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POLICY ASPECTS OF
LAND-USE PLANNING IN
IRELAND

FRANK J. CONVERY and A. ALLAN SCHMID

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PLANNING IN IRELAND

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The bulk of our interviewing was undertaken in January-June 1981. The first complete draft was circulated in February 1982, and the study was subsequently updated to include material up to the end of 1982.

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General Summary and Conclusions

The passage of the Local Government (Planning and Development) Act in 1963 heralded a substantially increased degree of intervention by government into decisions concerning how land is used. We describe the form which this intervention took over the subsequent 20 years and analyse its implications. We do so in three phases. First we present the legislative, administrative and analytic framework, then we discuss some elements of the planning process and finish with some conclusions.

The Framework

Legislation: The Local Government (Planning and Development) Act, 1963 comprises the legislative core of the Irish land use planning system. It has two main provisions: it requires local authorities to prepare a development plan, and it gives them power to decide — over a wide range of “non-exempted” development — whether and/or what form of development is permitted. Exempted development under the act includes agriculture, forestry, most wild and wetlands and work by local authorities themselves. The development plan “will help to prevent disorder and waste in development and to protect the public interest against damaging development”, according to the explanatory leaflet issued by the Department of Local Government (now Environment). In urban areas, the plan must show objectives for land-use, transportation, redevelopment and the preservation and development of amenities. In rural areas it must include objectives for the extension of water and sewerage services. A wide range of “optional” objectives may be included.

Planning permission decisions at the local level can be

appealed to An Bord Pleanála which was established under provisions of the Local Government (Planning and Development) Act, 1976, and re-structured under provisions of the Local Government (Planning and Development) Act, 1983. In most instances, the Board is the final arbiter, but there is provision for recourse to the courts. The latter, however, typically confine their purview to matters of interpretation and procedure.

Under the Housing Act, 1969, permission must be obtained for developments which involve the demolition of a habitable house, or a change to some other use. There are by-laws concerning structural safety, fire regulations, etc., which must also be complied with. These are embodied in draft Building Regulations; the Minister for the Environment has requested local authorities to use the draft as if it had the force of law.

Administration: At the local level, the two main actors in the decision-making system are the elected council members and the executive, the latter comprising the manager and his or her staff. The elected members are responsible for preparing the development plan and providing overall policy structure. Individual planning decisions are made by the manager, in the context of the zoning provisions and objectives of the plan, unless directed by the council – under Section 4 of the City and County Management Amendment Act, 1955 – to take a specific action. If a planning permission is to be made which significantly contravenes the provisions of the development plan, a “material contravention” must be approved by council members.

There is provision for public comment in the preparation of the development plan and requests for planning permission must be advertised in a paper which circulates in the area. Any member of the public can comment on such a request. After a decision has been made at the local level, it can be appealed to An Bord Pleanála by anybody within three weeks. The applicant for planning permission can also appeal the decision and has one month within which to do so. The Board employs inspectors who report to it on the merits of the appeals. At its discretion, the Board may conduct an oral

hearing. The Board's decision need not conform with the provisions of the relevant local area development plan, and there are no time limits within which decisions must be made. The Minister can (and does) provide policy guidelines to be followed by the Board in making decisions.

The Minister for the Environment is a critically important element in the decision-making process. He provides policy guidance to An Bord Pleanála, sets the legislative agenda which defines the authorities and responsibilities of the local authorities, and allocates funds for major infrastructural investments.

Analytical Framework: We attempt to go beyond simply describing the mechanics of the system, to discover its underlying dynamics: in doing so we focus especially on the implications in practice for the efficient use of resources, and for the distribution of opportunities and costs.

Elements of the Planning Process

Distribution of Gains and Losses: The 1963 Act specifies (Section 56(1)) the conditions under which compensation is *not* payable for refusing planning permission. These include developments which involve changing the use of an existing building, and those which: are judged to be *premature* in relation to deficiencies in water supplies or sewerage facilities; would endanger public safety because of *traffic hazard* or *obstruction*, or would create *serious traffic congestion*; would *injure the amenities*, or depreciate the value, of *property in the vicinity*. Proposed developments where refusal is necessary in order to preserve "any *view* or *prospect* of *special amenity value* or *special interest*", or to which a special *amenity area order* applies, can likewise be rejected without incurring liability for compensation. These conditions define the circumstances where the private landowners must in effect sacrifice their pecuniary interests to that of the common good. When the appropriate conditions do not obtain, then liability to pay compensation arises. The most common instance arises when development is proposed for bare land, such as the fields of a sports club or a convent within a

built-up area. If a local authority wants to keep such sites underdeveloped, it will either have to buy them, or pay compensation. If land is zoned "agricultural", so that there is no intention to provide services to it, and therefore prospective development cannot be classed as "premature", then liability to compensation can arise if none of the other conditions outlined above (traffic hazard, serious congestion, etc.) are met. Liability to pay compensation can be avoided if a Special Amenity Area Order has been made and received Ministerial approval. However none have yet been approved.

The development process results in substantial appreciation in land value:

<i>Period</i>	<i>Increase in serviced land value, Co. Dublin %</i>	<i>Increase in Consumer Prices %</i>
1963-1971	530	64
1975-1980	700	98

Landowners who are fortunate enough to own property which goes into development can capture very large gains. Some of the gain should accrue to the state: since 1982 a capital gains tax of 60 per cent has applied to all gains when the period of ownership is less than one year, falling to 50 per cent for periods greater than a year. There are very restrictive terms concerning indexation,¹ so that, in a period of relatively high inflation and modest growth in land values, the real (net of inflation) tax rate will be much higher than 50 per cent.

Procedural Controls: We have seen that local authorities have considerable statutory authority to shape the location and nature of development. However, this power is mitigated by the liability to pay compensation which is incurred under certain conditions — mainly related to the maintenance of open space — if development is prohibited. In addition to its statutory powers, the local authority can impose delays (time

¹ Adjusting the base-value to account for price inflation.

costs) which give it a negotiating “margin”; in 1981, 18 per cent of appeals to An Bord Pleanála took six months or more to process. In addition, some developers looking to the future may feel that indulging the desires of the council beyond what is statutorily required in one instance will help assure a more sympathetic (or less hostile) reception for future project proposals.

The Appeals System: An Bord Pleanála hears about 3,000 appeals per annum. In 1980, 22 per cent of the appeals were by third parties. Somewhat over half of the decisions of the local authorities are confirmed, about a quarter are reversed, and the balance are varied. In 1981 the response time was as follows:

<i>Response time</i>	<i>Percentage of total appeals</i>
Less than 3 months	48.7
3-6 months	33.5
6-9 months	11.9
Over 9 months	5.9
	<u>100.0</u>

There is tremendous regional variation in the susceptibility to appeal, ranging in 1981 from 2.55 per cent of local authority decision in Donegal to 25.86 per cent in Dun Laoghaire.

In the nature of things, most decisions of any significance get shifted upwards to An Bord Pleanála. With regard to policy, the Board receives sporadic policy directives from the Minister, and the general directive in making decisions to consider (Section 19 of the Local Government (Planning and Development) Act, 1983):

The proper planning and development of the area of the relevant planning authority (including the preservation and improvement of the amenities thereof), regard being had to the provisions of the development plan, the provision of any special amenity area order relating to the said area, the terms of any previous permission considered by the Board to be relevant . . .

The Board makes decisions on substance, and must therefore be a setter or at least a clarifier of policy in the land-use area. However, this role, which is inherent in the position of the organisation at the apex of the decision-making system, is not adequately reorganised.

Pricing and Payment for Infrastructural Services: We have the choices of having the costs of development-related infrastructural services provided by taxpayers in general, borne by the development, or some combination. If the full long-run additional costs of services — water, sewer, roads, gas, telephone, electricity, etc., — are *not* assessed against development, then: development in areas which are costly to service will be encouraged, sprawl will be facilitated, resources will be transferred from the citizenry in general to those individuals and regions where development is concentrated, and rationing of services will be done on a political/administrative discretionary basis, rather than through the use of market-clearing prices. Thus, charging development the long-run marginal costs will encourage both efficient use of resources and good environmental management.

Pricing can also be used to reinforce, or take the place of, regulatory approaches in other areas. For example, charges on derelict sites, strip development, high-rises, etc., could be designed to achieve performance in these regards which is in the general interest. Conversely, subsidies can be used to encourage particular forms of structural conservation and development.

In 1981, County Cork charged development £2,500 per acre for water, £2,500 for sewers, and also an occasional extra charge for roads, with some variation by area. Counties Dublin and Kildare charged a flat per acre development fee of £4,000 and £1,500 respectively. In the case of Dublin, the charged level has been set so as to recover the local authority share of the relevant costs; the Department of the Environment supplies the balance required.

There is now a statutory basis — the Local Government Financial Provisions (No. 2) Act, 1983 — for the application of a comprehensive range of local charges.

Conclusions

The system has undoubtedly achieved some successes in terms of protecting community interests, but in our view it will not deliver in the future what was expected of it at the time the planning legislation was passed, or what is aspired to in most development plans. This is so for a number of reasons: the system depends almost exclusively on administrative and regulatory powers, backed up by legal sanctions; these are difficult to enforce and are inappropriate for a people with post-colonial traditions of individualism. The gains from development are so large, and the situation concerning compensation so ambiguous (at best), that channelling infrastructural investment in a cost-effective fashion, and preserving environmental amenities, are both becoming increasingly difficult. Developments do not, in general, carry their full associated infrastructural investment costs, and funds to undertake these from government are very scarce. As a result, there is a tendency in some areas to "build-in" planning permissions and by-law approvals, a requirement that infrastructural work be undertaken which is not necessarily directly germane to the development in question. While this could be justified if it were done in a predictable and equitable fashion, such is not the case. Some developments get heavily penalised in this respect, while nothing is demanded of others.

If it is desired to retain present open spaces near cities, maintain distinct suburban town centres and prevent ribbon development, some major reallocations of property rights are a necessary condition. The current "successes" in these matters rest largely on public rights, given effect through the bargaining power of local authorities, which can create transaction costs for developers. These transaction costs will be insufficient to counteract future development pressure, as benefits from appeals become more profitable. The rights created by the present requirement to pay compensation in some circumstances if development of open land is refused will be more decisive than the rights created by the administrative power to impose cost creating conditions and delays in appeal. So if citizens are pleased with results so far, they should not assume that the *status quo* will persist as relative prices change.

If a substantial portion of the rising land value appreciation were to be captured by the public, it might retain the existing balance between the cost of appealing denials of planning permission on open space lands and the net gains from development. But if the public does not capture part of the appreciation gain, then the necessity to pay compensation for refusing development will have to be eliminated if open spaces are to be preserved in rapidly growing urban areas. The present control of open space development cannot be maintained in the future without substantial changes in property rights, in one form or another.

Incentives tend to be negative and penalty oriented, rather than positive and reward oriented. Thus, buildings of some distinction can be listed and demolition forbidden, but few rewards are available to maintain them.

The policy and decision-making environment is very complex, with a profusion of often conflicting forces involved. On preliminary examination it resembles a patient in traction, being pulled in all directions, but going nowhere. However, closer examination shows that a troika of forces are pivotal in shaping system direction and performance; these are the local authority managers, An Bord Pleanála and the Department of the Environment. There is a very heavy emphasis on discretionary regulation and negative sanctions in the planning permission process. The regulatory powers come both from statutory provisions and the ability to impose procedural requirements — mainly delay — on developers.

Very large revenue gains accrue as a consequence of the process of development, and these in the past have been captured mainly by landowners and intermediaries. Since huge capital gains and losses hang on planning decisions, the political pressure is great, and there is a potential for bribery.

We wish to emphasise again here that there is no evidence available to indicate that bribery has been a problem in the past. Furthermore, the potential in this respect is not confined to planning permission decisions; it arises in all situations where substantial funds are allocated on a discretionary basis. Nevertheless, we feel that it is worth addressing as a prospective problem in the domain of land-use planning for the following reasons:

- (i) In instances where the government makes discretionary grants, e.g., the IDA grants to industry, the amounts and purposes of such grants are carefully recorded, subject to public audit and in some cases are published. This makes the contribution explicit, and its efficiency can be monitored. This contrasts with the situations with regard to planning permission decisions, where the gain (or loss) is implicit and not readily subject to systematic audit and public scrutiny.
- (ii) In most cases where the government is awarding financial gain to individuals, this decision in the specific is delegated to officials; the political involvement is mainly at the policy-setting stage. In the planning system, both through the use of Section 4 powers and zoning decisions, there is a direct involvement by politicians in the creation of large capital gains and losses for specific individuals.
- (iii) In the majority of cases where government makes grants, the number of officials directly involved is quite small, operating within long established statutes and procedures. However, in the planning and by-law process, there can be substantial numbers of individuals from a variety of professional backgrounds involved at the local and appeals level, and this makes the system more susceptible.

Liability of local authorities to pay compensation is a major factor influencing the decisions of local authorities *vis-à-vis* open space preservation. There is some ambivalence concerning the role of the general public in the planning process. In some respects it is indulged and encouraged, while in others it is not.

There is a rising sense of frustration with the existing land-use planning system, and it is shared by planning officials, developers, architects, surveyors, conservation groups and the general public. We believe that the answer is not to promulgate more laws, regulations, provide more supervisory staff, etc. We need a fundamental reorientation in the manner in which the system is designed, characterised by four inter-

dependent elements: adjust incentives so that, for both private and public decision makers, there is a closer coincidence of interest between their own and that of the community's; secondly, capture for the public a significant proportion of the surplus resulting from development; thirdly, encourage initiative and excellence in the design and execution of developments; and fourthly, reduce the level of uncertainty which characterises the environment faced by both public and private decision makers.

Adjust Incentives: With regard to the first element, we suggest charging to developments the long-run marginal costs of their infrastructural services, and imposing additional charges when they infringe on social and environmental amenities, as, for example, in the case of derelict sites. Planning applications should bear the full costs of their review. With the resources thereby made available, infrastructural investments and planning permissions could and should be carried out in an efficient and timely fashion, with minimal delay. Incentives, such as grants, should also be provided to owners to maintain old housing stock, and to preserve buildings of distinction, maintaining thereby the character of areas.

Capturing the Surplus: We estimated very tentatively² that the annual surplus (rent) yielded to landowners and intermediaries by new development amounted to about £84 million in 1980; this is the return generated over and above the minimum return needed to keep the land in question in its highest revenue-yielding use. We feel that if development is to be channelled in a socially desirable fashion, in the sense that infrastructure is used efficiently and environmental and social considerations are given due regard, the great incentive which has existed for landowners in some areas to achieve zoning changes and/or planning permission must be substantially dampened (but not eliminated). If such is not done, the benefits for some landowners of non-compliance will be

²The data base available to derive such estimates is inadequate in the extreme.

so great that the pressure for change from these interested parties will prove impossible to resist. In addition to this efficiency aspect, there is also an equity dimension. There is constant pressure on the public exchequer to assist those who are victims of change which is not of their own making. Farmers and the unemployed come to mind in the 1983 context. It seems to us that there is a parallel argument in equity that the fortunate beneficiaries of change should contribute some share of their gain to the common fund.

We reviewed three broad approaches – compulsory purchase in designated areas at use values plus some premium, capital gains tax, a direct tax on sales and/or on land being zoned for development – to capturing the surplus. They each have advantages and disadvantages. We feel that the problems associated with the compulsory purchase of land in designated areas are likely to be substantial, and that, if this approach is adopted, local authorities will get involved in price control of housing. For these reasons we do not recommend that this (Kenny) approach be adopted to capturing the surplus at this time. We recommend that a combination of capital gain and sales tax be used to this end, with the amounts collected being published, and the impacts on land prices and other variables being clearly monitored. The capital gains tax of 50 per cent – which has been in effect since 1982 – comprises a useful basis from which to start. Since indexation – adjusting the base for the effects of inflation – is not permitted for traders in land, the “real” tax rates could be considerably in excess of 50 per cent. For example, if land were purchased for £100,000 and sold three years later for £250,000, the tax payable would be $0.5 \times 150,000$, or £75,000. However, if the average annual rate of inflation over the period were 12 per cent, then the real (net of inflation) gain would amount to $250,000 - 100,000 \times (1.12)^3 = £109,507$, so that the effective tax rate would be 73 per cent.

We would prefer to apply the tax only to this real gain, i.e., to allow indexation of the base. If such is not allowed, then the effective tax rate could in some instances equal or exceed 100 per cent, and the transfer of land into develop-

ment will be inhibited. Thus, in theory, a higher rate of tax — say 75 per cent — applied only to the real gain, will encourage more efficient allocation of resources than a relatively lower rate applied to nominal gains. However, we recognise that allowing indexation may provide more scope for tax avoidance and, therefore, make collection more difficult. We recommend that the implications of the current capital gains tax system for efficient land allocation be carefully monitored, and adjusted if necessary to reflect “real” rather than nominal gains.

If it is clear that it is impossible to prevent widespread tax evasion with the capital gains approach, then the designated area scheme deserves consideration. It is essential that land-owners should expect whatever is proposed to be continued in the future, with only incremental adjustments. If they expect that the taxes will be eliminated in the future, they will defer sales where possible, supply of land will fall, and land prices will escalate. Whichever option is adopted, we are strongly against imposing price control on housing, as suggested by the majority report of the Kenny committee. The long-term effects of such a policy, especially in an industry which is competitive, will be perverse and not in the societal interest.

Encouraging Excellence: Adjusting incentives and capturing some of the surplus, as we propose, will move system performance in a desirable direction, by simultaneously encouraging actions which are in the general interest, and by providing revenue to facilitate this end. However, something further is required, and is in many ways the most difficult to achieve, namely, the encouragement of excellence at every level in the system, and the creative use of the various talents available.

The present arrangements encourage the achievement of certain minima *vis-à-vis* safety in use and environmental quality. However, conscious, positive efforts must be made to encourage excellence, because the tendency of the present system is to reduce all activity to a (low) common denominator. The following are among the suggestions we make to this end: achievement of any improvement in office

block design depends fundamentally on the central government; as the major renter in Dublin, it should announce its intention, in the case of future requirements, to seek out buildings of distinction, to avoid the reverse, and then to act on this decision. The government is also the key to moving such activity to the north side of the city.

A special unit should be established in the larger local authorities to encourage innovation in building design and scheme layout, which would provide encouragement, advice and a "fast-track" through the planning permission process for those proposals judged to be especially distinctive. Competitions and awards for creativity should be utilised more frequently than heretofore, and the names of developers, builders, architects and the planning permission history should be permanently and prominently displayed for each major scheme.

Reducing Uncertainty: The preparation of the development plan provides local authorities with the opportunity to articulate alternatives, explore policy choices and costs, and to involve the public in this process. Putting more effort than heretofore into deciding what the community wants in certain localities, and the means of their achievement, would allow local authorities to provide developers with much more guidance as to what is likely to be acceptable, and would also provide An Bord Pleanála with a good basis for making decisions. This should reduce the number of planning applications which are rejected at the local level, and increase the proportion of cases on appeal in which the decision of the local authority is sustained.

The Development Plan should be a realistic medium-term investment programme with a clear presentation of costs and the origin of funds. It should not be an unrealistic "wish list".

In the case of individual applications for planning permission, potential objectors could be more positively involved by being brought together with the applicant in the pre-permission stage to explore means of reconciling differences. This would give the local authority additional information in

making its decision, and should reduce the number of third party appeals.

The policy-setting role of An Bord Pleanála, in conjunction with the Minister for the Environment, should be frankly recognised. This is inherent in their responsibilities to undertake substantive review, and the criteria which guide their decisions should be made available. This would provide a focus for the land-use debate, and also reduce uncertainty for both local authorities and developers.

What we propose is, we believe, realistic, achievable and desirable. Unlike many other policy proposals, it should be self-financing, since pricing is a central element, and it will not involve an increase in regulation — indeed the converse is more likely. However, it does represent a significant change from our present incremental, regulatory approach, and it would take a firm political commitment, backed by leadership from the Department of the Environment, to bring it about.

PART I INTRODUCTION

Introduction

The Local Government (Planning and Development) Act, 1963, provides the basic legislative framework for the regulation by government of most non-agricultural land-uses in Ireland. Prior to its passage, such regulation had been at the discretion of the local authorities. Some elements in the 1963 Act were modified in the Local Government (Planning and Development) Act, 1976. Eighteen years have elapsed since the government in Ireland decided to take a central role in decisions concerning the use of privately owned land.

Objectives

We decided that it was timely to review the implementation of these acts with a view to:

(i) Describing how they work in practice. There are descriptions available of the provisions of the acts, and the steps to be followed in their implementation; we are not aware of any comprehensive attempt to elucidate the underlying dynamics of the land-use planning process as it is actually applied in Ireland.³

(ii) Identifying who gets to make decisions in different sets of circumstances. The distribution of decision-making authority is central to what takes place on the ground, who captures benefits and who bears costs.

It is clear that there are conflicting interest groups in the land-use planning arena, and thus there is less than unanimity

³When this report was in final draft form, a very helpful guide to planning was published (Shaffrey, 1983) and Grist (1983) provided an evaluative overview.

on planning objectives. Among the interest groups are the immediate occupants and neighbours of residential, office and commercial space, developers, architects, planners, environmentalists and landowners, to name only the most obvious. This report will further identify and illustrate these interests and describe results in a variety of terms which we hope will be relevant to them.

We hope that this report will inform various groups as to the relationship between the formal law, the process of its use and administration and performance outcomes in several dimensions. It is not our intent to become a partisan for any particular point of view.

(iii) Identifying issues and aspects of the system which, on the basis of our preliminary analysis, hold possibilities for improvement. This was our primary objective.

While we do make some suggestions for improvement which we feel are worth considering, we do so rather tentatively. Many of the issues which we touch on would each require a detailed study before definitive conclusions could be reached. We had altogether less than a man-year to devote to this project. Our report is intended primarily as an effort to improve understanding of the Irish land-use planning system, especially as it functions in urban areas, and to clarify the issues involved.

Study Justification

The provisions concerning land-use planning, and the manner of their implementation, are pervasive in their effects. They influence: the quality of our physical and social environment; the nature and extent of activity in the construction and related sectors; the location and size of expenditures on transportation, communications, energy supply, water supply, sewage disposal and treatment, etc.; the distribution of gains and losses resulting from land-use changes; the extent to which the participants and the citizenry at large feel that their affairs are being dealt with fairly and expeditiously.

Given the magnitude of the resources (broadly defined) influenced by the planning process, it is clear that a small

improvement proportionate to the total resources engaged could be of substantial benefit. We hope that, by clarifying the issues involved, we can convey some sense of where the most promising opportunities for such improvement are to be found. As will become clear in subsequent discussion, the plethora of often conflicting interests involved result in a very constrained policy system, in the sense that countervailing forces make change difficult to accomplish. It is all the more useful in such circumstances to be able to identify the most fruitful opportunities for improvement.

Criteria

(i) *Economic Efficiency*

It is difficult to apply conventional economic efficiency tests in many land-use situations. For example, it is difficult to discern the willingness of the benefiting public to pay to have a Georgian-style exterior on a particular building or block (or, to learn what they would be willing to accept to forgo this benefit), in order to compare it with the opportunity costs (in terms of reduced space or utility thereof) of this provision. There are, furthermore, major distributional implications involved in such decisions. What happens will depend significantly on where the property rights (the rights to make decisions in relation to property) reside. Where they "should" reside is a fundamental consideration.

However, there are categories of land-use choice where economic efficiency tests can be applied to advantage. For example, assume that the cost of servicing land for house-building in area A is £3,000 per house, and £8,000 in area B, and prospective purchasers are indifferent as to location. Then, other things being equal, given that serviced land is to be provided, and assuming that these are the only such areas available, area A is clearly the more economically efficient choice. Similarly, if improvements in the planning system allow developers more flexibility – and therefore allow them to use their resources more efficiently – while not imposing environmental or other costs elsewhere, this too is an improvement in economic efficiency. In the terminology of economics,

this is called a "pure" Pareto improvement; some are made better off and no one is made worse off. A change which reduced the time involved in getting planning permission while not imposing additional costs elsewhere would also be of this genre.

(ii) *Consistency of Performance with Stated Goals*

In those many cases where it is difficult or impossible to apply the economic efficiency criterion, it is useful to determine the extent to which the planning system achieves in practice what "we" say that we want. This too is difficult to apply, because defining "we" in this context is problematic, and distinguishing "real" goals from rhetorical flourishes and deliberate obfuscation is likewise not easy. We relied on the objectives and aspirations stated in various development plans as our primary source of information in this regard, cognisant of their deficiencies for this purpose. We sidestep the problem of divining real intentions on the bases of stated objectives by, instead, using the conditional: "If purpose X is an objective, the planning system does (or does not) deliver, to the following extent . . .".

(iii) *Administrative Feasibility*

The ease (cost) with which changes can be handled administratively is an important consideration.

(iv) *Equity*

The attractiveness of proposals will turn in part on the extent to which they are judged to be "fair". Fairness is a difficult concept to quantify; it often has both symbolic and substantive dimensions. It has to do with people's sense that they are not required to make sacrifices while others make windfall gains. Although it is hard to evaluate the fairness of a change, it is so fundamental to the acceptability of same that we do address this aspect.

These are the criteria which inform our analysis. For purposes of exposition we have presented them separately here. However, in our study we do not always follow such an explicit pattern; the criteria are often treated implicitly in the discussion.

The Audience

This report is directed at a rather heterogeneous and general audience, including politicians, developers, planners, architects, community groups, officials in central government departments and development agencies, members of conservation groups, economic geographers, economists and interested members of the general public. Because of this wide spread of interests, much of what we present will appear trite and unoriginal to specialists in the various fields, but we hope that there will be something in our perspective which will be of interest to all. We have tried to keep technical terms to the irreducible minimum.

Methodology

We have used an intellectual framework derived from welfare and public choice economics (see Chapter 1).

We reviewed the Planning Laws and the literature pertaining thereto. Since our primary interest is in the workings of the land-use planning process in practice, we devoted much of our attention to the practitioners. We interviewed planners at the city and county levels in Dublin, Kildare and Cork. We discussed planning with a range of developers who are involved in all types, phases and scales of development. We met with architects, planning consultants, and central government officials and members of conservation groups. We identified many contemporary cases from newspaper articles, and also attended appeal hearings and public meetings. From these we provided a distillation of the nature and extent of the issues we discuss in subsequent chapters. There is very little serious, published, analytically oriented research on the land-use planning system in Ireland. As a consequence, much of our discussion is based on newspaper stories, magazine articles and material deriving from interviews. While this is clearly unsatisfactory, we felt that it would be useful to make a start using such sources, as a prelude to what we hope will be more rigorously based analyses.

Outline

In writing this report, we have attempted to make each section self-contained: for example, the reader whose primary interest is the policy choices and suggestions can turn directly to the appropriate material without reviewing the preceding material. Because of the variety of interested parties and the heterogeneous nature of the subject matter, we felt that this was desirable. However, since some elements — such as the liability of local authorities to pay compensation, and the role of An Bord Pleanála — are germane to a number of issues, this involved some repetition.

In the framework section (Part II), we first present a brief discussion of the concepts in economic theory which we regard as being most germane in the analysis of land-use planning. We then outline the legislative background, the administrative procedures followed and the issues involved in compensation.

In the next section we address a variety of aspects of the land-use planning process in Ireland, ranging from procedural controls and public participation to the pricing and allocation of land-related services.

In Part IV we trace the outcomes which result from the system described in Parts II and III and in Part V some policy choices are outlined.

PART II FRAMEWORK

Chapter 1

Economic Concepts

The maximum price which prospective purchasers are willing to pay for land is a residual; it is the risk-adjusted discounted present value of the net income (including re-sale value) expected to be yielded by the land over time. Thus, taking an individual and highly simplified case, when land is being purchased for housing, the developer estimates the price he can get for the houses, deducts all costs of construction and servicing, including an allowance for profit, and arrives at the maximum amount which can be paid for the land and still make the project profitable to undertake. Thus, with a market system, the use which can pay the most for land will tend to outbid alternatives. One of the pervasive tensions in the system then exists because "new" uses, e.g., office accommodation, periodically arise which can outbid existing uses. If it is desired to maintain the latter, this involves the difficult task of constantly thwarting the press of market forces.

This tendency in a market system for land to be allocated to the use which can pay the most for it, is to be encouraged on economic efficiency grounds if the market is not failing significantly in some aspects, and if equity issues are not a consideration. We return to these two very important caveats later on. The market fulfils the invaluable role of signalling and reflecting changes in taste, technology and in demand and supply. It provides a relatively smooth mechanism for adjusting to such changes and for rationing supply.

Land-Use Constraints

If landowners are constrained as to what they can do with their land, these constraints will be reflected primarily in

land-price. For example, given an adequate level of demand, if the density of building permitted in a given zone per unit area is increased, then, other things being equal, we would expect the price of the remaining development land in this area to increase. The developer will take his "normal" profit on the structure and the balance of the net return is available to be captured by the landowner. Likewise, if constraints are increased, we can expect that the land-price will fall.

Supply changes in any given area will also be reflected in the market elsewhere. Thus, for example, a change which reduces the supply of office accommodation available in desirable location X will result in: (a) an increase in the value of existing office accommodation in X (in excess of what it would have been in the absence of the reduction in supply) and (b) an increase in demand in *other* acceptable locations which will be reflected in higher land prices than would have prevailed if supply in X had not been reduced. We can, therefore, imagine the land market as a large balloon which, if constricted in one area, will expand commensurately elsewhere. If supply-reducing constraints are applied simultaneously in a range of areas, the price pressure will intensify unless supply-expanding actions are taken in other locations. Similarly, changes in demand resulting, for example, from transfers such as arise when rates are abolished and subsidies are made to farmers and prospective homeowners, will be reflected in part at least in land-price changes. We are stating the economic truism that, for a given set of conditions, land-price is the product of the forces of supply and demand; changes in either of these will result in a new equilibrium price. Levels of income and household formation, and consumer preferences, *vis-à-vis* location and style are key determinants of housing demand. We belabour the obvious because in official and popular discussions of planning and land-use policy generally, it often appears to go unrecognised.

Equity

In Ricardo's late 18th century exposition of rent theory, he envisaged that a growing population would require additional

food, and that this could only be provided by expanding the margin of cultivation onto land heretofore uneconomic to work. This could only be made profitable by a rise in the price of food. As the price increased, rents would accrue to those infra-marginal landowners, with those having the most fertile land reaping the greatest reward. Since this was the outcome of demographic and economic forces owing nothing to the endeavours of these landowners, Ricardo regarded these rents as windfall gains accruing to this class, and saw therein the seeds of class conflict, since the needs of the rising industrial entrepreneurial class for cheap labour (and therefore cheap food) were contrary to the interests of the landowners.

While the above does not do justice to the subtleties of Ricardo's arguments, it does provide us with a crude paradigm for the urban land market. Expansion at the margin, generated by demographic and economic forces, and shaped by infra-structural investments and technological advances, results in price-levels which provide "windfall" gains to infra-marginal landowners. A characteristic case arises in this regard when infra-structural investments — roads, water and sewer services, etc. — result in large property value gains for many adjacent owners. The intensity of the resentments engendered by such gains will depend, in part, on the extent to which (a) land-ownership, and the participation (or the hope of participation) in the gains is widespread in the population, and/or (b) taxation (including levies, development charges, etc.,) is used — and seen to be used — to capture a portion of the resulting gains for the populace.

Thus far, we have assumed that the landowners are sufficiently knowledgeable to capture the bulk of the rent. However, this is not always the case. If, for example, a developer (or intermediary) knows that a zoning change is in prospect, and the landowners in question do not, then this additional knowledge allows this prospective purchaser to capture the bulk of the rent "created" by the change. *A priori*, we would expect that there would be an asymmetry in the amount and quality of information available to these two groups (developers and landowners). Major developers are continuously involved in the land-market and, therefore,

have the incentive and the opportunity to capture economies of scale in acquiring information. For many landowners, a sale is a once-in-a-lifetime act. However, too much should not be made of this distinction. Sale by sealed bid or oral auction — the latter is not uncommon here — will usually ensure competitive bidding and therefore the transfer of most of the rent to the vendor. Nevertheless, there are situations — especially when the land-use changes are rapid — when the superior knowledge of the developer will confer real advantage. If individuals can actually get changes made in the allowable land use which increase its value *after* they have made the purchase, this too will allow them (rather than the initial landowner) to capture rent. If the opposite happens — a rent-reducing land-use designation is made after acquisition — then of course the purchaser loses. However, the latter is not a common event. “Development” value normally builds up over a period and the increased rent will often be shared by a number of parties in successive transactions.

In the next section, we introduce the notions of economic efficiency and associated concepts. Since we draw on these throughout the text, in what follows we provide definitions of them for the general reader.

Efficiency and the Market

When markets are competitive and all assets can be individually owned and managed, economists say that it will achieve a Pareto optimum and is efficient; all possible gains from voluntary exchange have been exhausted. However, the conditions for efficient market performance are rarely fully met. When there is a significant divergence from the ideal in this respect, this is called a manifestation of *market failure*. Policy measures to adjust for such failure are justified on economic efficiency grounds if the costs of intervention are less than the benefits resulting therefrom.

One major source of market failure in the case of land-use is the fact that some of the dimensions which add to, or detract from, the value of land are not owned: aesthetic vistas and the quality of adjacent air and water fall into this

category. Such effects are known as *externalities*. Building an ugly, polluting structure may maximise net income yield to the owner, but impose significant costs on "the public". Economic efficiency is enhanced if the owner is obliged to bear (internalise) these costs, but only up to the point when the last additional (marginal) cost of so doing equals the resulting additional benefit.

Transaction costs are the costs incurred in transacting business. They can comprise a source of market failure. To illustrate, let us look at a simplistic example, where a large number of owners are affronted by a particular proposed development and are willing in aggregate to pay up to £50,000 to prevent it, e.g., by buying the land. The developer, on the other hand, would require only £20,000 to desist and move elsewhere. Clearly an opportunity exists here for mutually beneficial trade. However, the costs of reaching a collective decision, gathering the requisite funds, making arrangements for appropriate management after purchase, etc. — the transaction costs — may be so large on the part of the landowners that it proves impossible successfully to make the trade. These costs act as a wedge preventing the system moving from the *status quo* to a better solution. Conversely, government often has the ability to impose transaction costs. This ability can be used by a planning authority to influence land-use in the direction favoured by it.

From this traditional view of market failure flows policy prescriptions. Government can encourage the appropriate internalisation of externalities by such means as: pricing; the extension of the jurisdiction to include externalities; regulation backed by legal sanctions; subsidies. It can reduce the magnitude of transaction costs by such means as providing "free" information and giving negotiating status to a representative sub-set of the collectivity in question. Each of these approaches has strengths and weaknesses; their aptness will depend on the particular circumstances obtaining. While we will draw on them in our analysis, they are limited in the sense that they take the existing allocation of property rights as given; an alternative allocation could yield a different equilibrium solution and imply a very different pattern of land-use. By identifying the sources of rights and the manner

in which they interact we hope to provide insights concerning how a given distribution of rights influences land-use and welfare, and how alterations in property rights might change matters in this respect.

Chapter 2

Legislative Background

In this chapter we give the reader a flavour of the legislative provisions which bear most directly on land-use policy in Ireland. This material is presented here in a very summary and colloquial form. Some of the ramifications of this legislation will be treated in subsequent chapters. A listing of enactments and regulations directly relevant to physical planning is presented in Appendix A.

The Local Government (Planning and Development) Act, 1963

This act — hereafter frequently referred to simply as “the 1963 Act” — is the legal corner stone of governmental efforts in Ireland to minimise the imposition of external costs as a result of modifications of the physical environment. Its provisions are administered by eighty seven local government bodies, comprising county councils, county borough corporations, borough corporations and urban district councils. These planning authorities are required to prepare development plans for their areas of jurisdiction wherein future land-use, transportation patterns, redevelopment areas, sanitary services, amenity areas, etc., are identified and co-ordinated so as to meet future demands while protecting natural and cultural amenities. For all development, meaning “the carrying out of any works on, in or under land or the making of any material change in the use of any structures or other land”, planning permission is required, unless it is exempted development. Exempted developments include work relating to agriculture and forestry, work undertaken by local authorities themselves in their own areas, work carried out in conformance with the provisions of the Land Reclamation Act

(1949) and minor developments (e.g., work to the interior of a building). Development by the state is not defined as such for the purposes of the Planning Acts, while a range of exemptions are provided for under the 1977 Regulations.

On application, the planning authority can either refuse permission, grant permission unconditionally or grant permission with conditions. The conditions can include specifications concerning the quantity, timing and disposal of waste products. The planning permission can be appealed. Under the provisions of the 1963 Act the appeal went to the Minister for Local Government for decision. Public involvement is provided for by making draft development plans public, by requiring the posting or publishing of requests for planning permission and by making provision for appeal. Bord Fáilte (Tourist Board), An Taisce (the National Trust for Ireland), the Arts Council and the National Monuments Advisory Council are identified as prescribed bodies who must be given notice of certain classes of planning applications, on which they can comment or advise. The following apparent weaknesses emerged as the Act was implemented:

- (1) Making a government Minister the adjudicator of appeals thrust the land-use decisions too directly into the political arena.
- (2) Enforcement was cumbersome, time consuming and ineffective. A developer could contravene the specifications of the planning authority with little probability of suffering significant adverse consequences.
- (3) Once planning permission was given, developers could wait indefinitely before implementing their plans.
- (4) The local government staffs were for the most part technically ill-equipped to prepare plans, to undertake rigorous evaluation of planning applications and to ensure the enforcement of conditions.
- (5) Adequate provision was not made for the planning of projects which simultaneously impacted a number of jurisdictions.
- (6) The Act only applied to new projects.
- (7) It was thought that the small and intimate scale of

most public authorities, with the resulting social and personal ties with influential constituents, lead in some cases to an undesirable affinity of interest between the regulated and the regulators.

