

THE HAMLYN LECTURES

Twenty-seventh Series

**THE LAND AND THE
DEVELOPMENT**

or

**The Turmoil and
the Torment**

Sir Desmond Heap



THE LAND AND THE DEVELOPMENT

or

The Turmoil and the Torment

by

Sir Desmond Heap, LL.M., HON. LL.D.

sometime Comptroller and City Solicitor to the Corporation of London, Past President of the Law Society, Member of the Council of the Royal Institution of Chartered Surveyors, Member of the Council and Past President of the Royal Town Planning Institute

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Sir Desmond Heap

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CONTENTS

<i>The Hamlyn Lectures</i>	page vii
<i>The Hamlyn Trust</i>	ix
<i>Preface</i>	xi
Lecture One: PAST HISTORIC	1
Lecture Two: PRESENT IMPERFECT	24
Lecture Three: FUTURE PROBLEMATICAL	49
Lecture Four: L'ENVOI	73

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THE Hamlyn Trust came into existence under the will of the late Miss Emma Warburton Hamlyn, of Torquay, who died in 1941, at the age of eighty. She came of an old and well-known Devon family. Her father, William Bussell Hamlyn, practised in Torquay as a solicitor for many years. She was a woman of strong character, intelligent and cultured, well versed in literature, music and art, and a lover of her country. She inherited a taste for law, and studied the subject. She also travelled frequently on the Continent and about the Mediterranean, and gathered impressions of comparative jurisprudence and ethnology.

Miss Hamlyn bequeathed the residue of her estate in terms which were thought vague. The matter was taken to the Chancery Division of the High Court, which on November 29, 1948, approved a Scheme for the administration of the Trust. Paragraph 3 of the Scheme is as follows:

“The object of the charity is the furtherance by lectures or otherwise among the Common People of the United Kingdom of Great Britain and Northern Ireland of the knowledge of the Comparative Jurisprudence and the Ethnology of the chief European countries including the United Kingdom, and the circumstances of the growth of such jurisprudence to the intent that the Common People of the United Kingdom may realise the privileges which in law and custom they enjoy in comparison with other European Peoples and realising and appreciating such privileges may recognise the responsibilities and obligations attaching to them.”

The Hamlyn Trust

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The Twenty-Seventh Series of Hamlyn Lectures was delivered in November 1975 by Sir Desmond Heap at the Law Society's Hall in Chancery Lane.

J. N. D. ANDERSON,
Chairman of the Trustees.

November 1975

PREFACE

A PREFACE comes first but is often read last—if, indeed, it is ever read at all. In the present instance I am assuming—perhaps rashly—that the reader is going to “begin at the beginning, go on to the end and then stop,” as Alice’s King of Hearts so wisely advised the witness. Accordingly, I want to make two short points before the reader goes any further into this book.

First, I want to mention that the four lectures which make up the book were delivered by me at the Law Society’s Hall, London, on November 4, 5, 11, and 12, respectively 1975. They are printed here in the terms exactly in which they were delivered. Because it is the understandable wish of the Hamlyn Trustees that the Book of the Lectures should be published as soon as may be after their delivery, it follows that the script of the lectures must necessarily be in the hands of the printers some weeks before the lectures are due to be given.

From all of this it will be seen that when a lecture happens to be (as is the third lecture—“Future Problematical”—in this series) based upon legislation which is actually in course of enactment as the lecture itself is being prepared, it is bound to follow that by the time the lecture is delivered—let alone published in book form—the lecture may find itself, to some extent at least, overtaken by events in that changes may well have taken place in the Bill for the legislation (from which the lecture derives) as the Bill makes its way through the customary parliamentary procedures to Royal Assent. Accordingly, the reader is asked to bear this point in

mind when reading the third lecture which is based upon the Community Land Bill now before Parliament.

The second point I wish to make is that these lectures, though given by a lawyer, are certainly not *law* lectures. Indeed, they could be regarded as not being lectures at all. They are more in the nature of essays, each separately concerned and contained, in which I have allowed myself to ponder, in musing and contemplative mood, on the use, the misuse and the non-use of land planning controls over the past half century. They are a 1975 commentary (not likely, and not exactly intended, to please everyone) on the passing scene relating to control of the land and its development and the turmoil and the torment in which, after a remarkably smooth beginning, that control increasingly finds itself today.

The point of the lectures is to stimulate, not to say provoke, further thought about what is to be done to simplify, and thereby improve, existing procedures covering control over land development in the great hope that, all in good time, the land development (and redevelopment) market will once again be able to play its influential role in building up and buttressing the economy of this country.

DESMOND HEAP

*The Members' Room,
The Law Society's Hall,
London*

October 27, 1975.

LECTURE ONE

PAST HISTORIC

It was at 20 minutes before four o'clock in the afternoon on Monday, April 5, 1909, when the President of the Board of Trade, Mr. John Burns, rose in his place in the House of Commons and proposed, "That the Bill be now read a second time." That Bill was the curiously titled, "Housing, Town Planning, Etc., Bill 1909." Its second reading was sandwiched between, on the one hand, the first reading on the Women's Enfranchisement Bill (to enable, of all wonderful things, women to vote at Parliamentary Elections)—all of which came to nothing whatsoever until after the holocaust of a World War, the First World War—and, on the other hand, the planning Bill was sandwiched between (would you believe it?) the Great Northern, Great Central and Great Eastern Railways Amalgamation Bill which likewise came to nothing at all until, again, that same World War had engineered the end of an epoch and set the giddy nineteen-twenties on their cocktail-studded progress.

Six Decades Ago

What a long time ago it all seems today!—that year of 1909 when town planning control over the development of land first stepped into the Parliamentary arena and became the law of the land. The intervening period covers, pretty well, the span of my own life. This, of itself, is not important; I mention it only because I feel that more change in the life-style of these islands—Great Britain and Ireland—has occurred in my own lifetime than had previously occurred since—well, since the inven-

tion of the wheel, just about. In the last 60 years we have had to put up with many changes in town planning control but town planning control itself has had to adapt its functioning to many changes in the British way of life.

Let us ponder just for a moment some of the facts of 1909 so that we may the better realise what a yawning gulf separates us from those days when statutory planning control first came into our midst.

Do you realise that, for Christmas 1909, your gift hamper beautifully packed and dispatched by those well-known "Grocers and Italian Warehousemen," Messrs. Fortnum and Mason, would contain, in the "*One Pound Hamper*," the following:

One Christmas cake
One plum pudding
1 lb of sausages
1 jar of mincemeat
One turkey, *and*
One bottle of whisky!

The turkey may well have been a small one but the bottle of whisky (at 3/6d.) was exactly the same size as today.

Did you have it in mind to have a week-end in Paris? Your return fare in 1909 (2nd class) would be 30/- (against £25.30 today)—or a few days on the French Riviera in which case your return fare would be as much as £6 12s. 0d. (against £70.10 today).

In 1909 most people had never heard of radio, television or of an aeroplane. The hey-day of the British Music Hall was beginning—it closed for the last time almost exactly 50 years later in 1959—but the Cinematograph and the "picture theatre"—the cinema—had not yet even got off the ground.

In 1909 out of 62 county councils (all operative since 1888) only half had actually appointed a county medical

officer of health. Indeed, it was the *et cetera* Part of the 1909 Bill (Part III) which sought to do something about this lackadaisical state of affairs in the sphere of public health.

It was not possible for Mr. John Burns, having moved his Bill, to go to the theatre that same night because the debate on the Bill continued (with a three-hour interruption for "private business") until a quarter to one the following morning when the second reading was carried by 128 votes to 20. If, however, he *had* gone that same evening to Mr. Wyndham's Theatre, then he would have been regaled with Mr. Frank Curzon's new production entitled, aptly enough, "An Englishman's Home (is his Castle)."

The *Daily Graphic* for April 6, 1909 carried a leader about the new planning Bill. It thought little of the Part relating to Housing but as to the Town Planning portion it declared:

"Mr. John Burns was fortunate yesterday in finding fairly general support for his Housing and Town Planning Bill. . . . So far as Town Planning is concerned there is more to be said for the proposals of the Bill. If we could be sure that local authorities would always take a far-seeing view of the future requirements of our towns we should all be glad to give them large powers of control. Unfortunately, the men who now sit upon municipal councils do not inspire very much confidence as regards the present, and still less as regards the future."

Poor local government—always in trouble!

The 1909 Act

The 1909 Bill was a modest affair. On town planning it carried 14 sections covering 9 pages. The principal Act

on the subject today, the Town and Country Planning Act 1971, the *seventeenth* Act of its kind since 1909, carries 295 sections and 25 schedules covering in all 382 pages. The legislation has indeed been fruitful and has multiplied. I shall return to this vexing point later in these lectures.

In the meantime, and because Miss Hamlyn wanted “the Common People of the United Kingdom” (her own words) to have knowledge of “the circumstances of the growth of (our) jurisprudence,” let me begin my run-down of the March of Planning Law by stating that the 1909 Bill empowered—it was a *power* as yet, not the *duty* it later became—the Bill empowered local authorities to make town planning schemes (which had to be approved by the central government) with respect to land in course of, or ripe for, development “with the general object of securing proper sanitary conditions, amenity” (the first statutory appearance of that word) “and convenience in connection with the laying out and the use of land.” There, in a few words, is enshrined the very beginning of planning control’s eventful and stormy story covering the land and its development.

You will observe that this new control was an optional matter for the local authority and, even when used, it could be applied only to what were, in effect, the developing fringes or suburbs of established towns. The downtown areas, the city centres, were too late for control—*redevelopment* as distinct from mere *development* had never been heard of—while the open countryside, soon to be ravished by ribbon development of the most dreary kind—the curse of the 1920s—the countryside was regarded as unready to receive this new form of control. Indeed it was a clever town planner who could catch a bit of land which wasn’t either too late or too early for

subjection to control under the new law. However, ribbon development overplayed its hand with the result that in 1932 the law of planning control dramatically changed gear when the *Town and Country Planning Act* was passed. This projected the possibility of control inwards to the city centres and outwards into the countryside.

The 1932 Act

All land was now susceptible to control which is not to say that all land was subject to control because it wasn't. When the Second World War broke out in 1939 no more than 4 per cent. of the land in Great Britain was subject to control under an operative Town Planning Scheme. In the meantime some developers sought to get their development on the right side of the law for compensation purposes by obtaining "interim development permission" (as it was called) for their development. But it all came to nothing; the Second World War with its bombing raids on London (and elsewhere) put paid to all that. I mention the matter only to demonstrate that it was this idea of the grant of interim development planning permission which led, under later legislation, to the new idea of planning permission—obligatory planning permission—for *all* development which, for nearly 30 years, has been the very hinge on which control over land development has turned.

The devastations in towns and cities of the Second World War, the bulge of growth of population, the outburst of the motor-vehicle, the post-war call for leisure and higher standards of living in general, more houses, more schools, more roads, more electric power stations, the open air life, the mobile life, the cult of informality coupled with central heating and the decline and fall of the three-piece suit—each and every one of these asserted

their respective pressures which together amounted to one vast, spreading and pervasive assault on the land. The assault grew but the land remained a constant. It needed to be conserved and protected if it was not going to be ruined. New thinking was called for and the hour produced the thinking. It also produced the Town and Country Planning Act 1947 which, on July 1, 1948, made a brand new beginning in the matter of control over land and its development.

The 1947 Act

In future this control was to be a bifurcated affair. In the first place there were to be development plans pointing the way ahead for development. These were to be made by local government authorities and approved by the central government so that they added up, collectively, to a Grand Plan (or the nearest we shall ever get to a Grand Plan) for the whole country.

In the second place there was to be this business of planning permission for development. No development (and this included a material change of use as well as a building operation) was to take place without the developer first getting planning permission for his development. The local authority could prevent him putting one brick on top of another until the authority had granted planning permission. To the grant of permission it could add such conditions as it thought fit which does not mean such conditions as it liked. A developer aggrieved by the local authority's decision could appeal to that minister of the central government who was responsible for planning control over land. The minister's decision was final. There was to be no appeal to courts of law (except upon strictly legal matters such as procedural mistakes and mistaken interpretations of the

statutory provisions)—the whole process of this new control was not a justiciable matter at all; it was an artistic process and whilst the substitution of the minister's artistic decision for the artistic decision of the local authority might not necessarily be a better artistic decision (but merely a different one) nevertheless, and because there must surely be an end to all things, the minister's decision is the final decision—the one that sticks. That is the law; that is what the law says.

Such, in a nutshell, was the new beginning for planning control set up by the Town and Country Planning Act 1947. Such, in a nutshell, is the position today although the position has been complicated and compromised almost out of all recognition by a positive parade of succeeding Acts of Parliament—nine of them in all and I do not include consolidating Acts in this count—each putting in its spoke, each making its contribution and each complicating the issues involved in the planning process. But more of this later—do not miss tomorrow's fascinating instalment!

The 1947 Act was undoubtedly the Great Divide, the Great Watershed, in the developing story of planning control over land development. Nothing associated with the land was ever to be the same again.

The Revolt that Never Was

Today, nearly 30 years later, it is interesting to speculate on the revolt that never occurred in 1948 at a time when nothing less than a positive revolution was taking place in the important matter of the land and its development. I believe there are three reasons for this.

First of all a lot of people had been impressed by those three great State papers published during the time of the Second World War, The Barlow Report on the

Distribution of Industry, the Scott Report on the Countryside and its Preservation and the Uthwatt Report on Compensation and Betterment. The latter was undoubtedly the most controversial of the three and the one not by any means as fully accepted as the other two. May I add that it was, in my view, the only one of the three which might well be written differently if it were to be written today. Anyhow, it is *not* going to be re-written today but this has not prevented the Government picking out some bits of it as a basis for the Community Land Bill now before Parliament.

These three State papers had done much to condition the minds of many people—the planned and the planning—about what was needed to be done when the bombs stopped falling and we had won the war. *En passant*, one should pay tribute to the Powers that Were of those days because, with London falling to bits around them night after night (and some of us here today—a diminishing number—remember it well even after more than 30 years—one does not talk but the sting of memory remains) the Powers that Were of those dark days were able (and this we should not forget) to consider, even when surrounded by semi-chaos, the question of how the land should be developed at the end of the war which for them meant, bless their hearts, after we had won the war about which there was apparently no doubt in their minds. (Well, that is the real way to win a war if you have got to have one.)

Secondly, the devastation of war-damage in towns and cities provided the biggest opportunity since the Great Fire of London to wipe the slate clean and start again. At least, this was the position in many areas and John Citizen was not slow to appreciate the point.

Thirdly, there was the evangelistic zeal with which Lewis Silkin, ever the master of his case, put his case across when it came to the Bill for the 1947 Act. "This Bill," he said, "has been described as the most important for a century. I should not go as far as that. . . ." Well, I believe he could have gone as far as that when I consider the state of land development control before, and then after, the 1947 Act.

In short, the case for town planning control was being increasingly understood and accepted. The feared revolt of the squires of the shires never came to pass. The arguments were all about the ways and means of getting a control which in itself was regarded as not only inevitable but acceptable. I think this speaks wonders for the innate sagacity of the old country. For all of this we should, 30 years later on, be grateful and if anyone doubts this, then let him have a go at getting the case for development-control squarely across the footlights in many a "developing country" oversea. I know a bit about this from personal and highly interesting (though sometimes frustrating) experience.

So much for the great change in planning control of 1947 and for the backs-to-the-wall revolt against it which never happened. However, before I move along to the next port of call in this nostalgic saga I really must make reference to the bit in the 1947 Act where things went wrong. It was the bit about financial arrangements which went wrong—the outgoing payments from the £300m fund for the nationalisation of development rights in land on the one hand, and the complementary levying of development charges on the carrying out of development of the land on the other hand.

