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# Shared Value Guidance Q and A

**Below are a series of common questions asked about shared value and general answers. These have been kept very broad to have the widest applicability. More detailed responses can be provided when a specific scheme is considered in more detail.**

## Q. What is shared value?

**A.** It arises where granting the use of land in some way creates value in a third parties land, and the owner of the land over which rights or use if required may seek a share of the uplift in value that its land creates in return for granting the required legal rights. These might be permanent, such access rights that enable development to happen, or could be temporary.

## Q. What are the typical situations where shared value arises?

**A.** Commonly, a developer or land owner may need access over someone else's land as a condition of a planning consent to develop. Without the access the planning consent cannot be delivered and hence the rights need to be obtained to continue with the scheme proposed. Other circumstances can also give rise to a shared value situation, where the rights add value shared value will not be appropriate if the development value is not improved by the use of NR land.

## Q. What should I do if I suspect there is a shared value element to my plan?

**A.** A step-by-step guide on how and who to engage with within NR, including contact points.

## Q. Where did shared value principles originate from?

**A.** The basic principle is usually said to have arisen first in the case of *Stokes Vs Cambridge Corporation* 1961, which was a compulsory purchase case in the Lands Tribunal (which is now the Upper Tribunal of the Lands Chamber). Essentially this is caselaw determined by the highest court dealing on land valuation matters in the country. It is usual practice for property owners to request such a payment in these circumstances.

## Q. How is shared value calculated?

**A.** It can be done in a variety of detailed valuation methods, but the essential approach is a marriage value type calculation. This involves the value of the existing land interests being compared to the value of the land with the benefit of the new rights. The difference between the two is shared amongst the parties to reflect that both are needed to create this additional value.

## Q. What about the existing value of the land?

**A.** The current use value is the starting point for shared value so no part of that need be shared.

## Q. What if there are a number of parties ransoming a scheme?

**A.** There is only one shared value or ransom amount. The principle that would apply here is that the increase in land value is created by all of the parties and therefore they all share in the amount. Often the amount is shared equally, but it is possible that if the circumstances dictate, one party may have a stronger position.

## Q. What is the position if the scheme has high upfront or uncertain costs and the developer cannot afford to pay immediately?

**A.** To some extent it will depend on circumstances, but it is usually possible to consider flexible payment methods, provided that the time elapsed and the reduced uncertainty to payment is properly reflected in the payment at that time.

## A flexible payment approach might involve one of the following options:

- A formula approach for fixing parameters
- Use of overage provisions to deal with unknown costs and values
- Staged or deferred/back-loaded payments

## Timing of payments could be:

- Part up front and part later, possibly through an overage mechanism
- More frequent staged payments based on actual costs and values
- All payments further back in the programme but with protections to ensure that payments stay in line with actual scheme values and costs
- Other options may be acceptable subject to approval and sign-off by professional advisors

**Q. How do I get more detail on a specific situation and what principles will apply?**

**A.** An initial meeting or series of meetings very early in the project life should enable basic principles to be set out and hopefully agreed at a very early stage. It may well be that at an early stage of scheme design and costing that the planning position may not be sufficiently clear or the detailed design and costing of infrastructure sufficiently advanced. Hence, detailed negotiations would be more appropriate once more detailed information is available.

**Q. Why should shared value land owners take value when they are not taking a risk in the same way as the developer?**

**A.** The shared value amount would effectively exclude the developers profit at a reasonable percentage, as that is the developers reward for taking risk. It is only a share in the value of the land that is factored in, by including it in the deductions, when valuing the uplift in value.

**Q. What if we are providing works or facilities for the benefit of the shared value land owner, should they not forego shared value in this case?**

**A.** Only to the extent of the value of the benefit. If a developer builds a railway station for example the cost of that should be factored into any payment. If, however, the value of the share of the land value increases significantly or exceeds the operational benefit, it should be considered as part payment. Otherwise, low value operational benefits could be offered to remove high value shared value payments, which would be inequitable.

**Q. Why does Network Rail require shared value payment from much needed residential schemes?**

**A.** The financial rules that govern NR and other government bodies require that any transfer of an interest in land is done at an open market value, even where the two bodies are both within the public sector.

**Q. When a safety benefit is offered to a public body should that not be a reason to drop shared value principles?**

**A.** No, because safety should be a determinant in its own right and public bodies should not trade off safety against value. Safety should be properly built into scheme design first without consideration of the impact on a payment to a public body. Only when a safe scheme has been settled on should a valuation exercise be undertaken including the safety costs to determine whether a shared value payment should be made.

**Q. What is to stop public bodies unreasonably withholding an agreement to seek to drive up the price?**

**A.** The guidelines applied are clear that this is inappropriate conduct for a public body. A joint independent assessment should be offered to speed up the process, mitigate cost but also ensure a fair outcome that has been independently arrived at.

**Q. What if the process fails and the public body is still being unreasonable?**

**A.** All public bodies have procedures that allow complaints to be made and investigated and for issues to be escalated if no satisfactory resolution is reached.

**Q. How do I best engage with public bodies to manage this issue?**

**A.** In line with the principle of the National Planning Policy Framework, it is felt that early consultation with NR in line with the general town planning principles are generally the best approach to discuss and agree principles and agree a way forward and a programme as the circumstances dictate.

**Q. Will shared value not reduce the local benefits through S106 payments?**

**A.** It should remove any benefits that are reasonable and proper as these will be factored into the cost equation before the land value uplift has been calculated, thereby reducing the shared value payment. Clearly though, excessive S106 proposals at the expense of the shared value land owner is not reasonable. Many other public bodies rely on Property Funding to assist in the delivery of their services, and hence this also needs to be recognised when considering the impact on public benefit.

## Enquiries

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