



Bert Brookes reports

Planning: the right way to gain?

YOU DO NOT need to be an economist or an expert in business studies to sense that the profits derived from rising land values are, whatever the law may say, unethical. The speeches of Winston Churchill and others in the early years of this century, with their frequent attacks on landowners' "unearned increments", have lost none of their validity with the passing years.

Nowadays, the unearned windfalls of land ownership are frequently associated with what the British call "town and country planning" and which the Americans call "zoning". Indeed, it is often asserted that it is the very process of granting planning or zoning permission for land to be developed that creates the extra value and provides the landowner with his rake-off – ignoring the fact that the potential for a more lucrative use must be inherent in the land if the planning permission is to be anything more than an academic piece of bureaucracy.

However this may be, people employed in the administration of planning or zoning would not be human if they did not sometimes note with envy the enormous sums in higher land values which, almost with a stroke of the pen, they can award to some fortunate landowners. Perhaps it is small wonder, therefore, that cases have occurred in which people associated with planning have yielded to temptation and have tried to obtain for themselves some under-cover share of the swag.

In recent years, the obsessive urge to grab a cut of the land value has spawned a more defensible, but still controversial, practice among local planning authorities. It is practice that, in Britain, has been branded "blackmail" and, in the USA, as "bribery" and "zoning for dollars".

The process is known in Britain as "planning gain". In America it is "incentive zoning" or "discretionary zoning". It arises when a local authority grants planning permission for a development but stipulates, as a

condition of its acquiescence, that the developer should provide, at his own expense, certain facilities for the local community. Where these consist, for example, of car parks to meet the expected needs of the development itself, or some other "infrastructure" such as sewerage or water supply, the local authority may well have right on its side.

But the tendency has been for the demands to go well beyond this.

Some authorities have made a practice of applying conditions that are tantamount to exacting payment

for permission to develop, thus coming close to abusing their statutory powers. Certainly, on both sides of the Atlantic, cases have occurred in which local authorities have made such extortionate demands on developers, or entered into such questionable deals with them, as to bring the planning and zoning processes into something close to disrepute.

In the United States, what is commonly offered to developers as the carrot for providing free community facilities is not so much the zoning permission itself as "floor-area bonuses" – permission to build greater floor areas per area of land than would otherwise be allowed.

How it works!

The United Kingdom:

- In London (St Giles), during the late 1950s Mr. Harry Hyams was granted permission to build the famous Centre Point building in a deal with the London County Council which involved his making a present to the council of land worth £1.5m.
- In London (Southwark) the developer of a site along the south bank of the Thames agreed to provide 291 apartments, a 3-acre park and a riverside walkway.
- In Hounslow, a developer offered facilities valued at £3m in the form of parking areas, a public square, 15,000 square feet of council offices and a bridge over a railway.
- In London, the planning gains made by the Tower Hamlets council over the years were reported to have included about 60 apartments, 6-8 acres of housing land, 135,000 sq. ft. of floor space for industry and community centres etc, seven squash and tennis courts, financial contributions for the restoration of a church and a theatre and the construction of a shopping centre and car park.
- In Oxford, according to the city council, county planners demanded cash for new road works at the Osney Mead Industrial Estate as a condition of granting planning permission for developments on the estate.
- In London (Hillingdon) a house builder was required to offer some of the houses to people on the council's waiting list.

IN BOTH countries, the planning authorities' practice of dealing themselves a slice of the developer's profits is coming under increasing criticism. The gains made by the authorities can be looked upon as a tax on developers, but since it applies only in *some* areas and falls only on *some* citizens, it is discriminating and inequitable.

In New York, Emily Marks, president of the Parks Council, has condemned the practice as a revenue-raiser, declaring that zoning benefits "should not be for sale"¹; and Mayor Koch has called on the city's Development Commitment Study Commission to "examine the process by which developers have been required to construct amenities or donate funds for public benefit as part of the approval of discretionary zoning actions".²

In Britain, the *Estates Times* has referred to the "blackmail" of developers as they have been "railroaded into providing swimming pools, libraries or leisure centres which have effectively doubled the cost of the project first envisaged".³ In the courts, Lord Denning has said that the conditions applied by local authorities "must fairly and

reasonably relate to the permitted development. The authorities are not at liberty to use their powers for an ulterior object, however desirable the object may seem to them to be in the public interest".⁴

A vital point was made by the *New Society* which said that the practice offered "opportunities to developers to "bribe" authorities to accept developments that would otherwise have been rejected." It added: "But the fact that developers will accept these conditions, however unwillingly, indicates how much they gain from planning approval".⁵

In 1980, in an attempt to bring some semblance of order to the British scene, the Department of the Environment called on one of its committees – the Property Advisory Group – to investigate planning gain and to advise on what should be done. In 1983, after the Group's report,⁶ the Department issued guidelines for

the planning authorities and developers to work to.⁷ In these, the authorities are called upon to exercise reasonableness and to apply only such conditions as are a reasonable charge on the development. In future, any local authority who treats an application for planning permission as an opportunity to obtain "wholly extraneous" benefits from the applicant may find him appealing to the Secretary of State. No similar guidelines seem to have been issued in the USA.

