leaving many sites vacant, derelict and underutilised. Across the same time period, annual new build completions increased by only half as much as planning permissions, to 195,295 in 2017/18.⁸ Prior to the outbreak of the pandemic, the gap between permissions granted and homes built was growing larger every year.

Similarly, Shelter’s analysis of the government’s Public Land for Housing Programme demonstrates that only 11% of the homes permitted on land sold through this programme – overwhelmingly into private ownership - have been built.⁹ This strongly suggests that disposing of public land to private interests intending to build market sale-led schemes is an ineffective and slow strategy for maximising outcomes from that land, whether for addressing the housing crisis or any other objective. Instead, public land disposals in recent years have served to increase the stock of derelict, vacant and underutilised land in private ownership. Indeed, increases in the numbers of unbuilt out housing planning permissions between 2011-12 and 2014-15 appear to closely track increases in the housing capacity on public land sold across the same period.¹⁰

By restricting consideration of action to tackle vacant, derelict or underutilised land to only certain kinds of public-sector owners (those specified in Schedule 16 of the Local Government, Planning and Land Act 1980), the government risks missing out on important opportunities to address inefficient and harmful misuses of land owned by other types of bodies and individuals – and even risks increasing that harm. Furthermore, this approach would create new incentives to redevelop land which happens to be owned by a Schedule 16 public body, even where land in alternative ownership is more appropriate for redevelopment, and, crucially, even where land in alternative ownership is causing far greater harm to the community living and working around it through blight.

The situation which would be created by the Right to Regenerate powers as currently proposed could leave a community group unable to even establish the interests registered for the second piece of land, if it is in private ownership, but would give a clear and facilitated path to developing the first piece of land, owned by a Schedule 16 public body. This carries a serious risk of disincentivising redevelopment of many of the country’s more harmful and most seriously misused landholdings and buildings, diverting investment and effort to those assets which happen to be held by a Schedule 16 public body.

- 1. We recommend that the government develops a strategic approach to tackling vacant, derelict and underutilised land and buildings across different ownership arrangements. As a first step, we recommend that the government collects and makes publicly available**

⁸ Shelter, [Planning permissions and completions, August 2019](#), pp. 3-4

⁹ Shelter blog, [“Losing the plot: part 1”](#), 2020

¹⁰ Brett, C., [The New Enclosure: The Appropriation of Public Land in Neoliberal Britain](#), 2018, pp.285-286

data on vacant, derelict and underused sites and their ownership, using clear definitions to distinguish between land and other assets which are vacant, derelict and / or underused.

The Scottish Vacant Derelict Land Survey has collected and mapped such information for most sites in Scotland since 1988, and has developed workable definitions of “vacant” and “derelict” to guide this exercise.¹¹ This has provided the evidence base for Scotland’s Vacant and Derelict Land Taskforce to produce recommendations and community toolkits tailored for different site types and ownership arrangements, and has also underpinned moves to empower communities and individuals to play an increased role in finding and delivering new uses for underutilised land by removing cost and other barriers to accessing information about that land.¹²

- 2. We recommend that the government takes action to replicate the coverage, quality and accessibility of data from the Scottish Vacant Derelict Land Survey for sites across England. For example, this could be done by building on brownfield land registers, expanding them to include a greater range of sites (not only those suitable for residential), and incorporating complete information on ownership from HM Land Registry.**
- 3. We further recommend that the government follows through on its intention, as expressed through its earlier consultation, “Transparency and competition: a call for evidence on data on land control”, to increase the transparency of contractual arrangements used to exercise control over the buying or selling of land. Government should improve the quality and coverage of data held by HM Land Registry on rights of pre-emption, options and estate contracts, and include this information in a new register of vacant, derelict and underutilised sites to ensure access to the information needed to bring sites into better use.**

The unique opportunity which public land and assets present

Land and assets owned by public sector bodies in England provide a valuable opportunity to tackle unmet need for social rent and other types of affordable housing in communities across the country, as well as to provide for a range of other needs for land which cannot be met effectively through the private land market – at least not without incurring significant cost to the taxpayer to meet inflated land costs. For example, a 2016 National Audit Office investigation found that the biggest risk to meeting the Department for Education’s ambition to open 500 free schools by September 2020 was “the availability of suitable sites”. The report further noted: “a lack of land means that the Department sometimes enters into complex commercial agreements and pays large

¹¹ National Statistics, [Scottish Vacant and Derelict Land Survey 2020: Guidance Notes](#), 2020

¹² See, for example, Scottish Land Commission, [Transforming Scotland's Approach to Vacant and Derelict Land: Recommendations from the Vacant and Derelict Land Taskforce](#), 2020

sums to secure sites in the right places. For example, while the average cost of the 175 sites that the Department has bought is £4.9 million, 24 sites have cost more than £10 million each.”¹³

Many neglected land uses have the potential to deliver significant economic, social, environmental and public health value over the long-term, and to drive forward a host of policy objectives at all levels of government in the short-term. These uses include, for example: driving up the supply of urgently-needed social homes; access to development land for Community Land Trusts, self-builders, custom builders and others building homes in non-standard ways; delivering County Farms to support new entrants to farming and sequester carbon;¹⁴ reforestation, flood protection and other environmental enhancement and restoration projects; improved public access to open spaces and parks; provision of workspace at sub-market rents to small businesses and charities, in turn creating jobs and social value; land for new schools, healthcare services and other public and social infrastructure in need of expansion and renewal.