Financial Arrangements of 1947

For myself I always regarded this conception as the most neatly worked out one of all the many, many financial arrangements conceived from time to time to deal with the vexed question of compensation and betterment. Quite frankly it was a very immaculate conception indeed and I for one am sorry it didn't work. I never for a moment thought that it would work although I believe it would have had a much better chance of working had it not been for the intransigence and obdurate insistence on the part of the Central Land Board that all development charges should be levied, willy-nilly, at the whole 100 per cent. of the increase in value of the land released by the grant of planning permission for development. (Incidentally, will you please note that the currently proposed Development Land Tax also adopts a 100 per cent. impost as its final goal. The lessons of the past are, apparently, never learnt and clearly there is nothing new under the sun.)

Way back in 1947 poor Lewis Silkin never foresaw that the Central Land Board would resist tooth and nail being saddled with any sort of a discretion in the assessment of a development charge. For the Board the whole thing was to be one of arithmetical precision only; there was never to be a case of tempering the wind to the shorn lamb. Let me remind you of Silkin's words on the Second Reading of the 1947 Bill. He was dealing with incentives. Lewis Silkin was, I am happy to tell you, a member of my profession. He was a Solicitor of the Supreme Court but that did not prevent him from having a ready fund of soundly-based common sense. He knew that incentives were necessary to encourage any indulgence in the tricky business of land development. He knew that the grant of planning permission never con-

ferred a penny piece of value on land as is so often declared today—and very mistakenly declared at that. It is demand, popular demand, and that alone which confers value on land development. The grant of planning permission merely releases the pent-up value *provided the demand is already there*. But if demand is not there, if there is no market in the land and its development, then the grant of planning permission for development is but an empty thing. Many developers know this very well indeed today—today at a time when the bottom has fallen out of the property development market. Lewis Silkin clearly knew all this and was at pains to leave in his system of development charges, some incentive to the developer. Listen to his own words:

“I will be asked why it is not possible to determine upon a fixed percentage of the increased value as the development charge. The Uthwatt Committee recommended 75 per cent., the Coalition White Paper 80 per cent.; why not choose one or the other, or split the difference? In my view, to have a fixed percentage in the Bill would be much too rigid. There will be cases where it would be right and practicable for the Central Land Board to impose a development charge of 100 per cent. On the other hand, there might be circumstances in which it would be important to encourage development by reducing the charge, either on account of economic conditions in the country generally, or in particular areas where unemployment is above the average. The importance of securing a particular piece of development on a particular site now, instead of in, say, 20 years, may also lead to a reduction in the development charge, well below

full development value. The Board would be free, subject to directions from the Minister, with Treasury consent, to vary the development charge from time to time, according to circumstances. . . .

“It will be an instruction to the Board not to hinder development by the imposition of charges which are too high, nor, on the other hand, to surrender any part of the development charge which they can secure and which, *ex hypothesi*, belongs to the community. I am sure that this flexibility is right, and that it would be a great mistake to provide in the Bill for a fixed percentage applicable to all circumstances, which could only be varied by Act of Parliament.”

Well, all that was what Lewis Silkin had in mind but at some point politics must have got in the way because what Silkin asked for was not what he got although his party had an entirely comfortable working majority. I often chatted with him on this point and I gained the impression that he never forgave the Central Land Board for their role in the matter.

Failure of an Idea

I said, a moment ago, that Silkin's 1947 financial arrangements would never, in my view, have worked and the reason I adduce for this opinion is that the arrangements took no account of that dear old thing called human nature. The 1947 financial arrangements were rooted, absolutely and utterly, in the principle that on a sale of land for development the land would change hands at its existing-use value because that was all the vendor had to sell after the development value in the land had been nationalised—as it had been by the inter-working of

divers sections of the 1947 Act. This was utterly believed by the architects of the 1947 finances. Indeed, it seems to have been taken completely for granted. I wonder why?

To put a ceiling on the selling price of a cabbage during the Second World War the government had had to make it an actual criminal offence, punishable with fines, and, if need be, imprisonment, to sell a cabbage above its ceiling price. The government of 1947 was clearly not going to do this sort of thing about the land and, moreover, at a time when the enemy was no longer at our throats. Nevertheless, Silkin's words, way back in 1947, make strange, not to say naive, reading today:

“I shall be asked,” he said, “what will be the position of a builder who is desirous of acquiring land and building houses on it for sale, or of a person wishing to build a house for his own occupation. Will they not suffer, and will development, therefore, be discouraged? When the Bill becomes law, a developer will acquire his land at the existing-use value. This will, of course, be lower than today's market price, which will include the development value. On getting consent from the local authority to build, he will then negotiate the development charge with the Central Land Board. As I have explained, this charge will be a sum which will not exceed the actual development value. In other words, for his land and for the right to build, he will pay an aggregate sum which will not exceed and may well be substantially less than today's market price. He cannot, therefore, be worse off; he may be better off.”

Well, I repeat that it was human nature (which simply would not swallow the idea—and that, notwithstanding

the thunderings of the first chairman of the Central Land Board—of sales at existing-use price only), it was human nature which ruined the immaculate financial conception of the 1947 Act. Acts of Parliament should never fail to recognise the force (and the quirks) of human nature.

The 1954 Act—Two Compensation Codes

The failed financial provisions of the 1947 Act were finally repealed by the Town and Country Planning Act of 1954 which, on the one hand, abolished development charges (so that, on development of land, betterment was not collected) and, on the other hand, limited compensation for planning restrictions pretty well to those cases where the restrictions were in derogation of an owner's existing-use rights in his own land.

But the 1954 Act, still seeking to draw an artificial distinction between private purchases of land and compulsory purchases, allowed for two codes of compensation for land purchases. On a sale of land by private treaty the vendor could demand (and get) market value. But if he sold (compulsorily, of course) to a public authority he was paid only the existing-use value of the land. And what happened?

A law abiding citizen, a Mr. Pilgrim, purchased land for his own personal, domestic purposes. He paid market value for it. Before he could use the land a local authority, wanting land for a public purpose, took it from him compulsorily and paid him only the existing-use value of the land which turned out to be but a tithe of what Mr. Pilgrim had paid. Mr. Pilgrim was left holding the baby which proved to be a fine upstanding mortgage which could not now be paid-off by the wretched mortgagor. Mr. Pilgrim committed suicide whereupon (and not surprisingly) paragraphs got into all the papers, ques-

tions were asked in Parliament and planning control found itself (again, not surprisingly) in the doghouse. The Report of the Committee on Administrative Tribunals—the Franks Report—(Cmnd. 218) had some strong words to say about this business of a double code of compensation for purchases of land.

The 1959 Act—Back to Market Value

Accordingly, the Town and Country Planning Act of 1959 abolished the double code idea, and once again, all purchases of land came to be made at market value.

But history is now about to repeat itself because, as and when the current Community Land Bill is fully operative, land purchases by public authorities will, once more, be at existing-use value only. Again the wheel of compensation turns and now it is about to come full circle. I feel the ghost of Mr. Pilgrim may well be in attendance at the second appointed day under the new Bill. No wonder the Bill takes the precaution of providing for Hardship Payments of up to £25,000 per case—a figure which Parliament has now increased to £50,000 per case.

1968—Complicating the System

After 1959 planning control continued on its way until complicated by the introduction of Office Development Permits in 1965, and then more particularly complicated in 1968 by the introduction of that curious anomaly called “Public Participation” (about which more tomorrow) and by the splitting of the Statutory Development Plan into two portions, first the Structure Plan—made *locally* by a local government authority and then approved *centrally* by the minister for town planning—and secondly, the Local Plan (or Plans) made *locally* and

under the overriding aegis of the Structure Plan by a local government authority and then approved *locally* by that same authority and so brought into operation without further check or control by the minister.

These major alterations of 1968 were the outcome of the Report of 1965, "The Future of Development Plans," by the Minister's Planning Advisory Group—the PAG Report 1965. This high-powered Group was set up in May 1964 because in the early '60s planning control was getting gravely into arrear with its work and what had been whispers in the wind calling for change, and particularly for speed, had developed into a swelling *crescendo* of demand for drastic action. Thus the 1968 Act, the most important Town Planning Act, in my view, since 1947, was enacted.

All that occurred in 1968, some three years after the PAG Report of 1965 recommending the split of the Development Plan into two parts, the Structure Plan and the Local Plan. Today, *seven* years after the legislation, *10* years after the PAG Report and *11* years after the setting up of the Planning Advisory Group in 1964, we have only four Structure Plans, and not a single Local Plan, in operation. Planning life still functions (and has to do) under the original (and now old fashioned) Development Plans approved in the 1950s and early 1960s. Then why, you may ask, have a plan at all? It is a teasing question and I shall leave discussion upon it until tomorrow.

The 1971 Act—Consolidation

The 1968 Act and earlier planning Acts still in operation were consolidated in the Town and Country Planning Act 1971 which today is the principal Act on the subject

in England and Wales. Scotland has a separate Act in very similar terms.

In concluding this history of statutory planning control, planning control by Act of Parliament, over the past half century—and it is well to realise that we have had this form of control only for a little more than half a century—I would like to make two points germane to the planning scene as we find it today.

The Democratic Process in the Artistic Field

In the first place may I say that I am sure that, in all that I have been saying, you will not have failed to notice that the planning control of which I have been speaking is a control, an artistic control, operated through a democratic process. This prompts a number of questions.

Who chose this process and why do we have it? What on earth has democratic control to do with the fulfilment of the artistic ideals of town and country planning control and the effect of that control on the development of land? No really beautiful thing was ever conceived by a committee. Sir Christopher Wren designed several new cathedrals for the City of London after the Great Fire of 1666. The City Fathers got into the act in a big way—perhaps a first manifestation of citizen-participation in the artistic process. And what happened? Poor Christopher Wren found himself building the particular cathedral which, of all his designs, was the one he least wanted to build. It may be added that it is only since the reconstruction after the damage of the Second World War that St. Paul's has been given the High Altar as Christopher wanted to see it.

I suppose the answer to my question lies in what Mr. Ramsay MacDonald (I think it was he), in one of his more enlightened moments of precision-speaking,

declared to be “the inevitability of gradualness.” He was ever a rare one for a notable turn of phrase!

Sanitation became a local government process because no one else would touch it. Then building-byelaw control (a purely functional matter and not an artistic process at all) followed suit. So did means-of-escape-in-case-of-fire, the checking at the port of entry of infectious diseases from hot and alien climes, meat inspection and the destruction of mad dogs. All this having been done, it seems to have followed, as night does the day, that town planning control must necessarily go the same way. But why should this have been?

The short answer is that it was housing (alas for town planning) which introduced town planning into the Parliamentary arena. Town planning was regarded as part of housing when, of course the matter was (and is) entirely the other way round. Town planning has constantly suffered from this inversion of the true position.

It must never be forgotten that there have always been votes in housing but not in town planning. It has always been easier for the politician to get immersed in a housing matter and get the houses built—anywhere at all, if need be. That is why papers at Housing Conferences are frequently given, not by experts, but by chairmen of Housing Committees.

With town planning—a comparatively dangerous thing to get associated with—it is different. Town planning control frequently means doing that terrible and most difficult thing of all—it means actually saying NO loud and clear. That is why it is always more difficult to get politicians to attend Town Planning Conferences. Yes, I am sorry for town planning control in that, politically speaking, it has always found itself tagging along after housing which was always given first priority. Houses

carry a sentimental ingredient in their midst. Town planning does nothing of the kind.

Thus, it is the democratic process which, as part and parcel of town planning control over urban-renewal, has built the Barbican Scheme in the City of London, or perhaps I should say *is building* the Barbican Scheme in the City of London because it is still on the job after 20 years of hard labour. This scheme has received world-wide fame and plaudits. I was present at the conception but had gone, "to fresh woods and pastures new," before its completion. Years and years have gone into disputation about the whys and wherefores of the Barbican Scheme as the democratic process of decision by popularly elected committees has wended its weary way and taken its undoubted toll. I repeat, there have been years and years of disputation and, worse than that, years and years of steeply rising building costs.

On all of this the simple point I want to make is that I tire of these democratic intrusions into the field of artistic endeavour. I yearn increasingly for the day when the inspired individualist will really come into his own—provided always he has had the requisite professional training and experience. I emphasise the importance of this matter and briefly draw attention to the fact that one of the most successful outcomes of post-war development in Britain has been the building of the new towns—33 of them so far. *They* were not the result of any democratic process—not at all. Superficially, and at a quick glance, they might appear to be so but it is not true.

Local authorities, those valiant exemplars of the democratic idea, were, from the word GO, constantly shunned by Parliament when it came to the job of deciding who should build the new towns. Indeed, they were still shunned by Parliament when it came to the question of

who should "hold" them once they were built. For their building the democratic set-up was jettisoned in favour of a corporation of experts, specially chosen (not elected) for their own skill, personality, character and expertise; they were the ones who were to build the new towns. I think they built well and their results, and especially the speed with which they have been attained, speak volumes for a system where the skilled individual is given full rein (within certain limiting boundaries, of course) to show his mettle, take decisions, get on with the job and finish it before rising costs price the whole thing out of the market.

The Environment—Preservation Rides Again

My second point, as I come to my conclusion tonight, is to refer to this matter of the environment.

"Environment" is now the "in" word and the Government were quick to cash in on this newly and popularly accepted epithet when, in 1971, they restyled the dear old Ministry the "Department of the Environment."

We now see an almost obsessive interest on the part of John Citizen in the environment and its preservation. Formerly, the environment did not mean a thing until Sir Colin Buchanan fired it into blazing life in his moving and thought-provoking *Traffic in Towns*. From the date of that book (1963) the environment has never looked back. This does not necessarily mean that it has always gone forward—not at all. But at least John Citizen, and one or two planning authorities, have now realised that the environment is not automatically here to stay. It is here only as long as valiant efforts are made to preserve it and, with it, that "quality of life" (another "in" phrase today) which becomes daily increasingly dear to

some of us as some of us daily (and increasingly) realise that the thing is in danger of disappearing before our very eyes and being replaced by what I would call (and not for the first time) the milk-shake, tinned-peas way of life in which nothing tastes of anything at all and cellophane is paramount. If you do not follow me in all this, take a trip abroad—particularly to the new world—and observe what is going on in one country after another.

Let me say at once that planning control under the law is well able to take care of the environment. Please do not let me hear any more outcry for new laws to do this and that. The laws are here with us right now—all that is lacking is the political will to use them.

The laws concerning the control of pollution do not run into hundreds; but they do run into *scores*. Look them up sometime; I have done so. Maybe new, dramatic efforts are going to be made *to use* them. The curse of the concrete jungle of the past 20 years is coming home to roost. That democratic process (to which I earlier referred) has a lot to answer for when we consider the concrete jungle, the unhuman scale of building and the barefaced vulgarity of a deal of development since the 1948 watershed made control of all this sort of thing entirely possible under the law.

But notice how the bitter lesson is progressively being learnt. No wonder stronger measures were enacted in 1968, with respect to conservation areas and buildings of special significance. These measures were *enacted*—it remains to see how much the democratic process will use them—and use them intelligently.

