

# THE TOWN AND COUNTRY PLANNING ACT

EXAMINED AND REVIEWED BY JOHN ORR — PART I.

At short intervals the governments of Great Britain set themselves to deal with some aspect of the land problem on behalf of the country. They are not eager to take up the task, but it has a habit of pressing itself upon their attention in an unavoidable manner. This recurring habit may be due to something insoluble in its nature, or it may be due to the bad workmanship of governments; to their repeated failure to deal with it as its solution demands.

Something urgent happens to rouse the interest of the country. The upheaval and chaos caused by two big wars have raised serious difficulties. The interruption of civilised life has intensified the need for building new houses, for making new and better roads, for widening and straightening old ones, for planning the lay-out of towns, and for keeping rents and rates within moderate limits. After 1918 there was a rush to build houses along the new roads, in order to reap the advantage of the public services which were carried with and by them. This led to a disorderly movement which disfigured the countryside, which earned for itself the title "ribbon development." It was a movement which showed no regard for any question of convenience or amenity in the future. Legislation was passed to remedy the evil, but it entirely failed in its object.

## PRELUDE TO THE ACT

Foreseeing that this experience might be repeated, the Government, in 1941, appointed the Committee on Compensation and Betterment, better known as the Uthwatt Committee, from the name of its chairman. The instructions to the Committee were: "To make an objective analysis of the subject of the payment of compensation and recovery of betterment in respect of public control of the use of land: To advise, as a matter of urgency, what steps should be taken now or before the end of the war to prevent the work of reconstruction thereafter being prejudiced. . . . To consider (a) possible means of stabilising the value of land required for development or redevelopment, and (b) any extension or modification of powers to enable such land to be acquired by the public on an equitable basis."

The Government laid stress on finding a means to prevent the work of reconstruction from being prejudiced. Lord Reith, Minister of Works and Planning, in the debate in the House of Lords which followed his announcement of the appointment of the Committee, said that the terms of reference included a consideration of anything which might "hamper, prejudice or delay" that work. There is no reason for mistaking the wishes and intentions of the Government. They are clear, definite and sharp. The obstruction which they feared might be encountered in the work is associated with the value of land to be acquired for its accomplishment. The suggestion of stabilisation, and their desire to secure an equitable basis, show what was in their minds. They remembered what had happened to previous schemes.

## THE "FLOATING VALUE" CONCEPTION

Sharp and clear as this point was made, it was dulled and obscured in the hands of the Uthwatt Committee and of Parliament. Mr. Silkin, Minister of Town and Country Planning, paid a high tribute to the work of the Committee, and confessed that his Bill was largely based on its recommendations. For the amount of work done by the Committee they deserve credit. But on the main issue,

about which their terms of reference, their instructions, were concerned, they failed.

Throughout their treatment of the problem the Government and Committee have been consistent in putting a slight upon the value of land as an element in the situation and upon the process of valuation by which the value is reached and established. The Committee knew the character of value well enough to enable them to deal with the attack on it involved in the idea of compensation and betterment. They may not have invented the phrase, "floating value," but they adopted it, and gave it a certificate for being something true and genuine. There is no such thing as "floating value." To a loyal economist and to a loyal valuer it bears its condemnation on its face. The Committee themselves have disproved its existence in an objective and disinterested discussion of the subject. "Values," they say, "have attached to land on the basis of the existing system of ownership." This feature of attachment which they ascribe to the value of land is an invariable and necessary mark of value everywhere. Value only comes into existence when it attaches itself to something, and if it floats it ceases to exist.

Two minds, or two sets of minds, in contraposition to each other with reference to the possession or enjoyment of a thing are indispensable for the existence of value. The Uthwatt Committee make this clear enough in discussing a practical issue. "Before," they say, "any increase in site value can become a proper subject for levy, it must not only have occurred and have been proved, but must have been realised or enjoyed or be realisable." This is a sound argument. Value attaches to land only when someone appears who, with the necessary credentials, is ready to pay, or who has paid, what it is worth. The Committee have laid down that principle to decide whether or not a value exists which the owner ought to pay to the State. Value as the result of a one-sided set of forces is no more conceivable than a single-bladed pair of shears. Floating value is a figment of the mind. If the Government must not tax the hopes, desires, expectations and dreams of the owner of land, it must not pay them for the same airy, non-existent stuff. To make a law that the country should do this is landlords' legislation.

## IMPOSITION EMPLOYED AGAINST THE STATE

It is said that if the Government decides to lay out the land of the country according to plans which do not coincide with those formed by owners of land, if it gives directions to development different from those shaped in the minds of owners, it is responsible for the failure of the latter to reap the returns which they expected, and ought to make this good. If this principle is conceded, it means that the Government, and the society, the community, the country, which it represents, cannot enjoy the freedom which an individual, or a business firm, enjoys but must pay two prices for land if it departs from the owners' plans. No private firm would deprive itself of the right to consider more than one neighbourhood before it decided to erect its factory. If its movements in examining alternative sites, set up "floating values," mists and clouds, as it were, in the minds of more owners than the one or more whose land is finally chosen, the firm does not pay those whose land is not taken. This is an imposition employed against the State,

is anti-social in its nature, and calculated to hamper, prejudice and delay schemes which are of universal benefit.

