All-Party Committee on the Constitution

The Constitution and the Cost of Building Land

Submission on behalf of the Labour Party
11th June, 2003

Introduction.
At the outset, it is noted that the all-party committee is examining Articles 40.3.2 and 43 "to ascertain the extent to which they are serving the good of individuals and the community, with a view to deciding whether changes in them would bring about a greater balance between the two". In that context written submissions have been invited on issues such as –

- the right to private property
- private property and the common good
- compulsory purchase
- the zoning of land
- the price of development land
- the right to shelter
- infrastructural development
- house prices
- access to the countryside.

We believe it is important to emphasise the context in which the review of these Articles is taking place. The all-party committee is charged by its terms of reference with undertaking a full review of the Constitution "in order to provide focus to the place and relevance of the Constitution and to establish those areas where Constitutional change may be desirable or necessary", having regard, *inter* alia, to the report of the Constitution Review Group. Its primary concern must therefore be a consideration of the existing provisions with a view to deciding whether change to the text is recommended. In the nature of things, any such decision can be arrived at only by reference to previous experience, in other words, the way in which those Articles have been interpreted and applied by the courts in previous cases.

It is not, in our view, the function of the all-party committee to determine, for example, what State policy in relation to development land should be. Nor is it the committee's function to offer the Government or the Oireachtas legal advice as to the restrictions, if any, placed on those forming such a policy by the present constitutional text in a case where, as here, any such advice must include a largely speculative element.

The former function belongs to the Government and the Houses while the latter, so far as Government policy is concerned, is the responsibility of the Attorney General. There is no reason, in our view, why action on some of the more urgent items on which submissions have been invited should await the final outcome of this committee's deliberations and the publication of its report on the matter.

We outline below our interpretation of Articles 40.3.2 and 43 and describe what action we believe is permissible within their remit. We support the case for amendment made by the CRG but believe it is largely textual in nature and that it would not introduce any substantive amendment to the applicable rules of law. Both for those reasons and because we do not believe the all-party committee is the sole or even the most suitable forum for considering the merits of a development land policy, we do not think it either necessary

or appropriate to postpone further action in promotion of our compulsory acquisition reform policy (spelled out below), for example, in anticipation of this committee's report.

Finally, this submission touches, to a greater or lesser extent, on all of the issues listed in the committee's notice with the exception of access to the countryside, which will be the subject of a separate submission. However, our position on the right to shelter was spelled out in our party's Twenty-First Amendment of the Constitution (No. 3) Bill 1999, which proposed to provide specific constitutional recognition for social, economic and cultural rights, including the right to adequate housing. That Bill was debated and defeated in the Dáil in October, 2000. We would argue that it makes more sense to deal with the right to shelter/housing in that context rather than within a "Private Property" framework.

The Constitution.
The Constitution has acquired a reputation for paying undue deference to property and the rights of property owners. We believe this reputation is largely undeserved and has in fact been relied upon, as an excuse for doing nothing, by those who are by and large satisfied with the *status quo* in terms of legislative intervention for the regulation of property and the enjoyment of property rights.

The Constitution contains two separate provisions relating to the protection of personal property rights. First Article 40, which deals with personal rights in general, makes passing reference to property rights. Section 3, sub-sections 1 and 2 of that Article provide that the State "guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen" and that the State "shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the … *property* rights of every citizen".

Second, Article 43 is headed "Private Property" and deals at greater length exclusively with that concept. That Article provides:

> "***1.*** ***1°*** *The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.*
>
> ***2°*** *The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property.*
>
> ***2.*** ***1°*** *The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.*
>
> ***2°*** *The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good*."

As the Constitution Review Group pointed out in their 1996 report[1], the fact that there are two separate constitutional provisions has given rise to confusion. The report states that, broadly speaking, Article 40.3.2 protects the individuals citizen's property rights while Article 43 deals with the institution of property itself. If so, then the test for the individual, in any case other than cases where the rights of ownership or transfer are in danger of abolition, is the Article 40.3.2 test: are the individual's rights being subjected to "unjust" attack?

