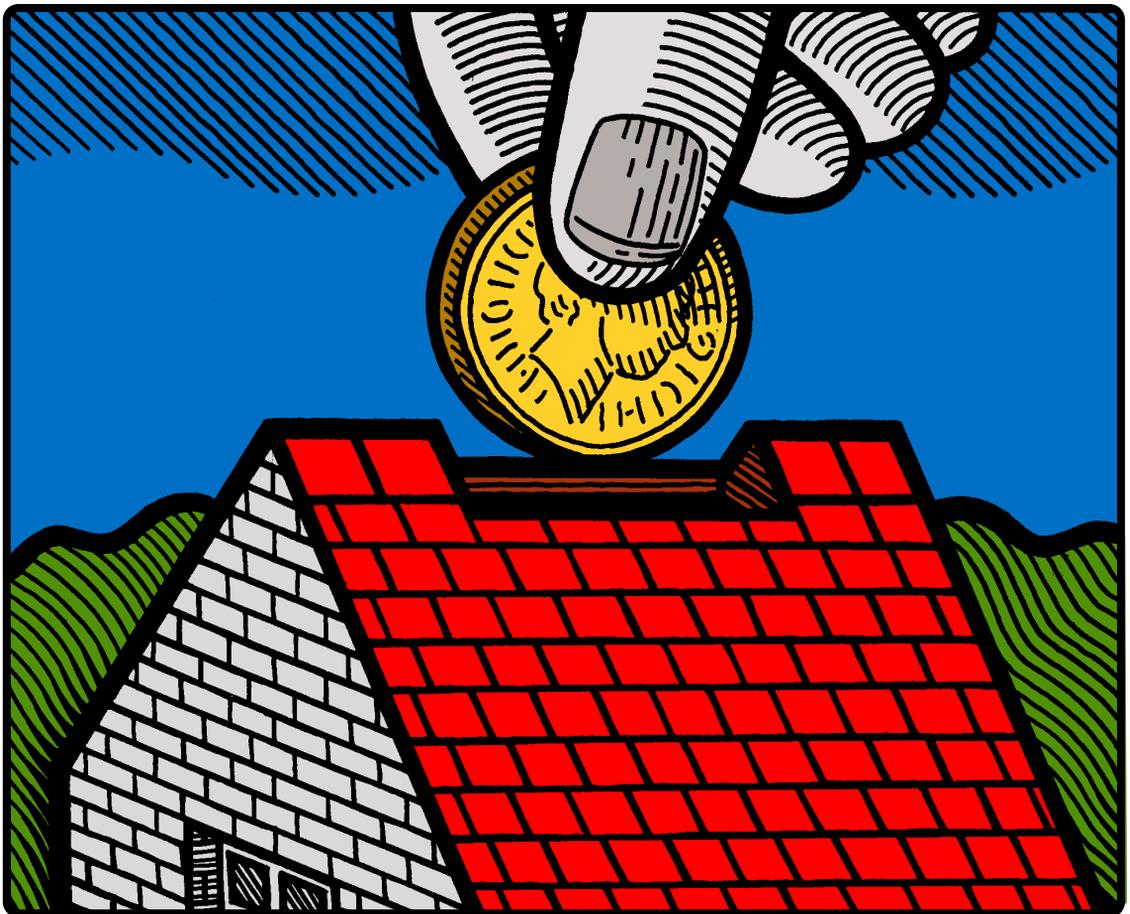




Town & Country Planning
Tomorrow Series Paper 13

land value capture and infrastructure delivery through SLICs

John Walker



Foreword

John Walker's new contribution to the Town & Country Planning Tomorrow Series takes the Association's highly successful Garden Cities campaign a step further, by making an important contribution to the debate about how we create sustainable new communities as part of the solution to the UK's chronic housing crisis.

So far, the TCPA's campaign has seen 'locally planned large scale development' appearing as a rung on the Government's strategy for housing, and the principles of Garden Cities cited in the Prime Minister's speech on infrastructure and within the National Planning Policy Framework. This is the first time that Garden Cities have been mentioned in national policy for over 40 years.

