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Introduction

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Purpose of the book

'Planning gain' raises fundamental issues around the role of the state and the optimal creation and distribution of land values. Such gain may, in part, be the product of better decisions about the use of land as a result of government intervention. But it can also arise because planning constraints affect markets in ways that do not offset market failures. The extraction and allocation of all or part of increases in land values, through government policies to capture planning gain, is a core policy and practice issue in many countries. This is significant because it provides a source of public finance and the potential for resource redistribution.

This book considers how mechanisms to create and extract planning gain have developed in England since the middle of the twentieth century. In the 1940s and 1950s, following the nationalisation of development rights, such mechanisms were a core element of national government policies and finances. Thereafter, there were many changes in the instruments used and in powers of implementation, although the principle of government control over development has remained unchanged. The main contribution of the text is to examine how the system for extracting land development value has operated since the 1990s based on a national legislative provision (currently defined in S106 of the principal planning statute – the 1990 Town and Country Planning Act) and implemented by local decision makers. In this period, planning gain has been in the forefront of policy development

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to enable local authorities to fund the physical infrastructure needed to support new development and meet wider community needs such as additional affordable housing.

The development process and the creation of development value

Our starting point must be the property development process and the way that development is driven by potential returns based on the value of outputs from that development (Brown and Matysiak, 2000; Reed and Sims, 2008). Development is the investment of capital in real property to produce a return. Usually – but not always or entirely – the return is measured in financial terms. Development is viable when its value upon completion exceeds its costs by an amount sufficient to compensate the developer for the risk that is borne and the effort that is expended on the project. These costs include the price paid for the required land, which in turn reflects its value in the best alternative use.

Development can take many forms. It may involve the identification and acquisition of a suitable site, the provision of off-site infrastructure to support the future use (i.e. the servicing of a site), the construction of buildings and other structures on the site and the disposal of the completed scheme to owners and/or occupiers. Developers may perform all of these tasks or only some of them. For example, there are those who specialise in assembling fragmented ownerships and selling on the resulting large site to realise the 'marriage' value. Others, including the original owner, may focus on obtaining outline planning permission and servicing land before selling it to a developer, who then completes the scheme. Developers themselves may retain and manage the resultant asset.

Development is not restricted to undeveloped, un-serviced land. Developers may purchase existing, serviced land and buildings for brownfield development. They may demolish the building and replace it with a larger or more functionally efficient building or one given over to a different use. Alternatively, the existing building may be renovated, refurbished or extended. The common requirement for the development to go ahead, whichever types or stages of development are involved, is that the value of the investment exceeds the cost by enough to provide a competitive return.

We now consider development demand and value. Land values are underpinned by the demand for land generated by the activities of society as a whole and their evolution. Land values are highest when the land is employed in its highest valued use and will, in a well operating market system, be allocated to that use by preparedness to pay and therefore price. Allowing for land productivity, agricultural values depend upon the demand for food and other farm products and the ability of consumers and users

to pay for these products. Retail land values depend upon the demand for consumer goods and the way in which they are distributed and so on. As society develops, so gross domestic product (GDP), productivity and personal incomes grow. This inherently increases the average value of scarce land but it also implies that the most appropriate means of production, distribution and consumption are likely to change. The nature and pattern of physical development must in turn change in the face of these trends. The relative values of different types of property and land will wax and wane as a result.

The level and distribution of the value generated by changes in demand are affected by a range of other factors. A key influence is the availability, quality and cost of off-site infrastructure. It is no good building houses on a site that does not have access to the road network, sewers or mains water. In a regulated market, the state, through the land-use planning system, will contribute to the general change in land values by, for example, reducing negative externalities and increasing positive ones. It may also control landowners and/or developers' ability to respond to changes in demand and to achieve that value by permitting or prohibiting any kind of development or restricting land use to specific types of development.

The most dramatic increases in land values occur when a change from a lower to a higher order land use is combined with the physical development necessary to meet the requirements of the new use. One example is the transfer of agricultural land for residential use. The price at which the highest valued completed development may be sold determines the value of the land required to achieve that development. In other words, once development costs (building costs, finance, professional fees and the minimum developer's profit) are covered, any residual establishes the maximum market value of the land. The difference between the market value and the existing use value of the land is termed the 'development value'. Another generally used term for this difference between market value and existing use value is 'betterment' (Cullingworth, 1980; Hall, 1965), reflecting the extent to which property development enables additional benefits to be achieved such as the benefits of public investment in transport that improves the accessibility of a site given planning permission.

