

## Written evidence submitted by the British Property Federation

### Introduction

1 The British Property Federation (BPF) is the trade association that represents large scale investors in the real estate sector. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers, and developers of real estate. Our members invest in a broad range of places where people live, work and enjoy their leisure time. They are therefore the custodians of retail units, logistics industries, homes, offices and social infrastructure. Our members invest close to £1 trillion in the UK economy, often on behalf of pensioners, and drive economic growth across the whole of the UK, underpinning the drive to level up the nation.

2 We are responding to key matters concerning our members including High Street Rental Auctions, and Compulsory Purchase Orders (CPO). We also aim to submit a later submission on various planning aspects of the Bill.

### Key points

3 High Street Rental Auctions are not the optimal policy response for regeneration of high streets, primarily because it is not in property owners' interests to leave units empty unless in exceptional circumstances. Often they require rental income to fulfil legal duties.

4 Legislation should distinguish between those landlords that are unwilling to let properties and those that are doing their best to find a tenant.

5 Business rates remain a larger barrier to entry for business than rent costs, this is evidenced by some members reporting instances of offering retail units at zero rent but still being unable to find tenants.

6 The technical changes to compulsory purchase orders in sections 140 to 148 of the Bill are broadly acceptable. The controversial clause is 149, which seeks to limit compensation to landowners within the vicinity of transport projects to a 'no scheme' basis. We think that this will lead to a two-tier land market with arbitrary and unfair consequences for those whose land is CPO-ed. It is not clear also what is defined as within the vicinity, and whether it will capture development unrelated to the transport scheme.

7 Our most significant concerns, however, relate to a consultation exercise currently being undertaken on 'hope value' in CPOs. This could be the prelude to new clauses being inserted into the Bill at a later stage. To deprive landowners of 'hope value' we believe is akin to the nationalisation of land. The proposition is not to allow the state to capture hope value wholesale, but to give the Secretary of State the powers to decide so in what are largely undefined circumstances in the consultation paper. We believe Parliament should be wary of such infringements to property rights, and certainly with the lack of detail forthcoming so far in the consultation.

### High Street Rental Auctions

8 It is disappointing, given the various causes of high street and town centre decline, that the Government have pushed HSRAs as a high-profile solution.

9 Commercial property owners do not keep properties empty without reason – they lose rental income, face higher insurance premiums, run an increased risk of vandalism to the property and are liable for full business rates after three months of vacancy.

10 Where such properties are empty, there will almost always be other causes, primarily the burden of business rates, which is at an all-time high in England, and wider economic decline.

- 11 BPF members already report instances of offering retail units in locations in the North-West and North-East of England for zero rent but are unable to let the units because business rates make them unviable: in England they are currently levied at 51% of the annual rental value of a property, an all-time high.
- 12 Many properties in those regions with the highest vacancies are also in the business rates transitional relief scheme, whereby they pay artificially high business rates to fund subsidised business rates in other parts of England. Landlords have reported several instances of business rates liability being in excess of 100% of the annual rent (instead of 51%) as a result of transitional relief, making occupancy costs simply unavailable for potential occupiers.
- 13 Despite a promise to cut the burden on business rates in the recently concluded ‘Fundamental Review of Business Rates’, resulting reductions in rates have been small, capped and time limited. Without a significant lowering of the business rates burden, shops on high streets will remain economically unviable and thus vacant. HSRAs therefore miss a root cause of vacancy – the business rates tax burden.
- 14 The locations of England with the highest proportions of vacant units are often those also most in need of levelling up. The North East has the highest shop vacancy rate (18.8% in Q1 2022)<sup>1</sup> and also the highest regional unemployment (5%)<sup>2</sup>. The North West and West Midlands also have relatively high levels of store vacancies correlating with relatively higher rates of unemployment. This suggests wider market factors are at play which create vacancies, rather than landlords in these regions by coincidence also being the least willing to seek tenants.
- 15 BPF members across all types – REITs, pension funds and ‘traditional’ commercial landlords – have fiduciary obligations to shareholders or to investors (which include the wider public whose pensions are invested with them). They are obliged to seek rental income from properties they own and would be in breach of their legal duties if they did not actively market them with a view to occupation.
- 16 A number of BPF members who invest in regeneration, placemaking and communities across the UK report that this measure runs across property-owning rights, and risks undermining investor confidence in supporting these activities, in turn jeopardising their ability to support the Government’s levelling up agenda.

**Recommendations:**

- 17 We consider this measure to be of limited use as in our experience the vast majority of property owners seek a return from their investment and to let property where there are willing tenants.
- 18 A much more effective tool to tackle town centre decline would be ‘Town Centre Investment Zones’ (TCIZs). These would be designated areas, like Enterprise or Housing Zones (in London) where local authorities would be able to exercise designated and enhanced fiscal and planning powers to boost the social, environmental and economic productivity of a location. This option should be actively explored by Government, and the BPF is ready to discuss it with Ministers, officials and parliamentarians.
- 19 We accept that in some cases a landlord may be unwilling to actively market a property. The legislation should therefore distinguish between those seeking a tenant but who have been unable to find one, and those unwilling to seek one at all.
- 20 Schedule 15, Part 1 of the Bill, which sets out the grounds a landlord may have for appeal against a local authority’s final letting notice, should be amended to include new clause 8, recognising this distinction: “That a landlord is able to demonstrate reasonable attempts to

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<sup>1</sup> <https://www.localdatacompany.com/blog/press-release-brc-ldc-vacancy-monitor-q1-2022>

<sup>2</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/regionalonlabourmarket/latest>

market the property at or below reasonable market rents for at least a 9-month period in the preceding 24 months”.

