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From the chairs

Rural

Gerard Smith
FRICS

The output from many RICS professional groups is relevant for those in rural practice and I recommend you read both the Land and Property Journals to keep up to date. A guidance note from the environment PG, Environmental risks and global real estate, illustrates the point (RICS.org/environmentalrisks).

This concerns the land and property acquisition, disposal and asset management stages of the real-estate lifecycle. It is aimed at chartered surveyors who are not specialists in environmental considerations or management and those who don’t have expertise in environmental reporting. Please email Fiona Mannix (fmannix@rics.org) for a copy.

The latest quarterly Rural Update was sent in October; again, please email Fiona for a copy. RICS is also producing a guidance note on the new Electronic Communications Code. The note will soon go to open consultation and I encourage you to comment.

Finally, we are collaborating with the Institute of Chartered Foresters and the Mersey Forest on the January conference ‘Creating value from woodlands – new opportunities in the Northern Forest’; for details, see p.25.

Geomatics

Gordon Johnston
FRICS

The RICS Geomatics pathway and a client guide to instrumentation and monitoring were both published in 2018, the latter jointly by the Survey Association (TSA), Chartered Institution of Civil Engineering Surveyors (CICES) and RICS (bit.ly/instrumoniit).

Meanwhile, events have been held to promote the recently launched seventh edition of the Party wall legislation and procedure guidance note. The Land measurement for development planning guidance note is also progressing and will be available soon for consultation. In 2019, we plan to publish a client guide on aerial imagery, with a work group for this now formed with TSA and CICES.

RICS has also responded to the UK government’s request for evidence on areas of focus for the Geospatial Commission (see p.5). Spatial is everywhere, so it has been a challenge to articulate a context for our work and profession while concentrating on the key strategic areas that the commission should develop and promote. Feedback on the government’s request is due in early 2019, and RICS is maintaining close links with all involved in this process.

Environment & resources

Stephen McKenna
MRICS

I am delighted that our guidance note Environmental risks and global real estate is published, and I encourage you to download it free of charge from the RICS website (RICS.org/environmentalrisks) or alternatively email Fiona Mannix (fmannix@rics.org). Environmental considerations affect real estate in all sectors, and increasingly have implications for buying, selling, using and valuing property.

The publication addresses the land and property acquisition, disposal and asset management stages of the real-estate lifecycle. It is also designed, among other things, to define the professional responsibilities of chartered surveyors; offer a guide to the identification of environmental considerations and the investigations appropriate to them; consider aspects of the relevant legal duties arising from environmental considerations; and help chartered surveyors to consider specialists’ reports.

In addition, it seeks to inform appreciation of the respective risk categories and conclusions and recommends standard phrases to report circumstances that relate to environmental risk.

Planning & development

Paul Collins
MRICS

The revised National Planning Policy Framework, with its emphasis on successfully delivering housing through local plans rather than just allocating sites, is beginning to take effect. While the focus is on housing numbers, we must not lose sight of the need for good urban design.

In this regard, the P&D professional group is considering extending its 2016 Placemaking and value information paper to explore sites in the Midlands and North. The original examined links between good urban design, placemaking and site sale prices (see Land Journal December 2015–January 2016, pp.6–8), and in general found a positive correlation, although not equally strong across all sites. We hope a new study could provide further insight.

Meanwhile, a new guidance note on the measurement of land for development planning purposes is being produced. This will cover five aspects of measurement used by owners, developers or their agents, namely land area, site area, net development area, site coverage and plot ratio. These may be being interpreted in slightly different ways, causing confusion, delays and disputes.
Briefing

Code dispute settlement ‘not binding’

A dispute between Virgin Media and Durham County Council under the new Electronic Communications Code, relating to payment for laying cables on local authority land, has been settled. This means Virgin Media will be allowed to lay cables for its £3bn Project Lightning ultrafast broadband scheme on council land for a nominal £1 fee. The dispute had been due a final hearing before the Upper Tribunal (Lands Chamber) in September.

Virgin claimed the agreement would set a ‘much-needed precedent’. However, Rhiannon Saunders of law firm Pinsent Masons said the agreement would not be binding because of the settlement before the final hearing.

‘The settlement ostensibly supports the position that operators will now pay only nominal sums for code rights. While this is a useful indication of the attitudes of code operators and site providers, the fact that the case settled means that this is not a binding precedent and we await to see whether the tribunal would endorse such a decision,’ she said.

Operators and landowners have issued a joint statement reaffirming their commitment to collaborate to make the new code work.

Investing in unlocked data

The Geospatial Commission has announced its first investments, with plans to grant £5m for unlocking data held by its six partner bodies, the British Geological Survey, the Coal Authority, HM Land Registry, Ordnance Survey, the UK Hydrographic Office and the Valuation Office Agency.

The commission, set up by Philip Hammond a year ago, will provide £80m over the next two years to support the development of products for a global market.

Using this publicly held data more productively could be worth up to £11bn to the economy every year, the government believes.

New services based on the data could include tackling crime hotspots or finding the quickest routes for emergency services, the Cabinet Office suggested.

Geomatics lectures continue

Forthcoming geomatics lectures to be held at RICS HQ in Westminster will include the UKGeoForum on ‘Cold War Mapping – How the Soviet Union secretly mapped the world’, on 24 January at 6pm. This will be followed by an offshore and marine lecture with the UK Hydro Society on 27 February at the same time. Contact Linda Powell to secure a place for either lecture (lpowell@rics.org).

The Christmas lecture was given by Clarissa Augustinus, of the UN Habitat Global Land Tool Network, who was presented with the Michael Barrett Award 2018. Her address described the way that challenges facing the planet such as climate change, population growth and urbanisation are being met through innovative land administration practices.

Conference

The RICS Rural Conference, South East will be held on 13 February 2019, in Tunbridge Wells.

rics.org/serural
Counting on cannabis

With a multibillion-dollar tax bonanza available to be collected from legalising cannabis, Thomson Reuters has been helping Mendocino County, California, to make the most of new revenues from its marijuana farms

Tad Simons

In November 2016, when the state of California passed Proposition 64 legalising recreational use of marijuana for adults, the tax implications were a bit murky. Seemingly everyone wants a piece of the billion-dollar-plus tax bonanza that legal cannabis is expected to provide, but the law — which came into effect on 1 January 2018 — only spells out what the state’s cut of the tax will be. Local cities and municipalities have the freedom to create and enforce their own cannabis tax ordinances and governing bodies all over California have responded by doing just that, asking voters to approve a wide variety of cannabis-related tax proposals.

These new, voter-mandated cannabis taxes are presenting a variety of challenges for local governments, particularly in areas where cannabis has been a large part of the economy for decades. In Mendocino County, officials are working hard to educate growers about the steps they need to take to comply with the state’s new regulations, a shift that involves changes in both policy and culture. One big change is a new tax on growers and cannabis-related businesses, the revenue from which will be used primarily for road repairs, youth drug prevention efforts and mental health services.

New taxes require new systems. Soon after Mendocino County passed its own cannabis business tax measure, the county asked Thomson Reuters for help developing a system to deal with the law’s new regulatory framework and tax structures. Mendocino County is one of many in California that have contracted with Thomson Reuters for its Aumentum property tax and business revenue modules. The challenge was to configure the modules for a new type of tax entering the formal economy in barely more than a year, as the people of California had only approved legalisation in November 2016.

Software implementations for government entities are complex and typically take more time, but Thomson Reuters met the Mendocino challenge by thinking creatively and drawing on work it had already done elsewhere in California. Instead of starting from scratch, it adapted a business revenue module that had already been built for the City of San Francisco and was thus able to provide a fully functional software package for Mendocino within the necessary timeframe.

The new module went live in September 2017 and the county’s tax collector is confident that the system will provide the crucial support needed to process the county’s new tax regulations. It will help Mendocino County invoice and license cannabis-related businesses, track revenue and make the way things are run more efficient, which should help foster public trust in the overall process. That trust is essential because California’s regulatory efforts are complicated by the federal government’s shifting policies on legalisation.

As it is, the logistics of registering growers and enforcing new regulations are formidable. In Mendocino County, for instance, voters approved a 2.5 per cent tax on cultivators’ gross receipts, one of five per cent on dispensaries, and a $2,500 annual flat tax on the cannabis supply chain — manufacturers, labs and distributors. When the measure passed, Mendocino County tax collector Shari Schapmire’s first thought was, ‘We’ve got to have some kind of software to accommodate this. What are we going to do?’

