PART II - COMMUNITY BETTERMENT FROM DEVELOPMENT VALUE IN BRITAIN

II.1. TOWN AND COUNTRY PLANNING SYSTEM

II.1.1. Introduction

The planning of towns, as an art and science for particular urban projects, is ancient and has persisted throughout the centuries. But it is mainly in this century, that Government has intervened to ensure its countrywide application. It did so in Britain in 1909. The instrument for so doing is a "planning system" (consisting of statute, regulation, guidance). It is within this system that the planning process is carried out. This section will aim to introduce statutory town planning in Britain, since it is in this framework that betterment initially became practicable. In doing so we concentrate on those elements of this framework which impinge upon the betterment.

II.1.2. The Development Planning Process

The relation between the planning system and the built environment has its prime focus on the physical development which results from the activities of the land owner/entrepreneur/promoter who assembles his factors of production (land, building industry, finance) to create the final products for consumption or further production.

The role of town and country planning can be seen as intervening into the "land and development market process", so that the evolution of cities and regions can be directed towards a future which would not otherwise emerge, and to be the best of alternative possible futures which have been considered (Lichfield and Darin-Drabkin, 1980: 23). It is in order to influence such future that we have the process of planning, which aims at steering the future by means of 'planned development'. This aims at managing the changes in the physical fabric which would otherwise evolve in a 'non-planned' way, and thereby the existing fabric associated with intensity and location of the proposed socio-economic activities (Lichfield and Darin-Drabkin, 1980: 24).

It is in order to manage these changes that the planning process comprises three inter-linked sub-processes: plan making, plan implementation and plan review with an eye to modifying the plan.

II.1.3. Evolution of the British Planning System

Britain is said to be a leading country in the evolution of its urban planning system. The reasons are stated as follows (Lichfield and Darin-Drabkin, 1980: 6):

- the earlier consciousness of the squalor of the urban system built by the first industrial revolution in the world, starting in the 18th century

- the long tradition of good management of the land in British rural and urban land-owning

- the system of property in land which recognised obligations as well as rights

Town and country planning as a governmental task has developed from public health and housing policies. The nineteenth century increase in population and the significant growth of towns led to public health problems which demanded a new role for government. The consequent nineteenth century public health legislation was directed at the creation of adequate sanitary conditions through measures such as new powers for local authorities to make and enforce building by-laws for controlling street widths, and the height, structure and lay-out of buildings (Cullingworth and Nadin, 1994: 1).

The movement for the extension of this sanitary policy into town planning united diverse interests (Ashworth, 1954). The first statute was the Housing, Town Planning, etc. Act of 1909. This empowered local authorities to prepare schemes for controlling the development of new areas, with the emphasis on raising their standard. The Act permitted local authorities to prepare town planning schemes with the general object of 'securing proper sanitary conditions, amenity and convenience', but only for land which was being developed or appeared likely to be developed (Cullingworth and Nadin, 1994: 2-3).

This legislation was revised after World War I with the Housing and Town Planning Act of 1919. The preparation of schemes was made obligatory on all borough and urban districts having a population of 20,000 or more. Some of the procedural difficulties were removed, but no change was made in the concept. Major advances were made in the field of housing, especially for the working-class, rather than in planning. The 1919 Act accepted the principle of state subsidies for housing so that the nation-wide growth of local authority housing began. Another significant aspect was the new standard of working-class housing, at a density of not more than 12 houses per acre. With these new standards, development could generally take place only on virgin land on the periphery of towns, and municipal estates grew alongside the private suburbs (Cullingworth and Nadin, 1994: 3).

Further attempts were made to deal with the increasing difficulties. The most significant was the Town and Country Planning Act of 1932. The main object was to control the development on land, whether urban or rural, so as to secure proper sanitary conditions, amenity and convenience and so as to preserve existing buildings or other objects of architectural, historic or artistic interest and places of natural interest or beauty, and generally to protect existing amenities (Jennings, 1946: 12). It extended planning powers to almost any type of land, whether built-up or undeveloped. Schemes took about three years to prepare and pass through all their stages. Final approval had to be given by the Parliament, and schemes then had the force of law. Variations and amendments were not

possible except by a repetition of the whole procedure (Cullingworth and Nadin, 1994: 3). With the 1932 Act, schemes were to be prepared by a local authority, or a joint committee, though again the Ministry had the power to compel an authority to prepare a scheme or to himself prepare a scheme and compel a local authority to carry it out (Jennings, 1946: 13).

The 1932 Act schemes in fact established zoning as their main tool. Land was zoned for particular uses, with provision for such controls as limiting the number of buildings and the space around them. In practice, most of the schemes did little more than accept and ratify the existing trends of development, since any attempt at a more radical intervention would have involved the planning authority in compensation which they could not afford to pay (Cullingworth and Nadin, 1994: 4).

The 1932 Act enabled but did not require the developers to apply for planning permission. If they did not obtain planning permission, and the development was not in conformity with the scheme when approved, the planning authority could require the owner to remove or alter the development. (Cullingworth and Nadin, 1994: 4).

To evaluate what has been presented, it can be said that the inter-war planning system was defective in several ways. It was optional on local authorities; planning was local in character; central government had no effective powers of initiative, or of co-ordinating local plans; and the issue of compensation kept the local authorities away from applying effective measures (Cullingworth and Nadin, 1994: 9).

II.1.4. Changes During World War II

Just prior to the war the Barlow Commission was set up to look into the problems arising from the drift of population southwards, primarily in search of work. It decided that a national planning authority was needed, with power to control the location of new industry away from congested areas, possibly coupled with the building of new towns (Royal Commission on the Distribution of the Industrial Population (Barlow) 1940).

Very briefly, the Commission concluded that the development of garden cities, satellite towns and trading estates could make a useful contribution towards the solution of the problems of urban congestion (Cullingworth and Nadin, 1994: 6). The Commission agreed that the problems were of a national character and required a central authority to deal with them, but could not agree on the form of this central agency (Cullingworth and Nadin, 1994: 7).

The Commission stated that *"the difficulties that are encountered by planning authorities under the existing system of compensation and betterment are so great as seriously to hamper the progress of planning throughout the country"*. To meet the difficulties certain ideas had been put to the Commission, including one for the purchase of all development rights in undeveloped land by the Government. It also recommended a body of experts be appointed by the Government which would examine the important issues of policy and

finance involved in the question of compensation and betterment (Lichfield and Darin-Drabkin, 1980: 131).