In the light of these criticisms, an additional planning act — *Local Government (Planning and Development) Act, 1976* was enacted. This provided for the establishment of an independent Planning Appeal Board (An Bord Pleanála) to take the place of the Minister for the purpose of judging appeals. Planning permission expires after 5 years⁴ if the proposed action has not taken place. To prohibit unauthorised development, or to secure compliance with planning permission conditions, a planning authority or any third party can secure a High Court injunction. To reduce conflicts of interest, all elected representatives, members and staff of An Bord Pleanála, and certain local authority officials must declare their interest, for public review, in matters relating to land development in the area or to any planning application. When an application is made for a development which is expected to cost more than 5 million pounds, the planning authority may require the applicants to prepare a statement of the environmental impacts anticipated as a result of the proposed development. An environmental study must be furnished to the planning authority where the application relates to specified types of trade and industry (see Article 28(3)(a) of the 1977 Regulations).

Environmental Acts

In addition to the above acts, there are two specifically environmental acts which can influence land-use by industry. These are the *Local Government (Water Pollution) Act, 1977* and the *Alkali, etc. Works Regulation Act (1906)*. The former requires the implementation of a licensing scheme administered by the sanitary authorities, whereby the dis-

⁴This has been extended to 6 years under provisions of the *Local Government (Planning and Development) Bill, 1982*.

charge of trade and sewage effluents to inland and tidal waters, and the discharge of trade effluents to sewers, can only be undertaken under the terms of a licence issued under the Act. The licensing authority may refuse permission, may grant it, or may grant it with conditions. The Minister has directed that appeals under the terms of the Water Pollution Act should be made to An Bord Pleanála. The Alkali Act requires that a variety of plants including alkali, cement and smelter works be registered and subject to inspection. The provisions of this Act are implemented by the Department of the Environment.

The National Monuments Acts, 1930 and 1954 provide for the acquisition, protection and management of national monuments by the Office of Public Works (National Parks and Monuments Branch). If it appears to the Commissioners of Public Works that a national monument is in danger of being destroyed, injured or removed, or is falling into decay through neglect, they may, by order, undertake its preservation.

In the Wildlife Act, 1976 the Minister for Fisheries and Forestry is given powers to protect flora and fauna, and to this end establish nature reserves and wildlife refuges. Provision is made for co-operative agreements and the making of grants and loans to private individuals.

The Housing Act, 1969

Under this act, permission is required from the local housing authority to demolish, in whole or in part, any habitable house, or to use it otherwise than for residential purposes, if its most recent use has been as a residence. The authority may refuse permission, grant permission or grant permission with conditions. Appeals are made to the Minister for the Environment. Conditions imposed may include the requirement that alternative accommodation be provided for those displaced or that payment in lieu be made to the local authority. On appeal, the amounts specified initially may be reduced or eliminated by the Minister. This act only applies to buildings which are being used as dwellings or were last used for this purpose. With the exception noted below, buildings which were not last used as dwellings can be demolished without permission.

Buildings listed in any development plan as being worthy of preservation are, however, given a measure of protection by a statutory order issued in 1967 under the 1963 Planning Act; this order was subsequently revoked and then included in the comprehensive Regulations made in 1977. Opportunities to protect the interiors of buildings are provided for in the 1976 Planning Act. In each case, the owner must be notified of such listing. However, this requires that these be listed for protection in the Development Plan. Thus, permission is required to demolish habitable dwellings and those listed for protection. All other categories of structure can be demolished without governmental review. It is interesting to note that even if permission to develop is withheld under the Planning Acts, the right to demolish could still be granted, since the decision-chain differs.

The Derelict Sites Act, 1961

Under this act a local authority can serve notice on the owner of a derelict area inviting him to submit a proposal for improving the site. If he fails to do so, or if he submits a proposal but fails to carry out the work, the authority can carry out the work and recover the cost from the owner. The local authority may also compulsorily acquire such a site, once certain conditions are met.

Administrative Acts

The Local Government (Ireland) Act, 1898 provided for the establishment of county councils, county borough councils and urban and rural district councils. The rural district councils were abolished in 1925. The county councils (27), county borough councils (4), borough councils (7) and urban district councils (49) — hereafter referred to under the generic title “local authorities” — comprise, as we have seen, a central element in the formulation and implementation of land-use policies.

In the local authorities, certain functions are “reserved” to elected members; these include such tasks as specifying the

tax rate ("striking the rate"), borrowing money and making by-laws. Functions not so reserved, such as the collection of revenues, the employment and control of staff, and property management are known as "executive" functions, and are discharged by the manager. The assignment of responsibilities *vis-à-vis* land-use planning will be discussed later on. This management system was initiated in Cork city in 1929, extended to other county boroughs by City Management Acts between 1930 and 1939, and all local authorities under provisions in the County Management Act (1940). This act was amended by the City and County Management (Amendment) Act, 1955. In Section 4 of this latter act, if certain specified conditions are met, the elected members of the council may, by resolution, require the manager to undertake "any particular act, matter or thing specifically mentioned in the resolution and which the local authority or the manager can lawfully do or effect to be done".

Chapter 3

Administrative Procedures

The Development Plan

The development plan is prepared in draft by planning personnel in the local authority in question. In urban areas, the plan must show objectives for land-use, transportation, redevelopment and the preservation and development of amenities. In rural areas it must include objectives for the extension of water and sewerage services. There is in addition a wide range of "optional" objectives which may be included.

The Department of Local Government (now Environment) in its explanatory leaflet titled *Your Development Plan* (1967) states that:

It is the purpose of the plan to inform the public about the policy of the planning authority and to give information on what is permissible, as well as what is not, by way of development. In this way it is hoped that the number of cases in which planning permission has to be refused can be greatly reduced.

It is perhaps worth quoting further from this leaflet, as it conveys the aspirations underlying the initiation of mandatory land-use planning in Ireland:

Resources are not unlimited, and it is important that they should be used to the best advantage from a national point of view. This will not happen automatically. It will not happen if each developer, public and private, goes his own way in ignorance or disregard of a common purpose, or if there is no common purpose . . . an unsuitably located factory may affect house values and cause nuisance and inconvenience to large numbers of residents; unsightly chalets may spoil the view and the tourist appeal in a scenic area; long-established access rights to beaches may necessitate costly road improvements or by-passes. It is necessary for planning authorities to make clear the limits which will apply to developments in the public interest. Briefly, the plan will help to prevent disorder and waste in development and to protect the public interest against damaging development.

Later on we will be discussing the capability of the planning system to achieve the types of objectives stated above.

A draft plan is made by the elected members of the local authority and then put on public display for 3 months. The public's objections and observations must be taken into account in making the final plan, which must be approved by the elected representatives.

The elected representatives can also make a Special Amenity Area Order which involves putting into this category an area of natural, scientific or historical importance whose character it is proposed to preserve. It allows the local authority to have very strict control over existing or new developments in such areas, or to prohibit the latter entirely. Furthermore, within an area of special amenity, no compensation is payable by the local authority because of restrictions imposed on the private use of land. Because of this provision, there is natural antipathy to the designation among landowners in the candidate areas. A Special Amenity Area Order must be approved by the Minister. So far, only one Area — Dublin Bay — has been designated as an area of special amenity by a local authority; however, the Minister refused to approve the designation.

The plan is shaped and structured by the planning staff, and guided by public commentary, but final responsibility rests with the elected representatives. Plans are to be revised every 5 years. However, delays in reaching agreement on the substance of some plans can result in much longer intervals between revisions. The plans typically depend on zoning as the primary means of encouraging compatibilities among land-uses. Drafts do not usually present the public with alternative visions of the future. A single plan is presented, and the public input must perforce be reactive to what is proposed therein.

Local authorities must take the necessary steps to implement their plans. For example, if an area is zoned for industrial development, then the requisite services must be provided.

The Role of Central Government: Development plans are not subject to approval by the Minister. However, the Department of the Environment does issue occasional advisory notices to local authorities regarding planning preparation.

The key role of central government stems from its function as the dispenser of the bulk of the funds for infrastructural services. The Industrial Development Authority also plays a central role, since it influences very strongly the location of new industrial capacity. There is a roads plan, which provides some sense of the central government's priorities and plans for trunk roads. There is nothing comparable provided for water, sewage disposal, sewage treatment and public housing.

In *Your Development Plan* it is stated that:

The objectives of the plan must . . . be realistic. They must take account of the practical prospects and of the resources likely to be available. At the same time, planning authorities are encouraged to avail fully of the opportunity of the development plan to set out their views and proposals for the development and enhancement of their area.

This represents both a caution and a challenge. The extent to which a local authority can count on the central government to provide the resources required to implement the plan will depend on the priority accorded to the various items in the national context. This in turn will depend on relative needs and costs, political factors and the leadership and implementation capabilities of the local authority manager and staff. It is impossible to apply relative weightings to these considerations. However, it is clear that, especially in the smaller local authorities, the development plan can be used by an ambitious local authority with an aggressive manager as one means (among many) of mobilising central government funds for the community in question. It is not clear also whose priorities prevail if there is a direct conflict between the plans of the central government and those of the local authority. If the former feel sufficiently strongly about the matter, budgetary control at this level (central government) is such that presumably irresistible pressure can be brought to bear, although the political costs of such action are likely to be high. The Minister does have a — rarely exercised — statutory role as co-ordinator of Development Plans (Section 22(2) of the 1963 Act).

Modifying the Plan: Since preparation of the plan is a

“reserved function”, i.e., the final decision rests with the elected representatives, it follows that modification thereof is also the preserve of this group. If a significant contravention of the plan is proposed – this is typically called a “material contravention” – then permission of the council members must be sought.

Getting Permission

Assuming that the proposed project is not an “exempted development”, planning permission must be sought and granted before development can proceed.

Before making a planning application, notice of intention must be published, either in a newspaper generally available in the district of the proposed development, or by posting a notice on the site.

Application can be made either for outline planning permission or for full permission. To apply for the former, a location and layout plan should be provided, but detailed plans do not have to be made. The granting of an outline permission is an agreement in principle by the planning authorities that what is suggested will be acceptable. However, an approval must be granted before development can proceed. Requests for outline planning permission are typically made by individuals who are selling a property and are anxious to be able to indicate that development potential exists. Since the request for outline permission is subject to appeal, and approval must subsequently be secured, some developers do not find it advantageous to apply for outline permission. On greenfield sites, because of the expense and uncertainty involved with an application for full permission, the tendency is to apply for outline permission.

Full Permission: The application for full permission must be accompanied by a site or layout plan and full drawings of floor plans, elevations and sections. No environmental impact assessment is generally required. The local authority may request further information concerning this and other dimensions. A decision should be made by the Planning Authority

within 2 months of receipt of the completed application. If further information is requested, the two month period begins again after its receipt by the authority. Planning permission is granted by default if nothing is heard from the authority within the two-month period.

The decision at the local level is made by the senior administrative officer in the local authority, i.e., by the county or city manager, usually on the advice of his or her planning officials and the local representatives where there is a planning committee (as there is in most areas). However, under section 4 of the City and County Management (Amendment) Act, 1955, the manager can be directed to make a planning decision by a majority vote of the elected representatives, when the number voting in favour of the resolution exceeds one-third of the total number of council members.

Appeals: If planning permission is refused, or if conditions unacceptable to the developer are imposed, the latter may appeal the decision to An Bord Pleanála. This must be lodged within one month of receipt of the initial decision. The appellant may, at the discretion of the Board, have an oral hearing, at which all parties to the appeal may attend, make submissions and call witnesses. The Board reviews each appeal *de novo*. It is restricted to considering the proper planning and development of an area, regard being had to the provisions of the development plan for the area, and of any Special Amenity Area Order. In doing so, the Board is required to keep itself informed as necessary on relevant policies and objectives of the Minister for the Environment, planning authorities and certain other public authorities. The Board is authorised to grant permission even when to do so contravenes a development plan or Special Amenity Area Order.

There is no time-limit within which an appeal must be decided. Any third-party can appeal a local authority decision. This must be lodged within 21 days of the decision. The opinion of the Board is, in effect, final. While the courts will get involved in matters procedural, they have thus far been reluctant to pass judgment on the substance of decisions. There is a provision whereby the council members can, in cases where there has been a change in circumstances relating

to the proper development of the area, revoke or modify a planning permission. However, it is not clear what constitutes a "change in circumstances". We gather that the change would need to be a matter of considerable significance, such as the adoption of a new development plan with major new objectives, or the determination of a big new bypass route which traversed sites to which permissions applied. It is a power which is rarely exercised, perhaps because of the ambiguity in this regard and also because there are implications for compensation (Section 59 1(a) of the 1963 Act).

By-Law Approval: Independently of the planning permission *per se*, prospective developments must also meet performance and safety standards *vis-à-vis* structural soundness, fire hazard, road construction, etc. Setting these standards is at present a local responsibility. However, there are national draft building regulations which define the norm for many, but not all (e.g., road standards are not included) of these aspects. If the regulations are approved, their implementation will become mandatory throughout the country.

In Dublin and Cork, and a few other areas, by-law approval must be applied for separately. This is typically done concurrently with the filing of the planning application. However, a considerable volume of construction-related activity requires only by-law approval. The approval process is quite separate; planning permission could be granted, but by-law approval withheld. There is no appeal against a decision on a by-law application. When the Building Regulations made by the Minister under Section 86 of the 1963 Act are in force, there will be provision for the relaxation of regulations in particular circumstances, either by the local authority or, on appeal, by the Minister. While the technical specifications to be met are published, it is impossible to be inclusive in this regard, so that each situation has to be judged on its merits. There is no time-limit within which a decision on by-law approval must be made. By-law approvals cannot be granted retro-actively, while planning permission can.

In some other local authorities, considerations dealt with under by-law approval in Dublin and Cork have been included as part of the planning permission process. However, An

Bord Pleanála has taken a jaundiced view of conditions imposed on planning permissions which they feel should be dealt with under building regulations, their attitude being that the planning system is designed to regulate land use, not details of construction.

Enforcement

The most salient enforcement provision arises, not from the planning laws *per se*, but from the requirement on the part of most lending institutions that a structure have full planning permission and by-law approval before they will consider lending money for its purchase. Therefore, if an individual builds without permission, the potential market will be confined to those purchasers who have ready cash. For a landowner who plans to use the structure(s) himself, and who does not care about the possible reduction in future marketability, on resale, this provides little disincentive. Jennings (1981) reports that in recent years between 20 and 40 per cent of houses were purchased without a mortgage. However, since most property-owning individuals will be anxious to ensure maximum future marketability, this requirement on the part of lending institutions probably means that for most "new" developments, planning permission will be sought.

The planning laws provide for a procedure whereby a "warning notice" can be served on the owner of land or any other person concerned, when land is being developed or likely to be developed for unauthorised purposes. If the warning notice is not complied with, a fine of up to £250 is payable. The maximum penalties for a continuing offence after a first conviction are a fine of up to £100 per day, or up to 6 months imprisonment, or both. There is also provision for the serving of enforcement notices on those who have carried out unauthorised development. Conviction carries a maximum fine of £250 and a fine of £50 per day if there is a continuation of the offence. The development must already be in place before the enforcement notice process can be initiated.

Any planning authority or third party can secure a High Court injunction to prohibit unauthorised development, or to secure compliance with a planning permission. However, the applicant can be held liable for costs if it turns out at the hearing of the action that the granting of the injunction was not warranted.

Taking-in-Charge: When a housing estate has been completed, the developer transfers it to the charge of the local authority so that street cleaning and maintenance, garbage pick-up, etc., can be undertaken. However, the local authority can refuse to do so if the developer is deemed to be not in full compliance with the planning permission and by-laws requirements. This provides a further incentive to the developer to conform. The criteria applied in deciding when a development is ready to be taken-in-charge can give rise to some dispute, an issue we address briefly in a subsequent chapter.

Some of the enforcement provisions function automatically and are effective. Others require an initiative by the local authority and are only effective if both the will and the means to act are present.

The emphasis is on negative incentives. There are few if any "carrots" provided to encourage positive behaviour. One important exception to this is the provision in the 1982 Budget passed by An Dáil in March which grants income tax relief in respect of the cost of repair and maintenance of buildings which are intrinsically of scientific, historic, architectural or aesthetic significance. To qualify, a building must be capable of conservation and there must be arrangements for reasonable access by the public to it.

Chapter 4

Compensation

Key considerations in land-use planning are the circumstances and extent to which a local authority is liable to compensate private landowners when the latter are precluded from capturing the maximum value for their land. Because of its significance, we devote a chapter to a review of this critical dimension as it applies in Ireland.

Compensation for What to Whom

The Irish Constitution says that the state shall “pass no law attempting to abolish the right of private ownership . . .” but it continues by saying that the state “may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good”. While it is our habit in constitutional democracies to make decisions by reference to such statements, they in fact provide little guidance. Lawyers try to find legal principles to explain why one type of loss is classified as private property whose loss of value by a public action requires compensation and another type does not. (These are summarised by Ackerman (1977), having been critiqued by Sax (1971).)

Economists too have tried to formulate theories to guide compensation. If it is a pecuniary externality from a market demand shift, for example, no compensation is suggested. But, if it is a technological externality such as pollution, there is a suggestion that the government should require compensation to be paid (by whomever created it – private or public.) Except, of course, if transaction costs are insignificant in which case the efficient result will take care

of itself if markets are permitted. Economists speak of eliminating externalities via facilitating market exchange or government direction.

But, both mainstream legal and economic analysis miss the essence of the compensation problem in a world of interdependence. Public choice theory focuses attention on the reciprocal character of the opportunities of conflicting parties. If one person has the opportunity to pursue their interest it often means that the other party is exposed to a lost opportunity. In the land-use application, for example, we can observe that if Alpha has the opportunity to build flats on a former sports ground, it means that neighbouring parties bear the cost of lost open space and increased congestion. If development were prohibited and compensation paid to the sports ground owners, it would be a cost to whom-ever pay the compensation. And conversely, if the neighbours' environment is to be maintained, it means a lost opportunity for the developer. In an interdependent world, it is not possible to make everyone better off. Externalities can not be eliminated, only shifted. If a particular loser is compensated, it just changes the name of the loser, for the payment of compensation always lessens the opportunities of someone. As Samuels (1981, p. 204) puts it: "To make Alpha's interest a cost to Beta is to refuse to allow Beta's interest to become a cost to Alpha. It is impossible to compensate all losers. What is important are the factors governing which injuries will be identified and compensated". In this context it might be added that what is also important is how this choice affects the character of our urban areas.

Irish Planning Law and Compensation

Let us look at how Irish planning law treats different situations of land-use change involving incompatible uses. According to Section 56(1) of the 1963 Planning Act, the planning authority is *not* liable to pay compensation for refusing planning permission in the following instances (among others):

- (i) For any development that "consists of or includes the making of any material change in the use of any

structures or other land". As we shall see, this provision received judicial interpretation.

- (ii) For developments judged to be *premature* in relation to deficiencies in water supplies or sewerage facilities.
- (iii) Because a road layout for the area, or part thereof, has not been indicated in the development plan.
- (iv) The proposed development "would endanger public safety by reason of traffic hazard or obstruction of road users", or would "tend to create any serious traffic congestion".
- (v) When erection of any advertisement structure is prohibited.
- (vi) When the refusal is necessary in order to preserve "any view or prospect of special amenity value or special interest", or to which Special Amenity Area Order applies.
- (viii) When the proposed development would injure the amenities, or depreciate the value, of property in the vicinity.

We can illustrate the import of these by reference to a few cases. First, consider the case of an application for development permission made to the local planning authority to build a residence or flats on agricultural or open space land. If permission is refused, and the community wishes to preserve the open space and would prefer development at another location, the local authority may be liable for payment of compensation.

In *re: Viscount Securities Ltd v. Dublin County Council* (1978) 112 ILTR 17, permission had been refused for development of land on grounds that the area was zoned for agriculture. It was established in the course of an appeal to the Minister that water and sewerage services were available to service the houses proposed to be erected on the land in question, so that the absence of such services could therefore not be used as a reason for refusal of the permission on appeal. When a claim for compensation was lodged and the matter came before the Property Arbitrator, the planning authority pleaded that compensation should be barred because of the provisions of Section 56 (1) (a) of the 1963

Act. The Arbitrator stated a special case in the matter to the High Court, and the planning authority's claim was rejected. Nowlan (1978, p. 83) says that this decision "makes it clear that permission to develop agricultural land cannot be refused without risk of compensation . . ." unless one of the other situations exempting compensation in Section 56 of the Planning Act are met. The wording of Section 56 (1) (a) is rather vague and says compensation is excluded "in respect of the refusal of permission for any development that consists of or includes the making of any material change in the *use* of any structures or other land" (italics added). Whatever was originally intended by the phrase "use" in this context, the meaning has been supplied by the Court in the Viscount Securities case; it does not include works. From our discussions, we gathered that the Court's interpretation is one which would be supported by the majority of Dáil members. Compensation is based on the reduction of the value of the land which is caused by the planning permission decision. However, there are a series of rules which have to be applied in determining the magnitude of such reduction.

Commentators such as the late Edward Walsh (1979) point out that the effect of applying these rules is that liability for compensation is not the difference between the value of the land in agriculture and its maximum potential value for office or industrial use. This means that an owner of open space is entitled to realise some gain above its agricultural value but the rest of the community need not lose to the extent of maximum development of the land.

In the open country this gets a bit difficult to interpret. Assume, for example, that the IDA has made a decision to acquire open land in a rural area and an actual bid has been offered to the farmer. Further assume that development permission has been refused by the local authority in order to protect the beautiful but not unique rural landscape amenity of the area. Unless a strong case can be made on grounds, e.g., the development would be premature in relation to water and sewerage services, the authority probably will be liable for compensation, but how much? It

is common for industrial site bids to be more than marginally higher than agricultural values. Is the farmer entitled to realise the actual bid in hand or only the amount indicated by sales for farming purposes in the area? Since we are not lawyers, and our purpose is not to advise clients but only to indicate the issues, we shall not try to answer these questions.

Contrast the liability for compensation in the above case to the situation of refusing permission to alter the use of an existing building. This requires no compensation. Nowlan (1978 p. 83) comments that in *Central Dublin Development Assoc. Ltd. and other v. the Attorney General* Mr Justice Kenny "accepts that permission to make a material change of use of buildings can be refused without giving right to a compensation and such a restraint on property rights is not unconstitutional."

What is the principle involved in saying that a farmer or sports ground owner under certain circumstances is entitled to compensation if they cannot build flats, but an owner of an existing building cannot receive any compensation if denied the opportunity to change its use?

Perhaps it has to do with the size of the loss inflicted on the owner by the refusal of the opportunity to change use. It might be the usual case that the appreciation gain from agriculture to residential use is greater than from modifying the use of an existing residence. But, if the size of the loss to the owner is to be the guide, then why not state it as the rule? One could imagine that in some cases the lost opportunity to alter the use of a building might exceed in value that of developing open land. Perhaps no explicit reference to size of gain can be admitted because it might raise embarrassing questions about income distribution justifications.

Further, consider the case of replacing a residence with a new office building. In practice, a community which wishes to preserve the residential character of a neighbourhood may refuse development permission; if it gives as the reason that it would reduce the residential amenities of adjoining properties, there is no sustainable claim to compensation. Note that if the claim were simply a broad concern for urban

congestion, there might be compensatable damages.⁵ In this case there is a common connection between a more dispersed effect and damage to specific neighbouring property-owners which can be prohibited without compensation. Apparently, under some circumstances, if agricultural to residential development causes a perhaps individually small, but potentially large, aggregative impact on visual amenity, and stimulates ribbon development and undifferentiated urban sprawl, the local authority must pay compensation to avoid it; but if it affects the value of a few neighbours' properties, it may be stopped without compensation.

This latter provision is often justified by saying that one can use one's property as one wishes as long as it does not affect other people in the use of their property. But, by begging the issue of what is the extent of other people's property, the Constitution provides little guidance. Could the local authorities say that the conversion of a sports ground to flats depreciates the property rights not only of neighbours but the opportunity of all residents and visitors to enjoy an open city? The law, therefore, is concerned with property rights as "defined in law," and not with matters such as the "right to a view," which is not a property right in this context. The fact that the issue is seldom raised in this fashion is as much witness to patterns of selective perception as to conscious choice among conflicting interests. The point is that when interests conflict, it is not possible to act without affecting others. Whether it affects others' "property" or not turns on a policy decision as to how "property" is defined.

It is a matter of physics to determine if Alpha's building affects Beta's opportunities, but it is a matter of policy whether Beta's interests are to be accorded a property right and thus a limit (cost) to Alpha rather than a cost to Beta.

⁵This is to be contrasted with the situation where planning permission is refused on the basis that the development proposed would be a traffic hazard, an obstruction or cause *serious* traffic congestion; these, as we have seen, are non-compensatable reasons for refusal.

Whether the Beta licks his/her wounds or through government pays compensation to Alpha, the cost is borne for Alpha's opportunities. And if the rights run the other way, and Alpha accepts the lack of development or buys out Beta's interest in order to build, the costs are always there no matter where the Courts decide to let them fall.

In another instance, what about advertising signs? Permission to place advertisements can be refused without liability for compensation. If one observes rural Ireland from the roadway, the effects of this policy can be seen in the relatively uncluttered vistas. The case of two-storey neon signs in towns and cities, however, is a different matter. Even though the same statute law applies and local planners are not without resolve to avoid a "signed" jungle, some members of the public, and even more so the traders, do not see what is wrong with such signs. When prosecutions are taken for unauthorised signs, the district judges seem to agree, and the traders are allowed to keep their signs upon court appeal often enough, or are fined such derisory amounts, that many planners have stopped trying to refuse permission for their display.

There are several other exemptions to the requirement of compensation for development planning refusal. Two commonly used reasons are noted. One has to do with premature development by reason of inadequate water or sewer services or yet unplanned road development. In practice what this means is that a local authority may implement phased development. It may indicate an area where it wants the next group of houses to go and where it is prepared to show road layout and water and sewer availability. The next ring of development may also be implied. There is no reason that the outlying area cannot or will not be serviced, only that the time is not now.

Local authorities often use the inadequate water and sewer services as an excuse for denying permission, hoping to avoid compensation, when their real reason is the wish to preserve open space, or prevent ribbon development along existing roads. In many cases this has worked, but on appeal to Bord Pleanála this provision which avoids com-

pensation is sometimes stricken, even if the Board upholds the refusal with other compensation-creating reasons. The Board probably finds little evidence to indicate that the refusal was related to prematurity rather than open space objectives, when the land in question is zoned for agriculture or open space. As the advice and guidelines provided by the Department of the Environment in relation to development control point out: (Department of the Environment (1982) p. 28):

Prematurity as a reason for refusal is not, however, appropriate except in cases where there is a reasonable expectation that the service in question will, in the future, be provided. To refuse, as premature, permission for the building of an isolated house in a rural area where there are no public water supply and sewerage services should not, for example, be contemplated *unless there is a plan for servicing the area in the future, or a reasonable prospect that such a plan will emerge* (emphasis added).

The law could be interpreted as saying that a landowner near an urban area is entitled to a claim on the public treasury sufficient to make the land useable. In this interpretation, the owner has the right eventually to receive an appreciation gain made possible by public investments in water, sewer, drains and roads; if the owner does not receive these entitlements translated into development projects, he can get it via compensation.

While this entitlement to claim seems to accrue regardless of whether one lives on a scenic river bank, swamp or well-drained plain around a city, it apparently does not apply to all landowners. A request to build a warehouse on an isolated narrow sub-standard road was refused by the local authority and it was upheld upon appeal to Bord Pleanála. The Board in a common sense judgement could feel that there was no expectation that this isolated road would ever be improved. In effect, this owner is not entitled to a public expenditure sufficient to make his land useable for a warehouse. There is some implication here that it is a matter of cost. But, if "excess" cost is the basis for decision, then a landowner on an area that is costly to lay pipes in, or to provide drainage of, or that would create environmental costs for the com-

munity, could also be denied development permission. It seems that, in practice, if an area is very costly to service, the latter will not be undertaken and permission for intensive development will be refused, on the basis of a non-compensatable reason. However, this rationale is not explicitly recognised and there does not seem to be a consistency in the manner in which this aspect is treated. For example, in 1982 members of Dublin County Council approved a number of re-zonings from agriculture to development of land which was unserved and which council officials argued would be very expensive to service. It is not clear at this stage whether landowners of these areas will be entitled to compensation if this property is left "permanently" without services, or whether such (expensive) services will have to be provided.

The final example to be noted here is that development may be refused with no expected compensation if it creates a traffic hazard. Actually, that was the language of the above warehouse refusal. Public health and safety is a long held reason for public regulation creating costs for entrepreneurs. The eminent legal commentator the late Edward Walsh (1979) argued that the above provision excluding a claim for compensation "may be said to be justified by the fact that since the community must pay the compensation, it would not be equitable that it would be so in cases in which the granting of permission in the form sought would inflict an *injury* upon the community"; (emphasis added). "It is not in the public good that houses should be constructed and occupied without satisfactory sanitary services or that developments should be permitted which would give rise to traffic hazard . . ." p. 87. But, as we have seen, interdependence always leaves us with *injury* (costs), the only issue is whose interests are to be upheld by leaving costs for others.

The point is not a defence for unsafe conditions, but to raise the issue of who bears the costs for avoiding them. People will have sewers if houses are allowed, but is a landowner where services are costly because of construction costs or because of the opportunity cost of lost scenic values entitled to the necessary public investments? Even

a road hazard may be corrected by sufficient public investment. It is an empty guideline to say that we can decide on whom to compensate by noting if they avoid creating (costs) to the public who pays the compensation. This can only be applied by selective perception which accepts certain costs and conveniently ignores others.

Summary

The components of Irish law can be summarised by noting that denial of permission which creates losses for landowners is not compensatable if it involves a change in the use of an existing building, advertising, changes from residential to office use, or if it creates a traffic hazard (among other reasons) but the loss is compensatable if it requires the retention of agriculture or open space use, when the land is serviced. If the land is unserved, but zoned for agriculture, then the local authority cannot claim "prematurity" and will have to allow low density (septic tank) development, or face compensation claims.

It is not yet clear what will obtain in this respect if land is zoned for development, but is unserved and is expensive (relative to other areas) to service. If the central government and/or local authority refuse to finance such services, can landowners claim compensation? The courts have yet to decide on this issue, which is likely to arise first in County Dublin.

The point is not to find anomalies, for the logic of the analysis has been to show that it is impossible to prevent the occurrence of damage (uncompensated loss of opportunity). The usefulness of the exercise then must be to raise a question of whether the particular pattern of anomalies is the one citizens want in terms of the resulting income distribution and environmental quality.

PART III ANALYSING THE PLANNING PROGRESS

Chapter 5

Distribution of Gains and Losses

The workings of the planning process inevitably involve "creating" great gains for some landowners and losses for others. For purposes of analysis it is important to have some knowledge of the processes which bring about these distributions and an understanding of their implications. We turn again to the issue of liability on the part of the local authority for compensation in cases where it refuses a planning permission. This time we focus especially on the influence which such liability has on the strategic behaviour and decisions of the planning authority. We then look respectively at the influence of the following on landowner gains and losses: a form of exempted development which is especially difficult to control, zoning and density control provisions, planning and by-law conditions and the housing laws.

Compensation and Planning Permission

The grant or refusal of planning permission is the bottom line in determining whether a landowner has the option to change land use. The permission ultimately determines the degree to which a proposed change may affect the interests of neighbours and third parties generally. Also, the permission determines which owners are able to capture the maximum increases in land value to which access to public services, and location in general, give rise.

The Planning Acts give the local authorities a great deal of discretion to allocate these options to change land use. But, there are substantial limits to these discretions contained in the legal requirements to pay compensation in specified

instances as outlined in the previous chapter. How has this worked in practice? Some idea can be gained from the fact that since the 1963 Act was passed, Dublin Corporation has only paid out £135,174 of which £60,800 was paid in the last five years (*Irish Independent*, 31 March, 1981). This suggests that the actual payment of compensation is no problem, since the amount is insignificant when compared to even the development value of a single parcel. The real point, which is evident by interview and news quotation, is that local authorities grant permission for development of open space to avoid liability for compensation even where they oppose development.⁶ Yvonne Scannell (1976, p. 23) observed that "local authorities . . . are reluctant to use their control power by prospects of paying compensation or being served with purchase notices. No local authority has sufficient budget to ignore these probable claims".

Planners interviewed expected that, as a result of the Viscount Securities case, it may not be possible to maintain undeveloped areas now included in zones designated as high amenity, agricultural or greenbelt. This means that creating villages and new towns around expanding metropolitan centres as distinct and separate entities will be difficult. Cities can be expected to sprawl with no intervening open spaces to tell the traveller when one community is left and another entered.

For example, the County Dublin Development Plan calls for distinct centres for several new towns, e.g., Tallaght, Blanchardstown, separated by green areas. The same is the case in the 1979 *Cork County Development Plan* which has a satellite town strategy (p. 37). For example, Ballincollig to the west of the city of Cork could be expected to grow. Some extension of utility lines from Cork could be expected to serve this area. Once these lines are in, however, and have "spare" capacity, landowners between the satellite and central city will want access and permission to develop their open land. It would be difficult to refuse permission on grounds

⁶For example, Dublin Councillor Eithne FitzGerald referred to the "Hockey pitch in Sandymount which was conceded for development under threat of compensation claim."

that development was premature because of non-availability of public services. The local authorities face the high probability of liability for compensation if they try to maintain their satellite town policy. Public purchase of the intervening lands is not possible fiscally.

Special Amenity Area Orders

The Planning Act (Section 42) does provide that, if the local elected council issues a Special Amenity Area Order and it is subsequently approved by the Minister for the Environment, then refusal of development permission for open space is non-compensatable. Likewise a Conservation Order can be issued, (Section 46), and where the order states that, as respects any flora and fauna, they are of "special amenity value or special interest", no compensation shall be payable in relation to them.

Two examples of the manner in which these provisions were drawn on by local authorities illustrate the issues. There is an area in County Kildare called Pollardstown Fen. It is a 220 hectare alkaline marsh unique in Ireland (Reynolds, 1980) and includes some rare flora. The County Council issued a Conservation Order in 1974, but this was appealed to An Bord Pleanála, which annulled the order for legal and technical reasons. In 1978, Kildare County Council considered passing a Special Amenity Area Order on the fen. When it became clear to landowners that no development would be allowed and no compensation would be payable, the political pressure became intense. The owners in some cases illustrated their anger by setting fire to the marsh, destroying some of that which the Council had wished to preserve. The central government (Department of Fisheries and Forestry) has now purchased some of the land (Doyle, 1983).

The only case when a Special Amenity Area Order was actually made was by Dublin Corporation for Dublin Bay on April 4, 1977. After a public hearing, the Minister in November 1981 refused to approve it.

He specified the main reasons for his decision:

1. The Order did not set out, in appropriate detail, "particular objectives for the preservation or enhance-

- ment of the character or special features of the area, including objectives for the prevention or limitation of the development in the area”.
2. The Order includes provisions which are ambiguous or conflicting, e.g., the reasons stipulated for including particular areas in the scope of the Order.
 3. The Order was based on a development plan which has been superseded by a new plan.
 4. It provides for the location of potentially incompatible uses in parts of the area, without making provision for their separation or management.
 5. It is not considered that certain housing areas included in the Order can be regarded as of outstanding natural beauty in the sense of the relevant statutory provisions.
 6. The Order is insufficiently detailed to provide the protection for amenity which would be expected from it.

He went on to indicate that he felt that a Special Amenity Area Order (or Orders) could be a suitable planning mechanism for Dublin Bay, and provided detailed commentary and advice concerning the scope and content which such an order should contain in order to receive Ministerial approval. The issue obviously touches on fundamental allocative property rights. It may be acceptable to restrict the options of a terrace owner to convert to offices for example. The members of this class of owners do not easily see themselves as a political group, but if all owners in a geographical area lose their rights, while those just over the line can still enjoy appreciation gain, it generates a different sort of political response. However, it is clear from the Minister's response that, in the case of Dublin Bay, the objection was not solely one of expediency, but of the proposed manner of implementation.

One of the motivating forces behind the 1963 Act was a concern for preserving the natural resources base of the tourist industry. Therefore there is a provision (Section 56(1)g) that allows permission to be refused without compensation if it is necessary to preserve any view or prospect of special amenity value or special interest. Note that the language refers to a view or prospect, not the general land-

scape, which might be of great beauty. The language suggests that if there is a unique point on a road where a waterfall is visible, then permission to build a house at that point, blocking the view, might be denied without compensation. But, if what is viewed (say a scenic river valley) were to be changed by development, then refusal may engender cause for compensation. Unfortunately, there is a paucity of published instances where the preservation of a "view or prospect of special amenity value or special interest" has been used successfully as a non-compensatable reason for refusing permission for development. Thus, it is difficult to derive from experience what comprises such a view. However, it appears to be the case that you cannot block a view if there is something noteworthy to see, but you can alter the landscape itself unless the public wants to pay the developer for the privilege of maintaining it. No exhaustive survey of reasons for planning refusals is available, but compensation-creating reasons for preserving high amenity are common, but the opportunity to claim that a unique view or prospect would be blocked are few.

