
NATURAL RESOURCES JOURNAL

Volume 15
Issue 3 *Summer 1975*

Summer 1975

Law of Land Use Planning in England Today, The

J. F. Garner

THE LAW OF LAND USE PLANNING IN ENGLAND TODAY

J. F. GARNER*

It is proposed in this article to deal with significant recent developments in English land use planning law, without describing the whole of the complicated legal system.[1] The principal topics that will be considered are the new development plans and other changes in positive (as distinct from restrictive) planning, the effects on planning law of the recent local government reorganization, the emphasis now put on public participation in the planning process, the modern case law on the meaning of "development," the procedure on appeals, and changes in the law relating to compensation in respect of injurious affection caused by "public works." Mention will also be made of the extent to which the activities of planning authorities may be subject to control by the new supervisory authorities of the Council on Tribunals, the Parliamentary Commissioner for Administration, and the Commission for Local Administration.

Planning law in its modern form in England and Wales[2] originated in the Town and Country Planning Act 1947. The latest consolidation, the Town and Country Planning Act 1971, has already been amended by the Town and Country Planning Amendment Act 1972 and the Local Government Act 1972, for the details of planning law, like the planning of land use itself, can never remain static for long. In this article references will be given to the 1971 Act and the subsequent amendments,[3] but these references should, in many instances, be read as including references to parallel sections in earlier statutes, for the general scheme of planning control introduced in 1947 has withstood the test of time, and remains essentially the same, in spite of the many detailed amendments.

---

*Professor of Public Law, University of Nottingham, England.

1. There are now many general accounts of English planning law available to American readers; with all due humility the present writer refers his readers to his own article "An Introduction to English Planning Law" (1971) 24 Okla. L. Rev. 457.

2. There is a very similar statutory system applicable to Scotland, but because of differences in Scots land law and administrative law, and also the very different geographical conditions "north of the Border," this article has been confined to England and Wales. Northern Ireland is again similar, but different.

3. References to sections without qualification are to the 1971 Act, and the Local Government Act 1972 is referred to as "L.G.A. 1972."

Development Plans

The advance planning of land uses in a given area and the control of development in that area are invariably necessary to one another. Without a master plan controls are meaningless, and without controls the master plan becomes a mere shadowy nothing—a picture of what might have been. One is, therefore, faced with "the chicken and the egg" kind of problem in deciding whether to speak first of the development plan, or to start with a description of changes in the system of development control. For no better reason than that development plans occupy the first few sections of the 1971 Act, the present writer has chosen the former alternative.

The "new" type of development plan for a county area, recommended by a group of experts within the former Ministry of Housing and Local Government,[4] and introduced by the 1968 Act,[5] applies only to those areas to which this part of the statute has been extended by Departmental order. Orders were made at various times between 1969 and 1974 for different parts of the country, and it was anticipated that the whole of England and Wales would be covered by orders by the end of 1974. The plan is not really a plan at all, as it consists primarily of written statements (prepared after the making of surveys of the area) supported by diagrammatic material and plans. One or more "structure" plans is prepared for the area of each county planning authority[6] and, in addition, there are a number of "local" plans and "action area" plans covering parts (not necessarily the whole) of the county in detail, and all these together form the

4. "Planning Advisory Group." *The Future of Development Plans:* H.M.S.O. 1965. The Government Department responsible for central supervision of planning administration was from 1950-1970 the Ministry of Housing and Local Government. In 1970 this function was taken over by the newly created Department of the Environment, presided over by a Secretary of State. This Department is responsible not only for the central supervision of planning and local government, but also for highways and transportation, public buildings and works and housing. Its establishment was a part of a general reorganization of central administration, whereby "super" Ministries were established, each responsible for a wide spread of functions.

5. 1971 Act, Part II.

6. Under the L.G.A. 1972, the whole of England has, since 1st April, 1974, been divided into 39 non-metropolitan counties and 6 metropolitan counties, with a further 8 counties in Wales. In each county there are a number of districts, and the Act provides that both the counties (metropolitan or non-metropolitan counties) and the districts, in England and in Wales, shall be local planning authorities. The 16th Schedule to the Act then apportions the various detailed planning functions between the two levels of local authorities, in many cases attributing functions to both counties and districts concurrently. The former county boroughs disappeared completely; the counties have new (enlarged) boundaries and the new greatly enlarged districts took over from the former non-county boroughs, urban districts and rural districts. In total there are some 400 local authorities (apart from the parishes, which in Wales are now known as communities) in England and Wales, as compared with some 1,500 before 1974.

"development plan" for each county. The district authority will normally be responsible for the preparation of local and action area plans, while a time program must be laid down in a "development plan scheme" which must be drawn up by the county planning authority in consultation with the district authorities in the county.[7] The structure plan is in all cases the sole responsibility of the county authority.

