Planning by Consent

THE ORIGINS AND NATURE OF BRITISH DEVELOPMENT CONTROL

PHILIP BOOTH

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Planning by Consent

the Origins and Nature of British Developmental Control

Philip Booth

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Preface

The genesis of this book lies in the work on Britain in my earlier book, *Controlling Development,* which presented a comparison of the French and British planning systems. There, in order to be able to explain the essential characteristics of British development control I thought it was necessary to devote some space to the evolution of the system. This enabled me to set the British system against the very different evolution of the French approach to the control of urban development; the ultimate purpose was to contrast the treatment of the fundamental problems of uncertainty and discretionary power. Although at the time I was unaware of Stephen Crow's article *Development Control: the Child that Grew up in the Cold* (Crow, 1996), I became convinced that there was a great deal more to be said about history of the development control system in Britain that would offer more insight into the present disarray in the system and—perhaps—help identify ways forward.

The past 25 years has not been short of histories of the planning system in this country and indeed elsewhere in Europe. From Ashworth's (1954) pioneering study in the 1950s, the task of explaining the way in which planning had developed was taken up by the late Gordon Cherry and continued by Anthony Sutcliffe, Stephen Ward and others. In this respect, the setting up of the International Planning History Society under Cherry's and Sutcliffe's leadership was formative in making planning history a distinct sphere of study within the more general field of urban history. Most of this work has, however, focused on plans and policies, and if the implementation of those plans and policies through mechanisms for approving projects has not gone entirely unremarked, it has seldom taken pride of place. I believed there was a case for exploring the history of British planning through the control of development, not the preparation of plans.

The very fact that I could consider—as indeed does the profession as a whole— that the development control system is a distinct entity with a history to be explored already says a good deal about the nature of development control in Britain. Nowhere else would the process of determining applications for development projects be considered a 'system'

in quite this way. Yet that perception sits oddly alongside Crow's portrayal of development control as an expedient device grafted onto a system of plans. This suggested that the expedient device was drawing upon an older tradition of decision-making. There was clearly a case for looking at the antecedents of development control under the planning acts.

Indeed, part of my initial thesis was that explanations for the current state of things in development control were to be found as much in distant as in recent history. Of the many peculiarities of urban development in Britain is the fact that for two centuries control was privatized under the leasehold system which, at its best, was highly effective. On the basis of work done years ago on seventeenth century development in London, I came to the view that leasehold control was a formative influence on building bylaws under the public health Acts in the nineteenth century —themselves very much a proto-planning control—and in turn on the planning system itself from 1909. What I had not anticipated at the outset was that the Middle Ages would also offer important explanations of the characteristics of planning control in the twentieth century. The way in which the law of property had developed in the feudal era seems to have been at the heart of conceptualizations implicit in current planning legislation.

This book does, therefore, offer a long—not a short—view of the way in which development control has evolved in this country. It presents a chronological account of control from the thirteenth century onwards and uses case study material to illuminate generalities of historical description. It identifies key periods in the evolution and unifies the narrative by reference to a number of recurrent themes. It concludes prospectively by trying to identify the questions to be addressed if planning control is to continue to serve a useful function. In taking so long a view the book almost inevitably deals with at least aspects of development control in a rather more cursory fashion than perhaps it should. But my essential purpose here was to find explanations for the idiosyncratic nature of British development control at the beginning of the twenty-first century in the belief that historical explanations were at least as important as those derived from current practice. It is also my hope that insight offered by historical explanation may serve to stimulate the much needed intellectual debate about what development control needs to be in the future.

In unravelling this history, I have been given assistance from various quarters. Anthony Sutcliffe's, Ann Rudkin's, John Punter's and John Delafons's initial enthusiasm for the project encouraged me to think it was worth doing. I was lucky enough to receive a grant from the British Academy under their Small Personal Research Grants Scheme that enabled me to undertake the necessary fieldwork and, above all, to spend a month in London to research the archives held at the Public Record Office, mainly for Chapters 3, 4 and 5. I was given sabbatical leave for the Spring Semester 1999 during which I completed a great deal of both the research

and the writing, and I am grateful to my colleagues for covering some of my duties during that period. Lyn Davies lent me material from his work for the Expenditure Committee review of development control in the 1970s and Robert Marshall some useful texts from the 1950s. I also received a good deal of assistance from staff at Sheffield City Archives and the Sheffield Local Studies Library and from the Archivist at King's College, Cambridge. At Hart District Council and Thurrock Borough Council, members of the planning departments looked out relevant case files and found me space to study them on their premises at my leisure. SPISE kindly invited me to attend the tenth anniversary of the burning of an effigy of Nicholas Ridley at a low point in the history of the proposal for Bramshill Plantation. Finally, Ian Burgess, Christine Goacher, Melanie Holdsworth and Dale Shaw typed the manuscript in the odd moments between a host of other duties and Christine administered the British Academy grant. To all of these go my thanks.