Located three hours’ drive north of San Francisco, Mendocino County is, along with Humboldt and Trinity Counties, part of the so-called Emerald Triangle, the largest cannabis-producing region in the USA. In Mendocino County alone, there are more than 5,000
independent growers, all of whom are now required by the state to register so they can be properly regulated and duly taxed.

Collecting that local tax revenue is Schapmire’s job – and it is a big one. Those who want to grow cannabis legally must obtain permits from both the state and local authorities, as well as complying with strict regulations concerning water sources, setbacks, drainage, pesticide use and other restrictions. Getting growers to register is the first challenge. ‘People want to be compliant. They want legitimacy. But there’s a trust issue now, because there’s still the concern that growing cannabis is federally illegal,’ Schapmire says.

By September 2018, only 700 of the many thousands of growers in the county had voluntarily registered. ‘Our biggest goal now is to get any cannabis-related business registered and logged into the software. Cultivators, processors, manufacturers, labs, dispensaries, all of them,’Schapmire says. Her hope is that registrations among cultivators will pick up once people see that their neighbours are cooperating. Once growers are registered, the Aumentum business revenue module will allow her to send timely invoices and issue licences from within the program.

That may sound routine, except that one of the complicating factors with the new cannabis business tax is that it will be collected quarterly. Also, because cultivators do not generate revenue every quarter due to their crop’s growing cycle, the county has imposed a minimum fee of $1,250 to $5,000 per growing cycle, depending on the size of the plot. ‘The biggest issue we have right now is that this is a gross receipts tax, first and foremost, but due to the minimum requirements there will be true-up issues at the end of each fiscal year,’ Schapmire explains. ‘This is very challenging, but we are moving forward.’

Furthermore, there are the taxes and assessments being received from other sources that have nothing to do with cannabis. ‘In addition to collecting property tax, we also collect a transient occupancy tax, a tourism assessment and issue general business licences,’ Schapmire says. ‘I wanted a software product that could accommodate all of our taxing and licensing needs which is why we chose Aumentum.’

Another challenge Schapmire faces is that cannabis is largely a cash business. Banks are still reluctant to participate in the cannabis economy, so, for instance, many of Mendocino County’s residents pay their property taxes by showing up at Schapmire’s office with large bundles of cash. Her office has cash-counting machines, and an armoured car shows up every day to take the money away. Schapmire estimates that at least 60 per cent of the cannabis economy is cash and until some sort of banking system is created for the industry, it is expected to stay that way.

Managing all these regulatory changes would be even more difficult if Mendocino County didn’t already have a head start on the rest of the state. Before Proposition 64 passed, the county’s board of supervisors had already spent years crafting local cannabis regulations to address issues related to the medical market. The cannabis business tax went into effect on 1 January 2017, but the only taxable businesses at that time were medical dispensaries because they were already licensed. The cultivation business tax did not begin until 4 May 2017, following the adoption of the Cultivation Ordinance – and even that was complicated by wildfire damage in October.

‘Some of the cannabis was affected by the fires because it was still in the ground,’ Schapmire says. ‘We heard reports about fire damage, smoke damage and theft because of mandatory evacuations.’ First-quarter returns were due 31 October, she says, but the county gave affected residents an extension to 30 November to remit their taxes.

**All systems go**

In order to handle all of these moving parts, the system that Thomson Reuters developed for Mendocino County was configured to include every specification for the county’s ordinances. To do that, the Thomson Reuters team stripped the data out of San Francisco’s business module and reconfigured it to fit Mendocino County’s requirements.

As a result, everything was ready on 1 January 2018 when the state regulation went into effect. ‘The tax is already in place, and our systems are in full swing,’ Schapmire says. Revenue from the tax will go into the county’s general fund, and voters have already indicated that they want the money spent on cannabis enforcement, road improvement and mental health services.

‘Thomson Reuters was extraordinarily responsive in allowing us to have the business revenue module first, and in helping us figure out how to make it happen,’ Schapmire says. While the rest of California grapples with the logistics of legalisation, Schapmire and her team are confident that the transition in Mendocino will continue to be smooth, and that collection and distribution of the county’s new taxes will become relatively routine. For them, the hardest part is already over.

*Tad Simons is an award-winning technology journalist who writes about communications, workflow issues, corporate efficiency, artificial intelligence, government administration and ethics. This article was first published by the Thomson Reuters Foundation*  

tadsimons@comcast.net

**Related competencies include:** GIS (geographical information systems), Legal/regulatory compliance, Valuation

**Further information:** tax.thomsonreuters.com/aumentum
Making rural dispute arbitration simpler

The rural arbitration disputes process has had a reputation for being expensive and slow – but a lot of work has gone into making it easier to use, more cost-efficient and less risky

Philip Meade

Dispute resolution often gets a bad press, especially in the rural sector where arbitration is seen as risky, expensive and slow. While some of these criticisms may be valid, a lot of work has been done over the past two to three years to change these perceptions.

There are only about 25 rural arbitrators on the RICS President’s panel. Twenty years ago there were 150 and even ten years ago there were about 80.

The RICS Dispute Resolution Service (DRS) has worked hard over the past decade to raise the standards and training of rural arbitrators and, in conjunction with Rural Arbrix – essentially a branch of the national club for arbitrators (arbrix.org) – a lot has changed. DRS has also set up a working group with the principal aim of raising and maintaining standards. Although some areas of these two groups’ areas of work do not overlap, their combined intention is to simplify – where appropriate – the arbitration process, reduce its costs and risks, and make it more accessible and user-friendly.

As well as updating RICS professional statements on matters such as acting as advocates or expert witnesses and conflicts of interest in dispute resolution, the DRS working group has written practical guidance on the nature and process of rural arbitration. Although there is a regulatory element to these documents, one of their main aims is to be informative and helpful about best practice and give details about the processes involved in arbitration. It is also felt that if rural arbitration is to be seen more clearly as an appropriate way to deal with disputes it must be easily accessible to the average surveyor and not just the domain of lawyers and barristers. If younger surveyors can be encouraged to participate, that in turn is likely to lead to rural arbitration becoming more cost-effective and efficient.

Rural Arbrix also tries to play a significant role in demystifying rural arbitration by introducing those interested not only to the process itself – through CPD events held twice a year at their spring conference and Rural Arbrix annual general meeting – but also by enabling them to meet arbitrators themselves.

While only arbitrators on the RICS President’s panel can become members of Rural Arbrix, members can invite guests who are interested in attending the annual general meeting and conference. Guests usually need to be rural chartered surveyors with at least ten years’ post-qualification experience and an interest or background in rural disputes. Anyone who would like to attend should ask an arbitrator they know for an invitation, or they can contact me.

Philip Meade FRICS is chair of the RICS Dispute Resolution Standards Working Group
philipmeade@dmpcuk.com

Related competencies include:
Conflict avoidance, management and dispute resolution procedures

Further information: Anyone interested in becoming an arbitrator or downloading the RICS guidance note on rural arbitration can visit rics.org/disputeresolution
Minerals and mineral products are essential to the development of the built environment, our infrastructure and our quality of life. The first UK Minerals Strategy was launched in July and is designed to meet the demand for minerals for the next 25 years (bit.ly/ukminerals). The strategy was prepared by the CBI Minerals Group and Mineral Products Association and has been endorsed by the government, NGOs and professional bodies including RICS and the Royal Town Planning Institute.

More than 210m tonnes of minerals are extracted in the UK each year, with the annual turnover of extraction estimated to be worth £15bn. Minerals represent the largest materials flow in the UK economy, at about 1m tonnes per day.

When looked at as a wider sector, the annual gross value added by mineral extraction, products, manufacture and first-use markets is more than £235bn – which means that 16 per cent of the total UK economy is attributable to minerals and that it supports 4.3m supply-chain jobs.

The largest tonnages extracted and supplied are construction aggregates such as limestone, granite, sand and gravel, and industrial minerals such as silica sand, clays and gypsum, providing the main constituents for critical materials such as asphalt, cement, concrete, bricks, mortar, glass, plaster and ceramics. However, the UK has a broad and valuable portfolio of mineral resources, which are also used in applications as diverse as chemicals manufacture, pharmaceutical products, hi-tech engineering, agriculture and production of paper and steel.

The extraction of coal in the UK has declined, although it remains strategically important for energy generation and other industrial uses, but the UK has seen the development of new mines for polyhalite, tungsten and barytes plus proposals to reopen tin and gold mines. Minerals and mineral products touch every aspect of our lives and our economy could not function without them, so it is essential that all stakeholders make the link between minerals and quality of life and do not just assume that demand will be satisfied.

