ABSTRACT

It is believed that over a quarter of all brownfield land in England has been vacant or derelict for at least nine years. In Scotland, over 40% of the 11,000 hectares of vacant and derelict land officially recorded in 2013, had been in that same condition for at least 22 years. This paper argues such hardcore vacancy is due as much to institutional factors as economic or physical ones. Among the most problematic of these are unrealistic owner expectations of what the land is worth, especially when reinforced by conventional valuation practices. To resolve these difficulties, the paper proposes the introduction of statutory Compulsory Sale Orders, under which any land idle for an undue length of time could be required to be sold by public auction. The paper sets out how CSOs could be implemented, explores what they might achieve, and considers some of the challenges likely to be involved in their introduction.

1 INTRODUCTION

1.1 This paper is about the semi-permanence of urban vacancy and the potential of institutional reform to tackle it. The specific focus of the paper is on urban vacant and derelict land, and especially that found within or adjacent to towns and cities in Scotland. The argument within the paper is that vacancy has become a semi-permanent feature of the urban landscape as much because of institutional barriers as economic or physical ones. Indeed, economic and physical barriers to the re-use of vacant land can well be interpreted as a subset of institutional ones.

1.2 The paper is thus located in an understanding of the significance of institutions as the ‘rules of the game’ through which urban development and redevelopment takes place.
Such rules are themselves enlivened by relations between those people and organisations whose strategies, actions and interests are crucial to the way in which rules are interpreted and reinterpreted. Crucially, the paper proposes both an institutional explanation for land market failure, which it sees as a central cause of semi-permanent urban vacancy, and a radical institutional solution, grounded in property rights reform.

1.3 Radical solutions, however, especially those that threaten embedded or powerful interests, seem less welcome to the British political and administrative establishment today than they might have done two generations ago. In this context, the focus on Scotland is deliberate. With its own Parliament re-established in 1999 (which soon developed a reputation for such pioneering legislative reform as the ban on smoking in public places), and with historical debate on Scottish land reform re-energised in recent years, Scotland now the chance to introduce radical reform of property rights in a way that might not yet be possible in other parts of the UK.

1.4 The paper now proceeds in five main sections. The first task is to establish what is meant by semi-permanent or ‘hardcore’ vacancy and to ascertain its scale. This task is accomplished in the next section which draws on official statistical sources in both England and Scotland. Greater attention is paid to the Scottish statistics, not simply because of the geographical focus of the paper, but also because they are actually much better than the English ones. In the third section, an institutional explanation of hardcore vacancy is put forward both to balance the economic and physical explanations that often dominate policy discourse and to enliven such discourse with the practical realities of power relations between actors. The section draws on an extensive literature, which goes back almost 40 years, on ownership and valuation constraints to urban redevelopment and explores what this has to say about the institutional failings of land markets.

1.5 The fourth section then proposes the introduction of Compulsory Sale Orders (CSOs) to require specified land (and potentially property) which has been vacant for an undue period of time to be sold by public auction, irrespective of whether it was held in public or private ownership. The section sets out and elaborates the main features of CSOs, as recently recommended to the Scottish Government by its Land Reform
Review Group (2014). It argues that the power of CSOs to reform market practices and cultures would derive as much from their existence on the statute book as their deployment in practice. In other words, merely knowing that land might be subject to a CSO when it has been vacant beyond a set time would often be sufficient to change owner behaviour.

1.6 The justification for such a radical reform of property rights to address land market failings is explored in the fifth section. At one level, this is about effective policy delivery on sustainable regeneration and community empowerment. At another level, however, any such reform raises genuine concerns around individual freedoms and human rights. To reconcile the public and private interests, which semi-permanent urban vacancy might appear to place in dichotomous opposition, the paper seeks to engender debate around the responsibilities of property as well as its rights. The potential of Compulsory Sale Orders to provide a radical institutional solution to an institutional problem is then summarised in the final section of the paper.

2 HARDCORE VACANCY

2.1 Hardcore or semi-permanent vacancy has been defined as land which has been vacant or derelict for more than nine years (English Partnerships, 2003). In that report, it was estimated that some 16,523 hectares, or around a quarter of all vacant or derelict land recorded in England in 2001, could be classified as hardcore. The report argued that development tended to ‘circle around’ persistently unused sites, making little actual impact upon them. Geographically, hardcore vacancy was found to be concentrated in former heavy industrial regions such as the North-West and Yorkshire & Humberside, which together accounted for around half of the overall total. In contrast, only 2% of land defined as hardcore vacant was located in Greater London.

2.2 These official figures came from research undertaken by Roger Tym and Partners (2001) which drew on the National Land Use Database of all vacant and derelict land (or ‘previously developed land’ as it became known) in England, produced that same year. Although heralded as an important statistical advance in the National Brownfield Strategy (English Partnerships, 2003 and 2007), no further figures for hardcore vacancy in England have ever been produced, even though NLUD itself was
published annually from 2001 to 2009 by English Partnerships (or by the Homes and Communities Agency, of which English Partnerships subsequently became part). Moreover, NLUD itself was not then updated until late October 2014, when the 2010 statistics appeared, along with raw data for 2011 and 2012. Again, none of these most recent updates contain any information on length of vacancy. In the absence of official statistics, a recent independent assessment by CPRE (2014a), using data obtained directly from local planning authorities, calculated that by 2012 hardcore brownfield land in England had increased to 17,740 hectares, a 7% rise on the 2001 figure.

