RESPONSE OF ASOCIALDEMOCRATICFUTURE TO MHCLG DECEMBER 2024 CONSULTATION ON COMPULSORY PURCHASE PROCESS AND COMPENSATION REFORMS

FEBRUARY 13, 2025

ASOCIALDEMOCRATICFUTURE
www.asocialdemocraticfuture.org

Introduction/housekeeping

1. Name of person submitting response: John Newton

2. He is submitting it on behalf of www.asocialdemocraticfuture.org (*ASocialDemocraticFuture*) in his capacity as convener of that organisation.

3. Comments or assessments prefixed by ‘we’ or ‘our’ should be taken to mean *ASocialDemocraticFuture*.

4. ASocialDemocraticFuture is a website committed to identifying and analysing policy pathways to equality and efficiency and their obstacles. It is independent of external financial and other support.

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The response of www.asocialdemocraticfuture.org, where applicable, is provided below, under each question heading.

The responses to questions five to eight and to question 21 are interchangeable between those questions.

Question 1

Yes.

Question 2

Yes.

Question 3

Yes**.**

Question 4

Yes.

Question 5

Para 23 of the consultation document advises that "*in addition to directions made under section 14A of the Land Compensation Act 1961(LCA, 1961) to remove hope value on a case-by-case basis, we are considering whether a general power could be introduced which would enable the Secretary of State in England or the Welsh Ministers in Wales to make a direction to remove hope value from the assessment of compensation for a specific category of sites where justified in the public interest*".

It goes on to suggest that the introduction of such a general power should be limited to specific categories of sites, namely,

- brownfield land in built-up areas, suitable for housing delivery, but with no extant planning permission for residential development;

- land allocated for residential development in an adopted plan but which has not come forward for development.

For the reasons that we set out in its June 2022 submission to an earlier departmental consultation on compulsory purchase reform, it would be better to simply remove the 'right' to hope value involving affordable housing and/or social infrastructure.

Section 190 of the 2023 Levelling Up and Regeneration Act (LURB 2023) already provides for the disallowance of any 'right' to hope value through its operation (as above) of new section 14A LPA1961, in cases where an eligible member of the wide range of public authorities prescribed in its Schedule Two issue a statement of the acquiring authority's intentions (statement of commitments) *in relation to the provision of affordable housing and/or educational and health social infrastructure as to what will be done with the project land should the acquisition proceed*,

so far as the authority relies on those intentions in contending that the direction is justified in the public interest.

Question Five itself, referring to where:

- it is claimed the delivery of the scheme with minimum affordable housing provision and other obligations such as provision of public infrastructure is not viable; or,
- the costs associated with the value associated with the prospect of planning permission ("hope value") has made the scheme unviable,

suggests such an approach.

Better to end the requirement for 'hope value' to be compensated with reference to an artificial 'market value' altogether.

That, however, may be a step too far for the forthcoming *Planning and Infrastructure Bill* to implement legislatively; the deflation of land values closer to their existing use values through the further development of the government's planning reforms, should provide a more effective alternative.

Certainly, a reformed CPO framework should provide *strong and streamlined default powers to underpin voluntary exchanges at Benchmark Land Value (BLV) values consistent with the provision of necessary public infrastructure and affordable housing at desired levels on green/grey belt and greenfield generally, as well as on brownfield sites.*

By the same token, any extended general direction powers (that would need we assume to be included in the *Planning and Infrastructure Bill* should not necessarily be limited to the specific categories of sites that *para* 23 of the consultation cited.

The prevailing MHCLG policy direction of travel across the three inter-linked areas briefly discussed below appears already potentially consistent with such a reformed framework.

First, the introduction of 'golden rules' applicable to development on GB land set out in the new National Planning Policy Framework (NPPF) (*paras 68 and 155 and 156*);

Second, setting low BLVs for viability purposes - broadly defined as the value that a willing landowner would be prepared to sell their land for a proposed development purpose - to keep land acquisition costs closer to their existing use value (EUV).

Para 157 of the July consulted NPPF version had had offered additional guidance on viability considerations for development in the Green Belt, attaching a cross reference to its A*nnex 4,* which sought to establish, a BLV based on EUV plus a "*reasonable and proportionate premium*".

Consultee responders were invited to specify such a value for national policy purposes, with a nudge that it should be closer to three times EUV compared to current industry expectations that can reach the 20-40 range.

Both that *para* and *Annex four* were, however, omitted in the new and operative December 2024 NPPF version.

Site-specific viability negotiation on GB land was prohibited in a December 2024 update to MHCLG viability guidance, pending "*strengthened national planning practice guidance on viability* (which apparently) *will consider the case for permitting viability negotiations on previously developed land and larger strategic sites, likely to carry greater infrastructure costs*".