The Coronavirus crisis has brought the importance of good-quality, genuinely affordable housing with adequate space and access to green spaces, nature and local services into sharp relief. Decent housing supported by high-quality infrastructure must now be seen as part of the country’s civic immune system, essential for building the resilience of individual households, local communities and the country as a whole to the impact we now know a pandemic can have on our economic and social lives. Furthermore, it is essential that the government provides for a pipeline of land to support environmental and climate resilience and biodiversity restoration objectives. Without this, it is difficult to see how the United Kingdom can meet its target to reach net-zero carbon emissions by 2050, or protect communities from the growing impacts of climate change and biodiversity loss.

It is within this context of Covid-19, the climate emergency and the need to build communities’ resilience that the public asset of farmland and smallholdings need to be considered. NEF are particularly concerned about the potential impact of the new Right to Regenerate powers, as proposed in the consultation document, on the availability of land for County Farms, and attendant risks to the potential of publicly-owned farmland to continue playing its historically important role: supporting the economic viability of local farming, providing an entry point for new farmers, developing and promoting innovative farming methods and delivering environmentally sustainable farming for the public good.

Farming in England suffers from both an ageing farmer population (the average age of farm holders in the UK is 59 years)¹⁵ and low recruitment into the industry (as a result of high start-up costs and low returns). Retirement rates are also low, exacerbating the shortage of land suitable for – and priced suitably for – new entrants into agriculture in many communities across England.

¹³ National Audit Office, [Capital funding for schools](#), 2017, p.11

¹⁴ CPRE, [Reviving County Farms](#), 2019

¹⁵ Laughton, R., *A Matter of Scale: A study of the productivity, financial viability and multifunctional benefits of small farms (20 ha and less)*. Landworkers’ Alliance and Centre for Agroecology, 2017, Coventry University.

Concentration of agricultural land ownership over many years means there are now fewer, larger farms overall.¹⁶

Publicly owned farmland, including County Farms, plays a key role in lowering barriers to entry in farming, and also supports the delivery of a number of essential public functions and Government policy priorities. These include food security, climate change mitigation and adaptation, flood mitigation and agricultural transition to agroecology, as well as access for recreation and enjoying nature for local people and communities. These social benefits are increasingly under threat as a result of sales of publicly-owned farmland.¹⁷

Local authorities own around 1.3 million acres of land in England, representing around 4% of the 32 million acre total.¹⁸ The amount of land used to provide ‘County Farms’ has halved over the last 40 years, spurred on by a scarcity of sites to develop housing in some regions.¹⁹ The size of England’s County Farms estate has dropped by over 15,000 acres between 2010 and 2018, with the majority of land sold between 2016 and 2018.²⁰

County Farms and public farmland should not be considered “underutilised” sites. Thinking in the long-term and considering the needs of current and future generations of farmers and local communities alike requires a different approach to assessing the value of land, to avoid forcing myopic decisions which result in a short-term financial return, but produce larger long-term costs.

From “market value” to “social value”

The government’s current policy approach to utilising land owned by local authorities (and other public bodies specified in Schedule 16 of the Local Government, Planning and Land Act 1980), fails to take advantage of the significant opportunity this land offers to meet needs for land poor served by the market. This is because both the existing Right to Contest and the new Right to Regenerate, as currently proposed in the consultation document, provide for public land to be sold at “market value”: the price that could be obtained by selling land on the open market. Furthermore, the consultation document describes the aim of the new Right to Regenerate as to bring public sector land into “better economic use”, a phrase which is open to interpretation and could be used to justify the destruction of social value. What is to stop a speculative proposal to purchase public open land, or a public park, to extend a private garden or a private residence, on the grounds that

¹⁶ Ingram, Julie and Kirwan, James, “[Matching new entrants and retiring farmers through farm Joint Ventures: insights from the Fresh Start Initiative in Cornwall, UK](#)”, Land Use Policy, 4 October 2011, pp. 917–927

¹⁷ *Ibid.*

¹⁸ 2015 Land Registry dataset, in Shrubsole, G., “[Who owns England: What land is owned by Councils?](#)”, 2020

¹⁹ Shrubsole, G., “[How the extent of county farms has halved in 40 years](#)”, 2018

²⁰ Graham, K., Shrubsole, G., Wheatley, H., Swade, K., [Reviving county farms: A report for CPRE, the countryside charity, by the New Economics Foundation, Shared Assets and Who Owns England?](#), 2019

this would increase the market value of the piece of land in question and thus constitute a “better economic use” than publicly-accessible green space?

