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Michael Carroll

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RURAL LAND USE CONTROL IN GREAT BRITAIN*

**MICHAEL CARROLL

INTRODUCTION

Natural resources are characteristically utilized by extractors and processors in the private sector in Western capitalist economies. Considerable doubt has been cast upon the ability of free market mechanisms to reflect long-term conservation values. Inadequate market structure for natural resources has resulted in a significant departure from the type of economy which would ensure efficient resource allocation. Also, the normal operation of the market may result in instability of incomes or other adverse social consequences. Thus, both inadequacies in the market mechanisms and socially unacceptable results of even a perfect market have resulted in increasing control by governments of the private sector's utilization of natural resources.

The way in which society has chosen to regulate land use through its institutions is an important part of the regulation of natural resources. A number of legal constraints apply to landowners, and economic adjustments to prices and costs have been devised to influence land use decisions of landowners and not provide society with the land use pattern and products that it wishes to obtain. There are a wide range of types of control mechanisms discussed below.

One of the major questions of rural land use that has developed is to what extent should the pattern of the countryside be changed in order to accommodate economically efficient forms of primary production. The containment and direction of urban planning has also been a major issue. The amalgamation of farms and a shift from labor to capital has resulted in rural depopulation that severely affects the patterns of rural communities and introduces unfamiliar buildings and equipment into the countryside.

Afforestation of upland areas which are sub-marginal for agriculture has also been a contentious point, especially since both

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**Assistant Professor, Department of Rural Economy, University of Alberta.

afforestation and agricultural uses of upland depend on government financial support. The emphasis in the new forests on timber production as opposed to amenity and recreation is an issue that has not been resolved.

A trade-off has to be made between maintaining a sufficient area of countryside that provides rural amenity to the increasingly urban population and the requirements of the rural community to maintain an economically viable life-style in the face of demands for urban land for development. In addition, a balance must be maintained between domestic and imported production of food and timber.

In fact a set of objectives exist for the use of rural land, some of which are incompatible. This article discusses some of the institutional arrangements that have been used to promote agriculture and forestry as uses of rural land within the constraints imposed by consideration of conservation, amenity, and social requirements.

COMMON LAW AND NUISANCE

Common law provides a standardized judicial body of rules, some of which apply to real property. One of the fundamental maxims that came to be accepted in common law was "*sic utere tuo ut alienum non laedas*" (so use your own as not to injure other, or neighbouring owners). Under the exercise of this maxim the holder of a tenure was limited in some of his activities in that if it could be proved in court that another person suffered interference in the use of enjoyment of his land, then damages might be awarded or the offensive use restrained.

There is nothing under common law to prevent the building of a factory in a rural area. Activities arising out of particular uses would have to be shown to be unduly injurious. As Hoyes¹ observed, common law nuisance does not influence the use of land in the town planning sense.

STATUTES

The control of land use by statute includes a number of different types of regulatory mechanisms. The acts relating to agriculture provide for a number of economic incentives and subsidies and regulate tenurial aspects, as do acts relating to forestry. Finance and income tax acts also provide incentives for particular kinds of land use. A number of other statutes are important. For example, the Road

1. Hoyes, *The Financial Consequences of Restriction of Proprietary Land Use*, (1963) (unpublished Ph.D. thesis in Department of Land Economy Library, University of Cambridge).

Traffic Act² deals with control of vehicular use of footpaths along with many other items not concerned directly with the property framework.

It would not be possible to discuss all the acts that deal with rural land use. However, a number of acts are discussed below in order to provide examples of the range of institutional mechanisms used in Great Britain to control land use.

Agricultural Holdings Acts

Tenants of agricultural land are leaseholders. At one time there was relatively little protection for the leaseholder apart from the terms of the contract. However, as a result of a number of agricultural holdings acts and other agriculture acts, the position of the leaseholder is much improved. The Agricultural Holdings Act, (1948), and the Agriculture Acts of 1958 and 1970 constitute a statutory code which to a large extent controls the landlord-tenant relationships for agricultural holdings.³ The main objectives of these acts are to provide security of tenure, afford rent stability, and allow compensation to be paid for improvements or dilapidations. The last provision is important since it provides both an incentive for tenants to improve agricultural land and a disincentive for them to let it decline.

