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Eric Barendt

St. Catherine's College, University of Oxford

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COMPREHENSIVE DEVELOPMENT PLANNING IN ENGLAND: HISTORICAL EXPERIENCE AND SOME COMPARISONS WITH FLORIDA'S PROPOSED LEGISLATION

ERIC BARENDT*

I. INTRODUCTION

When Lewis Silkin, the Minister of Town and Country Planning, introduced the Planning Bill of 1947 in the House of Commons, he spoke for substantially over two hours. It was observed that he had spoken longer than anyone in the House since that most verbose of Victorian Prime Ministers, William Gladstone.¹ Certainly none of the post-war Labour Government's measures merited a longer introduction than the Town and Country Planning Act, designed as it was to repair industrial slums and the devastation of war damage, to prevent the evils of urban sprawl and ill-conceived development, and to create a harmonious environment for the whole life of the nation. Prominent among the reforms effected by this planning act was the system of local authority comprehensive development plans, described by the Minister himself a year later as "ideal."² The objective was to compel the making of flexible land use plans by a relatively small number of local planning authorities familiar with the social and economic problems of the areas concerned and able to respond to local feeling and opinion. These plans would regulate the purposes for which land could be employed and, further, provide the mainspring for redevelopment of particular sections of the town or county where this was necessary. At the time high hopes were entertained that the 1947 Act would more or less permanently provide a framework for town and country planning. This, however, did not prove to be the case. Growing dissatisfaction with the nature and inflexibility of development plans under the Act led to a major reform in the system of comprehensive planning 20 years after it was passed.³ As if that

* Fellow, St. Catherine's College, Oxford, England.

1. The comment was made by Derek Walker-Smith, a Conservative Member of Parliament and a leading planning lawyer. See 432 PARL. DEB., H.C. (5th ser.) 1067 (1947).

2. Silkin, *Mr. Silkin's Message*, 1948 J. PLAN. L. 206.

3. See Town and Country Planning Act 1968, c. 72. This, and the other planning acts which had amended the Town and Country Planning Act of 1947, 10 & 11 Geo. 6, c. 51, now have been consolidated in the Town and Country Planning Act 1971, c. 78.

were not enough, reform of the planning authorities, as a necessary consequence of the most radical alteration of the structure of British local government in this century,⁴ has further complicated matters. In the eyes of some commentators this reform has set planning in England back a generation. The history of positive planning in England has, therefore, not been an even, simple one.⁵

Although, from an English perspective, the system of development plans in the United Kingdom has not been an unqualified success story, it remains to an appreciable extent a subject of interest—and even admiration—for many American planners and planning lawyers. The apparent flexibility of the development plan, the care with which it is prepared, the detail required in both the preliminary survey and the plan itself, and the influence exercised by central government, which allows national and regional considerations to penetrate the local plan, all are features that have excited attention.⁶ State legislators have been encouraged to study the English legislation. Such comparative study is always interesting, and often useful. But it is wise for comparative lawyers constantly to bear in mind the sociological and political differences between the countries whose systems are compared, if rash conclusions are to be avoided.⁷ It is, therefore, perhaps salutary for Americans looking at the English system of planning and land use control to recognize the degree of trust and confidence reposed in administrators in Britain, and the corresponding reluctance of the British courts to control administrative discretionary power in this area. Another factor of some importance is that the increasing pressures on space in an overcrowded island have made the planners' tasks extremely urgent in England. Delays caused by judicial-type processes before plans are finally approved have been found intolerable in England, whereas in the United States they might be thought the necessary price to pay for according every affected

Section 295 of this Act only applies to England and Wales, so that reference will only be made to planning in England (and Wales). Planning in Scotland is regulated by its own separate legislation.

4. Local Government Act 1972, c. 70, discussed in section IV of this article.

5. The term "positive planning" refers to the land allocation and use plans prepared by local authorities, which embody positive proposals for the development of the area concerned. In contrast "negative planning" denotes the system of planning control by which the local authority regulates individual applications for development permission. The former has some impact on the latter; this is discussed in section V of this article.

6. Among the comparative literature, which is much too voluminous to list exhaustively, are the following books: C. HAAR, *LAW AND LAND* (1964); D. MANDELKER, *THE ZONING DILEMMA* (1971); D. MANDELKER, *GREEN BELTS AND URBAN GROWTH: ENGLISH TOWN AND COUNTRY PLANNING IN ACTION* (1962).

7. See Kahn-Freund, *On Uses and Misuses of Comparative Law*, 37 *MOD. L. REV.* 1 (1974).

citizen due process. It may be added that the size and unitary character of England has made centralised influence from London, in some aspects amounting to direct control, both desirable and possible.

A second note of caution is that it is imperative, if the comparisons between two different legal systems are to be of any value, to look at the practical experience of the two systems as well as the legal rules. Only in this way is it possible to avoid the tempting impression that the grass is always greener on the other side of the field. The English experience in positive planning has been one of continual adjustment to the new demands created by the changing problems of town and country. This has shown itself in the type of plan expected of the planning authorities, the degree of local autonomy as opposed to centralised control, and, not least, in the administrative procedures which attend the preparation of, and the hearing of objections to, the plans. This article, then, will trace the development of positive planning in England in the hope that its richer understanding will be of interest to American planning lawyers. In the last section of the article some comparison is attempted with the proposed legislation that would establish a similar system of comprehensive local development plans for Florida.

II. POSITIVE PLANNING BEFORE THE 1968 REFORMS

A. Evolution of Planning Before 1947

The origins of town planning in England and Wales from public health and housing legislation have been amply described in the standard books on the subject.⁸ The story may be taken up in 1932 by a brief reference to the Town and Country Planning Act of that year.⁹ This measure conferred on planning authorities for the first time the power to plan for built-up areas and areas which were not likely to be developed at all. Previously, only areas which were in the course of development, or were about to be developed by private corporations, were subject to the local planning schemes. These schemes under the 1932 Act were only regulatory; they were not designed to promote development by enabling the local authority to take over areas which were suitable for residential or commercial building. Instead the schemes merely "zoned" areas for particular types of development at the initiative of private enterprise, in a manner

8. C. BELL, *CITY FATHERS: THE EARLY HISTORY OF TOWN PLANNING IN BRITAIN* (1969); C. HAAR, *LAND USE PLANNING IN A FREE SOCIETY* (1951); D. HEAP, *AN OUTLINE OF PLANNING LAW* (6th ed. 1973); A. TELLING, *PLANNING LAW AND PROCEDURE* (3d ed. 1970).

9. Town and Country Planning Act of 1932, 22 & 23 Geo. 5, c. 48. The leading work on this Act is D. HEAP, *PLANNING LAW FOR TOWN AND COUNTRY* (1938).

similar to the allocation by zoning ordinance of municipality or county land in the United States. Nor after 1932 was a local planning authority compelled to introduce a scheme; the powers conferred by the Act were permissive only.¹⁰ A third weakness was a planning scheme's lack of flexibility. Once the mandatory requirement of approval by the Minister of Health in London had been satisfied, the scheme was binding on developers and local authority alike;¹¹ it could only be amended by using the involved machinery set up by the 1932 Act for that purpose. The local authority had no discretion to allow development that did not accord with its own scheme. Another defect was thought to be that the schemes were prepared by county district authorities, the lower-tier authorities in the system of local government that prevailed throughout England and Wales until the recent reorganisation of local government.¹² These district authorities were often only responsible for a tiny area encompassing a population of a few thousand. Admittedly they could relinquish their powers under the Act to the larger county authorities, and there was also provision in the Act for the joint preparation of town planning schemes by two or more district authorities, or by a combination of county and district authorities.¹³ But in the normal course of events, plans would be prepared by the district councils (that is, the governing bodies of the authorities), and, therefore, the plans tended to be dominated by local, rather parochial considerations to the neglect of wider, regional issues.

The years of the Second World War witnessed two major developments in planning law, which in retrospect were the logical overture to the reforms effected by the 1947 planning legislation. The Minister of Town and Country Planning Act of 1943 provided for the transfer of the powers and duties imposed on the Minister of Health under the 1932 legislation to the newly created Minister of Town and Country Planning. Planning had at last achieved an autonomous existence, thereby severing its historical connections with the Ministry of Health. In a provision that is still in force, the Minister¹⁴ was charged with the duty of "securing consistency and

10. In fact, very few planning schemes were brought into operation; one reason was that local authorities were deterred by the cost of compensating developers who suffered loss as a result of a planning scheme.

11. For a comparison of the loose control exercised by modern development plans over individual planning applications see section V of this article.

12. An excellent survey of local government before the 1972 reforms is to be found in R. BUXTON, *LOCAL GOVERNMENT* (Penguin ed. 1970).

13. Town and Country Planning Act of 1932, 22 & 23 Geo. 5, c. 48, § 6.

14. His functions have, however, since been transferred to the Secretary of State for the Environment, who presides over one of the largest Ministries in the central government in London. See STAT. INSTR. 1970, No. 1681.

continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales."¹⁵ The Minister's role in English planning law is one of its major characteristics. Before the reforms of the 1968 legislation,¹⁶ no development plan of any kind was effective until it had received the approval of the Minister, generally after a public inquiry. The Minister (now the Secretary of State for the Environment) is also the appellate tribunal for appeals by developers from refusals of planning permission by local authorities. In many cases, planning decisions are influenced, if not dictated, by the authority's own development plan. And finally, the Secretary of State issues a number of policy notes and circulars, stating the Department's views on planning needs and policies, which have the effect of securing some uniformity in the treatment of land use problems by local authorities up and down the country. Many of these aspects of the centralising influence of the Department of the Environment in London will be discussed at various points in this article.