Requiring public land to be sold for “market value” means selling it for a price that assumes it will be used in much the same way that land originating in private ownership is used. With respect to land suitable for housing, as the recent Independent Review of Build Out rates led by Sir Oliver Letwin found, the assumption that housing supply in a local area will never increase to the point where the current prices of second-hand homes in the local market are forced downwards is baked into the standard methods of valuation for new housing and for development land.²¹ A Community Land Trust, self-builder, custom-builder or other housebuilder which then tried to use such land for a housing scheme including a range of tenures would struggle to make back the money on their initial land investment, faced with lower sales receipts and / or less immediate income from rented housing. Increasing opportunities for land to enter development at lower values is therefore critical to diversifying housing output, which itself is critical to driving up build out rates and so overall housing supply.

Public land holds out a unique opportunity to break out of the dynamic described above, because it is possible for public land to enter development with ambitious policy requirements for social housing and community infrastructure (or for another socially valuable use) at the lower values needed to achieve such policies – or indeed to be held back from developing and reserved for agricultural, environmental or other uses neglected by the market for land. However, current public land policies, and particularly the requirement to seek “market value” in disposals, mean we are missing out on this opportunity. For example, research from the New Economics Foundation in February 2020 found that just 2.6% of the homes planned to be built on former public land through the government’s Public Land for Housing Programme will be for social rent, and just 15% will be any tenure of “affordable housing” – well below the average level of “affordable housing” required by local authorities on private land-led housing schemes.²²

Instead of using public land to target sources of housing demand and housing need neglected by private land-led development, we are effectively releasing public land to do private land’s job - badly. This carries the risk of “crowding out” private land-led development which would have happened anyway, as there is only so much demand for market homes at current prices in each area. If both private and former public land are used in the same way to target this limited demand, the result will be slow build out rates and a sub-optimal contribution to housing supply.

Rather than requiring public land to transact at a “market value” which assumes it will be used for short-term profit maximisation, the government’s objectives for the development of public land should focus on delivering land uses which are valued by communities but not by the land market: what we might think of as “social value”. Where land is suitable for housing development,

²¹ Rt Hon Sir Oliver Letwin, [Independent Review of Build Out Rates – Draft Analysis](#), 2018, p. 13

²² New Economics Foundation, [“Sold-off public land is creating minuscule amounts of affordable housing”](#), 18 February 2020

this means high-quality, genuinely affordable homes that come with the infrastructure and services needed to support them. By using public land to meet needs for land neglected by private housebuilding, government can drive up build out rates on former public land from the current low levels achieved by the Public Land for Housing Programme, avoid crowding out private land-led development which would have happened anyway, and so drive up overall housing supply towards the government's 300,000 annual target.

This approach will also align the Right to Regenerate with the government's 2020 Green Book Review, in which HM Treasury set a clear expectation that changes to the use of public assets should "deliver social value for money":

"The Green Book is the government's guidance on options appraisal and applies to all proposals that concern public spending, taxation, changes to regulations, and changes to the use of existing public assets and resources. It is vital for designing interventions that both achieve government policy objectives and deliver social value for money - i.e. that maximise the delivery of economic, social and environmental returns for UK society for every pound of public funds spent."²³

4. **We strongly recommend that government develops new language to describe the purpose of the Right to Regenerate policy, replacing "better economic use" with "better community use" or "enhanced social or environmental value".**
5. **We recommend the government clarifies that a request to purchase land through the Right to Regenerate for less than "market value" should be accepted where the intended use will deliver enhanced "social or environmental value".**
6. **We recommend that government takes action to establish "social valuation" methods and principles for public land disposals under the new Right to Regenerate, explaining how surveyors should confirm that uses delivering enhanced community and social value achieve the government's "best consideration" test.**
7. **Given the climate emergency and the UK government's commitment to reach net-zero carbon emissions by 2050, it is critical that decisions about new uses for and disposals of public land prioritise land uses which can contribute to the country's climate transition. We therefore recommend the government clarifies how the environmental value of land uses should be assessed, and how surveyors should confirm that uses delivering high environmental value achieve the government's "best consideration" test. Conversely, proposed land uses delivering limited or negative environmental value should be penalised in this new system.**
8. **We recommend that requests made under the Right to Regenerate purely to expand private property with no public access or other community benefit are automatically refused.**

²³ HM Treasury, Green Book Review 2020: Findings and response, p.2

9. **We recommend that government clarifies current national planning rules and guidance to specify more ambitious policies for affordable housing and other social and environmental benefits on land in public ownership and land acquired from public bodies. We recommend the government considers how to reproduce the principle that development of public land should deliver enhanced community benefits compared to private land in its new policy approach to planning as outlined in 2020's Planning for the Future White Paper. For example, local planning authorities could specify a more ambitious on-site affordable housing requirement for residential sites originating in public ownership through their Local Plans. These policies should then become the minimum threshold for requests under the Right to Regenerate to meet in order for the first right of refusal to apply.**
10. **Given the government's intention to increase the evidence bar for public bodies to demonstrate that land and assets they hold are not surplus, in instances where this evidence bar is met we recommend the government introduces a moratorium on further requests for disposal of that land under the Right to Regenerate for a defined period of time, perhaps 15 years.**

Responses to consultation questions

Q1. Do you consider the Right to Contest useful?

