New Towns Act 2015?

An Act to Enable Sustainable Development through the Creation of New Towns by Means of Development Corporations, and for Purposes Connected therewith

'I should like to encourage the corporations to be daring and courageous in their efforts to discover the best way of living.'
Lewis Silkin MP, New Towns Bill debate, 1946

tcpa

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New Towns Act 2015?

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Contents

SUMMARY

There is now a clear consensus that England is suffering from a major housing crisis. Building a few new houses here and there is not going to be enough – we need to create comprehensively planned, larger-scale developments. The realisation that this needs to be done is encouraging many to look back at the New Towns programme, through which Britain built 32 New Towns that today provide homes for over 2 .5 million people. The creation of these New Towns was made possible because of legislation which is still on the statute books today.

The objective of this document is to identify the major issues which a future government would need to address in order to make the New Towns legislation fit for purpose. It is intended to provoke a positive debate about the best way to secure high-quality housing growth based on the success of the British New Towns. While there is inevitably a degree of complexity surrounding the law which underpins the delivery of new communities, the key messages of this document are clear:

- New settlements are a vital component of our response to the housing crisis, allowing for cost-effective and sustainable growth.
- The New Towns Act offers a powerful foundation for the delivery of the kinds of high-quality inclusive places that will meet our housing needs in the long term.
- This foundation is based on a specific approach to the designation of land and the creation of New Town Development Corporations to drive effective delivery.
- The basic architecture of the New Towns legislation remains in force and could, in principle, be used tomorrow.

However, this document also concludes that the current legislation is in need of modernisation to ensure that Development Corporations have the visionary purpose and obligations to balance their extensive powers. These changes would include:

- the creation of transparent legal objectives for Development Corporations, including sustainable development, climate change and social inclusion;
- enhanced requirements for participation by the public in the design and delivery of the New Town;
- ensuring partnership working with the established local authorities in the area in which the New Town is located; and
- ensuring the timely handover of the New Town's assets (i.e. land, property, finance) to the local authorities and to other successor bodies to hold and manage those assets in perpetuity for the benefit of the community.

In addition to the modernisation of the law, the development of New Towns would require important policy support and a detailed financial model, both of which the TCPA is currently developing. Significant policy challenges remain, primarily around the balance between centrally designated New Town sites and local consensus.

Introduction

In 2011 the TCPA launched a campaign to highlight the benefits of the Garden City model[1] in creating new places as part of a portfolio of solutions to tackle the acute housing needs of the nation. The case for a holistic and strategic approach to making high-quality places and the challenges in, and opportunities for, providing them have been examined in TCPA reports such as *Reimagining Garden Cities for the 21st Century*[2] and *Creating Garden Cities and Suburbs Today*.[3] These reports have highlighted the vital lessons to be learnt from the Garden Cities and post-war New Towns programme. The value of the New Towns programme to the nation's wellbeing is clear in the evidence base. The key ingredients for the success of such large-scale new place-making can be summarised as:

- clear political and policy leadership;
- powerful public sector delivery agencies;
- an effective mechanism to capture land values;
- the ability to attract employment in chosen locations;
- access to public finance, especially in the early and middle phases of development; and
- the ability to attract and involve private developers on a large scale.

Through a series of research reports[4] the TCPA has also identified the barriers to the implementation of large-scale development today. These barriers range from the lack of a financial model to deal with the upfront delivery of infrastructure, to the absence of a strategic planning process through which the need for one or more Garden Cities in a given area can be established. A key conclusion to be drawn from these reports is that it is unlikely that the localised planning system could deliver growth of the scale necessary to meet established housing need.

Another barrier is the identification of an appropriate mechanism to ensure that the Garden Cities and New Towns are each delivered comprehensively and to their full potential. This long-term activity is likely to exceed more than 30 years, depending on scale, and a comprehensive approach is vital to give confidence to investors, local residents, local authorities, and all other partners in the enterprise.

The New Towns Act, which is still on the statute books, has recently attracted interest primarily because of the success of the Development Corporation approach, which since 1946 has created 32 UK New Towns that today provide homes for over 2.5 million people.[5] While, in principle, the powers set out in the Act could be used again tomorrow, in practice there is an urgent need to reassess the legislation to identify aspects which need modernisation.

The objective of this document is to identify the major issues which a future government would need to address in order to make the New Towns legislation fit for purpose. These issues include important policy priorities concerning sustainable development, climate change, and participation, which have emerged

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

2 *Re-imagining Garden Cities for the 21st Century*. TCPA, 2011. http://www.tcpa.org.uk/pages/garden-cities-re-imagining-garden-cities-for-the-21st-century-166.html

3 *Creating Garden Cities and Suburbs Today.* TCPA, 2012. http://www.tcpa.org.uk/pages/creating-garden-cities-and-suburbs-today.html

4 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; and *Built Today, Treasured Tomorrow – A Good Practice Guide to Long-Term Stewardship*. TCPA, 2014. All available at http://www.tcpa.org.uk/pages/garden-cities.html

5 The 32 New Towns built under the post-war UK New Towns programme currently house over 2.5 million people – see A. Alexander: *Britain's New Towns: Garden Cities to Sustainable Communities*. Routledge, 2009

since the last consolidation of the law in 1981. This document addresses these priorities within a modern political context in which there is simply much less trust than there was in professionals and the planning system. There is thus an emphasis on the need for powers to be balanced by transparent responsibilities and objectives.

Other important issues include the perceived impact of human rights law on compulsory purchase and compensation practices. It is also helpful to learn relevant lessons from the experience of the Urban Development Corporations and the Olympic Delivery Authority, both created under different legislation from the New Towns Act. Any review of the New Towns legislation cuts across areas of compulsory purchase, compensation and human rights law, which are all inherently complex. This document is intended to make a contribution to the growing debate about the use of New Towns legislation, but it should not be read as legally definitive. It should also be read in the context two further, ongoing strands of TCPA research into the detailed policy and financial models necessary for the delivery of a new generation of new communities.