However, Garden Cities and Suburbs will not be delivered without access to long-term patient investment to meet up-front infrastructure costs. De-risking development for investors is a key requirement in unlocking the potential of high-quality new communities.

History shows that, properly managed and underwritten by the capture of land values, large-scale new developments can work financially. Capturing the increase in land values arising from the grant of planning permission was the crucial and highly successful funding model used in the development of the original Garden Cities and the post-war New Towns.

In this Tomorrow Series paper, John Walker takes us to present day, building on the lessons of the New Towns, and in particular lessons from Milton Keynes, by presenting a new, SLIC proposition – a Strategic Land and Infrastructure Contract – that would enable timely and predictable provision of essential infrastructure to be committed at an early stage, enhancing both investor and community confidence in the quality and deliverability of new Garden Cities and Suburbs. It might even make use of New Town legislation!

Lee Shostak

Chair, TCPA

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John Walker



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Key barriers to the delivery of new communities include capturing land value and managing investment risk in the provision of essential hard and soft infrastructure

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Introduction

The opportunities provided by creating large-scale, high-quality new communities is gaining traction with the Government as it recognises the important role that new Garden Cities and Suburbs can play in meeting housing need, promoting quality of life, and creating jobs. With the increasing recognition of, and strong references to, Garden City principles emerging in the Coalition Government's policies,¹ it is worth re-examining how land values and new partnerships can best be used for the long-term benefit of these new communities.

The recent TCPA report *Creating Garden Cities and Suburbs Today*² highlighted a number of key barriers to the delivery of new communities, including the capture of land value and the management of investment risk in the provision of essential hard and soft infrastructure.

The Garden Cities and the New Towns (and in particular the experience at Milton Keynes) together represent one of the most effective examples of large-scale and rapid growth in the UK, with annual rates of housing growth in Milton Keynes of between 2,000 and 3,000 being matched by the development

of infrastructure, facilities and employment opportunities over a period of several decades. This Tomorrow Series paper is based on lessons learnt from the author's extensive experience gained in a number of previous roles, including Chief Executive of the Commission for New Towns, Chairman of the Central Milton Keynes Board, and Chairman of the Milton Keynes and South Midlands (MKSM) Infrastructure Funding Sub-Group.

The central aim of this paper is to propose answers to two key questions:

- How do we secure the resources for necessary infrastructure and how can we ensure that infrastructure is provided when needed?
- What can we do that is different from what we traditionally have done?

In answering these questions, the paper builds on the experience gained at Milton Keynes during its Development Corporation period (1970-1999) and during the early 2000s, when the concept of Strategic Land and Infrastructure Contracts between landowners/developers, local authorities and government agencies was first developed. The paper suggests some simple guidance for local authorities and landowners/developers that could help them to secure the delivery of strategic infrastructure using land value capture and voluntary land pooling.

1 *National Planning Policy Framework*. Department for Communities and Local Government, Mar. 2012, para. 52. www.communities.gov.uk/documents/planningandbuilding/pdf/2116950.pdf

2 *Creating Garden Cities and Suburbs Today: Policies, Practices, Partnerships and Model Approaches – A Report of the Garden Cities and Suburbs Expert Group*. TCPA, May 2012. www.tcpa.org.uk/data/files/Creating_Garden_Cities_and_Suburbs_Today.pdf

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What is a SLIC?

A Strategic Land and Infrastructure Contract (SLIC) links the delivery of strategic, as well as local, infrastructure to the contribution of funds from landowners/developers. These contributions supplement, rather than replace, central and local government funding, which would itself be subject to greater certainty than is normally the case. They make it possible to secure interim funding on better terms by de-risking investment – and thereby enable timely and predictable provision of essential infrastructure at an early stage, thus enhancing general investor and public confidence in the quality and deliverability of growth.