The price at which land will be offered and traded in the market will depend upon a combination of the character and motivation of the landowner, the development potential of the land and the nature of the extant planning system (Goodchild and Munton, 1985). Landowners will usually require a significant financial incentive to sell land. They will seek to maximize the proportion of the development value of the land that they obtain in the land price and will calibrate that objective against prevailing market experience. This is the mechanism that brings land forward for

development. If the state reduces or removes the landowner's sale premium the supply of land will be reduced or halted unless an alternative means (such as compulsory purchase) is found to bring land forward for development.

The taxation of development value

Attempts by government to capture development values through the planning system have a long history in the UK (Cullingworth, 1980). This was initially seen as a matter of equity (Cullingworth, ibid; Hall, 1965; see also Fainstein, 2012, for international views). It was argued that increases in land values as a consequence of development should not be kept by landowners who had done little or nothing to generate this value but should be shared with the state as the representative of the wider society whose actions, in large part, created them. In line with these principles, national taxation of land development value was introduced, the income from which was used for general public expenditures.

Latterly, much more emphasis has been put on the more pragmatic rationale that development value taxation can be used to finance infrastructure and services both to increase economic growth and benefit communities (see, e.g. Bill, 2004; Campbell *et al.*, 2000; Crook and Monk, 2011; Lichfield, 1989). This, in turn, has shifted the emphasis towards approaches that are both locally based and generate hypothecated revenues.

State intervention in the creation and extraction of development value is by no means confined to the UK (Ingram and Hong, 2012; Monk *et al.*, 2013; Oxley *et al.*, 2009), although England, in particular, has been at the forefront of the development of policy and practice in this field over the last three decades. In all systems, local or national governments regulate and manage land uses in ways that influence the generation of development values which in turn may be taxed in one way or another. Each country has its own legal and institutional framework that helps to determine what types of instrument are feasible and desirable. Even so there has been considerable commonality in the increasing emphasis given to introducing instruments that enable local communities to benefit through improved local infrastructure and services, often through the provision of affordable housing.

Consequently, the book places the English experience in an international context. It looks at these issues in three distinct ways: by setting out the principles involved in generating and reallocating development values; by considering the types of policy instrument that can achieve these goals and the necessary conditions for such instruments to be implemented effectively; and by examining empirical evidence on how the instruments used in England and some other countries have worked.

In this context, ‘planning gain’ has become a colloquial term to describe the development value that arises as a consequence of the granting of planning permission or of re-zoning in most other countries (Ingram and Hong, 2012). This rise in value reflects all the benefits which are released as a result of changed opportunities that receiving planning permission makes possible. Some of these will arise from the quality of the planning process; some from reductions in constraint and some from the more effective use of existing infrastructure and the expectation of further infrastructure investment. In other words, it is not restricted to the gains in value arising from planning itself.

The proportion of planning gain which is captured depends on the effectiveness of the tax and its implementation. In the UK, this is strongly associated with the increasing use made by local planning authorities of planning obligations. Such obligations result from negotiations with applicants for planning permission for contributions (either in cash or in kind) towards infrastructure and wider community needs, including affordable housing. They are covered by S106 of the 1990 Act in England (and equivalent parts of legislation in the rest of Britain) and by the recently implemented Community Infrastructure Levy – or CIL (Crook and Monk, 2011). The obligations thus address objectives both of efficiency (in the sense that by securing developer contributions towards the off-site infrastructure costs of their new developments, additional investment which has positive net value to the community is enabled) and equity, by securing more funding from private developers for services, including in particular housing for low-income households, in cash or in kind (Crook and Whitehead, 2002). The recent introduction of CIL in 2008 creates a distinction between, on the one hand, those contributions which are negotiated through S106 agreements for site-specific infrastructure and mitigations and affordable housing and, on the other hand, those sub-regional and regional infrastructure costs for which local planning authorities may (but are not obliged to) impose a charge (related to the size of development) on all developers implementing a planning permission.