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. Part 2 provides a broad indication of the key aspects of legislative change that might be necessary.

Explanatory Memorandum Part 1: New Towns Legislation and its Fitness for Purpose

1 How did the News Towns Act work?

The New Towns Act 1946 was an element of a post-war planning settlement, along with the Town and Country Planning Act 1947, which instituted the nationalisation of the right to develop land, the capture of land values generated by the grant of planning permission (betterment[6]), and a reformed system of statutory development plan-making by local authorities. Although the taxation of land value was abolished by the Conservative government in 1954, the power to create whole New Towns was retained.

The need for a New Town and its location were typically identified by regional or sub-regional studies undertaken by various agencies of central and local government. 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 in 1970.

The structure and powers of Development Corporations

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

6 Betterment is the value accruing to land that results from the action of public bodies through, for example, the granting of planning permission or investment decisions

necessary to bring the town into being. The Development Corporation was run by a Board appointed by the Minister. The Board appointed key officers under a General Manager, who then built up the necessary complement of staff. Annual budgets were agreed with the sponsoring government department and HM Treasury, and the Board was required to report formally to the Minister annually. These formal reports were published and were laid before Parliament.

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 compulsory purchase land if it could not be bought by voluntary agreement;
- the power to buy 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;
- the power to grant or refuse planning permission;
- the power to procure housing subsidised by government grant and by other means and to act as a housing association in the management of housing; 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. For example, section 7(2) of the New Towns Act 1981 enabled the Secretary of State to issue a Special Development Order[7] which effectively gave deemed consent for development inside the New Town boundary so long as this accorded with the submitted masterplan. Responsibility for the design, ownership and consent for new development was therefore held by a single public body accountable to the Minister.

The borrowing powers of 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 were 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;[8] and the forced sale of Development Corporation commercial assets (both mature and immature assets) from 1981 onwards[9] removed income growth from the Corporations' assets. This limited the ability of the New Towns to reinvest in their renewal and upkeep.

Ensuring that New Town 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

7 Special Development Orders were designated using a Statutory Instrument which has itself been amended (1985 No. 1579)

8 Peter Hall, in an unpublished written communication to the authors of this document

9 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

statute in Letchworth Garden City[10]). 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 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.[11] 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 of the myths around Development Corporations

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

- ***Development Corporations were imposed on the locality, against local wishes:*** In fact, the designation of all New Towns followed a statutory planning process which, while it would be more participative today, was nevertheless transparent.
- ***Development Corporations were insensitive to local views and marginalised local authorities:*** In general New Town Development Corporations did not have local authority membership on the Board (although two did). Reformed legislation and policy should focus on engaging the local authority in genuine partnership working, to reduce friction and engender mutual respect and collaboration. However, there is no hiding the fact that short-term local political cycles and considerations are often likely to be in tension with the long-term and highly focused, intensive task of creating a whole New Town.
- ***Development Corporations procured ugly development and dysfunctional communities:*** There are many complex reasons why some people – both rightly and wrongly – have this view of New Towns. There is not space here to explore this issue fully, but two points are worth noting. 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 have the money to invest in their upkeep and renewal. Consequently, many of the New Towns are today dilapidated and run-down. The second point to note is that the New Towns were built during the post-war years, providing mostly public sector mass housing to meet the urgent needs of that period. The early New Towns suffered because of the acute national shortage of high-quality building materials, often resulting in poor-quality structures. The later examples suffered from being designed or developed[12] in an era of car-dominated modernism which was followed, and 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.[13]

There is a widespread consensus in the literature that the Development Corporation model has been highly effective, and it is clear that the rate of housing growth in the three decades after the Second World War was largely a result of the publicly financed New Towns programme. This record looks all the more impressive given current levels of homebuilding.

10 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

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

12 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)

13 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

2 Is the current New Towns legislation fit for purpose?

In principle, the answer is 'yes', in that the concept of an area designation accompanied by a body with wide ranging powers to finance, build and manage a new place remains the best prospect for delivering large-scale new housing growth. The basic architecture of the 1946 system, as consolidated in the New Towns Act 1981, appears to be robust and remains in force. There is no doubt that some of the issues raised below could be dealt with through secondary legislation and through the extensive reserve powers of the Secretary of State to issue circulars. It is unlikely that the result would be elegant, but it could be effective. However, whether this would meet the test of building consensus for a new programme of New Towns or securing consent on the ground is another matter.

While the principles of the New Towns legislation remain valid, in practice there appear to be two broad themes which need legislative attention:

- the coherence of the current legislation; and
- the ability of the New Towns legislation to deal with contemporary policy issues.

The coherence of the current legislation

The current New Towns legislation has been subject to very extensive amendment by both Acts and Statutory Instruments. Since the original 1946 Act there have been primary amending Acts in 1959, 1965, 1966, 1977, 1980, 1981, 1982, 1985 and 1994, with the last full consolidation in 1981. The context of the 1981 Act was the desire to bring the New Towns programme to a close rather than create a workable framework for future action. Consequently, the legislation no longer contains a workable section on how a Development Corporation would wind up and pass its assets on for the benefit of the community. In addition, there have been a series of amendments to key Statutory Instruments, such as the provision for Special Development Orders and more recent changes to public land disposal rules in the Growth and Infrastructure Act 2013. The amending legislation has tended to focus on mechanics such as stock transfer, borrowing limits, compulsory purchase rules, and the setting up and abolition of bodies such as the Commission for the New Towns.

The position is further complicated by the interaction of New Towns legislation with other pieces of particularly relevant primary legislation, including the Land Compensation Acts 1961 and 1973, the Leasehold Reform Act 1967,[14] which had a major impact on the financial model of Letchworth Garden City, and the Human Rights Act 1998.

