

Surrey County Council response to Government's Right to Regenerate consultation

This response is submitted on behalf of Surrey County Council. The council is supportive of the principles within this proposal, in line with our own priority to optimise use of our land and assets to provide best value for our residents and the wider taxpayer.

'Empowering Communities' is a key strategic priority for the council, and within this our aspiration is to find local solutions, wherever possible, to resolve issues of unused or underused land and assets, working directly with our communities. Therefore, this legislation should only be used to challenge public authorities where they are not actively managing their estate.

In line with this, it is critical that the detail in the legislation provides the appropriate protections to prevent the loss of value to the taxpayer and/or benefits to local communities. Local authorities should be given the opportunity to have clear plans in place for assets, with the appropriate flexibility and resources from government to effectively manage longer-term planning and regeneration strategies and actively shape local places.

Clear and careful definitions for unused and underused will be required to ensure that requests are only made for assets without a plan or where the authority is failing to deliver a plan for it. Any requests under the right should clearly evidence benefit for the wider community, as should any temporary use. Viability tests should be conducted early against any request under the reformed right, to ensure resource-intensive processes are only initiated for viable proposals. Reasonable timeframes should be incorporated to allow for due process and local authorities should be given the opportunity to recover associated costs. Protections should be included in the legislation to ensure the site is retained for the use originally defined within the request, to avoid loss of value on assets to the taxpayer, and to define what happens in the case of any failure of the purchaser during development or whilst running the asset. The details in the legislation must mitigate any unintended consequences of the right, for example frustrating or inhibiting the place-shaping ability of local authorities, leading to costly administrative processes arising from claims, or encouraging land banking which could inhibit community development.

Our response to the questions provides some more details on these important considerations. If these are taken into account in reforming the Right to Contest, the council is supportive of these reforms and would encourage consideration of an extension to all public sector bodies. We strongly support the principle of providing a mechanism for the public to better challenge authorities to optimise use of land and assets; however it is critical that benefits for wider communities remain the focus and that the reforms do not prevent authorities managing their estate effectively or gaining value for the taxpayer.

Increasing the usefulness and effectiveness of the right

The government seeks views on the usefulness of the right, as well as potential reforms to increase effectiveness. Respondents should consider how the right is used by private individuals as well as organisations. The government is particularly interested in responses from anyone who has previously submitted a request under the Right to Contest.

Q1: Do you consider the Right to Contest useful?

Yes/No – please provide a reason for your answer.

Yes – the council is supportive of the public having the right to challenge public bodies over unused or underused assets. This right is in line with our priorities to actively manage our estate and empower our communities, optimising use of our land and assets, to provide best value for the taxpayer and realise the most benefits for our residents and communities. However, as we have outlined throughout this response, it is critical that the detail in the legislation provides the appropriate protections to prevent the loss of value to the taxpayer and/or benefits to local communities.

As such, it is reasonable for local authorities to be expected to have an up to date Strategic Asset Management Plan for its portfolio of assets, outlining key principles of proactive use and life cycle

management for all its assets. Set against such a framework, authorities should be able to indicate plans for their significant assets, and be able to provide information on operational, non-operational, or surplus assets. This would need to reflect on timeframes required to deliver such plans. These include title information, option appraisals, viabilities, stakeholder issues, through to defining exit strategies for sites, including obtaining planning and marketing periods. Where plans are identified for surplus sites, then this would provide the opportunity for authorities to be challenged against delivery plans. Where delivery is not being achieved, and this is within the authority's control (e.g. not related to planning or wider title issues), this could make the site eligible for a request under the right in line with the aspirations of the proposals.

However, local authorities should not be constrained by the Right to Contest/Regenerate so much as to lose opportunities relating to land/assets for the benefit of our residents and the taxpayer in general. A vacant asset does not always suggest a dereliction of duty, and these may eventually be transformed for alternate uses for the public good. For example, on some land parcels added value activity may involve several years of title or planning negotiations. Too many constraints could also frustrate longer-term strategic planning and regeneration. Reasonable timescales should be linked to requests under the right, giving local authorities the appropriate opportunity to have plans in place for their assets. We propose 6 months would allow authorities to manage the request within their own governance structures and ensure timeframes do not conflict with due process.

