No more dead streets: tax and homeles
The Grenfell Tower disaster of June 2017 has brought with it an unprecedented media focus on the ‘housing crisis’. Most criticism has been levelled at local authorities for failing to rehouse people in suitable accommodation and in a timely manner. Private residential landowners, such as developers, investors and buy-to-let landlords, have also been criticised for pushing up prices and making housing unaffordable for many. A similar critique could be made of those who privately own other types of land, especially where they keep it empty through the use of tax avoidance schemes. This article explains and justifies that critique.

The ‘super prime crisis’

It will begin with a note on terminology. Alternative terms for the ‘housing crisis’ are available. Anna Minton, in her book Big Capital: Who Is London For?, offers the term ‘super prime crisis’. This recognises the fact that a large part of today’s housing difficulties comes from the impact of wealthier individuals and organisations purchasing excess land, thereby pushing up prices and reducing availability for others.

For evidence of this phenomenon and its impact, we need look no further than a March 2018 article in The Times: ‘[h]ouse prices have risen by a fifth more than they would have done without overseas investment over the past 15 years […] the average home in England and Wales would now cost £174,000 if there had been no overseas buyers compared with about £215,000 at present’. Many such buyers are likely to have seen the ‘property’ they were purchasing not as a matter of providing them with a home, but instead as a form of investment – an attitude well illustrated by publications such as Knight Frank’s The Wealth Report.

A significant factor, then, in today’s housing crisis may be the choice by developers and investors to see ‘property’ as an investment asset, purchasing, accumulating and transferring it with the sole aim of seeing their investment rise in value. For this reason, the rest of this article will refer to what is commonly known as the ‘housing crisis’ as the ‘super prime crisis’.

Rates-saving leases

Regarding empty land, there is a mechanism by which landowners can avoid paying business rates while keeping their land empty through the use of leases that may often appear to be shams. This mechanism is the rates-saving lease.

Ordinarily, business rates are payable on commercial and industrial property. If that...
HOMELESS AND SLEEPING ROUGH TRYING TO RAISE £14.00 FOR HOSTEL. ANY HELP WOULD BE APPRECIATED.
property does not need to pay business rates for a tax-free period of three months (for commercial property) or six months (for industrial property). However, if the land remains empty after the three- or six-month period expires, the law requires that landowners should then start paying business rates on the land once more. Landowners have found a way of getting around this requirement: if they enter into a lease of at least six weeks at the end of the three or six-month exemption period, they can claim a further exemption period when that lease expires. The end result is that landowners can enter into an ever-repeating cycle of avoiding business rates for the exemption period, then entering into a six-week lease, then entering into another exemption period.

The wrong in this scheme is that the exempted land will often remain perpetually empty. Although the land may seem occupied during the six-week lease period, courts have found that occupying 0.2 per cent of a 140,000 square foot warehouse (Makra Properties Limited v Newcastle and Bedworth Borough Council [2012]) or installing a small Bluetooth transmitter box in a 1,500 square metre warehouse (Sunderland City Council v Stirling Investment Properties LLP [2013]) is enough for the purpose of the six-week lease. To any reasonable observer of the supposedly occupied land, it could appear as empty while ‘let out’ as it would be during the tax relief period.

### Real Estate Investment Trusts (REITs)

The data shows the extent to which rates-saving leases are used in various parts of London. Another tax avoidance scheme available to landowners is the Real Estate Investment Trust (REIT).

As the name suggests, REITs invest in UK real estate. Introduced in 2007, they avoid tax on profits gained from property investments: ‘[a]ll UK REITs are exempt from corporation tax on UK property gains and rental income profits’. Despite some moves to tackle tax avoidance in the November 2017 budget, the tax-exempt status of REITs is not set to change.

It is not surprising, then, to read in publications like the Property Law Journal and the Estates Gazette’s Global Investor Guide that REITs “may become relatively more attractive as investment vehicles” following the November 2017 budget and that, “[b]eing a tax-efficient structure, a REIT is an increasingly popular choice for real estate around the world.”

