

Housing, Communities and Local Government Committee

Oral evidence: Land Value Capture, HC 766

Monday 11 June 2018

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Members present: Mr Clive Betts (Chair); Bob Blackman; Helen Hayes; Kevin Hollinrake; Andrew Lewer; Mr Mark Prisk; Mary Robinson; Matt Western.

Questions 175 - 252

Witnesses

I: Hugh Ellis, Head of Policy, Town and Country Planning Association; Ian Fletcher, Director of Policy, British Property Federation; Dr James Richardson, Chief Economist, National Infrastructure Commission.

II: Barry Denyer-Green, Falcon Chambers; Stephen Ashworth, Dentons; Vicky Fowler, Gowling WLG.

Examination of witnesses

Witnesses: Hugh Ellis, Ian Fletcher and Dr James Richardson.

Chair: Good afternoon and thank you for joining us to today for our session on land value capture. Before we start off with yourselves, could I ask Members of the Committee to put on record any particular interests they have that may be relevant to this inquiry? I am a vice-president of the Local Government Association.

Helen Hayes: I employ a councillor in my staff team.

Bob Blackman: I am a vice-president of the LGA.

Kevin Hollinrake: As do I, Chair, in terms of employing a councillor in my office.

Andrew Lewer: I am a vice-president of the LGA and have a registered interest in the Drakelow Development Holdings.

Mr Prisk: I am a Fellow of the Royal Institute of Chartered Surveyors.

Q175 **Chair:** Could you just say for the benefit of our records who you are and



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the organisation you are here representing?

Hugh Ellis: I am Hugh Ellis. I am director of policy at the TCPA.

Dr Richardson: I am James Richardson. I am chief economist at the National Infrastructure Commission.

Ian Fletcher: I am Ian Fletcher. I am director of policy at the British Property Federation.

Q176 **Chair:** Thank you very much for joining us this afternoon. Just in terms of the current system, if it does need reform—that is the first question, I suppose—would you favour retaining 106 and CIL alongside any new systems, or would you begin again from scratch?

Hugh Ellis: The system at the moment is chaotic. Section 106 and CIL yield substantial benefit but they have disbenefits, and those particularly are spatial inequality, which it plainly reinforces, and some degree of procedural complexity that goes with it as well. However, they do yield substantial results for communities. There is a big missing element, which is a comprehensive approach to land tax and betterment taxation in this country, and some notion of development corporations acting in the public interest along with an enhanced role for local government.

I would say, just finally, that government policy on land tax is not just CIL and 106; the values given away by the extension of permitted development are probably the most radical approach to land tax that we have taken in this country for a long time. Those values are very substantial, so there is not just section 106 and CIL in play here; there is an enormous amount of development for which those regimes no longer apply.

Ian Fletcher: Clearly, it is important that the infrastructure to support development is delivered. You only have to look at the British Social Attitudes survey out on Friday, which illustrated the importance of that to individuals. At the federation, I get exposed to the whole panoply of the development sector, and a lot of the complexities in the current systems reflect that. I am supportive of section 106 in terms of the gain at the site level and I am supportive of ensuring that there is the infrastructure there through the CIL process. I am disappointed, in terms of CIL, where there was not the opportunity grasped by Government to take onboard the recommendations of the CIL review and impose local infrastructure tariff. In some respects, the problems that were identified vis-à-vis CIL have been addressed—or sought to be addressed—through ad hoc responses that have made the system even more complex.

There will always be that complexity in terms of trying to take account of the north and the south, different asset classes—as I say, we cover the whole lot—and also in terms of the brownfield and the greenfield scenarios that our members encounter.



Dr Richardson: To some extent, like others, you start by recognising the complexity of the situation. Land values vary widely across the country. That is inherent. Whatever system you have is going to have to address those complexities and, whilst they are not perfect, the combination of CIL and section 106 at least give you variable tools that can take different things into account. CIL allows you to capture an element across a wide area at a relatively low level but ensures a contribution. Section 106 allows a more complicated valuation on particular sites and allows you to take the complexity of larger sites into account. Those are both potential desirable characteristics of any system overall.

I would say as well, of course, that from an infrastructure perspective those two only capture uplift on new developments, whereas a considerable proportion of the uplift from infrastructure development is often on existing property, so you would need to look at mechanisms that potentially capture value from existing property as well. Some of that you will get through things like capital gain or stamp duty, but you might want to think about wider mechanisms there as well in a comprehensive system.

Q177 **Chair:** Basically, then, keep 106 and CIL—we will talk about whether they should be changed at all—and then build from there maybe. The Government have proposed some changes to CIL and 106 in the Autumn Budget and is also proposing the NPPF changes to the way that viability assessments are used. Do you think they are good proposals or do you have concerns about them?

Hugh Ellis: They are a step in the right direction. Certainly, the idea of transparency and regularising inputs to viability testing—existing use plus—are all major steps forward. The context of that is that probably the single-most difficult thing for delivering good places was the viability test as described in the 2012 NPPF; that has played out in a very retrograde way in terms of benefits and outcomes on social housing and wider place-making.

There are limits to how far that goes. Questions remain about whether or not, for volume housebuilders, enshrining a profit margin of 20% is an acceptable margin to enshrine in that process. The question that remains is: current use plus what? That, as yet, is unresolved. These are steps in the right direction but, as I say, what they do not amount to is getting to the root cause of whether we have a coherent and clear narrative about capturing land values and dealing with betterment overall in this country. They would make a contribution; they are a step in the right direction.

Dr Richardson: I would pick up a couple of points that are welcome: the removal of at least some of the restrictions on pooling for section 106 and the proposals for a strategic infrastructure CIL. Both of those are things that the Commission called for in our study looking at the Oxford-Milton Keynes-Cambridge corridor. They are useful proposals that the Government brought forward.



Ian Fletcher: It is a mixed bag. There are some things that are very good in there: trying to ensure that the local planning process itself is giving clear signals about expectations for infrastructure and other gains. There are some things that need a little bit more work. We have not pushed back against viability assessments as open book, but there are some technical details around those in terms of how that works in practice for developers, in terms of exposing things like rights-to-light claims, paying off tenants and that sort of thing.

We are concerned, as said, in terms of some the CIL changes in that they just add an extra layer of complexity to what is a complex system already. Some of the changes to indexation—existing use value plus—play out well in a greenfield scenario but, as I say, I represent people who are developing complex sites all across the country, often brownfield and often will have negative residual value.

Q178 **Mr Prisk:** Briefly on that—and perhaps this is most relevant from Mr Fletcher's point of view and the federation—how much time do your members find they are spending engaging with the CIL process and section 106? There is a lot of political pressure to want to see homes built, for example, or roads developed or new factories opened, or whatever it is. What is the timescale? We talk about administration bureaucracy but very often this is as much about time spent.

Ian Fletcher: I do not honestly know, but I could come back to you and give you some figures on that. The corollary of that, and something I concern myself with, is the extent to which, in putting things like CIL together, there are conversations between different parts of the public sector. In terms of the local education authority and the commissioning trusts at an NHS level, to what extent do CIL aspirations include some of that?

Q179 **Mr Prisk:** Are there any particular examples of where this is delaying projects taking place that we should be aware of?

Dr Richardson: I do not have any specific examples from an infrastructure perspective. Infrastructure projects often tend to take longer anyway.

Q180 **Chair:** Just very briefly, are there other changes to CIL and 106 that could be made while we are doing the reforms, without going into the wider issues of land value capture, which we will come on to in a second? Are there any specific changes that you would like to see brought in now?

Hugh Ellis: There is an enhancement about that clarity of process. There is a question about some of the sentences in the proposed language that are really quite radical. For example, one of them is that viability should not include calculations of hope value. Those things are quite dramatic, in a way, considering what we might talk about in relation to compulsory purchase. These changes, if you like, deal with two mechanisms that—let us be clear—evolved in an ad hoc way as a result



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of a failure to deal comprehensively with land value capture. I know you want to talk about that, but that is important. They certainly would help.

The important other tension is transparency, and that is a tension between private and public sector. Communities need to know much more about how money is collected, what it is for and where it is spent in order to have some confidence in the system. Section 106—and it has not been much debated—is still seen with a great deal of suspicion by a lot of communities as the purchase of planning permission, which is what people tell us quite a lot. That kind of transparency needs to be addressed as well, and I am not sure that they have gone quite far enough in relation to that.

Dr Richardson: There is clearly an issue around capability, which varies a lot across local authorities. The local authorities that do this a lot are often very good at it. Colleagues can speak for the property industry but what we have heard is that those negotiations can be much smoother than perhaps with local authorities that do large sites very occasionally and perhaps do not have those capacities, so it is worth thinking about whether support could be made available and whether local authorities could pool their resources, or whether ones that do this more often could support some of those that perhaps do it once every few years, and reduce some of these transaction costs that potentially affect the smoothness of the system and bring costs.

Ian Fletcher: As I say, we would have preferred to have seen the Government pursue the local infrastructure tariff proposal. Some of the proposals that have come forward seek to address some of the key flaws that the CIL review team highlight in terms of CIL not raising what was expected in terms of the complexities of the system and the transparency of the system. However, Government, for reasons known to them, did not adopt those and decided to do some bolt-ons to the existing CIL system. We would have liked to have seen the changes to the pooling regs abolished altogether but, again, Government did not pursue that.

Q181 **Kevin Hollinrake:** Sorry if I missed this but, Mr Ellis, the new way to deal with viability assessments is at plan-making stage. In the NPPF, at paragraphs 34 and 58, it does determine a couple of circumstances where you could look at those again at individual development stage. Will this not just lead to a continued gaming of the system?