Agriculture Acts

Agriculture has been supported by a succession of British Governments on the bases that domestic food production should be maintained, that farm income should be stabilized, and that increases in efficiency of agricultural production should be encouraged. The effect of Great Britain's joining the European economic community has altered agricultural policy. The acts considered below, however, exemplify economic incentives.

The Agriculture Act of 1957 provided for a set of guaranteed prices and assured markets for certain products.⁴ The Agriculture (Ploughing Grants) Act of 1952 provided grants toward the per acre cost of ploughing up grassland.⁵ The Hill Farming Act of 1946 provided for per animal subsidies for sheep and cattle reared on hill farms.⁶

2. Road Traffic Act, 1972, c. 20, § §35-36.

3. Agricultural Holdings Act, 1948, 11, 12, & 13 Geo. 6, c. 63. Agriculture Act, 1958, 6 & 7 Eliz. 2, c. 71. Agriculture Act, 1970, c. 40.

4. Agriculture Act, 1957, 5 & 6 Eliz. 2, c. 57, § §1-11.

5. Agriculture (Ploughing Grants) Act, 1952, 15 & 16 Eliz. 2, c. 35, § 1.

6. Hill Farming Act, 1946, 9, 10, & 11 Geo. 6, c. 73, § §13-17.

The Agriculture Act of 1967 revised and extended these various provisions.⁷ Grants were established to assist in carrying out transactions and transfers in land designed to form a larger commercial agricultural unit.⁸ Grants were also established for long-term improvements in agricultural land, for expenditures on fixed equipment to benefit agricultural business, and for the purchase of new tractors and harvesters. Grants have also been available for improving water supply.⁹ Financial assistance was made available to certain bodies making agricultural loans.¹⁰ Other grants were available to farmers for hedgerow removal. These grants may have improved agricultural efficiency, but they often involved significant social costs because of loss of amenities and wildlife. Hence they have been abolished.

The guaranteed prices, market support, subsidies, and grants for production and investment have all had the effect of regulating the use of agricultural land. Detailed physical planning with respect to farm buildings is controlled to a limited extent by town and country planning legislation.

Forestry Acts

A series of Forestry Acts starting from 1919, with the 1967 Act being the latest, has defined the authority and activities of the Forestry Commission.¹¹ The authority of the Forestry Commission to purchase and manage land for the purposes of forestry is in itself a powerful mechanism for the control of forest land use. There were three schemes under which forestry grants were payable to landowners: Dedication (Basis I or Basis II), Approved Woodlands, and Small Woods. The Forestry Commission was authorized to enter a covenant or agreement with landowners to dedicate land to woodland use. A private owner who entered the Dedication scheme on Basis II received both a planting grant and a management grant.

To enter a Dedication scheme, woodland had to be managed under a Plan of Operations for the purpose of commercial forestry. As an alternate the Approved Woodland scheme could have been entered into without the long-term legally binding arrangements of Dedic-

7. Agriculture Act, 1967, c. 22.

8. *Id.* §28.

9. *Id.* §30-33.

10. *Id.* §63.

11. Forestry Act, 1919, 9 & 10 Geo. 5, c. 58. Forestry (Transfer of Woods) Act, 1923, 13 & 14 Geo. 5, c. 21. Forestry Act, 1927, 17 Geo. 5, c. 6. Forestry Act, 1945, 8 & 9 Geo. 6, c. 21. Forestry Act, 1951, 14 & 15 Geo. 6, c. 61. Forestry (Sale of Land) (Scotland) Act, 1963, c. 23. Forestry Act, 1967, c. 10.

tion, but the scheme also required a Plan of Operations to be drawn up before the planting grant could be made payable. The Small Woods scheme did not require a Plan of Operations. Neither of these latter two schemes includes a management grant. The Dedication scheme was the main plank of government-private sector relationships, and 80 per cent to 90 per cent of all private planting from 1965 to 1972 occurred within this scheme. Obviously, the grant was an important incentive, and the Plan of Operations provided a framework for detailed control of private sector forestry operations.