In 1942 Lord Reith, the Minister of Works, appointed the Uthwatt Committee to examine the subject of compensation-betterment and reconstruction after the war. The Committee was concerned only about land policy. It formed the basis of the legislation on land policy from 1944 to 1948 and has influenced land policy since then. Besides the interrelation it brings about with the planning system and the land policy (to be considered in further detail in the coming sections), another main feature of the report related to reconstruction areas.

In 1943 there was another important step in Britain's planning history with the Minister of Town and Country Planning Act of 1943. For the first time, it saw the appointment of a minister charged with the duty of *"securing consistency and continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales"*, with a similar duty for Scotland being placed on the Secretary of State for Scotland. The phrase 'and execution' placed a responsibility on the ministers for bringing into operation measures adequate for the task of implementation, including land policy (Lichfield and Darin-Drabkin, 1980: 130).

The Town and Country Planning Interim Development Act of 1943 amended the Act of 1932. The Act related only to the interim development period (the period between the taking effect of a resolution to prepare a scheme and the date on which the scheme becomes operative). It introduced two main features: It brought the whole of England and Wales under planning control and interim development decisions became enforceable in the interim period (Jennings, 1946: 7).

II.1.5. The Post-War Planning System

The new Labour Government, after the ending of the War in 1945, introduced the Town and Country Planning Act of 1947. It differed from that of 1932, mainly in the sense that it introduced 'development plans' instead of "schemes" these conveyed no legal development rights, since there was nationalisation as of 1 April 1948 of all the development rights in the country, subject to compensation to be paid five years later with interest and all at once. In addition to that, developers were to pay on the grant of permission a development charge amounting to 100% of the increase in the value of land resulting from development.

The 1947 Act provided the whole country with powers of development control, which became mandatory and not permissive. Whereas previously the rules for granting permission were stated in a planning scheme which was a local law for the area, under the 1947 Act development could take place only on the grant of a specific permit (Lichfield and Darin-Drabkin, 1980: 137). Thus, it brought all development under control, other than minor exceptions, by making it subject to planning permission.

The initial development plans in Britain were prepared in the form of structure plans, local plans and action area plans. The structure plan stated and justified, to the public and to the Secretary of State, the authority's policies and proposals of structural importance for the development and other use of land in the area concerned. It also interpreted the national and regional policies in terms of physical planning for the area concerned. It was the document which provided the framework and statutory basis for local plans, which then in turn provided the necessary further guidance for development control at the more detailed local level (Ratcliffe, 1976: 75).

Local plans were the planning instruments for applying the strategies. They gave a detailed basis for co-ordination and control of development.

Action area plans explained, the current condition, problems and prospects of the action area; the strategic framework for the action area as provided by the structure plan; the policies and proposals of the plan; the phasing of any related proposals of the plan; and the method of implementation (Ratcliffe, 1976: 81).

The development plans required by the 1947 Act within 3 years of 1 April 1948 were still incomplete in the mid-1960s. In the time being, the system became inadequate for their contemporary needs. Within this context, the Planning Advisory Group (PAG) was set up in May 1964 to review the structure of the planning system (Cullingworth and Nadin, 1994: 49). It proposed a system which would better distinguish between strategic issues and detailed tactical issues. Their proposal had legislative effect in the Town and Country Planning Act of 1968 (Cullingworth and Nadin, 1994: 50).

The Act of 1968 also brought about a major shift in planning philosophy in the scope and content of plans. Whereas the 1947 Act was mainly concerned with land use, under the 1968 Act emphasis was laid on major economic and social forces, and on broad policies or strategies for large areas (Cullingworth and Nadin, 1994: 52). 1968 also saw an era of centralisation of policy-making which continued into the 1990s (Cullingworth and Nadin, 1994: 53).

II.1.6. The Current System

The Town and Country Planning Act of 1990 consolidated the earlier legislation, but was soon modified by the Planning and Compensation Act of 1991. Together they retain the major principles of the 1947 Act, but brought four significant changes to the planning framework. The first was to make the plan the primary consideration in development control, as opposed being a consideration alongside "other material considerations", thus introducing what came to be called a "plan led system". The second was to make mandatory the adoption of local plans in areas covered by county structure plans, and also by single-tier authorities, where they were termed "unitary plans". The third was to abolish the requirement for central approval of structure plans. Although the Central

Government kept its powers of intervention, and an examination in public was still to be used to debate the plan after deposit (Cullingworth and Nadin, 1994: 58). Finally, the Act introduced a mandatory requirement for counties to produce minerals plans and waste plans for the whole of their areas. There will be no more small areas local plans, action area plans or subject plans other than for minerals and waste (Cullingworth and Nadin, 1994: 58).

The 1991 Planning and Compensation Act was said to be a principal instrument in the reorientation of the planning system. It aimed at replacing the patchwork of planning policies with a comprehensive and systematic hierarchy of development plan policies and established a plan-led system (Cullingworth and Nadin, 1994: 48).

II.1.7. Summary of Critical Issue to this Research

Within this planning system there is one feature, that of development control, which is critical to the research topic. A large array of somewhat minor exceptions apart, no proposal for development on land (that is works on or under the land or material change in use) can proceed without a planning consent for the proposed development. In deciding on the application the planning authority *"shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations"* where such considerations must relate to the use and development of land (Town and Country Planning Act 1990, Section 70 (2)). This requires balance between the two in making the planning decision, and thereby considerable discretion the respective weights in this balancing were changed in the 1991 Planning and Compensation Act, Section 54A by introducing what has come to be called the plan-led system.

> "Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise".

Since there are only minimal development rights attached to the land in law, and since the rights are procured in the main only by the permit, it follows that in the main a refusal of the consent, or the imposition of unacceptable conditions, carries with it no entitlement to compensation.

The result of this process is that the development rights for any parcel of land, and thereby the consequential land value, cannot be determined with any certainty in advance of the decision on the planning application and, should there be an appeal to the Minister or the Courts, the decision that flows from them. While the shift in the weights of the balancing has changed by the 1991 Act, the non-certainty still remains.

