IV. THE TOWN AND COUNTRY PLANNING ACT OF 1947

A. Introduction

Like most legislation dealing with property, the 1947 Town and Country Planning Act is extremely complex. It comprises over 200 pages, 120 sections, and 11 schedules; in addition, a great number of regulations which were necessary to the operation of the act have been issued and these alone now total over 300 pages.

The act repeals all former planning law and several other statutes which, although closely connected with planning law[66], had not previously been included in planning acts. Some parts of the repealed legislation were re-enacted by the 1947 Act, a process which, although clumsy, does achieve the laudable purpose of putting all the relevant law on the topic within the covers of a single document. In dealing with the complexities of the act, it is useful to keep in mind three main objectives which the act was attempting to achieve. Although it is difficult at times to relate all parts of the act to one or other of these objectives, the following three aims underlie most of the act's provisions: (1) All development was subject to control. No development was to be carried out without the permission of the local planning authority unless a successful appeal to the Minister from an unfavorable decision of the local planning authority was taken; (2) all development rights in land were forthwith vested in the State. This facilitated the State's control over land usage. It followed from this that if development were allowed, a payment (known as a development charge) had to be made by the developer to the State. However, Parliament had no intention of confiscating development rights in land, and in every case where an owner of land could show that his land had development value, he was to be compensated for its loss; (3) compensation for compulsory acquisition by local authorities was to be for the existing use value of the land only, that is, the value the land would have if it were always to be used as it was before the compulsory acquisition. The powers of local authorities to acquire land compulsorily were also increased.

In order to achieve these ends, the act invests considerable power and responsibility in the Minister of Town and Country

66. See, for example, Restriction of Ribbon Development Act, 1935, 25 & 26 Geo. 5, c.47.

Planning and the Central Land Board. The nature of these two institutions deserves some study, since they are vital to the operation of the Act.

1. The Ministry of Town and Country Planning

Until 1942 the Minister responsible for the implementation of the Town and Country Planning Acts was the Minister of Health. In 1942 the newly created Ministry of Works and Planning took control, but the Minister of Town and Country Planning Act, 1943,[67] created a new office whose incumbent was to concern himself solely with planning matters. Prior to this time, the Minister responsible for planning had always had some other major function to supervise, and planning was largely a part-time responsibility. The Ministry of Town and Country Planning was created in anticipation of the 1947 Act, which it was clear would require the full-time attention of a Minister. Thus, from obscure beginnings as an irregular offspring of the Ministry of Health, planning rose within the space of thirty years to full departmental status in the government. In 1951 the title of the Minister was again changed to that of Minister of Local Government and Planning; later the same year, the name was again changed—this time to Minister of Housing and Local Government. There can be no doubt that political considerations played some part in this confusing process; in any event, the planning powers possessed by the gentleman who held the office, by whatever name he might be known, were the same throughout the post-1947 period.

The department for which the Minister is responsible is divided into three branches: the headquarters administration in London, the headquarters technical directorate, and the regional organization. The technical staff includes a research group, a staff of town planning experts, and a corps of inspectors whose role is to conduct public hearings upon orders of the Minister. Although the act gives the Minister considerable personal discretion in the exercise of the powers, in practice he usually relies on the advice of his experts. The Minister's main functions are to formulate major policy decisions and to justify the government's planning policy in the House of Commons.

2. The Central Land Board

The Central Land Board was created by the 1947 Act and was charged with the function of assessing and collecting the

67. Minister of Town & Country Planning Act, 1943, 6 & 7 Geo. 6, c.5.

development charge levied whenever development was carried out. The Board also administered the fund of government moneys to be paid out to owners of property whose interests had been adversely affected by the operations of the act. It was in no way responsible for planning policy, its concerns being purely financial. After the 1954 Town and Country Planning Act its role changed somewhat, but it was still concerned solely with the financial aspects of planning.