The second wartime measure of importance was the Town and Country Planning Act of 1944.¹⁷ This empowered local authorities to take the initiative in certain cases and make positive plans; they were able themselves to plan for the development of areas blitzed by war damage, as well as areas in their jurisdictions where the use of land was ineffective or had become obsolete. To accomplish these purposes the local authorities had the power compulsorily to acquire land, similar to the American eminent domain power. It was clear from the start that this was only a temporary measure; local authorities were inhibited in using their new powers because of the strict limits within which they were circumscribed. Moreover, the new powers were not compatible with the pattern of development control exercised by the town planning schemes under the 1932 Act. So it was not unexpected that the new Labour government introduced the Town and Country Planning Act of 1947,¹⁸ legislation which still forms the foundation of modern English planning law.

B. The Town and Country Planning Act of 1947

The objectives of the new Act were set out by the Minister at the start of his marathon address to the House of Commons. Referring to the drift of the population to London and the Southeast and the

15. Minister of Town and Country Planning Act of 1943, 6 & 7 Geo. 6, c. 5, § 1.

16. See section III *infra*.

17. Town and Country Planning Act of 1944, 7 & 8 Geo. 6, c. 47.

18. Town and Country Planning Act of 1947, 10 & 11 Geo. 6, c. 51.

corresponding unemployment and depression in the North of the country, the Minister said:

[T]his process and the social evils which it produced, could not be corrected by localised and purely restrictive planning; it demanded planning on a national scale, and planning that involved positive action—in selecting which towns should be allowed to expand and which should not, in creating entirely new towns, in providing land, factories and services for industry where they were needed, as well as prohibiting them where they were not. It is because existing legislation cannot provide the instrument for planning the use of our land in accordance with these new conceptions that this Bill has become necessary.¹⁹

A major administrative change made by the Act was that planning powers for the most part—and certainly all power to prepare comprehensive development plans—were given to the larger local authorities, that is, to county and county borough authorities. This change had been recommended by two government committees which had produced reports of seminal importance during the war years.²⁰ The reform had the effect of reducing the number of planning authorities from 1,441 to 145, a reduction of approximately nine-tenths. The new planning authorities, it was thought, not only would be able to plan over a wider, more realistic area, reconciling the interests of town and country, the city-dweller and the commuter; they also would be able to afford larger, more qualified planning staffs than the district authorities had been able to employ. But it is worth bearing in mind that many county boroughs—that is, towns that exercised all local government powers in their areas, and were not subordinate in any way to the surrounding country areas—were relatively small. Over twenty years later the Royal Commission on Local Government in England found that over half the county boroughs had populations of less than 110,000 people.²¹

The provisions concerned with positive planning are to be found in Part II of the Act. Each local authority was directed to carry out a survey of its local area as soon as possible after the Act came into force. Then, within three years, it was obliged to submit to the Minister a report of that survey together with the development plan showing

19. 432 PARL. DEB., H.C. (5th ser.) 948-49 (1947).

20. COMMITTEE ON LAND UTILISATION IN RURAL AREAS, REPORT, CMD. NO. 6378 (1942) (known as the Scott Report); ROYAL COMMISSION ON THE DISTRIBUTION OF THE INDUSTRIAL POPULATION, REPORT, CMD. NO. 6153 (1940) (known as the Barlow Report).

21. ROYAL COMMISSION ON LOCAL GOVERNMENT IN ENGLAND, REPORT, CMND. NO. 4040, at 25 (1969) (known as the Maud Report).

the manner in which it proposed to use the land.²² The development plan consisted of maps and descriptive statements to illustrate the development proposals. Two functions of the plans were to define the sites of proposed roads, public buildings and open spaces for recreation; and to allocate areas of land for particular purposes, for example, agricultural, residential or commercial. A third purpose was to designate, as land available for compulsory purchase by the local authority, areas that were suitable for comprehensive development or that ought to be acquired for the purpose of securing their use in conformity with the plan. The "comprehensive development area" was an important feature of the typical development plan, but it proved ultimately to be an aspect of the system which led to criticism. The area could be one which, "*in the opinion of the local planning authority,*"²³ should be developed for one of a number of purposes, such as, dealing with extensive war damage or obsolete development, relocating population or industry, "or for any other purpose specified in the plan."

Before preparing a development plan, the county or county borough council was obliged to consult the district council of any area affected by its plan.²⁴ This was the only mandatory consultation requirement under the 1947 Act. This absence of public participation in the formation of policy and preparation of development plans came to be regarded as one of the weaknesses of the system established by the post-war legislation. Notice was, however, to be given in the *London Gazette*—the official newspaper for governmental purposes—and in at least one ordinary local newspaper, of the submission of the development plan to the Minister for his approval, which always had to be obtained before the plan became effective. Objections and representations made at that stage then had to be considered by the Minister, either after an informal meeting or after a public local inquiry at which the objections are heard by a Ministry (now Departmental) inspector.²⁵

The usual course has been for a public inquiry or hearing to be held. The objectors to the development plan have the opportunity through their lawyers to put forth their points of opposition to the local authority's proposals. The Departmental inspector conducts the

22. Town and Country Planning Act of 1947, 10 & 11 Geo. 6, c. 51, § 5(1).

23. Town and Country Planning Act of 1947, 10 & 11 Geo. 6, c. 51, § 5(3) (emphasis added).

24. Town and Country Planning Act of 1947, 10 & 11 Geo. 6, c. 51, § 10(1), as amended, Town and Country Planning Act 1971, c. 78, sched. 5, ¶ 6(1).

25. The public local inquiry is perhaps the most important English administrative procedure. It is used extensively in the planning area. See R. WRAITH & G. LAMB, *PUBLIC INQUIRIES AS AN INSTRUMENT OF GOVERNMENT* (1971). See generally H. WADE, *ADMINISTRATIVE LAW* (3d ed. 1971).

inquiry in a quasi-judicial manner, allowing the parties to introduce oral evidence and cross-examine the other party's witnesses on the strengths or weaknesses of the plan. The inspector then makes a report, generally with a recommendation, to the Minister (now the Secretary of State for the Environment). After the hearing or inquiry, the Secretary of State may consult any person he thinks fit before coming to a conclusion on the development plan. In practice his civil servants often talk to local authority officials, perhaps to clarify various details. The Secretary is under no duty to refer the local authority's comments to any other body or person.²⁶ Consequently, there is no obligation to comply with the usual "fair hearing" rules at this stage, as the implication of this aspect of natural justice is excluded by express statutory provision.²⁷ After consideration, the Secretary may then approve the development plan, with or without modifications, or reject it altogether.

Another novel provision in the 1947 Act required the local authorities to carry out a fresh survey of their areas at least once every five years, and then to submit the results of that survey to the Minister with any proposals for amendment of or addition to the plan.²⁸ The preparation of plans for the positive development of the town or county was envisaged as a continual process. Each plan would provide a framework for a certain period, but the framework would itself continually be adapted as the survey showed changes in population distribution, the economic and social sub-structure, transport needs, and recreation patterns. The ideal was stated by Mr. Silkin, the Minister of Town and Country Planning, in these terms:

The greater part of this plan will be simply framework. It will show the principal communications and the broad allocation of land among the main uses, such as agriculture, new towns to be established, existing communities to be enlarged, special areas to be preserved because of their scenic beauty, and so on.²⁹

The reality, however, did not live up to the dream.

26. Town and Country Planning Act of 1947, 10 & 11 Geo. 6, c. 51, § 10(3), as amended, Town and Country Planning Act 1971, c. 78, sched. 5, ¶ 6(3).

27. *Errington v. Minister of Health*, [1935] 1 K.B. 249, does not govern the procedure for consideration of development plans. *Errington*, in considering the objections to confirmation of a slum clearance order, held that the Minister was not entitled to consult the local authority informally without putting the authority's comments to the objectors for reply.

28. Town and Country Planning Act of 1947, 10 & 11 Geo. 6, c. 51, § 6, as amended, Town and Country Planning Act 1971, c. 78, sched. 5, ¶ 3.

29. 432 PARL. DEB., H.C. (5th ser.) 962-63 (1947).

C. Defects in the 1947 System: The Contents of the Plan

The criticisms of the 1947 Act development plans that led to the reforms of the 1968 Town and Country Planning Act related both to the contents of the typical development plan as dictated by the Act, and to the administrative procedure and delays to which their preparation and eventual approval were subject. With regard to the contents of the development plan the indictment was that it was neither a broad, flexible instrument capable of taking into account the multitude of ever-changing planning problems, nor was it, on matters where detail was essential, precise enough to enable the citizen to know what its impact on his property was supposed to be. The development plan was limited because, although the survey made by the planning authority might take into account the various economic, geographic and transportation problems which governed the life of the area concerned, in the end only a land use allocation plan emerged, incorporating proposals for positive development by the local authority itself. There was no legal obligation on the local authority to concern itself with the traffic needs of the area, nor with the proper balance between public and private transportation; the plan could completely ignore such factors. This weakness had been castigated by the famous Buchanan Report on traffic in British urban centres.³⁰ Another aspect of the system which pinpointed the restricted nature of development plans was their general failure to take into account regional factors and policies. The county borough (usually an urban area) might plan on the assumption that the overspill population from the suburban areas would be accommodated by development outside the city areas in the neighbouring county area, but the county plan, prepared by a different authority, might not allow for such development, and might indeed have restricted it by designating the land concerned as a "green belt."³¹ This weakness of the system was rather surprising in view of the fact that the Secretary of State could constitute as the local planning authority a joint planning board representing a united area comprising two or more counties or county boroughs.³² But the power was rarely used; so the absence of sensible integration of the development plans of neighbouring authorities constituted a grave defect in the 1947 Act system.

