1962

Town and Country Planning in England: A Bird's Eye View

R. E. Megarry

Follow this and additional works at: https://scholarlycommons.law.case.edu/caselrev

Part of the Law Commons

Recommended Citation

Available at: https://scholarlycommons.law.case.edu/caselrev/vol13/iss4/3

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.
Town and Country Planning in England: A Bird’s Eye View

R. E. Megarry

What I shall try to do in the time available is to paint for you a pretty broad picture of the kind of control of land use that we have in England and Wales, and how we came to have it. The system is complex, and I must perforce omit much, far more than I include. In the words of Holmes J., “To generalize is to omit;” and, I may add, often to omit is to falsify. But there are omissions and omissions: better a broad view that gives a fair picture of the essentials by omitting the detail than a microscopical examination of a tiny area that leaves the rest of the territory unsurveyed. In law as in geography, too much detail may stultify. The spirit transcends the letter, and it is something of that spirit which I seek to present.

BACKGROUND

England and Wales have an area of some 58,000 square miles, as compared with some 41,000 square miles in the State of Ohio. As England and Wales have a population of some forty-six million, whereas Ohio has a population of some nine and a half million, England and Wales are considerably more dense. For some time our population problem has led to some preoccupation with getting the best use out of the land available, with preserving the countryside, and with securing the best future for our towns and residential communities.

EARLY HISTORY

Before the year 1909 there was no general statutory provision for town or country planning in England and Wales. There were simply

1. Copyright R. E. Megarry, 1962. This article is no more than it purports to be, namely, a revised transcript of a short lecture. [The lecture was delivered at the School of Law of Western Reserve University in 1961. — Ed.] It eschews learning and essays only comprehensibility. A more ample but nevertheless informal and brief account of the law as it stood before and after the Act of 1947 will be found in Megarry, Lectures on the Town and Country Planning Act, 1947 (1949).

the rules of equity and the common law. Anyone could build what he liked on his own land provided he did not commit a nuisance or infringe any restrictive covenants. In general, the statute book was innocent of any provisions for controlling the use and development of land. But in 1909 there came the first timid beginnings of the statutory control of land use in England and Wales. Historically, this control falls into two periods. The first period is before the Town and Country Planning Act, 1947, came into effect on July 1, 1948, and the other period is after that date. The Act of 1947 was the great divide, for it created a new and much more comprehensive scheme of control which, with important modifications, is still in operation today. But in order to understand the Act of 1947, one must see what sort of a position had been reached before that Act came into force.

**Planning Schemes**

The Act of 1909\(^3\) laid down a system which over the years was greatly amended and varied, principally by the Acts of 1919,\(^4\) 1925,\(^5\) and 1932.\(^6\) Generally, the common feature of all these early provisions was this: that each area of land was to be controlled by what was called a town planning scheme. This was a scheme which in many ways resembled a zoning map, accompanied by the zoning ordinances with which you are so familiar in the United States. Now I say "to be controlled" by a town planning scheme, because, of course, it takes time to get these things settled. The idea was that the local authority for each area should, if it wished, prepare a town planning scheme showing how all the land in that district ought to be used. When all the procedural steps had been taken and the scheme finally came into force, it formed a sort of local law for that particular district.

A developer who wished to see if his proposed development was permitted by the plan would, of course, look at the scheme. He could inspect the complex of maps, on the one hand, and the printed documents, on the other hand, laying down certain definitions and rules. Broadly speaking, if what he wanted to do was not in accordance with the scheme he could not do it. If he wished to put up shops and offices in an area which was zoned for residential use, the answer was quite simple; the development was prohibited. There was, in effect, a hard and fast scheme which told everyone more or less how they stood. That was precisely the idea of these schemes.

---

3. Housing, Town Planning & c. Act, 1909 (9 Edw. 7, c. 44).
4. Housing, Town Planning & c. Act, 1919 (9 & 10 Geo. 5, c. 35).
5. Town Planning Act, 1925 (15 & 16 Geo. 5, c. 16).
Before the Schemes

Now what about the positions before there was any scheme? Schemes were optional: no local authority was obliged to prepare a town planning scheme, but each local authority could if it so wished. If a local authority wanted to have a scheme, the authority would pass a resolution to prepare one. This resolution was ineffective until it was approved by the appropriate Minister. In those days, the Minister of Health had the general national responsibility for planning. If he approved the local authority's resolution (and nearly always he would), the local authority would then sit down and start working out the scheme. This would take years — three years, five years, seven years, ten years. Many interests would conflict. Perhaps everyone would be more or less agreed as to where the principal residential areas would be; but how far into the country were they to extend? How much industry should there be in the area, and where? Were there to be any new shops, and if so, where were they to be? There would usually be many bones of local contention and many arguments during the preparation of one of these schemes. There might be political changes on the Council; the officers of the Council who had been preparing the scheme, and had been going blithely in one direction, might after an election be told to retrace their steps and point in another direction.