The process seeks to build virtuous cycles by asking each partner to strengthen their commitment at an early stage in exchange for similar action by each of the others. While it will be impossible to achieve firm binding legal commitments to all the necessary funding up-front, the public sector partners would find ways to commit more than is usually the case, including using best endeavours to find sources of funds over a period of time in exchange for binding ‘tariff’-type commitments from landowners. In other words, the process seeks to build trust, confidence and commitment between the various public and private partners who want to see the scheme delivered.

The contractual relationship could be between, on the one hand, the infrastructure providers and, on the other, the landowner(s) that controlled a substantial and separately developable parcel of land. However, it may be preferable for the local authority (where it has the capacity to do so) or another relevant delivery agency, such as the Homes and Communities Agency (HCA), to act as a contractual negotiator, partner (if they also own land) and banker to each of the above in brokering mirror-image contracts. A final option might be a locally based and controlled version of a New Town Development Corporation, which is discussed in greater detail at the end of this paper.

The Milton Keynes Tariff, agreed in 2004, was essentially a SLIC, in which landowners pledged contributions at a set rate per house or square metre of commercial floorspace in exchange for meaningful promises by the local authority and the HCA (then English Partnerships) to find the matching funds needed to deliver the agreed total

infrastructure package for around 18,000 homes. In legal terms, it took the form of a large Section 106 agreement. As a result of the pledges made by landowners and the local authority, the HCA was able to secure interim funding from the Treasury, which could see that most of the risks that might prevent repayment of their loan had already been addressed. In the current climate, that may look unlikely to be repeated in full, although there are compelling arguments about the public benefit that would result from up-front investment by government. If part of the cash flow funding came from HM Treasury, this would reduce the risks perceived by private funders and make their participation both more likely and on better terms.

Public sector landowners should be involved wherever possible, through existing ownerships or through acquisition of key sites. This will encourage private sector involvement and could be useful if the landowners jointly attempted to raise additional funds beyond their own resources.

At a wider geographic scale, the experience in the Milton Keynes and South Midlands Growth Area was that some SLIC-type contracts were brokered through the then Regional Growth Area Board, since contributions were needed from landowners from several local authority areas for major infrastructure investments which would be of benefit to all of them. Although Regional Boards no longer exist, similar arrangements could be secured today, possibly through Local Enterprise Partnerships (LEPs). The LEPs are involved in helping to prioritise infrastructure investment, for example through the Growing Places Fund.³ LEPs could not only make the case for new and expanded villages, towns and cities by linking housing to economic growth and jobs, but they could actively broker contracts between local authorities, government departments and landowners.

3

The basic argument for SLICs

First, land value increase is the only truly new financial resource created by and available to the growth process. All other financial inputs rely on transfers from other programmes or on real increases in total public spending, or are already factored into revenue spending projections. Therefore it is imperative to capture as much of this added land value as possible (and commercially

3 *Growing Places Fund. Prospectus.* Department for Communities and Local Government, Nov. 2011. www.communities.gov.uk/publications/regeneration/growingplacesfund

viable) in order to use it to support infrastructure provision. This is both morally defensible – much of the value is created by public sector policy decisions – and commercially sensible – development can proceed more rapidly and successfully if it is backed up by adequate and timely infrastructure. Landowners and developers cannot realise the value of their assets unless substantial infrastructure funding is made available.

The ‘traditional’ approach of capturing value through comprehensive public sector land assembly at ‘no scheme’ values – used by the New Towns and some Urban Development Corporations (UDCs) – is unlikely to be available on large-scale new schemes given the current funding environment, and

Secondly, multiple fragmented ownerships are highly likely to frustrate and distort the delivery of ‘joined-up’ sustainable development. They lead to continuing conflicts over planning and infrastructure needs and priorities. The growth achieved in the New Towns and by the UDCs would never have happened if such fragmentation had been allowed to continue. Therefore land ownership in each area identified for large-scale strategic growth should be mapped and analysed, and then steps should be taken to see how this can be ‘unified’ through voluntary SLICs. Landowners/developers have to be encouraged or persuaded to form alliances that effectively unify adjacent land ownership, including the use of land equalisation arrangements. Where the public sector owns land, this can be used to