Incidentally, and before I leave the environment and all it stands for, let me say, quite briefly, that of the many trendy things rearing their ugly heads these days I would have thought that the out-of-town super- (or hyper-)

market is the most ugly thing of all. Here lies the deep danger of citizen-participation because I will take a bet with you that if "convenience shopping" (as it is called) were to be put to the newly married young woman she would vote for it every time. Yet if you want to know which single thing can contribute better than any other to the decline and fall of the gracious city, it is the out-of-town supermarket. If anyone doubts this, go west (I say) go west and look what the supermarket has done for many a fair city in the U.S.A. The corroding effect on the civilised city of the out-of-town supermarket with its open-plan layout, its car parking spaces galore, its convenience shopping and cheapness-is-all approach—pile it high, sell it cheap—is equalled only by the damage to the fair city that is done by the indiscriminate use of the motor-vehicle in city centres.

Planning Control under the Law—To What Purpose?

All this, you understand, is controllable under the law. The question is: Do you want to control it? The question is: What sort of city do you want? The question is: Do you want a city at all? I rely on that democratic process (to which I earlier referred) to answer these questions for me. I hope the democratic process will come up with an answer before it is too late, that is, before the gracious city—the civilised city—has disappeared. I am now, thankfully, beginning to think that it will, so imbued, today, with the preservation of the environment has John Citizen become. The trouble with John is that he is at once a passionate and a fickle creature. Today I believe he is in danger of overdoing his understandable backlash against the concrete jungle which has emerged in the past 20 years and of leaping much too far out to the other extreme—namely, preser-

vation at all costs. (Oh yes, I shall be coming to Liverpool Street Station in a later lecture.) It is all a matter of being reasonable and steering a middle course; but steering a middle course must not be confused (as it so often is) with sitting on the fence with no aptitude for the taking of a decision. One of the most difficult things in the whole field of town planning control today is to get a decision—any decision, even a wrong one!

The decision-making process is at a low ebb and needs to be galvanised. Planning today does not need any more controls as is sometimes suggested. It certainly does not need any new control making building demolition (of whatever kind), a matter of “development” calling for planning permission before it can be undertaken. I repeat, it is not new and further controls which are needed today, but a better administration of those which we have. I shall return to this theme later on. In the meantime I bid you, Goodnight.

LECTURE TWO

PRESENT IMPERFECT

TODAY the Parliamentary Statement of the Law relating to Planning Control over the Development of Land covers the contents (in whole or in part) of 35 Acts of Parliament and runs to some 1,231 pages of annotated statutory legislation which must, of course, be read along with a growing body of subordinate legislation which currently comprises 171 statutory instruments running to some 880 annotated pages. Thus, the total of Parliamentary (or Legislative) Pronouncement in this increasingly important field amounts to no less than 2,111 annotated pages according to my own recent count but, with a figure of this magnitude, I will not be categorical as to a few pages one way or the other. I make it 2,111 pages "be the same more or less" as the conveyancers would put it.

The Weight of the Laws, the Orders and the Circulars

But this is not the whole story. Over and above all that Parliament itself has pronounced about this matter there must also be considered the Circulars, Memoranda, Papers (whether White or Green, Command or Consultative), and other expressions of opinion, advice and so on constantly emanating from the Department of the Environment. Today these non-legislative pronouncements number about (one cannot be absolutely precise with such quantities of paper around) 285 and add up to a further 689 pages of important documentation. There thus lies before you a total of 3,680 pages of reading

every bit of which is essential to you if you are to make yourself even a modest master of this subject.

There are also about 450 cases reported for you in the various Law Reports. Reference to one or more of these will be more than likely when you are considering any particular town planning problem.

Well, leaving aside the town planning decisions of Courts of Law, if, one fine morning, you were sallying forth to appear at a town planning inquiry, you would certainly need to have with you at least the pages of Parliamentary pronouncement together with the non-statutory (or policy) pronouncements of the Department of the Environment. What would be the dead weight of this minimum amount of law and administrative emanation which, as I say, you would need to be carrying with you as you mounted the steps of the Town Hall where the Public Inquiry was to be held? I can tell you what its weight would be because I recently put the whole lot of it on a weighing machine—at least I weighed an annotated, commercial publication (whose name I will not mention tonight) which, on light-weight paper and in 5,334 pages, carries all the law I am now talking about—and I found that the whole thing weighed 13lbs. 2oz., or (if you prefer it) just over 6 kilograms.

I quote this to show the inordinate quantity of law, rules and regulations, and policy statements relating to this comparatively new, 20th century system of control the object of which is, briefly, merely to stop you putting one brick on top of another until you have got permission to do so from a local government authority.

It was not always as heavy and complex as this. How did it get this way? It is a most important question because it goes to the very root of planning control's credibility. It is a question which puts in issue the very

acceptance of this kind of interference with the liberty of the individual because, of course, planning control is, by definition, a very serious interference indeed with the rights and freedoms of the individual. *That* is why planning control should at all times seek to be popular—to stand high in the estimation of the people—and by the people I mean those who are being planned (controlled) just as much as those of the people who are doing the controlling—the dictating—as to what can, and cannot, be done with the land.

How, then, did this control get to be so complex because, as I was saying, it was not always so? I believe there are at least *three* reasons for this and I will now discuss the first one.

The Curse of Complexity—The First Reason

After the Second World War I believe it is right to say that this country produced a system of planning control which was sound and good. It was certainly greatly admired by many people abroad. Lewis Silkin, the architect of the 1947 Planning Act, undoubtedly understood the subject well and knew exactly what he was talking about. He surely had a lot of advice, advice which was the result of serious and sustained thinking. He had resort to three great State Papers, none of which was prepared in a hurry. I refer to the Barlow Report, “The Royal Commission on the Distribution of Population” (1940), the Scott Report, “The Report of the Committee on Land Utilisation in Rural Areas” (1942), and the Uthwatt Report, “The Report on Compensation and Betterment” (1943). In short, the legislation in 1947 was in no sense a rushed affair. It followed a great deal of thinking and it was the trials and tribulations of the Second World War which provided scope and oppor-

tunity for such thinking. In those days legislators thought first and legislated afterwards. Today, of course, we live in a world of Instant Everything, including, I sometimes think, Instant Law. Today we legislate first, then think afterwards.

If I may just interrupt my thoughts at this point I would say that of all the Acts I know, it is the Local Government Act of 1972 which really is a classic instance of “pressing on regardless.” I shall return to the Local Government Act later on, but in the meantime I would regard it, so far as planning control is concerned, as a complete justification for that *cri de coeur* way back in 1925, when once again they were talking about reforming the law—the *cri de coeur* of the late Mr. Justice Astbury when he said, “Reform, reform, don’t talk to me about reform—things are bad enough as they are now.”

I repeat, the system of law and administration relating to planning which we set up in 1948 was, I believe, well thought out. Incidentally, I am *not* referring to the financial provisions of the 1947 Act. They were a totally separate matter and in my view should never have been in *that* Act at all. I am referring to the planning provisions proper of the 1947 Act. These, as I was saying, were well thought out and meet, fit and proper for their purpose.

It was when we came to the administration of these matters that trouble developed. The administrators, whether at local level or at central government level, did not, in my view, get on with the job with the speed, alacrity and despatch that it demanded. Over the years there became an inquisitive, obsessional interest in detail; a kind of policy of perfection increasingly seemed to set-in. There was constant reference from one depart-

ment to another; a constant search for “clearance” from one expert after another. All this took time and led to increasing delay in the obtaining of planning permission. On the other hand, development was eager and growing; it was increasing as the damage of war, bit by bit, was made good.

The Year 1960—The Watershed

Things ran, I would say, fairly smoothly throughout the first 10 years of the functioning of the 1947 Act, that is to say, until about 1960. After 1960, the delays and frustrations associated with this form of control began to get the upper hand. Certainly the control fell down in public esteem. Those who had the good name of town planning at heart, as many people had and still have (I am one), became increasingly concerned at finding the system falling upon such evil times.

The zephyrs of discontent which began to blow in the late 1950s developed alarmingly into strong gusts in the early 1960s. Accordingly, the Government of the Day sought refuge (as usual) in setting up a Committee. The Committee was called the Minister’s Planning Advisory Group (PAG) which was to advise the Government about what should be done in all the circumstances. This Group reported in 1965, producing a readably slim-styled volume with a dark green cover entitled “The Future of Development Plans.”

Now one of the major things which this Report advised was a good deal of load-shedding from Whitehall onto the shoulders of local government authorities throughout the land. Well, why not? After all, local government authorities throughout the land were constantly carping and criticising the control which they received from the central government, constantly asking to be given greater

autonomy and more and more powers. The Planning Advisory Group thought the time had come to give them more powers and thereby relieve pressure at central government level.

Sundering the Development Plan—Why?

Accordingly, the development plan which, under the provisions of the 1947 Act had to be made and kept under review by the local planning authority—the development plan which sketched out the way ahead for development by showing approximately (but not decisively) the style and quantum of development which could be allowed in the future and the timing of its carrying out—the development plan which had hitherto been made locally by a local government authority and then approved centrally by the Minister for town and country planning—this development plan in future, said the Planning Advisory Group, should be split into two separate parts, one part to be called the Structure Plan and the other part to be called the Local Plan.

The Structure Plan was not really a plan at all. It was a document showing strategic outlines, trends and tendencies, but never in any instance getting down to brass tacks or detail. This strategic document was to be made, as before, locally by a local government authority after which it then had to be approved, after a public inquiry, by the central government. Thereafter it would be open for a local authority, functioning under the general aegis of the Structure Plan, to make as many local plans as it thought requisite. A Local Plan would be made by a local government authority and then, after a public inquiry, would be approved by that same local government authority which had made it. From first to last, the Local Plan would not go before the central government

except in exceptional circumstances. Thus, there was to be less work for the Minister for town planning and more work for the local government authorities.

That was the *raison d'être* behind the advice given by the Planning Advisory Group, and it is quite interesting to note that in giving that advice the Group were really resuscitating an idea which had already been discarded once, and that way back in 1947. I tell you this because when the first draft for the Bill for the Town and Country Planning Act of 1947 was under consideration and ideas were formulating, the idea then was that a development plan would be a plan indicating *the general principles* upon which development would be prompted and controlled. Thus, the development plan would, under the first draft of the 1947 Act, have avoided detail and thereby the Minister, when approving the plan, would not himself have become involved in approving precisely when and where and how every piece of land would, or would not, be developed. The Minister's role would have been to concern himself with strategic matters, with principles, leaving it to the local authorities to apply those principles in their own way in any particular case when application for planning permission came before them. After all, if the local planning authority was satisfied with the application and granted planning permission, then the Minister would no further be involved. On the other hand, if the local authority refused the application and the applicant for planning permission felt aggrieved, then the applicant would have his right to appeal to the Minister and the Minister would then have the last word.

However, the first draft of the Bill for the 1947 Act was amended, with the result that the parliamentary styling for the development plan turned out to be quite a different cup of tea. Under the 1947 Act (as we got it)

a development plan was a plan “indicating the manner in which they [a local authority] propose that land in that [their] area should be used . . . and the stages by which any such development should be carried out.” In other words, the development plan was to carry a good deal of detail and precise statement. All this led, of course, to much detailed and precise opposition to the plan, all of which had to come before the Minister on the occasion of the public inquiry into the approval of the plan. This caused great delay in the approving of development plans, and it was many years before the face of our country became completely covered with operative development plans; it was in fact as late as July 27, 1960—the date when the Shropshire County Plan was approved.

These development plans, by law, had to be reviewed from time to time and there were fears that when the reviews came along the Minister would become swamped with objections and intolerable delay would be caused. Therefore, the Planning Advisory Group decided (as I mentioned) upon a split in the development plan, as that plan had hitherto been known and understood and accepted, dividing it into two portions, namely, a strategic plan which was subject to the Minister’s approval and a set of local plans which were not subject to his approval.

The Planning Advisory Group in doing all this were really seeking to put the clock back to what would have been the position in 1948, had the first draft of the 1947 Bill prevailed, which it didn’t. The advice of the Group was accepted by the Government of the day, who put the matter into legislative form in the Town and Country Planning Act of 1968, an Act the implications of which were, in some areas of its operation, never (in my view) sufficiently thought through to the end.

Public Inquiry—Examination in Public

Eventually a certain structure plan came up for approval by the Minister, or the Secretary of State as he came to be called after 1970. This was the Greater London Development Plan. (In some respects it was not strictly a structure plan, as that expression is used in the 1968 Act, but for the purpose of the point I am making it can be regarded as one.) The Public Inquiry into the Plan continued for an unconscionable length of time—nearly two years in all from July 7, 1970 to May 9, 1972. The details of the Plan caused the eruption of no less than 28,392 objections from 19,997 different quarters. Many objections were repetitive but, even so, they needed to be investigated by the Panel appointed to hold the Public Inquiry—the Layfield Panel—which, notwithstanding their best endeavours, could not complete their Inquiry in less than 22 months.

They made their Report on the Plan to the Department of the Environment in March 1973. That is now more than two years ago, but we still await confirmation (or rejection) in whole or in part of the Greater London Development Plan. No portion of that Plan is in any way operative today and that is 10 years after the PAG Report of 1965 and seven years after the legislation of 1968.

Incidentally, in what can only be described as an emergency measure enacted to prevent any repetition of the two years' Inquiry into the Greater London Development Plan, the hurriedly enacted Town and Country Planning Act 1972 put an end to the holding of the traditional style of Public Inquiry into a Structure Plan and substituted for it the "Examination in Public" in which the Secretary of State, having considered *all* objections to the plan, himself selects those *issues* raised by the objections (or any one of them) which *he* thinks should

be examined in public. Undoubtedly, this will hasten the coming into operation of Structure Plans, but whether it will satisfy objectors is another matter. Even so, at this moment, seven years after the 1968 legislation, only four structure plans are in operation while no local plans whatever have yet come into force. It is all wondrously slow.

[You may be interested to know that the total number of structure plans expected to be submitted for approval by the Secretary of State is 71. So far 20 have been submitted. As I say, it is all very slow.]

Why have a Plan?

If the country can get along for such a long time without plans, why have plans at all? The question is being asked. The short answer is that without any guidelines by way of an operative Plan (whether Structure Plan or Local Plan) to control, if only moderately, the wilder excesses of some local planning authorities, the applicant for planning permission who comes away with a refusal would be all the more at the mercy of the planning authority when it comes to the matter of an appeal. With an operative plan and a type of development which, in principle, fits the plan, the applicant can bring pressure on the authority to pay attention to, and indeed abide by, the contents of its own plan. Without such a plan the applicant's position would be dangerously at large.

So much then for the first reason for the time-consuming complexity of planning control today—the splitting of the development plan into two portions. Let me warn you that in all of this splitting-up it still remains requisite for you to keep your eye on the real ball which is still “the development plan,” that is to say, the *total* plan. I believe this total plan is as needful today as ever it was but its creation is now to be achieved not, as

hitherto, in one bold step (which undoubtedly put a heavy responsibility on the Minister for the approval of minutiae of all kinds) but by two separate steps (the structure plan followed by the local plan) a procedure which involves (as was intended) a good deal of load-shedding from Whitehall to Town Hall (or County Hall) but undoubtedly elongates, and makes more complex and therefore more time-consuming, the total procedure for creating and bringing into operation the development plans of the future—the end product of this involved exercise. But how could it be otherwise once you have decided to make two plans grow where only one plan grew before?

The Curse of Complexity—The Second Reason

The second reason (to which I now turn) for the increased complexity of today's planning procedures is undoubtedly the bringing into the decision-making process of all the hubbub and brouhaha of citizen participation. This was brought in by statute in 1968 but in relation only to the making of structure plans and local plans. For these two matters, and for these two matters only, does *the law* require that John Citizen shall be consulted at formative stages and before the planning authority's mind has been made up. However, this statutorily limited field for the functioning of citizen participation has in no way prevented local planning authorities extending the idea, of their own free will and volition, to many cases where application is made for planning permission for development. Any form of development proposal, if it is of any size or importance at all, is now expected to run the gauntlet of citizen participation. What does John Citizen think about it? All this provides yet another time-consuming process.