Structure Plans

A structure plan for an area must be in the form of a written statement which formulates the local planning authority's proposals in respect of the development and other use of land in the area (including measures for the improvement of the physical environment and the management of traffic); the statement must relate these proposals to general proposals for the development and other use of land in neighboring areas which may be expected to affect the area which is the subject matter of the plan.[8] In addition, the statement must deal with such matters as the Secretary of State may prescribe or direct in a particular case; this latter point would require the authority to take into account in their plan any proposed development of national importance, such as the third London airport at Maplin Sands in Essex,[9] or the Channel Tunnel. The authority must also have regard to economic planning and the resources that may or may not be available for the carrying out of the proposals in the plan.[10] A separate part of the plan must be prepared for an area which is, or which it is proposed should become, predominantly urban.[11] The statement must include a reasoned justification of the policy and general proposals formulated therein,[12] and must be accompanied by diagrams, illustrations, and descriptive matter.[13] It is also provided that every written statement must contain such

7. 1971 Act, s. 10C, as amended by s. 183 of the L.G.A., 1972.

8. 1971 Act, s. 7.

9. The Maplin Development Act, 1974, provides that planning permission is to be deemed to have been granted in respect of any development carried out by the public corporation (to be known as the Maplin Development Authority) set up under that Act. In effect, therefore, the implementation of central government policy in this respect is taken outside normal planning control completely, and the Essex County Council, in whose area the new airport (and seaport) will be situated, are compelled to take it into account in its structure plan.

10. 1971 Act, s. 7(4). The requirement to have regard to available *resources* was introduced for the first time in the 1968 Act.

11. This is in effect not an additional plan, but a separate structure plan for that area; see the Town and Country Planning (Structure and Local Plans) Regulations 1972 (S.I., 1972, No. 1154), reg. 8.

12. *Id.* regulation 9.

13. 1971 Act, s. 7(3)(b).

indications as the planning authority may think appropriate on the following matters:[14]

a) population;
b) employment;
c) housing;
d) industry and commerce;
e) transportation;
f) shopping;
g) education;
h) other social and community services;
i) recreation and leisure;
j) conservation, townscape and landscape;
k) utility services; and
l) any other relevant matters.

There is also a general requirement in Section 11 of the Countryside Act 1968 to the effect that, in the exercise of their functions relating to land under any enactment, every Minister, Government Department and public body (an expression which includes a local authority[15]) shall have regard to the desirability of conserving the natural beauty and amenity of the countryside.[16]

The structure plan must be prepared in consultation with district councils in the county and other statutory authorities,[17] and opportunities must be given, at two separate stages of the preparation procedure, for interested members of the public (including local amenity societies) to be informed as to what is proposed and to make objections and representations. If objections are made and persisted in at the later stage, the Secretary of State is required to convene what is known by the 1972 Amendment Act as an "examination in public."[18] This is an informal procedure whereby the principal issues raised by the plan, and objections thereto, are

14. 1972 Regulations, para. 10 and Schedule 1.

15. *See* 1968 Act, s. 49(2).

16. This is the nearest that English legislation has approached to the American requirement for an "environmental impact statement." The section in the Act of 1968, having no procedure for enforcement or judicial review, is very largely a dead letter in practice.

17. Such as water and highway authorities, public utility undertakings and appropriate Government departments.

18. This departure from the traditional English type of semi-judicialized inquiry was very largely inspired by the experience of the inquiry into the Greater London Development Plan (1969-1971; see account by Professor Donald G. Hagman in Journal of the American Institute of Planners, September, 1971, at p. 290). The new procedure was introduced primarily to save time, but also because the procedure by way of cross-examination and reply, tends, it was felt, to drive the planning authority into a defense position, whereas the inquiry should be conducted in a manner conducive to encouraging necessary modifications and re-thinking of proposed policies (see, for example, "The Examination of Structure Plans," by Layfield and Whybrow at [1973] J.P.L. 516).

examined in public in an informal manner by a panel consisting of an independent chairman,[19] an inspector of the Department of the Environment, and a member of the regional staff of that Department, all three of whom are appointed by the Secretary of State. At this public examination, the chairman selects the issues to be discussed, and only selected objectors are heard; no one objector has a right to be heard. By this means it is hoped to "de-judicialise" these proceedings and enable the more vital matters[20] to be discussed as informally as practicable. Most individuals, it is thought, will not be able to argue points affecting their own parcels of land, as the structure plan will determine only general questions such as whether a bypass is required for a particular town, whether a local airport should be developed so as to take international traffic, whether a new reservoir or a university is needed in the area, etc. Details as to the exact siting of the bypass or university, the extent of a central area re-development scheme or residential densities are matters for the local plan. Those areas which are to be action areas also must be specified in the structure plan.

The structure plan, when the examination in public has been concluded, is subject to approval (with or without modifications) by the Secretary of State, and it does not have legal effect until it has been so approved.

Local Plans

Local plans, normally (as above explained) prepared by district planning authorities, must have regard to the contents of the structure plan, and cannot come into effect until the structure plan has become operative. A local plan consists of a map and a written statement, and must formulate in detail the planning authority's proposals for the development and other use of land in the area covered by the plan (as in the case of structure plans). It may be one of three kinds; namely, a *district* plan (based on a comprehensive consideration of matters affecting the area); an *action area* plan (dealing with an action area, *i.e.* an area, normally a comparatively small one in a town center, which it is proposed should be comprehensively developed or redeveloped within a period of 10 years); or a *subject* plan, based on a consideration only of a particular description or descriptions of development (such as the provision of caravan sites

19. He will normally be a person experienced in planning, often (but not necessarily) a lawyer, and sometimes a retired local government officer or civil servant.

