

Land Value Taxation: An Investigation into Practical Planning and Valuation Problems

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SUMMARY

Land value taxation (LVT) is recognized as a means of capturing land values created by the community. It is also recognized as being a complex subject because of the many factors that can influence land values and because of the different perceptions and interpretations that are made about how such capture can or should be undertaken.

One aspect of concern is the effect of town planning on land values. As the latter are intimately connected to the use of land it follows that planning controls will have an important influence on them. This paper outlines the problems that planning can pose in the calculation of land values and outlines the methodology proposed to be used in the assessment of land values for taxation purposes in current research. This is aimed at updating two earlier studies into LVT in the town of Whitstable, Kent, UK.

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1. INTRODUCTION

Last April we reported that we have been commissioned by the Lincoln Institute of Land Policy to update two studies undertaken in the UK into land value taxation (or site value rating as it was then referred to). The studies were carried out by Hector Wilks in 1963 and 1973 at the town of Whitstable in Kent to the south east of London. In our previous paper we reported on the valuation theory and the results of the two studies and followed this up with an outline of the methodology to be used in this update study.

An important element of this methodology is town planning. Whilst the primary influence on land values is the interaction between supply and demand for land and what people will pay for it, planning controls where and in what manner new development and new uses of land and building may take place. It follows, therefore, as land values are intimately connected to the use of land, that the planning system will have an important influence on them. It is this influence which forms the subject of this paper.

It does this by first looking at the justification for land value taxation (LVT). This is followed by an examination into the interaction between town planning and land values where the paper concentrates on four matters. These are: attempts at land value capture; uncertainty of outcome over planning decisions; the question of hope value; and highest and best use. Finally the paper outlines the proposed planning methodology designed to tackle the problems that have been identified and to be used in the calculation of land values for Whitstable.

2. JUSTIFICATION FOR LAND VALUE TAXATION

As part of our investigation into the background to the Whitsable studies we looked at the history of taxing the unimproved value of land in England and discovered that it was long and varied. Introduced in the 9th century and known as Danegeld, it was a form of protection money which, under Canute, became a war tax for the defense of the realm. Later, in the 11th century, under William the Conqueror, Danegeld was regarded as so important a source of revenue that it was one of the reasons for the first great inquisition into landed property. This resulted in the publication of the Domesday Book which was drawn up for the purpose of teaching the State how to levy Danegeld (Rating and Valuation Association, 1964).

Interesting as this may be, it is in the 19th century that the debate into land value taxation really developed. The industrial revolution in the UK had, alongside the creation of great wealth and invention, produced high rates of poverty, poor housing and poor health with consequential high mortality and epidemics such as cholera.

Various attempts were made to improve living conditions with Royal Commissions set up to enquire into the causes of the problems and potential remedies. Among them was the Royal Commission on the Housing of the Working Classes set up in 1885 (RCHWC, 1885). This was the first inquiry to refer specifically to land value taxation (it was then called site value rating) with members concluding that the rating of land values would increase the supply of land available for housing in contrast to the existing rating system which was considered to be an impediment. The commissioners concluded that owners of land suitable for residential development:

“could afford to keep their land out of the market and to part with only small quantities so as to raise the price beyond the natural monopoly price which the land would command by its advantage of position. Meanwhile, the general expenditure of the town on improvements is increasing the value of their property.” (RCHWC, 1885)

These sentiments focus on the justification for LVT. The debate then, as now, is that the value of property is made up, in economic terms, of two distinct factors of production, namely, land (the natural resource) and capital (man-made improvements to it such as buildings) and that taxing one rather than the other could have very different results for society. As the Royal Commission (and many others) have recognized, the land element of value is created by the community whereas the capital element is created by the landowner. The justification for LVT is that the tax ought to be based on the land element so that the community recoups what it has created, and not on the capital element which is created by and is private to the landowner.

Part of the thinking about producing different results stems from the fact that land has no cost of production – unlike capital – and that taxing it cannot therefore add to the cost of production. There is no cost to add to. Taxing capital (eg buildings) increases the cost of production which generally has the effect of reducing supply. Extra costs can also be inflationary. Taxing land, on the other hand, cannot reduce supply because this is fixed. It cannot, therefore, have the same affect on price or value as a tax on capital.