Planning obligations were once a rarely used mechanism within British planning legislation (Jowell, 1977). They enabled local planning authorities to regulate aspects of development not directly related to land use and to ensure that developers mitigated some of the side effects of development. They have now become a frequently used method of obtaining substantial funding for wider infrastructure requirements and for meeting affordable housing and other community needs.

What is especially interesting about the British experience of using instruments to extract planning gain is that the once separate means of capturing land development value and of applying the resultant funds have now come together at the local level. For some significant period after 1947, increases in

development values were taxed on a *de jure* basis at the national level. Importantly, because government owned the development rights there was never a need to compensate those who were restricted in the use of their land – the focus was purely on the taxation of what were seen as unearned gains. Quite separate national systems of allocating public expenditure provided the means for funding off-site infrastructure and community provision.

Now these once separate systems for taxing development values and for funding infrastructure have come together at the local level. Local planning authorities are charging fees or negotiating contributions from developers to meet some of the costs of off-site infrastructure and community needs. Significant sums have been raised in this way. As we shall see in Chapter 6, the scale of these contributions has grown very considerably in England in the last two decades, with a large proportion of permissions for major housing and commercial developments now covered by planning agreements (Crook *et al.*, 2010). The growth of these agreements has arisen in part because of the financial pressures on the public sector, the traditional funder of capital for infrastructure and affordable housing. Faced with these contributions, developers have reduced the prices they are prepared to pay for land. The result is a *de facto* extraction of development value which is, at least in principle, paid by the landowner and is hypothecated for local use.

In telling the story of how systems for extracting planning gain have evolved and of their impact on development, we focus on England rather than the rest of the UK. Although the systems in Scotland and Wales are not dissimilar to those in England,[1] the advent of devolved administrations means that there are increasing differences between the nations of Britain in the ways these issues are being handled.

Factors affecting effective development value capture

Planning as a state activity has been conceived in several ways: as substituting administrative for market allocations to favour the state's objectives rather than those of individual actors; as regulating, shaping, and stimulating markets to operate more effectively; and as pro-actively developing the capacities of market participants often by the provision of infrastructure (which itself may be paid for by the captured development value). We need to bear this in mind when examining planning gain from different perspectives. Each highlights a specific way of looking at the system. No one perspective offers a full understanding of planning gain or of how it works within any country's system of land ownership, governance, spatial planning, public finance and property markets. It is therefore necessary briefly to consider

[1] Policy and practice in Northern Ireland are distinctive.

the fundamental drivers that affect planning gain capture to ensure that our presentation of the English system is clearly located within a framework that allows comparison with the systems in other countries.

Property rights and ownership

Whether land and/or development rights are in public or private ownership makes a big difference to how development values can be secured for public benefit and to the consequences for the supply of development land. Ownership is best understood as a set of property rights. One is the right to the benefits of development and another is the right to choose how to develop. The form and arrangement of these rights range from outright private ownership through to outright public ownership with a variety in between, for example, involving joint ventures of private and public bodies.

Where land is in public ownership the benefits are, at least in principle, directly available to be used for public benefit. The need for value capture arises where there is private ownership or a mix. Moreover, what may appear to be a simple allocation of ownership is often far more complex because these rights may involve restrictive or positive covenants that limit what the owner can do or place obligations on the owner. Property rights over the same plot of land may be split among several owners. In the UK, as we have already noted, the right to develop has been nationalised (for details, see Chapter 3). Hence, a parcel of land may only be developed by the owner if the state exercises *its own* development rights. Formally, this is done through the granting of planning permission.

Other public–private relational complexities may arise. For example, the state may bring land into temporary public ownership with a view to selling it on to the private market, following aggregation into appropriate lot sizes and the provision of key infrastructure. This approach – state acquisition of land perhaps at existing use value or somewhat above (compulsorily if necessary), servicing and sale at its value in its intended future use – may provide a more effective means of extracting gains than either land taxation or development charges. It is an approach which has been successfully employed in Germany and the Netherlands (as we shall see in Chapter 9) but has been used relatively rarely in the UK.