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

We do not consider the current Right to Contest, or the new Right to Regenerate (as currently proposed in the consultation document), fit for purpose for driving better uses of the public land to which they apply. As written, these policies fail to take advantage of the significant opportunity this land offers to meet needs for land poor served by the market. This is because both the existing Right to Contest and the new Right to Regenerate as proposed provide for public land to be sold at "market value": the price that could be obtained by selling land on the open market.

Requiring public land to be sold for "market value" means selling it for a price that assumes it will be used in much the same way that land originating in private ownership is used. With respect to land suitable for housing, as the recent Independent Review of Build Out rates led by Sir Oliver Letwin found, the assumption that housing supply in a local area will never increase to the point where the current prices of second-hand homes in the local market are forced downwards is baked into the standard methods of valuation for new housing and for development land.²⁴ A Community Land Trust, self-builder, custom-builder or other housebuilder which then tried to use such land for a housing scheme including a range of tenures would struggle to make back the

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money on their initial land investment, faced with lower sales receipts and / or less immediate income from rented housing. Increasing opportunities for land to enter development at lower values is therefore critical to diversifying housing output, which itself is critical to driving up build out rates and so overall housing supply.

Public land holds out a unique opportunity to break out of the dynamic described above, because it is possible for public land to enter development with ambitious policy requirements for social housing and community infrastructure (or for another socially valuable use) at the lower values needed to achieve such policies – or indeed to be held back from developing and reserved for agricultural, environmental or other uses neglected by the market for land. However, current public land policies, and particularly the requirement to seek “market value” in disposals, mean we are missing out on this opportunity. For example, research from the New Economics Foundation in February 2020 found that just 2.6% of the homes planned to be built on former public land through the government’s Public Land for Housing Programme will be for social rent, and just 15% will be any tenure of “affordable housing” – well below the average level of “affordable housing” required by local authorities on private land-led housing schemes.²⁵

Instead of using public land to target sources of housing demand and housing need neglected by private land-led development, we are effectively releasing public land to do private land’s job - badly. This carries the risk of “crowding out” private land-led development which would have happened anyway, as there is only so much demand for market homes at current prices in each area. If both private and former public land suitable for housing development are used in the same way to target this limited demand, the result will be slow build out rates and a sub-optimal contribution to housing supply.

Rather than requiring public land to transact at a “market value” which assumes it will be used for short-term profit maximisation, the government’s objectives for the development of public land should focus on delivering land uses which are valued by communities but not by the land market: what we might think of as “social value”. Where land is suitable for housing development, this means high-quality, genuinely affordable homes that come with the infrastructure and services needed to support them. By using public land to meet needs for land neglected by private housebuilding, government can drive up build out rates on former public land from the current low levels achieved by the Public Land for Housing Programme, avoid crowding out private land-led development which would have happened anyway, and so drive up overall housing supply towards the government’s 300,000 annual target.

This approach will also align the Right to Regenerate with the government’s 2020 Green Book Review, in which HM Treasury set a clear expectation that changes to the use of public assets should “deliver social value for money”:

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7. **Given the climate emergency and the UK government’s commitment to reach net-zero carbon emissions by 2050, it is critical that decisions about new uses for and disposals of public land prioritise land uses which can contribute to the country’s climate transition. We therefore recommend the government clarifies how the environmental value of land uses should be assessed, and how surveyors should confirm that uses delivering high environmental value achieve the government’s “best consideration” test. Conversely, proposed land uses delivering limited or negative environmental value should be penalised in this new system.**

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

Yes.