However Kelly[2] points out that the areas of application as between the two Articles is not that clear cut. Following swings first one way and then the other, it now appears that the

[1] *Report of the Constitution Review Group*, 1996, Pn 2632, p. 358.
[2] JM Kelly, *The Irish Constitution*, 3rd ed., 1994.

two Articles mutually inform each other. "*Thus a restriction on private property will not amount to an unjust attack on property rights [within the meaning of Article 40.3.2] if such restriction is socially just and subserves the exigencies of the common good [as permitted by Article 43]*.[3]" In other words, State action that is authorized by Article 43 and conforms to that Article cannot by definition be "unjust" for the purposes of Article 40.3.2.

In the present context, it is Article 43.2 which is of greatest significance. It attaches a substantial qualification to private rights in favour of the common good.[4] Although reconciling the language of the two Articles has given rise to unnecessary complication, contemporary case law is reasonably clear. The State may regulate and interfere with property rights; but it may not do so in a manner that disproportionately interferes with those rights. Any such disproportionate interference falls to be classed as an "unjust attack" and so unconstitutional. An interference is proportionate, however, if it has due regard to the principles of social justice and the exigencies of the common good.

Again, as the CRG points out[5], *"[t]here have been only about seven cases where a plaintiff has established an unconstitutional interference with his or her property rights and in nearly every such case the potential arbitrariness of the interference in question was fairly evident"*.

Thus the provisions of the Rent Restrictions Acts operated in a arbitrary fashion and so fell to be struck down[6]. As another example, the system of levying rates on agricultural land had been based on a valuation carried out between 1849 and 1852 and it bore no reasonable relation to current values for the land in question. It produced results described by the High Court as "eccentric and ludicrous" and so the use of the poor law valuation to levy local authority rates was also struck down[7].

The important aspect of both these cases is that it was not the principle of either rent restriction or local authority rates that was called into question but rather the mechanism of application, which was arbitrary and disproportionate in both cases.

Finally, we agree with the conclusions of the CRG[8] in relation to comparisons between Articles 40.3.2 and 43, on the one hand, and Article 1 of the First Protocol to the European Convention on Human Rights and Fundamental Freedoms, on the other.

> *"[T]here is a great deal of overlap as far as the substance of the respective guarantees is concerned … [A]n examination of the two leading cases arising*

[3] Ibid., at p. 1076.
[4] KC Wheare, *Modern Constitutions*, (2nd ed., 1966, p. 43.) contrasted the stress placed on the right of private property in sub-section 1 of the Article – "calculated to lift up the heart of the most old-fashioned capitalist" – with that placed on the principles of social justice and the exigencies of the common good in the second sub-section – "the Constitution of [former] Jugoslavia hardly goes further than this".
[5] At p. 359.
[6] *Blake v Attorney General* [1982] IR 117.
[7] *Brennan v Attorney General* [1984] ILRM 355.
[8] At p. 365.

respectively under the Constitution (Blake v Attorney General) and the Convention (Spörrong v Sweden (1983) 5 EHRR 35) reveals a striking similarity in terms of judicial reasoning and general approach to the issue of what constitutes an unjustified interference with property rights … [T]here is little of substance to choose between the Constitution and the Convention, as both protect the right to property and both envisage circumstances in which such right can be restricted, qualified, etc., in the public interest, provided any such interference in the right is proportionate and required on objective grounds."

For the reasons set out in the CRG report – which are largely to do with clarity and consistency – the Labour Party endorses the recommendations of the majority of the group, which provide for a single, recasted version of the two present constitutional provisions. Specifically, we would recommend a provision along the following lines.