30. STEERING GROUP AND WORKING GROUP, MINISTRY OF TRANSPORT, *TRAFFIC IN TOWNS* (1963) (known as the Buchanan Report).

31. This important problem in English planning is thoroughly discussed in D. MANDELKER, *GREEN BELTS AND URBAN GROWTH: ENGLISH TOWN AND COUNTRY PLANNING IN ACTION* (1962).

32. Town and Country Planning Act of 1947, 10 & 11 Geo. 6, c. 51, § 4, *as amended*, Town and Country Planning Act 1971, c. 78, § 1(2)-(3).

More often than that, however, the criticism voiced was that the development plan was not precise enough. Now there was admittedly one part of a development plan that potentially could have provided a precise proposal; this was the designation of a "comprehensive development area" for redevelopment by the local authority after compulsory purchase. But the exercise of this power became unpopular, and it soon was regarded as one of the least satisfactory features of the 1947 Act system. The reason was that the designation of such an area, in effect, froze the land until the compulsory purchase powers were exercised; in the interim the property owner would not maintain or improve his property.³³ The risk of this was mitigated by the provision in the Act that the Minister could not approve a plan which designated land as subject to compulsory acquisition if he thought that the acquisition was unlikely to occur within ten years from the date of the plan's approval.³⁴ This obstacle to long-term sterilisation of private land, however, provided objectors to a development plan with a ready-made argument against designation—it was easy to contend that, with rising costs, the local authority would not be able to acquire the land for development within the ten-year period. As a result comparatively little use was made of the designation power, and much more of the land-allocation power. This created great uncertainty. If an area was allocated in the plan as a commercial "zone," residential development of the area might be discouraged by the local authority, or on a formal application planning permission for an inconsistent or nonconforming use might be refused, even though the authority had no firm or immediate plans to encourage the siting of shops or offices in the vicinity.

Ultimately it became clear that a single development plan was not a suitable instrument both to guide the long-term plans for the local authority over a period of 15 to 20 years, and to detail with precision clearly defined small areas which were ripe for immediate action at the instigation of the authority. In trying to accomplish both ends, the typical development plan achieved neither. On this point it is interesting to note that an American observer has said that the development plan tried to combine the American master plan, zoning ordinance, subdivision ordinance, urban renewal scheme and street-map.³⁵ An English commentator asked the question:

Would it be better to have a new technique in planning? The planning authority could have in their archives whatever long-term

33. See Heap, *Designation or Allocation*, 1951 J. PLAN L. 629.

34. Town and Country Planning Act of 1947, 10 & 11 Geo. 6, c. 51, § 5(4)(a).

35. D. MANDELKER, *supra* note 31, at 12.

plans they desired to guide them in dealing with applications, but the weight given thereto should depend on their reaching the programming stage. At this stage, plans could be published showing what the authority *undertook* to do in the periods of 5, 10 or 20 years. . . . That would bring something far more finite into the plans in place of the airy-fairy never-never proposals of so much of current planning.³⁶

These difficulties suggested the solution adopted by the 1968 reforms—namely, two development plans, one to outline basic strategy, the other to make detailed proposals for immediate action in small areas.³⁷

D. Procedural Weaknesses in the 1947 Act

The second area of weakness in the system of planning established after the last war was the delay to which plans were subjected. The Act had required local planning authorities to submit plans for approval within three years. In fact, comparatively few authorities submitted plans within that time, and most secured an extension from the Minister. The great delays, however, occurred between submission and approval at the government department in Whitehall. It was reported by the Planning Advisory Group (PAG), which reviewed the development plan system in 1965, that the average time taken by the Ministry of Housing³⁸ to deal with a development plan was two to three years, but that some cases took considerably longer.³⁹ To some extent the inquiry process was responsible for these delays; objectors would raise numerous points about the precise shape and size of the comprehensive development area, usually because their own property was potentially affected by the plan. Instead of being a general, helpful consideration of the future character of the physical area, a development plan inquiry often turned into a series of individual planning appeals.⁴⁰ But probably delay was equally attributable to the overly large workload imposed on Ministry officials. They would probe the details of various aspects of plans, and would often send staff members

36. Leach, *Reflections on Development Plans*, 1952 J. PLAN. L. 13, 17-18.

37. See section III of this article.

38. By the Minister of Local Government and Planning (Change of Style in Title) Order, STAT. INSTR. 1951, No. 1900, the Minister of Town and Country Planning's functions were transferred to the Minister of Housing and Local Government. His functions have, in turn, been transferred to the Secretary of State for the Environment. See STAT. INSTR. 1970, No. 1681.

39. PLANNING ADVISORY GROUP, *THE FUTURE OF DEVELOPMENT PLANS* ¶ 1.29 (1965) [hereinafter cited as P.A.G. REPORT].

40. D. MANDELKER, *supra* note 31, at 57.

down to the county or city concerned to talk to local government officials or to make an on-site inspection. Once again, the disease suggested its own cure. If long delays were caused by Ministry perusal of the minutiae of plans, an administrative effort out of all proportion to the plans' real importance in regulating land use, perhaps there was a case for relaxing central government control over the more detailed local plans.

III. THE REFORMS OF 1968: STRUCTURE AND LOCAL PLANS

Instrumental in pointing the way for reform was the report of the Planning Advisory Group submitted to the new Labour Government in 1965.⁴¹ The report outlined the weaknesses of the development-plan system described above and proposed radical improvements. In assessing the PAG recommendations it should not be forgotten that the 1960's was a period of great innovation in planning theory in Britain. Planning was no longer conceived of as solely or, indeed, primarily, being concerned with allocation of land uses; it involved transportation, education and the use of leisure time and recreational facilities; it entailed consideration of all the social and economic factors in the region. It was also thought erroneous to plan for a particular period, with fixed and finite goals; instead, plans should be flexible, loose statements of continually changing, always provisional aims.⁴² This philosophy played some part in prompting PAG to recommend that there be two types of plans with two levels of responsibility in plan making—"the central responsibility of the Minister for policy and general standards, and the local responsibility for detailed land use allocation and environmental planning."⁴³ In summary, the proposal eventually adopted in the Town and Country Planning Act of 1968⁴⁴ was that the planning authority should submit a strategic "structure plan," outlining the various general planning proposals and policies to be pursued by the authority, to the Secretary of State for his approval. It should then follow this up by preparing a local plan, or series of local plans, which would be much more detailed in allocating land uses and formulating precise schemes for development. A local plan would not need the Secretary of State's approval in the ordinary course of events, though he would have residuary power to

41. See note 39 *supra*.

42. These trends are discussed by Bor, *Toward a New Planning Methodology*, 52 J. TOWN PLAN. INST. 405 (1966); McAuslan, *The Plan, the Planners and the Lawyers*, 1971 PUB. L. 247.

43. P.A.G. REPORT ¶ 1.35.

44. Town and Country Planning Act 1968, c. 72. The Act is now consolidated with other enactments in the Town and Country Planning Act 1971, c. 78.

"call in" local plans for his approval, where for one reason or another it had become clear that the plan was controversial in character.

A. Structure Plans

The Government White Paper that preceded the introduction of the reforming Act referred to the proposed structure plans as written statements of policy with a diagrammatic structure map to "expose clearly the broad basic pattern of development and the transport system."⁴⁵ In contrast to what now may be termed the "old-style development plan," the new structure plan consists of a written statement formulating policy and general proposals for the development and use of land in the area. Only diagrams and illustrations that the local authority thinks appropriate for explaining the proposals need be submitted with the written statement, in which case they will become part of the proposed structure plan.⁴⁶ At once it can be seen that a structure plan will be a broader, much more vague document than its predecessor under the 1947 Act, more flexible for the planners, but correspondingly less easy for the lawyers to grapple with when it comes to the formulation of objections.

Preliminary to the plan, the planning authority is under a duty to institute a survey of its area, examining all the factors relevant to its development. In contrast to the 1947 Act the new legislation spells out certain factors the survey has to examine and keep under review: the physical and economic characteristics of the area; the size, distribution and composition of the population; communications and the traffic system.⁴⁷ It seems that the local authority need not undertake the survey itself—it is only required to institute one, so presumably it could be done by private contractors.⁴⁸ A fresh survey can be instituted by the local authority at any time, and the Secretary of State may direct one to be prepared. The survey is crucial because the Act provides that the local authority must be able to justify its written policy and proposals by the results of its survey.⁴⁹ The same provision in the Act also requires the authority to consider current regional policies and the resources likely to be available for implementing the structure plan's proposals. Both these factors had been neglected in the

45. WHITE PAPER ON TOWN AND COUNTRY PLANNING 1967, CMND. NO. 3333 (1967), discussed in Wilkinson, *A New Context for Planning*, 31 MOD. L. REV. 55 (1968).