You can see that preparing and finally settling one of these schemes by the local authority was a process that was complex and slow. Even after the local authority had made the scheme, it did not come into force until the Minister of Health had approved it. Before he did this he would dispatch one of his inspectors to hold a local public inquiry to hear all objections to the scheme. Anyone could appear at one of these inquiries with counsel, if necessary, and witnesses and point out that the scheme was unwise, unfair, unrealistic, or otherwise bad. The Minister had full power to modify or vary the scheme as he thought fit before he approved it and it came into force.

As I have said, the production of an operative scheme was a long and complex process. It was not made shorter or less complex by the fact that the scheme finally settled the planning of an area, and could be changed only by a slow and cumbersome process. Finality takes longer than experiment.

Interim Development Control

Accordingly, something had to be done to cover the period while the scheme was being prepared. If there had been no control whatsoever

---

7. Act of 1932, §§ 1, 2, 6(1).
10. Act of 1932, § 38.
during that period, it would have been possible for any developer to jeopardize the scheme. If he knew or suspected that when the scheme came into force he would be not allowed to put any industry in the particular area where his land lay, he might promptly proceed to build a huge factory there, and this, of course, would make it quite impossible to bring the scheme into force as the local authority wished. And so during this period between the resolution to prepare a scheme and the scheme coming into force, there was a system known as "interim development control." The main purpose of interim development control was to prevent the scheme from being jeopardized; and the main rule was that if during this interim development period anyone developed his land, he did so at his own risk. If when the scheme came into force he found that what he had done was in accordance with the scheme, well and good: he could retain it there. If what he had done was contrary to the scheme he could be compelled, without any compensation, to pull down any offending buildings and discontinue any contravening use.\(^{11}\)

If, of course, the law had said just that, and no more, there would have been a complete halt to practically all development. The statute accordingly provided that anyone who wanted to know his position could apply to the local authority for interim development permission. The authority then looked at the draft scheme so far as it had been prepared, and if it seemed reasonably clear that what the applicant was proposing to do would not conflict with the scheme, then they gave permission for it. With this permission the development could safely be carried out, and it could not be suppressed or removed without the payment of full compensation. This was so even if the local authority later changed its ideas and in the end put into force a different scheme which prohibited the development.\(^{12}\) In short, although during the interim development period a landowner developed at his own risk, he could remove the risk by applying for and obtaining interim development permission. Further, under a succession of Interim Development Orders made by the Minister, interim development permission was granted in general for a wide variety of minor forms of development, e.g., works for maintaining a building.\(^ {13}\)

The Three Categories

Planning control in those days thus fell into three entirely separate categories. First, there were those local authorities which had never even resolved to prepare a scheme. Perhaps they were not interested in planning and were quite happy with the status quo, or perhaps their philo-
phy was to interfere as little as possible with private land development. These were the areas of no control. Secondly, there were the areas of interim development control: here there has been a resolution to prepare a scheme, but the scheme had yet to be formally approved. And finally, there were those areas which were governed by an operative town planning scheme. These were comparatively few. Statistically, at the outbreak of World War II in 1939, four per cent of England and Wales was covered by fully operative town planning schemes; seventy per cent was covered by interim development control; and in twenty-six per cent there was no control at all.

THE ACT OF 1943

In 1943, at the height of the war, a significant Act was passed, the Town and Country Planning (Interim Development) Act, 1943. This Act made two major changes. First, it abolished all the areas of no control. It converted the twenty-six per cent in this category into areas of interim development control, even though the local council concerned had failed to pass any resolution to prepare a planning scheme; the area was treated as if such a resolution had been passed and approved. Thenceforward, land in England and Wales fell into two categories instead of three. Four per cent of the country still had operative schemes, but after the Act of 1943, ninety-six per cent had interim development control. In ninety-six per cent of the country the crucial matter was accordingly the landowner's application for permission to do what he wanted to do and the grant or refusal of permission according to any draft scheme as it then stood on the drawing boards of that particular council. I emphasize this point because you will see in a moment how significant this feature was.

The second major objective achieved by the Act of 1943 was that it eliminated a notorious defect in the process of interim development control. This defect was that until a town planning scheme had come into force, nothing could be done about any development that a developer had carried out during the interim development period however objectionable it was. Some developers, encouraged by the fact that many local authorities had resolved to have a town planning scheme and then had taken ten or fifteen years to formulate the scheme, thought, “I can get in here and I can carry out some thoroughly unsuitable development without any permission at all. I can build a shocking tin shanty factory in the middle of a wonderful beauty spot in the unspoiled countryside and make a tidy profit before there is any enforceable control.” I am

14. 6 & 7 Geo. 6, c. 29.
not, of course, really suggesting that the thoughts of many developers were really as malevolent as this. However, the point is that they could have done this in reliance upon the fact that there was nothing whatever that the local authority could do to stop them until the scheme came into force. Once the scheme came into force the developer could be forced to pull down his tin shanties. Unfortunately, too many developers relied upon carrying out repulsive developments, making a quick profit and then departing before any scheme came into force.