Hugh Ellis: Yes, and although publicly there has been talk of a major shift in when this assessment takes place into the development plan, our reading of the NPPF draft revised is that it leaves quite a significant loophole.

There is also one problem: that it is very difficult to conduct those economic assessments at plan-making stage, which has not been talked about, because the economics of it are very difficult to calculate for a plan with a 15-year time horizon. That was always the case. There is a tension here between the need for transparency in a plan-led system and



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also the economic realities of individual site assessments. Colleagues have more expertise, but I cannot quite see how you can remove the need for an element of site-specific. In fact, the logic is that it really should sit there, so long as the development plan has very strong policies to indicate what kind of outcomes it wants from the process.

Q182 Kevin Hollinrake: Even though you conceded it may lead to a gaming of the system.

Hugh Ellis: The gaming of the system is critical, and you have seen that in a pretty extreme form since 2012. That is the nature of why you need to get the detailed proofing of that policy right. However, it does not have to be like that, if you could regularise the inputs to viability testing. That could be transformational because the loss of decent quality in place-making affordability and a whole range of other place-making factors that have gone out of a lot of residential development is largely the result of the way that system has been gamed.

Q183 Bob Blackman: Turning to both delivering and funding infrastructure changes—and if I could start with you, Dr Richardson, because it is probably most applicable to you—how dependent is the funding and delivery of infrastructure on capturing the increase and uplift in land value?

Dr Richardson: It varies but it is not, if you like, the pot of gold that releases infrastructure. At its most successful, in places with very high land values—something like the Northern Rail Extension or Crossrail—clearly, capturing those land values can contribute significantly to the cost of infrastructure, but those are perhaps the exception. They are certainly one end of the spectrum: land values are very high and particular developments are very obviously unlocked by those infrastructure developments, if you look at something like Nine Elms and the Northern line. Also you are often dealing with a relatively concentrated site, few people and a single developer.

If you look at, say, the infrastructure in Milton Keynes, the estimate is that the Milton Keynes tariff paid for maybe 20% of the infrastructure costs, and similar estimates are made for some of the other new towns. That is a contribution that is useful but it is not ultimately more than part of the answer to paying for infrastructure for new developments.

Q184 Bob Blackman: You have made much of the Oxford-Cambridge corridor being funded by land value capture. How is that going to have an impact?

Dr Richardson: That is clearly an area where land values are high and, therefore, where the scope for these kinds of instruments is stronger than it would be in other parts of the country. What we have looked at in that area is new settlements enabled by new infrastructure, so you are at the end of the spectrum where there is likely to be most successful.

Q185 Bob Blackman: Could you put a percentage on that?



Dr Richardson: We have not made an estimate, but it would still be optimistic to think that you could pay for the majority of it using land value. I suspect that is probably too high to think you could get more than 50%, so I would not want to suggest that this is the silver bullet, even somewhere like the Cambridge-Milton Keynes corridor. However, where there are large increases, there is an argument for seeking to capture a proportion of that towards the costs of infrastructure that enable those developments. That seems a fair way of doing things.

Q186 **Bob Blackman:** What legislative changes would you envisage having to happen to do what you have in mind?

Dr Richardson: You can either do it with legislative changes or you could simply use the existing mechanisms. You can use a development corporation. You can use section 106 or a strategic infrastructure CIL of the sort that Government is putting forward, which would allow you, in the way that the Mayor has captured value for Crossrail, to capture value across the corridor. You do not necessarily need a whole new mechanism but you would need to be able to use the existing mechanisms, with some of the freedoms and flexibilities that Government have subsequently proposed around pooling and around strategic infrastructure.

Q187 **Bob Blackman:** Are you saying to the Committee, then, that we would not need any legislative changes at all to capture the land value increases that you would be envisaging to finance infrastructure improvements?

Dr Richardson: I am not a lawyer, so I do not know whether the precise proposals being put forward in the Government's proposals require legislation or not—you would have to check that with the lawyers—but it does not necessarily require major reform of the system. Particularly the ability to use development corporations and capture value through that route for developing a new town—you are going to use that kind of mechanism—is available. As I say, you have to start with a realistic assessment of how much value you are going to capture in the first place.

Hugh Ellis: I would just comment on the paradox. The new towns programme, using development corporations, paid back its entire borrowing for the delivery not just of infrastructure but the whole of the towns, 32 communities and 2.8 million people. It paid back the debt to Treasury at £4.75 billion in 1999 and has gone on yielding, since that time, about £1 billion to what is now Homes England and Treasury through a land value capture model. The original development corporations were so profitable that they were lending money to other people. The paradox here is that that model, admittedly, gets to the heart of this issue, which is not whether we have the powers but what the regime is for the purchase of land and what price you are paying. What is the core economic model? Those measures are still there and they could deliver on a more ambitious scale for communities if you solved some of the issues around compensation code.



We should be ambitious about this agenda because it could be transformational for those places. If those new towns had been allowed to keep their assets, they would all look like Letchworth, but all those assets were returned to Treasury from 1980 to 1981. That story of the new towns is one of the most important bits of learning about how we do land value capture, because it shows how development corporations can do it effectively and create places. There are many problems in new towns—I am not suggesting they are perfect—but that model still is really worth learning from.

Ian Fletcher: I support my colleague's comment here. In our response, we supported two mechanisms for capturing new LVC. One is to go down the strategic infrastructure tariff route. The sector broadly supports infrastructure betterment to get gains from the public investment that goes into delivering big infrastructure projects, in terms of the opportunities that are created. Precedent has been set through mayoral CIL, so why should that not be applicable to other places within the UK?

We have also supported the use of planning betterment within the context of new towns where there is a clear public interest and there are, hopefully, CPO powers that are used proportionately and which provide alternatives. If we want to create the kinds of opportunities that deliver the housing and other property uses that make a community across the Cambridge-Milton Keynes-Oxford corridor, then I share the ambition of Hugh in that respect.

Q188 **Andrew Lewer:** The Town and Country Planning Association has called for a more effective and fairer way of sharing land values. Last week, however, the Country Landowners' Association—as was—told the Committee that fairness was irrelevant in the context of development. I am just going to read what they said, just to put that in the proper context: "You cannot talk about fairness. It is about what the market will demand and what you are trying to achieve...It is about what will provide a competitive return for the landowner to want to go and bring the land forward". Do you agree with the CLA about that and, if not, why not?

Hugh Ellis: Absolutely not, in the strongest terms I can muster. I can absolutely appreciate why they would say that; they are representing their members. The issue about how you build place and create place is a complex process that involves input and outcomes from people, from the quality of design right through to the share of assets. That means that the development process is acutely and definingly about fairness: fairness in relation to individual outcomes for people and places, and fairness in a wider sense, spatially, across England, about whether or not you are seeing even patterns in development. Land value capture can play a role in that.

This is the real tension, is it not, relating to the point made most powerfully by Peter Hall, when he was writing about this issue? This is a defining factor for the future of our communities. It could make all the difference between being Letchworth and not, but can you get political



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consensus between those different lobbies about a fair balance for landowners? It is not about dispossessing landowners; it is based on this one principal issue. When you grant planning permission, you are giving away a public asset. Development rights in this country are nationalised. We have decided not to comprehensively recoup that asset for a long time, and that has led to high levels of speculation, the distortion of the market and some pretty unfair outcomes. The best example of those unfair outcomes, I have to say, is some of the poor quality development that we are now seeing and some of the permitted development conversions we are now seeing. That is why this is all about fairness.

It is also an opportunity, is it not? You have had evidence from Letchworth. That is an example of how to have a low-tax town with really fantastic outcomes for people. That is the heart of what this issue is about. I appreciate it is also about paying for infrastructure but, for us, it is about that wider issue of: can you get great outcomes for people and can you build great, inclusive communities?

Ian Fletcher: My members have some concerns, particularly the further north you go, in terms of if this was to take a very blanket national approach, whether it be some sort of planning-betterment tax or the proposition on the table, which is existing use value plus. It very much depends on what is determined to be plus. Part of the concerns relates to the interplay between it, and the Government, through other planning policies, are seeking to introduce a housing delivery test. There are some fairly chunky numbers, particularly as you travel south in the country, on that.

The housing delivery test may lead to the plus in the south of the country being reasonably conservative, in that local authorities are, at the end of the day, going to have to deliver that land to deliver those housing numbers and, therefore, they err on the side of caution. As you go north, the hope of members is that that plus may also be conservative in the same way as many of the northern local authorities have not applied CIL because they know that that would kill off a number of developments that otherwise take place in the north of the country. Common sense may prevail but this proposition is worrying in terms of the uncertainty it causes.

Dr Richardson: Inevitably, if you try to develop an instrument that is trying to capture value that does not exist, the instrument is going to fail, so you cannot ignore the economics of it. You may or may not want to ask an economist about fairness but, from the point of view of infrastructure, it is obvious that developing infrastructure and making infrastructure successful requires buy-in from the communities that are affected by it. People's perceptions of fairness, whilst they vary a lot between different people, are clearly part of what enables infrastructure to be supported by communities, so you ignore fairness at your peril when developing infrastructure.



Q189 **Andrew Lewer:** The reference to fairness was simply taking it as an abstract model that bore no relation to quality and land values or, indeed, accepted this point about nationalisation of planning rights meaning that people's land ownership therefore did not have to be connected to those planning rights changing. What would you all think would be a fairer and more effective way of sharing those land values and doing that in practice?

Hugh Ellis: We have suggested three things. As I said, the first one is one of restoration. The PD issue is important not just for the giveaway of those rights but also, for example, on compensation. On an average farm, you will be able to develop five houses through conversion of the property, which, of course, has a big impact. We are handing back development rights and that has a big impact on compensation.

