V. THE TOWN AND COUNTRY PLANNING ACTS OF 1953[113] AND 1954[114]

The Conservative Government, elected in 1951, announced by means of a White Paper in 1952[115] that it proposed to make certain fundamental changes in the 1947 Act with regard to the compensation and betterment provisions (the latter, of course, being the collection of development charges). It was specifically stated that no change would be made in the substantive planning provisions of the act.

A. The White Paper of 1952

The White Paper started by outlining the contemporary situation under the Act and noting the three main features of the system as follows:

> (i) no development may be carried out without planning permission and, subject to certain exceptions, when permission is granted a development charge must be paid on the increase in the value of the land due to the grant of permission;
>
> (ii) payment is to be made. . .out of a £300 million fund, to anyone who can show that his interest in land was materially depreciated in value by the Acts, and no compensation is payable except in special cases when planning permission is refused;
>
> (iii) the price at which land is bought by compulsory purchase is its value for its existing use: in other words, development value is excluded.[116]

The difficulties which had been encountered were then related with reference to the main features of the 1947 Act.

To have made all the payments which, under the act, would shortly fall due would have had a considerable inflationary effect. Moreover, it was noticed officially for the first time that many

113. 1 & 2 Eliz. 2, c. 16.
114. 2 & 3 Eliz. 2, c. 72 [hereinafter referred to as the 1954 Act].
115. Minister of Housing & Local Government, Amendment of Financial Provisions, Cmd. No. 8699 (1952).
116. Id. at 1-2.

persons who had made claims on the fund were not really entitled to compensation at all, either because they had already sold their land at a price which included its development value, or because they had never intended to develop the land in the first place. Finally, the very valid point was made that to pay out all the compensation moneys at once would have made it extremely difficult for any future government to make any substantial changes in the financial provisions of the act, however badly they were working.

B. Purchase at Existing Use Value

It was easily ascertainable by 1952 that the legislative aim of creating a free market in which land would be transferred at its existing use value had not been achieved. The fact that owners were unwilling to sell their land at a price which did not include its development value meant that there was less land available for private development and also that when such development did take place, it was at a greatly increased cost. True, the act had given the Central Land Board the power to acquire land compulsorily, at its existing use value, from a landowner who was unwilling to put it on the market at its existing use value. But this procedure was at its best haphazard, and at its worst oppressive.[117]

C. Development Charges

"Making every allowance for the teething troubles of a new system, four years' experience of the working of the system has shown that few people really grasp the underlying theory, and that there is, in any event, a wide gap between theory and practice."[118] One might cynically observe that if this concept (namely, that a failure on the part of the people to understand the theory behind a law is a justification for doing away with the law) were applied rigorously, it might well result in the repeal of most legislation. It might well have been true that popular dislike of development charges (among the tiny, but highly organized minority to whom they applied) was the result of bad governmental public relations; but even if everyone had fully understood the mysteries of the planning legislation, can it seriously be doubted that the opposition would have decreased? A

117. The procedure was, however, expressly approved by the House of Lords in Fitzwilliam (Earl of) Wentworth Estates Co. v. Minister of Housing & Local Government, [1952] A. C. 362.

118. Minister of Housing & Local Government, supra note 115, at 3.

much graver criticism made by the White Paper is that the method of assessing the charge did not inspire public confidence. "Those who view development charge as a tax on development—and they are in the great majority—look for some definite relation between the amount assessed and the cost of the land or of the development; and their failure to find any makes them very critical of the method of assessment."[119]

Of the truth of this there can hardly be any doubt. The whole substance of the financial provisions of the act depended on the valuation of property. Even so simple a question as the actual value of a piece of property when no hypothetical contingencies have to be borne in mind is a problem which can produce remarkably varying responses from equally well qualified valuers. The job of measuring "existing use value," "restricted value," "unrestricted use value," etc., belong much more to the realm of metaphysics than it does to the realm of bricks and mortar. That the substantial rights of a landowner depend on the exercise of so mystical a function is bound to excite the passions of the landowner. Whether the landowner is entitled to demand a flawless system of valuation is not a question which can be discussed here. What is clear is that the government which passed the 1947 Act considered that the public interest in a period of national emergency was of greater importance than the interest of the landowner in the provision of a system of valuation which was agreeable to him.[120] It is also clear that the government in 1951 was of a contrary view, and, considering that the 1947 Act was in some respects contrary to the legitimate interests of property owners, it proceeded to amend it.