The Uthwatt Committee covered much ground in discussing this problem. But they lost their way. They did not keep to the direction they were given. They obscured and even obliterated it. "Short of confiscatory measures," they said, "it will always be costly to make land in private ownership available for planning purposes. From the point of view of planning, the ideal is that the best plan should be prepared, unhampered by financial considerations. As matters stand the cost falls on the local authority, and the plans suffer accordingly. It lies outside our terms of reference to consider to what extent the cost of planning should fall upon national funds, but we are satisfied that it is necessary, both from the point of view of avoiding delay in the preparation and execution of schemes, and from the point of view of cost, that planning authorities should have every facility for purchasing whatever land may be required for fulfilling their schemes. Suitable financial arrangements are therefore imperative." There is no ambiguity about this demand. It represents the attitude which has hitherto governed all legislation for these schemes as well as its administration. The prescription is simple—that planning authorities should have enough money at their disposal to pay unmeasured amounts to the claimants, unmeasured in the sense that they are not the result of a thoroughly careful valuation, a valuation which at this stage in this country's history should be regarded as scientific.

#### LANDLORD COMPENSATION

The reasoning of the Uthwatt Committee on this point goes full contrary to experience. Payment of large sums for land taken for public schemes has never facilitated their progress. On the contrary, these heavy solatiums, presumed to be in their nature as lubricant to a machine, raise prices, and bring things to a stand. The knowledge that national funds are available for the purchase of land has always stiffened the demands of owners. A reference to history and a consideration of the working of human nature in the field of economics would have saved the Committee from repeating this mistake. Both Committee and Government speak and act on the ancient and erroneous assumption that the State, the public, are inexhaustibly wealthy, that they can part with extravagant sums in the purchase of land, and suffer no hardship, and that owners of land, unless they are paid for something which does not belong to them, will suffer to an extent which must not be thought of or permitted. This view gives rise to the policies which "hamper, prejudice and delay" beneficial schemes, and prevent the settlement of relationships on "an equitable basis." And the evils which the Government of 1941 asked the Uthwatt Committee to teach them how to avoid are pronounced by the latter to be necessities.

The sum of £300,000,000 is mentioned at one time as a payment to prevent prospective lordship of landowners, and at another as the valuation of their rights in the land to be taken. For the first object it is misapplied. Genuine hardship is found at the bottom end of society, among those of its members who are crowded into houses in or near which they cannot keep clean, cannot get rid of the offscourings of their bodies, or enjoy the comforts of civilisation. It is not found among those who have the means to buy and sell land. Under the second aspect, Mr. Silkin and Mr. Dalton described the manner in which they arrived at this sum as the value of the landowners' rights. To take two general estimates of the value of

the area concerned, differing very widely in their amounts, to divide this sum by two and adopt the result as the value is not calculated to impress one as a creditable piece of valuation. There is altogether far too little valuation about this big transaction, and in the struggle of claimants to get their shares of the large total sum the country will lose.

#### RECOGNITION AND ABANDONMENT OF PRINCIPLE

Mr. Dalton, as Chancellor of the Exchequer, spoke on the Second Reading of the Town and Country Planning Bill, on January 30th, 1947. "I come now," he said, "to the alternative line of approach to the land problem, the question of the taxation and rating of privately-owned land values. . . . I would say to those who attach great importance to the taxation of land values, that land values are being, by this Bill, substantially deflated. . . . In my view, in his (the Minister of Health) view, and, I think, in the view of all of us on this side of the House, there is still great strength in the argument that taxation is better levied on a land value even if deflated, which has been created by the work of the community, and not by the work of the owner, than upon the buildings and other improvements. Therefore, there is still a strong case in principle for shifting the burden of local taxation, in some part, at any rate, from buildings and improvements, on to site values, even though they are deflated by this Measure. I say that as far as the principle is concerned."

If he had started from the point when he saw that the value of land has been created by the work of the community and not by the work of the owner, if he had stayed loyally and consistently under the influence of this perception, Mr. Dalton would not have shown himself so clearly as a man who would deny to his actions, his practice, the foundation of principle which is necessarily theirs. By the separation of principle from practice which he makes with so much emphasis he declares himself an unprincipled man.

#### THE WARNINGS NOW ISSUED

To make this break between the beginning and end of a piece of healthy human conduct is a fatal breach. Statesmen, governments, see and confess that they see the source of land value, see where it belongs. They ignore this when they place it, or allow it to be placed, where it does not belong. This wrong transposition may, at first, give rise to a fracturing violation of what is only a mental element, but one which embodied in an animate and material form sets material trouble in motion. Significant things have happened. The Town and Country Planning Act came into operation on July 1st, 1948, and seven weeks later, on August 18th, the Secretary of State for Scotland issued a warning to local authorities, responsible in part for the administration of the Act. They have agreed to pay prices for land which are so high that they jeopardise the working of the Act. The Secretary has confirmed some of these agreements, but he will not continue to do so. The authorities are asked to make sure that no prices are paid for land above the maximum which in the District Valuer's opinion represents a proper valuation of the land on the basis of the Act.