2.3 Although the concept of hardcore vacancy originated in English statistics, no official time series thus exists to determine the long-term trends or current extent of hardcore vacancy in England. In contrast, the Scottish Vacant and Derelict Land Survey (SVDLS) has been published on an annual basis since 1993, with preliminary surveys having been undertaken in 1988 and 1990. The survey presents a wealth of detailed information on the land itself along with the socio-economic characteristics of the areas within which it is located. Alongside each year’s headline figures, it is possible to track the annual flows into and out of vacancy and dereliction and to see what proportion of the total has been vacant or derelict over time.

2.4 The latest survey (Scottish Government, 2014a) records 2,355 hectares of vacant urban land and 8,759 hectares of derelict land in Scotland for 2013, making a total of 11,114 hectares. As Figure 1 shows, this total has hardly changed since the late 1990s. Over the same period, Scotland’s towns and cities have continued to spread outwards, with intense development pressure often experienced at the urban fringe. Yet, almost 60% of the vacant and derelict land recorded in Scotland in 2013 is evidently developable within ten years, and around half of this is considered developable within five years (Scottish Government, 2014a). Although these figures are based on judgements made by individual local authorities and cannot be cross-checked independently, they suggest that lack of development potential is not the most plausible explanation for continued high levels of vacancy and dereliction in Scotland.
Figure 1: Total vacant and derelict land in Scotland 1996-2013
(Source SVDLS Annual Reports 1996-2013)

Since Figure 1 presents only ‘overall stock’ figures, it disguises limited annual ‘inflows’ of new vacancy and dereliction and ‘outflows’ of vacant and derelict land reused or reclaimed. Between 2003 and 2007, for example, annual inflows averaged just above 700 hectares per annum, and outflows just below 775 hectares per annum, so reducing the total stock from 10,596 hectares at the beginning of 2003 to 10,240 hectares at the end of 2007. As this suggests, for much of the landscape of urban Scotland, the journey from the industrial to the post-industrial is slow and problematic. Indeed, since 2001, whatever success has been achieved in re-using vacant and derelict land in Scotland has largely matched by a steady stream of new vacancy and dereliction.

Vacant and derelict land in Scotland is geographically concentrated, with 63% of the total found in the six worst affected local planning authority areas in Scotland (see Figure 2). With one exception, all these areas are located in the former heavily industrialised Central Belt of Scotland. The exception is the Highland area, which accounts for over 12% of all vacant and derelict land in Scotland. However, half the total amount of vacant and derelict land recorded in Highland is attributed to just two
redundant military airfields, with a further 18% due to one large redundant port. Once these exceptional sites are acknowledged, the focus of attention shifts to the five areas in the Central Belt where vacancy and dereliction is concentrated. These are North Ayrshire and North Lanarkshire (each 12% of Scotland’s total), Glasgow (just under 11% of total), Renfrewshire (just under 9% of total) and Fife (just under 8% of total).

Figure 2: Local authority areas in Scotland showing the six locations worst affected by vacancy and dereliction in 2013 (Source: Scottish Government, 2014a)
2.7 According to the most recent SVDLS, over 40% of all vacant and derelict land in Scotland (4,544 hectares) has been vacant or derelict for at least 22 years. Unfortunately, this overall figure is not sub-divided further into different time periods. Such detailed information is instead provided only for vacant and derelict land within settlements where the exact period of vacancy is known. This information is available for a total of 5,347 hectares or just under half of all land in the survey. Figure 3 draws on this data to present the time dimension both for Scotland as a whole and for the five areas, apart from Highland, most affected by vacancy and dereliction.

![Figure 3: Length of urban vacancy and dereliction in Scotland](Source: Scottish Government, 2014a)

2.8 If hardcore vacancy is interpreted as land that became vacant or derelict before 2006, then this amounts to 75% of the Scottish total in Figure 3, and reaches over 80% in North Ayrshire and almost 90% for Fife. If instead, 2001 is taken as the cut-off point, then the Scottish figure for hardcore vacancy drops to 62%. Nevertheless, both figures suggest that persistent and unresolved vacancy is even more serious in Scotland than the 2001 NLUD figures revealed for the North West and Yorkshire & Humberside in England.
2.9 According to the Scottish Government (2014a) some 305 hectares of derelict and vacant land was reclaimed or returned to active use between 2005 and 2013 as a result of annual expenditure of around £8-10 million under the Vacant and Derelict Land Fund. Much as any such government action is welcome, the limited scale of what has been achieved under this fund, and indeed by other means through which land has been reclaimed or brought back into use, suggests that without a radical change in direction, urban Scotland can look forward to a future in which very high levels of urban vacancy and dereliction are likely to persist for several decades to come.

2.10 Failure to confront hardcore vacancy disproportionately affects on some of the most deprived communities in Scotland. Almost 25% of Scotland’s population live within 500 metres of a derelict site, and 55% live within 1,000 metres. Some 16% of all vacant and derelict land is located in the 15% most deprived datazones in Scotland, but this figure reaches 21% in North Lanarkshire and 40% in Glasgow (Scottish Government, 2014a). Moreover, as Figure 4 illustrates, the more deprived datazones become, the more their people have to experience derelict land. Significantly, this experience has become even worse in recent years, possibly because land that has been reclaimed tends to be located in the more prosperous parts of settlements.

![Figure 4: Percentage of Scotland's population living within 500 metres of derelict land by deprivation decile in 2007 and 2013 (Source Scottish Government, 2014a)]
As this section has shown, hardcore vacancy and dereliction have become a serious and significant concern in Scotland, and one that disproportionately affects Scotland’s older industrial areas and most deprived communities. It is thus essential to understand what turns vacancy and dereliction into such a hardcore problem.

