GETTING AT THE ROOT: MAKING HOUSING MORE AFFORDABLE BY DEFLATING LAND COSTS DIRECTLY

Draft executive summary, submitted by *A Social Democratic Future* to London Plan Consultation, 2nd March 2018.

Further information on the purpose, aims, and output of *A Social Democratic* Future can be found on its website*: http://www.asocialdemocraticfuture.org/*

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1 Defining the problem

Actual and expected land values, at root, are largely set by the operation of the current planning system interacting with the market failures that currently bedevil land and housing markets.

The current planning system allows landowners to capture some or all of the windfall increase in value attributable to granting of planning permission, which reduces the scope for affordable housing to be provided on the site; in other words, the current system internalises and perpetuates key intrinsic market failure (amongst others) of the current 'broken' housing market, as described in the 2017Housing White Paper (HWP).

The prime minister in its foreword declared that '*I want to fix this broken market so that housing is more affordable and people have the security they need to plan for the future*'. Its introduction then went on to recognise that 'that it may be in the interest of speculators and developers to snap up land for housing and then sit back for a while as prices continue to rise'.

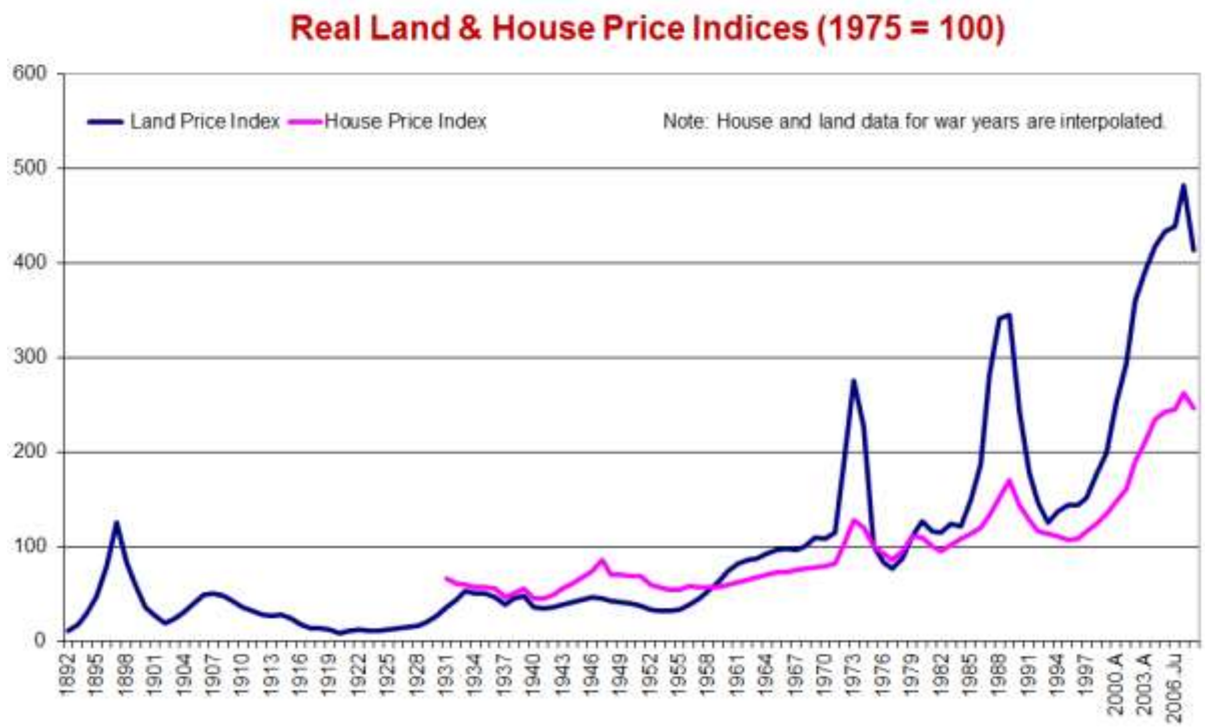
The pathfinding new housing policies contained in particular in H5 *Delivering Affordable Housing policy* and in H6 *Threshold Approach to applications*, requires a supporting package of national reforms underpinned by some measure of cross party overlapping political and technical consensus that go considerably beyond the 2017 HWP.

Sections Two and Three utilise DCLG and commissioned and independent research to review the current operation of the affordable housing obligations – with a particular focus on development viability testing, the cross-subsidy housing model and Community Infrastructure Levy mechanisms that currently represent public attempts to claw back planning gain for community purposes.

The focus of the policy proposals made in this report is the replication of Policy H6 nationally, helped by process of land value capture facilitated and complemented by further reform of the compulsory purchase rules that Section Four sets out.

<u>The root problem: land market failure</u>

Figure 1 below graphically shows that since 1970 estimated land prices, across England, have quadrupled in real terms. During the most recent complete cycle between 1994 and 2010, trough to trough, they more than tripled.



The modern planning system then allows landowners and developers to realize potentially massive unearned windfall gains - economic rent or unearned betterment or *planning gain* – from that secular trend. Five major inter-related consequences have followed.

First, the gap between the value of undeveloped land and its subsequent value when attached with residential planning permission has progressively widened.

Second, landowners and developers have realised increased windfall or planning gain represented by that gap.

Third, the cost of land has tended to account for a rising proportionate share of the development cost of providing new housing: a third up to two thirds of total development costs across higher cost areas, notably London.

Fourth, the business plans of the large housebuilders that now dominate the UK market have been skewed towards land speculation and trading, and away from maximising new home production at a sustainable margin, calibrated to the build and other non-land costs of providing residential developments.

Fifthly, the highest cost areas, mainly in London, residential development will not proceed unless the expected resale value of the houses built on the site are sold at levels that are quite beyond the capacity of even professional high earner dual earner households to purchase; let alone local households with moderate to average incomes: they have been simply priced out of local owner occupation.

The sum result has been increasingly unaffordable house prices, particularly for first time buyers, particularly marked in London, its surrounding hinterland, as well as the more economically buoyant sub-regions of the UK, concentrated in areas south of a line between the Humber and the Severn, excluding some of the south-west.

Land price increases, likewise, have been most marked across the same areas, as *Table 1, Appendix 1*, shows.

The sibling secular trend or counterpart to that explosion in land prices and of resulting deteriorating housing affordability is escalating housing wealth for established homeowners, lucky enough to have bought a house in earlier decades in those same areas. The nexus between house prices and housing wealth is now entrenched as a key parameter of national political economy[1].

As explained in appendix 1, data on land prices is incomplete and imperfect. Land sites are immensely heterogeneous in terms of characteristic, location, and landowner circumstance, while transactions in land possessed with particular size and site attributes are low in frequency.

Compiled land value indexes at either a national or regional level consequently constitute a notional composite of a diverse array of transactions that can be distorted by the particular and atypical transactions that may recorded over any short-term time period. Reported regional averages invariably hide significant differences at sub-regional and local levels.

Average weighted totals of land valued for statistical purposes, as reported in *Appendix 1*, simply, therefore, provide an indicative best available valuation benchmark. The actual value realised for a particular site will depend on its location and connectivity, on individual site circumstances, on the density of its development, and on the planning conditions imposed.

Taking regard of that warning note, the totals that *Table 2, Appendix* 1 records, suggest that - as a rough rule of thumb - indicative land values of a hectare of land attached with residential planning permission across London can range from £6m to more than £35m.

Outside London, average values are recorded, per hectare, between £1m and £6M. Nearly all of England, west of the Severn to the Wash line, apart from the south-west, record hectare values, on average, of less than £1.3m.

What is clear, however, is with the average value of a hectare of agricultural land around 21K, the conversion of greenfield in current agricultural or indeterminate low value use in single ownership and capable of inexpensive integration into existing utility networks, provides scope for landowners to make massive windfall gains on greenfield site development.

Although less striking, the planning gain that can follow the granting of residential planning permission pertaining to industrial land can also be significant, as suggested by *Table 3, Appendix 1*.

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[1] This report is focused on England, and all data reported unless otherwise stated refers to England. References to the national economy, however, refer to the UK.

Of particular relevance to London, vacant brownfield land that can be converted to residential use without the need for abnormal or high remediation or infrastructural costs to be incurred, or for complex land assembly processes to be progressed, can offer considerable potential scope for significant windfall gains to be secured on particular sites.

