

# NEW DEVELOPMENTS IN BRITISH LAND PLANNING LAW—1954 AND AFTER

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## I

### HISTORICAL OUTLINE OF LEGISLATION—1909 TO 1947

The controlled development of land by authorities who were not necessarily the owners of the land they controlled started in England in the nineteenth century, which saw the beginnings of Public Health Law and of Housing Law. Both these codes of law were—and still are—of important but limited scope, and it remained for the twentieth century to bring forth enactments controlling in broader and more comprehensive fashion the way in which land could be used. These enactments, starting in 1909, constitute the Law of Land Planning which is now nearing its half century of existence.

#### A. The 1909 Act

Part II, entitled “Town Planning,” of the Housing, Town Planning, etc., Act, 1909,<sup>1</sup> is the first enactment in Great Britain to deal with the control of land use. Under that Act (Sec. 54) local authorities were empowered (though none were obliged) to make

a town planning scheme . . . as respects any land which is in course of development or appears likely to be used for building purposes, with the general object of securing proper sanitary conditions, amenity, and convenience in connexion with laying out and use of the land, and of any neighboring lands.

In this statutory provision is to be found the germ of that ever-growing legislative code which now requires that development of any particular piece of land shall be viewed from all aspects and be permitted only if it is not merely good in itself but is also good in relation to other land which nowadays no longer needs to be neighboring land.

On the old common law maxim, *sic utere tuo ut alienum non laedas* (the basis of the doctrine of good neighborliness), statutory planning, evolving as it has come down the years, has now built a great edifice controlling individual schemes of development for the benefit of the country as a whole. Indeed, so great is this edifice and so far-reaching its control, that there is a need, increasingly imperative, in a tightly populated island like Great Britain, to husband and put only to its best use the country's inadequate supply of land, which alone can justify either the edifice or the interference with the liberty of the individual inseparably associated with it.

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<sup>1</sup> 9 Edw. 7, c. 44.

In 1909 planned control of land use, within the limited ambit of the Act of 1909, was secured through the medium of a town planning scheme. A local authority had to receive the prior approval of the local Government Board before making a scheme and the scheme itself, when made, was subject to the approval of the Board.

By the Housing Town Planning, etc., Act, 1919,<sup>2</sup> the necessity of first obtaining consent of the Local Government Board to the making of a scheme was in most cases removed and, much more important still, the 1919 Act made it obligatory for certain local authorities with a population of 20,000 or more to make town planning schemes within a specified period.

Voluntary statutory planning was thus largely replaced by compulsory statutory planning, and the first hint of regional planning appeared in the provision of the 1919 Act, whereby two or more authorities might agree to act in concert through a joint committee for the making of a town planning scheme which would be broader and more comprehensive than any made by an individual authority acting alone.

#### B. The 1925 Act

In 1925, by the Town Planning Act of that year,<sup>3</sup> land planning first received an Act of Parliament exclusively to itself, the 1925 Act, repealing all earlier planning legislation, becoming the principal Act on the subject.

Notwithstanding increasingly lengthy enactments, it was, in 1932, still true to say that town planning law, generally speaking, was unable to touch the inner core of badly developed central areas (which were too late, so to speak, for planning control) nor, on the other hand, to catch the broad rolling acres of the countryside which were not yet regarded as ripe for planning control. Between these two extremes there was, of course, the fringe development of towns, and it was really only in areas of this kind, that is to say, in *suburban* areas, that planning control could effectively make its presence felt.

#### C. The 1932 Act—Town and Country Planning

This state of affairs was altered by the Town and Country Planning Act, 1932,<sup>4</sup> which projected planning control inwards towards congested central areas and outwards towards the rolling countryside, the very title of the new Act (The *Town and Country* Planning Act) indicating the widened scope of control. But if the 1932 Act, repealing all previous planning legislation, drastically widened the area over which planning control could be exercised, the exercise of that control became once again a purely voluntary matter for the discretion of those local authorities entitled to make planning schemes, because the 1932 Act repealed the statutory obligation, imposed on certain authorities in 1919, of preparing planning schemes within a limited period.

Under the 1932 Act the outstanding features of planning control could be summarized under four heads as follows:

<sup>2</sup> 9 & 10 GEO. 5, c. 35.

<sup>4</sup> 22 & 23 GEO. 5, c. 48.

<sup>3</sup> 15 GEO. 5, c. 16.

(1) Planning schemes were essentially local in character as is evidenced by the fact that they could be made by no less than 1441 planning authorities in England and Wales and by the further fact that the Minister of Health, exercising central supervision over the approval of such schemes, was not bound to look upon them with a breadth of vision any wider in its outlook than that of the scheme which was before him for approval.

(2) The exercise of planning control by the 1441 authorities previously mentioned was entirely optional and many of these authorities, by refraining from taking the necessary steps to make a planning scheme, failed to exercise any adequate control.

(3) Compensation was payable, subject to a variety of exceptions, by local authorities for injurious effects caused by restrictions contained in a planning scheme.

(4) Seventy-five per cent of the increase in value of land (*i.e.*, betterment) caused by the provisions of an operative planning scheme was (at least in theory) recoverable by the local authority responsible for carrying out the scheme.

Each of these four outstanding features was to receive legislative attention in the great impetus given by the devastations of the enemy during the war of 1939-1945.

#### D. The Two Acts of 1943

The year 1943 saw the passing of two short but highly important Acts. First, the Town and Country Planning (Interim Development) Act<sup>5</sup> of that year made the preparation of planning schemes obligatory, and effective planning control over all development anywhere in the country became immediately available under that Act. Second, the local character, so far inherent in all planning schemes, came to an end with the passing of the Minister of Town and Country Planning Act, 1943.<sup>6</sup> This Act established, for the first time, a Minister concerned exclusively with planning control, the new Minister being charged with the duty of "securing consistency and continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales."

It is really impossible to exaggerate the importance of these particular words. They show clearly two things: first, that the Minister is to have the last word on (at least) all matters of importance relating to the controlled development of all the land in the country; and, second, that the control is to be exercised in accordance with a national policy. Thus it is that planning decisions taken on a local or town basis from 1909, on a county or perhaps even a regional basis after 1929, now come to be taken on an even broader and more national basis after 1943.

#### E. The 1944 Act

The Town and Country Planning Act, 1944,<sup>7</sup> was in the nature of an ad hoc

<sup>5</sup> 6 & 7 GEO. 6, c. 29.

<sup>6</sup> 6 & 7 GEO. 6, c. 5.

