

# THE ADMINISTRATION OF THE ENGLISH NEW TOWNS PROGRAM\*

## INTRODUCTION

On August 1, 1946, the English New Towns Act<sup>1</sup> received Royal Assent. Its passage initiated the implementation of an idea originally conceived by Ebenezer Howard who in 1898 first advocated the construction of "satellite towns." It was Howard's intention to build healthful communities of moderate size to relieve metropolitan areas of their excessive or "overspill" population. His new town was designed to embody the advantages of both rural and urban life. It was to be planned logically and in its entirety was to provide the combined advantages of beauty of nature and social opportunity; it was to provide high wages from industry attracted to the new town and at the same time to afford low rent housing.<sup>2</sup> Although private attempts were made at Letchworth in 1903 and Welwyn in 1919 to demonstrate the feasibility of Howard's idea, the construction of new towns was not accepted in England as a tool of national planning policy until the passage of the 1946 Act.

The problem of increasing urbanization had been recognized as early as the 1930's. In 1937, the Barlow Commission was organized to study the distribution of industrial population, and in 1940 it recommended as possible solutions both the creation of a national planning authority and the development of garden cities and satellite towns.<sup>3</sup> The first recommendation was implemented by an act of 1943 which created the Ministry of Town and Country Planning and vested it with powers of national planning.<sup>4</sup> The second recommendation, the building of satellite towns, received the additional endorsement of Sir Patrick Abercrombie in 1944 in the Greater London Plan.<sup>5</sup> With the increased emphasis on the need for urban decen-

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1. 9 & 10 Geo. 6, c. 68 (1946) [hereinafter cited as New Towns Act, 1946].
2. RODWIN, THE BRITISH NEW TOWNS POLICY 9-12 (1956).
3. Minister of Local Government and Planning, *Town and Country Planning 1943-1951*, CMD. NO. 8204, at 122 (1951).
4. Minister of Town and Country Planning Act, 1943, 6 & 7 Geo. 6, c. 5.
5. Minister of Local Government and Planning, *supra* note 3.

tralization after the war,<sup>6</sup> a committee was established under the chairmanship of Lord Reith following the Labor Party victory in 1945<sup>7</sup> to study new towns as a means for achieving the planned decentralization of a highly concentrated urban population.<sup>8</sup>

The Reith Committee worked quickly and submitted comprehensive reports in January, April, and July, 1946<sup>9</sup> making recommendations on all phases of new town development including: the size and selection of town sites; the planning and provision of necessary facilities and public services; land acquisition; finance; and the governmental structure of the new communities.<sup>10</sup> Shortly after the completion of the final report the New Towns Act was passed in August, 1946,<sup>11</sup> embodying many of the recommendations of the Reith Committee.

The British program, as set out in the New Towns Act, 1946, is a national program designed to create self-supporting, self-contained communities to accommodate the overspill of population, industry, and commerce from major urban centers.<sup>12</sup> Each new town was expected to be built over fifteen years and to contain a population of 50,000 to 60,000. Specially-formed public agencies were to carry on most of the building activities including the construction of housing, commercial and industrial facilities, and were to retain ownership of these facilities apart from exceptional cases in which the statute authorized conveyance of the freehold.

6. The lesson of the Second World War may well have been the most significant factor in awakening England to her need for decentralization of population and disbursement of industry. OSBORN, *GREEN-BELT CITIES* 47 (1946); PURDOM, *THE BUILDING OF SATELLITE TOWNS* 377-378 (1949).

7. The Labor Party had included the building of satellite towns in the London area as a part of its platform since 1918. When they gained control in 1945 with an overwhelming Parliamentary majority, the "planner and politicians were temporarily united." ORLANS, *UTOPIA LTD* 26-27 (1953).

8. Ministry of Housing and Local Government, *The New Towns of England and Wales: Review of Progress*, CMD. No. 1435, at 2 (1960).

9. New Towns Comm., *Interim Report*, Cmd. No. 6759 (1946); New Towns Comm., *Report*, Cmd. No. 6794 (1946); New Towns Comm., *Final Report*, Cmd. No. 6876 (1946). While all of these reports had been submitted after the passage of the Act, the New Towns Bill was introduced after the submission of the Interim Report and was under consideration when the second and third reports were received.

10. The first report was concerned primarily with the administration of the program and the type of agency to be used in developing the new towns. The second discussed the acquisition and disposal of land, the provision of basic services, the program of development, finance and the local government status of the new communities. The final report made recommendations on the principles to be followed in planning the town in both its physical and social aspects. Ministry of Housing and Local Government, *The New Towns of England and Wales*, Cmd. No. 1435, at 2-3 (1960).

11. New Towns Act, 1946.

12. HEAP, *AN OUTLINE OF PLANNING LAW* 181 (1960).

## I. SUMMARY OF THE PROGRAM

The program is administered nationally through the Ministry of Housing and Local Government which is primarily responsible for national planning in England.<sup>13</sup> Implementation of the program divides into three phases: (1) designation of the new town site; (2) development of the town including planning, development control, land acquisition and actual construction; and (3) the management of the town after most of the development has been completed.

The first phase of the program, site selection, is carried out entirely within the Ministry, which usually suggests, evaluates and selects prospective sites. In addition, the official Designation Order is drawn up and objections are heard by Ministry officials.<sup>14</sup>

After the site has been selected, the Ministry must create a development corporation for the new town which acts as its agent in planning the town, acquiring the necessary land, and constructing the town's facilities.<sup>15</sup> The corporation is a public corporation, which, like others in England, is a hybrid organism combining characteristics of both governmental and private enterprise.<sup>16</sup> Its directors are appointed by the Minister from many fields including the military, business, trade, and the professions.<sup>17</sup> Although in carrying

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13. The functions of the Ministry of Town and Country Planning were combined with some of those of the Ministry of Health in 1951 and it was renamed the Ministry of Local Government and Planning. [1951] 1 STAT. INSTR. 1348 (No. 142). During that same year the Ministry was renamed The Ministry of Housing and Local Government. [1951] 1 STAT. INSTR. 1347 (No. 1900).

14. New Towns Act, 1946, § 1.

15. New Towns Act, 1946, § 2(1). But if the Minister decides that the development of a newly designated town could be more expediently managed by an existing development corporation rather than by one especially created to build the newly designated town, he may order the existing corporation to develop that town in addition to any other for which it may be responsible. New Towns Act, 1946, § 16(1). Similarly, if after a development corporation has been created the Minister decides that development could be more expediently carried out either by a new corporation created to take its place or by another existing corporation, he may dissolve the first corporation and order its functions, property, rights and liabilities to be transferred to the newly created or other existing corporation. New Towns Act, 1946, § 16(2).

16. WADE, ADMINISTRATIVE LAW 30-32 (1961). The national development corporation was one of three agencies recommended as alternatives by the Reith Committee to administer town development; the others were local authorities and private associations. New Towns Comm., *Interim Report*, CMD. No. 6759, at 5. Local authorities were rejected because of fear that friction would be produced and because of the undesirability of having a local governing body own the town. Private associations were rejected because of problems in giving them compulsory purchase powers, in controlling their appointees, and in requiring them to terminate. H.C. STANDING COMM. A REP., cols. 67-69, 269 (May 23, 1946).

17. CENTRAL OFFICE OF INFORMATION REFERENCE PAMPHLET, THE NEW TOWNS OF BRITAIN 15 (1961).

out its duties the corporation is directly responsible to the Minister and Treasury on most matters,<sup>18</sup> because it is working within the jurisdiction of local authorities, cooperation between the corporation and those authorities is also essential.

When most of the new town has been completed, the development corporation is dissolved, its assets and liabilities are transferred to the Commission for New Towns and the administration of the new town reaches its third and final phase.<sup>19</sup> The Commission is chiefly responsible for managing the national government's investment in the town. Although it may undertake some residential, commercial, and industrial development, it may only do so on a limited scale.<sup>20</sup> While there is only one Commission for all the new towns, its London headquarters staff is small and the management of each new town is highly decentralized. The bulk of the work is carried on by a local staff, known as the Local Executives, which is composed almost entirely of officers transferred from the development corporation. In addition, a Local Committee is appointed to manage all of the government-owned residential property in the town.<sup>21</sup>

## II. MAJOR ASPECTS OF THE ENGLISH PROGRAM

Although chronologically the English program divides into three phases, for the purposes of this analysis it will be discussed topically. The five problems which will be considered are: site selection, town development, land acquisition, finance and the governmental structures of the new town. Although land acquisition might properly be discussed as an aspect of town development, it has been treated separately because of its technical nature.

### A. *Site Selection and Designation*

The selection and designation of sites for new towns is a matter which Parliament has chosen to leave largely in the hands of the Ministry of Housing and Local Government. Because the New Towns Act is silent regarding

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18. For example, the corporation must secure the Minister's approval of its master plan before acquiring land or carrying out development and Treasury approval of proposed development before funds will be advanced.

19. New Towns Act, 1959, 7 & 8 Eliz. 2, c. 62, §§ 6(1), (2), Sch. 2 [hereinafter cited as New Towns Act, 1959]. The 1946 Act provided that when the development of the town had been completed and the corporation dissolved, its assets should be transferred to the local authority having jurisdiction. New Towns Act, 1946, § 15. The repeal of this provision and the creation of the Commission for the New Towns represented a victory for those who from the first had opposed making a local governing unit the landlord of a new town.

20. 1963 COMM'N FOR NEW TOWNS REP. 3.

21. *Id.* at 2-3.

the criteria to be considered in weighing possible sites, the site selection process is largely *ad hoc*. The Minister is given broad discretion to make a Designation Order which for practical purposes is unreviewable, subject only to the qualification that he follow procedural requirements and be satisfied that the designation is in the national interest.

### 1. *Site Selection*

Initiative in suggesting possible sites may be exercised by either Ministry officials or local authorities who desire the location of a new town in their area. During the early stages of site consideration an attempt is made to keep discussion primarily within the Ministry to prevent land speculation in the areas concerned, but quiet consultations may be carried on with local residents in an attempt to maintain tranquility. When a site recommendation has sufficiently crystallized, it is submitted to the Chief Planner of the Ministry, who has the major responsibility for evaluating proposals and making recommendations for final selection.

The evaluation of site proposals in this and other stages is based on criteria developed within the Ministry. Factors which are usually considered include the availability of a water supply, the sufficiency of existing connecting roads, the availability of such utility services as gas and electricity, the potentialities for sewage disposal and the suitability of the land for development. Those factors usually considered most important are the availability of a water supply and the suitability of connecting roads. Supplying gas and electricity is generally not a serious problem because of the existence of national grids for both.<sup>22</sup> Sewage disposal usually assumes importance only when river pollution is threatened. Finally, land may be selected irrespective of its unsuitability for development if its utilization will preserve for agricultural purposes other more suitable land.

An area may be selected regardless of whether it includes an existing town or village.<sup>23</sup> In fact, because of the scarcity of open sites in England, the inclusion of some village or hamlet is almost inevitable. Although at first it was thought desirable to select areas with as little development as possible, more recent selections have indicated a change of philosophy within the Ministry, resulting in the selection of extensively developed areas for re-development as part of the new town program.

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22. In England both the gas and electric utilities have been nationalized. The country has been divided into areas, and an area board has been given the responsibility of providing gas or electricity within each area. As a result main service connections for both utility services are available in most parts of England.