Citizen Participation—Doubts

I must say that I myself have always had doubts about this business of citizen participation in the sophisticated world of town planning control. In saying this I am well aware that I am in danger of advocating town planning *by experts*. Well, if I am, I make bold to ask: and what is wrong with that? The training of a town planner takes years and years like the training of any other professional person and it must come as a bit of a bore to him to learn that he must, when seeking to exercise his expertise, constantly be asking John Citizen about what he, the planner, ought to be doing of.

One reason why I have always had my doubts about the principle of citizen participation is that it seems to me to strike at the very roots of an elective democracy. If we do need to have this new idea, then surely this must indicate a breakdown in the customary system of democratic government by elected representatives.

If this system has any value at all, then the elected representatives having been elected, should, in my view, be allowed to get on with the job.

Citizen participation substitutes, or tends to substitute, for the decision of the elected representative the decision of the man in the street—the woman on the Clapham bus—and all this leads not to government by elected representatives but to government by plebiscite—by referendum.

Another argument against citizen participation is the fact that it is nearly always negative in effect. At any Town Planning Inquiry which I myself have attended (and I must have attended more than a few by now) I have never yet found any citizen or citizen group that came forward to advance the case of the local authority. Whenever these worthy, dedicated and talkative groups of

citizens do turn up at an Inquiry, it is usually to criticise, in a completely negative fashion, whatever it is the local authority seeks to do. On the law of averages the local authority can't be wrong every time!

Another reason I doubt the validity of citizen participation is that it leads increasingly to what I would call "town planning control by the angry neighbour." I think it better that town planning control should be left in the hands of what, I hope, can still be described as a relatively impartial body, namely, the planning committee of the local government authority charged with the duty of exercising planning control.

One of the worst things about citizen participation is that the people participating are frequently ill-informed about what is going on; they are actuated by a desire to see to it that whilst we have town planning control it must never be town planning control for them but always for somebody else. In the outcome, they frequently fail to get what they are advocating. In other words, town planning control, notwithstanding the efforts of citizen participation, does often come out properly and fittingly on top. This having occurred, participating citizens are left with a sense, and sometimes a bitter sense, of frustration and the feeling that they have not had a fair deal. All this—and this is the worst of it—tends to lead to a division, which gets deeper and deeper, between the private citizen and his representative on the elected local council.

Planning by Plebiscite

I repeat, too much citizen participation will strike fatally at the whole concept of government by elected representatives and if that fails then the stage is wide open, as I said earlier, to government by plebiscite. I don't relish

things done by plebiscite. Plebiscites give you a decision arrived at by insufficiently informed, untutored, emotional people who have usually been subjected to the stress and strains of pressure often exercised for dubious and irrelevant reasons.

I said a few moments ago that the only area in which, *by law*, citizen participation *must* take place is in connection with the making of development plans under Part II of the 1971 Planning Act. However, so contagious is this idea of participation that some local planning authorities are proceeding to bring it into the picture whenever they are considering that other aspect of town planning control, namely, the day-to-day control of development by the grant or refusal of planning permission.

One reads and hears of invitations in these circumstances for John Citizen to express his opinion about a particular application for planning permission. Exhibitions with plans and models are held to show John Citizen just what the application is all about.

Well, all this makes John Citizen feel terribly important and I assume that the local planning authority, having got his views, gives them careful consideration. Let it be remembered, however, that the duty of the local planning authority is to come to a planning decision *on planning grounds and on planning grounds alone*, and it may be that many of the objections raised by John Citizen have got nothing to do with what is strictly called town planning control. They are very frequently personal matters exclusive to him and not functioning within the sphere of planning control at all. (I say this advisedly because I have seen the kind of objection that John Citizen does sometimes put in.) If this *is* the way John Citizen conducts himself, then the duty of the planning authority is to throw out completely everything that he says. The

question is: do these extreme objections influence the mind of the planning authority? It is certainly possible that they might but, I repeat, it is the duty of the authority to reject them.

I do, however, go further. If the local planning authority are going to allow themselves to be influenced by what John Citizen has said and the result of such influence is going to be a rejection of the application for planning permission, then I think the least the planning authority can do is to inform the applicant for permission that this is what they have in mind to do and, accordingly, allow him an opportunity of meeting and rebutting, if he can, the points of objection raised as a result of citizen participation.

If I were applying for planning permission I should certainly make it clear that if there is to be any citizen participation in the matter and if, as a result of that participation, there is danger of my application being rejected or granted subject to onerous conditions, then, as the applicant, I would like to know all about this and be given an opportunity of meeting any objection dredged up as a result of citizen participation.

I do not want to exaggerate this particular point but it is an important matter because, as I have already said, the danger is that John Citizen will raise matters which cannot rightly come within the consideration of the local planning authority. This is a procedural matter and I would not be a bit surprised to find that, in due time, it comes to be tested in the courts.

Delaying the Process

Of course, one thing is quite clear—the more John Citizen participates in the planning process, the longer the process will take. Indeed, unless John Citizen is fully

instructed before he seeks to participate, the delays which his intervention could cause might even become intolerable.

Planning processes need to be speeded-up, not held-up. Clearly, the more people we have stirring the pudding the longer it will be before the pudding is finished. Too many cooks do, usually, spoil the broth. It would be lamentable if further valuable time is to be lost because of ill-informed disputation and argument developing between citizen and planning authority.

Citizen participation can lead easily enough to the intervention of nothing more than Prejudiced Pressure Groups and Cranky Conservationists who fail to look at planning problems in the round but direct their attention solely to one single narrow aspect of a much larger problem.

I hope that when John Citizen comes forward to "put in his oar" in the early formative stages of the new development plans (that is to say, at the time when the local planning authority's views have not finally frozen into position), I hope John Citizen will come forward not to hinder the planning process but to ease it on its way, not only in his own particular, personal interest but in the interest of all those other John Citizens around him. It is significant that the post-1968 town planning procedures provide an opportunity for John Citizen to make what are called "representations" (*i.e.* things which are very different from "objections") about proposals which a planning authority has it in mind to insert in its new structure plan or new local plan. John Citizen can thus come along to support the plan and not merely to object to it.

One sometimes wonders what has caused this recent outburst of desire to have John Citizen functioning in

person. For many years local planning authorities have been elected by John Citizen to carry out town planning. Now it appears that John Citizen is to have the privilege of not only electing his representative to do town planning but also of getting into the scrum himself and doing his own personal pushing-about, whether or not his elected representative agrees with him.

Representatives and Delegates

You will notice that I referred to John Citizen electing his *representative*—I did not say his *delegate*. Elected local government councillors are not the delegates of those who elect them—they are their representatives. The difference between a delegate and a representative is crucial. Delegates do what they are told—representatives use their brains to the best of their ability and if the electors don't like what their representatives do they throw them out at the next election. When all is said and done the only sanction which an elector has in a true democracy is the ballot box.

If the elected representative is to be constantly consulting his electors to see what they would like him to do—this can only be regarded as the break-down of elective democracy. After all the elected representative has (or should have) many things to weigh in the balance—the sectional interest of those who elected him is only one. Of course, it takes not merely a politician to do this—it takes a *good* politician to do it. And I sincerely hope that in these cynical days the expression “good politician” is not just another contradiction in terms.

The idea of John Citizen getting personally into the picture is an idea which comes to this country from the U.S.A. where they have been talking about citizen participation for years but where there is a better reason for

having it than there is in England. In America a local government authority for a very big area will comprise merely a handful of people. Mayor Daly ("the Boss" of Chicago) rules that vast city with a handful of assistants. But in England, the quantity of local councillors is very much bigger than is that of their opposite numbers in the U.S.A. Thus, in England, the elected representatives, being greater in number than in the U.S.A., have a better chance of representing all shades of local opinion with the result that there is not the same need, in my view, for John Citizen to get personally into the picture as there is in the U.S.A.

That John Citizen should interest himself in town planning is a fine thing. But he really must do his homework before he has a right to expect a place in the band. Town planning control over land development is a process in which the beginner has much to learn before he can expect to be allowed to chuck his weight about. We should respect John Citizen's wish to get into the team; we have no need to pander to it.

The Curse of Complexity—The Third Reason

You will remember (those of you who are still following my lecture—I promise you it is now beginning to draw to its close!)—you will remember that I said earlier that there were at least three reasons why planning control today had become so complex and thereby so time-consuming and frustrating to a developer eager to get on with his development before rising prices put him out of the running altogether. I have given you two reasons and I now move to the third.

This reason is more ineffable than the others; it is more difficult to crystallize and contain. It touches that difficult question: What is planning control about and

on what matters should the fancy be allowed to roam when an application for planning permission comes before the controlling committee for decision—yea or nay? The *effect* of the grant of permission is, in the ultimate analysis, always the same. The effect is always one of two things (or maybe a bit of both), namely, it is *either* the putting of one brick on top of another (I speak metaphorically when today so many buildings are made of solid glass and concrete) *or* it is the making of a change (a material change not a trifling one)—a change in the use of land or buildings.

All this seems simple enough but it is the thought-processes leading to the planning decision which today take up time and cause delay—and, I should add, are tending to take up more and more time and cause more and more delay.

Once upon a time these thought-processes were short, sharp, simple and much to the point: What was the development going *to be* and what was it going *to do*? Did it conform with the provisions of the development plan, that is to say, was it housing in an area zoned for housing; was it industry in an area zoned for industry; was it commerce in an area zoned for commerce? Over and above all this there had to be considered some further questions. Was the development going to be noisy, noisome, noxious, offensive? Would it affect the public health? If in itself it was a good thing, was there too much of it—was it all too big, too wide, too tall? You can, after all, have too much even of a good thing.

This is the sort of questioning probe which went on in the minds of those responsible under the law for the grant or refusal of planning permission. I repeat, it was all simple, short, definable and greatly to the point; it didn't wander out and about, over and across imponder-

able fields touching all manner of indefinable things. Basically the planning decision was motivated by the fact that the development was (or was not) development in an area marked on the development plan for the sort of development which it was proposed to carry out. When this was the case then *prima facie* the answer was to grant the application for permission to develop.

1960 and After—Changing Horizons

I would say that this sort of thinking and probing went on for something like the first 10 years after the 1947 Act. Again, we find ourselves face to face with that milestone date of 1960 (or thereabouts) when important and far-reaching changes in the planning process first began to make themselves felt. Those responsible for thinking about planning control, writing about it, even dreaming about it—those who had taken examinations in matters relating to town and country planning began to spread their shaping spirit of control over new fields of technical expertise not previously regarded as falling within the ambit of planning control over land development. Thus, the fancy began to take wings, to roam at large whenever an application for planning permission came before the appropriate committee. Planning control came to be administered less and less in the simple, straightforward, maybe narrow, fashion which had hitherto been the custom; the control began to embrace influences—some might think extraneous influences—of all sorts and kinds. Planning control became inquisitively involved in matters of “social concern,” as it has been said. In short, after the concept of transport planning had, at long last (it only happened in the late 1950s and early 1960s), been added to that of land planning (and very rightly so) another concept began to emerge and this was “social planning.”

Indeed, from around 1960 the whole system of planning control over land development seems to me to have rejigged and geared itself in order to absorb one additive after another—all done in the name of that “comprehensive control” the gospel of which came to be so hotly, if imprecisely, preached in the 1960s.

Again, the question may be asked: What is town planning control about? The answer I have to give you is that, whatever it is about, its theme-song in the 1960s was undoubtedly, “Wider still and wider shalt thy bounds be set!” But the question remains: What *is* this control all about?

In earlier days it was all about the preservation of the public health and “amenity” (whatever that meant) but that is a long time ago. By 1960 other matters had got into the arena of disputation; the town planner’s horizon had begun to spread. The boundaries of his functioning were regarded as changeable—unwritten—with the result that the town planner, the person advising town planning committees and local government planning authorities—the town planner began to carry his banner into new fields of activity. The result of all this is that today it has become increasingly difficult to define exactly what *is* the town planner’s role. Where does it begin and where does it end?

On all this it is interesting to recall that, as long ago as 1948, Lewis Silkin, having got his 1947 Act into operation, was asking: Who is a town planner and what makes him tick? He could not get a satisfactory answer from any particular person so he set up a committee to investigate and inform him. This was the Schuster Committee (many today seem never to have heard of it), which published, in September 1950, the “Report of the Committee on Qualifications of Planners” (Cmd. 8059). It

continues to make useful and interesting reading today with its pertinent observations on "the present and prospective scope of Town and Country Planning," roundly declaring that the planning function is two-fold—"first, the determination of policies; secondly, the preparation and carrying through of plans for the utilisation of land in conformity with those policies"—and then adding (at page 69), "planning is now primarily a social and economic activity limited but not determined by the technical possibilities of design."

Well, it was certainly around 1960 when the town planner found his appetite for change whetted as he observed the planning process increasingly spreading the ambit of its control. The greater mobility of the affluent society, the advantages it got from car ownership (two car ownership in some cases) and the greater amount of leisure time which it had come to regard as its due—all this led to the emergence of "social planning," the new concept to which I have already referred. This is an expression which can mean all things to all men. It has led to less reliance being placed on the content of development plans; it has also led to the asking of many new-style questions. When the application for planning permission for development comes along, what are the social benefits which are going to be derived from it? What are the planning gains? Who is going to benefit from the development which it is sought to carry out, apart from the developer, and is it right that this benefit should be enjoyed by others?

Planning Control—Defying Definition

All this makes it more difficult than ever to identify exactly what town planning control today is about. It seems to be about almost anything that can be thought

of and one detects an increasing tendency to use the system as a sort of long-stop to hold up action, when everything else in the field has failed to do so, until all manner of things, some outlandish, some political and some just plain bizarre, have been probed and investigated *ad nauseam* and all done (as I said before) in the indeterminate name of comprehensive control of development. The Ministry were inveighing against this very sort of thing 25 years ago in the famous Circular 58 of 1951 when they stated, in effect, that planning control was not to be used as a universal cure-all for the ailments generally of mankind.

The extension of the boundaries in which the town planner today purports to function and have his being has undoubtedly led to the state of flux, exasperating indecision and costly delay in which development control now finds itself entangled. It has made it more difficult than ever before to get a straight answer to the simple question: "Can I have planning permission for this kind of development in this place which, here on the map which I produce, is marked as an area allocated for the very kind of development which I want to carry out? Can I have planning permission, *please*, to do just this?"

There was a time when the answer to that question was simple and speedily obtained. Today it is not a bit like that. I repeat, all sorts of considerations have been dragged into the cockpit of consideration, disputation and chatter. This chatter can go on for months (rightly handled!), as the applicant for planning permission goes again and again to the offices of the planning authority and chats the whole thing over with representatives of the planning department. He has been encouraged to do this by exhortations in circulars from the Department of the Environment and its predecessors.

The trouble about this is that the whole business is becoming so vague, nebulous and amorphous that nobody seems to know exactly where he stands with the result that it is often the case that the developer stands on one basis, the planning officer on another and then, when at last—at long last—it comes to the giving of a decision, the decision of the planning authority acting through its planning committee, the committee then seeks to stand on a totally different basis industriously searching up hill and down dale, hither and thither, for planning gains and “socially desirable” improvements of one kind or another. No wonder it all takes a long time! No wonder Mr. Gordon Cherry, Senior Lecturer and Deputy Director of the Centre for Urban and Regional Studies in the University of Birmingham, writing in his splendid book, *The Evolution of British Town Planning*, felt constrained to observe, when speaking of the 1960s, that (at page 178):

“ . . . planning developed rapidly during this period and planners were exposed to the influence of a wide range of different disciplines and viewpoints. It was almost an age of confusion as old certainties were questioned and new fashions came into prominence. Above all, the rapidity of change was quite unparalleled. . . .”