The respective share of windfall gain captured by the landowner and developer, respectively, will depend upon the precise arrangements agreed between them, as mediated by the particular circumstances of each site and by market conditions.

<u>How land market failure contributes to the current broken housing market</u>
Apart from the landowner and/or the developer extracting planning gain as an unearned economic rent of a scarce asset – the primary land market failure - the developer can still profit by mothballing or staggering the completion of developments to best benefit from expected future house price rises.

They are helped in this by their possession of oligarchic supplier power over the market - a classic feature of imperfect completion, compounded further by information asymmetries between the housebuilder suppliers and the individual buyers of new homes.

The developer to maximise profit will often also seek to persuade the LPA to accept the provision of dwellings on the site in layout and size terms that are most likely to maximise their sale values, rather than to meet local housing needs and requirements, while minimising build costs (and often quality) and affordable housing contributions.

The current developer business model development process also involves a feedback loop that generates further negative land, housing, and macro-economic risk outcomes.

A rising housing market inflates expectations of future dwellings sale values. These expectations will result in developers, wishing to sell into an expected future rising market, further bidding up the price of land that could be developed for residential use in the future[2].

The problem occurs when the inflationary music stops. The balance sheets of heavily-leveraged housebuilders inevitably become exposed to any inevitable downturn. The bust that followed the Great Financial Crash (GFC) proved particularly sharp, with land prices, on average, falling between 40%-60% from their record peak.

Short-term rescue packages to the industry were put in place in the immediate aftermath of the GFC that helped the major housebuilders at least to avoid crystallising capital losses on their landbacks that otherwise would have pushed many into bankruptcy.

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[2] *We must fix it: Delivering reform of the building sector to meet the UK's housing and economic challenges,* Matt Griffith, IPPR, December 2011, provided a pioneering base for much of the analysis here and other policy publications, including the 2017 HWP.

The Help-to-Buy scheme (HTB), operational since April 2013, then helped to bolster levels of housing demand sufficiently for new build activity to recover from the depths of its post-GFC slump, when housebuilding fell to the lowest levels recorded since the second world war.

Generally the major developers have pursued a post-GFC business model strategy, where they seek to extend margins on higher valued developments, targeted often to trading up purchasers able to access capital gains and mortgages, rather than to first time purchasers hamstrung by mortgage access difficulties and record income-price ratios[3].

Developers by preferring margin to volume, of course, are not only acting rationally, but in accordance with at least short-term shareholder interest. Since their near brush with either bankruptcy, or at least a period of very depressed profits and share price values in the 2008-2010 period, the main developers, their management, and their shareholders have enjoyed bonanza returns, whether in the forms of bonuses, share prices and options, and dividends: market outcomes powered by margin, rather than volume increases, unrelated to productivity or quality improvements: clear evidence of market failure or a 'broken housing market' as the Prime Minister herself pithily put it in her foreword to the February 2017 Housing White Paper (HWP).

In that light, one respected financial commentator has estimated that the chairman and chief executive of Berkeley group (which is delivering many urban regeneration projects for London local authorities, including Woodberry Down in Hackney), in total were remunerated £124m in a three-year period, representing an astonishing c20k per dwelling built and sold by the company during the period.

She went on to note that: 'if their incentives were more related to building brilliant houses than to shovelling up the share price, they could have spent 10k on each house without even touching the sides of shareholder returns'[4].

Currently section 106 planning obligations, and the Community Infrastructure Levy (CIL), in effect, still aim to recycle some of the windfall gain that resulting from the grant of planning permission in favour of residential accommodation for the benefit of the wider community. The introduction of the CIL in 2010 was accompanied by the scaling back of planning obligations with their restriction to site-specific mitigation measures and/or to the provision of affordable housing[5]. To these, we turn.

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[3] *The Global Financial Crisis, 10 years on, how the credit crunch transformed the UK housing market*, Savills Research, UK residential,

[4] *From the editor-in-chief*, Moneyweek, 9 September 2017.

[5] Regulation 112 of the 2010 CIL regulations only allows the insertion of a planning obligation If it is (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and, (c)fairly and reasonably related in scale and kind to the development.

2. The affordable planning obligations system

Section 106 of the Town and Country Planning Act (TCPA 1990 as amended in 1991) introduced the concept of planning obligations. Planning obligations provide a mechanism to allow local authorities to partially capture the uplift in development value of land that follows its granting of residential planning permission. As such it provides an alternative to a direct tax on windfall or on planning gain.

It also provides a direct planning measure to enhance and mitigate, respectively, the positive and negative impacts of particular developments on the wider community, in order to make a development acceptable.

Successive governments have attempted to reconcile or integrate these two purposes, as they have evolved, sometimes in a confusing and contradictory manner.

Shortcomings in the official data make it difficult to be definitive about either the contribution to total affordable housing supply made by affordable housing obligations or the precise characteristics of such properties.

The provision of affordable housing related to section 106 certainly became a significant component of total affordable supply, reaching 33,000 dwellings in 2008-2009. This supply source then more than halved to the 15,500 to 17,000 dwelling level by 2014. In 2016-17, c18,200 of the 41,500-oddd affordable dwellings were supplied via the section 106 route[6]

This meant that affordable housing by the early 2000's the section 106 route accounted for up to 60% of total affordable supply although. But a result of scaling back of obligations, dropping to c40% of the 32, 670 total affordable dwellings supplied by 2015-16.

All save 300 of the 18,200 dwellings supplied via section 106 in 2016-17 were provided with nil public grant: the reverse of the position in earlier decades when most affordable dwellings supplied through section 106 agreements were supported by public grant through the centrally-funded Housing Corporation.

This volatility in both the total level and composition of affordable housing provided through affordable housing obligations (section 106 supply route) is a function of changes in the wider economic environment, the grant funding regime, and other public policy changes, including the National Planning Policy Framework (NPPF), and the use of post-GFC development viability testing regime in particular. Section 106 supply has since 2010 been funded increasingly by developer contributions, therefore. Centrally-funded public grant support of section 106 sites was progressively cut back in the post-GFC environment, greatly accelerating a process that was already well-established.

The latest available DCLG evaluation of the planning obligations system indicated that c32,000 were agreed within agreements entered into 2011-12, compared to

[6] DCLG live Table 1000C.

c48,000 during the 2008-09[7]. Both figures reflect units that developers agreed to provide within section 106 agreements, not completions or even starts.

In that light, only a *half* of planning agreements signed between April 2008 and 2011 had been completed by 2014, delivering c21,000 affordable dwellings, suggesting a possible widening disparity between the agreed and actually delivered level of planning obligations, especially outside London. Stalled sites were concentrated in low value areas, with large scale greenfield extensions in medium and low value areas accounting for 71% of all stalled dwellings, but only 15% of sites with many brownfield sites stalled in high value areas[8].

The study also noted relatively low levels of affordable housing appeared to have been provided through section 106 agreements in low and to medium value housing areas, within the overarching post-GFC trend for the level of affordable housing completions provided through section 106 to decline[9].

That housing investment took the brunt of post-GFC fiscal austerity measures ushered-in by the Coalition's 2010 public expenditure review, of course, was a major factor.

Outside London and some other high-cost areas, where by 2013 house prices recovered or exceeded their pre-GFC levels, the development of many large brownfield and greenfield extension sites, if not mothballed, were stalled. Previously agreed section 106 obligations were often cut back, often with the apparent evidential support of the development viability testing - a mechanism that both the Brown and the Coalition governments promoted.

The last major landmark in planning policy and practice was the publication in March 2012 of the National Planning Framework (NPPF)[10]. 44 previous central government policy or guidance documents were replaced and streamlined them into one 65 page document. It remains as the primary source of national planning policy and guidance.

At the heart of the NPPF is a presumption in favour of sustainable development, which it states in paragraph 14 'should be seen as a golden thread running through both plan-making and decision-taking'.

The NPPF accelerated the use of development viability appraisals to assess the impact of affordable housing obligations on the overall commercial viability of particular site developments; and, in particular the relationship of viability to the scope and composition of proposed or previously agreed affordable housing obligations.

That meant, in turn, that high land costs inputted into development viability appraisal models reduced the scale and composition of obligations that such models assessed

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[7] *Section 106 Planning Obligations in England, 2011-12*, University of Reading and Three Dragons, in association with Hives Planning, David Lock Associates and DLA Piper LLP, DCLG, May 2014.

[8] Conclusion, *ibid* .