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Land value increase is ‘the only truly new financial resource created by and available to the growth process’

therefore needs to be used strategically and sparingly. Site-by-site Section 106 planning obligations are not designed for land value capture, although they do achieve some elements of it by placing the burden of local infrastructure provision on the landowner. However, the use of Section 106 on a site-by-site basis can be clumsy and unpredictable. The Community Infrastructure Levy (CIL) can be seen as more strategic, but the process of arriving at CIL rates is unlikely, on its own, to build sufficient resources or any real sense of confidence that infrastructure will be delivered on a particular site in a timely way. CIL is essentially one element of the MK Tariff (land value contributions), but omits all the others which made it work, such as confidence that infrastructure will be delivered.

lever such agreements. Unified owners can then talk to local planning authorities without narrow interests that skew the arguments towards particular parcels of land, and can come to agreements about overall infrastructure funding (transport, health, rail, hospitals, social housing, schools, parks, community halls, etc.) in advance and in place of site-by-site Section 106 and CIL processes. It seems that CIL may allow for ‘Section 106 islands’, which could be developed using SLICs.

Local planning authorities could broker a SLIC to secure the delivery of strategic infrastructure by the infrastructure agencies etc., supported by additional funding from landowners. (In the Milton Keynes and South Midlands Growth Area this was supported and driven by the ‘Rooker’ Board (the Inter-Regional

Board chaired by Lord Rooker) – and was written into its terms of reference.) The infrastructure agencies etc. would have an opportunity to benefit from these extra contributions only if they accelerated their programmes in line with the growth agenda. Otherwise, agreements lapse. There would need to be assurances that there would be no attempt to open the Section 106 process later with the aim of duplicating these contributions. However, Compulsory Purchase Orders (CPOs) should be available for use if minority landowners refuse to participate and try to ransom the whole development.

Landowners are often asset-rich but cash-poor. This type of arrangement should also improve their ability to raise funds from institutions to cover their cash flow deficit in the early years. This will be particularly so if public sector landholdings are included as part of the security and the public agency(ies) can help to underwrite the funding risk. Unified land ownership should also support higher-quality development, since landowners share a longer-term interest in getting growth in values as development proceeds. The result would be that in each growth area there could be perhaps one or two such strategic contractual



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The premise underlying the SLIC approach is that there is mutual benefit

4 What are the benefits of SLICs?

A SLIC would oblige the infrastructure providers to deliver specific items to agreed specifications and timescales. It would oblige the landowners/ developers to make an agreed financial contribution to each item at an agreed point in the delivery process. The net effect would be to galvanise the providers, who would benefit from a one-off opportunity to secure their infrastructure at lower cost; and to give the landowners/developers greater confidence in the growth process and their ability to exploit their landholdings in a profitable way.

arrangements, giving a predictable flow of private and public sector funds for specific infrastructure schemes.

5 What are the dangers?

A SLIC could be seen as creating a local cartel. The way in which land would be made available to the market, including pace and transparency, must be determined at the same time as the SLIC, and must satisfy concerns about land-banking, over-supply, profiteering and above all public legitimacy. In the past, public sector Development Corporations dealt

with this situation in a defensible and constructive manner by openly assessing and agreeing the level of market demand at regular intervals. This experience should be recycled into the way that local authorities use SLICs.

6

What if the landowners don't co-operate?

Landowners and developers in areas identified for large-scale growth should be incentivised to think and act strategically so that they get the benefit of reduced development risk and the local community gets the benefits of an earlier commitment to a greater share of their increased land values. The premise underlying this approach is that there is this mutual benefit. However, if the carrot is to be a sufficient incentive, it will have to be accompanied by a visible stick! The use of CPOs must be regarded from the start as a real and acceptable option to remove landowners whose intransigence could frustrate delivery of sustainable growth. This should be introduced at an early stage of discussion with the private sector.

7

What can the Government do to encourage the take-up of SLICs?