Essentially, you need three mechanisms. I cannot make all of these work but you need three in principle. First of all, you need public-sector-led development through development corporations and enhanced local authorities capturing land values through the new towns model. That is strategic-scale development. You need CIL and 106 evolved in the way that we discussed on transparency.

We have then suggested that you need one final thing, which is really difficult to achieve: a redistributive mechanism, which means that in terms of those communities in the south, in high demand areas, which are yielding enormous values, we have to find a way of redistributing some of that resource or finding other forms of investment, so that you can allow northern ex-industrial communities to have some opportunity to compete and to regenerate. That mechanism is extremely difficult but I was heartened to see that it was part of capital gains tax until 1985 and then we abolished it, so we are not proposing anything on that third mechanism that is, if you like, very novel, and it is still possible.

Finally, we are not naive enough to think that this is a money tree; there are limits to this. Of course, taxation regimes may reduce the tax take. All of them would stabilise the land market and would also, presumably, reduce land prices over time, which would be socially beneficial.

Dr Richardson: Beyond the Oxford-Milton Keynes-Cambridge corridor, the commission has not reached firm recommendations on this, so I can give you some broad indications on our thinking but I cannot put out, as it were, an NIC position on your question. A fair system would seek to capture some proportion of this value, and use that to put towards funding the infrastructure that those additional developments will put pressure on to. It would try to capture that both from new developments but also you have to look at uplifts for existing properties, where often significant uplifts come. That is more difficult to do but you would want to at least have an answer to that question.

Thirdly, while very difficult to do in practice, in designing a system you really do need to look at all the instruments, so not just CIL and section



106, but what you are capturing through capital gains tax, stamp duty and potentially even through income tax, so that you have a picture in the round. What is not captured in one place may be picked up somewhere else and, if you push one lever harder, you may find that there are effects elsewhere. People may not see that when they look at the system and ask whether it is fair or not, but unless you have a picture of what someone is paying in total, it is really quite hard to answer that question.

Ian Fletcher: I have set out our mechanisms already. The one thing I would add is that there is another mechanism that is voluntary and used well at the moment, which is the joint venture structure. A lot of our members enter into those and they deliver sometimes excellent places, where you have public authorities working together with private sector bodies. There is a lot of innovation in that space in terms of driving the capital receipts. Also I do a lot of work on the build-to-rent sector and joint ventures where the return to the local authority's income in terms of a percentage of the rents came forward and, therefore, in hard-pressed times, when local authorities are desperate for income, this is a way of generating other income for them.

Q190 **Andrew Lewer:** Quoting the Town and Country Planning Association again, its argument is that both CIL and section 106 reinforce the concept you have all already introduced into today's discussion, which is that of spatial inequality—most yield in high-demand areas. The British Property Federation highlights that some of the new models being proposed, such as strategic CIL and development rights auctions actually reinforce that equality. Can a system of capturing uplift in value be devised that does not lead to or exacerbate spatial inequality?

Hugh Ellis: Only if it had some redistributive mechanism and this is really difficult. Kate Barker talked about this in the 2004 planning gain supplement—the idea of overall levies—but general development charges have proved very unpopular and not successful in the three attempts that we have tried to introduce them. The difficulty is that communities experience pressure in development, want it to be of high quality and deserve a return from that, where that development is happening. If you are not careful, you reinforce a much wider question in this country, which is about the high concentration of growth in particular areas that have all sorts of other infrastructure costs and difficulties in meeting that growth.

The choice is that you try to find a way of levying or taxing that uplift and redistributing it. The original 1947 conception was that it was all redistributed through a landlord. The level of taxation, at 100%, was always bound to fail—if you set taxation rates at 100%, they tend to—but that did not remove the problem that they were trying to solve, which is precisely the one we are now left with. The issue is very much about whether you do that through capital gains, which then requires Treasury to hypothecate that money for regeneration, which I am sure they would



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be very displeased about, but it is also a question of, without it, the consequences being very severe.

Bear in mind that those spatial inequalities are already extremely severe in terms of development values, which is why a third of the country cannot charge CIL and why the quality of some of the development that we look at is at its worst in low-demand areas, because local authorities have very few mechanisms. Perhaps the way to solve that is to get those local authorities to have to be much stronger, using development corporation power to effect change, but not without some redistributive effect across England. Our best attempt at that is capital gains tax.

Dr Richardson: I would say two things. Inevitably, these kinds of instruments are going to raise very different amounts of money in different parts of the country. There are clear underlying economic causes of that. There is no getting away from that. If you have an instrument of this sort, it is going to be very geographically variable. It is worth remembering that, for infrastructure, of course, a significant part of the cost of infrastructure may be the cost of the land itself, so to some extent the cost also varies, so the same piece of infrastructure will be more expensive to deliver in a high-value area. Because those areas are often more congested, it may be more expensive still; you may have to use more expensive methods, such as tunnelling in London because there is no space above ground.

It is somewhat more complicated when you look at the costs as well as the yield, but if you are going to look at this geographical redistribution again, you do have to look at the system as a whole—how much money goes into the Exchequer and from where, and how much money goes out of the Exchequer and to where—rather than looking at each instrument on its own. You could say the same thing about income tax: an awful lot of income tax is raised within not a very great distance of this building. Do you hypothecate that across the country in some way, or do you just accept that what matters is the distribution of incomes and spending as a whole? Of course, you want to take a view on whether you are comfortable with that, but I am not sure that you need to hypothecate every individual instrument to achieve that outcome.

Ian Fletcher: I am not sure I would add much. A slightly different point is that many of these mechanisms rely on timing differently, so there is a need for central Government to put in funding at the start, whether that be lending funding or putting in absolute funding in that regard. A lot of these mechanisms only generate returns over time in terms of revenue and capital receipts that can then be paid to fund the infrastructure in the long term. Things like mayoral CIL clearly require government investment upfront before you start to then generate those receipts.

Q191 **Mr Prisk:** Could I just turn briefly to look at tax increment financing? In a different tax context, in the United States, it quite a popular route, certainly in California. Here, in our first session, we heard from TfL about



Battersea and the Bakerloo line and so on. I wonder whether panel members feel—and particularly the federation has itemised here—that this has a much better potential not just in London but in other cities and non-urban areas.

Ian Fletcher: The short answer is yes. If we were to look at the example of the USA, Illinois has 900 tax increment financing schemes itself, just in one state, so the potential is there. There have been some relaxations from Government, particularly in the 2013 regulations, that allowed TIFs to be set up on enterprise zones.

The challenges are twofold: first, it comes back to this issue of timing and that there has to be some borrowing that takes place, because the receipts stretch long into the future and, therefore, you come up against local authority borrowing caps set by Treasury. Secondly, something that has probably created a bit of hiatus in terms of the creation of TIFs is the bigger political debate around business rate retention and where that is heading. There is a great deal of uncertainty as to where that has been heading and, therefore, the extent to which local authorities would be able to retain those receipts for their own purposes rather than it going into TIFs. As I say, there is a bit of a hiatus whilst that piece of policy is sorted out.

Q192 **Mr Prisk:** Do other panel members take a view on that?

Dr Richardson: Whether you use TIF or some other instrument, you clearly need, as my colleague said, to be able to fund in advance for infrastructure. You have to build the infrastructure before you can yield value from housing. TIF is one mechanism; something like the Housing Infrastructure Fund is straightforwardly paying for it or you can change some of the rules around the Public Works Loan Board.

What you need to think about is how that fits into the overall fiscal framework: is that actually generating more financing or is it just shifting money around the system? How you get enough money in upfront to forward-fund the infrastructure that brings out value downstream is, in that sense, somewhat different than some other elements of public expenditure that generate social value but do not generate cash for the Exchequer in the future. Clearly, something that generates cash for the Exchequer in the future is easier to repay forward-funding than something that generates a social value but no cash.

Hugh Ellis: It is a very powerful tool but it does need to be set in that wider context of a wider approach to betterment and land value capture. Our concern is that we cannot quite solve the problem of how the mechanism might be used in lower-demand areas where future tax revenues are lower, future incomes are lower and development values are lower. As a tool for areas like London, there is potential; presumably the Oxford-Cambridge corridor is a high-value area that also has some positive application for it. It is, however, definitely a second-order



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instrument, and our concern is still about how it will fit into an overall regime of land value capture.

Q193 **Mr Prisk:** You would not rule out its application as part of a broader picture.

Hugh Ellis: No. In a new conception of local authorities where we are encouraging them to act, if you like, more powerfully, it might well be the sort of tool they could use to deliver. It would be part of their toolbox.

Q194 **Mr Prisk:** Presumably if the cap that Mr Fletcher referred to in terms of borrowing through the Public Works Loans Board and so on was loosened up, would it be something that local authorities might look at more favourably?

Hugh Ellis: It would be, and it is interesting that there is a parallel there with the loosening of the cap on borrowing for locally led new town development corporations, so there is precedent for that freedom.

Ian Fletcher: The other point I would make is that a lot of the mechanisms that exist are about capturing value from the residential development process, which is often based on business rates and is therefore about capturing value from the commercial property sector. You could see a TIF working well in places like Old Oak Common, where such a lot of infrastructure needs to go into that scheme. It has to be spread amongst a number of different mechanisms, and a TIF could help ensure that there was not quite such a call on the residential development and to deliver more affordable housing and things like that.

Q195 **Chair:** Do we know how many TIF schemes have been agreed so far?

Ian Fletcher: It is no more than a handful. There is one in Edinburgh, one in Birmingham, one in Glasgow and one in Battersea that I know of.