23. New Towns Act, 1946, § 1(3).

## 2. *Site Designation*

When a site is agreed upon, the Minister must draft a descriptive order, which includes reference to a map of the area and a statement of the size and general character of the proposed town.<sup>24</sup> He is not required to give all the information available to him; it is sufficient that he give all that he honestly considers necessary.<sup>25</sup> Notice of the draft must then be given and an opportunity to make objections must be afforded.<sup>26</sup>

When objections are raised within the allotted time,<sup>27</sup> a hearing must be provided,<sup>28</sup> but its significance is lessened because the Minister is in effect the judge of his own cause. The hearing, a public local inquiry at which an inspector from outside the Ministry presides, is, like most statutory inquiries in England, not guided by an established code of procedure, but may have the atmosphere of a trial. Objectors to the new town often engage counsel, and both they and the proponents are permitted to call and cross-examine witnesses. The inspector seldom takes a large part in the argument; he simply listens until the conclusion of the proceeding and submits a report of his findings to the Minister.<sup>29</sup> The Minister is not bound to follow the inspector's recommendations, but is required to publish the report with his decision.<sup>30</sup>

At the completion of the inquiry, the Minister may make a final Designation Order either in the terms of the original draft or with such modifications as he desires. But he is prohibited from modifying the draft so as to extend the originally specified area without first obtaining the consent of all interested parties.<sup>31</sup> Because the Minister must sometimes reduce the land

24. New Towns Act, 1946, § 1(2), Sch. 1, para. 1.

25. *Rollo v. Minister of Town & Country Planning*, [1947] 2 All E.R. 488, 490, *aff'd*, [1948] 1 All E.R. 13 (C.A.).

26. The notice must state that the draft has been prepared and is ready for consideration, designate a place within the area at which a copy of the draft and the Minister's statement may be seen at all reasonable hours and specify the time within which objections to the proposed order should be made. It must be published in the London Gazette and at least one local paper and must be served on any county council and county district council having jurisdiction over any land which would be effected by the order. New Towns Act, 1946, § 1(2), Sch. 1, para. 2.

27. That is, the time specified in the notice of the draft. It cannot be less than twenty-eight days from the publication of the notice. New Towns Act, 1946, § 1(2), Sch. 1, para. 2.

28. New Towns Act, 1946, § 1(2), Sch. 1, para. 3.

29. WADE, *op. cit. supra* note 16, at ch. 6. For a descriptive account of the nature of an inquiry proceeding, see MANDELKER, GREEN BELTS AND URBAN GROWTH ch. 5 (1962).

30. WADE, *op. cit. supra* note 16, at 173, 185.

31. New Towns Act, 1946, § 1(2), Sch. 1, para. 4.

area of the proposed designation, an overdesignation is often made in the beginning to allow for such loss.

The Minister is vested with broad discretionary power in reaching his decision. This is due in part to the administrative position which he occupies and in part to the subjective standard for the use of his power to designate. The statute requires only that he be "satisfied . . . that it is expedient in the national interest"<sup>32</sup> that the area be designated as a new town. Power conferred in these terms is almost incapable of abuse, because approval of a new town site need not be supported by objective facts but merely by a subjective state of mind.<sup>33</sup> The Minister is free to rely on whatever material he desires "whether obtained in the ordinary course of his executive functions or derived from what is brought out at a public inquiry."<sup>34</sup> He cannot be called upon to justify his decision in a court on the basis that the evidence was insufficient.<sup>35</sup> In fact, even where he has shown an intent to make the Designation Order prior to an inquiry by defiantly stating that the order *would be made*, his bias has been held immaterial.<sup>36</sup>

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32. New Towns Act, 1946, § 1(1).

33. WADE, *op. cit. supra* note 16, at 67-68.

34. *Robinson v. Minister of Town & Country Planning*, [1947] 1 K.B. 702, 716 (opinion of Lord Greene). The court was construing sub-section 1 of section 1 of the Town and Country Planning Act, 1944, which provided:

*Where the Minister of Town and Country Planning . . . is satisfied that it is requisite, for the purpose of dealing satisfactorily with extensive war damage in the area of a local planning authority, that a part or parts of their area, consisting of land shown to his satisfaction to have sustained war damage or of such land together with other land contiguous or adjacent thereto, should be laid out afresh and redeveloped as a whole, an order declaring all or any of the land in such a part of their area to be land subject to compulsory purchase for dealing with war damage may be made by the Minister if an application in that behalf is made to him by the authority before the expiration of five years from such date as the Minister may by order appoint as being the date when the making of such application has become practicable. (Emphasis added.)*

35. *Robinson v. Minister of Town & Country Planning*, [1947], 1 K.B. 702, 720 (opinion of Lord Somervall).

36. *Franklin v. Minister of Town & Country Planning*, [1948] A.C. 87. This case involved the Stevenage Designation Order. It is reported that when the Minister, now Lord Silkin, came to Stevenage to discuss the possibilities of designation with the local residents, he was greeted with public indignation. Opponents had prepared for his arrival by plastering the town with placards such as "Welcome to Silkingrad." They also let the air out of his tires and poured water into his petrol tank. The Minister became angry and stated at a public meeting that their jeering was in vain because they were going to have a new town regardless.

The question the court considered was whether the inquiry had been prejudiced because the Minister was incapable of making an impartial decision. The court held that the Minister's duty was not judicial and that his bias was irrelevant. It stated that the sole question was "whether he has complied with the statutory directions to appoint a person to hold the public inquiry, and to consider that person's report." *Id.* at 102.

One of the few limitations on the Minister's designation power is that he must consult the local authorities<sup>37</sup> concerned; however, even this limitation is slight since he is to decide *which* local authorities must be consulted.<sup>38</sup> This consultation is used to determine whether it is in the national interest to develop the area in question as a new town and does not concern detailed matters of development.<sup>39</sup> *Neither the time nor the form* for consultation *are* prescribed by statute. It has been held, however, that the only time requirement is that the consultation precede the final order,<sup>40</sup> and that the adequacy of the consultation will be decided according to the facts and circumstances of the particular case.<sup>41</sup>

When the final Designation Order is made it must be promulgated in the form of a statutory instrument. If objections have been made to the order by a local planning authority and not withdrawn, the order must be submitted to both Houses of Parliament, either of which may annul it by resolution.<sup>42</sup> In any event, notice of the final order must be provided in the

37. "Local authority" is defined in the New Towns Act, 1946, to mean: the council of a county, county borough, metropolitan borough, or county district, the Common Council of the City of London and any other authority being a local authority within the meaning of the Local Loans Act, 1875, and includes a local highway authority, any drainage board and any joint board or joint committee if all the constituent authorities are such local authorities as aforesaid. § 26.

38. New Towns Act, 1946, § 1(1).

39. *Rollo v. Minister of Town & Country Planning*, [1948] 1 All E.R. 13, 14-15 (C.A.) (opinion of Lord Greene). This case involved the validity of the Crawley Designation Order.

40. *Fletcher v. Minister of Town & Country Planning*, [1947] 2 All E.R. 496 (K.B.). In this case, the court was reviewing the Hemel Hempstead Designation Order. It was contended that the consultation to be timely must take place between the passage of the statute (the New Town Act, 1946) and the issuance of a draft order. Judge Morris stated his disagreement with this contention as follows:

As regards the time when consultation should take place, the Act, in my judgment, does no more than to prescribe that it must be before a final Order is made. It may well be that in many cases the most convenient and satisfactory time for consultation will be before a draft Order is made, but it is not for the court to give any ruling in regard to this matter. If consultation precedes the making of a final Order the terms of the statute will, in my judgment, have been satisfied. *Id.* at 500.

41. *Ibid.* The validity of the Hemel Hempstead Order was challenged on the basis that no consultation had occurred. It was contended that a meeting at which the Minister made no speech but merely invited questions was insufficient because a "consultation" presupposed an exchange of views between the Minister and local authorities in circumstances making it clear that it was a "consultation" for the purposes of the Act. Judge Morris held it unnecessary to decide whether the meeting alone constituted a "consultation" since other events considered cumulatively with it did. In reaching this conclusion he stated that in deciding whether a "consultation" had occurred one must consider "the substance of the events" and that a "consultation" may be a "continuous process." *Id.* at 500.

42. New Towns (No. 2) Act, 1964, c. 68, § 1.

same manner as notice of the draft,<sup>43</sup> and the order must be registered in the Registry of Local Land Charges by the appropriate official.<sup>44</sup>

The validity of the Designation Order may be contested by an aggrieved party if he makes application to the High Court within six weeks from the date the notice of the final order is given. The High Court is authorized to suspend the operation of the order temporarily during the course of the proceedings, and ultimately to quash the order if it is found that the Minister exceeded the scope of his authority under the statute.<sup>45</sup> Although three designation orders have been challenged on this basis, none has been quashed.<sup>46</sup>

### 3. *Modification of the Original Site Designation*

The Minister is authorized to make a Variation Order modifying or revoking the original Designation Order if he is satisfied that modification or revocation is in the national interest.<sup>47</sup> When he decides to make such an

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43. It must be published in the London Gazette and a local paper and must be served on the local authorities. In addition, it must be served on anyone who filed an objection to the draft and who submitted a written request for service. New Towns Act, 1946, § 1(2), Sch. 1, paras. 4-5; see note 26 *supra*.

44. Town and Country Planning Act, 1944, 7 & 8 Geo. 6, c. 47, § 17(1), as applied, New Towns Act, 1946, § 1(2) [hereinafter cited as Town and Country Planning Act, 1944]. The Local Land Charges Register is a register in which a record is kept of various restrictions imposed upon land by government authorities of a kind which are not usually or necessarily discoverable by a customary inspection of the land or title. Some of the many items which must be registered are: development plans; conditions attached to grant-aided rural workers' houses; notices declaring premises liable to use for civil defense purposes; notices imposing obligations on war damaged areas; compulsory purchase orders for land within a new town or for land acquired by expedited completion; conditions imposed on houses sold by local authorities; and, declarations that streets are prospectively maintainable by the public. A local land charge which is not registered in the appropriate register is void as against a purchaser for money or money's worth of a legal estate in the land affected thereby. 23 HALSBURY'S LAWS OF ENGLAND 52, 80, 94-95 (3d ed. Simonds 1958).

The registration of the Designation Order must include a reference to the title of the Designation Order, a description of the affected land by reference to a map or plan, notice of a place at which a copy of the Designation Order and the accompanying map can be inspected, the date on which the order was made and the date on which it was registered. [1946] 1 STAT. RULES & ORDERS 948 (No. 1896), art. 4.

45. Town and Country Planning Act, 1944, § 16(1), as applied, New Towns Act, 1946, § 1(2). Because of the administrative nature of the Minister's power, the court is limited to determining whether the Minister acted within his delegated powers and may not consider the merits of his decision. Wade, *op. cit. supra* note 16, ch. 3.

46. The Designation Orders of Stevenage, Crawley, and Hemel Hempstead have all been challenged in the courts, and all have been upheld. *Franklin v. Minister of Town & Country Planning*, [1948] A.C. 87 (Stevenage); *Rollo v. Minister of Town & Country Planning*, [1948] 1 All E.R. 13 (C.A.) (Crawley); *Fletcher v. Minister of Town & Country Planning*, [1947] 2 All E.R. 496 (K.B.) (Hemel Hempstead).

47. New Towns Act, 1946, § 19(2).

order, he must follow the same procedural requirements followed for an initial Designation Order.<sup>48</sup> If the Variation Order would extend the area of the new town by more than 500 acres or ten per cent of its original size, it, like the original order, must be made in the form of a statutory instrument; if objection has been made by the local planning authority and not withdrawn, it is subject to annulment by either House of Parliament.<sup>49</sup>

### B. *Town Development*

Development of the new town begins after the site of the new town has been officially designated and a development corporation has been established by the Minister. The corporation's responsibility to develop the town includes more than the construction of facilities. Before any construction may be undertaken the corporation must plan the town and secure Ministry and Treasury approval of each contemplated project. Provision is made to excuse the corporation from having to obtain the "planning permission" from the local planning authority which is usually required before land may be developed.