When land remains in private ownership, the main ways of extracting gain are taxing the development value when planning permission is granted, raising infrastructure funds through charging mechanisms and placing restrictions on development that require the developer to provide infrastructure and other services. All these create a possibility that landowners will not bring land to the market because they reduce the uplift in land value consequent upon development and, therefore, reduce the financial incentive

to sell. In addition, landowners will make a judgement about the prospects for future legislation or practice affecting taxes or charges in the future.

The public or private nature of ownership is not the only factor affecting the capacity to extract planning gain. Private landowners have many reasons for owning land. They also have different time horizons. Financial motives may include a desire actively to trade land to take advantage of new development opportunities, longer term investment motives or indeed sentiment or family obligation. The complexity of financial rules (including tax and accounting rules) affecting landowners, combined with the fragmented nature of their interests and holdings, means that there can be no one simple determining relationship between land prices and the supply of land for development that actually enters the market. Similarly, public bodies may own land for many reasons including historic circumstance. So, while under current legislation in England, public bodies are expected to own land primarily to carry out their obligations (e.g. owning the land on which schools are built), they may also own unused stocks of vacant land to meet future requirements or to achieve other objectives.

The need for finance

The need to raise funds for infrastructure and other local facilities and services through negotiated or prescribed charges and *de facto* taxes on development value depends to an extent on the role that the state plays in financing these requirements. Where the state funds most of these from national taxes on income, capital gains and transactions (plus local taxation on property and sales), local charges and *de facto* taxes on development values lose some of their appeal – at least on financial grounds. This is one reason why taxation and expenditure were seen as separate in the early post-war years, when most infrastructure provision was by the state. It is also one reason why they are now far more central as a result of privatisation. In many jurisdictions developers are generally responsible for providing on-site infrastructure, including service roads, water, sewerage and energy supplies. These are part of the developer's costs. Off-site infrastructure is another matter and may include a wide range of costs that have to be incurred to support new development.

Where the state is not the direct provider of development and its supporting infrastructure, any changes to market incentives created by introducing charges and taxes on development value may be crucial to the supply and price of development land. A high charge or tax rate may work, but only if it does not keep land off the market – or if the state is empowered, funded and prepared to step in and replace the land market with compulsory acquisition of land and its subsequent disposal. In many jurisdictions utilities (water, sewerage, gas, electricity and so on) are now provided by private companies rather than by national and local states. In such circumstances arrangements

are made for developers to negotiate directly with utility companies for the provision of off-site infrastructure (as well as paying for the on-site components). All of the developers' commitments affect the price of the land and therefore the extent of additional value available for extraction.

The ownership of development rights

Where land is in public ownership, development rights sit alongside the state's (or municipality's) ownership. They will still normally be subject to any limitations imposed by the land-use planning system and broader legislation constraining how the state may use these rights. However, where land is privately owned matters are different – often development rights are reallocated by government intervention of one sort or another. Systems vary between countries. In many ways, the British system is unusual because, as we have already noted, development rights have been nationalised (without compensation) and thus can only be allocated to landowners and developers by the state granting permission. Separate policy and legislation is needed to extract any of the resultant value for public purposes. In other countries, development rights remain in private ownership with their use constrained by zoning systems and covenants that enable the state to intervene in private decisions for reasons of public interest and potentially to gain some of the benefits arising from development and infrastructure provision.

Taxing value or raising charges

The policies and instruments discussed in the book cover two conceptually different objectives. On the one hand, there are instruments designed to tax development value that are applied through the planning system. On the other hand, there are instruments designed to raise funds from developers to help pay for the infrastructure needed, on the one hand, to allow their development to go ahead or to mitigate its impact and, on the other hand, simply to pay for future infrastructure requirements. What developers are asked to pay is then often related to the costs of the infrastructure and not (at least in principle) to the development values created. As we shall see, the current arrangements in England are a hybrid of these approaches.

Rules versus discretion?

