

Response to consultation on Right to Regenerate, March 2021

About the National CLT Network

The National CLT Network is the official charity supporting Community Land Trusts (CLTs) in England and Wales. We are a membership body and represent over 340 CLTs, who together have plans to deliver 7,000 homes by 2025.

For further information on this response please contact Tom Chance, Chief Executive of the National CLT Network, on tom@communitylandtrusts.org.uk.

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 think Community Land Trusts find the Right to Contest useful, as currently designed. We are not aware of a single CLT trying to use it, despite recent research finding that 70% of urban CLTs and 30% of rural CLTs obtain their land from local councils¹.

Community Land Trusts would see little value in using the Right to Contest because:

1. It would result in the land being released into the market, and so the CLT would not be guaranteed any benefit for its work in bringing the land forward.

We support and have previously argued for a right of first refusal to address this barrier, and argue in response to questions 7 and 9 that this right and the presumption in favour of disposal should only apply to certain cases including Community Land Trusts.

2. There is no provision for the land to be sold at a value which considers social value (economic, social, environmental) and so the Community Land Trust may be at a disadvantage in bidding for the site if private companies were to bid on the basis of maximising profit over long-term social value.
3. It is not aligned to other policy frameworks including the NPPF (and the proposals in the Planning White Paper), the Green Book and the powers contained in the Localism Act.

We suggest, below, ways in which the right can be integrated into, and couched in terms of, these wider frameworks to ensure it is both effective and of use to communities.

4. In most cases, Community Land Trusts need to develop a positive relationship with their local authority, and so would be more likely to negotiate a disposal directly rather than moving to

¹ Capital Economics (2020), *Housing by the community, for the community: An assessment of the value for money of community led housing in England*, <http://www.communitylandtrusts.org.uk/article/2020/9/15/press-release-major-evidence-boosts-case-for-community-housing-fund>

use the Right to Contest which could sour that relationship. Though there are cases where, having tried this approach, CLTs would welcome the reformed Right to Regenerate, and where the right may incentivise a better early conversation.

We suggest below an alternative way in which the policy could operate to give communities to bring forward proposals that complement and support a local authority's ability to deliver its policy objectives, and that would give communities a resort where local authority's are unwilling to engage.

In addition, the consultation doesn't propose providing equivalent reforms for Strand 1 - central government bodies - and doesn't provide any means for communities to bring unused and underused private land into better use. We address these points below. We would welcome a move from the Government to broaden the scope of this policy to begin to address the significant detriments and opportunities created by underused land and assets in England.

Objectives of the policy

Applications should not be considered only in light of their potential for "better economic use".

In its 2020 Green Book Review, HM Treasury made clear that "all proposals that concern... changes to the use of existing public assets and resources... both achieve government policy objectives and deliver social value -- i.e. that maximise the delivery of economic, social and environmental returns for UK society."

We would suggest that the most relevant policy objectives to couch the policy in are:

- The National Planning Policy Framework's objective of sustainable development, meaning both economic, environmental and social gains. The NPPF makes clear that these "are interdependent and need to be pursued in mutually supportive ways so that opportunities can be taken to secure net gains across each of the different objectives".
- The Local Plan and any other local spatially focused policy objectives, including for example policy objectives relating to affordable housing and net zero.
- The Government's objective of diversifying the housebuilding market. For example the Planning White Paper included a pledge to "explore how disposal of publicly-owned land can support the SME and self-build sectors" including Community Land Trusts.

The lack of alignment with these other policy objectives that has hobbled the Right to Contest and some of the Localism Act powers. This is an opportunity to fix that, and even to review and harmonise those related powers like the Assets of Community Value and the Community Right to Bid.

Valuation of land and other assets to align with policy objectives

There shouldn't be a presumption that land is sold for "market value" as commonly understood. This risks placing a value on the land which would make it unviable for any economic actor to deliver a new use in line with the policy objectives above.

Land should be sold for the best consideration that can be reasonably attained, and what is reasonable should reflect the policy objectives as stated above.

The Royal Institution of Chartered Surveyor's Valuation Professional Standards sets out six bases of value. We would suggest that equitable value is a more appropriate basis for this policy than market value. This "requires the assessment of the price that is fair between two specific, identified parties considering the respective advantages or disadvantages that each will gain from the transaction". Such an approach would enable an applicant, the Secretary of State and the relevant public body to discuss the equitable valuation to deliver a better use which would maximise social value for money.

A positive rather than adversarial policy

By adopting the six stage process proposed by ACRE, and couching both the decision making process on disposals and the subsequent valuation in terms of this wider policy context, the right can also become a policy that promotes positive engagement with public bodies.

For example, Bristol City Council has established policies for social value and for land disposal. The latter grounds decisions in its social value policy as well as its Local Plan, and aligns with the Government's objectives by prioritising disposal to affordable community led and self build schemes.. The council or Secretary of State should be able to couch any valuation of assets subject to a Right to Regenerate application in these policies, and not be required or encouraged to ascertain a "market value" without reference to them. If the policy is designed in this way, communities, self builders and SMEs across Bristol could use the Right to Regenerate as a means to raise and challenge the council on underused assets where the council is not proactively bringing it forward, and in a way that is then aligned with the council's and the government's policy objectives.