Chair: We might follow up.

Q196 **Mary Robinson:** Thank you. Following up on new towns, which have been mentioned a number of times, last year the Government announced that councils will be able to seek the Government's approval to launch a new town development corporation. Do you see this as a significant step? If it is a welcome step, to what extent do you think it will be taken up?

Hugh Ellis: It is a welcome step. It is very important, before I say anything, to say that we have the regulations but not the guidance to go with the regulations, and there is quite a lot in that guidance that is really important. The regulations themselves create a new opportunity for local authorities. The critical aspect of those is the shifting of responsibility from the Secretary of State to this new oversight authority—essentially, a parallel route—and the very successful route to the new towns programme was based on the Secretary of State holding the reins, for good or ill, and taking the responsibility. It is worth remembering that,



even through that route, the majority of new towns were locally asked for, not centrally imposed.

Under this new route, however, that responsibility shifts. You could see that that is really empowering but we hope that Government will offer the support that needs to go with that. In the regulations and process itself, we would like there to be a much stronger focus on quality—we think that is important—and, indeed, on land value capture and linking funding that.

There are two really positive things—perhaps three—in the regulations. One is the lifting of the borrowing cap, which makes it much more attractive to local authorities to do. The other is a focus on long-term stewardship for communities. Again, I cannot put too emphasis on how much that is the overwhelming lesson of why new towns did not deliver in the way that they should have. It is the difference between the Letchworth model and everything else: you have to give communities a proportion of the uplift, so that they can go on reinvesting in their communities over time. The bigger the new community, the more vital that is, because the renewal costs of building new places all come at the same time. After 40 or 50 years, all the infrastructure is ageing at the same time.

There is also an enormous opportunity for people to take a stronger role in their communities. There is strong content on that, and there is content on participation. I have to say we were worried to see the lack of a public inquiry before designation, so there is that mixed bag in terms of how this will work out. Overall, it could be extremely powerful. How many local authorities will take it up is hard to know, is it not? Certainly, one or two are very active in thinking about it. To be honest, it would require more support from Government if others are to take it up on the scale of the new towns programme.

Ian Fletcher: In terms of the creation of new towns, I set out previously that we are broadly supportive. The bit of the debate that maybe needs more detail or more rehearsing is, if you are going to try to land-value-capture and therefore take some of the hope value of properties, about the proportional response in terms of CP-ing people's land. You cannot really argue that taking all the hope value is proportional and, therefore, it is about what sort of mechanisms you can place in terms of trust structures and perhaps long-term value-capture mechanisms that compensate that person for the taking of their land. I would like to see a bit more in the public debate about that, but our members are supportive and certainly see the opportunities that it creates in terms of new towns.

Q197 **Mary Robinson:** Can I ask: is it the case, then, that, for new towns to be effective, the Land Compensation Act will need to be amended to reduce the entitlement to hope value?

Hugh Ellis: Yes. In some cases, it absolutely will. That is the biggest remaining element untouched by Government's reform agendas to compulsorily purchase. Hope value is a fairly extraordinary concept and,



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when the courts have described arriving at hope value as a process of being in a fantasy land, that is a very good description. Hope value was introduced, essentially, by changes to the law in 1959, and was a brake on the effectiveness of new towns. For us, it boils down to this central proposition: if development rights are nationalised—and we are clear about that—a landowner is essentially saying that, during the compensation payment, when all other factors of compensation have been considered disturbance, they require to be compensated for planning permissions that might, in a speculative future, apply to that land, having disregarded the impact of the scheme being proposed, because that is very clear.

From our point of view, because we can probably afford to say this, although we might get kicked under the table, to be clear what we are doing there is that we are compensating landowners for development rights that they do not own, for which they have not realised yet, and we are speculating that they might achieve. The issue there seems to me not one of politics but one of logic, because ultimately that money is coming out of the public purse and it is a value created by public action. We are really struggling with hope value. It is much better to see this as a process where you could have a simplified regime, which is a proper balance of fairness for landowners, who, regardless of the development rights issue, require proper and fair compensation for their land. There must, however, be a better and regularised way of achieving that.

It is true that, for some sites where hope value would not apply—remote sites where you cannot stack up an argument—hope value may be insignificant, but there are not many sites in south-east England that have that degree of remoteness and where no level of hope value would apply.

Q198 Mary Robinson: Would it be the case, though, that, in other areas such as the north of England, the state will be purchasing land near to existing-use value and that the landowners will have an argument that, in terms of the marketplace, they are not getting what the value of the land is?

Hugh Ellis: Land values are incredibly divergent across the country. The same general argument applies about hope value, though, wherever you are, in terms of the logic of it and whether or not you should compensate for it. While the Government's proposals are on regularising the process of dealing with valuation in viability testing, my concern is how that applies to compulsory-purchase compensation. Hope value is enshrined in law for compensation issues, but the NPPF draft says to disregard it in relation to viability testing. That is a crucial question because I am not sure how those things play out. I know there are three lawyers behind me who will probably tell you, but it is a very important issue.

There are changes that do need to be made, and probably that is one of them, but, to be really clear about it, that is not about dispossessing landowners or coming up with an unfair regime; it is about getting out of



that fantasy land and into something that we can all understand and has a clear narrative.

Q199 **Kevin Hollinrake:** You say, Mr Ellis, that we do need to amend the Land Compensation Act 1961 for new towns to be effective, but is that not covered by the no-scheme provisions in the Neighbourhood Planning Act 2017?

Hugh Ellis: I do not think so and I will display my ignorance by trying to say why. "Disregard the scheme" is a longstanding principle in compensation law, and it is clear that, when you designate a new town, you should disregard the impact of the designation on land values. That has been absolutely clear. The Government have extended that disregard to include some other associated transport works, which, you could say, is a benefit. However, in the process of creating a market valuation, "disregard the scheme" is one element, and then the construction of hope value follows on from that. The 1974 Myers case in Milton Keynes, which seems to be the seminal case, made it clear that, even having disregarded the impact of the new town, the landowner was still able to say what other things would have happened on their land, completely separate from the new towns process, that would have resulted in receiving permissions over time. They were able to justify that on the basis of where that land ownership was.

Hope value still floats above us in that way, creating uncertainty about how we might deliver change. All I would say is that the new towns were at their most successful pre-1959, when we positively introduced hope value into the valuation process. As I said, I am not suggesting we remove it completely; I am just saying that we should regularise it in the same way we are trying to regularise valuation for viability.

Q200 **Kevin Hollinrake:** Would you accept that the Government think otherwise? The Secretary of State thinks that that does allow new towns to be taken forward and land acquired based on a no-scheme principle, which does not include hope value.

Hugh Ellis: It is an extremely complex issue. I am always happy to be wrong. We are absolutely clear at the TCPA that the hope-value issue has not been dealt with, and we were surprised to see it not dealt with in the NPPF. It remains an issue. As I said, it is not an issue in every development—it depends how significant hope value is—but it remains an issue, certainly in high-demand areas.

Ian Fletcher: We would not like to see the hope value regulations in the 1961 Act go. I said we supported planning betterment within the context of new towns. Our membership does not support it beyond that. In the case of new towns, you can very much meet the public interest test. When you start getting beyond that—and you have legal experts next—you start to stray from that public interest test.

Q201 **Mr Prisk:** Mr Ellis, are the newly envisaged new town development



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corporations really that if they do not have CPO powers and planning powers? The risk here is that it could just be rather large neighbourhood planning groups.

Hugh Ellis: They do have some of those powers and it is true that there are changes that have been made, but they still, on balance, provide, at the moment, probably the most effective way of dealing with scale. Can I say, though, that, if we were really pushed on this point, we would say that the original new towns route remains the most powerful way of delivering change. It is a terrible shame that it became discredited in many people's minds because it was considered to be central imposition. Even as a trainee planner, I was taught it was central imposition, and it was only when we did the research that we discovered that, in the Milton Keynes case, it was asked for by Buckinghamshire County Council after much deliberation. If you can take away this notion that they were centrally imposed, the idea that Government and local authority work together through designation, and then you have this powerful instrument of delivery, does seem to us to provide a really hard-edged solution to many of these problems.

Q202 **Mr Prisk:** I am more concerned with the ability of that organisation to ensure that the developers involved within the curtilage of whatever development is proposed have leverage over them. In the absence of CPO powers, it seems to me that the danger is that there is just a talking shop.

Hugh Ellis: We will send you a note about that, because my understanding is a little bit different about where these new measures end up, and it would be good for us to clarify what we think about that.

Q203 **Chair:** Would it be possible to use the approach of the new towns in a micro way to extending existing settlements or even significant developments within existing settlements?

Hugh Ellis: Yes, it would. The development corporations in the north of England—the dual corporations in Newton Aycliffe and Peterlee—were not joined but had the same development corporations, and there was a lot of flexibility there. At one end, you have those with the big place-making objective. There is also the lesson of the American model of community development corporations, which are on a street-neighbourhood level. The general principle of having these powerful bodies can work in all sorts of contexts, but the core issue, of course, is that they have to have powerful delivery powers—compulsory purchase above all, probably—in driving change. It is not that they need to use those powers but they have to have the threat of them.

There is one very important point about positive and negative planning. The 1947 system, much criticised, was not designed to be used on its own but was designed to be used with the New Towns Act to deal with positive planning. Since we have not designated since 1970 or thereabouts, people ask, "Why is planning so negative?" It is because we



are not using the very instrument that was specifically designed for positive change. What we know about them now could mean that they could be extremely powerful and positive.