As we shall see in Chapter 9, some planning systems in developed countries are much more 'rule bound' than those in the UK. Many are 'zoning systems' in which a physical plan specifies the allowed future development of the relevant area and determines the permits needed for development to take place. The differences between zoning and more discretionary approaches

to planning such as the British planning permission system can be more apparent than real. Zoning rules can be changed and decisions in discretionary systems are bound to consider relevant policies. Nonetheless, discretion gives spatial plans in the UK system more inherent flexibility (and equally more uncertainty) in their implementation than zoning plans in other systems. Crucially, discretion provides the possibility of enabling planning authorities to negotiate planning obligations. It is this that has allowed planning authorities simultaneously to obtain contributions to infrastructure and community needs and – formally completely separately – to decide whether or not to grant planning permission.

However, the exercise of discretion by different local planning authorities (LPAs) may result in significant differences both in the extent of betterment created and in the policy and practice across administrative boundaries (and indeed over time) in extracting some of this. In part, these variations relate to market factors. The spatial pattern of demand for, and the value and cost of development, determine the amount of development value that may be extracted. However, variations in policy and practice also matter. Political and professional attitudes to extracting development value and practical competence in designing and implementing policies and in pursuing negotiations are important in this regard. There is also the possibility of perverse outcomes. These may include attempts to tighten restrictions on land supply to boost development values or to permit development in areas where development values have increased significantly but where there are other external costs to the development.

Fixed taxes, tariffs and negotiated contributions

When seeking to tax betterment or to raise contributions for infrastructure and other needs, policy makers have a choice of instruments that depends on the legal and institutional context and on political realities. At one end of the scale is a nationally imposed levy or charge covering a defined percentage of the uplift in development value, the latter spelt out formulaically in legislation, whilst at the other end, local authorities (or regional bodies) can be given powers to set and collect levies. They may have the right to determine whether the charge is made as a percentage of the uplift in value, as a fixed tariff or as a negotiated contribution. There is the possibility of mixing tariffs and negotiated contributions to collect funds for different purposes (as we shall see, this is the latest approach in England with planning obligations and CIL). Where sub-national bodies are given powers (or duties) important matters arise regarding the extent of their discretion and how this is limited. The latter may be affected by the imposition of rules – such as a requirement to maintain the viability of development – and by the extent to which developers can appeal to a higher authority against requirements.

Local discretion also gives rise to important consequences. In particular, it allows levies or charges to reflect local variations in underlying development costs and prices. However, variations in practice may mean that developers face differences in the costs within areas with otherwise similar market conditions. This may affect decisions about where to develop.

Hypothecation and contract

Part of the appeal of infrastructure charges and of locally negotiated contributions lies in the ability of the jurisdictions receiving them to devote the finances accrued to the funding of specific local investments. Conventionally, national systems of taxation do not permit such hypothecation so there can usually be no guarantee that funds raised from a locality through nationally defined taxes on development value will find their way back to the locality to meet its needs. This is precisely what local charging and contributions permit. They enable planning authorities to raise the funds (in cash and in kind) needed to support development. From the developers' perspective, whilst liability for nationally defined and levied taxes provides an element of certainty when scoping a project, locally negotiated contributions can give them contractual certainty that the local authority, having received the funds, will provide the agreed infrastructure required to support that development. Conversely, if the agreement specifies an 'in kind' contribution from a developer then, having granted consent with the related agreement, the LPA has the certainty that the developer will deliver that contribution.

Key factors behind the development of planning gain policy in England

The factors set out mentioned above are crucial to understanding the choices that can be made about extracting development value. In England, a fundamental difference from most other systems, which has been constant since 1947, is that development rights (but not land ownership) are nationalised so the state owns the power to determine how land is used. How that power has been used and with it how instruments to tax the outcome of its use have developed has depended on three factors (or 'drivers'). These are as follows:

1. changes to the political economy of the UK;
2. the nature of the UK planning system and how it has adapted to these changes; and
3. the nature of local discretion, especially in England.

Political economy

Whilst the UK is now often characterised as having a liberal market economy (Hall and Soskice, 2001), this has not always been the case. Moreover, there continues to be a strong state role in the provision of many services, especially education and health. In the immediate post-war period, following the election of a Labour Government in 1945, there was a strong ideological drive to ensure state control of the commanding heights of the economy and also to harness the state to address welfare provision. In our context this involved setting up a comprehensive system of land-use planning and becoming the main provider of infrastructure. It also acquired development land and, through local authorities, built new homes for social renting. Inner cities were to be comprehensively redeveloped with the overspill population accommodated in New Towns or other public sector developments.

