

---

# PLANNING IN BRITAIN: THE CHANGING SCENE

VICTOR MOORE\*

---

In 1968, statutory control of land use planning in Britain came of age. In 1947, the Town and Country Planning Act<sup>1</sup> introduced a comprehensive system of planning and planning control, based on development plans prepared by local planning authorities and approved by the central government. These plans had to indicate the manner in which a local planning authority proposed that land in its area should be used, and the stages by which any development was to be carried out. Twenty-one years later, this system was found to be in need of substantial overhaul.<sup>2</sup>

Development plans prepared under the Town and Country Planning Act of 1947 were subjected to increased criticism. The original plans soon became outdated, and procedures for their review were cumbersome; consequently few of the plans were able to do more than record the pattern of existing land use. The Town and Country Planning Act of 1968 sought to correct this defect by making fundamental changes in the form and content of development plans.<sup>3</sup> Predominantly, this is achieved by a new type of plan prepared by the local planning authority at two levels: a strategic "Structure Plan" approved by the central government, and detailed "Local Plans" which will not require central government approval. It is intended that a structure plan will deal purely with policies applicable to major land

---

\*Lecturer in Law, Department of Law Relating to Land, University of Reading, England.

1. TOWN AND COUNTRY PLANNING ACT 1947, 10 & 11 Geo. 6, c. 51.

2. Report of the Planning Advisory Group on the Future of Development Plans.

3. TOWN AND COUNTRY PLANNING ACT 1968, c. 72 (Part I).

uses such as housing, education, recreation, and transport.<sup>4</sup> The plan will not allocate particular parcels of land to particular purposes. This will be done by local plans which will deal with the detailed planning of any area.

One of the advantages of the new type of development plan is that it will encourage positive planning by monitoring more speedily and effectively changes or proposed changes in such key factors as the size of the population, the level of investment, and the pace of technological advance. Yet for the time being, these new plans must remain in a state of gestation, since few local planning authorities possess either the human or financial resources necessary to make instant changes.<sup>5</sup> Accordingly, the author has refrained from discussing the possible implications of these changes and has preferred instead to consider three diverse areas of law where recent events have had more immediate impact.

#### THE ABOLITION OF BETTERMENT LEVY AND THE DISSOLUTION OF THE LAND COMMISSION

"For centuries the claim of private landowners to develop their land unhindered and to enjoy the exclusive right to profit from socially created land values when their land is developed has been questioned, especially when the land is sold to the community which itself has created the value realised." So began the statement of policy in a White Paper presented to Parliament by the Minister of Land and Natural Resources in September 1965.<sup>6</sup> The view held by the then Labour Government was that it was wrong that planning decisions about land use should result in the realising of unearned increments by owners of land to which they apply, and that desirable development should be frustrated by owners withholding their land in the hope of securing higher prices. Consequently, a main objective of that government's policy, which was implemented in the complex and highly controversial Land Commission Act of 1967,<sup>7</sup> was to insure

---

4. The author hopes that structure plans will provide a much needed link between national economic planning and local town and country planning.

5. Despite advocacy in support of the new system during the passage of the legislative proposals through Parliament, the best description of the philosophy of the 1968 Act was given by Dr. Wilfred Burns, Chief Planner, Ministry of Housing and Local Government, at a conference organised by the Royal Institute of Chartered Surveyors on November 29, 1968.

6. THE LAND COMMISSION, CMND. No. 2771 (1965).

7. LAND COMMISSION ACT 1967, c. 1.

that a substantial part of the development value created by the community was returned to it. This legislation survived for four years until it was repealed by a Conservative Government in the Land Commission (Dissolution) Act of 1971. Thus, the limited life of a policy which was described on the one hand as "fair and equitable,"<sup>8</sup> and on the other as "the economics of bedlam,"<sup>9</sup> confirmed once more that special schemes for the taxation of development values in land will remain on constant and unending probation.

