

Putting Garden Cities at the Heart of the Housing and Planning Bill

This TCPA Parliamentary Briefing sets out recommendations for legislative change to support the development of high-quality, environmentally resilient and socially inclusive new places in which people will want to live



Parliamentary Briefing on Amendments to the Housing and Planning Bill
from the Town and Country Planning Association
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summary

There is cross-party consensus that we have a growing housing crisis, not just in terms of the number of homes we build but in their quality, affordability and location. Garden Cities offer a uniquely successful model that can be part of the solution to this crisis by setting out a visionary set of place-making standards¹ which harness the best of traditional design and modern technology with a method of delivery that both gets things done and can help pay for itself. The best way to achieve this is through a strong, positive and visionary planning system with clear and accountable objectives. Town planning is a vital part of a civilised society, allowing for the rational and democratic control of land in the public interest over the long term.

The current Housing and Planning Bill contains a range of radical reforms to planning² but is silent about Garden Cities and the wider enterprise of high-quality place-making. **Because of this omission the Bill is a major lost opportunity to provide the right tools for communities to deliver the best possible outcomes both for those in need now and for the welfare of future generations.**

The Housing and Planning Bill could bring about such provision quickly and efficiently by modernising our existing New Towns legislation into the kind of powerful, locally-led framework that can put long-term sustainable development back at the heart of the planning system. This is all the more important as devolution in England gathers pace, with Combined Authorities increasingly asking for the power to deliver the homes we need at scale.

The TCPA has developed an extensive body of research and policy on how to deliver Garden Cities, and on the lessons offered by the post-war New Towns programme.³ The case for a holistic and strategic approach to making high-quality places has been examined in TCPA reports such as *Reimagining Garden Cities for the 21st Century* and *Creating Garden Cities and Suburbs Today*. These reports have identified the key ingredients for success, and this briefing distils the key legislative changes which the Housing and Planning Bill must address. Unfortunately, the current Bill contains no measures to deliver Garden Cities and further deregulates the already weak English planning system.

The key messages of this briefing are:

- **Local authorities must take a lead role in the bottom-up designation of new Garden Cities, as they did for places such as Milton Keynes.**
- **The objectives of New Town Development Corporations (and Urban Development Corporations) need to be modernised to ensure that these bodies have the visionary purpose and local legitimacy to deliver genuine Garden Cities.**
- **In order to make new places financially robust, we need to reform the compulsory purchase compensation rules to provide a fair balance between the interests of landowners and tax-payers. The Exchequer has in practice failed to collect billions of pounds of public assets in what amounts to a substantial development subsidy to landowners.**
- **In order to build public confidence we need enhanced requirements for participation by the public in the designation, design and delivery of new Garden Cities.**
- **We must ensure the timely handover of a Development Corporation's assets (i.e. land, property, and finance) to a suitable stewardship organisation for the benefit of the community.**

The TCPA believes that the suggested legislative changes in this document deserve serious consideration and hopes to secure cross-party support for their inclusion in the Housing and Planning Bill. Taken together, this suite of measures would reshape our New Towns legislation to give us a positive planning instrument capable of tackling the long-term delivery of new places in a financially sustainable manner. The objective of this briefing is to offer a pathway to transform the New Towns legislation into a framework fit to deliver a new generation of Garden Cities. This requires a new emphasis on sustainable development, high-quality design, social inclusion, climate change, and genuine community participation. Because the Housing and Planning Bill makes procedural changes to the New Towns Act 1981, it provides the ideal legislative vehicle for laying the foundations for a new place-making renaissance.

Part 1 of this document provides a short description of how the New Towns legislation operated and a brief analysis of whether it is still fit for purpose, including consideration of how compensation law might be reformed. Part 2 sets out the detailed legislative changes necessary to deliver new Garden Cities.

¹ See the 'Garden City principles' page of the TCPA website, at <http://www.tcpa.org.uk/pages/garden-cities.html>

² A TCPA Briefing on the Housing and Planning Bill is available at <http://www.tcpa.org.uk/resources.php?action=resource&id=1265>

³ See *Re-imagining Garden Cities for the 21st Century*. TCPA, 2011; *Creating Garden Cities and Suburbs Today*. TCPA, 2012; *Creating Garden Cities and Suburbs Today: A Guide for Councils*. TCPA, 2013; *Built Today, Treasured Tomorrow – A Good Practice Guide to Long-Term Stewardship*. TCPA, 2014; *New Towns and Garden Cities – Lessons for Tomorrow. Stage 1*. TCPA, 2014; and *New Towns and Garden Cities – Lessons for Tomorrow. Stage 2*. TCPA, 2015. All available at <http://www.tcpa.org.uk/pages/garden-cities.html>

part 1

from new towns to garden cities

1

why is the TCPA so enthusiastic about garden cities and new towns?