Any reforms should ensure that the right only applies where there is no agreed plan for the site, or where the authority is failing to deliver against that plan in circumstances that are within their control. In addition, the right should only be used where there is a relevant use for the site that will benefit the community (which could include housing) and that use can be delivered. The wording of the proposal will need to be carefully considered to ensure that it is only used in these circumstances and to enable community benefit, rather than to enable purely commercially-driven development or the frustration of development of sites for uses that may be vital to the community as a whole but are not favoured locally.

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/No – please provide details.

Yes – current barriers tend to include:

- **Benefits for communities** – Key criteria need to be established to ensure that communities benefit from any requests in the long-term, including a definition of community use. The below considerations should be taken into account:
 - The right should include appropriate processes so that community groups with fewer resources than other parties (e.g. developers) do not lose out.
 - There should be no cap on the number of years a site is in community use, but appropriate covenants should be enabled to ensure the site is retained for such uses, to avoid future land transfers for non-community uses. This can be managed through either a disposal under a long lease with specific user provisions, or via covenants in the freehold disposal, possibly aligned to pre-emption/buy back options. This would avoid profit being made on land over and above the use value it is sold for and could also provide appropriate protections in the event that the purchaser fails during development or once they are running the asset.
 - Protections should be included to avoid groups (e.g. local campaign groups) using the right to frustrate, delay or block a development they do not consider that they want within an area but which the local authority has assessed as beneficial for the wider community (e.g. housing, waste disposal, etc.).
- **Assets held back due to extensive constraints or specific property risks** such as title, planning consents, Green Belt, access, or covenant issues. The Right to Regenerate should not be seen to override property specific or existing statutory constraints.

- **Resource-intensive** responding to enquiries, including Freedom of Information requests. Responses are unlikely to be timely where the land is still under option review, or being held back for strategic, financial, or political reasons. Under Q6 and Q8 we have proposed some mitigations for this.
- **Planning /Title** - land often comes with complex title issues and may not be brought forward due to other constraints or because it is part of a wider parcel/land title. If we hold a site strategically for the long term, but seek to have it allocated in a Local Plan process (which can cover a 10-15 year plan period), that should still be sufficient to challenge any application, as it does highlight an intended use for the asset.
- **Evaluation** - There would need to be some form of evaluation to ensure that that full market value was achieved for the benefit of the taxpayer, potentially through use of external parties acting as independent valuers. The evaluation process should also determine what happens in the event of multiple interested stakeholders in the same site and include a deliverability test to evaluate the potential purchaser and understand if their intended use can be delivered (for example, is planning permission obtainable for their proposal?). This is in addition to taking into account benefits for communities as noted in the first bullet point above.

Making it clearer when land is unused or underused

The government is considering publishing a definition of land that is unused or underused, to help guide people in making applications.

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

Yes/No – please provide details.

Yes – a careful definition of both unused and underused land would be required if these are included in the right.

This would be in addition to a definition of 'land', to make clear if the new right relates to both land and buildings, or only land, and clarifying whether there will be any distinction between categories of land, for example whether unused/underused brownfield land in the Green Belt or Conservation Areas will be treated differently. Noting the intent to bring forward land for housing or community development it is suggested that there should be some specific exemptions, including but not limited to:

- Size - a minimum level of land area should apply in every circumstance (e.g. less than say 0.05 hectares).
- Value - There may also need to be a minimum value applied for the land in question. This, alongside the above exemption relating to size would help prevent use of public resources for no or limited benefit to communities or the wider public, for example, avoiding householders seeking to use the right to increase their garden sizes. This could also be avoided through a condition that any associated costs are covered by the buyer.
- Where land has been appropriated for a purpose even if held unused, such as sites strategically acquired for an education use or land secured, whether directly or indirectly, by way of planning agreements - but otherwise held pending demographic or local housing growth
- Where land is subject to title disputes
- Where any party may be seen to be securing an added value advantage i.e. an adjacent landowner or owner of a ransom strip, where a small piece of land has been retained during the sale of a larger piece of land.