The ability of the New Towns legislation to deal with contemporary policy issues

There is a clear need to reassess the objectives of the New Towns legislation in the light of contemporary policy issues, and in particular how New Town designations can be related to the drive for localism. Similarly, 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**. Such considerations *could*

14 The impact of the Leasehold Reform Act 1967 on a new programme of New Towns would depend on the housing tenure offer. The TCPA is examining the implications of the Leasehold Reform Act and the merits of using reformed New Town legislation to exempt New Towns from the Act if necessary

be written into secondary legislation or into the corporate plans and masterplans of each Development Corporation; however, for reasons explored below there is at least a case for considering their inclusion in primary legislation.

All this means that there is a **case for refreshing and consolidating** the New Towns legislation.

3 Are there legislative alternatives for managing large-scale growth?

Can the local planning system deliver large-scale growth?

It is not impossible for the residual localised planning system of today to bring forward large-scale growth: there is, in principle, no barrier, 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. There are currently a number of proposals for more than 5,000 housing units, but none on the scale of the original New Towns programme.

A number of 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[15] 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, no matter how large and complex. It is a 'vast and beautiful tapestry versus a handkerchief'. It is not 'built' in one go, but 'grown' over several decades'.[16]

Another suggestion is to use the Town Development Act 1952. The places created under the 1952 Act delivered housing growth and were unusual in that they were initiated by local authorities. The Act allowed two local authorities – an 'exporting' metropolitan authority and a 'receiving' authority, such as Bletchley (for London) and Daventry (for Birmingham) – to reach an agreement on population shifts. London was involved in up to 30 agreements to 'export' some of its population to receiving authorities incentivised by money for facilities and infrastructure. The housing growth was handled by local authorities rather than Development Corporations, and the numbers of new homes created were lower than in the New Towns programme, accommodating around 300,000 people. The outcomes have been criticised as delivering very large, 'bolt-on', single-tenure estates rather than balanced communities. There is a 'family' of other measures, which all include the Urban Development Corporation model, that have been used by successive governments for area renewal and regeneration, but which have themselves proved controversial in terms of public engagement and crucially have not had plan-making powers. Finally, there are hybrid legislative routes which can create specific mechanisms for growth. The Act to build Hampstead Garden Suburb[17] and the London Olympic Games and Paralympic Games Act 2006, which established the Olympic Delivery Authority, are two examples of such an approach.

This is not an 'either/or' debate, and there are clearly lessons for the modernisation of the New Towns regime to be drawn from the experiences of the Urban Development Corporations and the Olympic

15 Set out under the Planning Act 2008

16 David Lock, in an unpublished written communication to the authors of this document

17 Hampstead Garden Suburb Act 1906

Delivery Authority, not least in terms of the powers to transfer public sector land to Urban Development Corporations by means of a 'vesting order'.[18]

4 The role for national policy on New Towns

There is plainly a need to be clear about the balance between necessary changes to law and the need for any future New Towns 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.[19] 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. There is a recent precedent in the Growth Area studies for national policy that provided focused areas of search to support decision-making.[20] This policy would need to consider the wider spatial role of new communities in the context of the nation as whole. This includes 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 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.** The lesson of recent history is that strategic approaches to growth which do not have democratic endorsement are liable to be very short lived. The approval of such a policy might be modelled on the process for preparing National Planning Statements set out in the Planning Act 2008. There would also be a need for a strong supportive relationship with government, requiring an experienced and motivated team within central government that could secure inter-departmental agreements.

Explanatory Memorandum Part 2: Proposed Changes to Legislation

5 Reforming the key principles of New Towns legislation

This part deals only with the principal elements of the New Towns legislation which would require alteration or would imply other policy changes. Each section of this part sets out the case for change, or otherwise, and where necessary suggests modified clauses – the proposed legislation is shown in boxes, and proposed changes to legislation, and proposed new legislation, are set in a **contrasting red type face (thus)**.[21]

18 A vesting order is a court injunction that transfers the legal ownership of a property. Vesting orders were obtained by the Secretary of State to compel the transfer of some land and property to Urban Development Corporations within their designated area

19 Based on the Abercrombie Greater London Plan of 1944. The post-war New Towns were embedded in a wider policy framework of dispersal from existing congested cities, city centre housing renewal, green belt designation, wider industrial relocation, and measures to address wider population growth. Quite spatially specific proposals were set out in regional plans such as the Clyde Valley Plan, which sought to set a wider functional context for new settlements. The New Town of Peterlee was designed to deal with regeneration in a low-demand area and was co-ordinated with large-scale demolition of sub-standard housing

20 *Sustainable Communities: Building for the Future*. 'Sustainable Communities Plan'. Office of the Deputy Prime Minister, 2003

21 The text of an updated Act should be non-gender specific throughout. An illustrative amendment is shown for the clause 3 box only

Clause 1 The power to designate land

The first significant issue is how section 1 of the New Towns Act 1981, concerning the designation of a New Town by the Secretary of State, can be squared with today's concern with localism and public consent. The 1981 Act puts the decision about where a New Town should be built in the hands of the Secretary of State, with only a minimal requirement to demonstrate that the local authorities in that area have been consulted. 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).

There is now little political appetite for central government to impose a New Town on an area. It has been suggested that the process could be modified to ensure that local authorities gave their consent before designation could be made. This idea was explored at length in the run-up to the 1946 Act,[22] and the problem of the right balance between imposition and consent remains extremely difficult to resolve. The debate in 1946 noted that in addition to considering the practical impacts on the localities concerned, the creation of New Towns is of more than local significance, in the wider sense of the value to the nation. In many cases a designation may involve more than one local authority, requiring multiple local agreements.

This would suggest that the best solution is to retain in law the Secretary of State's power to designate, but make it clear in policy that this power will only be used if no voluntary agreement can be reached, and where the Secretary of State believes that there is a clear public interest in the designation. In other words, it would be a power of last resort. However, the possibility of a New Town designation being imposed would encourage local authorities to come to negotiated voluntary agreements. These would be incentivised as they were in the past by assurances of greater protection for areas, as well as new resources for infrastructure.