Exempted Development

The ability of local authorities to preserve underdeveloped land in rural areas is also affected by the fact that most local authorities give especially favourable consideration to applications for sites to be occupied by a farmer or member of the farm family. This is intended to meet the needs of those working the land. However, in practice, a farmer can apply for development permission and subsequently sell the site or completed house to a non-farmer. This practice, for example, has resulted in non-farm houses being built in the uplands of Kildare and South County Dublin. It is a difficult administrative matter to prove a farmer's intention at the time of application.

Zoning and Density Control

When the elected councils establish the development plan, they in effect allocate the high valued uses among competing

sites. The council, for example, has the power to draw a line and say that houses on one side are allowed to be converted to, or replaced by, office uses, with subsequent capture of higher land values by some and not others, as well as exposure of neighbouring houses to costs of higher density adjoining sites. Over time, as development plans are updated, the usual process if any change is made is to move a site to a higher valued category. But occasionally, objectives change in such a manner that sites are down graded. For example, the 1980 Development Plan for Dublin Corporation down graded a formerly specified high density office zone to a mix of 60 per cent residential and 40 per cent offices. While there is a growing demand for apartments in the central city, this would mean a substantial capital loss for any buyer who paid a value commensurate with the former full office zone. (However, in one well-publicised case in Dublin (Earlsfort Terrace) the "old" planning permission was extended, allowing 80 per cent offices (McDonald, 1981).)

A different situation arises in cases where land was purchased on the presumption that the prior (relatively high intensity) development would be allowed, but permission had not yet been granted. In such cases, the prospective developer stands to make a capital loss under the new (less intensive) zoning designation.

Planning Conditions

The Planning Act allows local authorities to add conditions to planning permissions (Section 27(2)). In general, these conditions, while creating costs for developers, are not compensatable (Section 56, (1)(c) and (d)). These include, for example, regulating the size, height, floor area and character of structure, building lines, parking, aspects of structures such as design, colour and materials, the number of structures, reservation of open space, road layout, landscaping and preservation of objects of historical interest, views and prospects of natural beauty, trees, existing public rights of way, to name some of the items. The power to add conditions provides, for example, the opportunity to continue the Georgian architect-

tural character of an area or to emphasise a horizontal line to make buildings on shorelines less obtrusive.

The power to add conditions also introduces the possibility of strategic bargaining on the part of the local authority which can modify the nominal rights which the developer might possess under the kinds of refused land-use change requiring compensation. A local authority may prefer to keep an area in open space, but may give permission to avoid compensation claims. Yet, it has sufficient flexibility in placing conditions that the developer may accept retention of more open space than is otherwise the practice for similar developments where the compensation issue does not arise. Housing estate developers report that some planning authorities ask for land for roads which serve regional needs rather than the needs of the developers' house occupants. Under Section 55, the developer may claim compensation if the conditions are not reasonable. But, the authorities' bargaining power comes from a marginal grey area when it is difficult to prove that the condition is unreasonable. In addition, even if the developer is confident of proving in court that a condition is unreasonable, the cost of doing so may prevent pursuit of the nominal rights.

To illustrate how bargaining may proceed, consider the case of a housing development in County Dublin (*Council Minutes* of 10/10/1977). The applicant requested permission to develop houses and flats on 21 acres. The Council had previously made the decision to acquire 4.5 acres in the area for open space purposes. So when the development was proposed, the Council took the opportunity to impose a condition providing for 11 acres of open space. This was more than the usual standard requirement for a housing estate. The conditional permission was appealed, but upheld. However, support upon appeal does not remove cause for compensation. The developer subsequently filed a compensation claim of £550,000 under Section 55 as the amount that the value of the property had been reduced by the condition. This amounts to £50,000 per acre for the 11 acres of open space. After the Council was advised by Senior Counsel that they were liable for some compensation, and an Official Arbitrator to deter-

mine the amount had been appointed, the Council entered into negotiations with the developer. The developer agreed to retain 6.5 acres as public open space plus 2.5 acres around an existing and retained manor house on the site. The Council agreed to pay £30,000 compensation. This figures to be £5,615 per acre for the 6.5 acres. The Chief Valuer advised that this was very good value. Indeed, the Council had paid £17,090 per acre for some nearby land previously.

The question is, why was the developer willing to provide the open space above usual requirements for a bargain price? The authors have no inside information on strategic bargaining by the public authorities. The result suggests that they can effectively utilise the flexibility to impose conditions to their advantage.

Another illustration is provided by an application to build 72 houses on 132 acres (County Dublin Council Minutes 14/7/1980). The permission was refused because it was in an area for preservation as high amenity, and conflicted with preserving views at a riverside site, plus creating traffic congestion and non-availability of water supply. The refusal was appealed but upheld, citing only the compensatable reason of high amenity preservation. The developer subsequently filed a claim for compensation of £150,000. Negotiation then followed. The developer also owned an adjoining parcel of 20 acres. The Planning Act provides (Section 26(2)) for inclusion of adjoining lands owned by the applicant in the area subject to conditions. The developer agreed to a condition prohibiting the development of the adjoining 20 acres plus ceding, free of charge, land for road widening.

Again, why would a developer agree to keep 20 additional acres as open space to achieve permission to build on an area designated as preserved for high amenity reasons, when Senior Counsel for the County Council advised that the County would be liable for compensation if the development was refused?

Finally, there was an application for planning permission for 30 houses on a (former) Pitch and Putt course in South County Dublin which was zoned for amenity in the Development Plan. On the basis of a previous decision by An Bord

Pleanála, it was judged that the Council would be liable for compensation if permission was refused. The matter was resolved when the applicant reduced his density to 24 houses, and on that basis, permission was granted (*Council Minutes* of 8/3/1982).

Along the line to final approval and actual servicing of sites there are a number of opportunities for the public authorities to exercise discretion which can cause developers increased construction or delay costs. Some of these matters are contained in By-Law Approval, which is in addition to Planning Permission. Some of these detailed building requirements are incorporated into standards whose extent is easily predicted and allow little room for interpretation. Others are site specific in application, and allow a considerable range of interpretation by a local authority which can be helpful and accommodating or obstructive and delaying.

All of these things are interactive and cumulative. If a developer is intransigent and insists on formal rights in a particular instance (say files for compensation for a condition requiring ceding of extra land for open space or a carriage way), the public authorities may utilise their power to exact costly marginal conditions on future or concurrent projects by a larger builder.

These observations should not be misinterpreted. It is not implied that public authorities use these tactics of cost increasing threats frequently and directly. They are more subtle and largely remain as background possibilities which heighten acceptance of the authorities' requests.

Housing Laws

One class of people that is potentially affected by change in use are those who rented housing space in a building which the owner wishes to convert, or tear down and replace, with non-housing uses. The Housing Act, 1969, Section 3 requires a developer to obtain permission to demolish a habitable house or change its use. The Act (Section 4) allows housing authorities to add a condition requiring the replacement of the former accommodation. So, if a low rise building of three

flats is replaced by a high rise office building, it will sometimes have three flats on the top floor. Their use in a block of offices may be non-marketable or objectionable to the owner. In practice these units, equipped with kitchens, etc., have been used for employee lounges, etc., rather than housing. It is one thing to check plumbing in a building plan but another to enforce actual use.

The objective of keeping an area populated so that it is not deserted after office hours might be better served by mixing buildings rather than uses within a single building, but this again is hard to achieve by requesting one parcel owner to develop for lower profit housing while the neighbour has high land value producing offices, but it does tend to happen with large developments.

The rights of (previous) tenants can be a barrier to assembly of parcels for large developments and therefore they can be a factor in land-use change.

The Housing Act 1969, Section 4(3)(c & d) enables the housing authority to place a condition on a demolition or changed use of former housing which requires the developer to make a payment towards any costs incurred by the housing authority in providing for the rehousing of the displaced tenant; if it is a dwelling not subject to rent control, the developer may be required to pay the tenant for any hardship in securing alternative accommodation.

This is a matter of negotiation and introduces delay and uncertainty. In England, this payment is a matter of formula related to the rateable value of the building. A developer spoke of allowing a temporary use of an office in a building scheduled for demolition. This was intended as a charitable act because the occupant was a voluntary social service organisation. When he was ready to build, he was required to provide alternative office space for the organisation.

Decisions concerning demolition or change of use for a house can be appealed by the developer to the Minister for the Environment, Section 4(6). There is no provision for third party appeal, which has implications for architectural preservation to be discussed in a later section. (See *Taisee Journal*, Vol. 5, No. 2, 1981, p. 34). There is likewise no pro-

vision for compensation in the event of a refusal of permission under the 1969 Act. However, if the house in question has been listed for preservation in the Development Plan, then a separate permission must be sought under the Planning Acts.

Chapter 6

Procedural Controls

In the previous chapter the nominal ownership of development options was discussed. The key legal provision was seen to be what restrictions to development could be placed by the local authorities without creating liability for compensation. The compensation rules seem to give most of the options to the landowner in the case of open land particularly so when it has access to services. In practice, it was noted that the local authority exerted more influence than might be expected from the nominal rights. It was suggested that part of its countervailing power came from its discretion in giving permission with conditions. This does not stop open space development, but it can modify it in the direction of the preference of the local authority.

In this chapter, some further ability of a local authority to influence development beyond its nominal rights is explored. It will be found that all nominal rights are modified by the costs of securing them in application. A party may have a right to develop in their preferred way, but if it costs too much to insist on that right, the preferred development may be considerably altered in practice. One major cost may be the delay involved before a final ruling affirming the developer's rights can be secured. It is not suggested that public authorities or the third party public deliberately use delaying tactics in all cases to enlarge its ability to alter developer's plans. Some delay and transaction costs seem to be inadvertent aspects of the public administration of complex claims.

Time Limits and Delays

Section 26(4) of the Planning Act requires the planning authority to act within two months of receipt of an application for development permission. However, during that period the authority may request further information, which gives an additional two months beginning upon receipt of information. One observer notes that "requests for additional information, which invariably arrive on the last day of the second month, are seen by developers as a device often to extend the time for a decision" (McKone, 1980, p. 31). For complex developments, the two month period may not be sufficient. In any case, most are acted upon during the last week. (If no action is taken by the last day of the period in question, then permission is regarded as having been given. This is the reverse of UK law.) There is a provision in the legislation for extending the two months period, by agreement with the applicant, but this provision is infrequently used.

The decision of the authority may be appealed to An Bord Pleanála by the applicant within one month upon receipt of the decision, or by third parties within 21 days of giving the decision. There is no time limit given for the appeal board to act. This will be discussed further below in the subsection on appeals.

Conditions Subject to Future Administrative Actions

The power of the planning authority to give permission with conditions has already been discussed. Their bargaining power derives from their ability to use this power in ways which add to development costs. This is, of course, limited ultimately by a rule of reason. As will be discussed below, the applicants may appeal what is considered unreasonable. The point to be noted here is the opportunity for delay when the condition takes the form of meeting requirements to be detailed by another department such as the fire or sanitation officer. An increasingly common condition found in development permission is that approval of the fire officials is to be

obtained. Such a condition is allowed (Department of the Environment, 1982, p. 43): "Pending the making of the Regulations, it is open to planning authorities to request that consultation take place between the developer and the fire authority to ensure that the appropriate fire prevention devices, etc. are provided". This can create further uncertainty and delay. The developer has permission, but has some unknown further obligation to meet. This may be particularly troublesome for large developments with external financing. Such conditions are not imposed by An Bord Pleanála.

By-Law Approval and Building Regulations

After planning permission is obtained, the developer must get by-law approval for building details in the Dublin area and Cork. A number of developers indicated that this was their biggest problem area with the regulatory system. One developer reported that there was no time limit in acting on a by-law submission. Another indicated that it was possible to file an intent to build, which, if not acted upon, constituted approval.

One developer of housing estates reported that the planning authority would use delays on aspects of one project to get concessions on a new application. Another said this was no problem because the public authorities were not that efficient or well organised. A survey of builders by An Foras Forbartha⁷ found a respondent who claimed that a local authority used by-law approvals to get things from the developer which were not strictly related to by-law matters of materials and engineering.

An apartment developer claimed inflexibility in applying by-law requirements. The access road and footpath were required to be of a certain width, but at one point in the road, they had one foot less than the requirement. Without entering into a debate on the desirability of meeting this standard to the letter, it appeared to this developer that no

⁷O'Rourke, Jennings and Pigott (1982).

official wanted to take responsibility for making a judgement as to what was close enough; requests for waivers like these get refused out of hand. The local authority has two months to act on a request for waiver. There is no appeal against by-law decisions.

The Planning Act (Section 86) provides that the Minister may formulate building regulations relating to the Public Health Acts. A draft of Building Regulations has been in circulation for many years. After the Dublin Stardust disco fire disaster in 1981, the Minister for the Environment requested local authorities to use the draft as if it had the force of law, but as of December 1982 the regulations have not been laid before the Dáil and the manner of their implementation is not clear. These regulations will take precedence over any local by-law regulations. Some provisions, however, might contain an option for waiver by the local authorities.

Flexibility in applying by-law regulations is a particular problem for those who wish to re-model and preserve existing buildings of architectural merit. It is very difficult to meet exactly the letter of the regulations and maintain the desired aesthetic qualities, particularly with respect to fire provisions. Again the issue is one of what is close enough. In many cases, the fire conditions of the proposed re-furnished structure may be a substantial improvement in comparison with the existing building, but still be short of new building standards. It is acknowledged that judgements are even more difficult in this area after the public reaction to the Stardust fire disaster. The easiest thing for a fire official to explain is that no development was allowed except in conformance to standards. It is more difficult to explain that a trade-off was made for a slight fire risk to obtain the viable retention of outstanding old buildings.

The Cork Local Development Plan (for St. Lukes area, 1980) observes that "the widespread disregard of the Planning Acts and Housing By-Laws contributes to the decline in the standards of accommodation in the area". It was observed that many houses had been converted to flats, but few applications for permission had been made. It might be expected that some people might fear that city planners might

prohibit flats. Others might fear that they could not meet by-law requirements. In Dublin, an architect reports that he tried to get planning permission for conversion of a house to offices. This apparently was no problem, but a condition would require approval of the fire official. One of the two required exits was across the roofs of adjoining buildings and did not meet the regulations. The fire official was reported to have said that he could ignore the current usage by default (it has been in offices for some time), but if asked for formal approval, it would be refused. Again without debating whether the fire provisions were "good enough", it seems relevant to raise a question on the practical result of inflexible administration of standards. If people know they have no chance of meeting the standards, they will ignore them and hope that high detection costs will protect them. This difficulty seems to arise even though "substantial compliance" is a concept recognised by the Courts.

It is not possible to obtain by-law approval retroactively. This can create a problem when an extension is made to a house without obtaining permission. When the house is to be sold, a building society is reluctant to give a mortgage without by-law approval. So a practice has been developed whereby the societies will accept an architect's or engineer's certification that the structure substantially meets by-law regulations.

Water and Sewer Connections

Upon appeal, An Bord Pleanála may grant planning permission or remove an objectionable condition. But in the end, the connections for water and sewer must be made, and this can provide one more opportunity to delay a project and, by implication, to provide bargaining strength with regard to other projects by the same developer. However, the Public Health Act, 1878, gives a householder a right to connect to an existing sewer, so that the possibility of imposing delay in this respect is limited once planning permission has been granted.⁸

⁸In a decision in the High Court, Mr. Justice O'Hanlon ruled that the 1878 Act gave a *prima facie* statutory right to a developer (McKone Estates Ltd.) to seek connection with the sewerage system of Kildare County Council (*Irish Times*, 7 July, 1983).

Taking-in-Charge

When a housing estate is completed and all required public improvements are in place, the developer will request the local authority to take it in charge. This means that the public then becomes responsible for maintenance of streets, lighting, etc. (Garbage pick-up is undertaken as soon as residences are occupied.)

There can certainly be differences of opinion as to whether the developer has in fact completed the required improvements in roads, lighting and seeding of play grounds, etc. In fact, some local authorities have had to take action to force developers to complete facilities, even when the last house is finished. (See *County Dublin Council Minutes*, 12 May 1980.) A High Court mandatory injunction was granted in 1981 to the Council requiring a housing estate developer to complete the landscaping of an estate finished in 1975. ("Court Order Against Builder", *Irish Times*, 10 February 1981.) A housing estate in Sligo was left by the developer in a deteriorating state with a raw sewage pipe outlet, large holes in the road, open manholes and inoperative lighting (*Ireland's Eye*, RTE 2, 13 May 1981).

On the other side, a developer (Dublin) cites a case when the road inspector is on the site during construction and approves of what is being done in this regard. However, when the request to take-in-charge is made, the local authority says the road is not up to standard. These standards can be vague and shifting. The developer sometimes winds up making cash payments to get the estate taken in charge. In other cases the developer rebuilt an open space three times and could not get a precise statement of what was required.

In 1973, the Construction Industry Federation (CIF) requested legislation on what was called "the vexed question of the taking-in-charge of housing estates" (McKone, 1976, p. 14). The following CIF request was not heeded:

Regarding the issue of a development certificate . . . this should include provision that where development works . . . are completed satisfactorily and so proved by the developer . . . the District Court should order the Local Authority to take these services in charge.

Appeals to An Bord Pleanála

The first recourse for the developer or a third party who objects to a planning decision is to appeal to An Bord Pleanála. On large, complex cases, this process can take over a year before a decision is available. Appeals on hand for over six months at end of 1981 were 17.8 per cent of the total (see table below). Delay affects the nominal rights of developers. A developer may feel that a refusal or condition is not legal or reasonable and from past experience with similar cases may judge that the local decision would be reversed. But, in exercising the right to appeal, the developer must consider the transaction cost involved in delay. At high interest rates, delay is very costly (Brangan, 1977). This can be offset if sales and rental values are also inflating, but it does introduce an element of additional uncertainty in fluctuating markets. Builders and architects may also simply have a human preference for bringing things to a completion, even if there was no financial incentive to turn over one's investment money as quickly as possible. Those builders operating on small margins may face a cash flow crisis as construction is delayed on land purchased with borrowed money. Others, such as insurance companies with internal finance, may be less affected.

These transaction costs of delay are mentioned frequently by developers as the reason they do not appeal an unfavourable decision, even when they believe they might eventually win. This provides an opportunity for the local authorities to

Table 1: *Appeals on hand before An Bord Pleanála*

Date	Less than 3 months		3 to 6 months		6 to 9 months		Over 9 months	
	No.	per cent	No.	per cent	No.	per cent	No.	per cent
31.12.1981	1,061	48.7	730	33.5	258	11.9	128	5.9
31.12.1980	793	46.4	571	33.4	224	13.1	122	7.1
31.12.1979	878	43.7	580	28.8	320	15.9	233	11.6
31.12.1978	716	47.3	476	31.5	196	12.9	125	8.3
31.12.1977	686	40.7	574	34.1	227	13.5	197	11.7

Source: An Bord Pleanála, *Annual Report and Accounts*, 1981.

bargain beyond their nominal power and obtain concessions. One observer of An Bord Pleanála concluded his analysis by saying that "The problem of arbitrary decisions by planning authorities in minor cases — such as the colour of bricks to be used to close windows in a building — remain because of the cost to developers and third parties of such appeals" (Zimmerman, 1980). Some might dispute that it is limited to minor cases.

The applicant has one month to file an appeal after a local authority decision. Third parties have three weeks. An applicant may decide to accept objectionable conditions rather than bear transaction costs of appeal. If a third party makes the delay inevitable, the applicant may use the extra week to also enter an appeal hoping to get some of the conditions relaxed.

Third parties can use the right of appeal in a strategic manner to obtain concessions from developers. The threat of a delaying appeal has been known to give rise to developers paying bribes to third party appellants to drop their appeals. Anyone may file an appeal for a £30 fee. One developer estimates that "there have been at least 30 cases of blackmail, and sums of money up to about £40,000 each have been paid to objectors . . ." (McKone, 1980, p. 29). Some of this may be compensation for a neighbour's loss of amenity and some may be simply vexatious and malicious.

Section 18 of the 1976 Planning Amendments enables the Bord to determine if the appeal is vexatious or creating unnecessary delay, and could order the appellant to pay compensation and expenses in relation to the appeal. This is difficult to determine and is infrequently used. Zimmerman (1980, p. 335) reports that: "In 1978 the Bord gave four directions relative to the payments of appeal expenses totalling £150, and in 1979 for the first time declared several deposits forfeited".

Any individual who is familiar with the provisions of the Planning Acts and reasonably articulate can readily compose a plausible basis for an appeal. Proven cases of vexatious appeals are therefore more an index of ignorance and ineptitude than vexatiousness.

Another case illustrating the power of appeal mechanisms arose with the application to build a pharmaceutical manufacturing plant by Shering Plough in South County Tipperary. Many local people objected because they feared a health hazard. After a lengthy appeal, permission was upheld. Some objectors did not attend public meetings during the formulation stage and then at time of appeal said they needed considerable time to consider the plan and obtain opinion of their own experts. The objectors then threatened to turn to the courts at which point the company abandoned its plan. This illustrates that the cost of pursuing one's nominal right to build may in effect destroy the use of the right.⁹

Information on the law and its processes is part of the transaction costs of securing one's nominal rights. For example, during an appeal proceeding, each party is given the opportunity to respond to any material submitted in writing by the other side. This itself can be used to delay, as there can be responses to responses, etc. However, if this is understood by the defendant developer, no comments are made in writing on the objection and discussion is reserved for the oral hearing. Thus, an advantage is given to the party who can invest in the most information on the decision system.

Even after permission is obtained and building proceeds, there are opportunities for third parties to create delay. Section 27 of the 1976 Act gives any person the right to apply to the High Court to prevent development not in substantial compliance with the conditions of the permission. The courts will evaluate the merits of the case in deciding whether to hand down a prohibition order.

Developers claim that there are some conditions which are impossible to carry out precisely, and this gives an opening for those who object to the overall project to create a delay.

Developers argue that they need some flexibility to meet changing conditions between the time permission is granted

⁹It is interesting to note that subsequent to this, the law was changed. Section 42(a) of the 1976 Act limits the period within which a decision can be challenged in the High Court to two months after the date of decision.

and construction. For example, housing design may have to change in response to consumer demand. The Planning Act does provide for local authorities to grant waivers for small changes. Some developers in the Dublin area feel that local authorities are reluctant to grant these waivers, thus forcing the developer to make a new application which is again subject to the whole appeal process and delay. A 1981 High Court case illustrates the delay potential. An office development off Leeson Street was under construction (five storeys completed) when an objection was filed that the building was not in accordance with the permission. One change was the omission of the basement. The developers argued that this change could hardly harm any neighbour. Justice D'Arcy agreed and denied the injunction ("Planning File for Office is Missing", *Irish Times*, 7 April, 1981).

The same problem of flexibility applies to the often lengthy appeal process. The Board may invite the applicant to submit modified plans (Section 42 of 1977 Regulations), or he may volunteer revised plans. In the latter case, if the Board decides that the revisions alter significantly the character of the original application, it may advise that a fresh application be submitted to the local authority.

Decisions of An Bord Pleanála may be questioned in the Court if proceedings are instituted within two months. The Courts do have ultimate review power, but are reluctant to replace their substantive judgment for that of an administrative law board. The Supreme Court in July 1979 decided in favour of the Board in relation to the use of a site in County Cork for disposal of asbestos waste (An Bord Pleanála, *Annual Report*, 1979).

The Courts do pass judgment on the adequacy of the procedures followed in the appeals process. In a recent (March, 1983) judgment by the High Court, An Bord Pleanála was directed to show cause why its ruling in a particular case should not be set aside. The Board had confirmed the decision of Cork County Council to permit the establishment of a chemical plant. A woman, whose appeal was not sustained by the Board, claimed that it had reached its decision without giving her a full and fair opportunity of making her submis-

sions in relation to documents made available to the Board but not to her. The judge said that the failure by An Bord Pleanála either to furnish her with the required information or to afford her an opportunity of making a final submission meant that the appeal was not conducted in accordance with the minimum standards of fair procedures guaranteed by the Constitution.

Court Actions

Reference to court actions has already been made above. All that remains to be added is to discuss how the rules affect use of these rights-enforcing proceedings. An important issue is who bears the costs of delay. While a private individual may be awarded an injunction which prohibits development, if the bases for this injunction are subsequently not sustained, then the person seeking the injunction can be liable for costs. This potential liability in the context of an unsuccessful court suit creating delay can be contrasted to such liability in the context of an appeal before An Bord Pleanála. The problem of finding the delicate balance between creating enough costs to discourage frivolous and malicious delay appeals, and not enough to prevent action by those who are genuinely concerned about development effects, will be discussed later.

Land Assembly

Not all of the time absorbed in getting to the building stage is occasioned by the planning laws. Major delays are encountered in assembling the necessary parcels in already built-up areas for re-development (Trench, 1980). As already noted, removing tenants from buildings can be a problem. Finding owners and solving conveyancing problems take time. Owners of strategic parcels may bargain for a larger share of the total project economic rent (land appreciation). Local authorities have the power to assist in land assembly via compulsory purchase orders, but it is seldom used.

Land is not a homogenous commodity with perfectly

substitutable parts. The owners have different personal situations which affect their willingness to sell. This may explain why, when a developer finally controls a site, there is such tenacious determination to build despite all opposition. Even after a refusal, the developer may keep coming back with new applications. It may also explain why new land suburban sites may be preferred to old central city sites.

Transportation Planning and Other Public Investments

The location of public investments in roads is another device to shape settlement patterns and, of course, confers great appreciation to those who are served by it, or are near key entry and exit points. The Department of the Environment has published a *Road Development Plan for the 1980s* (May, 1979). It contains a map of planned major improvements and a time scale. These can be incorporated into local Development Plans. Local plans, however, have been frustrated by lack of central government grants. The Land Use and Transportation Study (LUTS) for Cork would need £4 million for 1981 to keep on schedule, but "Government allocation is expected to finally come to £1.6 million" (*Business and Finance*, Special Supplement, February, 1981, p. 17).

There is no published multi-year central government plan for other public investments, but obviously investments in central sewage treatment plans affect location of development. There was a High Court case which establishes the principle that appeals of permission can not only consider the existing sewage and pollution situation but also the cumulative future effects of future development (*Killiney and Ballybrack Development Association Ltd. v. Minister for Local Government and Templefin Estates Ltd.*, High Court, 1 March, 1974).

Casual observation and reading of development plans would suggest that new housing has been permitted at a faster rate than money is available for sewage treatment, with consequent damage to coastal water at population centres (Downey, 1981, p. 14). The 1972 Report on Water Pollution said that: "Virtually all sewage systems serving populations

of more than 10,000 are causing or contributing to pollution and require remedial action" (reported in Scannell, 1976, also see Lennox and Toner, 1980). Several years ago An Taisce appealed against a proposal of "Pfizer Chemical Co., to put untreated effluent into Cork Harbour equivalent to a pollution effect of a population of 2.4 million people. Permission was not granted . . ." (*Taisce Journal*, Vol. 1, No. 4, 1977, p. 11). Still County Cork decided to allow untreated domestic effluent from Midleton to be discharged into Cork Harbour (*Taisce Journal*, Vol. 4, 1980, p. 8).

It is easy to let the houses be built when builders think that they can be sold, even if the social and physical services are over-taxed or unavailable. At some point these social and infrastructural services will have to be built, or quality of life will be severely threatened. The cost of such "retro-fitting" is likely to be greater than it would have been if cost-effective infrastructural investment had shaped the pattern of developments.

Land Banks

One way for the public to control new development is to own a considerable portion of the developable land. The City of Cork owns a major share of the open land in the city. South Tipperary used a budget surplus some years ago to buy land for industry. This was sold off to private developers and the money turned over to buy yet additional land. The problem with this approach today is that it would be hard to start to acquire any sizeable acreages; local government is simply too hard pressed financially.

Many local authorities have a land bank for use on council housing. This does little to control private development and is used for the most part slightly in advance of needs. This is not made any easier by the policy of the Department of the Environment (at urgency of Department of Finance) not to give loans for land banks. The loans for council housing do cover land costs, but only at time of construction.

There is great scepticism in the building industry that local government in general (as opposed to a few "exceptional

cases'') is capable of using land banks effectively. As Greene (1982) put it:

Transferring land into public, i.e. bureaucratic, hands ignores Constitutional rights and assumes that the public sector will approach the disposal of serviced land in a manner suited to the demands of the community. Anyone who believes that ignores the totally inept performance of public authorities in the area of land management in the last twenty years.

The Developer

Thus far, we have discussed some of the mechanisms — formal and informal — which the planning system provides to local authorities and third parties to influence the nature and timing of development. We conclude by noting that developers themselves are not without resources in this respect. By making multiple applications for one site — in one case we were informed that 22 separate applications had been filed — the issues can be so obfuscated and confused that when permission is finally given it is possible to be creative in interpreting the conditions. In addition, the enforcement procedures have been so weak in some instances that within a wide range, conditions imposed could in any event be ignored.

Chapter 7

Public Participation

In the preceding chapter, there was some implicit consideration of public participation in the process of land-use change. Here this will be made more explicit by focusing on those procedural points that affect public participation.

Notice to Affected Parties

The first requirement for anyone to participate in any direct fashion is to know that a decision is about to be made. The Planning Act requires that applicants publish their intentions in a newspaper in general circulation in the area of the development. In practice it is quite possible that those concerned may not hear of the proposal. For example, a developer in rural County Cork may give notice in a Dublin-based paper. While the paper may circulate there, it may not be widely read. Also the notice may be in English or Irish. The practice in the City of Cork is to publish once a week all accumulated applications altogether in the local paper (regardless of where they originally appeared). There is no requirement to notify neighbouring property owners, though notice will typically be sent regularly to any registered residents' association.

While some public notice is required, the Planning Act is not clear on what the public can do after they know an application is pending. The notice must imply some purpose to be served, but this is not spelled out. This was pointed up by an 1981 dispute commonly referred to as the Torca case in Dun Laoghaire Borough. An application was made to build a bungalow, although this was not clear initially. The first two public notices were rejected by the planning officer because the location and extent of development were not

clear. One day after receipt of the third notice, the permission was granted. Three near-by residents brought a case to the High Court claiming their right to object was thwarted by the quick decision. It was finally decided by the Supreme Court. The Senior Counsel for the developer was reported (paraphrase) to state "that there was a defect in the planning law because it did not say an objector had a right to make an objection or for his objection to be considered by the planning authority" ("Planning: How the Judge found the Loopholes", *Sunday Press*, 5 April, 1981). Nevertheless, the Supreme Court upheld the injunction to stop construction.

The Court accepted the argument of the public right to be heard in objection, rather than give a narrow interpretation of the law which gives no guide on how long an application must lie open giving opportunity for comment. (The authority must act within two months, but no direction is given on the speed of action within that time.)

There appear to be some unresolved conflicts in philosophy contained in Irish planning law. The element of public notice implies the opportunity for the public to be considered in decisions. Yet, the decision is made in the first instance by the professional technical staff and ultimately by the professional administrative (manager) staff. We frequently encountered the point of view that decisions should be made "in accordance with good planning principles" which suggests that it is a matter of technical judgement rather than of public purposes which are reflected in political choice. If this line of thought is extended, public comment is largely irrelevant and perhaps only ceremonial. The text of the Planning Acts is more circumspect in this regard, saying that decisions should be based on "the proper planning and development of the area". This issue of technical administration vs. political choice is further discussed below.

In making a decision on a planning permission, a local authority manager must have regard to the development plan, but need not follow its provisions slavishly. However, when a significant departure from some fundamental principle of the plan is proposed, then a "material contravention" must be sought. The elected council may grant permission which

would contravene materially the development plan or a Special Amenity Area Order, subject to prior public notice (Section 39(d) of the 1976 Act). Copies of the notices must be given to any persons who have submitted a written objection concerning the development. Section 39(d) of the 1976 Amendment to the Planning Act requires the planning authority to duly consider the objections received not later than 21 days after publication of the notice. Note that for material contravention, in contrast to a regular development application, the public must be considered and they have a specified length of time in which they must be heard before a decision is made by the elected council.

Third Party Appeal

The right of third parties — whether neighbouring property owners or the general public — to appeal planning decisions has already been noted. Third party appeals comprised 18 per cent of the total appeals in 1977, 20 per cent in 1978, 11.5 per cent in 1979 and 22 per cent in 1980. Under present rules there is no requirement for objectors to come forward during any formative stage, or during the period the application is pending before the local authority. The objector can wait 21 days after the permission is given to file an appeal. This may be the first time the developer is aware of the nature of any objection. It may also be the first time the planners are aware of objections. This makes it difficult for the planner to require conditions which might obviate the objection. It is very hard to work out compromise if one of the parties says nothing until a formal appeal is made. This may explain something of the reluctance of a planner to recommend a permission with conditions rather than an outright refusal, thereby shifting the decision to the appeal board. The planner may sense that a particular land-use change will be controversial, but have little idea of what modification in the proposed development might be acceptable to the parties — so better to refuse than be caught in the middle. The planner might go to great lengths to work out a compromise only to find that the third parties change their minds or a splinter group emerges

and still files an appeal. There is no public forum where an objector has to go on record prior to the formal appeal of a planning decision.

The general public objector often is at a disadvantage to the applicant, whose high stake justifies considerable investment in information. There is a potential for ignorance of procedural detail to defeat public participation. This is illustrated by a 1981 Supreme Court case in Bray. Development permission had been granted for a shopping centre and was appealed to An Bord Pleanála by local residents. The Planning Act requires that the appeal when filed contain written grounds for the appeal. The residents said they would submit their reasons after further study. The developers tried to block the appeal by an action in the High Court claiming infraction of the legal procedures. The High Court refused to sustain this action, and was upheld by the Supreme Court. Mr Justice Henchy was reported to have said "that it would be unduly legalistic and unfair if ordinary members of the public were to be ignored if their appeal against a planning permission did not immediately state the grounds of appeal" ("Planning: How the Judge Found the Loopholes", *Sunday Press*, 5 April, 1981). The Courts have it in their power to equalise the differential access to information and legal expertise if they wish. (Note that the objectors had their court costs paid by the losers.)

In this case, the Courts upheld the procedures which are followed by An Bord Pleanála; the latter attempts to keep the appeals system as informal and "non-legalistic" as possible, so as to accommodate the ordinary citizen.

Chapter 8

Decision-making Authority

Who in the regulatory system actually makes decisions as to what will be allowed in terms of land-use? In this chapter we address this issue. We first discuss the relative position of the manager and the elected council in this respect and then turn to the influence of the central government. In conclusion, we touch on the issue of conflict between local authorities. Because of its significance, we devote the next chapter to a discussion of the role of An Bord Pleanála, which is the primary appeals tribunal.

Managers vs. Politicians

The making of the Development Plan, and any material contravention thereof, is a function reserved to the elected local council.

Throughout 1982 there was heated and often acrimonious debate in County Dublin concerning the zoning of land for development. The Draft Development Plan went on exhibition in July 1980. A large number of submissions were made from landowners to have their land rezoned from agriculture/amenity to development. Many of these were proposed to the council and passed by majority vote, over the strong objections of council staff. Rezonings were typically justified in the particular by arguing that they would generate jobs, and in general, on the grounds that insufficient land was zoned for development in the draft plan. Council officials opposed the proposals on the grounds that they would overload water and sewer services, that roads were inadequate, that they would be prohibitively costly to service and that sufficient land was already zoned for development purposes. The will of the

majority of council members prevailed initially, since they have the statutory authority at this level. However, members of one major party were instructed by their leader to support the proposals of the planning officials, and the Minister for the Environment subsequently indicated that he would not provide finance from central government to service the rezoned areas. Recission of the rezoning decisions is now being undertaken in some areas.

This illustrates how a combination of national political, policy and financial considerations can combine to undermine the statutory authority of local politicians.

Acting on an application for a development permission is an administrative decision of city or county manager. The implication seems to be that development within the plan is a technical matter for professional administration and not a policy matter for political choice between competing interests. The usual Development Plan leaves considerable latitude for allocative choice among conflicting parties. Whether these choices should be made by professional managers, with informal pressure from the elected council, or by the council itself, is a major policy question. The informal pressure usually takes the form of a council requirement that the manager discusses certain categories of decisions with members before a decision is taken.

*Section 4*¹⁰

Section 4 of the City and County Management Amendment Act, 1955, authorises a council to direct the manager to take a specific action. This may be used by the council to direct the manager to grant or refuse an application for planning permission. Some councils use their Section 4 power frequently and others never. Zimmerman (1980) observes that the power has never been invoked in 12 planning authorities, but was used frequently in Counties Kerry, Mayo and Wicklow. It is also quite common in County Dublin. Use of Section 4 directives seem to have their own dynamic. If there

¹⁰When this report was in final draft, a comprehensive review and analysis of the use of Section 4 resolutions was published (Colleran, 1983).

is not habit of use, each council member can deflect constituent pressure by saying that it is a matter for professional administration. This can be very useful for elected politicians when their voters are rather evenly divided on an issue. In that case, political choice is a no win situation, for half of the people will be unhappy no matter the decision.