The Act of 1943 accordingly put teeth into interim development control. It provided that if anyone thereafter carried out unauthorized development during an interim development period, the local authority could serve a notice upon him requiring him to remove the structure or to discontinue the unauthorized use of the land. Such a notice had to be complied with without any compensation being recoverable. After the Act of 1943, if anyone wished to develop during the interim development period, he had, in effect, to get permission to do it; he could no longer develop merely at a future risk.

The Minister

In order to complete the picture I should point out that the decision on an application for interim development permission was not entirely within the power and discretion of the local authority. If an applicant sought interim development permission and it was refused, or it was granted subject to unacceptable conditions, he had a right of appeal to the Minister. Generally speaking, the courts had no jurisdiction in these matters because they concerned planning policy rather than law; the applicant had only his right of appeal to the Minister. At first blush this may not sound very attractive. One governmental authority refuses permission, and the only appeal is to another governmental authority. Yet sometimes what seems highly objectionable in theory works well enough in practice; and so it was here. The right of appeal proved very effective. The Minister did not whitewash all the acts of local planning authorities. Appeals to the Minister, generally speaking, succeeded nearly as often as they failed. The Minister was always ready to listen to an appeal, whether based on individual hardship, the faulty application of planning principles by the local planning authority, or any other intelligible ground.

These appeals were conducted by what can only be described as a full adversary process. A person did not appeal from the local authority simply to obtain the clemency of the Minister; instead, it was an ad-

17. Act of 1932, § 10(5).
versary fight. The contestants were the applicant, on the one hand, as the appellant, and the local planning authority, on the other hand, as the respondents. Each side would call its witnesses. The appeal would be conducted in public in something like a courtroom. There would be an inspector from the Ministry sitting in the chair and acting as the judge, and the local planning officials, the people who were hatching this incipient scheme, would also be there. The planning officials would adduce their evidence and be available for cross examination. A disappointed applicant who had been refused permission to develop would at least have the moral satisfaction of having the planning officials who were largely responsible for his discomfiture on display in public and subject to cross-examination by counsel. This was an important element in the removal of any sense of injustice.

At the end of the hearing the inspector gave no decision, but simply said, "I now declare this inquiry closed." He then inspected the property concerned and prepared a written report of the hearing and inspection for submission to the Minister, with his recommendations whether the appeal should be allowed or dismissed. Two, three, or six months later the appellant would receive a formal letter of decision from the Minister. This letter would not only state the Minister's decision, for dismissing the appeal, allowing the appeal, or partially allowing it, as the case might be, but also gave the reasons for it. This was the state of affairs before the Act of 1947 was passed and the conduct of appeals is still much the same today.

One important feature of these planning appeals is the public attention that they attract. In England, for some time now the public has been interested in inquiries in particular and in the idea of planning in general. Planning inquiries often attract sizable audiences. It is not unusual to have thirty, fifty, or even a hundred local residents turning up and sitting in court all day, although, not surprisingly, attendance on the second morning is often not as good as on the first day. There is much to support the view that in England town and country planning is regarded as something done by and with the cooperation of the people, and not as something extraneous, imposed from outside.

**Defects**

There were certain defects in this old system. First, planning was optional: local authorities were not obliged to prepare planning schemes. Secondly, it was rigid. Once a town planning scheme had been made it was far from easy to alter it.\(^\text{18}\) It could be done, but it was a long and complicated process and many planning authorities were reluctant

---

to embark upon it. In some areas planning schemes that were sound and valid in the 1920's and 1930's had, as a result of changes in population, the erection of new factories, and the construction of new roads, become quite obsolete by the end of the war. A plan that was good in 1930 might in 1945 be very bad; and so there was an obvious need to make these planning schemes less rigid. A third problem was the number of local authorities who had power to prepare these schemes. Some 1,450 local authorities throughout England and Wales possessed planning powers, so that on an average there was one local authority for approximately every 30,000 people. In other words, England was planned in rather small units.