The definition for **unused land** will need to include recognition that unused land is not necessarily surplus. Surplus properties at Surrey County Council are those that have been deemed surplus to "operational" requirement of the council and its services, including local authority partners, and are therefore 'unused' and available for disposal. However, that also makes the asset available for non-operational use or investment and income producing activities. There are also a number of vacant properties that are to be retained for future service use or simply held as a strategic hold. Whilst these

may be currently 'unused' they will be used longer term, and any definition will need to provide for a list of exemptions that protect all assets for their wider benefit whilst in public hands.

The principle of including **underused land** is also important but careful consideration would be required to establish a clear definition to avoid subjective views based on incorrect or incomplete information being used to inform requests. Defining and measuring 'underused' would be very challenging, especially where operational assets or land attached are included. The council may for instance hold land for business continuity or emergency planning purposes and whilst it may be seen as underused, it needs to remain available for that purpose, or short term meanwhile uses, rather than be seen as available to acquire.

As already noted in our response to Q1, the asset plan that is developed by the local authority should declare land that is surplus and also consider land/properties that are underused and how that will be resolved (either by using the site more intensively or vacating the site for disposal). There would need to be a defined change management process – should an operational requirement arise for surplus land then there needs to be a mechanism to avoid this being eligible for disposal under the right whilst proposals are being developed.

The level of activity or internal documentation sufficient to show why the land is held for a specific purpose will need to be defined clearly. A number of factors could apply including sites submitted to and awaiting strategic allocation, or available but not yet required within the five-year current housing supply provision. It would need to recognise that there is a decision making process that is required to decide the best course of action for a site and therefore timeframes for that process would need to be incorporated within the act to protect against purchasers demanding sale before a full evaluation could be done, to ensure best value for the public.

Extending the scope of the right

The government is also interested in views as to whether extending the right to include unused and underused land owned by town and parish councils would increase the effectiveness of the right in optimising land usage across England.

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

Yes/No – please provide a reason for your answer.

N/A – the views of town or parish councils should inform this decision.

Land where a public body has an intended use

Many requests are refused as the public body indicates that it has an intended use for the land. This may mean some sites are left unused or underused for some time until those plans materialise.

The government is considering incentivising temporary uses by ordering sales where temporary uses cannot be identified. This would help minimise blight until sites are put to better long-term use and help to keep neighbourhoods vibrant and productive especially in town centres and urban areas.

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

Yes/No – please provide a reason for your answer.

Yes – Surrey County Council is supportive of incentivising temporary use of unused land, either for commercial or community use prior to its disposal or development. The council has its own policy supporting meanwhile uses where appropriate. To further enable this, government should introduce temporary planning permissions or other measures which would make it easier to deliver temporary uses defined as appropriate. Definitions and timescales would need to be clearly defined so that all parties understand where a sale could be ordered if temporary use is not identified.

Local authorities should make clear the intended use and the path to delivering it via an asset plan, allowing for consideration of temporary uses within that pathway. Any temporary use would need to be evaluated in regard to the local area and how it interacts with the community, traffic management, local environment and any other relevant factors.

Although temporary uses are supported wherever appropriate, they should be subject to the same constraints detailed above for permanent uses of the land (see responses to Q2 and Q3). It should also be recognised that other factors may prevent temporary use, such as insurance reasons where certain uses cannot be provided with a sufficient level of value cover, or if the property is subject to specific health and safety compliance issues.

Therefore a distinction should be drawn between where a temporary use can be found for the site but the local authority is not or has not arranged this, against where a temporary use cannot be identified because there is no temporary use for the site that is practicable.