The short answer to why the TCPA advocates so strongly in favour of a new generation of Garden Cities is that Garden Cities represent the very best of British place-making, framed by a financial model which can pay for itself. This nation has never bettered the success of places such as Letchworth in terms of innovation, design, finance, inclusion or governance. The Garden City principles apply equally as well to the renewal and expansion of places as they do to the creation of new places.

Meeting needs at scale is a much more sustainable approach than the kind of fragmented housing development that we are currently delivering in parts of England. Lack of proper transport infrastructure and adequate health and educational services, as well as low-quality buildings which lack public space or gardens, can be avoided by planning and building at scale over the long term.

The TCPA's interest in New Towns is driven simply by the success of the New Towns programme⁴ in delivering new places in an era of strict austerity, through a financial model which paid for itself. Furthermore, the problems that the resulting New Towns face today provide key lessons which inform this briefing, not least the need to ensure that new Garden Cities are delivered with community consent, that they are built to high-quality design, and that assets vital for renewal are held by the community and not disposed of with the kind of imprudence which marked the end of New Towns programme.

The TCPA's ambition is simply to weld together the quality of Garden Cities, as found at Letchworth, with the practical success of the delivery of the New Towns. That is what the amendments proposed here will achieve.

2

how did the new towns act work?

The success of the New Towns legislation was founded on a simple but powerful combination of site designation followed by the establishment of a New Town Development Corporation to do all that was necessary to bring the new community into being.

Site designation and locally-led Garden Cities

The need for a New Town and its location were typically identified by regional or sub-regional studies undertaken by central and local government. **Some of our most successful new communities, such as Milton Keynes, were locally led by forward-looking local authorities who saw the benefits of a long-term integrated solution to housing growth needs.** After public consultation the government would designate the proposed boundary of the New Town and a public inquiry would hear objections and other submissions. The New Towns programme was delivered in three phases, beginning in 1946, with the last New Town designation occurring in 1970.

What was the role of the New Town Development Corporations?

Once a site had been designated the Development Corporation acted as the real 'engine' of the New Towns approach. **The success of the Development Corporations was directly related to their ability to deploy the following core powers:**

- the power to compulsorily purchase land at current-use value and capture the betterment for the benefit of the wider community;
- the power to borrow money (with some limitations);
- the power to prepare a masterplan which, after public inquiry and approval by the Minister, would be the statutory development plan;

⁴ The 32 New Towns built under the post-war UK New Towns programme currently house just under 2.8 million people – see *An Introduction to the UK's New Towns and Garden Cities*. TCPA, 2014. <http://www.tcpa.org.uk/pages/garden-cities-259.html>

- the power to grant or refuse planning permission;
- the power to procure housing and to act as a housing association; and
- the power to do anything necessary for the development of the town, such as undertake the delivery of utilities or enter into partnership working with other agencies.

Importantly, the interlocking nature of the planning powers of Development Corporations made them very effective instruments of delivery.

The borrowing powers of the New Town Development Corporations

Initially Development Corporations were required to borrow only from HM Treasury, on 60-year fixed-rate loans. The first generation of New Towns proved so financially successful that they became net lenders to other public bodies.

However, the cost of borrowing was a major financial burden for the third generation of New Towns in the 1970s and 1980s, owing to national inflation of interest rates; and the forced sale of Development Corporation commercial assets from 1981 onwards⁵ removed income growth from the Corporations' assets. This limited the ability of the New Towns to reinvest in their renewal and upkeep.

Ensuring that assets are held for the benefit of the community

Significantly, the 1946 arrangements did not resolve the long-term future of a Development Corporation's residual assets and the question of how they might be used for the long-term benefit of the community. It was assumed by many that such assets would be passed to the local authority or a local trust to use the steady growth of income for the benefit of the local community in perpetuity (as had been secured by special statute at Letchworth Garden City⁶). Instead, under the New Towns Act 1959 the government created a national agency (the Commission for the New Towns) to centrally hold and ultimately dispose of Development Corporation assets.

Exceptionally, Milton Keynes Development Corporation was able to hand some community assets to successor trusts created for the purpose, together with a bundle of commercial assets as an endowment to pay for their upkeep, and in 2013 the local authority was permitted to borrow to buy the remaining undeveloped land assets.⁷ Because Milton Keynes was able to maintain and manage its assets in this way, it is today in far better condition – and a more attractive place – than other New Towns of a similar age.