We share the government’s concern, as set out in the consultation document, that longstanding vacant, derelict or underutilised land can have a significant impact on the attractiveness of a local area. Worryingly, research also indicates that the presence of such land in a community is associated with poor health outcomes,²⁷ and extensive research into the impacts of such land in Scotland has uncovered a range of harms across health, environmental, economic and community indicators, including increased levels of anxiety, poorer life expectancy and increased incidence of crime and anti-social behaviours.²⁸

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However, we would emphasise that these harmful effects exist whether vacant, derelict or underutilised land is owned by a public sector body specified in Schedule 16 of the Local Government, Planning and Land Act 1980, another kind of public sector body, the private sector or the third-sector. Indeed, fragmented patterns of landownership in England mean a derelict site and the land around it will often be split between owners of different sectors.²⁹ Redeveloping the part of a site that happens to be in a particular form of ownership in isolation carries a high risk of missing out on potential “marriage value” from a strategic development across the entire site, which in many cases would also offer the opportunity for high-quality mixed use development. Tackling the problems caused by such land and delivering its best use therefore necessitates a joined-up approach for improving land use across different ownership arrangements, underpinned by a definition of vacant, derelict and underutilised land which can be applied across different forms of ownership – not a piecemeal approach dealing solely with land owned by Schedule 16 public bodies.

A significant amount of data relating to land is collected by central government, local authorities, combined authorities and non-departmental public bodies. However, this data is generally held disparately by the bodies which ‘own’ it – and although the information is collected, it is not necessarily available or accessible to the general public. While England does not therefore currently store reliable data on vacant, derelict or underutilised land and its ownership in one place, it is extremely likely that a far greater quantity of such land exists in private ownership, across a greater range of neighbourhoods. This is because of the much larger amount of land held in private ownership overall and in every community across the country,³⁰ but it is also the result of divergence in the policy approach to vacant, derelict or underutilised land depending on whether it is owned by public or private interests.

Decades of government policy with respect to public land has seen an estimated 2 million hectares move from public ownership since the end of the 1970s, primarily into private ownership. This represents around 48% of all the land across Britain that was held in public ownership by the end of the 1970s, or 10% of Britain’s total land mass.³¹ Policies incentivising or forcing disposals of public land identified as surplus have also driven more efficient uses of land which has remained in public ownership – in part as a strategy by which public bodies can avoid disposing of their land and other assets, by developing new and better uses which ensure sites will not be considered surplus. For example, research from the Royal Town Planning Institute in 2019 found that 95% of local authorities directly delivering housing were building on their own land.³²

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In contrast to the policy framework for public land, England has a notable lack of policy mechanisms for disincentivising private owners from keeping land in a vacant, derelict or underutilised state. This is one reason why numerous policy changes in recent years aimed at driving up the supply of land permissioned for market sale-led residential schemes have not produced commensurate increases in either housing supply or affordability. Under the current planning system, local authorities can grant planning permissions to land in private ownership, but they have limited tools to incentivise or force the owners of that land to implement those planning permissions. Research from Shelter shows that between 2011/12 and 2017/18, the number of planning permissions for new homes granted annually more than doubled, reaching 382,997 – more than enough to meet the government’s aim of 300,000 annual net additions in theory. In practice, however, housebuilders in England have responded to increased residential permissions by exercising more discretion over where to build, leaving many sites vacant, derelict and underutilised. Across the same time period, annual new build completions increased by only half as much as planning permissions, to 195,295 in 2017/18.³³ Prior to the outbreak of the pandemic, the gap between permissions granted and homes built was growing larger every year.

Similarly, Shelter’s analysis of the government’s Public Land for Housing Programme demonstrates that only 11% of the homes permitted on land sold through this programme – overwhelmingly into private ownership - have been built.³⁴ This strongly suggests that disposing of public land to private interests intending to build market sale-led schemes is an ineffective and slow strategy for maximising outcomes from that land, whether for addressing the housing crisis or any other objective. Instead, public land disposals in recent years have served to increase the stock of derelict, vacant and underutilised land in private ownership. Indeed, increases in the numbers of unbuilt out housing planning permissions between 2011-12 and 2014-15 appear to closely track increases in the housing capacity on public land sold across the same period.³⁵

By restricting consideration of action to tackle vacant, derelict or underutilised land to only certain kinds of public-sector owners (those specified in Schedule 16 of the Local Government, Planning and Land Act 1980), the government risks missing out on important opportunities to address inefficient and harmful misuses of land owned by other types of bodies and individuals – and even risks increasing that harm. Furthermore, this approach would create new incentives to redevelop land which happens to be owned by a Schedule 16 public body, even where land in alternative ownership is more appropriate for redevelopment, and, crucially, even where land in alternative ownership is causing far greater harm to the community living and working around it through blight.

The situation which would be created by the Right to Regenerate powers as currently proposed could leave a community group unable to even establish the interests registered for the second

³³ Shelter, [Planning permissions and completions](#), August 2019, pp. 3-4

³⁴ Shelter blog, [“Losing the plot: part 1”](#), 2020

³⁵ Brett, C., *The New Enclosure: The Appropriation of Public Land in Neoliberal Britain*, 2018, pp.285-286

piece of land, if it is in private ownership, but would give a clear and facilitated path to developing the first piece of land, owned by a Schedule 16 public body. This carries a serious risk of disincentivising redevelopment of many of the country's more harmful and most seriously misused landholdings and buildings, diverting investment and effort to those assets which happen to be held by a Schedule 16 public body.