[9] Para 7.11, *Section 106 Planning Obligations in England, 2011-12.*

[10] *National Planning Policy Framework*, Department of Communities and Local Government, DCLG, March 2012. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf.

were consistent with scheme viability, while the lower actual and expected house prices fed into those models in the wake of the GFC further reduced the assessed viability of many schemes.

Much land for post-2010 development was purchased when land prices exploded during the boom that preceded the GFC. The expectation of continuing rising house prices on the cost of land appears to over-ride any countervailing dampening influence exerted by requirements for sites to include affordable housing.

The lack of certainty and variability of such obligations in terms of the prospect of their required implementation and asymmetric negotiating/information imbalances between developers and councils is likely to have further weakened any deflating influence on land prices.

This proved to be a problem for many London local authorities dependent on a cross-subsidy funding model reliant on a rising housing market to increase the amount of development scheme profits on sales that could then be diverted to fund affordable housing contributions on-or off-site.

That said, most particularly in central London – house prices recovered quickly post-2010, particularly at the higher end of the market. Yet many any high-density multi-storey developments did not include any affordable obligations in the first place, or where they did, at a level well below 35%.

That might not have been a problem if the 35% affordable homes target as a proportion of total supply had been approached at the aggregate rather than site-specific level - as was intended in policy terms - but only 13% of homes given planning permission in 2014/15 were reported to be affordable in London.

That outcome cannot be divorced from the asymmetric and biased application of development viability testing in favour of developers, as the summary of the St. Mary's Residential case study in the next section will demonstrate.

Overall, there is little or no evidence that section 106 has deflated land prices and thus has helped to improve affordability in general, in contrast to allowing in-site officially-defined affordable supply to be provided and maintained in some high cost areas, and to be provided on sites that otherwise could not be used for affordable housing.

The planning obligations process has been increasingly hampered by the asymmetric and imperfect sharing and use of information by negotiating public and private parties. That imbalance takes many forms: in market knowledge, in resources, in incentives, and in clarity of purpose.

The asymmetrical negotiating position/skills of the parties (which are essentially market failures) have been much compounded, but not created, by viability testing, where developers progressing high value schemes with millions of profit at stake, employ extensive and focused consultant support to promote and interpret models that already possess in design an in-built developer/and owner bias, predicated on developer return (profit|) and land price valuation assumptions.

The impact of such shrouded methodological bias is then magnified by 'confused and conflicted' understanding and practice of the appraisal process that developers by reason of their experience, resources, and profit-maximising motivation have been much better-equipped and positioned to exploit.

Crucially, the planning obligations process developed since the nineties as a user-led response to the intrinsic inability of the town and county land use planning system itself to deliver the affordable housing or balanced communities in tenure and social compositional terms. The section 106 planning obligations process is not specifically designed to effectively recycle windfall landowner and development gains into affordable housing and other public purposes.

In short, the planning obligations process as currently administered provides a second-best policy response to a symptom of a wider public policy failure to provide sufficient affordable housing in the areas where it is most needed, in turn, connected to the failures in the land and housing markets identified in this report.

<u>Use of development viability testing within the section 106 process</u>
The commercial viability of a development constitutes a material consideration that LPA's can take account of, when setting, or, in the case of stalled schemes, when reviewing planning obligations.

The NPPF underscored the significance of development viability testing. LPA's were cautioned not to insist on a scale of obligations and policy burdens that might threaten the overall viability of individual scheme developments.

Crucially it also made clear that in order to ensure viability, the costs of any affordable housing obligations requirements, as well as standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, 'provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable'[11].

The end-result of the viability process, as currently applied, hinges on that definition of '*competitive returns'* and its practical application.

The NPPF also advised that where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled[12].

Subsequently issued guidance in 2014 confirmed that affordable housing contributions should not be sought without regard to individual scheme viability, taking regard of the competitive returns to landowner and developer principle[13].

In development viability models, *developer return* or *site land cost* are the key

[11] https://www.gov.uk/guidance/national-planning-policy-framework/plan-making#para173
[12] https://www.gov.uk/guidance/national-planning-policy-framework/decision-taking#para205
[13] https://www.gov.uk/guidance/viability

parameters that determine the result or model output. They are used either as a variable model input into the appraisal or the residual output that it generates.

Where site land cost is used as an input into the model, a residual developer return output is then generated. That output is then compared to a required threshold developer return. This is generally set as standard industry practice at levels at or in excess of 17% of the Gross Development Value (GDV) of the project.

Alternatively, and as has been more usual, where a pre-determined developer return, again generally above 17%, is used as an input into the mode, a residual (notional) land value model output (RLV) is then generated, after the gross development costs of the scheme are subtracted.

Essentially, therefore, in the most common case, RLV (or RDV) = GDV-GDC.

That RLV, generally, must not only be positive for the scheme to be deemed viable, but should *exceed*, in addition, the *benchmark or threshold land value*: essentially the price that is assumed to be sufficient to induce the landowner to sell[14].

Many different metrics, however, have been used to determine benchmark threshold land value, including, its:

- historic or recent purchase value, or on its estimated market value based on comparable site market values;
- existing or current value (EUV);
- alternative use value (AUV), either consented, or for which permission might reasonably be expected to be obtained to put the land for that particular use;
- EUV plus a premium - say 15% to 30%;
- ratio to the scheme's GDV.

The variable use of such myriad assumptions in methodological practice and interpretation by developers, by LPA's, and by members of the planning inspectorate hearing and deciding appeals, has tended to create stakeholder confusion and to indeterminate outcomes[15].

Such methodological lack of clarity can also provide a convenient smokescreen for developers to 'game' the process and to further exploit informational and other asymmetries in their favour. Developers – and the consultant advisers acting on their behalf - will naturally tend to under-estimate the expected scheme GDV. Lowering the expected assessed GDV of a development will, all other things being equal, reduce the RDV model outturn, and even make it negative, and by doing so, reduce or remove the amount of affordable housing obligations the model deems viable.

[14] This was at defined by RICS in 2012, in line with valuation practice, as 'the estimated amount for which the asset should exchange on the valuation date between a willing buyer and a willing seller in arms-length relationship after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion'.

[15] See, *Financial Viability in Appraisal in Planning Decisions: Theory and Practice*, N. Crosby and P.Wyatt, RICS Research 2015, for evidence of that

Developers have also on occasions over-paid for land and then sought to reduce agreed affordable housing levels, by appealing, or threatening to appeal on the ground that current market conditions had now made previously agreed obligations, unviable[16].

In sum, the underlying methodological assumptions of development residual valuation models, as have been applied, serve to protect the:

- developer, not from only actual loss, but also from falling below an industry-standard profit return level that, in turn, is based on having to navigate a development risk profile that is itself produced by land and housing market failure, with the same such failures allowing excess and often grotesque super-profits to be secured[17];
- landowner to secure a 'competitive return' that actually reflects windfall gains resulting from land market failures, unrelated, and inimical, to the working of an efficient land market.

These twin intrinsic features reduce the scope for affordable housing to be provided through section 106 and increases the unit public grant cost of providing affordable housing.

The correction of these failures require the foundation assumptions of development testing to be recast in line with a wider reform of the operation of the housing and land markets and their treatment by the planning system.

St. Mary's Residential Case study.pdf illuminates how the design and practice of residual development residual models has tended to play out in practice[18].

It involved Southwark obtaining overage of £12.5m. This was only c12.5% of total scheme profit. A proportion closer to 50% would appear to have been much more appropriate. The resulting excess of realised GDV over GDC, as reported by Lendlease to its shareholders, generated a scheme profit of £113m. The australian multi-national was left with a net profit of c£101m.

The realised profit actually, therefore, only just fell short of the scheme GDV. This suggests that the realised Lendlease profit rate relative to GDC was over 90%, rather than the 25% that the applied development appraisal had had originally

[16] Para 6.3.1 of the appraisal submitted by lendlease ,cited below, advised as follows : 'There is much debate about the extent to which purchase price should influence the choice of viability benchmark sum …we see sensible reason for taking purchase into greater account given recent land value falls and reduction in HCA funding as, without doing so, land will not be 'encouraged' to come forward for 'development'. Indeed developers will be faced with unviable and blighted planning consents. As such, to ignore purchase price paid unless unreasonable at the time of purchase based upon prevailing market conditions and planning policies) would be bad for all stakeholders interested in the delivery (i.e actual construction) of new housing.

[17] To be fair, the 2014 guidance advised that: 'this return will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. A rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected wherever possible' but, the industry-norm is as stated for housing development schemes and is less than 15%, but can often exceed 20%.