<sup>7</sup> 7 & 8 GEO. 6, c. 47.

provision giving local authorities wider powers of compulsory purchase at 1939 values over land which was required for redevelopment as a whole in order to deal with the problems of "blitz" (areas of damage caused by enemy action) and "blight" (areas of bad layout or obsolete development), and the consequential relocation of population or industry from congested built-up areas.

In 1947 the legislative slate was again wiped clean by the Town and Country Planning Act of that year.<sup>8</sup> This monumental enactment drew for much of its content on the Barlow Report<sup>9</sup> of 1940, the Scott Report<sup>10</sup> of 1942, the Uthwatt Report<sup>11</sup> of 1942, and the Coalition Government's White Paper on the Control of Land Use<sup>12</sup> of 1944, though it never followed in their entirety the provisions of any one of these documents.

#### F. The Town and Country Planning Act, 1947—A New Beginning

The 1947 Act,<sup>13</sup> preserving the idea of planning on a national basis, strengthened the power of the Ministry towards that end; nationalized development values in all land, allowing claims by landowners for their loss of development value to be made on a total sum fixed at £300,000,000 (Part IV of the Act); and enacted that no development of land could take place without (a) planning permission (Part III of the Act), and (b) payment of a development charge representing the increase in value of the land arising from the development (Part VII of the Act). It followed from these provisions that if planning permission were refused, then except in a few cases no compensation was payable because no loss could be said to have been sustained by the landowner who no longer had vested in him the development rights in his land.

The planning provisions of the 1947 Act have, on the whole, worked well and no serious suggestion has been made for any substantial modification of them. On the other hand, the financial provisions (Part VI and Part VII) of the Act (whereby it sought to solve planning's vexed question of compensation and betterment) consisting of complementary provisions relating to (a) claims on the £300,000,000 Fund and (b) development charges, were severely criticized from many different quarters and on a variety of grounds including the following: Development charges destroyed a man's incentive to develop his land; the once-and-for-all distribution of the £300,000,000 Fund would have an inflationary effect on the country's economy; and the provisions were so complex that they were simply not understood by the man in the street and accordingly lacked the support of popular opinion without which no statutory provision could expect to succeed.

<sup>8</sup> 10 & 11 GEO. 6, c. 51. See CHARLES M. HAAR, *LAND PLANNING LAW IN A FREE SOCIETY* (1951).

<sup>9</sup> REPORT OF THE ROYAL COMMISSION ON THE DISTRIBUTION OF INDUSTRIAL POPULATION, CMD. No. 6153 (1939).

<sup>10</sup> REPORT OF THE COMMITTEE ON LAND UTILISATION IN RURAL AREAS, CMD. No. 6378 (1942).

<sup>11</sup> FINAL REPORT OF THE EXPERT COMMITTEE ON COMPENSATION AND BETTERMENT, CMD. No. 6386 (1942).

<sup>12</sup> THE CONTROL OF LAND USE, CMD. No. 6537 (1944).

<sup>13</sup> See note 8, *supra*.

## II

## THE WHITE PAPER OF 1952—NEW FINANCIAL PROPOSALS

Accordingly, much new thinking was given to the financial aspects of land planning. It was becoming increasingly clear that land planning and £.s.d. were interrelated matters and would have to go forward hand in hand or not at all. The importance of the financial side of the matter was emphasized in the Report of the Committee on Qualifications of Planners<sup>14</sup> (the Schuster Committee) which observed (para. 64):

We have shown how far-reaching the conception of town and country planning has become and how wide are the powers available to planning authorities; but what they can actually achieve will be subject to severe practical limitations. The existence of these limitations does not, however, mean that our conception of the scope of planning is invalid. What it does mean is that it will not work in practice unless the planning authorities take account of them. In fact the limitations serve to increase the responsibility of the authorities in relation to the determination of policies.

The Report also states (para. 65(5)):

Cost in fact must dominate positive planning, since there is no end to the improvements in environment which are ideally desirable. It is cost that sets the limit and when cost is ignored—as indeed appears to have been the case in some of the contemporary planning proposals—then planning is just so much waste paper.

Having once recognized that the financial aspects of land planning *do* exist and *must* be reckoned with, the next question was to consider the lines upon which they were to be treated. These were set out in the Government White Paper of November 18, 1953,<sup>15</sup> showing its Proposals for Amending the Financial Provisions of the 1947 Act.

The White Paper Proposals provoked a good deal of argument on all sides but if one excluded those proposals which related to the “unscrambling” of past things which took place between the commencement of the 1947 Act and the publication of the White Paper, the new Financial Proposals so far as they related to *future* transactions were reasonably simple. In effect they provided for not more than three things as follows:

(1) for the abolition of development charges in all development commenced on or after November 18, 1952;

(2) for stopping the once-and-for-all distribution of the 1947 Act's £300,000,000 Fund; and

(3) for the payment of *limited* compensation *if and when* a person was prevented from reaping the development value of his land either by

(a) being refused planning permission for the development of the land or having planning permission for its development granted subject

<sup>14</sup> CMD. No. 8059 at 18, 19 (1950).

<sup>15</sup> CMD. No. 8699 (1953).

- to restrictive conditions which go beyond the bounds of what is currently referred to as "good neighborliness"; or
- (b) by having his land compulsorily acquired by a public authority at the current existing use value of the land.

In either of the foregoing cases (a) or (b) the compensation payable was limited and would not exceed the amount of the claim (*if one had been made*) on the 1947 Act's £300,000,000 Fund in respect of the land which was affected.

In other words, the three things which the White Paper Proposals sought to do were:

- (1) to return the development value in land to the landowners;
- (2) to abandon further attempts at direct or ad hoc collection of betterment; and
- (3) to accept the principle of paying in certain cases limited compensation for (a) planning restrictions or (b) compulsory purchase of land at its current existing use value.

### III

#### THE TOWN AND COUNTRY PLANNING ACT, 1953

The proposals of the White Paper of 1952 have been translated into statutory effect by two legislative instalments. The first of these was the short Town and Country Planning Act, 1953,<sup>16</sup> which abolished development charges on all development on or after November 18, 1952 (the date of publication of the Government's new proposals in the White Paper of that date) and stopped the distribution (due, under the 1947 Act, to take place in July 1953) of the £300,000,000 Fund established under the 1947 Act to those who had successfully claimed on that Fund for loss of the development value in their land by virtue of the provisions of the 1947 Act.

### IV

#### THE TOWN AND COUNTRY PLANNING ACT, 1954

The second legislative instalment for translating into statutory effect the proposals of the White Paper of 1952, is the recently enacted Town and Country Planning Act, 1954,<sup>16a</sup> which received the Royal Assent on November 25, 1954, and came into operation for all purposes on January 1, 1955. It is a substantial and highly complex measure divided into six Parts and comprising in all seventy-two sections and eight schedules.