The strategy reveals that, over the next 25 years, 5bn tonnes of mainly construction and industrial minerals will need to be identified and permitted from indigenous sources. To do so sustainably, government and key stakeholders have been urged to:

• recognise that minerals and mineral products, and the industry supplying them, are vital to the economy and quality of life
• realise that supply cannot be assumed; it must be planned, monitored and managed
• ensure steady and adequate provision is made, primarily through the land-use planning system

The UK’s first minerals strategy sets out how to meet demand for the next 25 years sustainably and offers exciting opportunities for land and resources professionals

Bedrock of the economy

The UK’s first minerals strategy sets out how to meet demand for the next 25 years sustainably and offers exciting opportunities for land and resources professionals

David Sandbrook
• establish supportive policy, operating and trading conditions to enable UK industry to thrive and invest in future supply.

The strategy is based on three pillars — economic, environmental and social — all of them areas where chartered surveyors are actively engaged and essential to meet the strategy’s objectives.

The economic pillar is based on the principles of demand, supply and investment, with the strategy calling for both a strong national minerals and mineral products policy and statement of need. This call was answered to a degree by the publication of a revised National Planning Policy Framework in July 2018, which, after extensive lobbying from the minerals sector, retains high-level mineral planning policies.

At paragraph 203, for instance, it states that ‘it is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs. Since minerals are a finite natural resource, and can only be worked where they are found, best use needs to be made of them to secure their long-term conservation.’ This is supported by paragraphs 207 and 208 that require minerals planning authorities to plan for a ‘steady and adequate supply of’ aggregates and industrial minerals respectively.

There is considerable benefit in this framework sitting alongside the government’s overarching policies for increased housing supply and major infrastructure projects. The strategy also urges the government to ensure that there is a supporting regulatory, operating and trading environment for investment, trade and export of UK minerals and mineral products that will also reduce any risk from insecurity of international supply.

The strategy encourages mineral planning authorities and marine regulators to ensure sufficient sites are allocated and consents or marine licences granted so a steady and adequate supply can be maintained to meet demand forecasts, while also ensuring that re-use and recycling is maximised. The industry will be responsible for identifying and promoting sites and submitting a sufficient number of planning applications.

Land-use planning is prominent in the strategy’s second pillar, environmental, which relies on government to ensure the mineral planning system is properly resourced and does not duplicate other regulation. With an effective system in place, the onus is then on the industry to avoid and mitigate the impacts of extraction, processing and transportation and continue to ensure environmental net gains through responsible site management and high-quality restoration.

The third pillar, social, aims to maintain the sector’s level of education, skills and employment, with a strong emphasis on health and safety, and to encourage research and innovation, as well as new initiatives to improve public understanding, engagement and appreciation of the need for minerals.

The strategy presents a range of interesting opportunities for existing chartered surveyors and new entrants to help identify and secure land and resources, promote sites through the planning process and help restore sites following excavation enabling beneficial uses afterwards. The strategy highlights the importance of minerals to the national economy and that they are critical to the development and maintenance of the built environment and our infrastructure. This in turn shows the wider importance of minerals and mineral products to the work of most RICS professionals and the need for mineral specialists, plus additional RICS training and recruitment into the sector.

In endorsing the strategy, RICS has said: ‘Given the UK’s needs for housing, infrastructure and economic growth over the next 30 years, it is imperative that there is a greater appreciation of the value of minerals and the most effective ways, to plan, extract and use them in the best interests of society.’

David Sandbrook is a partner at Carter Jonas and head of its Mineral & Waste Management Team. He is a member of the RICS Land & Resources Global Board and holds the Land Strategy seat on Governing Council. He is also a member of the MPA Minerals Committee and Policy Advisory Group david.sandbrook@caterjonas.co.uk

Related competencies include:
Minerals management

Minerals by numbers

More than 210m tonnes of minerals extracted in UK each year

Minerals’ annual turnover is worth £15bn

1m tonnes of minerals moved each day

16% of the total UK economy is attributable to minerals

4.3m jobs supported through minerals supply chain
Valuing unregistered land

Groundbreaking RICS research examines the operation of informal land markets in developing countries and suggests that a fairer and more flexible approach to market value is needed.

James Kavanagh and Steven Matz
In many developing countries, only 30 per cent of land and property rights, at best, are registered and often the rate is much lower. As forced displacement for infrastructure expansion, natural resource extraction and other developments reach into previously informal or socially tenured domains, there is a pressing need to understand current valuation methods and their suitability.

Recognising the inherent value of legitimate rights over land is critical when dealing with compulsory purchases so as to achieve fair compensation. Fair value is often the foundation of tenure security and the start of a formalisation process. These are big global issues, at the core of several of the UN’s Sustainable Development Goals and the New Urban Agenda (see Land Journal May/June 2016, pp.20–22).

There is a widely discussed claim that title registration and formalisation are essential prerequisites for valuing unregistered land. But a new RICS report, Valuing unregistered land, examines how informal land markets operate in Ghana, Indonesia, and Peru (rics.org/valunregland). The study is particularly important because governments, valuers and professional bodies need to ensure they are informed about, and can respond to, future scenarios for the expansion of informal land markets.

The report builds on RICS research on valuation of unregistered land in Kenya in 2011 and evaluation of valuation practice in sub-Saharan Africa in 2016, and also helps to provide an evidence base for the International Land Measurement Standard (ILMS) Coalition, of which RICS is part. Consultation on the ILMS concludes on 31 December (rics.org/consultilms) and it is due for launch at FIG Working Week in Hanoi in 2019. The ILMS aims to provide new ways of classifying, defining, measuring and reporting land information, improving land tenure security around the world and enabling fair compensation during large-scale land acquisition.

The research has also informed other closely aligned initiatives, including the GLTN Valuation of unregistered lands: A policy guide (bit.ly/gltnunreguide), RICS is a partner of GLTN and the research now features on the latter’s website under partner publications (bit.ly/gltnricspp) and in the UN Food and Agriculture Organization (FAO)’s voluntary guidelines on tenure (bit.ly/faovolguid), having helped provide a strong empirical evidence base for both.

It is the first time that anyone has looked closely at the working of informal land and property markets. Most land and property in the developing world is held informally and is therefore outside functioning administration systems. The knock-on effects of this are abysmal levels of property taxation revenue generation and service provision (bit.ly/proptaxafrica) in addition to endemic corruption (bit.ly/oecdproptax).

Furthermore, the RICS research will act as a platform for future initiatives such as standards for environmental and natural capital and ecosystem valuation as well as the International Valuation Standards. RICS, FIG and GLTN have committed to using the research and the GLTN output to produce a new best-practice protocol for valuing unregistered land, at a time when communal tenure is increasingly becoming recognised in national and international legislation (see pp.15–17 of this issue). NGOs such as Landesa, Cloudburst, the PRindex initiative and Namati are starting to bring land value issues to the forefront of sustainable development and communal empowerment.

Ghana, Indonesia and Peru offer useful case studies because much of their land and property markets operate. In Ghana, the customary tenure system accounts for nearly four-fifths of all land, meaning it is usually unregistered. While it might be expected that the lack of registration would cause problems obtaining a mortgage or where a legal dispute arises, in practice banks are willing to lend on unregistered land, and courts prefer the principle of equity to the western principles of registration conferring an indefeasible title, that is, one which cannot be annulled.

However, undervaluation is a major issue in Ghana, and can lead to inequities through inadequate compensation, for example, where land owned is required for public infrastructure projects. The replacement cost method is widely used by professional valuers on unregistered land, and involves estimating the gross replacement cost, ascertaining depreciation to reflect, say, any property defects, and then calculating the net replacement value. Where valuers have little local knowledge, or do not consult with residents and fail to understand the impact on livelihoods, significant undervaluation can occur.
Indonesia
In Indonesia, registration is not only encouraged but assisted. However, relatively few parcels of land are registered and many of them are held under the adat system, which is based on the customary law of a region or ethnic group. This raises the question of what happens when land is publicly acquired: the usual methods of valuation are used for land held under adat, namely cost approach, market comparison, income capitalisation, residual approach and the profits method.
A key difference in valuation compared with registered land is a ten per cent reduction in prices on the basis that registration will cost this proportion of the land value. Furthermore, contrary to what proponents of registration contend, no automatic indefeasibility privilege is given because courts prefer to adjudicate on a case-by-case basis. Although undervaluation is common, this is more to do with valuers’ limited ability to carry out systematic research.