[18] Its website, http://35percent.org, provides evidenced briefings and links to released viability studies relating to this and other multi-story regeneration schemes in Southwark, including this, the Heygate, and the One Blackfriars developments.

projected.

An additional overage of c£38m could have possibly financed the building of additional c100-500 affordable units within the borough, depending on their size, tenure, the financing model used, and whether the council was able to offer public or other land secured at below market levels.

Of course, one case study is not proof of general practice, but St. Mary's Residential is not atypical of other similar developments[19]. The survey evidence reviewed earlier confirms the scaling back of section 106 affordable housing contributions.

The operation of development viability testing has clearly contributed to developer profits multiplying during a period when affordable housing totals secured through section 106 fell sharply.

Appraisal outcomes certainly need to incorporate clear review mechanisms, set with reference to clearly defined expected outcomes.

The policy pendulum has begun to swing back again towards the direct provision of higher actual levels of on-site affordable housing, as reflected in this 2017 Draft London Plan, which itself is based on the Supplementary Planning Guidance on Affordable Housing and Viability (AHVSPG) on that Mayor Khan issued after his election in May 2015 was explicit about his preference for adopting existing use value- plus premium as the comparable benchmark or threshold land value.

That SPG also stated that the Mayor will consider invoking his 'call in' or direct refusal powers, where he is not satisfied with the:

- viability information submitted by the applicant, or with the assumptions that underpin the information;
- level of scrutiny that had been given by the LPA; particularly where he considers the viability information submitted 'may suggest a higher level of affordable housing could reasonably be provided'; or where he wants to:
- review the weight the LPA has given to competing planning objectives, other than providing on-site affordable housing in accordance with the refreshed strategic GLA affordable housing aspirational target of 50%.

Such a shift will necessitate change to the way the planning obligations process interact with viability testing and other affordable housing provision models.

***A Social Democratic Future* fully supports the aim and content of the Mayor's AHVSPG and believes that it sets a needed template for national housing policy reform as part of a needed package to repair Britain's broken housing market. This requires the effective direct deflating of land values and a reduction in developer profit margins.**

But by the same token it is concerned that its intentions to be achieved

[19] Oliver Wainwright has provided some further examples in a polemical but disturbing piece: https://www.theguardian.com/cities/2014/sep/17/truth-property-developers-builders-exploit-planning-cities,

requires similar reinforcing strategic policy reform at the national level, without which there is a possible danger of a developer 'strike' occurring at London-level as the largest housebuilders/developers migrate to locations where they can continue to enjoy excess super-profits.

Cross party support for a sustainable reform – based on a credible and sustainable tailored incremental approach – is again a pre-requisite for the effective implementation of the needed package of reforms. It will be incumbent on the Mayor, the GLA, the Labour Party and the Government front benches to seek and secure some level of sustainable workable wider political and technical overlapping consensus to underpin it. That, of course, is a tall order; prospects of its achievement - on past events - are neither rosy nor certain.

A possible model replicating and customising the AHVSPG and Policy H6 is outlined in Housing Supply Partnership feb 2018.pdf

The limitations and risks of the wider cross-subsidy housing development model
The St. Mary's Residential Scheme provides an exemplar example of the pitfalls of the cross-subsidy model. The 284 scheme units were all pre-sold. Their high values suggest that foreign buyer effective interest proved significant. This type of inner-city global-facing mega-development, where the public return is a function of commercial profit that can be realised form the development (and, of course, the ability of the LPA to negotiate the best share of that profit) has, in the capital, tended to be marketed to foreign buyers purchasing for investment purposes.

These profits, along with the resources *potentially* available for public cross-subsidy, can be maximised, where foreign buyers push up prices way above levels that are affordable, even to indigenous local residents fortunate enough to lie within the top 10% of the national, or even local, income distribution.

In such cases, dwellings are often purchased as a paper investment to secure future capital gains - or, even more worryingly, possibly, occasionally, as a convenient way to launder internationally-sourced black money.

The justification for the use of cross subsidy (mirroring the argument for the use of appraisal models to assess viability), is that it many such sites would otherwise remain undeveloped: local construction activity, the beneficial local economic impact from that activity followed by the spending of the residents, and the section 106 benefits, local receipts and tax revenues generated, would be foregone.

To put it a bit more colourfully: 'better to sup with the devil, than go hungry'.

The actual direct benefits that are actually realised, on the evidence of the case study and from other developments, clearly underwhelm, however. The actual sustainable impact, both present and future, of such developments on the local economy and community, remain uncertain and questionable.

The pushing up of central London real estate prices by this cross-subsidy development model could well prove to a bubble waiting for a future slump. That risk has been heightened by the post-Brexit economic environment. The post-2016 decline in central London house prices rather suggests that the boom is already over. Even if the properties are sub-let to indigenous tenants, the rents that are likely to be charged will almost certain be beyond the capacity of local residents to pay.

The positive direct impacts and externalities generated by such developments for the local economy and community need to be balanced against their future negative impacts on local housing affordability and community sustainability.

As ever, it is best to look for the facts for guidance. Between April 2010 and 2015, total annual new supply completions in the capital averaged c18,000, compared to the 66,000 additional homes assessed as annually necessary in the GLA's latest Strategic Housing Market Assessment (SHMA).

Affordable housing completions were under-supplied within those depleted annual build completion totals, averaging c6,800 annually, compared to the 43,500 assessed as required in the same SHMA: a massive shortfall.

What makes these shortfalls even more acute is that in inner London, a proportion of total completions, as evidenced in the above case study, will be private completions sold at prices way beyond the capacity of even upper-middle and income residents, or of migrants from other parts of London and country to afford. The type of housing, and the public environment and social mix that is provided in our cities is also ripe for review.

The case study and similar such schemes involved the comprehensive redevelopment of an *existing mixed use or vacant site f*or primarily residential purposes. Comprehensive redevelopment of *existing council estates* have occurred that have resulted in little replacement affordable housing on site, or at least insufficient such housing within the same estate to allow even a right-to-return, let alone a seamless transfer, thus requiring the decanting or dispersal of the existing residents elsewhere.

Such schemes have often been robustly opposed by the local community as an imposition involving 'social cleansing' - the Heygate scheme within Southwark again being a case in point. It is within that context the Labour Party in September 2017 announced that it intended to require local authorities to convene ballots with respect to the comprehensive redevelopment of social housing estates which would require the majority of existing residents to approve the proposals tabled.

Such ballots may delay or prevent schemes proceeding with blight descending to the ultimate detriment of the same residents, who may be incentivised to hold out for promises that are unrealisable or which require resources diverted from other even more pressing priorities.

In some inner-city boroughs, such as Southwark, the replacement of monolithic social housing estates by housing that is more diverse in tenure and type offers clear economic and social advantages that arguably, can override a resident right to stay or to return. Some schemes such as Avenue Gardens in Ealing borough appear to have commanded community consent.

At the end of the day, the effective and sensitive *exercise and discharge* of the Mayor’s 50% affordable housing requirement on public land should help the securing of community support.

Overall, and crucially, the planning obligations process developed since the nineties as a user-led response to the intrinsic inability of the town and county land use planning system itself to deliver the affordable housing or balanced communities in tenure and social compositional terms. The section 106 planning obligations process is not specifically designed to effectively recycle windfall landowner and development gains into affordable housing and other public purposes.

In short, the planning obligations process provides a second-best policy response to a symptom of a wider public policy failure to provide sufficient affordable housing in the areas where it is most needed.

3 The Community Infrastructure Levy (CIL)

CIL is the officially preferred mechanism for Local Planning Authorities (LPA's) in England and wales to fund locally required infrastructure investment to address the cumulative effect of development. It is collected from owners or developers of land undertaking new building projects in their area The levy is a fixed charge based on the floorspace of a new or redeveloped building; most development of 100 square metres or more, or comprising a new build dwelling, is potentially liable for the levy.

Its introduction of CIL involved a parallel scaling back of planning obligations to specific measures required to make a development acceptable in planning terms. Affordable housing planning obligations, which can vary according to LPA policy and viability, have become the main form of obligation that is negotiable on a site-by-site basis. CIL is levied according to a Charging Schedule (CS).

The application of CIL by local authorities is a permissive, rather than a mandatory requirement[20]. But if an authority adopts CIL it must apply it across all the developments subject to the levy at the defined applicable rate that its local CS Unlike planning obligations CIL is not negotiable on a site-by-site basis.