"***Private Property***

1. *Everyone has the right to own property and to its peaceable enjoyment and possession. No person shall be deprived of his or her property, or of any rights in relation to property, save in accordance with law. The State further guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath and inherit property.*

2. *The State recognises, however, that the exercise of these rights must in the public interest be subject to legal restriction and ought, in civil society, to be regulated by the principles of social justice. The State, accordingly, may delimit by law the exercise of these rights with a view to reconciling their exercise with the exigencies of the common good.*

3. *Without prejudice to the generality of sub-section 2 of this Article, any such delimitation may in particular relate to the raising of public revenues, proper land use and planning controls, protection of the environment or of the consumer and the conservation of objects of archaeological or historical importance*."

We would stress, however, that we do not envisage any dramatic change in the jurisprudence of the courts arising from such an amendment, or any variation of it, as proposed by the CRG. What is envisaged is essentially a tidying-up exercise that preserves the essential thrust of the case law which has arisen both before the domestic courts and at European level.

Our proposals in relation to price controls for building land put forward below do not, therefore, in our view rely for their consideration on the prior enactment of this or any other amendment to Article 43. We believe they are consistent with the terms of the present Constitution.

Should this not transpire to be the case, then constitutional amendment would of course be required. Such an amendment would most likely be confined simply to making it clear that, where the exigencies of the common good so require, provision may be made by law for the acquisition of land by local authorities and other public bodies, to enable the performance of public functions, at a price that is less than its open market price.

Housing policy – basic principles.

In February, 1999, the Labour Party appointed an independent housing commission, chaired by Professor PJ Drudy of the Department of Economics in TCD. The purpose was to assess the nature and causes of the housing problem and to offer possible solutions. Its report, *Housing: a New Approach*, was published in April, 1999. A copy of that report is enclosed with this submission.

In arriving at its recommendations, that commission set out four basic principles which, in their view, should underpin housing policy in Ireland in the future. We offer them for endorsement by this committee.

1. Housing is a social good. Since housing represents one of the fundamental requirements of human beings, it should not be treated in the same way as non-essential traded commodities for speculation or investment.

2. Every person should have a right to good quality affordable housing appropriate to their particular needs. This right should be enshrined in the Constitution or in legislation.

3. In view of the particular significance of housing for society, market forces alone must not be allowed to dictate its provision and price. In accordance with the Constitution, strong intervention by the state may therefore be essential in the interests of social justice and the common good.

4. Land is one of the critical resources required for housing. For this reason, actions of the state on behalf of the community (e.g. via re-zoning, planning permission or provision of infrastructure) should not result in significant untaxed gains to landowners.

As regards the first two principles, Labour Party policy is encapsulated in our Twenty-First Amendment of the Constitution (No. 3) Bill 1999, which proposed adding the following to Article 40 of the Constitution:

> "*The State, bearing in mind international legal standards, recognises the economic, social and cultural rights of all persons and, in particular, recognises:*
>
> *i. the right to earn a livelihood and to reasonable conditions of employment,*
>
> *ii. the right to adequate health care, and*
>
> *iii. the right to an adequate standard of living, comprising adequate housing and nutrition and other means necessary to a dignified existence.*

Where practicable, the enjoyment of these rights should in the first place be ensured by individual and family effort and initiative.

Where persons or their dependants are unable adequately to exercise or enjoy any of these rights, the State guarantees, as far as practicable, by its laws to defend and vindicate these rights, in accordance with the principles of social justice."

That Bill was debated and defeated in the Dáil in October, 2000. The Labour Party remains committed to its re-introduction and its being put to the people for enactment by them.

So far as reliance on market forces in general is concerned, we believe that the price of owner-occupied housing is determined by the interaction of various factors affecting demand and supply – the so-called "housing market". If this market were perfect and were operating efficiently, it would have certain characteristics, including free entry of suppliers. However, the market is in fact a highly imperfect one and displays significant blockages, especially on the supply side. These include the slow release and availability of land and delays with planning permission and services. In such circumstances and with excess demand, a relatively small number of developers (who may or may not be also builders) can exert considerable control over prices in the short term and can in the process secure exceptional levels of profit – often called "super-normal" profit in a monopoly-type situation.