3. The Act and Local Authorities

The ambitious aim of the 1947 Act to place all land in the country under planning control obviously could not be achieved without the assistance of local authorities. Conceivably the conscription of an army of planners in London and a completely centralized planning program would have been possible, but such a scheme had never been recommended and would have been most unlikely to succeed. Instead, the prime responsibility for planning was placed upon the local authorities. However, the act draws a sharp distinction between local authorities and local planning authorities. Until 1947 such planning as there was had been controlled by the urban and rural district councils and by the boroughs. In other words, the lower tier of local government units had been deciding planning problems. For various reasons, it was decided that this was not a desirable arrangement. First, these councils seldom devoted much time to their work and tended to be rather amateurish in their approach. Their record in using the powers which had previously been conferred upon them was not such as to inspire confidence. Second, they lacked the financial resources necessary to adequate planning; merely in order to fulfill the requirements of the act with regard to the drafting of development plans, the services of a staff of surveyors, valuers, and other experts would be required.

In order to solve these problems, the planning function was transferred by the act to the county councils. These bodies, used as they were to handling the important services (e.g., education), had the necessary financial support and also were composed of persons whose interest in local government and whose governmental acumen exceeded that of the district councils. This move also reduced the number of planning authorities from 1,441 to 145, and thus greatly facilitated problems of coordination. The county boroughs still maintain their jurisdiction over planning matters within their boundaries; therefore, the term "local planning authorities" refers to the county councils and the county borough councils.

The planning function and the various duties assigned to local planning authorities by the act are the responsibility of the council as a whole. But, as in other matters, the function is delegated to a committee of the council. The council in most cases hires professional planners, architects, surveyors, etc., to advise them, but the final decision will always rest with the council as a whole. The local planning authority, therefore, is not directly under the control of Parliament because it is a committee of the locally elected council. This is not to say that it can take matters entirely in its own hands. For instance, it cannot abdicate its responsibilities and refuse to plan for its neighborhood on the ground that it is politically opposed to planning. The act makes it the duty of every local planning authority (henceforth referred to as the LPA) to draw up detailed plans for its area. These plans are subject to the approval of the Minister. Various decisions will have to be made by the LPA in the implementation of these plans, but in every case there is the right of appeal to the Minister, whose decision on the matter is in most cases final. (Occasionally, the courts will have some power to adjudicate the matter, but the act in general gives little power to the courts.) Moreover, the Minister has from time to time issued circulars to LPA's indicating what the national policy on a given matter is to be. Naturally, the LPA must follow this policy pronouncement, for the Minister will presumably overrule all decisions of the LPA which are not in accord with it.

Provision is expressly made in the act for a LPA to delegate to a district council the planning powers over the area under the jurisdiction of that district council. For example, a predominantly rural county may contain one large industrial city which is not a county borough. In these circumstances it would be folly for the county council to attempt to plan for the city; as a practical matter, it is more prudent in such circumstances to let the city plan for itself. Such delegations have in fact taken place, and the Minister can order a county council to delegate its planning powers if he feels this to be necessary. In certain other fields coordination among LPA's, by means of joint planning boards, is compulsory (e.g., where an area denominated as a national park contains portions of one or more LPA'S areas.) It is also open to any two or more LPA's to create a joint planning committee voluntarily in order to coordinate their respective planning activities.

4. Survey of the New System

With the passage of the 1947 Act, all the old law was

repealed, all the operative schemes under previous acts were to come to an end on a day fixed by the act, and all interim planning control was to cease. In its stead, complete planning control was vested in the LPA's. Their permission was required for all development, whether in town or country, whether or not the development was in accord with the development plan, and whether or not the development had been permitted by previous schemes. They were required to establish development plans, to be approved by the Minister, which were to be available for public inspection. Roughly, these plans were to show the LPA's future developmental schemes for the area. However, it was not intended that the plan should be binding; it was merely to act as a guide to potential developers as to what the LPA's decisions in this particular case might be. The act thus deemphasized the importance of the development plan, as compared to the previous schemes, which, once formulated, were binding on the planning authority.

Secondly, as a result of the vesting of all development rights in the State, the compensation aspects of planning were radically changed. No compensation would be payable for a refusal of permission to develop (technically styled by the act as "planning permission") although compensation would be paid under the act to every owner of land who could prove he had sustained substantial loss as a result of the operations. Since the act was aimed at removing the "compensation bogey," which had been the chief stumbling block to successful planning in the past, the sums which local authorities (and all government departments) were to pay upon compulsory acquisition of land were reduced under the act on the theory that the landowner had already been compensated under the act for his loss of development value. Therefore all the acquiring authority needed to pay was the present use value of the land; in many cases, of course, this would be a mere fraction of the current market value of the land. Further, the cumbersome procedure through which local authorities had previously had to go in order to acquire land was considerably simplified.