For well over thirty years, the problem of betterment, or of law to treat increases in the value of land caused by community activity, has been under continuous public scrutiny. Following the comprehensive review of the problem in 1942 by the Expert Committee on Compensation and Betterment under the Chairmanship of Mr. Justice Uthwatt,<sup>10</sup> the financial provisions of the Town and Country Planning Act of 1947 sought to provide a solution as ingenious as it was comprehensive. The Act provided that, save for some minor exceptions, no development of land could be carried out without a grant of planning permission from the local planning authority. This provision was intended to be the key instrument in the machinery for the control of land in Britain and it has fulfilled that function to this day. But allied to this provision was the omission of any obligation to pay compensation to an owner of land refused planning permission, and the inclusion of a requirement that when a grant of planning permission was obtained, the owner should pay a development charge equal to the increase in the value of the land resulting from the grant. Thus, by imposing a development charge at a rate of one hundred per cent on the development value of land, this 1947 legislation effectively transferred to the state the landowner's rights to this value. As a result, land ceased to be offered for development by landowners, and the scheme had to be abandoned in 1953. Thereafter, until 1967, no other special provision existed for taxing the development value of land.<sup>11</sup>

---

8. Town and Country Planning Bill 1968, H.C. 31 Jan. 1966, Col. 712.

9. *Id.* at Col. 720.

10. EXPERT COMMITTEE ON COMPENSATION AND BETTERMENT, FINAL REPORT, CMD No. 6386 (1942).

11. The 1947 legislation provided for compensation to be paid to landowners who suffered through the passing of the Act and who could show that their land possessed development value as of July 1, 1948. Development value arising after that date in effect also became the property of the state because of the development charge, and in this case no compensation was paid.

Under the Land Commission Act of 1967, a "betterment levy" became payable whenever any development value was realised. Unlike the development charge of the 1947 Act, the levy was charged at the rate of only forty per cent of the development value, although in order to discourage the withholding of land from the market, power was given to the Minister to alter the rate of the levy, and it was his stated intention (though never implemented) that the rate should be increased progressively to at least fifty per cent. Two basic principles underlay the assessment of liability for levy. The first principle was that the levy was a charge on the development value of land and not on any increase in its current use value. Development value was not actually defined in the Act, though in general terms it represented any additional value realised over and above the value of the land for current use purposes, where the additional value was due to the possibility of putting the land to another and more profitable use. A grant of planning permission did not in itself give rise to a liability for levy; the additional value also had to be realised. On the other hand, a levy might have to be paid where, although there was no grant of planning permission, the land was sold at a price which reflected the possibility of a grant in the future. Any increase in the current use value of land, whether due to inflation or to the effects of neighbouring development, was not subject to the levy at all but was taxed under a system of capital gains tax introduced in Britain for the first time by the Finance Act of 1965.<sup>12</sup> The second principle was that the levy was payable by the person realising the development value. In the majority of cases this realisation occurred where the owner sold his freehold or leasehold interest, created a lease out of a superior interest, or proceeded to carry out development after a grant of planning permission.

The unpopularity of the 1967 Act was due to many causes. One was undoubtedly the fact that instead of confining itself to matters of principle, the Act contained detailed and complex rules for assessing levy for every conceivable kind of transaction capable of taking place in land. Even professional advisors found it difficult to understand

---

12. FINANCE ACT 1965, c. 25. However, a form of "short term" capital gains tax was in fact introduced in 1952.

its provisions.<sup>13</sup> Now, the levy has been abolished, and increases in land value from whatever source are treated as capital gains and subject to capital gains tax in the same way as increases in the value of any other asset. The landowner has gained in a number of ways. Whereas the levy was charged at forty per cent, capital gains tax is currently charged at thirty per cent. Again, under the levy, *de minimis* relief was granted to owner-occupiers of property which was worth under £10,000 and which did not exceed a quarter of an acre, whereas total exemption for capital gains tax purposes is given to owners of property of less than one acre. Finally, levy was charged by reference to each individual transaction, whereas under capital gains tax, a person's losses may be set off against his gains.

The Land Commission Act of 1967 had one further purpose. This was to set up a body called the Land Commission, which would insure that land was available when it was needed for the implementation of national, regional, and local plans.<sup>14</sup> Accordingly, the Act gave the Land Commission wide powers of land acquisition, management, and disposal. The Labour Government's view was that local authorities were inappropriate bodies for creating the necessary "land bank" and that this purpose could only be achieved by a national body with national resources. Under the Act, the Land Commission was to act as an agent for the collection of the levy in private transactions. Where the Land Commission acquired land, however, any levy it collected was not passed on to the central government, but was retained to supplement the Commission's working capital.