In the UK no distinction, for taxation purposes, is made between the two elements of landed property value. For domestic property there is the council tax (CT) and for non-domestic property there is the uniform business rate (UBR). Both include land value as well as building value in the assessment but the rate is only paid if buildings are occupied and is paid by the occupier. If a building is under-occupied (as many are) and/or if the building is deteriorating, then the rating assessment is depressed by this. In addition, a building that is physically unchanged between revaluations will become progressively over-rated on its building element and under-rated on its land element. Thus land values are systematically under-rated rather than not rated at all.

One effect of the existing property tax system is to increase speculation in land and property. Unless there is a general slump, the land element will increase in value year on year inducing landowners to withhold land (and property) from the market. If higher gains are to be made in the future from simply holding land, there is less incentive to sell or develop (Henry George

Foundation (HGF), 2002). This has the effect of artificially reducing the supply of land for development thereby pushing up land and property prices.

The theory in support of LVT is that it would have the opposite effect. The argument is that it creates an incentive to landowners to make better use of land which increases the supply thereby helping to stabilize and, in the longer term, reduce prices. This, of course, raises a number of questions. The one of most concern in this paper is the effect the planning system will have on supply and, in particular, land value.

3. TOWN PLANNING AND LAND VALUE

The broad purpose of town planning can be said to be to regulate the development and use of land in the public interest (Department of the Environment (DoE), 1992). Other objectives that are often used are: 'to encourage development'; 'to protect the environment'; 'to ensure that development is sustainable' (Cullingworth and Nadin, 2002). More can be added to this list.

In pursuit of these objectives the process of planning operates on the basis of local government (the local planning authority (LPA)) adopting a set of planning policies for the use and development of land appropriate for its area and for the authority to operate a system of control aimed at regulating all development proposals. In the UK, policy is to be found primarily in what is called the development plan and the regulatory process requires those interested in developing land or changing the use of any building to obtain planning permission from the LPA before they can proceed. Failure to apply for permission or to develop without consent can lead to the authority taking enforcement action.

One effect of the planning system is that it can have a significant impact on land values. For example, a piece of land can be worth a few thousand pounds before the grant of planning permission and millions after. This was recognized at the outset of nationwide planning controls in 1947 which raised, and continues to raise, questions about how increases in land value might be captured. It also raised questions about potential value, what it might be and how it should be assessed. These matters are the focus of the remainder of this section of the report under the following headings:

- Attempts at land value capture
- Uncertainty of outcome over planning decisions
- A question of hope value
- Highest and best use

3.1 Attempts at Land Value Capture

Past attempts at land value capture in the UK stem from the time of the Second World War. Vast displacements of people and industry together with the huge amount of urban destruction during the war required extensive urban renewal on an unprecedented scale. It necessitated government intervention and a way of implementing and funding this work not previously imagined nor attempted. It was also recognized (Uthwatt, 1942) that rebuilding the

devastated areas could not be treated in isolation and that this could only be part of the answer. The committee reported that there was a need to co-ordinate this renewal while at the same time building sufficient and adequate housing where it was needed, overhauling the transport system, establishing new industry and providing utility services, open spaces and other amenities (Uthwatt Report, 1942).

Viewed in this context it was perhaps inevitable that nationwide public controls over the use and development of land would be introduced and that a means of financing this work should be found quickly. The former led to the post-war system of town planning embodied in the Town and Country Planning Act, 1947 and the latter to a complex system of compulsory purchase and compensation. Funding was to be achieved through a system of land value capture commonly referred to as betterment. Significantly, all of these matters were incorporated into the above Act with the effect that land value capture became associated solely with new development.

This raised questions, among other things, about where new development should be allowed and how to deal with the resultant speculation in land. The Uthwatt Committee (1942) reported that potential value was a floating value which could drift between many pieces of land irrespective of the total demand for development. Planning permission therefore released latent value in those locations where development was allowed and prevented it elsewhere. The thinking was that the government or local authority should be entitled to participate in such increases in value in order to recover all or part of this increase to help pay for improvements deemed necessary at public expense. However, with the emphasis on improved value from development, the logic was to obtain a basic value from which any increase could be calculated. This, of course, led to the introduction of a development charge based on the difference between existing use value and development value.

This approach to betterment taxation was introduced and repealed three times in the second half of the 20th century. The first was the development charge introduced in 1947 and repealed in 1953. The second was the betterment levy introduced in 1967 and repealed (effectively) in 1970 and the third was the development land tax introduced in 1976 which was abolished with effect from 1985. In all three cases the charge was tied to the grant of planning permission and based on the difference between existing use value and development value. They concentrated, therefore, principally on the capital element of property value rather than the land element of value. They also operated independently of the existing system of property taxation which concentrated, as reported above, mostly on the capital element of value.