#### 1. *Planning*

The corporation's first responsibility is the planning of the new town. Although the land within the designated area remains within the jurisdiction of a local planning authority, the corporation is required to prepare a "master plan" outlining the development scheme for the entire town. The master plan is not required by the statute but has nevertheless been required by the Minister since the inception of the new towns program.<sup>50</sup> The absence of statutory regulation has given the Ministry an opportunity to experiment with different methods of master plan presentation and different content requirements. Presently, the Ministry states the general principles which it desires a master plan to follow, and the corporation is allowed to prepare its plan according to those principles. Generally, the plan must include a written statement describing the site, present and proposed population, employment opportunities, housing, industrial and central areas, open spaces, communications, engineering services and the program of development. In addition, maps are usually included illustrating land use, topography, geology, boundaries, architecture and landscape, services, communications and traffic flow. The Minister reviews the plan, holds a local

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48. *Ibid.*

49. New Towns (No. 2) Act, 1964, c. 68, § 1.

50. Minister of Local Government and Planning, *supra* note 3, at 131.

inquiry, and renders a decision approving or rejecting the plan with or without modifications.<sup>51</sup>

As development proceeds under the program outlined in the master plan, the corporation is required, under section 3(1) of the New Towns Act, to submit development proposals periodically to the Minister for his approval.<sup>52</sup> These proposals may be approved by the Minister only after he has consulted with the local planning authority and other concerned local authorities.<sup>53</sup> It was intended by the drafters of the act that the 3(1) proposals would be detailed proposals for development indicating the nature of the buildings being erected. Instead the plans submitted as 3(1) proposals often are broad "area plans" showing only the general layout of a residential, commercial or industrial district. Although the Minister has demonstrated a willingness to accept 3(1) proposals submitted in this broad form, the Treasury has withheld the public financial commitment until more detailed sectional proposals are submitted.<sup>54</sup>

## 2. *Development Control*

Normally, land may be developed in Britain only after planning permission has been obtained from the local planning authority. But because it is sometimes necessary to carry out new town development over local opposition, the development corporation has been exempted from the control of the local planning authority and instead has been made responsible to the Minister. The Minister is authorized to make a Special Development Order which may grant planning permission for any development for which section 3(1) proposals are approved under the Act.<sup>55</sup> Currently, subject to some limitations, the Minister has given permission in the Special Development Order for any development which the corporation is authorized to carry on under the New Towns Act.<sup>56</sup> This means, for example, that if the de-

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51. *Ibid.*

52. New Towns Act, 1946, § 3(1).

53. *Ibid.*

54. Since the statute is vague about the content of the development proposals to be submitted under § 3(1), the Ministry could require more detail at the time of submission if it so desired, and could insist on a submission which would satisfy the Treasury.

55. New Towns Act, 1946, § 3(2).

56. The Special Development Order which is currently in effect was made in 1963. It gives permission for any development authorized by the Act for which § 3(1) proposals have been approved. This general authorization is, however, subject to some limitations. The Order does not operate to permit development for which planning permission is required either as a result of an order revoking or modifying a prior planning permission or because of an order requiring the discontinuance of an existing use. Town and Country Planning Act, 1962, 10 & 11 Eliz. 2, c. 38, §§ 27, 28, as applied, [1963] 2 STAT. INSTR. 1936 (No. 1142), art. 4(a). The Order does not operate

velopment corporation wishes to construct a housing development it may do so after obtaining approval of its § 3(1) proposals, and need not request planning permission from the local planning authority.<sup>57</sup>

When development is undertaken within or near a new town by a *private* developer, planning permission must be secured from the local planning authority in regular fashion. The development corporation, because of its unique position as the principal planner and developer of the town, is also involved in this decision. Thus, when a private developer applies for permission to develop land within the boundaries of the designated area, the local planning authority is required to consult the development corporation and when agreement cannot be reached, the matter is settled by the Minister. When a private developer applies for permission to develop land outside but near the designated area, the local planning authority may enter into arrangements to consult the development corporation but retains the right to give or withhold approval.<sup>58</sup> In any area, if planning permission for private development is refused, the landowner may appeal to the Minister, who is authorized to make the final decision in this as in any other case. However, if the appeal is taken on land within a new town, the officers in the Ministry's decisional branch will confer with members of the Ministry's New Town Section having jurisdiction over the town.

Until recently the development corporation, like any builder, had to comply with local building byelaws administered by the local authorities having jurisdiction over the new town. No exemption was given from this control, so the corporation was often hampered in its use of new building and design techniques. For example, building byelaws require minimum amounts of open space both in the front and in the rear of new buildings.<sup>59</sup> These space

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to give planning permission for industrial buildings in a class prescribed by the Board of Trade unless a certificate is first obtained from that Board. [1963] 2 STAT. INSTR. 1936 (No. 1142), art. 4(b). Finally, the Order requires consultation with another authority as a condition precedent to the granting of planning permission in certain cases. Thus, if the proposed new town development is likely to affect land which is outside the designated area, the development corporation must consult with the local planning authority having jurisdiction over that land. [1963] 2 STAT. INSTR. 1936 (No. 1142), art. 5(1)(c).

57. The general nature of § 3(1) proposals raises some questions concerning their scope. For example, a development corporation may argue that the Minister's approval of a general § 3(1) proposal for a "residential district" constitutes permission to erect a block of twenty-story flats. It is extremely doubtful that the control exercised under § 3(1) was intended to be so loose.

58. For example, in one new town the local authority follows a policy of consulting the development corporation on applications for planning permission for land within one mile of the new town's boundaries.

59. See, *e.g.*, MINISTRY OF HOUSING & LOCAL GOVERNMENT, MODEL BYELAWS, SERIES IV BUILDINGS, byelaws 68, 69 (1953), covering front and rear spacing. These model byelaws have been adopted by a number of local authorities.

requirements often prevented the use of *culs-de-sacs* and L-shaped buildings and thus inhibited modern architectural design. Although the byelaws could be waived by the local authority with the Minister's consent, no provision was made to enable a development corporation to obtain a waiver without any action taken by the local authority.<sup>60</sup>

Recently this problem was alleviated by provisions authorizing the Minister of Public Buildings and Works to make national building regulations to replace the local building byelaws,<sup>61</sup> and authorizing the appointment of a Building Regulations Advisory Committee to study proposals and suggest draft regulations.<sup>62</sup> Although the draft regulations have not yet been adopted, the Committee's report has indicated that the regulations should emphasize the functional and should be flexible enough to permit new building design.<sup>63</sup> For example, it recommended that the regulation of space around buildings be measured according to a new geometrical conception—a minimum three-dimensional space where it is most needed, not on the ground, but adjacent to windows in habitable rooms.<sup>64</sup> Under the new regulations the Minister of Public Buildings and Works is given the power to relax the application of building byelaws on request of the developer if the local authority refuses to do so.<sup>65</sup> Therefore the development corporation no longer is dependent on the assent of a local authority, but may itself request a waiver. Finally, the very fact that the regulations are now nationally imposed means that they will be more easily amended and kept up to date.<sup>66</sup>

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60. The result is that a local district council may control development through a strict enforcement of building byelaws. The development corporation has been at their mercy on such matters.

61. Public Health Act, 1961, 9 & 10 Eliz. 2, c. 64, § 4(1), as modified, [1964] 1 STAT. INSTR. 457 (No. 263), art. 2(1), Sch., pt. I [hereinafter cited as Public Health Act, 1961]. The Public Health Act, 1961, made the Minister of Housing and Local Government responsible for the promulgation and administration of building regulations, but in February 1964, these responsibilities were transferred to the Minister of Public Buildings and Works by statutory instrument.

62. Public Health Act, 1961, § 9.

63. Building Regulations Advisory Committee, *First Report*, CMD. No. 2279, para. 49 (1964).

64. This new method for measuring space around buildings was recommended expressly because of the many cases for relaxation from the then present byelaws which arose under the standard space requirements. Building Regulations Advisory Committee, *supra* note 63, at Appendix VIII.

65. Public Health Act, 1961, § 7(1), as modified, [1964] 1 STAT. INSTR. 457 (No. 263), art. 2(1), Sch., pt. I; see note 61 *supra*.

66. Building Regulations Advisory Committee, *supra* note 63, at para. 51.

### 3. *Provision of Facilities*

The construction of a town completely or substantially anew is indeed a large task posing many problems. Initially there is the problem of who is going to carry out building activities on a scale sufficient to ensure the rapid provision of housing accommodations, commercial establishments, industrial sites and the other buildings necessary to a modern community. Secondly, there is the problem of how local governmental units can finance and operate the new town's governmental services such as roads, amenities and sewerage facilities prior to the establishment of a sufficient tax base. Finally, there is the similar problem of how public utilities can provide services in the quantity and at the time that they are needed.

To ensure the rapid provision of housing, commercial establishments, industrial sites and other needed facilities, the development corporation is generally authorized to carry out building and other operations and to carry on any business or other necessary undertaking.<sup>67</sup> By virtue of this power the corporation plays the major role in providing these facilities. However, private developers are not precluded from carrying on construction activities if they have obtained the necessary planning permission; some housing, commercial and industrial facilities are provided by this means. New town housing may also be provided by a local authority which is empowered to construct housing,<sup>68</sup> and which often employs the development corporation as its agent in the provision of such units.<sup>69</sup>

Local authorities remain responsible for the provision of public facilities such as public buildings, amenities, roads and sewerage facilities, but due to the additional strain placed on them by the quantity of such necessary facilities, the development corporation is authorized to assist in two ways. First, it is authorized to make contributions to the cost of such projects after securing the approval of the Minister and Treasury.<sup>70</sup> Second, it may act as the local authority's agent by carrying out the construction work.<sup>71</sup> Illustrative of the corporation's role in providing public facilities is its part in constructing roads in and around the new town. Although the development corporation has the responsibility for providing unclassified roads within a new town, it is not responsible for providing classified or trunk roads within or connected to that area; those remain the responsibility of the local highway authority and the Minister of Transport. Nevertheless, the development

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67. New Towns Act, 1946, § 2(2).

68. Housing Act, 1957, 5 & 6 Eliz. 2, c. 56, pt. V, § 92(1) [hereinafter cited as Housing Act, 1957].

69. Housing Act, 1957, pt. V, § 125.

70. New Towns Act, 1946, § 11.

71. New Towns Act, 1946, § 2(2).

corporation is often employed to construct classified roads as an agent of the local highway authority and usually contributes to its cost.<sup>72</sup>

The provision of sewerage and sewage disposal facilities is unique in that this is the only instance in which the development corporation is empowered to take over the powers and duties of a local authority. If possible, these services are to be provided either by the local authority which would be otherwise responsible for their provision or by a united district created for that purpose.<sup>73</sup> If neither of these methods is acceptable, the development corporation may be authorized by the Minister to exercise the powers of a local authority in constructing sewers and sewage disposal works or in making agreements for their acquisition or use.<sup>74</sup> In addition, the Minister's order may authorize the transfer of existing sewerage facilities located in the designated area from the local authority to the corporation and may direct that the corporation comply with provisions of the Public Health Acts, 1939 and 1937, relating to sewerage and sewage disposal, or to sewers, drains, cesspools and sanitary conveniences.<sup>75</sup> When the development corporation must assume the responsibility of a local sewerage authority, certain financial adjustments must be made to allocate the costs of sewerage construction and

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72. Letter from Miss J. Earl, Ministry of Housing and Local Government, June 30, 1964, on file Washington University LAW QUARTERLY. "Unclassified" roads are roads designed to serve only the new town development itself. "Classified" roads are those with some through-traffic function. "Trunk" roads are the main long distance national traffic arteries. The corporation often assists the local authority by constructing and helping to finance classified roads, but seldom plays any part in providing trunk roads. When the corporation builds classified roads it does not do so under any highway powers of its own but as the agent of the local highway authority. When the corporation shares the costs, it is done under § 11 of the New Towns Act.