Many other reasons were adduced for the creation of the Land Commission. It was argued that, if, because of the existence of the levy, the supply of land were withheld from the market on a substantial scale, only a national body with compulsory power to acquire could effectively intervene to secure the supply, and that the Land Commission, unlike local authorities, would be both able and willing to do this. Furthermore, it was felt that the Land Commission could use its powers of compulsory acquisition for the benefit of private development. So if planning permission had been given for the de-

---

13. "Oscar Wilde is said to have defined an idealist as one 'who knows the value of everything and the price of nothing' and a cynic as one 'who knows the price of everything and the value of nothing.' In order to advise clients as to their rights and liabilities under the Land Commission Act 1967 it was by this definition necessary to be both an idealist and a cynic." Keith F. Goodfellow, Q.C., in a paper presented to the Incorporated Society of Auctioneers in February 1967.

14. See note 6 *supra*.

velopment of land by a private developer, and the development was frustrated by the owner of an interest in the land who was unwilling to cooperate with the developer, the Land Commission could acquire the interest by compulsory acquisition and then convey it to the developer.

There were many other areas where the Land Commission was intended to have a positive function. It was envisaged that the Commission would be able to buy and assemble land needed for central area redevelopment, or for major schemes of expansion such as the building of new towns, and that in these cases it could act as a holding agency carrying the financial burdens of ownership until such time as the local authority was ready to proceed with the development or redevelopment.

The Land Commission has now been dissolved, and its demise has created a vacuum which needs to be filled. Unlike local planning authorities, the Land Commission had no planning powers of its own. It was intended that it should function in conjunction with local authorities and within the framework of current planning legislation. It could only acquire land for which there had been a planning decision such as a grant of planning permission given either by the local planning authority or by the Minister. Since the establishment of the rule in 1947 that no compensation should be paid to a person prevented from developing his land due to planning restrictions, planning and planning control have been carried on by planners without regard to the financial implications of their decisions. One of the lamented virtues of the Land Commission was that having no planning role of its own, it would have been an ideal body to bring into the planning field a consideration of the financial and economic effects of planning decisions. As a strong, national, and independent body with a right of appeal to the Minister from the refusal of a local planning authority to grant planning permission, the Land Commission could have insured that for the first time in over twenty years, a sense of commercial responsibility for planning decisions was introduced into the British planning system.

#### THE PROTECTION OF AREAS AND BUILDINGS OF SPECIAL ARCHITECTURAL OR HISTORIC INTEREST

Almost every country has legislation designed to conserve its architectural inheritance. In Britain, special legislative control exists to

preserve both areas and buildings considered to be of special architectural or historic interest.

Control over areas was introduced for the first time by the Civic Amenities Act of 1967.<sup>15</sup> Under that Act local planning authorities were required to designate areas of special architectural or historic interest which they considered desirable to preserve or enhance. These areas were known as conservation areas, and important legal and administrative consequences flowed from that designation. Under general planning law, planning permission is required from the local planning authority for the development of land, and save for exceptional cases, there is no legal obligation requiring the applicant or the authority to publicise the application. But if the land is within a conservation area, and the development proposed is likely to affect the character or appearance of the area, the local planning authority must publicise the application for planning permission by a newspaper and site notice, and before the local authority makes a decision on the application it must consider any representations which have been made to it. This requirement gives to residents within the area and to local or national preservation societies the opportunity to comment on the development proposed and to attempt to influence the decision of the local planning authority.

The designation of a conservation area has, however, considerably more administrative significance. The Minister has advised local planning authorities that when they consider applications for planning permission for development within a conservation area, they should have special regard to such matters as brick, height, materials, colour, vertical or horizontal emphasis, and grain of design.<sup>16</sup> He has also advised these authorities to refrain from granting outline planning permission, which is a planning permission granted subject to *subsequent* approval for matters of detail such as means of access, siting, design, or external appearance. Instead, the Minister has advised authorities to grant a planning permission only after submission of detailed plans and elevations which show the development in its setting.