Peru
In Peru, informal landownership is widespread. In 1996, the country built on previous reform to confer registration on informal properties and established the Commission for the Regularisation of Informal Property (COFOPRI). A COFOPRI registration can in some instances increase the land value by around 50 per cent over that of the original unregistered land. The commission is now considering standards for housing and services as well, to address structural concerns with self-built homes, which families often construct floor by floor as their financial circumstances improve.
Peruvian regulations make it clear that registration is not needed for the valuation of land that is still held informally. Despite provisions for valuing unregistered land, professional valuers are not usually involved in the process or in disputes and mostly operate within the formal system.

Overall findings
The research concludes that the assumption that registration is needed for valuation is misleading. Ghanaian and Indonesian valuers have adapted established valuation methods for different types of land and tenure, whether registered or unregistered. The courts in these countries do not place strong weight on registration either.
Valuing unregistered land highlights important strengths in, but also challenges to, valuation practice. The study finds that valuers have adapted their methods, and, as such, local valuation practices have been quite resilient. However, there are also challenges specific to the valuation of unregistered land. Undervaluation is one, as is overvaluation in some instances. On the whole, most conflicts associated with compensation for the expropriation of unregistered lands arise from the top-down nature of the valuation process, a view of value limited to legally created structures alone, and an overreliance on asocial valuation techniques for establishing value. There is a chronic lack of professional and technical capacity in these sectors.

Another major finding is that various forms of evidence of tenure such as tax and utility bills, affidavits from neighbours and proof of occupation are admissible in all three markets during lending and dispute resolution processes. This is a major insight into the way informal land markets operate outside formalised titling and registration systems. It could have significant ramifications for the way major agencies such as the World Bank think about formalisation projects or how software systems deal with informal and communal tenure information. Some risk needs to be recognised with regard to data held in land administration systems that have typically been configured for formal purposes with an emphasis on ‘clean’ landownership data.

The call for a more flexible concept of market value and the understanding that a uniform approach will not work is gaining some traction, as can be seen in the recently published UN FAO voluntary guidelines on tenure and the GLTN Valuation of unregistered lands, the latter of which states: ‘When valuing unregistered lands, social market values need to be taken into account, as value is a socially constructed phenomenon. They cannot be divorced from the social context in which it occurs.’

A flexible and reasonable theory of value can generate even more variations, but why should that be a problem? Value is a social construct, varying from one community to another and one country to another. Rather than be left in the hands of individuals or valuers, valuation must be a social activity, involving unions, assemblies and social movements, the courts, the media, religious institutions and others. Valuers need to consult widely, but also study the corpus of legal judgments on what constitutes reasonable value. Sticking to the valuation standards of national or even international bodies alone is necessary but not sufficient.

James Kavanagh is director, RICS Land Group
jkavanagh@rics.org
Steven Matz is global research assistant, RICS External Affairs smatz@rics.org

Related competencies include:
Cadastre and land administration,
Legal/regulatory compliance, Valuation

The knock-on effects are abysmal levels of property taxation revenue generation and service provision in addition to endemic corruption
Could collective title become a new norm?

Following the examination of unregistered lands in the previous article, recent research has found increasing support globally for family and community land titling, challenging the existing model of individual and state ownership.

Liz Alden Wily

Consider this: despite several centuries of industrialisation, 150 of 194 of today’s economies are agrarian, based on the use and exploitation of lands and resources. Rural land dependants will number 2.5bn by 2050. Even allowing for soaring urbanisation and physical sprawl, rural land will still constitute 90 per cent of the total global land area and be primarily responsible for feeding 9bn people while capturing carbon to slow climate change.

Permanent farmland will expand from its present 15 per cent of global land area by 2050. Nevertheless, the shared off-farm resources of communities in the form of forests, rangelands and swamplands will remain significant. These play critical roles in rural livelihoods. They are also neither easily nor productively subdivided into private parcels, which has been a key factor in their retention as collective assets around the world.

But to whom do these lands belong – governments or communities? Governments have historically claimed them, enacting laws to establish that although such areas are under substantial customary occupation and use, this community possession does not amount to property.

The rise of socially collective entitlement challenges this hegemony. Less expectedly, potential uptake by the urban poor could reinforce this form of property in land. City slum dwellers will number the same as rural dwellers by 2050 – at 2.5bn – but most living on lands too tiny and fluid to title individually, so interest is growing in adopting collective tenure to stabilise occupancy and frame slum upgrading.

Where is property law moving in all this? We know that individual entitlement has been the holy grail since industrialisation and capitalism began to dominate modes of growth and that such entitlement will continue to be the anchor for housing stock; it remains central to most immoveable property law. But this is not the whole story: instead, we find that the 21st century opened with reforms that took new routes to land security into account. Collective property that is owned by families, groups and communities has emerged as a legal option. In the process, what has been conventionally defined as property in land is loosening its singular focus on the discretely individual and commoditised parcel.

Living in cities, it is easy to forget just how much of the world’s area — up to 6bn ha — largely remains the collective domain of communities, with or without the support of national laws. We also forget how resilient such tenures have proven. They operate in all regions today despite economic transformation and programmes designed to extinguish them. This resilience is due to a lack of trust in the state and its systems, preference for community jurisdiction and the unsuitability of privatisation for many resources on which communities depend.

Many communities already enjoy legally supported possession of their land. They include, for example, 1m rural communities in China, 32,000 in Mexico, all rural communities in Papua New Guinea, Vanuatu and Fiji, and the 30–40 per cent of lands in Australia, Canada, Colombia, Nicaragua and Bolivia officially titled to indigenous communities. We also know that thousands of other communities have no legal support for their tenure.

A review of land legislation in 100 countries finds that 73 of 100 state laws in 2018 provide for community-based landholding as a lawful form of property. Moreover, this is expanding — including in Europe, where countries such as Spain and Portugal have revived collective tenure for forests and pastures to aid conservation.

Recognition of indigenous peoples’ land rights gradually spread through Latin America during the 20th century, with a surge in the 1980s. Nevertheless, most legal recognition of collective property has taken place since 1990. Nearly 50 per cent of first-time provision has been since 2000, and 25 per cent in the past decade. At least nine relevant laws are presently before parliaments or in draft form, in African and Asian nations from Ghana to Indonesia.
The right of owners to determine access to, and use of, their properties and associated rules is fairly uniformly embedded

The main driver for recognising ownership is political change, including the breakup of the USSR and the wave of multi-party democratisation in Latin America and Africa in the 1980s and 1990s. Accordingly, new conditions have often been established first in new constitutions, such as in China in 1982, Brazil in 1988, Armenia in 1995, and Mozambique in 1997. New constitutions also provide expanded bills of rights and new requirements for devolved governance, supporting rising numbers of community land claims.

Proportionately more countries in Oceania, Latin America and Africa have enacted supportive laws, at 100, 84 and 78 per cent of sampled laws respectively. A sustained history of communal tenure underlies 59 of the 73 laws – 81 per cent. This includes European cases where customary arrangements have transformed into sophisticated legal entities, for example in Germany, Austria, Switzerland and Sweden. Other countries acknowledge community property on the basis of state-created land collectives, cooperatives and unions, such as in Kyrgyzstan, Mongolia, Armenia, Algeria, Cuba and China. Fifty of the 73 laws – 68 per cent – indicate that community and private or corporate property are equally protected in the eyes of the law.

Not all laws providing for collective property include the same resources. Some provide this only for shared off-farm pastures and forests. Others enable communities to become the formal, registered owners of the entire area of their traditional domains, including root title to family farms. Conditions also vary for different categories of community owners. For example, communities who define themselves as indigenous peoples enjoy stronger rights to foreshores and waters than are available to other communities and they are more protected by international soft law that requires their free, informed and prior consent ahead of acquisition of their lands.

Weaknesses in laws are also quite similar across regions. Many relate to the unreasonable timeframes by which community land titling must have occurred, the complexity of the process and the absence of legally binding requirements for the state to fund formalisation. It is mainly only in Africa that laws acknowledge community property prior to case-by-case registration. This means that roughly 40, 60, 70 and 80 per cent of customary lands in Uganda, Kenya, Tanzania and Ghana respectively are acknowledged as owned without parcel identification.

Still, owners of these lands like communities everywhere are keen to double-lock their rights through case-by-case survey and registration. All laws provide procedures for this. There is less consistency over which land types may be included under community title. Limitations in one-third of laws reviewed result in communities losing forest and riparian lands at adjudication, or being forced to surrender management of these to state actors.

The way national laws handle the saleability of community lands also differs. Forty-three per cent of laws forbid alienation of any community property, although some newer laws permit certain lands to be leased with community approval. One-quarter of laws permit family or individual usufructs over homesteads to be sold, the community retaining ultimate title and new owners remaining subject to community rules of use. Only one-third of laws stipulate that a community may freely sell all or part of its property.