WHETHER the DOE's guidelines will be effective in the United Kingdom, and what the future holds for incentive zoning in the USA, remains to be seen. It is plain, however, that the laying-down of rules in the matter, while a step forward, will be little more than a palliative.

It will take more than a Government department's plea for "reasonableness" to outlaw mutually advantageous "deals" between authorities and developers.

The problem of planning gain has its genesis in the burning resolve of local authorities, confident in the rightness of their instincts, to take for their communities a share of the windfall profits of land increment – profits which have come about only through the existence of the local community and the environmental services it has provided. No set of planning rules or code of conduct will change these deeply held convictions. The extreme features of the practice may be rooted out, but the problem will remain so long as the ever-rising rent of land is allowed to flow into private pockets.

Only when laws are passed to take the whole of the community-created rent of land into the public treasury will the planning and zoning systems be free to work as they were intended. Until that day comes, local authorities will continue to be dazzled by the huge sums of land value that are frequently at stake in the planning cases they consider. And inevitably they will be tempted to demand their pound of flesh.

REFERENCES:

1. *New York Times*, 2 October 1983.
2. *Ibid.*
3. *Estate Times*, 16 September 1983.
4. *Planning Gain*, Report by the Property Advisory Group, HMSO, 1981.
5. *New Society*, 14 April 1983.
6. *Planning Gain*, *op. cit.*
7. Town & Country Planning Act 1971 – Planning Gain (DOE Circular 22/83).

U.S. history: lessons for classrooms

BY BERT BROOKES

● What did the 17th-century Dutch government offer its citizens to encourage them to settle in North America?

● What did a million Irishmen hope to get from emigration to the USA after one-and-a-half million of their countrymen died in the famine of 1845?

● What achieved record sales in the USA in the years preceding the Panic of 1837?

● What did Central American governments offer the United Fruit Company as an inducement to build railways in their countries?

● What was it, in Manhattan, that made John Jacob Astor the richest man in America?

These are some of the incidental questions – to which the short answer, in every case, is "land" – that are touched upon in a special series of lesson sheets recently issued to social studies teachers and educational establishments in the USA by the Henry George School in New York.*

With the general title "Land and Freedom", the sheets cover twenty individual subjects ranging from *The Dutch and the New World*, *Irish Immigration and Indian Landownership* to *Colonial Mercantilism and the Louisiana Purchase*. They have been produced by Stan Rubenstein MA, Director of the School and his consultant on history, Harvey Snitker, MA.

The lesson sheets are designed to enable teachers to convey to their classes, simply, accurately and objectively, the intimate backgrounds to the major economic and social developments that have influenced the course of United States history in the four centuries since the opening up of the North American continent.

The facts are presented with brevity and clarity, contemporary and modern documents are quoted or recommended for additional reading and suggestions are made on how classes might be organised to analyse, discuss and debate the issues involved.

Since most of the world's economic and social problems have their roots in the mechanics of land tenure or in barriers to free trade, the philosophy of Henry George frequently comes to the surface in these papers.

The authors doubtless hope that, their appetites whetted, many students will demand to know more.

*5 East 44th St., New York, N.Y. 10017.



● Stan Rubenstein

How it works!

The United States:

- In New York, developers may be permitted to build up to 20 per cent more floor space in return for providing "quality" buildings and "neighbourhood improvements".
- One builder in New York was allowed the extra 20 per cent on the size of his building provided he built and maintained an underground passageway between two subway lines.
- Another New York developer, the builder of residential premises on East 72nd Street, agreed to contribute \$456,000 to a charity to be nominated by the city council.
- The prospective re-developers of sites in New York's Union Square (including the former S. Klein departmental store building) would normally be allowed a density of 10 (i.e. 10 square feet of floor space per square foot of land area). They will be able to get this increased to 12 by making improvements to the subway station and to 14 by making contributions to park maintenance.
- In Montgomery County, any developer building more than 50 homes on one site can get a 20% increase in density by offering at least 12.5% of them as "low or moderately-priced" units for which the county sets the maximum price and nominates the buyers.
- In California, since 1978 when Proposition 13 slashed the State's income from property taxes, the authorities have attempted to raise money by requiring developers to make contributions to the cost of regional parks, freeway exchanges and flood-control channels.
- In San Francisco, builders of office blocks may be required to make cash contributions to the city's housing fund.