Philip Booth
Sheffield
January 2003

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Chapter One
The Glory of the British Planning System

> **The heart of British planning is the permitting system, strengthened by the government ownership of the development potential of land. This is one of the glories of the British system, but it also generates deep discontent—because the flexibility the planners prize in the system is viewed by the developers as too prone to arbitrary decision making and surprise rulings on proposed projects.**
>
> (Haar, 1984, p. 204)

To describe a process as banal as the filling out of an application form or the issuing a permit as a *glory* may seem far-fetched. For, at its most basic, development control is no more than that: the stuff of countless different administrative procedures designed to regulate aspects of our daily lives. But if the process is banal, its content need not necessarily be so: this routine bureaucratic procedure brings the public at large into contact with the nature of land-use change with a directness that almost nothing else achieves. It does so through the resolutely trivial, as in the proposal to build a back extension, as much as through the major project that may significantly alter a neighbourhood, a town or a region.

As a process, it does not get a good press. Planners are all too ready to permit some outrage to common decency in the environment; they take an inordinate time to make up their minds; their decisions are arbitrary, wilful or, worse, motivated by political dogma or financial gain. The process is seen as negative and reactive, bureaucratic and time wasting. It is overwhelmingly concerned with trivia. The planners themselves see it as a thankless task and one which they are happy to escape in favour of the seemingly more glamorous and intellectually challenging work of policy-making and evaluation. Neither the public nor the developers nor the planning profession itself appear to like development control very much even if no one has quite dared to suggest its outright abolition. We are emphatically not used to seeing it described as a 'glory'.

Why then does Haar, an American lawyer, view British development control in such a favourable light? At the simplest level, the system of applying for a permit each time a land-use change is proposed is in no way unique to Britain. During the twentieth century all the developed countries of the world found comparable ways of controlling development, and all were founded on some general idea of a public good that would be served by such systems of control. In fact closer examination suggests that the superficial similarities—the making of applications, the issuing of permits—conceal significant differences of approach and underlying rationale. These differences are both of process and of content. Systems for controlling the urban environment do not necessarily share the same objectives. The process by which applications are dealt with and the way in which decisions are taken vary very markedly and reveal wide divergences in understanding about the nature of authority and accountability. Exploration of systems of control in these terms begins to reveal a British system which is clearly distinctive when compared with those in other parts of Europe or indeed in the rest of the world.

The essentials of the system are simply described. The Town and Country Planning Act passed in 1947, and not fundamentally altered since, sets out a definition of development that would cover all forms of land-use change. Anyone carrying out development, so defined, would need a valid planning permission before doing so. Finally, local authorities were given the task of determining planning applications. In carrying out their task, they were obliged to consider planning policy as set out in the development plans, which they were also required to prepare, as well as other circumstances that might bear upon the acceptability of the proposal. Not all development would require local authority consent. The legislation also allowed for consent to be given by order of the Minister responsible for planning. But the major interest in the system has always lain in the way in which local authorities have used their powers.

Put in these terms, the process hardly appears very remarkable. The oddness of the system by comparison with forms of control in other parts of the world only becomes fully apparent if we study the detailed wording of the Act itself. Two key sections of the current legislation have remained little changed from those of the 1947 Act. The first, Section 55, contains the definition of development. Development is defined not only as physical change, expressed in the phrase 'building, engineering, mining or other operations in, on, over or under land' but also 'any material change of use of buildings or other land'. Several features of the wording are noteworthy: the apparent quaintness of the term 'operations'; the reference to engineering and mining as well as to building; the inclusion of 'material change of use' without any further elaboration of what distinguishes a material change from any other. The all-embracing nature of the control is clear, as is the ability to conceive of an abstract quality—land use—as a

concrete reality. No other planning system proposes a definition of this kind as a preliminary to control and no definition is as wide-ranging as that in British legislation.