The relationship between the 1953 Act and the 1954 Act will be appreciated. The Uthwatt Committee had reported that proper control of land use would not work until something was done about the compensation problem inseparably associated with such control. The problem had been faced in the 1947 Act in Part VI and

<sup>16</sup> 1 & 2 ELIZ. 2, c. 16.

<sup>16a</sup> 2 & 3 ELIZ. 2, c. 72.

Part VII, each of which was complementary to the other. Part VI (dealing with claims on the £300,000,000 Fund) dealt with the compensation side of the problem and Part VII (dealing with development charges) dealt with the betterment side of the problem.

The 1947 Act had a strictly logical, theoretically perfect, and entirely dispassionate approach to the compensation-betterment problem, and it was found (though the point is not free from argument) that this approach, by and large, did not work, principally (it may well be submitted) because it took insufficient note of human nature which is not inherently addicted to doing anything for nothing, but, on the contrary, is prone to ask, "What do I get out of this?"

In consequence, a new approach to the problem was made. This was outlined (as already explained) in the White Paper of 1952 and made into law, first, by the Town and Country Planning Act, 1953 (which by abolishing development charges and thereby replacing Part VII of the 1947 Act, resolved the betterment side of the compensation-betterment problem by the simple expedient of giving it up), and, second, by the new Town and Country Planning Act, 1954 (which replaces Part VI of the 1947 Act and deals with the compensation side of the problem). Thus, just as Parts VI and VII of the 1947 Act were complementary, the one with the other, so equally are the two Planning Acts of 1953 and 1954.

The Act of 1947 is still the principal Act in land planning but its financial provisions are fundamentally altered by the 1953 Act and the 1954 Act. All these Acts may now be cited comprehensively as the "Town and Country Planning Acts, 1947 to 1954," and with the host of subordinate legislation in the form of regulations and orders made under them, these Acts form the planning code under which the use of land in England and Wales is now controlled (similar control is available in Scotland under the Town and Country Planning (Scotland) Acts, 1947 to 1954).

## V

### BASIS OF THE NEW SYSTEM OF COMPENSATION UNDER THE 1954 ACT

The 1954 Act provides a new system of compensation for (1) all planning restrictions on the development of land, and (2) the compulsory purchase of land by local and other public authorities. This new system of compensation is based on claims duly made on the £300,000,000 Fund established under Part VI of the 1947 Act, and formally assessed and admitted by the Central Land Board as entitled to satisfaction out of that Fund. In other words, the new system of compensation is based on all those admitted (*i.e.*, established) claims on the 1947 Act's £300,000,000 Fund which ought to have been paid out (under the provisions of the 1947 Act) in July, 1953, but which (under the provisions of the 1953 Act) never were.

The existence of an established claim on the 1947 Act's £300,000,000 Fund is, generally speaking, a condition precedent to participation in any of the benefits conferred by the 1954 Act. Thus, any person who was entitled to claim on the £300,000,000 Fund, but who, for one reason or another, failed to do so, will find

little in the Act (except in section 35 and Part IV of the Act) for him, and the Act reopens no doors in order to allow any of those who failed to claim on the £300,000,000 Fund now to do so. Provision is made, however, for an additional payment to be made in certain cases of compulsory purchase where a person failed or forgot to claim on the £300,000,000 Fund (§35). This additional payment is on an *ex gratia* basis and cannot be claimed as of right. It is later referred to more fully.

It is also to be noted that anyone who did remember to claim on the 1947 Act's £300,000,000 Fund and got his claim formally and finally assessed by the Central Land Board, only to find it excluded from any share in the Fund by reason of its being a "small claim" within the provisions of section 63 of the 1947 Act, will find that he is still excluded from any of the benefits of the 1954 Act.

## VI

### PAYMENTS FOR PAST DEPRECIATION OF LAND VALUES—PART I OF THE 1954 ACT

#### A. Payments in Reference to Established Claims

Part I of the Act provides for the making of "payments" for depreciation of land values caused by the coming into operation of the 1947 Act, such payments to be made by the Central Land Board by reference to established claims (claim holdings) on the 1947 Act's £300,000,000 Fund (1954 Act, §1).

Part I of the 1954 Act goes on to deal with those cases in which payments by the Central Land Board will be made in respect of past matters and events (other than past planning decisions which are dealt with in Part V of the Act), occurring between the commencement of the 1947 Act on July 1, 1948, and the commencement of the 1954 Act on January 1, 1955. These cases are as set forth below.

1. *Case A—Payment Where Development Charge Incurred.* Under this Case the holder of a claim holding is entitled to a payment by the Central Land Board if he has incurred a development charge in developing the land to which the claim holding relates or if his predecessor in title incurred such a charge (§3).

The amount of the payment will, generally speaking, correspond to the amount of the development charge (§3(4)), although it will not exceed the value of the claim holding (§3(3)).

Interest at 3½ per cent will be payable as from July 1, 1948, to the date when the payment under Case A is made by the Board or to June 30, 1955, whichever is the earlier (§14).

2. *Case B—Payment Where Land Compulsorily Acquired or Sold at a Price Wholly or Partly Excluding Development Value.* Under this Case the holder of a claim holding is entitled to a payment by the Central Land Board when the land covered by the claim holding has been either compulsorily acquired or sold between certain dates at a price (as, for example, an existing use price) which did not reflect the full 1947 development value of the land as shown by the amount of the established claim on the 1947 Act's £300,000,000 Fund (§5(1)).



No payment will, however, be made (§5(2)) under Case *B* where on a compulsory purchase or on a sale to a public authority possessing compulsory purchase powers, the purchase price of the land was calculated either (a) by reference to March, 1939, prices in accordance with the Town and Country Planning Act, 1944, or (b) on the basis of equivalent reinstatement. Moreover, compensation for disturbance, severance or injurious affection is not to be regarded as part of the purchase price (§6(1)(a)).

No payment will be made under Case *B* unless (§5(3)) the land to which it relates was either:

- (a) acquired by a public authority possessing compulsory purchase powers (§69(1)) under a notice to treat served, or a contract made, on or after August 6, 1947, and before the commencement of the Act; or
- (b) sold, otherwise than by a public authority with compulsory powers, pursuant to
  - (i) a contract made on or after August 6, 1947, and before November 18, 1952, or
  - (ii) an option granted on or after July 1, 1948, and before November 18, 1952.

The amount of the payment under Case *B* will be the value of the claim holding reduced by the amount of any excess which may have been paid over the existing use value of the land (§5(4)).