The right of owners to determine access to, and use of, their properties and associated rules is fairly uniformly embedded. Statutory requirements for communities to adopt inclusive processes in decision-making have become more common and are at their most developed in newest laws such as in Liberia, Mali, Timor-Leste, Malawi, Kenya and Vanuatu.

Another innovation is stronger stipulation that private land interests be acknowledged and nested in the community property, where root title to the entire land area is vested in the community in common. Some laws formalise the distinction by requiring that family and communal lands are zoned separately, defining the former as inheritable and transferable usufructs.

Such conditions help to alleviate pressure on communities to extinguish collective title altogether, caught between a wish to sustain communal tenure over shared resources while enhancing exclusive rights to the house and farm. Indeed, collective properties could in time be largely limited to tenure over forests and rangelands. Changing land uses can provoke shifting norms. In Ireland, for example, ancient lowland commons show signs of heading for subdivision among families as their use for peat-cutting gives way to farming. This is not the case with their upland commons, which remain critical for communal grazing.

Research also showed that the law is never enough for sustained recognition of community property. The enthusiasm of governments regularly wavers after enactment as they contemplate the loss of lands to themselves that community titling will mean: this is because virtually all untitled community lands have long been designated as unowned public lands, which administrations have been fairly free to dispose of. Shifting gear into acknowledged ownership takes adjustment.

This helps explain why laws are taking much longer to be enacted than in the 1990s, and why more loopholes are being retained to sustain state interests. Even on enactment, application of the law is often delayed through failure to issue regulations or establish...
registers. Curtailment of rights can also proceed by the back door with the declaration of new national protected areas including key community lands and the creation of subcategories of essential public property. The demands of international tourism, large-scale oil palm plantation developments, mining and dam projects have all notoriously taken their toll on securing community land rights in the past five years. Political will can be shaky, and this matters most where judiciaries lack independence or are inaccessible to the poor majority to defend their new legal rights.

Nevertheless, the widespread embrace of community property by the law suggests the end is in sight for its wholesale denial and that the law will mature to face new challenges. Already the biggest constraint is no longer whether property may be owned by parties other than individuals and corporations but a more fundamental tug of war between communities and their governments as to which of their lands may be registered as their property.

Recognition is sufficiently advanced to raise new concerns, such as how far communities are gaining rights but not escaping the implications of discrete parcelling on which recognition rests. Will this diminish the nuanced layering of rights in and across communities that oil the success of adaptable community tenure? Will the demands of formalisation liberate communities, or will they trap them in the constraining bureaucracy of often unreliable state administrations?

By 2050 we should know more.

Liz Alden Wily is a political economist and a fellow at Leiden Law School, the Netherlands  lizaldenwily@gmail.com

Related competencies include: Cadastre and land administration, Compulsory purchase and compensation, Legal/regulatory compliance


LandMark is an interactive site with downloadable maps and data on community and indigenous peoples’ lands landmarkmap.org
It is something you do every day; and as a professional working in the built environment, it is highly relevant to your working life. But how often do you actually think about walking?

For many, walking is just what happens when we put one foot in front of another. However, it is both a mode of transport in its own right as well as a part of virtually all other journeys, whether by bike, bus, train or car. It brings great benefits – for individuals, for business and for cities.

Yet we are walking less than we used to. The distance people walk has gone down by about a tenth over the past ten years. According to the Department for Transport, people in England walk an average of about four miles per week, or just less than 200 miles a year. But averages can be misleading: every month, four out of ten adults aged 40 to 60 in England spend less than ten minutes walking continuously at a brisk pace. What’s more, nearly a third of all car trips are shorter than two miles. So there is potential for change.

Public Health England (PHE) is clear about the health benefits of getting every adult active every day. As little as ten minutes of physical activity at a time...
benefits both bodily and mental health. Persuading inactive people to become more active could prevent one in ten cases of stroke and heart disease in the UK and one in six cases of death from any cause. It could reduce levels of depression by 30 per cent and reduce the risk of dementia – now the leading cause of death in England and Wales – by 30 per cent. As PHE states, ‘if physical activity were a drug it would be classed as a wonder drug’.

Having healthy streets that encourage active travel is now enshrined in government policy. A key section of the draft London Plan, the capital’s spatial development strategy, is the Healthy Streets Approach (healthystreets.com), which is designed to improve air quality, reduce congestion and help make the city’s diverse communities greener, healthier and more attractive places to live, work and play. The mayor’s aim for 2041 is that 80 per cent of Londoners’ trips will be on foot, by cycle or on public transport.

This means that development proposals will need patterns of land use that enable residents to make shorter, regular trips by walking or cycling. Specifically, development proposals will need to demonstrate how they support the indicators developed by the Healthy Streets initiative, such as encouraging pedestrians from all walks of life and creating shade, shelter and places to stop and rest. They will also need to reduce the dominance of vehicles on London’s streets, whether stationary or moving, be permeable by foot and cycle and connect with local walking and cycling networks as well as public transport. For developers, this means thinking as much about the spaces between developments as the developments themselves. It means creating high-quality, attractive public realm that designs physical activity back into our everyday lives.

The Healthy Streets Approach can reduce air and noise pollution and help combat social isolation. Having people walking through urban spaces also makes those areas safer for others and is a great social leveller. It is people on foot who make urban centres vibrant and they support economic activity. Transport for London discovered that people who walk to town centres across London spend more per week than those who come by bus, train, tube, bike or car. And employers are increasingly finding that to attract new staff, particularly millennials, they need to be based in vibrant, walkable areas. Companies are therefore starting to incorporate walkability into their building layout, with some having their offices designed to encourage walking.

Samsung’s US headquarters in San Jose, California is based on a walking layout so employees are never more than a floor away from stepping outside for a walk. Google’s plans for its ‘landscraper’ headquarters at King’s Cross in London include a 200m-long ‘trim trail’ on the roof to enable staff to exercise. Other companies are incorporating a ‘daily mile’ route to encourage employees to get out for a walk; for example, Saga’s group headquarters at Sandgate near Folkestone has a marked-out mile in its grounds that staff can use for a meeting or a stroll at lunchtime.

Steve Jobs, the late co-founder of Apple, made a habit of the walking meeting. Anecdotal evidence suggests that such meetings lead to more honest exchanges with employees and are more productive than traditional sit-down sessions. Getting more people walking at work would make for a healthier workforce and not just by reducing the risk of diseases linked to physical inactivity. Research also shows that absenteeism rates are lower among staff...
who walk and that active commuters are better able to concentrate and under less strain than those who travel by car.

Moving towards a walking world requires the transformation of our towns and cities, many of which suffer from being designed around the car. We need to place walkability at the heart of our urban environment.

The Walkable City is one that puts people first and shapes itself in accordance to its citizens’ needs and desires. To address the complexity of the urban issues, a variety of actions and policies is required, diversified both by nature and dimension.

The starting point is to have a vision and strategy. Urban policies, involving city plans and innovative interventions, can promote a diffused, walkable approach. But this does not have to be a lengthy strategy: Greater Manchester’s recent Made to Move report (bit.ly/made2move) aims to double and then double again cycling in the conurbation and make walking the natural choice for as many short trips as possible. The city intends to do this by putting people first, creating world-class streets for walking, building one of the world’s best cycle networks, and fostering a culture of cycling and walking, and the document has 15 steps to transform the way people get around.

We need to act to provide safe and efficient transport systems and improve street networks. Examples of such measures include improving walkable connectivity, pedestrianisation, better integration with public transport, reducing vehicle speeds, improving crossings and signage.

We need to create more liveable environments, with improved urban quality and redesigned public space that prioritises people on foot. This can include re-using redundant infrastructure, improving street design and furniture, creating pocket parks, improving micro-climates and having active street-level frontages such as shops and cafes.

We can help to create a sense of place and community that encourages the active and emotional participation of people in everyday life, for example through public art, open-street events, street fairs and inclusive design. Smart and responsive cities also enable us to create playful, interactive environments, providing wayfinding systems, monitoring the city and using digital evaluation tools.

The good news is that we can design physical activity back into our everyday lives by encouraging walking as a daily means of getting around. The measures can range in size from a single parklet (see illustration above) to major schemes such as the New York High Line public park, which was created from a former elevated freight-rail line. That means walkability can be improved for today and tomorrow, as well as in ten or 20 years’ time.

We can all play a part to help improve walkability in our actions and decisions, as well as by encouraging walking in our businesses and creating walkable places as part of the developments we create in our professional lives. So, let’s all think more about walking — and as it boosts creativity, what better way to do that than taking a walk? As Nietzsche wrote, ‘All truly great thoughts are conceived while walking.’