There is no general rule to determine what each party should pay; each local situation varies. Terms are agreed upon between the development corporation and the local highway authority and must then be approved by the government departments concerned. One basis for agreement which has frequently been employed is that the corporation pays what it would cost to build the road to a sufficient width and standard for their own development purposes, and the local highway authority pays the additional cost of building the road to the width and standards required for through traffic.

73. A "united district" is sewerage authority composed of adjacent municipalities. Normally the Minister of Housing and Local Government can order the creation of a united district on application of a local authority. Public Health Act, 1936, 26 Geo. 5 & 1 Edw. 8, c. 49, pt. I § 6(1). In the case of a new town no request is necessary; the Minister is authorized to create a united district whenever he considers it expedient. New Towns Act, 1946, § 9(1).

74. The Minister of Housing and Local Government is authorized to order the corporation to exercise the powers of a local authority under § 15 of the Public Health Act, 1936, if the development corporation has made application for such powers and if he has consulted with the local authorities having jurisdiction. New Towns Act, 1946, § 9(2).

75. New Towns Act, 1946, §§ 9(2), (3).

maintenance. The local authority, which would have otherwise been responsible for providing sewerage service, must share the construction cost of new facilities and the maintenance cost of any facilities, new and old, operated by the corporation. Similarly, the corporation is required to reimburse the local authority for any existing facilities transferred to it by that authority.<sup>76</sup> When it appears to the Minister that the local authority is capable of providing sewerage service he may, after consulting the authority, order the return of the undertaking to the authority.<sup>77</sup> In this order he may, with the consent of the Treasury, specify the terms of the transfer including the amount of the compensation due to the corporation from the authority.<sup>78</sup>

The act has also provided assistance to public utilities (known in England as statutory undertakers) in handling their responsibility for providing the town with utility services. Although the development corporation is not authorized to provide such services,<sup>79</sup> it may make contributions to the utility's expenses similar to those made toward the expenses of local authorities.<sup>80</sup> In addition, a utility's powers may be modified or extended by order of the Minister and the minister having jurisdiction over it,<sup>81</sup> to enable the utility to provide the new town with services which would otherwise be unavailable, or to aid it in adjusting operations which were impaired by the acquisition of its land or the extinguishment of its rights by the new town.<sup>82</sup>

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76. New Towns Act, 1946, §§ 9(4), (5). Whenever any such financial adjustments must be made, the amount to be paid may be determined either by agreement between the development corporation and the local authority or, if agreement cannot be reached, by the Minister, and the amount determined must be specified in the order empowering the corporation to provide the sanitation service.

77. New Towns Act, 1959, §§ 7(1), (5). Similarly, he may order the development corporation to transfer the undertaking to a united district. New Towns Act, 1959, §§ 7(1), (2), (5).

78. New Towns Act, 1959, § 7(3).

79. The corporation is explicitly prohibited from providing such services unless it is authorized to do so by a special enactment. The only exception is a trolley vehicle service, which the corporation may provide if authorized by order of the Minister of Transport. New Towns Act, 1946, § 21.

80. New Towns Act, 1946, § 11.

81. The minister having jurisdiction of transportation services such as railways, light railways, tramways, road transport, water transport, canal, inland navigation, dock harbour and pier and lighthouse services is the Minister of Transport. For the supply of electricity, gas or hydraulic power, it is the Minister of Fuel and Power. For the supply of water, it is the Minister of Housing and Local Government. Town and Country Planning Act, 1944, § 13(7), as applied, New Towns Act, 1946, § 26(1).

82. Town and Country Planning Act, 1944 § 26(1), as applied, New Towns Act, 1946, § 10(1)(a). Either the utility or the development corporation may present the need for the extension to the ministers. Town and Country Planning Act, 1944, § 26(1), (5) as applied, New Towns Act, 1946, § 10(1)(a). The ministers' order may authorize the utility to acquire land and to construct buildings and works, apply prior enactments regulating utilities in the acquisition of land or construction of roads, and recognize

But if for one of these reasons the utility's operations have become so impaired that it is impractical for it to service the new town, the utility may be relieved of its obligation by an order of the minister having jurisdiction over that utility.<sup>83</sup> Whether the order is for an extension of powers or relief from an obligation, notice must be provided by the utility, an opportunity for presenting objections must be furnished and, if objections are made and not withdrawn, the order is subject to special parliamentary procedure.<sup>84</sup> When the service involved is either gas or electricity, the Minister of Fuel and Power is authorized to transfer an area from one utility to another if it is necessary in order for the new town to secure either service.<sup>85</sup>

### C. *Land Acquisition*

Because the great majority of development (including housing, commercial and industrial facilities) is to be carried out by the public development corporation, land acquisition is an important aspect of the English program. For this reason, the corporation has the authority to acquire land within or adjacent to the new town and other land needed for the provision of services<sup>86</sup> whether the development or redevelopment of that land is intended.<sup>87</sup>

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financial arrangements decided upon by the development corporation and the utility. Town and Country Planning Act, 1944, as applied, New Towns Act, 1946, § 10(1)(a).

83. Town and Country Planning Act, 1944, § 27(1), as applied, New Towns Act, 1946, § 10(1)(b). While either the utility or the corporation may put forward a need for the extension of the utility's powers, only the utility may present its need for relief from its obligation to perform services.

84. Town and Country Planning Act, 1944, §§ 26(3), (4), (6) & 27(2), (3), (4), Sch. 1, as applied, New Towns Act, 1946, § 10(1). This means that the order is ineffective prior to being laid before Parliament for review. After the order has been submitted and notice has been published, objectors have fourteen days in which to present petitions of general objection or proposed amendment, after which the order may either be annulled or referred to a joint committee. The joint committee may approve, disapprove or modify the order. If it approves the order or makes modifications which are acceptable to the Minister of Housing and Local Government and the minister having jurisdiction of that utility, the order will take effect in its approved or modified form. But if the joint committee disapproves or makes modifications which are unacceptable to the ministers, the order must be confirmed by a confirming bill. Statutory Orders (Special Procedure) Act, 1945, 9 & 10 Geo. 6, c. 18, §§ 1-6.

85. New Towns Act, 1946, § 10(2), as superseded, Electricity Act, 1947, 10 & 11 Geo. 6, c. 54, § 4(2) and Gas Act, 1948, 11 & 12 Geo. 6, c. 67, § 6(2).

86. New Towns Act, 1946, § 4(1). But other authorities are also authorized to acquire land within or near the designated area. Local highway authorities may purchase lands which are needed to construct or improve classified roads within or leading to the new town, or to control the development of frontages adjacent to these roads. The Minister of Transport may acquire land in similar cases when the road is a trunk road. Neither authority can acquire land for the purpose of controlling frontage development if the owner agrees to submit to their authority. Town and Country Planning Act, 1944, §§ 3(1)(b), (2), (4), (5), as applied, New Towns Act, 1946, § 7(1). A utility may be empowered to acquire land within or near the designated area which is needed for the

In addition, to protect landowners, the corporation may be forced to purchase land within the designated site if seven years have passed since the making of the Designation Order.<sup>88</sup>

### 1. *Acquisition by Agreement*

Although there has been a recent increase in the use of compulsory purchase powers in acquiring land for new towns, the majority of the land has been acquired by agreement. To acquire land by agreement the corporation must simply obtain the Minister's approval<sup>89</sup> and comply with policy statements which limit the length of time in advance of its proposed use that land may be acquired.

### 2. *Acquisition by Compulsory Purchase*

When land must be acquired compulsorily, an administrative procedure similar to that normally required for compulsory purchase in England must be followed. This procedure consists of three steps—authorizing the purchase by means of a Compulsory Purchase Order, obtaining possession and title through service of a "notice to treat" and assessing compensation.<sup>90</sup>

*a. authorizing purchase.* To obtain authorization for compulsory purchase, the corporation must make a Compulsory Purchase Order containing a description of the land sought to be acquired and submit it to the Minister for his confirmation.<sup>91</sup> It must also provide notice of the order indicating a

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provision of services if it is authorized by an order made by the Minister of Housing and the minister to whom it is responsible. Town and Country Planning Act, 1944, § 26(2) (a), as applied, New Towns Act, 1946, § 10(1). The procedural steps which must be followed in acquiring land are similar for all acquiring authorities.

87. Town and Country Planning Act, 1947, 10 & 11 Geo. 6, c. 51, § 46(1).

88. New Towns Act, 1946, § 6(4).

89. New Towns Act, 1946, § 4(1).

90. This procedure has been incorporated almost entirely from the Town and Country Planning Act, 1944.

91. Town and Country Planning Act, 1944, § 3(2), Sch. 2, pt. I, para. 1(1), as applied, New Towns Act, 1946, § 4(1). This description may be by reference to a map or by any other descriptive means.

For a period of five years, 1946-51, the development corporation could obtain an authorization for compulsory purchase by a more expedient means than that which is ordinarily available provided the Minister of Housing found that a speedy authorization was urgently necessary in the public interest. Authority to make the purchase under this procedure was by a writing instead of Compulsory Purchase Order. This procedure could not be used to acquire a dwelling house, nor was it available after two years had elapsed since the making of the Designation Order designating the new town. Acquisition of Land (Authorisation Procedure) Act, 1946, 9 & 10 Geo. 6, c. 49, §§ 2, 3, Sch. 3, as applied, New Towns Act, 1946, § 4(3). The provisions of the Acquisition of Land (Authorisation Procedure) Act, 1946, establishing this procedure have now lapsed, and the section was repealed by the Statute Law Revision Act, 1953, 2 Eliz. 2, c. 5.

time at which objections can be raised.<sup>92</sup> An objection in the proper form submitted within the allotted time must also be considered by the Minister unless it relates to questions of compensation or to the necessity or expediency of acquiring the land, in which case the objection is considered irrelevant.<sup>93</sup> Issues which the Minister must consider are whether the land will be appropriate for development and whether purchase is presently desirable. The case for purchase is stronger if the land is needed to carry out projects for which section 3(1) proposals have been previously approved, but the Minister is not bound to approve the order even in these cases. In examining these factors he may seek additional information by three means—by requiring the submission of an additional written statement by the objector, by providing the objector with a hearing before a Ministry official or by providing a public local inquiry.<sup>94</sup> But whenever he feels he has sufficient information, he may confirm the order in its original form or modify it with the consent of the interested parties.<sup>95</sup> The Compulsory Purchase Order becomes effective after notice of the confirmation has been provided<sup>96</sup> and

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92. Town and Country Planning Act, 1944, § 3(2), Sch. 2, pt. I, para. 2(1), as applied, New Towns Act, 1946, § 4(1). The notice must state that the order has been submitted or is being considered, name a place where a copy of the order, the map and other descriptive material may be read, and prescribe the time and the manner in which objections may be raised. The time period specified may not be more than twenty-eight days.

When the land under consideration is within an area included in a Designation Order, the corporation is relieved from the obligation of serving notice to each affected landowner. In this case, and in others in which personal service is not required, notice must be effected by publication in the London Gazette, by local advertisement, and by placing a copy addressed to "owners and occupiers" on one or more conspicuous objects on the land. When the land under consideration is not located within the new town designated area, the Minister may direct the corporation to serve affected landowners individually. In such cases notice must also be published in one or more local papers. Town and Country Planning Act, 1944, § 3(2), Sch. 2, pt. I, paras. 2(2), (3), as applied, New Towns Act, 1946, § 4(1).

93. Town and Country Planning Act, 1944, Sch. 1, para. 3, as applied, New Towns Act, 1946, § 4(1).

94. Town and Country Planning Act, 1944, Sch. 1, paras. 2, 5, 6, as applied, New Towns Act, 1946, § 4(1).

95. Town and Country Planning Act, 1944, § 3(2), Sch. 2, pt. I, para. 4, & pt. II, para. 9, as applied, New Towns Act, 1946, § 4(1).