During the early years of the 1947 Act the Central Land Board and the Ministry of Town and Country Planning (now renamed "the Ministry of Housing and Local Government") sought to encourage sales of land at existing use value, that is to say, at prices which excluded all development value, the vendor retaining the claim on the 1947 Act's £300,000,000 Fund. Any vendor who followed this policy and who now holds the claim on the £300,000,000 Fund, will qualify for a payment under Case *B* of the 1954 Act.

Interest on the amount of payment under Case *B* will be paid as under Case *A* above (§14).

3. *Case C—Payment Where Land Given Away.* Under this Case the holder of a claim holding is entitled to a payment by the Central Land Board if he has disposed absolutely of the whole of his beneficial interest in the land affected by the claim holding otherwise than for valuable consideration (§7(1)) which latter does not include marriage or a purely nominal consideration (§69(1)).

The amount of the payment will be the full value of the claim holding (§7(3)), but no payment will be made unless the gift was made on or after July 1, 1948, and before November 18, 1952 (§7(2)).

Interest on the amount of the payments will be paid as under Case *A* above (§14).

4. *Case D—Payment Where Claim Holding Purchased.* Under this Case the holder of a claim holding is entitled to a payment by the Central Land Board if he purchased the claim holding for valuable consideration (§69(1)) or derives title to it from someone who so purchased it, the claim holding and the land to which it relates never having been held by the same person since the purchase was effected (§8(1)).

The amount of the payment will be the value of the claim holding or the amount paid for the claim holding, whichever is the less (§8(3)), but no payment will be made unless the purchase of the claim holding took place, or was in pursuance of a contract made, before November 18, 1952 (§8(2)).

Interest on the amount of the payment will be paid as under Case *A* above (§14).

5. *Payments to Successors in Title of Original Claim Holder.* A successor in title to a claim holding is entitled in certain circumstances to receive any payment which his predecessor, had he continued to be the claim holder, would have been able to receive under Case *A*, and Case *B*, or Case *C* (but not Case *D*) (§9). This provision will protect, *inter alios*, a mortgagee of a claim holding (§9(b)(ii)).

6. *Payments in Cases Analogous to Case B.* Payments may be made by the Central Land Board (or the Lands Tribunal on appeal) to the holder of a claim holding in certain cases analogous to Case *B* (§10).

7. *Residual Payments in Cases Analogous to Case A and Case B.* On application payments (reflecting the residue of the value of a claim holding) may be made by the Central Land Board to an applicant who is *not* the holder of a claim holding but who has bought or leased the land affected by the claim holding on terms which included some part of the development value of the land (*i.e.*, more than existing use value was paid) from an owner who retained the claim holding, the applicant having subsequently paid development charge or had his land bought by a public authority at existing use value (§11).

8. *Procedure for Claiming a Payment Under Part I of the 1954 Act.* Section 13 of the Act and the Central Land Board Payments Regulations, 1954, made thereunder prescribe the manner of, and the period for, making application to the Central Land Board for a payment under Part I of the 1954 Act. Applications must be made to the Board on or before April 30, 1955.

Where the decision of the Central Land Board on an application for a payment under Part I of the 1954 Act is disputed there is a right to appeal (within thirty days of the Board's decision) to the Lands Tribunal (§13).

The aggregate principal amount which can be paid on all applications relating to the same claim holding cannot exceed the value of the claim holding (§12).

9. *Effect of Payments under Part I on Claim Holdings.* Payments made under Part I of the 1954 Act go in reduction or in extinguishment (as the case may be) of the claim holding in connection with which they are made (§15).

## VII

COMPENSATION FOR PAST PLANNING DECISIONS AND PAST REVOCATIONS OR  
MODIFICATIONS OF PLANNING PERMISSIONS—PART V OF THE 1954 ACT

## A. The Right to Compensation

Part V of the Act deals with compensation to be paid by the Minister of Housing and Local Government for past planning decisions, already given between the commencement of the 1947 Act and the commencement of the 1954 Act, whereby land has been depreciated in value by reason of planning permission for its development having been refused or granted subject to onerous conditions (§§42, 43, and 26). Similarly the past revocation or modification of an earlier planning decision may have depreciated the value of land before the commencement of the 1954 Act, and here again compensation is payable by the Minister (*ibid.*).

The amount of compensation will depend on how much depreciation the land has sustained but it will never exceed the value of the claim holding affecting the land (§44).

Compensation under Part V will carry interest at 3½ per cent as from July 1, 1948, to the date of payment or until June 30, 1955, whichever is the earlier (§46(1)).

Claims for compensation under Part V of the Act must, in accordance with the Town & Country Planning (Compensation) Regulations, 1954, be made within six months of the commencement of the Act, but the Minister may extend this time in a particular case (§§45(1) and 22(2)).

## B. Exclusion of Compensation

The right to compensation under Part V of the 1954 Act is subject (§43(4)) to most of the limitations which apply under Part II of the Act relating to compensation in respect of future planning decisions (which are more fully explained later).

The Minister has the right to review any case in which compensation may be payable under Part V of the 1954 Act (§45(3)).

## C. Effect of Payment of Compensation under Part V on Claim Holdings

Compensation paid under Part V of the 1954 Act will go in reduction or extinguishment (as the case may be) of the claim holding in connection with which it is paid (§46(2)).

## D. Apportionment, Registration, and Repayment of Compensation under Part V

Compensation under Part V of the 1954 Act in excess of £20 will be apportionable, registrable, and liable to repayment or subsequent development of the relevant land as in the case of compensation payable under Part II of the Act relating to compensation payable in respect of future planning decisions (§46(4) applying §§28 and 29 of the 1954 Act) except that (as under Part IV of the Act) compensation for modification of an existing planning permission will not be recoverable on the subsequent carrying out of development in accordance with the modified permission.

## VIII

CONVERSION OF RESIDUE OF A CLAIM HOLDING INTO "UNEXPENDED  
BALANCE OF ESTABLISHED DEVELOPMENT VALUE"

Any claim holding, or any remnant of a claim holding, still remaining after claims under Part I and Part V of the 1954 Act (relating to *past* matters and events and to *past* planning decisions respectively) have taken effect becomes (together with an addition of one seventh of its value) attached to the relevant land and forms the "original unexpended balance of established development value" associated with the land (§17). This original balance sets the upper limit or maximum amount of compensation which can ever become payable under Part II and Part III of the 1954 Act relating respectively to future planning decisions and future compulsory purchases of land. The addition of the seventh represents approximately the interest (less tax) which would have been payable if the whole value of the claim holding had been paid out under Part I or Part V of the Act.