At page 201 :

“ But above all, planning [became] greatly extended in concept and practice, brought about by a wide involvement with other related fields of activity and encouraged by new approaches from the social sciences. New agencies in planning are now operating and this has resulted in a very confused, though

stimulating, scene. . . . So much has been in flux over the last decade.”

Yes indeed; so much really has been in flux that one can rightly question whether it is not the case that planning control has lost its way in a sea of systems. I think that was a perfectly fair question in 1972 and I am fortified in that view by the fact that it was in that same year that Mr. George Dobry Q.C., was invited by the Government to set out on his questing journey into “Darkest Development Control” and find out where on earth we had all got to and then, I presume, lead us out of the administrative labyrinth into the fresh air of sweet simplicity. Well, there must have been *some* reason for Mr. Dobry’s appointment. If that was not the reason—what was the reason? Planning control should be a means to an end; it has no call to be an end in itself. Mr. Dobry was appointed to find out where it was taking us and particularly to find ways and means of speeding the process. However, more of “Dobry” next week—in the fourth and last lecture.

Until next week I bid you, Adieu.

LECTURE THREE

FUTURE PROBLEMATICAL

AUGUST 4, 1914, saw the outbreak of the First World War (at least so far as this country was concerned) and some of us here today may even remember that cataclysmic occasion. August 4, 1975, saw the introduction into the House of Lords of the Community Land Bill thereby producing another occasion which none of us here today is ever likely to forget.

Community Land Bill 1975

Why is this so? It is because the effect of this new Bill on land and its development is going to be more devastating than anything which has ever happened before to the land of this country, and in saying this I do not forget the property legislation of 1925 nor that of 1947. The new Bill has received a bad press and a cold and highly critical reception from all shades of professional and informed opinion. The architects, the lawyers, the surveyors, the valuers, the constitutionalists, not to mention the property owners, the Town and Country Planning Association and many representatives of the small man, have all had some very strong things to say against it. Indeed, in the whole of my professional experience I have never heard such unanimous denouncement delivered, as one might say, *forte* with one tongue, voice and accord, as has been launched against this Bill. The ancient rite of *clameur de haro* had nothing on the clamour against this Bill.

Accordingly, as the future of the land and control over its development is going to be vastly affected by

the provisions of the Bill it is now necessary, in the general context of these four lectures, to offer observations and commentary upon the Bill.

Let me make it plain that this lecture is no substitute for a textbook upon the meaning and purport of the Bill—not at all. That sort of thing is for a different occasion and a different lecture. Even so, it will be requisite to outline briefly the main provisions of the Bill and then make a commentary upon them. No story about land and town planning control or the development of land can today shun the impact of this Bill and these 1975 Hamlyn Lectures would lose all relevance to the passing planning scene (with which they are collectively concerned) if they sought to do so. In fact they do not seek to do so at all—hence this dissertation on the Community Land Bill 1975.

Collapse of the Property Market

How did it all begin? Well, once upon a time, *mes petits*, there was a man who built a very tall building in the middle of a congested town. So congested was it that the governing council for the town required the man to give up so much land to accommodate street traffic of all kinds that the building got squeezed up more and more until it got thinner and thinner but, by way of recompense, higher and higher for life, you will remember, is full of compensation. In the end it became a heavenward-pointing campanile of a building of dramatically slender proportions but of very little use as offices whose tenants like, better than anything else, a lot of flat open space with very few stairs. This building was called “Centre Point” but by some it was given many other names. It remained empty for years and thus upset a lot of people.

Eventually it upset a Conservative Government who were thereby provoked into legislating for a new kind of tax called a "development gains tax." Before any real amount of money had been collected under this tax, the Conservative Government was superseded (for such is democracy where, with the situation rightly handled, a minority so easily triumphs over the will of most of the people)—the Conservative Government was followed by a Labour Government which decided to build enormously on the Conservative tax foundations. The Labour Government accepted the development gains tax as a mere beginning, an appetiser, the aperitif before the banquet—and went on to produce a White Paper called "Land" (Cmnd. 5730) dated September 12, 1974. This was a declaration of intent—an intent which materialised in the Community Land Bill 1975 introduced into the Commons on March 12, 1975 and into the Lords (as already stated) on August 4, 1975.

In the meantime the bottom had fallen out of the property market, values (and therefore prices) had come tumbling down all over the place and alarm and despondency had set in in a big way all round and about the land and property scene. And, without doubt, it all goes back to Centre Point. There really is no single thing that has done more, on the one hand, to destroy the property market overnight, and, on the other hand, to provoke new legislation of the most radical and rigorous kind, than the slender figure, but totally empty corridors, of Centre Point. Better for someone to have fitted the campanile with a carillon, turned on the unsplashing fountains and let the people sing. I believe that for land-owners it would all have been cheap at the price.

Development Land Tax Bill

As to the Community Land Bill the position now is that the Government expects the Bill to be enacted in this Session of Parliament and to come into operation on January 1, 1976. However, the Bill, it must be remembered, is one which will function in a complementary fashion with the proposed new Bill relating to the taxation of land values. The other Bill (the Development Land Tax Bill) has not yet (September 1975) been exposed to public view. It is thought that it will be introduced sometime during Autumn 1975. If that is correct then, clearly, the Development Land Tax Bill, a fiscal measure emanating from the Treasury, cannot in the normal course become law by January 1, 1976. The Community Land Bill which emanates not from the Treasury but from the Department of the Environment, could, in theory, become law before next January, but as the Development Land Tax Bill and the Community Land Bill ought to be found working side by side in a sort of double harness, it is difficult (though not impossible) to see how the Community Land Bill can be brought into operation as early as January 1, next. Maybe it will turn out, as has so often been the case with Bills relating to land, that it will be April 1, 1976 before it comes into operation.

The Two Objectives

Now the Community Land Bill has two principal objects. These are, first, to secure that increases in the value of land brought about by its development are collected by the state—that is what the word “Community” really means—and, secondly, to enable local government authorities (the new county councils and the new district councils) themselves to indulge in the business of carrying

out development—in other words, to participate in what is today so frequently called “positive development.” In the future it is the idea that local government authorities will not only control development in the private sector through the existing medium of town and country planning control over land development (a medium, incidentally, which is not affected by the new Bill) but will themselves “get in on the act” and do development themselves either alone or in partnership with the private sector.

The First Objective

So far as the first of the aforementioned objects is concerned this is the third attempt which has been made by a Labour administration to collect for the state development value in land. The first attempt was under the Town and Country Planning Act 1947, when developers were obliged to pay a development charge to the state before they could carry out development. This arrangement was brought to an end by a Conservative administration after five years in 1953. The next attempt was made under the Land Commission Act 1967 when a betterment levy was imposed upon all those reaping any increase in the development value of land caused by the carrying out of development. After something like three years this arrangement was also brought to an end and now, in 1975, we come to yet another attempt.

This attempt involves, in the first place and for a temporary period, the length of which is not known and which is called the “transitional period,” the imposition of a swingeing tax at the rate of 80 per cent. rising to 100 per cent. of the increase in value of land brought about by its development. At the end of the “transitional period” the Bill provides that a local authority, when-

ever it buys land compulsorily, will pay to the private owner from whom the land is taken the existing-use value only of the land. Thus, whether during the transitional period or thereafter, so long as the Bill remains the law of the land, increases in the development value of land brought about by development will be taken up by the state first through taxation (during the transitional period) and thereafter through a new system of compulsory purchase at existing (or current) use value only.

En passant, it may be stated that whilst the latter point may cause no hardship to those who have held their land immemorially over the centuries, the new principle of compulsory purchase at existing-use value only will certainly fall with a bang (and possibly a big bang) on those who have purchased land for development since, say, the end of the Second World War, and have paid for that land (as they were obliged to do in order to get it at all) not only its existing-use value but also its potential development value as well.

The Responsible Authorities—The Secretary of State
The authorities responsible for “making the going” under the new Bill are, in England and Scotland the new local government authorities set up, as from April 1, 1974, under the Local Government Act 1972, together with all new town development corporations and, in Wales, a new centralised authority to be called the Land Authority for Wales.

Behind all the foregoing authorities looms the Secretary of State for the Environment—the *eminence grise* of the new Bill—who takes unto himself more remarkable powers over the conduct of local government than he has ever had before. Whether the mandarins of the new form of local government have entirely wakened up to this

point would appear to be doubtful. The *Municipal Journal*, in an euphoric ecstasy, has declared that the Bill is "probably the most exciting thing to happen to local government for decades." ("Probably"—the M.J. wasn't quite sure!) But if the "small print" of the new Bill is carefully read it will be seen that the local government authorities are bound hook, line and sinker to the fancies, wishes and policies of the Secretary of State for the Environment. Clauses 43 to 48,* under the innocuous heading "Land transactions by authorities," take good care of all this and make totally sure that all the "goodies" coming, in the first place, to local authorities under the provisions of the Bill will, in the next place, be safely gathered in by and for the Secretary of State *if that is the way he wants it*. Without doubt clauses 43* to 48 carry bad news for the brave new world of local government authorities who should certainly read these clauses with particular care.

The White Paper "Land" studiously avoided any reference to the nationalisation of development land and in doing so the paper was less than frank. The Bill again eschews "nationalisation" like the plague and in its title uses the expression "Community." It is the "*Community Land Bill*" with which we are dealing. But having used that expression once (in its title—clause 58 (1))* the expression never appears again throughout the entire Bill. Then who, one may ask, is "the Community," and the answer is: in the last analysis "the Community" is none other than our old guide, philosopher and friend, the Secretary of State for the Environment!

* At the date of going to press these were the clause numbers in the Bill. Subsequent amendments to the Bill have caused an alteration in the numbering.

The Transitional Period—First Appointed Day

When the new Bill is enacted it will not come into operation until the first appointed day, which the Secretary of State will declare. That will start running the transitional period. During the transitional period, as has been said, the other Bill (the Bill relating to development land tax) will secure, throughout the whole of the transitional period, that whenever any development value in land is reduced into possession by a private developer it will be taxed at 80 per cent. rising to 100 per cent. with the result that the private developer will receive little, and later on no, development value at all.

Again, during the transitional period local authorities will be encouraged, through the medium of new *powers* (and later new *duties*), to acquire development land compulsorily. "Development land" is any land which, in the opinion of the local authority, is suitable for "relevant development."

Development Land—Relevant Development

And what is "relevant development"? "Relevant development" means *all* "development" (as defined in the Town and Country Planning Act 1971) *except* that which is excluded by the Bill itself or by regulations to be made under the Bill (when it becomes law) by the Secretary of State. (Let me leave it like that for the moment—I will return again to the matter, I promise you, shortly.)

Thus, it will be noted that once planning permission for "relevant development" of land is granted, any such land *must of necessity* fall into the category of development land. But it is not at all necessary for an application for planning permission for development to have been made before land can become development land—that is not the idea at all. The local authority can come to the

conclusion—through the medium of the customary local government routines for arriving at a corporate decision—the local authority can come to the conclusion that land, under the Bill, is, in their opinion, development land even if planning permission for its development has already been refused! I repeat, “development land” is what the local authority says it is. Of course, it is true the authority, in making up their mind, must have regard to the contents of their own development plan and to any other material considerations but, again, the contents of the plan are not necessarily binding upon the authority. Could we not, in all of these exceedingly vapid circumstances, be forgiven for sending up the sigh—“What’s the use—I give up.” This is the sort of planning cloud-cuckoo land into which the amazed and demoralised developer is ensnared and absorbed by this sort of double-talking legislation repetitively carried over from early and equally desperate attempts at particularising the nebulous.

*The Duty to Acquire Land—
Designated Relevant Development*

I have spoken of the new powers whereby a local authority can acquire land compulsorily during the transitional period. But I must now go further and tell you that during the transitional period the Secretary of State may, here and there up and down the country, make what may be called “clause 20” Orders (they are made under clause 20* of the Bill). Wherever such an Order applies it will lay the local authority for the area covered by the Order under a statutory obligation (a *duty*) to buy up all development land needed for “designated relevant development” within the next 10 years. This is one of the most

* See note on p. 55.

outstanding of the many new features in the Bill—there has never been anything like this before.

After a clause 20 Order is made any local authority affected by that Order will have no option as to whether or not it buys up development land needed for designated relevant development. It will be bound to buy it up. If it will not do so and is recalcitrant then the Secretary of State may step into the picture and buy it up himself. Once any class of development has been particularised in a clause 20 Order as being “designated relevant development,” then it will be open to the Secretary of State to make a “Commencement Order.” Thereafter it will not be possible—it will be illegal—for any development of that class to be carried out *except* on land which is in, or has passed through, the ownership of the local authority or the Secretary of State himself in a case when the local authority refuses to play ball.

Disposal of Acquired Land

Having bought up development land, the local authority will have to consider to whom they will dispose of it for development unless, of course, they want to keep it for development by themselves. The disposal will not be by way of a freehold (except perhaps in the case of housing land) but by the grant of a lease, the length of which is, at the moment, not clear. It could be 60 years, 100 years, or 160 years, etc.

It should not be assumed for a moment that the person who has applied for planning permission to develop his own land and has got that permission and who then, under the foregoing arrangements, loses his land as a result of it being compulsorily purchased by the local authority—such a person should not assume he will then

get back a lease of such land to carry out his development. That is not necessarily the idea. Such a person will have to take his chance along with anybody else who then comes into the picture and shows an interest in developing the land. One wonders if it is sufficiently realised that this is going to be the prospect before us after the first appointed day. I am well aware that the previous owner's case for a lease of his land back to himself *must* be considered by the local authority. That is quite true and quite clear. What is *not* clear is how the local authority is to conduct itself when there are competing claimants (including the previous owner) all wanting to get their respective, itchy fingers on to the land, planning permission for the development of which the previous owner has applied for, fought for, and possibly conducted an appeal for. When there is this profusion of conflicting interests abroad and the principle of competitive greed is to be found rearing its ugly head in our midst—what then is to be the line of duty for the local government authority, bless its dedicated dutiful heart, hell-bent on getting the best price it can for the benefit of its ratepayers? (Well, why not the best price—its first duty is to its own ratepayers.) What in those circumstances will be the line of duty for the democratically elected local government authority? This is a very good question—one of the most teasing questions that will arise under this controversial Bill. The injection of the profit motive into the hurlyburly of local government's daily doings is something quite new. However, let us have no fear for we are told that, in due course, there will issue from the Department of the Environment "guide lines" for dealing with all such intricate and delicate matters.

Relevant Development—Definition by Regulation

The substance of the new Bill is built around the expression “relevant development” (I said I would come back to it), and this means *all* development (as defined in the Town and Country Planning Act 1971) *except*:

- (a) one kind—a family house built on land owned on September 12, 1974—*exempted* by the Bill itself *; *and*
- (b) development yet to be *excepted* by regulations later to be made under the Bill (when enacted) by the Secretary of State.

A lot will turn on how far-reaching these regulations are. A good deal of the sting could be taken out of the Bill if the Secretary of State made wide-ranging regulations exempting development from the definition of “relevant development.” But all this remains to be seen. Indeed, it all depends on how the Secretary of State feels about the matter. So far he has shown his hand (Department of the Environment Consultation Document, May 1975, paragraph 12) no more than to say that “the regulations under clause 3 should exclude from the definition only relatively minor development which is not significant for the purpose of the land scheme.”