Addressing some New Town myths

The New Town Development Corporation model has been widely copied throughout the world. Criticism of the model in the UK can be distilled around two points:

- **New Towns were imposed on the locality, against local wishes:** In fact, the designation of all New Towns followed a transparent statutory planning process. The role of central government varied, with the designation of Milton Keynes being based on the plans of Buckinghamshire County Council. The UK's biggest and most successful New Town was therefore local authority led but nationally enabled.
- **Development Corporations procured ugly development and dysfunctional communities:** Two points are worth noting in response to this charge. First, one of the reasons why many post-war New Towns look unappealing today is that, having had their financial assets taken away from them, they do not now have the money to invest in their upkeep and renewal. The second point to note is that the early New Towns suffered because of the acute national shortage of high-quality building materials, often resulting in poor-quality structures. Furthermore, the later examples suffered from being designed in an era of car-dominated modernism⁸ which largely failed, throughout the world. The lessons to be learned are that to avoid the mistakes of the past we must focus on the quality of new places (not just the number of houses) and ensure that they are endowed with sufficient assets to secure long-term income for future maintenance.⁹

5 In the 1980s, the government resolved to wind up the remaining New Town Development Corporations. As part of this process the Commission for the New Towns was instructed to sell its existing portfolio of assets and any further property it received via transfer from the Development Corporations as they were wound up

6 Central to the development of Letchworth Garden City was a commitment to manage assets for the benefit of the community and repatriate all profits back into the Garden City estate, once initial loans had been repaid. This model went through several modifications over time, but today it is managed by the Letchworth Garden City Heritage Foundation, which in 2013 was able to reinvest £3.5 million in charitable activities for the Letchworth community as a result of proactive asset management

7 In Milton Keynes a Limited Liability Partnership company has been created to secure development of the land for the Council

8 In fact, Milton Keynes was designed for all modes of transport and included a grid system of rapid public transport. Following privatisation of bus services in 1986, the potential of public transport has not yet been realised (but it is capable of being realised: the physical grid infrastructure is there for all time and no options are closed forever)

9 For more on long-term stewardship, see *Built Today, Treasured Tomorrow – A Good Practice Guide to Long-Term Stewardship*. TCPA, 2014. <http://www.tcpa.org.uk/pages/built-today-treasured-tomorrow.html>

3

is the current legislation fit for purpose – what needs to change, and why?

We could use the current New Towns legislation tomorrow. The basic architecture of the 1946 system, as consolidated in the New Towns Act 1981, appears to be robust and remains in force. The issue is whether this legislation can encourage public support by offering a clear narrative of high-quality place-making, as demanded by the Garden City principles.

While the mechanics of the New Towns legislation remains intact, there needs to be much stronger safeguards to ensure that there is a locally-led process and clear objectives for Development Corporations so that they can be held to account by the community. How can sustainable development, climate change, good design and a contemporary understanding of equalities be properly reflected within the legislation? How can long-term participative governance and stewardship be secured? There are, for example, no statutory obligations on Development Corporations in relation to sustainable development, or good design, or climate change, because **Development Corporations are not defined in law as local planning authorities and so are not covered by the relevant provisions of the Planning and Compulsory Purchase Act 2004.**

4

what are the legislative alternatives for managing large-scale growth?

Can the local planning system deliver large-scale growth?

Local planning approved 261,000 units of housing in the 12 months to March 2015,¹⁰ but only a fraction of these new homes were in highly sustainable new communities, and in many cases serious doubts remain about the most basic service provision for much new housing. It is therefore not impossible for the residual localised planning system of today to bring forward large-scale growth, but unparalleled levels of co-operation and the presence of private sector investors willing to risk substantial upfront investment (albeit for long-term gain) would be required, along with central government support.

The TCPA New Communities Group¹¹ represents 11 local authorities pursuing this route, including Cherwell District Council, which is bringing forward the development at Bicester. However, there are currently a very limited number of proposals for more than 5,000 housing units in the planning process, and none on the scale of the original New Towns programme. It is unlikely that a new Garden City, as part of a local response to the need to create more homes, will emerge as an appropriate option solely within the boundaries of a single local planning authority (unless it is very extensive in territory and unitary in its powers). A 'larger than local' strategic planning process which can enable and support local growth is required.¹²

Why not just use Urban Development Corporations (the Ebbsfleet model)?