II.2. COMMUNITY BETTERMENT FROM DEVELOPMENT VALUE EXACTIONS

II.2.1. Land Value Depends on Land Use

Land value may be described as the monetary valuation of land use (Clarke, 1965: 73). Since land value is intimately connected with use, it follows that as the use of land changes, so will its value. The value may also change before any change of use actually takes place due to the expectation of a potential change in use which will affect the land's "development value". This expectation can be that predicted by the market unaffected or affected by Government intervention, be it by town planning or general public controls e.g. for sanitation (Lichfield, 1956: Ch. 22-5; and Lichfield, 1979: 111-131).

As in the market generally, the land value will result from demand and supply. But land is distinctive in the supply side. Except for the man-made improvements it is a gift of Nature and therefore has no production costs. This simple fact is the basis of much that is of concern in this research (Appendix I.2).

Land value may therefore be classified as "current use value" or "potential use value". (Clarke, 1965: 74). It is in respect of the latter that the term betterment arises.

Betterment in Relation to Land Use/Value

Since the middle ages, the term betterment has been used to describe the increase in site value caused by improvements carried out at public expense (Parker, 1965: 54). Its principle is "that persons benefited by public expenditure should contribute to such expenditure to the extent of the increased value of their property, and this is not only if the improvement effected by the public authority was carried out for the purpose of conferring a benefit on such property, but also if the resulting benefit was purely accidental, the expenditure having been undertaken for a totally different purpose" (Clarke, 1965: 74, quoting *Palgrave's Dictionary of Political Economy*).

The Uthwatt Report (ECCB, 1942) extends this principle still further and attempts a comprehensive definition to include not only *"any increase in the value of land (including the buildings thereon) arising from central or local government action, whether positive, e.g. by the execution of public works or improvements, or negative, e.g., by the imposition of restrictions on other land"* but also the *"enhancement in the value of property arising from general community influences, such as the growth of urban population"*. The first category is termed "betterment proper" and has generally carried approval. The second category is termed "unearned increment" and has long been subject to controversy (Clarke, 1965: 75).

Recoupment, on the other hand, was defined in the Uthwatt Report as a system enabling a public authority to recover the whole part of the increased value given to neighbouring lands by the execution of public works. It also added that recoupment is not strictly an application of the principle of betterment. The two different definitions are given as follows:

> "The principle of betterment is that the public authority are entitled to require the owner of land increased in value by their works to pay over in money part of the increase which he thereby enjoys. In the case of recoupment, however, the authority buy outright the land likely to be enhanced in value by their proposed works, paying the owner its current market value, and any profit they are able to make by developing or selling it is entirely theirs; there is therefore, no need to ascertain how much of that profit is attributable to increase in value due to the particular works and how much to other causes, and the major difficulty of the existing betterment system is thereby avoided." (ECCB, 1942: 117)

Past and Present Betterment Legislation

Two threads in the fabric of the history of this country indicate the application of the principle of betterment in legislation:

(i) payment *according to* benefits received or dangers avoided, most frequently represented by sewers and drainage rates; and

(ii) payment (whether by direct charge or set-off against compensation) *in respect of* benefits received by public improvements, e.g. through the widening of roads.

The first thread remains unbroken from the Middle Ages to the present day, when it is represented by differential rates under the Land Drainage Act, 1930. The second thread first appeared in 1662, but after a few years is broken and does not reappear until about 1830. Thereafter, although it is somewhat tenuous for long periods, there is no real break and it appears in full strength and colour in the London County Council Improvement Acts of the 1890's and in the Town Planning Acts from 1909 onwards.

The earliest Statute giving effect to the principle of assessment of contributions according to benefits was an Act of 1427 (6 Hen. VI, Ch5) appointing Commissioners of Sewers for 10 years to supervise works for sea defence wherever they might be required. The principle on which the sewage rates were levied under a later Statute of 1531 was that *"everyone whose property derives benefit from the works of the Commissioners may be assessed to the rates they impose"*. The sewer rate was in the nature of an improvement rate levied over the area, or in some cases on the individual properties, adjudged to be benefited by the sewage works and not necessarily only upon areas or properties for whose benefit the works were deliberately executed. While some authorities have doubted whether this is an example of the principle of betterment it certainly appears to contain the germ of the principle of betterment.

Whether the rates described in the preceding paragraph can be regarded as instances of the principle of betterment or not, it is clear that the principle is by no means a modern innovation. It was adopted by Parliament as long ago as 1662 in the Act 13 & 14 Charles II, Ch2 (ECCB, par. 245-277), though the word used is not "betterment" but "melioration".

The Act provided (inter alia) for the widening of certain streets in London (and for compensation to owners and occupiers of houses pulled down) and provided powers

> "to assess upon owners and occupiers of such houses, such competent sum or sums or annual rent in consideration of such improvement and melioration as in recent and good conscience they shall judge and think fit".

A similar provision was included in the Act for the Rebuilding of London after the Great Fire, 1667 (18 & 19 Charles II, Ch3) and in the Rebuilding Act 1670 (22 Charles II, Ch11) in respect of deepening the Fleet Canal and providing a public wharf. Others followed (ECCB, 1942: 107-114), namely:

- General Acts from 1931 to 1890, which provide for setting out benefits against compensation
- London County Council Bills and Acts, 1890 to 1902, to establish the right to recover a direct charge in relation to increase in land value from public street improvements
- General Acts since 1890 containing "Set-off" provisions when exercising compulsory purchase

The Town Planning Acts, 1909 to 1932 were the first general Acts since the reign of Charles II to provide for the recovery by a direct charge on those who benefited, in this case by restrictions on development not from public works

Compensation and Betterment

Just as betterment arises in relation to development value, so does compensation for its loss. But the two are not symmetrical since they relate to different land and have different legal rules for assessing the quantum.

This has given rise to problems which have been dealt with in two main ways. The first is named the "continuing solution" and attempts to deal with the gains and losses of development value as they arise. This method was attempted in the 1909 Town Planning and the 1932 Town and Country Acts in Britain. The argument is that gains and losses occur because of planning decisions taken in the public interest. Accordingly gains are taxed by a betterment levy (75% in the 1932 Act) and compensation is paid to those whose property values are held down, with a wide range of restrictions being excempted.