Prior to the introduction of a CIL Charging Schedule, LPA's are expected to conduct development viability testing of its proposed schedule, undertake public consultation, after which it is subject to examination by an independent examiner.

By autumn 2017, 144 authorities were charging CIL in England, with others progressing towards doing so, with the number of authorities implementing CIL concentrated in London, and those parts of the south-east with higher development values, and a patchwork pattern elsewhere.

It was envisaged that CIL could yield upwards to £1bn a year once fully operational. In stark contrast, CIL had only raised £195m by March 2016 for the local planning authorities (excluding the London Mayor's CIL, which is charged across London, for Crossrail). This relatively small amount reflects the time lag between the CPA's issuing CIL liability notices and actually receiving revenue, its patchy introduction, and the modest rates generally imposed.

The other side of that same coin is that CIL has represented a relatively minor development cost of around 2% of total market value on average, exerting a limited or negligible impact on development'[21].

100% relief from the levy is provided on those parts of a chargeable development that are intended to be used as social housing. It was not until 2015 that an amendment to the CIL regulations extended that relief to landlords who are not local housing authorities, private registered providers of social housing in England that let dwellings at no more than 80% of market rent to households whose needs are not adequately met by the commercial housing market, conditional on a planning obligation to ensure compliance with these conditions is entered into.

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[20] *The value ,impact and delivery of the Community Infrastructure Levy*, DCLG et al, February 2017.

[21] Para 23 , Summary of Main Findings, *ibid*

CIL receipts can be used to fund a very wide range of local infrastructure, including roads and other transport infrastructure, drainage schemes, flood defences, schools, hospitals and other health and social care facilities, parks, green spaces and other environmental improvements, as well as leisure centres and other local facilities. Education and transport projects have been the most commonly supported by CIL. But CIL cannot be used to fund the provision of social or affordable housing directly.

CIL clearly remains work in progress. But, even when fully operational, it will only indirectly recycle windfall planning gains for general infrastructural purposes, which may or may not, in turn support additional housing provision. CIL does not incentivise developers directly to supply dwellings on affordable terms, nor is it intended to.

The current limited scale and coverage of CIL means that local proceeds of the levy will only finance additional infrastructure at the margin in the foreseeable future, even across most authorities that have adopted it.

CIL revenue will need to build over several years, therefore, before it is sufficient to fund significant infrastructure investment across those LPA's that actually have adopted a CIL Charging Schedule. The inability of local authorities to use future CIL proceeds as loan collateral for forward funding projects, further constrains its funding potential.

In short, CILs, is currently a largely inconsequential means of incentivising the provision and source of funding of needed local infrastructure, although it could become over time, however, a more important funding source of particular local projects, such as a new school servicing a new housing development.

A recent DLG review in its conclusion not only identified a range of shortcomings in the design and implementation of CIL, but highlighted that it essentially has not 'fulfilled its original intention of providing a faster, fairer, simpler, more certain and transparent way of ensuring that all development contributes something towards cumulative infrastructure need and that it has also disrupted and complicated the section 106 arrangements, which, through much criticised, actually worked reasonably well for most sites'[22] .

Certainly CIL, fails, to materially address the contribution that windfall gain and resulting inflated land values for residential accommodation made to the housing affordability problem, provides a muted and largely inconsequential mechanism to garner and channel resources for the funding of local infrastructural provision.

Despite that, the DCLG review did not recommend sweeping away the CIL regime. It rather noted that reverting back to a reliance on section 106, would mean that where section 106 obligations were not negotiated, potential revenue would be foregone by not charging CIL on developments that potentially could yield significant revenue.

It went out to point out the relative success of the London Mayoral Charge, which was levied at a relatively low rate for a defined funding purpose, and that that

[22] Para 4.1.11*, ibid.*.

principle could be extended to the new combined authorities in the guise of an additional Mayoral-type Strategic Infrastructure Tariff (SIT)[23].

Instead of either abolition or leaving the current ‘inadequate patchwork’ system intact, it proposed a twin track replacement system of a new low level Local Infrastructure Tariff (LIT) based this time on a national £ per square metre rather than locally set formula that would apply to all development (with virtually no exceptions). Section 106 would be used in combination with LIT for larger sites. A site specific planning obligations agreement would operate in tandem with LIT.

According to the review this would ‘capture the best of both worlds, optimises the contributions from those smaller sites which may not otherwise be contributing to a section 106 system and also ensures that the more substantial infrastructure needs of larger developments are met in a timely manner by those best placed to do so’[24].

It suggested that one possible formula could be take a sum between 1.75% and 2% of the sale price of a standardised three-bedroom family house, divide it by 100 to reach a £ per square metre rate that would then be applied to all new residential development, with the government consulting on a LIT rate for commercial development that ties it to the residential rate but does not exceed it[25].

Putting to one side the detailed proposals of the review, its argument that a simple, certain levy – in effect tax - on new development that minimises burdensome and cumbersome administrative requirements that builds upon the present CIL and section 106 systems provides a possibly sensible and feasible way forward that is consistent with simplicity, certainty, and transparency.

Such characteristics must underpin the devising and implementing process of an effective reform agenda commanding sustainable cross-party support is to be attained. This, of course, is a high bar.

[23] Para 4.3.6, *ibid*
[24] Para 4.3.1, *ibid*.
[25] Paras 5.12 and 5.19, *ibid*

4 The effective future use of land value capture by housing authorities using compulsory purchase as a backstop last resort

LPA's do not currently possess the right to simply designate land for housing use and then to acquire it for such use at a value less than its future housing development value, and thus capture that potentially higher value for the community (land value capture).

Rather they are expected to identify a deliverable five-year supply of housing land that is consistent with meeting the local housing needs and requirements that they have identified within their local plans. When a land site, say, previously open or derelict land, is designated for housing within a local plan, usually its market value will increase, reflecting the increased likelihood that sometime in the future that it will be put to productive housing use at higher than its current value: the difference between existing and that market value is represented by *hope value*.

LPA's largely depend upon on private developers to bring forward proposals for residential development, after they have acquired and/or assembled land interests across such sites; in which case, the price for the land will invariably adjust to reflect more closely its future housing development use value away from its existing value.

Practice in some other European Union (EU) countries is different, most notably Germany, where land values are frozen when land is vested for housing use by a local authority. Countries deploying such forms of public land capture effectively, tend to benefit from much more steady house price trends, where not only land accounts for smaller proportion of total residential development value compared to the UK, but where build rates are much higher. Both outcomes are supportive of the wider macro-economic ends of steady, balanced non-inflationary growth[26].

The 2017 HWP, itself, highlighted that in many countries, local authorities regularly directly work with local landowners to proactively assemble land for housing, noting, in particular, that in germany local authorities often use processes, known as land 'pooling' or 'adjustment' in order to acquire and, assembly close to its existing use values, and then service it, ready for residential development[27].

The 2017 Conservative manifesto was even more specific. It committed a future conservative government to 'work with private and public sector house builders to capture the increase in land value created when they build to reinvest in local infrastructure, essential services and further housing, making it both easier and more certain that public sector landowners, and *communities themselves (*author italics*)*, benefit from the increase in land value from urban regeneration and development'[28].

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[26] See figure 2, *The challenge of accelerating UK housebuilding, A predistribution approach*, Thomas Audrey, Policy Network, 2015. Between 1975 and 2013, the UK reported the most volatile housing among six OECD countries, and the lowest build rate at 3.6 per 1000 dwellings, compared to c6.0 in the netherlands and france. Germany reported the lowest volatility, but posted only a 4.6/1000 build rate, but, unlike the UK, was marked by a declining population and home ownership rate, but still posted a higher build rate.

[27] Para. A.48.

[28] p71, https://www.conservatives.com/manifesto

Robert Blyth, head of policy for the Royal Town Planning Institute (RTPI) in the summer of 2017 endorsed land value capture as the ‘single most useful instrument to channel value generated by development towards infrastructure and housing without incurring more public debt”[29].

But for land value capture to occur on a replicable and comprehensive scale requires a substantive change in planning practice towards the more strategic and interventionist planning model, practised on the continent, involving far greater co-operation between strategic planning and housing staff.

Such a shift also needs to be accompanied by continuing reform to the compulsory purchase rules. This must tilt the institutional framework governing the operation of the land market in favour of the community, by substantively deflating the expectation of landowners that they are entitled to the full unearned increment of higher land value, attributable to a change in planning zoning or the granting of permission in favour of residential accommodation.