## IX

## COMPENSATION FOR FUTURE PLANNING RESTRICTIONS—PART II OF THE 1954 ACT

The 1947 Act, having expropriated for the state all development value in land, naturally made no provision for the payment of compensation on a refusal of planning permission for development or on a grant of permission subject to conditions (except when the development was within Part II of the Third Schedule to the 1947 Act, *i.e.*, was development falling within the ambit of existing use).

By the abolition of development charges by the 1953 Act development value was restored to land and accordingly the 1954 Act provides (subject to wide exceptions dealt with later) for the payment of compensation for planning decisions which prevent a person realizing the development value in his land.

## A. Two Codes for Compensation in the Future

After January 1, 1955 when the 1954 Act commenced, there are thus two codes of compensation. Which of the two codes will apply in any given case will depend on whether the development which is restricted is "existing use development" (*i.e.*, development falling within the ambit of the existing use of land or buildings) or is "new development" (*i.e.*, development which goes out and beyond the ambit of existing use).

If the development falls within the ambit of existing use (that is, if the development is of the kind mentioned in Part II of the Third Schedule to the 1947 Act) then on a refusal of planning permission compensation will continue to be payable under section 20 of the 1947 Act. If the restricted development is something outside the ambit of existing use then the development is termed "new development" (§16(5)) and is dealt with under Part II of the 1954 Act.

## B. Compensation for Planning Restrictions on "New Development"

For a planning restriction on "new development" compensation may be payable

under the 1954 Act (§19). It is a condition precedent to the getting of any compensation under the 1954 Act for planning restrictions that there shall be an unexpended balance of established development value (§§17, 18) for the time being attached to the land in question (§19(1)).

The amount of the compensation (if any) will depend on how far the affected land is depreciated by the planning restriction (§§25, 26, and 27), but will not exceed the amount of the unexpended balance of established development value for the time being attaching to the land (§25). Any compensation paid will go in reduction or extinguishment, as the case may be, of the unexpended balance attaching to the land (§18), and it may be added that as the object of the 1954 Act is to compensate only for development value which, owing to planning restrictions, becomes incapable of being realized, the value of any "new development" taking place on or after July 1, 1948, and not made the subject of a development charge, will also go in reduction or extinguishment of the unexpended balance (§18), the value of any such "new development" being calculated in accordance with the Fourth Schedule to the 1954 Act.

Claims for compensation under Part II of the Act must, in accordance with the Town & Country Planning (Compensation) Regulations, 1954, be made within six months of the relevant decision, but the Minister can extend this in a particular case (§22(2)).

### C. Exclusion of Compensation

There are many limitations on the payment of compensation which are to be found in sections 20 and 21 of the 1954 Act.

1. *Section 20.* Under this section compensation is excluded in a variety of cases.

*First*, there is no compensation payable on a refusal of planning permission for any development which consists of or includes the making of any material change in the use of land or buildings (§20(1)). As most applications for planning permission in built-up areas are for change of use, it follows that compensation will not often be payable in connection with such applications.

*Second*, there is no compensation on refusal of planning permission for the display of advertisements or on the grant of such consent subject to conditions (§20(1)).

*Third*, compensation is excluded where the reason (or one of the reasons) for the refusal of planning permission is because the application for permission is premature, having regard to either one or both of the following matters, namely:

- (a) the order of priority, if any, indicated in the development plan for the area in which the land is situated for development in that area;
- (b) any existing deficiency in the provision of water supplies or sewerage services, and the period within which any such deficiency may reasonably be expected to be made good (§20(3) and (5)).

The first ground may not always be available because development is not always

staged (or programmed) in all parts of a development plan. Moreover, a planning application cannot in any case be "stood down" on the ground of prematureness for more than seven years from the date when it was first refused on this ground (*ibid.*).

*Fourth*, there is no compensation on a refusal of planning permission to develop land liable to flooding or subsidence (§20(4)).

*Fifth*, there is a wide exclusion under section 20(2) (6) and (7) of the 1954 Act of compensation in respect of planning permissions which are granted but which have conditions (some of them severe) attached to them. These conditions relate to:

- (a) the number or disposition of the buildings on the plot of land affected by the planning application (thus, if application is made for houses at ten to the acre but only three are permitted no compensation will be payable);
- (b) the dimensions, design, structure, and external appearance of a building and the materials of which it may be constructed (this gives a very wide power of control: under it stone may be required in place of brick, the number of floors in a building may be limited, the ratio of the size of the floor area to the size of the building plot may be reduced as the planning authority require; all these things may or may not make a building an uneconomic proposition in the eyes of the developer, but whether they do or not compensation is not payable on their being imposed as planning conditions);
- (c) the layout of land including provision of facilities for the parking, loading, unloading or fueling of vehicles (under this basement car parks can be required in buildings without liability for compensation);
- (d) the use of buildings or of land without buildings (this is a very broad exemption of liability for compensation, covering as it does the important matter of use zoning as shown in development plans);
- (e) the location or design of a means of access to a highway or the materials of which it may be constructed;
- (f) the mining or working of minerals.

There is a good deal in section 20, and particularly in section 20(2), of the 1954 Act which is based upon section 19 of the Town and Country Planning Act, 1932, which sought to exclude payment or compensation for injurious effects caused by the coming into force of a variety of provisions set out in a town planning scheme made under the 1932 Act. There were, however, many safeguards in section 19 of the 1932 Act which were calculated to temper the rigor of the section. By and large, section 20 of the 1954 Act contains the stings of section 19 of the 1932 Act with none of the safeguards.

2. *Section 21.* Under section 21 compensation is not to be paid on a refusal of planning permission "if, notwithstanding that refusal, there is available . . . planning permission to which this section applies," and section 21 applies to—

any development of a residential, commercial or industrial character, being developed which consists wholly or mainly of the construction of houses, flats, shop or office premises or industrial buildings (including warehouses), or any combination thereof.

The object behind this section was explained in the House of Commons by the Minister of Housing and Local Government, who said<sup>17</sup> that the section provides that:

. . . compensation is not to be payable for refusal to allow one kind of development, let us say industrial, if another kind, let us say commercial or residential, is allowed. The principle is that, provided some reasonably remunerative development is allowed, the owner is not entitled to compensation because he is prevented from exploiting his land to the most remunerative development position.

#### D. Review of Planning Decision by Minister

Whenever the planning decision of a local planning authority gives rise to a claim for compensation the Minister may review the planning decision and, if he so desires, may vary it so as to avoid the payment of compensation (§23).

Section 23, in giving the Minister the final say on whether or not compensation is to be paid, is only reaffirming the power already given to him under the Minister of Town and Country Planning Act, 1943, of having the last word on planning (whether or not matters of compensation are involved) by reason of his being charged under that Act of 1943 with the "duty of securing consistency and continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales."