In October 1974, a new basis of Dedication was devised, Basis III. This basis was then made the only scheme under which grants were payable. Under the Forestry Acts, the Forestry Commissioners are entitled to make whatever conditions they think appropriate with regard to providing grants. Under Basis III the objectives of Dedication were altered to include a consideration of integration with agriculture, environmental safeguards, and public outdoor recreation. Broad-leaved crops were encouraged for amenity purposes by the provision of a supplementary grant of \$250 per hectare, compared with \$90 per hectare for the ordinary planting grant. Owners of Dedicated woodland are requested to discuss with local planning authorities the establishment of access agreements under the Countryside Acts¹² and provision of appropriate recreation facilities. Thus, the new policy to be administered by the Forestry Commission places a greater emphasis on nontimber benefits of forestry than previously. Grants are also available towards the cost of establishing shelterbelts on farms under the farm capital grant scheme.¹³

Apart from the incentives noted above, another important aspect of control is the Forestry Commission's requirement of a license for felling trees. A license may be granted subject to certain conditions—for example, a replanting condition. If a license is refused, compensation may be claimed for deterioration in the value of trees.¹⁴ A license is not required to fell under a Plan of Operations, nor for cutting of small volumes of trees. Given the powers of licensing felling and the conditions that may be imposed upon making grants payable, there is a good deal of control on forestry land use.

Finance Acts and Income Tax Acts

These acts are mentioned as examples of the use of fiscal incentives in regulating land use, particularly forestry. Income from

12. National Parks and Access to the Countryside Act, 1949, 12, 13, & 14 Geo. 6, c. 97. Countryside (Scotland) Act, 1967, c. 86. Countryside Act, 1968, c. 41.

13. Agriculture Act, 1970, c. 40, § 29.

14. Forestry Act, 1967, c. 10, § 11.

commercially managed woodland can be assessed for tax purposes under either Schedule B, or Schedule D of the Income Tax Act of 1952.¹⁵ The assessment under Schedule B is one-third of the "annual value" or rent of the land in its unimproved state, which is usually a low figure. Under Schedule D, the profits are assessed on the same basis as profits from a trade. The advantage of Schedule D might be, for example, that a woodland would be assessed under Schedule B while income is high during timber felling, and in replanting it, could be switched to Schedule D so that the tax immediately payable would then be during a loss-making period of the woodland management. Losses under these circumstances may be set against other taxable income. Also, relief against income tax under Schedule D may be obtained for certain capital forestry expenditures. Farming and other commercial occupation of land are taxed under Schedule D.

The treatment of capital value of woodlands is a crucial issue. Growing trees are not subject to capital gains tax.¹⁶ Hence, capital gains tax is not payable on the timber value at sale or disposal of woodland. However, the value of land itself is not necessarily exempt. Sale of the standing timber without transfer of title to land is, of course, treated under the Income Tax provisions.

Estate duty was established under the Finance Act of 1894.¹⁷ The rate of estate duty has been varied under a succession of Finance Act, until the Finance Act of 1975, which established a capital transfer tax.¹⁸ Two major provisions provided relief for woodland values. First, the value of timber was not taken into account in calculating the value of the estate for the purpose of setting the rate of estate duty. Second, the estate duty payable on timber did not have to be paid until the timber was sold, and then it was taxable only on its value at the time of the death which created the liability for estate duty.

The new capital transfer tax under the Finance Act of 1975 is chargeable on both lifetime transfers and on property left at death. The rules which apply to woodland include the provision that the value of the trees may be left out of the accounting in determining the value of an estate at death. But, when the trees are sold, tax is payable at the rate which would have applied if the value of the trees had not been left out of the accounting in determining the value of

15. Income Tax Act, 1952, 15 & 16 Geo. 6 & 1 Eliz. 2, c. 10, §125, §83.

16. Finance Act, 1965, c. 25, §33.

17. Finance Act, 1894, 57 & 58 Vict. c. 30, § 1-17.

18. Finance Act, 1975, c. 7, § §19-52.

the estate. These changes remove the incentive of tax avoidance for persons with certain forms of wealth to invest in forestry, and are particularly noteworthy when compared with the considerably more favourable provisions for woodland under estate duty. Capital transfer tax relief is allowed for agricultural land by reducing the value of agricultural property for the purposes of tax assessment.

Town and Country Planning Acts

Town and country planning legislation has fundamentally affected landownership. A land owner cannot carry out certain sorts of development without planning permission. The development of this legislation has been a response to social pressures to control private development. These pressures were first felt in the urban environment that resulted from the industrial revolution. Rural land use is very much less affected than urban land use by planning control. Nevertheless, it has been shown that a number of other regulatory mechanisms, including incentives and subsidies, are in fact used to control rural land use.