**AN INSTITUTIONAL EXPLANATION OF HARDCORE VACANCY**

*Critical success and failure factors*

3.1 Although there is now a wealth of literature on vacant and derelict, or ‘brownfield’, land in general, remarkably little is focused on hardcore sites. A notable exception is the work of Dixon *et al.* (2011) who tried to pinpoint ‘critical success factors’ enabling long-term barriers to redevelopment to be overcome through a comparison of the development history of 10 hardcore sites in Manchester (England) and Osaka (Japan). To do so, they adopted an agency approach, seeking to link economic and property market change to the strategies of key stakeholders. Although they identified no ‘universal model’ of urban regeneration easily transferable from one context to another, they did suggest that success in tackling hardcore vacancy depends principally on “the presence of strong markets; seeing the recession as an opportunity; long-term vision; strong brand; strong partnerships; large-scale developments; and prioritising infrastructure” Dixon *et al.* (2011: 975).

3.2 According to Dixon *et al.* (2011), continued disuse of hardcore brownfield sites can threaten the economic competitiveness of cities, impair the tax base, impede job creation, damage the quality of life and undermine efforts to tackle contamination. Alongside success factors, they therefore provide clues to what might be described as ‘critical failure factors’ accounting for persistent vacancy. In Manchester, for example, earlier low demand was matched by a downward spiral in economic and social conditions, poor infrastructure and lack of expertise in exploiting tax relief. But “unrealistic values and expectations, often based on high densities” also played their part (Dixon *et al.* 2011: 973). In Osaka, contamination was seen as less significant than “fragmented ownerships and development control as well as lack of agreement with landowners” (Dixon *et al.* 2011: 972). This highlights the need to interpret economic and physical constraints within an institutional context.
Yet, it still remains tempting to see hardcore vacancy as essentially a physical or economic problem caused by the presence of contamination or other physical constraints, and by the lack of enough ‘end value’ to pay for their remediation or treatment. This weakness of this explanation is that it largely disregards the important role of development actors in mediating physical or economic problems, sometimes making the unexpected happen and sometimes thwarting the expected. Land markets provide a critical setting through which this process of mediation takes place since the path from redundancy to re-use usually involves and often requires a change of ownership, and can be frustrated when owners hold land off the market. For example, Adams et al. (1995) found that the transaction rate for industrial sites in the Cheshire-Wirral corridor was almost twice that for those which had been developed compared to those which remained vacant. In another study in inner Manchester, almost 60 per cent of the 83 hectares of brownfield land that had been developed or brought into use for purposes other than public open space had required a change into active ownership as part of that process (Adams et al., 1988). Indeed, on occasions, several changes in ownership may take place prior to redevelopment, with different actors taking different views of how best to price site constraints. As this suggests, setting in place measures to encourage and indeed accelerate the transfer of vacant land from passive to active ownership should be an important focus for urban land reform.

The importance of ownership strategies and constraints

There is no ready reckoner by which to convert physical constraints into standard costs applicable to all potential developers. Instead, different developers will have their own systems and networks (for example, through access to contamination insurance – see Payne, 2009) to turn what others might see as a brownfield problem into a business opportunity. In short, not all developers pursue the same strategies, interests and actions, for in each circumstance, some may be more adept than others in exploiting, indeed bending, the ‘rules of the game’ to their advantage. Where ownership and valuation constraints significantly impede urban redevelopment, the institutional failings of land markets can have serious consequences.

An ownership constraint can be said to exist where development is unable to proceed because the required ownership rights cannot rapidly be acquired through normal
market processes (Adams et al., 2001a). Such constraints derive the distinctiveness of
land as a commodity, the imperfect nature of the land market, the behavioural
characteristics of landowners and the institutional context for land ownership, exchange
and development. As Table 1 shows, there are five main types of ownership
constraint, each of which can be further subdivided into more precise categories.

| Ownership unknown or unclear | • Title deeds incomplete or missing  
| • Ownership in dispute |
| Ownership rights divided | • Land held in trust  
| • Land subject to leases or licences  
| • Land subject to mortgages/other legal charges  
| • Land subject to restrictive covenants  
| • Land subject to easements  
| • Land subject to options or conditional contracts |
| Ownership assembly required | • Ransom Strips  
| • Multiple ownership |
| Owner willing to sell but not on terms acceptable to potential purchasers | • Restrictive terms or conditions of sale  
| • Unrealistic expectations of price |
| Owner unwilling to sell | • Retention for continued current use for occupation  
| • Retention for continued current use for investment  
| • Retention for continued current use for making available to others on non-profit basis  
| • Retention for control or protection  
| • Retention for subsequent own development  
| • Retention for subsequent sale: Indecision  
| • Retention for subsequent sale: Postponement  
| • Retention for subsequent sale: Uncertainty  
| • Retention for subsequent sale: Speculation  
| • Retention for no specified purpose: inertia |

Table 1: Typology of Ownership Constraints to Urban Redevelopment (Source: Adams et al. (2001a) where further explanation of each category can be found.)

3.6 How significant are such constraints? In a detailed investigation of 80 large redevelopment sites in four British cities (Aberdeen, Dundee, Nottingham and Stoke-on-Trent), Adams et al. (2001a) discovered 146 separate ownership constraints which disrupted plans to use, market, develop or purchase 64 of the 80 sites at some point between 1991 and 1995. The relative importance of the five main types of constraint is shown in Figure 4.
The most prevalent form of constraint shown in Figure 4 was the division of ownership rights (leases, restrictive covenants etc), but the most disruptive was the requirements for land assembly, evident on 26 separate occasions and which impeded the redevelopment of 24 of the 80 sites. This led the research team to propose a new land assembly mechanism, known as an Urban Partnership Zone (Adams et al., 2001b) which subsequently also found favour with the Scottish Government’s Land Reform Review Group (2014). However, the proposal for Compulsory Sale Orders, outlined later in this paper, is intended to address constraints created by owners unwilling to sell and by those apparently willing to sell but not on terms acceptable to potential purchasers.