In more recent years a system of planning obligations has been in operation. This is principally intended to regulate the off-site effects of new development (eg traffic generation or downstream flooding) but it has evolved to include the payment of money for off-site works or facilities and/or other benefits. These can include additional classrooms at a local school or social housing. In essence the obligation imposes extra costs on development which can be deducted from the price to pay for the land. As such, planning obligations may be said to capture part of the increase in land value arising from the grant of planning permission although they are dependent on negotiation between developer and LPA, do not apply in all

cases where development is proposed and are tied to the grant of planning permission. If the development does not proceed then neither does the obligation.

Five main weaknesses can be identified with all of these attempts at land value capture. First, all have been directed solely at new development and ignored the fact that community created land values must necessarily transcend all sites whether developed or not. Second, all of the charges have been one-off up-front payments at the time of development thereby taking no account of changing land values over time. Third, all have targeted development value rather than land value thereby focusing primarily on the capital element of value. Fourth, the charges have been in addition to and alongside the existing landed property tax system and have therefore not been able to deal with the adverse effects of the existing property tax system. Finally, the overall effect of the charges has been to discourage new development.

3.2 Uncertainty of Outcome Over Planning Decisions

Current planning law in England and Wales is contained in the Town and Country Planning Act 1990 (TCPA 1990) as amended by the Planning and Compensation Act 1991 (PCA 1991). A new Act is shortly to be introduced (in 2004) but for the time being and for the purposes of our study – which is focused on 2001 (Census Year) – the 1990 Act is the appropriate legislation.

In the determination of planning applications for development there are two provisions of the Act that are of concern. One states that the LPA, when determining any planning application, *shall have regard to the provisions of the development plan, so far as material to the application, and to any other material consideration* (s.70 TCPA 1990). The other is that: *where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.* (s.54A TCPA 1990).

The effect of the former is to state that there are only two matters with LPAs can take into account when determining applications, namely, the development plan and any other material consideration. The effect of the latter provision is that of these two matters the development plan comes first. As the Government confirmed in 1997:

In all cases where the development plan is relevant, it will be necessary to decide whether the proposal is in accordance with the plan and then to take into account other material considerations. (DoE, 1997)

These requirements suggest that it should be relatively straightforward to assess development potential and hence development (and land value) at different sites. The situation, however, is not that straightforward.

The main difficulty is in respect of material considerations because this phrase is not defined in the planning Acts. On the one hand there is uncertainty over its meaning and on the other, to decide how much weight should be given to material considerations alongside the

development plan. The classic case is *Stringer v Minister of Housing and Local Government (1970)* in which Cooke J, in upholding a decision to refuse planning permission, stated:

'it seems to me that any consideration which relates to the use and development of land is capable of being a material consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances.'

Government policy expands the point:

'Material considerations must be genuine planning considerations, ie they must be related to the purpose of planning legislation, which is to regulate the development and use of land in the public interest. The considerations must also fairly and reasonably relate to the application concerned (R v Westminster CC ex parte Monahan 1989). Much will depend on the nature of the application under consideration, the relevant policies in the development plan and the surrounding circumstances.' (DoE, 1997)

From the above it is clear that the term 'material considerations' can be wide ranging. Fortunately the courts, precedent and common sense do provide a body of evidence to help assess whether a particular matter is material or not. What can sometimes be more difficult is the weight to be given to these matters. For the purposes of the current research it is considered that material considerations can be divided into three broad areas, namely:

- the development itself;
- policy considerations; and
- other external planning matters.

Among the considerations relating to the actual development itself these commonly include: the siting of buildings; their area; layout; number; height; mass; design and external appearance; means of access and landscaping. Similar considerations can apply to other structures and engineering works. Where changes of use are proposed, additional relevant matters may include the nature, extent (temporal and physical) and intensity of the new use or uses.

Policy considerations can also be important. Notwithstanding the importance of the development plan, two other aspects of policy can affect development potential. One is central government policy and the other is additional policy issued by the LPA. Both need to be examined for their potential effect on land values.

In addition to the above there are a number of other planning matters that can be important. Alongside the potential impact of new development on the environment there is the effect that the environment can have on development. This can be in respect of the character of the area and adjoining properties (eg size and position of nearby buildings or trees) and in other planning decisions including appeals. Applications for similar development at a site or in the locality or for other development at sites to be assessed can all affect the outcome for development at individual sites and hence site potential. In any methodology aimed at

assessing the impact of planning on land values it is considered that all of these matters should be investigated and taken into account as deemed appropriate.