Fairly rapidly state planning in its extreme form was replaced by a more mixed economy. This was undoubtedly the case in housing where there was an increased private sector role building for owner occupation from the early 1950s. Housing output from then to the end of the 1970s was split roughly 50:50 between the public and private sectors.

From the 1980s onwards, Britain became more of a liberal market economy than a mixed economy. There was substantial deregulation of key sectors. Some public services and most nationalised industries were privatised. Crucially for the subject matter of this book, many utilities were privatised; a proportion of social rented housing was sold to its tenants at discounts under a right to buy policy; and local authorities were no longer seen as providers of new homes but as facilitators of supply by other agencies. Public expenditure (especially on capital) was reined in, whilst local authorities' freedoms and ability to raise their own funds through both local taxes and borrowing were increasingly restricted.

The planning system

The planning system in the UK had to adapt to this changing political economy. One of the enduring achievements of the first post-war Labour government was the establishment of a comprehensive system of land-use planning, following much debate and discussion by reconstruction committees sitting during the war time (Cullingworth, 1975). In 1947, all development rights were nationalised whilst leaving the ownership of land and other property rights unchanged (for descriptions of the planning system see Cullingworth *et al.*, 2014; Rydin, 2003).

Those wishing to develop land had to apply for planning permission from the LPA. Government policy created a presumption in favour of development so that applicants for permission did not have to prove the need for it;

rather LPAs have to give good reasons for refusing permission. In deciding whether or not to grant permission LPAs have always been obliged to have regard to the provisions of their development plan and to any other material considerations.

All LPAs are thus required to draw up a development plan for their area, having regard to national policy guidance and to keep it under review. The exact form of what is required of a plan has changed in detail over the years but the fundamentals of the planning system have not.

Unlike the zoning plans of many other jurisdictions (see Chapter 9) development plans in Britain do not, of themselves, grant permission. Instead LPAs must have regard both to the provisions of the plan and to other considerations so far as they are material. Thus, the British planning system is a system for decision making where there is a balance between rules (plans and policies) and discretion (taking other material circumstances into account). Getting this balance between certainty and flexibility right was a key matter facing the designers of the post-war planning legislation and the relevant 1944 White Paper emphasised that plans would not confer the right to develop but instead provide a policy background for the taking of decisions on planning applications (Cullingworth, 1975). The obligation to take other material considerations into account means that LPAs may grant permission for something that does not accord with their plan whilst also refusing something that does, provided good reasons can be given. Those whose planning applications are refused have the right to appeal to central government.

This brief sketch of the planning system in Britain identifies two key matters relevant to our book. First, central government plays a key role in the planning process. Ministers have both a policy role and an appellate role. Second, the planning system is a discretionary decision-making system that has the flexibility needed to accommodate policy, demographic, economic, social and other change but also generates uncertainty about decisions. These two matters (the role of central government in determining policy and the inherent discretion in the system at the local level) have enabled the planning system to adapt to changes in the political economy of Britain, whilst leaving the fundamentals of the system unchanged. Development rights have remained nationalised, development continues to need consent and LPAs are required to have regard to national policy, their adopted plans and other material consideration when making decisions. As the political economy changed, so too did planning practice with more emphasis on a collaborative style of planning (see Healey *et al.*, 1988; Healey, 1997) to enable development to proceed and to negotiate acceptable outcomes.

Central–local relations: Local discretion, innovation and adoption

The third factor behind the growth of planning obligations as the means of capturing planning gain is the significance of local discretion. The development of a more negotiative and participatory style of plan making and development management has been fundamental to the success of planning obligations in delivering funding for infrastructure and affordable housing.

Chapter 3 shows how attempts to extract development value through measures of national taxation foundered. This was partly because landowners kept land off the market because the high rates of tax made them indifferent to development and also because of expectations of political change. Measures introduced to enable land banking by the public sector to address such land withholding foundered on inadequate borrowing approvals from central government and insufficient eligible development land allocated in LPAs' development plans.

From the 1980s onwards, public spending cuts and the privatisation and marketisation of services arising from the emergence of a liberal market economy all made it problematic for LPAs to secure either infrastructure needed for development or community requirements. At the same time, central government used national planning policy statements to make it difficult for LPAs to use their development plans as vehicles for pursuing wider social and economic objectives and restricted the role of planning to the shaping of physical developments.