The Urban Development Corporation (UDC) model has been used by successive governments for area renewal and regeneration. In the past UDCs have driven change

10 *Planning Applications: January to March 2015 England*. Planning Statistical Release. Department for Communities and Local Government, 18 Jun. 2015.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/435809/Planning_Applications_January_to_March_2015.pdf

11 Details of the TCPA New Communities Group are available at <http://communitiesgroup.org.uk/>

12 See page 7 of *Assessing Proposals for Garden Cities. Memorandum to the Judges of the Wolfson Economics Prize MMXIV Concerning the Delivery of a New Garden City*. TCPA, Feb. 2014. http://www.tcpa.org.uk/data/files/TCPA_Garden_City_Memorandum.pdf

but have also proved controversial in terms of public engagement and securing high-quality outcomes. The Government's use of a UDC at Ebbsfleet demonstrates the need for clear duties on quality and inclusion. Neither the Order setting up the Ebbsfleet UDC nor the policy brief from DCLG contains reference to the Garden City principles, or any clear standards on social housing, climate change or long-term stewardship of development values for the community. As a result, while the TCPA hopes for good outcomes at Ebbsfleet, there is little prospect of it meeting the full range of Garden City principles and delivering the opportunities they present.

The Government is proposing to make changes to the way that UDCs are designated, providing for less parliamentary scrutiny.¹³ It should also be made clear that, unlike the designation of a New Town Development Corporation, there is no requirement to hold a public inquiry when designating a UDC. As a result UDCs are less open to public scrutiny and community participation than the New Towns approach.

Why not use Mayoral Development Corporations?

Mayoral Development Corporations (MDCs) can be used in London by the Mayor and, as a result of Housing and Planning Bill, by Combined Authorities. They were introduced, based on the UDC model, primarily for urban regeneration. The objects and powers of MDCs are defined in the Localism Act as regeneration (Section 201 of Part 8 of the Localism Act 2011). As a result, the TCPA's concern about their application for building new places mirrors those relating to the use of UDCs, and in particular the lack of any reference to design or place-making standards or key issues such as sustainable development and climate change.

If the Government is determined to use the UDC model, the TCPA strongly urges that the objectives of such bodies are reformed using the wording suggested in Part 2 of this briefing.

The Nationally Significant Infrastructure Projects (NSIP) route

A number of other suggestions have been made for alternatives to using New Towns legislation for delivering large-scale growth. For example, it has been suggested that the 2008 major infrastructure planning regime could be used, by including housing as major infrastructure within its provisions. This route is unlikely to be fruitful,

partly because the 2008 regime was developed for specific kinds of discrete infrastructure and therefore does not contain provision for establishing the Development Corporations that are at the heart of the New Towns model.

Put simply, the complexity of creating a whole New Town is such that there is much more to do, over a much longer timescale, than building specific infrastructure. It is a 'vast and beautiful tapestry versus a handkerchief'.¹⁴ It is not 'built' in one go, but 'grown' over several decades. The Housing and Planning Bill creates a new power for an element of housing to be included in NSIP applications.¹⁵ This will be for up to 500 homes, which do not have to be geographically connected with the infrastructure. The TCPA does not see the logic of this threshold or how it can lead to good place-making outcomes.¹⁶

13 See Clauses 108-110 of the Housing and Planning Bill. <http://services.parliament.uk/bills/2015-16/housingandplanning.html>

14 *New Towns Act 2015?* TCPA, Feb. 2014. <http://www.tcpa.org.uk/data/files/NTA2015.pdf>

15 See Clause 107 of the Housing and Planning Bill. <http://services.parliament.uk/bills/2015-16/housingandplanning.html>

16 See the TCPA Briefing on the Housing and Planning Bill – *The Housing and Planning Bill. Putting Place-Making at the Heart of Planning*. Parliamentary Briefing. TCPA, Oct. 2015. <http://www.tcpa.org.uk/resources.php?action=resource&id=1265>

5

the role for national policy in supporting a new generation of garden cities

It is important to be clear about the balance between necessary changes to law and the need for any future Garden Cities programme to be supported by a broad framework of national policy.

One of the key lessons to be drawn from past experience is that the development of New Towns was set within a strong national policy framework – for example the dispersal of population from London or Merseyside.¹⁷ It would be for nationally or regionally expressed policy to decide the number, scale and broad areas of search for the location of new settlements, thus providing the context for local decision-making. This policy would need to consider the wider spatial role of new communities in the context of the nation as whole, including the relationship of such communities to future infrastructure provision and resource use. Policy would also need to provide some detail on governance standards and the operation of the Development Corporations, and establish broad expectations in terms of design and technology. The TCPA is exploring the best route for the preparation and content of this policy. **It is extremely important for the legitimacy of the designation process that such a policy should have parliamentary approval.**

6

fair and simple land compensation rules for new garden cities

The Housing and Planning Bill reforms compulsory purchase, so why do we need further change?

Part 7 of the Housing and Planning Bill sets out a series of procedural reforms to the compulsory purchase regime which will make a marginal difference to speeding up the compulsory purchase process. None of the measures laid out address the core argument consistently put to government by the TCPA on the unfair nature of the Compensation Code.

Why are compensation and land value so important?

