

capturing value — the return of the land question in planning

The recent protests against the High Court decision on rights to wild-camp in Dartmoor National Park have spurred renewed interest in land justice issues—and this connects not just with access but also with wider questions of ownership and development land values, says **Edward Shepherd**

The political spotlight is once again on the land question in England. This was recently demonstrated by the January 2023 protest that brought over 3,000 people to Dartmoor. They came to express their displeasure at the High Court case brought by Alexander Darwall, hedge-fund manager and owner of part of the moor, that resulted in the end of the right to wild-camp across the whole of the National Park. That this was one of the largest land actions in British history¹ brings home the strength of feeling that was provoked by the injustice of one millionaire using his resources to extinguish the right for us all to spend a night under the stars in a National Park,² albeit one which is extensively privately owned.³

There followed a permissive agreement with some Dartmoor landowners that now enables people to camp on parts of their land, but in return for a fee paid from public funds by the Dartmoor National Park Authority.⁴ So, wild-camping on Dartmoor is no longer possible with the sense of freedom that comes with not having to ask permission or engage in the kind of transactional relationship that characterises so much of life away from wild places. The severance is a deeply symbolic and keenly felt loss for many people.

The land question in early planning

The National Parks were, of course, established in 1949 in the crucible that birthed the modern town and country planning system. Indeed, the land question is at the heart of planning. As readers will know, there is a long pre-history to the '1947 system' of planning in England. This is a story of the entanglement of different campaigns and agendas

(housing, health, rural, design, conservation, land) that converged via a common concern with the social, environmental and economic impacts of the combination of private landownership, limits on land access, and uncontrolled development.

In the late 19th and early 20th centuries, landowners, particularly speculative ones, were often cast as parasites who benefited unjustly from their monopoly power as rentier owners of a limited resource. Classical economist David Ricardo famously claimed that 'the interest of the landlord is always opposed to the interest of every other class in the community', a view that guided the land campaigns of liberals and Fabians alike. However, while there was pressure from some quarters for a fundamental transformation of landownership via land nationalisation, there was ultimately more mainstream political support for a more moderate approach that targeted the rents of landowners via taxation, rather than their fundamental ownership of land.

Of course, these debates crystallised in the planning system via what we now refer to as 'land value capture'. Although there had been limited provisions in earlier planning legislation, the 1947 planning system addressed the land value issue comprehensively. It included a development charge, equating to 100% of development value,⁵ that would be payable to the State by the developer following the granting of planning permission. Further, compulsory purchase would be at existing-use value (EUV), rather than at a price that included development value.

Together, these measures would mean that the State (acting on behalf of the community) would



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collect all of the land value created by new development, which was, in the terminology of classical economics, a form of rent. These measures were accompanied by a 'once and for all' £300 million fund to compensate landowners in cases of hardship caused by the transition to the new system. Therefore, the 1947 system as originally enacted nationalised both development rights and development land values, while leaving the underlying system of landownership otherwise largely undisturbed (compulsory purchase aside).

The combination of a development charge at 100% of development value and a compulsory purchase system based on EUV was of fundamental importance, because it meant that, in theory, a landowner would be no worse or better off if their land was acquired via a private transaction or via compulsory purchase. In effect, the financial provisions of the 1947 system were intended to abolish the market in development values by seeking to ensure that all land would be transacted at EUV. This, it was hoped, would bring private and public interests into closer alignment with regard to land development, because (in theory) landowners would no longer chase the gains of development value but would instead make their land available for the most socially beneficial use (as determined by the planning system) rather than the most profitable.

Monopoly power of landowners

The problem was that with the right to develop and to development value thus alienated from other rights of landownership, and a private market in

land maintained, landowners retained much of their power over land supply and their power to demand rents in return for making their land available for development. Many continued to demand prices that included some development value, and many opted to withhold land from development until such time as the development charge would be repealed and they would, once again, be able to command full development value. Therefore, despite the attempt to abolish the market in development values, they continued to be traded and priced in the land market. The contradiction between State control of development and private ownership of development land that had been introduced by the planning system was not overcome.