Q204 Helen Hayes: I would like to turn to the question of international comparisons. This Committee is looking at international examples of land value capture, particularly in the Netherlands and Germany. TCPA's evidence highlighted difficulties in transposing international approaches into the discretionary English planning system. How should we address these problems in making our recommendations?

Hugh Ellis: As you are all aware, European systems are based on different constitutional arrangements and zonal planning systems. Our system is discretionary. To cut to the chase, an awful lot of issues in English planning would unlock if we had a genuinely plan-led system—not just community certainty but issues around land tax as well. That is really the key lesson. Certainly, our view now is that strengthening the status of the development plan could be a very powerful way of dealing with this. After all, local authorities still have compulsory purchase powers for comprehensive redevelopment of areas they designate in their development plans, but we need to get a stronger sense of those local authorities and their powers.

It is interesting, when you draw a line right across Europe, that some of the most successful land value capture models are all accompanied by powerful public sector bodies that act as the master developer. They work in concert with the private sector, which delivers most of the development, but you have that oversight from a master developer. The Dutch, Austrian, German and Danish models all, to some degree, work on that basis. However, we just do not have planning instruments at the local level that are strong enough to match the power that a Dutch development plan has.

Dr Richardson: In terms of infrastructure, we have looked around the world to see whether there are really good examples to learn from. There are interesting examples but not things that one can just pick up and transpose, partly for the reasons that my colleague just gave. The system is very different in other countries and makes it very hard to read across. For example, Hong Kong is often pointed to as a good example of using land value uplift to finance infrastructure; essentially, however, the state owns all the land in the first place, so you start in a very different position there. The experience, I am afraid, that we have found is that it is interesting to see what other countries have tried but there is nothing that you can just pick up and ask, "Why do we not do that here?"

Ian Fletcher: I am always cautious of importing regimes from other countries. You often need to do that lock, stock and barrel. There are benefits to the same old system in terms of giving very clear signals about land values. The key question for the Committee is the extent to which, through a plan-led system, you can get close to a zonal system that you would find in other countries.



Q205 **Helen Hayes:** Do you agree with the evidence that we heard last week that there are cultural barriers in England that do not exist on the continent and that make it harder to accept those types of interventions in this country, or is it more simply a question of policy and regulation?

Hugh Ellis: It is a question of policy and regulation. After all, Europe learned tremendously from our new towns programme; in fact, many of the models in the Netherlands are based on the British new towns experience. The difficulty we have had is just the point that Peter Hall made so eloquently: we just cannot get a consensus about this issue and about what should be a fair balance between the uplift in development values and community benefit, and what landowners and developers see as a proper return for their investment. The prize of reaching consensus on that would be enormous for communities, but there is no cultural issue at heart here. There is a failure to grasp, in policy terms and in law, effective measures for that fair deal to be struck.

Ian Fletcher: I do not know if it is a cultural issue but there is, for lack of better words, a British sense of fair play in terms of ensuring that landholders are properly compensated for their land. The smaller you get in terms of scale, the more local politics play out on that, which is why I am supportive of using these mechanisms in particular circumstances of new towns but not on individual developments.

Chair: Thank you all for coming to give evidence to the Committee this afternoon.

Examination of witnesses

Witnesses: Barry Denyer-Green, Stephen Ashworth and Vicky Fowler.

Q206 **Chair:** Thank you very much for joining us this afternoon. Welcome to the Committee. Could you just say who you are and the organisation you represent?

Vicky Fowler: I am Vicky Fowler. I am a partner and planning solicitor at Gowling WLG, where I have the planning and compulsory purchase practice. I have been practising in planning law for about 20 years. I should also say that I am currently chair of the Compulsory Purchase Association, which has made a separate representation to you. I appreciate that, in time, you may want to hear from them but I am also able to answer questions on that particular aspect.

Stephen Ashworth: I am Stephen Ashworth. I am a partner in the planning team at Dentons, a solicitor. I made the representations that you will have seen in a personal capacity. I am sure that there are a number of my fellow partners who would not agree with a great deal of what I say.



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Barry Denyer-Green: I am Barry Denyer-Green, a barrister in private practice. I am not aware that I am representing anybody here, other than the fact that I have been engaged in compulsory purchase and compensation for very nearly 55 years.

Chair: Thank you all for joining us.

Q207 **Matt Western:** Thank you for coming in. I wanted to talk about viability assessments and the recent case with Parkhurst Road in Islington. How significant a decision was that, Ms Fowler?

Vicky Fowler: I cannot say I am familiar with the decision, sorry. Others are more familiar.

Q208 **Matt Western:** Are any of you familiar with Islington Council versus a particular developer?

Barry Denyer-Green: I am sorry; the acoustics in this room are utterly appalling.

Q209 **Matt Western:** They are not brilliant for a relatively new building. I was just asking you if you had a view on the impact of the recent decision that Mr Justice Holgate arrived at on Islington Council versus a particular developer—Parkhurst Road Limited. Are you familiar with that?

Barry Denyer-Green: No, I am not familiar with the details.

Stephen Ashworth: I am afraid that I am. It is a wonderful decision, in three respects. The first is that it sends out a very clear message to developers that, if you overpay for the site, you should not expect to get a relief from proper development plan policies on that account and that account alone.

The second is that the addendum that David Holgate wrote to the judgment makes it quite clear that there is a mismatch between the way in which the RICS advised the property should be valued and the way in which Islington and the Mayor's SPGs advised that you should value property, and that they both need to get their act together to clarify that, because it does not serve anybody's purpose.

The third point is that he nails the issue that has been a problem in valuation circles for a long time: that most people buy sites on the assumption that they are going to get a waiver of planning against proper planning policy. As a consequence of that, if you are looking at comparable values when you are doing the viability exercise, there is a degree of circularity to that because they do not reflect the full application of development plan policies. That is wrong, and they should, and he kills that.

Q210 **Matt Western:** Thank you. You think, then, that this could be quite significant.

Stephen Ashworth: It is only a reminder of the obvious, but it is very helpful.



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Q211 **Matt Western:** It is very helpful. Thank you. Just looking at the draft proposals for the reforms of the NPPF, do you think this is going to see greater transparency and perhaps an increased commitment on the part of developers to meet such obligations as I was just alluding to and Mr Ashworth was describing in the case of that example?

Vicky Fowler: Yes, I do. Certainly the idea of viability assessments being transparent has to be positive. I have to say that we at Gowling WLG act for eight of the 10 housebuilders, and I do not recognise the comments of Stephen in terms of housebuilders gaming or looking to, effectively, negotiate away 106 obligations. The reality with large housebuilders is that they want to see the doctors' surgeries and schools, et cetera, as much as the local authority in terms of making that new development marketable.

Other examples are appeal decisions. Putting aside the Parkhurst decision, there have been inspector decisions where, effectively, if an application is not providing for an amount of affordable housing, based on viability grounds, the Inspector has said, "This application is clearly premature. You need to wait until you can afford the full level of affordable housing", on the basis that, when you are looking at planning, you are weighing the harm and the benefits. If you cannot mitigate your impact or you cannot deliver policy requirements in terms of affordable housing, you have to do that balancing exercise: do the benefits outweigh the harm? In certain appeal cases, because the local authority is close to the five-year land supply, the Inspector said, "No, sorry; the benefits do not outweigh the harm. Come back when you can afford the affordable housing".

Q212 **Matt Western:** There have been examples, then, where they have been instructed to wait until they can make it stack up to deliver affordable housing.

Vicky Fowler: Yes, there have.

Q213 **Matt Western:** Can you give me an example?

Vicky Fowler: I cannot give you a name but I am happy to come back and put that in writing.

Matt Western: Thank you very much.

Barry Denyer-Green: It is not a topic that I can assist on, sir.

Stephen Ashworth: In answer to your direct question, the changes in the NPPF and the NPPG that effectively make viability assessments open to public scrutiny have to be welcomed. We have to remember that a viability exercise should be necessary only if you are not meeting development plan policy. If you are meeting development plan policy, viability should not be an issue. If you are promoting a development and looking for an excuse or a reason not to meet that policy, absolutely that should be in the public domain and be capable of being tested by those



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who are going to be affected. The core of what underlies the shift in the Government's attitude is very much to be welcomed.

The more important element that is changing is the emphasis on making sure that development plan policies very clearly set out public expectations. If they do that and they do so in a clear way and do not build in caveats, that gets priced into the plans. That carries on an exercise of right-planning land, which is what we all want to be securing. If you do that, you will address a great deal of Mr Ellis's issues. Remember that hope value is fragile. If you adopt a local plan policy that says it is going to be 40% affordable housing and the public realm has to be world-class, then hope value withers under the heat of that policy.

Q214 Matt Western: Perhaps what you are saying is that it would be a good thing to have more established and more determined upfront in the local plan. Do you think this is going to go far enough, though, in the way that the draft is written, or could the changes be more fundamental?

Vicky Fowler: It strikes the right balance in terms of what is required. Viability has to be important at the end of the day. If the obligations are too onerous, you will end up with the developments not coming forward. Of course, you do have sites where there are abnormal or particular clean-up costs in terms of contamination, so there does have to be some flex. I do agree with Stephen, however, in terms of the idea of being firmer on what is required and what is expected.

Q215 Matt Western: Because of the site specifics, as you say, there could be contaminated land. If the authority was determining this upfront and saying, "We believe this land should come into play", for example, would there not be a way of assuring that at the beginning of the process, recognising what land could then be appropriate? That is relevant to the master plan, for argument's sake, is it not?