A factor of considerable significance in particular is the availability of serviced land, since it is a fundamental requirement for housing. This factor has been widely recognised as being a central issue in the housing crisis. A range of measures designed to increase and service the supply of suitable land is therefore crucial.

The Kenny Report.

The availability of land at a reasonable price for housing, especially in the main urban centres, has been a deep cause of concern in Ireland for almost three decades. In the early 1970's, this concern resulted in the establishment of a Committee on the Price of Building Land under the chairmanship of Mr Justice Kenny.

That committee was asked to consider, in the interests of the common good, possible measures for controlling the price of land required for housing and other development and for ensuring that some or all of the increase in the value of development that was attributable to the decisions or operations of public bodies could be secured for the benefit of the community.

The main objective was to find a way to stabilise or reduce the price of building land and to ensure that the community acquired on fair terms the "betterment" element which arises from works carried out by local authorities. The Committee reported to the Government in 1973. The main proposal was that local authorities should be enabled to acquire potential development land designated by the High Court at "existing use value" plus 25 per cent. This proposal inevitably raised objections, and in particular it was argued that it was an "unjust attack" on property rights and was therefore contrary to the Constitution. This view was far from universal, however, on the grounds that the rights of property owners must be regulated by "principles of social justice" and the "common good" – also set out in the Constitution.

The Local Government (Building Land) Bill 1980 was introduced into the Dáil by Deputy Ruairi Quinn TD. It was defeated at second stage on the 11th June, 1980, by 15 votes to 59, Fine Gael abstaining. The purpose of that Bill, along the lines recommended by Kenny, was to enable local authorities to designate land required for development and to enable them to acquire land at existing use value within five years of such designation. Since the defeat of that Bill, no further action has been attempted.

Our view is that any constitutional challenge to legislation along the lines proposed by Kenny would fail, for the reasons set out in the analysis of Articles 40 and 43 set out above. In the present circumstances in particular, where we face a severe housing shortage, "social justice" and the "common good" must surely dictate that land owners should not accrue huge gains purely as a result of land re-zoning or planning permission. Such planning permission always carries the responsibility to provide services; yet land owners may make a relatively limited contribution to this.

Every opinion the all-party committee receives on this question is, however, of necessity speculative. The only way of finding out whether such proposals will survive constitutional scrutiny is to incorporate them into legislation and await the outcome of constitutional challenge.

If the legislation falls, then we will at least have a clearer view as to why it fell and of the nature and extent of the amendments to the Constitution required in order adequately to restore it.

The central proposal of this submission, therefore, is that legislation should provide that land being compulsorily acquired by local authorities for development purposes should be capped at existing use value plus a reasonable addition.

However, time has moved on since the publication of the Kenny Report. First, constitutional jurisprudence no longer seems to require that the delimiting of property in the manner envisaged by that committee is an exercise that could be undertaken only by the High Court. Legislative interference in property rights occurs every day of the week, without direct High Court involvement. One could instance restrictions on the use of gaming machines; limitations on land use so as to protect national monuments; the regulation and control of banking; residential property tax; the superlevy on milk production; and restrictions on casual trading. All of these were the subject of unsuccessful challenges to their constitutionality, yet none involved the direct participation of the courts, as Mr Justice Kenny considered necessary.

Second, the Kenny Report stated its main proposal as not being that a local authority should have power to acquire land anywhere at a price below its market price: "It is that a court should be authorised a form of price control in designated areas" (emphasis added). Yet, if one has to justify compulsory acquisition at current use value by reference to the principles of social justice and the exigencies of the common good, then surely it is the *purpose* for which the land is acquired that is of importance, rather than its *location*.