- 1. We recommend that the government develops a strategic approach to tackling vacant, derelict and underutilised land and buildings across different ownership arrangements. As a first step, we recommend that the government collects and makes publicly available data on vacant, derelict and underused sites and their ownership, using clear definitions to distinguish between land and other assets which are vacant, derelict and / or underused.**

The Scottish Vacant Derelict Land Survey has collected and mapped such information for most sites in Scotland since 1988, and has developed workable definitions of “vacant” and “derelict” to guide this exercise.³⁶ This survey has provided the evidence base for Scotland's Vacant and Derelict Land Taskforce to produce recommendations tailored for different site types and ownership arrangements, and has also underpinned moves to empower communities and individuals to play an increased role in finding and delivering new uses for underutilised land by removing cost and other barriers to accessing information about that land. We recommend the government takes these definitions as its starting point for definitions of “vacant” and “derelict”.

- 2. We recommend that the government takes action to replicate the coverage, quality and accessibility of data from the Scottish Vacant Derelict Land Survey for sites across England. For example, this could be done by building on brownfield land registers, expanding them to include a greater range of sites (not only those suitable for residential), and incorporating complete information on ownership from HM Land Registry.**
- 3. We further recommend that the government follows through on its intention, as expressed through its earlier consultation, “Transparency and competition: a call for evidence on data on land control”, to increase the transparency of contractual arrangements used to exercise control over the buying or selling of land. Government should improve the quality and coverage of data held by HM Land Registry on rights of pre-emption, options and estate contracts, and include this information in a new register of vacant, derelict and underutilised sites to ensure access to the information needed to bring sites into better use.**

It is less clear how a workable definition of “underutilised” land and assets can be developed, and in particular how such a definition would account for uses of land which do not maximise short-term profit, but which do deliver social, community and long-term economic value, often over

³⁶ National Statistics, [Scottish Vacant and Derelict Land Survey 2020: Guidance Notes](#), 2020

long time horizons, and support the delivery of local, regional and central government policy objectives. Commenting on the Right to Regenerate proposals, Swindon’s cabinet member with responsibility for planning has noted, “We welcome any policies which help bring vacant land back into use, but these new plans would not deliver any meaningful benefits to Swindon in their current form, because most of our land is allocated to either council housing, public open space or leased to tenant farmers and is therefore in use.”³⁷

We therefore strongly urge that the government develops language to describe the purpose of the Right to Regenerate policy, and the kinds of land and assets to which it will apply, which recognises the value of uses like social rent housing, County Farms and public open space. The phrasing used in the consultation document – that the purpose of the Right to Regenerate policy is to bring public sector land into “better economic use” – is open to interpretation. What is to stop a speculative proposal to redevelop a public park as a residential scheme, on the grounds that this would increase the market value of the piece of land in question and thus constitute a “better economic use”? It is highly unlikely that the community living near that park would prefer this outcome, and over the long term such a change would generate significant additional health and social problems, and costs across a whole host of public services.³⁸ It is vital that the government assesses requests under the Right to Regenerate based on their ability to deliver social, economic and community value over the long term, and makes this clear in any definition of unused or underused land.

4. **We strongly recommend that government develops new language to describe the purpose of the Right to Regenerate policy, replacing “better economic use” with “better community use” or “enhanced social or environmental value”.**
5. **We recommend the government clarifies that a request to purchase land through the Right to Regenerate for less than “market value” should be accepted where the intended use will deliver enhanced “social or environmental value”.**

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

No.

It is crucial that consideration is given to the administrative burden new Right to Regenerate rules would create for public bodies, and that steps are taken to ensure public bodies are resourced to meet any new expectations. Given the small overall budgets and capacity of town and parish councils, the Right to Regenerate as proposed is likely to create an unreasonable administrative burden for these organisations. If the government decides to include land owned by town and parish councils in the new Right to Regenerate powers, we strongly recommend allowing the

³⁷ Swindon Advertiser, “Right to regenerate plan ‘would be of no real benefit to Swindon’”, 26th January 2021

³⁸ Fields in Trust, Revaluing Parks and Green Spaces: Measuring their economic and wellbeing value to individuals, 2018, pp.6-8

public bodies to whose land it applies to charge a fee for applications under the Right to Regenerate, set at the level needed to allow public bodies to cover the costs of administering requests.

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

Yes. To support beneficial temporary uses of land which is not suitable for new permanent uses, government should indicate potential suitable temporary uses, and should consider what support public landowners and the communities living near to sites are likely to need to successfully implement those temporary uses in good time.

We note that public bodies with a transport function are more likely than other types of public bodies to hold land and assets for long-term strategic reasons, for example to enable additional or extended platforms at train stations in the future. There is clearly an opportunity to identify temporary uses for such land which can deliver more social, economic and community value than leaving it vacant, and which avoid the blight which vacant sites could otherwise create. Sites owned by transport bodies are often located close to existing transport links and infrastructure, and so offer particular opportunities to find creative meanwhile uses of value to the local community. Careful thought will be needed to identify and deliver such uses without precluding the possibility that such sites are ultimately used to support the expansion of necessary transport infrastructure.