Susan Claris is associate director of transport consulting, Arup susan.claris@arup.com

Related competencies include:
Masterplanning and urban design, Spatial planning policy and infrastructure

Further information: Cities Alive –
Towards a walking world
arup.com/walkingcities
Up to the mark

The National Quality Mark Scheme has been developed to prevent expensive and time-consuming delays when substandard land contamination documents are submitted to planning authorities.

Seamus Lefroy-Brooks

The National Brownfield Forum, of which RICS is a member, was known as the Land Forum and set up in 2009. Its remit, as set out in the House of Lords, is to oversee the implementation of the national brownfield strategy, to improve coordination on contaminated land and brownfield policy between government, devolved administrations, regulators and practitioners, and to encourage the exchange of best practice and knowledge.

Over the past decade it has received repeated complaints from members that documents submitted to planning authorities about land contamination are often not up to the required regulatory standard. So in 2014, the forum began developing the National Quality Mark Scheme (NQMS), since promoted by the Environment Agency and the Ministry of Housing, Communities & Local Government. The scheme aims to encourage applicants under the Town and Country Planning Act 1990 to get their submissions right first time.

Although the focus of the NQMS is the documents themselves, the scheme has required the identification and registration of those in both public and private sectors who are competent to review the submitted reports. These suitably qualified persons (SQPs) understand the specialist technical issues involved in the assessment and remediation of land contamination and they are assessed by the Specialist in Land Condition Register, of which RICS was a founder.

The relevant land contamination documents tend to be one of the following:
- preliminary land contamination risk assessment
- phase 2 land contamination assessment
- remediation options appraisal/remediation strategy
- remediation plan/remediation statement
- remediation completion/validation/verification report.

For a fee of £75 each, an NQMS mark and declaration of conformity can be submitted with any of these reports to show the regulator that it has been reviewed by an SQP and found to be of the standard required.

Submissions up to standard rather than on regulation itself. In truth, both regulator and applicant incur large costs every time substandard documents are submitted and a game of ping-pong ensues until omissions or mistakes are corrected and the document is acceptable.

The presence of an NQMS mark immediately assures the contaminated land regulator that an expert has reviewed a particular document and found that it meets the necessary technical and regulatory standards. While inadequate documents may not put any lives at risk, they can result in significant project delays. Members should also note that local authority regulators are not bound to report any proposed remediation measures that may be technically unnecessary or superfluous.

The quality mark is a voluntary, low-cost scheme that can be applied to any development. Knowing that a document bears the mark assures clients and regulators alike that a report will meet the planning requirements without rework, thus saving both time and money.

Seamus Lefroy-Brooks is chair of the NQMS steering panel seamus@lbhgeo.co.uk

Related competencies include: Contaminated land, Environmental assessment

Further information: bit.ly/landNQMS

Brownfield redevelopment projects can be held up by submission of substandard documents
Copenhagen: the City & Port Development Corporation takes a unified approach to exploiting the value of public assets such as land and buildings.
Self-help for cities

Rigid public organisations and outdated financial structures are holding back the development of modern cities. Self-governing and financing arrangements could be the answer, as examples from Scandinavia show

Luise Noring

In most societies, cities struggle to implement positive initiatives due to the rigid institutional structures of public organisations. There are many legitimate reasons for such structures, including ensuring accountability and transparency and preventing malpractice and corruption. Yet the rigidity seems to hamper societies that must more and more often respond to the faster pace of change — including the abrupt collapse of the housing market, unforeseen climate disasters, mass refugee migration and violent protests. In many circumstances, life simply moves more quickly than the institutions responsible for tackling these challenges.

By the same token, our financial structures seem outdated. Banks and other institutions eagerly provide cheap finance for the wealthy, yet are unwilling to do so for the poor. Many financial institutions tend to be highly compartmentalised, focusing on separate products rather than holistic places, and are guided by short-term concerns such as electoral politics and shifts in popular opinion.

Addressing the role of such structures and institutions in cementing socio-economic immobility and enhancing inequality is thus an unpopular topic and seemingly the only option this leaves for improving the livelihood of the poor is raising taxes. As a result, governments are left strapped for cash for decent healthcare, housing, education and other services. Those less fortunate must concentrate on surviving, making it harder to get out of poverty.

The arguments presented here are, of course, oversimplified. But in essence, if we do not see beyond the constraints of our public and financial institutions we are left without hope for a better future. This is the motivation behind the search for self-governing and self-financing arrangements for cities. Cities are the closest governance level to citizens, and by enabling such arrangements, we can have a direct impact on people’s lives. Currently, there are three dominant ways of raising investment capital in cities: taxes, land-value capture, and tax increment financing (TIF).

However, taxes are scarce in spite of population growth because this prompts increased demand for public services and goods. First, as more people move into cities the price of housing increases, in turn meaning more people need housing subsidies and demand for affordable and social housing also rises. Both are the responsibility of the public sector. Second, as more people move into cities and housing prices rise, those on lower and middle incomes are pushed further out to access affordable housing. This increases demands on roads and public transport — also a public-sector responsibility. Third, energy distribution must respond to increased pressures.

At the same time, we know that if we do not create liveable cities with lower air pollution, more green space, good road infrastructure, investment in renewable energy and so on the challenges of urbanisation will become either extremely costly to reverse or irreversible. This is without factoring in the extra public spending needed to provide an ageing population with better medical care.

So while tax revenue per capita tends to stay more or less the same, expanding public housing, transport and energy infrastructure lead to a steeper rise in the curve of public spending. Most societies are confronted with population growth, urbanisation, infrastructure that is outdated or in short supply, and climate disruption. To provide services such as healthcare, schools, housing, sanitation and energy for these diverse, growing populations with scarce taxes is therefore impossible.

Land-value capture is a solid alternative, but it requires local governments to own and manage the land assets. It also needs to
be done smartly to reap the benefits of the value thus captured. TIF, meanwhile, is available for local government that does not own and manage land assets but is able to spend future tax revenue to service and repay bonds. Yet if future taxes are spent on repaying these bonds, that revenue cannot be spent on services. In short, we need better ways of governing and financing our cities.

It will probably come as a surprise to most readers that there are many kinds of self-governance and self-financing in use. Most are, unfortunately, ignored; but a few examples are proving successful.

Copenhagen
The Copenhagen City & Port Development Corporation is a vehicle for leveraging the value of public assets such as land and buildings. It is important to note that this needs a unified approach, because if several public entities are trying to leverage their assets simultaneously then the price is lowered and it does not work.

When landownership is fragmented, each public authority sells its land assets as it needs; but in times of recession when the public sector is strapped for cash, this may flood the market with supply. That was the case in Copenhagen during the 1970s, when the port authority had to sell land in prime locations at lower prices.

When a city does not have a dedicated, holistic strategy for optimising land assets and public entities sell land to close budgetary holes, such assets are often sold below market value. City & Port was however able to manage the market by sequencing the supply of land on sale and was also able to wait out the global recession rather than reduce the price of the land.

So that it can operate efficiently and respond effectively to the market, it is allowed ample freedom of operation from the public institutions that own and oversee it. With too much public-sector interference, it would be unable to maximise revenue that is being funnelled into the construction of a city-wide metro system.

Affordable housing
The Danish model for affordable social housing is another example of self-governance and financing. The industry consists of private, non-profit housing cooperatives that are owned, governed and financed by their members. The tenants select and prepare leaders for among their own number and also pay their rent back into the savings scheme. One-third of it goes towards the improvement and maintenance of their housing estate, while another third goes towards the savings of the housing cooperative, which owns and oversees multiple estates; the final third is put into the National Building Fund to finance the construction of new affordable and social housing. This arrangement prompted the CEO of housing cooperative KAB Jens Esmelund to say: ‘If you think about it, it is quite remarkable that this segment of society is making such enormous savings for collective use.’

Although the national government made huge withdrawals from the National Building Fund in 2016, leaving it with a deficit of €134m, board chair Christian Hægbsbro estimates that the fund will hold €805m by 2030. Between the housing cooperatives and the fund, the industry is well consolidated, providing affordable social housing for every fifth citizen in Denmark.

Local Government Denmark
Local Government Denmark (KL) is a private membership organisation that represents all Danish municipalities. The founding principle is that by bringing them together, KL is able to gain political and fiscal competencies that each municipality would not have by itself. KL is the permanent partner in the annual negotiations with the finance ministry that settle the municipal budgets. Danish municipalities allocate 50 per cent of the entire public budget, compared with the 30 per cent that are allocated by national government and 20 per cent by the regions. Every three years, KL meets with trade unions, regional authorities and the national government to determine the salaries, terms and conditions for the half a million municipal employees.