We oppose as both not constitutionally necessitated and as unduly cumbersome and restrictive the idea that acquisition at current use value should be available only within specifically designated areas of a local authority's functional area and that such designation should be undertaken by the courts. Instead, this entitlement should be enjoyed by local authorities in any circumstance where they have powers of compulsory acquisition in respect of land needed for the performance of statutory functions and which is not being exploited by its current owner to its full development potential.

There is no reason in any such case why the portion of the open market price of that land attributable to local authority works and/or economic and social forces such as planning schemes and the like should, as a matter of constitutional or any other principle, be held to belong exclusively to the land owner and to be immune from restriction or regulation under Article 43.

Local authority powers – the present position.
It should be borne in mind that, since 1963, planning authorities have had general powers to develop or secure the development of land. In particular, under s. 212 (1) of the Planning and Development Act 2000, a planning authority has powers, *inter alia*, to:

- provide, secure or facilitate the provision of areas of convenient shape and size for development; and

- secure, facilitate or carry out the development and renewal of areas in need of physical, social or economic regeneration and provide open spaces and other public amenities.

Under sub-s. (2) of that section, a planning authority may provide or arrange for the provision of –

- sites for the establishment or relocation of industries, businesses, houses, offices, shops, schools, churches, leisure facilities and other community facilities,

- factory buildings, office premises, shop premises, houses, amusement parks and structures for the purpose of entertainment, caravan parks, buildings for the purpose of providing accommodation, meals and refreshments, buildings for the purpose of providing trade and professional services and advertisement structures,

- transport facilities, including public and air transport facilities, and

- any ancillary services.

Further, it may maintain and manage any such site, building, premises, house, park, structure or service and may make any charges which it considers reasonable in relation to the provision, maintenance or management thereof.

Sub-section (3) enables a planning authority to make and carry out arrangements or enter into agreements with any person or body for the development or management of land, and to incorporate a company for those purposes. And sub-s. (4) makes it clear that a planning authority may use any of powers in relation to the compulsory acquisition of land in relation to these functions "and in particular in order to facilitate the assembly of sites for the purposes of the orderly development of land".

By s. 4 of that Act, development undertaken by a local authority within its own functional area is exempted from the obligation to obtain planning permission, although a public notice and consultation process under Part XI may be required and material contravention of the development plan is not permitted.

Section 213 of the Act provides, more generally, that a local authority may, for the purposes of performing any of its functions (whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), *including giving effect to or facilitating the implementation of its development plan or its housing strategy under s. 94*, acquire land, permanently or temporarily, by agreement or compulsorily.

Section 94, referred to in the previous paragraph, is the section of the Planning and Development Act dealing with housing strategies. It provides that each planning authority must include in its development plan a strategy for the purpose of ensuring that the proper planning and sustainable development of the area of the development plan provides for the housing of the existing and future population of the area in the manner set out in the strategy.

In summary, there is no shortage of enabling provisions to equip local authorities to take a pro-active role in the planning and development of their areas, including the acquisition and development of land banks, either by themselves or in partnership with commercial developers, and in accordance with the provisions of a coherent overall plan rather than by considering planning applications submitted on a piecemeal basis.

The only restraining factor is cost. Local authorities cannot afford to acquire land compulsorily on such a scale and for such a purpose at open market rates.

Rules for the assessment of compensation.
The rules for assessing compensation in respect of land compulsorily acquired are set out in s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919. Where the compensation is payable by a planning authority or other local authority, s. 69 of the Local Government (Planning and Development) Act 1963 applies and adds an additional 10 rules to the original six.

Section 265 (3) of the 2000 Act provides that s. 2 of the 1919 Act, as amended in 1963 shall, notwithstanding the repeal of the Act of 1963, continue to apply to every case (with certain exclusions not here relevant) where any compensation assessed will be payable by a planning authority or any other local authority.

Those 16 rules are appended to this submission.