Vicky Fowler: It could be but, in terms of the allocation, you do not always necessarily know the abnormalities. You know whether it is brownfield or greenfield and, in terms of the hidden costs, you have a good idea. The other thing that is being proposed or suggested is clarity around further viability appraisals. Effectively—and this is very much what the Mayor is doing—if there is a delay in bringing forward that planning permission and, ultimately, land values are going up, they are captured. If there has not been a substantial implementation in London within two years, the idea is that that viability appraisal is relooked at and there may be more certainty or values have gone up. There is certainly the suggestion around the reviews, which again is helpful.

Stephen Ashworth: In broad terms, you could do quite a lot more, and local authorities should probably be encouraged to do more at the local-plan level. It is a bit of a myth that development viability at a plan level is somehow difficult. We have an enormous number of CIL charging schedules in place that have gone through precisely that exercise. We will have had decades of experience going through affordable housing



viability exercises as part of the plan-making process, without anybody having a great deal of complaint about the way in which they have worked. It is a practical exercise.

If you are looking at normal typologies of sites or normal land uses, doing a liability exercise on those is relatively simple. If you are looking at large-scale sites, it is a much more difficult exercise. However, for local authorities promoting, as part of its local plan, a large-scale site, it ought to know about it and it ought to have done sufficient work ahead of allocating it in order to understand whether it is contaminated or whether it has significant infrastructure costs. If it has not done that work, it should not be promoting it.

Q216 Matt Western: Summing up, is it fair to say that you believe that a new approach, where you are looking at a broader local plan by a local authority, and by setting very clear, determined objectives about, say, the infrastructure or other commitments such as social or affordable housing, would improve the process and maybe even speed it up, while ensuring that there is less chance of developers avoiding their responsibilities and obligations?

Vicky Fowler: Yes, that is fair. What has been happening in London in terms of the Mayor's affordable housing and the idea that, if you come in at 35%, you will not need to do a viability assessment has been very positive and it is delivering. I do support that.

Stephen Ashworth: I agree, perhaps with two caveats. One is that, remembering almost every local plan exercise, the local planning authority is working alongside developers and landowners, so it is not just a local authority-initiated process. There is a partnership that allows it to be an informed process and that starts to make sure that you do not get any seepage later on during the application.

The second part is that your language was about developers avoiding obligations. The key is not to target developers; the key is to make sure that you have absolutely clear and consistent policies so that landowners and their agents understand the price of a permission, because all of these costs should be on the landowners. Developers are simply midwives.

Q217 Matt Western: Mr Denyer-Green?

Barry Denyer-Green: I do not really have anything to say. It is a little bit out of my field of expertise. I am really on compulsory-purchase compensation.

Q218 Matt Western: I like that last example of developers being midwives. It was very neatly put. Do you think this new approach will raise more revenue, leading to more affordable housing, and speed up delivery? Is that a fair assumption?



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Vicky Fowler: Yes, and certainly that is happening in the London examples. I suppose another London example is Westminster, where the new administration came in and said, "It is 35% affordable and that is it. If you are not offering 35%, you will just get refused". The difficulty is that, ultimately, the sites that have been acquired under the assumption that that would be negotiated away just will not come forward for some time until viability can stack up, effectively.

Q219 **Matt Western:** Do you think local authorities or the public sector should be leading by example in this case? You are less familiar with the Parkhurst case but it was owned by the MoD, and you will be aware of the whole public estate agenda of 2011-12 or whenever it was. Should they be leading by example?

Vicky Fowler: Yes, I believe they should.

Stephen Ashworth: There is one exception to that. The Mayor has adopted quite an aggressive approach in relation to affordable housing, and this requires public sector land to provide a higher percentage of affordable housing than private sector land. I had never understood the logic of that. We ought to be looking at building mixed and balanced communities, and I have never been clear why something that is being built on public sector property should be more mixed or a different balance than something that is built on land that was previously private sector. The Mayor might be able to justify that but I have never seen any real justification for it.

Q220 **Matt Western:** What is the figure, out of interest?

Stephen Ashworth: 50%.

Matt Western: What is that versus?

Stephen Ashworth: 35%.

Vicky Fowler: It can be less but you would have to submit a viability assessment if it is not at 50%. Likewise on employment land, the idea is that if you are getting employment land released for residential, it should be 50% on the basis that you should not pay less for the land because it is industrial rather than residential.

Q221 **Mary Robinson:** I have a small follow-up, Mr Ashworth. You were speaking about hope value. You seemed to indicate that we would not be having any of these problems or issues if councils were strong enough and demanding enough to stick to the targets that they set and ensure that the quality of the housing was up to the standard that they set as well. Is it through slippage with councils that is leading to these issues?

Stephen Ashworth: You need to take it back one stage. A local planning authority can afford to be firm if it has development plan policies in place that provide a stronger justification for a decision to refuse a scheme that is not of an adequate quality of development, that does not provide an appropriate public realm or that does not provide the



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affordable housing. However, if it has development plan policies in place that very clearly signal that those are its requirements, then it should be able to expect the Secretary of State's support on appeal and it should be able to have a robust debate with a developer or landowner about what is going to be provided, and it ought to win that argument.

To date, we have suffered considerably from local plan policies that have been hedged and caveated, and the Department needs to take some responsibility for that because they used to go around saying, "You ought to add qualifying wording into planning policies. You will normally have 35% affordable housing or you will have public realm subject to viability". That should be excised. There is no place for that. Particularly if you are moving forward with a plan policy that is properly viability-tested, there is no need for that sort of qualifying wording because the moment you put that in, you offer the opportunity for debate and, if you have that sort of debate, some local authorities will, on a number of occasions, be persuaded to lower their standards in order to be able to grant a consent and see some development. In practice, I suspect they could say no, if the local plan policy supports them, and still get the development.

Q222 Kevin Hollinrake: Just touching on that point, in the draft NPPF, it mentions at paragraphs 34 and 58 that there are some exemptions to plan-led viability assessments, particularly in 58, which says, "Where proposals for development accord with all the relevant policies in an up-to-date development plan, no viability assessment should be required to accompany the application. Where a viability assessment is needed..." Therefore, it does open the possibility that a site-specific viability assessment is then allowed, which might then lead to a gaming of the system.

Vicky Fowler: My reading of that was more that it harks back to the Mayor of London's model, where, effectively, if you are policy-compliant, you should not need a viability assessment. The whole point around that is to make the planning process faster. Where you have viability assessments, you have great debates and great delay. I do not have the paragraph in front of me. I think Stephen has.

Stephen Ashworth: The wording could be improved. It should say quite clearly that it will only be in exceptional circumstances that that sort of viability assessment will be required. As has been said before, there will be occasions where circumstances have changed and you will discover something on a site that imposes a cost that you had not anticipated. However, that should be the exception rather than the rule.

Q223 Kevin Hollinrake: That is interesting. Touching on your point, Ms Fowler, in terms of your clients not trying to game the system, I am sure that that is the case but we have heard of a case today, from Mr Weston, with the Parkhurst Road Limited developers, as well as in my constituency, where we had this situation. We know it exists and that it happens. You mentioned that abnormals might be a reason why you would need a further viability assessment but, as Mr Ashworth said,



should that not be considered at the point in time when the developer agrees to purchase that site? They have already done investigations to look at the potential consequences, the point being the landowner should reduce their price to compensate for the cost of those abnormals.

Vicky Fowler: Yes, that is fair. I am just trying to think in terms of other reasons why—

Q224 **Kevin Hollinrake:** Okay, but the principle is agreed.

Vicky Fowler: The principle is agreed, yes.

Q225 **Kevin Hollinrake:** Let us talk about the famous Land Compensation Act 1961. Perhaps, Mr Denyer-Green, this is an area of your specialism. Should we not simply get rid of hope value and then the state should be able to purchase land at existing use? Would that not simplify all these problems?

Barry Denyer-Green: I can give an answer as a lawyer, not as a politician. As a lawyer, we have to consider the possible application of the European Convention on Human Rights. The principal article that one is concerned with raises two tests: public interest and proportionality between the individual and the public interest. If one is going to pay less compensation, less than the open market value—and the underlying premise of the Land Compensation Act is open market value or financial equivalency to what is taken—and if one is going to have some basis that excludes hope value and, therefore, not pay open market value, one must bear in mind that the whole premise of the 1961 Act is to disregard the scheme of the acquiring authority and to apply a set of rules by which the expropriatee is compensated on the basis of what he would otherwise have in terms of financial equivalency, open market value. That is what one is looking at in getting rid of hope value. If one gets rid of hope value, then one has to test it against the European convention and the two tests I have just identified: public interest and proportionality.

Now, of course, public interest can be served by paying less than financial equivalency, and I can give you two examples where Parliament has enacted legislation that does just that. First, the Leasehold Reform Act 1967, under which tenants of long leases of houses can, in effect, expropriate the freehold. There are two different bases of compensation: one under which the tenant pays only for the value of the land and not the house, and the other, under which, for higher-value houses, the tenant pays for the house but on a fairly restricted formula basis. Under both bases, the tenant expropriates the freehold interest without paying open market value. That has been tested in a case before the European Court of Human Rights and that was found to be convention-proof, because there was a public interest of social position of tenants who had possibly—they or their predecessors—paid for the house and at the end of the tenancy would lose the house and also, in certain parts of the country, economic and social consequences in not having such a policy.



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The reason I raise that as an example is that it shows the degree of public interest that has to justify departure from financial equivalency or open market value.

I can give you a second example, and that arises under the Planning (Listed Buildings and Conservation Areas) Act 1990, where if the owner of a listed building allows it to deteriorate in the hope of encouraging the prospect of demolishing it and redeveloping it, in those circumstances the Secretary of State can, in any compulsory purchase of that building, direct that the minimum compensation shall be paid and that minimum compensation does disregard the hope value of being able to develop that building. Again, one can see the public policy justification for that, in that it discourages the ill of allowing listed buildings to fall into dereliction.