This action was repeated on September 25th, when Sir Malcolm Trustram Eve, Chairman of the Central Land Board, sent a letter to the Secretary of State for Scotland calling attention to the same problem, the same threat to the operation of the Act. Many owners were selling land on terms unfair to prospective developers. He intimated that the Board could be authorised in appropriate circumstances to buy the land compulsorily.

Thus, although the Uthwatt Committee recommended that the financial resources of the nation should be placed at the service of local authorities, and although the Government, inspired by this advice, took particular pains to give it legislative effect, and notwithstanding the confidence of the Minister of Planning and of the Chancellor of the Exchequer in its success, the administrators have been forced back, or have come back, to the work of the District Valuer, or to compulsory purchase in which predecessors have so often placed their trust, and so often confessed their disillusion. The Government should not deceive itself, or seek to deceive the community, on this point.

#### VALUATION BIAS AND PREJUDICE

Those who are interested in this subject might study a paper read to The Surveyors' Institution in January, 1912, by Mr. Frank W. Hunt, at that time Assistant Valuer to the London County Council. His subject was: "The Tendency of Recent Modifications of The Lands Clauses Acts." His manner is so dispassionate and objective that it is difficult to realise that it is largely a narrative of abuses, if not in legislation, then in administration. The Lands Clauses Act, the principle of which governs procedure in compulsory purchase, was passed in 1845.

The attitude of legislators and administrators to valuation is illustrated in the following principles which governed their decisions and actions: (1) "The basis of compensation under the Lands Clauses Acts is the value to the owner." This theory was given authoritative form in the statement: "When Parliament gives compulsory powers and provides that compensation shall be made to the person from whom property is taken for the loss he sustains, it is intended that he shall be compensated to the extent of his loss, and his loss shall be tested by what was the value of the thing to him, not by what will be its value to the person acquiring it."

(2) Railway companies were to pay more for land than public bodies. The principle governing this practice was stated thus: "In construing the Act of Parliament a greater liberality has been shown towards a public body, such as a municipal corporation or the like, than is shown to a railway company, which is looked upon more as a body of persons speculating for their own benefit."

(3) The last method to be noticed for raising the prices of land acquired under the Land Clauses Acts originated with the valuers. They adopted what would probably be considered a bold, and was certainly a simple, plan. When they had fixed the value they added a percentage to it. The practice hardened into a custom. Mr. Hunt quotes other authors who discuss the reasons for its existence. "The fact," says Freeman, one of them, "that while in the case of houses and building land the allowance is invariably 10 per cent., while in the case of agricultural land it is usually 25 per cent., and in some of the northern counties runs to 50 per cent., rather favours the theory of prospective value. But the true answer probably is that the exact object of the allowance is not critically weighed by the persons who give it, but that where a man is deprived of something which he does not want to sell, it is only fair that he should have a bonus beyond mere market value to cover anything which may tend to his disadvantage, and which cannot be exactly foreseen, and to secure him a general immunity from loss."

These open anomalies in the practice of valuation, however they were introduced, whether by prejudiced legisla-

tors or by biased valuers, have been gradually removed by legislation. It is possible that Mr. Hunt and his fellow-members of the Surveyors' Institution thought in 1912 that the valuation provided for in the Finance Act of 1909-10 would give to public bodies a proper and accurately measured basis for the working of their schemes. If so, their hope was disappointed. The mood of lawlessness which had asserted itself in the unconstitutional rejection of the Budget by the House of Lords forced the suspension of the valuation and taxation on the outbreak of war in 1914. This mood continued rampant after the war, and compelled Mr. Lloyd George to repeal the measure of which he was the responsible author. The character of this struggle should be recalled and kept in mind by men who concern themselves with questions which involve the valuation and acquisition of land, and the rating and taxation of land values. The fight was straight and thorough, and should have been decisive. But private owners of land show an unfailing and incredibly resourceful resistance to any move on the part of the State to take possession of its own property and to perform duties connected with its preservation.

*(To be continued.)*

#### "Wheels within Wheels"

We much regret that in an article printed under the above heading on page 175 of our September and October issue of LAND & LIBERTY we inadvertently stated that Sir Robert Sinclair was Industrial Consultant to the Chief Planning Officer of the Government, whilst at the same time holding the post of Deputy President of the F.B.I. and the chairmanship of the Imperial Tobacco Company.

In fact, Sir Robert Sinclair ceased to be the Industrial Consultant to the Chief Planning Officer over a year ago, while he has only recently been appointed as Deputy President of the F.B.I. We are pleased to take this opportunity of acquainting our readers with the correct facts.

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