3.3 A Question of Hope Value

The primary influence on land values is the interaction between supply and demand for land and, therefore, what people will pay for it. As land is fixed in supply and location, it is axiomatic that changes in demand for land can have a substantial influence on land values. But changes in demand do not operate in isolation and are influenced by a number of factors. These include changes in the size and composition of the population, the state of the economy, local and global markets, government policy (especially monetary policy relating to interest rates), business confidence and speculation in land. Blundell (1993:13) adds fertility of the land, the presence of minerals, ease of communication, proximity of towns and the kinds of use permitted by planning and other environmental legislation.

Individual perceptions about the relative importance and influence of these factors vary enormously. Similarly, individual perceptions about the benefits to be obtained from land or buildings also vary. Potential purchasers will pay for potential benefits arising from:

- enjoyment of existing buildings and sites in their current use;
- improvements to existing landed property incorporating physical alterations, extensions or changes of use;
- development on land that has not previously been developed (known as greenfield sites);
- development of cleared urban sites that previously contained buildings (referred to as brownfield sites);
- partial or total redevelopment of urban sites with new buildings in previous or new uses;
- as an investment where the intention is to retain existing landed property or land and receive rental income from it; or
- as an investment where the intention is to retain land or buildings and to sell at a profit at some future date with or without the benefit of planning permission for development.

From the above it is clear that the price a site will command does not depend on its existing use but on its potential use. This, however, will depend on an assessment of what is likely to be approved by the LPA. In the case of options 3, 4, 5 and 7 above and to a lesser extent option 2, there could be uncertainty of outcome regarding planning applications for development. This will depend primarily on what the development plan states, if anything, for individual sites, how up to date the plan is and the likelihood of policy changing in the future in favour of development at specific sites. All of these matters can be important because if there is any uncertainty of outcome there could be an element of hope value attached to the potential value. The question is what should be done about it?

In consideration of this question a useful starting point is to look at what is meant by hope value. Here, Abbot defines it as:

'an increase in the value of land produced by the belief that there is a chance that the demand for that land will change significantly; for example where there is a prospect that

planning or zoning approval will be granted for a change to a more valuable use. 'Hope value' may be quantified as the price paid for land in excess of the existing use value when a purchaser considers that there is a chance of obtaining consent to carry out an alternative and more valuable form of development' (Abbot, 2000).

From this we can conclude that part of the issue is one of deciding the extent to which planning policy should be taken to definitely affect the outcome of individual planning applications. Wilks, in his 1973 study, appeared to have some difficulty with this. Whilst recognizing that the valuer must totally disregard hope value he reported that some policy statements of the LPA could only be treated as a 'puff' and not a solid fact (Land Institute, 1974) and would therefore be unreliable. On the other hand, he also reported that if land is designated for development then the position is very clear, adding:

'It is a matter of fact alone for the valuer to decide whether the evidence proves a site value or whether the evidence should be ignored simply because it indicates 'hope' value.' (Land Institute, 1974)

The problem would appear to relate to those sites which are not allocated or zoned for development. However, Wilks also referred to the cardinal principle that *'no owner should be rated for site value on the basis of a value which cannot be realised'*. This, it is submitted, must be the deciding factor.

3.4 Highest and Best Use

We have reported that the price people will pay for land and property will be based on potential use rather than existing use and that hope value should be ignored. We also know that the development plan and other material planning considerations need to be taken into account in the assessment of land values. These suggest that we should examine the extent, if any, to which planning controls will allow land values to be based on higher and best use rather than existing use.

In consideration of this point it is important to remember the economics of LVT. In our reporting of the justification for LVT we indicated that a tax on land and not buildings would, in theory, encourage landowners to make better use of land. If there is a charge on the land, irrespective of what it is used for, there will be an incentive (depending on the level of charge) for the landowner to use it to best effect in order to obtain the best financial return. If a site remains unused, and possibly under-used, the outgoings would exceed income and it would be unprofitable to hold on to the land without doing something to it. The rationale is that if land is put to its highest and best use then this would be the most efficient use of land and be the most rewarding for the landowner.

Linked to this is the fact that if the charge on land was based on existing use rather than potential use the incentive to make better use of land would disappear. This is because such a tax would encourage landowners to leave unused sites idle and not put them to good use. A nil use would result in a nil tax liability and a nil contribution to the community (either in

terms of tax revenue or in any other terms). There is, therefore, an economic need for LVT to be based on potential use which is why town planning requirements become important.