---

15. CIVIC AMENITIES ACT 1967, c. 69.

16. The advice was given by the Minister of Housing and Local Government. English planning administration has been described as a hierarchy of centralised pontification. The supreme pontiff is currently the Secretary of State for the Environment, upon whom all legal duties and responsibilities have fallen. In administration, he is assisted by a number of junior ministers. References to the Minister in this article, therefore, should be construed in the light of this note.

There is no doubt that the special treatment accorded to development within a conservation area has stimulated public interest in any activity likely to destroy, conserve, or enhance the environment of these areas. However, there has been criticism that the law remains inadequate. Under general planning law, planning permission is deemed granted without any application to the local planning authority for certain development of a minor nature such as the enlargement of a dwelling (within limits), the erection of ancillary buildings within the curtilage of a dwelling, the erection of fences, kiosks, and lamp standards.<sup>17</sup> Since an express grant of planning permission is not required from the authority for these activities, they attract no special legal or administrative control when carried out in a conservation area. It has been argued that if a conservation policy is to be effective, this minor development should be subject to the same special control as any other development within a conservation area.<sup>18</sup>

Yet another criticism is that there is no effective control exercised over the demolition of buildings within a conservation area, unless they have been given specific protection as buildings of special architectural or historic interest. Under general planning law, the question of whether demolition amounts to development and thus requires a grant of planning permission is by no means clear. Development is defined, *inter alia*, as "the carrying out of building, engineering, mining, or other operations in, on, over, or under land."<sup>19</sup> In the recent case of *Coleshill and District Investment Co., Ltd., v. Minister of Housing and Local Government*,<sup>20</sup> the House of Lords refused to answer the question of whether demolition came within that definition. One lordship<sup>21</sup> felt that it was unnecessary and possibly misleading to give an operation a single labelling word, and then to try to apply the definition to that word. The true path of inquiry is to ascertain what is to be done and then to see whether that comes within the statutory definition. Nevertheless, the case suggested that demolition of part of a building may constitute development, whereas its total demolition would not. The uncertainty of the law and its application has brought

---

17. This list is not intended to be exhaustive.

18. The problem is greatest in historic towns such as York, Bath, and Chichester. By a special order, the Minister can make minor development subject to a requirement that express planning permission be obtained, but it is rare for him to do so.

19. TOWN AND COUNTRY PLANNING ACT 1962, 10 & 11 Eliz. 2, c. 38, § 12.

20. [1969] 1 W.L.R. 746 (H.L.).

21. *Id.* at 752.



a demand for further legislation to prevent the total demolition of any building within a conservation area without the prior permission of the local planning authority, and a change in the law to achieve this is likely in the near future.

Special control is also exercised to protect buildings of special architectural or historic interest whether or not they are located within a conservation area. Under the Town and Country Planning Act of 1947 the Minister was required (and still is) to compile a list of buildings of special architectural or historic interest. For administrative purposes, a provisional list of buildings divided into three grades was prepared. Grade I contained buildings of outstanding interest. Grade II contained buildings of special interest which warranted every effort to preserve them; the more important were distinguished from the less important within the grade. Grade III contained buildings which did not qualify for inclusion in a higher grade according to standards which were current when the list was compiled but were important enough for further and continuing consideration. After consultation with the appropriate local authorities buildings within Grades I and II were placed on a statutory list, the legal effect of which was to prohibit any demolition, alteration, or extension which would affect their character as buildings of special architectural or historical interest without the approval of the local planning authority or of the Minister.<sup>22</sup>

Prior to 1968 this control could be easily avoided and was often openly disregarded. In one method of avoidance, the owner intentionally allowed a building to fall into disrepair, and then demolished it in the interests of safety or health.<sup>23</sup> In another, a building was demolished "accidentally" in the course of developing adjacent land. For such antisocial behaviour the owner would be liable to a small fine, but this would be a minor sanction since there would now be no valid reason for the local planning authority to refuse the owner planning permission to develop his land and thus enable him to obtain its full development value. Figures show that in 1966 over four hundred buildings within the statutory list were demolished, though some of these were demolished with the consent of the local planning authority in the interests of the proper planning of their area. In 1968, the Town and Country Planning Act continued the special con-

---

22. The grading of buildings is, of course, a continuing process.

23. In such a case the law was not contravened.

trol over such buildings, but recast the machinery of control in an attempt to make it much more effective. As a result, the number of listed buildings destroyed in 1969 fell to just over two hundred and fifty.