<u>The development of the compulsory purchase rules</u>

The bedrock principle of the compulsory purchase process (CPP) is that compensation payable to the owner should not be increased or decreased due to any impact of the CPP scheme that is ‘solely attributable to the particular purpose for which it is acquired, and the acquiring authority’s need for the land for that purpose’, In short, the potential impact of the scheme *itself* on the value of the land, is to be disregarded for compensation purposes: the ‘no scheme’ principle[30].

The Land Compensation Act 1961 (LCA1961) was a consolidation if earlier legislation dating back to Victorian times, and remains the principal statute governing the assessment of compensation, despite recent changes and substitutions made by subsequent legislation, most notably, section 232 of the Localism Act and the Neighbourhood Planning Act 2017 (NPA2017).

<u>Where the Neighbourhood Planning Act 2017 (NPA2017) leaves us</u>

The DCLG and HM Treasury in 2016 undertook a joint consultation process on reform of the compulsory purchase rules. Its central premise was that the application of the ‘no scheme’ application in practice over time as interpreted by case law had become complex and uncertain.

A new principle was advanced that where land is acquired for a wider regeneration or redevelopment scheme that is directly linked (facilitated or made possible) to a ‘relevant’ transport infrastructure scheme, the definition of ‘the scheme’ should so include that ‘relevant’ linked transport scheme. Any compensation payable by an acquiring authority would exclude and disregard increased values attributable to both the wider regeneration and the supporting ‘relevant’ transport scheme.

The consultation also proposed that mayoral development corporations (GLA, and the new combined authorities led by a mayor, including, Birmingham, Manchester and Liverpool) should be put on the same statutory footing as new town and urban

[29] Planning news, 10th August 2017.

[30] para 106, *Neighbourhood Planning Act, Explanatory Notes*, The Stationery Office, 2017.

development corporations, in that all prior development undertaken preparatory to a scheme should be disregarded for the purposes of assessing compensation. These have been enacted in the Neighbourhood Planning Act 2017 (NPA2017).

A new power for the secretary of state to create a New Town Development Corporation for which a local authority, or more than one local authority, rather than central government, is responsible for, was also provided.

These changes should make it easier for sponsoring public bodies to capture and recycle a higher proportion of the land value uplift (captured from the subsequent sale or leasing of acquired land and properties) that should follow strategic and major investments in *transport infrastructure*. Their initial infrastructure investments could then also be potentially financed by bonds on the back of the collateral offered by the prospect of increased land values generated by that public infrastructural investment.

This should help mooted major infrastructural projects, such as the Oxford-Cambridge transport corridor, or CrossRail2 in London, to be self-funding, improving the prospects of their approval and completion by governments possessed with limited fiscal flexibility.

Taking Crossrail2, the GLA and Transport for London (TfL) acting in concert, taking ownership and directly developing station and interchange sites could benefit from - one think tank estimates – of up to £69bn of *potential* land uplift value. Some of that uplift could then be recycled as cross-subsidy in support of additional affordable housing provision, which, if achieved, could make a significant dent in the capital's growing housing shortage[31].

The precise mechanism by which in practice the increased values of areas and assets adjoining any future new stations built (including homes and businesses tunnelled under) would be recycled for community, rather, than for individual property owner, benefit, remains to be developed, however.

An increased council tax and business rates levy would be one such possible mechanism, but that presupposes prior reform of those taxes.

The apportionment of land value gains between TfL, the GLA, and the boroughs, for transport and housing purposes is likely to prove a problematic and protracted process.

And, even more crucially from a housing standpoint, these projects involve complex public-partnerships that will inevitably straddle decades, when need for affordable housing is a pressing current priority.

A reliance on a cross-subsidy model to provide affordable housing, also risks becoming a variant of the trickle-down approach that in housing policy and sustainability terms has not actually appeared to have worked well in practice, in

[31] *Bridging the infrastructure gap, financing infrastructure to unlock housing*, Centre for Progressive Capitalism, June 2016.

general, across the capital.

But, as was explicitly recognised and underscored by the government, these latest provisions make no fundamental change to the principles that historically have underpinned CPP.

The ‘no scheme’ principle underlying the CPP remains intact. The planning assumptions - defined in substituted section 14 of the LPA1961, as set out in Table 1 below- will still determine what (if any) planning permissions could be potentially available for the land connected to the CPP.

Table 1: Provisions of NPA 2017 relating to the ‘no scheme’ definition making new (substituting into) section 5, of LPA1961.

	after rule (2) insert — “(2A) The value of land referred to in rule (2) is to be assessed in the light of the no-scheme principle set out in section 6A, below.
	Section 6A
1	The no-scheme principle is to be applied when assessing the value of land in order to work out how much compensation should be paid by the acquiring authority for the compulsory acquisition of the land (see rule 2A in section 5).
2	The no-scheme principle is the principle that—
(a)	any increase in the value of land caused by the scheme for which the authority acquires the land, or by the prospect of that scheme, is to be disregarded, and
(b)	any decrease in the value of land caused by that scheme or the prospect of that scheme is to be disregarded.
3	In applying the no-scheme principle the following rules in particular (the “no-scheme rules”) are to be observed.
4	Rule 1: it is to be assumed that the scheme was cancelled on the relevant valuation date.
5	Rule 2: it is to be assumed that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme.
6	Rule 3: it is to be assumed that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers.
7	Rule 4: it is to be assumed that no other projects would have been carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers if the scheme had been cancelled on the relevant valuation date.
8	Rule 5: if there was a reduction in the value of land as a result of—
(a)	the prospect of the scheme (including before the scheme or the compulsory acquisition in question was authorised), or
(b)	the fact that the land was blighted land as a result of the scheme, that reduction is to be disregarded.
9	Sets out definition of ‘blighted’ land.
10	See also section 14 for assumptions to be made in respect of planning permission

The ‘no scheme’ value, defined as the open market value that a willing buyer and seller would agree in the absence of the scheme subject to the CPP, will still be potentially dependent on a host of actual or assumed planning factors ‘conceivably known to the market’ that could be deemed relevant to each particular scheme.

The owner, therefore could still claim for compensation of loss of potential future betterment that can be linked to an existing planning permission, or to one associated with a possible prospective future planning permission for an alternative appropriate development use, which could be available, according to ‘circumstances known to the market’ at the relevant valuation date’.

In terms of specifics, the prospect of a future planning permission for, say, a future housing alternative use offering the speculative hope of a significantly higher future development value than its existing use - can be considered with regard to factors, such as future expected population increase and the related future need for more land to be zoned for housing within a particular LPA area.

It could still even be claimed by a farmer owning agricultural land in an area subject to possible acquisition by a new town corporation established by a LPA or group of LPA’s that sometime in the future that the relevant LPA would have designated that land for housing use, disregarding the impact of its vesting for housing through exercise of statutory powers connected to the specific new town development, disregarded for compensation purposes.

The use of land value capture, therefore, will continue to be constrained by the existing institutional and legal framework relating to the compulsory purchase of land and buildings by public authorities, and the continuing ability of landowners/developers to exploit hope value connected to public policy and investments in particular.

A more comprehensive reform of the LCA 1961 going beyond the (NPA2017) is thus required.

Moving to an existing value + 0.3 general betterment principle

The challenge is to mainstream land value capture within the wider residential development process. This is in order to maximise the future supply of affordable housing within a feasible public finance constraint in accordance with other public policy objectives and social aims.

At the same time, the potential direct benefit of land value capture, backed by complementary compulsory purchase powers, which must always be a last resort, does, however, must be weighed against some substantive efficiency and equity concerns.

A general legal duty to demonstrate a compelling case in the public interest already exists that must be met in all CPO cases. In short, the right of a landowner to enjoy the fruits of that ownership should only be overridden, where it can be demonstrated that a wider public interest case of greater force prevails.

To be successful any reform - certainly within a timescale of interest to the existing generation that needs additional affordable housing - would need to encourage and underpin mutually beneficial voluntary exchanges between owners and LPA's at values closer to existing than alternative residential value, rather than to regulate antagonistic relationships. That, in any case, would distract scarce planning resources, as well as risk the infringement of general long established principles of constitutional and administrative law, and incorporated EU human rights legislation.

The capacity of LPA's to implement effectively such powers, taking cognisance that only 38% of the 293 LPA's in England outside London actually had a local plan compliant with the NPPF, early in 2017[32].

