

**JOINT PLANNING  
LAW CONFERENCE**

**Planning for Growth and Decline**

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**DEVISING NEW POLICY INSTRUMENTS:  
THE LESSONS OF HISTORY**

**BY**

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1. INTRODUCTION

The purpose of this contribution is to introduce an historical perspective to the overall theme of planning for decline and for growth. Historical perspectives are notoriously unhelpful in planning, because it is a process which necessarily looks to the future. Yet it is remarkable how constant and enduring many of Britain's policy instruments have been and how often it is that new Government initiatives look as much to past experience as to the challenges of the future. More importantly, the history of planning initiatives demonstrates the power of the institutional bases of planning and the differing objectives of the prime actors. It is impossible to attempt more than a generalised and impressionistic study in as short a paper as this and so I have confined it to some key points.

Some historical parallels are immediately apt to our present planning dilemmas. The social concerns of the Victorians with the poverty and decay of the inner cities finds parallels still, though their preoccupation was with an inner city population that was increasing rapidly, and ours is with urban depopulation and economic decline. Their prescription was increased state intervention in the private housing market, imposing new controls on private landlords and for better sanitation through public sector funded infrastructure. Contemporary policy for the inner cities has aims that are broader but less clearly defined. To take another era, the 1930s can also be seen to have many parallels to today's problems. The economy was in a state of deep depression with high unemployment, particularly in the heavily industrialised regions. There was the familiar dilemma of local government finance. Local authorities with high unemployment and social problems attempted to raise further finance by increasing the rates levied on a rating base that was diminishing, but thereby decreasing the attractiveness of their areas to the incoming private investment necessary to create new jobs. Central government responded to increasing regional disparities with special aid legislation (Special Areas Act 1932) and introduced rates exemption for industry.

## 2. LAW AS A POLICY INSTRUMENT

The difference, so far as land use planning is concerned, is that it is said that today we have a sophisticated, finely tuned system of planning control that our forefathers would have envied. It allows discretionary rather than mechanical intervention, it provides controls for preservation and conservation and it allows for a balance to be struck between those objectives and the need still for sensible allocations of land for new development. Why, then, have we not solved our urban problems?

The answer is easier than the question. All law has limits, and planning law has more limits than most. It has first to be seen within the context of economic forces, not least the management of the macroeconomy. It is impossible to separate planning problems from national economic problems, as the current state of regional imbalance and inner cities testifies.

A straightforward analysis of the role of law in planning illustrates the connection. Law can be used in five main ways: to coerce, to prohibit, to regulate, to enable and to induce. In a market economy, coercion is rarely an appropriate instrument. It has its uses however, when the objective of the coercion is to promote greater market efficiency (as in compulsory purchase of access land to open up backland to development) or in the pursuit of some social goal (such as compulsory acquisition for public sector housebuilding). But it is not confiscatory: even the second appointed day scheme of the Community Land Act 1975 made provision for protecting existing land values, partly through phased implementation and ultimately in the hands of financial hardship tribunals. The recent decision by the European Court of Human Rights endorses for the future the principle of compensation for state intervention against private property, though reserving for the state considerable discretion in valuation principles it adopts. So too with prohibition. The outright prohibition of private market activity is by no means uncommon, but it is a selectively used device. Legal prohibition which is not coupled to a discretionary dispensing power is liable to be

crude and inflexible. The Victorian ban on back to back housing, for example, had simply to be set to one side when Barratts decided to experiment with a modern variant.

And so the principal mode of modern planning is regulation. It seeks to modify market activity, not to direct it or destroy it. It is the essential tool of the mixed economy, and its success depends upon there being some market activity to modify. It has numerous styles, ranging from those where discretion is structured in accordance with predetermined rules, to those where discretion is at large. Development control is a hybrid; discretion is tied to various norms, such as the development plan and government circulars, but they need only to be taken into account, not rigidly applied. At a different level, there are wide variations in enforcement. Regulation may be backed by immediate criminal sanctions, or its effect may be softened by preliminary remedial procedures.

But the remaining two modes provide important supplementation. Law may enable, for example, by prescribing duties or by allocating resources for public authorities intended to promote private sector activity. Publicly funded infrastructure is an example. Or law may attempt to induce private sector activity, by selective financing (such as urban development grant and other grants operated by central and local government) or by selective deregulation (simplified planning zones).