46. Town and Country Planning Act 1971, c. 78, § 7(3)(b).

47. Town and Country Planning Act 1971, c. 78, § 6.

48. See D. HEAP, *AN OUTLINE OF PLANNING LAW* 36 (6th ed. 1973).

49. Town and Country Planning Act 1971, c. 78, § 7(4). It is interesting to speculate whether judicial review might be available if the survey provided no reasonable justification for the planning authority's policies. The reluctance of the English courts to intervene in the planning area is discussed at pp. 431-32 *infra*.

course of preparing the old-style development plan. The neglect of costs had led to enormous difficulties, and had resulted in a large number of plans being grandiose and hopelessly impractical. With regard to the regional element, it is worth noting here that the Town and Country Planning (Amendment) Act 1972⁵⁰ has enabled local authorities to combine together to produce a structure plan for their respective areas, or parts of those areas. The survey also may be prepared jointly. This valuable addition to the 1968 reforms is, of course, particularly appropriate for dealing with problems of urban sprawl, the rehousing of persons displaced by redevelopment of the town centres and the transportation of commuters.

Turning to the contents of the plan itself—primarily a written statement, not a map—it must first formulate proposals for the development and use of land, including measures for the improvement of the physical environment and the management of traffic. Secondly, it must state the relationship of these proposals to the general proposals of neighbouring areas for land use and development. Finally, it should contain references to a number of matters, such as likely changes to the plan, population factors, and economic and social policies, though the extent of such references is to be determined by the local authority itself.⁵¹ The written statement must contain a reasoned justification of the local authority's policy. Although, in contradistinction to a 1947 Act development plan, the structure plan does not make detailed proposals for defined areas of comprehensive development, section 7(5) of the Town and Country Planning Act 1971 does require the structure plan to indicate as an "action area" any part of the land which is selected for comprehensive treatment in accordance with a later local plan.

The treatment of "action areas" shows the reasons for having two plans, one broad in outline and concerned with overall strategy, the other to give detailed content to the former's proposals. In the absence of a map, the action area's boundaries will be unclear from the structure plan, an omission which was deliberate, but one that has raised considerable controversy and difficulty. The Government spokesman during the committee stage of the Bill in the House of Commons gave two reasons for keeping the boundaries of the action area vague

50. Town and Country Planning (Amendment) Act 1972, c. 42.

51. Town and Country Planning Act 1971, c. 78, § 7(3); Town and Country Planning (Structure and Local Plans) Regulations 1972, STAT. INSTR. 1972, No. 1154, reg. 10 & sched. I, pt. II. See generally Whybrow, *Structure and Local Plans: Practice and Procedure*, 1971 J. PLAN. & PROP. L. 605, 674, discussing the details of structure and local plans.

in the structure plan.⁵² First, to attempt precision would entail a lot of detailed work for the Minister's staff, when one of the objects of the Act was to reduce both the workload on the central government machinery and the consequent planning delays. Secondly, to mark the precise boundaries of the action area would indicate which properties were likely to be subject to compulsory purchase when re-development was ripe, and these properties would be blighted as a result. If the areas were kept vague, there would be less planning blight, that is, reduction in the market value of property owing to fears about compulsory purchase or planning restrictions. This reason seems rather less convincing, for while properties might be less seriously blighted if it was not clear that they were included in the action area, it might be that the planning uncertainty will lead to more properties over a wider area losing some of their value.

B. Structure Plan Procedure

Before turning to local plans, it is worth spending some time discussing the procedures for the preparation and approval of structure plans. As with the old-style development plan, there are two fundamental stages: the procedure before the submission of the plan to the Secretary of State for his approval, and then the hearing of objections before the Secretary decides whether to approve the plan. In both areas, there have been substantial changes from the position extant before 1968.

Under the 1947 Act, as has been seen,⁵³ there was virtually no consultation, or even publicity, with regard to the development plan before its submission to the Minister. It seems strange now that this attracted very little criticism; the PAG report of 1965, perhaps because its authors were almost entirely officials and planners, devoted only one page to the subject of public participation, and that was used only to emphasise the value of public relations techniques in eliciting support for a plan, the contents of which had already been determined. But in the next two years the climate of opinion changed, and the 1967 Government White Paper identified the absence of opportunity for public participation as one of the principal weaknesses of the planning system.⁵⁴ The necessity for such opportunities was constantly emphasised by the Government spokesmen throughout the

52. See D. HEAP, *AN OUTLINE OF PLANNING LAW* 40-43 (6th ed. 1973), which quotes excerpts from a speech by the Minister of State during the committee stage of the 1968 bill.

53. See p. 421 *supra*.

54. See *WHITE PAPER ON TOWN AND COUNTRY PLANNING 1967*, CMND. No. 3333 (1967).

course of the parliamentary debates,⁵⁵ and it found expression in the 1968 Act. It is provided that before finally determining the contents of a structure plan for submission to the Secretary of State, the officials of the local planning authority shall take such steps as will, in their opinion, secure publicity for their survey and the matters they propose to include in the plan, and further secure that persons who wish to do so have an opportunity to make presentations on these matters. The structure plan submitted to the central government must detail the steps taken by the local authority to comply with this obligation, and if the Secretary of State is not satisfied that adequate publicity has been accorded the plan by the local authority, he can return it to the authority with a direction to ensure that more widespread and effective consultation is allowed.⁵⁶

It would require a separate article to do justice to the subject of public participation in the preparation of plans, and so only a few observations can be made now, most of them critical of the *legal* position. The Act only requires that there be an opportunity for the public to comment before submission of the plan to the Secretary of State. But by that stage, it may be too late for participation to be meaningful, as all the alternatives to the plan submitted might have by then been ruled out by the local authority. In 1968 the Ministry of Housing (then still charged with the function of overseeing national planning policy) set up the so-called Skeffington committee to report on the various ways and means by which full public involvement in the making of plans best could be secured, but its report⁵⁷ has been largely ignored, at least by the central government. Under the 1971 Act detailed regulations may be made by the Secretary of State to supplement the rather meagre provision of the Act itself.⁵⁸ It is possible that this power could have been exercised to translate the Skeffington Report's proposals into delegated legislation. For example, a regulation concerning the time when proposed survey and draft plans, and their alternatives, could most efficaciously be published would be most helpful. But, in fact, virtually no detailed rules have been made. In a recent circular commenting on the Skeffington proposals, the

55. *See, e.g.*, speech of Anthony Greenwood, Minister of Housing and Local Government, when he introduced the bill in the House of Commons, 757 *PARL. DEB.*, H.C. (5th ser.) 1362 (1968).

56. Town and Country Planning Act 1971, c. 78, § 8(3)-(4). There is a similar provision with regard to local plans in § 12. The discussion in the text is relevant to the pre-submission publicity requirements for both types of plan.

57. DEPARTMENT OF THE ENVIRONMENT, PEOPLE AND PLANNING (1972 ed.) (known as the Skeffington Report).

58. Town and Country Planning Act 1971, c. 78, § 18.

Ministry made some very anodyne remarks about participation in planning, and concluded:

[M]ore needs to be known, not only about the methods and techniques of publicity and public participation, but also about the degree of benefit obtained from them compared with the time taken to prepare and submit plans, and the cost and the calls on the time of the community and local government.⁵⁹

Clearly, the central government is still, to some degree, agnostic on the merits of public participation.

An interesting question which may be briefly discussed is whether noncompliance by a local planning authority (or the Secretary of State's failure to require compliance) with the mandatory participation and publicity requirements may lead to successful challenge in the courts. The Act provides for judicial review of a structure or local plan by any person aggrieved within six weeks of its approval, or in the case of a local plan, its adoption,⁶⁰ on the grounds that the plan is ultra vires, or that some essential procedural requirement of the Act, or regulations made under it, has not been complied with.⁶¹ The difficulty is that the publicity requirements are so drafted in the Act that the administrators might have more or less unfettered discretionary power to assess the adequacy of the steps taken to secure public participation.⁶² It is also true that there has not been a successful challenge in the courts to a development plan; in some cases immediately after the last war, the judges seemed reluctant to allow judicial review in the planning area.⁶³ More recently, the general climate of judicial opinion has been more favourable to the review of the exercise of administrative powers, even where they are expressed in subjective terms in the statute, as they are in the Town and Country Planning Acts. This judicial activism is particularly prevalent where the

59. Department of Environment Ministry Circular No. 52/72 [hereinafter cited as D.O.E. Min. Circulars]. This circular, like most ministerial circulars, is an advisory document, issuing guidelines as to how local authorities are to exercise their powers. It is a peculiar characteristic of British administrative behaviour that so much should be done through such informal, extra-legal means. On occasion, the courts have held a ministerial circular to contain legislative matter, in which case its terms bind the persons or bodies to which it is addressed, *see Blackpool Corp. v. Locker*, [1948] 1 K.B. 349, but this is very rare.

60. *See* pp. 433-35 *infra*.

61. Town and Country Planning Act 1971, c. 78, § 244.

62. The key phrases in the 1971 Act, § 8, are: "the local planning authority shall take such steps as will in *their opinion secure*"; "if . . . the Secretary of State is *satisfied*" (emphasis added). *See* Samuels, *Town and Country Planning Act 1968*, 1969 PUB. L. 19, 21.