Owners apparently willing to sell but not on acceptable terms proved disruptive on 21 of the 80 sites, with 23 individual cases of disruption recorded in total. Four of these cases were attributed to restrictive terms or conditions of sale. For example, one building company advertised plots for sale on an industrial estate in Stoke-on-Trent but required any potential purchaser to commission it to design and build any development. More importantly, some 19 separate cases were discovered where vendors set unrealistically high asking prices or held unrealistically high expectations of land value, below which
they not prepared even to consider offers. In 16 of these cases, the owners’ unrealistic prices or expectations significantly or very significantly disrupted another party’s plans to use, market, develop or purchase the site.

3.9 The impact of this was most acute in the fragile markets of Dundee and Stoke-on-Trent. A classic example concerned a former marl pit of 8.5 hectares in Stoke-on-Trent, half of which had redevelopment potential. It was on the market in 1997 for £860,000. At interview, it transpired that the owner, a local developer, believed its open market value to be £600,000, but would accept £500,000 if offered immediate payment. This sum was calculated on the basis that it would cover original purchase price of £220,000 paid in 1987, the £220,000 spent in interest charges over ten years and approximately £60,000 of other expenditure. However, the owner admitted that a professional valuation of the land undertaken for his bank suggested that it was worth only £260,000. Crucially, as subsequently argued, a best professional valuation of £260,000 does not necessarily mean that the land would have reached this estimate, if actually sold on that date.

3.10 Moreover, the four cities research showed that some owners were simply unwilling even to consider offers from potential purchasers, whatever the price offered. The research identified 35 individual cases among the 80 potential redevelopment sites, where owners chose to retain land in their ownership, even though they had no immediate development plans themselves. These 35 cases were accounted for by owners who wanted to keep the land for later sale (12 occasions), for their own current (under) use (10 occasions), for their own later development (8 occasions), or for no specific purpose whatsoever (5 occasions). Such owner reluctance to sell land with redevelopment potential affected 29 of the 80 sites, and caused significant or very significant disruption to another party’s plans to use, market, develop or purchase the site in 80% of the instances where it occurred.

3.11 One example of such owner reluctance was evident in Dundee, where British Gas had sought planning permission for a non-food retail park on a substantial brownfield site close to the city centre. This was intended to produce a high enough return to cover the estimated £1-1.5 million needed to treat on-site contamination. However, as the land had a development plan allocation for business and industrial use, the retail planning application was refused by the City Council. Despite this, British Gas still believed that a
retail consent granted would eventually be granted, and thus turned down four serious enquiries and one formal offer from other parties to purchase the site for non-retail uses.

3.12 The four cities research has added significance as far as hardcore vacancy is concerned, because in 2011, the same research team revisited all 80 sites that had originally been identified 16 years earlier to discover how many had been redeveloped or reused in the meantime (Adams et al., 2012). As Figure 5 shows, only 43 sites (54%) had been fully developed during that period, although a further 20 (25%) had been partially redeveloped. But 17 sites (21%) remained wholly undeveloped, despite the lengthy development boom that had occurred in the meantime.

![Figure 5: Development status in 2011 of the 80 redevelopment sites originally identified in 1995 (Source: Adams et al. 2012)](image)

3.13 No attempt was made in 2011 to repeat the detailed investigation of ownership constraints site-by-site, but as Figure 5 shows, the 17 remaining hardcore sites were almost evenly split between the four cities. This was surprising because two of the cities, Aberdeen and Nottingham, had experienced much greater prosperity and development activity in the intervening period than the others. This indicates that hardcore vacancy is not necessarily resolved by economic upturn.
Indeed, almost paradoxically, economic upturns (especially when they come to an end) may actually exacerbate hardcore vacancy by encouraging an even greater sense of unreality about what is achievable, which is then never fulfilled. If speculative bubbles unduly raise owners’ expectations, it may take years for these to return to calmer levels. This could well explain why Nottingham Eastside, comprising two of the original 80 sites, still remains vacant in 2015, almost 25 years after manufacturing ceased on the site. Yet, over this period three major redevelopment proposals were put forward for this site, none of which were ever implemented. The first was a £150 million proposal for a world trade centre, offices, residential, leisure and hotel, put forward in 1990 by the Boots, the original landowners. The second was an ever bigger mixed-use development for almost 270,000 m² of office, residential, leisure and retail space, masterplanned by Michael Hopkins Associates and proposed by the developers, Eastside & City, in 2004. The third proposal, made in 2010, was more mundane and involved an 11,000 m² Tesco superstore on part of the site. With all three schemes having failed, the land remains as shown in Figures 6 and 7.

Figures 6 and 7: Hardcore vacant land at Nottingham Eastside taken in 2015

Hardcore vacancy is thus closely linked to structural economic change, whether on the edge of Nottingham city centre, for example, or in the deindustrialised parts of Central Scotland. However, bringing such land back into productive use is about much more than producing plans, grand or small, for the structural transformation of the physical environment. Crucially, it may also require structural change in the mindsets of landowners who mistakenly see undue value in their land. Bringing about greater owner realism can be essential to small-scale regeneration, especially in places where grand plans are unlikely ever to come to fruition. In this context, the detailed
evidence produced from Aberdeen, Dundee, Nottingham and Stoke-on-Trent confirmed what many other commentators had long suspected or argued, and indeed continue to do so.