The second way has been what is called as the "once-for-all" solution. This method attempts to resolve the problems finally by a single operation at a given date. The argument is that all increases in urban site values derive from the natural growth of society and can therefore be appropriated by the state. Accordingly, development rights are given to the public authority and compensation is paid only for the development values that exist on the enacting date. Consequently, all future development values accrue to the state.

Examples are in the Uthwatt Report and the three Acts introduced by post World War II Labour Government, which are now discussed.

II.2.2. Uthwatt Report: The Classic Analysis

The Uthwatt Report (ECCB, 1942) is the principal report which provided a framework regarding compensation and betterment. Broadly, it set forth the ideas that land use planning would be on a national scale, that private rights in land be subjected to the public welfare, and that the use of land by private owners be restricted to accomplish this objective. Following these, it recommended that development rights be vested in the Government and a system be established to "obtain betterment" from landowners on development via a "development charge". In the Uthwatt Report, the term "betterment" covered not only the unearned increment caused by planning proposals, but also the increase in site value due to the natural growth of the society described as "general community influences" (ECCB, 1942: 115).

The Uthwatt Report was based on two issues of concern. The first was the fact that the future potential development value arising from future expected development affected a much larger area than needed for the development in the near future (ECCB, 1942: 14). The second issue of concern was that planning restrictions did not decrease the sum of land values, but merely redistributed them through 'floating value' and 'shifting value'; the former being described as the potential and speculative development value, and the latter as the balance between the fluctuations of the values of different tracts of land which is a result of the public control of land use (ECCB, 1942: 15). (See also Turvey, 1957: 122-130) Thus, in theory, it would provide the possibility of compensating all land owners whose land value decreased out of a betterment fund levied on those whose land benefited from an increased value (ECCB, 1942: 16). The Uthwatt Report also claimed that the above theoretical statement did not hold true in practice due to the limits of the existing statutory code. Practically, it would be possible only if all the land in the country were under a single ownership (ECCB, 1942: 23). Unification of the development rights for un-built-on land outside the urban areas was also concluded to be a means for removing the conflict between public and private interest (Lichfield and Darin-Drabkin, 1980: 134).

On the above theory, the Uthwatt Committee recommended as follows:

> ".....the immediate vesting in the State of the rights of development in all land lying outside built-up areas (subject to certain exceptions) on payment of fair compensation, such vesting to be secured by the imposition of a prohibition against development otherwise than with the consent of the State accompanied by the grant of compulsory powers of acquiring the land itself when wanted for public purposes or approved private development" (ECCB, 1942: 157-158).

The Committee recommended that local authorities be given the power of compulsory land acquisition for recoupment with the approval of the Central Planning Authority with no right of appeal against its decision. The Committee also recommended that the set-off against compensation should be abolished when a periodic levy on increases in annual site values would be established, with the exception of the increases in the value of undeveloped land outside 'town areas' as long as it remained undeveloped. The periodic levy scheme was recommended to be imposed through quinquennial assessments disregarding the increases due to recent expenditure of the owner. Indeed, the levy was set as 75 per cent of the value increments, taking into consideration the elements of increase due to the skill and enterprise of the owner or occupier. The Committee also recommended, in favour of this periodic levy, the abolition of the system of betterment collection under the Town and Country Planning Act of 1932 (ECCB, 1942: 165).

Another area of concern was whether compensation should be paid or not for planning restrictions on the use of land. Two cases were identified, in which liability to pay compensation was recognised and was not. The first was the limitation of the established rights to the owner of the land, in which case the State was liable to pay compensation. The second case was the vesting of the development rights to the State and in this case the State was not liable to pay compensation (Lichfield and Darin-Drabkin, 1980: 134).

As to the collection of betterment Uthwatt concludes (ECCB, 1942: 135):

> "We have shown that, of the existing methods for recovering "betterment" in its strict sense of increase in the value of land due to particular public improvements or provisions of planning schemes, set-off has been of little practical effect. We are forced to the conclusion that no *ad hoc* search for "betterment" in its present strict sense can ever succeed, and that the only way of solving the problem is to cut the Gordian knot by taking for the community some fixed proportion of the whole of any increase in site values without any attempt at precise analysis of the causes to which it may be due.
>
> One method which has been advocated of measuring increases of site value involves an initial valuation on a capital basis of all land in the country at a given date, this initial valuation being the datum line from which subsequent increases would be measured by re-valuations at periodic intervals, a levy been made after each revaluation on the increases so revealed.
>
> Broadly stated, our recommendation is that there should be a levy in respect of the increase in annual site value of each hereditament as revealed at each quinquennial rating revaluation over the datum annual site value (i.e. the annual site value as first determined for the purposes of the scheme)."

II.2.3. Town and Country Planning Act 1947

Based on the principles of the Uthwatt Report, the post-war Labour Government enacted the Town and Country Planning Act of 1947 which nationalised development rights. Beyond many exceptions no development was allowed without the permission of the local planning authority. If permission were rejected, no compensation would be paid, except in a limited range of special cases. If permission were granted, any resulting increase in land value was to be subject to a development charge (Cullingworth and Nadin, 1994: 107). The land owner had the right to continue the existing use of land so that any interference by the State would attract compensation (McAuslan, 1984: 84).

Betterment could be claimed as a development charge so far as the value of land was enhanced by the grant of permission (McAuslan, 1984: 78); in other words, it was conceived as *"any increase in the value of land (including the buildings thereon) arising from central or local government action, whether positive, for example by the execution of public works or improvements, or negative, for example by the imposition of restrictions on other land"* (Cullingworth and Nadin, 1994: 107). Thus the development charge was assessed at the full increase in value due to the permission to develop, reducing the incentive to develop, since all profit on development was theoretically taken away (McAuslan, 1984: 78)

Under the 1947 Act, loss of development value due to the nationalisation of development rights (which was calculated to be the difference between the unrestricted present use value and the existing use value) attracted compensation. This was based on admitted claims to an ex gratia and arbitrary fund of £300 millions, plus one-seventh for the accrued interest on the amount of the claim. When all claims had been received and examined, the previously set £300 millions would be divided between them according to the respective proportion of their value as at July 1st 1948, and paid together with interest. In practice, the total of all claims amounted up to £380 millions, not substantially exceeding the preliminary estimate (Cullingworth and Nadin, 1994: 107).