**THE ACT OF 1947**

These defects, and many others, were corrected by the Act of 1947. This scrapped the old system completely. It wiped the slate clean: in effect Parliament said, "We are going to start all over again. We will learn from our experience and mistakes under the old system and have a better and more comprehensive system of control." First, the old town planning schemes were all completely repealed and replaced by a very much modified version of the town planning scheme. Every local planning authority was required to prepare within three years what was called a "development plan." Unlike the old planning schemes, development plans are compulsory. As a preparatory step, the authority was required to carry out a survey of its area and submit a report of the survey to the Minister, who is now the Minister of Housing and Local Government, in place of the Minister of Health. Although the report of the survey is not a formal part of the development plan, it usually contains far more reasoning and explanation of policies than will be found in the plan itself: the report explains, the plan states.

The development plan itself does not look very different from the old town planning scheme. There is still a complex of maps, including a basic map and a town map for each urban area. The town map has various markings and colorings on it; there may be red for the residential zones, dark purple for the heavy industrial zones, light purple for the noiseless, colorless, and odorless industries, brown for shopping areas, and so on. There are also program maps to show when during the next twenty years each of the changes is likely to take place.

Generally speaking, all our zoning is exclusive. We have never had a system of Euclidian zoning in which there is a hierarchy of uses, and where in each class any use in a superior class is permitted. Thus an


industrial zone does not embrace housing or shops. The furthest we go along this road is that some local planning authorities provide a table in the written statement which is part of the development plan showing certain compatible uses (e.g., shops and houses, or offices and public buildings) which will probably be permitted, or will be considered on their merits. Thus in a heavy industrial zone, permission for light industrial development will in all probability be granted; commercial development will be considered on its merits; and permission for housing development will in all probability be refused. Euclidian zoning would permit all these.

In addition to all the maps, the development plan includes a written statement. This sets out the broad outline of planning policy and the general rules to be applied in the area, together with various definitions. So the development plan does not look much different from the old town planning scheme. However, as you will see later there are some important differences.

Every local planning authority is thus obliged to prepare a development plan. Having prepared the plan, the authority must submit it to the Minister for approval. The plan must first be advertised. At least six weeks notice must be given to allow for objections,21 and anyone can inspect the development plan in the local city hall to see how it affects his own land. There will then be a public local inquiry into any objections to the development plan.

These inquiries are usually well attended by objectors. The inquiry will often last a long time. Perhaps the simplest of these inquiries will be completed in about a week, whereas the more complex ones take many weary months. At the inquiry there is a detailed examination of every objection that has been made to the development plan. The objections may be on matters of broad principle; on the other hand, they may be on the particular application of a planning policy to an individual plot of land.

Planning Policy

Each area may have its own planning policy. Thus there are striking differences in policy with regard to industry. Take the Greater London area. The view was generally held that there was far too much industry in the Greater London area; there was a persistent concentration, a general moving of industry toward London. Some said it looked as if London were going to be strangled by a ring of factories all round the edge of Greater London. The County of Middlesex, bordering on London, was one of the counties particularly affected in this way. On the other

---

hand, there were some counties in the north of England where industry was moving out, with a consequent increase of unemployment. As a result, two entirely different planning policies are to be found in these areas. In Middlesex, the policy is to restrict any increase of industry. Let there be no more new industry in this area and only a very limited expansion of existing industry; the industrial invaders must be kept out. In parts of the north of England there is quite the reverse policy. Allocate more land for factories, and provide some encouragement for industrialists to bring their factories there, for they are needed. And so at a development plan inquiry a grand overall policy such as the Greater London policy might be subjected to attack by Middlesex industrialists complaining of strangulation. At the other extreme, there might simply be the objection that a plot of vacant land on which someone wanted to build offices or factories had been zoned as residential in the development plan and he did not like that zoning. Here the objector simply wanted the line to be moved fifty yards to the west so as to leave him just outside instead of just inside the residential zone.

All the objections are grouped according to area and subject-matter, and then each group of objections is heard in turn. Evidence is offered by the local planning authority and by the objectors. There is the usual examination and cross-examination of witnesses, and, indeed, the whole process of adversary proceedings conducted by advocates. At the end of the inquiry the inspector inspects the areas that have been discussed and sends a report to the Minister with his recommendations. Probably a year or more after the inquiry is closed the Minister's decision will be published; and this usually approves the development plan with amendments and modifications which may be extensive or may be slight. Thereupon the development plan becomes operative, though within six weeks of publication the plan can be challenged in the High Court. Such a challenge, however, is open only on the ground of ultra vires or failure to comply with the requisite formalities, as where it is alleged that no proper opportunity to object has been given, or something of that nature.22 The courts have no jurisdiction to interfere with the substance or policy of the plan. They can interfere only if the formalities have not been complied with. No question of infringement of constitutional rights can arise, for, of course, we have no constitution in your sense of the word.

There is one big difference between the development plan and the old town planning scheme. The old town planning scheme laid down the local law. It actually gave permission to build houses in the areas that were zoned residential. The development plan, on the other hand,

gives permission for nothing. It does not operate as a sort of local law. What it does do is to provide an informed prophecy of what kind of development is likely to be permitted and what is likely to be prohibited.