These centrally imposed constraints led several LPAs to find other ways of securing the funding they needed and using the planning system to pursue wider objectives. The legal framework of planning has always allowed LPAs to negotiate agreements with developers to contribute funding or in-kind facilities in connection with their proposed developments. Such agreements make it possible for LPAs to give consent to acceptable developments that they would otherwise have to refuse because of the lack of supporting infrastructure.

Once innovating LPAs had demonstrated the possibility of successfully using planning obligations to secure funding, other early adopters followed and eventually the practice became widespread. The more negotiative style of decision making in planning that emerged from the growth of a liberal market economy in Britain thus made it possible for LPAs to pursue this approach. As a result, planning obligations are consistent with the tenets of a liberal market economy in the sense that private (development value) funding has (partially) replaced public funding of infrastructure and of affordable housing. This reflects the wider changes in the relationships between state and market and the private and the public.

This use of planning obligations was not uncontroversial. Inevitably, questions were asked not only about the legality of obligations practice but also

about the ethical challenges for planning practitioners in terms of the conduct of negotiations and the temptation to use planning policy to shape financial outcomes. These challenges by property and other interests and the wider questions these raised about the ethics of professional practice ultimately led central government to establish a clearer policy framework in the 1990s. This did not limit the use of obligations. Instead it endorsed as government policy what had essentially been a local initiative. Consequently, the use of obligations for these purposes was legitimised and legalised, whilst at the same time greater transparency (policies to be included in plans) and accountability (openness about the content of agreements) were introduced into the process.

Definitions

A wide variety of terms have been used to describe the phenomenon discussed in the book. Confusingly in the literature, the same terms have often been used to describe different phenomena and a specific phenomenon has sometimes been discussed using different terms. Thus, the term 'planning gain' is sometimes used to describe the contributions developers make through planning agreements but it is also sometimes used to discuss the increase in market value of land arising from planning permission from which such 'planning gain' can be extracted. The focus of this book is the variety of ways, including taxation and negotiated planning agreements, used to capture some of the development value created through the granting of planning permission and we have tried to use the term 'development value' consistently throughout the book to describe the increase in the market value of land arising when planning permission is granted and to use the phrase 'capturing (or extracting) development value' when discussing methods to tax or negotiate some or all of it.

Box 1.1 lists and defines the principal terms used throughout the book. Although the three definitions of betterment are conceptually separate, it has proved difficult to capture them through mechanisms specifically related to each of the three types identified in Box 1.1 mentioned above. Although the mechanisms we describe and discuss in this book are in practice related to capturing development value at the time when planning consent is granted, the increase that is captured can arise not just because the state allows new uses or new physical development on the parcel but may also reflect a land parcel's improved accessibility arising from transport investment by the state and from the general uplift in values arising from greater prosperity. It is the granting of planning permissions that provide that state with the opportunity to secure some 'betterment'.

Box 1.1 Definitions of terms used in the book.

Terms	Definition
Betterment	Increases in the value of a parcel land that arise from many factors including: (a) the impact of public investment, such as transport, which increases accessibility, thus raising demand for that parcel and hence its market value (b) the impact of granting planning permission for development, including change of use, which in itself increases market value by allocating development rights (c) the impact of overall economic performance of the nation and of specific locations which is reflected in higher land values
Betterment Levy	The levy on development value introduced in 1967
Community Infrastructure Levy	A levy that local planning authorities may charge developers for contributions to infrastructure introduced in 2008
Development Charge	The tax on development value introduced in 1947
Development Land Tax	The tax on development value introduced in 1974
Development Value	The difference between the market value of a parcel in its existing use and that in a proposed new use
Market value	The value of a parcel of land, including any buildings erected on it, when it is traded in the market or acquired compulsorily when compensation is paid at market value
Planning agreements	The legal agreements between developers and local planning authorities setting out the obligations that have been agreed. Known as S106 agreements after the clause in the principal planning legislation
Planning Gain	The gain in market value created by granting planning permission (i.e. also definition (b) under 'Betterment' above), some or all of which may be extracted through taxation of contributions via planning obligations. It is a term that has also been used colloquially to describe planning obligations *per se* as well as the overall increase in market value of the land
Planning obligations	The contributions developers agree to provide in terms of infrastructure and community facilities – in cash and in kind – following negotiations with local planning authorities about planning permission