Indeed, the development charge was abolished by the incoming Conservative government in 1953. However, because the basis for compulsory purchase remained at below market value, this introduced a dual-price system for development land, widely perceived as unfair because a landowner would be worse off if their land was compulsorily acquired by the State rather than by private transaction. Market value was later introduced as the basis for compulsory compensation by a Conservative government via the Town and Country Planning Act 1959.

Struggles over the distribution of land rent

The subsequent history of development taxation/land value capture is the story of a restless search for an approach that would enable the State to collect some development value while also providing a sufficient supply of development land to meet

government objectives.⁶ At risk of over-simplification, the post-war history of this policy area until the 1980s broadly constituted attempts by Labour governments to bring more development land into public ownership along with a proportion of development value, and attempts by Conservative governments to leave private ownership of development land largely undisturbed but to tax development gains and increase the supply of development land via the planning system.

There was therefore general consensus regarding the need for the State to collect (or retain)⁷ a proportion of development value. There was less agreement regarding the proper method and how much development land and its value should be owned by private landowners.

A consistent feature in how these debates were framed was the figure of the speculative landowner. As with 19th century debates, the rent-capturing behaviour and monopoly power of speculative landowners was considered an appropriate and politically acceptable target for the taxation of development gains. This was particularly acute in inflationary periods that were characterised by rapidly increasing land and property prices, such as those that pertained in the early 1960s and 1970s and which prompted Conservative governments to introduce a limited and largely symbolic speculative gains tax in 1962 and to propose a development gains tax that was ultimately introduced via the Finance Act 1974.

The technical containment of land rent debates

The English land value capture regime since the 1980s has been based on a system of locally negotiated planning obligations which have been combined, since 2010, with the Community Infrastructure Levy (CIL) in local authorities that have chosen to adopt it. These instruments have been relatively successful in displacing and containing fundamental political questions about the pattern of private landownership and concentrations in ownership of land value. This is because they are predicated on an ideological acceptance of the commodification of land and, specifically, land rent as development value which is now haggled over between public and private interests. Rather than the kind of high-profile national measures and debates targeting development gains and private ownership of development land that characterised the decades following 1947, such questions started to be worked out by professional experts in local plan-making and on a site-by-site basis via the planning application viability process.

The politics of rent at the heart of the land question came to be contained in the technical calculations of development viability consultants and reduced to transactional negotiations between local authorities and developers and landowners to

agree how development value should be apportioned. Political pressure regarding the land question was also arguably reduced as a result of the expansion of home-ownership, which produced a coalition of small landowners who had an interest in increasing house prices.⁸ However, by entangling land value capture policy so closely with housing supply via what we now call Section 106 agreements, the seeds were sown for a new political rupture around the land question.

The re-politicisation of land rent

Once again it has been inflationary conditions that have brought the land question back out into the open in English planning. First, it was the housing affordability crisis in London and the South East of England that prompted action. In the years following the rediscovery of housing supply as a policy problem in the early 2000s,⁹ there came to be overwhelming evidence that some landowners were retaining a larger and larger proportion of development value at the expense of affordable housing. This was due to the market norms that were reinforced by how professionals were using the residual method of valuation in their viability assessments, which are subject to significant uncertainties due to their being based on contestable predictions of future costs and values.¹⁰

This created political pressure to make the viability process more transparent to the public and to standardise the approach to development viability in planning to more closely control assumptions regarding developer profit and returns to landowners, which led to the 2018 adjustments to the national planning viability guidance in England.¹¹ These sought to ensure that developers would properly factor in the anticipated cost of policy-compliant developer contributions in the price paid for land, thereby in theory reducing inflationary pressure on land prices and redistributing a higher proportion of development land value for public benefit. However, an opportunity was missed to clearly specify what constituted a 'reasonable' return to the landowner in viability terms.¹²

Proliferation of land value capture tools in search of a political fix

Since then, the land value capture debate has rumbled on. The Levelling-up and Regeneration Bill contains provisions for the introduction of a new Infrastructure Levy that is intended to replace CIL and largely replace Section 106, which will be retained for restricted purposes. This is the most high-profile proposed change to the land value capture regime and is intended to reduce delays and increase responsiveness to market movements by basing contributions on achieved, rather than predicted, prices.¹³ However, there are other proposals in the pipeline that in different ways seem to target development value either directly or



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indirectly. These include proposed community land auctions, the Building Safety Levy, biodiversity net gain, and adjustments to the compulsory purchase process which appear to be intended, in part, to more closely control how development value is calculated via Certificates of Appropriate Alternative Development.