20. It is intended that matters selected for examination shall be the major issues of policy, or matters which, because of their regional or national significance, are of concern to the Secretary of State.

(trailer parks) in a holiday area).[21] The same list of matters that must be considered in a structure plan must also be considered in a local plan, so far as may be appropriate.[22]

There must be a local plan for each action area, and there will be such other local plans for areas in a county as may have been determined in the development plan scheme. Each local plan will be subject to representations and objections from members of the public and amenity societies at two stages of the preparation process, as in the case of the structure plan. Objections at the second stage will in this case be dealt with at a local inquiry held before an inspector appointed by the Secretary of State, and every objector is entitled so to be heard.[23] The inspector prepares a report as a result of the inquiry, which must then be considered by the local (district) planning authority, who must decide whether or not to modify the local plan in accordance with any recommendations contained in the report. The authority must give its reasons for its decisions, and also make copies of the inspector's report available for inspection by the public.[24] The local plan (except insofar as it may be inconsistent with the confirmed structure plan) may then be confirmed by the local authority (with, or without, modification) themselves, and it will come into legal effect without further reference to either the county planning authority or the Secretary of State, although copies must be sent to them.[25]

Review by the Court

Within a period of not more than six weeks from the confirmation by the Secretary of State or the local authority (as the case may be), of any part of a development plan, a person aggrieved may appeal to the High Court on the ground *either* that the plan (or that part thereof) is not within the powers of the 1971 Act, *or* that some procedural requirement of the Act or regulations made thereunder has not been complied with *and* (in the latter case only) that the interests of the applicant have been substantially prejudiced. On such an application the High Court may suspend the operation of, or quash, the plan (or part thereof) either wholly or insofar as it affects the property of the applicant.[26] The validity of the plan may not be called into question by any other type of legal proceeding.[27]

21. Town and Country Planning (Structure and Local Plans) Regulations, 1972, reg. 15.
22. *Id.*, Regulation 20.
23. 1971 Act, ss. 13 and 14.
24. Town and Country Planning (Structure and Local Plans) Regulations, 1972, reg. 33.
25. The county authority must certify that the local plan conforms with the structure plan: 1971 Act, s. 14(5), as amended by L.G.A., 1972, Sched. 16, para. 3.
26. 1971 Act, s. 244.
27. *Id.* s. 242.

This right of appeal is a valuable safeguard, although under the old style development plans prior to 1968, there is no record of any application to the Court having been made under this procedure. However, with the opportunity for inconsistency between a structure plan and a local plan, and also in view of the freedom from central government control over the activities of local authorities in relation to local plans, there may in the future be a few applications under these statutory provisions.

General Observations

The development plan is a guide to development—it provides a framework within which government departments and other public bodies can implement proposals outlined in the plan, and it also indicates how development control is likely to be exercised. Planning permission is required for development, but if some project of development proposed by an individual is in accordance with the approved development plan, there is then a reasonable chance that planning permission will be forthcoming for that project, although subject to certain restrictions,[28] a planning authority may on occasion depart from the provisions of the approved development plan.

Development plans also are not thought of in the legislation as being static; by their very nature the written statements of the structure plans are drawn in very general terms and they (and the local plans) can be modified, altered or even withdrawn after due publicity and consultation,[29] and indeed it is anticipated that they will be kept under constant review.

Other Forms of Positive Planning

Under this heading we may consider new towns, motorways and other highways, and national parks and countryside preservation. So far as the national parks are concerned, there have been no changes in the law since the passing of the Countryside Act 1968, and no new national parks have been designated in recent years. County planning authorities have, however, been very active in establishing "country parks" under the Act of 1968; these are comparatively small areas of land, perhaps 50, perhaps 250, acres in extent, but rarely more, and designed for public recreation and exercise. They will usually be equipped with picnic areas, car parks and lavatories, perhaps also with a simple restaurant, and they often include a stretch of water available for sailing or rowing, etc.; some countryside parks are based

28. Principally as to the prior service of notices: see the Town and Country Planning (Development Plans) Direction, 1965.

29. 1971 Act, ss. 10, 10B and 15.

on an historic mansion which has passed into public ownership. They are different from the much more extensive national parks, where (unlike the great national or state parks of the U.S.A.) private land ownership and normal country uses continue; land ownership of a country park will vest in the county or district council, and in some cases charges are made for admittance.

The law relating to new towns also has not been changed since the consolidation of the statutes in 1965, and the latest new towns to be designated now in course of building, are at Peterborough and Milton Keynes. These are to house much larger populations (about 250,000) than the earlier new towns designated in the 1940s and 1950s.

In connection with the procedure for the designation, laying out and construction of a special road (motorway) or a trunk road (a main road other than a motorway)[30] three separate forms of orders may be necessary:

(a) an order designating the line of the road, within specified limits of deviation;[31]
(b) an order or orders providing for the closure or deviation of existing highways crossing or linking with the new road, and the lay-out of slip roads and access roads;
(c) an order or orders providing for the compulsory acquisition of the land required for (a) and (b).