However, finding that no amendment was possible which would leave the theory of the 1947 Act intact, it decided to scrap the whole financial theory of the act. The White Paper proposed to abolish the development charge altogether. Further, claims which had been established upon the £ 300,000,000 fund were not to be paid out in accordance with the terms of the 1947 Act, but were to be made the basis for planning restrictions. The 1947 Act had not, of course, made any provision for compensation in respect of planning restrictions since it was assumed that adequate compensation for the loss of development value would be made by payments out of the fund.

The effect of abolishing the development charge was to give back to landowners the development value of their land. Since the State has therefore taken nothing from the landowner, he is

119. Id. at 5.
120. Quaere whether any system of property valuation would at once be acceptable to the landowner and to the government.

not entitled to any compensation unless and until his land becomes subject to planning restrictions. This was precisely the situation which the 1947 Act had tried to avoid because it had been demonstrated by past experience that under such circumstances good planning would be enormously hindered by the inability of local authorities to meet the compensation bills.

However, the government saw that to return to this position would be hopeless. It therefore insisted that although restrictions upon the user of land ought to give rise to compensation, such compensation would be limited to the amount which had been assessed for that property under the 1947 Act for the loss of development value. Naturally, the legislation which embodied the aims set out in the White Paper gave rise to even more complex legislation than the original act. No attempt will be made to analyze it in detail, but the framework of the legislation will be discussed.

1. The Abolition of Development Charges

The first measure enacted to implement the proposals of the 1952 White Paper was the Town and Country Planning Act, 1953. In contrast to all other planning legislation, it was brief and to the point. It consisted of just three sections. Section 1 abolished the development charge. Section 2 provided that the distribution of the £ 300,000,000 fund should not take place according to the provisions of the 1947 Act, but that claims were to be satisfied "in such manner, in such cases, to such an extent, at such times and with such interest as may hereafter be determined by an Act of Parliament passed for that purpose." Section 3 stopped the process whereby the Central Land Board had sought to impose a general pattern of the sale of land between individuals at existing use value by the use of the powers of compulsory acquisition which had been given to the Board. Thus the act cut at the whole structure of the 1947 Act, and it was left to legislation in 1954 to erect a new structure.

2. The 1954 Act: A New System of Compensation

Up until 1954 a dual system of compensation-betterment had been maintained. The State (or local authority) paid out money by way of compensation and collected it by way of betterment.[121] Whether these sums of money were adjusted in the haphazard manner which was in operation before 1947, or

121. The State alone, of course, collected betterment, but this was returned to local authorities by means of government grants.

whether they were adjusted by the payment of compensation for the loss of development value and the collection of development charges really made only a theoretical difference. In both cases the underlying notion was that the amount collected should be roughly equivalent to what was paid out, on the theory that every planning decision will hurt some and benefit others, directly or indirectly. Compensation and betterment were methods of adjusting these shifts in value.

The Acts of 1953 and 1954 frankly abandon hope of making any balance between the two. The abolition of development charges marks the end of over 100 years of experimentation in collecting betterment; under these Acts, no attempt is made at recouping for the State the amounts it pays out by way of compensation; these are a dead loss to the State, and persons who profit from planning decisions will henceforth receive this benefit free unless the added development value is acquired by the State through restrictive planning decisions or by compulsory purchase. In these circumstances, the State will pay no compensation for development values which have accrued since 1947. To this extent, therefore, the 1954 Act still does collect betterment indirectly. For this reason we do not have to deal with any provisions for the collection of money in the 1954 Act. It is solely concerned with regulating the payment of compensation.