Our proposal is to amend these rules further in cases where local authorities are compulsorily acquiring "development land" in order to enable the performance by them of statutory functions. The purpose would be to equip local authorities to undertake a programme of acquiring undeveloped land at present in private hands. The land could subsequently be either built on by the authority itself or zoned, serviced and sold on, with a view to ensuring that a constant supply of such land is available, both for local authority housing and private development purposes, within the framework of a coherent and detailed plan for the area in question.

Central to the working of any legislation along these would be three concepts commonly used in tax law, set out below.

> **Open market value** means the amount which land, if sold in the open market by a willing seller, might be expected to realise.
>
> **Current use value** means the amount which would be the open market value of land if the open market value were calculated on the assumption that it was and would remain unlawful to carry out any development in relation to the land other than minor (i.e., exempted) development.
>
> **Development land** means land the open market value of which exceeds its current use value.

If Kenny were given effect, local authorities would be entitled to acquire development land compulsorily at its current use value plus 25 %. This would require stripping out from the present compensation assessment rules references to potential for, or restrictions on, future development: current use value would be the governing criterion.

It would also require, however, special provision to be made in respect of development land that was acquired before the publication of the legislation, so as to avoid an attack based on the claim that the legislation was expropriatory in nature and so

unconstitutional, due to a failure to provide compensation at least equivalent to expenditure actually incurred, plus a reasonable return on investment.

Our view in this regard is based on the fact that the courts lean against legislation affecting property rights with retrospective effect[9]. The courts also lean in favour of the view that compensation should be provided in all cases where its provision is not inconsistent with social justice or the requirements of the common good and is "clearly practicable"[10]. The intention, therefore, should be to cap the landowner's return on his or her investment rather than abolish it.

So, where an individual had acquired land before, say, July, 2003, then compensation for its compulsory acquisition would be assessed, first, by reference to the cost of acquisition (including the cost of any loan entered into for the purpose), if that land was acquired by the claimant through a bargain at arms length. Where land was acquired otherwise than by way of an arms length transaction (i.e., by inheritance or a gift), then the cost would be the amount which would be assessed by an arbitrator applying the rules in force prior to the passing of this Act as the open market value of the land on the date of its acquisition by the claimant.

To the cost of acquisition would be added the amount, if any, assessable in respect of the cost of improvements carried out, other than work consisting only of maintenance, repairing, painting and decorating, which have added to the value of the land.

Finally, an amount would be added to represent a reasonable return on investment in the land. This might, for example, be calculated as if an amount representing the cost of acquisition and of improvements had been instead invested in securities yielding an annual rate of return 2 per cent. higher than government stock.

This total figure would, again, be increased by 25% but the total would not in any circumstances exceed the open market value of the property. In other words, compulsory purchase rules would not produce a rate of compensation greater than what the market would provide.

There is of course nothing cast-iron about the figure of 25%, or of 2% over government stock as a rate of return on investment. Kenny picked 25% simply as offering a "reasonable compromise" between the rights of the community and those of landowners[11]. Other figures may be suggested; it may also be argued that the circumstances of particular cases would require a greater degree of flexibility.

[9] See, for example, *Hamilton v Hamilton* [1982] IR 466.
[10] *ESB v Gormley* [1985] IR 129.
[11] At page 40, para. 68.

Conclusion.
In relation to compulsory acquisition, the Kenny Report pointed out the following[12].

> "*A further factor which may serve to raise land prices occurs in cases in which the price of land compulsorily acquired by a local authority is determined by official arbitration. Under the Act of 1919 the Official Arbitrator must determine the price as being that which the land would make if sold on the open market by a willing seller to a purchaser who is prepared for its building potential. There is inherent in this system the likelihood of over-valuation. This tendency results from the fact that part of the compensation to the owner consists of an award for the potential development value of the land. This potential development is necessarily speculative because no one knows the precise form which future developments will take and so each owner claims that his land should be valued on the most favourable basis. Since the probability of development is not capable of precise arithmetical calculation, arbitrators find themselves faced with a range of estimates and tend to assess compensation on a basis which, in the interests of fairness, favours owners. Hence, the official arbitration system under which the rules for the assessment of compensation in the Acts of 1919 and 1963 must be applied tend to inflate land prices.*"