63. *E.g.*, *Robinson v. Minister of Town & Country Planning*, [1947] 1 K.B. 702.

authority's decision or order seems patently unreasonable, or has been reached on the basis of no evidence at all.⁶⁴ It may be, therefore, that the courts would intervene to quash a structure (or local) plan if it became clear that the publicity requirements of the Act had been more or less ignored, and that the administrators' view that the requirements had been met was clearly untenable. At any rate, one would hope the courts will take this view, if the occasion arises for them to express one.

After submission of the old-style development plan to the Minister for his approval, a local public inquiry would be held to ascertain the objections of persons affected by the plan.⁶⁵ The 1968 Act (now consolidated in the Act of 1971) made no alteration to this position; any objector continued to be entitled to put his views before a public inquiry.⁶⁶ The concern over the length of the monumental Greater London Development Plan Inquiry, however, at which over 28,000 individual objections were considered in the two and a half years of its existence, led to a change in the law. The 1972 Town and Country Planning (Amendment) Act⁶⁷ has replaced the public inquiry by a more informal public examination procedure when the Secretary of State has to determine whether to approve a submitted structure plan⁶⁸ (the old public inquiry procedure still governs local plans).⁶⁹ The most important feature of the change is that no objector will have a right to appear at a public examination; only those selected by the Secretary of State or, in the course of the examination, by the person presiding, will be able to put their views forward. The aim of the change, as revealed in the parliamentary debates⁷⁰ and in a Code of Practice⁷¹ issued subsequently, was to make the examination less of a gladiatorial contest between the local authority and the objectors or, rather,

64. Among the leading cases are: *Commissioners of Customs & Excise v. Cure & Deeley, Ltd.*, [1962] 1 Q.B. 340; *Padfield v. Minister of Agric.*, [1968] A.C. 997; *Coleen Properties Ltd. v. Minister of Housing & Local Government*, [1971] 1 W.L.R. 433. The possibility of the English courts applying a "substantial evidence" rule was canvassed by Lord Denning, M.R., in *Ashbridge Inv. Ltd. v. Minister of Housing & Local Government*, [1965] 1 W.L.R. 1320, 1326.

65. See pp. 429-30 *supra*.

66. Town and Country Planning Act 1968, c. 72 §, 4(3).

67. Town and Country Planning (Amendment) Act 1972, c. 42.

68. Town and Country Planning (Amendment) Act 1972, c. 42, § 3, *repealing and replacing* Town and Country Planning Act 1971, §§ 9(3)-(4). See Samuels, *Town and Country Planning (Amendment) Act 1972*, 1972 J. PLAN. & PROP. L. 541.

69. See p. 434 *infra*.

70. 829 PARL. DEB., H.C. (5th ser.) 1482 (1972).

71. The Code of Practice was issued to local authorities with D.O.E. Min. Circular No. 36/73. The Secretary of State has authority to make legally binding regulations to govern the procedure at public examinations, but, interestingly, he has preferred to issue an extra-legal code of practice.

their highly paid lawyers. In contrast to the public inquiry, the participants sit around a table on equal terms with the chairman of the panel and his two colleagues. The use of lawyers is discouraged, so that the examination is more like a seminar on the structure plan and its alternatives than an onslaught by objectors with vested interests.

It is too early to assess the merits of this important change in the administrative procedure for the approval of structure plans. By the beginning of this year only two such examinations into structure plans had been completed.⁷² To an American observer it must seem a strange reform, one which weakens the voice of the individual citizen on a plan which may eventually affect his property rights.⁷³ Clearly, however, something had to be done to reduce the risks of delay in the planning inquiry process. Moreover, the quasi-judicial nature of the inquiry is ill-suited for a debate on the merits of a strategic type plan, where precise boundaries are not drawn. It is unlikely that the Secretary of State's discretion to select the representatives for discussion at the examination will be abused; the publicity attendant on the preparation of structure plans, and the reporting of the examination itself, should prevent any chance of that. It may be concluded then that this new form of administrative procedure is an interesting experiment which for the moment merits attention and deserves support.

C. Local Plans

If after the public examination the Secretary of State approves the structure plan, the local authority must then consider the preparation of a local plan, or plans, for any part of their area. It can, in fact, embark on this course before the structure plan is formally approved, or even submitted to the Secretary of State. The only local plan which the authority is under a mandatory duty to prepare is an "action area plan"; this plan must make detailed proposals for development within the action area delineated by the structure plan. This must be done fairly quickly because regulations under the Act require that the development start within 10 years of the date the structure plan was submitted for central government approval.⁷⁴ Other

72. White, *A Structure for Advice*, NEW Soc'y (London), Jan. 24, 1974, at 193.

73. The individual property owner may intervene at the public inquiry into the local plan, which more clearly will delineate the property affected by a redevelopment scheme, or, of course, at the inquiry into his objections to a compulsory purchase order acquiring his property. But by then the major issue of policy—that the area including his land is suitable for development—will have been decided, and it is too late for him to make objections in principle on that score. See McAuslan, *supra* note 42, at 263-64.

74. Town and Country Planning Act 1971, c. 78, § 7(5); Town and Country Planning (Structure and Local Plans) Regulations 1972, reg. 11.

types of local plans are optional, though the Secretary may direct their preparation. They are the district plan, outlining proposals for the development and other use of the land in a particular part of the structure plan area, and the subject plan, which is concerned with proposals for particular land uses over a wider area.⁷⁵ For example, the local authority might publish a local plan showing proposals for the siting of parks and recreation areas. Unlike the structure plan, the local plan primarily is to consist of a map with a written statement, supported by diagrams and other illustrative matter. The local plan will look more like the old-style development plans with fairly detailed "zoning," or land allocation, and specific development projects marked on a map, the scale of which is to be determined by the local authority itself.

The most controversial aspect of the new local plans is that they do not have to be submitted to the Secretary of State for his approval. It was thought wasteful of departmental time to require the details of local plans to be inspected by departmental staff. The same publicity arrangements required for structure plans,⁷⁶ however, attend the preparation of local plans. The Secretary must be satisfied that they have been properly complied with. After the plan has been prepared and published, all objections must be sent to the authority itself, and an inquiry is then held, presided over by a departmental inspector. It is, however, the local authority that considers the inspector's report of the inquiry and recommendations, and must decide whether to adopt the plan.

The procedure has been criticised on the ground that, in effect, the local authority is "judge of its own case," so that the new system offends the principles of natural justice.⁷⁷ From one perspective there is something in this critique, but it could be argued that the analogy between "judicial" process and the pre-adoption procedure for local plans is wholly misleading. It might be said that the local authority is, in reality, only affording opportunities for public participation before it decides, as it is entitled to do under the Act, on the plan to be adopted. These opportunities are relatively informal before preparation of the provisional plan; they are followed by a more formal

75. Town and Country Planning (Structure and Local Plans) Regulations 1972, reg. 15.

76. See p. 430 *supra*.

77. See ANNUAL REPORT OF THE COUNCIL OF TRIBUNALS FOR 1967, ¶¶ 25-28. The Council, instituted by the Tribunals and Inquiries Act of 1958, 6 & 7 Eliz. 2, c. 66, supervises the numerous administrative tribunals and public inquiries which are such a prominent feature of the British administrative process. Comparisons are deceptive, but the Council performs a role not totally unlike that performed in the United States by the Administrative Conference of the United States.

process between preparation and final adoption. From this perspective, arguments about natural justice seem entirely misplaced; it is submitted that this is the preferable view. It is surely a mistake to view the public inquiry as a kind of trial with the Minister or Secretary of State acting as a judge in a dispute between the local authority and objectors.⁷⁸ What matters is that the inquiry itself is conducted fairly, and on this point the 1971 Act does not alter the position. The Secretary of State can "call in" the local plan at any stage before it is finally adopted by the local authority. If he does this, it is not to have effect unless approved by him.⁷⁹ This is a possible safeguard against a local authority's abuse of its greater powers over development plans, but clearly it would defeat the object of the new legislation if the reserve power were to be exercised frequently. As the power may be exercised at any time before formal adoption of the plan, it could be used by central government on the inspector's recommendation, whether formal or informal.

Another point worth making is that, in effect, objections at a local plan inquiry which are in substance objections to the structure plan, are precluded by the Act. The local plan must conform to the structure plan as approved by the Secretary of State, so it is too late at the local plan inquiry to argue that the structure plan's provisions are misconceived, and should not be implemented by the local plan, whether an action area plan or another kind.⁸⁰

D. Conclusions Concerning the 1968 Reforms

It is difficult to come to any firm conclusions as yet on the merits of the radical change in the planning system introduced in 1968. Although the new provisions were in force in many parts of the country by the end of 1973, very few structure plans have been prepared at the time of this writing, and none approved by the Secretary of State. For the time being, the old-style development plan system still operates, and it is the plan prepared under the 1947 Act which may, therefore, be influencing planning applications for some years to come. Moreover, the picture is complicated by the reorganisation of local government, briefly described in the next section of this article; any theoretical

78. The local authority considering objections to its plan is now in the same position as the Minister considering objections to a provisional order siting a new town under the New Town legislation. In *Franklin v. Ministry of Town & Country Planning*, [1948] A.C. 87, the House of Lords held that, in this situation, the Minister was under no duty to observe the rules of natural justice, so that there could be no objection to his having a pre-determined view about the proper site for the proposed new town.