The Town and Country Planning Act of 1947 brought about two major changes. The first that whereas previously the rules for not granting permission were stated in a planning scheme which was a local law for the area, under the 1947 Act development was allowed to take place only on the grant of a specific planning permit. The second that whereas previously the landowner had his development rights granted to him in the local scheme, after 1947 the landowner had no rights until they were granted to him by the planning permit, except in the case of 'reinstatement' of established buildings (Lichfield and Darin-Drabkin, 1980: 137).

The 1947 Act did not work as expected. Land was being widely offered and, still worse, bought at prices including the full development value, even though developers were to pay a development charge amounting to 100 per cent of the increase in the value of land resulting from development (Cullingworth and Nadin, 1994: 10). This was largely due to the severe restrictions imposed on building. Building licenses were very scarce, and developers able to obtain them were willing to pay a high price for land upon which to

build (Cullingworth and Nadin, 1994: 108). Purchasers other than developers often found themselves forced to pay more for land than its existing use value, which in logic was all they should have been ready to pay (McAuslan, 1984: 78).

To prevent such problems, the Central Land Board had been given powers of compulsory purchase at the 'correct' price. This power was used to facilitate the supply of land at existing-use prices, but it was also used as a warning to owners of land in general. The second function was put into use only where an owner had actually offered his land for sale at a price above the existing-use value (Cullingworth and Nadin, 1994: 108).

The greater the amount of planning control, the greater did the gap between existing use and market values become. As a result of the 1947 Act, owners who were forced to sell their land to public authorities at existing use values considered themselves to be very badly treated in comparison with those who were able to sell their land at increased prices, resulting partially from the planning restrictions on other sites (Cullingworth and Nadin, 1994: 109).

II.2.4. Unscrambling: The Acts of 1953, 1954 and 1959

The new Conservative Government (1951) tackled this issue by a new scheme through a series of measures under the Town and Country Planning Acts of 1953 and 1954. One of these was the abolition of the development charge and the termination of the Central Land Board. The abolition caused land speculation. As long as owners could expect to receive only existing use value there was little point in buying land to hold in anticipation of a price rise. But when development values were given back to private sellers the prospect of speculative profits emerged again (Parker, 1965: 67)

With the new scheme the £300 million fund was extinguished as well. Instead of the compensation for development rights lost in 1947 being paid on a pro rata basis out of the fund, it was to be paid fully in the future, but only when the loss was actually realised on refusal of permission. The local authority was made responsible for the payment of this compensation in cases where the claim attached to a site which was being compulsorily acquired. In other cases it was the central government's responsibility (Parker, 1965: 66)

The owners who sold their land privately in the market were now placed in a privileged position compared with owners whose land was subject to compulsory purchase (Parker, 1965: 66). The former received the full market price for their property and retained the development value. The latter on the other hand, only received existing use value because, the development rights belonged to the State. This situation was tackled by the Act of 1959, which re-established market price as the basis of compensation for compulsory acquisition (Parker, 1965: 67). An owner could, thus, obtain the same price for his land irrespective of whether he sold it to a private individual or to a public authority, at least in theory. For the public authorities land purchase thus suddenly became extremely costly (Cullingworth and Nadin, 1994: 110).

II.2.5. Land Commission Act of 1967

The Labour Government of 1964 made another, quite different, attempt to secure a substantial part of the development value created by the community to the community itself, and the reduction of the cost of land to authority for essential purposes. To pursue these policies, a Land Commission was created to buy or compulsorily purchase land suitable for development, with the objective of supplementing the local authority powers to facilitate an orderly programme of approved development. The Land Commission was designed to be a site assembler, a planning agency to determine land use; a development agency to manage, dispose off or develop land itself, or engage either private or public developers. Thus a central government agency was established to compete with the local authorities in determining where and how land should be used (McAuslan, 1984: 78).

A betterment levy was introduced which was equal to a proportion of the development value on all land sold, either in the open market as a tax, or in a sale to the Commission and used as a deduction against purchase at market value. Initially the rate of the levy was to be 40% in order to encourage early sales would increase over time (McAuslan, 1984: 78). This 'betterment levy' was in fact the 'development charge' reinstated, this time at only 40 per cent, because it was agreed that the 100 per cent fixed by the 1947 Act had contributed to the reasons for the repeal of the financial provisions of that Act.

Together with the betterment levy, the Labour Government established a capital gains tax by the enactment of the Finance Act of 1967. The tax was charged on the increases in the existing use value of land only, and not on the increases in the development value as in the betterment levy (Cullingworth and Nadin, 1994: 111). Both of the taxes were measures taken for taxing the previously untaxed profits from land (Lichfield and Darin-Drabkin, 1980: 144). The Land Commission Act of 1967 was repealed in 1971 by the Conservative Government (McAuslan, 1984: 78).

II.2.6. Development Gains Tax

On 17 December 1973 the Conservative Chancellor (Anthony Barber) announced during an emergency Budget that the Government proposed to introduce legislation to alter the basis on which tax was charged on "substantial" capital gains arising on the disposal of land or buildings with development value or potential. He also announced that provision was to be made in the legislation for tax to be charged on the occasion on which a building (other than one used for residential purposes) was first let following "material development".

However there was soon a change of Government following the general election of 28 February 1974 and it fell to a new Labour Chancellor to put these proposals into legislative clothing in Part III and Schedules 3 to 10 of the Finance Act 1974. This was regarded by the Labour Government as an interim measure only, to bridge the gap until a more far-

reaching one could be found (Prest, 1981: 96). Consequently these limited arrangements for a Development Gains Tax were replaced as respects disposals after 1 August 1976 by the more comprehensive Development Land Tax 1976, to which we now turn.

II.2.7. Community Land Scheme

The Labour Government of 1974 returned to the battle. It introduced its Community Land Scheme in two parts. The first was the 1975 Community Land Act which provided wide powers for compulsory land acquisition, and the second was the Development Land Tax Act of 1976 which provided for the taxation of development values. This was going to be an achievement in terms of 'positive planning' and of 'returning development values to the community' (Cullingworth and Nadin, 1994: 114).