In relation to strengthening the role of local government, there may be merit in introducing the right of local authorities to submit a formal local impact report based on the 2008 nationally significant infrastructure projects model.[23] The accountability regime for New Town designation would then comprise the following:

- national policy setting out the need, and areas of search, subject to public consultation and parliamentary approval (using the 2008 nationally significant infrastructure projects model);
- consultations and negotiations with local planning authorities, including inviting suggested sites;
- designation of sites, using reserve power if absolutely necessary; and
- the individual right to object and be heard at public inquiry.

There are further opportunities to prescribe standards and site-specific objectives in the New Town designation order and masterplan. Furthermore, while not required by law, it would be legally safe as well as environmentally prudent for a New Town order to be accompanied by Strategic Environmental Assessment.

22 Lord Reith (Chair): *Final Report of the New Towns Committee*. Cmd 6876. HMSO, 1946

23 Under section 60 of the Planning Act 2008

New Towns Act 1981

1 Designation of areas.

(1) If the Secretary of State is satisfied, after consultation with any local authorities who appear to him 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 may make an order designating that area as the site of the proposed new town.

*

(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 3 The power to establish Development Corporations

Refreshing the remit of Development Corporations offers an opportunity to broaden their governance. The current law gives the Secretary of State control over the appointment of the whole Board. Schedule 3 of the 1981 Act could be modified to require one third of the 12-member body to be appointed by the relevant local authorities (see Annex 1).

There is a further issue of how community governance is to be managed while the New Town is being developed, before it has a functioning local government. There are two opportunities here: first, to ensure that the community has a stake on the Board of the Development Corporation; and second, to explore how the residents can begin to help shape the development of their new community. Using similar powers to the neighbourhood planning provisions of the Localism Act 2011 it would possible for the Development Corporation to establish a neighbourhood forum. This forum could nominate one member from the Development Corporation and could undertake neighbourhood planning activities which support the objectives of the Corporation. Its plainly desirable that membership of forum be by election, as soon as is practicable.

In addition to an opportunity to modernise the governance of Development Corporations there is also an opportunity to create further certainty for the community by incorporating a requirement that the Development Corporation will have a minimum life of 30 years. The long-term nature of town development and the need for continuity despite changing national priorities requires a clear statement of Parliament's normal expectation of the duration of New Town Development Corporations.

Drawn from New Towns Act 1981

3 Establishment of development corporations for new towns.

(1) The Secretary of State shall by order establish a corporation, in this Act called a development corporation, for the purposes of the development of each new town the site of which is designated under section 1 above*

(2) A development corporation shall be a body corporate by such name as may be prescribed by the order, and shall consist of—

(*a*) a **chairperson**;

(*b*) a deputy **chairperson**; and

(*c*) such number of other members, not exceeding 11, as may be prescribed by the order.

(3) Schedule 3 to this Act has effect with respect to the constitution and proceedings of a development corporation.

(3a) A development corporation shall be constituted for a minimum of 30 years.

(4) Nothing in this Act (except the express provision relating to stamp duty in section 72(1) below) shall be construed as exempting a development corporation from liability for any tax, duty, rate, levy or other charge whatsoever, whether general or local.

* *Words in s. 3(1) 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*

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'***.[24] 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 a 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[25] to focus the system on sustainable development, climate change and good design, but as noted in Part 1 of this document they do not apply to Development Corporations because they are not local planning authorities.

The suggested new approach is to create two new separate clauses. The first deals with an extended and modernised list of objectives and duties; the second with consolidated powers.

To modernise the objectives, the first new clause 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.[26] The redrafted clause also seeks to stress important obligations on the social and cultural, as well physical and economic, development of a New Town.

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

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

26 As set out in the Housing and Regeneration Act 2008

Drawn from New Towns Act 1981

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 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 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.

New Clause 4A The principal powers of Development Corporations, and Clause 4B The specific powers of Development Corporations

As made clear in Part 1, Development Corporations' existing powers are extensive and do not necessarily require fundamental change. However, there are some uncertainties resulting from amendments to the primary legislation. For example, section 5 of the New Towns Act 1981 (as amended by the Water Act 1989) appears to restrict the ability of Development Corporations to 'carry on any undertaking for the supply of water, electricity or gas'.[27] The restriction also appears to apply to some kinds of public transport

27 Section 5(5)(*a*) of the New Towns Act 1981

networks which would require separate authorisation. There also remains some uncertainty about the powers of Development Corporations to borrow money from private sources. There was some relaxation of restrictions on Development Corporation borrowing at the end of the New Towns programme, and section 59 appears to allow short-term borrowing from private sources subject to HM Treasury approval.

Plainly, to be effective Development Corporations need to be able to play a full and creative role in the life of a new community. For example, a Development Corporation could be catalyst for small and community business opportunities, including energy services companies which could both distribute and supply the energy needs of the community.

To provide for the maximum possible clarity and confidence about the powers of New Town Development Corporations, new Clause 4A sets out three layers of enabling powers. The first is an evolution of the general powers provision to incorporate the more modern language the Homes and Communities Agency model.[28] The second is a suggestion that Development Corporations might be endowed with the same general power of competence that was created for local authorities in section 1 of the Localism Act 2011. This power, to do anything an individual with full capacity can do, would allow Development Corporations to, for example, establish and trade commercial enterprises and to borrow. The TCPA is still exploring whether this suggestion adds anything to the legal status of a Development Corporation not provided by a general enabling clause.

The final tier of enabling powers set out in new Clause 4A provides for specific powers for Development Corporations which remove any uncertainty about their core functions. It is important to note that the core power to compulsorily purchase land has always been set out in a separate section of the legislation, and is dealt with below. New Clause 4A is formulated on the assumption that **section 5(5) of the 1981 Act, on the restriction of Development Corporations, would be repealed**.

4A Principal powers of development corporations.

(1) A development corporation designated under this Act may do anything it considers appropriate for the purposes of its objects or for purposes incidental to those purposes.
(2) A development corporation designated under this Act has the power to do anything that individuals generally do.
(3) The specific powers of a development corporation designated under this Act are to be exercised for the purposes of its objects or for purposes incidental to those purposes.
(4) Each power may be exercised separately or together with, or as part of, another power.
(5) Each power does not limit the scope of another power.

