



Leader of the Council

Martin Tett
Buckinghamshire Council
The Gateway
Gatehouse Road
Aylesbury
HP19 8FF

martin.tett@buckinghamshire.gov.uk
01296 382302
www.buckinghamshire.gov.uk

Submitted by email:
righttocontestconsultation@communities.gov.uk

02 March 2021

Dear Sir/Madam,

Right to Regenerate: reform of the Right to Contest Consultation

I write in respect to Buckinghamshire Council's consideration to the above consultation. I have set out our observations that the Council wishes to express regarding the proposed reform of the Right to Contest below. The responses to the survey questions are contained within Appendix 1.

Whilst Buckinghamshire Council acknowledge the Right to Contest has been unsuccessful and there is an urgent need to improve the delivery of sustainable homes and/or regeneration projects, it is not clear from the consultation how the proposed reforms could be delivered in practice. We recognise that the reforms are founded upon a good premise and may have the potential to contribute to our regeneration and recovery ambitions. Yet, there remains several unknowns and lack of specific detail regarding the proposals that make the potential benefits of the reform less transparent.

One of our foremost concerns is that the potential reforms could lead to impractical strains on already limited council resources as there becomes a number of potentially speculative applications that would limit our ability to deliver regeneration plans and strategies, or our capital projects are delayed as a result of 'Right to Regenerate' applications. Whilst we endeavour to have clear plans and programmes for our estate, as a new unitary authority, we have significant concerns that the proposed reforms would unfairly disadvantage our ability to provide compelling reasons to refuse applications. We are undergoing an assessment of our estate alongside progressing a number of capital projects and consider that if the reforms are imposed, that a 5-year moratorium should be granted to any recently established unitary authorities.

Moreover, it is considered that a fundamental part of the consultation is the parameters by which the reforms could operate. We believe that specific definitions or set of criteria would need to be set out to clarify what is meant by unused or underused as well as better economic use and future use. Without such, the varying spatial and conditional contexts land or buildings find themselves in, leave public bodies open to a significant number of applications for their property. It would also be essential that if a party was to come forward with an application to

acquire land, there is a clear and deliverable plan, strategy, planning consent and funding evident so that land is not simply passed over on the prospect of ideas to regenerate.

Lastly, if the right is reformed, it is considered important that prospective applications first consult with the local authority to ensure the most effective use of both local and central government resources. This should also help to improve the engagement between public bodies and applying parties, including community groups.

I would also wish to express that as a new unitary authority, we are working closely with our local town and parish councils regarding internal devolution mechanisms that include transferring responsibility of assets including land in order to attempt to improve local community ownership and benefits.

Thank you for providing the opportunity for the Council to respond to these proposals. Should they be taken forward, we would strongly urge for clear parameters and requirements to be established to safeguard our ability to deliver transformational projects and schemes that often play a fundamental role in producing much-needed finance for service delivery.

Please ensure our views are included in the consultation and provide acknowledgement of receipt.

Yours sincerely

Martin Tett
Leader of the Council

Appendix 1:

Q1: Do you consider the Right to Contest useful?

No. It is considered that the right to prevent disused and derelict land remaining in such state is sensible, but the existing right itself is not useful as evidenced by its limited historical application. It is also considered that there is likely a lack of knowledge and sufficient resource within community groups to develop viable proposals that would enable the acquisition of public body property.

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

Yes. As apparent by the success rate of 1 disposal out of 192 requests since 2014, it would appear that barriers to the effectiveness of the right are evident. Current barriers are likely to include:

- A lack of public knowledge that the right exists
- Restricted public/community resource, knowledge and equitable access to be able to effectively use the right
- Limited indication or understanding of what land could be classified empty, under-used or without plans to bring back into use

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

Yes. The Council considers that it is of paramount importance that a clear definition is required to ensure that the right is used in the appropriate circumstances. Without a clear definition, our significant concerns are threefold;

- 1) By reforming the right without a clear definition and appropriate lead-in time for public bodies, it is considered that it will create further strain on already limited council resources, including staff time and capital and revenue budgets. Should the right be reformed at speed and without a clear definition then there is the possibility that it will require public bodies to prematurely invest in future plans as a backstop against speculative applications or 'land-grabs' by organisations with the resource and financial capacity.
- 2) Transformational regeneration projects often require a substantial resource to develop and take long periods of time to come to fruition. We are concerned that the right may hinder the delivery of such projects if a parcel of land that forms a larger project is subject to an application.
- 3) A definition would assist in the usability of the right, consequentially improving its effectiveness. It is concerning that it is not made clear whether it will solely include brownfield land; as a new authority with considerable land-based planning constraints, we are placing strategic importance on the use of brownfield land. It should be made clear through a definition that the right does not apply to greenfield sites or those with existing designations.