The government even consulted in June 2022 on a proposal to ensure that land compulsorily acquired for some public purposes is purchased at an amount less than market value,¹⁴ and a version of this idea has since found its way into a Levelling-up and Regeneration Bill amendment via the House of Lords. This was predictably met with some consternation by professionals concerned about the perceived attack on the 'equivalence principle' that would result in the return of a dual market in land.¹⁵ However, little thought appears to have been given by policy-makers to the interaction of these various measures and how they may work in practice (including any potential 'upside' value impacts, such as may be possible through biodiversity net gain), beyond a vague pledge to ensure that at least as

much affordable housing is secured as under the present regime.

The impression is one of a government casting about for ideas on how to manage the political risk arising from the interaction of England's system of private landownership, severe inequalities of wealth held in land, and the supply of genuinely affordable housing. Pressure has mounted to the extent that the government felt it needed to act, yet the current proposals are unclear, more recent ones (such as community land auctions) seem rushed, and the 2018 planning guidance change fudged the issue of what constitutes a reasonable return to a landowner. There seems to be a lot of political bluster but little in the way of political will for a real transformation of the development land market of the kind that may be required to fix a dysfunctional system that has demonstrably poor distributional effects, particularly concerning access to housing that is affordable.

Fundamentally, policy-makers are constrained by the ongoing system of private landownership, the commodification of development land value, and

the monopoly power of landowners to withhold the supply of development land in market or policy environments that do not favour them, combined with the current requirement to pay market value for land compulsorily acquired.

The return of the rentier archetype

Of course, some parts of the development lobby would argue that it is the planning system that is behind poor distributional outcomes as it limits the supply of development land,¹⁶ thereby limiting the supply of housing and prompting more intense and dense development of sites (which may also be encouraged by some local authorities keen to increase the size of the planning gain pie¹⁷). However, there has been increasing acknowledgement of the role of landowners in the land supply issue.

In particular, the spotlight has shone on larger housebuilders and their development land-banks. Housebuilders argue that they need a large land-bank that includes both strategic and 'oven-ready' sites to mitigate planning uncertainty and the complexity of development.¹⁸ Others argue that housebuilders benefit from the value of their land assets increasing over time, and are incentivised to bring sites forward at a moderate pace so as to maximise profitability (or rent-extraction) over supply.¹⁹

Whatever side you are on, the land-banking question has arguably taken some of the focus away from the planning system as being the main cause of housing supply issues. Indeed, housebuilders are not merely seen by policy-makers and politicians as the suppliers of new homes that need land as an input into the manufacturing process, but also as land businesses or, more accurately, rentier land speculators.²⁰ This recurrent role in the politicisation of the land question is now largely played by the volume housebuilders, whose political fortunes are on the wane following the post-global financial crisis boom years of Help to Buy (although they still wield significant power owing to their dominance of new housing supply). Indeed, the Home Builders Federation has produced a paper that sets out what it sees as the numerous new regulatory requirements that are increasing housebuilders' costs and are, for them, symptomatic of a change in their political circumstances.²¹

The land justice movement

However, until Mr Darwall's recent strategic misstep, because the focus in England has been so strongly on land issues as filtered through the lens of the housing crisis and housebuilding, little mainstream political attention has been paid towards the wider issues and inequalities of landownership and access to land.²² Since the Dartmoor High Court decision, there has been renewed mainstream political interest in broader land justice issues. The Labour Party has now pledged to pass a Right to

Roam Act in England and restore the right to wild-camp on Dartmoor.²³ The Dartmoor National Park Authority has also confirmed that it will seek to appeal the High Court decision. Whatever the ultimate judgement regarding the interpretation of the law, now that permission to appeal has been granted,²⁴ the process of fighting the case will attract further media and political attention and will maintain mainstream political pressure on land justice issues.