Sections 4(2)–4(5) of the 1981 Act would then become Clause 4B.

28 *'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

Drawn from New Towns Act 1981

4B Specific powers of development corporations.

(1) To secure **the** laying out and development **of the new town** every development corporation shall have power (subject to section 5 below)—

(*a*) to acquire, hold, manage and dispose of land and other property,

(*b*) to carry out building and other operations,

(*c*) to provide water, electricity, gas, sewerage and other services,

(*d*) to carry on any business or undertaking in or for the purposes of the new town,

and generally to do anything necessary or expedient for the purposes or incidental purposes of the new town.

(2) In relation to subsection (1) above—

(*a*) the power of acquiring land conferred by that subsection on a development corporation includes power to acquire any land within the area of the new town, whether or not it is proposed to develop that particular land; and

(*b*) the power of disposing of land conferred by that subsection on a development corporation includes, in relation to any land within the area of the new town, power to dispose of that land, whether or not the development of that particular land has been proposed or approved under section 7(1) below.

(3) A development corporation (without prejudice to the generality of the powers conferred on development corporations by this Act)—

(*a*) may, with the Secretary of State's consent, contribute such sums as he may, with the Treasury's concurrence, determine towards expenditure incurred or to be incurred by any local authority or statutory undertakers in the performance, in relation to the new town, of any of their statutory functions, including expenditure so incurred in the acquisition of land; and

(*b*) may, with the like consent, contribute such sums as the Secretary of State, with the like concurrence, may determine by way of assistance towards the provision of amenities for the new town.

(4) A transaction between a person and a development corporation shall not be invalidated by reason of any failure by the corporation to observe—

(*a*) the objects in **section 4A**, or

(*b*) the requirement in subsection (1) above that the corporation shall exercise the powers conferred by that subsection for the purpose there mentioned,

but (it being declared for the avoidance of doubt) nothing in this section shall be construed as authorising the disregard by a development corporation of any enactment or rule of law.

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 original 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. The decision not to pass all these assets to the local authority is, perhaps, controversial but reflects the need to safeguard community assets from being used to fill funding shortfalls for statutory local authority services. It 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.

Drawn from New Towns Act 1946

6A 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 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

cont.

6A continued

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.

(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 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.

Clause 7 The planning powers of Development Corporations

The planning powers of Development Corporations remain broadly effective, and while changes to consolidate secondary legislation around Special Development Orders would be necessary, section 7 of the 1981 Act remains a strong foundation. It has been suggested that New Town Development Corporations, like the Homes and Communities Agency, could have the status of local planning authorities.

The Homes and Communities Agency is bestowed these powers through designation orders for a particular site. There would be clear benefits in this approach in that the Development Corporations would be empowered to facilitate neighbourhood planning and would be subject to the 'duty to co-operate', which may enable effective cross-border working. However, care would be needed to exempt Development Corporations from those plan-making requirements which duplicate the provision of the New Towns Act. Overall, this route would require much more detailed investigation.

New Towns Act 1981
7 Planning control.

(1) In relation to a new town—
  (*a*) the development corporation shall from time to time submit to the Secretary of State, in accordance with any directions given by him in that behalf, their proposals for the development of land within the area of the new town; and
  (*b*) the Secretary of State, after consultation with the district planning authority within whose area the land is situated, and with any other local authority who appear to him to be concerned, may approve any such proposals either with or without modification.

(2) A special development order made by the Secretary of State under section 59 of the Town and Country Planning Act 1990* with respect to the area of a new town—
  (*a*) may grant permission for any development of land in accordance with proposals approved under subsection (1) above; and
  (*b*) such permission shall be subject to such conditions, if any (including conditions requiring details of any proposed development to be submitted to the district planning authority) as may be specified in the order.

  This subsection is without prejudice to the generality of the powers conferred by sections 59 to 61 of that Act of 1990.*

* *'section 59 of the Town and Country Planning Act', and 'sections 59 to 61 of that Act of 1990' are words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123: 1, 2), s. 4, Sch. 2 para. 51(1)(a)*

Clause 10 Compulsory purchase powers

The 1981 Act contains powers within section 10 for Development Corporations to carry out compulsory purchases with the Secretary of State's approval. It also contains a lengthy procedure, in Schedule 4, for authorising compulsory purchase. This process gives particular discretion to the Secretary of State as to whether to hold a public inquiry if objections to a Compulsory Purchase Order are lodged. Both section 10 and the Schedule 4 would benefit from modernisation – for example in relation to the Tribunals and Inquiries Act 1992.[29] Because the New Towns compulsory purchase rules are largely based on stand-alone powers under the New Towns Act, changes to procedure could be achieved without impact on the wider compulsory purchase regime.[30] The reform of New Town Development Corporations' compulsory purchase power might also include the addition of the powers of compulsory purchase of crown land, which may speed up the disposal of public sector land.

29 There may be other useful lessons to be gained from the 2008 nationally significant infrastructure projects regime and the Olympic Delivery Authority

30 See the complex way that the Homes and Community Agency's compulsory purchase powers are framed in the Planning Act 2008

New Towns Act 1981

10 Acquisition of land by development corporations.

(1) A development corporation may, with the Secretary of State's consent, acquire by agreement, or may, by means of an order made by the corporation and submitted to and confirmed by the Secretary of State in accordance with Part I of Schedule 4 to this Act, be authorised to acquire compulsorily—
  (*a*) any land within the area of the new town, whether or not it is proposed to develop that particular land;
  (*b*) any land adjacent to that area which they require for purposes connected with the development of the new town;
  (*c*) any land, whether adjacent to that area or not, which they require for the provision of services for the purposes of the new town.

(2) A compulsory purchase order under this section shall, in so far as it relates to land—
  (*a*) which is the property of a local authority, or which is held inalienably by the National Trust, or
  (*b*) which forms part of a common, open space or fuel or field garden allotment,
  be subject to the special provisions of Part IV of Schedule 4.