The underlying rationale for the proposal put forward by Kenny is set out succinctly on page 49, para. 93:

> *"[T]he proposal involves a delimitation of property rights but one which is no more restrictive than other forms of price control. We believe that this delimitation is not unjust because the landowners in question have done nothing to give the land its enhanced value and the community which has brought about this increased value should get the benefit of it."*

This rationale remains valid and is adopted by us as the basis for our proposals to this committee.

And local authorities legitimately represent "the community" in these circumstances. By Article 28A of the Constitution, the State "recognises the role of local government in providing a forum for the democratic representation of local communities, in exercising and performing at local level powers and functions conferred by law and *in promoting by its initiatives the interests of such communities*." (Emphasis added.) This function is given statutory expression in ss. 63 and 66 of the Local Government Act 2001, which describe the functions of a local authority as including, *inter alia*, the taking of "such action as it considers necessary or desirable to promote the community interest", including the community interest in social inclusion and the social, economic, environmental, recreational, cultural, community and general development of the area of the local authority and of the local community.

[12] At page 13, para. 22.

In conclusion, therefore, we believe our proposals are justifiable by reference to the principles of social justice, since there are no moral or ethical principles by reference to which a landowner can claim any superior or indefeasible entitlement to the enhanced value of his her landholding attributable to development profit.

We believe they are also justified by reference to the exigencies of the common good, since a state of affairs whereby local authorities are incapable of adequately discharging their constitutional and statutory mandate on behalf of local communities must, by definition frustrate the common good.

Appendix
Current Rules for the Assessment of Compensation

1. No allowance shall be made on account of the acquisition being compulsory.

2. The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise:

3 The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any authority authorised or capable of being authorised under any transferred provision to acquire land compulsorily.

4. Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account.

5. Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, where reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.

6 The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.

7. In the case of a compulsory acquisition of buildings, the reference in Rule (5) to the reasonable cost of equivalent reinstatement shall be taken as a reference to that cost not exceeding the estimated cost of buildings such as would be capable of serving an equivalent purpose over the same period of time as the buildings compulsorily acquired would have done, having regard to any structural depreciation in those buildings.

8. The value of the land shall be calculated with due regard to any restrictive covenant entered into by the acquirer when the land is compulsorily acquired.

9. Regard shall be had to any restriction on the development of the land in respect of which compensation has been paid under the Local Government (Planning and Development) Act 1963.

10. Regard shall be had to any restriction on the development of the land which could, without conferring a right to compensation, be imposed under any Act or under any order, regulation, rule or bye-law made under any Act.

11. Regard shall not be had to any depreciation or increase in value attributable to –

    (a) the land, or any land in the vicinity thereof, being reserved for any particular purpose in a development plan, or

    (b) inclusion of the land in a special amenity area order.

12. No account shall be taken of any value attributable to any unauthorised structure or unauthorised use.

13. No account shall be taken of –

    (a) the existence of proposals for development of the land or any other land by a local authority, or

    (b) the possibility or probability of the land or other land becoming subject to a scheme of development undertaken by a local authority.

14. Regard shall be had to any contribution which a planning authority would have required as a condition precedent to the development of the land.

15. In Rules 9, 10, 11, 12, 13 and 14 "development", "development plan", "special amenity area order", "unauthorised structure", "unauthorised use", "local authority" and "the appointed day" have the same meanings respectively as in the Local Government (Planning and Development) Act 1963.

16. In the case of land incapable of reasonably beneficial use which is purchased by a planning authority under section 29 of the Local Government (Planning and Development) Act 1963, the compensation shall be the value of the land exclusive of any allowance for disturbance or severance.