3. Compensation Generally

The 1954 Act makes provisions for some sort of compensation for persons who suffer a diminution in the value of their property as a result of planning decisions. Since there is no foreseeable end to the making of such decisions, the idea, implicit in the 1947 Act, of making a once-and-for-all payment out of a specific sum of money has been abandoned. Instead, all compensation will be paid out of general public funds, for there is in theory no ultimate limit as to how much will be paid. This being so, it is not surprising the act displays a particularly niggardly attitude towards the payment of compensation. As a general rule, the establishment of a claim upon the 1947 fund within the time limit imposed by that act, is a condition precedent to the payment of compensation under the later act. This provision has some very far-reaching consequences, for generally a person who was prevented from establishing a claim on the 1947 fund by the de minimis provisions is forever precluded from establishing any kind of claim with respect to his property, however much his use of it may be restricted, and his compensation in cases of compulsory acquisition will be limited to the existing use value of the property.

Moreover, even if the landowner or his predecessor in title had established a claim on the fund, his compensation in respect to future planning decisions will be limited to the amount of his admitted claim on the fund. Under very few circumstances can he claim more, and he can only obtain the full amount of his claim when, as a result of planning decisions, his land can be said to have been completely stripped of development value. The total of all claims made on the fund did not in the end exceed £350,000,000, a sum considerably less than was expected. It is therefore unlikely that the total to be paid by the State in respect of compensation for planning decisions will greatly exceed this sum, although in a few circumstances claims for compensation can be entertained even though the applicant or his predecessor had not established a claim on the fund.

One last point which may be noted here is that whereas under the 1947 Act the entire fund was to be payable on a certain date to all those who had qualified to participate, under the 1954 Act compensation is payable as and when the development value of the applicant's land is diminished by a refusal of planning permission. Thus, each time planning permission is refused, it is necessary to compute the amount by which the applicant's land has diminished in its development value, and this sum or the total amount of his claim on the 1947 fund, whichever is less, will be paid as compensation.

D. Payments for Past Depreciations of Land Values — Part I of the 1954 Act

The general principle of the act is laid out in Part I, which provides for "payments" to be made in respect of depreciation in land values caused by the operation of the 1947 Act. The payments are to be made by the Central Land Board by reference to established claims on the 1947 fund—which are, however, liable to be modified under the 1954 Act. These payments are to be made generally with respect to future refusals of planning permission, but the act also defines four cases where payment is to be made with respect to past events (other than past planning decisions). Very briefly, these are: (1) where the holder of the claim has incurred a development charge; (2) where his land has been compulsorily acquired at a price which did not include the development value of the land; (3) where he has disposed of his beneficial interest in the land otherwise than for valuable consideration; and (4) where he has become entitled to the claim under a disposition for valuable consideration other than a mortgage.

E. Compensation for Future Planning Restrictions—Part II of the 1954 Act

Since the 1947 Act expropriated for the State all development rights in land, it made no provisions for compensation for future planning restrictions, except where the planning decision restricted development falling within the ambit of existing use (Third Schedule development). With the restoration of development values to land, measures had to be introduced for the compensation of landowners whose interest in their land was thus adversely affected.

Since 1955 (the date when some of the act's provisions came into effect) there have been two codes of compensation; one is applied where the development restricted is "existing use development," i.e., development which is defined by Part II of the Third Schedule to the act, previously referred to,[122] the other, where the development restricted goes beyond the ambit of the existing use. In the first case, compensation continues to be payable as it was under the 1947 Act, and the relevant part of that act[123] remains in force. In the second case, a new scheme for compensation was set out in the 1954 Act.