Persons affected have rights to object to each of these orders and inquiries may have to be held into these objections. For some time it has been considered that the procedure is too slow and cumbersome and, by the Highways Act 1971,[32] it is now possible for all these procedures to be taken concurrently; the minimum period to be provided for objections to orders has also been reduced from three months to six weeks.[33]

The Heavy Commercial Vehicles (Controls and Licensing) Act, 1973, gives powers to local highway authorities to make traffic regu-

30. Often the two types of road are barely indistinguishable on the ground, except that motorways are equipped with a public telephone system at every mile; there are no roundabouts, and there are restrictions on the classes of vehicles that may use the highway. Private rights of access to special roads are prohibited, but similar orders may be made in respect of any trunk or other main road.

31. Highways Act, 1959, ss. 7 and 11.

32. Sections 14-18.

33. *Id.* In recent months (Spring, 1974) there have been many expressions of public opinion against further extensions of the motorway network, and pressure has been increasing on H.M. Government to provide for improved railway facilities, especially for freight transport. Similar pressures are also evident in favor of using the inland waterway system constructed mainly in the eighteenth century, which has, over the past 100 years or so, been allowed to fall into decay. But the road transport lobby is very powerful in Whitehall and Westminster.

lation orders which would prohibit the use of a specified road or zone[34] by heavy commercial vehicles,[35] and each authority is under a duty to consider how these powers should be used in relation to their area.

Local Government Reorganization

Not only has the Local Government Act 1972, which came into operation on 1 April, 1974, had the result of drastically reducing the number of local authorities[36] while at the same time increasing the number of lcoal planning authorities,[37] but also it has had the effect of causing an acute shortage of trained staff in the departments of planning authorities. With the alterations in functions and the lowering in status of many former large boroughs,[38] a considerable number of senior officers in the age range 50-65 have either retired prematurely,[39] or have secured more remunerative offices outside the planning field. The increase in the number of authorities having planning functions has meant a considerable increase in jobs for planners; work also has increased, by reason of the larger number of applications for planning permission in the last two years.[40]

It is hoped that, with an increased output from university and other planning schools, the overall number of qualified planners required will be met by 1980, but even then there is likely still to be a shortfall of experienced men. With the preparation of the new development plans, as well as the problems of reorganization, this situation does not presage well for the efficiency of planning administration in the country in the next few years.

The Local Government Act, 1972, also contains a general section

34. Such as a historic town center.

35. Defined as a vehicle designed or adapted for the carriage of goods, having an unladen weight in excess of three tons.

36. *See* note 5 *supra.*

37. Before 1974 only the counties and county boroughs were planning authorities in their own right (although there was a certain measure of delegation of functions from counties to districts), which meant there were only some 150 planning authorities. Now both counties and districts are planning authorities (a total of over 400).

38. Nottingham, for instance, with a population of 350,000, is no longer responsible for the preparation of its own structure plan. For this purpose, and for all education and most welfare functions, it now forms part of the (new) County of Nottinghamshire. In a metropolitan county (such as the West Midlands) a former county borough (such as Birmingham, population 1,100,000) retains its education and welfare functions as a metropolitan district, but is similarly not responsible for the preparation of its own structure plan.

39. The generous financial terms contained in regulations made under the L.G.A. 1972 have encouraged this trend.

40. A recent (1974) review published by H.M.S.O. shows the following statistics:

Number of decisions by local planning authorities on applications for planning permission	in 1968 : 425,000
	in 1972 : 615,000

empowering a local authority to delegate any of its functions, not only to a committee of its number, but also to any of its officers.[41] This power is being widely used to enable officers to make decisions, without referring the case to a Committee, on applications for planning permission in routine cases (as may be defined by the authority). This clearly saves time and effort in processing the application, but is not likely to have much effect on the decision, as in this type of case the committee could normally be expected to accept the officer's recommendation.

Other aspects of local government reorganization, in particular the splintering of planning functions between counties and districts, are discussed in other parts of this article.

Public Participation

A move towards the general public being given a greater share than hitherto in the planning process was heralded by the publication in 1967 of the report of a Departmental Committee presided over by the late Sir Arthur Skeffington, entitled "Planning for People," which had a considerable influence on the changes made in the statutory procedure for the new development plans by the 1968 Act.[42] As we have already said, opportunities have to be given for representations and objections from members of the public to be made at two stages (the "proposals" and the "draft") of the preparation of both structure and local plans. There are also provisions in the 1971 Act requiring the planning authority to ensure that due publicity is given to its proposals and the draft plan, and that, in particular, special steps are taken to ensure that amenity societies (which have been noticeably growing in number, membership and activity in recent years, encouraged no doubt by the environmental crisis) and similar bodies are made aware of what is proposed. Moreover, the authority is required to inform the Secretary of State of the action that has been taken to comply with these requirements, and if the Secretary of State is not satisfied with the action so taken, he may direct the authority to take further steps to ensure due publicity.[43]

Publicity and the opportunity for members of the public to let their views be known, is now also required in connection with various stages of the procedure of development control. It has often been argued that every application for planning permission should have to be advertised locally, and an opportunity afforded for repre-

41. *See* Local Government Act of 1972, sec. 101.
42. Now Part II of the 1971 Act.
43. 1971 Act, ss. 8 and 12.

sentations from members of the public. This has, however, been thought to be conducive of unnecessary delays if it were generally introduced, and there are now the following compromise solutions:

(a) Advertisement followed by a period of 21 days for the receipt of representations from members of the public is required for a number of proposed "noxious" uses of land, such as the construction of public lavatories, sewage farms or skating rinks. This list has recently been added to so as to include the construction of any building of a height greater than six meters;[44]

(b) Similar action must be taken in respect of any application for development on land in, or that might affect, a conservation area,[45] or in connection with any application to demolish or alter a building of special architectural or historic interest that has been included in a list approved by the Secretary of State;[46]

(c) At an inquiry into an appeal against a refusal of planning permission or a grant of permission subject to conditions, the Central Government Department will normally have required the inquiry to be advertised locally, and any person interested will be permitted to let his views be known by the inspector conducting the hearing. This practice is widely used and inspectors rarely deny anyone a hearing at an inquiry;

(d) A parish (in Wales, a community) council may ask the district council (to whom all applications for planning permission have to be initially addressed) to advise them of all applications relating to land in the parish, and the district council must then accede to this request and give the parish council an opportunity of making representations on every such application.[47] This is a very important change in the law, but it will of course be of relevance only in areas where there is a parish (or community) council. This will in fact be the case in all rural areas and also in areas formerly (prior to 1974) comprised in any non-county borough or urban district, which is designated by the Secretary of State to have a "successor" parish council.[48]

---

44. 1971 Act, s. 26; Town and Country Planning General Development Order 1973 (S.I., 1973, No. 31), art. 8.

45. 1971 Act, s. 28. A conservation area is some part of the local planning authority's area declared to be such as being "an area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance" (1971 Act, s. 277(1) (re-enacting a section in the Civic Amenities Act, 1967). Many areas in the ancient towns and cities of this country have been designated as conservation areas; if the legislation applied to the United States, no doubt such areas as Vieux Carre in New Orleans, New Castle, Del., and Williamsburg, Va. would be so designated (among many others).

46. 1971 Act, s. 54.

47. Local Government Act of 1972, Sched. 16, para. 20.

48. L.G.A., 1972, Sched. 1, Part V. In general, the Secretary of State has so designated only those areas that were formerly non-county boroughs or urban districts, having a population not exceeding 20,000.

Appeals from decisions of the Secretary of State to the Courts are provided for in the Act in most instances,[49] but these may be initiated only by the local planning authority, or by a "person aggrieved." This expression has been defined by the Courts in a narrow way, so as to deny standing to a mere busybody (such as members of an amenity society) and to confine the expression to persons whose *legal* interest in the property, or adjoining property, is affected. There may, however, be a change of heart in the attitude of the Courts in this matter, for a recent decision (albeit only at first instance) suggests that any person who has been served with notice of an inquiry into a refusal of planning permission, and who has appeared at that inquiry, may be entitled to appeal to the Court against the decision of the Secretary of State made as a result of the inquiry.[50] Any such appeal must, however, be confined to a point of law (such as, for example, the definition of "development" (see below) or a substantial error of procedure).

The Meaning of Development

The statutory definition of "development," now to be found in the 1971 Act,[51] remains to all intents and purposes the same as it was in the 1947 Act, but the statutory words have become encrusted with the passage of time with many barnacles of judicial interpretation.[52] This definition is, of course, the key to planning control, as no development may be carried out without the prior grant of planning permission. Space does not permit us to discuss all the issues, but the following, all concerned in recent decisions, may be interesting:

(a) Most controversies about the application of the statutory definition turn on the meaning of "material change of use," but it is still not clear whether demolition of a building (not being a

49. 1971 Act, ss. 242-48.

50. *See Turner v. Secretary of State for the Environment* (1973), 228 E.G. 335, contrasted with *Buxton v. Minister of Housing and Local Government* [1961] 1 Q.B. 278; and see article at [1974] J.P.L. 20.

51. 1971 Act, s. 22(1): "development" means "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land." This is subject to certain exceptions, in particular changes of use within any one of the classes of use specified by the Secretary of State in the Town and Country Planning (Use Classes) Order, 1972 (S.I., 1972, No. 1385). Also, certain kinds of development, mostly of a comparatively trivial kind, are exempted from the need to obtain planning permission by the Town and Country Planning General Development Order 1973 (S.I., 1973, No. 31).

52. The monopoly value given to a piece of land by a grant of permission to develop is so great that it is often financially a sound gamble for a landowner to fight an unfavorable decision through the Departmental inquiry and into the courts. The English bar has, in consequence, many exceedingly affluent specialists in the subject.

"listed"[53] building) is within the first limb of the definition[54] in all circumstances. In *Coleshill v. Minister of Housing and Local Government*[55] the House of Lords held that demolition of the blast walls round a former explosives factory, which demolition had a serious effect on the amenities of the locality, fell within the definition, but in *Iddenden v. Secretary of State*,[56] the Master of the Rolls said *obiter*, that the demolition of an old nissen hut and disused lean-to was *not* development requiring planning permission. The American Law Institute in their draft Code[57] have very wisely expressly included demolition in the definition of development.