The reason I give those examples is that, although they are not directly compulsory purchase, they nonetheless show the degree of public interest justification that you would have to have. Now, applying that to removing hope value, you have two levels of consideration. Much may depend on the formulation and whether it is simply dropping the statutory planning assumptions or whether it goes further and provides that existing-use value, not market value, should be payable. The two are quite different. The more, in general terms, there is a difference between market value and hope value—the greater disparity, in other words, the greater loss to the expropriatee—the more you have to justify a good public interest reason why you are not paying financial equivalency. That arises in terms of the compatibility of the legislation itself with the convention, but it also applies to an individual case, because an individual may have bought the property at a price that reflects hope value. Then, if the property is acquired and he gets less than he paid for it, on that basis, at that level, again, the treaty would be engaged and the question would arise as to whether it was compatible.

The answer is that it depends, but departing from financial equivalency could be justified if there were strong public interest reasons for so doing.

Q226 Kevin Hollinrake: They have not been proven in court yet on that basis. You mentioned the European Court of Human Rights. Other European nations do operate this kind of policy—Germany and the Netherlands, for example—where they do buy land at existing-use value.

Barry Denyer-Green: That is not my understanding of the legislation, or rather the application of their legislation. As I understand it, the more usual position is they buy land before value is attributed to hope. That is certainly the position in relation to the Netherlands, and I believe it may be the position in relation to Germany.

Q227 Kevin Hollinrake: Is there ever a situation where hope does not exist?

Vicky Fowler: The classic example would be in terms of some of the new settlements. Effectively, you are a greenfield site, so you are not looking



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at an urban extension; you have a greenfield site that may not be sustainable. It is a bit like the new town example. Effectively, a parcel of land on there is likely to be close to existing-use value, because the chances of that greenfield site in the middle of nowhere coming forward for residential is probably pretty slim. That would be an example of close to existing-use value.

That is why I disagree that the new towns designation or use of new towns does not work in terms of capturing land value uplift, et cetera, because without that new town designation, in some of those areas that land just would not have come forward for development. You would not get planning support for it.

Stephen Ashworth: Can I challenge you on the basis of the question? I do not think that you need to change the legislation in order to achieve a great deal of what certainly Mr Ellis has been talking about. If you use planning policy properly, then you can drive down land value to such an extent that there is precious little hope value left. You can drive it down towards, effectively, the margins of existing use plus and, if you do that, then why bother with any little bit of hope value that is left? Allow it to go wherever it will.

Q228 **Kevin Hollinrake:** Drive it down by what mechanism?

Stephen Ashworth: By using planning policy and if you have clear and consistent planning policies, you can do that. There should be a far more inventive use of CIL for those purposes. Look at what Wokingham has done, for example, in its urban extensions and new settlements. It has a CIL rate of £350 per square metre for properties, and that works; it drives down land prices. As the new communities come on board, one of the things that they ought to be looking at is, in some cases, there will be reluctant landowners within them who have agents whispering in their ears, saying, "Your land is worth a couple of hundred thousand an acre". Impose a CIL around that area of new town, do it at £500 a square foot and you know what? The land value is going to be down pretty close to agricultural values. You have the capacity, as planning authority and charging authority, to change the market value, so why not do it locally instead of waiting for Parliament to change the compensation grid?

Q229 **Kevin Hollinrake:** One of the developers made this point very clearly last week, and the CLA made it very clear last week, that if you do that in a punitive way, landowners just do not come forward and will not sell, if those levels of CIL are too high.

Stephen Ashworth: The answer to that is twofold. The first is that is what compulsory purchase powers are there to achieve and the joy of it is that if you have a clear local plan policy framework and a clear CIL framework, then those get taken into account when you are determining CPO compensation. That is the core answer.

Q230 **Kevin Hollinrake:** If I understand it and I will try to paraphrase



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everything that has been said, we would have a problem trying to get rid of hope value on sites where other sites have had hope, but in completely remote locations that is certainly possible—in new towns, for example, and that seems to be where the German situation is. In terms of driving down land in those more populous areas, you might say, if you had a clear set of rules for 106 and CIL, backed up by CPO powers where those were not delivered, for example, that would square the circle. Is that your reading of it?

Stephen Ashworth: Yes.

Q231 **Chair:** Do you disagree?

Barry Denyer-Green: I do not agree in the sense that if you impose so many additional costs, there will come a point where the farming owner of land will say, “Well, why should I bother? I will carry on farming”.

Q232 **Kevin Hollinrake:** But the CPO powers could go along and say, “We are buying it anyway”.

Barry Denyer-Green: Then you would have to use the CPO powers. Can I give you a very current, contemporary example of this? Parliament enacted the Digital Economy Act last year. Under it there is an Electronic Communications Code that sets the consideration for the payment for sites on rooftops and farmers’ fields. That has been altered from an essentially market negotiation basis where the two parties would simply agree a price, to a basis that, on one interpretation in the code, means that a site on top of a building or in the corner of a field may only be worth £50. As a result of that, the whole market has collapsed. Nothing has happened since the new code came in.

Q233 **Kevin Hollinrake:** That would mean that the CPO powers—

Barry Denyer-Green: They would have to use them.

Q234 **Kevin Hollinrake:** Are you saying they will not, or do we need to make it easier for them to use them? What do we need to do?

Barry Denyer-Green: Using the CPO powers will be expensive and will take up time, and of course there is uncertainty as to how the determination of the consideration might work out. But yes, you would have to use CPO powers. That does not seem to be very sensible, frankly.

Q235 **Kevin Hollinrake:** Did you say that it does seem sensible?

Barry Denyer-Green: It does not seem to be very sensible: to have to achieve developments throughout the country only through the use of CPO powers.

Q236 **Kevin Hollinrake:** The threat itself might help.

Barry Denyer-Green: I doubt it, not for £50.

Q237 **Kevin Hollinrake:** No, I am not talking about £50. What we are talking



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about here is fair policies where you do not drive the value down to nothing; you just drive it down to a point where you are getting a fair share for the community and a fair share for the landowner. That is what we are talking about. On that basis, using CPO is possible.

Barry Denyer-Green: Yes, but you would have to increase the use quite considerably, and the threat of the use quite considerably.

Q238 **Kevin Hollinrake:** Ms Fowler, you mentioned before in some of your comments that we need to get more firm in terms of making sure of the delivery of 106 and CIL, for example. Is that what you mean: using CPO as a backup for the local policies?

Vicky Fowler: Yes, it can do, although obviously you hope you do not have to go there. The thing is, if the 106 requirements are properly tested, they have gone through the local plan and have been viability-tested, then you should not need to. As I said, the reality is those sites will not come forward. Quite often, we are talking about quite small sites that deliver housing. It is easy on your big settlements or your new settlements, but for everyday sites, I do not think that is achievable.

Q239 **Kevin Hollinrake:** You have mentioned a few times that you have to wait until that development is viable. We are in a flatter house price growth market now, so the escalation in land prices and house prices is not going to be such a feature in the future, perhaps. You might have to wait some years and that is not what we want to do. We want to deliver the houses, so simply waiting until that becomes viable is not an option. At that point, is it not right that you would step in and say, "I am sorry; develop or we CPO"?

Vicky Fowler: Yes, so certainly CPO could be used.

Q240 **Chair:** Apologies; some members of the Committee have had to go. Sometimes people in politics are slightly more important than others and their aspirations have to be met, do they not? That is nothing to do with the important evidence you are giving to us today, I assure you.

To come back to these issues, is it really that simple, then, that all we have to do is use existing powers and get a clear local plan? If that is all you have to do, why is it not already being done? Why are we arguing about new methods and new mechanisms?

Stephen Ashworth: I do not think that we really need to be. In part, it is because, at a national and local level, planning for the past decade has been mocked, derided and robbed of courage and that is the responsibility of a huge number of people. If you do that regularly to the people who are meant to be delivering a system that could, in principle, deliver what you outlined, then you take away their capacity and self-belief to say, "No, this design is not good enough. That level of affordable housing is not good enough". There has been a pattern, under Governments of both persuasions, to grant too much on appeal and to grant consents on appeal for schemes that, quite frankly, should not have



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been granted consent, because there has been a need for a signal for new housing or because there has been a need to fund a bit of infrastructure kit and that has outweighed quite obvious problems with the consent. If we change the environment within which planning operates, then you have a system that can work, but that means that instead of bad-mouthing planners, at a national government level we have to enthuse and encourage them. At local government level, we have to treat it much less as a discretionary service but one that is core to delivering the quality of life of the people who live in the communities that they serve. That is not the case at the moment.

Q241 Chair: We still have the new towns legislation in place. You are almost saying that would not be needed if we adopted the approach that you are taking here.

Stephen Ashworth: No, that is not quite fair, because new towns are a creature of a very different scale. Part of the benefit of the new towns was that it was an organisation whose sole purpose was to deliver a new town and had the powers to do anything that was expedient in order to do so. That made it all-powerful. I am afraid Mr Prisk was wrong earlier. The locally led version has CPO powers and, like all CPO powers, it is subject to confirmation, quite rightly, by the Secretary of State, like the old new towns, and they will have a development order power subject to confirmation by their sponsoring local authorities. They will have the same bag of tricks as the old new towns and will be a powerful mechanism. It is the creation of an organisation whose purpose is to deliver a community, which meets the sort of standards that the TCP were talking about in terms of design quality and stewardship, that makes it work, and that is not really the subject matter of a local authority.