The Act of 1947 thus introduced a completely new concept. Even though there is a fully operative development plan in force, in every case where anyone wishes to carry out any development he must first apply to the local planning authority for planning permission, and that authority must consider the application on its merits. The authority must consider in particular the provisions of the development plan, although this is not binding or conclusive.  

In other words, if what is proposed is in exact accordance with the development plan it is highly probable that the applicant will receive permission; but it is not certain. Thus, things may have changed since the development plan was settled. Perhaps it was a good idea then to zone the land as industrial, but something has happened since, such as the construction of a new road, which has made that zoning highly undesirable. There will thus be the occasional case where an applicant will be refused permission to do something that accords with the development plan. On the other hand, if what the applicant proposes to do is contrary to the development plan, it is probable that he will be refused permission. But here again things may have changed and new ideas may have crept in. It may have been found that in the development plan as originally conceived a miscalculation had been made. Perhaps too little land was allocated for industry, and so the applicant may be lucky and get industrial permission for land which the development plan zones as an open space. The development plan is a guide, a highly persuasive guide, a prophet with even more than Biblical powers of prophecy; but it is not law and it is not decisive. Everything must be determined on application.

You will notice the similarities and the contrasts. Before 1948, interim development control was mainly a device to prevent the town planning scheme from being frustrated. The emphasis was on the scheme, with interim development permission in the main a preparatory incidental. Today, the emphasis is on the planning permission, with the development plan mainly an important guide to the probable result of an application for permission. The present system, in essence, is a highly polished version of interim development control.

"Development"

So far I have used the word "development" quite glibly. What does it mean? The Act is very comprehensive in its definition of development. This falls into two parts. First, development means "the carry-

ing out of building, engineering, mining, or other operations in, on, over, or under land.” Notice the fine comprehensive sweep of that. Nothing is left out. In fact, the definition is even more comprehensive than at first appears because most of the words in it, like “building,” “engineering,” and “mining,” are themselves defined in definitions of remarkable amplitude which sweep in almost everything conceivable. The other part of the definition is this: “the making of any material change in the use of any buildings or other land.” An owner who does nothing structural escapes the first limb of the definition, but he may nevertheless be carrying out development because he is making a material change in the use of buildings or land. Thus he begins to use the ground floor of his house as an office; he uses his office as a shop; or he starts to carry on some industrial manufacturing process in his shop. Each of these activities makes a material change in the use of land or buildings, and so constitutes development. In each case he must apply for permission under the Act.

Leave it there, and of course the system would be ridiculous. I sell shoes in my shoe shop; shoes do not pay, and so I decide instead to sell tobacco, cigarettes, sweets, and the like. Leave the definition as it stands, apply it nakedly, and it might well be said that I have made a material change in the use of my building which requires planning permission. Accordingly, the edge is taken off these very comprehensive definitions by a series of orders and regulations which are subordinate legislation made by the Minister under the authority of the Act. These make some general exceptions and give blanket permission for certain types of activity that do not harm the general structure of the Act. There is, for example, the Town and Country Planning (Use Classes) Order, 1950. This states, in effect, that changes in use from one type of shop to another type of shop shall not be deemed to be development. However, there are a few exceptions to this. A fried fish shop seems to be looked upon as noxious; so one cannot change from shoes to fried fish without getting specific planning permission. But if a shopkeeper stays away from fried fish and three or four other special categories, he can switch from shoes to books, to ladies dresses, and so on as much as he likes. The Order lays down eighteen “use classes,” and within each class he can roam at will. Thus, one class comprises theatres, cinemas, music halls, dance halls, skating rinks, swimming baths, and so on. Someone who owns any establishment falling within this category can roam within this class at will; but once he goes from one class to another, the general rule is that planning permission will be required.

There is also the Town and Country Planning General Development Order, 1950.\footnote{STAT. INSTR., 1950, No. 728.} This Order gives general and automatic planning permission to a fine assortment of activities for which express permission would otherwise have to be sought. The twenty-four classes of development include, with many detailed restrictions and qualifications, such forms of development as the alteration and enlargement of dwelling houses which do not increase the cubic content by more than one-tenth, with certain overall maxima; the erection of garages and other out-buildings within the curtilage of a dwelling; the erection of fences; and temporary uses of land not exceeding twenty-eight days in a year.