(b) Turning to the question of material change of use, the courts in recent years have been much exercised with the concept of the "planning unit" as being the subject matter of the change of use. What is the test for deciding whether there is a "material" (which must be material from a "planning" point of view)[58] change of use amounting to development, in a case where there has been a change of use of one building in a group of buildings within the same curtilage and in single occupation? Taken in isolation, the change of use of that building may be "material," but the courts have now said on several occasions[59] that the planning unit must be considered as a whole. If the change of use of the single building is sufficient to amount to a material change in the use of the group of buildings as a whole, then this may amount to development, but not otherwise.[60] The ultimate question whether a change *does* amount to development is a question of fact and degree for the planning authority, and the Secretary of State (on appeal to him), but the courts must determine questions of law regulating the manner in which such a question of fact must be determined.

(c) If a use has been abandoned, its resumption will probably

53. A building of special architectural or historic interest included in a list prepared or approved by the Secretary of State, which then cannot lawfully be demolished or altered except in pursuance of a consent obtained from the local planning authority: 1971 Act, s. 54.

54. *See* note 45 *supra*.

55. [1969] 2 All E.R. 525.

56. [1972] 3 All E.R. 883, 885.

57. "A Model Land Development Code," Tentative Draft No. 2, d. 24 April, 1970, § 1-202.

58. *See, e.g., Marshall v. Nottingham Corporation* [1960] 1 All E.R. 659.

59. *Trentham v. Gloucestershire County Council* [1966] 1 All E.R. 791; *Burdle v. Secretary of State* [1972] 3 All E.R. 240; *Wood v. Secretary of State* [1973] 2 All E.R. 404.

60. Thus, *Wood* (above) concerned an area of land consisting of a farmhouse, sheds and a market garden. A conservatory was built onto the side of the house and garden produce sold therefrom; previously the only sales at the premises had been from a stall at the road side. It was held that the correct question for determination was whether the use of the conservatory (for the erection of which planning permission was not required) amounted to a material change of use of the whole area of land.

amount to a material change, and so need planning permission, but again it is a question of fact whether the use was abandoned or merely temporarily discontinued. The concept of the planning unit may be relevant in this context also. Thus, in *Pettitocat Lane Rentals v. Secretary of State*,[61] a war damaged site in the City of London had for 20 or more years been used as an adjunct to the street market. A large building on stilts was erected on the site, the market use being abandoned during the construction. When the building was completed the appellants wanted to continue the market use of the land under the building, but it was held that the planning unit had changed as a consequence of the erection of the building and planning permission would be necessary for the recommencement of the market use.

(d) Intensification of use also may amount to a material change of use. This was held to be the case where a building constructed as a single family dwelling was, without physical alteration, occupied by seven separate families,[62] and the bringing onto an existing caravan site hitherto used for a limited number of caravans of a considerably increased number of caravans also was capable of being a material change of use.[63]

Having decided that particular operations or change of use amounts to development, the planning authority must then, on application, decide whether or not to grant planning permission. In so deciding they have a very considerable discretion, but they are required by the Act to have regard to the provisions of the (approved) development plan, and to any other material considerations.[64] The courts will ensure that this requirement is observed, and in particular that the authority does not have regard to irrelevant considerations, such as, for example, the cost of the development in question,[65] although "material considerations" are not limited to questions of amenity and include any matter, whether of public or private interest, which relates to the use and development of land.[66]

Appeals Procedure

The most significant change in the procedure regulating appeals to the Secretary of State for the Environment from decisions of a local

61. [1971] 2 All E.R. 793.

62. *Birmingham Corporation v. Minister of Housing and Local Government, ex parte Habib Ullah* [1963] 3 All E.R. 668.

63. *James v. Secretary of State for Wales* [1966] 3 All E.R. 964 (H.L.).

64. 1971 Act, s. 29 (1).

65. *J. Murphy & Sons Ltd. v. Secretary of State* [1973] 2 All E.R. 26.

66. *Stringer v. Minister of Housing and Local Government* [1971] 1 All E.R. 65, where it was held that the planning authority could properly have regard to the effect that proposed development might have on the operation of the Jodrell Bank telescope, which belonged to the University of Manchester.

planning authority[67] in recent years, has been the entrusting of the Secretary of State's inspectors with the power to decide the appeal, without the need to refer the case for decision in the Department. In such a case the inspector presides at an inquiry in the ordinary way and writes his report, then determines the appeal on behalf of the Secretary of State; as the decision is in law the Secretary's decision, a dissatisfied appellant will still have his right to appeal to the court on a point of law or if he can show he has been substantially prejudiced by an error of procedure.[68]

The regulations specifying the classes of cases in which the inspector (or "appointed person" as he is known by the statute) can determine the appeal[69] have been generously drafted, so that approximately 80% of all appeals are now dealt with in this manner.[70] Obviously this saves time; the average delay between the lodging of the appeal and the giving of a decision, in a case where the inspector decided after holding an inquiry, was given in January, 1974, as 46 weeks; if the case was decided by the Secretary of State,[71] the average delay was 53 weeks.[72] These periods are clearly too long, and the Secretary of State has recently appointed 120 new inspectors[73] in an effort to speed up the process. A further means of expediting the procedure is to persuade the parties to dispense with the oral hearing and allow the appeal to be determined on written representations, coupled normally with a visit to the site by the

---

67. Refusing planning permission, granting permission subject to conditions, refusing listed building consent, deciding to serve an enforcement notice, etc.