To summarize, the theory of the act was to assume all development rights in land for the State; to collect "betterment" by way of development charges, payable by any landowner who wished to develop his land; to compensate all landowners who could show that the development value in their land, now assumed by the State, was above certain fixed de minimis figures; to ensure by this means that land could be purchased by local authorities and government departments fairly at a price which was not excessive; to ensure also that land would be bought and sold on the open market at its present use value, and thus

discourage speculation in the property market; to divorce straightforward planning for future land use from compensation problems by paying compensation for all future restrictions on land use in one lump sum; and finally, to create a system whereby effective planning for the future with some degree of government supervision would be possible. At the same time, however, adequate arrangements were made for the review by the courts of arbitrary official action; clearly, no program of this sort could be carried through without some infringements of property rights. There was a real need to protect the individual against arbitrary action, against action which could not be reconciled with any reasonable policy decision. The courts, of course, always have authority to judge whether any official has acted within the terms of his grants of power, including a Minister of the Crown. Although the act deliberately excludes the courts from adjudicating upon many of the questions which will be raised by the operation of the act, nevertheless no official can go beyond the powers which he is given by the act; and in this respect the courts have an invaluable role to play—a role which is not easily inferred from a study of the cases which come before them, but rather from the cases which do not reach the courts because an official has been restrained by the threat of judicial action.

B. The 1947 Act: The Meaning of "Development"

Since a crucial portion of the act deals with "development," it is essential that the meaning of this word be clearly understood. The act says: "'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land . . . ."[68] This definition is not complete in itself, for some of the included terms are themselves later defined by the act; but, taking a prima facie view, it will be seen that the act contemplates an expansive scope for the word. To take the first half of the definition—"building, engineering, mining or other operations in, on, over or under land"; a later section of the act provides that building operations include "rebuilding operations, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on business as a builder. . . ."[69] That is a remarkable definition; it seems that the habits of builders have been adopted by Parliament as one of

68. The 1947 Act, §12(2).
69. Id. at §119(1).

the touchstones of the act. Strangely enough, there has been little litigation on the point, although there will surely be some in the future as the bare bones of the act become clothed with the detail of case law. "Engineering operations" are defined to include "the formation or laying out of means of access to highways"[70]—thus bringing this type of building activity (which had previously been controlled by the Minister of Transport) within the scope of planning legislation. However, whereas previous restrictions (under the Ribbon Development Restriction Acts) had applied only to main highways, the 1947 Act applies to all roads. The legislative purpose here, namely, the restriction of building which would be injurious to road safety, shows again the very broad scope of the planning acts. Their purpose is to protect every conceivable aspect of public welfare which can be protected by restrictions of "development." "Land" is defined in a manner agreeable to most real property lawyers, if not to the layman, as "any corporeal heriditament, including a building as defined by this section, and in relation to the acquisition of land. . .includes any interest or right in or over land. . . ."[71]

The second half of the definition of development, i.e., "the making of any material change in the use of any buildings or other land," deals with something quite different, namely, a difference in the use to which buildings or land are put. This half of the definition expressly excludes a change in the use of land occurring by way of building operations upon it. True, this does materially alter the use to which the land is being put but the draftsman wished to keep the two types of development quite separate, for differing restrictions are later placed upon them.[72] Any change in the use of land or in the use of

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70. Ibid.
71. Ibid. "Acquisition" of land here refers to condemnation—for which the legal term of art in Britain is "compulsory acquisition."
72. It would be appropriate to comment here upon the widely different methods of statutory construction used in Britain and the United States. In Britain, evidence of the purpose of legislation, as expressed through Parliamentary debate, through committee reports upon which the legislation is based, or through any other means, is not admissible in court. The act is to be construed on its own, and in the event of ambiguity, the court will strive to ascertain the intention of the Parliamentary draftsman. The intention of this individual is, of course, irrelevant, except insofar as the court is endeavoring to find the meaning of the document as a whole. If there is a thinking mind behind the act, this mind is that of the draftsman; and in passing the act, Parliament must have presumed its intent from the document which was before it, and, again, the only method by which this could have been done

buildings upon it is therefore development. Clearly, no statute could successfully control such a vast field of activity as this, and it is therefore not surprising that later sections exclude many types of use change from the operation of the act. A building is defined as "any structure or erection and any part of a building as so defined. . . ."[73] Thus a wall, a billboard, or a gas pump are all buildings for the purposes of the act.