The structure of the book

This book on England's experience of planning gain is timely for three reasons. First, there is much interest in the ways that we tax betterment and capture planning gain. However, because this experience is peculiar to England, there is a risk of inappropriate policy transfer and application in quite different contexts. This book tries to ensure that both the context and the operation of planning gain in England are made clear. Second, following the

global financial crisis, fiscal austerity has dominated the economies of many of the world's developed countries, making it necessary to find new ways of financing infrastructure and community needs, especially from the private sector. This places an imperative on understanding the potential for designing planning and taxation systems for achieving new sources of funding. Third, the conceptual and empirical literature on planning gain is scattered across many learned journals and a range of research reports commissioned by government and related agencies. The aim is therefore to bring this source material into one place and to critically examine experience. The editors and the other collaborating authors have undertaken much of this earlier work, but each chapter has been specifically written for this volume, informed by our experience and knowledge.

This book describes and analyses the ways the planning system in England addresses three related challenges.

1. First, it clarifies how the land-use planning system may contribute to the generation of development values.
2. Second, it considers whether these increases in development values may be taxed without adversely affecting the efficient allocation of land and, if so, how.
3. Third, it demonstrates how these gains can help to fund the infrastructure and other community needs, including affordable housing, required to implement agreed development and land-use plans.

To address these questions, in the chapters of the book that follow this introductory chapter, we set out the conceptual and policy frameworks for looking at development values and the funding of infrastructure; second, we examine the specific experience of English policy and practice in the last two decades; and third, we look at the experience of selected countries as well as more general international evidence to see how others have addressed these issues. Finally, we seek to draw lessons both for England and elsewhere on how planning systems can deal with significant growth and development pressures in the face of continuing austerity.

Thus, in Chapter 2 we use the perspectives of economic theory and relevant empirical evidence to examine the price and supply of development land, to show how planning and the capture of planning gain impact on these and to examine the potential costs and benefits of implementing such policies. In Chapters 3 and 4, we look at how policy to 'capture' development value evolved. Chapter 3 looks back at the four attempts to tax development value through explicit national taxes and levies and shows how and why these failed to achieve their objectives. Chapter 4 then explains how planning obligations policy has evolved to become a *de facto* means of capturing development values at the local level to help fund infrastructure and affordable housing. In Chapter 5, we draw on financial economics and institutional

theory to examine development costs, values and funding, how development projects are appraised, how outcomes vary spatially and temporally and how planning gain policies (both charges and taxes) affect the viability of developments.

The following three chapters look at empirical evidence on the operation of the planning gain system in England. They make use of a variety of perspectives to examine the extent of planning gain, how it is distributed across the country and how its extraction is achieved. In Chapter 6, we assess the evidence on the incidence and value of planning gain secured, using valuation principles based on economic theory to measure the value of planning gain contributions. In Chapter 7, we look at the significant variations in planning gain across England, using statistical analysis and insights from policy, subsidiarity and discretion to understand the differential impact of the market and the state on planning gain. The distinct contributions of tariffs and negotiated contributions to the capture of planning gain are also considered. Chapter 8 looks at what has been delivered in terms of affordable housing and infrastructure, in particular showing how far negotiations following initial agreements have maintained or indeed increased what is delivered as well as maintaining viability for developers. It also reveals how recent policy changes (described in Chapter 4) that mix fixed charges with negotiated contributions are affecting delivery in a changed economic environment.

In Chapter 9, we examine the planning gain capture systems in four other developed countries and use our framework to compare the range of approaches. Finally, in Chapter 10 we draw conclusions about the achievements and failures of the planning gain systems in England and other countries and identify lessons for the future that can be drawn from this evidence.

Conscious that some readers may ‘dip into’ the book and read specific chapters before reading the book as a whole, we have deliberately repeated or summarised some limited relevant material from previous chapters so that the context for the detailed analysis or findings of the selected chapter are clear.

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