The Community Land Scheme differed from the previous attempts in two ways. The first is that the provisions dealing with the taxation or recoupment of betterment were separated from provisions dealing with the public acquisition and development of land. The second is that the local authorities (and in Wales the Welsh Land Authority) became the vehicles for exercising power in respect to this function rather than the central government (McAuslan, 1984: 79). The increased power given to the local authorities was also conceived as a contribution towards more positive planning (Lichfield and Darin-Drabkin, 1980: 4).

The objectives of the Community Land Scheme can be grouped into two: enabling the community to control the development of land in accordance with its needs and priorities; and recouping to the community the increase in the value of land arising from its efforts. The first objective arose from the difficulties in achieving 'positive planning'; now that the lapse of the financial provisions of the 1947 Act largely but not entirely meant a reversion to "negative planing". The second objective stemmed, following the repeal of the Land Commission Act, from the absence of any specific means of channelling some part of this increase to the public hands, other than through general taxation (Lichfield and Darin-Drabkin, 1980: 169). Following these objectives, the intentions of the Scheme were identified as the passing through local authority hands of all land for development and renewal in the country, and the passing into public hands of all rises in land values which resulted from such development (Lichfield and Darin-Drabkin, 1980: 4).

In terms of land acquisition, under the Community Land Act a local authority could purchase land for the purpose of private-sector development either compulsorily or by agreement. If the authority gave permission for relevant development it had the option to acquire the land for subsequent disposal. The authority could dispose of land to the private sector by leases in general up to 99 years. The choice of developer to whom the local authority leased the land is affected by 'prior negotiating rights'. Exempt development, outside the coverage of the community land scheme, included development for which permission was given by a General Development Order, and development for purposes of agriculture and forestry (Lichfield and Darin-Drabkin, 1980: 171).

Land acquisition under the Community Land Act would be financed by borrowing and all costs of this borrowing, as well as the costs of management and of land improvements, would be met from the proceeds of land disposal (Lichfield and Darin-Drabkin, 1980: 173). Only when it was fully profitable would it be possible to transfer funds from the 'community land accounts' to other local authority sectors. However this held true only for 30 per cent of the surplus. 40 per cent had to be paid to the central government and the rest would be paid into a fund from which allocations would be made to local authorities whose community land accounts were in deficit (Lichfield and Darin-Drabkin, 1980: 174).

Under the Development Land Tax Act of 1976, development gains were calculated as the difference between the market value (the net proceeds of disposal) and either the current use value or the cost of land acquisition plus special additions (whichever was the highest). The tax would be paid when there was development on the land, or when the land was sold or leased (Lichfield and Darin-Drabkin, 1980: 174).

The Community Land Scheme was expected to change certain issues in the private sector development process. The first was the reluctance of landowners to make their land available for development, both because of the possibility of the exercise of compulsory purchase powers and the liability for development land tax. The second expectation was the change in the unwillingness and inability of the developers to undertake the obligations and risks of major schemes in the new climate, and the unwillingness of financial institutions to make funds available in the circumstances now prevailing. (Lichfield and Darin-Drabkin, 1980: 181)

Besides these anticipated changes, there were also other expected achievements of the scheme. Firstly, it would alter the kind of plans which were produced, since they would incorporate a greater recognition of the realities of the development process as the local authority played a greater role in it. Secondly, a patchwork landownership pattern would be overcome. Thirdly, there would be greater co-ordination between the public and private sectors at the plan-making stage, so that plans would be more realistic and implementable (Lichfield and Darin-Drabkin, 1980: 183).

The scheme, like its two predecessors, had little chance of proving itself. The economic climate of the first two years of its operation could hardly have been worse, and the consequent public expenditure crisis resulted in a central control which limited it severely (Cullingworth and Nadin, 1994: 114). The Community Land Scheme was abolished by the Thatcher Government in 1979. But the law as to the ownership of the development rights remained the same, having survived the Acts of 1953, 1954 and 1959. They are still separated from the balance of the ownership title and are owned by the Crown, so that the denial of compensation for refusal of planning permission, or imposition of unsatisfactory conditions, still prevails.

II.3. FUNDING OF INFRASTRUCTURE

II.3.1. What Is Infrastructure?

The land, buildings and spaces of any urban area are the base for its socio-economic activities, both by the town's residents and those coming in from outside, as regular commuters or irregular tourists, peripatetic academics and businessmen, etc. These need an infrastructure, namely "the underlying foundation or basic framework" (Longman, 1988).

In everyday usage there is however a difference in what is conceived as "underlying". There is general agreement on the inclusion of transportation or telecommunication (its obverse), and their associated facilities (such as lighting, car-parking, bus and railway stations, telephone exchanges) as well as basic utilities (water, sewerage, waste disposal, gas, electricity).

To this physical infrastructure others would add the social infrastructure required to serve people, to comprise all those services which makes land development (Loughlin, 1985):

(a) possible (circulation streets, roads, water, sewerage, gas, electricity, telecommunications, street lighting, street cleaning and refuse services);

(b) acceptable in terms of amenity (parks and amenity areas) and social overhead (schools, health and welfare services, libraries and other cultural facilities).

Paying for physical and social infrastructure, in the traditional broad division of labour in providing urban development, is generally the province of central and local government on behalf of taxpayers/ratepayers, together with ad hoc bodies on a commercial basis (gas, etc.), while private and public entrepreneurs generally provide the urban fabric which is remunerative. This division of labour is blurred at the edges. In a residential area the developer will build the streets and gift them at the required standard to the local authority for maintenance; in a rural area a local authority can build coastal protection works which are financed by tax assessment on specific beneficiaries.

Thus the building and running of a town is a mirror of our mixed economy. In this mix there is another ingredient: intervention by government (central and local combined) in the development, via the urban and regional planning system. This has broadly two aims: to remove impediments to the working of the market for both the private and public entrepreneurs; and regulate its activities in the "use and development of land in the public interest" (DoE, 1988: para. 17). This combined intervention provides a wider definition of the infrastructure framework (Wakeford, 1990):

> "all the supporting services required to ensure that land development takes place in a socially acceptable way; that is it does not intrude on the landscape, cause disturbance to neighbours, create traffic congestion, or overload the school system.

This would seem to bring into this definition the avoidance of unfavourable externalities which arise from development".