Access to land in the right location and at the right price is the foundation of successful new places. Development Corporations have the power through compulsory purchase to deliver comprehensive land assembly. Compulsory purchase powers should, of course, be used as a last resort, and Development Corporations should promote fair, negotiated settlements with landowners. This might include opportunities for a landowner to have a long-term investment stake in the development of a new community. However, compensation must also be fair to tax-payers and the wider public, particularly when land is to be used for a purpose which is in the national interest and where increased land values result mainly from the actions of the public sector.

This issue is vital because the capture of the uplift in land values which the granting of planning permission and development creates is vital to fund debt repayment and long-term reinvestment in a new community. If land compensation deals are too generous to landowners, this viability may be compromised, reducing the ability to deliver public goods such as social housing or green space. If, on the other hand, compensation is unfair, landowners may challenge decisions in the courts. The issue of how to strike a fair balance is mired in procedural complexity, but in approaching a new settlement it is important to establish some working assumptions:

- The value of land is dependent on the use for which it can be developed. The landowner has a right to

¹⁷ *New Towns and Garden Cities – Lessons for Tomorrow. Stage 1: An Introduction to the UK's New Towns and Garden Cities.* TCPA, Dec. 2014. http://www.tcpa.org.uk/data/files/Garden_Cities_TCPA_NTGC_Study_Stage_1_Report_14_12_19.pdf

maintain the current use of land but has no right (with some exceptions) to develop the land for other uses without the permission of local government. All development rights are effectively nationalised.

- The increase in land value between current use and use for, say, housing is an ‘unearned increment’ or betterment, a value accruing to the landowner through the actions of a public authority. The landowner has done nothing to ‘earn’ the new value of the land since he or she did not own the right to develop it. The value gap between current use and use for homes is substantial and can be up to a hundredfold increase.
- The logic of the 1947 planning system was to tax this value, but despite two further attempts at comprehensive betterment taxation the system was last abandoned in 1985.¹⁸ Since then the Exchequer has in practice failed to collect billions of pounds of public assets in what amounts to a substantial development subsidy to landowners. The continued logic of this major tax loophole is unclear, particularly in an era of financial austerity.
- The reason this matters for the development of new Garden Cities is that capturing this betterment, in addition to the wider land rental and sale income, is the main way of financing new development and paying for high-quality outcomes and long-term management. In short, the public asset of betterment needs to be captured and recycled for public benefit. It was this mechanism that made the ‘Mark 1’ New Towns so profitable. (The current position is remarkable: developers of some schemes do not even meet the cost of the direct impacts of development on public services such as education. They can escape such ‘impact fees’ by arguing that schemes are unviable. Viability is plainly dependent on land price, development cost, public investment and acceptable profit margins. The landowner’s expectation of betterment drives inflated land prices and reduced viability’.)
- The compensation rules for the compulsory purchase of land for New Towns have changed over time, and particularly after the passage of the 1961 Land Compensation Act. Compensation is now based on the market value of land. This value is derived not simply from its market value in its *current use* (typically agriculture and including any valid planning permissions), but also in relation to its speculative future development for uses such as housing. This

is known as ‘hope value’. Determining hope value requires a judgement of what the courts have described as a ‘fantasy world’ in terms of guessing what might happen to land over time.

- Parliament tried to restrict the scope of hope value by ensuring that the impact of some forms of public development, including New Towns, should be disregarded in the calculation of compensation.¹⁹ The problem is that the law still allows for a reasonable assessment of hope value had there been no New Town designation. The allowance for ‘hope value’ based on a speculation of what might have happened to land over time is illogical and represents a real unfairness to the tax-payer, and holds back the provision of high-quality homes and places by inflating the price which is paid for land.
- The landowner is in effect asking not simply for the best current-use market value, plus all normal allowances for disturbance, but also for a speculative value based on the future actions of a public authority. Landowners are thus asking for compensation for development rights which they do not own, for betterment values which were created by a public authority.

This final conclusion is important because while no-one is suggesting that landowners should not be treated fairly and indeed generously, the land values at the heart of the debate are substantial and need to be dealt with prudently. The question then is how to capture a proportion of these values for the public good. Three options for reform should be urgently explored:

- a return to a general betterment charge, collected through corporation tax; or
- changes to the compensation rules for New Towns and Garden Cities to restrict hope value planning assumptions; or
- changes to compensation rules for New Towns and Garden Cities to produce a simple flat rate of compensation based on final scheme values.

During the passage of the Housing and Planning Bill the TCPA will be asking Ministers to agree to an HM Treasury sponsored review of the Compensation Code. In advance of, and without prejudice to, the outcome of that review the TCPA is asking for an enabling clause which would allow the Secretary of State to set special compensation rules for new Garden Cities by order at a later date.