In addition to the prevalence of rates-saving leases in various parts of London, the data also illustrates instances where rates-saving leases are being used by REITs. This could be said to create a double whammy of tax avoidance on the part of these REITs, where they first use leases that may often appear to be a sham in order to avoid business rates, and then use their status as REITs to avoid any tax on rental income or corporation tax.

### FOI data

FOI requests have been made to various London councils, asking: “for how many commercial properties within your Borough have there been multiple applications for empty rates relief in the past three years with a time lapse of no less than approximately four and a half months between applications?” and “for how many industrial properties within the Borough have there been multiple applications for empty rates relief in the past three years with a time lapse of no less than approximately seven and a half months between applications?”

The requests seem to be an attempt to identify the extent to which rates-saving leases are being used as tax avoidance measures.

For those councils that supplied data, their responses showed not only how many properties in their area have been subject to repeated rates-saving leases, but the companies and individuals linked to them.

This is where consideration of REITs comes in: for, when one looks at the list of UK REITs provided on the website of Investment Property Partners, one finds that names of certain REITs appear with predictable regularity in the data obtained by these FOI requests.

One particular REIT was linked to rates-saving leases in relation to four properties in Ealing, 249 properties in Islington, 115 properties in Kensington and Chelsea, 119 properties in Tower Hamlets, 21 properties in Wandsworth, and 91 properties in Lambeth.

The numbers may be somewhat deceiving. For example, of the 249 properties Islington, the vast majority are commercial and industrial units at a mere seven different addresses. These ‘properties’ therefore relate to multiple units in a much smaller number of buildings.

But that caveat aside, the following points still stand:

- Certain companies are making repeated applications approximately every four-and-a-half or seven-and-a-half months for empty rates relief in respect of what is, in certain areas of London, a large number of properties.
- This behaviour likely indicates that such companies are periodically using leases of at least six weeks, entered into after periods of at least three or six months, to give the appearance of periodic occupation of those properties.
- This appearance of periodic occupation is being used to justify repeated applications for empty rates relief.
- In addition to avoiding business rates by the apparent use of such leases, many entities using these leases also avoid corporation tax on UK property gains and rental income profits by virtue of existing as REITs; and

In a situation of rising homelessness, and against the backdrop of the super prime crisis, this may be critiqued for depriving central government and local authorities of much-needed funds that could be used to support social housing, and for leaving land empty that could be directly or indirectly used to provide housing or support to those who are currently homeless, threatened with homelessness, or struggling to meet housing costs.

### Homelessness

It is worth comparing the figures obtained by these FOI requests with figures obtained by Shelter in November 2017, reflecting the numbers of those either sleeping rough or living in temporary accommodation.

The table above makes for sobering reading:

- The picture is clear. In each of the London councils for which there is adequate data, the number of commercial and industrial properties that appear to have been kept empty through rates-saving leases either equals or outstrips the number of rough sleepers in that area. It may be suggested that, if each of these properties were converted from commercial and/or industrial use (in the exercise of which they have been kept continually or repeatedly empty) to residential, then every one of the rough sleepers in each of those councils could be given a roof over their heads (though some of the buildings are currently purposed for non-domestic use).

It cannot be right that entities holding landed wealth are allowed to avoid taxes while keeping land empty. If the properties identified above must remain empty, it would do some good for their owners and the occupiers to pay the relevant taxes on them, so that local authorities and central government are provided with adequate funds to meet their duties to the homeless.

We should be under no illusions: requiring owners of empty properties to pay their fair share of tax, or even putting all such empty property to use as residential accommodation for homeless people, would not be an outright solution to the super prime crisis. The temporary accommodation statistics demonstrate that.

But it would be a step in the right direction, and could move us towards a situation where, as demanded by the recent protests organised by Streets Kitchen in London, there are “no more deaths on our streets”.

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