Under the 1968 Act it is an offence to execute, or cause to be executed, unauthorised works for the demolition, alteration, or extension of a listed building in a manner which would affect its character as a building of special architectural or historic interest. For contravention of the provision, the person responsible will be liable on conviction to a term of imprisonment not exceeding twelve months,<sup>24</sup> a fine, or both. In determining any fine to be imposed, the Act requires the court to have particular regard to any financial benefit which has accrued or appears likely to accrue to the offender in consequence of the offence. But there is also a further sanction. If the local authority considers that a listed building is not being properly preserved, it may compulsorily acquire the property. Before doing so the authority must first serve on the owner a "repair notice" which specifies the work the authority considers to be reasonably necessary in order to preserve the building, and contains an explanation of the consequences of failure of the owner to carry out the work. One of these consequences is a restriction imposed on the amount of compensation paid when compulsory acquisition takes place. In normal cases where a listed building is compulsorily acquired for public works, the fact that the building is listed is disregarded in assessing the compensation which is paid. In other words, the amount paid to the owner for his property is its market value, with regard to its potential for development or redevelopment within the existing development plan framework, and ignoring the fact that his building has in fact been listed. However, when a listed building is compulsorily acquired for preservation purposes, compensation is assessed on the basis of existing use value and any development or redevelopment potential is disregarded when it can be shown that the owner has deliberately allowed his building to fall into a state of disrepair for the purpose of justifying the development or redevelopment of the site or of an adjoining site.

Although a provision denying an owner the development value of his property where he has deliberately neglected to maintain it in an attempt to realise that value may seem unduly harsh, it is the presence of this provision rather than any application of it that is likely to help

---

24. The detention could well be spent in a "listed building" of another kind.

the cause of conservation. Yet, surprisingly, suggestions have been made that the provision does not go far enough. During 1970, some members of a Preservation Policy Group set up by the Minister of Housing and Local Government suggested in their report that where a building was compulsorily acquired because of neglect, the price paid to the owner on acquisition should exclude any element of "break-up" value, *i.e.*, the value which is attributed to such things as panelling, staircases, or fireplaces within the building which could be sold separately if the building were demolished.<sup>25</sup>

There are many other provisions applicable to the control of listed buildings that differ from those exercised under general planning law in relation to other property. With non-listed property, planning permission is deemed to be granted for certain minor development; in the case of listed buildings, the express consent of the local planning authority or of the Minister is necessary for *any* work of demolition, alternation, or extension which is likely to affect its character as a building of special architectural or historic interest.<sup>26</sup> Furthermore, as with development in a conservation area, a local planning authority must advertise by newspaper and site notice an application for consent to carry out work to a listed building, and the authority must take into account any representations it has received when it determines the application. Indeed, it is the provision requiring public notice before a decision is made on an application which has contributed most to the current effectiveness of conservation control.

### THE GREATER LONDON DEVELOPMENT PLAN INQUIRY

Under the London Government Act of 1963<sup>27</sup> the structure of local government within the greater London area underwent a radical change. The Act established a Greater London Council to administer an area previously administered by a number of other authorities. Accordingly, the area had at its inception a number of development plans prepared under the provisions of the Town and Country Planning Act of 1947, as amended by later statutes. Under the London

---

25. Not surprisingly there was disagreement among the members over this suggestion.

26. Compensation would be paid for a refusal of consent if the work does not fall within the statutory definition of "development." For that which does, no compensation is paid, though the owner may be able to require an authority to purchase his property if it has no reasonably beneficial use as a result of the refusal.