¹⁸ P. Hall and C. Ward: *Sociable Cities: The 21st-Century Reinvention of the Garden City*. Routledge, 2014, Second Edition

¹⁹ See Schedule 1 of the Land Compensation Act 1961

part 2

laying the foundation for a new generation of garden cities

Part 2 of this briefing sets out the TCPA's proposed changes to the Housing and Planning Bill – in the form of amendments to the existing New Towns Act 1981 that are designed to enable the delivery of a new generation of Garden Cities for the 21st century.

Four key amendments are proposed.²⁰ The first three amend existing clauses in the New Towns Act 1981 in order to change the process for designating New Towns and the objectives of New Town Development Corporations. The amending clauses could be inserted in

Part 6 of the Housing and Planning Bill, after Clause 110 and under a new heading 'Garden Cities'. The fourth proposed amendment inserts a new clause relating to the Compensation Code in the New Towns Act 1981. This new clause could be inserted in Part 7 of the Housing and Planning Bill, after Clause 126.

The proposed legislation is shown in boxes, with changes to the existing legislation set in a **contrasting red type face (thus)**.

²⁰ A set of detailed proposals for changes to the New Towns Act 1981, aimed particularly at strengthening community participation and the long-term governance of new Garden Cities, are set out in *New Towns Act 2015?* (TCPA, Feb. 2014. <http://www.tcpa.org.uk/data/files/NTA2015.pdf>). For the sake of simplicity, only key amendments from *New Towns Act 2015?* have been selected as proposed amendments to the Housing and Planning Bill here

Clause 1

the power to designate land for a new garden city

- preparation of a draft Designation Order, including public consultation and participation as well as Strategic Environmental Assessment arrangements;
- designation of sites by consent, using reserve powers if absolutely necessary; and
- the individual right to object and be heard at a public inquiry.

The New Towns Act 1981 puts the decision about where a New Town should be built in the hands of the Secretary of State. The right of individuals and local authorities to object to a designation is enshrined in the public inquiry process (Schedule 1(3) of the 1981 Act). In practice some of our existing New Towns were locally led, with local government advocating strategic growth in places such as Milton Keynes. The formula set out in Part 1 of this briefing is to give more power to local communities. Central government would provide the technical and strategic planning support for new Garden Cities, but local government would have the key say in triggering the designation process. Where the local planning authority in whose area the designation is to be made objects to the designation the Order could not be made unless the Secretary of State can clearly demonstrate an overriding case in the national public interest. This is reflected in changes to Clause 1 below. The accountability regime for the designation of new Garden Cities would then comprise the following:

- national policy supported by a strong technical evidence base setting out the need, and areas of search, subject to public consultation and parliamentary approval (using the 2008 Nationally Significant Infrastructure Projects approval process);
- consultations and negotiations with Local Enterprise Partnerships, Combined Authorities and local planning authorities, including inviting applications from local planning authorities for suggested sites;

New Towns Act 1981, Clause 1 **Designation of areas**

(1) If the Secretary of State is satisfied, after consultation with any local authorities who appear to him **or her** to be concerned, that it is expedient in the national interest that any area of land should be developed as a new town by a corporation established under this Act, he **or she** may make an order designating that area as the site of the proposed new town.

(2A) An order may only be made with the agreement of the local planning authority or authorities within whose boundary the designation falls, unless the Secretary of State can demonstrate that there are exceptional circumstances relating to the national interest so to do.

*

(3) An order under this section may include in the area designated as the site of the proposed new town any existing town or other centre of population; and references in this Act to a new town or proposed new town shall be construed accordingly.

(4) Schedule 1 to this Act has effect with respect to the procedure to be followed in connection with the making of orders under this section and with respect to the validity and date of operation of such orders.

(5) An order under this section shall, when operative, be a local land charge**

* S. 1(2) repealed (1.10.1998) by 1998 c. 38, s. 152, Sch. 18 Pt. IV (with ss. 137(1), 139(2), 141(1), 143(2)); S.I. 1998/2244, art. 4

** Words repealed by New Towns and Urban Development Corporations Act 1985 (c.5, SIF 123:3, 4), s. 14(2), Sch. 4

Clause 4

the objects and powers of development corporations

Partly because of the nature of legislation, very little of the high social ambition which drove the originators of the 1946 Act was reflected in the legal objectives of the Development Corporations. These are quite brief and mechanistic, referring only *'to the laying out and development of the new town'*.²¹ There is a risk that Development Corporations might see themselves as 'engineering' departments rather than organisations

engaged in the wider social enterprise of place-making. Over the last 30 years there has also been wide recognition that planning has few, if any, 'outcome' duties. This in turn has led to much criticism that planning has become a process without a purpose. New legal provisions have been introduced to focus the system on sustainable development, climate change and good design,²² but as noted in Part 1 of this briefing they do not apply to Development Corporations because Development Corporations are not local planning authorities.