None of these instruments is new. All have been deployed in planning, both for growth and decline, for at least one hundred years. What has changed has been the context of their use. Consider, for example, the dramatic changes in landownership in this century alone, the growth of large scale development interests distinct from the old landed estates, the changes in the arrangements for investment in property, the steady growth of the state in all areas of the economy and the reaction to that phenomenon, the evolution of an active system of judicial review of statutory discretion and the growth of non-market interests, including pressure groups and individuals.

A simple two-dimensional model of planning portrays it as a struggle between the landowner/developer, who has been deprived by law of the right to do as he wishes with his land; and the public sector regulatory bodies of central and local government who seek to subordinate private right to public interest. That, of course, is not only simple but simplistic. The forces that shape planning policies and the outcome of planning decisions are multidimensional, and the legal instruments through which they are implemented overlap. How they are used depends not only on economic forces but also on politics and ideologies.

### 3. THE FORCES OF POLITICS AND IDEOLOGY

It is a truism that planning is a political process. If Parliament had intended anything else, it would never have conferred such broad powers on Government ministers and local councillors. Other countries have attempted to defuse overt politicization by setting up planning tribunals and even drawing judges into land policy. But not so Britain. Politics, and politicians' accountability, provides some sort of basis for the otherwise empty notion of "public interest" as the justification for planning power. But there is no more ambiguous a sport than politics. Policy is the stuff of politics, and it would be surprising if planning policy did not reflect the common ideology of the ruling group. So, at national level, we have endured the public sector/private sector battles which have dominated land policy since 1947, characterised by the introduction of dramatic initiatives which have the threat of repeal hanging over them the moment they are announced. And, at local level, there is similar though less dramatic ideological conflict over private and public sector investment and development.

An ideology is a belief, not a technical solution, and it is important to bear this in mind at a time when established planning policies are under threat. It would be a massive oversimplification to suggest that since the growth of planning coincided with a steady decline in the national economy, so a decline in planning may be expected to coincide with economic regeneration. Intelligent forward planning is now an essential

function of any business: no enterprise can afford to be without its regularly monitored projections of cash flow: tables showing relative returns on investment, new product development schedules and forecasts of profits ratios. But this contemporary enthusiasm for planning seems not to have embraced the processes of land-use planning by public sector agencies. Indeed, the reverse is the case: land use planning is said to be restrictive, stifling of enterprise, unimaginative, conservative (especially in the hands of Labour councils) and ideologically suspect as a dead hand reining in a free market.

By failing to plan for growth, it has contributed to decline. One problem is that private firms who undertake planning have a clear indicator of success or failure - the balance sheet. But land-use planning has no equivalent: whether you put increased housing land supply, or green belt preservation, on the credit or debit sides, depends very much on your initial prejudices.

If the only influence of politics in planning were at the level of crude ideology, the interaction would still be relatively straightforward. But politics comprises not only the process of obtaining group political power through elections, but also the process of retaining group power and advancing individual interests within the group. Individual political profiles can be enhanced by the loud, rather than the wise, use of power. Politics at this level operates in different ways. The party caucus, or pre-meetings, can come to determine not only issues of policy but also individual applications of it: and party discipline, however informal, is used to secure a united front and stifle internal dissent. Relations between both local and national politicians proceed on the basis of horse trading and compromise, in which immediate objectives may be traded off against long term political stability. Alternatively, power is used deliberately to disadvantage other groups. It is strange how often planning permission for unneighbourly development is more readily granted in wards which insist on returning councillors from the minority party.

The pure pursuit of political ideology can never form a happy basis for accountability, a point which is well demonstrated when adherents to the same ideology owe allegiance to different constituencies. The difficulties which the Conservative government has had in obtaining land release in the shires illustrates this, no less than the Labour Party's difficulties with rate capping.

The influence of party politics on planning has to be accepted as inevitable in the constitutional structure of the nation, but we need to be clear as to the extent that it may cloud our understanding of the process. There is a great gap between politics and statutory power. There is no mention of politics at all in the Town and Country Planning Act 1971, and so decisions which are in fact taken on ideological grounds need in practice to be dressed in technocratic guise, or at least tied to "planning" policy and technically supported, in order to constitute a valid exercise to power.