Hart¹⁹ observed that in the nineteenth century, land use legislation reflected a recognition that sanitary conditions had to be improved in towns. From such beginnings the emphasis on towns has been retained.

In the twentieth century, the analogue of legislation that set enforceable standards and control on private development during the nineteenth century has been the growth of legislation dealing with the planning of development. The first planning act was the Housing, Town Planning Act of 1909.²⁰ This act established the right of the local authority to control development and specified some details on the way that development was to be carried out. Thus, there was a diminution of the rights of the private owner to develop wherever he chose and in all circumstances. In addition, mention was first made of "amenity and convenience in connection with the laying out and use of the land, and of any neighbouring lands."²¹

The Town and Country Planning Act of 1932 made it possible for a planning scheme to include both urban and rural areas.²² As Ashworth²³ observed, this inclusion of rural areas was a significant

19. W. P. HART, LOCAL GOVERNMENT LAW (1973).

20. Housing, Town Planning, etc. Act, 1909, 9 Edw. 7, c. 44.

21. *Id.* §54.

22. Town and Country Planning Act, 1932, 22 & 23 Geo. 5, c. 48, §1.

23. W. ASHWORTH, THE GENESIS OF MODERN BRITISH TOWN PLANNING (1954).

step. The local authority was given the power to prepare a scheme identifying areas in which certain classes of development could or could not take place. The Town and Country Planning Act of 1947²⁴ took into account the recommendations of the Barlow Report,²⁵ the Scott Report,²⁶ and the Uthwatt Report.²⁷ The provision of the 1947 Act may be summarized:

- i) Local planning authorities were created within each county or county borough council;
- ii) Development plans were required from each local planning authority;
- iii) Planning permission was made essential for any proposed development;
- iv) Development charges were made payable on development values;
- v) Provisions were made for conservation of certain amenities.²⁸

The 1947 Act fundamentally affected land ownership in that development rights in land were placed under government control.²⁹

All previous amending legislation was consolidated under the Town and Country Planning Act of 1971.³⁰ The definition of development remains similar to that used in the 1947 Act. The use of land for agriculture or forestry has been and continues to be specifically excluded from the definition of development.³¹

As previously noted, building operations do fall within the legal definition of development in the 1971 Act and constitute development subject to control. A building may be erected for agricultural purposes, however, and providing it is within certain size limits, the General Development Order³² will be deemed as granting planning permission for the development. Forestry buildings are also included in the General Development Order. The General Development Order is curtailed somewhat by the Landscape Areas Special Development

24. Town and Country Planning Act, 1947, 10, 11, & 12 Geo. 6, c. 51.

25. ROYAL COMMISSION ON THE DISTRIBUTION OF THE INDUSTRIAL POPULATION, REPORT, 1940 Cmd. 6153. Chairman, Sir Montague Barlow.

26. MINISTRY OF WORKS AND PLANNING, REPORT OF THE COMMITTEE ON LAND UTILIZATION IN RURAL AREAS, 1942 Cmd. 6378. Chairman, Rt. Hon. Lord Justice Scott.

27. MINISTRY OF WORKS AND PLANNING, EXPERT COMMITTEE ON COMPENSATION AND BETTERMENT, FINAL REPORT, 1942 Cmd. 6386. Chairman, Hon. Mr. Justice Uthwatt.

28. After M. C. WHITBY, D. L. J. ROBINS, A. W. TANSEY, & K. G. WILLIS, RURAL RESOURCE DEVELOPMENT 71 (1974).

29. The extent to which property rights are affected by planning acts is described in A. TELLING, PLANNING LAW AND PROCEDURE (5th. ed. 1977).

30. Town and Country Planning Act, 1971, c. 78.

31. *Id.* §22(2).

32. *Id.* §24.

Order, which empowers the local planning authority to control the type and quality of such building in a few specific localities.³³

The 1971 Act continues and amends certain provisions for trees. Under section 59, the local planning authority is required to consider the provisions for preservation and planting of trees in granting planning permission. Under section 60, trees preservation orders may be made so that trees may not be cut down without the permission of the local authority. The local authority may make replanting a condition of permission. Dedicated woodlands cannot normally be made subject to a tree preservation order.