It will be noted that the new arrangements whereby a local government authority is placed under a *duty* to buy up development land compulsorily will come into operation piecemeal up and down the country. How long it will take before the entire face of the country is covered with these new arrangements is problematical. It depends, one would have thought, on how quickly local government can gear itself to deal with its new

* Since going to press amendments to the Bill provide further instances of *exempted* development.

powers. It has been mentioned that, to enable local government to do this, something like 12,750 new officers and clerks will be required together with some 1,400 new revenue staff—a total of 14,150 in all. I wonder where all these people are today and what sort of a man-sized job it is that they are holding down at the moment?

End of Transitional Period—Second Appointed Day

As and when the whole face of the land is subject to the requisite orders *obligating* local authorities to purchase development land compulsorily, then it will be open for the Secretary of State, by Order, to bring to an end the transitional period. Such an Order will usher in “the second appointed day” and when this occurs, the penal taxation of 80 per cent. to 100 per cent. in the form of a land development tax payable on a compulsory sale of land will cease to function. Thereafter, the method whereby increase in development value of land brought about by the prospect of development will be secured for “the Community,” will be by enabling local authorities, when buying up the land compulsorily to pay for it nothing more than the existing-use value of the land.

Hardship—£50,000 a Claim?

As I mentioned earlier in this lecture, this could bear harshly upon those who, shall we say in the last 25 years, have purchased land with a view to developing it. They may well find themselves grievously out of pocket. This has been recognised and the new Bill accordingly provides that where this does happen then, provided it causes *hardship* (an interesting expression which is not defined), the person aggrieved will be entitled to appeal to a new form of tribunal (to be known as a “Hardship Tribunal”) and if that tribunal is satisfied that hardship has occurred it is empowered to pay to the aggrieved

person a sum not exceeding £50,000 for any one claim. This figure can be increased by regulations made by the Secretary of State. The thing to note here, however, is that an aggrieved person has no *right* to any such compensation. He is entirely in the hands of the Hardship Tribunal, and he must demonstrate that he is in fact suffering hardship as a result of the new system of compulsory purchase at existing-use value only. There will be a number of these Hardship Tribunals sitting in different parts of the country if the Secretary of State so provides. It is entirely a matter for him; he is not obliged to set up any Hardship Tribunal at all.

The Second Objective

Let me now turn briefly to the second of the two driving forces behind the new Bill, namely, the desire to give local government authorities an opportunity to indulge in positive development. On this, and at this stage of the lecture (for I shall return to the matter before I conclude tonight) I will say only that local authorities have had this sort of power ever since 1944 and have shown no particular wish to use it. It is a matter of opinion and speculation as to how they will shape up to the development powers now being *reconferred* upon them.

Speed and Delay—Suspended Planning Permissions

The new arrangements under the Bill are certainly not calculated to hasten the speed of development. The delays which, over the last 10 years, have grown progressively in the business of obtaining planning permission for development are now going to be increased because the new Bill provides that, in any area where a clause 20 Order is in operation obligating the local authority to purchase development land compulsorily, then in any

such area, as soon as planning permission for designated relevant development has been obtained (a matter taking months or years as is well known), the planning permission is straightaway put into suspense for a further period in order to give the local authority time to take the necessary steps to acquire the land compulsorily.

New Compulsory Purchase Procedure

The taking of these steps could be a matter of years rather than months and the architects of the Bill are entirely alive to this. So much is this so that the Bill, as first presented, drastically abrogated the safeguarding provisions of the Acquisition of Land (Authorisation Procedure) Act 1946 by providing that in the case of compulsory purchase of land under the new Bill the right of an owner to object and protest against the compulsory purchase of his land was to be dramatically curtailed.

This led to a paean of protest from many quarters (including the Council on Tribunals) with the result that the draconian provisions of the Bill as first introduced have been modified, though only somewhat. The original idea behind the Bill was to get rid of all public inquiries or private hearings (if the Secretary of State so desired—it was to be entirely a matter for his discretion) in connection with the compulsory purchase of land under the Bill. A man about to lose his land was still left with the right to object; he could put his objection into writing and send it to the Secretary of State. But he never *met* anybody; he never *saw* anybody; there was no confrontation; no cross-examination to test out the merits and expose the demerits of the acquiring authority's case. The objector had one right left. He could fulminate by post.

Needless to say this sort of high-handed, imperial behaviour led to some comment—I avoid the language of exaggeration. It led to comment—strong and to the point. In the result the harsh corners of the Bill have been softened but only somewhat. Undoubtedly, in the ultimate analysis it is still open to the Secretary of State to throw overboard the well-known safeguards of public inquiry or private hearing in a case where objection is duly made to a compulsory purchase order. If there is any one set of provisions in the new Bill which are more calculated than any other to add fuel to the current call for a Bill of Rights to protect the fundamental rights of the individual from the overweening vanity of a parliamentary majority at Westminster, it is the compulsory purchase provisions of the new Bill. I say no more about them tonight—you must read them for yourselves but do read, most carefully, “the small print.”

Having acquired development land compulsorily under the Bill the local authority must then consider what next to do with the land. Will it develop it itself, will it develop it itself in concert with the private sector or will it dispose of the land to the private sector for development by the private sector? These are the questions which must be answered. It will all take time. Local authorities these days are not, in general, noted for the speed with which they discharge obligations of this kind. Their present performance in the field of town planning control over development does not encourage any belief that, in the discharge of these further and quite onerous responsibilities, a local authority will work more speedily than it does at the moment. If all this is going to be the case, then another scotch on the development wheel is, without doubt, about to come into operation.

Development Value—Who Collects and How Much?

It is interesting to ponder about what is going to happen, under the Bill, to the moneys representing increases in the development value of land brought about by development. How are these sums of money going to be dealt with? As I have explained already, they are going to be taken from the private developer either by taxation (the development land tax during the transitional period) or by the new system of compulsory purchase of land at existing-use value when the transitional period has concluded. Where does the money go? Well, as at present advised, the answer is that the money will be divided into three parts; 40 per cent. of these development gains will go to the Treasury; 30 per cent. will go to a pool to be shared amongst local authorities in general, and the final 30 per cent. will go to one or other of the two local government authorities—the county council and the district council—functioning in the area where the development in question has taken place.

But here again, the hand of the Secretary of State, that is to say the power of the Central Government, must not be forgotten. Reference has already been made to the provisions in the Bill which enable the Secretary of State to call upon local government authorities to explain in full whatever it is that they have collected by way of development value and what they are doing with it. He can then decide what further should be done with it and in so doing he is entitled to conclude that he, on behalf of the Central Government, should take it unto himself. Local authorities will not necessarily be winners in this new powers of land acquisition—new duties of land than rights when it comes to meeting the Secretary of State round the table.

A Small Bill—See Later for Details

Finally, on the provisions in the Bill, it is to be mentioned that the Bill is certainly smaller in size than its predecessors in kind. It comprises 58 clauses, 10 schedules and runs into 89 pages of a Queen's Printer's copy. This is because the Bill is a classic instance of the new styling for legislation which is insidiously creeping in. The Bill itself is subject to close inspection and detailed debate in Parliament (subject to the ravages of all-night sittings) but it is mainly an *enabling* instrument. It empowers, in general terms, somebody somewhere to do all sorts of things by way of subordinate legislation in the form of rules, regulations and orders. Therefore, it is impossible to say from a reading of the Bill alone exactly how things will turn out in the future. Subordinate legislation by the Secretary of State for the Environment will fill out the skeleton of the Bill. Such subordinate legislation receives, of course, nothing like the close scrutiny by Parliament which is given to an Act of Parliament itself. It is said that the pressure of work in Parliament is progressively forcing this new styling into being. Certainly the new styling means that Parliament is handing over a great deal of responsibility to individual Ministers. The cry goes up, "But you must trust the Minister." The trouble about all this is that nobody knows, with any certainty, which particular Minister it is which one is expected to be trusting. Ministers come; sometimes they go.

Devastating Effects—Development in Turmoil

In drawing this lecture to a close I venture to repeat what I said at the opening, namely, that the Community Land Bill is going to have a devastating effect on land, land development and town planning control over land

development. I really do not believe there can be any doubt at all about this. One could argue for hours about the pros and cons of the details of the Bill but let us put detail aside. It is not merely the detail of this Bill which is cockeyed; it is the entire ethos and dogma of the thing which is out of gear and running amok. To those who favour town planning control over the development of land (as I do and have done for the 40 years I have been associated with it as a lawyer in the public service); to those who favour the skimming off of *some* of the rich rewards of property development wherever and whenever they occur (as I am and have been for at least 30 years since I first faced the compensation-betterment problem of planning control); to all those who favour these kinds of thing (and there are millions of all party political persuasions who undoubtedly do); to all these professional, commercial, entrepreneurial, property-owning and non-property-owning people, this Bill can only be regarded as a disaster. It is regrettable to have to say this but it is necessary to say it if one is to be frank and candid and to speak plainly. I repeat, never in my life have I seen such unanimous, professional, technical and commercial opinion ranged in critical hostility to a Bill as in this case. That the effect of the Bill will be devastating is the opinion of many sober-minded people who have full knowledge of the tricky problems of land development and who are not at all averse to the public purse, the community, getting a fair share out of the profits (when they have accrued) of land development.

The securing of this fair share can easily be done by a process of progressive and phased taxation so that anyone thought to be making too many ill-gotten gains (as the evocative saying goes) can be made to "cough-up" and pay a reasonable proportion into the Exchequer.

The true thing is to be reasonable—this Bill is unreasonable. Because some big boys in time past have “made a pile” out of land development—all carried out, incidentally, with planning permission granted by some local government planning authority somewhere—because a few big ones have done well (or too well), *all* developers and landowners are now to be sacrificed on the altar of an ideological principle of the most rigorous kind.

Send in the Councils!

In effect all initiative in the development field is to be handed over to the new county councils and the new district councils. Now, at the moment, all local government at whatever level—and there are three; do not forget the parish councils (some even with mayors, enchained and garlanded) who now have rights in the planning field which they never had before—today all local government is suffering badly from post-operative shock following the reorganisation of April 1, 1974. And the problems are not all teething troubles as is often suggested; not at all. We now have split-level, two-tier, county and district local government everywhere. There is a long future ahead of push and pull, tussle and hassle between disputing authorities both functioning on the same plot of land—who does which and with what and to whom? These are going to be the questions and they are going to last for a long time.

In this state of disarray local government is to receive new development game; they seem to have more duties acquisition, when full implementation of the Bill is in force.

Anyone who has had experience in recent years of prizing planning permission for development out of a local government authority is bound to view with dismay

this conferring upon them of new powers. We have been told quite frankly that some 14,000 new staff will be needed. And I have queried, quite frankly, "Where are they *now*? What are they doing *today*?"

Did not the recent performance of planning authorities lead, two years ago, to a complete investigation of the system by Mr. George Dobry Q.C.? His Report on the matter makes 264 pages of sober and depressing reading. The saving of the day on the planning front has been brought about only by the sudden demise, 18 months ago, of the entire property market—a demise brought about, *inter alia*, by threats and rumours of threats to do all the things which the Community Land Bill now seeks to achieve. I repeat, those who have knowledge and come to the matter with an open mind free from the warping effects of party political prejudice cannot but view with the greatest reserve this lock, stock and barrel handing over of development initiatives to local government authorities.

Development Initiatives—Bureaucracy's Contribution

Local government authorities have had general town planning powers to do all sorts of development ever since 1944 when the bombs were raining down on this country. It was feared the private sector might not be equal to the demands of post-war redevelopment. Local authorities have had plenty of development powers for over 30 years. What they have not had is initiative. Bureaucratic institutions should not be expected to have development initiative. Local government authorities have their undoubted place in the settled and civilised order of things. They have their powers, their functions and their duties. But when all is said and done it has to be admitted that no local government authority has ever shown any apti-

tude for catching lightning in a bottle. Local government authorities are not made that way. They are not that sort of animal.

The entrepreneurial skills and expertise of the developer who is prepared to back his fancy and take a chance—these are not the sort of thing to be found at town or county hall. Yet they are essential if development is to go forward and a vibrant property market is once again to take the stage.

The big thing in life is to create steam—the committee system of local government bureaucracy is not geared to do this sort of thing. It is no reflection upon the system to say that—it is not the function of local government to create steam.

Steam is created not by committees, however democratically elected, but by individualists, adventurers, risk-takers. If they create too much steam (and some do and have done) this can be well trimmed by the public sector (the local authorities) judiciously setting in motion the planning controls readily available to their hands. That is the very purpose for which these controls were invented.

Far too many people today are constantly hankering after other people's jobs—jobs which, in any event, they are not skilled and fitted to do. It is a good maxim for the cobbler to stick to his last—the public sector and the private sector (and there is room for both) each doing their own real thing.

This Bill will be destructive of all private initiative and it is this sort of initiative—the initiative of the individualist—which has always made the development scene fizz and tick.

Today that scene is as dead as the dodo. Can anyone really believe that the committee-ridden hands of local

government (even with 28,000 more hands) can ignite the catalytic spark which will once again set that scene alight? Local government does not work that way and its founding fathers never expected it to do so.

It is the destruction of individual incentives which is basically the worst thing about the new Bill. It will destroy the entrepreneur's "shaping spirit of imagination" and replace it with the dull, if dedicated, plodding approach to development which characterises the development attitudes of local government authorities.

We shall be told, I have no doubt, a great deal about how, in time past, certain authorities have functioned in concert with the private sector in joint development schemes. But investigation will show that in these instances the driving force derived from the entrepreneurial expertise of the private sector which played the dominant role. The star was the entrepreneur—the featured player was the local government authority. This Bill reverses the two roles and it is this which will prove its undoing. It is this which will make the entrepreneur think twice before he will agree to play at all. And if the entrepreneur declines to play and all action in the development field is left to the local authorities—what is to happen then? The answer is: Not enough; not enough to rebuild this country's battered economy. It will be, once again, a case of too little and too late.

Common Ground—Consensus Politics

It is all very sad especially when one remembers that in this important matter of land development, and in the equally important matter of town planning control over land development, there is so much common ground between professionals and experts of widely differing

political opinions. Could not this common ground have been exploited in whatever new Bill was thought to be required? Of course it could and the Royal Institution of Chartered Surveyors in its 1975 Memorandum entitled "The Land Problem: A Fresh Approach" has shown the way. But all this would have led to legislation based on the politics of consensus. The politics of consensus is no bad thing when it comes to the land. But hear on this the strong words of the Minister, moving the Second Reading of the Bill:

"One newspaper," he said, "*The Times*, would have preferred a different Bill—a Bill with which both sides of the House could agree. I am afraid that I cannot oblige. The Bill that I am moving today is one based upon a deeper philosophy than the politics of consensus. So far from denying its radical principles, I take pride in them."

"*Also sprach Zarathustra . . . !*"—I think I hear the sound of violins; Mr. Richard Strauss's. Clearly, the Minister was in exultant mood—quite the *superman*. But that does not prove the philosophy of consensus politics—especially in the field of land planning—to be wrong. We shall see—and I believe that, under this Bill, we shall see sooner rather than later.

Goodnight.

LECTURE FOUR

L'ENVOI

THOSE of you who have done me the honour of attending this quartet of lectures will have realised by now that they are not really lectures at all but rather distinct and separate essays touching various aspects of town planning control and its effect on the development of land.

The first essay was a sentimental journey down the arches of the years showing the historic development of this twentieth century form of control.