96. Town and Country Planning Act, 1944, § 3(2), Sch. 2, pt. I, para. 5, as applied, New Towns Act, 1946, § 4(1). The notice that the Compulsory Purchase Order has been confirmed must be published in at least one local paper and must be served on all owners and occupiers, any objectors who file a request and any one else specified by the Minister.

Failure to serve the notice of confirmation will oust the Lands Tribunal of jurisdiction to complete the compulsory purchase. *Metcalf v. Basildon Dev. Corp.*, 12 Plan. & Comp. R. 127 (1960).

the order has been registered in the local land registry.<sup>97</sup> Although an appeal may be had to the High Court, the court is limited as in the case of a Designation Order to a determination of whether the Minister acted within the scope of his powers, and lacks jurisdiction to review the merits of his decision.<sup>98</sup>

The procedure for obtaining a Compulsory Purchase Order varies slightly, however, in two cases: (1) when the land sought to be acquired belongs to a utility and is used in the provision of its service, and (2) when it is a common, open space, or fuel or field garden allotment.<sup>99</sup> If the utility makes a representation to the minister having jurisdiction over that utility, its land must be excluded from the Compulsory Purchase Order.<sup>100</sup> But compulsory purchase of such land may be authorized by an order made jointly by the Minister of Housing and the minister having jurisdiction over that utility after the two ministries have provided objectors with an opportunity to be heard before an official appointed by them.<sup>101</sup> The notable differences between this and the normal procedure is that no provision is made for a public local inquiry and the order is subject to special parliamentary procedures.<sup>102</sup>

A purchase order including lands used for a common, open space, or fuel or field garden allotment is also subject to special parliamentary procedures unless the Minister of Housing, in the case of an open space, or the Minister of Agriculture and Fisheries, in the case of a common or fuel or field garden allotment, issues a certificate stating his satisfaction either that other land of equal size is being provided as a substitute or that the land is needed for

97. Town and Country Planning Act, 1944, § 17(1), as applied, New Towns Act, 1946, § 4(2)(b). The registration must contain a reference to the title of the purchase order, a description of the land, a notice of a place where a copy can be viewed, the date on which the order was confirmed and the date on which the registration was completed. [1946] 1 Stat. Rules & Orders 948 (No. 1896), art. 4.

98. Town and Country Planning Act, 1944, § 16(1), as applied, New Towns Act, 1946, § 4(2)(b).

99. A "common" is defined to include "any land subject to be enclosed under the Inclosure Acts, 1845 and 1882, and any town or village green." An "open space" is defined as "any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground." A "fuel or field garden allotment" is defined as "any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act." Town and Country Planning Act, 1944, § 14(10), as applied, New Towns Act, 1946, § 4(2)(a).

100. Town and Country Planning Act, 1944, § 13(3), as applied, New Towns Act, 1946, § 4(2)(a). The representation must be made within the time allowed for objections.

101. Town and Country Planning Act, 1944, §§ 13(4)(a), (b), Sch. 3, pt. I, paras. 2, 3.

102. Town and Country Planning Act, 1944 § 13(3), as applied, New Towns Act, 1946, § 4(2)(a).

widening an existing highway and a substitute is unnecessary.<sup>103</sup> When either minister proposes to issue a certificate, he must give notice of his intention, provide an opportunity for objection and hold a public local inquiry if he feels it expedient.<sup>104</sup> When the certificate is issued the corporation must publish notice indicating that fact.<sup>105</sup>

*b. acquiring title and possession.* Normally, after the purchase order has been made, the corporation must acquire possession and title to the land through service of a "notice to treat" on all persons having an interest in the land.<sup>106</sup> This notice must be served within three years of the date of the confirmation of the Compulsory Purchase Order<sup>107</sup> and must state the particulars of the interest sought to be acquired and the willingness of the corporation to treat. It must also demand a statement from the person having the interest indicating the nature of that interest and his claim.<sup>108</sup> If the party fails to state the particulars of his interest and claim within the allotted time, or if agreement cannot be reached on the amount of compensation which the corporation should pay, the matter must be settled in a proceeding before the Lands Tribunal.<sup>109</sup> Between the time stated in the notice to treat and the completion of the purchase,<sup>110</sup> the corporation may

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103. Town and Country Planning Act, 1944, § 14(1), as applied, New Towns Act, 1946, § 4(2)(a). The development corporation may acquire lands as a substitute if the Minister consents, and the Minister may make an order vesting such lands in the persons concerned. Town and Country Planning Act, 1944, § 14(5), (6), as applied, New Towns Act, 1946, § 4(2)(a).

104. Town and Country Planning Act, 1944, § 14(3), as applied, New Towns Act, 1946, § 4(2)(a).

105. Town and Country Planning Act, 1944, § 14(4), as applied, New Towns Act, 1946, § 4(2)(a).

106. Land Clauses Consolidation Act, 1845, 8 & 9 Vict. 1, c. 18, § 18, as applied, Town and Country Planning Act, 1944, § 18(1), as applied, New Towns Act, 1946, § 4(2)(c) [hereinafter cited as the Land Clauses Consolidation Act, 1845].

107. Town and Country Planning Act, 1944, § 18(1), Sch. 5, pt. I, para. 1(2), as applied, New Towns Act, 1946, § 4(2)(c).

108. Land Clauses Consolidation Act, 1845, § 18, as applied, Town and Country Planning Act, 1944, § 18(1), as applied, New Towns Act, 1946, § 4(2)(c). This notice may be served by delivery to the person, by delivery to his last place of abode or the last address he provided for service or by prepaid registered letter to his last abode or last previous address. If the address cannot be ascertained the notice may be delivered to some person on the premises or may be conspicuously affixed to some object on the land. If the landowner to be served is a corporation, notice may be served by delivery or registered mail to the secretary, clerk or anyone at its principal office. Town and Country Planning Act, 1944, § 54, as applied, New Towns Act, 1946, § 4(2)(c).

109. Land Clauses Consolidation Act, 1845, § 21, as applied, Town and Country Planning Act, 1944, § 18(1), as applied, New Towns Act, 1946, § 4(2)(c).

110. The land does not vest in the acquiring authority until compensation has been assessed and title has been conveyed or a deed poll has been executed. See 10 HALSBURY'S LAWS OF ENGLAND 81-87 (3d ed. Simonds 1955).

enter and take possession without prior consent if it provides a second notice—notice of intention to enter—at least fourteen days prior to entry. However, when entry is made before completion, interest must be paid on the purchase money from the time of entry to the time of completion.<sup>111</sup> If the occupier refuses to relinquish possession when the corporation is lawfully entitled to it, the corporation may issue a warrant to the sheriff who then must deliver the lands.<sup>112</sup>

If the Minister is satisfied that the corporation should be empowered to enter and secure the title to lands before expiration of the time required by the normal procedure, he may invoke in the Compulsory Purchase Order a special procedure for expedited completion.<sup>113</sup> When this procedure is invoked, a request that owners provide the corporation with their names and addresses and with information regarding the particulars of their interests must be included in the notice of the Minister's confirmation of the Compulsory Purchase Order.<sup>114</sup> Consequently the need for service of notices to treat is eliminated, and landowners are treated as if notices to treat had been served on the date when the Compulsory Purchase Order was registered in the Registry of Local Land Charges.<sup>115</sup>

The corporation may begin proceedings to secure possession and title to the land after two months have passed from the publication of notice of the Compulsory Purchase Order. First, it must execute a declaration stating its intention to enter and take possession after a prescribed period of at least fourteen days and stating that title to the land will vest in it at that time.<sup>116</sup> Then it must serve notice of the declaration on those landowners who provided the information requested in the notice of the Compulsory Purchase Order.<sup>117</sup> Finally, at the end of the period specified in the declaration, the

111. Town and Country Planning Act, 1944, § 18(1), Sch. 5, pt. I, para. 4(2), as applied, New Towns Act, 1946, § 4(2)(c).

112. Land Clauses Consolidation Act, 1845, § 91, as applied, Town and Country Planning Act, 1944, § 18(1), as applied, New Towns Act, 1946, § 4(2)(c).

113. Town and Country Planning Act, 1944, § 18(3), as applied, New Towns Act, 1946, § 4(2)(c).

114. Town and Country Planning Act, 1944, § 18(3), Sch. 6, pt. I, para. 2, as applied, New Towns Act, 1946, § 4(2)(c); see note 96 *supra*. The information requested in this notice is basically the same as that requested in a notice to treat. See text accompanying note 108 *supra*.

115. Town and Country Planning Act, 1944, § 18(3), Sch. 6, pt. I, paras. 1(1), (2), as applied, New Towns Act, 1946, § 4(2)(c).

116. Town and Country Planning Act, 1944, § 18(3), Sch. 6, pt. I, para. 3(2), as applied, New Towns Act, 1946, § 4(2)(c).

117. Town and Country Planning Act, 1944, § 18(3), Sch. 6, pt. I, para. 3(3), as applied, New Towns Act, 1946, § 4(2)(c).

corporation may enter and take possession without previous consent; title to the land vests in it at that time.<sup>118</sup>

The special procedure for expedited completion is not available to acquire a minor tenancy<sup>119</sup> or a long tenancy which is about to expire.<sup>120</sup> In such cases, notices to treat are not deemed to have been served at the registration of the Compulsory Purchase Order<sup>121</sup> and when title to the land vests in the corporation it vests subject to these interests.<sup>122</sup>

*c. assessing compensation.* In cases involving compulsory purchase in general, including cases involving new towns, when the amount of compensation cannot be agreed upon after service of notice to treat, assessment of compensation is made in an administrative proceeding before the Lands Tribunal.<sup>123</sup> Under the rules ordinarily employed by this body in measuring

118. Town and Country Planning Act, 1944, § 18(3), Sch. 6, pt. I, para. 3(4), as applied, New Towns Act, 1946, § 4(2)(c). Note that there are two principal differences between the normal and the expedited procedures: (1) under the expedited procedure the corporation is relieved from the burden of serving notices to treat on individual landowners; (2) under the expedited procedure title to the land vests at the time the corporation lawfully enters the land while under the normal procedure title does not vest until compensation has been assessed and paid.

119. A "minor tenancy" is a tenancy for a year or from year to year, whichever is less. Town and Country Planning Act, 1944, § 18(3), Sch. 6, pt. I, para. 1(3)(a), as applied, New Towns Act, 1946, § 4(2)(c).

120. A "long tenancy which is about to expire" is a tenancy greater than a minor tenancy but which has left to run, at the time of the registration of the purchase order providing for expedited completion, a period of shorter duration than a year and a period specified in the purchase order. Town and Country Planning Act, 1944, § 18(3), Sch. 6, pt. I, para. 1(3)(b), as applied, New Towns Act, 1946, § 4(2)(c).

121. Town and Country Planning Act, 1944, § 18(3), Sch. 6, pt. I, para. 1(3), as applied, New Towns Act, 1946, § 4(2)(c).

122. Town and Country Planning Act, 1944, § 18(3), Sch. 6, pt. I, para. 3(5), as applied, New Towns Act, 1946, § 4(2)(c).

123. Land Compensation Act, 1961, 9 & 10 Eliz. 2, c. 33, pt. I, § 1, superseding Acquisition of Land (Assessment of Compensation) Act, 1919, 9 & 10 Geo. 5, c. 57, as applied, Town and Country Planning Act, 1944, § 18(2), as applied, New Towns Act, 1946, § 4(2)(c) [hereinafter cited as Land Compensation Act, 1961]. The New Towns Act, 1946, applies § 18(2) of the Town and Country Planning Act, 1944, on matters regarding the assessment of compensation. The Town and Country Planning Act, 1944, originally applied the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919. The 1919 act has since been superseded by the Land Compensation Act, 1961; and the Town and Country Planning Act, 1944, has been amended to apply the provisions of the 1961 act instead. Because of the length of the citation necessary to indicate this change, citation will hereinafter be made to the Land Compensation Act, 1961, alone.