A greater role for local authorities

The Right to Contest was designed to be a last resort where listed public bodies have refused to engage with, or refused, a request to bring unused land into use. The government is inviting views as to whether it should require applicants making a request under the right regarding local-authority-owned land to demonstrate that they have contacted their local authority before making a request. The purpose would be for the applicant to find out more about the land from informal discussions or correspondence with the local authority, without needing to submit a formal request, and to allow requests submitted under the right to progress more swiftly, as local authorities should be prepared to respond.

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

Yes/No – Please provide a reason for your answer.

Yes – the local authority should hold an asset plan for each significant site, and therefore in the first instance should be contacted to confirm to the applicant that such a plan exists. This would also give the local authority the opportunity to work directly with their communities to resolve any issues together first and support their role in actively shaping local places.

If resolution at this point is not possible, the applicant would then have the necessary information to submit an application via the process that would be agreed within the legislation.

This should be on the basis that responses should be aligned to the benefits and exemptions under the Freedom of Information legislation and allow for authorities to seek full details of the applicant party and be able to recover disbursements and costs where applicable.

There should be protections in place to prevent multiple applications for information i.e. from marketing companies who seek information that is then sold on commercially. It might be advisable to support applicants specific to a locality or on voting registers.

Presumption in favour of disposal

The government welcomes views on whether the Secretary of State should apply a presumption in favour of disposal when considering applications under the right, establishing clearly that disposals will be ordered unless there is a compelling reason not to do so.

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

Yes/No – Please provide a reason for your answer

This would need to be carefully considered in light of the comments in response to other questions, for example ensuring evidence of the wider community benefits of requests, or where there are specific exemptions (see response to Q3).

The presumption should only apply where various criteria, including around use and value, are met. Disposal would require a specific definition for this scenario, as it should not preclude transfers of interests for public purposes such as dedications, transfers for tax efficiency, or partial transfers where a longer term opportunity may arise even if not yet fully evidenced. Where there are asset plans in place that have been agreed via the process that would be defined within the legislation, then the presumption to dispose should only be valid where those plans were not being delivered.

A presumption to dispose could leave local authorities at risk in various ways, from a service delivery perspective should development plans be thwarted, or if the disposal will:

- adversely affect the public by reducing proceeds from sale,
- enable a use that adversely affects the local community, or
- frustrate a use that would benefit the wider community.

Publicity and reporting

To improve transparency around these requests and assist with record-keeping, the government is considering placing requirements on local authorities such as:

- *quarterly reports by a designated local authority officer on the number of preliminary enquiries made*
- *requiring the display of physical and electronic publicity where a request has been submitted for the release of a site*
- *requiring local authorities to publish all requests, together with their outcomes and reasoning, on their websites*

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

Yes/No – Please provide a reason for your answer

Yes - but only if the proposals contain a clear schedule of reports that the public body would need to prepare, taking into account our comments below and avoiding public bodies dealing with many further ad hoc requests for information.

These proposals could significantly increase Freedom of Information (FOI) style requests, which are resource- and time-intensive to respond to. The impact of this will be dependent on the level of detail required to meet these new publicity measures. Under the Transparency Code, local authority assets are already published in the public domain so a potential mitigation could be to ensure local authorities highlight those assets held and classified on their balance sheet as “Surplus” or “Assets Held for sale” alongside this published data, to reduce the number of requests for information on assets which do not meet the definitions of unused or underused under the right.

The legislation must recognise the legal framework that local authorities operate within, including governance and decision-making processes. GDPR and issues of commercial sensitivity need to be taken into consideration where displays of information are requested and/or authorities required to publish outcomes and reasonings. There should be a formal process for applications to be submitted in an appropriate and consistent format, to avoid a high level of enquiries being received “informally” (e.g. phone calls, emails) on any site being marketed.

The government should consider the costs of administering claims and who would be responsible for these. Local authorities should have the opportunity to recover associated costs, for example through an upfront fee paid by anyone exerting the right.