KommunelInvest
The Swedish Local Debt Office KommunelInvest is another private membership organisation, which represents 272 of the 290 Swedish municipalities in the financial markets. With a lending portfolio of around €30bn, it is a powerful player in the domestic and international financial markets. In the global market, scale is essential and by bundling all municipal loans KommunelInvest is able to negotiate these on similar terms to its peers.

KommunelInvest aims to provide cost-efficient, stable funding for all its members. It holds a triple-A credit rating due to its conservative investment tactics and loan guarantees provided by its members. The office also helps fund investments for Swedish municipalities in energy, housing and infrastructure. It will invest directly in local housing and transport corporations and, on behalf of its county members, it also invests directly in healthcare. In Sweden, municipalities allocate 70 per cent of the public budget.

What's stopping us?
We may ask ourselves: why not all implement these and other self-governing and self-financing measures? What are the barriers?

The short answer is an unimaginative reliance on existing institutions and financial tools. Cities are unable to see beyond limited, short-term ambitions and capabilities. Bundling assets or competencies under the management of one entity, municipalities in KL and KommunelInvest relinquish individual political power to join collective negotiations instead. In the process, each must accept the opinion of the majority of member municipalities.

A long-term strategy for affordable social housing requires cities to maintain a vision and the ability to realise it over many election cycles. Accruing massive savings takes years: but if cities are open to new kinds of thinking and organisation, we can go a long way towards ameliorating these seemingly intractable urban problems.

Luise Noring is assistant professor at the Copenhagen Business School’s Department of Management, Society and Communication lno.msc@cbs.dk

Related competencies include: Development appraisals, Management and regeneration of the built environment, Project finance
Growing opportunities for woodland

Forestry values and timber prices are rising and the government is backing payments for managing land use for the public good, with well-managed woodlands set to benefit the most

Simon Lloyd

Forest ownership has traditionally been perceived as straightforward, long-term and a low-risk investment. But over and above this, research by Savills published last March found that although cash on deposit would have accumulated 19 per cent in value before tax since 2009, a spruce tree growing on a hill in southern Scotland would have accumulated 36 per cent tax-free, simply from its growth. Add in inflation in capital market value, and the increase totals more than 80 per cent.

The future for productive timber woodland thus looks encouraging.

Together with the current Agriculture Bill’s promised payments for managing land use to ensure public goods such as habitats, species, public access and water quality after Brexit, the way we value our woodland as productive will need to be recalibrated. It might soon be valued as much for its timber potential as for its ability to prevent flooding or provide other services.

The Department for Environment, Food & Rural Affairs’ 25-year environment plan estimates the value of woodland’s natural capital is ten times that of timber production. After Brexit, we might well see payments for services such as flood attenuation, biodiversity and health and well-being as well as carbon credits.

Woodland that is well managed, which means that those responsible are building in resilience to climate change through innovative planting and management techniques, will benefit the most. In England, only 59 per cent of woodland is currently managed, and in Wales around 57 per cent. That falls well short of the government’s own target of 67 per cent. Some experts believe that in certain regions, up to 75 per cent could be managed.

Bringing existing woodland back into management can achieve near-instant benefits from better capital values, annual income and woodland health and resilience to resist pests and pathogens. There are an estimated 100m tonnes of trees in England that have reached or are over harvestable age, most of these hardwood, having a combined timber value of around £3bn. These undermanaged woodlands are a missed opportunity for today’s landowners.

Simon Lloyd is chief executive of the Royal Forestry Society communications@rfs.org.uk

Related competencies include: Forestry and woodland management, Sustainability

Conference to highlight forests’ true value

John Lockhart

Forests and woodland offer public goods by the truckload. They sequester carbon, improve air and water quality, reduce flooding, provide numerous valuable habitats, improve our landscapes and represent unique places for recreation and quiet enjoyment. The protests in 2011 at the decision to sell off the Forestry Commission also proved the public’s passion for our trees and forests.

The past 18 months have also seen a sustainable increase in timber demand and harvesting and management operations are for the first time providing meaningful returns for owners and growers. Staggeringly, the UK is second only to China in respect of timber imports.

The Institute of Chartered Foresters, RICS and Mersey Forest are organising a conference on the Northern Forest (see Land Journal October/November 2018, pp.22–3) at Tatton Hall near Manchester on 21 January, after a successful event in Oxford in 2018. It will highlight opportunities and challenge traditional thinking on an often undervalued asset class. To book, visit charteredforesters.org.

John Lockhart is chair of Lockhart Garratt, an independent forestry and environmental planning consultancy john.lockhart@lgluk.com
Held to ransom

How can ransom strips be valued and how can developers deal with them?

Alex O’Connor

The valuation of ransom strips has long proved difficult. To work through the various factors that should be considered in any valuation, this article proposes consideration of the following scenario.

A surveyor is instructed by a developer, which has recently acquired a plot of land for a multimillion-pound development only to discover shortly after completion of the transaction that it can only access the site through a small adjoining parcel of land owned by a neighbouring individual. The client wants to negotiate the purchase of this land to be able to proceed with its development. Unsurprisingly, the difficulty arises when the neighbour learns of the importance of the land to the developer and seeks a sum that far exceeds its actual value.

There is no statutory framework governing the valuation of ransom strips; the parties are free to negotiate whatever sum they consider acceptable. However, the starting point is often taken to be the seminal case of Stokes v Cambridge Corporation [1961] 180 E.G. 839. In this instance, the judge took the view that the appropriate purchase price was one-third of the increase in the value of the land to be developed as attributable to the acquisition of the ransom strip. The relevant sum was calculated as one-third of the value of the development site, having deducted the costs of ‘roads, sewers, fencing, consents and contingencies’, and the value of the site without the ransom strip. This has set the precedent for many subsequent valuations.

To apply this to the sample scenario, the developer’s land was initially valued at £500,000. After the development works, and having deducted the appropriate developer’s profit and costs as described in the paragraph above, the estimated value will be £5m, a difference of £4.5m. The ransom strip is worth £100,000; however, in applying Stokes, many would take the view that the appropriate valuation for the strip would be £1.5m, as a third of £4.5m.

On the facts, Stokes related to an acquisition by compulsory purchase, and it can therefore only serve as guidance rather than as a hard-and-fast rule. Indeed, there have been numerous judicial references to the Stokes approach as a principle of valuation, not of law; see, for example, Wards Construction (Medway) Ltd v Barclays Bank Plc and Kent County Council [1994] 68 P. & C.R. 391.

Moreover, when deciding Stokes, the tribunal took additional factors into account. For example, it was of the view that the Cambridge Corporation held land beyond the ransom strip that would also benefit from the intended development works. As a result, it considered that the purchaser would be willing to pay more for the ransom strip as this would not only benefit the current development site but also potentially subsequent development works on the additional land. This is a clear indicator that the tribunal was not wedded to the principle of a one-third valuation, but rather that it took the view, on the specific facts of the case, that one-third was the appropriate proportion in that instance.
Compulsory acquisition is not a simple solution to the problem of ransom strips

Increasingly, many in the property sector are taking the view that applying the Stokes rule is not synonymous with applying a one-third valuation; rather, that the process of valuation depends on the particular circumstances and can therefore vary immensely between cases.

Considering the angles
There are many other factors that may affect the valuation of a ransom strip. In Batchelor v Kent County Council [1988] 56 P. & C.R. 320, the Lands Tribunal considered whether there would be any alternative market for the land than for the use intended by a particular purchaser, and whether there were potential other points of access to the site.

Where there is more than one point of access or the possibility of negotiating a new point of access, the developer may be in a stronger position because it is not reliant on the purchase of the ransom strip. When the case was remitted to the Lands Tribunal, the valuations put to it were on the basis of the ransom strip being valued at 50 per cent of the uplift in value of the development land in Batchelor v Kent County Council [1992] 1 EGLR 217. Likewise, in Ozanne and ors v Hertfordshire County Council [1989] 43 E.G. 182, the value of the ransom strip was found to be 50 per cent of the uplift. While the above cases all relate to compulsory purchase, the principles can be applied to ransom strips.

In the recent case of Persimmon Homes Limited v Hillier and ors [2018] EWHC 221 (Ch), the court considered the significance of planning permission on the valuation of a ransom strip. One of the questions before the court was what the claimant would have paid for a ransom strip in October 2012. At that time, planning permission for any development works had not yet been granted, so the court found it appropriate to apply a planning risk discount to the purchase price, to account for the risk that the claimant would have taken in purchasing the land without the security of knowing that it would be able to develop the site — in other words, to take account of the anticipated value of the land being lower than its eventual development value.