Not content with this rather exhaustive definition, the act delineates certain activites which are expressly included within the definition. For example, the use as two separate dwelling houses of a building which was formerly used as a single dwelling house is definitely development; that issue is reasonably simple. Great difficulties, however, attach to the restrictions to dumping refuse.[74] Again, the use of the exterior of any building for the display of advertisements is also development. This somewhat strained definition of the word was needed in order to give the Minister the power to regulate advertisements generally.

Just as some activities are expressly included in the meaning of the word "development," others are excluded – some by the act itself, others by later orders made by the Minister. These exceptions cover a vast amount of activity which would otherwise be development and therefore merit some detailed study.

First, repair and maintenance work on a building "being works which affect only the interior of the building or which do not materially affect the external appearance of the building"[75] does not constitute development. The aim of the relaxed control here is quite clear. If you paint the outside of your

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(Footnote continued)

was for Parliament to have tried to assess the intent of the author of the document. This is the theory, at least. It is useful insofar as the ordinary citizen, were he so adventurous as to try to understand the planning legislation, would have wondered, on encountering its less cogent passages, "What are they trying to get at here?" Thus it is not uncommon for courts to ask themselves, "What was the intention of the draftsman of this particular phrase?"

73. The 1947 Act, § 119(1).

74. Dumping refuse is development except where the land has been used for that purpose before and the height and superficial area of the deposit is not increased by the dumping. This concept of adding to a pile of refuse without increasing either its height or its superficial area is not easy to grasp; perhaps the meaning is that refuse can be put into holes in the ground without this being development, but may not be piled above the ground. This subject is not as abstruse as may first appear since the aim of the section is clearly to restrict the continued spoilation of the countryside by slag-heaps near the coal mines.

75. The 1947 Act, §12(2)(a).

the act from the definition of development. The act also deals with other types of activity which are included within the definition (and which, under the 1947 act, had to be accompanied by the payment of a development charge) but for which no planning permission is necessary.

1. Development Not Requiring Permission

All the situations which do not require planning permission have one thing in common; namely, a reversion to some former use made of the land. Briefly, they are as follows:

a. If land was being used on the day upon which the act came into effect for some purpose other than that for which it was normally used, no permission is required for a reversion to normal usage. (Nor would a development charge have been payable.)

b. If land is habitually used for one predominant purpose, but on occasions is used for some other purpose, no permission is necessary for the periodic change in use (though presumably the user would have to produce evidence of the custom if challenged).

c. If land was unoccupied when the act came into effect, then permission for a reversion to its normal use when occupied would not be required.

2. Challenge of Decisions Relating to Development

The LPA's are charged by statute with formulating development plans and enforcing them.[80] If development takes place without their permission, they can order the owner to restore the land to its previous condition. Clearly, therefore, the determination by the LPA as to whether a certain undertaking does or does not constitute development is of vital importance. In order that developers may be able to plan their business with at least some degree of security, the act provides that any person may obtain from the LPA a determination as to whether, in their opinion, a certain activity will or will not constitute development. If they obligingly determine that it does not constitute development, then the developer may proceed without applying for or obtaining their permission.

80. We shall look more fully into their powers of control over non-conforming uses later; we are here concerned with their control over development.