The Government could consider giving this approach further support and recognition as a valuable tool for delivering large-scale locally planned development. It could prioritise future allocations of mainstream funding programmes, and any future rounds of the Growing Places Fund, in areas that have made real progress towards forming such Strategic Land and Infrastructure Contracts. It should also look into ways of giving greater confidence about medium-term funding allocations for large-scale projects, on condition that delivery in the short term was as promised.

In two-tier areas where development crosses local planning authority boundaries, County Councils, or wherever they exist Local Enterprise Partnerships, could be encouraged to co-ordinate the provision of SLICs, taking the overview of strategic infrastructure requirements. The Government could support longer timescales for local authority infrastructure plans and Local Plans that will facilitate the emergence of more satisfactory visions and infrastructure solutions for sustainable communities.

The Government could also consider using the HCA as a source of relevant expertise to help broker SLICs in areas where local authorities lack the relevant skills.

To assist with capacity, skills and knowledge issues, thus promoting a rapid learning curve, it will be essential to ensure that experience gained in one area is available in others.

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And finally - why not use a tried and proven form of organisation to oversee the delivery of SLICs?

SLICs need brokers. They also need 'ringmasters' who take responsibility for actual delivery and management of the agreements once they are in place, and they need contractual partners. As stated above, there are several options for whom the contracts could involve. Careful consideration is necessary, as this will have an impact on the confidence with which the investors and developers view the particular SLIC arrangement.

New Town Development Corporations (NTDCs) were purpose-designed to deliver large-scale joined-up development, and did so very effectively for over 40 years. The Act under which they were created still exists, but has not been used in recent times. Two principal reasons for this are:

- NTDCs are seen as agents of central government, imposed on local areas and denuding local authorities of their normal rights and planning powers.
- They were funded by central government loans (which, in fact, were repaid with interest 40 years early, leaving HM Treasury with a healthy surplus of over £1 billion of remaining assets, which have been used to part-fund the programmes of English Partnerships/the HCA ever since).

The first of these points could be overcome if the Government could find a way of allowing local authorities to create and effectively own NTDCs, appointing their boards and providing their operating brief. The second problem, of funding, could be overcome if the SLICs approach was adopted, although some interim finance from central government would still make good sense and, on previous evidence, would provide a good investment for the taxpayer. The locally based NTDC could become the contractual partner for landowners and for infrastructure providers,

providing transparency, clarity and greater confidence all round.

And before anyone shouts 'we can't afford it', just remember the conditions in which the early NTDCs were created in the late 1940s and 1950s: austerity,

including food rationing, far worse than anything we see now; and massive government debt – about 2.5 times bigger even than today! What is affordable now must be judged in the context of what will pay dividends over the longer term.

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Land Value Capture and Infrastructure Delivery through SLICs

By John Walker

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John Walker started his career at the Milton Keynes Development Corporation in 1975 and reached the position of Deputy Chief Executive before he left in 1992. From 1992 to 1999 he was Chief Executive and Accounting Officer of the Commission for New Towns. John also served as Chief Executive of the British Urban Regeneration Association (BURA) between 2001 and 2004. As a Director of John Walker Consultants Ltd he has advised on a number of Government initiatives – as an advisor on Growth Areas to ODPM/DCLG from 2003 and 2008, and as an advisor to DCLG on the deliverability of eco-town proposals and as Chairman Eco-town Challenge Panel between 2007 and 2008. Since 2010 he has been Chairman of the Whitehill Bordon Eco-town Delivery Board. John has also held several voluntary positions, including Deputy Chairman of Midsummer Housing Association from 1984 to 1986, a Trustee of Milton Keynes Parks Trust from 2000 to 2009, a Trustee of Bletchley Park Trust between 2000 and 2004, and a Trustee of the National Energy Foundation from 2000 to 2006. He has been Chairman of the Green Gauge Trust since 2009 and is also the current Chairman of the National Energy Foundation.

The Town and Country Planning Association produces the Tomorrow Series in order to promote debate and encourage innovative thought. Views expressed in Tomorrow Series Papers are those of the authors and do not necessarily represent the views of the TCPA.

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