And so it becomes necessary to clarify the language of the debate. Planning is far more an art than a science, though there is frequent resort to quantifiable data in an attempt to reinforce value judgements. This results in a remarkable amount of looseness and subjectivity in the language used by its actors which makes intelligent historical analysis impossible if it merely adopts a particular usage without explaining which. Two examples will suffice: first, the pretence that there is an ideal outcome of every decision and every policy. As in: current policy relating to housing development on agricultural land seeks to secure a proper balance between preservation of good agricultural land and satisfying the demand for new homes. There is, of course, no proper balance; merely a rough and ready balance between a variety of pluralist views, and a balance which will depend on which view proves most compellingly influential with the decision maker, whether for reasons of scientific rationality, personal inclination or predominant ideology.

Second, the attempt to classify policy instruments as either positive or negative. This has some limited validity, but only so far as it is analogous to the language used to describe land covenants; that is, in relation to the interests of a particular landowner or developer. Within that context the whole machinery of development control is negative and restrictive. But that usage has a double, pejorative, meaning which obscures overall assessment of policy instruments. What is negative to one landowner may be, indeed probably will be, of positive advantage to others, most especially his neighbours or competitors. Green belt policy is negative in relation to new development, but by virtue of its very rigidity is popularly seen as an extremely positive (ie successful) policy in containing urban sprawl; and positive too if it has some effect in steering investment back into the inner city. Planning is a highly discriminatory process, which necessarily advances some interests at the cost of others.

A separate but related problem is that of the intellectual dishonesty of contemporary planning, in which, on the local planning authority's side, a general prejudice against the development, the developer and all others of his ilk, not to mention a fear of voter hostility, has, "for legal reasons", to be translated into a detailed case based on highways and sewers; and in which, on the developer's side, an optimal profit opportunity is translated into the performance of an essential public service which will benefit the community, and provide homes for the homeless and jobs for the unemployed. There is an interesting role reversal when the development is to take place on land owned by the local planning authority which is considering the planning application alongside competing applications on other privately owned sites. Legal forms are not apt at penetrating planning rhetoric, particularly once it becomes common practice: see eg R. v Amber Valley District Council, ex parte Jackson. But it also allows some central issues to be sidestepped. Does planning really have no role in regulating competition within private markets? Ought political party groups be able to predetermine planning applications at private pre-meetings?



But language is not the only problem. Identifying the impact of policy choices even on particular sectors is far from straightforward. Development and investment decisions, for example, are moulded by a variety of complex factors, of which the planning process is only one. Attempts to assess the impact over time of new regulatory or deregulatory policies by comparing year by year figures for housing completions or commercial floorspace or property investment trends can never provide wholly reliable indices of policy performance. Nor are policies ever evenly applied between different planning authorities or between central and local government.

A further inevitability is the fact of short political timespans which necessarily affect the way in which policies are implemented, with a tendency to move to ad hoc devices rather than to use the established mechanisms. Planning by appeal is a current example. The timescales imposed on planning by the political process are often remarkably short. Ministers have not, in recent years, lasted long in the Department of the Environment, and it is to be expected that they will be anxious to push through new policy initiatives, and will be impatient with advice that cautions them to undertake prior research, to set clear objectives and to ensure adequate monitoring. The Comptroller and Auditor General, and the Committee of Public Accounts of the House of Commons, have both recently commented adversely on this in relation to the urban programme and enterprise zones; and it has been a repeated criticism of regional policy, particularly the massive subsidies to manufacturing industry in depressed areas (not least de Loren and the Lear fan jet project). It is uncommon for national politicians to be interested in, or even to comprehend, the long term values which local planning has often sought to maintain; or to think through any long term land policy. It can be political death to stick with inherited policies and to test their effectiveness before deploying new ones.

4. PRE-WAR PLANNING

How far does this help in looking at the land policies of earlier years? The tentative nature of planning intervention between 1909 to 1945 reflected the political strength of landed wealth, against which national politicians were disposed to move only with caution. It was an era of mechanical and reactive planning, dogged by a lack of any forward thinking, inadequate local discretion and the necessity to compensate as the price for taking any decision against a landowner's interests. It adopted the language of prohibition, but the compensation bogey rendered it illusory. The regulatory mechanisms of the 1932 Act were still tied closely to tightly structured discretion. They could be made to work only with the co-operation and agreement of the large landowners.