Third, continuing reform of compulsory purchase order (CPO) rules consistent with the use of CPO as a backup default stick to encourage voluntary exchanges at a defined premium close to existing use values on and beyond GB land, including greenfield, urban extensions, and the next generation of New Towns, as is most relevant to this question.

It seems clear to us that all three of the above are inter-linked and dependent on each other to be future effective.

A danger exists, however, that they are blown off-course by short term industry pressures made for commercial reasons connected with the predominant private speculative model, amid claims, for instance, that the 'golden rules' will render future GB development unviable.

In that light it is worrying that *para 94* of the consultation, advises that the proposals outlined in *para 93* are, however, "*likely to impact a very limited number of claimants given the number of directions likely to be made in any year is estimated to be low*"

This seems to imply either that the policy direction above as implemented will prove so successful that actual resort to CPO - as is desirable – will, indeed, prove a default last resort; or that, rather, the changes will have limited applicability and consequence, which will be contrary to the government's broader housing objectives, including its delivery target.

Question 6

Mayoral and other development corporations, certainly, will have to mobilise and enable large scale developments, sooner rather than later, to grasp the opportunities accorded by planning, including CPO, reform: that is if the government's 1.5m delivery target is even to be approached, let alone met (See Labour's Planning Reforms: Ends and Means for relevant discussion, especially its sections *two and three*).

Longer term, a widened general directions power is likely to prove pivotable to the success or otherwise of the future New Towns programme.

Such development corporations will need to acquire land at values close enough to EUV to make them viable inclusive of infrastructural and affordable housing requirements; such land acquired will not necessarily be confined to the specific categories cited in *para 23*.

Question 7

To reiterate, the justification for limiting the scope of the general direction to the specific categories of sites, cited in *para 23*, is not clear.

Using an Existing Use Value Plus (EUV+) approach (current use value of a site plus an appropriate site premium), to determine BLVs should further help to embed known and increased affordable housing requirements, crucially, into future land and house price expectations.

Its application itself should help reduce land prices and expectations of future prices and thus the net public expenditure costs of the future New Town and other major developments that require a partial public contracting model to kickstart them.

The consultation highlights the imperative that changes should conform with human rights law.

Correct, but the interpretation of the application and coverage of that body is wide, especially when public law and policy must navigate, as here in a practical way, competing property and social rights in tangible and practical, rather than abstract, terms.

A clear and present danger exists that ‘human rights’ becomes a ‘red herring’ issue, used by vested interests to undermine core government public policy objectives, themselves designed and developed to further wider public interests, including the ‘human rights’ of less advantaged members of society.

In that light, some further claim that eliminating hope value would create a new horizontal inequity in the treatment of compensation available to owners of plots with planning permission and those with prospective planning permission; others, that the ‘golden rules’ will create a dual land market for GB and non-GB land; and that using CPO powers to ensure policy-compliant schemes come forward would likewise mean a differential viability approach creating a two-tier land market for Green Belt release compared to other areas of land.

According to these interpretations such outcomes would be inequitable and would discourage such landowners not to release such land through voluntary negotiation, especially if default CPO action was considered unlikely.

They would instead be encouraged to wait for a change in government or a lobby-assisted policy reversal, as indeed proved the case with the 1975 Community Land Act and the 2007-9 Planning Gain Supplement.

However, the horizontal inequity that landowners owning similar parcels of land can receive differential rewards or windfalls as a product of the planning system – whether through LPA plan apportionment or the approval of speculative planning applications - already exists.

That would continue to be the case, quite regardless of the already implemented LURA reforms and their future development.

In fact, land allocated for residential development in an adopted plan, but which has not come forward for development is more likely to be subject to option or binding agreements with the landowner consistent with a future residential value many times of its existing use value than others, carving out such a land as a specific category could risk spotlighting the above issues retrospectively rather than navigating them into the future in accordance with government’s planning reforms.

Owners of agricultural land in an area subject to possible acquisition by a New Town or Local Development Corporation established by an LPA or group of LPAs that sometime in the future could designate that land for housing use, could still expect hope value.

The potential use of land value capture to help finance future partially public contracted schemes (see *section three* of Labour's Planning Reforms: Ends and Means) commensurate with the government's delivery target, would then therefore continue to be constrained by the existing institutional and legal framework relating to the compulsory purchase of land and buildings by public authorities, as well as by the continuing ability of landowners/developers to enjoy hope value created or connected to public policy action and investments.

The general legal duty to demonstrate a compelling case in the public interest that must be met in all CPO cases already exists.