As proved to the case with the 1975 Community Land Act, over-ambitious powers, in- adequately backed by resources, capacity, and local commitment, and which are not demonstrably fair and transparent, would simply generate opposition to their application at both national and local levels.

In that light it should not be forgotten that often it is the LPA that is reluctant for a site to be developed, even where affordable housing is offered, rather than the landowner: further reform of the compulsory purchase rules is necessary, but certainly not a sufficient condition, for the 2017 HWP 250,000 annual dwelling target to be met on a sustained basis[33].

The design, scoping and the exercise of reformed LCA2016 powers in tandem with the existing planning system must, therefore, be defined in a careful circumscribed manner, and be limited to defined situations, where substantive evidence shows that they could produce the most beneficial impacts in the public interest.

Safeguards protecting against arbitrary acquisition demonstrating proportionality and *compelling* public interest, would need to be clearly set out, therefore, not only to cultivate political acceptance, but to prevent and/or render unnecessary protracted legal challenges.

The worst case example of a farmer forfeiting the lands that have been in his family's ownership for generation, thereby losing their livelihood and financial security to a local authority that then hoards the land, letting it fall into disuse, would need thereby to be clearly avoided and rebutted.

That said, the inequity and inefficiency of the current situation, whereby - generally - already affluent landowners have enjoyed rises in land values that sometimes reflect the capitalisation of subsidies and tax breaks linked to agricultural use, are able to capture potentially massive windfall gains from the granting of residential planning permission needs to change in order to safeguard and further the interests and prospects of a larger group of less advantaged potential first time buyers priced out of the current housing market.

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[32] *Policy response, Housing White Paper*, Savills World Research, UK Residential, 2017.

[33] See note 48. In that case the LPA rejected the application by the farmer owner, even though it contained 40% affordable housing. *Ref: APP/Q3115/W/16/3161733 Thames Farm, Reading Road, Shiplake*.

In order to provide a secure statutory footing to redistribute windfall gains from landowners to the developing public authority beyond that provided for in the NPA2017, requires the LCA 1961 to be further amended in such a way that the requirement to compensate owners of land not currently zoned for housing, for any future prospective land uplift or 'hope' value, is expressly removed, in clearly defined circumstances. In parallel, mechanisms are required that can channel that gain towards the support the provision of additional locally affordable housing.

These could extend beyond new town designations to:

- authorities with an already NPPF plan in place;
- LPA's approving urban extensions or villages;
- where local neighbourhood commitment to their exercise was demonstrated;

and, most relevant in the London context to:

- the regeneration of derelict and under-used industrial land.

Cross party support for a sustainable reform – based on a credible and sustainable tailored incremental approach - is another pre-requisite, if the potential of such extended CPP powers to be realised.

Moreover, a shift in the CPP towards compensation at existing value, is not feasible or consistent with private developers and landowners continuing to able to realise windfall gains through transactions conducted outside the CPP envelope.

A more general dampening of land price expectations encouraged by wider changes in the planning system that effectively encourage land owners to release land for housing development for a premium above existing value that is limited to, say 30 per cent above existing value, is another pre-requisite requirement to progress. Such a change is consistent with developer business models shifting towards securing a steady return from construction, rather than from volatile returns from speculative landholding, encouraged.

Appendix 1: The measurement of land prices

Until 2010 the NVO used to collect land valuation data on three types of site: small sites for less than five houses; bulk land in excess of two hectares; and sites with planning permission for flats, all attached with outline residential planning permission. The DCLG took NVO area data across these three types of site and compiled a notional average value for a hectare of land attached with outline planning permission for each region.

The trends reported in figure 1 within the main report and in table 1 below are based on such data collated and interpreted by the National Valuation Office (NVO) and other government statisticians.

Appendix Table 1: Average valuations of residential building land with outline planning permission, England, 1994-2010

Region	1994	1995	2000	Jul 2005	Jul 2010	*Value 2010*
	Weighted average valuation per hectare (£)					*1994=100*
North East	437,312	447,355	507,716	1,827,243	1,123,003	*257*
North West	427,291	446,819	631,495	2,110,686	1,327,120	*311*
Yorkshire & the Humber	428,837	497,042	632,403	2,245,831	1,250,173	*292*
East Midlands	388,505	397,096	616,392	1,770,883	1,067,924	*275*
West Midlands	574,645	597,383	961,625	2,143,300	1,571,870	*274*
East	604,379	735,231	1,342,715	3,034,674	2,298,157	*380*
South East	739,056	862,368	1,862,731	3,227,147	2,330,618	*315*
London	1,912,127	2,107,732	4,244,864	8,418,900	6,457,285	*338*
South West	533,609	591,412	1,160,049	2,259,521	1,501,729	*281*
England	***731,168***	***812,328***	***1,514,834***	***3,314,303***	***2,371,549***	***324***

Source*: Discontinued DCLG table 563.*

Such average weighted totals of land valued for statistical purposes, simply provide an indicative valuation benchmark: the best available, but an imperfect base for a consistent time series. The immense heterogeneity of land sites in terms of characteristic, location, and landowner circumstance combined with the low frequency of land transactions, mean that any compiled land value index at either a national or regional level is a notional composite of a diverse array of transactions, with reported averages invariably hiding significant differences at sub-regional and local levels.

The revealed recorded price for any particular site (in land registry) will depend on the particular characteristics possessed by each site, the particular circumstances of its sale, as well as the impact of general market trends. The revealed and recorded price of such sales will not therefore necessarily correspond with the values accorded to sites deemed that may be deemed comparable for notional valuation purposes.

The above official land price series have not been updated since 2010 when the NVO scaled down its coverage. Since 2010 information has largely relied on professional surveyor and consultancy surveys, the geographical coverage and assumptions of which can differ.

The DCLG did publish in 2015, however, notional residual land value estimates for a 'typical' residential site for solely 'policy appraisal purposes' according to assumptions summarised in appendix table 1[34].

The notional estimated residual land values that table 2 reports below reports estimated notional residual land values per hectare of developed residential real estate, for each english region. It does not purport to represent the average *actual* price paid for a hectare of land attached with planning permission.

Tables 2 and 3 exclude the impact of section 106 and CIL requirements on that value, and of any site-specific development factors, which would be expected to lower such values.

They also represent regional averages; values will differ widely according to locality. They also assume – in order to allow the residual land figures to be computed on a consistent basis - 'typical' high density developments of c270 dwellings per hectare across London, and 35 dwellings per hectare outside the capital.

Appendix Table 2: Estimated average residual residential land values, per hectare, by region, England, March 2015.

Region	**Land residual value per hectare**
North East	1,000,000
North West	1,400,000
Yorkshire & the Humber	1,400,000
East Midlands	1,100,000
West Midlands	1,500,000
East	2,600,000
South East	3,600,000
London	29,100,000
South West	2,000,000
England, including London	***6,900,000***
England, excluding London	***2,100,000***

Interestingly, however, the values reported in both tables 1 and 2 appear broadly similar for most regions, except that estimated residual land values in 2015 were 50% higher than the land values that were estimated in 2010, residual land values of an average c£29m per hectare as a cross-London average: five times as much.

The latest estimate from Savills residential indicate that prices of greenfield and urban land across the country as a whole have subsequently only slowly recovered to hover 20-40% below their respective 2007 peaks, but in some high cost areas increases have surpassed their previous peaks, most notably in central London, where residential land values, by 2016 were nearly a third higher than they were in 2007,

[34] *Land value estimates for policy appraisal*, DCLG, December 2015

but the Savills index takes account of affordable housing obligations[35].

The DCLG dataset is disaggregated down to local authority level. Estimated residual land values, per hectare, for residential sites attached with full planning permission differ greatly from London borough to borough, ranging down from £118m and £110m in the City and Westminister, respectively, to £65m inHammersmith,£53m in Islington, £49m in Southwark, c£40m, in Camden and Richmond, £30m in Wandsworth, c£25m in Hackney, Lambeth, and Tower hamlets, c£20m in Ealing and Merton, c.£17m in Barnet, Croydon and Sutton, £15m in Harrow £9m to £13m across most of the other outer London boroughs, with Havering, Barking, and Bexley in the east, recording the lowest estimated residual land values, at c£8m per hectare[36].

The other main city conurbations, such as Manchester and Birmingham pale in comparison, with both cities reporting estimated residual values of c£1.6m and £1.2m. Only Leeds approaches the England excluding London average of £2.1m per hectare.