Furthermore, we consider that it is important that the definition needs to both be clear and flexible to accommodate for land in differing spatial and conditional contexts. What is considered

as unused or under-used land and/or properties in large towns and cities will be different from those in smaller towns or village settings.

As a suggestion for proposed parameters for what constitutes unused or underused, it is advocated that it could include land or properties where there are no plans, strategies and programmes for use; no planning consent or emerging planning application; no funding available to progress a viable use; and land or properties that does not serve a commercial purpose for the public body.

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

The Council has no specific opinion on this question.

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

Yes. Provided what is meant by temporary uses is made clear and the temporary use does not prejudice the long-term use or impact on the character of the existing area. We do also consider that the viability and resource requirements of implementing such temporary uses would need to be appropriately assessed before implementation.

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

Yes. It is considered that it should be a requirement for local authorities to be contacted prior to ensure the most effective use of central government and local authority resources. It would also guarantee that the applying party is fully informed on the status of land parcel or property. We believe that this should also extend to allowing the local authority to have a right of veto where it would result in financial risks or losses to the local authority.

To eliminate potentially unnecessary process, it is considered that value could be added through public bodies publishing a list of sites that could be considered available under the right. However, this would have significant resource implications for local authorities and would require appropriate funding or measures such as an appropriate lead-in time guaranteed to enable effective delivery.

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

No. Whilst it is appreciated such right would coincide with the National Planning Policy Framework, we are concerned that it could be used inappropriately. A presumption in favour of disposal would only be effective and beneficial if there was a clear and deliverable plan for regeneration. The Council considers that should the right be reformed, parties applying for disposal of land must have a viable plan, resource and funding available to deliver the regeneration. For any land that is within an area with designated planning policy or with regeneration strategies in place, proposed future uses should be aligned. Furthermore, demonstrable community benefits should be evident to ensure regeneration benefits the place and its communities rather than being used for financial gain.

Lastly, as previously mentioned land parcels often form part of a wider land assembly for schemes and a presumption in favour of disposal may result in delays to projects where this scenario occurs.

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

Yes. The Council considers that this would help to ensure greater transparency and engagement between public bodies and local communities however there would be resource implications on local authorities that would need to be resolved through additional measures and or funding. It is also considered that the frequency of reporting should be assessed further to ensure the process works in practice.

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

Yes. We consider that a 'right of first refusal' would be beneficial, however, it should only apply to local community groups. These groups must also have clear, viable and deliverable plans in place to prevent larger organisations with greater resources taking advantage. Mechanisms should also be explored in the case of two or more local community groups applying for the same parcel of land to minimise potential tensions.

It is considered this right should apply for the first 12 months following a direction, however, we would welcome further clarity on what would happen should this right not be taken upon and where the public body has since developed plans for the land.

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

Yes. As aforementioned, should the right be reformed we consider it important that conditions are placed on disposals to ensure that land is regenerated rather than being sold on for financial gain. As applied alongside planning permission, it is considered conditions would be essential in guaranteeing appropriate delivery following disposal. Suggested conditions could include:

- A clear, viable and deliverable plan or programme that aligns with the local strategy for regeneration and the character of the existing area
- Clear evidence of funding available to enable the delivery of proposed plans
- The facility for land disposed of to be returned to the public body should plans not be implemented within a specific timeframe
- Valuation to be based on any specified proposed uses to ensure public bodies are able to attain the best value for their property

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

Yes. It is considered that clearer explanations are required on the definitions of 'future use', 'community', 'better economic use', 'compelling reason', and 'market value'. Similar to the definitions of unused or under-used, those outlined above can vary significantly and may be open to interpretation. These definitions need to be clear to stop unsustainable uses coming forward that would not benefit any community aspiration, not ensure success and viability of

local places, or harmfully affect local authorities resources. We would welcome further clarity and explanation should the reforms continue to develop.

DRAFT