The Lands Tribunal was established in 1949 by the Lands Tribunal Act, 1949, 12 & 13 Geo. 6, c. 42, and given jurisdiction to hear most compensation disputes arising in England. It replaced the panel of official arbitrators which had been employed to settle compensation disputes until that time. See Acquisition of Land (Assessment

compensation, which also apply in the case of new towns, compensation is based on "market value" or the amount the land would bring if sold in the open market by a willing seller,<sup>124</sup> but in certain cases it may be based on the cost of equivalent reinstatement.<sup>125</sup> In either case, there are certain factors which may not be considered in assessing compensation. First, no allowance can be made for the fact that the acquisition was compulsory.<sup>126</sup> Second, the land's suitability for a particular use cannot be considered if the

of Compensation) Act, 1919, 9 & 10 Geo. 5, c. 57. The tribunal holds public hearings at which each party is usually limited to one expert witness. Land Compensation Act, 1961, 9 & 10 Eliz. 2, c. 33, pt. I, §§ 2(2), (3).

The Lands Tribunal has also been given jurisdiction to assess compensation when the land belongs to a utility. Prior to October 31, 1952, compensation was assessed in such cases by a special tribunal composed of a barrister or solicitor who was appointed by the Lord Chancellor and acted as chairman, two persons having special knowledge in land valuation and civil engineering who were appointed by the Minister, and a person having special knowledge of the utility involved and who was appointed by the appropriate minister. [1952] 1 STAT. INSTR. 1253 (No. 161), art. 3, modifying Town and Country Planning Act, 1944, § 13(6), Sch. 4, pt. II, para. 3(1), as applied, New Towns Act, 1946, § 4(2)(a). The utility is permitted to elect whether it wants compensation to be measured according to the standard rules or according to specially prescribed rules. The standard procedure may only be elected if the utility serves written notice of its request within two months of the date of service of notice to treat. Town and Country Planning Act, 1944, § 13(6), Sch. 4, pt. I, para. 1, as applied, New Towns Act, 1946, § 4(2)(a). When the special rules are elected, compensation is measured by the aggregate of the amount expended in making necessary adjustments in the provision of the utility service. Items includable are the cost of purchasing new land and erecting new buildings and apparatus, the estimated amount of decreased receipts caused by the acquisition, the cost of removing old apparatus as reduced by the estimated value of the property which is no longer used for carrying on the undertaking, and the estimated increase in net receipts resulting from the acquisition. Town and Country Planning Act, 1944, § 13(6), Sch. 4, pt. I, paras. 2(1), (2), as applied, New Towns Act, 1946, § 4(2)(a).

124. Land Compensation Act, 1961, pt. II, § 5(2). "Market value" was made the measure of compensation for notices to treat served after October 29, 1958, by the Town and Country Planning Act, 1959, 7 & 8 Eliz. 2, c. 53, pt. I. Before the passage of the 1959 act, compensation had been fixed at less than market value. Town and Country Planning Act, 1954, 2 & 3 Eliz. 2, c. 72, pt. III.

125. "Equivalent reinstatement" may be taken as the measure of compensation when the land is being used and would continue to be used for a purpose for which there is no general demand or market. Land Compensation Act, 1961, pt. II, § 5(5). This is the case, for example, when the land is being used for a church, school or park. When compensation is awarded under this section, it is assessed according to the cost of acquiring an equally convenient site and erecting equally convenient premises. 10 HALSBURY'S LAWS OF ENGLAND 139-40 (3d ed. Simonds 1955).

126. Land Compensation Act, 1961, pt. II, § 5(1). This rule, which was first adopted in the Acquisition of Land (Assessment of Compensation) Act, 1919, § 2(1), was an express abrogation of a practice which developed under the Land Clauses Consolidation Act, 1845, of adding an extra ten per cent as compensation for the land being acquired compulsorily. 10 HALSBURY'S LAWS OF ENGLAND 95 (3d ed. Simonds 1955).

land could only be put to that use pursuant to statutory powers or if there would be no market value for that use apart from the special needs of a particular purchaser or of an authority possessing compulsory purchase powers.<sup>127</sup> Finally, appreciation in value due to any use which is illegal or contrary to the public health must be disregarded.<sup>128</sup>

Because the value of land is largely governed by planning expectations, the Lands Tribunal may make certain planning assumptions in determining market value. A landowner may have compensation assessed on the basis of a use for which he has received planning permission<sup>129</sup> or on any of the following assumptions: that he would have been given planning permission for the type of development to be undertaken by the acquiring authority;<sup>130</sup> that he would have been granted planning permission for development within the ambit of the land's existing use;<sup>131</sup> that planning permission would have been given to the owner for a use proposed in a development plan;<sup>132</sup> or that planning permission would have been given to the owner for any use indicated in a certificate of appropriate alternative development.<sup>133</sup> An owner may choose from among these assumptions.

127. Land Compensation Act, 1961, pt. II, § 5(3). Suppose, for example, that an adjacent landowner was anxious to acquire the parcel to expand a factory and was willing to pay an excessive amount because of his special needs. This amount would be disregarded because there is no market apart from the special needs of a particular purchaser.

128. Land Compensation Act, 1961, pt. II, § 5(4).

129. Land Compensation Act, 1961, pt. II, § 14(2).

130. Land Compensation Act, 1961, pt. II, § 15(1).

131. Land Compensation Act, 1961, pt. II, §§ 15(3), (4).

132. Land Compensation Act, 1961, pt. II, §§ 16(1), (2), (3).

133. Land Compensation Act, 1961, pt. II, § 15(5). This is a certificate which may be issued by a local planning authority on application of a landowner whose land is not designated for development in a development plan. For example, a certificate may be issued for land which is designated as either "green belt" or "white land" (for which no use has been indicated). Land Compensation Act, 1961, pt. III, § 17(1). The purpose of the certificate is simply to indicate a use for which planning permission might reasonably have been given if the land were not compulsorily acquired. Land Compensation Act, 1961, pt. III, § 17(4). For example, if the land is surrounded almost entirely by residential development, a certificate of residential use would normally be appropriate. HEAP, AN OUTLINE OF PLANNING LAW 173 (1960). An aggrieved party may appeal the local planning authority's determination to the Minister who, if the parties desire, must provide a hearing. Land Compensation Act, 1961, pt. III, §§ 18(1), (2), (3).

The potential value of the certificate of appropriate alternative development may be illustrated by a simple hypothet. Assume the following facts: the development corporation intends to acquire undeveloped land for which no planning permission has been given and to use the land for a park or school, a use having no market value. In the development plan the land is designated as "green belt." Under these facts the market value of the land would be nominal, even if all the planning assumptions were made. Now suppose that a certificate of appropriate alternative development is applied for and the local planning authority certifies that the land would likely have been approved

Although market value normally would be assessed on the basis of the planning assumptions alone, when the land is located within a new town two additional rules operate to prevent private interests from retaining "betterment," the increase in value which is attributable to the development of the new town or to the prospect of that development. First, account may not be taken of any increase in the value of the land which is attributable to any actual or prospective development in the new town if that development would have been unlikely had the development corporation not acquired the land, or proposed to acquire it, and had the area not been designated as a new town.<sup>134</sup> Second, if the landowner also owns land adjacent to that which is being acquired, any increase in the value of the adjacent plot which is attributable to actual or prospective new town development must be deducted if that appreciation would have been unlikely had the development corporation not acquired the land, or proposed to acquire it, and had the area not been designated as a new town.<sup>135</sup> Both rules operate in roughly the same manner. The Tribunal must first determine the amount by which the land has increased in value since the date of the Designation Order. This is computed by subtracting the market value at the designation date from the market value at the time notice to treat was served. Next, the Tribunal must determine the portion of the total increase which probably would have accrued between the designation date and service of notice to treat if no designation had been made. This amount is the increase in value which is *not* attributable to the new town. It must then be deducted from the total increase to determine the part of that amount which is attributable to the new town. Finally, this amount is deducted from the market value at the date of service of notice to treat and the landowner is awarded the amount of the difference.<sup>136</sup>

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for residential use. By virtue of the certificate the landowner is able to collect the market value of his land for residential use.

For a general discussion of the certificate of appropriate alternative development, see Brown, *Certificate of Appropriate Alternative Development*, 1961 J. PLAN. & PROP. L. 514.

134. Land Compensation Act, 1961, pt. II, § 6(1), Sch. 1, pt. I, para. 3. Conversely, no account may be taken of any diminution in value attributable to actual or prospective development in the new town if it would have been unlikely had no acquisition or designation been made or proposed.

135. Land Compensation Act, 1961, pt. II, §§ 7(1), (2). If the adjacent land on which the increase has been deducted is subsequently acquired, the increase may not be deducted again. Similarly, if other land adjacent to land for which the increase has been deducted is later acquired, the increase may not be deducted a second time. Land Compensation Act, 1961, pt. II, § 8(1).

136. Suppose, for example, that the value of plot A when notice to treat was served was \$25,000, that the value at the time of designation was \$15,000, and that the land would probably have been worth \$20,000 when notice to treat was served even if no

Property owners are also prevented from receiving any increase in value which results from the construction of any building or the making of any alteration or improvement if the Lands Tribunal is satisfied that the building, alteration or improvement was not reasonably necessary and was undertaken for the purpose of obtaining increased compensation.<sup>137</sup>

### 3. *Inverse Condemnation*

A landowner whose land is located within the designated new town area may compel the development corporation to purchase his land if seven years have passed since the making of the Designation Order and if the owner has served the corporation with written notice of his desire to sell.<sup>138</sup> The corporation is deemed to have been authorized to acquire the tract on the date the owner makes his desire known.<sup>139</sup> Although this provision was meant to protect landowners who lived in the area at the time of designation, it applies to anyone holding the land at the end of the seven year period.<sup>140</sup>

### 4. *Relocation*

The development corporation has two responsibilities concerning the relocation of persons from whom land is acquired. First, if it appears at the

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designation had been made. The Tribunal in awarding compensation would first determine that the value of the land had increased by \$10,000 (\$25,000-\$15,000) since the time of designation. Then it would determine that the land's value would probably have increased by \$5,000 (\$25,000-\$20,000) even if the designation had not been made. Next it would find that \$5,000 (\$10,000-\$5,000) was attributable to the development of the new town. After deducting that amount the Tribunal would award the landowner \$20,000 (\$25,000-\$5,000).

Now suppose, in addition to the above, that the landowner also owned a second plot, plot B, located adjacent to plot A. Assume that plot B was worth \$20,000 when notice to treat was served on plot A, that plot B was worth \$12,000 at the time of designation, and that plot B would probably have been worth \$16,000 if no designation had been made. Under these facts the Tribunal would find that the value of plot B had increased by \$8,000 (\$20,000-\$12,000) since the time of designation. Then it would find that \$4,000 (\$20,000-\$16,000) of this increase would probably have accrued even if the designation had not been made. The Tribunal would then determine that \$4,000 (\$8,000-\$4,000) of plot B's increased value was due exclusively to the new town, deduct that amount from the \$20,000 determined above, and award the landowner \$16,000 for plot A.

137. Town and Country Planning Act, 1944, § 18(2), Sch. 5, pt. II, para. 8, as applied, New Towns Act, 1946, § 4(2) (c).

138. New Towns Act, 1946, § 6(4).

139. New Towns Act, 1946, § 6(4). Applications under this section are not often submitted. Owners are deterred by the fact that once they submit the application it cannot be withdrawn.

