Balancing profit and purpose

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Harriet Forster addresses how developers and charities can work together to unlock the value in strategic land for housing.

As the UK's housing crisis rumbles on, it is a truth almost universally acknowledged that we need to build more homes. Like it or not, the starting point for a lot of these homes will realistically be "strategic land" – land not currently used for housing, but which has the potential for future development.

Strategic land includes greenfield sites, often on the edge of existing settlements, and buildings looking for a new lease of life. It ranges in scale from half a dozen houses on the outskirts of a village to the large-scale repurposing of existing assets (former hospitals, defence infrastructure, etc) which have the potential to provide hundreds of new homes.

For charities and other organisations with strategic land in their portfolio, there is a real opportunity to unlock value – both financial and social.

Working together

For most charity landowners, the first step is to partner with a developer or promoter. There are a number of ways in which this partnership can be structured, but the basic recipe is a simple one:

Land + expertise + appetite for risk = planning permission = financial return for both parties.

The landowner, by definition, supplies the land. The developer contributes its specialist expertise and resources to navigate the planning process and bears the risk that planning is not granted by spending its own money upfront. Once planning permission is granted, the property will be sold – either to the developer, or sometimes on the open market to a third party. The developer will recover its costs, and receive either a discount on the land price or a share of sale proceeds to reflect the work done and commercial risk taken to date.

First things first

The first step for any charity looking to sell land for development is to make sure that it has the power to do so. Charities will often have owned property for generations, and how they originally acquired it can sometimes have fundamental implications for its future sale or development.

In some cases, there may be trusts in place which stipulate that certain pieces of land must be retained by the charity, or only be used for the charity's underlying purpose (village halls, sports grounds, community centres, etc). Workarounds are often available, but the Charity Commission will need to be involved, and the associated time and costs factored into the transaction.

Schools, religious organisations and literary/scientific institutions in particular should check their acquisition documents as, in certain circumstances, land which was originally donated can be caught by the Reverter of Sites Act 1987, and extra steps will need to be taken to ensure the sales proceeds are freely available for the charity to use and not deemed to be held on trust for the original donor.

Charities regulated by the Charity Commission will also need to comply with the (recently updated) provisions of the Charities Act 2011 before contracting to sell to a developer, and in most cases take advice from a designated adviser before entering into the transaction.

Key terms of the transaction

A subject-to-planning deal with a developer is a long-term business venture. Charity trustees should consider whether they have sufficient expertise to make decisions on the charity's behalf, and bring in a professional team where needed. As well as scrutinising the headline financial terms carefully, charity landowners should also weigh up the following:

- How long will the agreement last? This must be long enough for the developer to have a decent shot at getting planning permission, without dragging on indefinitely. When and how can it be extended and/or terminated?
- What will be paid when? Is there a payment on exchange and is this refundable if the transaction does not proceed? If the price is to be paid in instalments, how will future payments be secured?
- How will the land be valued post-planning permission? What will be deducted?
- If the developer obtains an enhanced planning permission in the future, or sells on at a profit, will there be a further payment?
- What can you do with the land in the meantime? Can you carry on with the existing use? If you receive rental income from the land, can you continue to let it and on what terms? Can you restructure or change trustees without falling foul of the contract with the developer?

Unlocking social value

So far, so legal. But what about the kind of value that cannot readily be captured in a spreadsheet or a "key risks summary"?

For many legacy landowners, and charities perhaps more than most, the decision to put land forward for residential development will be based not just on financial criteria but on a desire to secure lasting, tangible benefits for the local community and the surrounding area. Those with larger landholdings will also have to continue living alongside the completed development and so will have a direct interest in making its impact a positive one.

What this looks like will be different for every organisation. For some, biodiversity and habitat creation will be paramount, with an emphasis on landscaping, planting, wildlife corridors and the potential to use the charity's retained land to relocate species and increase biodiversity.

For others, it will be the experience of the people living on and near the site which matters most: ensuring the design blends into the existing landscape, providing new community facilities such as play areas and useable green space, or delivering more affordable housing for local people. There are as many ways to benefit the local area through residential development as there are landowners – and developers – with a vision. The key to a successful scheme is making sure that vision is a shared one.

What really matters?

With that in mind, any landowner wanting to make a positive impact through development must consider its priorities early on and communicate these clearly from the outset. This enables the developer to plan with these objectives in mind, and factor them into its appraisal.

Once the transaction is in legals, these shared goals can then be incorporated into the documents. Most contracts will provide for the landowner to have some involvement in the design of the scheme and the planning process, but there is always an underlying tension between the developer's desire for autonomy and the landowner's concerns about the end result. This is where a clear set of shared objectives can make a real difference, not just to the direction of the project but to the time spent negotiating (and both parties' legal fees).

To get the best out of the partnership, landowners should think about what they really want to scrutinise and why. Is it design which really matters, or housing density, or planting and biodiversity, or community space? Is the same level of scrutiny needed everywhere, or are there some areas – perhaps those which adjoin an existing settlement or are particularly prominent – which matter more than others? If the landowner can be clear and specific about its priorities, rather than just asserting a general desire for "control", most developers will be receptive – not least because the landowner's areas of focus will often enhance the market value of the scheme.

It is also worth remembering that charities can enhance a development's positive social impact simply by being patient. A landowner which is willing to take a longer-term financial view across the life of a project can make a real difference to the end result.

If the transaction can be structured (tax permitting) so that some or all of the price is deferred until later in the build, or even linked in part to the developer's own sales receipts, this will give the developer breathing space it needs to deliver a better scheme with more community benefit – and ultimately a higher market value.

There is still a tendency to talk about "social value" as an optional extra – the cherry on top of the financial cake. But anyone who is serious about residential development knows that it is more fundamental, like the butter or the flour, and that the best recipe for residential development goes something like this: Land + expertise + appetite for risk + shared vision = planning permission = enhanced financial return + enhanced reputation + a legacy which both parties can be proud of.

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