3.16 Almost 40 years ago, for example, Edwards (1977: 206) asked “Why if there is a widespread exodus of capital, with manufacturers and statutory undertakers locating their investments elsewhere, do land values in the inner cities remain so high that the re-use of obsolete land and buildings is impeded?” A decade later, Gloster and Smith (1989: 3) suggested that in the recession of the early 1980s “companies were reluctant to sell at sensible prices, if such prices were below historic cost or book value.” Around the same time, Howes (1989) also argued that owners might be unwilling to sell at prices below those which matched book valuations or recouped historic acquisition costs financed through loans.

3.17 Later contributions have come to remarkably similar conclusions. The Urban Task Force, 1999: 223) considered that “landowners often have unrealistic expectations of what their site is worth or feel unable to release sites because of the inflated values that are recorded in their accounting books”, although, strangely, it seemed to believe that the problem was largely confined to public-sector landowners such as the National Health Service and Ministry of Defence. The Brownfield Guide published for practitioners by English Partnerships (2006: 29) noted that “Unrealistic price aspirations of land owners can make the site assembly process time consuming and costly.” From his own practical experience, Syms (2010) thought it common for landowners to hold unrealistic expectations of both land value and actual prices likely to be offered by potential developers. Most recently, CPRE (2014b: 12) argued that “Brownfield site owners are hesitant to sell their land because they speculate that the value may increase in future and as a result brownfield sites within urban areas may remain vacant for a significant amount of time.”

The significance of valuation constraints

3.18 Since keeping land vacant incurs no taxation and relatively few holding costs, many landowners are under no pressure to sell, and are quite prepared to wait until that tempting offer finally arrives, even if it never does. Crucially, however, owners’
unrealistic expectations of what their land might be worth can be reinforced by the culture and practice of professional valuation, so creating specific valuation constraints to urban redevelopment. Although these are conceptually a subset of ownership constraints, valuation constraints deserve special mention. They occur when estimates of value diverge materially from prices actually achieved in open market transactions. Significantly they reinforce owners’ unrealistic expectations of price as well as owners’ decisions to keep land off the market.

3.19 In the regeneration context, valuation constraints arise because of the inherent difficulties involved in estimating how much vacant urban land and property is actually worth. Professional valuation works best when there is plenty of recent comparable evidence to draw upon. Yet, actual transactions in vacant urban land are relatively few in number, with the prices paid per hectare varying substantially. Moreover “Since the size, location and particularly the physical condition of each vacant site endow every transaction with individual characteristics, it becomes extremely difficult for the valuer to generalise a particular level of prices from a recent set of transactions” (Adams et al., 1985: 172). In the absence of comparable evidence, a development appraisal might be used to construct a residual land valuation for a specific project, but such appraisals are known to be notoriously susceptible to the particular assumptions they incorporate. In any event, there is no certainty that a residual land valuation produced for a potential developer will find favour with the existing owner. Indeed, as one interviewee reported to Dixon et al. (2011), owners of hardcore brownfield sites can be ‘completely unrealistic’ about the actual costs of bringing then forward for development.

3.20 Research in inner Manchester found that owners were encouraged to set unrealistic asking prices primarily by conventional valuation practices which produced significant contradictions between comparative and residual values (Adams et al., 1985). Developers, as potential purchasers of land, all valued land as a residual, while existing owners, as potential sellers (who were usually advised by professional valuers) relied on comparing the sale site with recent transactions on similar sites. Yet, the shortage of actual sales made the general level of prices hard to discern. In such circumstances, over reliance on the comparative method of valuation placed undue emphasis on the most favourable recent transaction, ensuring that land prices
were “revised downwards only slowly and reluctantly in response to lack of demand or excess supply” (Adams et al., 1985: 172).

3.21 Such valuation constraints can be understood only in relation to the scale of structural change experienced, and indeed required, within urban areas. Where the transition from the industrial to the post-industrial involves moving to a higher-value use, such as a shopping centre or an upmarket block of apartments, valuation constraints tend not to be a problem, at least during boom times, since the financial appraisal of the proposed development will usually produce a residual valuation that enables the developer to meet the owner’s expectations. Yet the regeneration of urban Scotland and similar deindustrialised locations cannot be achieved by shopping centres and apartment blocks alone. Indeed, the really hardcore problems of vacancy and dereliction are concentrated in places with little demand for shopping centres and upmarket apartments. Here, structural change does not imply a higher-value use but usually requires some write-down of former patterns of value to stimulate new activity. If the comparative method of valuation reinforces the reluctance of owners to acknowledge the extent of that structural change, urban land markets grind to a halt.

3.22 Compulsory purchase is not really much help here, even if were widely implemented by local authorities, precisely because the valuation assumptions inherent within compulsory purchase law and practice prioritise the comparative method of valuation and encourage undue reliance on past evidence. Ironically, owners willing to sell vacant urban land may do better out of compensation from compulsory purchase than if their land were sold at public auction. While the former is based on a valuation or estimate of price, with all the difficulties that involves, the latter involves an actual market transaction which automatically reflects the extent of structural change within the area. Moreover, actual transactions can expand the evidence base for subsequent comparative valuations, making the latter more reliable.

The operation of land and property markets

3.23 As this suggests, valuation constraints to urban redevelopment are best tackled not by seeking to improve the technicalities of professional valuation, but rather by ensuring
that more vacant land and property in urban areas comes forward for sale and is indeed sold to those best placed to promote its re-use or redevelopment. To achieve this, it is important to consider how land and property markets operate in practice, and why they are prone to failure. Such analysis can help the State devise measures that improve market operations, rather than necessarily seeking to take over market functions. In this context, and particularly in relation to hardcore land vacancy, three important characteristics of land and property markets need to be understood.