4. CURRENT RESEARCH STUDY

In the first year of this research project into an update of the Whitstable studies we examined the background to these studies and the methods used in the calculation of land values and annual rental value.

Funding for the current project was provided by the Lincoln Institute of Land Policy on the condition that modern technologies such as Geographic Information Systems (GIS) be used. This, as it transpired, proved to be a challenge because of the lack of a uniform method of recording addresses and the difficulty in creating identifiable site areas within the GIS database for all hereditaments and other land at Whitstable. An additional concern was the fact that the Valuation Office Agency, because of its role as valuer for government purposes, is prevented from disclosing data on property by the Official Secrets Act.

The reliance on electronic data sources which are not compatible and the paucity of information delayed the identification and measurement of all parcels of land. It is anticipated, however, that progress on these matters will be made this year.

One important aspect of the research methodology – and which was not reported on in detail last year – is the impact of planning on land values. Despite changes in legislation it is not always clear what the outcome will be for development proposals at different sites thereby making it difficult to assess what land values might be. It is this matter which is addressed in the remainder of this paper.

4.1 The Development Plan

To assess the impact of planning on development potential and hence land values it will be necessary to examine both the development plan and other relevant planning documents. For Whitstable the starting point is the local plan produced by Canterbury City Council (the LPA) and the structure plan produced by Kent County Council. These two documents form the development plan for the town. This will be followed by an examination of other documents and records of planning importance.

4.1.1 The Development Plan

In respect of the development plan two matters are considered important. The first is what the plan includes in its written statement and shows on maps for Whitstable regarding the potential for development. It will either allocate land for development or it will not. For the former, it is envisaged that only a small proportion of sites will be zoned for specific purposes (e.g. residential development or public open space) and that the presumption is that development or use in accordance with the zoning will be allowed. The intention is to value land on this basis.

Where land is not allocated for development – this will apply to most of Whitstable – the initial presumption, for the vast majority of sites, will be that the existing use will continue and that the land should be valued accordingly. It is anticipated that many residential areas will fall into this category although other material considerations may well affect some sites. These considerations could alter the initial presumption.

The second matter relating to the development plan requires an investigation into the extent to which decisions on planning applications vary from adopted planning policy. Whilst many decisions of LPAs are straightforward, in that they can be seen to be in accordance with the plan, others are not. It is the latter that need investigating.

Many LPAs adopt a system of delegation where many planning decisions are delegated to the chief planning officer (CPO) for determination without recourse to the planning committee which is normally the responsible authority. Delegation allows simple and uncontroversial applications to be determined more quickly which allows the planning committee to concentrate on more important matters such as a conflict with the development plan. Standing Orders of the authority will normally specify the circumstances when this should be done and this is, in fact, what happens at Canterbury City Council.

For the purposes of this research, the intention is to examine the applications determined by the planning committee during the study period of 2001. The objective will be to establish the extent, if any, to which the authority has departed from established planning policy for Whitstable and to use the results to assist in the calculation of land values.

4.1.2 Other Material Considerations

Whilst the development plan is of prime importance in the assessment of development potential, other material considerations are still important because they can affect this potential irrespective of whether proposals are in accord with the development plan or not. The plan cannot cover all eventualities concerning the use and development of land, particularly in respect of detail. For example, whilst it may specify that trees subject to a tree preservation order (TPO) shall be protected, it will not, in all probability, specify the details of the trees and the impact their preservation will have on development potential. This could be substantial and adversely affect what may be constructed at sites. Conversely, trees subject to a TPO could enhance the value of sites and neighbouring land.

Other material considerations therefore, need to be considered for their positive and negative effects on land value. For the purposes of this research, they need to be investigated solely with this in mind and, because of the primacy of the development plan (required by section 54A of the TCPA 1990), subsequent to it. Thus, whilst the range of material considerations can be very extensive, it is likely that they will not affect many sites.

The material considerations to be investigated include aspects of planning policy other than the development plan (eg. government policy contained in Planning Policy Guidance notes), extant permissions (including appeals), the character of the area (eg. density, design, use of

buildings etc) and limitations of individual sites (eg. a tree preservation order or building of special architectural or historic importance – known as a listed building).

Once all the relevant documents have been examined the research will then focus on those sites identified as being affected by the above investigations. The outcome will be to identify and apply an appropriate adjustment to the unit value for each relevant site or landed property.

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BIOGRAPHICAL NOTES

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