27. LONDON GOVERNMENT ACT 1963, c. 33.

Government Act of 1963, the development plans which covered the greater London area were drawn together to constitute the Greater London Initial Development Plan. The London Government Act of 1963, however, anticipated the changes made to the development plan system by the Town and Country Planning Act of 1968 by requiring the Greater London Council to prepare a general development plan for their area laying down considerations of general policy with respect to the use of land in the area, including guidance for the future road system. Since this plan was to be a policy document dealing with basic planning concepts, it was to be similar in nature to the structure plans which, it is envisaged, will be produced under the Town and Country Planning Act of 1968. Indeed, this Act makes provision for the plan to be treated as a structure plan for the greater London area once it has been approved by the Minister. By 1969, the plan had been prepared and had been submitted for approval to the Minister as the Greater London Development Plan (GLDP).

A long established feature of British planning law is that members of the public have the right to object to the provisions of a development plan, and their objections should be considered by the confirming authority, in this case the Secretary of State for the Environment. In order to help the Secretary consider the objections, it is usual for him to appoint a person or persons to hold a public inquiry into the plan and to report to him. When the plan was submitted for approval in 1969, it was described as comprehensive, complex, and controversial; there were over 20,000 objections and representations made against it. The government thereupon decided that the inquiry should be conducted by a panel with an independent chairman of high standing and repute, an independent transportation expert, an independent planner, and sufficient ministry inspectors to enable the inquiry to be conducted efficiently, expertly, and expeditiously. In addition the panel was to be assisted by a number of outside assessors to help them probe and evaluate the plan's policies, the objections, and possible alternative strategies.

In October 1970, with a leading Queen's Counsel as chairman, the inquiry began its deliberations.<sup>28</sup> Meeting most days of the week, it is unlikely to complete its task before the spring of 1972. Many of the objectors who could have appeared at the inquiry to pursue their

---

28. The most erudite comment so far seen by the author on the work of the inquiry is Hagman, *The Greater London Development Plan Inquiry*, 37 J. AM. INST. PLANNERS 290 (1971).

objections have not done so. Those who have or who will appear are likely to be lower echelon local authorities, public or private corporations, trade associations, learned societies, and other groups of vested interests who have the resources to enable them to mount a challenge to the Plan's proposals. The current inquiry, however, raises a basic question as to the suitability of inquiries as a forum for the investigation of planning issues.

The device of a public inquiry is used in almost all cases of dispute involving a decision about land use. The inquiry process may be used by a Minister to inquire into the proposed line of a major trunk road, the proposed site of a new major airport, a proposal for comprehensive redevelopment of a town centre, or a decision that an individual be refused planning permission to develop his property. Although these inquiries vary in size and public importance, a common feature is that the process is quasi-judicial in character, so that parties to the inquiry are under pressure to employ lawyers to act on their behalf. In two recent instances, lawyers have also been appointed to conduct the inquiry, namely the current GLDP inquiry and the Commission of Inquiry led by Mr. Justice Roskill for the siting of the third London airport.

It has been argued that the intervention of lawyers within the inquiry system reduces the occasion to a wrangle having much in common with an action for personal injuries in a court of law, and that method is inappropriate. What is required is a constructive public discussion of the issues involved or of alternative proposals. At a recent conference on planning by inquiry sponsored by the Royal Institute of British Architects and the Royal Town and Country Planning Association,<sup>29</sup> Britain's leading planner, Professor Colin Buchanan, expressed the view that planners and architects felt hostile over the effects the legal profession and its *modus operandi* were having on the inquiry system. He felt that an "over-judicialised" procedure tended to harden attitudes and produce a sense of confrontation, and that a judicial chairman inspired the judicial atmosphere of a court and the idea that a verdict had to be given according to the evidence.

Professor Buchanan was the sole dissentient member of the Commission of Inquiry into the siting of the third London airport to recommend that the airport be sited on the coast, instead of at the inland

---

29. The conference was held in May 1971.

site recommended by the other members. But whereas the majority of the members reached their conclusions on the evidence before the inquiry, Professor Buchanan preferred to reach his conclusion on his individual experience of land use planning. It was his recommendation which has now been accepted!

Despite current criticism, most observers believe that the quasi-judicial inquiry system must remain. Until greater public participation in the planning process is more fully secured, no other forum in Britain can provide the same opportunity for all members of the public, however disparate, disorganised, and impecunious they may be, to express views on major proposals affecting land use.

## NOTES