II.3.2. Current Funding of Infrastructure

Current practice in British funding of infrastructure has origins stretching back over centuries, and has evolved piecemeal with the growth in the infrastructure itself and the multiplication of public agencies and powers related to the funding. For these reasons the practice is complex (Loughlin, 1985). For our purpose we do not need a comprehensive description, but rather a categorisation of different kinds of funding as a context for the planning gain with which we go on to consider. Following is a somewhat heroic attempt. (Lichfield, 1991).

a Paid for by Central or Local Government and Recouped Respectively out of Taxes or Business Rate and Community Charge

These are the traditional public works funded from public sources, for example roads, rail links, drainage, sewerage, car-parking. Generally, the funds are levied on the population as a whole, paid into one pool and distributed from the pool for specific works. On occasions particular funds are earmarked or hypothecated for specific works. Or there is a special assessment levy on the beneficiaries of particular works.

b Paid for by a Statutory Undertaker with the Cost for a Specific Project Passed on to the Landowner/Developer

These are the traditional utility services, be they in public or private hands, be they or not a monopoly. Their capital cost is typically met by developers' contributions which are passed on to the consumers in the disposal price, or to land owners in reduced purchase price of land. An example is the levy for water and sewerage in the Water Act, 1989, supplementing the requisitioning required under the Water 1945 Act by a system of general infrastructure charging, intended to allow for capital costs incurred by undertakers when providing additional capacity.

c Paid for by the Developer/Operator under the "Polluter Pays" Principle

(i) Public Health

This somewhat archaic term covers construction which is regulated in the interests of public health, such as standards in sewers, water supply, etc., and access by streets to

development which are initially constructed by the developer and then transferred to the local authority.

(ii) Environmental Pollution

Control over emissions have been regulated since the Alkali Act of 1874, which has been the cornerstone of industrial air pollution since that time. This has taken on new dimensions with present concerns on environmental pollution (SOS for Environment et al, 1990a: Part IV and Annex A). There is being introduced a more rationalised regulatory system in the Environmental Protection Act, 1990, with the adoption of the principle of the "polluter pays", (both ex ante in terms of tax and ex post in terms of damage caused) and the general move towards introducing financial incentives and disincentives.

In parallel, environmental regulation under or alongside the planning system has been advanced since 1988 through the requirement for an environmental assessment to be made as a preliminary to obtaining planning permission; mandatory for a particular array of projects where environmental pollution is fairly certain (e.g. power stations); and at the discretion of the local planning authority where the environmental impacts are "likely to be significant" (e.g. large scale urban development) (DoE, 1990b). Parallel legislation has been introduced for projects falling outside the planning systems, e.g. forestry. In these the developer as potential polluter would be called upon to pay, via his amelioration in kind of the potential side effects (DoE, 1990b).

d On Planning Permission

When faced with an application for development an authority may grant permission with or without conditions, or may refuse. For this purpose, planning authorities have formidable powers of regulation over all but a complex array of exceptions (typically non-significant) in physical development (new works and material change of use). The objective has been given by the Department of the Environment to secure the "use and development of land in the public interest" (DoE, 1988: para. 25), which is aimed at "securing economy, efficiency and amenity in the development and use of land" (DoE, 1989: para. 4 and 5).

In general the development control seeks improvements in the quality of the development which is being proposed, so affecting private costs; minimisation of the divergence between private and social costs and benefits through amelioration of disbenefits in the proposals and thus internalisation of the costs; co-ordination with other development to minimise overall costs. Thus in practice development control passes on to the developer/landowner the financing of costs which would otherwise fall on the public purse.

II.3.3. Planning Gain/Obligation Agreements

The Conservative Government of the 1980's assumed direct and vigorous control over the expenditure of the local authorities, be it from local taxation or Government grant, which drove the authorities to seek ways of supplementing their resources, in order to meet their obligations. At the same time, land owners and developers were in fierce competition for the granting of permission, to use the opportunities on their land, which meant so much for them financially. During the boom of the economy and the development industry during the 1970's, planning permission thus became the vehicle for huge rises in land value accruing to land owners and developers without their incurring payment for the development rights, beyond normal taxation. As a result, there arose without express legal sanction the system of 'planning gain', which amounted to exaction by the authority from the applicant for planning permission of contributions in money or kind towards the direct costs that would otherwise be thrown on the authority because of the permission (DoE Circular 22/83).

The "planning gain" could not be legally imposed as conditions on the planning permission. In order to formalise the arrangements, authorities had to use agreements under the Town and Country Planning Act 1932. In the property boom of the early 1970s planning agreements became widely used (Cullingworth and Nadin, 1994: 114), in addition to three other legal bases: Section 52 of the Town and Country Planning Act of 1971, Section 111 of the Local Government Act of 1972, and Section 126 of the Housing Act of 1974. Besides these three, there were also some additional powers obtained under local acts (McAuslan, 1984: 84).

In England less than 1 per cent of planning decisions involve planning agreements. The largest proportion are concerned with regulatory matters (contracts, plans and drawings, building materials, etc.) and over a half deal with occupancy conditions (for example, restrictions required for sheltered housing, agricultural dwellings, social housing). Agreements serve an important function in securing the provision of infrastructure necessitated by a development (particularly roads), and in environmental improvement (such as landscaping). Only a very small number of agreements are concerned with wider planning objectives (Cullingworth and Nadin, 1994: 115).

From planning gain in practice attracted many criticisms (Rosslyn Research, 1990), leading to policy for improving the system (DoE Circular 16/91). In 1991 statutory provisions relating to agreements were provided by the Planning and Compensation Act 1991. Agreements have become 'obligations' which may be unilateral, not necessarily involving any 'agreement' between a local authority and a developer at all (Cullingworth and Nadin, 1994: 115; Section 12 of the Planning and Compensation Act 1991, amending section 106 of the Town and Country Planning Act 1990):

> "Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to ..... as a planning obligation) .....
>
> (a) restricting the development or use of the land in any specified way;
> (b) requiring specified operations or activities to be carried out, in, on, under, or over the land;
> (c) requiring the land to be used in any specified way;
> (d) requiring a sum or sums to be paid to the authority on a specified date or dates or periodically"

II.4. SUMMARY OF EXISTING SITUATION ON BETTERMENT

The three post-war measures for betterment tax on development value in Britain, introduced by successive Labour Administrations, have all been withdrawn by the succeeding Conservative Administrations. But one critically important feature of the 1947 Act remains unaffected, namely that the ownership of all landed property development rights continues to vest in the Crown. Despite the amending planning legislation of subsequent Governments these rights were not given up and returned to the property owners. Consequently there is now no "compensation problem" to form the other side of the betterment coin. If a planning application is refused or granted with conditions, no claim for loss of development rights can be admitted. As Prest (1981: 189) puts it succinctly

> "But at least one thing does seem clear in the fog: the issue of planning compensation for planning refusal can be considered truly dead and buried."