(3) Where a development corporation have been authorised under subsection (1) above to acquire compulsorily land forming part of a common, open space or fuel or field garden allotment, they may be authorised under that subsection to acquire compulsorily, or may, with the Secretary of State's consent, acquire by agreement, land for giving in exchange for the land acquired.

(4) Part V of Schedule 4 has effect with respect to the validity and date of operation of compulsory purchase orders under this section.

(5) In relation to operational land of statutory undertakers this section has effect subject to section 13 below.

Clause 14 New compensation rules for New Towns

The compensation rules for the compulsory purchase of land are central to the effectiveness and viability of the New Towns model. This is partly because comprehensive land assembly is vital in developing a New Town, and partly 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. If, on the other hand, compensation is unfair, settlements will be challenged in the courts.

This document has already made clear that a New Towns programme would need accompanying national policy: this policy should emphasise that the use of compulsory purchase powers is a last resort and should promote fair, negotiated settlements with landowners. There are two contemporary issues that need to be resolved in relation to paying fair compensation for land acquired by compulsory purchase:

- Case law has tended to lead to more generous settlements on the amount of 'hope value' that has been paid to landowners.
- There is a perception that introduction of the Human Rights Act 1998 has reinforced the position of landowners and has made changes to the law to redress this balance more difficult.

The current legal framework for compensation

The core legal framework for compensation is set by the Land Compensation Act 1961.[31] From 1946 New Towns legislation has itself set out compulsory purchase powers, but the current compensation regime is largely framed by the 1961 Act.[32] This legislation, along with case law, established the compensation code which is applied in cases of compulsory purchase.

The most relevant aspect of the code is rule 2, 'the establishment of market value for land and property' (based on section 5(2) of the 1961 Act). The central issue is the way in which market value can reflect not just current use value but, in addition, a measure of 'hope value'. This 'hope value' is over and above any value created by any existing planning permission: it is the value that may be created by the hope of future development. The amount awarded in compensation is the sum of the current use value plus any hope value, plus a sum paid to compensate for disturbance. Hope value, like many other aspects of compensation law, is determined on what can be justified on a case-by-case basis, determined by the evidence.

Disregarding the impact of a New Town designation on hope value

The designation of a New Town is specifically listed in section 6 of Schedule 1 of the 1961 Act as being a form of development whose impact on determining market values should be disregarded.[33] Section 51 of the Land Compensation Act 1973 allows for the Secretary of State to make a direction prior to the designation of a New Town that any increase or decrease in value due to public development should be disregarded. It is not clear if this power has ever been used.

The impact of the Myers case

The problem for the development of a new generation of New Towns is that the compensation code enshrines a conflict between allowing hope value while disregarding the impact of a New Town designation. The Myers case[34] over compulsory purchase in Milton Keynes illustrates the complexity inherent in trying to work out what land would have been worth had there been no New Town designation and what sensible planning assumptions could otherwise be applied. Very broadly, the problem is that Development Corporations can no longer assume acquisition simply at current use value, and consequently the process of working out a market value will be time consuming.

For example, where a New Town is designated in an area in which there is no reasonable prospect of development (and, therefore, lower hope values), market value will be closer to current use value. However, it is hard to conceive of such a site in the South East of England, and, in the case of a designation to expand an existing town, the calculation of hope value under rule 2 (because of existing legitimate planning assumptions) might be substantial, even if the New Town scheme itself was disregarded through section 6 of Schedule 1 of the 1961 Act.

New Towns as a special case?

Parliament has clearly signalled that New Towns are a special case in compensation law because of their national character and accepted role in the wider public interest. It follows that while broad changes to

31 As amended, principally by the Land Compensation Act 1973 and the Localism Act 2011

32 The New Towns Act 1981 does contain amendments to the 1961 Act on compensation rules

33 Essentially bringing into statute the Pointe Gourde principle

34 *Myers v Milton Keynes Development Corporation* [1974] 2 All ER 1096

compensation rules would be highly controversial, changes in relation to New Towns might be both justified and achievable.[35]

A new provision would need to find a way of allowing the decision-maker to disregard all, or part, of any hope value. Removing hope value would be highly controversial and would need to be carefully justified. The original suite of planning and New Towns legislation not only nationalised development rights but also taxed (or nationalised) all development values. Set at 100%, the tax (or development charge) was logical but extinguished the private property market. However, it did remove the complexity of betterment and hope value for the first generation of New Towns.

After the abolition of the development charge in 1954, the position became, and has remained, confused and illogical. Hope value based on the expectation of future planning approvals was recognised as legitimate in the Town and Country Planning Act 1959 and reaffirmed in the Land Compensation Act 1961. Since that time landowners have been gaining compensation for values (betterment) which, put simply, do not belong to them.[36]

Betterment is value accruing to land that results from the action of public bodies through, for example, the granting of planning permission or investment decisions. As matter of economic and legal principle, betterment is a value created by, and therefore should accrue to, the state. The state has chosen not to collect this value directly, although a measure of indirect collection happens through section 106 agreements, the Community Infrastructure Levy, and general taxation.

What is quite remarkable is not simply that the state does not collect betterment directly, but that it compensates landowners for hope value for rights and values which the state in fact already owns. The problem for policy-makers is that attempts at collecting betterment directly have been controversial and transitory. The last major attempt to deal with this issue was the short-lived Community Land Act of 1975.[37]

It may well be that a future government will not wish to re-open the betterment issue in relation to New Towns. For many sites sufficient development values for New Town building would remain even if a measure of hope value were to be paid. However, the failure to grasp the betterment issue, and in particular the payment of compensation for values and rights to which landowners have no logical or legal claim, remains troubling, particularly when such values could contribute to the quality, affordability and long-term upkeep of new places.