79. Town and Country Planning Act 1971, c. 78, §§ 14(5)-(4).

80. Town and Country Planning Act 1971, c. 78, § 14(2).

conclusions about the merits of the 1968 reforms may be rendered meaningless in view of the practical administrative difficulties thrown up by this cataclysmic change.

The objectives of the reform of the planning system were clear enough: to enable planning to be more thorough in the range of factors it took into account and to compel it to be more cautious than were the old development plans about detailed redevelopment proposals. Local autonomy is to be encouraged and delays reduced. To some extent the hand of the planner is strengthened at the expense of the individual, who may find the structure plan altogether too inchoate, or shapeless, to be opposed, and who may later discover that a local plan prepared to implement the structure plan has immediate, adverse implications for him. It has been thought that the planners would be able to plan more quickly and effectively, as not all their proposals and policies would have to be incorporated in the single plan under the straitjacket of the town or county map. The hope may be an illusion. Some planners may find it difficult to take the structure plan seriously; without supporting local plans it may become little more than a vague, never-to-be-realised set of aspirations. Largely because of this, there are suggestions that the new scheme is no more practical than the old.⁸¹ It would certainly be an agreeable surprise if the new system did not lead to such long delays, now that two plans have to be prepared before any coherent redevelopment occurs, and before a land use allocation scheme exists that can serve as a worthwhile basis for development control. The scepticism of Sir Derek Walker-Smith, when speaking on the bill that introduced the new system, is worth recalling:

Every fresh effort that I can recall to place town and country planning Measures on the Statute Book has been made in good faith and with beneficent intention, but even after all these years, none has succeeded in producing a really satisfactory and viable system.⁸²

IV. THE IMPACT OF LOCAL GOVERNMENT REFORM

One point frequently made during the debates on the 1968 planning bill was that it was essential to ensure that the planning authorities were of sufficient size and had staff of the right calibre to take on the work of preparing structure and local plans. It was em-

81. Some of the criticisms are discussed by Hague, *Structure Plan Opportunities*, 58 J. TOWN PLAN. INST. 400 (1972).

82. 757 PARL. DEB., H.C. (5th ser.) 1395 (1968).

phased that planning reform should not ignore the administrative machinery.⁸³ The Members of Parliament were thinking of the then-imminent local government reform. These remarks now take on an ironic twist, because the reform has taken place and it seems possible that whatever benefits could have been brought about by the 1968 reforms will be undone by the reorganisation of local government. The point has been made that in its anxiety to get the size and boundaries of the new local authorities right, the Conservative Government of the day and Parliament ignored the allocation of functions among the various local authorities when they passed the Local Government Act 1972.⁸⁴

This is not the place to go into the reasons for local government reform in England and Wales. They have been amply analysed elsewhere.⁸⁵ Prior to the Local Government Act 1972,⁸⁶ which came into effect on April 1, 1974, the planning units of local government were the counties and the county boroughs. The latter, normally town areas of fairly substantial populations, were one-tier authorities and exercised all planning powers within their areas. Counties were further subdivided into lower, second-tier units, a variety of noncounty boroughs and urban and rural districts, but these lower authorities had no positive planning powers.⁸⁷ This position was not affected by the 1968 reforms. But the new organisation divides local government into two separate, independent tiers. The county boroughs have been abolished, and together with the existing counties, are merged into fewer, but larger counties. This is the new first tier. Within each county, there are a number of district authorities which make up the second or lower tier. Both tiers have planning functions under the 1972 Act. The difficulty arises because the lower-tier district authorities are in no way legally subordinate to the county authorities. The district authorities' powers are conferred on them by the Act itself, and are not delegated by the counties. Thus, the number of authorities with some responsibility for planning has trebled.

The second adverse consequence of the Act is that in an attempt

83. *E.g.*, 757 PARL. DEB., H.C. (5th ser.) 1379 (G. Ripon, M.P.), 1393 (F. Willey, M.P.) (1968).

84. Buxton, *Planning in the New Local Government World*, 1974 J. PLAN. & ENV. L. 60.

85. See R. BUXTON, LOCAL GOVERNMENT 221-73 (Penguin ed. 1970); Cross, *The Local Government Act 1972*, 2 ANGLO-AM. L. REV. 351 (1973).

86. Local Government Act 1972, c. 70.

87. These authorities did have some powers over applications for planning permission, but these are not relevant here. The point is that they were not substantially involved in the preparation of development plans, though they were entitled to be consulted. See 418, 420 *supra*.

to secure some conformity between the planning undertaken by the county authorities and that done by the districts, a number of extremely complex provisions have been made which undermine the coherence of the 1968 reforms. The county authorities are responsible for the preparation of structure plans.⁸⁸ That much is clear. It is when one comes to the preparation of local plans that the position becomes complicated, and the weaknesses of the reform from the planning perspective become exposed. An amendment to the Town and Country Planning Act 1971 provides that the task of preparing local plans is to be exercised by the district authorities. This is, however, immediately qualified by requiring the county authorities, in consultation with the district authorities in the various counties, to make a "development plan scheme" for the preparation of local plans in the counties' areas.⁸⁹ The schemes are to allocate the responsibility for preparing local plans between the county authority itself and the various district authorities, and will also lay down the title and type of the local plans to be prepared, for example, whether subject or district plans are to have priority. The Secretary of State is given substantial power to influence "development plan schemes"; he may direct a county authority to prepare a scheme before a particular date, and he can amend any scheme sent to him. The district authority is safeguarded against total withdrawal through the scheme of its planning powers to some extent by the provision that it may make representations to the Secretary of State if it is dissatisfied with the county council's proposals for a development plan scheme. On the receipt of such representations, the Secretary is empowered himself to prepare a scheme. Finally, it is provided that a county's structure plan may contain provisions for the county itself to prepare local plans insofar as this does not contradict the development plan scheme.⁹⁰

The reason for this elaborate system is to ensure some degree of harmony between structure and local plans. This would be virtually impossible to achieve if structure plans were prepared by the counties, and local plans by the autonomous districts without any direction from the larger county authorities. Local plans must conform generally to the structure plan,⁹¹ but it is difficult to see how one authority can interpret the general policies devised by another and implement them faithfully in its plans. It should be borne in mind that frequently the authorities concerned will be of different political complexion:

88. Local Government Act 1972, c. 70, § 183(1).

89. Local Government Act 1972, c. 70, § 183(2), amending Town and Country Planning Act 1971, c. 78, § 10(c).

90. Town and Country Planning Act 1971, c. 78, § 10(c)(5).

91. Town and Country Planning Act 1971, c. 78, § 14(2).

the county authority is more likely to be Conservative, anxious to preserve rural interests, county amenities and so on, while the district authority is more likely to be urban in character, may well be Labour-controlled in politics, and may be keen to facilitate housing development in rural suburbs and to develop mass transport facilities. The Local Government Act provides that the county authority must certify whether a district authority's local plan conforms to its structure plan; a refusal so to certify means that the matter is referred to the Secretary of State for his decision.⁹² But clearly this was not felt to be enough, so the provision for a development scheme enables the county authority to exercise considerable control over positive planning by district authorities. The final picture is, however, far from pleasing.

The idea that structure and local plans can effectively be prepared by two separate authorities seems very doubtful; they are not distinct, discrete activities. The idea of the 1971 Act was that the planning authorities would start work on the local plan fairly soon after the structure plan was begun. The work on the one would then inform and guide the work on the other.⁹³ The reform of local government has made this process, which is so essential to the new concepts of planning, difficult to achieve. It is all very well for the Government to urge close cooperation and constant contact between the county and district authorities, as it has done in one of its most recent circulars from the Department of the Environment.⁹⁴ But as the Government itself has admitted, planning staffs will be in short supply for some time, a direct consequence of the trebling of the number of planning authorities, and it seems likely that they will be too busy coordinating and cooperating with each other to have much time and energy left to do any serious planning. There is, in summary, a substantial risk that the complexities of the new system and the uncreative tensions which may well occur between the county and district authorities will render wholly nugatory any improvements the reforms of 1968 might have introduced into the English system of planning.

V. THE DEVELOPMENT PLAN AND DEVELOPMENT CONTROL

So far this article has concentrated on the preparation and contents of positive planning, and has not at all been concerned with its repercussions for development control. Theoretically, however, one of the

92. Local Government Act 1972, c. 70, sched. 16, ¶ 3.

93. See Swindell, *Planning Reorganization*, 224 *ESTATES GAZETTE* 607 (1972).

94. DEPARTMENT OF THE ENVIRONMENT, LOCAL GOVERNMENT ACT 1972, TOWN AND COUNTRY PLANNING: COOPERATION BETWEEN AUTHORITIES (D.O.E. Min. Circular 74/73, 1973).

most important attributes of the development plan system introduced by the 1947 Act, and now carried on by the 1968-71 legislation, is that the local authority plan is to form the basis for development control policy. Development in England, with some exceptions, requires a grant of planning permission from the local planning authority.⁹⁵ The 1971 Act now provides that the authority in dealing with the application must "have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations"⁹⁶ Thus, the development plan does not itself determine whether the application should be granted or refused.⁹⁷ As the most recent Department circular on this subject says: "Development which accords with the development plan still needs planning permission—and will not necessarily get it; while development which does not accord with the plan may be permitted if other circumstances tell in its favour."⁹⁸

But it would be wrong to deny that development plans are in many cases substantially influential in determining whether a local authority grants planning permission or not. The restrictions on development within the green belts surrounding urban areas, a restriction designed to preserve agricultural land and to prevent urban sprawl, have been enforced through refusals of planning permission in pursuance of the development plan.⁹⁹ What happens is that the county development plan delineates certain "green" areas in which development would not normally be permitted. The statement accompanying the map would perhaps detail the exceptional circumstances in which permission might be granted. This would provide the basis on which permission would be granted or refused. To an American observer, however, the system leaves a lot to administrative discretion. Both the map and the written statement are flexible documents to be interpreted by the planning authority in the light of the merits of the particular application. Thus the Green Belts circular states that the development plan map need not show the precise limits of permissible

95. Town and Country Planning Act 1971, c. 78, §§ 22-23. This important aspect of English planning law is discussed in the standard books, e.g., D. HEAP, AN OUTLINE OF PLANNING LAW 69-132 (6th ed. 1973); A. TELLING, PLANNING LAW & PROCEDURE chs. 6-8 (3d ed. 1970).