This will not only make the policy more effective, it will also encourage a more collaborative approach on the part of the public bodies that are subject to the applications.

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

Yes. Guidance needs to be clear on what constitutes an "intended use" - it is currently too easy for a public body to state this and then to continue to neglect the land for another decade. Being allocated in the Local Plan should not be sufficient to constitute an "intended use", nor should it preclude the Right to Regenerate being taken up - indeed the right will often be most useful on land allocated in the Local Plan, where a Community Land Trust has a proposal to bring forward a better use in line with the Local Plan and where the landowner has no plans likely to be acted on in the near future.

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

Yes, with two caveats.

Town and parish councils are likely to be much closer to their local community, and they may own limited assets in areas where opportunities for communities to meet essential needs can be scarce. So there is a particular case for them to then engage their community in a discussion about local social, economic and environmental needs if an application is received.

Second, we think the right in relation to these bodies should only be available to properly constituted community organisations, or other applicants with whom the town or parish council comes to an agreement. Otherwise there is a risk of missing scarce opportunities to meet essential needs. For example, the Plunkett Foundation has found that the inability to acquire a suitable building is the main barrier to setting up a village shop. CLTs in rural areas acquire approximately 30% of their land from public landowners, many of which will be town and parish councils.

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

Yes.

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

Yes, this is reasonable so long as there is clear guidance about reasonable response times so that Community Land Trusts are able to proceed to use the Right to Regenerate if the public body does not engage in timely informal discussions. We would also propose that the guidance encourages or even requires both the applicant and the local authority to use this stage in the process to engage the community local to the asset in a discussion about its use.

We would endorse the six step process proposed by ACRE. This would not only ensure that local authorities and communities are properly involved in discussions. It would also move the Right from being an adversarial last resort to a positive process by which communities could identify underused assets and bring forward proposals to make better use of them.

Q7: Should the government introduce a presumption in favour of disposal of land or empty homes/garages where requests are made under the right?

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

We would like to see a presumption in favour of disposal and a 'right of first refusal' for Community Land Trusts, other properly constituted community and charitable organisations, and for individuals or associations of individuals bringing forward self and custom build housing proposals.

This would align the policy with the Government's ambition to diversify the housebuilding industry through these approaches, as noted in our answer to questions 1 and 2.

There is a particular case for Community Land Trusts to enjoy this right because the statutory definition of the CLT (in s79 of the Housing and Regeneration Act 2008) expressly requires that they then use the assets to further the social, economic and environmental wellbeing of the community. This further aligns the Right to Regenerate with our other comments below, ensuring that it achieves wider government policy objectives into the future.

Without the presumption and the right of first refusal, these stakeholders have little incentive to go to the trouble of pursuing the Right to Regenerate, and the government will miss a golden opportunity to further its stated objective of diversification.

Other individuals or organisations could still use the Right to Regenerate, but without the presumption in favour of disposal and the right of first refusal.

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

Yes. As noted in our answer to question 6, we think a preliminary enquiry and a request both present an opportunity for the public body to engage in a wider discussion with the local community. This may lead to partnership approaches which could establish the best use for the asset.

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

We have no firm view on this as proposed, but would be comfortable with conditions that require the better use of the site to be progressed within a defined timeframe to avoid the new owner continuing to leave the asset empty or underused, and conditions that relate to the interpretation of the NPPF, Local Plan, Social Value Act etc such as a requirement for a certain amount of affordable housing..

For example it has been the practice of some public bodies to initially lease land to a CLT with a provision for it to convert into a long lease or freehold disposal when planning permission is obtained or homes are completed. If that isn't achieved within a specified timeframe the lease expires and ownership reverts to the public body. Covenants can also be placed on the deed of sale to secure the intended social value in the longer term, where the land is not sold to a body like a CLT which is legally bound to promote local wellbeing.

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

First, we believe that the measures being proposed need to be extended to Strand 1 - central government bodies - and be put on a statutory footing. It has been our experience that CLTs find underused land and buildings owned by central government bodies more difficult to obtain than land owned by, for example, local authorities.

Second, we would like the Government to consider broadening the Right to Regenerate to apply to privately owned assets that are wholly or mainly, abandoned or neglected or where the underuse or management of the land is causing harm to the wellbeing of the community.

Such a right would be of transformative benefit in left behind communities, which are often blighted by privately owned land and homes (other than primary residences). In some cases there are risks to public safety; more often they have a detrimental effect on adjacent land and the local community and economy. There is evidence that the presence of such land is associated with poor health outcomes². Assets may be allocated for better use in the Local Plan but the landowner has frustrated efforts by the community, local authority and local businesses to acquire and develop the asset.

Many Community Land Trusts in left behind communities focus on bringing assets of this kind into better use. A reformed Right to Regenerate would give them a stronger hand where publicly owned assets are the issue, but offers no recourse for privately owned assets which are often more relevant to their locality.

Experience in Scotland suggests that such a reform would encourage private landowners to bring forward better use of their land and assets, and provide an impetus for informal discussions with their local authority and local community organisations who may be well positioned to establish partnership structures to help bring these uses about.

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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.