The TCPA is clear that acquiring land at current use value is the foundation of building high-quality places and that government should urgently seek a fair system of compensation in which betterment values are recouped for the long-term benefit of the community. Section 14 of the New Towns Act 1981 already modifies the Land Compensation Act 1961, directing that certain matters should not be taken into account in determining compensation in relation to compulsory purchase by New Town Development Corporations. This could be extended to disregard market value and instead focus on existing use value. It has even been suggested that a fixed premium could be attached to this figure to simplify valuation and appease landowners (10% of current use value).

35 This would require a section similar to that inserted into the 1961 Act by the New Towns Act 1981 which directs that the decision-maker should disregard certain interests or enhanced values where these can be shown to have been solely undertaken to try to increase compensation

36 As a result of the Town and Country Planning Act 1947 the right to develop land is no longer a proprietary right in English land law

37 Abolished in 1980, the Community Land Act was designed ‘to enable the community to control the development of land in accordance with its needs and priorities’

The impact of the Human Rights Act on compulsory purchase and compensation in New Towns

The Human Rights Act 1998 is often said to create a barrier to reforming compensation rules, by enhancing the rights of property owners. The Act gives effect to the European Convention on Human Rights, so EU examples of how compensation is dealt with are relevant and useful. For example, the German Federal Building Code appears to allow for tighter definitions of current use value in some compensation cases without any necessary breach of Convention rights.

While the Human Rights Act does create new areas of challenge, as a matter of general principle nothing within it prevents the effective use of compulsory purchase powers or prevents compensation at current use value.[38] It is true that Articles 1 and 8 give rights for the protection of possessions and to a home. However, the deprivation of rights under Articles 1 and 8 is perfectly lawful so long as the tests of proportionality and the public interest have been met. In the context of New Towns, the case for compulsory purchase of land for the provision of new housing and social facilities falls firmly within the public interest test. Case law has found that there must be a 'reasonable relationship' between compensation and the value of the property. In terms of proportionality, it is important to demonstrate that alternatives to compulsory purchase have been considered. The degree to which current use value could be justified would require careful consideration of the arguments surrounding betterment discussed above. As a matter of basic reasonableness, it would seem hard for landowners to bring a successful challenge under the Human Rights Act to justify hope value if that value was not, and had never been, in possession of the landowner.

The TCPA is exploring the legal mechanism which might be used to ensure that compensation rules for the compulsory purchase of land for New Towns are based on a fair system founded on current use value.

New Clause The 'duty to co-operate' and local housing needs

While the expectation is that a New Towns programme would be set within a national policy framework, there is still the question of how designated sites and Development Corporations would relate to neighbouring local planning arrangements. In the first instance it is clear that any new Development Corporation should be listed as a body subject to the 'duty to co-operate', as set out in section 110 of the Localism Act 2011.[39] It will also be vital to make clear in policy the role that a New Town plays in meeting the housing need of neighbouring authorities. Plainly, one key incentive for a group of local authorities to support the development of a New Town would be meeting part of their long-term housing need.

38 Plus compensation for disturbance

39 Development Corporations could be added to list of public bodies in the Town and Country Planning (Local Planning) (England) Regulations 2012

Annex 1 Schedules 1 and 3 of the New Towns Act 1981

Proposed changes are set in a **contrasting red type face (thus)**.

SCHEDULE 1 Procedure for Designating Area

Making of orders under section 1

1.— (1) Where the Secretary of State proposes to make an order under section 1 above he shall prepare a draft of the order, describing the area to be designated as the site of the proposed new town by reference to a map, either with or without descriptive matter, together with such statement as he considers necessary for indicating the size and general character of the proposed new town.

(2) In the case of any discrepancy between the map and any such descriptive matter, the descriptive matter shall prevail except in so far as may be otherwise provided by the draft order.

(3) The Secretary of State shall give notice in writing to each authority which, in relation to the designation, is a relevant local authority, inviting them to submit a local impact report.

(4) A 'local impact report' is a report in writing giving details of the likely impact of the proposed designation on the authority's area (or any part of that area).

2. — (1) Before making the order the Secretary of State shall publish a notice—

(*a*) in the London Gazette;

(*b*) in one or more newspapers circulating in the locality in which the proposed new town will be situated; and

(*c*) in such other newspapers, if any, as he considers appropriate in the circumstances.

(2) That notice shall—

(*a*) describe the area to be designated as the site of the proposed new town;

(*b*) state that the draft of an order under section 1 above has been prepared by the Secretary of State in relation to that area and is about to be considered by him;

(*c*) name a place within that area where a copy of the draft order (including any map or descriptive matter annexed to it) and of the statement required by paragraph 1 above may be seen at any reasonable hour;

(*d*) specify the time (not being less than 28 days from the publication of the notice in the Gazette) within which, and the manner in which, objections to the proposed order may be made.

(3) The Secretary of State shall, not later than the date on which the notice is published in the Gazette, serve a like notice on the council of every county and of every district or, in the case of land in Wales, every county or county borough in which the land, or any part of the land, to which the order relates is situated, and on any other local authority who appear to him to be concerned with the order.

3. If any objection is duly made to the proposed order and is not withdrawn, the Secretary of State shall, before making the order, cause a public local inquiry to be held with respect to the objection, and shall consider the report of the person by whom the inquiry was held.

4. Subject to paragraph 3 above, the Secretary of State may make the order either in terms of the draft or subject to such modifications as he thinks fit, but, except with the consent of all persons interested, he shall not make the order subject to a modification which includes in the area designated as the site of the proposed new town any land not so designated in the draft order.

5.— (1) As soon as may be after an order has been made as provided by this Schedule, the Secretary of State shall publish as provided in paragraph 2(1) above a notice stating that the order has been made and naming a place (within the area designated by the order as the site of the proposed new town) where a copy of the order may be seen at any reasonable hour.

(2) The Secretary of State shall serve a like notice—

(*a*) on any local authority on whom notice of the proposed order was served under paragraph 2; and

(*b*) on any other person who has duly made an objection to the proposed order and, at or after the time of making that objection, has sent to the Secretary of State a request in writing to serve him with the notice required by this paragraph, giving an address for service.