One type of use which might be suitable for such land is as pop-up Temporary Accommodation for local homeless households and other specifically temporary needs. In Lewisham, the local authority has delivered this type of use at PLACE/Ladywell, a temporary housing and community space made up of 24 transportable flats and 16 transportable office spaces, which since 2016 has occupied part of the site formerly occupied by Ladywell Leisure Centre. It was delivered and assembled using Modern Methods of Construction over a period of just six months.

PLACE/Ladywell has delivered considerable value for the community. The scheme has provided Temporary Accommodation to at least 49 separate families, of a higher-standard than occupants would otherwise have been likely to access through Nightly Paid accommodation, and at a lower cost to the local authority compared to housing families in Nightly Paid accommodation. The scheme has also supported the local economy through affordable office and meeting space for local small businesses and community groups, and provided a base from which to deliver welfare during the COVID-19 pandemic.³⁹

LB Lewisham always intended to relocate these structures over time as it established permanent uses for the Ladywell site and as new sites in its ownership suitable for meanwhile uses became

³⁹ London Borough of Lewisham, [The Future of PLACE/Ladywell](#), January 2021

available. In March 2019, the council approved a planning application to build 232 permanent homes on the site, and they are currently identifying a new site for PLACE.

This provides one example of how temporary uses can be found for land in public ownership which meet communities' priorities and deliver enhanced social and community value without compromising the availability of the land for meeting long-term strategic needs.

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

Yes. Particularly where vacant, derelict or underutilised land is owned by the local authority that has planning powers in relation to that land, it is important that a cooperative approach is taken to facilitate delivery of new and better uses. This will help to ensure that proposals for new uses which are themselves unusual, or which use a delivery method that is unusual or marginal in the place in question (such as delivering social rent and other affordable homes through a Community Land Trust), can be developed and delivered swiftly and effectively. Guidance supporting the new Right to Regenerate should also encourage both the applicant and the local authority to use this stage in the process to engage the local community in a discussion about the future use of the land and assets in question.

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. Disposal of land or assets under the Right to Regenerate should only take place where:

- the site in question has been identified as vacant, surplus or underutilised in line with new definitions;
- the request delivers enhanced community benefits, and is *not* being used purely to expand private property with no public access or other community benefit;
- proposals comply with more ambitious policies for developing former public land (see our answers to Q9 and Q10 below);
- the new owner proposes a deliverable use and agrees to deliver that use within a reasonable timeframe (see our answer to Q11 below).

It is crucial that we ensure that public bodies which do have a genuine intention to develop new and better uses for their land and assets have a way of evidencing this robustly, for three reasons.

Firstly, because communities deserve clear explanations of how local land and assets will be developed and an indication of the likely timescales involved in realising new uses, and of how the developer will be held accountable for delivering the scheme proposed in good time.

Secondly, because government must avoid creating unnecessary and costly administrative hurdles for public asset-holders, and must ensure that public bodies across the country and at all scales can implement the Right to Regenerate as intended – i.e., for progressing and speeding up disposals where land and assets are genuinely surplus, and confidently justifying refusals to dispose of land

and assets where they are not. Particularly given the government’s proposal that the Right to Regenerate could apply to land and assets held by public bodies with relatively small budgets and limited overall resources – Town and Parish Councils – it is crucial that consideration is given to the administrative burden new Right to Regenerate rules would create for public bodies, and that steps are taken to ensure public bodies are resourced to meet any new expectations.

Thirdly, because government must design the Right to Regenerate to provide the certainty needed to underpin new and better uses of land and assets – whether those new and better uses are driven by the original public owner, an organisation or member of the public using the Right to Regenerate, or another actor. Given the often significant challenges involved in securing development finance, procuring skills and materials and getting other inputs in place, it is vital that development plans for land to which the Right to Regenerate applies are not disrupted by unnecessary uncertainty and delays. For example, a public body intending to redevelop space currently occupied by garages into housing could struggle to secure interest from private investors, or to secure finance at an affordable rate, if potential investors know there is a risk the public body could be forced to sell that land and lack ways to manage and control that risk.

If the government does decide to proceed with a presumption in favour of disposal, an exception should be made where a request is made under the Right to Regenerate purely to expand private property with no public access or other community benefit - for example, where the applicant wishes to purchase public open land to extend a private garden. In this case, the request should be refused, with a clear explanation provided to the applicant. Disposal should not proceed unless and until an alternative use for the land that delivers enhanced long-term social, economic and community value has been proposed.