Parliament had been prepared to intervene very much more significantly in instances of physical detriment by conferring new public health and housing fitness powers, but remained unconvinced of the need to enforce amenity controls against private property interests. It is interesting to note in passing that it was the 1932 Act, rather than the 1947 Act, which was to prove one of Britain's more significant legislative exports to nations - including New Zealand, Australia and Canada - where private property continued post-War to command greater ideological support, but where the tendency is now to move to more intervention and greater discretionary power. A further key element of the pre-War era was the impact of new infrastructure provision, both public and private, such as the metropolitan line, and the size of the 1930s land grab for comparatively low density housing development.

By 1935, there was a housing boom, with an average of 263,000 houses a year being built through until 1938/39. The boom was market led, and fuelled by falling interest rates, low labour costs and construction costs, an abundance of mortgage funds and an ample land supply. The 1932 Act planning schemes proved inadequate instruments in the allocation of land and the control of development, and their failure to cope with the

housing boom strengthened the case for comprehensive planning, for properly planned new towns, and for legal protection of the countryside from development.

Those who argued the case for more comprehensive planning invariably saw it in "end-state" terms: the purpose was to harness unanimous public and political commitment to social improvement. Thus, Sir Ernest Simon's vision in 1935 (A Century of Municipal Progress, p218):

"If public opinion remains steadily determined to put an end to the slums and prepared to pay the necessary price, if our city councils act with wisdom, foresight, and discretion, we can certainly within a single generation provide for every family a good house in a healthy, convenient, and beautiful city".

The notion of planning as a decent social policy was to prove critical in the preparation of the three war time reports on the distribution of the industrial population, betterment, and land utilization in rural areas, and also in the development of the new towns planning. The consensus on the need for planning was skillfully maintained by Lewis Silkin in guiding the 1947 Act through Parliament, notwithstanding that the 1947 Act conferred unprecedented and largely unfettered discretionary powers, and new coercive tax controls over land prices in an attempt to restructure entirely the private land market. But the battle was largely perceived as two dimensional: the state was to assume to the powers of the large landowners; public participation and conservation were not truly on the agenda.

##### 5. THE MACRO PLANNING ERA

The Town and Country Planning Act 1947 heralded the new era of the planned society, in which land use planning would embrace not only development control but also public sector investment, industrial relocation and decongestion policies; and all in the context of a land market from which market forces for development were to have been excluded by the operation of the development charge. The land taxation provisions had caught

the fury of the conservative opposition in Parliament, allowing the planning components of the package to slip through comparatively uncontroversially. The story of the violent swings in national land policy since then, which has seen no fewer than three nationalisation/differential taxation schemes successively introduced and subsequently dismantled, has been told many times and need not be repeated here.

What is of greater historical interest is the degree of political consensus in national economic and planning policy. The two main political parties shared a faith in Keynesian macroeconomic theory, and a consequent faith in their power as economic managers. The objective was to maintain an acceptable level of demand in the economy by exerting control over key elements such as credit, interest rates, imports, taxation and public expenditure. Public investment was thus a key element in stimulating demand, rather than an unwelcome clog on the public sector borrowing requirement. The influence on urban policy was seen in the massive slum clearance and redevelopment projects, and in the provision of national infrastructure and the regional aid programmes. It was, however, a clumsy and uneven economic system. Because of the insensitivity of the monitoring and controlling devices, it led to successive stop/go eras, in which measures to stimulate the economy would lead to rapidly rising inflation, leading in turn to measures to reduce demand.

Perhaps nothing illustrates more graphically the gap between the promise of national economic planning and its actual performance than George Brown's period at the Department of Economic Affairs. It resulted in a national plan which attempted boldly to set and co-ordinate Government objectives, but which the DEA lacked power to impose effectively even on Whitehall, let alone the country at large. So too the office ban in Greater London. It was strictly speaking a regulatory instrument, but was interpreted as a prohibitory device. It was politically a simple, dramatic and therefore attractive policy, but the market responded predictably to this clampdown on supply by raising the price of the existing commodity.

Underlying the policies of the 1960s and early 1970s was the assumption of growth as the prime aim of economic management; and land use planning came to be justified as a process of growth management, on the unquestioned assumption that the forces of growth would be strong enough to bear the costs of regulation and of public sector investment activity. Nor should the successes of the era be underestimated. It saw through the slum clearance programme, massive new housebuilding in both sectors, new towns and expanded towns and investment in motorway infrastructure.