To modernise the objectives, the amendment draws on the outcome duties in both the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008, as well as the legislation that created the Homes and Communities Agency, which has statutory objectives that include people's wellbeing, good design, and sustainable development.²³ The redrafted clause also seeks to stress important obligations on the social and cultural, as well physical and economic, development of a New Town.

New Towns Act 1981, Clause 4

Objects and general powers of Development Corporations

- (1) The objects of a development corporation established for the purpose of a new town shall be **to secure the physical laying out of infrastructure and the long-term sustainable development of the new town.**
- (2) **Under this Act sustainable development means managing the use, development and protection of land and natural resources in a way which enables people and communities to provide for their legitimate social, economic and cultural wellbeing while sustaining the potential of future generations to meet their own needs.**
- (3) **In achieving sustainable development, development corporations should—**
 - (a) **positively identify suitable land for development in line with the economic, social and environmental objectives so as to improve the quality of life, wellbeing and health of people and the community;**
 - (b) **contribute to the sustainable economic development of the town;**
 - (c) **contribute to the vibrant cultural and artistic development of the town;**
 - (d) **protect and enhance the natural and historic environment;**
 - (e) **contribute to mitigation of and adaptation to climate change in line with the objectives of the Climate Change Act 2008;**
 - (f) **positively promote high quality and inclusive design;**
 - (g) **ensure that decision-making is open, transparent, participative and accountable; and**
 - (h) **ensure that assets are managed for the long-term interest of the community.**
- (4) **In this Part 'infrastructure' includes—**
 - (a) **water, electricity, gas, telecommunications, sewerage or other services;**
 - (b) **roads, railways or other transport facilities;**
 - (c) **retail or other business facilities;**
 - (d) **health, educational, employment or training facilities;**
 - (e) **social, religious, recreational or cultural facilities;**
 - (f) **green infrastructure and ecosystems;**
 - (g) **cremation or burial facilities; and**
 - (h) **community facilities not falling within paragraphs (a) to (f);****and 'land' includes housing or other buildings (and see also the definition in Schedule 10 to the Interpretation Act 1978), and references to housing include (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, the building or part of building concerned.**

²¹ Section 4(1) of the New Towns Act 1981

²² In the Planning and Compulsory Purchase Act 2004, as amended by the Planning Act 2008

²³ *'The HCA may do anything it considers appropriate for the purposes of its objects or for purposes incidental to those purposes'*. Section 3 of the Housing and Regeneration Act 2008

New Clause 6A

the winding-up of development corporations and the long-term stewardship of assets

One of the most profound lessons of the existing Gardens Cities and New Towns is the need to ensure that the community will benefit from the long-term management of key assets. The Letchworth model demonstrates how a trust, supported by the income from a portfolio of assets, can contribute to meeting the cost of a range of community needs, from health care to culture, in perpetuity. This requires a detailed financial model to ensure that sufficient assets remain after the debt incurred by creating the New Town has been repaid, and hence that the trust, acting on behalf of the community,

can invest in the New Town and additional services over the long term. The failure to enable the New Towns to capture these long-term values has left them vulnerable to the problems of regeneration, which, unusually, can come in very large waves because of the speed with which the town was initially built. For instance, 50 years after they were built, New Towns such as Harlow and Stevenage found that large parts of their infrastructure were reaching the end of their life at the same time, and they have struggled to find money for renewal.

The proposed winding-up clause is based on a modification of the 1946 legislation, and would allow flexibility to transfer assets not solely to a local authority but also to a body such as a new community trust which could take on and manage the remaining assets for the long-term benefit of the community. Where the stewardship body is the local authority or a body linked to it there must be clear requirements that the assets are not used to fulfil funding shortfalls for statutory local services. This clause would make it less likely that the Treasury would seek the forced sales of such assets that proved so negative for the long-term financial viability of the New Towns. In any event, the 1981 Act, which was focused on asset disposal, no longer contains a workable way of transferring assets from Development Corporations to community trusts and local authorities.