The case law cited in this article does not present all the possible valuations for a ransom strip, neither is it an exhaustive list of the factors to be considered when valuing the land. But it does indicate the complexity of the process, and why care should be taken when instructed on a valuation. So what can a developer do in the face of a titleholder that simply refuses to sell, or insists on an unacceptable price?

In some circumstances it may apply to the local planning authority to authorise a compulsory purchase. One basis for such an application is section 226 of the Town and Country Planning Act 1990. This sets out some of the grounds on which a local planning authority may exercise its power to acquire land on a compulsory basis.

The condition most likely to be relevant under the Act is where the acquisition will support the development, redevelopment or improvement of the land. The authority must also be satisfied that the works are likely to promote or improve the economic, social or environmental well-being of the area. It should be noted that there are further requirements, not set out here, that must be satisfied in order for compulsory acquisition requests to be authorised.

Compulsory acquisition is not a simple solution to the problem of ransom strips as, even where the relevant authority authorises such acquisition, anyone with an interest in the land must be notified and may have the right to object. It is only after any objections have been heard that the compulsory acquisition order can be confirmed. Once the order has been finalised, the parties may negotiate the appropriate compensation.

In the event that the owner of a ransom strip is unknown then the developer may be able to obtain indemnity insurance to protect against the possibility of them coming forward at a later date. The insurer will carry out its own valuation and enquiries in order to assess the premium for the policy. However, this cover may not be available where the of the owner is known, and even less likely to be available where they are aware of the situation.

Under advice
In short, there is no easy response to the question of how much a ransom strip is worth. As in any commercial transaction, land is only worth what another party is willing to pay, and where the buyer has no alternative then any attempt to negotiate the purchase price is likely to prove costly. For this reason, it is essential to ensure that a client has always been fully advised on the rights required for a site before its acquisition, and while it is still free to look elsewhere if the costs prove too high.

To return to the original scenario, a developer that has already acquired its site, and for which the losses incurred in terminating or relocating the project would be greater than the price of the ransom strip, is likely to be at the mercy of the owner unless there are particular extenuating circumstances or it can demonstrate that it is appropriate for the local planning authority to exercise its compulsory purchase powers.

Alex O’Connor is a partner at Collyer Bristow alex.oconnor@collyerbristow.com

Related competencies include: Valuation
When the National Planning Policy Framework (NPPF) was published in 2012, the UK development industry was still severely affected by the banking crisis, but the government was determined to create conditions where the private sector would continue to supply housing of all kinds. Maintaining the business case for development was central to this: viability was declared a material consideration when determining planning applications and testing this became a critical part of the evaluation process in decision-making.

The NPPF was also an expression of the government’s desire to withdraw from areas where it felt the market could achieve better results. It was in this spirit of deregulation that it disposed of around 1,000 pages of planning policy and replaced them with a 57-page statement outlining its policy to ensure sustainable development. This was followed in 2014 by planning practice guidance (PPG) elaborating its policy.

Although still driven by the need to provide more housing, 2018’s review of the NPPF and associated PPG has given less weight to viability issues, even questioning the need for them to be tested at the decision-making stage. Settling viability early in the planning process is one of the primary purposes of the PPG revisions and the government would like to see most issues resolved at plan-making stage. The expectation is that if the market recognises what planning policy aims to achieve then land pricing will alter accordingly.

Since the introduction of the NPPF, it has been argued that the application of policy has been skewed towards satisfying the economic element of sustainable development at the expense of its social and environmental components. The suggestion is that, by making financial viability a material consideration in decision-making, the government has enabled public goods such as environmental improvements and affordable housing to be squeezed out while protecting a market return for the landowner and developer.

Striking the balance between policy formulation in a plan-led system and housing supply through a market-based system is bound to create tension. This interplay between planning policy and market conditions is still highly relevant. While this formulation of advice is no longer current, the figure should ‘reflect’ relevant planning policies and not ‘buck’ them. On the other hand he said the proper application of those policies should also be ‘informed by’ and not ‘buck’ an analysis of market evidence that reflects those policies. He had observed during the proceedings that assessing viability is a valuation skill informed by planning knowledge; it is not simply an application of policy disregarding what is taking place in the market, neither is it about generating valuations based on prices paid and giving little regard to the planning obligations set out in local plans.

The weight to be given to competing planning and market evidence remains an area of considerable professional judgement in a context where decision-makers exercise a wide range of discretion in a sometimes politically polarised process.

Although the NPPF makes reference to developer contributions and viability assessments, details on viability have been transferred to the 2018 PPG on the subject and arranged in four parts. The revised RICS guidance will focus on the first three:
RICS guidance will seek to make practice consistent, based on policies that still have considerable latitude for interpretation

- viability and plan-making
- viability and decision-making
- standardised viability assessment inputs
- accountability.

The overall government objective is to bring greater certainty, clarity, speed and transparency to viability testing in the planning process. The intention was to find a method or measure that could operate easily and be understood by all stakeholders and decision-makers.

The guidance has been formulated to respond to variation throughout the country in socio-economic conditions and affordable housing policies alike; it is not the role of a professional body to go beyond what policymakers have formulated, but to advise how settled policy may be applied. RICS guidance will seek to make practice consistent, based on policies that still have considerable latitude for interpretation. A distinction needs to be made between consistent application by professionals and uniform outcomes in decision-making.

RICS’ revised guidance will address three important changes. The first of these is that viability testing will be conducted mainly at the plan-making stage. This is a significant shift from the existing regime and is challenging in a number of ways. The Local Housing Delivery Group, under chair Sir John Harman, issued guidance in 2012 that focused on area-wide viability and to some extent identified the limits of this approach to assessment. The extent to which broad-based viability testing conducted on an area-wide basis at a particular date can substitute for viability testing on a specific site at a later date has been questioned.

Some indication of the government’s preferred approach may be derived from area-wide assessments for Community Infrastructure Levy purposes, but these were never intended as a substitute for site-specific assessment. Determining the range of typologies of developments to be tested and how fine-grained the analysis should be to overcome the need for site-specific testing is the particular challenge. Increasing availability of data may help overcome some of these problems, enabling regular updates to evidence bases.

The second major change with which the guidance deals is that viability is no longer a material consideration. Whether a viability assessment is admissible at development management stage will be at the discretion of the decision-maker. While viability may no longer be a material consideration in planning, it will always remain a key consideration in development and maintaining the business case at all stages in the cycle will still be critical to ensuring housing supply.

Although PPG 2018 stresses that the review mechanism is not a tool to protect developer’s return, it is not clear how a decision by the developer to cease construction for sound commercial reasons is to be balanced with the other objective of maintaining housing construction across all types. Here, an understanding of optionality – the ability to choose between a number of other options or indeed do nothing at all – must underpin any policy.

The third change is that EUV has a percentage uplift added. Viability assessment at area-wide and site-specific levels should follow the government’s recommended approach to assessing viability and is to be based on EUV plus a premium to give an incentive for land to come forward. Data sources to inform the landowner premium should include market evidence and can contain BLVs from other viability assessments.

A legal opinion sought by RICS states that there is no functional connection between EUV and the establishment of BLV. This view was reiterated by Mr Justice Holgate when he stated EUV is a reference point against which the premium may be measured, but that the uplift cannot be derived from EUV. Deriving it instead from market evidence that reflects planning policy is the same as applying a discount to unencumbered market value to reflect planning obligations. Both methods should arrive at roughly the same BLV to encourage land to come forward for development.

The question still remains: what comparable evidence is to be admitted in support of this BLV? How is it determined to be policy-compliant without issues of circularity arising? And how is it to be adjusted to ensure compliance? This is the area where Mr Justice Holgate has asked for more guidance to be provided, which will greatly benefit practitioners and which we hope will contribute to the certainty, clarity, speed and transparency the government and the public are seeking.

While we have been preparing guidance responding to the revised NPPF and PPG, we have been consulting on mandatory conduct and reporting requirements for practising chartered surveyors. The final version will apply to all surveyors who contribute to development viability appraisals for planning purposes. This is a pivotal area of professional practice, in which chartered surveyors’ opinions have an immediate impact on a vital public interest policy – that is, affordable housing supply. We want our members to understand what is required to act to the highest standards in serving this sector. It is also a contentious area of practice and adherence to these standards is obligatory.

Tony Mulhall is associate director, RICS tmulhall@RICS.org

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