But once there is a precedence for Section 4 directives, they tend to grow. One councillor does a favour for a constituent seeking to avoid a refusal. Then, if this is supported by other councillors, they expect the votes to be returned when they have a constituent in need. This presents a social trap dynamic whereby many elected members may abhor the overall cumulative result, but cannot withdraw from exchange of support for directives.

It seems plausible that the frequency of Section 4 directives may become common. Since rates were removed from housing, the local councillors have much less power and opportunities to provide material benefits to constituents. The allocation of capital gain via planning permission is probably the most significant category of benefit at their disposal.

Up till now, the most vocal public groups have found the planning decisions of the professional administration more to their liking than the directives of elected councillors. This has produced therefore many public outcries against the Section 4 power in the media. The planners have tended to be more protective of high amenity areas than the more development-minded councillors in some jurisdictions.

The grant of permission on foot of Section 4 may still be appealed to An Bord Pleanála. This is not unusual. For example, a number of appeals of shore line developments as a result of Section 4 directives by Counties Galway and Mayo have been made by An Taisce and other environmental groups.

This means that attempts by local councils to avoid claims for compensation can be frustrated by subsequent refusals by the Board. There were appeal cases in Red Rock, Howth and Cabra in north Dublin, where the Board's refusal to allow development of open space could leave the local authorities liable for compensation and no means of escape.

(See *Business and Finance*, 25 June 1981, p. 29 and *Taisce Journal*, Winter 1981, p. 13). In effect, the Board's decision implies that the preservation of open space in some particular cases is worth whatever compensation might be necessary (though the required amount and availability of funds was not known to them at the time of decision).

The issue being considered here is the distribution of decision-making power among elected politicians and appointed professionals. The initiative lies initially with the manager. If the council acts before a decision is made, or after upon foot of a new application, it can exert its will. However, in the final analysis it is subject to appeal to a non-elected appeal board which can not only affect the ultimate land-use, but in effect either cause the elected council to come up with money to compensate developers for the loss of their right to develop, or allow them to do so.

Level of Government (local vs. central)

An aspect of whose preferences count in land-use change is related to the level of government that makes control decisions. In a sense it is a question of boundaries and jurisdiction. Different parties may be expected to have different degrees of influence at different levels of government. In this section the factors affecting the interaction of local and central government is examined.

Department of Environment Guidelines

The Minister for the Environment may issue planning circulars to the local authorities. These are rare and in any case are advisory only. One such circular — Planning Control Problems — was issued in 1973 (Pl. 210/8). In addition to his comments urging a liberal approach to ribbon development and concentrating into settlements, the then Minister urged the following: principle of restricting development on National Primary roads; inappropriate for planning control to go into detail on septic tank control; inappropriate to go into detail on design features, and minor extension of existing development in built-up areas need not be sifted finely, except in

areas of very high architectural quality; for rural areas, cannot see the justification for refusing permission for reasonably designed residential development except for areas of very high amenity and traditional beauty spots of national importance; reasonable to restrict development in coastal areas if it is essential to protect tourist attractiveness and "does not create a 'reservation'".

Another major policy statement came in 1980 (PD 2/80; 28 July 1980). The theme was concern for "over-rapid development of larger urban concentration". With reference to encouraging population growth in existing smaller settlements, "he is anxious to ensure that such settlements should expand when possible in order to encourage the maintenance of existing communities and to counteract the higher energy demands generated by isolated housing developments in rural areas unrelated to any identifiable centre . . ."

A very important document, *Development Control: Advice and Guidelines*, was issued by the Department of the Environment in October 1982 (Department of the Environment, 1982). It provides a comprehensive compilation of the Department's view regarding the preparation of the development plan, particular classes of development, refusals of permission, conditions and procedural matters. Though not legally binding, the guidelines are likely to be used informally by An Bord Pleanála in discharging its review responsibilities, and the Department's control over the allocation of infrastructural investment funds gives it considerable potential leverage in encouraging favoured modes of behaviour. We have seen that the Minister did not hesitate to use this power in County Dublin to discourage rezonings which were not recommended by professional planners.

There are some other indications of related national policy by other agencies. The Industrial Development Authority follows a policy of bringing industrial employment to the existing locations of population. There have been discussions of decentralising central government employment, but only limited steps have been taken. For a discussion of regional policies see (NESC, 1975, 1976 and O'Farrell, 1979). A May, 1972, government policy statement — *Review of Regional Po-*

licy — adopted elements of concentration and dispersion. It would appear that the politics of regional location policies are such that it is not possible to enunciate a sharp directional policy but rather to follow a mixed series of particular decisions in terms of public aids and investments.

The Minister may require a planning authority to vary the development plan (1976 Act, Section 22 (3)). This has never been used. The closest thing to it was the case of Wood Quay in Dublin where the immediate building of civic office buildings would prevent recovery of old Viking artifacts. After vocal public demonstration, the Minister ordered the Corporation to delay its construction for further study of the issue, and this was carried out. Whether the Minister has formal authority to stop a particular city development is unclear, but it demonstrates the respect of afforded central government and perhaps the informal bargaining strength it has with local government.

In practice, the pressure on a local authority to conform to national objectives is probably frequently subtle. An example of the forces at work is provided by the following: the central government road planners have strongly urged a new high capacity north east Dublin corridor road, but Dublin City Council has refused to include it in its 1980 Development Plan because of fear of its effects on established residential neighbourhoods. The central government nevertheless announced private plans to build a new toll bridge across the Liffey on the eastern edge of the city. Without a new approach road this bridge is less useful. There are no doubt potentials for application of carrots and sticks in the distribution of grants for local services to persuade local governments to the national point of view.

Conflict Between Local Authorities

The 1963 Planning Act, Section 22 (2) provides that the Minister may require the development plan of two or more planning authorities to be co-ordinated. Of course one person's co-ordination is another's oppression. For example, Dublin Corporation can not meet its need of council housing within the Corporation boundary, so that it buys land in

County Dublin. In the interest of reducing its per housing unit land costs, the Corporation has asked the County to alter its present density maximum of 10 houses per acre (*County Council Minutes*, 13 May 1980, p. 446). The Corporation owned 1,900 acres in the County at the time. The Chairman of the County Council said that the Corporation was not a good developer and left its projects without sufficient community services, which then created demands for county services. So the Chairman expressed the need to keep density low to insure that services would be adequate.¹¹ From one perspective there is a lack of co-ordination, but shall it be co-ordinated in favour of county or city? In principle the Minister could settle the debate, but in practice the county now prevails. There probably are other differences of opinion between city councils and the neighbouring counties over drainage systems and roads.

¹¹ However, in the current Draft Development Plan, higher densities than heretofore are allowed, subject to suitable design standards and safeguards.

Chapter 9

The Appeals System

Number of Appeals and Reversals

While planning decisions are initially made by local authorities, a significant number are appealed to the national level appeals board. The number of appeals formally determined by the board has tended to increase over time, as indicated in Table 2.

The numbers for 1979 were "artificially" low because of the postal dispute in that year. Over the five years of its operation, An Bord Pleanála has confirmed the decision of the planning authority in over half the cases; in over a quarter of them the decisions of the planning authority have been reversed, while for the balance the decisions of the planning authority have been varied (Table 2). Dublin City and County (including Dun Laoghaire) account for close to one-third of the appeals.

Table 2: *Number of appeals and relation to decisions of planning authority (%)*

Year	Number of appeals	Decisions of planning authority (percentage of total):			Total
		Reversed	Varied	Confirmed	
1977	2,487	29.6	13.4	57.0	100
1978	2,762	25.0	14.0	61.0	100
1979	2,251	25.4	12.2	62.4	100
1980	3,139	29.8	16.7	53.5	100
1981	2,980	27.1	15.6	57.3	100

Source: *Annual Report and Accounts, 1981, An Bord Pleanála.*

The number of appeals has meaning primarily in relation to the total number of decisions made by local authorities. In Appendix B the number of planning decisions, and the percentage refused, are listed for counties and county boroughs for the years 1979-1981. In Appendix C, the number of appeals as a percentage of decisions are listed.

It is interesting to compare the extremes and the average for the counties and county boroughs.

Table 3: *Planning decisions and appeals, Clare, Wicklow and total (Ireland)*

	<i>Planning decisions</i>		<i>Percentage refusals</i>		<i>Appeals as percentage of decisions</i>	
	<i>1978</i>	<i>1981</i>	<i>1978</i>	<i>1981</i>	<i>1978</i>	<i>1981</i>
Clare	1,184	1,230	2.02	3.25	3.02	3.25
Wicklow	1,127	1,251	27.41	30.13	17.77	19.04
Total	41,798	43,446	12.07	15.00	7.65	9.39

Source: Appendix B and Appendix C.

Although both Counties Clare and Wicklow made about the same number of planning decisions, Clare's refusal rate was negligible, while in Wicklow close to a third were refused. The same relative relationship obtains at the appeal stage. As a generality the greater Dublin area tends to be more "appeals prone", with appeals in Counties Dublin, Kildare, Meath, Wicklow, Dublin County Borough and Dun Laoghaire together amounting to almost half of the total in 1981. In 1981 about 1 planning decision in 10 was appealed overall, but there was a great variety in this aspect, ranging from 2.55 per cent in Donegal to 25.86 per cent in Dun Laoghaire (Appendix C).

Factors Affecting Refusals and Appeals

As long as there is an national level appeal process and someone is dissatisfied with the planning permission, there will be some shift of the locus of decision upward. But, there

are things that local planners do which can affect the frequency of appeals (and reversals). If developers, from examination of the local Development Plan and conversation with planners and other related officials, could determine what would be approved, they would only risk unacceptable proposals when they thought they would be reversed on appeal. However, some developers claim that the Development Plan is not detailed and that they get little or conflicting signals from officials. A 1976 survey of Dublin architects and planning consultants provided this response . . . "It is difficult to get a worthwhile commitment on [road, sanitary and fire] requirements. This also applies to the question on the need to employ an Information and Development Control Officer to give information to developers and architects on a co-ordinated and comprehensive basis" (McKone, 1976, p. 4).

Local control of planning is jealously defended in principle, though some authorities on occasion act to pass on responsibility to An Bord Pleanála. An example of the honour given to local control is manifested by the public reaction to a celebrated appeal of Dublin Corporation refusal in 1977 of an office building on Harcourt Terrace, the original terrace being a block of architectural distinction. The Board upheld the refusal on grounds that the "development would be injurious to the residential amenities of properties in the vicinity . . ." The Board went on to suggest what type of development would be acceptable. This brought much criticism and a charge reflected in news stories that the Board was usurping the prerogatives of the planning authority. (Also see *Taisce Journal*, Vol. 1, No. 5, 1977, p. 26.)

In response to this criticism, the Board wrote a public letter saying that its commentary did not affect local planning authority nor bind the Board, and that it regretted "that its decision should have been interpreted as a challenge to, or a usurpation of, the authority vested in the Dublin Corporation as a planning authority." (Letter to the Editor, *The Irish Times*, 15 September 1977, p. 9.)

In spite of this nominal objection to policy-making at the national level, in practice Dublin planners are seen to refuse

major developments and pass on the decision to the Appeal Board. Some developers claim that the Corporation is "afraid to make decisions on big projects", and so passes the decision on to Bord Pleanála. There is a delicate line here on which reasonable observers might well differ in their interpretation; we have no inside information on planner motivations and can only discuss potentials. There is a body of literature to the effect that there are great incentives for bureaucrats to make no mistakes. The incentive structures are often such that the cost of making a mistake is greater than the benefits of taking a chance on a creative solution of public conflicts. Reference has already been made to the lack of incentives and information for finding a compromise between groups at the local level. If local people are divided why not shift the decision to a body which does not have to face the local electorate? The local authority staff may also reckon that since the proposal is in any event likely to be appealed to An Bord Pleanála by a third party, why not reject it right away and let the applicant appeal?

Some architects speak of their inability to get approval for creative design. They say that if it had not been done before, it tends to be rejected. Again, the line between just poor design and the fear of controversy over the new design is debatable.

Also, if a delaying strategy is employed to discourage certain developments, especially those which might give rise to claims of compensation, the local authority exposes itself to the shift of decision-making to the national level. When a developer decides to bear the delay and transactions costs of appeal, then the local authority loses control.

The reasons for refusal may reflect the concerns of different perspectives from within local government. A development might be highly desirable in terms of its major use, but objectionable from some particular perspective of the Fire Officer, Medical Officer or Engineering Department. In a large city with specialised departments often housed at a distance from each other, there can be problems of communication as well as of priorities. This is a variety of transaction costs discussed previously. Some Dublin developers

claim that a permission is often refused because one department objects to some feature, even when from a general land-use perspective the proposal had basic support. One planning consultant, speaking of an applicant for planning permission, said, "in contacting the various departments it is quite possible that he will find the various requirements conflict and cannot be easily rationalized" (Keaney, 1976, pp. 6-7).

In a survey of architect and consultant practises made by the Royal Institute of the Architects of Ireland and updated by McKone (1976, p. 2) around three-quarters of them reported that Planning Authorities were unfamiliar with the requirements of the Roads, Sanitary and Fire Authorities in 1976. The earlier 1970 survey showed on the order of one-half were unfamiliar. About 80 per cent of the practices saw a need for some type of information and development control officer to facilitate co-ordination. The City of Cork brings together all department officers to exchange views on applications so that all are aware of the perspective of each and the Manager can then secure a compromise if necessary.

A substantive example of possible internal conflict is that of a major shopping redevelopment. The site may border a narrow street and the developer may prefer to keep the present street pattern to create an intimate environment desired by shoppers. But from a road engineering view, it might be desirable to use the demolition and renewal as an opportunity for street widening (See McDonald, "Investors Bring Gaiety Blues", *Irish Times*, 24 February 1981). In Dublin, in such a case, the Corporation granted permission for a shopping and office development in 1973 near the head of Grafton Street and St. Stephen's Green, with the condition that the side street be widened to 80 feet "to protect and improve the existing amenities". A group concerned with building preservation appealed to the Minister who removed the condition for street widening. (This was prior to An Bord Pleanála.) The developer came back later with an expanded application and the Corporation again insisted on a road widening condition. The developer appealed in 1975,

and again the Minister kept the existing street. Here the local government pursued its objective even after indication that it was not satisfactory to the appeal authority.

Substance of Appeal Rulings: Is there a National Policy?

Some judicial theories argue that appeal bodies, whether special purpose or general courts, only act to clarify law and work out special cases when their application create a particular hardship for an individual. There is a firm line between this view and one involving substantive policy review reflecting basic objectives of public purpose. No systematic review of appeal decisions by An Bord Pleanála is available. However, a few decisions are presented here to illustrate the types of decision made and the opportunity for basic philosophic differences between the Board and local authorities.

The *Cork City Development Plan 1977* (p. 13) has a policy of preventing office users from locating in the city's retail centre. It represents a philosophy that pedestrians enjoy a shopping experience uninterrupted by sterile facades of offices, including financial institutions. Also it reflects the idea that these users can pay higher land prices and will drive out little shops who cannot afford high rents, but nevertheless contribute to the total shopping experience of a city centre. Cork officials have occasionally found their planning refusals in accordance with this plan frustrated by approvals on appeal. The same experience occurred in their street policy on advertising signs.

In Dublin, five planning applications for amusement halls were refused by the Corporation but granted on appeal. These decisions are never easy to interpret. It could be claimed that the Board is not contradicting the basic objective of the local development plan, but only working out matters of individual hardship or equity in application of the basic objective.

Several recent reversals of decisions by Dun Laoghaire Borough Council led the Council to ask the government to reduce the power of An Bord Pleanála (*Southside*, 11 March, 1981, p. 2). The council had refused a proposed 393 houses

on a 50 acre site near the coast, arguing that the density was too great (Murtagh, 1981). It would appear that the case involved elements of judgements of equity as well as land-use objectives. The appeals board approved the proposal. The inspector's report (not usually made public) indicated that the proposal seemed reasonable because of high density building already in the area, some of which was high density housing built by the Dun Laoghaire Corporation itself. This might be seen as a judicial-type judgement on fairness and equity but also has elements of substantive objectives as well. A city may decide that, irrespective of the past, it now wants to lower the overall density and impact of further development.

To illustrate further the kind of disputes settled on appeal, consider the case of redevelopment in a Georgian area of Dublin. The Corporation refused permission for a five storey building which would have filled in a site at the end of a Georgian street scape. The proposed building had large vertical panels of glass set between brick piers, and this was considered as out of character with the existing Georgian terrace (Dublin Corporation Decision Order, p. 20, 14 January, 1977). On appeal permission was nevertheless granted. This decision was taken by the Minister shortly before An Bord Pleanála commenced operating. Two conditions were attached. The first gave the local authority power to control brick colour and texture (but kept the glass panels). In effect, the city's concept of preserving the Georgian character by copying existing styles was not accepted. Here is a basic substantive difference in policy objectives. Incidentally, the site was later acquired by a developer more sympathetic to historic preservation and a more compatible building is now under construction.

The second condition imposed in the above case illustrates a major cause of land-use conflict — namely the effect of development on immediate neighbours. It was required to have the windows at the back of the development of a type not allowing easy overlook into the back yard of neighbouring residences. A related conflict concerning this development was carried to the High Court. Occupants of a neighbouring

flat claimed that the new building would interfere with "rights of ancient lights" to their bathroom (*Irish Times*, 24 March, 1981). The developer also owned the affected flats. The claim was settled and the building proceeded. This is the type of case in which compensation is sometimes made to remove an injunction which is creating delay costs for the builder. It illustrates that individuals can have recourse to both planning procedures and common law in asserting their rights.

To get a sense of the kinds of cases and reasons given by An Bord Pleanála, some examples are presented below, all dated January, 1981.

Housing — reversed grant: premature because of deficient sewerage services

Warehouse — upheld refusal: narrow road creates traffic hazard

House — upheld grant: added conditions requiring reservation of land for future road and controlling access

Flats — reversed grants: out of character with established pattern of two-storey neighbouring houses and vehicular access injurious to neighbouring residential amenities

Housing development — reversed refusal: added conditions prohibiting development until by-pass is built, density similar to surroundings, etc.

Houses and flats — upheld grant: contained conditions on an embankment relative to sight lines and footpaths, restricted access to a nearby major road, controlled materials in the interest of visual amenity, and reserved open spaces, retained trees, etc.

Bungalow — upheld refusal: further increase in septic tanks would be prejudicial to public

	health and road serving site is inadequate
Offices at rear of site — upheld refusal:	would be traffic hazard
Bungalow — upheld refusal:	Development Plan policy to preserve high scenic amenity is reasonable and it would be harmed by prominent location of the site and lacks natural screening
Two storey house extension — upheld refusal:	injurious to residential amenities of adjoining properties by reason of over-shadowing and loss of daylight
Continuance of office use — upheld refusal:	area is zoned residential which is considered reasonable and it would lead to build-up of offices which would detract from residential amenities. (Note that the office in question might not detract, but more based on the cumulative use of the precedent would.)

As noted in the section on compensation, local authorities have in the past included reasons for refusal which they hope will be non-compensatable. The appeal Board often remove these reasons when they think they are not valid, even though they may uphold the refusal on grounds which may give rise to a claim for compensation. For example, the Board may not allow the reason of premature development when the zoning suggests the local authority has no intention of providing services at any time. The appeal Board is also called upon to make qualitative judgements. A local authority may refuse an application because it judges that the development would create a traffic *hazard* which is a non-compensatable reason. On appeal, the Board may decide that it is only a matter of occasional traffic congestion; as contrasted with *serious* traffic congestion, which is a non-compensatable reason for refusal.

We examined a number of cases involving applications to convert to or build offices in residential areas within south Dublin's growing office area (Dublin postal zones 2 and 4). They show that the appeal Board upheld Corporation policy to restrict this encroachment from going further.

Some examples of appeals for other types of land-use change are illustrated by a 1980 application by a drug manufacturer near Bandon, County Cork. The approved plan was appealed by An Taisce. After the group met with the company, details of effluent levels and monitoring were agreed to and incorporated as conditions by An Bord Pleanála. The *Taisce Journal* (Vol. 5, No. 2, 1981, p. 33) noted that "The County Council were a little annoyed that their monitoring procedures were considered inadequate..." The added conditions were claimed to be more stringent than the council's.

One observer has argued that the public's lack of confidence in the ability of local councils to set and monitor complex industrial pollution standards introduces an additional uncertainty inhibiting industrial growth. The lack of confidence leads to additional appeals to An Bord Pleanála, so that industry is not sure what is expected of it at the time of its initial investment planning (Dunne, 1981).

Another area of conflict involves vacation homes in the prime tourist coastal and lake areas. Recall that preservation of the tourist industry was one of the motivations for the 1963 Planning Act. In one case, the appeal Board approved a holiday village on Lough Melvin in County Leitrim (Burrows, *Irish Times*, 12 March, 1981). The number of houses was reduced from 36 to 24 and conditions were placed to reduce the visual impact. The appeal was brought by several environmental groups. Another recent case involved a proposal for 80 cottages and a 30 room hotel on the coast in County Clare. The developer already had a 1967 permission for 38 cottages. The refusal by County Clare was upheld upon appeal "on the grounds that it would interfere with the scenic attractions of the White Strand area" (*Business and Finance*, 12 March, 1981, p. 17). The development company subsequently decided to dispose of the site.

The history of the relationship of the appeals process to

the political system is relevant to recall at this point. The 1963 Act put the appeals process in the hands of the Minister for Local Government (now known as Minister for The Environment). While the bulk of the decisions were probably made on the advice of the professional planners in the Department (some of whom are now employed by An Bord Pleanála) enough seemed to reflect party politics to cause a negative reaction. This led in 1976 to the transfer of the appeal process to an appointed board, chaired by a former judge of the High Court. This gives the appeal Board considerable independence from party politics; no one interviewed wanted to return to the pre-1976 ministerial system. However, since all members of the Board are appointed by the Minister, this power does allow some indirect policy influence at this level.¹²

Leaving aside the question of favouritism in individual cases, the history of ministerial appeal does give some evidence of appeal decisions reflecting fundamental public policy judgments and therefore changing with elections and the government in power. In 1973, the Minister for Local Government, in an effort to reduce the number of appeals issued a Ministerial Circular Pl. 210/8 "Planning Control Problems" (12/11/1973) urging planning authorities to be less restrictive. The directive stated "Some development plans contain provision against ribbon development and/or requiring development should be gathered into settlements. It is the Minister's view that such clauses should not prevent a liberal approach to individual cases" (pp. 1-2). Since the Minister was the appeal source, he could back his policy advice with grants of permission. An analysis indicated that: "In pursuance of his stated policy some figures for parts of 1974 show that the Minister has increased the number of reversals of decisions on appeal. In County Offaly, for example, the number reversed in the first nine months of the year was 35 per cent of appeal decisions made. This figure far outweighs any for previous years" (Feighery, 1975, p. 26).

¹²Under provisions of the Local Government (Planning and Development) Act, 1983, the authority of the Minister in this regard has been diluted. The Chairman and members of the Board must be chosen by the Minister from names submitted by various representative organisations.

Permissions as a per cent of applications rose slightly from 1973 to 1975 as follows (McKone, 1976, p. 10):

	Permissions (% of Applications)	
	1973	1975
County Dublin	69	80
Dublin County Borough	71	77
Nation	86	88

One builder applauded the Minister for the "great improvement in the permission decision, particularly for the year 1975, and most particularly in the decision by the Minister on appeals" (McKone, 1976, p. 10).

During this period when the Minister was development oriented, many approvals were made upon appeal for office projects in south centre Dublin. Later, under An Bord Pleanála, Dublin Corporation policy to contain office development and slow its advance into residential areas such as in Dublin postal zone 4 was more sympathetically treated.

Policy Objectives and Predictability

The above samples of appeal cases can give some ideas about basic substantive objectives reflected in decisions. It is not possible, however, to easily summarise these in a statement of overall policy. The inspector's reports giving facts of each case are not available to the public. The rulings themselves are quite terse. In the UK, from time to time, the Department of the Environment makes available key cases which illustrate precedents, and there is an annotated summary organised by type of land-use changes. This reduces the information costs to those who might wish to appeal, and increase the predictability of result. In Ireland, the prospective appellant can only turn to a solicitor or planning consultant who, through accumulated experience, can predict how different situations might fare on appeal.

The 1976 Amendment to the Planning Act (Section 6) says that "The Minister shall, from time to time, give to the Board such general directives as to policy in relation to plan-

ning and development as he considers necessary". Only one directive, relating to retail shopping developments, has been issued. Perhaps in an attempt to remove any suspicion of political influence, Ministers have avoided providing much general policy direction. This means that an appointed body must make its own policy, the only requirement being that it shall keep itself informed of policies of various public authorities. (See *Taisce Journal*, Vol. 1, No. 2, 1977, pp. 4-6.)

While it is difficult to summarise the current policies which result in particular appeal decisions, it is clear that the rulings do have a major impact on Ireland's physical landscape. The Board is certainly more than a minor arbiter providing equity among owners, or deciding whether a claimed traffic hazard is only a traffic congestion. The Board cannot avoid passing judgement on the desirability of alternative conceptions as to what Ireland's urban and rural landscapes should look like. It may be necessary to assert that the primary responsibility for planning is local, but the authority of the Board is above it. Some perspective on this authority is given by comparison with the US. For many years after affirming the constitutionality of local zoning, the Supreme Court refused to enter with substantive policy judgements and would not superimpose its judgment on the land-use objectives contained in the zoning. It would only address procedural matter. This has changed recently with respect to matters of segregation and civil rights. The point is that if any appeal body rules on substance (as opposed to only procedure) it cannot avoid replacing the local authorities as the ultimate formulators of policy.

A frequent comment from developers is that "There is too much planning and not enough development". While there will always be differences between the public authorities and builders, the resources to promote development might be augmented if the size of exemptions were raised. The area of a house extension which is exempt from the requirement to get planning permission has been extended by Ministerial Order from 18 square metres to 23 square metres. By-law approval must still be granted in some areas (Statutory Instrument No. 154 of 1981). This is not to say that minor extensions are not cause for dispute between neighbours. The

only question is whether society should spend its resources adjudicating all of them. An alternative would be to specify more standards for height, size, yards, etc., than are now provided and then leave some of these remaining disputes to the councils. The high transaction costs, of course, would mean that many disputes would remain to be suffered or worked out informally between neighbours. In addition, since some of these latter cases are likely to end up in the courts, there are costs to be borne here also. The point is not that higher exemptions would be costless, but whether the alternative costs to local planners and An Bord Pleanála is worth it.

Chapter 10

Pricing and Payment for Infrastructural Services

In providing infrastructural services — water, sewers, roads, lighting, etc. — to developments a choice must be made between charging the costs to the benefiting development directly, or financing these services from general tax funds. We have seen that the provision of some services in this respect — notably roads and open spaces internal to the developments — must be provided to the requisite standard before the development will be taken-in-charge by the local authority. In addition, we learned that in some cases a developer may be “required” to undertake additional work which is not necessary for the proper functioning of the development *per se*; such requirements are imposed in a somewhat arbitrary and *ad hoc* fashion. In some cases a major contribution in this respect will be extracted, while in others nothing will be demanded.

Economists argue as a guiding principle that economic efficiency and social well-being will be enhanced if goods and services are charged for at a rate which reflects the long-run marginal costs of their provision. By long-run marginal costs is meant the total additional costs which will be incurred over time in providing the service in question. Thus, connecting a development to a main sewer may involve modest costs in the short-run, since there is excess capacity in the system. However, if building in the area is expected to continue, it will be necessary eventually to provide additional capacity. The developments taking place now and their successors in essence make necessary the provision of additional capacity in the future. The costs charged against them should incorporate an element reflecting this fact. If the full long-run marginal costs of services — roads, water, sewers, gas, tele-

phone, electricity — are not assessed against development, the following consequences ensue:

- (i) Developments in areas which are relatively costly to service will be encouraged *vis-à-vis* areas which are less costly in this respect.
- (ii) Following on (i): sprawl will be encouraged, as outlying areas do not suffer a cost-penalty compared to areas close-in; for a given outlay on services fewer structures will be serviced.
- (iii) Since taxpayers in general must pay, there is a transfer of resources from the public to the construction sector. This is captured by property purchasers, renters and landowners. It seems probable that some landowners and the purchasers of the more expensive properties will have higher than average incomes. If the income distributions of beneficiaries is higher than that of taxpayers in general, then the system will involve a transfer from the less to the better off.
- (iv) Regions in which a disproportionate share of building is located, i.e., the East, will benefit relative to the rest of the country.
- (v) Local authorities will probably not receive the resources necessary to service the effective demand; they depend on the allocations from central government, which are made on the bases of political, administrative and financial considerations. Cost increasing delays are likely, as developments “queue up” to be serviced. Rationing of services is done on a political/administrative discretionary basis, rather than through the use of market-clearing prices. A market-clearing price in this context is defined as the price at which all developments wanting services can get them.

We acknowledge that it may be difficult in practice to charge the full service costs to developments as they occur. Problems of “lumpiness” in supply and co-ordination in the provision of services can make it difficult to estimate the “correct” prices. There will be political pressure from landowners — particularly those in areas which it is especially cost-

ly to service — as they realise that such charges reduce the price they can get for their land. To the extent that the charges can be passed forward to house buyers, they too are likely to exert pressure to keep these costs paid by taxpayers in general. Finally, while developers might welcome such a system if it meant that the services were provided in an efficient and timely fashion, if the payments were made but there was no commensurate improvement in these respects, they too would resist these charges.

In spite of these difficulties, we feel that the advantages of charging developments the full long-run marginal costs of providing infrastructural services are so compelling that a determined effort is warranted to arrive at a workable pricing system. The manner of such charging can take a variety of forms: the developer could pay a lump sum to the local authority; rent sufficient to cover the full costs could be assessed; the developer and the local authority could form a partnership, sharing costs and returns; a developer could finance and construct the infrastructure and with appropriate constraints, sell access to others. No single approach will be uniquely appropriate for all circumstances. Cost-effectiveness and political, legal and administrative feasibility will all bear on the choices available in this respect. Once the decision in principle has been made to charge developments their full long-run costs, alternative means of accomplishing this can be tried. The experience gained thereby can be used in designing an appropriate mix of financing methods.

Section 26 of the 1963 Act precludes a local authority from charging for “works which have facilitated the proposed development which were provided earlier than seven years before the grant of permission for development”. A legislative relaxing of this time constraint would be desirable, but not essential for the effective operation of the concept.

Pricing can also be used to reinforce, or take the place of, regulatory approaches in other areas. For example, in areas of high amenity, such as coastal zones, if it were desired to discourage high-rise developments, a charge could be assessed, e.g., per metre, which escalated with the height of the structure. These charges could be in the form of a lump sum, an

annual payment, or some combination. Undesirable strip-development could similarly be discouraged. Likewise, the owners of derelict sites could be charged a fee which increased rapidly over time and varied depending on the extent to which dereliction was judged to diminish the quality of life.

Conversely, payments could be made to property owners who were willing to maintain structures of historic, cultural or aesthetic/architectural interest, so as to preserve them for their own sake and/or in order to maintain the character of an area. This concept could be broadened to comprise a house improvement grant which increased in amount with the age of the structure. This would help maintain the existing old housing stock.

Other pricing opportunities arise in the area of assessing planning applications and appeals. Here the anomolous situation arises where delay imposes very high costs on developers, but the planning assessment and appeals systems do not have the evaluative resources to provide timely decisions. In 1980, total expenditure by An Bord Pleanála (including value of services received from the Department of the Environment) came to £1,007,976. Since 3,139 appeals were determined in that year, this works out at an average cost per appeal of £321. A sliding scale of charges, increasing with the magnitude and complexity of the application, could be of benefit to both developers and regulators if the revenues generated thereby were used to provide timely and useful evaluations of applications and to improve the quality of the planning process. In the Local Government (Planning and Development) Bill, 1982, provision is included for the introduction of charges for planning applications and appeals. Such charges are envisioned by central government as a means of reducing the demand for Exchequer financing.

In addition to the points with regard to charging for infra-structural services, pricing has the following advantages:

- (i) Once the principle and conditions for payment are established, payment will (relative to regulation) be "automatic". For example, the owner of a derelict site will be billed at the appropriate rate, which will be pre-specified, and based on area, location and dura-

tion of dereliction. The simplicity of this can be compared with the tortuous, expensive, time-consuming and often ineffective procedures which must be invoked at present to deal with this problem under the provisions of the Derelict Sites Act (1961). Enforcement costs of encouraging the desired behaviour will be lower than they would be with exclusive dependence on the regulatory mode.

- (ii) Pricing allows for graduated responses, while regulation tends to favour "either — or" decisions. Take the hypothetical case of an application to build an apartment block in a coastal zone. It is felt that such a structure will diminish the aesthetic quality and character of the area. The planning authority is faced with the decision of allowing it or not. While in the former case conditions can be imposed on the size and nature of the structure, the regulatory approach does not allow the community to be compensated directly for an irreducible (by conditions) dis-benefit imposed by its construction. If a charge were assessed, the community would be so compensated. The resources thereby made available could, for example, be used to develop and maintain a linear coastal park or provide adjacent housing for low-income individuals. Since the prospective liability to compensation provisions of the planning acts (as interpreted by the local authorities) tend to result in many such permissions being granted, there is real merit in our view in having a pricing system in place which simultaneously encourages the construction of a "socially desirable" structure and compensates society for any irreducible costs imposed.
- (iii) Exclusive dependence on a regulatory system may not be inappropriate in countries where for centuries governments have ruled with the consent of the governed. Such a tradition gives societal legitimacy to government strictures; this in turn influences positively the efficiency and enthusiasm with which regulators carry out their assignments and the willing-

ness of the regulated to comply with them. However, Ireland is a post-colonial society where government regulation was for centuries associated with an alien and malevolent authority, popularly presumed to be acting in a manner inimical to the general interest. In these circumstances, to break regulations and the law, far from being perceived as anti-social, was taken by many as a manifestation of patriotism. Given this tradition, which still shapes attitudes to some extent today, we feel that in addition to its other not inconsiderable advantages, the use of pricing has much to commend it as a means of encouraging socially desirable land-use behaviour in Ireland. Enforcement costs are lower, the penalty, or reward, is graduated in proportion to the magnitude of the impact and the adjustment is left more up to the individual.

Who should decide what can be charged for and at what rates? Should there be provision for appeal concerning the scope and magnitude of charges assessed? The answers to these questions turn to some extent on the degree to which one "trusts" the local authorities to behave responsibly. We recommend that a generous amount of freedom be provided to local authorities in this respect, subject to the general provision that a charging scheme as implemented should provide incentives which advance the objective specified in the development plan.¹³

Experience

The 1963 Planning Act Section 26 (2) allows local authorities to require payment of a development levy in the form of a contribution towards expenditures where any works by the

¹³In An Dáil on March 3, 1983, the Tanaiste and Minister for the Environment indicated that he proposed "to allow local authorities the maximum discretion and flexibility to determine their own spending and revenue patterns and to restore some of the freedom they had lost in recent years in this regard". This proposal has been given statutory expression in the Local Government Financial Provisions (No. 2) Act, 1983.

local authority facilitate the proposed development (including those commenced up to seven years before the grant of permission for development). Thus, the 1979 *Cork City Development Plan* requires, for land being developed for the first time, a contribution of £2,800 per hectare in respect of main drainage and an additional charge based on cost and area served. In addition, there is a charge for water schemes based on cost of works and water requirements of the development. These figures are updated to reflect inflation.

County Cork charges £2,500 per acre for water and another £2,500 for sewers and also an occasional extra charge for roads. The charges do vary by area of the county. Under this provision County Dublin and County Kildare charge a flat development fee of £4,000 and £1,500 per acre respectively. This practice of a flat fee is questioned by Walsh (1979, p. 36) who points out that the law requires the levy to be proportional to benefit. This would require expensive estimating procedures. The practice has not yet been challenged in the courts. The rate has often been fixed so as to cover all of such costs which the local authority must finance (typically 50 per cent) the balance being paid by central government.

In general, public services have been charged for (if at all) at a constant level regardless of location. This provides no incentive for new building to consider the effect of its location decision on service costs. It provides no incentive for locating in city centres, where some infrastructure is available, as opposed to new areas requiring new investments. If the Ministerial circular advising planning authorities to favour existing settlements instead of ribbon and isolated developments were backed up with government grants and appropriate service pricing policies, it could have more impact on settlement patterns.

The right to a development levy constitutes an opportunity by which a part of the land appreciations gain subsequent to development might be captured by the public. It might be objected that the law is written in terms of a charge equivalent to the amount of value added by public investments and is not related to the cost of such investments and not cer-

tainly to the total appreciation gain. But, in practice, the value added by the specific public improvements to water, sewer, roads, drainage and that added by the locational rents occasioned by growth of an urban centre are inseparable. If you do not have water, access to the city is of little value.

The availability of water and sewers is the ultimate land-use control, at least for major developments. When the sewerage service boundary is drawn, it effectively defines the limits of major developments. Even if development permission were granted by the local authority, it would be of little use without connections.