We are living through a political moment that is once again being shaped by the convergence of various pressures concerning housing, landownership, the environment, and the distribution of economic rent in land. While many of those who participated in the January 2023 land action on Dartmoor may not have heard of land value capture, these debates cut to very similar sets of concerns. Whereas the Dartmoor protest was about the loss of the right to wild-camp in a National Park, it was also an expression of disgust at the wealth and power inequalities that come with large concentrations of landownership.

Land value capture is about the social redistribution of this wealth. Some may argue that this wealth should be redistributed because it is fundamentally unjust that private landowners should benefit from all of the value uplift created by development that is valuable, in part, because of public effort and investment. Others may accept that some redistribution of this wealth is needed for pragmatic reasons to do with funding public infrastructure on which new development has an impact. Some may take the view that, because current forms of land value capture are based on the ideological naturalisation of land as a commodity and legitimise the idea of development value as a gain to private landowners, they merely facilitate the rent-based financialisation of land²⁵ and compound and reinforce the structural inequalities that are built into our current system of landownership.

Whatever one's view of land value capture, it is clear that the land question, and the version of it contained in land value capture debates, is not going away any time soon.

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Notes

- 1 See S Bradley: 'Dartmoor protests: inside the battle over the right to roam. Reclaim the land'. *Huck*, 26 Jan. 2023. www.huckmag.com/perspectives/dartmoor-protests-inside-the-battle-over-the-right-to-roam/