Under this scheme, all future refusals of planning permission will be compensated only if the applicant (or his predecessor) had made a claim on the 1947 fund; and the amount payable will be limited to the amount of the claim on that fund. Moreover, the "unexpended balance of established development value" (i.e., the amount of the applicant's claim on the 1947 fund, less any sums which he already has received by way of compensation) will be reduced whenever planning permission for a particular development is granted. For, since the "unexpended balance of established development value" represents the as yet unused development value of the land, any development which is permitted and carried out will naturally lessen this amount, and therefore lessen the amount which the applicant can receive by way of compensation for any future planning restrictions.

In some specific cases, compensation for future refusals of planning permission is excluded by the act.[124] The effect of

122. See note 98 supra.
123. The 1947 Act § 20.
124. These are: (1) If the development refused takes the form of a change of use of land or buildings. As this is one of the main heads of development, it follows that many refusals of planning permission will go uncompensated. (2) A refusal or conditional grant of permission for display of advertisements. (3) A refusal of a premature application, i.e., in a situation where the LPA has indicated on the development plan that development of this type will be permitted in,

these provisions is to exclude most potential developers from compensation altogether. For the first time, for instance, restrictions relating to the use of land or buildings on it (i.e., zoning laws) can be imposed without liability for compensation. Although, therefore, the 1954 Act seems to be a measure in favor of landowners in that it abolishes the development charge, it does impose severe limitations on the landowner's ability to collect compensation for the refusal of planning permission.

F. Compensation for Future Compulsory Purchase of Land—Part III of the 1954 Act

We have already seen how the 1947 Act introduced a new yardstick by which compensation in cases of compulsory acquisition was to be measured. In most cases under that act, compensation was payable at existing use value without regard to potential development value. Obviously, this was no longer a fair system once the loss of development value was no longer the subject of additional compensation. After the 1954 Act, compensation is to be payable for the existing use value and for the development value up to the unexpended balance of established

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(Footnote continued)

let us say, 10 years' time. (4) Where planning permission is refused with respect to land which is subject to flooding, subsidence, etc. (5) Where conditions attached to a grant of planning permission relate to the design, dimension, size, external appearance of a structure, or where the conditions relate to the density of buildings or the layout of land, including the provisions of parking spaces, loading and unloading facilities (even basement car parks can be required without payment of compensation), or where the conditions relate to the use of buildings, or land without buildings. (6) Where, despite a refusal of planning permission for one type of development, planning permission is available for "any development of a residential, commercial or industrial character, being development which consists wholly or mainly of the construction of houses, flats, shop or office premises, or industrial buildings. . .or any combination thereof." The 1954 Act, supra note 114 at §21(3). The object of this latter exclusion was explained by the Minister introducing it as follows: "[C]ompensation 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 reasonable 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." This extract from the Parliamentary debates (Hansard Vol. 525, col. 56) is quoted in Heap, Town and Country Planning Act, 1954, 10 (1955). This fine analysis of the 1954 Act has been the basis of this discussion of the compensation provisions.

development value. There are therefore two values attached to land now. One is the full market value at which sales take place between individuals. The other is the amount which will be paid for the land if it is subject to compulsory acquisition. The act goes some way toward relieving this situation by providing that a purchaser of land can require the local authority and the local planning authority to state whether they are going to acquire the land compulsorily within the next five years. If he receives a negative assurance, then he is protected to the full market value of his land if the land is compulsorily acquired during the five-year period. No specific performance of the assurance of the local authorities can be guaranteed because the land may be acquired by a public authority other than the LPA or the local authority.

G. Compensation for Revocation or Modification of Planning Permission—Part IV of the 1954 Act

A grant of planning permission, once made, can be modified or revoked by the LPA. Under the 1947 Act, the only compensation payable under these circumstances was for the abortive expenditure incurred by the developer. The developer can now obtain full compensation regardless of whether he had made a claim on the 1947 fund or of the size of such a claim.