We have argued in favour of the principle that developments in general should "carry" their full long-run incremental infrastructural costs. However, we recognise that, in certain cases, state subvention will be warranted. For example, in certain inner city areas the costs of financing particular forms of development, e.g., residential, may be higher, for a variety of reasons, than the costs of such developments at the periphery. If it is felt that there is a societal advantage in retaining a residential component in the inner city, then a grant to this end can be justified. However, it will be more efficient if the grant (including in this category provisions for tax relief) is paid irrespective of the infrastructure costs, so that the development is still fully charged for the latter. This will ensure that the builder confronts the full costs and will economise on their use appropriately.

PART IV OUTCOMES OF THE EXISTING SYSTEM

Chapter 11

Open Space: Aesthetic and Financial Aspects

An important feature of development plans around cities is the identification of areas for preservation of open space and protection as zones of high amenity. By open space we mean any undeveloped land, either within an urban area or at its fringe, which is commercially attractive for development. For example, Counties Dublin and Cork have a policy of concentrating development in existing or new population centres and maintaining a distinct identity to these centres by keeping spaces open between them.

There are a number of reasons why ribbon development is objectionable. Accident rates per mile are higher on ribbon development (Hearne, 1976). Also public service costs are higher. Scattered rural developments, when compared with clustered units of housing at peripheral sites with relatively high densities, have five times the capital cost for electricity, lighting, sewerage, etc., and three and a half times the on-going cost for refuse collection, lighting, mail and school transport (Suffren and Mulvihill, 1977). Also, scattered development on the periphery leaves behind decaying upper floors and derelict sites in city centres.

No systematic data are available to measure success in meeting stated open space and clustering objectives, but the available observations do indicate a mixed result. There is no doubt that a considerable number of planning applications in these open space designations have been denied and upheld on appeal. At the same time many have been permitted, some on Section 4 order by elected councils, some on appeal and some after threat of compensation claim by the owners.

In the rapidly growing Dublin area, agricultural and open space zones are under considerable pressures and the sub-

urban towns are starting to run together with loss of identity to an undifferentiated conglomeration (Byne, 1977). A recent example is the rezoning of 300 acres to industry in the green belt originally specified to separate the new towns of Tallaght and Clondalkin (Kilfeather, 1981). The Dublin Mountains have seen fingers of house development pushing higher into the valley sides along the roads (Johnston, 1972). The observation of the then chief executive of An Foras Forbartha is worthy of nothing in detail (Downey, 1981, p. 18):

Scattered and ribbon development along national primary routes and other major roads not only destroys the visual character of the traditional Irish landscape — particularly when the design and finish of the dwelling and its situation are insensitively treated — it also makes the countryside less accessible for the remainder of the population. Contrast, for example, the Dublin mountains of today, where mile after mile of new, scattered residential development may be encountered, with that of twenty years ago. In areas of high scenic value — Wicklow, West Cork and Donegal are good examples — the growth of retirement, holiday and second homes, as well as the thoughtless development of agriculture-related dwellings, is actively threatening tourism, and may well, in the end, destroy the very attractiveness of the area. Paradoxically, the quality of dwellings erected in the West of Ireland in the late seventies was higher than in the rest of the state, yet ribbon and scattered development — often, sadly, sanctioned by elected representatives against the advice of their professional planning staff using Section 4 of the City and County Management Acts — is endemic.

What are the economic, institutional and property rights ingredients which contribute to the above results? First, the demand for building in advantageously located open spaces must be acknowledged. There is simply a huge demand for filling in spaces between suburban villages around metropolitan centres. Even if there were dramatic changes in policies on industrial location and the location of government employees, public infrastructure investments and the assessment of long-run marginal costs for infrastructure, the attraction of Dublin would be immense. Even attempts to concentrate development into existing or new towns in the metro region have strong countervailing forces. The very act of designating a development zone alerts the owners there that they have a

valuable asset — reservation prices rise, land availability may actually decline and there is then a reward to move to cheaper land along the roads and spaces connecting the city centre and its satellites. This phenomenon is also present in smaller towns.

The same demand pressures are found in rural scenic areas. With the growth of income and leisure, there is great demand for scenic housing sites. The first to build and enjoy the view may resent those who come later and detract from the view, but the same desire motivates both groups. There is also pressure in depressed rural areas for any development which promises jobs (construction and services). Politicians cannot easily ignore public opinion willing to trade a bit of coastal or mountain scenery for jobs, even though the latter are temporary, and more permanent jobs relating to tourism may be forgone as a result.

The indulgence with which applications for houses for farm family uses are treated contributes to ribbon development; there are substantial, administrative and political costs involved in preventing non-farm families from acquiring these houses. There is also an understandable tendency for elected officials to want to help the individual who makes a case for an exemption from the open space designations. This is a dynamic which is hard to stop when once in motion. When a few permissions are granted which at that level create no environmental harm, the next set of applicants ask why they cannot get permission since their neighbour did. And, so on it goes.

Kilfeather (1981a) reports in the *Irish Times* (December 12, 1981) on a decision by Dublin County Councillors to rezone for industrial use 33 acres of agricultural land. Approval of this proposal was followed by another motion proposing that the adjoining 3½ acres be rezoned to commercial use. A councillor opposing the motion said that he was beginning to see how this system operated:

With our previous decision just 10 minutes hot, we are moving on to extend it to this man's lands. There is plenty of land further on: why should they be treated any differently?

Elected councils and An Bord Pleanála can get caught in this dynamic of trying to be fair to each applicant in sequence. To say that Section 4 power, which allows elected councils to dictate the decisions of managers, is itself the culprit is to oversimplify a complex set of forces.

The attempt of some local authorities to discourage rural housing may have actually contributed to sprawl. The *1977 Co. Kildare Development Plan* (2nd Revision, Part 1, p. 97) calls for sterilisation of land around a rural house for a minimum of 5 acres on a county road and 10 acres on main roads. This policy of large lots may just further spread isolated houses.

The key property right influencing use of open land is the right of owners to receive compensation if permission to develop is denied, for all but a few reasons. For example, as noted earlier, a denial of permission because development would be premature given lack of water or sewers is non-compensatable. This reason provides only temporary protection at best, and where land is zoned as open space (so that there is a presumption that there is no intention to provide services) "prematurity" provides no protection. In some cases it may appear that the Appeals Board has no sympathy for local councils' policies for open space when the Board either grants permission or gives non-compensatable reasons upon the local councils' refusal. In fact the councils may be hoping that their refusal will not be appealed, and that the applicants do not pursue their right to compensation, even though the council knows that the basic law places the developer of open land in the predominant position. The Appeal Board may sympathise with the open space objectives, but it knows that when land is zoned in this category and there is no intention to ever supply services, denial can create the basis for compensation. In urban "infill" open space areas — which are typically adjacent to services — if the local authority wishes to maintain the area in the existing use, liability for compensation arises in most cases.

To the extent that local councils have been successful in thwarting development of open space, it is more a matter of providing transaction cost barriers than of relying on the nominal rights created by planning laws. Local councils make

refusals which contradict the rights to develop but which are accepted because it costs too much for the developer to pursue the matter further. But these costs are always relative to gains; as the benefits to development increase, developers will appeal refusals on open space, and as long as the rights of compensation remain, they can be expected to win.

Designation of an area under a Special Amenity Area Order which is confirmed by the Minister can remove the right to receive compensation if the ability to develop open space is denied in the area so designated. As we noted earlier, the fact that this has never been implemented suggests that there is a fundamental problem in selecting some as ineligible to receive the land appreciation gains of development while granting riches to others.

We conclude that a likely outcome of the existing land-use planning system will be a pattern of urban sprawl which will be costly to service — relative to a least-cost alternative — and less aesthetically and perhaps socially pleasing than more concentrated development. Attempts to concentrate development in satellite towns surrounding the main urban centre are likely to fail; the very act of providing services to them makes the land along the “serviced” corridors extremely attractive for development while the local authority is liable for compensation in most circumstances if such development is forbidden. This combines with a preference on the part of many individuals to live on the fringe of the major urban area, which also exerts pressures for change. While the local authority has procedural mechanisms for influencing land-use these will tend to be over-ridden when the gains to individuals from so doing become sufficiently large. Such gains will be captured primarily by those landowners who have the knowledge and the willingness to argue their case and maximise their personal gain. Those who hold back either from lack of knowledge or from an unwillingness to impose on the community and go against the spirit of the collective aspirations, may well find that their holding back in this regard has been in vain.

Chapter 12

Structural Preservation and Innovation in Design

There is a growing interest in the preservation of our architectural heritage (Nowlan, 1980). An Taisce published an *Amenity Study of Dublin and Dun Laoghaire* (An Taisce, 1967), proposing buildings of architectural and historic value for preservation. This was followed in 1982 by a further study of Dublin – *Urbana-Study of Dublin* – which had the objective of “formulating a conservation policy for buildings on List 1 and adjacent streetscapes” (An Taisce, 1982). Development Plans commonly contain lists of buildings which the local council wishes to preserve and those whose preservation is to be decided on a case by case basis. The 1976 Dublin Development Plan listed 106 buildings whose preservation is an objective and 124 buildings whose demolition or alteration will be considered on their merits.

The architectural merit of a building is subject to much debate, and different people would add to or delete from any list; when it comes to making a judgement to preserve an already deteriorated building, there can be even wider differences of opinion. But it would be fair to say that some important buildings have been lost and some others retained upon threat of demolition (Nowlan, 1980 and Robinson, 1980). In the *Urbana-Study of Dublin* work cited above, it is pointed out that (An Taisce, 1982, p. 5):

The deteriorating physical condition of buildings and continuing development pressures are eroding the stock of buildings in Dublin on List 1. In the last twenty years about 70 houses on streets containing buildings on List 1 have been lost.

Most attention has been given to exteriors. The 1976 amendments Section 43 (c) extended the necessity for per-

mission to listed interiors as well, but only a few local authorities, including Cork and Waterford, have implemented interior control.

The interaction of laws and strategies in this area can be complex. Owners of listed buildings are notified that their buildings have been so designated and alterations are subject to planning permission.

It is not clear whether a grant of permission to demolish a listed building is a material contravention of the Development Plan, thereby requiring council action instead of managerial action alone. This appears to turn the degree of specificity *vis-à-vis* listing provided in the objectives stated in the Development Plan. Also, it is not clear to us what manner of proposed alteration of a listed building would, if refused, give rise to compensation claims.

Permission may be required under the Housing Act for demolition of a building used as a residence irrespective of its being listed in the Development Plan under the Planning Act. A demolition permit under the Housing Act may not be appealed by third parties but such actions can be so appealed under the Planning Act if the building in question is listed. A building which is not used for housing and is unlisted may be demolished without any permission. This leaves unregulated a range of buildings which are merely attractive and part of the character of a block or city rather than being of great historic or architectural merit. In Dublin, St. Ann's Schools and the Molesworth Hall, which were demolished in 1978, were of this genre.

The desire of local authority officials to avoid eyesores and dilapidated buildings provides an opportunity for owners to make some strategic moves. A building may be left to decay and then applications made for demolition and replacement. The local authority is then faced with the trade-off between continuation of an historic but derelict building, or its replacement with a sound building of a different architecture. A recent case in Dublin arose when a developer was refused planning permission for an office development because it would replace a listed Georgian building. The owners were then observed taking the roof off (McDonald, "Developer

Works on Roof of Georgian House" *Irish Times*, 30 May 1981, p. 20). More subtle processes of presenting the authorities with the choice between a building too costly to preserve and a new building can also be observed.

A case in Drogheda was appealed to An Bord Pleanála. The manager granted permission for demolition of a 250 year old school building to make way for a housing development. The appeal was brought by environmental and historical groups. Drogheda's mayor testified against the permission granted by the county manager. The developer argued that the building could not be restored economically (MacConnell, "Appeal over Drogheda Plan Adjourned", *Irish Times*, 10 June 1981). The Board refused demolition permission (An Taisce, 1981).

The restoration of an historic building is often more costly than new construction. It is frequently impossible to meet the fire standards of a new building and, as noted earlier, some trade-off has to be made between a slight fire risk (compared to new construction — but still better than that which applies to the current structure) and retention of historic architecture. The high cost of restoration means that conservation is not just a matter of prohibiting demolition. The Planning Act, Section 14, permits local authorities to give financial assistance to private owners to help preserve buildings, but this has not been used by them. Another key scarcity in this area is personnel to establish standards and make surveys of historical buildings and advise on their preservation. This may be one of the areas where the trade-off between use of scarce planning resources for minor building extensions, etc., and other planning activities should be examined.

A potentially very important positive change in the incentives was provided in the Budget and ensuing Finance Bill (Section 19) enacted by An Dáil in 1982. The provisions apply to buildings which are judged by the Commissioners of Public Works to be structures which are "intrinsically of significant scientific, historical, architectural or aesthetic interest", and to which "reasonable access is afforded to the public". Expenditures qualify which are incurred on "the repair, maintenance or restoration of an approved building

or on the maintenance or restoration of any land occupied or enjoyed with an approved building as part of its garden or grounds of an ornamental nature". Qualifying expenditure incurred by the owner *or* occupier of an approved building will be treated under the income tax code as if this amount were a loss.

For individuals paying a marginal rate of tax of 65 per cent, this in effect means that qualifying expenditure "costs" the owner only 35p per £ of expenditure. For persons with a relatively high taxable income who can allow public access (a minimum of 30 days per year and 4 hours per day is specified) this provides an attractive inducement to maintain and perhaps improve approved buildings. For low taxable income individuals, the benefits, and therefore the positive incentives, are much less.

The Kinsale Experience

The Development Plan and the listing process provides local authorities with the opportunity to assert their objectives in the preservation area and to mobilise opinion to their point of view. However, very few communities have embraced this opportunity. An exception is the town of Kinsale, County Cork. Here, the town's urban district council, through its officials, has used the Development Plan as a means of highlighting the unique architectural heritage of the area. The Cork County Architect, personnel of the School of Architecture, University College, Dublin, An Foras Forbartha and others have participated in advisory roles and the community has responded very favourably. In explaining this success, Mr. Pat Murphy, Chairman of Kinsale Community Tourism Promotions Ltd., wrote, in a letter to the *Irish Times*, October 22, 1977:

... If the growing success story of Kinsale as a town determined to conserve its own heritage is to provide any lessons, it is that there is boundless goodwill in the inhabitants towards sensitive developments which emerges if a suitable vehicle for its expression is provided and trust and tact are equally intermingled. . . . The Statutory Draft Development Plan is . . . exemplary in that it embodies and expresses the hopes and intentions for the future of their town of the people of Kinsale.

To help act on these aspirations, a report — “Kinsale: A National Heritage Town” — was commissioned from the School of Architecture, University College, Dublin, and this document was formally adopted by the Urban District Council. Philip Geoghegan, who directed the study, explained (*Irish Times*, October 22, 1977):

It did little more than articulate and structure the expressed wishes of the people in Kinsale. Great care was taken in discovering what those wishes were. . . . The report also sets out directions which would help conservation in the town.

The School of Architecture also provided a resident, free and independent advisory service.

The Kinsale situation is somewhat unique, in that it is already an important tourist and culinary centre, and has a distinguished history and architecture. There is a palpable self-interest for many citizens in maintaining an attractive ambience. The town is sufficiently small that with effective leadership it was possible to heighten community awareness and concern, and thereby bring community pressure to bear in encouraging preservation. “Outside” talent, interest and funds (from the Heritage Trust) reinforce these tendencies. Finally, the officials, notably the Cork County Architect and the Town Clerk, and the elected council members, supported the effort vigorously.

While there have been some successes in other towns, frequently the necessary ingredients for a sustained preservation programme are lacking. The following reasons for this can be suggested:

(i) *Rent Control*. In 1981, it was estimated by Threshold that there were 31,500 controlled tenancies in existence, while another study showed that in 1979 the average rent paid per month by controlled tenants was £10.80, compared with £72.00 by “uncontrolled” tenants. The consequences were inevitable (O’Brien and Dillon, 1982, p. 15).

Almost by definition, most controlled lettings were in fairly old properties and many lacked even basic amenities. This situation was aggravated because the low rental incomes received by landlords were not conducive to ensuring that the property was maintained in good order. Again, not infrequently in the case of

Dublin, landlords sold off properties very cheaply with sitting tenants to property speculators who, having got the property very cheaply with the sitting tenants, then sought to get rid of their tenants by allowing the house to fall down around their ears.

Thus rent control was very destructive of much of the older building stock, while providing often very inferior and deteriorating accommodation. In 1981, the Supreme Court reaffirmed an earlier ruling of the High Court that the provisions in the 1960 Rent Restrictions Act relating to the restrictions on rent and the right of landlords to recover possession of controlled premises were unconstitutional. This clearly has implications for the well-being of tenants and these require serious policy attention.¹⁴ However, the ability of property owners to capture close to market-level rents on the formerly rent-controlled buildings should have a very positive effect on structural conservation.

(ii) *Lack of Awareness*. In spite of such excellent volumes as Patrick Shaffrey's *The Irish Town: An Approach to Survival* (Shaffrey, 1975) and numerous local histories, there is still a widespread lack of understanding and knowledge concerning what each community's architectural endowment consists of. "You can't see what you don't understand", the painter Constable observed.

(iii) *Ascendancy Complex*. Since many of Ireland's most interesting structures were built by and for the ruling class, there is a tendency in some quarters to therefore denigrate their social, historical and architectural significance. The lack of historical mainstream "legitimacy" encourages apathy, and sometimes even antagonism, towards preservation.

(iv) *Lack of Skills*. Only six of the 27 county councils employ an architect, and even among professionals there is a general lack of expertise in identifying structures worth maintaining, and in prescribing cost-effective strategies for preservation.

(v) *Lack of Positive Incentives*. Although the Development Plan and planning process can be, and is used, to discourage

¹⁴ Many of the issues and opportunities in this area are discussed by O'Brien and Dillon (1982).

destruction of structures, the procedures employed to this end all take a negative form. No positive financial rewards are offered, although such is allowed by the acts. This is a reflection both of the straitened financial circumstances in which local authorities find themselves and the low priority which preservation is assigned by them in budgetary terms. The facility provided in the March 1982 Budget, whereby expenditure incurred on approved buildings can under certain conditions be treated as a loss under the income tax code, is a potentially important exception to the negative nature of incentives. (See discussion above.)

(vi) *Lack of Direct Local Vested Interest in Preservation.* We have noted that in Kinsale, an enlightened citizenry could see the long-term economic and community benefits of preservation. In many districts, although there is a comparable self-interest, it is not always so readily identifiable by those affected, nor so easily orchestrated and mobilised.

(vii) *Absence of Leadership.* Overcoming the "natural tendencies" inimical to preservation requires vigorous leadership. Given the pivotal role which the manager is assigned in the Irish planning system, this usually means in effect that the manager must be willing and able to provide the necessary lead. In some cases this has not been forthcoming.

(viii) *Procedural Deficiencies.* To be protected, buildings must be listed in a development plan. However, it takes time to compile the list, and development plans are typically revised at best on a five year cycle although piecemeal revision is allowed under the Act. Thus, many buildings worthy of preservation may be left without any protection for several years.

As implemented, the land-use planning system is unlikely in many cases to result in the preservation of zones of architectural distinction, except in cases, such as Merrion Square in Dublin, where there is a coincidence of commercial and aesthetic interest in preservation. Even here, unless positive efforts are made to encourage maintenance, disintegration may eventually set in. In those cases where there is a sub-

stantial commercial advantage in allowing deterioration and eventual clearance, the current listing and permit process is likely to be insufficient in many — perhaps most — cases.

Innovation in Design

In the course of our interviews with architects, we were consistently told that the planning system encouraged mediocrity and a lack of venturesomeness in design. A prominent architect, Mr. Sam Stephenson, expressed the prevailing view at a conference of the Architect's Association of Ireland (quoted by McDonald in "Architect says Dublin Office Block Design Depressing" *Irish Times*, 23 October, 1981):

There is no single culprit, but an unholy and unwilling alliance of developers, planners, conservationists and tired and timid architects.

With regard to planners, he observed that they shied away from anything new or striking in architectural design. "Most of the time they seem to hope that no development would ever take place so that they wouldn't have to make any decisions". His criticism of conservationists was that they were satisfied with "anything that is not obtrusive or noticeable. They seem to prefer all new developments to blend with the existing developments, despite the fact that some of these developments are very large indeed".

In Dublin, the requirement in many areas that a facsimile of the original frontage be provided — usually with red brick — on new buildings is regarded as especially chafing, as it so restricts creative originality that all architectural design tends towards a (low) common denominator. Planners respond that when developers (and their architects) were "let loose", as in the office boom in Dublin in the 1960s, they produced mainly glass boxes of negligible aesthetic merit. Better, they say, to have a low common denominator than none at all.

An exactly parallel set of concerns arise in the case of the design of housing schemes. Private developers and their architects argue that a planning application which includes only design features — in terms of plot ratios, spacing, materials used, road widths and layout, etc., — which are already well

accepted, will maximise the probability of approval. Any application incorporating new or different features — e.g., the use of cluster development, novel structural designs, culs-de-sac, etc., — is likely to be delayed and perhaps even refused. This combines with uncertainty concerning the degree to which consumers are likely to be enthusiastic about new concepts to stifle creativity. That there is a measure of creativity available was demonstrated in Dublin when the Corporation held a competition for architects asking them to submit local authority housing scheme designs. Several very attractive and functional designs were submitted, and the realisation of some of them can now be seen in inner city areas. Planners at An Foras Forbartha developed a prototype for a housing scheme which had a number of unique features *vis-à-vis* open space, contours, culs-de sac, etc., and which would not cost more than the conventional design, but which would necessitate some sacrifice of road widths, kerbs and junctions (Brangan *et al.*, 1980).

This study is of such significance that it is worth describing in a little more detail. The team undertaking the study set out to demonstrate that it is possible to build housing estates which are safer, more diverse and engender a stronger sense of community than existing schemes and to build them at no greater cost. The professional skills of the six team members included architecture, engineering, planning, quantity surveying and social science. They note that half of the accidents to child pedestrians in residential areas occur when the child is crossing from behind a parked vehicle. Roads have tended to be wide and straight and to be through roads rather than culs-de-sac. They are wide because they are designed to allow for parking on both sides of the road and to allow access by large vehicles such as fire engines and straight because minimum garden depth requirements, building line requirements and sewers located in grass margins make it uneconomical to put in curves. They argue that curved, short culs-de-sac with wide driveways and plenty of off-street visitor parking should be used. They note that research has shown that culs-de-sac are the safest type of residential road layout, but that existing minimum junction spacing requirements (about 60 metres)

discourage their use. They took 5 schemes currently under development, and designed alternative layouts, employing the cul-de-sac concepts and using flexible road standards. In Figure 1 the original layout and the attractive layout can be seen for one of these schemes. They argue that the latter is safer for children than the former, provides more diversity and a greater sense of identity, and is more secure, in terms of discouraging vandalism and burglary. The new layout would allow 302 houses in the scheme, compared with 288 in the original. Taking the average per house original layout costs as 1,000 units, the costs per house of the revised plan worked out at 962; the distribution is presented in Table 4:

Table 4: *Average layout costs per house, original and revised*

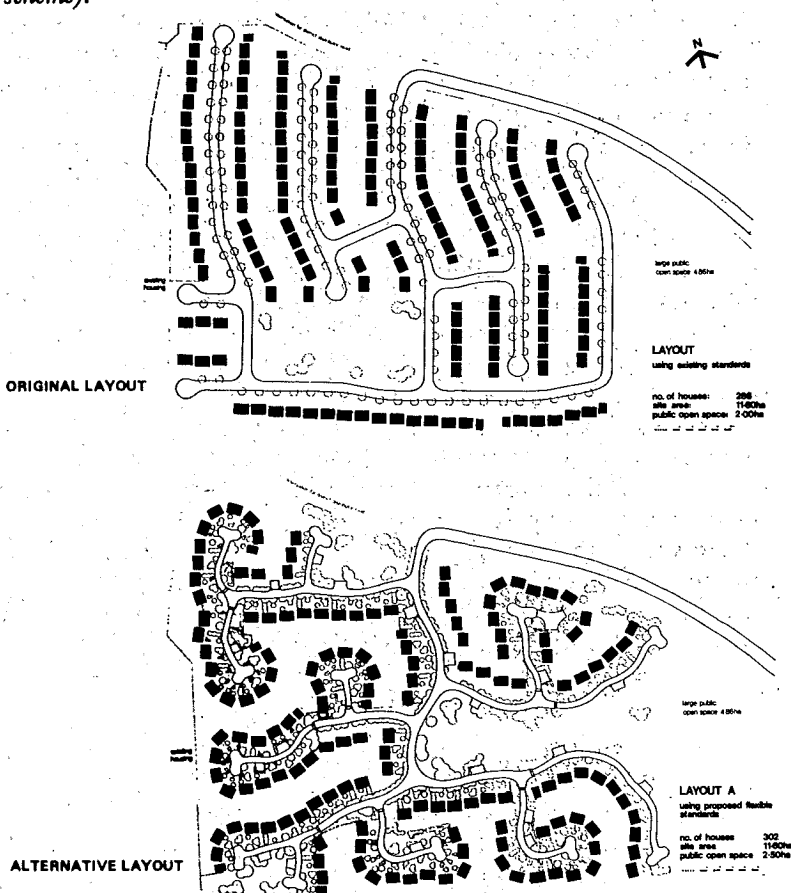
	<i>Original</i> (288 houses)	<i>Revised</i> (302 houses)
Paved Areas	467	410
Fencing	90	84
Landscaping	81	102
Drains	260	262
Services	102	104
	----- 1,000	----- 962

Many developers to whom we spoke shared the opinion of the Foras Forbartha group that if roads did not have to be designed for through traffic and to allow on-street parking on both sides, then much more pleasing and socially desirable scheme designs could be adopted. Others felt that what was proposed would cost more than the existing conventional designs.

In spite of the opportunities identified in this study,¹⁵ there have been few moves to act on them. We feel that an effort

¹⁵The concepts were first presented at a conference – “Streets for Living” – held in 1976.

Figure 1a and 1b: *Original layout and alternative layout (housing scheme).*



Original	68	210	87
	House & Concrete Surround	Open Space, Gardens and Margins	Roads, Footpaths and Driveways
Revised	68	217	64

Site allocation per dwelling

Source: Brangan (1980), p. 17.

should be made to identify the constraints inhibiting progress in this regard. The following are among the likely candidates: the costings estimates are over-optimistic; developers feel that customers would not be attracted to such schemes; road engineers insist that roads be designed for through traffic which allows passage for bin-collection, fire brigade vehicles, delivery lorries, etc., and on-street parking; planning permission is delayed or refused.

We feel that diversity could characterise housing scheme layout if there was the flexibility and will to encourage it. A key requirement for the successful implementation of such schemes appears to be that householders and visitors comply with regulations limiting on-street parking. Even though ample off-street parking would be provided, it might prove difficult to enforce this requirement.

The assumption is implicit that house purchasers would be willing to buy houses in schemes other than the conventional layout. If builders are willing to test this premise, they should be encouraged to do so.

However, the incentives are to minimise hassle and delay by being determinedly unoriginal; we can expect that current design conventions will continue to be an outcome of the current planning system.

Chapter 13

Planning and Development

It is clear from the statement made by the Minister, Mr. Neil Blaney, in introducing the 1963 Planning and Development bill to An Dáil (Dáil Debates Volume 197), and from other sources such as Meagher (1965), that the land-use planning system was viewed as a major element in encouraging and facilitating economic and social development. This would be achieved by a cost-effective provision of infrastructural services, by anticipating potential bottlenecks in the supply of housing, industrial sites, transportation, etc., by avoiding an unbalanced population distribution and by preserving an attractive environment so as to attract both tourists and industry. With regard to the latter, in introducing the bill Mr. Blaney commented (Dáil Debates Vol. 197, p. 1762):

Good environment is important to existing industry and it can encourage new industry . . . Industrialists are influenced by good amenity, by the appearance of a place and by the facilities which it offers for leisure . . . A good environment and prosperity are closely associated.

To what extent has the land-use planning system fulfilled these aspirations? It is virtually impossible to give a definitive answer to this question, since separating out the influence of planning *per se* from all of the other factors bearing on development is not feasible. However, it may clarify matters if some of the issues involved are addressed.

By examining the systems whereby infrastructural investments are allocated, we can get a sense of the extent to which the aspiration of the planning system to utilise these resources cost-effectively has been realised. With reference to both regional policy and the distribution of development within

Dublin we address the issue of achieving a "balance" in population and economic development.

The Allocation of Infrastructural Investment

How does the planning system encourage the allocation of infrastructural investment in a co-ordinated and cost-effective fashion? The bulk of these funds are dispensed by the central government. Since development plans are prepared at the local level, it is possible at this level to prepare a co-ordinated and cost-effective combination of investment opportunities. In most development plans, a co-ordinated local infrastructural "package" is presented. However, the central government only makes a very limited volume of general purpose funds available. For important road, water and sewer schemes, the work has to be authorised and financed by the Department of the Environment. The exemption of residential housing from rates and its replacement by finance provided by the Exchequer has in effect diminished the autonomy of a local authority with regard to embarking on a self-funded infrastructural investment programme. Allocations from the central government for these purposes are based on some index of need, combined with distributional and political considerations. A national roads plan has been published (*Road Development Plan for the 1980s*, Department of the Environment, 1979) which is to serve as a locational guide for future allocations. No national water and sewer investment plan is available. It is not clear what criteria are employed to ensure that, within the distributional and political constraints imposed, the funds devoted to infrastructure are spent in an economically efficient fashion. However, Foster *et al.*, (1981), in a study of the importance of infrastructure for industrial investment undertaken for the National Economic and Social Council (NESC), noted that (p. 82):

We have detected a tendency to improvisation and to *ad hoc* decisions in the provision of infrastructure. There are infrastructure plans but especially at the local level they tend to be collections of worthwhile proposals rather than systematic attempts to anticipate needs and opportunities. . . . It would . . . seem as

if there is a serious problem in determining investment priorities. The style of decision-making of the past and of the present would appear better suited to times when the supply of investible resources is more ample in relation to demand. . . . The present mixture of national and local political decisions may appear easiest to sustain since they imply no break with past practice, but their adequacy will come under greater strain as the scarcity of funds becomes greater.

They conclude this theme in their analysis by saying that (p. 87):

We believe that the needs and costs of providing infrastructure have reached such a point that urgent attention should be given on how to establish priorities and improve methods of provision so as to make the best use of scarce resources.

There is, therefore, a strong implication that economic efficiency is not being achieved with the present system.

Regional Policy

The limitations of a highly localised land-use planning system as a means of making decisions on infrastructure investments has been recognised by commentators. Meagher, who has played a central role in the Department of the Environment in developing and implementing the Planning Acts, looked to regional planning in part as a means of overcoming these (Meagher, 1965), as did Murray (Murray, 1966). Their anticipations concerning developments in this regard have not been realised. Although regions have been defined, none of them has been assigned autonomous decision-making authority or revenue-raising capability. The Industrial Development Authority has established job targets in manufacturing, by region, and has used its considerable financial resources and discretion in channelling private investment (and therefore jobs) to particular areas in order to achieve its objectives. Foster *et al.*, (1981) point out that the IDA has been successful thus far in overcoming bottlenecks in infrastructure because it has "been able successfully to put pressure on other public agencies to undertake special investments to overcome such bottlenecks." These authors go on to argue that the ability of one agency to override normal priorities is only

possible when the existing authorities do not have "well-worked out programmes according to their own priorities."

We conclude that, in terms of achieving regional objectives *vis-à-vis* economic development, the land-use planning system *per se* has not played a pivotal role, although it has in many cases responded positively to efforts in this regard by the IDA. Has the system had much success in shaping the location and nature of development within a single planning jurisdiction? Dublin provides an interesting example in this respect.

Location of Development in Dublin

Two interrelated issues have dominated recent discussions of this topic.

The first concerns the decline of selected areas of the inner city, the latter defined usually as the area bounded by the Grand Canal on the south, by the Royal Canal on the north, and the Phoenix Park to the west. The decline is documented in a number of recently published reports, including Bannon *et al.*, (1981), Davis *et al.*, (1980) and a report on the inner city prepared by an inter-departmental committee (Inter-Departmental Committee, 1979). The problem stems from a combination of declining employment opportunities in industry, as the "old" base becomes increasingly uncompetitive, the replacement of residences by office and related developments and the attractions of the suburbs for family living. The situation does not yet resemble the so-called doughnut effect, which is a familiar feature of many American cities, where a "dead" interior is surrounded by a vibrant ring of economic activity. However, some disquieting trends in this direction have been identified in the reports cited above.

The second is the continuation of a trend, now almost of two centuries duration, for most office, apartment, prestige retail outlets and middle and high income housing developments to locate south of the River Liffey, tending to partition the city into two socio-economic zones.

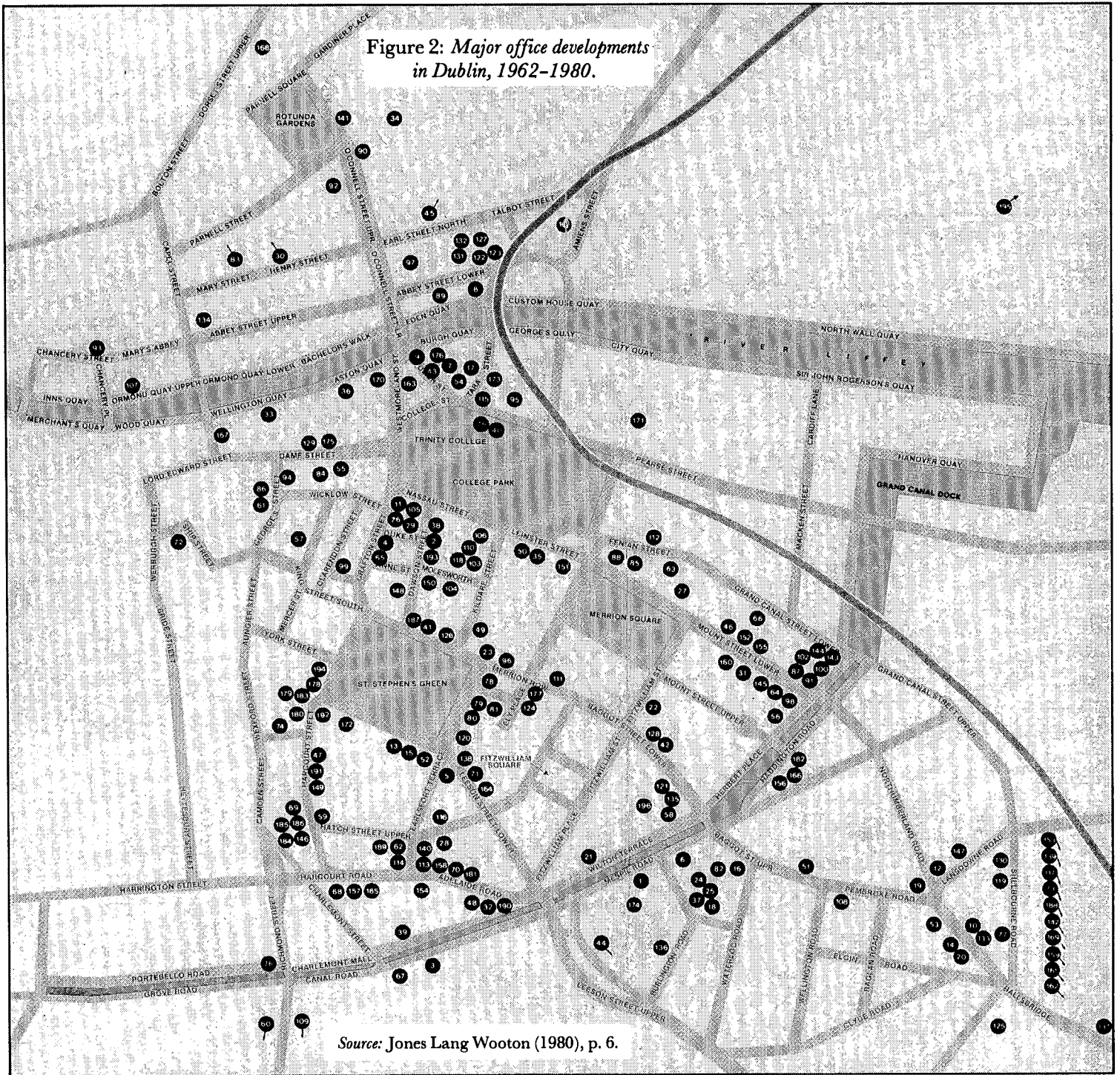
A number of steps have been taken to deal with these problems:

- (1) As noted earlier in a different context, the Corpora-

- tion is building small blocks of attractive residential units in areas which have been losing population.
- (2) The IDA has initiated an effort to attract industry and service activity into the inner city.
 - (3) The police presence in the most crime-prone inner city areas has been increased. This seems to have effected a reduction in the incidence of serious crime in 1981 in some zones — Kevin Street and Kilmainham, and relatively low growth in 1981 in others, e.g., Store Street at 5.6 per cent, compared with very rapid rates of growth in some suburbs, e.g., Blackrock/Dundrum (63%), Rathfarnham and Tallaght (43.7%) (Data provided by the Minister for Justice in response to Dáil Question, Dec. 1, 1981).
 - (4) Irish Life Assurance Co. Ltd., a company in which the state is a majority share holder, is a major developer of office accommodation in Ireland. It has established a large office/residential/shopping mall complex on the northside of the city and has also developed a major shopping centre in this zone.
 - (5) In May 1981, the Minister for the Environment issued a general policy directive to An Bord Pleanála. In it he stated that, in determining appeals relating to retail shopping structures which would represent large scale additions to the existing retail shopping capacity in the locality, the Board shall have regard to “the need to counter urban decline and to promote urban renewal and to promote the utilisation of unused infrastructural facilities in urban areas”, among other matters.
 - (6) Relatively indulgent planning conditions, compared to those in the south, are available for office development in the northside. For example, developments in the south must now have 60 per cent of the space residential, while 100 per cent office designation is available in the north.