- 1. Given the government’s intention to increase the evidence bar for public bodies to demonstrate that land and assets they hold are not surplus, in instances where this evidence bar is met we recommend the government introduces a moratorium on further requests for disposal of that land under the Right to Regenerate for a defined period of time, perhaps 15 years.**

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

Yes. We welcome the government’s intention to improve transparency around requests made under the current Right to Contest and the new Right to Regenerate powers proposed in this consultation, and around the outcomes of such requests. This will support more informed uses of these powers in future, with better outcomes for applicants and less administrative burden for the public bodies affected by these powers. This information should ultimately be incorporated into publicly available data on vacant, derelict and underused sites across all forms of ownership.

Q9. Should government offer a ‘right of first refusal’ to the applicant as a condition of disposal?

Yes, where proposals comply with more ambitious policies for developing former public land (see our answer to Q10 below).

Where there are competing policy-compliant requests to develop the same piece of land and the “right of first refusal” does not apply (for example because the original applicant withdraws interest), land should be sold to the group or individual with the greatest potential to deliver enhanced community, environmental or social value, at a price set by the winning bid’s estimated Gross Development Value and delivery costs.

For very small sites in public ownership, with space for 5 or fewer homes, affordable housing would not normally be required as part of development. In such cases, provided the individual or group exercising the Right to Regenerate is prepared to comply with any and all policies which do apply to the site, the right of first refusal should stand. It is notable that many requests under the current Right to Contest have related to small plots of land, and there is a particular opportunity to facilitate a pipeline of such sites for Community Land Trusts, self- and custom builders.

An exception should be made where the Right to Regenerate is used purely to expand private property with no public access or community benefit, for example where the applicant wishes to purchase public open land to extend a private garden. In this case, the request should be refused, with a clear explanation provided to the applicant.

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

Yes.

Land and assets owned by public sector bodies in England provide a valuable opportunity to tackle unmet need for social rent and other types of affordable housing in communities across the country, as well as to provide for a range of other needs for land. This is because it is possible for public land to enter development with ambitious policy requirements for social housing and community infrastructure (or for another socially valuable use) at the lower values needed to achieve such policies.

Some places have started to implement policies to reflect the greater potential for land originating in public ownership to deliver enhanced community benefits, particularly when developed for housing. The most notable example is London’s Threshold Approach to Affordable Housing on Public Land, which targets 50% affordable housing, compared to a policy of 35% affordable housing for land originating in private ownership.⁴⁰ Government should consider ways to enable and incentivise other local planning authorities to distinguish between public and private land in their planning policies, to maximise social, community and long-term economic value from land in public ownership and to avoid displacing activity which would otherwise have taken place on

⁴⁰ Greater London Authority, [Threshold Approach to Affordable Housing on Public Land](#), 2018

private land. These policies should apply both to land remaining in public ownership, and to public land disposed to a private or third-sector interest.

One way of facilitating this would be for MHCLG to clarify its guidance for assessing scheme viability on public and formerly-public land to achieve more ambitious affordable housing policies compared to private land. Under current viability rules, benchmark land values include a premium for the landowner which should “reflect the minimum return at which it is considered a reasonable landowner would be willing to sell their land”.⁴¹ Given the different incentives public and private landowners have for selling, this could be applied differently on public and formerly-public land. Where a lower benchmark land value reflects the ability to deliver greater long-term value (for example by meeting long-term needs for social housing and a short-term boost to local housing supply), a “reasonable” public landowner should prefer it to a scheme which risks displacing housing demand by delivering market sale homes which would otherwise be delivered on private land. This principle should be carried over into the new policy approach to planning outlined in 2020’s Planning for the Future White Paper, with more ambitious community benefits for land originating in public ownership specified in Local Plans.

- 9. We recommend that government clarifies current national planning rules and guidance to specify more ambitious policies for affordable housing and other social and environmental benefits on land in public ownership and land acquired from public bodies. We recommend the government considers how to reproduce the principle that development of public land should deliver enhanced community benefits compared to private land in its new policy approach to planning as outlined in 2020’s Planning for the Future White Paper. For example, local planning authorities could specify a more ambitious on-site affordable housing requirement for residential sites originating in public ownership through their Local Plans. These policies should then become the minimum threshold for requests under the Right to Regenerate to meet in order for the first right of refusal to apply.**

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

Careful thought should be given to what should happen in the event that a site is disposed under the Right to Regenerate, but a new use is not delivered on that site in good time. It would be appropriate to specify time limits for a new owner to a) start and b) complete delivery of a new use together with promised community benefits. If these time limits are exceeded, the site’s original owner could be given a right of first refusal to purchase the land for the same value it was sold for, or for a value set by a new use delivering enhanced social, community or long-term economic value.

⁴¹ MHCLG, [Viability guidance](#), 2019, para. 13

To discuss any aspect of this consultation or the New Economics Foundation’s response, please contact Rose Grayston, Senior Programme Manager for Housing, at rose.grayston@neweconomics.org.

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