96. Town and Country Planning Act 1971, c. 78, § 29(1).

97. This is one respect in which the English development plan is a less coercive instrument than the proposed Florida local government comprehensive plan. See p. 447 *infra*.

98. DEPARTMENT OF THE ENVIRONMENT, DEVELOPMENT CONTROL POLICY NOTE No. 1, § B(10) (1974 ed.).

99. It is this process which forms the subject of D. MANDELKER, GREEN BELTS AND URBAN GROWTH (1962).

development within existing rural settlements. The written statement need only outline the kinds of development for which the council would be prepared to grant permission, and in some cases the circular indicated the council could say that it would allow development "in exceptional circumstances."¹⁰⁰

Very often, however, the development plan will not even attempt this rather low level of precision, but will make no particular proposals for land uses in certain areas. Then each planning application will be determined on its particular merits, without guidelines from the plan. This phenomenon is very common in county development plans; sometimes such areas are sandwiched between a "green belt" zone and the edge of the town or city which it surrounds. These "white areas," as they are known, from the use of that colour on the development plan map, have been compared to the American "floating zones."¹⁰¹ It is likely that the relaxed connection between the overall development plan and development control will become even more loose when the new system of structure and local plans becomes fully effective. Structure plans probably will be too imprecise themselves to be a reliable and sure guide to land use allocation in particular areas. Local plans, unlike the old-style development plans, are not mandatory (with the exception of action area plans), and will, especially in country areas, not be prepared in vicinities where the local planning authority has no particular proposals to make. If this forecast turns out to be accurate, then development permission will become even more a matter of ad hoc administrative discretion, though in urban areas, and rural areas of special character, development plans will continue to afford relatively clear guidance.

The liberal attitude of English planning to development that is inconsistent with the local authority plan has been shown by the relaxation of the central government's control over such development. Before 1965, all planning applications which involved a substantial departure from the plan had to be reported to the Minister with all the relevant plans and copies of the objections so as to give him the option of making a direction with regard to the application.¹⁰² This

100. MINISTRY OF TOWN & COUNTRY PLANNING, GREEN BELTS (Min. Circular 50/57, 1957).

101. See D. MANDELKER, GREEN BELTS AND URBAN GROWTH 155-56 (1962). Floating zones frequently have been struck down by the courts on the ground that their flexibility and indefiniteness is the very antithesis of a proper, constitutionally valid zoning ordinance. See, e.g., *Rockhill v. Township of Chesterfield*, 128 A.2d 473 (N.J. 1957); *Eves v. Zoning Bd. of Adjustment*, 164 A.2d 7 (Pa. 1960). Other courts have upheld this type of zoning, an approach more comprehensible to an English observer. See, e.g., *Huff v. Board of Zoning App.*, 133 A.2d 83 (Md. 1957).

102. Town and Country Planning (Development Plans) Direction 1954, issued with

gave the Minister an appreciable measure of control but it involved a large volume of departmental work on planning applications which, though involving substantial departures from the development plan, might be perfectly meritorious. So in 1965 the procedure was changed to confer more authority on local authorities, and to reduce the burden on the Whitehall machinery. The 1965 Town and Country Planning (Development Plans) Direction¹⁰³ provides that though all planning applications which involve a substantial departure from the provisions of the development plan must be advertised locally, only those which also affect the whole of the neighbourhood or which contemplate development contrary to views previously expressed by a government department must be referred, with the relevant objections, to the Minister to allow him the option of intervening. The Direction also appears to lack legally coercive force, so that now a failure by a local authority to comply with its provisions will not be a ground for review in the courts; the circular says that "the new direction is drafted in a different form so as to make it clear that the Minister's requirements are procedural in character, and do not affect the powers of local authorities to allow development not according with their development plans."¹⁰⁴ The circular characterises perfectly the informal, extra-legal approach of English planning.

VI. AN AMERICAN COMPARISON: THE PROPOSED FLORIDA LEGISLATION

A frequent indictment drawn up by American planners and planning lawyers in the 1950's was that the requirement that zoning ordinances be prepared "in accordance with a comprehensive plan" was largely meaningless.¹⁰⁵ The claim was that municipal authorities might prepare master plans, stating planning goals for the city or county, indicating the priorities for development, and allocating land uses to particular areas, but they had little or no effect on the more detailed planning instruments prepared by the same authority. Often, indeed, the courts held that the common requirement of conformity with a comprehensive or master plan meant not that the zoning ordinance and regulations should conform to a separate plan, but

Min. Circular No. 45/54. In one interesting administrative law case, a neighbor challenged a grant of planning permission after the local authority had failed to comply with this notification requirement. The judge held that the applicant lacked standing to secure declaratory relief, but he was prepared to assume that the grant of planning permission was ultra vires. See *Gregory v. Camden London Borough Council*, [1966] 1 W.L.R. 899.

103. Issued as part of Min. Circular 70/65.

104. *Id.* ¶ 2.

105. See the classic articles, Haar, *In Accordance With a Comprehensive Plan*, 68 HARV. L. REV. 1154 (1955); Haar, *The Master Plan: An Impermanent Constitution*, 20 L. & CONTEMP. PROB. 353 (1955).

only that the ordinance itself should be a complete, rational attempt to zone the city or county area.¹⁰⁶ Municipalities and courts thus in effect combined to frustrate the aims of the expert planners. But the picture has been changing, and ten years ago, a Canadian expert, in commenting on the growing similarities between the British development plan and the American master plan, remarked that "there is every indication in the expanded lists of the subject matter of planning that the new British comprehensiveness is gaining favour on this continent."¹⁰⁷

Two major trends mark the reaction to the position twenty years ago. First, the master plan has become more truly a comprehensive plan, being based on more penetrating surveys, taking into account regional, economic and traffic factors, and so on. Secondly, there is now a serious and determined attempt to secure the influence of the comprehensive plan on the range of development which is permitted in the various areas or zones covered by the plan. No longer is the master plan to be little more than wastepaper in planners' offices, of no consequence whatsoever to private developers.¹⁰⁸ Concomitant developments are the greater attention now paid to regional questions, and the retention of some regulatory power at the state level when planning issues present problems in which the state clearly has a legitimate and important interest.¹⁰⁹ In all these spheres the American developments in varying degrees mirror the English trends in planning law, showing how often like problems on both sides of the Atlantic have called for and elicited, whether consciously or not, strikingly similar responses. Nevertheless, the overriding political and constitutional differences prevent the two systems of planning law in England and the United States from presenting identical patterns. The interesting question is, of course, how far these differences—in particular, the American reluctance to commit important decisions to administrative discretion—matter, and whether they prevent the effective use by planners in the United States of ideas originating, or at least more developed, in the United Kingdom.

106. See cases cited in C. HAAR, *LAND-USE PLANNING* 340-42 (2d ed. 1971).

107. Milner, *The Development Plan and Master Plans: Comparisons*, in *LAW AND LAND* 61 (C. Haar ed. 1964).

108. *Id.* at 63-66.

109. See Haar, *Regionalism and Realism in Land-Use Planning*, 105 U. PA. L. REV. 515 (1957). For a recent article on Florida's legislation to solve the problems of development with state-wide repercussions, see Finnell, *Saving Paradise: The Florida Environmental Land and Water Management Act of 1972*, 1973 URBAN L. ANN. 103.

A. The Proposed Florida Local Government Comprehensive Planning Act

This article, therefore, concludes with some tentative observations on the proposed Florida legislation, seen from the perspective of the lengthy survey of the post-war course of land planning legislation in England. The Florida Comprehensive Planning Act requires every county and municipality to prepare a local comprehensive plan to guide and shape development in the area concerned; other authorities covering areas with a smaller population have permissive powers to prepare such a comprehensive development plan.¹¹⁰ Counties and adjoining municipalities are encouraged to cooperate to prepare plans together for suburban areas;¹¹¹ this is a type of provision familiar to English planning lawyers since 1947, and is, of course, designed to deal with the whole host of suburban problems—some of them of regional importance which cannot adequately be handled by one authority acting alone. Section 6 of the proposed Act provides for the establishment by municipal and county governing bodies of local land planning agencies to prepare, recommend, and then, subsequent to its adoption, oversee and propose amendments to the comprehensive plan. This is to some extent in conformity with the American practice that has generally left the task of preparing the master plan to independent planning commissions, and often also given them power to adopt the plan.¹¹² Leaving the preparation and adoption of such plans to expert planners may lead to better plans, but it may be argued with some force that this delegation has in the past reduced the effectiveness of the plans when it comes to the crucial task of influencing the content of zoning regulations. It seems wiser, as the Florida legislation would do, to ensure that the final authority for adopting plans lies with the politically responsible councils and their governing bodies. It has certainly never been suggested in England that the responsibility for preparing development plans should be discharged by any body other than the local authority itself; although there are risks and weaknesses in this allocation of authority, it is surely correct to make representative, elected bodies responsible for the solution of planning problems rather than leave it all to experts who, acting alone, would be doomed to ineffectiveness.