In short, the right of a landowner to enjoy 'hope value' can and should be overridden where it can be demonstrated that a wider public interest case of greater force is present: not a very high bar.

The policy direction outlined in our response to *Question Five* would, moreover, and crucially, act to relieve towards removing wider horizontal inequities between landowners and thus move towards greater fairness between them.

Question 8

Our response to *Question Six* covers.

This local press article suggests a further possibly relevant example. Amber Valley (AV) Council is seeking to acquire land for a major development adjacent to the Derby Mackworth overspill estate (but outside the City Council boundaries on AV land) in accordance with its Local Plan targets, but which apparently is not currently confirmed as allocated within its LP.

AV's efforts are currently being stymied by the owner of the land concerned.

The reformed policy framework advanced in our response to *Question Five* should help to both encourage a voluntary win-win outcome for both parties, as would widened CPO general directions acting as a default power to underpin that framework (landowner gets a price above EUV; acquiring authority can avoid resource costly CPO process and progress the scheme quicker).

It appears that the earliest envisaged start on this site - and no doubt many other similar large-scale ones subject to the LP process - is 2029 for completion by 2039.

Approaching the government's delivery target presupposes that major schemes such as those announced by the MHCLG today (13th February) to get spades in the ground before 2029, ready for completion as soon as is possible thereafter, underscores the imperative for development corporation and other public authorities to be able to use and benefit from the reformed policy framework outlined in our responses to *Questions Five and Six*.

Question 9

Yes. This is sensible housekeeping exercise.

Question 10

Yes, save that that the requirement to include an on-line map of the proposed site to be acquired should be clearly stated.

Question 11

Yes.

Question 12

No comment.

Question 13

Yes.

Question 14

Yes

Question 15

No comment**.**

Question 16

No comment.

Question 17

No comment.

Question 18

No comment.

Question 19

No comment.

Question 20.

Yes**.**

Question 21

As per our response to Questions *Five and Seven*, it would be both fairer and create more certainty to lift the prospect of hope value from securing planning permission for residential development more generally.

The policy direction identified in our *Question Five r*esponse could then be incorporated into planning policies covering the setting of benchmark values and of affordable housing obligations.

The CPO framework would then need to offer an effective default backstop for schemes, where they involve delivery of a high proportion of affordable housing and/or social infrastructure providing a compelling case in the overall public interest.

The rights and expectations of landowners connected to land value increases unrelated to their own efforts or activities should then be balanced with those of households priced out of affordable housing partly, because of such increases often reflected in hope values.

The key policy and equity issues continue to revolve around the practicability of uplifting additional affordable housing through the mechanism of deflating land prices by planning policy requirements and setting BLV values closer to EUV values for viability purposes.

Another possible impediment is a general lack of human and other resource capacity of LPAs to initiate, progress and complete substantive CPOs on the scale and timescales that may be required to give the required teeth and default backing to the government's strategic aims.

The risk is that the prospect of default compulsory purchase at existing use values is perceived and becomes a 'paper tiger' threat to be largely ignored, rather than an effective default last resort power, which could undermine the effective uptick of voluntary exchanges and purchases of development land at values needed by, and, consistent with the government's affordable housing and other social objectives.

It also reinforces the need for new development corporations to take a demonstration lead, as argued in our response to *Question Six* and for them to develop and share their experience and expertise.

In sum, and in the final analysis, it is vital that a reformed public policy framework underpins and encourages voluntary exchanges of land at values consistent with the government's planning reforms and wider objectives and that CPO reform is both integral to and consistent with that framework.

Question 22

The proposals made in the consultation and the policy framework outlined in our response to Question Five should produce impacts that act in favour of protected groups defined under the Equality Act 2010, especially where they result in the provision of additional affordable housing where they have a disproportionate need for it.

Relevant background documents:

https://www.asocialdemocraticfuture.org/wp-content/uploads/2022/07/June-2022-Compulsory-Purchase-Compensation-Consultation.pdf

Labour's Planning Reforms: Ends and Means

ANNEX A

Consultation questions

Question 1: Do you agree that directions to remove compensation payable for prospective planning permissions ("hope value") should be allowed to be included in CPOs made on behalf of parish/town or community councils by local authorities under section 125 of the Local Government Act 1972 where the schemes underlying the orders are providing affordable or social housing?

Question 2: Do you agree that a decision on the confirmation of a CPO which includes a direction to remove value attributed to the prospects of planning permission (i.e. "hope value") from the assessment of compensation for land taken should be eligible, where the relevant criteria in guidance are met, to be undertaken by:

- Inspectors where there are objections to the order; and
- Acquiring authorities providing there are no objections to the order?