New Towns Act 1981, New Clause 6A, drawn from New Towns Act 1946

Winding-up of Development Corporations and disposal of assets for community benefit

- (1) Where **a period of 30 years has elapsed and** the Minister is satisfied that the purposes for which a development corporation was established under this Act have been substantially achieved, and is further satisfied, with the concurrence of the Treasury, that the circumstances are not such as to render it expedient on financial grounds to defer the disposal of the undertaking of the corporation under this section, he **or she** shall by order provide for the winding up and dissolution of the corporation.
- (2) At any time after an order has been made under the last foregoing subsection, the Minister may, with the consent of the Treasury, by order provide for the transfer of the undertaking or any part of the undertaking of the corporation to such **body or bodies** as may be specified in the order or, in so far as that undertaking consists of a statutory undertaking, to such statutory undertakers as may be so specified:
Provided that—
 - (a) before making any such order the Minister shall consult with the **relevant local authorities** in which the new town is situated, with any other local authority and any statutory undertakers to whom the undertaking or part of the undertaking of the corporation will be transferred by virtue of the order, and with any statutory undertakers (not being such undertakers as aforesaid) who, immediately before the date on which the order under section 1 of this Act designating the site of the new town became operative, were authorised to carry on within the area designated by that order an undertaking similar to the undertaking or part of the undertaking which will be so transferred as aforesaid; and
 - (b) an order under this subsection shall be of no effect until an order defining the terms on which the transfer is to be made has become operative under the subsequent provisions of this section.
- (3) Where provision is made under the last foregoing subsection for the transfer of the undertaking or any part of the undertaking of the development corporation to a local authority or statutory undertakers, the terms upon which the transfer is to be made shall be such as may be determined by an order made by the Minister with the consent of the Treasury, and any such order may provide for the payment by that authority or those undertakers, in consideration of the transfer, of such sum as may be specified in the order, to be satisfied in such manner as may be so specified:

Provided that not less than 28 days before making an order under this subsection, the Minister shall serve a copy of the proposed order on the local authority or statutory undertakers to whom the undertaking or any part of the undertaking of the corporation is to be transferred, and if any objection is made by them within 28 days after the service of the notice, the order shall be subject to special parliamentary procedure.

cont...

- (4) If the Minister is satisfied that it is expedient, having regard to the provisions of any order or orders made or proposed to be made under subsection (3) of this section, that the liability of the development corporation in respect of advances made to them under this Act should be reduced, he **or she** may, by an order made with the consent of the Treasury, reduce that liability to such extent as may be specified in the order: Provided that an order under this subsection shall be of no effect until it is approved by Resolution of the House of Commons.
- (5) An order under this section which provides for the transfer of the undertaking or any part of the undertaking of a development corporation to any local authority, statutory undertakers **or other body** may contain such incidental, consequential and supplementary provisions as the Minister thinks necessary or expedient for the purposes of the order, and in particular, but without prejudice to the generality of the foregoing provision, may extend or modify the powers and duties of that authority or those undertakers so far as appears to the Minister to be necessary or expedient in consequence of the transfer: Provided that—
 - (a) in relation to an order which provides for extending or modifying the powers and duties of any statutory undertakers, subsection (2) of this section shall have effect as if for the first reference therein to the Minister there were substituted a reference to the Minister and the appropriate Minister; and
 - (b) no order under this section shall confer or impose upon any local authority any powers or duties which are exercisable within the area of that authority by any other local authority.
- (6) An order under subsection (1) of this section may provide for the appointment and functions of a liquidator of the development corporation, and may authorise the disposal, in such manner as may be determined by or under the order, of any assets of the corporation which are not transferred to a local authority or statutory undertakers **or other bodies** under the foregoing provisions of this section.

New Clause 14A

fair compensation for land acquired by compulsory purchase

that Parliament has over time treated New Towns as a special case in compensation law and offered two routes for reform. Clearly there is as yet no final consensus as to what solution should be adopted. As a result the TCPA is suggesting the adoption of an enabling clause which creates an explicit power for the Secretary of State to define how compensation is to be calculated through secondary legislation. This enables swift action to be taken when there is a settled view as to the fair balance between private and public sector interests.

Part 1 of this briefing set out why there is need for urgent reform of the compulsory purchase code. It made clear

New Towns Act 1981, New Clause 14A, drawn from New Towns Act 1946 **Fair compensation for land acquired by compulsory purchase**

- (1) Where the land of a private landowner is compulsory purchased under section 10 of this Act then the Secretary of State may, by order, set out the formula for determining fair compensation to landowners.**

further information

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Putting Garden Cities at the Heart of the Housing and Planning Bill

Parliamentary Briefing on Amendments to the Housing and Planning Bill

@ TCPA. Revised version, published January 2016

The **Town and Country Planning Association** is an independent charity working to improve the art and science of town and country planning. The TCPA puts social justice and the environment at the heart of policy debate and inspires government, industry and campaigners to take a fresh perspective on major issues, including planning policy, housing, regeneration, and climate change. Its objectives are to:

-  secure a decent, well designed home for everyone, in a human-scale environment combining the best features of town and country;
-  empower people and communities to influence decisions that affect them; and
-  improve the planning system in accordance with the principles of sustainable development.

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