One interesting provision is that the meetings of these planning agencies should be open to the public, necessitated not only by the

110. Fla. H.R. 2884, § 4 (Comm. Substitute 1974).

111. Fla. H.R. 2884 (Comm. Substitute 1974).

112. Milner, *supra* note 107 at, 71-75.

express provisions of the Act,¹¹³ but also by Florida's Government in the Sunshine Law.¹¹⁴ The intent of the Florida legislation to encourage public participation is also made clear by section 10, which imposes a duty on the governing bodies of all the relevant local authorities to establish procedures for effective public involvement in the planning process. The Act goes further than the equivalent English legislation in making it plain that consultation is to precede the selection by the council of a particular plan.¹¹⁵ The authorities also may establish advisory committees to help the official agency prepare the plan and to supervise the workings of plans which have been adopted; this provides another method of implementing the objective of full citizen participation, as yet not fully attempted in England.¹¹⁶ In this respect the American approach appears more advanced than the cautious English moves.

The comprehensive plan is to consist of "materials in such descriptive form, written or graphic, as may be appropriate to the prescription of principles, guidelines and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area."¹¹⁷ It seems, therefore, that it is for the municipality or county concerned to decide whether its plan is largely to consist of maps, filled out by commentary (as was the old-style development plan in England), or whether the written statement is to predominate, as it now does with the structure plan. As with the structure plan, the comprehensive plan is to be costed and, similarly, it is to contain a specific reference to the plans of adjacent municipalities or counties and to the state comprehensive plan.¹¹⁸ With regard to details, some elements of the comprehensive plans are mandatory and some are optional. The former elements include a land use plan; reference to traffic circulation problems and conservation needs; and proposals for recreation areas, housing programmes and, where relevant, coastal-zone protection. The projected plan, therefore, seems much more detailed than the structure plan, which has to refer to a number of similar features, but only to the extent thought necessary by the local authority.

113. Fla. H.R. 2884, § 6(2) (Comm. Substitute 1974).

114. FLA. STAT. §§ 286.011-.041 (1973).

115. Fla. H.R. 2884, § 10 (Comm. Substitute 1974) provides: "The procedures shall provide for broad dissemination of proposals and alternatives . . ." See pp. 429-31 *supra* for the English provisions.

116. The recommendations in the Skeffington Report, see note 57 *supra*, for the institution of community forums for the discussion of local authorities' proposed plans has met with a tepid response from the Department of the Environment. See Circular No. 52/72, Annex, ¶¶ 6-9.

117. Fla. H.R. 2884, § 8(1) (Comm. Substitute 1974).

118. See p. 428 *supra* for the similar English provisions.

On the other hand, in contrast to the structure plan, the Florida local comprehensive plan does not have to outline an action area for immediate development. But a "general area development element consisting of plans and programs for the redevelopment of slums and blighted locations in the area and for community redevelopment"¹¹⁹ is one of the optional elements. Others include provision for port and aviation facilities, off-street parking, and public buildings, such as public schools, hospitals and libraries.¹²⁰ These elements are the equivalent of the subject plans that the new district authorities, or perhaps the county authority under a development plan scheme, may prepare in England.¹²¹ A similarity with modern English planning requirements is the need for the Florida comprehensive plans to be based on surveys and studies. Overall the Florida comprehensive plan seems a much more rigorous and fuller document, with more mandatory detail, than its English equivalents. This is in many ways desirable, but the English experience before 1968 does show that plans can be too ambitious; too much can be attempted at one time, with the consequence that, in the end, little of use is accomplished.

After the land planning agency has prepared the draft, the local authority must hold a public hearing, and must send copies of the plan to the state land planning agency, the relevant regional agency and, where the plan is prepared by a municipality, to the relevant county. These authorities can then comment on the proposals. They may recommend changes and modifications, and the governing body for the authority concerned must reply to these comments. A second public hearing may be held at that stage. Ultimately, however, the county or municipality is free to adopt its plan despite the adverse reactions of the other bodies. There is, therefore, no equivalent to the Secretary of State's veto over the English structure plans; in America generally it is unusual for there to be that degree of centralised control over local zoning and planning regulations.¹²²

An important feature of the system established by the proposed Florida Act is the provision for the evaluation and appraisal of comprehensive plans. The local planning agency is charged with the duty of preparing periodic reports on the plan, and these are to be sent to the governing body of the municipality or county at least once every five years, but not for a period of two years after the adoption of the

119. Fla. H.R. 2884, § 8(6)(h) (Comm. Substitute 1974).

120. Fla. H.R. 2884, § 8(7) (Comm. Substitute 1974).

121. See p. 434 *supra* for the relevant English provisions.

122. The recent developments in the United States, where the states assume some control over development of state-wide importance or regional impact, are chronicled in Finnell, *supra* note 109, at 110-12.

plan or any amendment to it. The report must compare the results of the programme in the plan with its objectives, and it may suggest amendments to it.¹²³ In this respect the Florida law goes further than the English legislation, which provides only that the local authorities may submit amendments to their plans at any time after their adoption, though the Secretary of State can direct them to do so.

The great contrast with English planning, however, is with regard to the effect of the comprehensive plan on development in the area covered by it. In England, as has been seen,¹²⁴ the development plan influences, but is not determinative of the question whether planning permission should be granted or refused. Ultimately, the determination of planning applications is for the discretion of the local authority, which has to take into account all material considerations as well as the development plan. The Florida Act provides that the unit of local government shall not approve any developments or establish local land use regulations that are inconsistent with the comprehensive plan.¹²⁵ Thus, no building or zoning permit, subdivision approval, rezoning special exception or variance may be granted, unless its effect is in conformity with the comprehensive plan.¹²⁶ The consequences of this are, of course, first, to introduce a genuine requirement that zoning be done in accordance with a comprehensive plan, and be correspondingly less random. Secondly, and more importantly, the new scheme incurs the risk of a lack of flexibility with regard to applications for planning permits, which must now be determined on the basis of the plan. This rigidity seems surprising to an English observer; perhaps it is attributable to the American suspicion of administrative discretion, in particular a fear of the abuses which could occur if zoning boards were free to grant variances or exceptions for development which was not in accordance with the comprehensive plan.

To an English observer, the provision in the proposed Florida legislation, authorizing challenges to the reasonableness of the comprehensive plan in the courts, and allowing judicial consideration of the relevance of the plan to local authority development regulations,¹²⁷ seems odd. English planners and, perhaps surprisingly, many English planning lawyers, regard judicial review as an evil to be avoided; it may be recalled that there has never been a successful challenge in the courts to the validity of any development plan, a fact which is surely not attributable entirely to the quality of English planning or

123. Fla. H.R. 2884, §§ 13(2)(c), 13(3) (Comm. Substitute 1974).

124. See p. 419 *supra*.

125. Fla. H.R. 2884, § 14(1) (Comm. Substitute 1974).

126. Fla. H.R. 2884, § 14 (Comm. Substitute 1974).

127. Fla. H.R. 2884, § 14(3) (Comm. Substitute 1974).

the fairness of the public inquiry procedure. In the absence, however, of any central administrative control of local plans, and bearing in mind the consequences of the comprehensive plans for development applications, it is not surprising that such provision for judicial challenge is made. It will also be surprising, it is suggested, if it is not used frequently.

B. Conclusion

It will be fascinating to see the fortunes of the proposed Comprehensive Planning Act, both as it fares in the 1975 Florida Legislature and as it eventually may be applied by local governments and the courts. There is much to recommend the Florida effort to combine the new techniques of and approach toward planning adopted in the last few years in England with a comparative absence of administrative discretion in the plan's application to development control. The performance of the courts in carrying out the tasks implicitly conferred on them by the Act will be important. When considering the relevance of the plan to litigation concerning a development permit, the courts will be performing a role similar to that of England's Secretary of State for the Environment, who hears appeals from decisions of local authorities refusing planning applications. Those appeals often are made on the ground that the authority should not have applied its development plan so rigidly to the particular case.

What has been called "plan-informed" development control is now perhaps to be the accepted practice on both sides of the Atlantic, but the two systems still will not mirror each other precisely. As a leading American planning lawyer has said, "[I]t is the habit of giving the plan great weight, rather than any clear legal requirement, that differentiates the English and the American practice."¹²⁸ The constitutional and political traditions of the United States and England, with their divergent allocations of decision-making between courts and administrators, determine that, however similar their planning objectives may be, they will continue to be achieved in very different ways.

128. Hagman, Book Review, 59 CALIF. L. REV. 1579, 1584 (1971).