So much compensation is excluded by sections 20 and 21 of the Act that it may well be that the Minister will not frequently have to consider using his powers of review under section 23 for the purpose of avoiding liability for compensation.

#### E. Apportionment, Registration, and Repayment of Compensation

When an award of compensation exceeds £20 it will be apportioned among different parts of the relevant land in accordance with the manner in which such parts are affected by it (§28). The amounts charged to each part of the land will be registered in the register of local land charges (*ibid.*) and will thereafter become a charge on the land to which they relate.

It is most important for any purchaser of land on which compensation exceeding £20 has been paid to note that if, later, he wishes to carry out "new development" (§16(5)) on that land by—

- (a) the construction of residential, commercial or industrial buildings (§29(2)(a)); or
- (b) the mining or working of minerals (§29(2)(b)); or
- (c) any other form of development which is in the Minister's opinion of such value to warrant the requirement (§29(2)(c));

<sup>17</sup> 525 H. C. DEB. 56 (5th ser. 1954).

then he must first *pay back* the compensation or so much as is attributable to the area of land which he seeks to develop (§29(1)). Any sum so repaid will be restored to the unexpended balance of established development value for the time being attaching to the land (§29(9)).

The Minister, however, has power to remit any such repayment in whole or in part in any case where proper development of the land is unlikely to be carried out if it is not remitted (§29(4)).

## X

### COMPENSATION ON FUTURE REVOCATION OR MODIFICATION OF PLANNING PERMISSION—

#### PART IV OF THE 1954 ACT

##### A. The Right to Compensation

A planning permission once granted can in certain circumstances be later revoked or modified under section 21 of the 1947 Act, in which case compensation under that Act may be payable (1947 Act, §22) for abortive expenditure and loss or damage. No compensation was, of course, payable under the 1947 Act for depreciation in the value of land caused by revocation or modification, by reason of the fact that under the 1947 Act land contained no development value, such development value as it previously held having been expropriated by the 1947 Act to the state.

It was the 1953 Act which, by abolishing development charges, restored development value to land and, in consequence, the 1954 Act enlarges the right to claim compensation from the local planning authority on any revocation or modification (taking place after the commencement of the 1954 Act) of some earlier planning permission (whether granted before or after the commencement of the 1954 Act) so as to permit a claim for depreciation in value to be made (§38), and the scope of section 22 of the 1947 Act is widened accordingly. This enlarged compensation under Part IV of the 1954 Act may be claimed in respect of any land whether or not there is an unexpended balance of established development value attaching to it.

##### B. Apportionment, Registration, and Repayment of Compensation

Any compensation exceeding £20 will, where it is practicable so to do, be apportioned among the various parts of the land affected (§39), will be registerable as a local land charge (*ibid.*), and will be recoverable by the Minister on the subsequent carrying out (1954 Act, §41(1), applying §29) of "new development" of a kind to which section 29 of the 1954 Act applies (as to which see §29(2)). The Minister may, however, remit the recovery of the compensation in whole or in part (§41(1), applying §29).

Any compensation recovered by the Minister is payable by him to the local planning authority by whom the compensation was paid in the first place (§41(2) and (3)).



## XI

COMPENSATION ON FUTURE COMPULSORY PURCHASE OF LAND—  
PART III OF THE 1954 ACT

## A. Private Purchases at Market Value

The abolition of development charges by the Town and Country Planning Act, 1953, had the effect of returning to land-owners the development value of their land. Thus after the commencement of the 1953 Act on May 20, 1953, it became possible for a landowner to sell not only the existing use value of his land but its development value as well.

So far as the compulsory purchase of land was concerned the law as to the compensation to be paid by the acquiring authority remained as provided under Part V of the 1947 Act (*i.e.*, the compensation was existing use value only) until the coming into force of Part III of the 1954 Act on January 1, 1955.

## B. Compulsory Purchase at Existing Use Value Plus 1947 Development Value

Part III of the 1954 Act amends this by providing that after the commencement of the 1954 Act (§30) there shall be paid on any compulsory purchase of land not only its existing use value current at the date of the notice to treat (in accordance with the 1947 Act) but also the 1947 development value of the land as evidenced by the unexpended balance of established development value (if any) attaching to the land at the date of the notice to treat (§31 and the Fifth Schedule).

Additional compensation on compulsory purchase is also payable under the 1954 Act where since July 1, 1948, expenditure has been incurred on certain works which have planning permission (§32).

When the compulsory purchase relates to certain special classes of land on which there does not exist, and could not exist, any established claim on the 1947 Act's £300,000,000 Fund for the simple reason that such land was precluded by the 1947 Act itself from participating in that Fund, then the 1954 Act provides (§34) that the compensation payable on compulsory purchase not merely shall be existing use value of the land at the date of the notice to treat but shall also include the benefit of certain planning permissions which have either been granted expressly, or are deemed to have been granted, for its development. These special classes of land are itemized in the Sixth Schedule to the 1954 Act.

Complex provisions are included in the 1954 Act (§36) amending the basis of compensation for severance, injurious affection, and disturbance.

## C. Hardship Cases—the Case of Mr. Pilgrim

For the purpose of removing hardship special provision has been made in section 35 of the 1954 Act for an additional payment (on an *ex gratia* basis and not demandable as of right) where on a compulsory purchase of land it is found that for one reason or another no claim on the 1947 Act's £300,000,000 Fund was made. Section 35 was added at a late stage by the House of Lords after the Act had

passed through the House of Commons, the latter Chamber subsequently confirming the Lords' additions. The section, known as the "Pilgrim Section," derives from the case of one Mr. Pilgrim who, having paid £500 in the open market in 1950 for a plot of land adjoining his house, later had it compulsorily acquired from him by a local authority acting under the 1947 Act for the sum of £65 (its existing use value), *no claim on the 1947 Act's £300,000,000 Fund for loss of development value ever having been made*. In these circumstances Mr. Pilgrim committed suicide, a fact very fully reported and pointedly commented upon in both technical and popular press.

Whether any such additional payment as is allowed by section 35 will be made will depend on the merits of each case. It will not be paid in any case unless it can be shown that a claim on the £300,000,000 Fund would have been established if it had been made. If this can be shown, then an additional payment calculated by reference to the unexpended balance of established development value of the land, *must* be paid *unless*, in the opinion of the "appropriate authority" (§35(3)), it is not "just and reasonable" that it should be paid, either in whole or in part (§35(2) proviso).

#### D. Effect of Payment

The paying of the whole or part of any unexpended balance of established development value on the purchase of land has the effect of extinguishing or, as the case may be, reducing the amount of that balance (§37).