Validity and date of operation of orders under section 1

6.— (1) If any person aggrieved by an order under section 1 above desires to question the validity of that order, or of any provision contained in it, on the ground—

(*a*) that it is not within the powers of this Act, or

(*b*) that any requirement of this Act has not been complied with in relation to the order,

he may, within 6 weeks from the date on which notice of the making of the order is first published in accordance with the relevant provisions of this Schedule apply to the High Court.

(2) On any such application the Court—

(*a*) may by interim order suspend the operation of the order or any of its provisions, either generally or in so far as it affects any of the applicant's property, until the final determination of the proceedings; and

(*b*) if satisfied that the order or any of its provisions—

(*i*) is not within the powers of this Act, or

(*ii*) that the applicant's interests have been substantially prejudiced by any requirement of this Act not having been complied with,

may quash the order or any of its provisions, either generally or in so far as it affects any of the applicant's property.

7. Subject to paragraph 6 above, an order under section 1 above shall not, either before or after it has been made, be questioned in any legal proceedings whatsoever, and shall become operative on the date on which notice is first published as mentioned in that paragraph.

SCHEDULE 3 CONSTITUTION AND PROCEEDINGS OF DEVELOPMENT CORPORATIONS

Appointments of members and tenure of office

1.— (1) The members of a development corporation (in this Schedule referred to as 'the corporation') shall be appointed by the Secretary of State after consultation with such local authorities as appear to him to be concerned with the development of the new town, and in appointing members of the corporation he shall have regard to the desirability of securing the services of one or more persons resident in or having special knowledge of the locality in which the new town will be situated.

(2) The Secretary of State shall invite the relevant local authorities to suggest up to three candidates for membership of the corporation.

(3) The Secretary of State shall appoint two of the members to be respectively chairman and deputy chairman of the corporation.

2. Subject to the following provisions of this Schedule, a member of the corporation, and the chairman and deputy chairman of the corporation, shall hold and vacate office as such in accordance with the terms of the instrument by which they are respectively appointed.

3. If the chairman or deputy chairman of the corporation ceases to be a member of the corporation, he shall also cease to be chairman or deputy chairman, as the case may be.
4. Any member of the corporation may, by notice in writing addressed to the Secretary of State, resign his membership; and the chairman or deputy chairman may, by the like notice, resign his office as such.
5. If the Secretary of State is satisfied that a member of the corporation—
   (*a*) has become bankrupt or made an arrangement with his creditors, or
   (*b*) is incapacitated by physical or mental illness, or
   (*c*) has been absent from meetings of the corporation for a period longer than 3 consecutive months without the permission of the corporation, or
   (*d*) is otherwise unable or unfit to discharge the functions of a member, or is unsuitable to continue as a member,

   the Secretary of State may remove him from his office as a member of the corporation.
6. A member of the corporation who ceases to be a member or ceases to be chairman or deputy chairman shall be eligible for reappointment.

Remuneration

7. The corporation shall pay to their members, in respect of their office as such, such remuneration and such reasonable allowances in respect of expenses properly incurred in the performance of their duties as may be determined by the Secretary of State with the consent of the Minister for the Civil Service, and shall pay to the chairman and deputy chairman, in respect of their office as such, such additional remuneration as may be so determined.

Pension benefits for chairmen

8. In the case of any such person, who is or has been the chairman of the corporation, as the Secretary of State may with the consent of the Minster for the Civil Service determine, the Secretary of State may direct the corporation—
   (*a*) to pay to or in respect of that person on his retirement or death such pension, allowance or gratuity as may be so determined; or
   (*b*) to make payments towards the provision of such a pension, allowance or gratuity.

Meetings and proceedings

9. The quorum of the corporation and the arrangements relating to their meetings shall, subject to any directions given by the Secretary of State, be such as the corporation may determine.
10. The validity of any proceeding of the corporation shall not be affected by any vacancy among their members or by any defect in the appointment of any of their members.

Instruments, etc.

11. The fixing of the seal of the corporation shall be authenticated by the signature of the chairman or of some other member authorised either generally or specially by the corporation to act for that purpose.
12. Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the corporation by any person generally or specially authorised by them to act for that purpose.
13. Any document purporting to be a document duly executed under the seal of the corporation shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

Community governance

14. Within 12 months of the first occupation of the town by new residents the development corporation shall establish a neighbourhood forum. For the purpose of establishing the forum section 61F (5)–(13) of Schedule 9 of the Localism Act shall apply to the corporation as if it were a local planning authority.

Annex 2 Arrangement of Sections of the New Towns Act 1981

Available at http://www.legislation.gov.uk/ukpga/1981/64/contents

Introductory Text

Part I New Towns and their Development Corporations

New towns
1. Designation of areas.
2. Reduction of designated areas.

Development corporations
3. Establishment of development corporations for new towns.
4. Objects and general powers of development corporations.
5. Restrictions on powers of development corporations.
6. Allocation or transfer of new town functions.

Planning control in new towns
7. Planning control.
8. Features of special architectural or historic interest.
9. Frontages and abutments.

Acquisition of land by development corporations and highway authorities
10. Acquisition of land by development corporations.
11. Acquisition of land for highways.
12. Local land charges under ss. 10 and 11.
13. Acquisition of statutory undertakers' operational land.
14. Application of Compulsory Purchase Act 1965 and modification of Land Compensation Act 1961.
15. Compensation for acquisition of statutory undertakers' operational land.
16. Extinguishment of rights over land compulsorily acquired.

Disposal of land by development corporation
17. Conditions as to disposal.
18. Disposal to pre-acquisition occupiers.

Powers exercisable in relation to land acquired by development corporation or highway authority
19. Power to override easements and other rights.
20. Consecrated land and burial grounds.
21. Open spaces.
22. Possession of houses.
23. Extinguishment of public rights of way.
24.(1) Where an order under section 23 of this Act...
[S. 24 substituted by Telecommunications Act 1984 (c 12, SIF 96), Sch. 4 para. 79(4)(5), Sch. 5 para. 45]
25. Special power to create trunk roads.

New Towns Act 2015?

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