

## TOWN AND COUNTRY PLANNING IN THE UNITED KINGDOM

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### Summary

The British system of planning and land use controls consists primarily of its town and country planning laws (and explanatory orders and circulars) and related Parliamentary statutes dealing with new towns, open spaces and transportation. All such controls are based on relatively detailed plans required at the national and local government levels. Except as provided by statute, there is no compensation for land use controls even if the value of regulated private land is reduced to zero. Permission for private development of any kind requires local government permission, except in specialized redevelopment zones.

### 1. Introduction

The British system of land use planning and control is among the most sophisticated and complex in the world. Arguably sprung from the garden cities movement culminating (in England, anyway) in Ebenezer Howard's Garden Cities of Tomorrow, England has been experimenting with comprehensive town and country planning laws since at least the Housing, Town Planning, Etc., Act of 1909, arguably derived from nineteenth century housing and public health statutes. Commencing with the Town and Country Planning Act, 1947, England instituted the basis for the present framework by requiring local planning permission for all "material development", levying a development tax on all increases in value deriving from such planning permission, and confirming the nationalization of development rights through the creation of a large fund (300 million

pounds sterling) from which landowners were, upon proper application, compensated. Moreover, the granting or withholding of planning permission was to be guided by detailed local development plans conforming generally to national (and general) structure plans. Thus, by 1948, ownership of land carried with it nothing more than the right to continue its present use. Parliament also passed legislation for the creation of new towns, preservation of the countryside, town development, and transportation, all of which had considerable effects on the use of land.

Between 1947 and 1999, Parliament passed various amendments and other statutes, and the departments and ministries charged with land use planning and control promulgated various regulations and guidance documents, all generally in response to various white and green papers and commission reports recommending various changes to the system of town and country planning laws. The principal issues addressed are not far removed from those commonly arising in the United States: propriety of land development conditions precedent to development permission; effect of transportation policy on land use, the relationship between planning and regulation; preservation of open space; public participation. To these subjects this chapter now briefly turns.

## **2. The Theory of Government and Institutional Politics: A Brief Comparative Sketch**

In order to fully comprehend the English town and country planning laws, it is useful to place them in their institutional framework. Until recently, U.K. was a unitary state. Although there are now separate parliaments for Scotland and Wales, England at least is governed by a single central government made up of Parliament, parliamentary ministers of the party in power and, symbolically at least, a monarch. While different statutory schemes sometimes apply to the principal components of the kingdom England, Scotland, Wales and Northern Ireland—including planning laws—this does not alter the essential unitary character of the largest unit, England. Parliament is regarded as supreme, with the ability to pass any law affecting the use and ownership of property and create and abolish local governments. Even England's highest court is composed of law lords from the parliamentary upper house.

By comparison, the USA, for all the apparent power of the national government in Washington, is a federation of 50 states. The state is the principal unit of government and the ultimate repository of sovereignty. The states created the national government by means of a constitutional convention, and that federal government must trace every exercise of power to that document. It is, therefore, a constitution of grant, not of limitation. The states have all the power not delegated to the national government, to which they can both add and subtract by means of amendments to the federal constitution. Only the states can create and abolish local governments—which indeed they may do with abandon and without limitation unless prohibited by the relevant parts of a state constitution. As implicit from the foregoing, such state constitutions are popular documents of restraint and not of grant. States can do anything governmentally (through legislatures) which was not delegated to the national government in the federal constitution nor prohibited by a popularly-promulgated state constitution. Lastly, an entirely separate federal judiciary headed by a Supreme Court, decides issues of constitutional interpretation, including when land has been taken inappropriately by

government either through compulsory purchase or by regulation, both of which require public purpose and compensation.

This difference between the U.S. and U.K. has profound implications for land use planning and control. First, since land use control is regarded as an exercise of the police power and since only the states have such power, it is the states that exercise mandatory planning and land use controls often by delegating a portion of that power to local government through planning and zoning enabling statutes.