However this has now an additional importance beyond the solution to the compensation problem when land value is mooted as a new taxation base. Any objections from land owners, for example, to an incremental betterment tax, as envisaged in the Uthwatt Report (ECCB, 1942: 135-154), on the development rights which they do not own but nevertheless can enjoy, would hardly make for a credible case at the Court of Equity.

What does remain unaffected are the various means of transfer of funding of infrastructure, from the public to the private realm. Indeed the degree of transfer has accelerated under the same Conservative Administrations, through the introduction of planning gain/obligation agreements in the 1970s, which were further strengthened in the 1980's and 1990's (Cullingworth and Nadin, 1994). But while these measures have enabled authorities to claw from landowners/developers the costs of infrastructure, and are not designed or intended to secure betterment from rising development values themselves, have produced a decided shift of burden from the public to the private sector. Since, in rent theory, if not in practice, this burden would be at the expense of the landowner, it is a form of community benefit. And their potential for doing so could be greatly enhanced. While open to justifiable criticism in their evolution over 25 years, the planning

gain/planning obligation process has offered a useful and flexible tool for redressing the public/private balance in land development. (Lichfield, 1989; Lichfield, 1992).

II.5. COMMUNITY BETTERMENT FROM DEVELOPMENT VALUE: AN EVALUATION OF PAST PROPOSALS

II.5.1. Attempted Aims and Objectives

As with land taxation for revenue raising proposals, (Sec I.6.3) we now evaluate past proposals for community benefit from development value in order to draw lessons for the future. And as there we will first try and identify some attempted aims and objectives of the past proposals, which were in pursuance of:

- the centuries' old aim to transfer to the community from the landowners some element of the rise in land value which comes from community growth.

- trends to place on landowners rather than the community the direct cost of infrastructure needed to serve new development.

- the system initiated in the 1970's whereby exactions, not limited to traditional infrastructure, were levied in association with particular planning permissions (planning gain/planning obligations).

II.5.2 What went right?

Taking each of the three headings in turn:

1. Recoupment

- Following the opening up of the issue by the Barlow Commission (RCDIP, 1940) the Uthwatt Committee set the scene with its classic report on compensation and betterment. This provided a very good basis for post war legislation and practice.

- On this basis three successive Labour Governments introduced quite diverse attempts to tackle the issues of recoupment for the community.

- From these a vast amount of experience was obtained of what could and could not be done.

- As a result, and despite opposition, the thesis has been widely accepted by the development industry that some recoupment to the community was expected and accepted.

- One enduring residue is the acceptance that compensation is not payable by the community for restrictions on value from denial of compensation for refusal.

2. Infrastructure

- There has been a decided shift in practice, through transferring the cost of infrastructure from the community to landowners/developers.

Planning Gain

The logic of the process has been accepted in general but there are still many reservations about its practice and applications.

II.5.3 What went wrong?

1. The Plaything of Politics

- Each of the three Labour Government ventures were both opposed by the Conservatives in opposition and then unscrambled/repealed as soon as the opportunity arose, and before the wrinkles could be ironed out. Furthermore, the Conservatives had no reasonable antidote to put in the place of the repealed systems. Accordingly there was no opportunity to amend any of the three ventures in the light of experience.

- All three Labour Government attempts were very laborious and complex. Therefore they required a great deal of time to implement, which none received before being repealed by the Conservatives.

- This lack of possible experience was augmented by the Labour Governments' switching to a new concept in each case, so that they themselves failed to offer later opportunities for improvement of the previously rejected scheme.

- All this fragmentation was aggravated by the real defects in the schemes, which have been recorded by commentators, as now summarised in the following section.

2. Flaws in the Labour Government Schemes

- The Town and Country Planning Act 1947 Act failed because while it allowed the private market to operate it took away all incentive to develop by the 100 per cent development charge (TCPA, 1997: 42, quoted from Cox, 1984: 82; Blundell, 1993: 5).

- According to the 1947 Act, increases in land values arising from causes other than development or redevelopment remained with the landowners. In practice, the

majority of land value increases were of this kind and therefore they could not be returned to the community (Blundell, 1993: 12)

- The 1947 Act and the Land Commission Act of 1967 both encouraged speculation by giving landowners the hope that their land would increase in value without being liable to the development charge (Blundell, 1993: 7-8).

- The financial benefits of collecting development charges under the 1947 Act were discouraging by 1952.

- "...the total sum received in development charges in the three and a half years which had elapsed since the "appointed day" was but £8.6 millions, with a further £4.9 millions set off against the compensation fund. The revenue which the charge was producing was negligible; the disincentive to development was massive" (Douglas, 1976: 214)".

- Similarly under the Land Commission Act of 1967, the Commission completely failed to collect the forecast yield from levy: expected to yield £80 million in its first year, in fact it yielded a mere £15 million, with £32 million the next (1969-70). And it had compulsorily purchased a derisory 2207 acres of land and sold 913 acres. (TCPA, 1997: 29, quoted from Cox, 1984: 151).

- The Community Land Act of 1975 faced difficulties after the Government's spending cuts of December 1976 reduced the borrowing capacity of local authorities by £70 millions, which at the same time restricting their acquisition of land due to funding problems (Blundell, 1993: 12)

- In the end the Community Land Act was a failure in that by April 1979, the Community Land Account was in deficit to the tune of £33 million (TCPA, 1997: 31, quoted from Cox, 1984: 187)

- The main problems in the Community Land Act were due to the fact that the Government allowed no new staff to be hired; there were conflicts between planning, finance and surveying staff; the 99-year lease provisions were difficult because lending institutions preferred 125 years; there was some deliberate withholding by landowners; almost 98 per cent of potential land was exempt because already held in land banks by statutory undertakers and builders; and there was a building slump which meant that this exempted land was not used up as expected (TCPA, 1997: 31, quoted from Cox, 1984: 187-91)