Any public authority interested in knowing whether in fact there is any unexpended balance of established development value for the time being attached to land which it is proposing to purchase may on demand ascertain information about this from the Central Land Board (§49).

#### E. The Two Rates of Compensation—Consequential Protection for Prospective Private Purchasers

One of the difficulties arising from the two rates of compensation (the private rate and the public rate) is that a private person may buy a plot of land at full market value and before he has had time to develop the land (thereby raising its existing use value) find his newly bought land compulsorily acquired from him at a rate which, excluding all post-1947 development value, is less than he has paid for it. It is the object of section 33 of the 1954 Act to meet this situation.

Section 33 provides that a private prospective purchaser of land can, by application in writing, require the local county borough council, non-county borough council, urban district council or rural district council to serve on him a notice within twenty-eight days stating whether or not—

- (a) the council propose to acquire the land (compulsorily or otherwise) within the next five years, or
- (b) the council have been notified by a public authority possessing compulsory purchase powers that that authority proposes so to acquire the land within the next five years.

If the notice which the local council give discloses a negative answer on each of the foregoing points, then, provided the prospective purchaser completes, or enters into a *bona fide* contract for, the purchase of the land, and gives notice of the completion or of the contract to the local council within three months of receiving the local council's notice with the negative answers, he will receive some protection if, before the end of five years from the service upon him of the local council's notice, his land is compulsorily acquired.

The protection which is given in a case in which all the foregoing requirements are satisfied is that if the land is acquired compulsorily within the five-year period, there will have to be paid for it not the current existing use value of the land plus its 1947 development value, but the value of the land with the benefit attached to it of any planning permission already granted and still in force at the time of the service of the local council's protection notice with the negative answers.

For any notice which it serves the local council may charge a fee of 5s. (§33(4)), and if they fail to serve a notice within the statutory twenty-eight days they are deemed to have served a notice with negative answers (§33(3)).

## XII

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS—PART VI OF THE 1954 ACT

The 1954 Act contains in Part VI some important provisions of a miscellaneous nature.

Information as to the amount of the original unexpended balance of established development value of any land can be obtained on application to the Central Land Board for a fee of 5s., or, in a case where the giving of this information requires the making of a new apportionment, for a fee of 15s. (§48), and public authorities can be given precise information as to the amount of any unexpended balance for the time being attaching to any land (*ibid.*)

A new system of exchequer grants to local authorities is provided by the enacting in section 50 of the 1954 Act of a brand new section 93 for the 1947 Act. Under the new system there will be a general grant at the maximum rate of 50 per cent of the costs, excess or expenditure in relation to which the grant is calculated. In the case, however, of grant paid in connection with the acquisition of land as a public open space, a last-minute amendment of the Act has provided that the maximum rate of grant may, at the discretion of the Minister, exceed 50 per cent, but not 75 per cent.

It is important to note that payments already made or yet to be made, in relation to war-damaged land under section 59 of the 1947 Act and the Planning Payments (War Damage) Scheme, 1949 (No. 2243), are, if over £20 and no development charge has been incurred, to be registered against the land as a local land charge and will be repayable with the interest paid thereon, on the subsequent carrying out of any kind of "new development" (§57). This is clearly a point which purchasers of land for development must now bear in mind.

Section 59 of the new Act contains important provisions relating to planning

permission for industrial development and affects section 14(4) of the 1947 Act. Section 63 of the new Act provides for the ultimate dissolution of the Central Land Board and section 70 removes certain doubts relating to the right to receive confirmation by the Minister of a purchase notice served under section 19 of the 1947 Act by making it clear that in considering whether land has become incapable of reasonably beneficial use, attention must be paid to the land in its existing state and not to any potential development value which it may happen to have.

### XIII

#### COMMENT

The 1954 Act has been termed a compromise attempt (because there is no perfect solution) at dealing with the compensation-betterment problem of land planning. It is a compromise because, on the one hand, it makes no further attempt at the direct or ad hoc collection of betterment (such attempts having failed under the 1932 Act), while on the other hand, it provides for the payment of limited compensation on the imposition of planning restrictions on development.

There can be no doubt that it is the lack of any further attempt at the ad hoc collection of betterment on the one hand, and the "pegging back" of development values in land to 1947 on the other, which form at once the main basis and the controversial features of the 1954 Act.

#### A. As to the Abandonment of Betterment

So far as betterment is concerned it may be useful to draw attention to the great cleavage of development values which occurred in 1947 as between development values accruing before January 7, 1947 (the date of the introduction as a Bill of the 1947 Act), and development values accruing on or after that date. The midnight of January 6-7, 1947—the moment of Betterment's Great Divide—was a moment fraught with import as much for the 1954 Act as it was for the 1947 Act.

The new Act does not, as has been suggested, throw betterment completely to the winds because it has provided that the community, whenever it wants them, shall be in a position to acquire for nothing all the increase in value (*i.e.*, betterment) accruing to land since January, 1947, by reason of the fact that the community never has to pay for any such betterment whenever—

- (1) a planning decision is given which prevents an owner realizing some or all of such betterment, or
- (2) land is compulsorily acquired for public improvements as, for example, roads, schools, houses, open spaces, and so forth.

Indeed, the only development values in land which, under the new Act, are lost to the community are those which accrued before 1947, and even these are not completely lost because they will never have to be paid for in the case of any land on which a person failed or forgot to establish a claim on the 1947 Act's £300,000,000 Fund. There is one exception to this and that is the *ex gratia* payment to be paid

(but only in certain instances) under section 35 of the new Act in connection with the compulsory purchase of land.

It may be admitted that under the 1954 Act while money flows out of central funds by way of limited compensation in certain cases, nothing is to flow into central funds by way of betterment. In view of this, some have argued that the new Act merely restores the compensation betterment problem as it existed under the Town & Country Planning Act, 1932. This, however, is not correct, because it is to be remembered that betterment is of two kinds and the only kind which the 1947 Act sought to collect was the kind created by the developer himself in carrying out development of his land. The *full* amount of this increase in value of land, caused by the sweat of the developer's own brow, was "creamed off" in the form of a 100 per cent development charge, no allowance being made for the risks and hazards borne by the developer in carrying out his scheme of development.

A very different, and much more controversial, type of betterment is embodied in the rise in the existing-use value of land caused by neighboring public improvements or by scarcities or by other entirely extraneous matters not associated in any way with the efforts of the landowner himself. This type of betterment was left untouched by the 1947 Act which made no attempt to collect it. Indeed, it may be said that one of the prime troubles of the 1947 Act stemmed from the psychological blunder which it made of attempting to collect that particular kind of betterment which, above all other kinds, should have been left to the developer himself.