But it carried the seeds of its own destruction. People reacted against rapid and insensitive change and Governments responded by reinforcing public rights of input into forward planning and development control, and by bowing to pressure for strengthened conservation controls. And so planning became more a pluralist function, with the impossible task of reconciling disputes not merely between developer and planning authority, but between different public interests both within the public at large and also between and within public agencies. The irony is that the more responsive the system becomes to these pressures, the more ad hoc a process it develops into.

#### 6. THE MINIMALIST PLANNING ERA

Deregulation is a simple policy that has proved electorally popular on both sides of the Atlantic and it will undoubtedly have a long term impact in Britain. There is a new scepticism as to the effectiveness of centralized state planning, which necessarily spills over to the land use planning system. It is surprising how far Ministers have been able to go even without changes in the law: departmental circulars, reinforced by decisions (and costs) on appeal, and by the willingness of the courts to treat circulars almost as a sub-species of planning law, have had a considerable impact on local planning authorities. It is, ironically, a centralizing trend, reflecting partly the overall breakdown in relations between central and local government, but also reacting against the perceived lack of direction of planning. It is evolving towards a system in which development control will be restricted to the protection of interests of acknowledged importance. Enterprise zones and simplified planning zones reflect the deregulatory approach, but in the latter case, only to the extent that they will be used by the Secretary of State to impose deregulation on local

authorities. The way in which the system is presently going signals a return to the planning schemes of the 1930s. But at the same time we have the contemporary equivalents of the new towns, in the form of urban development corporations, proving that public sector (albeit heavily disguised) organisations and finance can still achieve market regeneration.

The regional policy which helped hold the growing gap between north and south through the 60s and 70s could not survive the collapse of manufacturing industry nor the deregulatory ideology. The turnaround in national ideology appears most clearly in the Secretary of State's recent endorsement of SERPLAN, which proceeds on the clear basis that Government will not direct or persuade industrial location out of the South East, but rather encourage growth in the South East as a catalyst to national economic growth. There is also a growing mismatch between two limbs of the same ideology: the need to spend public money to attract private investment (infrastructure, urban development corporations, regional promotion, underwriting marginal schemes for their employment generating potential) and the government's concern to hold down public sector spending (capital controls, reduction in RSG, ratecapping).

Ironically, it is the inability of Government Departments to plan their own administration that still stands as a rebuke to planning. It was the lengthy delays in the 1960s in the old Ministry of Housing and Local Government's processing of development plan approvals and amendments which led directly to the introduction of the new structure plans and local plans. And lengthy and growing delays in the handling of planning appeals within the Department today look increasingly at odds with Ministers' exhortations to local planning authorities to streamline their management structures and improve their throughput times for planning applications. So too the unproductive policy conflicts within central government, and between central government and the still unprivatised state industries (including transport and the energy utilities).

## 7. EVALUATION

Like most history lessons, the history of planning is not a story of linear development. It shows a pattern of successive actions and reactions, not only in the short term ideological switches in land policy like the Community Land Scheme, but also over longer term issues like new town development. No doubt the most weighty charge that can be levelled at the activity of planning throughout the century is that it has promised far more than it could hope to deliver. The reasons are twofold: it is at heart a proselytizing activity which hopes that promises will self-fulfill, which they more readily will if the market believes the message. Secondly, the scope of the problems to which planning is addressed has become increasingly complex, whilst growing complexity in public sector management has made it the more difficult to respond. The steady decline of a political consensus had undermined the visionary impetus that planning once enjoyed, and that tends to obscure the long term benefits of a decent land policy. The same policy instruments, limited as they are by law, by economics and by politics, have to serve new objectives.

Only a fool would attempt to project any of the lessons from the past through to the future, but we may be sure that discontent with the planning system will not readily abate, and that new policies yet will be devised and given legal form. Unless a future government determines to adopt a directed economy in land development, all those initiatives will be subject to the same constraints as in the past, but against a backcloth of even greater government complexity - not least, as now seems possible, if a future government party is unable on its own to command a majority in the House of Commons and thus the clear mandate for strong policies that the present Government has enjoyed.