To summarize, the Town and Country Planning Acts affect all land ownership. The use of rural land is not greatly affected, but important controls on the type and size of buildings which can be constructed exist. Also of importance are tree preservation orders.

Powers of compulsory purchase are conferred on planning authorities under the Acts. These provide an ultimate control in specific circumstances in which it is considered that the public interest cannot be served with the existing ownership.

National Parks and Countryside Legislation

Three acts affect land use by requiring local planning authorities to have due regard for national amenities in designated areas. They also set general provisions for amenity conservation. They are the National Parks and Access to the Countryside Act, 1949, the Countryside Act, 1968, and the Countryside (Scotland) Act, 1967.³⁴

The National Parks and Access to the Countryside Act, 1949 established a National Parks Commission that was empowered to designate areas as "National Parks or as areas of outstanding natural beauty."³⁵ Also, the Nature Conservancy was empowered to purchase and manage nature reserves.³⁶ Local planning authorities were required to formulate proposals³⁷ for any relevant area of National Park that would serve to accomplish the purposes of National Parks, which is "preserving and enhancing natural beauty . . . for . . . their enjoyment by the public."³⁸ Other parts of the Act dealt with the ascertainment of existing footpaths and bridleways,³⁹ the creation

33. Landscape Areas Special Development Order, 1950, STAT. INST. no. 729.

34. *Supra* note 12.

35. National Parks and Access to the Countryside Act, 1949, 12, 13, & 14 Geo. 6, c. 97, §1.

36. *Id.* §16.

37. *Id.* §10.

38. *Id.* §5.

39. *Id.* §§27-38.

of new public rights of way,⁴⁰ and long distance routes,⁴¹ and provided for access to open country.⁴²

The Countryside Act, 1968 revised and extended the duties of the National Parks Commission, making it the Countryside Commission.⁴³ The general principles remained much the same as in the 1949 Act. A major innovation was the provision of recreational opportunities in small-scale country parks.

The conversion of wild moor land in National Parks to agricultural land by ploughing could only be carried out if notice were given to the local authority. It was also made lawful for the Forestry Commission to provide certain recreational facilities on any land and to acquire and manage land as forest land for the purpose of providing amenity.

The Countryside (Scotland) Act, 1967 established the Scottish Countryside Commission,⁴⁴ made provision for the improvement of outdoor recreational facilities, and extended the powers of local planning authorities in various ways. National Parks had not been created in Scotland, but in 1948 the then Secretary of State identified five areas in a National Park Direction Order. The 1967 Act enabled the Secretary of State to designate further areas of particular natural beauty as areas of special planning control on advice from the Scottish Countryside Commission. Provisions were made for access to open country, the creation of public paths and long distance routes, and other matters affecting the recreational use of land.

The three acts mentioned above have affected, and continue to affect, the use of rural land for agriculture and forestry in designated areas. Certain types of development injurious to amenity or conservation are restricted in designated areas, and provisions are made to facilitate recreational use of land.

THE IMPACTS OF THE STATUTES

General

The exclusion under many circumstances of agriculture and forestry from the definition of development has fundamental consequences. Whitby noted that with changing conditions in agriculture not foreseen in the drafting of the Town and Country Planning Act

40. *Id.* § § 39-41.

41. *Id.* § § 51-55.

42. *Id.* § § 59-83.

43. Countryside Act, 1968, c. 41, § § 1-5.

44. Countryside (Scotland) Act, 1967, c. 86, § 1.

of 1947, the lack of development control has permitted the wide-scale elimination of hedgerows and the erection of farm buildings that might be considered out of keeping with traditional concepts of rural surroundings.⁴⁵ It should be noted, however, that the principle involved in the construction of buildings is not exclusion from the definition of development, but is the granting of general planning permission under the General Development Order. Consequently, changes can be introduced relatively quickly and easily, without requiring a new act.