(Nor would he have had to pay a development charge under the 1947 Act.) If, however, they are of the opinion that it is development, the developer may still formally apply for planning permission which might well be granted. The grant of planning permission means that the development in respect to which it is issued has been allowed by the LPA. A grant of planning permission "runs with the land," but its effect is limited to the particular type of development which it authorizes. LPA's cannot give a blanket power to develop. Each time a different form of development is considered, planning permission therefor must be obtained. No development may be undertaken without planning permission from the LPA. Of course, a determination by the LPA that the activity proposed is development does not of itself mean that they will prohibit it; it merely means that they have the power to prohibit it. If they refuse permission, the developer may appeal to the Minister on two grounds: first, that the activity did not constitute development, and second, that even if it did, the LPA ought not to have prohibited it. If he fails in his appeal to the Minister, the road becomes more arduous. He can appeal nowhere else from the decision that his activity, being development, ought to be prohibited; but he can still appeal to the courts on the ground that his activity does not constitute development. However, there is considerable risk attached to such a course. Before the developer may resort to the courts, he must first apply for, and be refused, planning permission. He must then, at obviously considerable risks, go ahead with his development and await the "enforcement notice" from his LPA, ordering him to dismantle his development. At this stage he can go to a court of summary jurisdiction, and thence to the High Court, and allege that the notice is invalid because the construction or change of use to which it relates does not constitute development. The court may overrule the decision both of the LPA and of the Minister. However, it would be a hardy litigant who entered upon so hazardous an adventure, unless perhaps to secure a year or two of undisturbed violation.[81] The procedure may justly be criticized on the ground that there are three standards as to what constitutes development; that adopted by the LPA's (which may vary from county to county),that adopted by the Minister, and that adopted by the courts on appeal from the decision of the Minister. In the course of time, no doubt, the decisions of the courts will come to control the matter, but, as has been pointed

81. This is the only case, incidentally, in which the decision of the Minister on a particular point is not final.

out, it will take a succession of optimistic gamblers taking their cases to court before the question is adequately covered by case law.

A recent case[82] has held that there is nothing in the act to prevent a court from giving a declaratory judgment on the question of development. If this decision is upheld, it will, of course, spare the developer the hazard of proceeding with his development in defiance of an adverse decision by the LPA and the Minister. However, it is unlikely that the limited judicial review allowed on this point will ever produce a significant body of judge-made law. Rather it is meant to act, and does act, as a check upon the discretion both of the LPA's and the Minister. Since both the LPA and the Minister must give reasons in writing if they refuse an application for planning permission, this appeal to the courts does act as some kind of safeguard, though it must be remembered that the point of appeal is limited to the question: Was the activity in respect of which the enforcement notice was served "development" within the meaning of the act? The courts may not pass judgment on the reasonableness of the LPA's or the Minister's decision to refuse permission. This is deemed to be a question which can best be solved through political means, and probably is best solved in this way, for it is strongly felt in Britain that political questions should be answered by politicians who are responsible to the people, rather than by judges, who are not.

C. The 1947 Act: Control of Development

The distinction between planning and zoning, between the drawing of plans and their enforcement, is not as strongly emphasized by the 1947 Act as it has traditionally been in American jurisdictions. The same body, namely, the LPA, both formulates plans and enforces them; therefore, the control of development begins with the formulation of the "development plan."

1. The Making of Development Plans

One of the principal aims of the act was to restrict private development. The power to decree what type of development shall be restricted and to enforce these decrees lies with the LPA. The act requires each LPA to establish a development plan; and, in order to afford a measure of control

82. Pyx Granite Co. v. Minister of Housing & Local Government., [1958] 2 Weekly L. R. 371 (C.A.).

until such time as the plan is completed and approved, all land is deemed to be subject to immediate development control. Thus, even though no development plan is in existence, still the potential developer must secure LPA permission for his development. This may be refused, in which case the developer still has certain remedies—appeal to the Minister, carrying on and risking enforcement proceedings, or, under certain circumstances, he can compel the local authority (not the LPA) to purchase his land.