The connectivity and agglomeration benefits of urban density and location explain why land values are so much higher in London, and other areas, such as Cambridge and Oxford, close to middle and high income employment sources, than they are in rural remote areas largely dependent on agriculture, or in an erstwhile mining, industrial, and port areas.

For instance, Bolsover in Derbyshire, Redcar in Cleveland, and hull have reported land residual values of 420k or less per hectare. A hectare of land attached with full planning permission for residential development on average has an has an estimated residual value of 815k in the city of Liverpool, slightly less below the comparable value reported for Lincoln.

Taking the averages reported for England excluding London,for the south-east region, and for high cost local authority commuting areas to London reporting residual land values at a level c£6m, suggests an average land or site value per dwelling provided of 60K, 114K, and 171K, respectively, assuming a density of 35 dwellings per hectare, along with the other assumptions defined in appendix table 1.

With respect to a ‘typical’ brownfield location, Table 3 below reports estimated average per hectare land values, attached with the following assumptions:

- nearby uses likely to include later residential development;
- services available to the edge of the site;
- current use restricted via full planning permission to industrial/warehouse use;
- no abnormal site constraints, and/or land contamination or remediation issues exist.

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[35] Figure 2, *Market in Minutes, UK Residential Development Land,* Savills research, May 2016. *The* Savills index covers UK and reports land value blended to reflect affordable housing requirements, and is thus not consistent with either figure 1 or table 1.

[36] *Ibid*, table 1.

Appendix Table 3: Average industrial land value estimates by region, per hectare.

Region	Estimated value per hectare of a typical industrial site, £
North East	180,000
North West	400,000
Yorkshire & the Humber	375,000
East Midlands	450,000
West Midlands	500,000
East	675,000
South East	1,100,000
London	2,730,000
South West	430,000
England, excluding London	***514,000***
England, including London	***760,000***

Source; *Land value estimates for policy apprais*al, DCLG, December 2015.

When these estimated average industrial land values are compared to the estimated residual land values for a hectare with change in planning permission to residential use, as reported in table 1, they are much lower: c11% of residential RDV, on average, when London is included, and c24%, on average, when London values are excluded.

Appendix Table 1A: Valuation assumptions applied to produce DCLG-estimated residual residential land values, per hectare, by local authority and region, England, March 2015.

No.	Assumptions applied
1	Residential land values have been produced assuming nil affordable housing. The reported figures, therefore, may be significantly higher than could reasonably be obtained for land in the actual market.
2	Any liability for the Community Infrastructure Levy is excluded
3	It has been assumed that full planning consent is already in place.
4	Valuation Office Agency's local valuers have identified sites considered to be 'typical' for the local authority area based on their own knowledge and experience of that area.
5	The figures provided are appropriate to a single, hypothetical site and should not be taken as appropriate for all sites in the locality.
6	In a number of cases schemes that do not produce a positive land value in the model. Based on VOA market knowledge a 'reserve value' (£2,470,000 for London and £370,000 elsewhere) has been adopted to represent a figure at less than which it is unlikely (although possible in some cases) that one hectare of land would be released for residential development.
7	The Valuation Office Agency assumed that each site is 1 hectare in area, of regular shape, with services provided up to the boundary, without contamination or abnormal development costs, not in an underground mining area, with road frontage, without risk of flooding, with planning permission granted and that no grant
8	The site will have a net developable area equal to 80% of the gross area.
9	For those local authorities outside London, the hypothetical scheme is for a development of 35 two storey, 2/3/4 bed dwellings with a total floor area of 3,150 sq.m (average 90sq.m).
10	For those local authorities in London, the hypothetical scheme is for a multi storey development of 269 units comprising 1, 2, 3 & 4 bed flats with a gross building area of 23,202 square metres and a net sales area of 19,722 square metres (unit average sales area c.73sq.m).
11	These densities are taken as reasonable in the context of this exercise and with a view to a consistent national assumption. However, individual schemes in many localities are likely to differ from this and different densities will impact on values produced.
12	Where recent, local data is available, lower quartile build costs are taken from the RICS Building Cost Information Service, or where absent, recent cost figures from neighbouring locations are taken.
13	Basic build costs are increased by 15% to cover any external works, service connections, gardens, fencing and roads.
14	Profit is taken at 17% of GDV for market housing (17.5% in London)
15	Fees are taken at 8% of build costs.
16	Marketing costs are assumed at 3% of the sale price.
17	Finance cost is calculated using a cashflow with a 6% debit rate and a 2% credit rate.

Source: Annex A, *Land value estimates for policy appraisal*, DCLG, December 2015

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Appendix 2: The measurement of affordable housing obligations and their m monitoring within the London Plan.

The official affordable housing series began in1991-92. Reliant on local authority returns) it has not provided a consistent and reliable time-series of the total number of dwellings supplied through section 106.

Nor has it provided until recently a consistent breakdown between affordable dwellings funded entirely through section 106 (using no public grant) and dwellings that rather received some public support in the form of grant or discounted land. Affordable dwellings supplied via the section 106 delivery route utilising public grant, were subsumed under various other funding category headings within the series until 2015-16.

In 2015-16, DCLG affordable housing live tables 1011S and 1011C commenced a time series of actual affordable starts and completions delivered via the section 106 route, broken down into social rent, affordable rent, intermediate rent, shared ownership, and other affordable home ownership, with each category split between no public grant and some partial grant funding streams[37].

By then the proportion of the total section 106 supply accounted for by nil grant schemes had steadily increased to c 38%, a figure still, however, well below the near 100% total that DCLG table 1000C recorded for 2015-16[38].

The DCLG, itself, has relied upon periodic commissioned surveys to provide aggregated information concerning the characteristics and value of affordable section 106 agreements[39]. The latest available such study estimated also that the value of affordable housing in kind contributions that had been entered into section 106 agreements agreed in 2011-12, accounted for £2.3bn, or 62% of the £3.7bn total worth of planning obligations agreed for that year, less than half the estimated £5 billion that had been agreed in 2007-2008 reported by its predecessor 2010 study, reflecting the impact of the Great Financial Crash (GFC) on the housing market[40].

That figure was arrived at by an assessment of the discounted market value of the dwellings provided in-kind, defined by the ratio of market value that the acquiring social landlord paid for each affordable unit. For example, if it paid 120k for an affordable dwelling with an open market value of 200k, the affordable housing contribution was deemed 80K.

The official affordable series still does not track individual housing obligations contained in section 106 agreements with respect to, when they were entered into, and

[37] https://www.gov.uk/government/statistical-data-sets/live-tables-on-affordable-housing-supply

[38] *Rethinking planning obligations, balancing housing numbers and affordability,* Brownhill at al, Joseph Rowntree Foundation, July 2015.

[39] DCLG in July 2017 commissioned the University of Liverpool to carry out updated research into the extent of contributions through planning obligations and how they are managed by different authorities 'in order to bring the findings of previous studies up to date'.

[40] Ibid.

then:

- actually delivered; or,
- remain outstanding;
- were cancelled; or:
- differed in quantum and composition to what was agreed and contained within the agreement when entered into.

The GLA in order to monitor London Plan Housing Policies HI, H5 and H6 should implement a monitoring system tracking the progress of affordable housing obligations as above.

Rather depressingly, the need to do so was identified as long back as 2002, when Joseph Rowntree Foundation (JFF) review found that local authority recording of section 106 supply was inconsistent and haphazard, with some recording units when secured or approved, others when completed, while some double-counted both[41].

Accurate and comprehensive tracking information, given its importance in housing policy and delivery terms, should to be collected annually and more systematically through the local authority statistical returns to the DCLG, or other specified and identified means.

The periodic survey-based studies that the department commissions could then focus on identified research priorities connected to the section 106 delivery process, and on the validation of the data that is collected on an annual basis.

It would also be helpful, for policy information purposes, for the precise value of the affordable housing obligation contribution and the equity share sold for each dwelling to be defined.

The provision of that information would assist any assessment of the actual affordability of such units to target-group households, and their public resource opportunity cost. This is important, as anecdotally, an increasing number of such units, at least in some parts of London, seem to possess a very high value market value, even in excess of £1m, with combined mortgage, rent, and service charge outgoings, approaching £2000 a month.

Improved targeting of affordable home ownership product is required.

[41] *Planning Gain and Affordable Housing: Making it Count,* ibid.