The highly concentrated nature of Dublin's office developments can be judged from Figure 2. Close to 90 per cent of all Dublin apartments have been built on the south side of

Figure 2: Major office developments in Dublin, 1962-1980.



Source: Jones Lang Wooton (1980), p. 6.

the Liffey: 40 per cent of the Dublin units are in the Dublin 4 postal area. It is too early to say whether the measures taken will have the effect of diminishing the relative attractiveness of the south side of the city for office and apartment developments. Most of those to whom we talked felt that they would not, for the following reasons:

- (1) In the case of offices, there are substantial agglomeration economies. Since traffic movement within the city is slow and difficult, being within walking distance of other offices with which the bulk of business is transacted is a substantial advantage.
- (2) Most company chief executives, Secretaries of Government departments and their senior management, reside in the south, and are unwilling to travel to the north, mainly because of the time loss and frustration engendered in travel.
- (3) The financial institutions and letting agents know that Dublin postal zones 2 and 4 have a very good track record in terms of commercial viability. They provide ready finance and marketing services in this area, but are much less enthusiastic about financing activity in areas without a "solid" past record of lettings.
- (4) The aesthetic and social atmosphere in the office/apartment zone in the south is said to be superior to what is available elsewhere.
- (5) The central government and government-financed institutions have for several years been the major occupiers of new office accommodation. The government has shown no interest in, or commitment to, the objective of encouraging the shift of development north of the River Liffey.

There was also a sense that the predominant position of the major downtown retail outlets was likely to be challenged in the future by suburban developments in the form of shopping centres "anchored" by department stores of a scale and diversity now only found in the city centre. In many interviews the difficulties of inner city and speedy cross town access, and the severe shortage of parking, were cited as being

perhaps the key constraints. Ambitious road construction plans designed to overcome this difficulty have failed to come to fruition, because of lack of resources and/or political opposition; the latter derives mainly from the antipathy of those who would be displaced if the proposals were acted upon.

In 1982 there were very substantial funds allocated for housing and related social purposes from central government to parts of the inner city in Dublin and the Urban Development Areas Bill (1982) was introduced. The latter provided for the establishment of urban development commissions to secure the regeneration of designated urban areas. The Custom House Dock site and the area covered by the medieval walled city of Dublin were so designated. The Minister would be empowered to designate the areas as urban development areas and to establish commissions. Development carried out by, or approved by, an urban development commission within its area was to be exempt from planning control. The commissions would be very much creatures of the Minister -- Section 19 of the Bill provided for the dissolution of an urban development commission when it appears to the Minister that there is no longer a need for its existence. The powers of local authorities were to be further confined. With the change of government at the end of 1982, the Urban Development Areas Bill (1982) has been allowed to lapse.

Because of the predominance of Dublin on the urban scene in Ireland, problems of inner city decline tend to be defined in terms of the capital. However, it is clear that the difficulties are shared to greater or less degrees by all of our cities.

Chapter 14

Gains in Land Value and their Distribution

In the report of the Committee on the Price of Building Land (1973) hereafter referred to as the Kenny Report, the first chapter is devoted to detailing the very rapid rise in the prices paid for serviced land and potential building land near cities and towns. Between 1963 and 1971 the average price of serviced land in County Dublin increased by 530 per cent, while in the same period the consumer price index rose by 64 per cent. This pattern has since continued; Jennings (1980) showed that the median cost per undeveloped house site in the Dublin area has increased from £500 in 1975 to £4,000 in 1980, a 700 per cent increase, while the consumer price index increased by 98 per cent over the same period. He divided the market into three parts: the northern sector, the southern sector and the new town areas (Tallaght, Blanchardstown, etc.,) and shows that for the past three years, prices in the south and the new town areas have grown especially rapidly (Table 5). He also estimated the share of house price which land comprises over time in the three areas and in the greater Dublin area as a whole (Table 6).

While the proportion of the average house price consisting of land price has remained quite stable in the greater Dublin area over the period, this masks very sharp shifts within the area, with decline in the northern sector being "compensated for" by growth in the southern sector; the new town areas have also shown some growth, albeit from a much lower base.

The price payable for land is a residual. In a prestige area with strong demand, and therefore high house prices, builders will be willing to pay much more for sites than they would in less attractive areas with lower prices. In each case, the developers will estimate the price at which they feel they can sell

Table 5: *Median prices paid per undeveloped site for housing land, Dublin area, Current £*

Year	North	South	New town areas	Greater Dublin area
1974	800	700	400	500
1975	800	1,500	400	500
1976	2,200	1,900	700	1,500
1977	3,000	2,600	—	2,600
1978	3,000	5,000	1,000	3,000
1979	2,900	9,500	2,400	3,400
1980	3,700	12,000*	2,900	4,000

*Only one transaction

Note: The data for 1979 and 1980 were generously provided to us by Jennings as an update of his original analysis, which covered the 1974-1978 period.

Source: Jennings (1980) pp. 23, 25.

Table 6: *Site cost as a percentage of average house price in the greater Dublin area, selected years*

Year	Northern sector	Southern sector	New town areas	Greater Dublin area
1976	19	16	7	13
1978	11	15	6	11
1979	11	22	9	11
1980	13	22	11	12

Source: Jennings (1981) p. 4.

their houses; they then deduct all of their non-land costs, including an allowance for profit, and this defines the maximum amount which they will be willing to bid for land. In competitive markets, the price actually paid will amount to the maximum which the most economically efficient developer

could afford to pay and still make a profit. Land price, therefore, is derived from the price which developers estimate they can get for the finished house. Jennings (1980) estimated that in 1979 median prices paid per undeveloped site in the south suburbs, north suburbs and new town areas amounted respectively to £9,500, £2,900 and £2,400 (see Table 5). The higher prices paid in the south suburbs derived from the higher prices which, other things being equal, developers felt they could get in that region compared to the other sectors. The higher site cost *per se* does not cause the higher house prices. Putting this another way, if developers were given the land for nothing in the south, the house prices would not fall by 22 per cent in the area unless there were price controls. There would be some (probably slight) downward influence on prices, as a result, but the predominating factor determining house sale prices in the short run is likely to be demand for properties in the area in relation to supply.

In addition to growth in income and population, a variety of factors can cause a major appreciation in land value. These include: the provision of infrastructural services, including water, sewer connections and roads; changes in taste; the provision of adjacent aesthetic, cultural, educational and social amenities, and reduced rates of crime and delinquency. Value may likewise be diminished by a parallel set of negative influences. When substantial property appreciation occurs, the owners capture what economists call a rent. Rent in this sense does not have its popular meaning, but is defined as the return over and above that required to maintain a resource in its highest valued use. Take the case of land now used for farming. If services are provided adjacent to this land, and it is located on the south side of Dublin, it would have had a median market value in 1979 of £76,000 per acre (8 sites per acre) for development. If the landowner would require a minimum of £16,000 per acre before he would give up his land to this use, the difference between the minimum necessary to induce the change in use and the amount actually received is called rent. Thus in this case the rental yield to the landowner is £60,000 (76,000–16,000) per acre.

Rent Yield

Minimum Price

The average price per statute acre received for agricultural land which was sold at public auction for farming in 1974-1980 has been estimated by Kelly (1981) and is shown in Table 7. This is land which is unserviced and which does not have planning permission.

Table 7: *Average price per statute acre received for agricultural land at public auction, 1975-1980*

£/AC					
1975	1976	1977	1978	1979	1980
597	839	1,164	1,554	2,365	1,474

Source: Kelly (1981)

The price of agricultural land is the absolute minimum which landowners would accept to transfer use. However, the minimum price which would induce a voluntary surrender of land for development — this assumes that the full market price for development is not obtainable — will generally be higher than this. We were told that a farmer who does not particularly wish to sell, but who has say, two sons who wish to farm, can be induced to sell for a price which allows him to purchase farms for each of them and that this type of consideration tends in many areas to define the minimum threshold price. If we allow a 100 per cent “mark-up” on the historically high average agricultural land price of 1979, we arrive at a “minimum acceptance” price of £5,000 per acre.

Area Developed

There are no annual data available specifying the total area of land which is developed annually. This must be estimated. In 1979, the composition of housing output was as follows (Table 8):

Table 8: *Housing output and land area requirement, 1979*

	<i>Houses</i>		<i>Land</i>	
	<i>No.</i>	<i>% of total</i>	<i>Area¹</i>	<i>% of total</i>
Local Authority	6,239	23	624	18
Private Estate	10,323	39	1,032	29
Private Single (one-off)	9,095	34	1,819	52
Private Apartments (New Blocks)	437	2	15	0.5
Conversions/Apartments	450	2	15	0.5
	26,544	100	3,505	100

1. Assuming a density of 10 units per acre for local authority and private estate houses, and 5 units and 30 units, respectively, for private single (one-off) and apartments.

Source: Duffy (1980, p. 2)

We estimated that a density of 10 dwellings per acre is likely to be the net average space requirement for local authority and private estate houses, while for the private single (one-off) units and apartments, densities of 5 and 30 per acre, respectively, have been assumed. Bannon (1979) estimates that industrial, commercial/institutional, transportation and interior associated open space requirements consume the same amount of land as residential use. Thus, with a total residential land requirement of 3,500 acres we estimate that the total annual conversion of land to development would amount to about 7,000 acres.

Land Price and Rent

For building land in the greater Dublin area, the average price per acre for land for private housing – undeveloped sites – came to £49,000 in 1980 (Table 9). This is the only firm data we have on the market value of such land; the Dublin area accounts for about one-third of the nation's housing construction.

As can be seen in Table 9, the average price paid by local authorities in the Dublin area for land for all purposes – amounting to £10,000 per acre in 1980 – is lower than that paid for private housing land. If we take the average

Table 9: Average price per acre of undeveloped land purchased for private housing and by local authorities for all purposes, Dublin area

	Private housing			Local authorities		
	Area (acres)	Value (000s £)	Average price per acre (£)	Area (acres)	Value (000s £)	Average price per acre (£)
1974	554	3,120	5,632	432	1,080	2,500
1975	398	2,300	5,779	323	1,020	3,158
1976	158	2,400	15,190	64	1,000	15,625
1977	504	9,940	19,722	105	700	6,667
1978	334	6,900	20,659	392	1,400	3,571
1979	249	6,987	28,060	611	6,100	9,984
1980	300	14,700	49,000	273	2,730	10,000

Note: The data available for private housing account for about 66 per cent of the total land "converted" to housing in the Dublin area.

Source: Adapted and updated in personal communication from Jennings (1980)

price for a 0.2 acre site for a single house as £2,500 this yields a per acre value for land for such purposes of £12,500. We assume that the average price of land for local authority, private estates and apartments outside Dublin is half the level obtaining in the Dublin area. We apply the private estate value per acre to apartments in Dublin (Table 10).

Table 10: Tentative weighted average estimates of land values per acre for development land (housing), 1980
Price per acre (1980 £)

	Land area as % of total	Dublin area		Outside Dublin	
		Price	Weighted average	Price	Weighted average
Local Authority	18	10,000	1,800	5,000	900
Private Estate	29	49,000	14,210	24,500	7,105
Private Single (one-off)	52	12,500	6,500	12,500	6,500
Private Apartments	1	49,000	490	24,500	245
Conversion/Apartments					
			23,000		14,750

Note: Weights applied are the percentage of total land area for each category (Table 8).

Source: Tables 8 and 9.

If we assume that a quarter of development (by area) takes place in the Dublin area with the balance being located elsewhere, we arrive at a weighted average number (rounded to the nearest thousand) of £17,000 per acre. Deducting the £5,000 per acre "minimum acceptance price" leaves us with an average "rent" per acre of £12,000. Applying this to the total developed area of 7,000 acres yields a total annual rent of £84 million (1980£). Rent is defined in this specialised context as that amount (surplus) above the minimum necessary to shift the land into development.

The reader will appreciate the tentativeness with which this estimate must be advanced. (We derived it in part to show the deficiencies of available data.) Its magnitude depends primarily on two variables — the average sale price of the land for each purpose and the acreage of land being developed for the various uses.

With regard to the former, the only published data available relate to Dublin. With regard to the latter, no published estimates are available. We are especially uninformed concerning the private single (one-off) category, which comprised 34 per cent of all new housing units in 1979. The areas and price per acre of land being devoted to industrial and other non-housing uses are likewise not published. Such information appropriately analysed is absolutely fundamental to sensible public discussion of the land price and rent capture discussion. In the absence of such data, the most fanciful estimates can be advanced and gain credence. We hope that the very useful work of Jennings at An Foras Forbartha on land prices will be expanded and that accurate data on the areas being developed, by use category, will be gathered and published. No data are available on land transactions for private housing outside Dublin.

Who gets this rent? It is divided at present between the landowner, intermediaries who may buy unserviced agricultural land in hopes of getting services and planning permission, and the state. Note that usually the developer *per se* does not capture any of it, nor does the purchaser of the house or other development. This is so because if the market for development land is competitive — and all the indications are that it is —

the developer will pay full market value and will only be able to realise a "normal" profit on the investment. If, however, a developer is also active as an intermediary in the land market, then, as a dealer in land, he may be able to capture some of the rent. This depends, however, on a degree of ignorance on the part of the landowner, and/or the existence of some special influence or ability by the developer *vis-à-vis* matters such as the following: getting services to the site, getting the land rezoned, getting planning permission, or using tax-avoidance skills. Over the next 50 years, if present trends continue, we can expect a total of 35,000 acres (7,000 x 50) to be developed. Since there are over 11 million acres of agricultural land in the Republic, this comprises about 3 per cent of the total land base potentially available. Profitable speculation in the land-for-development market is therefore confined to a very small fraction of the total area. The sharp fall in the price of agricultural land from 1979 to 1980 illustrates the potential penalties borne by those who buy farm land in hopes of capturing a large gain when it is developed, if this latter anticipation is not realised. In our discussions, for simplicity we assume that the rent accruing when land is ready for development is captured by "the landowner" and the government.

The government's share comes from the payment of a capital gains tax, which is payable on all capital gains, including those accruing as a result of the sale of land. The tax is collected under the provisions of the Capital Gains Tax Act, 1975. The rate prescribed initially was 26 per cent and in 1978 this was increased to 30 per cent. In the Finance Bill, 1982, passed by An Dáil, the rate of capital gains tax was further increased, as follows:

<i>Circumstance</i>	<i>Rate (%)</i>
Period of ownership of the asset is not more than one year	60
Period of ownership is 1-3 years	50
Any other case	40

Somewhat different provisions were made for gains resulting from the disposal of development land, when this is a "once-

off" transaction, such as a farmer selling sites would engage in. The tax rate when the period of ownership is not more than one year remains at 60 per cent but the 50 per cent rate applies to all gains when the ownership period exceeds 1 year, except in cases when the land was purchased compulsorily and has been owned for at least 3 years, in which case the rate falls to 40 per cent.

Indexation relief applies only in respect of the appreciation gain in the then existing use values on the date from which the gain is computed. In the January 1981 Budget Speech (where the measure was first introduced) it was stated that indexation would be allowed for that portion of the gain which would enable a farmer to replace a farm sold for development by a farm of similar agricultural value. In addition, roll-over relief does not apply and losses on other disposals are not allowed for off-setting purposes.

Where a disposal is by a dealer or developer of land, or by an individual or company trading in land for a profit, it is corporation tax which applies rather than capital gains tax. No indexation relief is available in relation to the disposal, and a tax rate of 50 per cent applies.

The net tax payable under the capital gains provisions, and net receipts, are listed below (Revenue Commissioners, 1981):

<i>Year</i>	<i>Net tax payable (£)</i>	<i>Net receipts (£)</i>	<i>Net receipts as % of tax payable</i>
1975	n.a.	40,166	n.a.
1976	383,978	430,453	112.1
1977	4,609,849	1,470,248	31.9
1978	12,328,329	3,239,437	26.3
1979	20,343,546	3,996,472	19.6

Source: Revenue Commissioners (1981) p. 165

Two things strike one about these data: the first is the very modest amount of the total tax payable from this source, both in relation to tax yielded from other sources and in terms of

our estimate of total annual value appreciation gain on land moving into development; the latter amounted to about £84 million. Some of this gain will have been realised in intermediary transactions which took place prior to 1975, and this would not be assessable for capital gains tax. In 1979 net receipts from all sources came to £1,990.8 million, so that the capital gains tax payable — £20.3 million — only amounted to about 1 per cent of receipts from all sources in that year.

The second item worthy of note is the low percentage of the net tax payable which has actually been paid: it fell to less than 20 per cent in 1979.

In the case of land, the low yields to the Exchequer resulted in part because in the past it has proved possible to reduce or indeed avoid tax by, among other means, the use of subsidiaries and annuity payment schemes. One such approach involved the parent company which owns the land forming a subsidiary and subscribing for a number of shares therein. The subsidiary then buys an annuity which is secured on the land for the amount of the parent company's shareholding, and pays the annuity to the parents for a time. The parent then transfers the land to another company, which will do the development. However, in arriving at the taxable income, since the annuity is charged on the land, its capital value can be deducted from the profits made on the sale, thereby significantly reducing tax liability. A number of land deals involving the use of such tax-liability reducing schemes are outlined by Crowley (1981). In June 1981 the government announced measures to preclude the masking of gains so as to reduce tax liability, but it remains to be seen how successful they will be. We return to this topic in the next section, when we address policy choices.

PART V POLICY CHOICES AND SUGGESTIONS

Chapter 15

Characteristics of the Land-Use Planning System: A Review

As a result of our review and analysis, we have drawn some conclusions concerning the characteristics of the Irish land-use planning system, from which derive our policy suggestions. We present those characteristics here in a summary form.

Characteristics

1. Complex Decision Environment

The decision-making environment *vis-à-vis* land-use planning is unusually complex.

The manager of the local authority, and his or her staff, comprise the front-line decision-makers; within the context of the development plan, they make the initial decisions. This administrative level is necessarily complicated, with the planning, roads, water and sewer, parks, fire departments and others all being involved. In the nature of bureaucracies, in some local authorities some of these entities have become semi-autonomous fiefdoms with their own imperatives, which may be difficult or impossible to harmonise with an overall vision or plan. To run this system effectively requires managerial skills of the highest order; any deficiencies in this regard among the senior management staff in a local authority can seriously impair performance especially in the more populous jurisdictions.

The policy-making authority at the local level rests with the elected members of county councils, urban councils and borough corporations. This authority is most formally manifest in the responsibility to prepare and revise development plans, but council members also set the tone for managerial decisions and can ultimately over-ride a manager's decision

in most cases. Because the ability to do favours in other spheres of activity has been diminished, planning permissions have become, in many cases, a primary mechanism for achieving favour with constituents. When a development plan is being revised — as in County Dublin in 1982/83 — councillors can be seen to vie with one another to accomplish rezonings on behalf of constituents. Where the prospective capital gain is so large, when there is no popular countervailing pressure, and when there are few viable means of indulging constituents, this pattern is to be expected.

Local authorities themselves are also major developers, providing 20-25 per cent of all housing units. Local authority housing and transportation policies are therefore a significant influence on land-use.

An Bord Pleanála is the final arbiter of disputes concerning the substance of planning permission decisions. Its influence is direct and immediate in the particular, but as the nature of what it favours and does not favour becomes clear, it also has a role in the shaping of land-use policy at the local level.

The Minister for the Environment, on the advice of his or her civil servants, may provide policy guidelines to An Bord Pleanála, and advice to the local authorities, on planning and related matters; the Minister appoints the members of An Bord Pleanála,¹⁶ and also is the judge of appeals made under the Housing Acts. However, the key control exercised at this level is budgetary; all major infrastructural and housing investments involve central government financing and, therefore, require approval at this level. Research related to land-use planning is undertaken on behalf of the Department of the Environment by An Foras Forbartha; the latter also provides advisory services to local authorities. The central government is the chief utiliser of office space in Dublin; its preferences in this respect are central to what is provided where in this area. The Industrial Development Authority is a major developer of factories and a predominant influence on the private sector in this area.

¹⁶From a list of names provided by designated organisations and groups under provisions of the Local Government (Planning and Development) Act, 1983.

Developers and their architects and engineers, as the major "on the ground" changers of land in Ireland, are important influences, as are their commercial, industrial and house-buying clients. Banks and other financial institutions and insurance companies can significantly affect both the nature and location of development by the conditions they impose on borrowings for development. Professional associations of architects, engineers, planners, chartered surveyors, etc., can influence the land-use planning process, as can more explicit lobbying interests such as the Construction Industry Federation, the Living City Group, An Taisce, etc.

The general public play a role in making their choices as consumers of housing. Members of the public also influence land-use through their involvement in the revision of development plans, as supplicants for a favourable zoning change (in the case of some landowners) and as commentators on the plan overall. They are involved in specific decisions, either as requesters for planning permission or as third party objectors. At the local level, residents' associations represent the interests of residents in the planning process.

Environmental interests are represented by a number of organisations, of which by far the most prominent is An Taisce. An Taisce is a nation-wide voluntary private conservation organisation which has as its aim:

To conserve and develop the nation's physical heritage of land, air and water, places of outstanding beauty or historical or scientific interest, buildings, wildlife and flora.

It has around 7,500 members and plays a role in the revision of development plans and in the evaluation of specific development proposals. It puts primary emphasis on consultation as a means of achieving development which is environmentally harmonious, but as a last resort it appeals issues to An Bord Pleanála. An Taisce was given a quasi-official "prescribed body" status under provisions in the 1963 Planning and Development Act, a status it shares with Bord Fáilte, An Comhairle Ealaíon (The Arts Council) and the National Monuments Advisory Council. This requires that local authorities consult with these bodies in the preparation of develop-

ment plans or in proposed variations of them, and with regard to certain classes of application for planning permission.

This very cursory overview of some of the institutional influences prominent in the Irish land-use planning process shows the complexity of the system. However, some of these are more central than others.

2. Key Centres of Influence

City and County Managers, An Bord Pleanála and the Department of the Environment are key centres of influence.

The managers of local authorities are in a central position at the local level. Although they ultimately must accede to the desires of their council members, they can retain a large measure of control because:

- (a) They control the information on which decisions are normally based. The manager can cite Department of the Environment opinions, technical conditions, legal precedent, budgetary constraints, etc., in favour of his view; few council members have the resources, skills, aptitude or interest to challenge coherently a well-argued managerial position and it is difficult therefore to convince a majority of council members of their point of view. Of course, in *particular* instances, a councillor's view can be made to prevail *via* "Section 4" and plan revisions.
- (b) Managers can cite "good planning principles" in support of their decisions and there is still a residue of respect for technocratic excellence and impartiality, which extends even to areas where the decision turns on conflicting values, rather than on engineering/structural considerations.
- (c) They are primarily responsible for ensuring excellence and a high degree of motivation among the local authority staff. They are in a position to provide sustained leadership.

At the national level, An Bord Pleanála's influence flows directly from its statutorily defined position at the apex of the decision-making pyramid. There appears to be strong institutional incentives for planners at the local level to pass those

cases which are likely to be locally contentious onto the Board.

The third key centre of influence is the Department of the Environment. Its functions in the planning system have already been noted. However, its significance is as much psychological as it is statutory and budgetary. This is so because of the deeply engrained tradition in Ireland of looking to the central government for ideas, permission, funds and action. This has continued for so long in so many areas, and has been so institutionalised in statute and procedure, that it is difficult for many local authorities to act creatively when they are "given" a free hand, e.g., in the preparation of a development plan. There is a tendency on their part to argue that there is an insufficiency of funds to do the job, even when existing local revenue-raising opportunities are not being availed of. Unless the Department leads aggressively in the land-use planning area, as much by example, advice, exhortation and encouragement as by budgetary and legislative support, it is unlikely that local authorities will play their full potential role. After an initial burst of activity in the 1960s to get the planning system operational, and another major effort in the mid-1970s to update and improve the legislative framework, the Department seems to have confined itself largely to a custodial role, rather than being at the "cutting edge" of the planning system, constantly urging improvements, showing the way and helping ensure that other governmental units, such as the Office of Public Works, and the IDA, are acting in a manner consistent with overall objectives.

However, the Department can hardly be accused of inactivity in 1982 and 1983. In October 1982 the Department issued *Development Control: Advice and Guidelines*. This is a comprehensive compendium of advice as to how to implement the planning process. One might agree or disagree with the interpretations recommended, but at least a firm basis for debate has been provided and the Department is to be commended for doing so.

Departmental resources have also been involved in the preparation of numerous bills — The Urban Development Areas Bill 1982, The Local Government (Building Land) Bill 1982, The National Heritage Bill 1982, the Local Govern-

ment (Planning and Development) Bill, 1982; the Local Government (Planning and Development) Act, 1983 and the Local Government Financial Provisions (No. 2) Act, 1983. While only the last three of these have been enacted into law, the background work involved in preparing these bills combine with the possibility of a 3-4 year period of stable government to provide a potential basis for sustained action. A joint Oireachtas Committee on Building Land has been re-established (March, 1983) to make recommendations for measures to deal with the supply and cost of building land, with a requirement that it report before 31 December 1983. Finally, An Foras Forbartha has undertaken a review of the planning system, with the objective, in part, of providing research priorities and establishing a research agenda in this area (Grist, 1983).

As long as the current institutional system is adhered to, if the land-use planning process is to be changed, the lead must come from the Department of the Environment, and changes must be fully endorsed and vigorously supported by the local authority managers and by An Bord Pleanála.

3. Emphasis on Discretionary Regulation

The system as implemented leaves a lot of discretion to the bureaucrat. Apart from the rather broad specifications contained in the zoning provisions of the development plan, developers are left with little except precedents — what has been acceptable in the past — to guide them in preparing their plans. “Let’s see what you have in mind and we’ll judge whether it is acceptable” seems to be a common operating philosophy for planning authorities. There are cases where planners and developers have worked together before a proposal was submitted, to work out a mutually agreeable scheme which is in harmony with planning objectives, but such pre-planning seems to be more the exception than the rule. In the event that a proposal is not acceptable, there is a reluctance to specify clearly which changes would result in approval. It was pointed out to us that one of the problems with consultation can be that local authority planners end up doing the work which should be done by the developer’s

architect/consultant. However, experience should allow the local authority to separate the "free-loaders" from those who want genuine consultation, and this latter can be given priority treatment.

Once permission has been granted, it appears to be almost impossible in some cases to enforce compliance with conditions imposed. A good example of the difficulties is provided in a recent case where planning permission for a major retail outlet was granted on condition that a house of considerable historic significance on the property be retained. The house was allowed to deteriorate. When the case was taken to the High Court, the judge noted that (*Irish Independent*, December 17, 1981):

It appeared that the developer had been completely indifferent to, or perhaps even welcomed the deterioration in the condition of the building, and had virtually done nothing to halt it. The developers had shown a complete disregard for the moral obligations which arose from their course of dealing with the Corporation on the planning applications, but he felt the Corporation had also been extremely remiss in exercising whatever statutory powers were open to them to cope with the situation.

However, he refused to make an order compelling the developer to ensure the structural stability of the house because the planning condition only required that it be retained, and "He will not interpret that rather nebulous expression as imposing a liability on the developers to preserve and maintain No. 40 in a condition of good repair referable to any particular period in the past."

However, when planning permission conditions are drafted clearly and unambiguously, and there is a will to enforce the regulations, then the system can be effective. The experience in Cork was cited by a number of observers as a positive example in this regard.

Pricing is rarely employed to encourage desirable behaviour and to discourage the converse. We depend almost exclusively on a regulatory system which allows for few gradations — either a development is in compliance or it is not — and which depends on cumbersome administrative/legal procedures to achieve compliance.

As we noted earlier, we feel that almost exclusive reliance on this approach is unwise in the Irish context. Our attitudes to regulation are much closer to the American than to the European view. We tend to share the former's insouciance concerning some legal niceties. The mood is captured (perhaps in an exaggerated form) in the following extract from a Wyoming cowboy's letter to a ranch owner wintering in the East.

Dear Sir, We have brand 800 calves this roundup we have made some hay potatoes is a fair crop. That Englishman you lef in charge at the other camp got to fresh and we had to kill the s.o.b. Nothing much has happened since you lef. Yours truly, Jim.

Enforcement of an administrative/regulatory system is costly and difficult. When there is not a widespread inclination to comply, with societal opprobrium being bestowed on those who do not, it can become almost totally ineffective.

4. Large Revenue Gains Created

As land goes from agricultural to development status, large surpluses¹⁷ accrue. Their magnitude is a consequence of the interaction of the demand for, and supply of, serviced land in different areas. As (formerly) residential areas become attractive for office development, surpluses are also generated. In a given area, the size of the surplus accruing is largely determined by what the end-user is willing to pay for the use of the area for a house, office, factory, etc., net of the intervening costs of providing the structure in question. In the longer term, expansion of the supply of serviced land will diminish the size of the surplus accruing, but will not usually eliminate it. For example, in parts of south Dublin which are highly prized as residential areas, the potential for expanding the supply of serviced land in this vicinity is modest. Owners of land for development in these areas will capture

¹⁷We use the term "surplus" to denote the gain in land value in excess of the minimum price which is needed to keep land in its highest revenue yielding use. Economists define this as rent, but since the term rent also has popular connotations, we use surplus to convey this meaning.

very large gains, almost regardless of the extent to which the supply of serviced land is expanded elsewhere in the urban fringe area. Analogous arguments apply to the surplus which accrues in areas especially favoured for office or apartment development. Likewise, when water and sewer lines are installed, the adjacent landowners receive a substantial appreciation in value. This can be diminished by increasing the serviced area, but a locational differential will still exist.

We estimated that, over a 50 year time period, about 3 per cent of the existing agricultural land area will be developed, so that a relatively small number of landowners are likely to share significantly in the gains resulting from development. The creation of gains for some landowners implies lost opportunities for others; if the water and sewer lines create gains for A, they imply gains forgone for B, in the sense that his land now remains unserviced and therefore with only agricultural use value.

Intermediaries who have more knowledge and/or influence than the landowners may capture part of the surplus, but it is important to note that in most cases the much maligned "speculators" do not create the surplus; they simply try to share in it.

5. Planning Authority Powers: Statutory and Procedural

The ability of local authorities to influence land-use rests both on the relevant statutes — the Planning Acts, the Housing Acts, etc., and on the ability to impose delay and procedural requirements on developers. With regard to the latter, a developer has to compare the often substantial costs — in terms of delay — of appealing planning conditions, with the costs of complying with them. When the procedurally imposed costs exceed the compliance costs, a local authority has a margin of influence which is in addition to its direct statutory powers.

6. Liability to Pay Compensation: A Dominant Consideration in the Maintenance of Open Space

The fear of having to pay compensation if development of open space is prohibited is a major factor shaping the actions of planning authorities on this issue. We define open space in

this context as any undeveloped land — within the city or at the urban fringe — which is attractive for development. The pattern which has been followed generally is for a local authority to cite non-compensatable reasons — e.g., traffic hazard, prematurity of development by reason of inadequate roads, and/or water and sewers — as the basis for not allowing development. If, on appeal, An Bord Pleanála validates the decision of the planning authority, but cites compensatable reasons for so doing, e.g., the maintenance of a green belt, the authority then typically negotiates with the landowner in an effort to achieve a form of development which is least damaging to the former's planning objectives. In doing so, the planning authority depends on its procedural powers, general negotiating skills and a spirit of *noblesse oblige* and public spiritedness on the part of the landowners to encourage the latter to indulge some of the public's goals and not to press their own statutory advantage to the limit. Compensation is only rarely actually paid.

7. *Potential for Bribery is Great*

While known instances of bribery are very rare, the opportunities in this regard in the land-use planning system are great and operate at several levels. The first arises when the Development Plan is being revised and the zoning boundaries are therefore being reviewed. To achieve rezoning from agricultural to development status can result in appreciation gains in the order of £40,000 per acre. A landowner with as little as 25 acres can become a millionaire in some circumstances if the land is rezoned and proves attractive for development. The second area where scope for bribery is great is at the planning permission and by-law approval stage. Here, both the permission itself and the conditions attached thereto can involve very large gains or losses to the developer, and provide a considerable incentive to attempt to assure a congenial result. Since An Bord Pleanála is in most circumstances the ultimate arbiter of decisions, the incentive to try to achieve influence at this level is especially great.

Third party objectors comprises the final category where potential for bribery is considerable. For a £30 fee, by

appealing the permission to An Bord Pleanála, any citizen can impose up to a year's delay on a large development.¹⁸

We were assured by those involved in the planning process that the amount of bribery, in the sense of cash changing hands, was negligible, but that the doing of favours for constituents, friends, etc., without a cash payment being required was more common. We sense that the public's level of confidence in the integrity with which planning matters are disposed of is diminishing, reflecting the scepticism embodied in Kipling's lines:

“Who can doubt the secret hid
Under Cheop's pyramid
Was that the contractor did
Cheops out of several millions”

We do not doubt that in the vast majority of cases the legendary integrity of the public servants involved has been proof thus far against the temptations and opportunities inherent in the current system. However, we feel that it would be prudent and advantageous if the system could be designed such that the scope for bribery were diminished.

8. Few Legal Precedents

There have been a number of precedent-setting court cases in the planning area since 1977. However, they are insufficient in number and diversity to provide a reliable basis for predicting outcomes in some (but not all) situations. Planning authorities find themselves therefore taking measures to avoid litigation when they have very little basis for knowing what is and is not “legal.” The decisions in some of the cases which have been tried seem to have turned on narrow definitions of legal terms; the wider societal implications of issues have not been assayed. Where a judgment must be made as to whether and to what extent the general right of private property should be protected, and an individual's property rights protected from unjust attack, i.e., the degree to which private property rights in a particular case should be

¹⁸In 1980 there were 874 third party appeals, comprising 22 per cent of the total.

abridged in order to accommodate the common good, it seems to us that it is necessary to be able to specify, at least in approximate terms, what will be sacrificed in terms of "the common good" if the restrictions are not imposed. Few private property rights are absolute. It would be wise to anticipate the addressing of this issue in a variety of contexts by undertaking scholarly analyses of the trade-offs involved before the matter is brought to court. If this is not done, the justices will have to make decisions of enormous import for national well-being, without adequate information on the implications.

9. Ambivalence Concerning the Role of Public Participation

Public participation in the land-use planning process is allowed for in a number of ways. By requiring that an application for planning permission must be advertised in a newspaper which circulates in the area, and by sending notice of such an application to local residents' associations (this is the custom in Dublin), public involvement is catered to at this level. Likewise the draft development plans must be put on display, and public commentary on them allowed for, before the final plans are drawn up. The most potent provision for public involvement rests in the ability of any person to appeal a planning permission to An Bord Pleanála. In cases where the appeal is sustained, presumably this action would be judged to have been in the social interest. In cases where the original decision is upheld on appeal, very substantial financial and social costs can be imposed, both on the developer and those depending on the project for income and employment.

There is ambivalence in these provisions, which arise from two sources. First, while the public are encouraged to learn about applications for planning permission, there is no provision for conducting prior discussions with planning officials and/or the applicant, in order to explore modifications which might accommodate public objectives. Some developers do discuss their plans with interested members of the public before applying for permission and attempt thereby to prevent third party appeals, while An Taisce "negotiates" with

developers at times at the pre-permission stage, concerning the nature of the developments proposed. However, there is no institutional mechanism for triggering this pre-permission discussion between interested members of the public, the developer and the planner.

The second source of ambivalence arises in the preparation of the development plan. The draft plan is prepared as a single proposal; no options are presented concerning which the citizenry could make their preferences known. Public involvement then tends to become one of either passive acceptance of what is proposed, a self-interested effort to get a favourable rezoning or other "favour," or opposition to some element(s) in the plan. Creative and positive public participation, addressed to the overall land-use outcomes desired, and the means of their achievement, is not encouraged, although it is not precluded.

10. Adequacy rather than Excellence in Layout and Design is Encouraged

The planning permission process is viewed by most developers as a series of hurdles to be overcome. Next to outright refusal, time delay is the biggest penalty which can generally be imposed. Layouts and building designs which are original and do not have a "track-record" tend to be subject to special scrutiny and therefore delay, and have an increased likelihood of being rejected. Even if planners view the proposals with enthusiasm, those concerned with by-law approval can stymie them by adopting an inflexible attitude regarding implementation of regulations. There is a strong incentive therefore to submit projects of a layout and design with which the reviewing officials are thoroughly familiar, and which would not become contentious and a source of controversy with council members and the public. The system therefore encourages the achievement of certain minima *vis-à-vis* structural performance characteristics, safety, density, etc., but does not reward innovation.