- 2 Mr Darwall has claimed that he was seeking to clarify the law and that he wanted greater control over camping on his land owing to the environmental impact of irresponsible campers which increased during the Covid-19 period
- 3 See the 'Who owns Dartmoor?' webpage of the Who Owns England? website, at <https://whoownsengland.org/2021/03/22/who-owns-dartmoor/>
- 4 See C Marshall: 'Dartmoor wild camping agreement reached'. *BBC News*, 19 Jan. 2023. www.bbc.co.uk/news/science-environment-64333066
- 5 Development value is here defined as the difference between the value of the land in its existing use and the value of the land with a prospect of more valuable development. Usually, development value will increase as the prospect of development becomes more certain. The language of 'value' here is rooted in the discourse of the valuation profession. In more critical discourse, development value would be understood as a form of rent
- 6 For a brief history see CA Jones, J Morgan and M Stephens: *An Assessment of Historic Attempts to Capture Land Value Uplift in the UK*. Heriot-Watt University, for the Scottish Land Commission, Apr. 2018. <https://researchportal.hw.ac.uk/en/publications/an-assessment-of-historic-attempts-to-capture-land-value-uplift-i>
- 7 The language of 'land value capture' is, of course, problematic because it is based on the ideologically settled assumption that development value, by right, belongs to the private landowner and is 'captured' by the State on behalf of the community. Of course, another way of thinking about this is that development value, by right, belongs to the community and so it is the landowner that is 'capturing' it through their monopoly power
- 8 See Dr Chris Foye's UK Collaborative Centre for Housing Evidence blog post, 'Why land dropped off the political agenda (and why it's coming back again)', for a summary of this argument, at <https://housingevidence.ac.uk/why-land-dropped-off-the-political-agenda-and-why-its-coming-back-again/>
- 9 G Bramley: 'The sudden rediscovery of housing supply as a key policy challenge'. *Housing Studies*, 2007, Vol. 22(2), 221–41
- 10 S Sayce, N Crosby, P Garside, et al.: *Viability and the Planning System: The Relationship between Economic Viability Testing, Land Values and Affordable Housing in London*. Kingston University London/Ramidus Consulting/Royal Agricultural University/University of Reading, for London Borough of Barking and Dagenham, et al., Jan. 2017. <https://research.reading.ac.uk/research-blog/delivery-of-affordable-housing-negatively-impacted-by-planning-policy/>
- 11 See O Salisbury: 'NPPF 2.0 and viability: problem solved?'. *The Planner*, 18 Jan. 2019 (updated 26 Aug. 2022). www.theplanner.co.uk/2019/01/18/nppf-20-and-viability-problem-solved
- 12 A lot of the research regarding the problematic uses of the residual method in viability assessments for planning has been carried out by my former colleagues at the University of Reading, including Professor Neil Crosby, Professor Pat McAllister, and Professor Pete Wyatt. For an insight into some of the issues, listen to Professor Crosby's appearance on the 'Have We Got Planning News for You' podcast (Apr. 2021), at <https://havewegotplanningnewsforyou.com/episode-10-with-professor-neil-crosby-lead-author-of-rics-assessing-viability-in-planning-under-the-nppf-2019/>
- 13 How the Infrastructure Levy will work in practice is still uncertain. However, in March 2023 the government launched a technical consultation on the levy which includes detail regarding how it might operate – see www.gov.uk/government/consultations/technical-consultation-on-the-infrastructure-levy/technical-consultation-on-the-infrastructure-levy
- 14 *Compulsory Purchase: Compensation Reforms. Consultation*. Department for Levelling Up, Housing and Communities, Jun. 2022. www.gov.uk/government/consultations/compulsory-purchase-compensation-reforms-consultation/compulsory-purchase-compensation-reforms-consultation
- 15 See R Gupta: *LURB in the Lords – No Hope*. Town Legal, Mar. 2023. www.townlegal.com/wp-content/uploads/Compulsory-Reading-LURB-in-the-Lords-%E2%80%93-No-Hope.pdf
- 16 See A Breach: *Capital Cities: How the Planning System Creates Housing Shortages and Drives Wealth Inequality*. Centre for Cities, Jun. 2019. www.centreforcities.org/publication/capital-cities/
- 17 J Robinson and K Attuyer: 'Extracting value, London style: Revisiting the role of the state in urban development'. *International Journal of Urban & Regional Research*, 2021, Vol. 45(2), 303–31
- 18 See 'Feeding the pipeline'. Webpage. Lichfields, Nov. 2021. <https://lichfields.uk/content/insights/feeding-the-pipeline>
- 19 Q Bradley: 'Artificial scarcity in housebuilding and the impact on affordability: the return of absolute rent'. *Antipode: A Radical Journal of Geography*, 2023. Available at <https://eprints.leedsbeckett.ac.uk/id/eprint/9213/7/ArtificialScarcityInHousebuildingAndTheImpactOnAffordabilityTheReturnOfAbsoluteRentPV-BRADLEY.pdf>
- 20 E Shepherd: 'Housing development, land and the decentred state: Traditions and dilemmas in House of Commons planning debates'. *Journal of Legislative Studies*, 2023 (forthcoming)
- 21 *Building Homes in a Changing Business Environment: An Assessment of New and Forthcoming Additional Costs of Housing Delivery*. Home Builders Federation, Oct. 2022. www.hbf.co.uk/news/hbf-report-building-homes-changing-business-environment/
- 22 There have, of course, long been grass-roots land justice movements in England despite the recent lack of mainstream political attention. Some organisations are listed on the Land Justice UK website, at www.landjustice.uk/
- 23 See H Horton: 'Labour government would pass right to roam act and reverse Dartmoor ban'. *The Guardian*, 27 Jan. 2023. www.theguardian.com/environment/2023/jan/27/labour-government-would-pass-right-to-roam-act-and-reverse-dartmoor-ban
- 24 See H Horton: 'Dartmoor wild camping hopes rise as park wins right to appeal against ban'. *The Guardian*, 5 Apr. 2023. www.theguardian.com/environment/2023/apr/05/hope-for-wild-camping-on-dartmoor-as-national-park-wins-right-to-appeal-ban
- 25 See T F Purcell and C Ward: 'The political economy of land value capture in the UK: Rent and viability in Salford's new municipalist turn'. *Environment & Planning A: Economy & Space*, 2022, 0(0), 1–18 (published online 19 Oct. 2022). <https://journals.sagepub.com/doi/full/10.1177/0308518X221131322>