68. Act of 1971, ss. 244-248.

69. Town and Country Planning (Determination of Applications by Appointed Persons) (Prescribed Classes) Regulations, 1972 (S.I. 1972, No. 1652).

70. Including such matters as the erection of not more than 60 dwelling houses and the use of land for residential purposes not exceeding 2 hectares (approx. 5 acres) in extent, or appeals against enforcement notices relating to those kinds of development.

71. This is of course a legal euphemism, meaning that the application is decided by civil servants within the Department acting on behalf of the Secretary of State. Only in a very few cases of special national (or possibly political, where a Member of Parliament has intervened on behalf of a constituent) importance does an appeal reach the desk of the Secretary of State himself, or even that of a junior Minister.

72. Interim Report of Mr. George Dobry Q.C. (see below).

73. This makes a total fo 230 inspectors employed full time. In addition, 50 are appointed *ad hoc*, for particular inquiries only, and there are 20 employed part-time. Most inspectors are engaged exclusively on planning appeals of various kinds, but 25 are concerned with compulsory purchase order and slum clearance inquiries. The inspectors are drawn from different walks of life; many have planning or surveying qualifications, and a few are lawyers. Some of the recent appointments have been retired officers from the Armed Forces. All newly appointed inspectors have to undergo three months training. They are all civil servants, members of the staff of the Department of the Environment, and are not comparable with the hearing officers of the American Administrative Procedure Act.

inspector (unaccompanied by either of the parties).[74] This latter device, however, has not proved popular, either with inspectors or with the parties.

In the autumn of 1973, the then Secretary of State appointed a planning silk[75] to carry out an investigation into existing development control procedures. An interim report was issued with commendable expedition in January, 1974, and the inquiry was continued under the Socialist Government that came to power in March, 1974; a final report was expected towards the end of 1974. The interim report expressed general satisfaction with the present system for dealing with development applications and appeals, but suggested, *inter alia,* that a specially simple procedure should be devised for dealing with minor applications from householders.

Compensation

In principle, in the English land use control system, compensation is not payable in respect of planning restrictions. It has of course always been accepted that expropriation (or "compulsory purchase" as it is commonly mis-named in English practice) should give rise to compensation, although this must be expressly provided for in each case by the statute authorizing the acquisition.[76] But planning restrictions are thought of as being similar to other restrictions on land use imposed (for example) in the interests of public health, and do not therefore attract liability for compensation.[77] Parliament accepted a rather specialized exception from this attitude in 1947 when compensation was made payable once and for all to those whose right to develop their own property without permission from the planning authority was taken away by the 1947 Act; a measure which, as it is sometimes said, nationalized development rights. Accordingly, a sum of £300M was set aside for payment of compensation, and insofar as it may not have previously been settled, a claim is still payable to any landowner who had established his right to compensation in 1949, and has recently either been refused planning permission, or has had his land compulsorily acquired by some

74. The delay in such a case, if decided by an inspector, is 30 weeks, and if decided by the Secretary of State, 53 weeks.

75. Mr. George Dobry, Q.C.

76. Parliament could authorize compulsory acquisition without making any provision for compensation at all, as there can be no question of an English statute being unconstitutional, but in fact there is no example on the statute book of this ever having been done; *see* the Privy Council case of *Sisters of Charity v. The King* [1922] 2 A.C. 315.

77. *O. D. Cars Ltd. v. Belfast Corporation* [1960] 1 All E.R. 65, a case decided on the constitution of Northern Ireland, which has a system of planning control very similar to the English statutes.

government agency. However, the number of cases where there are still outstanding unpaid claims is now very small indeed, and apart from these cases the landowner who is refused planning permission is not entitled to compensation.

Under the Land Compensation Act, 1973, certain claims may now be admitted for compensation in respect of what has become known as "worsenment." The situation so redressible must involve a depreciation in the value of the claimant's property (to an extent of at least £50)[78] caused by physical factors occasioned by public works of a specified kind constructed or commenced after a date in 1969.[79] The physical factors that will give rise to such a claim are limited to "noise, vibration, smell, fumes, smoke and artificial lighting and the discharge on to the land in respect of which the claim is made of any solid or liquid substance;"[80] the public works in turn are limited to a highway, an aerodrome or other works or land (such as a sewage disposal works) provided or used in the exercise of statutory powers.[81] The amount of compensation that may then be claimed is to be assessed at the amount of depreciation in value of his property suffered by the claimant, and it can be claimed only by an owner in fee simple or one holding under a tenancy that has at least three years still to run, of a dwelling which he is using as his residence, or of premises of an annual value not in excess of £2,250[82] of which he is the owner occupier. The Act also enables the Secretary of State to make regulations providing for highway and other government authorities to provide sound insulation for dwellings affected by public works.[83]

The Act of 1973 also amends the law of compensation for compulsory acquisition of land taken from a claimant in a number of matters of detail, which are of only marginal significance to the town and country planning system. In particular they include a new principle, to the effect that any person losing his home as a consequence of a compulsory acquisition may be entitled to an extra sum by way of consolation, and may also have a right to be re-housed at the public expense.