Accordingly, in comparing the new Act in so far as it touches (or rather fails to touch) betterment, with previous efforts at collecting betterment, care should be taken to draw a fair comparison. In other words, if under the 1954 Act that type of betterment which is embodied in a rise in the existing-use value of lands is thrown away, then it is to be remembered that the 1947 Act also threw it away.

Moreover, the powers of compulsory purchase by public bodies have never been wider than they are today and the White Paper of 1952 threatens (in case of need) to make them wider still. In view of all this, and of the further fact that compulsory purchase of land is to take place on terms which ignore all development values accruing on or after January 7, 1947, the question may be asked—is the case for the ad hoc recovery of betterment anything like the case it was? Those who are still arguing this case should remember three things: first, that there was a good deal of betterment which the 1947 Act itself abandoned as hopeless to recover; second, that the 1954 Act involves the pegging-back of development values to what they were in January, 1947 (a pegging-back which will become progressively drastic in effect as the development value of, for example, undeveloped land continues to rise after 1947); and third, that experience under the 1932 Act as well as the 1947 Act has shown that betterment is, in any event, and on any showing, easier to claim than to collect.

### B. As to the Payment of Limited Compensation

But if the new Act abandons all further attempt at the ad hoc collection of betterment, it has, on the other hand, severely limited the amount of compensation payable for planning restrictions.

Under the 1932 Act compensation for planning restrictions was payable by local planning authorities out of local rates and the total amount potentially payable on the whole country was entirely at large. Many local planning authorities (especially the poor ones) were unable to give planning decisions which were completely uninfluenced by the fear of having to face compensation out of local rates.

The 1947 Act removed all liability for compensation from local planning authorities by providing a sum of £300,000,000 to be used in a once-for-all settlement for the nationalization of all development values in all the land in Great Britain, after which settlement no problem of compensation could ever arise. The distribution of this sum was stopped (as has been mentioned) by the 1953 Act and the 1954 Act provides that there shall be no such once-for-all payment as was envisaged by the 1947 Act, but that compensation for planning restrictions shall (subject to many exceptions) be met (as it was, in effect, to be met under the 1947 Act), out of central funds (*i.e.*, out of national taxes and not local rates) but only *as and when* the "pinch" of planning is felt. The total figure payable by way of compensation becomes a known, finite figure because it is related to the claims made and established on the 1947 Act's £300,000,000 Fund. Thus the total *possible* amount of compensation payable under the 1954 Act is about £350,000,000 this being approximately the total of all the established claims under the 1947 Act. But the total *probable* amount of compensation payable under the 1954 Act is obviously going to be much less than £350,000,000 because it is to be remembered that no part of this total figure will ever be paid unless and until the "pinch" of planning is felt by a landowner, either by his being refused planning permission for development, or by having his land compulsorily acquired at its current existing use value. Indeed, the full amount of £350,000,000 will clearly never be paid at all and the figure which the Government have in mind as being the one likely to be paid out over an indefinite period of time is around £100,000,000, that is to say, £200,000,000 less than the 1947 Act provided should be paid in 1953.<sup>18</sup>

The payment of compensation if and when "the pinch" of planning is felt (for example in 1977, if that is the date on which the relevant planning restriction is imposed) by reference to development values as they existed in 1947 is a proposition which has never previously been tried. The White Paper of 1952 did not seek to suggest that this proposition was a perfect solution and the applicant who, in 1977, is refused planning permission and is then paid in money values as they existed 30 years earlier in 1947, may well find himself in agreement with the White Paper on

<sup>18</sup> See the remarks of Parliamentary Secretary, Ministry of Housing and Local Government: "We intend only to pay about one-third of that [£300,000,000] sum by instalments." 508 H.C. DEB. 1229 (5th ser. 1952).

the point. Nevertheless, in the absence of a perfect solution, the White Paper claimed the new arrangements, as now embodied in the 1954 Act, to be the best under all the circumstances.

So far as compensation and betterment are concerned, it would, on reflection, appear arguable that the 1954 Act is not so much in danger of becoming burdensome to the community by reason of the fact that it fails to collect betterment, as it is of becoming burdensome to the private individual owing to its rigorous exclusion of compensation for planning restrictions which preclude a man from realizing the development value of his land. In short, under the 1954 Act the position of the man who gets planning permission is rosy enough, but things are not by any means so good for the man who is refused permission. The object of the financial provisions of the 1947 Act was to even things up as between the lucky man who got planning permission and the unlucky man who failed to get it and it must be admitted that the provisions of the new Act are by no means calculated to achieve this end. On the contrary, the new Act tends to pinpoint the bad luck of the man who, in the public interest, is refused planning permission as against him who is fortunate enough to get it. The danger here is that planning authorities (being human after all) may be sorely tempted into giving planning decisions on a sympathetic basis rather than on a dispassionate assessment of what good planning, in the circumstances, requires.

### C. Conclusion

The position, summed up, appears to be this. Betterment collection is, and always has been, fraught with difficulties. The last attempt at this collection (through the medium of development charges) appeared to be hated generally and was abandoned, to the delight, or so it seemed, of everyone. But this having occurred, it is difficult to see how the new Act could fail to peg back development values to 1947, thereby relieving the community from having to pay for post-1947 development values whenever it wanted to plan land or to acquire land compulsorily, in the public interest. Those who are prepared to accept, on the one hand, the abandonment of betterment through the abolition of development charges and yet continue to press, on the other hand, for full compensation for all planning restrictions, should remember that what they are really asking for is the putting back of the planning clock, not to 1947 and not even to 1932, but to something much earlier than that. They are, in fact, completely shutting their eyes to the fact that, as the Uthwatt Committee reported, there *does* exist a compensation-betterment problem indissolubly associated with land planning and that without its solution control of land use cannot be properly carried out.

The 1932 Act never properly faced the problem. The 1947 Act faced it dispassionately and logically and made a valiant though abortive attempt to solve it. The 1954 Act steers a middle course between the 1932 Act and the 1947 Act. Less logical than the 1947 Act, it nevertheless avoids the theoretical excesses of the earlier Act

and although by no means perfect from every point of view (it is admittedly a compromise), it does not necessarily follow that it will not work in practice or that it is bound to be swept away after a short period of years. Indeed, whenever prophecies are heard of the early demise of the 1954 Act, it would appear permissible to ask this question—if the principles of the 1932 Act did not make a genuine effort to solve the compensation-betterment problem of land planning, and if the principles of the 1947 Act valiantly tried to do so but failed, and if the new principles embodied in the 1954 Act are also to fail, what then are the principles on which this vexed question can be solved?