The second essay emphasised certain aspects of today's town planning routines and showed how, in their increasing complexity, they were bringing the whole system into question with the result that Mr. George Dobry Q.C. was asked to investigate the matter. (I will return to the Dobry Report in a few minutes.)

The third essay was an exposé of the new Community Land Bill coupled with an expression of the fears, sincerely and deeply felt, by well-informed people of differing political persuasions, as to the effect of the Bill on the good name of planning control and of their doubts as to the efficacy of its functioning.

In tonight's essay, after which I take my leave, I shall conclude by presenting some reflections on a number of town planning matters pointedly featured in the news these days.

Accordingly, let me turn for a few moments to the emotional matter of conservation and preservation and their place in the building world during the closing decades of the twentieth century.

Conservation—Preservation—and Delay

Britain today with a population of 55,361,999 and a land mass of 87,820 square miles is just about the most densely populated country in the world. There is argument hereabouts as to whether it is Belgium or Holland which wins the prize for congestion. No matter—if Britain does not actually win the prize she is certainly a close runner-up. The U.S.A., with a population just over four times bigger than that of Britain, has a land mass just over 40 times as big—that is why they do not worry too much about conservation in the U.S.A. Nearer home, France, with a population of 52,346,000, has a land mass of 210,038 square miles—over twice the size of Britain for a population three millions smaller. As a European Town Planner, speaking with the best will in the world, recently said to me, “ the British are very dense ”!

Accordingly, the whole story of planning control in this country is shot through and through with references to the need to preserve, to conserve. This was originally born of a vague fear of what might happen with too many people living on too little land. Over the years the feelings about preservation have remained but, with a population increase now slowing down, the motivation for preservation has shifted progressively to an increasing awareness of the quality of life around us—the general ambience of our surroundings, and a fear that it is going to slip away before our very eyes if we are not careful to protect it. This is the environmental approach to planning control. It has always been there but it burst into more dramatic insistence around and about 1960—the Watershed Year, as I earlier called it in these lectures.

This year, 1975, is European Architectural Heritage Year and, undoubtedly, it is giving a great fillip to all ideas touching the conservation of land and buildings.

Britain has many fine buildings and I am not referring solely to cathedrals and stately homes when I say that. Our country rejoices in many commercial and engineering buildings built primarily for functional purposes but suffused nevertheless with style, grace and distinction.

There can be no doubt that during the past 15 years public awareness of our architectural heritage has grown enormously accompanied, I am bound to say, with increasing disenchantment at the broad-brush, clean-sweep, approach to redevelopment. Here we must distinguish between "blitz" and "blight."

Areas of *blitz* (where World War II did all the demolition that was needed) have largely been rehabilitated. Alas, not all of the rehabilitation has turned out to be "a thing of beauty and a joy for ever." Thus, when it comes (as it now does) to the rehabilitation of areas of *blight*—the seedy, run-down, twilight areas in need of comprehensive redevelopment—there is growing public demand for the conservation of historic sites, the erection of "in-fill" buildings which complement their surroundings—in short, a demand for better manners in urban redevelopment and civic architecture.

All this has led to a positive lobby for making the best possible use of existing resources including buildings as well as land. This is seen in the general support now given for rehabilitation and piecemeal renewal as against wholesale demolition followed by yet another "modern block"—and block, I fear, is frequently the right word, or so I myself happen to think. I could, of course, be wrong about this because it is all a matter of taste. I must confess, however, that I am weary of being told that "beauty is in the eye of the beholder"—a concept too frequently used these days as a cover-up for unimaginative design and second-rate workmanship.

The particularly interesting thing about all this to me is that the law, and the way the law is going today, is helping more and more to foster this idea of the rehabilitation of what we have rather than demolition followed by brand new construction. The latter needs planning permission and, under the Community Land Bill,* may result in your losing your own freehold to a local government authority. But if you confine yourself to internal rehabilitation of a building and do not alter the external appearance—an appearance which is usually the basis of the desire for conservation—this, remember, is not “development” under the principal Planning Act of 1971. And if what you do is not development then it can never be “relevant development,” let alone “designated relevant development,” under our friend the Community Land Bill. Thus, by a policy of “make do and mend,” as we used to call it in World War II (speaking of our “Sunday suit”), you may at once be helping to preserve our Architectural Heritage and, at the same time, *mirabile dictu*, keeping yourself clear of the snares and pitfalls of land nationalisation. Life, you see, is full of compensation!

And now all this talk about conservation has brought me, as I thought it would, to—yes, you are quite right—to Liverpool Street Station. (I promised in my first lecture that I would get there.)

In re Liverpool Street Station

Well, do we preserve Liverpool Street Station?—and Broad Street Station, with it? Do we? I think not. Railway stations, of all things, cry out to be functional. I have never been able to accept “Temple Meads” at Bristol

* Probably the Community Land Act 1975 by the time this lecture is delivered.

and feel that that great man, Isambard Kingdom Brunel—Engineer, for whom I have always had the most profound regard (being somewhat of a G.W.R. fan though hailing from the North) would have done better had he kept to engineering and left architecture to the architects. I rejoice in the Great Bridge—the Royal Albert Bridge—over the River Tamar at Saltash, a thing of beauty and of a style totally in keeping with its functional purpose which was, and is, to carry heavy railway trains from Devon into the Delectable Duchy. On the other hand, Temple Meads Station has always seemed to me something of a cross between a Transylvanian Castle-Dracula and a Flemish Town Hall which had come in out of the cold!

And so I cannot subscribe to the preservation of Liverpool Street Station—at least not the built-up façade. This does not rate a preservation order even if more can be said in favour of the great iron canopy over the platforms. For myself I was always more affected by the enormous “ Gateway to the North ” at Euston—the Great Doric Arch or, to be fastidious, the Propylaeum because it wasn't an arch at all—I know this for I speak with the authority of an ex-Meccano boy—it was the Propylaeum. If that had to go (and it had and it did) then I cannot shout-up for Liverpool Street.

Liverpool Street Station was listed, curiously enough, as a building of special architectural or historic significance only on the very day that application for planning permission for its redevelopment was made. It was certainly a very late listing. The effect of the listing is that listed building consent will first need to be obtained for the demolition of the place before rebuilding (in accordance with planning permission) can begin.

This routine of last-minute listings is bringing the whole system into disrepute. The rebuilding of Liverpool Street Station has been the subject of public comment and discussion for years. It is no new matter suddenly arising. Accordingly, if the authorities concerned are of opinion that the station is a building of architectural or historic significance, one would think this opinion could have become a settled opinion years ago, in which case the station should have been listed years ago, in which event those preparing the current enormous plan of reconstruction might very well have bent their endeavours in a different and modified direction. My point is to demonstrate that, here again, the *manner* in which the planning laws have been administered will lead to delay, frustration of endeavour and a further fraying of nerves in general. All could have been avoided by application of mind to the listing process at the right time—and that time (in the case of so dominant a thing as Liverpool Street Railway Station) was long ago.

Frankly, I believe there is too much of this sudden, spot listing going on today. Much of it is being done in order that, before development can take place, there shall be a double form of investigation, first as to whether the building in question shall be demolished and secondly as to whether the proposed new development shall be allowed. The pendulum of public opinion in this field should not be allowed too great a swing against redevelopment. What is required is not blind opposition to progress, but opposition to blind progress. These two matters are quite different things.

Administrative Complexity in London

Turning to matters of administration I often think it would be a very good thing for improving the planning

process if each planning authority would be good enough to mind its own business—to do its own thing and to stop trying to do somebody else's thing.

The danger of what I will call duplication of endeavour—though that is a very elegant way of putting it; frequently it is just another study in bloody-mindedness—is very prone to arise once you have accepted (as Parliament now has) the idea of split-level local government right across the board.

Let me develop this point. Some 17 years ago local government in Greater London was put under the spotlight of a Royal Commission which produced its Report in 1961—the Report of the Royal Commission on Local Government in Greater London (Cmnd. 1164)—the Herbert Report so-called because Sir Edwin Herbert (later Lord Tangle and a Past President of the Law Society) was its Chairman. The Report advised the abolition of the 29 Metropolitan Boroughs and the expansion of Metropolitan London from the London County Council area of 117 square miles to the Greater London Council area of 620 square miles. Greater London was then to be subdivided into 32 London Boroughs plus the ancient City of London.

The Report was accepted by Parliament and split-level local government for Greater London established by the London Government Act 1963.

Now the point to note about all this is that the Report made it clear that the job of the G.L.C. was strategic (that is to say, not detailed) and that the cut and thrust and general hurly-burly of local government in London was to be carried out at the Borough level. The impact of local government was to strike John Citizen from the Borough Town Hall and not from County Hall. The G.L.C. was *not* to be the L.C.C. writ large.

This is something with which the G.L.C. have never come to terms. The making of a development plan for Greater London is clearly the job of the G.L.C.—it is a strategic matter if ever there was one. But the day-to-day control of development under the aegis of such a plan—note that—*under the aegis of such a plan* is something which should be left to the London Boroughs to get on with. Is it so left? Not at all. The G.L.C. cannot keep itself clear of the detailed, daily business of granting or refusing planning permission for development. The duplication of effort and the consequent waste of time and money brought about by the resulting delays are now notorious.

Today, I have no hesitation in saying that the best thing for planning control in London would be for the G.L.C. to get itself off the backs and out of the hair of the London Boroughs and let them get on with the job of development control in their own way but under the overall, constraining discipline at all times of the Development Plan for Greater London.

I want, very briefly, to show how this double-headed monster of control can lead to difficulties and I fear I must once again quote the G.L.C.

At the present time there is an operative development plan for Greater London—it is called “the Initial Development Plan.” Let me stress that today it is the only operative plan for London. A later plan called the Greater London Development Plan (GLDP) is still with the Central Government and has never, as yet, been approved and thereby come into operation.

There is an area in Central London (it happens to be in the City) which is zoned for offices. A developer applies for planning permission for offices in that area having first got an Office Development Permit from the Secretary

of State. Please remember that the getting of such a certificate shows that the building of the offices is in accord with the Government's policy about the overall distribution of offices in the national interest. The application comes before the local planning authority (the City Corporation in this case) to be considered purely on planning grounds—siting, size, bulk, daylight angles, parking bays and so forth. And what happens? The G.L.C. passes a resolution (it is dated March 11, 1975) declaring as a matter of policy—G.L.C. policy—that, except in an exceptional case (dependent not on the inherent merits of the particular case but on general grounds of public benefit), there are to be no more offices in the area in question. Now while the G.L.C. can pass such a resolution if it wants to, I know of no legal basis for the implementation of that resolution in the circumstances of this case. I feel the G.L.C. must know this as well because they are expertly advised at all times.

However, pursuant to this policy, the G.L.C. issues to the planning authority a direction to refuse planning permission. Here we have yet another mishap. The powers of the G.L.C. in a matter of this kind are limited by law and I quote the authority—it is the Town and Country Planning (Local Planning Authorities in Greater London) Regulations 1965 No. 679. Under these Regulations the G.L.C., when considering such a matter as the one I am talking about, is limited to doing certain specified things and doing no more. In short, it is *not* to have regard to any matters other than the policy set out in the Initial Development Plan with regard to offices. (The contents of the GLDP—whatever they are—do not affect the point as this plan is not yet in force.) But the difficulty is that the G.L.C. now wants to go beyond the 1965 Regulations and allow itself to be influenced by a policy which

amounts, in effect, to an unapproved amendment of the contents of the Initial Development Plan.

Why does some developer not challenge all this? I don't know but I am sure that one day it will found not only a protracted appeal to the Secretary of State but also a good case for action in the courts. The pity of it is that it is all so unnecessary and does nothing for the good name of planning control. It runs counter to the rule of law and may rightly be called a displeasing example of lawlessness in the planning field. On this it is interesting to observe that the G.L.C. Report covering the Resolution of March 11, 1975 declares, very frankly, that "the Initial Development Plan still shows land as suitable for office development where the Council would not now wish to see such development. In this confused situation the Council can only make clear its present policy." I do not understand the reference to a "confused situation." I see no confused situation—the constitutional position is clear—and if the Council sees some confusion it is entirely of the Council's own making.

The Overlap of Planning Authorities in General

I have quoted at some length this particular matter of planning control and office development in order to show how administrative complexity can so easily be created when there are two planning authorities putting inquisitive fingers into the same pie. Before I leave the point let me add that this kind of thing, if care is not taken, could now break out in other parts—now that we have split-level local government everywhere with the new county councils and the new district councils both functioning over the same plots of land.

In 1947 there were 1,441 planning authorities in England and Wales. The 1947 Act reduced them to 184 but the

Local Government Act of 1972 increased that number to 421. The result is that over every square inch of land there are now two fully-fledged planning authorities. In consequence there can be no peace for planning in the Shires until the counties and the districts knock their own heads together and come to terms as to who does *which* and who does *what* in the field of planning control. There must—there really must—be a proper division of labour between the counties and the districts. Each one must know where it stands and must then restrain itself and stop interfering with the work of the other.

I am bound to tell you that with the law as it now stands—with its pestiferous savings and reservations constantly qualifying some clear and readily understandable general statement—it will not be easy for this clear division of labour (to which I have referred) to be achieved. Well, maybe the law touching all this should be refined and changed accordingly. I wish Mr. Dobry in his Report would have paid even more attention than he did to this important matter which, today, is at the root of so many of our planning problems.

The Planning Act of 1968 split “the development plan” as we had known it since 1948 into two portions. One was the “structure plan” made locally by the local planning authority (county council or county borough council) and approved centrally by the Minister for town planning; the other portion was the “local plan” again made locally and *by the same local planning authority* and then approved locally as well and by that same local planning authority. This made sense once you accepted that there was to be load-shedding of planning detail from Whitehall to Town (or County) Hall.

But then came local government reorganisation. The Local Government Act of 1972 provides that structure

plans shall be prepared by the new county councils and local plans by the new district councils subject, however (and alas), to a host of provisions relating to a totally new legal instrument called a "development plan scheme" which scheme can itself provide that the foregoing arrangement shall *not* apply. Such a scheme can only be made by a county council and only after consultation with the district council. A structure plan itself can provide that local plans shall be made exclusively by the county council instead of by the district council but the structure plan can only do this insofar as such action is not inconsistent with the provisions of the development plan scheme.

I shall not develop this theme further. I have already said enough to demonstrate what I will call the "case of the overlap" which has developed since the setting up of the new county councils and the new district councils each functioning *as of right* as a local planning authority thereby increasing the number of such authorities from 184 to 421, as I mentioned before. A great deal of confusion has flowed from this. The planning process instead of speeding up (as was intended by the 1968 Act) has dramatically slowed down enmeshed in its own coils.

As the preparation of a development plan is, I would have thought, a continuous and indivisible process—the 1968 Act certainly provided that it was the same planning authority which made both the structure *and* the local plan—it seems a calamity not only for sound town planning but also for the avoidance of delay (that greatest of all curses attaching to planning control) that the Local Government Act of 1972 provides for a division of labour between county and district councils in a field where there should be only one party at work.

The division has been made the wrong way. A more simple and acceptable division, in my view, would be to leave the total job of plan making to the county councils and the job of day-to-day control of development by the grant or refusal of planning permission, to the district councils. This may be a simple, not to say ruthless, division of labour but is it not time that some simplicity was injected into the planning routines of today?

There can be no doubt that the inordinate delays in the handling of planning applications today can be laid directly at the door of the new two-tier system of local government. But this system is with us, it is not going to go away. We cannot now face reorganisation of the reorganised! I repeat, the best that can now be done is for the two tiers of local government to close ranks and come to terms with each other. This is easier said than done. Nevertheless great efforts to do it must now be made.