Right of first refusal

Successful requests lead to the land being placed on the open market. This can act as a significant disincentive for those putting in a request, for example, for community groups who can find it difficult to raise finances quickly. The government is considering introducing a 'right of first refusal' to those who make the request recognising that they may need additional time to prepare a bid. This would usually be for market value and would be for a limited period of time. The right of first refusal would be imposed by the Secretary of State as a condition of disposal at his discretion. The government would welcome views as to the circumstances in which it should be employed.

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

Yes/No – Please provide a reason for your answer. Please also include what you believe would be a reasonable timeframe for the expiration of the right of refusal.

Yes, however there is a risk that this could be used to frustrate developments which are beneficial to the community but not supported by every stakeholder. A 'right of first refusal' should therefore only be offered where there is no existing plan for the property's disposal i.e. the land/asset is defined as 'unused' or 'underused' under the legislation. The deliverability of the proposal from a planning or financial point of view would also need to be considered, otherwise the disposal of land will be frustrated by the very mechanism that is being designed to expediate it.

The 6-month moratorium period that exists under the Right to Bid legislation (Localism Act 2010) could be applicable here, giving applicants a reasonable timeframe to secure anything they need (a business case, funds etc.). Any such allowance would mean the land remaining unusable and a potential blight for that further period, so government would need to ensure initial viability tests are undertaken on any request in advance of any moratorium period being agreed.

As noted under Q2, where there are conflicting requirements for the site, then there would need to be some form of evaluation based upon value and/or community benefit. There will need to be a specific definition of "applicant" to avoid parties making multiple applications and/or simply seeking to claim first mover advantage over and above another legitimate claimant, also noting that the applicant may be an individual seeking to buy on behalf a body or group yet to be formally formed.

Conditions attached to disposals

The Secretary of State has the power to specify in the direction the terms and conditions for disposal of the land. To date this power has never been exercised. The government invites views on whether conditions ought to be imposed on the disposal of land (for example, that a sale could only be to someone with the intention to redevelop a site).

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

Yes/No – Please provide a reason for your answer.

Yes. If the main reason for the proposal is to enable land to be used to provide community benefit, then this benefit will need to be defined and controlled as part of the disposal process. This would prevent the proposal being used by developers to force land disposal for profit, rather than for community benefit, and to ensure that the benefit is actually delivered by the acquiring party. All the comments relating to the control of how the land is to be used post purchase for the community listed above apply here (see response to Q1 and Q2 re benefits for the community).

In any best value transaction, authorities may seek to secure clawback / overage where excess profit might arise, and potentially a pre-emption right to take back if the use is changed or the asset(s) is still held derelict. The opportunity to do this should be protected within the legislation, to ensure public authorities are able to gain the best value for the taxpayer in every transaction.

There should be a time limit and obligation on the delivery of a development (both an obligation to secure planning, and then a period to commence full development from date of consent, noting

planning decisions/timetables might take time). This would avoid simply moving the issue of vacant land onto a new owner.

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

Please explain your answer.

As stated throughout our response, the proposal needs to be considered within the overall context that local authorities have an agreed and deliverable plan for their properties, one which can be reviewed and changed depending on circumstances but one that performance can be measured against. Government should be supporting this process and providing appropriate resources to public bodies to develop assets for the benefit of the taxpayer.

Any reforms should ensure that the right only applies where there is no agreed plan for the site, or where the authority is failing to deliver against that plan in circumstances that are within their control (rather than, for example, a change in market conditions).

In addition, before a reformed right can be offered effectively, there must be absolute clarity on the associated risks and how these will be mitigated, as well as what mechanisms will be included to ensure best value is secured for taxpayers.

The consultation does not highlight issues such as VAT (likely to be an added and non-recoverable cost to certain groups) nor how unused land that offers alternate benefits to a society might be considered (i.e. land with potential for carbon sequestration through planting, and/or offering socio economic and environmental benefits).