11. Dublin is Different

Developers, officials, architects, etc., all emphasised to us

that Dublin (including the city, county and Dun Laoghaire) differs significantly from the rest of the country — including the large cities of Cork, Galway, Limerick and Waterford — in the complexity of issues arising and the intensity with which they are debated. This results because of the predominant role of the city in the commercial, cultural and political life of the country and the consequences that flow therefrom. These include: the location of almost all office and apartment developments, and about one-third of all housing construction, in the Dublin area; the very high financial stakes riding on planning decisions — in many cases these will exceed by an order of magnitude those accruing outside the capital; the location in the city of the national media, parliament, the two largest universities and cultural centres.

Because of these scale and other particular influences, it has been advocated that the Dublin area be treated differently to the rest of the country in the land-use planning process. It has been suggested, for example, that An Bord Pleanála might have a special division devoted exclusively to dealing with Dublin area cases. Others have proposed that the decision-making process be broken down to much smaller, i.e., community scale, units.

Chapter 16

Pricing, Incentives, Innovation and Enforcement

Pricing of Infrastructural Services

The case for full long-run marginal cost pricing of infrastructural services can be justified on the bases that: it encourages development on the least-costly-to-service areas; it discourages sprawl; it does not transfer resources from taxpayers in general to segments of the property-buying public (the latter "on average" are likely to be wealthier than the former); regions with relatively little construction activity will not subsidise those with a lot; funds are provided directly to the exchequer of the local authority to finance the necessary work; and supply of infrastructural services should be much closer to effective demand, reducing the queueing and administrative rationing problem.

By long-run marginal cost we mean the replacement cost in the future of providing these services. If there is excess capacity in a particular system at a given time, then the immediate cost (short-run marginal cost) of connection may be negligible. However, in time, as expansion continues, the existing infrastructural supply becomes fully utilised and new capacity must be added. Efficiency in resource utilisation will be enhanced if current developments are charged the full long-run marginal costs of their infrastructural services.

To be set against the advantages of such pricing, it is argued that, if it is implemented, the costs will be passed through to the buyers of the properties; house prices will rise. To what degree is this a valid argument? If it is known before land purchase that such a cost will be imposed, then, in the simplest case, in arriving at their estimates of price payable for land, developers will deduct this infrastructure cost, just

as they deduct other construction costs, from the price they expect to get for the structures to be built. Thus the "burden" will tend to be passed back to the landowner rather than be passed forward to the housebuyer. However, in cases where developers feel that some of these costs can be added to the house price without losing sales, they will incorporate this consideration in their bidding for the land. There will be land at the margin — especially in high infrastructural cost areas — which, with charges, will become unavailable for development. There will be interaction between demand for housing and other development, which is shaped very much by the transactions in the existing stock, and the supply of land, to yield new sets of equilibrium prices for both. The burden of infrastructural costs will be shared by house purchasers and landowners, with the share of incidence depending on demand and supply price elasticities. We feel that the bulk of the "burden" will, if certain conditions are met, be borne by the landowner, for the following reason: for much development land, there is a big margin between the minimum acceptance price needed to get the land into development and the price which can actually be achieved on the open market. As long as there is a "reasonable" surplus achievable above existing use value, the landowners will supply the land for development. Within this acceptance price range, supply of land will be very price inelastic. Demand for new housing, on the other hand, is strongly influenced by the trade in existing stock and tends to be "driven" by factors such as population growth and household formation, real incomes and availability of mortgage finance and these exert strong effects on price.¹⁹

Let us take the extreme case, where all of the costs of infrastructural services are passed through to the housebuyer. This would mean that houses which have high infrastructural costs will be relatively expensive, and, other things being equal, will be less attractive to buyers than houses in areas which are less costly to service. Affluent purchasers of expensive

¹⁹ A study by Ian Irvine, which is in draft at the ESRI, will shed some light on the relative significance of demand and supply influence *vis-à-vis* new house prices.

houses will bear the full servicing costs, without the benefit of a subsidy in this regard from the general taxpayer. We therefore feel that, to the extent that it has validity, the impact on house prices is not a convincing argument to set against the advantages of long-run marginal cost pricing of infrastructural services. For effective operation, the following should characterise policy in this area:

- (1) In so far as it is administratively possible to do so, charges should reflect actual costs.

The use of an average cost for the entire jurisdiction defeats an important purpose of the charge, which is to encourage development in areas which are less costly to service and to discourage the converse. Thus, the charges for in-fill developments would amount to the least cost long-run marginal costs for expanding the system. Conversely, developments, for example, in unserviced and costly-to-service mountain areas would attract charges sufficient to cover the full (high) costs applicable to such areas.

- (2) There should be substantial political agreement among the parties that the costs of infrastructural services will not be transferred back to the general taxpayer after the next election. If this is not done, then those landowners who can afford to wait before selling will do so; rather than take a capital loss now, they will wait to see how the election turns out. This will drive the price of development land up rapidly, thereby exacerbating rather than ameliorating land-use planning problems.
- (3) The central government should maintain the incentive to assess charges, by making the amount of the lump sum contribution to local government independent of the extent to which a local authority charges for infrastructural services.
- (4) With the resources which such charges make available, and utilising the rationing effect induced thereby, the local authority should make every effort to ensure that the services paid for are delivered in a timely and

efficient fashion. Developers and house purchasers should be seen to be getting what they have paid for in terms of roads, water and sewers, effluent treatment plant, etc. In fact, as noted above, a (probably substantial) fraction of the infrastructure cost will be reflected in lower land prices, rather than being added to house prices. However, there is both symbolic and practical value in providing services efficiently when they are being charged for explicitly.

- (5) Where there is a concern that low income individuals will be unfairly burdened by this pricing approach, grants can be made to such individuals directly. "Low income housing" *per se* should not be subsidised, for two reasons: (a) following on the reasoning outlined earlier, much of the subsidy is likely to be transferred to the landowner on whose land they are built; (b) high income individuals can (and do) buy "low income" housing; to the extent that a subsidy is effective, they capture it.²⁰

Pricing for Planning Services

Pricing opportunities also arise in the provision of planning permission reviews, both at the initial decision and appeal stages. Delay imposes very heavy costs on developments, but the incentives in this regard are quite perverse in terms of the planning system. We have argued that the ability to impose delay is a major procedural weapon in the hands of officials. Efficient and timely expedition of permissions could reduce their influence. We feel that the ability of officials to shape events should not depend on this cumbersome, costly and somewhat arbitrary power to delay; we are proposing a number of approaches — of which pricing is one — which would free planners from the necessity of having to depend so heavily on procedural powers in the carrying out of their responsibilities.

²⁰ There are a variety of other mechanisms for addressing the housing of low income families; these are discussed in Blackwell (1981).

Gerry Henry, a prominent auctioneer in Dublin, was quoted (Cook, 1981) as recommending that:

If the corporations cannot afford to substantially increase the number of qualified planners, they should invoke a financial levy on each planning development submission in relation to their capital value so that the corporation can recruit the necessary planners.

We strongly endorse this proposal. The funds generated should be at a level sufficient to increase the number of planners at both local and appeals levels and to contribute to the preparation of development plans. In return, developers should receive timely and competent treatment of their applications. As one individual involved in property development pointed out (Walsh, 1982):

Most developers, if they saw some speed of action being brought to bear on new development areas, would be disposed towards paying a realistic levy on the basis that their lands would be immediately opened up for development.

The government introduced charges effective from March 7, 1983. The rates are as follows:

Planning Applications

Dwellings (including flats)	£30.00 per dwelling
Domestic extensions and other improvements	£15.00 per dwelling
All other buildings	£1.75 per square metre of gross floor space
Submissions by persons other than the applicant	£10.00

Appeals

Written appeals	£30.00 per appeal
Request for an oral hearing	£30.00 per appeal
Submissions by persons who are not formal parties to an appeal	£10.00 per submission

The main concern in relation to the fee for planning applications is that the *quid pro quo* — quicker service — will not be forthcoming. We feel that the logic of the pricing approach

will be seriously vitiated if it is not accompanied by better, more timely service. If necessary, the fee should be adjusted so as to provide the necessary resources to function with full effect both in preparation of the development plan and in the handling of planning applications.

The introduction of charges for lodging an appeal and for making submissions to planning authorities in relation to planning applications have proved to be more controversial. The flavour of the opposition can be captured in the reaction of the Dublin Civic Group, a voluntary conservation society (cited by Frank McDonald in the *Irish Times*, March, 4, 1983). The £30 fee was described as a "grave social injustice" which would have the effect of "silencing the voices of those who show serious commitment to the care and protection of the environment." Professor Kevin B. Nowlan, chairman of the group, observed that almost 80 per cent of their work consisted of making submissions to Dublin Corporation on current planning applications, and comments "If we were forced to pay £10 for every letter we write to them, we may have to got out of business altogether."

With regard to the charge for making submissions to planning authorities, we agree with the point of view of the Dublin Civic Group: this submission process is designed to improve the quality of decisions at the local level, by bringing information on attitudes and implications to the notice of a planning authority; to "penalise" the provision of such by means of a charge cannot be justified on grounds of either efficiency or equity.

The charge for lodging an appeal is not so easy to evaluate, because there is a trade-off to be made between ease of access on the one hand, and spurious, ill-considered, uninformed or malevolent appeals on the other, which can impose very high economic and social costs.

We feel that there is a case to be made in favour of imposing a charge for third party appeals, but that it must be accompanied by mechanisms for allowing access to those who otherwise could not afford to lodge an appeal. The following are of this nature:

- (i) Give the prescribed bodies, notably An Taisce — a “quota” of free appeals, based on their normal appeal record. Other non-prescribed bodies which have a record of responsible activity in this area should be allowed to apply for a similar quota.
- (ii) Provide a loan fund for individual appellants which could be used by them in cases of demonstrated financial need.

It is important to bear in mind in evaluating charges in this area that the objective should *not* be to raise sufficient funds to finance the appeals system. Rather, the goal should be the discouragement of undeliberated, spurious and mischievous objections.

Pricing and Amenity Considerations

It is recognised that derelict, unused sites impose a cost on society and that these costs grow as the period of dereliction increases. It also takes time to put together the physical and financial resources necessary to carry out a commercial development. In order to encourage utilisation of such sites, a charge should be assessed with increases over time, as long as the state of dereliction continues. This approach was recommended by the inter-departmental committee on the inner city. Transfer of the property would also transfer the assessment which was payable at the time of transfer. This would encourage development. For those developers who, for whatever reasons, were having difficulties getting work underway, it would encourage them to sell on to those who could. If necessary, a local authority should use its powers of compulsory acquisition so as to facilitate private development.

Local authorities are themselves owners of substantial acreages of derelict areas. This is often caused by the purchase of properties for road widening, which is then delayed because of shortage of funds. It is important that the costs which such dereliction imposes on the community also be reflected in the local authority's own accounts, i.e., that they carry the same level of charges as the private sector. It may be

argued that this does not make sense, in so far as the local authority would in effect be charging itself. However, it is normal procedure in vertically integrated private firms for intra-company transactions to be "costed", so as to allow evaluation of unit performance. The performance of local authorities with regard to dereliction should likewise be costed. If no overt "penalties" in this regard are shown, there will be no pressure within the system not to hoard land unnecessarily and mirror thereby the behaviour of the private sector. The incentive facing local authorities at present appear to be very strongly in the direction of "hoarding" sites for road-widening, housing, etc., so that when central government funds finally become available for these purposes, programmes can be rapidly implemented. The very heavy social costs which such a policy engenders are not apparently given great weight, nor is the loss of credibility which the local authority suffers *vis-à-vis* private dereliction. Change in this domain probably depends on the ability to plan capital programmes five years in advance, so that land requirements can be reasonably matched against programme targets.

In areas where high-rise developments are judged to be undesirable, an assessment could also be payable. Likewise, strip development, development in areas of high amenity, etc., could attract a charge to compensate for the costs such development imposed on society. How, and on what grounds, would the charge levels be based? This would vary with time, place and circumstances. The charge level must be sufficiently high that it does act as an incentive to encourage socially beneficial behaviour, but at a level where implementation is politically feasible. Inevitably, a degree of experimentation will attend the initial applications of the concept, but experience should soon indicate the price range which is effective and feasible.

It is sometimes difficult to convince people that a pricing approach along these lines is appropriate. This is so because it is conventional to view Western governments as leaving the private sector unhindered except for applying certain regulations to achieve the public welfare. These then exceptional interferences are seen as absolute necessities. Their very legitimisation for existence is their unique necessity. If the

public justifies its rights to regulate from extreme necessity, it then seems strange to be willing to trade some of these for other things of value. For example, a public health regulation which would cause death could not be sold for money (maybe even if used to build a hospital). At the most, if the public changes its mind in the particular instance, it relinquishes the regulation entirely and nothing is expected in return.

It is not clear if the above is a conscious ideological underpinning for current governmental behaviour or not, but the fact remains that governments reserve rights for the public and seldom ask anything in return if they are abandoned. This puts the government in an all or nothing regulatory posture where it either applies the rule to some degree or lets it fall by the wayside. Perhaps some of the current unpopularity with regulations in general is this inflexible application or abandonment in the face of pressure and favouritism rather than offering them in exchange for other valuable considerations in open competition.

At one time in Dublin there was a practice whereby the local authority relaxed its on-site parking requirements for a fee. The fact that this practice required the subterfuge of promising eventual public construction of parking facilities nearby to serve the building is testimony to the reluctance to see the government in the trading mode. Current thinking requires government to say it absolutely needs the parking space or give up the rule entirely.

When the public rights are clearly expressed in standards such as those limiting density, height, or property line setbacks, there are some opportunities for trading (at least in-kind if not for money). Thus it is common for a local authority to negotiate with a developer to achieve a given density by a building siting or height or floorspace arrangement more conducive to the public's preference than originally proposed by the developer. Some might even be willing to increase the density in return for including some apartments in an otherwise entirely office or commercial building. Sometimes, local authorities try to get more than the past standard of internal open space on an estate development, in return for simply its development permission (or at least an implied

less time consuming approval process). Some examples of this have failed upon appeal.

It is clear that to apply pricing approaches in certain circumstances will require a re-orientation in attitudes.

Incentives for Conservation

Thus far, we have discussed some of the uses of price as a means of inhibiting socially undesirable land-use behaviour. The mirror image of this approach is the use of pricing and other incentives as a means of encouraging desirable land-use. The use of grants, loan subsidies and tax incentives is the norm in Western European cities to encourage the maintenance of buildings of some cultural/architectural distinction and historical value. The approaches used are summarised by Robinson (1980). In Ireland, with the exception of occasional grants to institutions such as Trinity College and Kings Inns, no ear-marked incentives of this nature have been made available. Home improvement grants have been provided in the past, but no effort has been made to target these, either to lower-income homeowners, or to discriminate among housing types on the basis of age, structural condition or architectural/cultural/historical distinction.

One notable advance has been made in encouraging the conservation of buildings which are of either scientific, historic, architectural or aesthetic significance. This is the provision in the Finance Bill, 1982 (Section 19) which allows expenditure on the repair, maintenance and restoration of approved buildings to be deducted in the estimation of taxable income. For owners or occupiers who pay a relatively high marginal tax rate, and who can comply with the requirement that public access be provided, this is an attractive incentive (more details are provided in Chapter 12).

Another small advance in this respect is represented by the cultural/environmental awards by Dublin Corporation for 1983, which are to those who have set a standard of taste in the way they have maintained, repaired, restored or refurbished their shops, pubs, banks, garages, etc.

We feel that a package of incentives, targeted to encourage

the achievement of particular conservation objectives in a cost-effective manner, should be provided. It should reinforce in a positive manner regulatory efforts to maintain what we most value from our past in terms of land-use, and would include, for example, incentives for the maintenance of inner city residential structures, which might have little architectural distinction but be of great social significance. A wide-ranging number of options in this regard are discussed by Davis *et al.*, (1980).

Incentives for Innovation

We have noted elsewhere the institutional incentives which encourage adequacy rather than excellence in layout and design. There are a number of incentives worthy of consideration as a means of tipping the balance in favour of excellence.

Mr Paul Burke-Kennedy, an architect, commented (quoted in McDonald (1981)):

I could have a small watercolour exhibition in a Dublin gallery or write a play and I would receive critiques in all the daily newspapers. However, if I am involved in the design of a building on a prominent site in the city, I get not a word of criticism or analysis.

This — perhaps exaggerated — statement implies that architects would respond favourably to critical evaluation of their work, and to public acclamation (or opprobrium). It should be possible to draw on these tendencies by using rewards, awards, publicity, etc., much more frequently and vigorously than has heretofore been the case, so as to recognise work of distinction and excellence. In the same manner that the builder's name was engraved on Swiss lodges of old, we feel that all those involved with major developments, (including those who gave planning permission), should have their names prominently and permanently displayed thereon. This would provide them and their posterity with continuing, enduring public testimony to the calibre of their achievement. Consideration should be given to setting up a special unit within local authorities with the objective of fostering and encouraging excellence, and expediting the passage of original and

noteworthy proposals through the planning/by-law labyrinth. Thus, such proposals would be encouraged by the process rather than the reverse.

Enforcement

Action on the above proposals would create an environment wherein the incentives facing private decision-makers will encourage socially desirable outcomes and discourage the converse. We believe that it is essential that the current mechanisms be reinforced in this fashion, if the land-use planning process is to aspire to produce the outcomes desired. The present almost exclusive dependence on regulatory and procedural mechanisms will prove increasingly inadequate and inappropriate in the future. Given Ireland's history, and the resulting cultural, social, political and economic tradition, an intensification of the regulatory approach — more rules, planners, dependence on court action for enforcement, heavier fines, etc., — will avail little. There must be a fundamental and conscious effort to design incentives such that people and institutions tend to do in their own self-interest what is also in the societal interest. Enforcement in such an environment will cease to be the Achilles heel which it tends to be at present.

If goals, and the means of their achievement, are clearly stated in the Development Plan, and if the latter is used effectively to develop a consensus concerning the aspirations of the community, this will greatly enhance the effectiveness of any enforcement system.

Chapter 17

Capturing some of the Surplus

That very large gains in market value are associated with land as it goes from undeveloped to developed state was demonstrated in a previous chapter. It was argued that the magnitude of this value derives from the anticipated price received for the structure(s) in question, net of all non-land costs, including an allowance for "normal" profit. For a given level of construction costs, the magnitude of the gain at a site then is largely (but not exclusively) determined by the price buyers are willing to pay for a property in that location. The size of the surplus per unit area varies sharply with location, but the data presented in the Kenny report and by Jennings (1981) show that over the past 20 years it has grown at an annual average rate which far outstrips the rate of inflation. Under the existing taxing, subsidy and institutional arrangements, while there may be occasional, temporary drops in real value, undeveloped land which achieves developed status has been as close to a high yielding, risk-free investment as one can find in Ireland. It is widely accepted that a portion of this surplus should be captured by the general public, on the grounds both that it is largely "unearned", in the sense that it arises from general economic and demographic growth on the one hand, and is "created" by the infrastructural investments undertaken by governments, on the other. In cases where it is desired to maintain open space, it also provides a substantial and often irresistible degree of incentive to thwart such desires, and results in wasteful use of infrastructural investment.

The debate has turned on how, and to what extent, the difference arising in land value as it goes from undeveloped to developed status should be captured.

Before addressing this topic, it is as well to point out that British experience in this respect is virtually without value as a source of information on alternatives. This is so because of two interrelated factors: the price of land and the willingness to trade today are very largely determined by expectations concerning the future; for several decades Britain has had alternating governments with ideologically based, strongly opposing views on this topic. Thus, what one government would propose and legislate for, the opposition party would promise to undo once in government. The majority of individuals, faced with selling land now and losing the bulk of the surplus, or waiting for a change of government which will result in reduction or elimination of the government take, will wait. Behaviour under such circumstances will be quite different to that which can be expected in a situation in which the decision-making environment is likely to remain unchanged indefinitely. The general lesson which the British experience does yield is that, so long as we retain the principle and practice of private land ownership in Ireland, every effort should be made to arrive at a system of capturing the surplus which commands general popular support and which will not be overturned with a change of government.

Approaches

Broadly, there are three approaches to capturing the surplus. They each have advantages and disadvantages; there is no perfect solution to this problem.

In addition to the characteristic noted above, i.e., robustness over time, the surplus-capturing method should also aspire to share only in the rent, i.e., the amount between the minimum which the landowner would accept (if there were no market *per se* in land) and the actual market price. For example, if the minimum a landowner would accept were £10,000 per acre (this might be substantially above the use value price) and the market value were £40,000, this difference of £30,000 comprises rent; this should be the focus of attention. If there is an attempt to capture value beyond the minimum acceptance threshold, there will be a (probably

very substantial) reduction in the supply of land becoming available.

1. *Compulsory Acquisition by the Government at Existing Use Value plus Some Premium*.

This is the approach advocated in the majority report by the Committee on the Price of Building Land (1973); hereafter the latter is referred to as the Kenny committee. It is recommended that, on application by a local authority, the High Court would designate areas in which (p. 36):

in the opinion of that Court the lands will probably be used during the following 10 years for the purpose of providing sites for houses or factories or for the purposes of expansion or development and in which the land or a substantial part of it has been or will probably be increased in market price by works carried out by a local authority which were commenced not earlier than the first day of August 1962 or which are to be carried out by a local authority.

It is envisaged that all land within the designated area would be purchased by the local authority at use value plus some percentage of it; 25 per cent is suggested for the latter. Part of the land would then be used by the local authority for its own purposes and the balance would be leased or sold to private users. With regard to the latter, the committee (majority report) says that (p. 41):

We would expect local authorities when leasing land to seek the highest price or rent for commercial developments such as offices or factories, but for social purposes, such as housing or schools, we would expect land to be made available on terms which covered costs only.

Land disposed of by local authorities to the private sector will involve stipulations as to type of building and its price. It is noted that (p. 41): "the scheme will strengthen the powers of local authorities and will, we think, enable them to introduce some element of price control of new houses".

Lands within the designated areas can also be traded privately, but since the local authority will have the authority to "re-purchase" it again at use value plus 25 per cent, this (they argue) defines the ceiling which any rational person would pay.

It is clear that price control was envisaged as an inherent element in this scheme. This arose out of the terms of reference given to the committee, which were to consider, in the interests of the common good, possible measures for "controlling the price of land required for housing and public development", and also for "ensuring that all or a substantial part of the increase in the value of land attributable to the decisions and operations of local authorities . . . shall be secured for the benefit of the community".

Thus, the committee was not simply asked to explore means whereby some portion of the surplus arising as land goes from undeveloped to developed status could be captured for the public: it had to consider how the price of land might be controlled and how the surplus "*attributable to the decisions and operations of local authorities*" (italics added) could be secured for the public. It is unfortunate that the committee's terms of reference were thus defined, because it skewed their deliberations in an unhelpful direction. In our view, because it is largely derived from demand, it is not the price of land which is the problem, but the equity and incentive implications of the large surplus which the process of development generates.

By being confined to consider only those gains attributable to the decisions of local authorities, two problems were created for the committee. The first was the pragmatic administrative problem of defining the lands and value increment so attributable; the second was the fact that the misgivings which are expressed about large "unearned" capital gains on land transactions apply with equal and sometimes greater force to land where the value is not wholly attributable to the decisions of local authorities. The equity and incentive arguments for capturing some of the surplus for the public apply with equal force to all land. For example, a case arose in Dublin where it was claimed that a 4 acre site at Earlsfort Terrace, which has been derelict since 1971, would yield a capital gain of £8 million (McDonald, 1981); such land value gains would not be included in the Kenny report proposals.

The necessity of making price control of housing an

element in the proposals of the majority report is, in our view, a serious limitation, for a number of reasons:

(i) It will transfer the land-value "gain" from landowners to the initial house buyer. House purchasers are already among the most indulged groups in the country; they receive house purchase grants in the case of first time buyers, they typically pay a negative real rate of interest to lenders, which is further reduced by the fact that interest payments are allowed as a deduction for income tax assessment purposes, and they pay no rates to support domicile-related expenses such as garbage collection and neighbourhood and infrastructure maintenance. It is not clear to us that a further transfer — which could instead be captured by tax-payers in general — is warranted.

(ii) Non-price rationing will be introduced, as people "queue-up" to buy these houses which have an implicit capital gain associated with them. A two-tier market will develop, comprised of houses which are traded in the open-market at the market-clearing price, and those with price control. The former will consist of houses which are already part of the existing housing stock, and those which are built on sites outside the designated areas. Criteria will have to be established to decide who gets a price-controlled house and in what sequence. These criteria, no matter how well intentioned or ingeniously structured they are, will be subject to manipulation by applicants, as they attempt to maximise their prospects of selection. The experience with the allocation of local authority housing provides eloquent testimony to the potential problems in this regard. Allegations of political influence will be heard.

(iii) The supply will tend to be unresponsive to changes in taste. With a queue waiting to buy, builders will have little incentive to be responsive to evolution in taste. For example, the recent interest in apartment living in Dublin would probably not have been adequately reflected in builders' decisions under a house-price controlled regime.

(iv) As long as costs are allowable in computing the sale price, there will be little incentive for builders to pursue

aggressive cost-reducing uses of labour, machines and materials, or to improve the quality of design and structures. With rapid inflation and changing technology, it is impossible for a bureaucracy to enforce adequately appropriate standards in those regards.

(v) There is an incentive for builders to try to capture some of the surplus by creative use of accounting methods and procedures *vis-à-vis* costs. If the surplus is very large, the incentive will be correspondingly large, and we can expect considerable effort to be expended in this regard, both by the builders and the detectors. In both the private and the public sectors, this can represent a substantial wastage of intellectual and financial resources.

(v) With rapid inflation, a relatively slow-moving bureaucracy and a political situation wherein kudos can be earned by obeisance to slogans such as "keep the lid on prices", "cut out profiteering by unscrupulous developers", etc., it is likely that the prices will be kept sufficiently low that the construction sector will shift resources into non-price controlled activity, such as domestic office and industrial development, overseas construction work, or, in the longer term, non-construction activity in Ireland and elsewhere. This will exacerbate the shortage and the tensions in the system.

For all these reasons, we feel very strongly that the price control element in the majority report of the Kenny committee should not be acted upon. The construction industry is reasonably competitive, and we can see no substantial grounds for intervention in this fashion. Our rejection of this concept is not a criticism of the committee *per se*, since this proposal is a logical outcome of the terms of reference which they were given.

There are three potential difficulties²¹ which arise in practice: the first is the technical/administrative one of designating the areas, purchasing the land, selling on the land, etc.

²¹ Many observers feel that the designation of areas, and their compulsory acquisition at use value plus some percentage, would, if implemented, contravene provisions of the Constitution. We do not address this issue.

To do it in a timely and efficient fashion will require considerable technical expertise, courage, initiative, entrepreneurial skills and leadership, and it is not clear that all of the local authorities will have a sufficiency of these qualities.

The second problem is that land outside the designated areas will be traded on the open market, presumably for a price which is often very much in excess of that paid within these areas. This will give rise to comparisons which may well make the proposal politically impossible to implement. It will also give rise to enormous pressure to influence the location of the boundaries of the designated areas. It is for this reason, among others, presumably, the Kenny committee recommended that this task be assigned to a justice of the High Court. We discussed earlier the political difficulty in issuing a Special Amenity Area Order, which would mean that those within the boundary of such an area could be refused development permission without compensation being payable. Those inside — and especially perhaps those at the boundary — will resent being thus constrained while they observe neighbours making large “windfall” gains, made all the larger by the fact that development is constrained in an adjacent area. Analogous considerations arise in the case of the Kenny designated-area scheme. It would be possible to ameliorate the situation if a substantial portion of the gain in the non-designated areas were to be taxed away.

The third potential difficulty arises from the fact that local authorities will be able to buy land for their own purposes at a relatively modest price. Paradoxically, this could result in inefficient use of the resource if the local authorities tend as a result to be “wasteful” in their use of it, by increasing lot sizes, buying land and then letting it sit idle, increasing road margins with very modest improvements in appearance or performance, etc. It would be wise to use the full opportunity cost price — what the land could fetch on the open market — in internal transfers to the local departments of housing, transportation, sanitation, etc., so as to encourage parsimonious use of land.

If the price control provision now implicit in the “designated area” proposal were dropped, so that the local authorities

dealt in land primarily as a means of capturing "the surplus", then this approach has merit in principle. It has the not inconsiderable advantage that, compared to less direct approaches (see below), the opportunities to avoid transferring the surplus to the public are diminished. In addition, if local autonomy and self-reliance are to be encouraged, it presumably is an advantage that the local authorities will have their own source of funds. However, the practical political/administrative difficulties outlined earlier are real and substantial, while we have doubts that a local authority would be able to resist the temptation to control land and house prices, and thereby pass on favours – in the form of "cheaper" land – to the more effective interest groups. We therefore recommend against adoption of this means of capturing the surplus at this time. If other approaches (see later) are tried and found to be seriously wanting, this method might then be tried.

This is the most ambitious of the three approaches we examine and would require substantial institutional resources. Those which we now address are less demanding in this respect.

2. Tax the Capital Gain on Land Transaction

As we noted earlier (Chapter 13), for "once-off" sellers of development land, there is already a capital gains tax at the rate of 60 per cent on all short-term (less than 1 year) gains resulting from disposal of development land. This falls to 50 per cent in the case of land held more than 1 year and 40 per cent when the land is purchased compulsorily, having been owned for at least 3 years. For corporations trading in land, and individuals and companies dealing in land for profit, the rate is 50 per cent, i.e., the current corporate tax rate. Since these provisions were enacted only in 1982, we do not have sufficient experience to judge their impacts and effectiveness.

Where capital gains tax applies, there is a provision for indexation,²² (using the consumer price index) of the base

²² Adjustment of the value to account for the effects of price inflation.

land value, but only use value is allowed in estimating the base to which indexation applies. No indexation is allowed in those cases where corporation tax applies.

In addition to the advantage of being readily integratable into the existing tax collection framework, the capital gains method also has another advantage, since it is designed to capture only a portion of the surplus,²³ it should have very little effect on the supply of land to development. We add the very important caveat which we entered earlier, namely, that this will only obtain if landowners are sure that the tax will continue to apply in the future; if they feel, for whatever reasons, that it is likely to be reduced or eliminated, then supply will be constricted and consequently the price of that which is traded will escalate.

In the majority report of the Kenny committee, three objections to this proposal are raised: it would be difficult to define the land whose disposal gives rise to liability; it is argued that it "is highly probable that it would increase it [the price of land] and in our view, any proposal which we make must offer a reasonable prospect of reducing or, at least, stabilising the price of serviced and potential building land"; finally, it is averred that "methods of arranging the transactions so that tax will not be paid will be discovered".

With regard to the first point, it has been overcome by making the tax apply to all land transactions where the gain exceeds the current use value, as the capital gains tax²⁴ now in force does. The second difficulty is a manifestation of being hoist by the petard of one's terms of reference. As we have argued elsewhere, we feel that the bulk of the tax will be borne by the landowner. However, to the extent that there is a price effect, we do not feel that this should be a determining consideration.

The third objection is one of considerable substance. The yield to the Exchequer from the existing capital gains tax has been modest, considerable creativity being displayed

²³Defined as the return yielded in excess of the minimum acceptance threshold price.

²⁴Section 35 of the Finance Bill, 1982.

in developing methods of avoidance. Experience in the UK seems to bear out the difficulties in this respect. There is a Development Land Tax applicable in the United Kingdom.²⁵ The tax is charged on real and deemed realisations of development value after the 31st July 1976. The start of a development is a deemed realisation for tax purposes. The rate of tax is 60 per cent for all taxpayers, whether individuals, partnerships, trusts or companies. In assessing the taxable gain, a number of deductions are allowed, the main one being £100,000 for a married couple on gains in any one year. The tax is assessed on the difference between development value and a base derived by formula from cost (if relevant) and current use value. Current use value is defined as the value of the property on the assumption that only development which is "not material" can be carried out. This is roughly equivalent to "existing use value" in the Kenny terminology, although again, some exemptions, including specified use changes, are allowed. The yield to the Exchequer from this tax in the UK in 1980-1981 amounted to about £25 million (sterling). This seems modest, but the relatively low yield may be explained in part by the fact that some categories of gifts and other taxes can be used as a credit against the Development Land Tax, reducing thereby the nominal yield of the latter.

If such taxation can be made effective (a not insignificant caveat), we are in favour of this approach.

3. Impose a Direct Tax on Land Proportionate to its Value in its Highest net Revenue Yield Use

There are several variants of this approach:

(i) Impose a charge when land is rezoned from open space to developed: This charge can be payable at the time of rezoning, or when the development takes place, or some combination. The level of the charge could be varied to reflect the magnitude of the appreciation gain accruing

²⁵All information which we include on this tax is taken from Silke and Sinclair (1981), pp 142-145.

to the landowners. This approach has the great advantage from the Exchequer's point of view that it is difficult to avoid payment. If some portion is payable at the time of rezoning, it has the further advantage that it will discourage the ubiquitous pressure from landowners for rezoning. This pressure is especially prominent at the time when the development plan is being revised. The *ad hoc* indulging of these requests thwarts efforts to develop a cost-effective and environmentally satisfactory pattern of development and undermines the credibility of government and the democratic process by presenting elected representatives in the guise of advocates for special interests.

This issue was raised with considerable force in County Dublin throughout 1982. As part of the revision of the Development Plan, a majority of councillors voted at Council sessions during the year to rezone substantial tracts of land from agricultural to residential, commercial or industrial uses. These rezonings were generally opposed by the planning officials, on the grounds that they did not comprise part of a coherent overall plan, and as such would be costly to service, environmentally deleterious and socially disruptive and destroy the character and separateness of communities. They argued further, that a long-term plan for the greater Dublin area had been prepared in 1969 to which the Development Plan of 1972 adhered and that maintaining the thrust presented therein will provide plenty of land for all uses.

The councillors, in presenting the case for particular rezonings, tended to take a more local view. Thus, in arguing the case for the rezoning of 150 acres in the Stepside area of south County Dublin, a councillor argued that (quoted in *Southside*, June 16, 1982):

The owner of the land suffers from vandalism. He can't grow crops and I wouldn't describe some of the things that go on up there — some of you wouldn't be able to eat your dinners.

In proposing a rezoning of 24 acres at Sandyford to residential, another councillor noted that (*Southside*, June 16, 1982):

Other land in the area is residential. The owner of this bit seems to have missed the boat.

However, the case for rezoning was also made²⁶ on the more general grounds that the initial Draft Development Plan for County Dublin did not adequately provide for the residential and work requirements of a burgeoning population.

The imposition of a charge when land is rezoned has the disadvantage that, since it is payable on all land being developed, "entry" into development by land which yields a surplus below the level of the tax will be discouraged. A profits tax will not have this effect; any land which can with profit be developed will not be held back, since only a share of the profit is taken. The fixed amount requirement, on the other hand, will prevent development of that land which cannot with profit be developed once the tax is payable.

(ii) A sales tax, payable by the vendor: on the transfer or lease of lands suitable for building, a fixed percentage of the sale price, or a progressive rate varying with value, would be payable by the vendor. There already is a tax of this sort — called stamp duty — but it is paid by the buyer. In the majority report of the Kenny committee, this approach is dismissed, primarily on the grounds that its main effect would be to increase prices. It is argued that "in cases where the duty was paid, we would expect it to be passed on so that it would ultimately be borne by the purchaser of the buildings on the land."

We do not share the Committee's certitude of conviction that the tax would be borne entirely by the buildings' purchasers. As we outlined earlier, economic theory would indicate that a substantial proportion of the burden will be carried by the landowner in the form of reduced (net of tax) land prices. Since the Kenny committee does not provide the evidence to justify its assertions in this respect, we cannot evaluate them further.

In the minority report of the Kenny committee, a sales tax was also suggested as a means of capturing a portion of

²⁶See Michael Green, "Naive notions from critics of renewal," *Irish Times*, April 15, 1982.

the surplus. The concept of a designated area, as presented in the majority report, was accepted. For any sale of land within this area, the local authority would have to be given offer of first refusal. If the local authority accepted the offer, it would pay full market value, as determined under the rules for assessment of compensation in compulsory acquisition cases. A sales tax (levy), i.e., a percentage of the amount realised on the transaction, would be charged, payable by the vendor: a 30 per cent levy is suggested as being appropriate.

In the majority report of the Kenny committee, this approach is discounted (p. 35):

The levies which are proposed would be payable by the vendor but they would probably be passed on to the purchaser and they would therefore increase the price of serviced and potential building land . . . The history of the levies and taxes in Britain since 1947 shows that all types of levies and development changes invariably increase the price of land.

We view the minority report more sympathetically. As we argued earlier, the British experience since 1947 yields no generalisable lessons *vis-à-vis* price effects, because of the inconsistency of commitment from one government to the next in the post-war period. The price effects observed are what one would expect in this institutional environment. In the March 1982 budget, a provision was made *vis-à-vis* the capital gains tax on development land, whereby the purchaser of such land was to be obliged to deduct 30 per cent of the consideration at the point of payment and to hand it over to the Revenue Commissioners; the vendor was to receive 70 per cent of the sale price. It was to apply to all property with development potential where the total consideration was over £50,000. The cash so received by the Revenue Commissioners would be treated as a payment on account, pending determination of the final liability for capital gains tax.