What power the national government has over the use of land comes about either through adjuncts to legislation passed pursuant to the Constitution's Commerce Clause (ceding to the national government authority over interstate commerce) (such as the Clean Air Act) or through conditions attached to federal grants for state participants in various federal projects (such as the Coastal Zone Management Act). This is in sharp contrast to the exercise, in England at least, of plenary planning and development control power through acts of Parliament such as the Town and Country Planning Acts, and the creation of the Department of the Environment (now Environment, Transportation and the Regions) and its land use predecessor, the Ministry of Town and Country Planning.

### **3. Plans and Planning: The Plan as Guideline/ The Plan as Law**

The English system of land use control is closely tied to its extensive system of planning. While there may not be a formal national plan, national planning was accomplished up to 1990 by structure plans for each county setting out broad policy guidelines, into which local plans prepared by each local authority perforce had to fit, and a series of Planning Policy Guidance Notes issued by central government. Local plans—variously development plans, action area plans, and the like since the 1960s—were detailed plans indicating what use was to be made of land at the relevant local government level. The structure plans—at various times prepared by local government for their area—consisted of broad text only.

Local plans were far more specific, with maps which provide extraordinarily detailed land use guidance. While it was unnecessary in a strict legal sense for a landowner to submit a proposal in accordance with the applicable plan, since the Local Planning Authority (LPA) was not bound by its terms in the granting (or not) of planning permission, LPAs were required to have regard to the contents of the plan in deciding planning applications. In practice, it was a rare development proposal that would receive planning permission if not in accordance with the local plan—which generally had to conform to the guidance provided in the structure plan for the region.

The Town and Country Planning Act, 1990, and the Planning and Compensation Act, 1991, significantly altered both the planning process and the importance of the plans. First, Parliament has made it clear that development—and therefore granting of planning permission—should be more directly in accord with local plans. Second, structure plans are now prepared locally only in accordance with national planning guidance documents from the central government, without the approval previously

required of the central government, though it retains the authority—which it exercise—to intervene.

The result appears to be a shift to a more legalistic treatment of the more detailed local plans in applications for planning permission. This mirrors experimentation of the same sort in many U.S. jurisdictions, though generally the plan—usually labeled a “comprehensive plan” to which land use controls such as zoning are in theory to conform—is more of a guidance document. Evidence of such shift in the U.S. is language in state zoning enabling legislation and city charters requiring specific conformance or concurrence between such plans and zoning ordinances, often requiring that no permit for development be processed or issued unless it accords with the applicable detailed development plan.

An excellent example of a specific local development plan is the Cambridge Local Plan. Adopted by the City of Cambridge in 1996 pursuant to Section 36 of England’s Town and Country Planning Act, 1990, and within the context of the Cambridgeshire Structure Plan of 1989, the Local Plan contains a range of statutory policies and objectives in 15 chapters. In accordance with national Department of Environment planning policy guidelines (PPGs), particularly Policy Planning Guidance: Development Plans and Regional Planning Guidance (PPG12, 1992), each chapter is divided into objectives, strategies and policies coupled with supporting text and land use policies. The latter set out what will and what will not be allowed, promoted or supported, in shaded boxes and bold types. Thus, for example, in Chapter 4, The Natural Environment sets out the following policy (at 32):

*Policy NE15.* The City Council will, in partnership with others, take steps to protect and enhance the nature conservation value of green spaces, wetlands, water courses and other features, including hedges and corridors. The impact of development proposals on the wildlife corridors illustrated on the Proposals Map will be an important factor to be taken into account in considering planning applications.

Moreover, the plan contains detailed recommendations for which parts of the city will grow, and what the mix of uses will be. Precisely where university faculty housing will be located, what business colleges will be permitted, and how other local universities will fare are all set out in great detail not only in the text of the plan – which runs to nearly 300 pages—but also in a detailed accompanying “Cambridge Local Plan Proposals Map” at a scale so detailed that the shape of existing buildings is discernable on each street, way and block.