- 21 There may also be cases where a property owner may be unable to let an empty property below a particular level of rent without breaching their own fiduciary duties to their shareholders or lenders.
- 22 Government should not require property owners to undertake any action that places them in breach of other legal commitments, for example, if a tenancy required them to undertake certain works that conflicted with an agreed future use or required expenditure that necessitated borrowing in excess of limits agreed with lenders. Schedule 15, Part 1 of the Bill should therefore be further amended with new clause 9 “That the proposed level of rent or other proposed terms of the tenancy would entail the landlord breaching pre-existing contracts with third parties in relation to the property”.
- 23 The Government should also publish an impact assessment of this policy, setting out the evidence base that has led them to the conclusion that this measure is required, and to what extent they consider HSRAs will address the problem.

### **Changes to compulsory purchase orders**

- 24 Compulsory purchase orders are an important procedure that can help unlock regeneration and infrastructure projects. They are generally very stressful for all involved in the process and can result in protracted legal negotiations. They are therefore subject to various checks and balances

### **Sections 140 to 148**

- 25 Sections 140 to 148 in the Bill contain several procedural changes that we broadly support. The Government is, however, also using the Bill to push forward with various changes to the compensation arrangements for CPOs. Depriving someone of their land at less than market value and close to existing value is an extreme policy that is akin to nationalisation of land and looks out of place in the 2020s. If the Government's motivation is to capture more value for the state, there are better ways of doing it (existing and new) from the development and post-development process, rather than changing the compensation arrangements for CPOs

### **Section 149 'No-scheme' principle: minor amendments**

- 26 Whilst s149 is labelled as "minor amendments", they will impact heavily on compensation paid to landowners near transport schemes. It will mean that any transport scheme can be ignored in valuation terms for calculating compensation under CPO arrangements e.g. where land is compulsory purchased close to a railway station the value attributed to its proximity to the station could be ignored, but if the same land was available in the open market the value would be higher – thus creating a two-tier market.
- 27 The BPF has no qualm with public authorities capturing land value uplift from development where there has been significant public investment in improving transport infrastructure and property values increase as a result. For example, within London we have supported Mayoral CIL to help fund Crossrail.
- 28 The compulsory purchase of somebody's land however, based on 'no scheme', is depriving some landowners of significant value that will be available to other landowners whose land is not compulsory purchased. Such arbitrariness is unfair and will ultimately slow the development process as contentious CPOs are taken through the courts.

### **Recommendation**

- 29 We ask the Bill Committee to consider removing section 149, based on its arbitrariness and unfairness. Also, to explore when the 'no scheme' approach in section 149 will apply? Will it just capture land critical to the transport scheme or unrelated development? And at what distance from a transport scheme?

### **Hope Value Consultation**

- 30 There is an accompanying consultation exercise to the Bill, which is open from 6th June until 19th July. The proposals on 'hope value' within the consultation paper are not in the Bill and would be highly impactful on landowners. We are presuming these proposals may get added as amendments to the Bill. If so, it would be unfortunate that such significant proposals are not being scrutinised at various stages of the Bill in the House of Commons.
- 31 Depriving landowners of hope value would be a very significant step. In its simplest form, a family of farmers may have owned land for generations, on the basis they will farm the land, but have an inheritance to pass down to future generations locked up in the value of the land, should its use change. The proposition seems to be that this would now be captured by the state.
- 32 The Government is alive to the human rights consequences of taking hope value and striking a balance with the public interest. In the past, there were rare circumstances in which existing use value was paid to landowners, to create the post-war New Towns for

example. The argument being that the infrastructure requirements of creating a whole new town can only be subsidised through significant land value capture to the state. The nationalisation of land may have been appropriate in the 1950s and 1960s for post-war reconstruction. We would question deeply however, whether it is appropriate in the 2020s, when the public generally take a view that their land is theirs.

- 33 We are also not talking about developments of the scale of the New Towns being a feature of current policy. On most developments, even large housing estates, the infrastructure required to facilitate the development, can usually be funded via existing land value capture mechanisms such as section 106 payments and CIL (which get reflected in land values), and the proposed future infrastructure levy.
- 34 The Government has not really considered better or more consensual ways of bringing land forward without resorting to CPOs. The product of development – buildings and places - creates several income streams - taxes and other payments - that ultimately are at least in part the result of land being released. Rather than depriving landowners of their land at close to existing use through confrontational CPOs, we believe the Government should be exploring how it can incentivise landowners to release land at below market value, in return for some share in the longer-term income generated from what is developed.
- 35 Ultimately, the current consultation paper stops short of proposing the removal of all hope value in all circumstances, the Government being aware of the human rights consequences. Instead, the consultation proposes a measure to allow acquiring authorities to request a direction from the Secretary of State that, for a specific scheme, payments in respect of hope value may be capped at existing use value or an amount above existing use value where it can be shown that the public interest in doing so would be justified.
- 36 This proposal lacks any kind of detail. For example, is it talking about a cap at existing use or a higher value? Will the Secretary of State have carte blanche to decide, or have to follow various rules as to what compensation is appropriate?
- 37 It is also not clear in what circumstances this power would be used, or what appeals mechanism would be available? Without some strictures it could be a significant erosion of citizens' property rights, and a recipe for confrontation, and therefore delay.

### **Recommendation**

- 38 We ask the Bill Committee to explore whether the Government will be seeking to bring further CPO clauses to the Bill forward, based on the current consultation exercise, and when within the Bill process? Also, to express our opposition to such nationalisation of land. And, to explore what limits will apply to the Secretary of State's powers?

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