3.24 First, land and property markets are so riddled with imperfections that they are among the least efficient of all (Balchin et al., 1988). Such imperfections occur when the conditions of perfect competition are violated within the market. For example, far from exchanging homogeneous products, every real estate transaction is different since, at the very least, its location is unique. Land and property markets are also more prone to failure than many other types of market, with externalities, under-provision of public goods, and lost opportunities endemic. Thirdly, the way such markets operate reflects the particular institutional characteristics of the society, culture and legal framework within which they are located. This means that we should see them as a “social construct . . . understood as part of the system of social relations” (De Magalhães, 2001: 106). This approach implies that market transactions, like social interactions, are highly conditioned by humanly devised rules, norms and regulations, and reflect dominant powers and interests.

3.25 If land and property markets are indeed socially constructed, it follows that they can be socially re-constructed. In part, this happens implicitly all the time as individuals and organisations make fresh choices and set off in different directions. It also happens explicitly when powerful market actors such as developers, landowners and investors re-appraise their strategies so as to capture and direct such market movements to their own advantage. In this context, urban land reform can involve the State re-writing the ‘rules of the game’ that define property rights and responsibilities to ensure such markets operate more efficiently. One way to achieve this is to encourage, indeed require, land which has been vacant or derelict for an undue period of time to be put up for sale by public auction. This is the essence of the concept of Compulsory Sale Orders, originally proposed as ‘Community Rights of Sale’ by the
current author (Adams, 2013), and subsequently taken up and recommended to the Scottish Government by its Land Reform Review Group (2014).

4 COMPULSORY SALE ORDERS

4.1 The most effective way to achieve a fair and realistic price for real estate that is hard to value such as vacant and derelict land is to put it to public auction. Auctions enable sellers to fulfil any responsibilities they may have to achieve the best possible price and help resolve the inherent difficulties involved in the valuation of abnormal assets. Auctions are a well-established and widely used means of sale within land and property markets. A brief glance through the weekly pages of Estates Gazette, for example, will soon reveal several notices of forthcoming public auctions, mostly involving numerous sales at the same auction, and often including plots of vacant land. Compulsory Sale Orders seek to take advantage of this experience and expertise by ensuring far more vacant land is sold by public auction.

4.2 Although the auction process is well experienced in handling the sale of vacant urban land, relatively few owners appear willing to entrust such land to auction. Such reluctance is likely to arise if owners believe that auction prices would be lower than what they think might eventually be achieved by waiting indefinitely for a purchaser. But, from a public policy perspective, this is precisely the point. Significantly, auctions can play an important role in the process of ‘price discovery’ by which information is conveyed from submarket to another. For example, in Hong Kong, where auctions are widely used to ensure that public land is sold in an accountable and transparent manner, Chau et al. (2010: 480) found that “lower than expected land auction prices have a significant negative market-wide and local impact on real estate prices while higher than expected land auction prices have little or no impact.” The immediate and very public sense of market realism engendered by auctions could thus provide an important stimulus to urban regeneration by ensuring that vacant urban land is made readily available at reasonable prices to whoever can put it to best use.

4.3 The power of Compulsory Sale Orders (CSOs), recently recommended to the Scottish Government by its Land Reform Review Group (2014) would enable local authorities (and possibly other public agencies and even community groups) to require that land
which has been vacant or derelict for an undue period of time be put to public auction. Drawing on Adams (2013), the LRRG recommended that a new statutory register of vacant and derelict land be introduced. After a period of three years on the register (commensurate with the validity of most planning permissions), any site could be subject to a CSO, irrespective of whether it was in public or private ownership. Owners served with a CSO by the local authority would be required to offer the land for sale by public auction within a six to eight month period, with local authorities having reserve powers to act if owners failed to comply or comply satisfactorily.

4.4 The proposed statutory register of all vacant and derelict land in Scotland would effectively be an enhanced version of the existing Scottish Vacant and Derelict Land Survey. Although local authorities are already expected to collect information for this survey each year and forward it to the Scottish Government, this would become a statutory responsibility. Full details of each site would then be published online. Although not covered in the LRRG report, three important changes would need to be made to the current SVDLS to enable the CSO process to work effectively:

- The definition of vacant land would need to be expanded to include land outwith defined settlements, and land for which the appropriate use might be for public open space, allotments, recreation, woodland etc
- The date when any site was first registered as vacant or derelict would need to be carefully recorded
- Full ownership details would be included, with the possibility that the Land Register for Scotland might also record whether land is officially deemed vacant or derelict.

4.5 There may be circumstances in which the owners wish to object to the inclusion of land within the register. Alternatively, other bodies such as community groups may consider land has been omitted. A formal procedure would therefore be needed to require local planning authorities to consider and respond to such proposed changes. Such requests would be decided on the purely factual basis of whether the particular sites did or did not meet the required definition. However, there might be some limited right of appeal against the local planning authority’s decision, either to the Directorate for Planning and Environmental Appeals (DPEA) or the courts.
4.6 The LRRG also recommended that the notice served on the owner requiring the land to be sold by public auction would be accompanied by a planning statement prepared by the local authority, explaining what types of development may or may not be allowed in future. This would set out any existing planning permissions and relevant development plan allocations and policies. The statement, which would be published online by the local authority, would be expected to be included in the sale particulars.

4.7 Although anyone could participate in the auction, it would be important to discourage speculative purchases by parties who then continued to keep the land vacant. To avoid this, all purchases under a CSO would be subject in law to the implied grant by the new owner to the local authority of the right to purchase the land three years thereafter at a valuation set at that date by the District Valuer if development had not commenced by then. Alongside the planning statement, this would help ensure that bids made at the auction were based on realistic, not speculative, proposals.