Q242 Chair: It is a matter of scale.

Stephen Ashworth: Yes.

Q243 Chair: To come back to a point about human rights legislation, until 1961 new towns legislation and the powers new towns had allowed purchase of land without hope value on a large scale. That was surely okay with the Convention on Human Rights, was it not?

Barry Denyer-Green: It is not quite as simple as that.

Chair: Right. I am a politician; you are a lawyer. That is probably the difference.

Barry Denyer-Green: The first five or six towns were set up and the land was acquired under legislation under which compulsory purchase compensation was existing-use value, with very marginal additional assumptions of planning permission for enlargements of buildings by a small amount. Essentially, it was existing-use value. That was the result of the Town and Country Planning Act 1947 and the consequence of nationalising development value. Consistent with that was the logic that,



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if development value is nationalised, you do not pay it on a compulsory acquisition, so it was existing-use value until 1959.

Thereafter, for the towns that were then set up, hope value planning assumptions had then come in, but bear in mind, as Ms Fowler mentioned, new towns were generally located in greenfield areas and where, in the absence of the scheme of a new town, hope value would have been probably fairly limited. In terms of the compensation that had to be paid, although under the legal rules you had to assume planning permission for building houses in the new town, you had to disregard the scheme of the new town. You had to disregard the roads, the schools, the infrastructure, the services and everything, which meant, in fact, they only paid existing-use value, agricultural value or possibly just a little bit more, but really nothing more at all. That was the background.

Q244 **Chair:** Was there not a related case in Milton Keynes, though, where a landowner claimed that there could have been other development happening if the new town had not and, therefore, had an element of hope value reinstated?

Barry Denyer-Green: Yes. He only got that if he was able to show that, absent the new town, he could have got planning permission for something. That is correct.

Q245 **Chair:** Going back to the 1959 and earlier new towns, effectively, legislation did not allow hope value and it was consistent with the European Convention on Human Rights, was it not?

Barry Denyer-Green: It probably was compatible for this reason: that the Town and Country Planning Act 1947 had nationalised development value and had set up a fund to compensate those who had lost it. In that sense, not paying hope value, consistent with the fact that development values no longer belonged to landowners but had been nationalised and a compensation fund had been set up to compensate them for the loss of it, although it was never paid out, would have been the answer. In other words, there would have been a public interest justifying the level of compensation.

Q246 **Chair:** Thank you for that. That was helpful. There is a difference in the framework, which is helpful.

Very quickly, just asking questions about the history of all this issue of trying to capture increases in land value, there have been quite a few national attempts at it, in the 1960s and 1970s, and then even the planning gain supplement that never got further than an idea and a discussion. Why have they all failed? Just very briefly, if there is an explanation.

Barry Denyer-Green: Lack of political consensus meant that legislation that came in from time to time did not last very long with a change of political power. Also, the Community Land Act and development land



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tax, for example, had 80% tax payable and the market just froze; nothing happened. Land became scarce and nothing happened at all.

Q247 **Chair:** Of course, landowners knew that a change of Government would change it.

Barry Denyer-Green: Exactly. That is my experience of why the various schemes did not work, because there just was not political consensus and the market waited until there was a change of Government.

Stephen Ashworth: The only element I would add to that is you can see that more recently in terms of what has happened with CIL. CIL was progressing quite well and then the Government announced a review and people stopped promoting it. The thought that it might not last any longer meant we had an 18-month period when CIL lost its way a bit. That is a shame, because had more promoted it we would have been able to raise more money to be able to fund the infrastructure that is needed.

Q248 **Helen Hayes:** Can I ask whether you think there are lessons that can be learned for the UK from international comparisons, or are the UK planning system and the legislation that underpins it just too different for us to be able to do that?

Vicky Fowler: The main thing with international comparisons—certainly what I get out of those—is about that really early intervention. As we have touched on, in the Netherlands, there is the fact that effectively the public authorities take control and get the land at a very early stage, before the land increases through policy changes, et cetera. One of the frustrations I see, particularly around some of the large infrastructure schemes, for example, like HS2 and, in some respects, in the early days with the Olympics, was the fact that there was not the finance or the will to acquire land early on. Ultimately, they were not given the money by Treasury to do those deals early on.

Stephen Ashworth: Absolutely there are lessons to be learned. The GLA raised the capital gains report when they were here last week, and a number of the examples in there are certainly worth looking at. Some of the lessons that came out of that were not so much about the planning or value capture mechanisms that arise, but about the fact that you had a local authority public sector that was funded and resourced and was quite muscular. There was a question in the last session about whether there is a cultural issue that needs to be addressed. If you go and talk to some of the organisations—certainly the ones that are mentioned there—yes, there is, and the culture is about empowering our lower-level public authorities to do more work.

I would, though, raise a word of caution. I spent a year and a bit out in the States looking at the way in which they captured value or sought to extract money to pay for infrastructure. One of the things I came back with is some work and experience about business improvement districts,



but trying to build that into the UK system—it has now worked and we have 200 BIDs—took a long time. There is a fundamentally different basis of property tax in the States and here. It looked a great model and a simple model out in the States, but when you bring it across here and impose it, it does not work. What happens? Look at Leicester Square. The tenants ended up paying a whacking BID bill. They now have power to have a property owner levy, and what has happened? The property owner levy is now asking the tenants to pay the property owner BID levy and the tenant BID levy. We did not translate it properly, so be very careful; it is not a pick and mix, take the lessons from abroad and adopt them easily here. It is a very different context.

Barry Denyer-Green: Slightly differently, and looking at it entirely from a compulsory purchase compensation angle, yes, we can learn from examples abroad. Many jurisdictions have a compensation basis that is not financial equivalency for what is lost, which is ours; it is compensation for what we are going to do to relocate you. That is very different, in that it is directed to trying to find a solution to the problem caused by compulsory acquisition of a home or a business or whatever. That is where the emphasis is in trying to achieve relocation with something equivalent, rather than pay you a sum that is financially equivalent.

I can give you an example from the Olympics site. I did many of the cases there. Due to the nature of the area, there were lots and lots of tertiary businesses right at the bottom of the economic scale: car breakers and scrap dealers and concrete crushers and so on. By and large, they were simply told to go and very little effort was put into, “How can we relocate your business?” In other jurisdictions, it is, “How can we relocate your business?” that would be the task of the expropriator; it is not here, and that is a pity.

Vicky Fowler: In Germany, for example, they are entitled to be allocated land of equivalent size or value to that that they owned prior. Equally, in Canada, they have the market value of the land damages attributable to disturbance, damages for injurious affection, but also any special difficulties in relocation. Again, on the Olympic Park, where businesses were trying to relocate, they were having to do so at much higher land prices, which presented difficulty, and it would not have presented difficulty had the land been acquired earlier. Ultimately, under our system, if you have to pay more for a property, you are seen as getting some benefit to that. That is fine if you can lend, because when you come to sell it, it will have uplifted in value, but if you cannot, there is quite severe hardship there.

Q249 **Matt Western:** I am just interested in that. You were describing, Mr Denyer-Green, about the relocation of these viable businesses from their sites and that there is no incumbency upon the authority to find them an alternative. Can you give an example of other countries where that works well, and how?



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Barry Denyer-Green: The country that comes to mind immediately is Canada—Ontario—where they have what is called “new for old”. If they compulsorily acquire your house, the task of the expropriator is to find a house to enable you to relocate to. Here that does not happen. The task here is to try to establish the value that we are going to pay you. What you do is up to you.

Matt Western: With HS2, for example, you are just given some money: “Pack your bags”.

Barry Denyer-Green: Yes. I can give you another example. Some years ago, I was concerned with a disused mining village somewhere near Newcastle. The mine had been closed for some time and there were a couple of streets of ex-mining houses, which the coal board had persuaded the miners to buy at a certain point. The mine closed and there was no work—nothing. The place became derelict and they began to exercise powers of compulsory purchase, but the value of those houses was £10,000 or £15,000, and even in that area you could not find a house to replace that which was lost. Again, it is not about how we can relocate you in something equivalent, but about what the value is of what we are going to expropriate from you.

Q250 **Matt Western:** This is a large gap in the NPPF. This is something that has not been explored.

Barry Denyer-Green: Yes.

Q251 **Chair:** I have one final point. Hugh Ellis talked earlier, when we were looking at the transfer of possible models across from other countries, about the zonal planning system that exists in Europe and gives a stronger basis. Mr Ashworth, when you were talking earlier about having a more rigorous local plan with well defined objectives and requirements, is that effectively moving more towards a zonal system that exists in Europe?

Stephen Ashworth: Yes. It is not going the whole way there, because there is another cultural difference. The British discretionary system suits the form of government that we have, and allowing a degree of local decision-making is right. Let us not pretend that a zoning system has no problems. If you go to the States, for example, where zoning is often quite rigorous, changes in zoning become enormous, great litigious battles. One of the permanent secretaries at DCLG, before I went to the States, said, “The thing you have remember about the States is that zoning is chosen because there is an assumption of corruption, so you have to say exactly what can be done, because otherwise the public officials will be corrupted”, whereas here, happily, we do not have that history, so we can have a degree of discretion at a local level. Long may that remain.

Q252 **Chair:** In a way, it is not replicating the zonal system you are looking at; it is moving maybe towards certain elements of it in terms of toughening



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up the requirements and the conditions in the local plan, so everyone knows what they are from the beginning.

Stephen Ashworth: Yes. It is creating a very certain framework against which you can value. Certainty works; it genuinely does.

Chair: Thank you all very much for coming to give evidence to the Committee this afternoon.