\textit{Revision of Development Plans}

That, then, is the general frame of the Act of 1947. Subject to important qualifications, a landowner must seek planning permission for all development. But before going further, one important new feature in the development plan should be mentioned. Things may change after the plan has been approved, and so there is a provision that at least once in every five years the whole development plan must be reconsidered by the local planning authority, and amendments may be put forward which will bring the plan up to date. There is also a discretionary power to review the plan more often than once in every five years.\footnote{Act of 1947, § 6.} Each time the authority proposes to make any change there must be another survey of the area and, in general, the whole machinery of the initial making of the plan must again be followed. So development plans, unlike the old town planning schemes, are not rigid. They are intended to be flexible and to keep pace with modern needs and trends in the country as a whole and in the neighborhood in particular. Everyone has an opportunity to object if the development plan is being changed because, of course, this may prejudicially affect his property rights.

\textit{Local Planning Authorities}

A second change is that there has been a striking reduction in the number of planning authorities. As already mentioned, in the old days there were something like 1,450 local authorities with planning powers. Now there are no more than 145. In other words, some 1,300 local authorities have been deprived of planning powers; councils of boroughs, urban districts, and rural districts now have no planning powers other than any which are delegated to them. Only authorities with county status now have planning powers. This means that the counties and the
county boroughs (that is, the large cities which rank as counties on their own) are the only local planning authorities.\textsuperscript{29}

This was thought necessary for a variety of reasons. With a multitude of small planning authorities there were all the difficulties of fringe development that straddled local government boundaries. Sometimes it was far from easy to get planning co-ordination between warring local authorities. It is astonishing how much heat can sometimes be engendered between one local authority and another on apparently the most trivial of matters, at any rate in England; no doubt it is better over here. Furthermore, the smaller authorities often could not afford to pay for an adequate planning staff. One result of depriving the smaller authorities of their planning powers and concentrating them in the 145 county and county boroughs is thus to ensure that every local planning authority has a properly qualified staff. It also obviates most of the border incidents, though not all. There may be a large town on the edge of one county, and what happens to that town will have a marked effect on the neighboring county; and many a county borough is \textit{urbis in urbe}. Accordingly, provision was made so that in such cases a joint planning board could be constituted, composed of representatives of the planning authorities concerned, and this board would become the local planning authority for that particular area.\textsuperscript{30} In most cases, machinery thus exists which enables us to avoid the boundary incidents which may easily be a real handicap to effective planning.

\textit{Appeals}

These, then, are the authorities to which an application for planning permission must be made. In general, they may refuse permission, or grant it, either unconditionally or subject to such conditions as they think fit. In reaching a decision the authority must have regard to all material considerations, and, in particular, the development plan.\textsuperscript{31} But once again, as under the old system, the local planning authority is not in the saddle as a dictator. There is the right to appeal to the Minister from all planning refusals and from all undesirable conditions which have been attached to permissions that were granted.\textsuperscript{32} An applicant may be delighted with the permission, but not with the conditions, and so he appeals to the Minister. Such appeals are at present running at the rate of about 6,000 a year, and the majority of these are contested appeals with legal or other professional representation. A relatively small number are

\begin{itemize}
\item \textsuperscript{29} Act of 1947, § 4 (1).
\item \textsuperscript{30} Act of 1947, § 4 (2).
\item \textsuperscript{31} Act of 1947, § 14 (1).
\item \textsuperscript{32} Act of 1947, § 16.
\end{itemize}
decided upon written representations, but generally there is the full adversary process.

Planning Benefits

It is all too easy to look upon planning control as being merely a restriction on a land owner. One has to look at the other side too. For example, Mr. Jones owns a comfortable house in which he lives. His next door neighbor proposes to establish a school of music in his house. It may be that Mr. Jones does not like music; perhaps (even worse) he is a music-lover; in either case he may not want the school of music next door to him. The neighbor must apply for planning permission, for he is proposing to change his residential premises into an educational establishment, namely, a school of music, and this is development. A refusal of planning permission will benefit Mr. Jones, and so he will be concerned to oppose his neighbor's application. If the neighbor is refused permission by the local authority and he appeals to the Minister, Mr. Jones probably will be present at the appeal to support the local planning authority. In planning matters one man's restriction is another man's protection.

This fact is fully realized in England. When someone proposes to construct a new factory or open a new quarry the local residents will often turn out in force to point out how all the dust, flies, noise, smells, and other undesirable consequences will affect them. Full weight will be given to their representations; yet England is a small and densely populated island, and sometimes the minority (the local residents) must suffer in the interests of the majority of the country.