Unfortunately, there is a lack of comprehensive, positive planning. This aspect is noted in the Report of the Select Committee on Scottish Affairs, in which it is observed that "there is not a single policy for land resources . . . ; there are a multitude of policies, one for each of the main components of the physical environment."⁴⁶ Furthermore, it is noted that "This fragmentation creates opportunities to adopt conflicting policies."⁴⁷

The report goes on to suggest that the forward planning aspect of the provision of the Town and Country Planning Act (Scotland) 1947 has been neglected and as a result "forward planning has not been as good as it should have."⁴⁸ Nevertheless, the large majority of farming activities are not included in planning control, but the importance of the restrictions on buildings and development will probably become more significant as farming systems tend to make an increasing use of large buildings. Apart from the negative aspects of control, the influence of physical planning on the rural sector has been minimal. Donaldson observed that Government policy has tended to be expressed through economic incentives of varying attractiveness to different types of land use.⁴⁹

Development Control in Agriculture

One of the more obvious features in development control is restriction on the type and size of buildings constructed for agricultural purposes. More widescale development to change land use from agricultural to residential would have to be in accord with the development plan prepared by the local planning authority unless an exception was made to the declared development policy.

45. See WHITBY, *et. al.*, *supra* note 28, at 88.

46. I SELECT COMMITTEE ON SCOTTISH AFFAIRS, LAND RESOURCE USE IN SCOTLAND, REPORT AND PROCEEDINGS OF THE COMMITTEE 5 (House of Commons Paper 511-i, Session 1971-72, 1972).

47. *Id.*

48. *Id.*

49. G. DONALDSON, *FARMING IN BRITAIN TODAY* (1969).

The increase in the extent of use of so-called "factory farming" systems has significantly affected the appearance of the countryside in certain areas. For instance, large poultry units have imposed buildings on the landscape of an unfamiliar and formerly uncharacteristic type. The extension of the principle of animal housing separated from the sources of food in which feed is transported to the housing units to permit pig production and, increasingly, in the future, beef production will probably create conflicts between those who resist changing the character of the countryside and those who stress the economic viability of agriculture and efficiency in food production. Weller⁵⁰ pointed out that an attempt by planners to constrain changing patterns of agriculture would decrease the contribution of domestic agricultural production towards self-sufficiency. From this point of view, it is possible to argue that development planning is already too restrictive in that planning permission may be denied for the erection of large farm buildings.

It is interesting to note that in applying for grants to construct farm buildings, any increased costs may be claimed if they result from conditions of planning permission imposed in order to maintain amenity. There is an example of the relationship between planning and economics. It is a point of contention as to who should pay for society's consumption of amenity. Presumably it might be argued that the consumer should pay, but examples of this cost distribution are not as common as they should be.

Control Through Incentives in Agriculture

It has been noted above that government policy that reflects social needs has tended to be carried out through the provision of incentives in the agricultural sector rather than control in the development planning sense. The various types of incentives have been outlined in section 3 above and include grants, subsidies, price support, and fiscal incentives. Incentives should support the objectives of development planning through selective grants and financial compensation. This is not always the case, and conflicting policies may create problems. For example, the Ministry of Agriculture was paying grants for hedgerow removal in the interests of efficient agriculture when planning for amenity and conservation would have been facilitated by their retention.⁵¹

50. J. WELLER, *MODERN AGRICULTURE AND RURAL PLANNING* (1967).

51. Under the Agriculture Act, 1967, c. 22, §30, sched. 4, the removal of hedges was an improvement eligible for a grant. This was at a time when hedgerows were being removed from the English landscape to the consternation of amenity groups and the general public.

Development Control in Forestry

Building restrictions under the Town and Country Planning Acts are of much less importance to forestry than agriculture. Since neither agriculture nor forestry uses constitute development, afforestation of agricultural land has not been classified as development. The balance between the various forms of assistance to hill farms and forestry has been important in any shifts between forestry and agriculture. A particularly significant feature of forestry is the high proportion (approximately 40 per cent) of forest area in Great Britain under the management of the Forestry Commission.

Afforestation of hill land in Scotland will be considered as an example of the relationship between property rights and policy designed to fulfill social needs. The Forestry Commission and the Scottish Department of Agriculture have an administrative agreement under which the Department of Agriculture approves acquisitions of land by the Forestry Commission. The intention is to ensure good land use in the long term, regardless of the prices that may currently be paid for land by agricultural operators. It was given in the evidence to the Select Committee on Scottish Affairs that the Scottish Department of Agriculture granted approval of a Forestry Commission acquisition of land for afforestation in a number of cases in which they would not otherwise have done so were it not for the fact that private forestry interests were intent upon purchasing the area in question.⁵² Thus, the lack of control on afforestation in the private sector seems to have defeated the object of the administrative agreement, which was to ensure the best use of land and, in particular, to retain the maximum area of viable agricultural land. In this respect at least, it may be suggested that some more positive planning control over afforestation in the private sector would have been beneficial. Moreover, private forestry interests in this case would probably have been afforesting under a Dedication scheme and receiving relevant grants in addition to income tax relief. It remains to be seen whether the new emphasis on integration with agriculture under Basis III will affect such situations.