4.8 If the land remained unsold at auction, a period of time, possibly three years, would have to elapse before another CSO could be served. Such an unproductive outcome would probably be exceptional since, in most circumstances, a community organisation or local authority might be expected to make at least a nominal bid for the land, especially as no reserve price would be allowed. The intended notice period of six to eight months for the auction would also help generate interest and proposals for the future use of the site.

4.9 It is widely held that compulsory purchase serves as much as a reserve power as an actual one since the mere threat of a compulsory purchase order encourages negotiation and enables public authorities to acquire land by agreement (Murning et. al, 2001). In a similar sense, the impact of CSOs is likely to be far wider than the actual numbers served, since the possibility that land which has lain vacant for an undue period of time could be put to public auction is likely to have a profound impact both on owner psychology and valuation practice. Transaction evidence from any auctions that take place will provide an important benchmark for future valuations and help narrow the divergence between comparative and residual approaches to valuing vacant urban land. By curtailing the power of owners to hold out indefinitely
for what they perceive to be an appropriate land value, CSOs will facilitate more effective market operations by creating a better balance between development and land ownership interests. At the margin, they may well make development sites more viable, the assessment of which has become an important part of the planning system, at least south of the border (Coleman et al., 2013, McAllister et al., 2013). Nevertheless, CSOs may well be portrayed as a fundamental assault on the rights of property. This calls for their justification, which the paper explores, to be substantive.

5  PROPERTY RIGHTS AND RESPONSIBILITIES

5.1 Why should landowners be penalised for inaction? As Lawson and Rudden (2002) point out: “In principle, owners can do anything they like with what they own: use it, use it up, neglect it, destroy it, give it away entirely or for a time, lend it, sell or lease it, pledge it, leave it by will, and so on. Furthermore the owner is perfectly free to do nothing at all with the thing: in principle, the law of property imposes no positive duties on an owner.” Failure to make best use of land or develop it in line with any statutory development plan does not constitute a breach of planning control. Most powers found in planning law and indeed in public law more generally are intended to control actions, not inactions. The introduction of CSOs would thus represent a radical approach to land reform, resetting the balance between property rights and responsibilities.

5.2 Rights in land, unlike the land itself, are socially constructed and re-constructed over generations. They have developed and evolved as statute and case law have reshaped relationships between holders of different property rights over many centuries. This process has involved increasing recognition that property rights are matched by property responsibilities. So, for example, under the Occupiers Liability (Scotland) Act 1960, property occupiers have a duty of reasonable care to see that no-one suffers injury or damage by virtue of some danger on the premises. Over time, both the nature of, and balance between, property rights and responsibilities evolves. This process of evolution can happen gradually as case law develops and more formally as new legislation is passed. The introduction of CSOs would reflect the view that landowners have important public responsibilities as well as private ones. Two agendas provide the context for those responsibilities, at least in relation to vacant and
derelict land, which are now discussed in turn. The first is focused on sustainable development and the second on community empowerment.

5.3 However sustainable development is defined, it is normally taken to involve careful and efficient use of scarce environmental resources. Policies across the UK have thus long sought to limit the outward spread of settlements by making best use of land within them. If land remains vacant or derelict within settlements, as a result of ownership or other constraints, it undermines such policies and creates further pressure for outward expansion. It has been calculated that at modest development densities, about half a million homes could be built of Scotland’s stock of vacant and derelict land, in the theoretical event of its all being devoted to that use (LRRG, 2014). And contrary to much political invective, urban vacancy and dereliction is now primarily a matter of private not public land ownership, with more than twice as much such land in Scotland, for example, in the hands of known single private owners (5,932 hectares) than known single public owners (2,611 hectares). This may not matter if vacancy and dereliction were small scale or temporary in nature, but as this paper has shown, this is certainly not the case in Scotland. Indeed, it is arguable that the pervasive scale and duration of vacancy and dereliction across much of the landscape of urban Scotland blights the prospects for sustainable development in its widest sense – economically, socially and environmentally. This is why the LRRG (2014: 122-123) argued that, “Keeping urban land and property vacant when someone else could put it to beneficial use impedes the chances of achieving sustainable and resilient settlements.”

5.4 Community empowerment provides the second justification for CSOs and reinforces that derived from the sustainability agenda. The paper has already shown how dereliction is concentrated in some of the most deprived communities in Scotland. Bringing such land back into use as fast as possible is indeed a matter of social justice. But this agenda is not simply one of lessening the burden of dereliction and vacancy upon deprived communities. It is also about engendering community regeneration through facilitating access to land. Over the past decade, rural land reform in Scotland has encouraged a flowering of community enterprise by enabling local communities to access land from which they were previously excluded by extensive private estates (Satsangi, 2009; Scottish Government, 2012; Skerratt, 2013).
Communities in urban Scotland who may wish to create allotments, open space and small-scale housing or employment schemes can draw on this experience, provided they can access unused land at realistic prices. Although the Scottish Government is intended to facilitate this by extending the ‘community right to buy’ from rural to urban Scotland, in most circumstances a CSO would provide urban communities with a faster and more efficient means of acquisition. That is why the LRRG recommended that CSOs should sit alongside the extended ‘community right to buy’ within the panoply of land reform measures in Scotland.

5.5 The importance of sustainable development and community empowerment in the economic and social regeneration of Scotland suggest that there must come a time when it is no longer acceptable to the public interest for an owner to retain land or property indefinitely without use or sale. Earlier in this paper, it was suggested that the relevant period might be three years, but it could well be shorter or longer than this. Whatever the chosen period, the public interest would need to be so clearly established that it would not be possible to argue that a CSO order constituted a breach of the European Convention on Human Rights.