The point which I am trying to bring out is that there is not only the negative side of town planning to consider, but also the positive side. Each side greatly concerns the legal profession. The graduate emerges from law school with a full knowledge of restrictive covenants, equitable servitudes, and the like. Later someone comes to him for advice, stating that his neighbor is proposing to set up a school of music, and that there is a covenant restricting the neighborhood to private residences only. The client wants to know what he can do about his neighbor's proposal. A strict, legal, and formal answer would be that the client can commence proceedings for an injunction to restrain the breach of this restriction provided that the wording of the covenant is suitable, provided that he is entitled to enforce the benefit of this restriction, and provided that the neighbor is subject to the burden of it. There could be nice expensive Chancery proceedings lasting a long while and perhaps going to appeal. But the competent lawyer in England will say, "There is a fascinating point of construction on this restriction, but I think the sensible thing to do is to go to the local authority and find out whether your neighbor had
planning permission for this change. If not, then we will encourage the local authority to enforce control strictly, and if this succeeds it will be much speedier and cheaper than a Chancery action. We will knock him out on planning grounds instead of launching proceedings for an injunction which may be difficult and expensive.” As so often happens, good advice may prevent money from finding its way into the lawyer’s pocket, but that is an occupational risk of the profession. In England, the important thing is that the benefits of planning control are fully recognized by the populace generally.

Advertisements

This, then, is a sketch of the main stream of planning control. But before I end, let me deal with one specialized field of control, namely, advertisements. One of the changes made by the Act of 1947 was to provide for the control of advertisements on land. True to form, the Act and the Regulations made under it are very wide in their definition of advertisements. In effect, any sign that conveys any information to an intelligent mind is an advertisement. Thus a bus sign in the street indicating a bus stop is an advertisement. The words are only “Bus Stop,” but the sign is an advertisement because it is visible by the public on the street and it conveys some sort of information. Control thus applies not only to advertisements in what might be called the strict sense, but also to all announcements in any public place.

The general line taken by the Act and the Regulations was that new advertisements required planning permission, but that existing advertisements could go on indefinitely unless challenged by the local authority; and for advertisements which have to be removed there is no compensation beyond the cost of removal. “Advertisement” is not confined to the particular poster advertising the particular cigarette or whatever it was that appeared on the billboard when the Act came into force. The rule is not that this particular announcement was privileged and that subsequent posters in the same place advertising beer or chocolate were not. It is the advertising site rather than the particular advertisement that is the subject matter of control. Existing advertising sites could continue to display advertisements of any kind unless challenged. If there is a challenge the advertiser must seek permission for the advertisement, and the procedure is generally similar to an application for ordinary planning permission. The same principle applies to an initial application for new advertising sites.

There are, of course, many exceptions and qualifications. Thus many

---

useful advertisements (e.g., the bus signs that I have mentioned) and various temporary advertisements (e.g., a sign reading “For Sale” outside a house) are automatically deemed to have permission. However, permitted advertisements are subject to certain conditions, e.g., requiring them to be kept clean and tidy and not to interfere with road traffic signs. There are also provisions for constituting “Areas of Special Control” where in effect all advertisements are prohibited. Thus, beautiful scenery or attractive villages can be preserved from spoliation. If Niagara Falls were in England (and I wish they were) I cannot think that at night illuminated advertisements would be permitted to flash out over the waters.

The broad result of this system of control has been highly beneficial. Many objectionable advertising sites have been suppressed and many more prevented from coming into existence. Both in the suppression of old sites and in the authorizing of new sites planning authorities have been able to give effect to considerations of amenity and road safety. Sometimes it is necessary to take a rather strict view as regards advertisements which front on highways along which cars proceed at speed. The whole point of an advertisement is to attract attention; it is not much of an advertisement if it does not. But so far as the driver of a car is concerned, for the word “attract,” I would substitute “distract.” Those driving cars on highways ought not to have their attention distracted from what they are supposed to be doing (namely, driving safely) by the presence of advertisements. There has been something of a clean-up of advertisements on important roads in England, though not as much as some would wish. On the other hand, you should not think that planning control is necessarily anti-advertisement. There are some dreadful industrial towns in England with appalling architecture, and from every point of view these towns are greatly cheered up by bright advertising; there is a place for everything. But when one goes to country beauty spots or on populous highways then entirely different considerations come into play.

This control was accepted by the advertising industry with a certain amount of grumbling; yet it is remarkable that so drastic a control was put into effect with so little trouble. Perhaps the members of the advertising industry were afraid that if they refused to co-operate the Regulations might be made even more drastic than they were. An even more important factor, I think, was that the reputable advertisers (and there are many) were thankful to have the not-so-respectable advertisers brought under proper control. No longer was it necessary to compete in putting up frightful signs in unsuitable places for fear that if this was not done some less reputable advertiser will put up advertisements there. At any rate, the advertising revolution was painlessly effected in 1948, and now that it has been in full swing for over twelve years most people
are well content with it, except perhaps some of the less reputable advertisers.

CONCLUSION

Finally, the time has come to try to draw some threads together. Among the general features discernible in English town and country planning is, first of all, that it is compulsory. Every local planning authority is obliged to prepare a development plan for its area, and to enforce the system of control in that area.