Conclusion

The planning process introduced by the 1947 Act on the whole

78. Land Compensation Act, 1973, s. 7.
79. *Id.*, s. 1. To this extent the 1973 Act is retrospective in effect.
80. *Id.*, s. 1(4).
81. *Id.*, s. 1(3).
82. *Id.*, s. 2(6) and the Town and Country Planning (Limit of Annual Value) Order, 1973 (S.I. 1973, No. 425).
83. 1973 Act, s. 18.

has worked well, but the environmental and energy crises of recent times have caused it to show signs of strain, in particular by the increasing activities of amenity societies and the greater number of applications for development and appeals against decisions. No branch of the law in any society can work properly unless it is properly administered, and the standard of planning as distinct from planning procedures, in this country often leaves much to be desired.

The inquiry procedures have been greatly improved over the last 30 years, largely as a result of the watchful advice of the Council on Tribunals,[84] a body set up by statute in 1958 with functions similar to those of the American Administrative Conference.[85] The Council has within its jurisdiction the examinations in public into a structure plan, and in their Report for 1972-3 they have announced their intentions of visiting several of these sessions and keeping the procedure under review. The Parliamentary Commissioner for Administration (the English "Ombudsman")[86] has on a number of occasions been asked to investigate complaints of alleged maladministration in the Department of the Environment,[87] but whereas he has sometimes found clumsy or unsympathetic handling of individual cases, these have not been many, and cases where he has found any element of injustice have been very few indeed.[88] His jurisdiction is confined to the machinery of central government, but as from 1st April, 1974 there has been a Commission for Local Administration,[89] and this body, by means of a number of individual commissioners, has jurisdiction to investigate complaints of maladministration on the part of local authorities in the exercise of their functions. It is anticipated

84. When the Inquiries Procedure Rules were being revised in the early 1960's, the Council on Tribunals held a number of meetings with interested central and local government bodies, and the eventual Rules of 1962 were very different from the original draft, as a consequence. The Council has also investigated complaints on a number of occasions about the conduct of individual inquiries (see the Annual Reports of the Council). Many of these have concerned the procedure regulating trunk road schemes, and as a result of representations made by the Council the distribution of publicity material attendant on these inquiries has been improved (Report for 1971-72, para. 92).

85. Tribunals and Inquiries Act 1958, since replaced by an Act of the same name of 1971. The Council on Tribunals is a much lower powered machine than its American counterpart, having but small resources for carrying out research, and governed by a council of only 16 part-time persons (the Parliamentary Commissioner for Administration is an *ex officio* member): *see* article by the present author at [1965] P.L. 321.

86. Established by the Parliamentary Commissioner Act, 1967.

87. Or its predecessor, the Ministry of Housing and Local Government.

88. The Commissioner's Annual Report for 1972, for example, shows that there were in that year 58 complaints against the Department (not all concerning planning matters), and that the Commissioner found there had been "some measure" of injustice in 15 of these cases.

89. Established by the Local Government Act 1974, as part of the package of local government reorganization coming into effect on that date.

that planning administration, where wide discretions are entrusted to local authorities, and where an adverse decision may directly and seriously affect the interests of the citizen, is likely to occupy much of the time of the Local Commissioners.

Planning Law in this country has never been judicialized to the same extent as the administration of zoning and sub-division control in the United States. Judicial review of development plans has hitherto been unknown, although legally possible, and the many appeals to the courts against Ministerial decisions on planning appeals and against enforcement notices have been concerned exclusively with legal and procedural points; the courts are excluded by the legislation from considering matters of planning policy.[90]

These features of the English system are, it is thought, apt to continue, and future changes are not likely to be concerned with other than points of detail, dealing for the most part with a desire to speed up inquiry procedures, while public pressures to conserve the countryside and to make more extensive use of the railway and inland waterway systems would probably increase. In the near future conflicts of public opinion are likely to arise in connection with the construction of terminals and refineries for exploitation of the oil fields in the North Sea and the English Channel off the coast of Cornwall, which may well lead to an almost classic clash between commercial interests and those anxious to protect natural beauty. Ironically it seems that new sources of energy and raw materials are invariably found in the most beautiful parts of the country, such as the mountains of Snowdonia and the lochs and bays of the Scottish Highlands.

The problem of "betterment/worsenment" has not, however, been solved. Emphasis until 1973 was on the need to cream off bettermen, and the Labour Governments of 1945-1950 and 1966-1970 made two attempts at setting up an effective machinery. The first, the development charge of the Town and Country Planning Act, 1947, was a failure because it exacted too high a charge; the second, the development levy of the Land Commission Act 1967, exacted only 40% of development value, but the Act was unbelievably complicated and difficult to operate, and when the Conservatives came to power in 1970, this Act was speedily repealed. Now the present Labour Government which came to power in the summer of 1974 has promised a new bill which would empower local authorities to acquire urban land needed for public or private housing, or for

90. Many reported decisions point out that the question is "one of fact and degree," to be decided by the local planning authority.

schools, hospitals, and other community needs, at existing use values. Meanwhile, the Land Compensation Act 1973 accepted by both main political parties, had (as above explained) made some provision for compensation for worsenment. It seems unfortunate that the two opposing aspects of the effect of planning legislation on land values cannot be dealt with together in a single piece of legislation.