H. Compensation for Past Planning Decisions—Part V of the 1954 Act

Since owners who had suffered loss under past planning decisions would not now receive the compensation which the 1947 Act envisaged (i.e., out of the £ 300,000,000 fund) the later act provides that the Minister is to pay compensation in all cases where planning permission had been refused prior to 1954, the amount of compensation being equal to the amount by which the value of the land has fallen, but in no case being greater than the value of the claim on the 1947 fund. The existence of such a claim was a necessary condition to the payment of compensation.

I. Exchequer Grants under the 1954 Act

It was not envisaged by the framers of the 1947 Act that local authorities would have to pay anything by way of compensation for planning decisions. They would have to pay, however, when they acquired land compulsorily for comprehensive development, for repair of war damage, or for some similar purpose.

The 1947 Act provided for grants to be made to local authorities for these purposes. These grants were continued under the 1954 Act, though the percentage paid by the Minister was decreased.

J. Summary of the Aims of the 1954 Act

The act is a collection of miscellaneous provisions attempting to patch up earlier legislation, when the theory of the earlier legislation had clearly been abandoned. To this extent, it is profoundly unsatisfactory. The act is unhappily another interim measure insofar as most provisions hinge upon the existence of a claim upon the 1947 fund. As a transitional step, it succeeds in its broad purpose of altering the effects of the 1947 Act, and of substituting a set of provisions which will work without too much injustice until a new scheme of things is introduced. But it has no guiding philosophy behind it, and this defect is bound, as political erosion takes its toll, to make yet another overhaul necessary.[125]

The Uthwatt Committee pointed out that the compensation-betterment problem was indissolubly connected with the land-use planning and that, although the British planning statutes have worked out a workable system of planning, they have so far failed to solve the compensation problem. It may be that the 1954 Act has brought in some sensible approaches; it is hard to see, for instance, why zoning ordinances (or their British equivalent—a series of individual planning restrictions) should automatically attract compensation. But in reverting to the former ideas on the subject of compensation for the compulsory acquisition of land, the 1954 Act is a serious stumbling block to the removal of nonconforming uses because the only effective way of removing a nonconforming use is to purchase the property compulsorily.

The legislation of 1954 was introduced partly because the theoretically perfect and strictly logical Act of 1947 had failed to impress the landowning public with its logic and partly to relieve landowners from the seeming injustice which followed from the imperfect working of the 1947 Act. Certainly the act cannot

125. A good example of the political erosion here referred to is a recently introduced bill, the object of which is to secure that compensation in cases of compulsory purchase will be at full market value, plus whatever increase occurs in the market value of the land during its first 5 years of acquisition. As a proposition divorced from the background of the act, this has meaning; but when one considers the philosophy of the 1947 Act, one sees how far Parliament has moved in 10 years, and how easily grand theories are forgotten.

have improved matters for local planning authorities, and it failed to placate landowners, as is evidenced by their strong lobbying for the new legislation with regard to compensation. Frightful though such a thought seems, it can scarcely be very long before the whole planning law again comes under review, for so little is now left of the financial provisions of the 1947 Act that the planning provisions will soon be of doubtful validity.

One of the main attributes which planning legislation should have, namely, stability, has been markedly lacking in Britain. Experimentation there has been, and useful lessons can be learned from this. But, to be effective, planning legislation must not only be understood by those to whose operations it applies, it must also be capable of enduring for appreciable periods of time without vital change — as indeed must all law having to do with property. Although much criticism has been voiced in this paper concerning the two acts, the fact that Britain alone in the free world has achieved a publicly controlled, national system of land-use should not be ignored. It may well be that for other countries the difficulties which are inherent in this system would be out of proportion to the relative advantages gained. In Britain the inception of such a system was deemed vital and it has been made to work. It is to be hoped, however, that Parliament will not be content with the present situation, but will strive to produce a politically and economically sound financial theory of planning which will result in the country's fourteenth and final Town and Country Planning Act.