5.6 In this context, it is both unhelpful and incorrect to regard the rights of the certain property holders as somehow absolute and worthy of protection above all other considerations. The strong legal tradition of protecting private property derives from a time when it was seen as a bulwark of freedom against the absolute tyranny of the monarch. But time has moved on, and today’s test is between the public and private interest or rather between many different public and private interests. This makes it important to appreciate how the exercise of property rights by one individual may restrict the opportunities (social, economic or environmental) of many others. Even the European Convention on Human Rights, which declares that ‘every natural or legal person is entitled to the peaceful enjoyment of his possessions’, allows lawful interference in the public or general interest (see Allen, 2012). Since property rights are socially constructed, each generation will choose to refine their disposition, adjusting the balance of rights and responsibilities to achieve what at that period is best seen to represent the public or general interest. In an urban context, keeping large areas of land vacant and derelict does not serve the public interest, when some rebalancing of property rights could help bring it back into use.
In this context, the Community Empowerment (Scotland) Bill now before the Scottish Parliament will, in principle, give communities the right to buy abandoned or neglected land for the purposes of the sustainable development of that land, even if there is no willing seller. Lengthy and demanding procedures will need to be fulfilled, including Ministerial approval, before this power can be exercised. Nevertheless, if the Bill is enacted, it will establish the principle in Scotland that neglect or abandonment of land can be a cause to deprive owners of their land. When questioned by the Scottish Parliament on whether this provision would be compatible with the European Convention on Human Rights, the following response was given by the Minister:

“The Scottish Government is content that section 48 concerning a right to buy neglected and abandoned land is compatible with Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR). The provisions inserted into the 2003 Act by section 48 do not as such determine any person's ECHR rights as the provisions provide a mechanism whereby a community body may apply to purchase abandoned and neglected land and give Ministers a power to consent to that such an application. The Scottish Government is content that the provisions inserted by section 48 are capable of being exercised in a way that is compatible with the ECHR. Ministers will be required to ensure that any decisions or secondary legislation they make under the provisions inserted by section 48 are compatible with the ECHR.” (Scottish Government 2014b, paragraph 142)

Similar considerations apply here to compulsory purchase where, according to SPICE (2009) three key issues need to be satisfied to comply with the ECHR. Specifically, compulsory purchase by a public authority needs first to have a clearly defined legal basis, secondly, be pursued in furtherance of a legitimate aim, and thirdly be proportionate to that legitimate aim. As long as due process is embedded within any legislation and subsequently observed in practice, it is quite possible within a democratic society to construct a statutory framework that allows owners to be dispossessed of land not in active use. Any statutory framework for CSOs will clearly need to involve similar set of appropriate checks and balances, most likely including
Ministerial approval after due consideration of all the relevant evidence. Since CSO powers would be discretionary, not mandatory, Ministers would be right to expect any proposals to be well justified by their proponents. Moreover, for individuals, although not for corporate landowners, personal hardship may well be reasonable grounds why Ministers would choose not to confirm a particular CSO. In short, similar ECHR arguments are likely to apply to CSOs as to CPOs, with attention focused not on their legitimacy in principle, but rather on the processes through which they are operationalised.

6 CONCLUSIONS

6.1 In the post–industrial era, the prosperity of cities to re-invent themselves demands the ability to take land and buildings left vacant by economic change and transform them into sites of future opportunity. Owner attitudes and strategies are crucial in enabling this to happen. Cities without the desire or capacity to regenerate will spread outwards as they grow, leaving the doughnut effect so evident in many parts of North America. In the UK and Europe, where sustainable urban development has long been associated with the idea of keeping cities compact, constraints on outward expansion have been reinforced by regeneration policies intended to meet development needs through the re-use of redundant urban land.

6.2 Much new activity has been generated on reused land in Scotland over the past 35 years, despite its often pepper-potted nature. In Glasgow alone, former docks and shipyards are now home to the Braehead Shopping Centre, the up-market Glasgow Harbour development, the Scottish Exhibition Centre, the BBC, STV and Science Centre, for example. Such success stories show what can be achieved through the creative re-use of urban land, but they are not necessarily typical of Scotland’s urban landscape. Indeed, beyond such limited nodes of prosperity lie thousands of hectares of vacant and derelict land, much of which has remained unaltered for many years.

6.3 Many people look to the planning system to bring such vacant urban land back into use. While the planning system has immense power in preventing unwanted development, its ability to generate desirable development, at least on its own, is really quite limited. So we need to link the planning system to other policy tools if we
want to see significant regeneration take place. Traditionally this has involved developer subsidies and compulsory purchase. Both are potentially expensive (and therefore less likely at a time of austerity) and both address symptoms of the problem, rather than the problem itself.

6.4 This paper has instead argued that where holders of property rights so neglect their responsibilities that economic and community development is impeded, the case for reform is strong. The prime example of this in urban areas is that of keeping land and property idle, when its transfer to another owner, be that a local community, entrepreneur or public authority, would help bring that asset back into use and so create new employment, new housing and so on. The paper has proposed the introduction of Compulsory Sale Orders, not as a mechanism for greater Government intervention in land markets but in fact, quite the reverse. In principle CSOs offer an institutional solution to an institutional problem. Indeed, they would reconstruct the ‘rules of the game’ within land and property markets to make those markets work more efficiently on their own account, with minimal government intervention. If, by so changing market practices and cultures, CSOs were able significantly to reduce the stock of vacant and derelict land in Scotland, and relieve the blight experienced on a daily basis by its most deprived communities, they must surely be welcomed.

REFERENCES