Question 3: Do you agree that the decision-making function of the confirming authority relating to the making of a direction for additional compensation under Schedule 2 of the Land Compensation Act 1961 should be eligible to be undertaken by an inspector?

Question 4: Do you agree that section 14A of the Land Compensation Act 1961 should be amended to make it clear that directions to remove hope value should apply to other heads of claim where open market value is a relevant factor in the assessment of compensation?

Question 5: Another approach to removing hope value from the assessment of compensation could be to allow the Secretary of State in England or the Welsh Ministers in Wales to issue general directions for sites which meet certain defined criteria. We would welcome examples of brownfield sites suitable for housing in your areas (e.g. through an allocation) where a planning permission has not been sought along with the reasons why. In particular, examples of sites where either:

- it is claimed the delivery of the scheme with minimum affordable housing provision and other obligations such as provision of public infrastructure is not viable; or
- the costs associated with the value associated with the prospect of planning permission ("hope value") has made the scheme unviable.

Question 6: We would welcome views on why you think, in the circumstances of the example(s) given in question 5, the removal of the value associated with the prospect of planning permission ("hope value") where CPO powers are used could help deliver a housing scheme which meets the policy requirements of the local authority and how it would help address the problem outlined in the example.

Question 7: We would also welcome your views on whether, in the circumstances of the example(s) given in question 5, there would be any consequences of removing the value associated with the prospect of planning permission ("hope value") from the assessment of compensation as a result of the use of CPO powers and the delivery of land for housing development.

Question 8: We would welcome views on whether there are any other categories of sites, other than those listed in question 5, which would be suitable for the proposal. If so, please give reasons why you think the removal of the value associated with the prospect of planning permission ("hope value") where CPO powers are used in those circumstances could help deliver a housing scheme which meets the policy requirements of the local authority and how it would help address the problem outlined.

Question 9: Do you agree that notices and documents required to be served under the Land Compensation Act 1961, Compulsory Purchase Act 1965, Land Compensation Act 1973 and the Acquisition of Land Act 1981 should be capable of being served electronically if parties agree in writing to receive service in that manner or where the recipient is a public authority?

Question 10: Do you agree that the information relating to the description of land published in newspaper notices of the making and confirmation of CPOs should be simplified?

Question 11: Do you agree that where a CPO requires modification to rectify an error such as a drafting mistake or to remove a plot of land from the schedule and/or map, the acquiring authority should be able to confirm the CPO itself by making the required modification(s) providing: (a) all other conditions under section 14A of the Acquisition of Land Act 1981 have been met, and (b) the proposed modifications are non-controversial in the manner set out in the consultation?

Question 12: Are there any modifications which you think should or should not be capable of being made by the acquiring authority (in addition to the inclusion of additional land in a CPO without the consent of the owner) when confirming its own CPO?

Question 13: Do you agree that the Secretary of State should be able to appoint an inspector to undertake a decision on whether to confirm or refuse a CPO made under the New Towns Act 1981?

Question 14: Do you agree the temporary possession powers available under the Neighbourhood Planning Act 2017 do not need to apply to the taking of temporary possession of land under the Transport and Works Act 1992 and Planning Act 2008 as there are sufficient provisions under those consenting regimes which provide for the temporary possession of land?

Question 15: Do you agree there should be an expedited notice process for the vesting of interests in land and properties under the general vesting declaration procedure in the circumstances outlined in the consultation?

Question 16: If you answered positively to question 15, we would welcome views on whether there are any other circumstances where the expedited notice process for the vesting of interests in land in an acquiring authority should apply?

Question 17: If you answered positively to question 15, do you agree those with an interest in land included a CPO should be able to enter into an agreement with the acquiring authority for their interest to vest in the authority earlier than the existing minimum 3-months' notice period?

Question 18: Do you agree that the current loss payments should be adjusted as set out in the consultation?

Question 19: Do you agree that the method of calculating the "buildings amount" under sections 33B(10) – 33C(11) of the Land Compensation Act 1973 should be changed to "gross internal floor area"?

Question 20: Do you agree that exclusions to home loss payments should apply where one of the statutory enforcement notices or orders listed under section 33D(4) and (5) of the Land Compensation Act 1973 has been served on a person and they have failed to take the required action on the day the relevant CPO which their property is subject to is confirmed?

Question 21: Do you have any comments on the likely impact of the proposals outlined in this consultation on business interests both for the acquiring authority and claimants?

Question 22: Do you consider there are potential equalities impacts arising from any of the proposals in this consultation? Please provide details including your views on how any impacts might be addressed.