140. The provision does not impose an ownership test. There is no minimum length of time during which an owner must have held the land before demanding purchase, and he need not have owned the land on the date of the Designation Order.

time of acquisition that an individual or a family occupying the land will be displaced because of the taking of a residence, the corporation must provide reaccommodation prior to acquisition,<sup>141</sup> and may pay an allowance toward relocation expenses.<sup>142</sup> If the residence had been located within the boundaries of the new town, then the place of relocation must also be within that area.<sup>143</sup> If a business is displaced by the acquisition of the building in which the business is carried on, the corporation may pay a reasonable allowance for probable losses due to the disturbance to the business.<sup>144</sup> Second, the corporation has a general obligation when leasing land to give preference to anyone from whom land was acquired who prefers relocation in the new town and is willing to comply with any requirements of the corporation concerning the development of the land offered.<sup>145</sup> When one is accommodated on corporation land in this manner, the corporation must set his rent on the basis of the price paid for his land when it was acquired.<sup>146</sup> For example, if the corporation acquired the land at a time when land values were low, it must set the lessee's rent on the basis of the low land values.

#### D. *Finance*

The construction of an entire town within the span of a few years raises financial problems not ordinarily faced by a town which develops more slowly. The most obvious problem is the provision of the capital required to undertake construction. The sums needed by a development corporation to build housing, stores and factories and to contribute to the development of municipal and utility services will greatly exceed those required by a private developer to erect a residential subdivision or a shopping center. In addition, the provision of these facilities prior to the presence of a sufficient

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141. Town and Country Planning Act, 1944, § 30(1), as applied, New Towns Act, 1946, § 6(1)(d).

142. Town and Country Planning Act, 1944, § 30(5), as applied, New Towns Act, 1946, § 6(1)(d).

143. Town and Country Planning Act, 1944, § 30(1), as applied, New Towns Act, 1946, § 6(1)(d).

144. Town and Country Planning Act, 1944, § 30(5), as applied, New Towns Act, 1946, § 6(1)(d).

145. New Towns Act, 1946, § 5(2). The corporation has general authority to dispose of land under conditions and in a manner it considers expedient for development of the new town in accordance with the section 3(1) proposals which have been approved by the Minister. However, the corporation is subject to directions which the Minister may give and it may not dispose of a freehold or grant a lease for more than ninety-nine years without the consent of the Minister. New Towns Act, 1946, § 5(1), as amended, Town and Country Planning Act, 1947, § 46(2), and Town Development Act, 1952, 15 & 16 Geo. 7, 1 Eliz. 2, c. 54, § 18 Sch.

146. New Towns Act, 1946, § 5(2).

number of anticipated inhabitants is likely to produce an operating deficit until inhabitants can be secured.

### 1. *Advances and Grants*

The working capital of both development corporations and the Commission for New Towns is provided by the national government in the form of long term loans known as advances;<sup>147</sup> they are prohibited from borrowing funds from any other source.<sup>148</sup> These advances may be made by the Minister when he decides, with the concurrence of the Treasury, that the section 3(1) proposals indicate that the prospective development is likely to secure a reasonable return in relation to the costs of the undertaking.<sup>149</sup> When advances are approved they may be taken from funds made available to the Minister by the Treasury from the Consolidated Fund, and are subject to terms which the Minister and Treasury may provide.<sup>150</sup> As the Minister receives repayment of interest and principal, he must pay it into the Exchequer; if a payment becomes due and is not made, he must file an explanation with each House of Parliament.<sup>151</sup> The aggregate amount of advances issued to development corporations and the Commission for New Towns may not exceed 550,000,000 pounds.<sup>152</sup>

In addition to these advances to provide working capital, development corporations and the Commission for the New Towns are also eligible to receive assistance to help defray deficits which result when operating revenue is insufficient to offset current expenditures. The Minister, with the approval of the Treasury, is authorized to give such assistance to development corporations in the form of grants from funds provided by Parliament.<sup>153</sup> In the past, the Minister has provided corporations with grants up to fifty per cent

147. New Towns Act, 1946, § 12(1); New Towns Act, 1959, § 3(1).

148. New Towns Act, 1946, § 2(2); New Towns Act, 1959, § 2(6).

149. New Towns Act, 1946, § 12(7). If a generalized § 3(1) proposal is submitted the Treasury may withhold approval until more detailed plans are prepared.

150. New Towns Act, 1946, §§ 12(1), (3); New Towns Act, 1959, §§ 3(1), (3). The Treasury may replace funds it advances in any manner authorized by the National Loans Act. Under that Act the Treasury may create and issue securities and specify the rate of interest, conditions of repayment, and conditions of redemption. National Loans Act, 1939, 2 & 3 Geo. 6, c. 117, §§ 1, 3, as applied, New Towns Act, 1946, § 12(4) and New Towns Act, 1959, § 3(4).

151. New Towns Act, 1946, § 12(5); New Towns Act, 1959, § 3(5).

152. New Towns Act, 1964, c. 8, § 1. Prior to the 1964 legislation the advances to the Commission for the New Towns could not exceed 5,000,000 pounds and advances to development corporations could not exceed an aggregate of 400,000,000 pounds, less the amount which had been advanced to the Commission. New Towns Act, 1959, §§ 3(1), 11(1).

153. New Towns Act, 1946, § 12(2).

of their first year's deficit and twenty-five per cent of the second.<sup>154</sup> Deficits not defrayed in this manner are treated as part of the cost of the new town and are capitalized.<sup>155</sup> The Commission for the New Towns may be given additional advances not to exceed 1,000,000 pounds to assist it in meeting revenue deficits.<sup>156</sup>

In addition to the special assistance received by development corporations and the Commission for the New Towns in the form of advances and grants, both are eligible to receive housing subsidies for the development of housing within the designated new town area. Development corporations are eligible to receive this assistance for housing which they are authorized to provide on their own account and for housing which they provide under arrangements with local authorities.<sup>157</sup> In the former case, the subsidy is paid by the Ministry of Housing directly to the corporation; in the latter, it is paid to the local authority which must pay at least an equal amount to the corporation.<sup>158</sup> The Commission for the New Towns is eligible to have subsidies transferred to it by the development corporation, and may receive subsidies for new dwellings provided by it.<sup>159</sup> Both development corporations and the Commission are eligible to receive additional subsidies in certain cases.<sup>160</sup>

## 2. *Surplus*

After the bulk of the construction has been completed and the towns have been transferred to the Commission, the income of the new towns may exceed expenditures. If so, provision has been made for the transfer of surplus back to the Exchequer. If the Minister is satisfied, after consultation with the Treasury and the Commission, that the Commission has a surplus

154. Minister of Local Government and Planning, *Town and Country Planning 1943-1951*, CMD. No. 8204, at 122 (1951).

155. *Ibid.*

156. New Towns Act, 1959, § 3(2).

157. Housing (Financial Provisions) Act, 1958, 6 & 7 Eliz. 2, c. 42, § 1(1) [hereinafter cited as Housing (Financial Provisions) Act, 1958].

158. Housing (Financial Provisions) Act, 1958, § 1(2).

159. New Towns Act, 1959, § 4(1), Sch. 2, para. 4(1).

160. For example, both may receive additional subsidies when a dwelling is constructed by an experimental method or with experimental materials with the Minister's consent. Housing (Financial Provision) Act, 1958, § 14; New Towns Act, 1959, § 4(2)(a). Both may also receive additional subsidies for hostels, which are buildings providing for residential accommodations generally or for any class or classes of persons. Housing (Financial Provision) Act, 1958, § 15; New Towns Act, 1959, § 4(2)(b). Development corporations may also receive additional subsidies for any enhanced expense attributable to the acquisition of rights of support, protection against site, subsidence, measures taken to preserve the character of the surroundings or housing improvements. Housing (Financial Provision) Act, 1958, §§ 8(1), (2), 11.

in either its capital or revenue accounts exclusive of reserves for future requirements, he may direct the Commission to pay him a sum not exceeding the amount of the surplus. The Minister must in turn pay the sum to the Exchequer.<sup>161</sup>

### 3. *Financial Control*

Accompanying the national government's duty to provide advances and grants is a large measure of financial control over the operations of the development corporations and the New Towns Commission. Both the Minister and the Treasury must approve proposed building construction before advances of funds can be made. Before approving advances the Treasury examines project proposals to ascertain whether the project is one which the development corporation, rather than a local authority or private developer, should provide. For example, the Treasury may be reluctant to approve funds for a swimming pool or golf course on the ground that it should be provided by the local authority, or it may refuse to approve advances for a pub or bowling alley on the ground that it should be provided by a private developer. In addition to determining that a proposed project is a proper subject for the expenditure of national funds, the Treasury must also find that the project is economically feasible—that it is likely to secure a reasonable return compared with the cost of carrying out the proposals.<sup>162</sup>

A development corporation and the Commission for the New Towns are both required to keep proper accounts and records for each fiscal year in the form that the Minister directs.<sup>163</sup> These accounts must be audited by an auditor appointed by the Minister, and a copy of the audit must be sent to the Minister along with any other report of the auditor.<sup>164</sup> The Minister, in turn, is required to prepare annual accounts of the funds issued to him and advanced to the corporation and of funds received from the corporation or Commission and paid to the Exchequer.<sup>165</sup> These accounts together with the accounts submitted by the corporations and Commission must be submitted to the Comptroller and Auditor General. They are required to examine and certify the accounts and lay them before each House of Parliament.<sup>166</sup>

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161. New Towns Act, 1959, § 2(7).

162. New Towns Act, 1946, § 12(7).

163. New Towns Act, 1946, § 13(1); New Towns Act, 1959, § 5(1).

164. New Towns Act, 1946, § 13(2); New Towns Act, 1959, §§ 5(2), (4).

165. New Towns Act, 1946, § 13(4); New Towns Act, 1959, § 5(5).

166. New Towns Act, 1946, § 13(5); New Towns Act, 1959, § 5(6).

### E. *Governmental Structure*

With the exception of the larger cities, which are independently organized as County Boroughs, English local government is generally administered by two tiers of local authorities. The upper tier consists of administrative counties<sup>167</sup> which are responsible for providing such services as education, libraries and museums, parks and open spaces, and housing assistance in rural areas.<sup>168</sup> In addition, they serve as the local planning authorities for the administration of town and country planning.<sup>169</sup> The lower tier is composed of three types of district units—municipal borough councils,<sup>170</sup> urban district councils, and rural district councils.<sup>171</sup> These units are responsible for providing sanitation, housing, parks and open spaces, and building controls.<sup>172</sup> In addition, municipal borough councils and urban district councils may provide libraries and museums, roads and streets, and amenities such as swimming baths and washhouses.<sup>173</sup> While most English towns are organized in one of these forms, a separate structure is available for larger cities. These cities are usually organized as County Boroughs,<sup>174</sup> are removed from the control of the administrative county, and are authorized to provide services comparable to those afforded by that unit.<sup>175</sup>

When the site of a new town is designated, the area encompassed in the Designation Order is occasionally within the jurisdiction of two or more county councils and is often within the jurisdiction of two or more district councils.<sup>176</sup> While the mere designation of the town does not affect the territorial jurisdiction of these units, as the new town is constructed and its

167. Administrative counties can be created, or their boundaries altered, by the national government. Each county is a body corporate with a common seal, composed of an elected council which consists of a chairman, county aldermen and county councillors. JACKSON, *LOCAL GOVERNMENT IN ENGLAND AND WALES* 51 (1949).

168. *Id.* at 116; WADE, *ADMINISTRATIVE LAW* 20-22 (1961).

169. *Ibid.*

170. Non-county or municipal boroughs are created by Royal Charter. As a chartered corporation the borough has all the powers of an ordinary person. Conversely, rural and urban districts may only do what Parliament has expressly authorized them to do. Each non-county borough has an elected council composed of a Mayor, Aldermen, and Councillors. JACKSON, *op. cit. supra* note 167, at 52-53.

171. Urban and rural districts are administrative subdivisions of the county. The urban districts are generally the built-up areas, and the rural districts are the less populated sections. Each has an elected council consisting of a chairman and councillors, and each is a body corporate with a common seal. *Id.* at 53.