Apart from the management of forest land, the Forestry Commission also has an impact on forestry land use in that it enters the market as a buyer of forest land and a buyer and seller of timber.

The Countryside Act of 1968 amends the provisions of the Forestry Act of 1967 by enabling the Forestry Commission to man-

52. III SELECT COMMITTEE ON SCOTTISH AFFAIRS LAND RESOURCE USE IN SCOTLAND, MINUTES OF EVIDENCE TAKEN BEFORE SUB-COMMITTEE A 535 (House of Commons Paper 511-iii, Session 1971-72, 1972-. Witness, Department of Agriculture and Fisheries for Scotland, June 13, 1972.

age land for recreation and amenity purposes. This amendment was of considerable importance as far as woodland in the state sector was concerned. In National Parks, the Forestry Commission would tend to pay more attention to amenity and recreation. Local planning authorities have the capability under the Town and Country Planning Act of 1971 to favor developments that utilize trees for amenity. More important for existing uses of land is the power to issue tree preservation orders. While the total area of woodland included in tree preservation orders is not available at any central registry, it is considered to be only a small proportion of all woodlands. This fact does not diminish the importance of the provision since amenity value is not directly related to the area involved. For example, a single tree in a village may be of great importance to amenity, yet an area measurement would not reveal this fact.

As far as felling licenses are concerned, it seems that conflict situations were rare, and the normal exercise of the woodland owners' rights are not greatly diminished in practice.⁵³ However, the provision is of value in protecting the public interest, particularly in cases in which the protection of amenity values may be important. In addition to control through either the refusal to grant a felling license or the imposition of conditions, the possibility of an administrative agreement between the Forestry Commission and the local authority presents another aspect of control. It appears that the existence of administrative machinery through which managers must process their applications for any felling permits the monitoring of such applications so that tree preservation orders may be made on any woodland which the local authority considers should be controlled.⁵⁴

Control Through Incentives in Forestry

The system of grants to woodland owners and financial incentives through income tax and estate duty reliefs has been very important in controlling private forest activities. In particular, it has been helpful by encouraging planting. The Dedication scheme binds the woodland owners, and the resulting covenant is an equitable right in land held by the Forestry Commission as if it were an owner of neighbouring land. However, the owner would not enter into the covenant unless he regarded the compensation in the form of grants at least

53. Interview with Forestry Commission Staff in South East England Conservancy (May 1972).

54. *Id.*

sufficient to make the loss of freedom of future decisions worthwhile.

Financial incentives are perhaps not a particularly fine tool with which to implement government land use policy since they are available to a number of different types of operators under a wide range of conditions. The proposition that the most economically attractive land use will be preponderant on the type of land most suited to it is not justified. Financial incentives so affect the ability of forestry or agriculture to pay a certain level of rent that free market economic production efficiency is not the only factor in determining economic viability for any particular form of land use. Thus, the acquisitions of land for afforestation are affected very considerably by the level of the various incentives for forestry. On this point a director of a large private sector forestry group stated to the Select Committee on Scottish Affairs that private forestry was absolutely dependent upon support from the Government.⁵⁵ The powers of the Forestry Commission to control private forestry through the system of grants would not necessarily be sufficient to control afforestation on particular sites without the assistance of the tax and finance laws.

The grant scheme, through provision for a Plan of Operations has some of the characteristics of an incentive scheme coupled with detailed physical planning control. The continuity of management ensured by Dedication is a valuable feature of the scheme.

The implications of institutional factors which create the property framework have been considered above. A mixture of physical planning of development and control through economic incentives is used to control forestry as well as agricultural land use. The total impact of the property framework is fundamental to land use decisions.

55. *Supra* note 52, at 460. Witness, Economic Forestry Group, May 2, 1972.