Unfortunately this tax was introduced at a time of high interest rates and stagnant land values. In this situation a 30 per cent "take" from the transactions value could cause severe cash-flow problems for large land-holding companies.

The provision was subsequently withdrawn. It is unfortunate that this form of collecting the tax was not tested in practice. It overcomes the primary drawback of the capital gains tax, namely the difficulty of ensuring its collection. (Cynics might argue that this is why it was dropped!) It would "penalise" those land sales where the gain is relatively small; in such cases, the transfer of the land in question to development could be inhibited.

We recommend that, when economic circumstances make it feasible to do so, some form of collection of the capital gains tax be re-introduced — such as the percentage of sale value approach discussed above — which reduces the possibility for tax avoidance. It could be phased in over two years to allow time for adjustments to the new circumstances. As we have argued elsewhere, we feel that if such a tax were seen to be a permanent feature of the land market, much of the tax would be reflected in lower prices to vendors.

(iii) An annual tax assessment — the level of which is based on the value of land in its most remunerative potential use — is termed site valuing.

In their analysis of local authority expenditure and finance, Copeland and Walsh (1975) comment (p. 91):

We judge that . . . the effect of site value rating would be a more efficient use of scarce urban land. In any general revaluation we therefore recommend that the value of sites (as defined by the planning authorities) be raised relative to that of structures on the sites.

If the level of rates assessed were sufficiently high, the bulk of the surplus or rent accruing to landowners as the property goes into development and thereafter, could be captured for the public. Again, most of the burden of such a tax is likely to be borne in the form of reduced land values. This approach has much to recommend it on both grounds of efficiency and equity. However, in view of the public antipathy to rates, and the reflection of this in political decision-making, it is not likely to be acted upon in the near future.

Conclusions

Each technique for capturing a portion of the surplus has advantages and disadvantages. Taxing the capital gain accruing from development is the most readily undertaken in terms of existing tax-collection procedures, but it appears to be difficult to limit tax-evasion and demands for exemptions. A sales-tax or levy approach is more certain in its yield to the Exchequer, but can distort land-use behaviour in undesirable ways. Compulsory purchase by local authorities at use value plus some percentage would be effective in capturing the rent, but raises major questions relating to constitutionality, administrative and political feasibility, and the degree to which it can be applied to areas already serviced.

Since the government has recently (June 1982) introduced increased capital gains taxes on land transactions, we recommend that this be carefully and publicly monitored, to determine, as rigorously as possible, the effects of this tax on land prices, tax yield, etc. Such studies should accompany any initiatives in this field. In the past, the degree of certitude which has characterised assertions in this area seems to be inversely related to the amount and quality of evidence available to support them.

We feel that the use of some combination of direct tax approaches should be seriously considered, because they combine feasibility of implementation with reasonable certainty regarding yield. They also are more consistent in character with other local charges. The use of a "sales tax" as a payment on account for capital gains tax deserves consideration in this respect.

Taxation is inextricably tied to the question as to who collects and who gets the tax revenues. Evaluating the benefits of local autonomy versus central government control is a task which far transcends our brief. However, if there is a conviction that diminishing local dependence on central government is worthwhile, then allowing the local authorities to retain all, or some share, of the capital gains tax would be a very effective means of advancing that goal. At present all

of the capital gains tax accrues to central government. We feel that "automatic" disbursement to the local authority, perhaps for specified purposes, of some or all of the tax, would help develop public support for this approach.

We are of the opinion that the uncertainties and potential difficulties attending the implementation of the more ambitious Kenny proposals (majority report) are such that it would be wiser at this stage to concentrate attention on getting an effective capital gains tax operational along the lines outlined. A key element in evaluating performance in this regard is knowing the amounts collected per period by local authority jurisdiction. This information should be published by the Revenue Commissioners. These data will provide some basis for evaluating the effectiveness of the tax as a mechanism for capturing part of the surplus.

If the Kenny proposals are taken up, we urge very strongly that the house price control element be eliminated. The land being returned to the private sector should be auctioned off to the highest bidders, with a steady, reasonably predictable amount being sold per period.

Our attention in this chapter has been concentrated on capturing the surplus value yielded by the development process. In doing so, we have argued that the demand for land is a derived demand, and that the price which land for development fetches in the open market is largely dependent, other things being equal, on the price which can be received for the development in question. However, we also wish to note that there is a land supply effect on land price; restrictions in the supply of serviced land will tend to push up the price of serviced properties. Local authorities should therefore ensure that serviced land in requisite quantity is coming on the market. The revenues yielded by long run marginal cost pricing of infrastructural services should give them both the resources to do so, and some guidance as to where to allocate them.

Capturing a portion of the rent or surplus, in addition to its equity dimensions, will help in the achievement of cost-effective use of infrastructure and in the preservation

of open space. Other countries, with different traditions, do not appear to need such assistance. For example, in West Germany it has proved possible to simply define areas — the “Aussenbereich” — and prohibit development there, without any liability on the part of the state for compensation.²⁷ Most of the country’s land is formally classified in this non-development zone (Reilly, 1978). In Ireland it does not appear to be possible politically to impose large “losses” on landowners by a total ban on development, except in few clearly specified cases; a diminution of the gain to landowners from development is socially desirable therefore in so far as it will help relieve the pressure. It would also reduce substantially the very large incentive for bribery which exists in the present system.

²⁷Germany’s constitutional provisions *vis-à-vis* the rights of private property are very similar to Ireland’s. The discrepancy in practice seems to bear out the familiar saying that a Constitution means what the courts say it means.

Chapter 18

The Development Plan and Institutional Aspects

To a degree unusual in the Western world, Ireland has a highly centralised government. What were already relatively modest powers of taxation and decision-making at the local level have been steadily diminished in recent years. Planning remains one area where a significant residue of authority still resides locally. However, we have seen that a growing number of the most significant decisions are being shifted to An Bord Pleanála and existing institutional incentives imply that this tendency will intensify. The Department of the Environment and the Industrial Development Authority are the major arbiters in terms of new infrastructure. We will discuss the national level role later in this chapter. Here we wish to address the one policy instrument which is unique to the local authority, namely, the development plan.

The Development Plan

The Development Plan provides an opportunity for local authorities to articulate the community's aspirations for the future, to outline means of their achievement, and to mobilise public support and involvement to this end. To be successful in this role, the public must be actively involved in the consideration of choices. This means that people need to have a sense of what outcomes to expect with different land-use policies, both in terms of appearance and quality of life, and have a realistic sense of the policy measures needed to achieve various outcomes, and their cost. In order to get members of the public to devote their time to this effort, they must have a sense that they are contributing in more than a cosmetic fashion to the decision-making process.

Developing alternatives and presenting them to the public in an intelligible fashion is difficult and costly, and it demands serious intellectual effort to think things through, and financial and human resources and creativity to engender useful involvement. Likewise, discussing policy instruments, and their costs, effectiveness and overall implications with the public in a coherent fashion imposes great demands on planning resources. In this process, the review of policy instruments should convey clearly the limitations of these. For example, the weaknesses of zoning as a means of maintaining open space should be clearly specified.

However, we feel that if local authorities are to have any substantive role in the planning process — and we feel strongly that they should — the preparation, presentation and use of the Development Plan should be central in this effort. The following measures can help in this undertaking:

(i) Capturing a substantial portion of the surplus accruing to landowners from development will reduce the magnitude of the gain to be made, and reduce thereby the pressure for zoning changes, outline planning permissions, etc. This in turn should simultaneously reduce the “messenger-boy” assignments which now consume a disproportionate amount of local legislators’ time, and instead allow them to look at land-use more from a community welfare perspective; in so doing, their prestige and credibility will be enhanced.

(ii) Charging the full costs to development for infrastructural services will tend to result in a cost-effective pattern of development, will often discourage environmentally damaging proposals and will diminish the magnitude of the surplus gained by some landowners.

(iii) By putting a lot of effort into deciding what the community wants, it should be possible as a result to provide much more guidance to developers as to what will and will not be acceptable in particular areas. Furthermore, in cases where permission is refused, the developer should be given clear instructions as to which changes would make approval likely. These actions would reduce the demands on existing

planning personnel, thereby freeing them for work on the Development Plan.

(iv) By utilising community organisations, residents' associations, interest groups, etc., it should be possible to draw systematically on pools of knowledge, expertise and values which are outside the "official" channels. The Universities, regional colleges, schools, local newspapers, radio, etc., can all be mobilised in these efforts.

(v) A review of successes and failures *vis-à-vis* what was aspired to in the previous five year plan will provide a realistic context from which to commence revision.

(vi) The fact that values — the weight given to various outcomes — is central to the land-use planning process needs to be emphasised.

We encountered a tendency to mask this fact by appealing to "good planning principles" as a means of making a decision, as if planning *per se* could resolve value judgements in the same way that an engineer, for example, decides on the technical specifications for a bridge. This recourse to technocratic judgement is understandable in a decision-making environment where most of the existing pressures operate in a fashion inimical to cost-effective use of resources and the preservation of environmental amenities, where engineering is the dominating professional influence and where authoritarian decision-making modes are deeply ingrained. However, if the incentives are adjusted in the manners we suggest, planners will be able to come out from behind the intellectual barricades, and fulfil their vitally important functions of outlining alternatives and their implications, and structuring the terms and tone of the land-use debate. In doing so, it would also be helpful if the uncertainty of outcomes were discussed. Understanding of the urban organism is at an early stage; predicting overall outcomes from interventions in the transport and housing systems, for example, is still an inexact science. Such a situation is susceptible to waves of fashion as to what will achieve desirable results. It is the planners' task to educate the decision-makers and the public as to what is known in these areas and what is merely plausible hypothesis. An Foras Forbartha, with

its expertise in both planning and communication, could play a central role in this regard.

(vii) Many of the existing Development Plans typically suffer from two further serious limitations: they do not adequately cost-out their proposals and the sources of funds, and they suffer from an unwillingness of some of the national state development agencies to indicate of what their plans for the future consist. Of these, the former is more serious. Once there is a weak connection between aspirations and the costs of fulfilling them, and who bears these costs, priorities remain unspecified; in the worst cases, the Development Plan can degenerate to the level of a meaningless wish list, lacking all credibility. It is important that costs of proposals be fully and realistically presented, together with the sources of projected expenditure.

While a few local authorities have made some attempt to utilise the Development Plan along the lines we suggest, in general, they have not. The seeking of public input has often been passive. Rather than going actively in search of views, there has been a tendency to comply with the letter but not the spirit of the law. Many Plans have little policy content; what is desired, why, and how what is proposed is to be achieved is only cursorily addressed. Attention is often drawn to the zone boundaries, rather than to what the hopes and aspirations are within zones. Alternatives are rarely canvassed.

We feel that the Development Plan should focus particular attention on the planning process, and, in particular, how to structure the decision-making environment, both for local authorities themselves and for private sector decision-makers, such that socially desired outcomes are encouraged. It is much more important to have decisions being made which are in the general direction of what is desirable, than to have a finely wrought set of definite aspirations, but without a framework which encourages action towards their achievement. Costs of alternatives, and the sources of funds for projected expenditure, should be clearly specified.

The National Level

The Department of the Environment

Given Irish governmental structures and attitudes, it is clear that, if initiatives are to be taken which are widespread in application and effect, the Department of the Environment will have to provide sustained leadership and support. However, such leadership has not been provided in recent years; the Department has fulfilled a mainly custodial role, with occasional amendments of a relatively minor nature being made from time to time. However, in 1982 Departmental personnel were involved in the preparation of a number of bills. In spite of the changes of government in the period, two of these – the Local Government (Planning and Development) Act, 1982, and the Local Government (Planning and Development) Act, 1983 – were enacted into law. In addition, a set of advice and guidelines concerning development control was published.

The lack of sustained leadership from this source prior to 1982/83 arises perhaps most fundamentally from the absence of political interest; land-use planning does not feature prominently on party political election manifestoes. In spite of great public interest in the particular, the system as a whole does not yet command attention. The Department has also had its mandate broadened to include responsibility for environmental policy, and this may have diluted the attention senior management have been able to devote to land-use planning *per se*. There may also be a sense that diminishing returns has set in to the regulatory approach, and that there is relatively little to be gained by further refinements, while the use of pricing approaches is unfamiliar, unproven (in the civil service context) and possibly contentious. Finally, a number of commentators (usually natives of Dublin) claimed that civil servants were drawn mainly from rural areas of Ireland, and had little interest in, understanding of, or sympathy with, urban areas. This is a line of argument which it is impossible to substantiate or evaluate.

The Department also has responsibility for allocating infrastructural investments at the national level, and, to a lesser

degree, for developing regional policy. In practice, the Industrial Development Authority plays a central role with regard to the latter. Our brief did not extend to a consideration of policy in these areas. However, we do endorse the recommendations by Foster and in their report for the National Economic and Social Council, namely, that investment appraisal techniques be employed to evaluate and rank infrastructural expenditure proposals. We recommend that the Department acts on this and also takes the lead in encouraging the use of pricing approaches to land-use by local authorities. If it does so, it will be necessary to employ economists trained in techniques of micro-economic analysis, econometrics and investment appraisal. The technical planning group in the Department would also need to be expanded, while An Foras Forbartha could play a very important supporting role.

An Bord Pleanála

The role of the Board — in conjunction with Ministerial directives — as a setter of national policy for land-use decisions needs to be frankly recognised; such recognition might have to be given statutory expression. If this were done, the guidelines and criteria which are followed in reviewing appeals could then be laid out. This would serve two purposes: it would facilitate a coherent debate on their appropriateness (or otherwise) and it would also provide guidelines for both developers and local authorities which could significantly reduce the number of appeals.

REFERENCES

- ACKERMAN, BRUCE A., 1977. *Private Property and the Constitution*, New Haven: Yale University Press.
- AN BORD PLANALA, 1979. *Annual Report and Accounts*, Dublin.
- ANONYMOUS, 1980. "A Developer Who Cherishes the Past", *Construction*, October, pp. 45-47.
- AN TAISCE, 1967. *Amenity Study of Dublin and Dun Laoghaire*, Dublin: An Taisce.
- AN TAISCE, 1981. "Good Planning and Development — Drogheda Grammar School", *Taisce Journal*, Vol. 5, No. 4, p. 13.
- AN TAISCE, 1982. *Urbana-Study of Dublin: Conservation Report*, Dublin: An Taisce.
- BAKER, T.J. and L.M. O'BRIEN, 1979. *The Irish Housing System: A Critical Overview*, Dublin: The Economic and Social Research Institute, Broadsheet No. 17.
- BANNON, M.J., 1973. *Office Location in Ireland: The Role of Central Dublin*, Dublin: An Foras Forbartha.
- BANNON, M.J., 1979. "Urban Land", Ch. 12 in D.A. Gillmor, (ed.), *Irish Resources and Land Use*, Dublin: Institute of Public Administration.
- BANNON, M.J., J.G. EUSTACE and M. O'NEILL, 1981. *Urbanisation: Problems of Growth and Decay in Dublin Part II*, Report No. 55, Dublin: National Economic and Social Council.
- BARRETT, MAEVE, 1975. *Landscape Evaluation: A Perception Study Related to South County Dublin*, Dublin: University College Dublin, unpublished Town Planning Thesis.
- BLACKWELL, JOHN, 1981. "Do Housing Policies Show a Redistribution to the Poor?", Kilkenny Poverty Conference Paper.
- BRANGAN, EOGHAN, 1977. *Analysis of Time Costs in the Private Housing Development Process*, Dublin: An Foras Forbartha.
- BRANGAN, E., V. BRANGAN, T. DUFFY, N. HYDE, R. MULVIHILL, and D. STEWART, 1980. "Cost and Layout Regulations: Case Study Layouts" in: *Proceedings of a Conference on Cost and the Environment of Residential Areas*, Edited by E. Brangan, a working paper from An Foras Forbartha, Dublin.
- BURROWS, GEORGE, 1981. "German to Build Holiday Village at Lough Melvin", *Irish Times*, 12 March.

- BYNE, AUVEEN, 1977. *Planning in the Urban Fringe: An Appraisal*, Dublin: University College Dublin, unpublished Town Planning Thesis.
- BYRNE, GERRY, 1981. "From Ships to Offices: Redevelopment Plan for Custom House Docks", *Construction*, (Feb.), pp. 18-21.
- COLLERAN, EMER, 1983. *Planning: Use and Mis-use of Section 4 Resolutions*, Dublin: An Taisce.
- COOK, GRAEME, 1981. "A Quietly Prosperous Market Predicted for the Coming Year", *Sunday Tribune*, 27 December.
- COPELAND, JOHN and BRENDAN M. WALSH, 1975. *Economic Aspects of Local Authority Expenditure and Finance*, Dublin: The Economic and Social Research Institute, Paper No. 84.
- COMMITTEE ON THE PRICE OF BUILDING LAND, 1973. *Report to the Minister for Local Government*, Dublin: Stationery Office, (Kenny Report).
- CROWLEY, DES, 1981. "Fortunestown Lives up to its Name", *Sunday Tribune*, 20 December.
- CULLINGWORTH, J.B., 1974. *Town and County Planning in England and Wales*, London: Allen and Unwin.
- DAVIS, J., B. MEEHAN and R. WALSH, 1980. *Incentives for Inner City Renewal in Dublin*, Dublin: Royal Institution of Chartered Surveyors.
- DEPARTMENT OF THE ENVIRONMENT, 1982. *Development Control: Advice and Guidelines*, Dublin: Stationery Office.
- DOWNEY, LIAM, 1981. "Housing - A View of the Future", Paper presented to Regional Studies Association Annual Conference, 6 March, Dublin.
- DOYLE, GERARD J., 1983. "Pollardstown Fen" in D. Jeffrey, P. Newbould and J.J. Moore (eds.), *Nature Conservation in Ireland: Progress and Problems*, Dublin: Royal Irish Academy (forthcoming).
- DUFFY, T.P., 1980. *Private Housebuilding in Ireland, 1976-1980*, Dublin: An Foras Forbartha.
- DURNEY, T.A., 1976. Preservation and conservation of the listed buildings in the Dublin inner city area, Dublin: University College Dublin, unpublished Town Planning Thesis.
- DUNNE, JIM, 1981. "Hugh Coveney on Cork", *Business and Finance*, 23 April.
- FLANNERY, MICHAEL, *Building Land Prices*, The Tribune Printing and Publishing Groups, Birr, Co. Offaly.
- FEIGHERY, FRANCES B., 1975. An assessment of planning appeals, Town Planning Thesis, UCD.
- FOSTER, C.D., N. SEGAL, J. DORGAN and S. DEWAR, 1981. *The Importance of Infrastructure to Industrial Development in Ireland*, Dublin: NESC Report No. 59, Stationery Office.
- GARNER, J.F., (ed.), 1975. *Compensation for Compulsory Purchase: a Comparative Study*, United Kingdom Committee on Comparative Law.

- GARNER, J.F., (ed.), 1975. *Planning Law in Western Europe*, Amsterdam: North-Holland.
- GREENE, MICHAEL, 1982. "Land-Use — A Need for Policy Change", Paper presented at the Construction Industry Federation Seminar, October 7, Dublin.
- GRIST, BERNA, 1983. *Twenty Years of Planning: A Review*, Dublin: An Foras Forbartha.
- HALL, PETER, 1973. *The Containment of Urban England*, 2 vols. London: Allen and Unwin.
- HALL, PETER, (ed.), 1965. *Land Values*, London: Sweet and Maxwell.
- HEARNE, R., 1976. *Selected Geometric Elements and Accident Densities on the National Network*, Dublin: An Foras Forbartha.
- HUGHES, N., 1975. *Planning in Ireland 1972-1975*, Dublin: An Foras Forbartha.
- INTER-DEPARTMENTAL COMMITTEE, 1979. *Inter-Departmental Committee on Inner-City — Summary of Recommendations*, Government Information Service.
- IRISH INDEPENDENT, 1981. "Developers in Frescati Case don't have to Restore House", 17 December.
- IRISH TIMES, 1981. "House Project Halted", 24 March.
- JENNINGS, R., 1980. *Land Transactions and Prices in the Dublin Area 1974-1978*, Dublin: An Foras Forbartha.
- JENNINGS, R., 1981. "Recent Developments in Housing Land in Dublin", *Mimeo* An Foras Forbartha, Dublin, quoted in *Business and Finance*, 8 October, p. 26.
- JOHNSTON, A.T., 1972. Planning policy and its implementation in the Dublin mountain area of Dublin County Council 1940-1970, Dublin: University College Dublin, unpublished Town Planning Thesis.
- JONES LANG WOOTON, 1980. *Report on Dublin Office Property*, Dublin.
- KEANEY, P.J., 1976. Untitled paper presented to Seminar on Planning — A Social Advantage or Disadvantage, sponsored by the Construction Industry Federation, Dublin: 17 June.
- KELLY, DEIRDRE, 1976. *Hands Off Dublin*, Dublin: O'Brien Press.
- KELLY, P., 1981. "Trends in Land Prices 1970-1980", *Farm and Food Research*, Vol. 12, No. 3, June, pp. 94-95.
- KENNY REPORT (see Committee on the Price of Building Land).
- KILFEATHER, FRANK, 1981. "Green Belt Rezoned for Industry", *Irish Times*, 5 December.
- KILFEATHER, FRANK, 1981a. "Dublin Land Rezoned for Industrial Use", *Irish Times*, 12 December.
- LENNOX, L.J., and P.F. TONER, 1980. *The National Survey of Irish Rivers: a Third Report on Water Quality*, Dublin: An Foras Forbartha.
- LIDDLE, LAURENCE H. et al., 1980. *Incentives for Inner City Renewal in Dublin*, Dublin: Department of Surveying and Building Technology, College of Technology.
- "LUTS — Floundering Amid Apathy", *Business and Finance*, special supplement February 1981, p. 17.

- MARTIN, JOHN H., 1975. Public participation in planning: A policy oriented review, Dublin: University College Dublin, unpublished Town Planning Thesis.
- McCUMISKEY, L.M., 1981. "A Review of Ireland's Water Resource – Rivers and Lakes", *Irish Journal of Environmental Science*, Vol. 1, No. 2 (An Foras Forbartha).
- McCAGUE, TERENCE, 1979. Rural housing pressure: source, symptom, solution: A case study of Co. Laois, Dublin: University College Dublin, unpublished Town Planning Thesis.
- McDONALD, FRANK, 1981. "£8m Harvest for Weed-Growers", *Irish Times*, 1 September, p. 10.
- McDONALD, FRANK, 1981a. "Architect says Dublin Office Block Design is Depressing", *Irish Times*, 23 October.
- McDONNELL, N.P., 1977. Public participation in planning, Dublin: University College Dublin, unpublished Town Planning Thesis.
- McKONE, JOHN, 1976. Paper presented to Seminar on "Planning: A Social Advantage or Disadvantage", sponsored by the Construction Industry Federation, Dublin: 17 June.
- McKONE, SEAN, 1980. "The Planning Acts – The Achilles Heel of the Construction Industry", *Construction*, November, pp. 27-33.
- MEAGHER, G.A., 1965. "Planning and National Development", *Administration*, 13(4), pp. 247-257.
- MURRAY, C.H., 1966. "National and Physical Planning", *Administration* 14(4), pp. 286-297.
- MURTAGH, PETER, 1981. "Inspector's Report on High-Density Estate Plan Blamed Councils", *Irish Times*, 14 April.
- MUSGRAVE, DONAL, 1981. "Middleton to Get its Sewage Treatment Plant", *Cork Examiner*, 19 June, p. 1.
- NATIONAL COASTLINE STUDY, Vol. 1, *A National Strategy*, November, 1972. Vol. 2, *County Reports*, October, 1973. Commissioned by Bord Fáilte and An Foras Forbartha.
- NESC, 1975. *Regional Policy in Ireland*, Report No. 4, Dublin: Government Publications.
- NESC, 1976. *Institutional Arrangements for Regional Economic Development*, Report No. 22, Dublin: Government Publications.
- NOWLAN, KEVIN B., 1980. "Conservation and Development", in *Dublin's Future: The European Challenge*, (A report for An Taisce published by *Country Life*, London).
- NOWLAN, KEVIN I., 1978. *A Guide to The Planning Acts*, Dublin: Incorporated Law Society of Ireland.
- O'BRIEN, LANCELOT and BRIAN DILLON, 1982. *Private Rented – the Forgotten Sector*, Dublin: Threshold Research Committee.
- O'CONNOR, CONSUELO, 1981. "Planning Matter", letter to editor of *Irish Times*, 12 June, p. 11.
- O'FARRELL, P.N., 1979. *Urbanisation and Regional Development in Ireland*, Dublin: NESC Report No. 45, Stationery Office.

- O'ROURKE, C., R. JENNINGS, and P.T. PIGOTT, 1982. *Problems of Delays and Expenses Associated with Private House Purchase Transactions*, Dublin: An Foras Forbartha.
- O'SULLIVAN, PHILIP, 1978. *Irish Planning and Acquisition Law*, Dublin: Institute of Public Administration.
- REILLY, WILLIAM K., 1978. "The Use of Land: Learning from other Countries", Paper presented at the Graduate School of Design, Harvard University, Cambridge: Massachusetts, October 24.
- REVENUE COMMISSIONERS, 1981. *Annual Report of the Revenue Commissioners Year Ended 31st December, 1979*, Dublin: Stationery Office.
- REYNOLDS, JULIAN, 1980. "Pollardstown Fen", *Taisce Journal*, Vol. 4, No. 1, Spring, p. 6.
- ROBINSON, NICHOLAS, 1980. "What is to be Done (with architectural preservation)" in *Dublin's Future: The European Challenge*, (A report for An Taisce published by *Country Life*, London).
- ROCHE, JOHN, 1973. Public participation in planning, Dublin: University College Dublin, unpublished Town Planning Thesis.
- ROYAL INSTITUTION OF CHARTERED SURVEYORS, 1976. *The Development Land Problem in Ireland*, Dublin: Royal Institution of Chartered Surveyors.
- ROYAL INSTITUTION OF CHARTERED SURVEYORS, 1979. *The Development Land Problem in Ireland Reviewed*, Dublin: Royal Institution of Chartered Surveyors.
- ROYAL TOWN PLANNING INSTITUTE (Irish Branch) 1972. *Submission to the Committee on Land Prices*, April.
- RYAN, ETHNA, 1981. "Only Three Present at Planning Meeting", *Business and Finance*, 25 June, pp. 28-29.
- SAMUELS, WARREN J., 1981. "Commentary: An Economic Perspective on the Compensation Problem" in Samuels and Schmid, (eds.) *Law and Economics, An Institutional Perspective*, Boston, London: Martinus Nijhoff Publishing.
- SAMUELS, WARREN J. and A. ALLEN SCHMID (eds.), 1981. *Law and Economics: An Institutional Perspective*, Boston, London: Martinus Nijhoff Publishing.
- SAX, JOSEPH L., 1971. "Takings, Private Property and Public Rights", *Yale Law Journal*, Vol. 81, December, pp. 149-186.
- SCHMID, A. ALLAN, 1968. *Converting Land from Rural to Urban Use*, Baltimore: Johns Hopkins, University Press.
- SCHMID, A. ALLAN, 1978. *Property, Power and Public Choice*, New York: Praeger.
- SEIGEN, BERNARD, 1970. "Non-Zoning in Houston", *Journal of Law and Economics*, Vol. 13, (April), pp. 71-148.
- SCANNELL, YVONNE, 1976. *The Law and Practice Relating to Pollution Control in Ireland*, London: Graham and Trotman.
- SHAFFREY, PATRICK, 1975. *The Irish Town: An Approach to Survival*, Dublin: The O'Brien Press.

- SHAFFREY, PATRICK (ed.), 1983. *Your Guide to Planning*, Dublin: The O'Brien Press.
- SILKE, A.S. and W.L. SINCLAIR, 1981. *Hambro Tax Guide 1980-'81*, London: Queen Anne Press.
- SUFFREN, PETER K., 1977. Housing in rural Ireland: an alternative approach to sprawl, University of Edinburgh, unpublished Master of Philosophy Thesis.
- SUFFREN, P. and R. MULVIHILL, 1977. *Housing in Rural Ireland: An Alternative to Sprawl*, Dublin: An Foras Forbartha.
- TRENCH, BRIAN, 1980. "Slazenger Site Proving Difficult to Sell as One Piece", *Construction*, July/August, pp. 5-6.
- WALKER, GERALD, 1979. "Research on Information Processing and Communication in The Internal Process" (about Ireland) in *Research into Local Planning Processes*, a report from a Colloquium, Stockholm: Swedish Council for Building Research.
- WALSH, EDWARD M., 1979. *Planning and Development Law*, Dublin: The Incorporated Law Society of Ireland.
- WALSH, BRENDAN G., 1982. "Land Use — The Need for Policy Changes", Paper presented at the Annual Meeting of the Construction Industry Federation, Dublin.
- WRIGHT, LANCE AND KENNETH BROWNE, 1974. "A Future for Dublin", a special issue of the *Architectural Review*, November.
- ZIMMERMAN, JOSEPH F., 1980. "An Bord Pleanála" (The Irish Planning Board), *Administration*, Vol. 28, No. 3 (Autumn).

APPENDIX A

ENACTMENTS AND REGULATIONS DIRECTLY RELEVANT TO PHYSICAL PLANNING

Planning Acts

- Local Government (Planning and Development) Act, 1963 (No. 28 of 1963).
- Local Government (Planning and Development) Act, 1976 (No. 20 of 1976).
- Local Government (Planning and Development) Act, 1982 (No. 21 of 1982).

Regulations, Rules and Policy Directive

- Rules of the Superior Courts (No. 1), 1976 (S.I. No. 286 of 1976).
- Local Government (Planning and Development) Regulations, 1977 (S.I. No. 65 of 1977).
- Local Government (Planning and Development) (Amendment) Regulations, 1980 (S.I. No. 231 of 1980).
- Local Government (Planning and Development) (Amendment) Regulations, 1981 (S.I. No. 154 of 1981).
- Local Government (Planning and Development) General Policy Directive, 1982 (S.I. No. 264 of 1982).

Enactments which Amend or Affect the Planning Acts

- Housing Act, 1969 (No. 16 of 1969) S. 10 and 12.
- Gas Act, 1976 (No. 30 of 1976) S. 42.
- Wildlife Act, 1976 (No. 39 of 1976) S. 21(8).
- Casual Trading Act, 1980 (No. 43 of 1980) S. 7(3).
- Fire Services Act, 1981 (No. 30 of 1981) S. 13.
- Litter Act, 1982 (No. 11 of 1982) S. 19.

Source: Taken directly from Department of the Environment (1982).

Appendix Table 1: *Permissions and refusals by the local authority and the Minister, County Dublin, 1975*

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	<i>No. of planning applications</i>	<i>Local authority</i>			<i>Minister</i>		
		<i>Permissions</i>	<i>Refusals</i>	<i>Refusals as % of Permissions</i>	<i>Decisions upheld</i>	<i>Decisions not upheld</i>	<i>Decisions not upheld as % of those upheld</i>
Grand total	2808	2149	461	21	219	171	78
<i>Residential</i>							
Group		269	135	50	64	42	66
Single		376	151	40	55	61	110
Total		645	286	44	119	103	87
Factories		33	38	115	n.a.	n.a.	
Offices		16	12	75	26	25	96
Shops, Pubs, Restaurants		18	25	139	n.a.	n.a.	
Garages		9	10	111	n.a.	n.a.	
Warehouses/Stores		33	11	33	n.a.	n.a.	
Schools		17	—	0	n.a.	n.a.	
<i>Conversion of dwelling to</i>							
Pubs		—	2		1	—	0
Offices/Shops		5	4	80	2	1	50
Factory		3	5	167	n.a.	n.a.	
<i>Extensions/Alterations to:</i>							
Houses		1116	33	3	31	11	35
Offices		10	5	50	8	11	137
Shops/Restaurants/Pubs		16	14	88			
Schools		13	—	0			
Garages		5	3	60	6	2	33
Warehouses		8	1	13			
Factories		14	5	36			

Note: Some minor applications have been omitted, so that number of entries will not sum to grand total.

Source: McKone (1976), p. 9.

APPENDIX B

<i>Area</i>	<i>Planning decisions</i>					<i>% refusals</i>				
	1977	1978	1979	1980	1981	1977	1978	1979	1980	1981
<i>County</i>										
Carlow	312	394	543	398	406	2.56	2.28	6.62	9.79	4.92
Cavan	782	957	1134	958	918	11.89	10.44	9.61	10.54	14.92
Clare	1060	1184	1589	1384	1230	1.03	2.02	2.83	3.39	3.25
Cork	3578	4153	5303	4262	4674	13.24	17.48	17.10	17.03	22.20
Donegal	2345	2437	2626	2689	2299	8.57	6.48	8.49	6.91	7.65
Dublin	3103	3485	4446	3915	4050	19.14	17.67	15.87	18.95	19.14
Galway	2827	3504	4042	3302	3476	13.51	16.46	13.03	11.72	14.32
Kerry	1796	2243	2800	2318	2340	8.24	7.84	9.03	6.77	8.97
Kildare	956	1340	1553	1352	1408	9.93	16.71	23.11	19.60	19.31
Kilkenny	782	1093	1248	983	1029	3.45	3.11	4.40	4.78	7.96
Laois	573	732	1003	727	755	6.63	6.83	4.38	6.18	7.94
Leitrim	449	405	549	560	461	8.46	5.43	8.19	8.57	7.80
Limerick	1485	1718	1998	1566	1566	4.78	5.18	6.15	6.19	9.45
Longford	495	600	615	508	513	4.04	4.00	6.01	8.66	9.16
Louth	767	826	881	698	798	16.03	18.52	17.93	18.19	17.16
Mayo	1688	1926	2299	2032	1764	4.91	4.36	5.69	4.67	5.38
Meath	1688	1672	2199	1756	2274	10.84	8.91	10.14	16.51	22.42
Monaghan	653	781	795	665	662	7.19	8.45	7.67	10.07	14.95
Offaly	528	608	736	593	615	5.30	7.73	7.33	5.56	8.29
Roscommon	931	1008	1338	1135	1175	3.00	4.06	5.90	6.07	7.14
Sligo	719	821	859	744	868	18.63	14.85	15.36	19.89	14.63
Tipperary NR	593	815	881	768	818	4.72	5.76	7.83	8.59	11.24
Tipperary SR	537	761	882	687	646	2.04	5.51	5.21	4.94	6.19
Waterford	827	821	1125	787	744	11.97	15.46	19.11	16.01	16.26
Westmeath	875	1015	1048	892	795	9.82	9.45	10.40	12.44	12.57
Wexford	1392	1533	1849	1562	1617	15.01	14.41	17.19	16.06	14.34
Wicklow	975	1127	1168	1131	1251	25.84	27.41	27.56	30.68	30.13
Sub-total	32716	37959	45509	38372	39152	10.73	11.41	11.83	12.23	14.31
<i>County Borough</i>										
Cork	620	741	846	610	656	13.70	14.17	15.72	11.63	15.09
Dublin	2611	2621	3116	3076	3004	18.07	21.17	20.31	20.38	23.56
Limerick	233	274	310	273	280	17.16	11.67	11.93	12.45	21.42
Waterford	175	203	240	311	354	9.14	10.83	5.00	11.89	7.90
Sub-total	3639	3839	4512	4270	4294	16.84	18.59	18.06	18.00	20.84

Source: Taken directly from the Department of the Environment (1982).

APPENDIX C

<i>Area</i>	<i>Appeals as % of decisions</i>			
	<i>1978</i>	<i>1979</i>	<i>1980</i>	<i>1981</i>
<i>County</i>				
Carlow	3.21	4.17	7.50	5.01
Cavan	6.16	5.59	6.38	7.10
Clare	3.02	3.59	4.05	3.25
Cork	9.90	7.55	9.41	11.70
Donegal	3.19	2.47	3.38	2.55
Dublin	15.52	11.45	14.00	16.44
Galway	7.87	6.86	6.14	6.50
Kerry	3.96	3.84	4.86	5.55
Kildare	10.03	10.10	11.29	12.86
Kilkenny	2.30	2.76	3.52	3.33
Laois	3.55	3.35	4.26	5.03
Leitrim	4.20	2.91	5.00	4.77
Limerick	2.62	1.95	3.86	4.53
Longford	3.21	2.99	7.04	8.64
Louth	10.19	8.49	11.23	9.50
Mayo	2.71	3.45	3.66	5.41
Meath	5.45	6.27	8.84	8.61
Monaghan	4.50	5.58	6.41	9.08
Offaly	4.81	5.19	5.00	6.46
Roscommon	3.97	4.04	3.08	3.57
Sligo	7.22	6.07	8.84	7.37
Tipperary NR	3.48	4.73	5.62	9.13
Tipperary SR	4.20	2.94	3.44	4.30
Waterford	6.70	7.38	8.79	7.64
Westmeath	4.88	4.50	5.26	7.91
Wexford	5.57	4.77	6.27	5.57
Wicklow	17.77	13.66	19.71	19.04
<i>County Borough/Borough</i>				
Cork	10.80	8.98	10.66	11.74
Dublin	17.21	16.88	18.76	20.67
Limerick	5.47	9.68	7.69	14.64
Waterford	5.42	3.93	9.65	8.78
Dun Laoghaire	20.88	24.26	26.76	25.86
National Average	7.65	6.82	8.44	9.39

Source: Taken directly from the Department of the Environment (1982).

Books:

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