The two-tier system is here to stay, at least throughout the foreseeable future, and the only hope for planning control under this double-jointed system is to oil the joints so that they work smoothly together. The alternative will be the end of all acceptable forms of planning control—a demise brought on by the incidence of rheumatoid arthritis in the joints of the new system of local government.

The Dobry Report

I have already made two references to Mr. Dobry in this lecture and would now refer to his Final Report dated January 17, 1975, and entitled “Review of the Development Control System.”

This Report (as the author himself has declared) made no attempt to alter the planning control system funda-

mentally. It accepted the existing system and did some tinkering with it. Maybe that was as well because it is now clear that the Report has not so much been overtaken by events as overwhelmed by them.

Mr. Dobry was appointed to his daunting task in October 1973 because at that date (according to *The Times* newspaper) "a hectic profusion of [planning] applications and appeals was threatening to overwhelm the system." That was in the Autumn of 1973 but within two months of Mr. Dobry's appointment the ground, in effect, was cut from beneath him.

On December 17, 1973, the Conservative Chancellor of the Exchequer, unable to face any longer the empty corridors of Centre Point, to which I earlier referred in my third lecture, suddenly announced and soon got enacted, the stinging Development Gains Tax. The effect of this new tax (coupled with threats by the succeeding Labour Administration to develop in a big way what had merely been started by the Development Gains Tax) caused the bottom to fall out of the property market and a dramatic slump in all kinds of development followed. Thus, the hectic profusion of planning applications and appeals of which *The Times* complained ceased to be a profusion and became a comparative trickle.

The *raison d'être* for any Report by Mr. Dobry ceased for the time being to exist. That of itself would not have invalidated in any way the searches, researches and investigative efforts on which Mr. Dobry was already embarked. Why should it have done? One surely looks forward to the day when, once again, the development and property world will be buoyant and lively. After all, was it not the Secretary of State himself who said in Parliament on December 19, 1974, that :

“ A healthy market in commercial property is necessary for the achievement of the Government’s social and economic objectives.”

Thus, continuing with the preparation and production of the Dobry Report was entirely right and proper and the Report duly appeared in February 1975 when it was presented to the Secretary of State.

It was regarded by many as pointing in the right direction but by some as not being sufficiently incisive. It certainly proposed no revolutionary changes except perhaps to make demolition of any building at all (whether a listed building or not) an act requiring planning permission—a concept which I, for one, could not accept regarding it, as I do, as yet a further irritating and unnecessary complication of the planning control process.

To date no action has been taken by the powers that be on the Dobry Report and when I said, a few moments ago, that the Report must now be regarded as overwhelmed by events I was thinking, of course, of the Community Land Bill the details of which I dealt with in my lecture last night. I then demonstrated that there was nothing in the Bill which was calculated to speed up the planning process and hurry development on its way. I was at some pains to show that, in my view, the contrary would be the case.

Accordingly, it is astonishing and disappointing to find that when Mr. Dobry had been charged with the duty of finding ways and means to cut planning delays, very soon thereafter there should be presented to Parliament a new Bill which will deeply affect the planning scene, will certainly complicate the planning process and, as I have already claimed, will cause grievous delays.

In my opinion the introduction of the Community Land Bill has entirely changed the climate for planning

control and administration. The Dobry Report does not fit in with the new Bill and I doubt if we shall see any substantial action taken on the Report. You can have the Report or you can have the Bill; I do not see how you can have both.

On this it is interesting to record that at a meeting of the Town and Country Planning Association on May 15, 1975, the Minister for Planning and Local Government then said (if he is reported correctly) that :

arising out of the Community Land Bill, he would welcome " thoughts that are required on changes in planning law to achieve proper participation together with speed of planning decisions. I have no doubt that the Bill, though it does not reform planning structures, will accelerate the need to consider changes in planning law and the decision-making process."

That is what the Minister is reported as saying. If the report is correct it would appear that, notwithstanding the Dobry Report, we are now to see the Government once again on the warpath in an endeavour to make "changes in planning law and the decision-making process."

You will notice that the Minister particularised two things. He spoke about "changes"—he wanted to hear news about certain changes. What were the changes? They were of two kinds, namely,

- (1) changes in planning law; and
- (2) changes in the decision-making process.

Frankly, these changes have been needed for a long time. The enactment of the Community Land Bill may well accelerate (as the Minister admits) the need for

changes in planning law but, if there are to be changes that are calculated to simplify and speed up the whole process (as one would have hoped), then it really is difficult to see how they can now come about at all when it is remembered that it is none other than this new Bill itself which will be responsible, once it becomes law and is in full force and effect *after* the second appointed day, for slowing down the planning process and providing that every planning permission that is granted for designated relevant development shall instantly be suspended until the appropriate local government authority have compulsorily bought up the land to which the planning permission relates, a procedure which, at best, will take months and, at worst, will take years. In the meantime costs will rise and the development could conceivably price itself out of the market. This is the problem the Bill creates. Dobry was advocating simplicity and speed; the Bill will generate complexity and slow-motion. I repeat, you cannot have Dobry on the one hand and the new Bill on the other—never the twain can meet.

When it comes to “the decision-making process” of which the Minister also spoke it is greatly to be hoped that, somehow or other, planning authorities will get off their high pedestals and get down to the difficult job of making up their own minds at a much quicker rate of knots than hitherto. It is a sad commentary on our times that with more and more aids to memory, computerised statistics, ready-reckoners and information retrieval systems, it is getting more and more difficult to get public authorities quickly to give a straight answer to a straight question.

For example (and as Dobry reported) about 70 per cent. of all planning applications are simple and uncontroversial. Over 80 per cent. of all applications are

granted. Yet in spite of this Mr. Dobry was struck by the fact that one local authority took an average of five months to process the planning applications made to it. On the other hand another authority (a near neighbour) took only two months to deal with 95 per cent. of all applications.

A perceptive comment on the Dobry Report and its highlighting of inordinate delay in the planning process was made by Mr. John Young writing in "Public Service and Local Government" for March 18, 1975. Mr. Young said:

"The implicit suggestion of the Dobry Report was that the only way to speed up the planning process was to place a weighty boot under the collective seat of the nation's local authorities. Local authority reaction, as expressed through the Association of Metropolitan Authorities and the Association of District Councils, was remarkably restrained . . . the councils' general lack of aggressiveness seemed to carry an admission that Dobry may have been at least partly right."

This comment sums up the situation perfectly. Planning authorities, in discharging their duties as such, need to meet more frequently, talk a good deal less and energetically train themselves in the difficult art of making up their mind and then sticking to it. Some authorities seem ready to do anything rather than draw a conclusion and make a decision. Democracy may be a many-splendoured thing but it certainly does have an in-built propensity to take its time.

*And thus the native hue of resolution
Is sicklied o'er with the pale cast of thought,
And enterprises of great pith and moment*

*With this regard their currents turn awry,
And lose the name of action.*

Proposed "Environmental Impact Analysis"

I have to warn you that efforts are currently afoot to introduce into the planning process yet another check which will give further opportunity for more consultation, more discussion and more time-consuming meetings. The new routine is called the "environmental impact analysis," and, like citizen participation, is yet another importation from the U.S.A.

What will be the impact of the proposed development on the environment about us? This, of course, is a good question. Anyone who lives in one of the new redeveloped areas full of tall buildings will soon realise that the effect of high buildings in the creation of unacceptable, gusty wind currents is something about which much remains to be learnt. The point I wish to stress, however, is that it will not be every application for planning permission which will call for a full-scale environmental impact analysis—only exceptionally important and very big applications will rate for this. Where is the line to be drawn? Once that question is raised we are off, yet again, down the slippery slope of a new opportunity for delay.

All I ask is that the drawing of the line be taken speedily and that the proposed new routine be used, where its use is really called for, intelligently and that means that it is not to be used as a further instrument in the doomed chase for total perfection. That is a will-o'-the-wisp which is not capturable. Indeed, one of today's most valid criticisms of planning control is that, despite the delays of successive adjournments and interminable cross-references, the resultant product is frequently unattractive.

Return to First Principles

Planning control needs to sort itself out. It has lost its way in the morass of rules, regulations, guidelines, circulars, white papers and blue books. If public support for planning control—this very drastic interference with the rights of the individual—is to be retained (and if it is not retained I believe the whole system will collapse, as it deservedly should)—if public support for this twentieth century form of control is to be retained, then care and sympathy must be the keynotes of the control. The Minister for town planning once declared that it was nothing less than essential to get public support and went on to say:

“ You can only do that fully if you get people 100 per cent. to realise that their particular case is receiving the fullest and most sympathetic consideration, as well as incidentally speedy consideration, which is an important factor, and that their case is not turned down except for clear-cut reasons of public interest.”

So spoke the Minister addressing the Annual Meeting of the Urban District Councils Association in 1949. That is 26 years ago but his words are none the worse for that. Indeed, they are more relevant to the planning scene today than they have ever been.

Somehow planning control has got to get itself back to first principles. It has got to produce a system which will be understandable and popular and attractive to all people. It has got to learn how to concentrate on basic essentials and stop trying to secure and to control all things at once. It has got to be selective in what it seeks to do because it can't do everything. In particular I wish it would stop interfering in details of design and leave

this to the architects—about whom a word in a moment. The massing of buildings, the cube of a building, the important matter of where the shadow of a building (especially a tall building) will fall—all these and such like matters are for the planning authority. Further details about design should be left for the building designers—the architects who today complain bitterly that their invention and imagination is hemmed in by a labyrinth of obstructive regulations.

Long-term Problems; Short-term Politics

It would also be a good idea if political jiggery-pokery could be pulled out of planning control. This control was not conceived for the satisfaction of party political aims but one is merely naïve if one assumes that, on occasion—the case histories show several occasions—politics do not get into the works. The function of planning control is to secure the best use of land; to put the disposition of land development at the whim of any political ideology is to prostitute the purpose for which the land planning system was invented.

It would be yet a further good idea if all future land legislation could go forward in Parliament on a more agreed basis. The repetitive cycle of push and pull—enactment, repeal and then enactment again—such as we have seen over the last 30 years is doing nothing for the land nor for planning control over its development. Alas, the Minister for Planning and Local Government (as I mentioned yesterday) has indicated (in speaking about the Community Land Bill) that he has no time for the politics of consensus. This may be all right when you are dealing with the business of controlling the illicit manufacture of artificial doll's hair in South Mimms but it is *not* all right when you are dealing with The Land. The un-

biased and carefully considered statement by the Royal Institution of Chartered Surveyors to which I referred in an earlier lecture—"The Land Problem—a fresh approach"—this treatise, which seems to be fair to land owner, developer and community alike, points out a fair and reasonable way ahead but its progress is now obstructed by politics; radicalism is all and the Minister has no time for the politics of consensus. So much the worse for the land and its development!

Let me now leave this matter of planning controls and their administration. I hope I have made it clear that, in my view, these controls must either get better (by getting less) or get worse (by getting bigger). They really cannot remain as they are and I would specially warn you not to be deceived by the present misleading state of affairs. The planning control process may, at the present time, conceivably be thought to be functioning satisfactorily. But the present scene is illusory. The great backlog of planning applications and appeals is being overtaken but that is because, just now, the land development market is in the doldrums. If and when that market again becomes buoyant, as it certainly should if the best interests of this country's economy are to be served, then the unsatisfactory state of affairs which led to Mr. Dobry's appointment will surely re-assert itself and, once again, town and country planning control will find itself under fire. That is something I feel very sure about and there I leave the point.

The Built Environment—The City

In my final words I return to the architects because so much that is good or bad in the built environment around us depends upon them. For myself I feel that in much of the new development which has taken place since the

Second World War there is a sorry lack of those two precious things—taste and style. These, I know, are highly subjective matters and what is one man's home-sweet-home is another man's prison house. There is no categorical answer to the question of what constitutes good taste. Even so there are certain eternal verities which cannot be gainsaid. The beauty of the double-cube, as a matter of proportion, is axiomatic and has never been improved upon. I myself have always thought a curved line more beautiful than a straight line though in this I was recently confounded on discovering that it was Sir Christopher Wren himself who actually declared the opposite to be the case.

Modern building, and there has been a surge of it in the past 25 years unequalled since the rebuilding of the City of London after the Great Fire of 1666, has too many brutal qualities about it for my own taste. This feeling, though personal, is, I suspect, beginning to be felt by more and more people—hence the growth of the lobby for conservation and preservation. There is no need to advocate a return to the styles of the past. What is needed is a more humane, more gentle, more gracious approach to modern building.

I often think the true test of good planning control is to be found in building, or the rebuilding, of the city. This is where the problem of Piccadilly Circus instantly rears its provocative head. The same problem asserts itself again at Leicester Square and Trafalgar Square. The same problem asserts itself over and over again in other great towns and cities throughout the land.

What then is a city? What should the designers and the planning controllers be striving for when they come to consider the rebuilt city? To answer these questions I call upon aid from Mr. Victor Gruen because I find

myself thinking on the same lines as he does. Mr. Victor Gruen, Viennese by birth and an American citizen by adoption, in answer to the question, what makes a city? declares:

“The city is the countless little sidewalk cafés of Vienna where a person with little money may spend hours over a cup of coffee and a newspaper; it is the beer gardens in German-speaking countries, the bistros and cafés of France, the espressos of Italy and the pubs and tea rooms of England. The city is the crowded sidewalks, the covered galleries of Italy, the arcades and colonnades and the people on them and in them, some bustling, some walking for pleasure, some engaged in the age-old tradition of the promenade. The city is the parks: the tiny green spots with benches. . . . The city is the elderly lady who strikes up a conversation with the elderly gent sitting next to her on the bench in Central Park, and later marries him; the six-year-old boy who asks another, ‘Do you want to play with me?’ and later becomes his life long friend; the young man who offers a seat in the street-car to the young girl, and becomes engaged to her two weeks later; the gentleman who asks for permission to sit at the sidewalk café with another, and ends up writing a book with him; the businessmen who strike up a conversation in a bar and later go into partnership; the millions of chance meetings that turn out to be the important events of a life time.”

Yes, indeed; you would be surprised to know in that neat, compact, precinctal area of the medieval City of London, what business deals are struck over a cup, or a glass, or a sandwich at lunchtime.

The city is, after all, one of the hallmarks of any civilisation. In the words of the eighteenth-century architect whose name I cannot now discover :

“ A city is a place which should be to the satisfaction and convenience of those who live and work in it and to the great surprise of strangers.”

What a splendid concept that is! I want town and country planning control to pull up its socks and apply its mind to securing things like that. I want William Wordsworth, if he ever does come back to Westminster Bridge and looks East, still to have something to make a song about—or at least a sonnet.

Mr. Chairman, Ladies and Gentlemen, I want to thank you for all your kindness, courtesy and patience in hearing me out as I have delivered these Hamlyn Lectures for 1975. I sincerely hope that Miss Hamlyn, looking down from that exclusive Valhalla specially reserved for gentlewomen from Torquay, will have found nothing to which exception could be taken in any of these four essays which, this year, I have had the honour to give in her name in the Law Society's Hall.

I wish you all, Goodnight and Farewell.

ENGLISH LAW— THE NEW DIMENSION

by

SIR LESLIE SCARMAN

In English Law—The New Dimension Sir Leslie Scarman—one of the country's most distinguished judges—examines the current state of English Law and the contemporary challenges which it faces and which it must meet if it is to survive. Is English Law capable of further growth within the limits of the Common Law System or has the Common Law reached the end of the road? These are the fundamental questions which Sir Leslie Scarman asks as he discusses the social, political and economic conditions which confront the Law today.

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1975

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