172. *Id.* at 116-117; WADE, *op. cit. supra* note 168, at 20-22.

173. *Ibid.*

174. County Boroughs are cities which can only come into existence under the authority of the national government. Although fifty years ago a population of 50,000 would have been sufficient, today a population of at least 100,000 is usually required. JACKSON, *op. cit. supra* note 167, at 46-49.

175. *Id.* at 115-16.

176. Minister of Local Government and Planning, *supra* note 154, at 132.

population increases, the need will probably arise to redraw the lines of local government jurisdiction. For example, an urban district may be organized to be coterminous with the designated boundaries of the new town or to include the new town and some adjacent territory as well. If the new town's population reaches 100,000 it may be reclassified as a County Borough.

While the jurisdiction of the local government units is not affected by the Designation Order, some of their powers and duties may be. For example, it has already been indicated that the new town development corporation is exempt from the planning control of the local planning authority having jurisdiction.<sup>177</sup> It has also been pointed out that the local sanitation authority (the district council) may be forced to transfer its responsibility for providing this service to the corporation.<sup>178</sup> Finally, the activities of local authorities in the provision of housing, while they may be continued, will be slight compared with those undertaken by the development corporation.<sup>179</sup>

Although some friction may develop between the local authorities and the development corporation, it is essential that they cooperate in developing the town. Because each has responsibility in planning the town, consultation is important if the building effort is to be harmonious. Otherwise, the local planning authority might approve the proposals of a private developer for the development of lands in or near the town which are inconsistent with the corporation's town plan or there may be disagreement between the development corporation and the local highway authority on the road system.<sup>180</sup>

#### CONCLUSION

The English have decided to carry out their new towns program through public development corporations. The use of these agencies, usually one for each new town, permits each new town to be built with a certain amount of individuality. The corporation exercises the initiative both in broad scale planning of the town and in the detailed designing of buildings. In addition, the corporation is exempt from local planning control.

The primary purpose for which the program was instituted is the decentralization of urban population, which is a national problem. Also the program is financed by national funds. Therefore the need for national supervision was recognized and the Minister of Housing and Local Government was given supervisory power over almost every phase of the corporation's work. For example, the Minister must approve the master plan, the section 3(1) proposals and land acquisitions (whether made by agreement or com-

177. See text accompanying notes 55, 56, & 57 *supra*.

178. See text accompanying notes 73-74 *supra*.

179. See note 68 *supra*.

180. Letter from Miss J. Earl, Ministry of Housing and Local Government, June 30, 1964, on file Washington University LAW QUARTERLY.

pulsorily). In addition, the Treasury has been given control over money advances and may review every corporation project on its financial merits prior to its undertaking.

However it was also recognized that some provision was necessary to give local authorities a voice in the new town's development. Thus Parliament required the Minister to consult local authorities before making a Designation Order and before approving a section 3(1) proposal. In the latter case, consultation need only be with the local planning authority, but its importance is obvious since this authority controls all private development within the designated new town area. In addition, because local rural and urban district councils would probably be financially and otherwise incapable of providing the new town with new services and facilities as rapidly as needed, provision was made for the corporation to render financial assistance and to aid in carrying out the needed construction. In the case of sewerage and sewage disposal, the corporation was authorized to completely take over the local authority's responsibility on a temporary basis.

Finally, the English program recognized the interests of individual property owners who may suddenly find themselves in a rapidly expanding new city. This is evidenced by the fact that public local inquiries are authorized at three different stages—on the Designation Order, on the master plan, and on a Compulsory Purchase Order. Other indications of landowner protection are the inverse condemnation procedure, which allows land owners to force the purchase of their land after seven years if it has not been purchased by that time, and the relocation provisions, which give displaced homeowners the right to be relocated and other landowners a preference in acquiring land in the new town.

An evaluation of the total program is difficult because of its scope. The use of a special agency, the development corporation, naturally results in a more tedious administrative procedure. However, it permits an individuality of design which would not be likely if planning initiative were completely vested within the Ministry, and at the same time prevents the parochialism which would probably result if local authorities were charged with the administration of the program. The adequacy of the program is probably best proved by its results. Since 1946, sixteen new towns have been designated in England and Wales, four of which have a present population of more than 60,000. More than 100,000 new houses and flats have been completed, and hundreds of new shops and industrial sites have been built. The administrative process for the development of the new towns may appear more cumbersome than is necessary, but in its pragmatic conciliation of the competing interests in the development of the new town community the English system has much to teach us.

## APPENDIX

Recently a bill was introduced in Parliament which, if enacted, would consolidate in one statute most of the enactments concerning new towns; the majority of the proposed changes are minor and merely clarify possible ambiguities in the provisions of earlier statutes. Because the bill will probably be enacted, with few alterations, in the spring of 1965, the following tables are provided to reveal the extent to which prior enactments will be repealed and to assist the reader in locating in the proposed consolidation act the provisions which have been cited in this article.

### I. TABLE OF PROPOSED REPEALS

<i>Act</i>	<i>Extent of Repeal</i>
Town and Country Planning Act, 1944, 7 & 8 Geo. 6, c. 47.	The whole Act as applied by the New Towns Act, 1946.
Water Act, 1945, 8 & 9 Geo. 6, c. 42.	In Schedule 2, paragraph 1(b).
Statutory Orders (Special Procedure) Act, 1945, 9 & 10 Geo. 6, c. 18.	In Schedule 2, the entries relating to the Town and Country Planning Act, 1944.
New Towns Act, 1946, 9 & 10 Geo. 6, c. 68.	The whole Act.
Town and Country Planning Act, 1947, 10 & 11 Geo. 6, c. 51.	Section 46; and in Schedule 8, the entry relating to the New Towns Act, 1946.
Licensing Act, 1949, 12 & 13 Geo. 6, c. 59.	Section 4(1).
Town Development Act, 1952, 15 & 16 Geo. 6 & 1 Eliz. 2, c. 54	Section 18; and the Schedule.
New Towns Act, 1958, 6 & 7 Eliz. 2, c. 12.	The whole Act.
New Towns Act, 1959, 7 & 8 Eliz. 2, c. 62.	The whole Act, except—section 4; section 9(1) and (3); section 10; section 12(1); in section 14(1), the words from the beginning to “the New Towns Act, 1959”; section 14(2) and (3); and paragraph 1(10) of Schedule 1.

<i>Act</i>	<i>Extent of Repeal</i>
Land Compensation Act, 1961, 9 & 10 Eliz. 2, c. 33.	In Schedule 4, paragraphs 1 to 5.
Public Health Act, 1961, 9 & 10 Eliz. 2, c. 64.	In section 84(1), the words from "Subsection (3)" to "to new towns)".
Housing Act, 1961, 9 & 10 Eliz. 2, c. 65.	In Schedule 2, paragraph 16.
Town and Country Planning Act, 1962, 10 & 11 Eliz. 2, c. 38.	In Schedule 14, paragraph 47.
New Towns Act, 1964, c. 8.	The whole Act.
New Towns (No. 2) Act, 1964, c. 68.	The whole Act.

## II. TABLE OF COMPARISON

<i>Town and Country Planning Act, 1944</i>	<i>Proposed New Towns Act, 1965</i>
§ 3(1)	cl. 8(1)
(2)	(2)
(4)	6(4), 5
(5)	Sch. 3, para. 8
§ 13(3)	cl. 10(3)
(4)	(1), (2)
(6)	13
(7)	54(3)
§ 14(1)	cl. 8(3); Sch. 3, para. 13(1)
(3)	Sch. 3, para. 13(2)
(4)	13(4)
(5)	cl. 7(3); 8(4), (6)
(6)	Sch. 3, para. 13(3)
(10)	cl. 54(1)
§ 16(1)	cl. 7(4); 8(5); Sch. 1, para. 6; Sch. 3, para. 14
§ 17(1)	cl. 1(4); 9(1)
§ 18(1)	cl. 12(1)
(2)	(2)
(3)	15(1); 16(1), (7); Sch. 7, para. 1

*Town and Country Planning Act,  
1944*

*Proposed New Towns Act, 1965*

§ 26(1)	cl. 28(1), (2)
(2)	(5)
(3)	29(1)
(5)	28(3)
(6)	29(2)
§ 30(1)	cl. 22(1)
(5)	(5)
§ 54	cl. 51
Sch. 1, para. 2	Sch. 3, pt. I, para. 4(2)
3	(3)
5	(5)
6	(6)
Sch. 2, pt. I, para. 1(1)	Sch. 3, pt. I, para. 1
2(1)	2(1)(a)
(2)	(1)(b)
(3)	(2)
4	3
5	5
Sch. 3, pt. I, para. 2	
3	Sch. 4, pt. I, para. 2
	3
Sch. 4, pt. I, para. 1	Sch. 5, paras. 2, 3
2(1)	1(2)
(2)	1(3)
Sch. 5, pt. I, para. 1(2)	Sch. 6, pt. I, para. 2
4(2)	4(2)
Sch. 6, pt. I, para. 1(1)	cl. 16(2), (7)
(2)	(7)
(3)	17(1), (2), (6), (7)
2	Sch. 7, para. 2(b)
3(2)	cl. 16(4); Sch. 7, para. 2(a)
(3)	16(5), (6); 17(3)
(5)	Sch. 7, paras. 13, 14

<i>New Towns Act, 1946</i>	<i>Proposed New Towns Act, 1965</i>
§ 1(1)	cl. 1(1)
(2)	(3)
(3)	(2)
§ 2(1)	cl. 2(1)
(2)	3(1), (2); 4(1)
§ 3(1)	cl. 6(1)
(2)	(2)
§ 4(1)	cl. 7(1)
(2)(a)	(2)
(2)(b)	*
(2)(c)	*
(3)	*
§ 5(1)	cl. 18(1)
(2)	(2)
§ 6(1)(d)	*
(4)	cl. 11
§ 7(1)	*
§ 9(1)	cl. 33
(2)	34(1), (2)
(3)	(3)
(4)	(4)
(5)	(5)
§ 10(1)	*
§ 11	cl. 3(3)
§ 12(1)	cl. 42(1)
(2)	(2)
(3)	44(1)
(4)	(2)
(5)	(3)
(7)	42(3)
§ 13(1)	cl. 46(1)
(2)	(2)
(4)	(5)
(5)	(6)
§ 16(1)	cl. 5(1)
(2)	(2)
§ 19(2)	cl. 53(3)
§ 26(1)	cl. 46(10)

<i>New Towns Act, 1946</i>	<i>Proposed New Towns Act, 1965</i>
Sch. 1, para. 1	Sch. 1, para. 1
2	2
3	3
4	4

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\* These sections of the New Towns Act, 1946, incorporate provisions of other enactments. Because the proposed New Towns Act, 1965, includes these provisions which were formerly incorporated, the need for corresponding sections in the new act has been obviated.

<i>New Towns Act, 1959</i>	<i>Proposed New Towns Act, 1965</i>
§ 2(6)	cl. 37(1), (4)
(7)	45
§ 3(1)	cl. 42(4)
(2)	(5)
(3)	44(1)
(4)	(2)
(5)	(3)
§ 4(1)	**
(2)(a)	**
(2)(b)	**
§ 5(1)	cl. 46(1)
(2)	(2)
(4)	(4)
(5)	(5)
(6)	(6)
§ 6(1)	cl. 41(1)
(2)	(2)
§ 7(1)	cl. 40(1)
(2)	(2)
(3)	(3)
(5)	(4)
§ 13	cl. 3(3)

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\*\* These provisions are not to be repealed by the proposed consolidation act.

<i>New Towns Act, 1964</i>	<i>Proposed New Towns Act, 1965</i>
§ 1	cl. 43

<i>New Towns (No. 2) Act, 1964</i>	<i>Proposed New Towns Act, 1965</i>
§ 1(1)	cl. 53(4)
(2)	1(6); 53(5)