A key concern for Cambridge (and indeed for much of England as noted in a later section on transportation and land use, is the growth in road traffic. It accounts for four of the seven problems listed in the Strategy chapter (2) of the Cambridge Local Plan. Unfortunately, Cambridge is not the master of its transportation future. As the local development plan observes at page 8, local development plans must fit in the context of regional—read county in many cases, though in some instances “region” is an amalgam of counties—structure plans approved by the national government. The structure plan calls for accommodation of more high-technology industry (attracted by the world class university), limits on the City’s physical growth through limited new housing, and

further restriction of motor traffic in the city center, with high priority for pedestrians, bicycles and buses. These strategies “will tend to worsen the transport and environmental problems of the city, particularly because of its emphasis on housing outside the city, with the result that commuter traffic will grow.” (at 8) Worse, the city has no authority over highways, public transport and rail services leading into and out of the city. These are all the responsibility of the County Council for the area.

Such transportation concerns, together with a need to preserve its unique university precincts which draws scholars, students and tourists, all in great numbers, constitute the bulk of the issues addressed in the plan. As noted in another section below, transportation policy is a major issue in planning and land use in England today. Other chapters deal with preservation of the natural and built environments (including those which surround Cambridge, as in other towns and cities in England), employment, housing, shopping, recreation and leisure, and education.

Not all local governments have prepared local plans, however. As noted in a recent edition of England’s prestigious *Journal of Planning and Environmental Law*, eight years after being required by the Town and Country Planning Act, 1990, to prepare area-wide local or unitary development plans, fully one-third have failed to do so. By the end of 2004, all local authorities had formally adopted area-wide development plans, most had completed the inquiry stage, and a good proportion had placed their plans on deposit for objections and representations prior to an inquiry.

Whether such detailed local planning is altogether a good thing is another matter. Certainly the plan becomes an important—indeed crucial—document in the development permitting process. On the other hand, if the plan is so detailed, what need of any other land use control mechanism such as zoning? At least one major U.S. city has come to such a conclusion and is in the process of turning its short, map-detailed development plans into lengthy guidance documents instead. Meanwhile, courts faced with disharmony in those jurisdictions in which conformance is required have had no difficulty in upholding denial of land development approval which is not in accordance with the applicable plan, regardless of the underlying zoning.

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### **Biographical Sketch**

**David L. Callies** is the Benjamin A. Kudo Professor of Law. He has the following qualifications: AB, DePauw University, 1965; JD, University of Michigan, 1968; LLM, Nottingham University (England) 1969.

**Professor Callies** came to the William S. Richardson School of Law in 1978 following a decade of adjunct teaching and private practice where he counseled local, state, and national government agencies in land use management and control, transportation policy, and intergovernmental relations. Professor Callies recently co-authored *Taking Land: Compulsory Purchase and Regulation in Asia-Pacific Countries* (2002) and is the author of *Preserving Paradise: Why Regulation Won't Work and Regulating Paradise: Land Use Controls in Hawai'i*. He is co-author of *The Quiet Revolution in Land Use Control*, a study of state land use legislation; *The Taking Issue*, an analysis of the constitutional limits of land use control; the casebooks *Cases and Materials on Land Use* (3rd ed.) and *Property Law and the Public Interest* (1998); and editor of *Takings* (1996). He is co-editor of *Land Use and Environmental Law Review* and past managing editor of the *Michigan Journal of Law Reform*. In 1982, Professor Callies received the Chancellor's Award for distinction in teaching, research, and service and was awarded a UHM Campus Merit Award in 1983. In both 1990 and 1991, he received the Outstanding Professor of Law Award. He has lectured on land use and property law in American Samoa, Australia, China, England, Hong Kong, Japan, the Marianas Islands, Palau, Spain, Switzerland, Scotland, Germany, France, and Taiwan and surveyed land and environmental laws in Fiji, Australia, the Philippines, Colombia, Ecuador, Canada, Singapore, New Zealand, Thailand, Malaysia, Mexico and the Marshall Islands. He is a past chairman of the American Bar Association's Section on State and Local Government Law, past chair of the Academics' Forum, council member of the International Bar Association, and treasurer of the AALS Section of State and Local Government Law. In 1991 he was elected to the American Law Institute (ALI). In 1995, on the unanimous recommendation of the faculty, the Board of Regents appointed him Benjamin A. Kudo Professor of Law. He is a life member of Clare Hall, Cambridge University, where he was a Visiting Fellow in 1999. In 2002 he was elected to the College of Fellows of the American Institute of Certified Planners (FAICP) of the American Planning Association.