Secondly, the system is comprehensive. It covers the whole of England and Wales. Every acre of land appears on some development plan somewhere. It is perfectly true that many parts of undeveloped country districts are not planned in any positive sense. They are not colored with any color on any of the maps, but are simply left uncolored. They are "white" areas, and the letterpress in the written statement which forms part of the development plan will state that the areas uncolored are for the most part intended to remain in their existing use. In short, this holds the fort: keep the land as it is unless good cause for change is shown. In the "white" areas sheep still may safely graze. If instead of being left "white" the land receives a "green belt" marking, the sheep are even safer, for this means that there is a positive policy of preventing development there. This is normally because such land borders on urban development. In these cases the "green belt" is usually intended to check further expansion, to prevent two or more urban areas from joining up, and to preserve open land within reasonable reach of city dwellers. Not surprisingly, there is many a hard-fought battle on "green belt" markings, for they tend to sterilize land of great commercial value. It is the "white" land and the "green belt" land which constitute most of the "country" in the title "Town and Country Planning Act, 1947." Yet despite the relatively negative aspect of "white" land, it is substantially true to say that every plot of land in England and Wales is subject to some development plan.

Thirdly, the system is flexible. It is flexible in that there is a provision for the periodical amendment of development plans, and that in any case a development plan does not constitute binding law. It provides a strong guide, so if an applicant is refused planning permission to do something which the development plan states he can do, then this is a very strong argument when the case comes on appeal to the Minister. The applicant can say, "Well, here it is, here is the decision made three years ago that this land should be industrial land, and now I have been refused permission." The burden immediately shifts to the local planning authority to show that it is right for them to depart from the development plan. But it is only a burden; it is heavy but it may be shifted.
The system is flexible in regard to the development plan and flexible in regard to the system of requiring planning permission for every type of development, except those types of activity which are permitted by the Orders which I have already mentioned.

Fourthly, the system is unified. It is unified by being under the general control of one Minister throughout the country. He exerts his unifying influence both by means of his appellate functions and by virtue of his advisory and rule-making powers. He does much to ensure that the standards applied by one local authority come up to the standards which all local authorities ought to observe. And, of course, we now plan in fairly large units. With only 145 local planning authorities for the whole country we avoid planning in penny numbers. On an average there are now over 300,000 people for every local planning authority. We escape the problem of a large urban area with fifty or one hundred different municipalities each with its own planning control and planning system, yet each merely forming part of what in England we call one large conurbation. Further, the system is unified because there is one law governing the whole of the country. Different planning policies are carried out in different areas: thus Middlesex restricts industry whereas Durham encourages it. Each is a perfectly intelligible but quite distinct policy, yet each falls squarely within the framework of the Act of 1947 and is governed by rules of law which are common to the whole country. The penalty for disobeying an enforcement notice which requires compliance with planning control is exactly the same in one place as in another. The machinery, the right of appeal, and the limited access to the court, are all part of one system of law which applies to the entire country; yet within that one system each planning authority is able to carry out its particular policy if and so far as that policy is approved by the Minister. There is one law but many policies. There is, in effect, a national system of law with local options on policy.

Fifth, there is a high degree of citizen participation. It is quite striking to note how much support there is for planning control among the inhabitants of England and Wales.

Lastly, I would once again emphasize the adversary process which is available to anyone who is dissatisfied with a planning decision. It is not simply a question of appearing before a planning board of appeals and trying to persuade them to change their minds. An appellant has the local planning authority in the dock, as it were. His adversaries are there, and they have to justify their policy to the Minister's impartial representative. The disappointed applicant for planning permission has the satisfaction of seeing his case fought out and of watching the planning

---

34. A conurbation is an area in which a number of towns and municipalities have merged into each other and physically form one unit.
officer who advised the rejection of his proposal thoroughly cross-examined as to the basis of the decision. It is one thing to try to persuade a planning officer to change his mind, and another to require him to justify his decision before someone who is skilled and impartial. An applicant who has been denied planning permission is at least entitled to feel that his lawyer has been able to get to the bottom of the case against him, as well as putting forward the best case for him. This does much to remove any sense of injustice that might otherwise be felt.

This, then, is a bird’s eye view of an Act which on the statute book is over 200 pages long, with as much again in amendments; and I shrink from estimating the bulk of the subordinate legislation enacted under it. I have spoken for less than an hour, and you will understand that I have not put before you everything that is to be found in our wealth of statutory material. In particular, nothing has been said about the bold experiment which sought to take the financial profit out of increases in land values due to potentialities of development, a bold experiment which held the field for barely five years, and failed.³⁵ I can say no more than that I have sought to give you a bird’s eye view of some of the salient features of our system as it stands today; and the bird flew high.