Development plans under the 1947 Act differ from those which were made under previous legislation in several important respects. They are not, for example, permanent in any way. Indeed, they are required by statute to be reviewed every five years or more often if the LPA thinks necessary. Again, every LPA was required to produce a development plan by 1951 unless the Minister granted an extension. Lastly, there is a great difference between the effect of a "scheme" under the earlier legislation, and a "development plan" under the 1947 Act. A scheme brought about a change in the local law when it came into operation, for all the land in the area covered by the scheme was subject to its provisions. The scheme was binding on the land, in other words, and therefore had legal effects. Under the new act, the development plan is not an effective legal document, for it does not bind land in the area to which it relates.[83] It is merely a guide for potential developers as to the probable decisions of the LPA with regard to the grant or refusal of planning permission with respect to any particular piece of land. Only the individual grant or refusal of permission by the LPA is binding on the land, and even this may not be final—for the LPA can change its mind or it can be overruled by the Minister. Under the earlier acts, a scheme, once brought into operation, was extremely difficult to alter and was binding both on landowners and on the local authority. The situation at present is, therefore, that a developer can be fairly sure that if his development is in contravention of what is proposed by the development plan, then permission for such development is not likely to be granted by the LPA. On the other hand, if it is in accord with the proposed plan, then permission is likely to be granted. These measures were passed in order to create a flexibility in planning control which could, if used wisely, make the decisions of the LPA accord with current needs and national development.

If it be asked what purpose a development plan could serve under these circumstances, the answer (not to be found in any

83. An exception occurs in the case of "designated land"—see infra at 66.

official pronouncements) is probably that it was an effective way of forcing local planning authorities to plan intelligently. The plans which they produced had to be approved by the Minister; in other words, they had to accord with national planning policy, and they had to be approved by professional planners, employed by the Minister, as being good and sensible planning. If the LPA's had not been required by statute to produce plans, they might well have paid little attention to planning problems and granted or refused planning permission on a completely arbitrary basis. The development plan is therefore more than just a guide for developers. Requiring a development plan spurs the LPA's to action, provides a method of acquiring national data, and gives the Minister some initial control over the planning of the whole country. Although the act has little to say about the exact form which a development plan should take, the Minister has issued, by means of circulars to planning authorities, quite complex regulations as to how they should go about drafting a plan and as to the type of information he expects it to contain when it is presented to him for approval. The plan should be preceded by a survey of the area, indicating what the present situation is, and what are the potentialities of the area.

The information required in a preliminary survey can be summarized as follows:

I. Physical Conditions
   (1) Existing land use
   (2) Age and condition of buildings
   (3) Quantities of building uses
   (4) Residential density
   (5) Land unsuitable for building purposes.
II. Ancient Monuments and Buildings of Architectural Interest
III. Rural Community Structure
IV. Population
V. Industry and Employment
VI. Minerals
VII. Agriculture and Forestry
VIII. Communications
   (1) Roads
   (2) Railways, docks, harbours, and canals
   (3) Gas supply
   (4) Land drainage
IX. Social Services
   (1) Education
   (2) Health
X. National Parks, Conservation, and Amenity Areas
XI. Holiday Development[84]

On the basis of information obtained in this survey, the LPA is required to draw up a development plan which is in fact a whole series of plans, including a county map, town maps, "comprehensive development area" maps, designation maps (showing property which is intended to be compulsorily acquired), road maps, and phasing maps (showing the stages by which the proposals contained in the other maps are to be carried out). A written statement is to accompany the formidable bundle of cartography and must include a summary of the main planning proposals and explanatory statements giving reasons for proposed compulsory purchase and the planning proposals.[85]

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84. Each of these heads is further subdivided. For example, under "Ages and Conditions of Buildings" the Minister's circular has this to say: "The physical condition of buildings will be an important factor in determining the need for redevelopment. Maps should therefore be prepared for each area in respect of which a town plan is being prepared, distinguishing buildings as follows:
    a) Buildings which have suffered extensive war damage.
    b) Buildings already condemned or which would be scheduled for demolition under the Housing Acts if demolition were immediately practicable.
    c) Buildings of architectural or historic interest.
    d) Other buildings, classified by age as follows:
        i) Erected before 1875.
        ii) Erected between 1875 and 1914.
        iii) Erected since 1914.
    conditions make it desirable.)

    This classification should give a first index to the areas to be considered for redevelopment.

    From the information so obtained, considered with other factors such as density, mixture of uses, layout, structural condition, and subjection to periodic flooding, other maps should be prepared to show:
        i) Areas requiring early development.
        ii) Areas becoming obsolete but which still contain some years of useful life.
        iii) Areas not likely to require redevelopment for many years." Circ. No. 40 (April 16, 1948).
85. A complete table of the information required would be too vast to be illuminating. It suffices to say that very detailed information as to the current situation and as to proposed development is required.