Section 70, which sets out the criteria for determining applications for planning permission, is the second key part of the Act. Local authorities are required 'to have regard to the development plan, insofar as it is material to the application, and to any other material considerations'. Though the originality of this wording has often been remarked upon, its effects are nevertheless worth rehearsing. First, it deliberately weakens the connection between the plan and the decision on a particular project. The Act specifically recognizes that a plan may not be pertinent to the decision to be taken. Equally, other factors may be as, or more, significant than the plan in determining the outcome of a planning application. No other planning system creates quite this kind of partial divorce between policy and control; most others derive their legitimacy from a pre-ordained set of regulations or some kind of zoning that spells out what is permissible to the developer and on what grounds the controlling authority must base its decision.

Secondly, the wording of Section 70 explicitly confers discretionary power on the local authority. It is for the authority to decide whether the plan is in fact material to the decision, and what other material considerations need to be taken into account. No other system offers quite this kind of discretionary freedom.

The wording of the Act was of course an expression of the preoccupations of politicians and administrators during the 1940s. Pressure had developed for a system that would be universal in its application. It had to include all forms of development and it had to apply regardless of the state of planning policy. The desire for universal control was summed up in the idea that legislation should nationalize the rights to future development of land. Although the legitimacy of State involvement in the control of development is shared by any system in which private activity is subject to public control, the particular formulation of the concept is idiosyncratically British. The British legal profession has always made great play with the right of the owner to 'enjoy' his or her property. We can note the way in which the 1947 Act divided the current 'enjoyment' of land (in other words, land in its current state) from its future development and so gave concrete existence to another essentially abstract concept.

Pressure had also built up for a system that would be flexible, hence the desire to loosen the absolute link between the plan and the development control decision. It was part of a pragmatic administrative tradition that rejected minutely prescribed limits in favour of a case-by-case approach that favoured precedent and procedural rules over substantive regulation. Finally, the wording confirms the role of local authorities in the control

process. In general terms, British development control is not so very different from systems elsewhere. But the implication of Section 70 is that local authorities are not merely acting as agents of the State in controlling development, they are being given the freedom to determine their own destiny. The activity is not purely administrative, it becomes explicitly political. And, by further implication, the Act gives them freedom to negotiate the best solution to a given problem of development.

Underlying these general implications of the legislation are two longstanding and interlinked traditions. The first is that of common law with its heavy reliance on judge-made law. Other systems of law also use the judgements of the courts to inform the intentions of the legislation, but in common law judgements on individual cases have a central role (Waldron, 1990). Moreover statute law is framed in such a way that often allows judges to interpret general legislative intentions in the light of circumstance. Case law has remained highly significant for the understanding of the way in which the law may be used. The apparently unfettered freedoms contained in sections of the Town and Country Planning Act have in practice been subject to judicial scrutiny and the limits to discretionary behaviour have been set. But the way in which judges have behaved, in referring to legal precedent, in balancing competing interests and in applying generalized tests to particular cases, has come to inform administrative practice, too.

The other tradition which underlies the discretionary powers of the Act is that of procedural fairness. The power to decide is legitimated, not by reference to regulation carrying the force of law, but by the way in which the decision is taken. It implies a trust in the behaviour of those appointed or elected to take decisions. It also requires a judicial scrutiny of the way in which decisions are taken. Significant among the legal tests that judges will apply to administrative behaviour is whether the decision-maker acted *ultra vires*—beyond the powers accorded by law. Yet within those powers, those who take decisions must also show that they did so fairly and reasonably.

Other Systems of Control

In all of this the contrast with planning systems in most other parts of Europe is striking. The contrast is most marked when Britain is compared with those countries that form part of the Napoleonic inheritance. In France, for example, the very different terms in which planning is discussed gives a clue to the divergence of Britain and its European neighbours. In Britain, much of the discussion about planning in general and development control in particular has centred on the need for flexibility, and on how that flexibility might be achieved. In France on the other hand, the discourse has focused on the terms *sécurité* and *certitude*—(legal) security

and certainty—as tests of good planning. Where in Britain we have been content with a pragmatic vagueness in our planning legislation, the French look for clarity and precision.

The reasons for this emphasis on precision and definition are bound up with the way in which the legal system has been used to define rights and duties. Property rights in France could not in theory or in practice be divided in the way that they were in Britain after the 1947 Act. Future use and development of land were as much part of the right to property protected by the constitution as was current enjoyment. This did not mean the State had no right to interfere in property rights, however. French lawyers could conceptualize the power of the State in terms of the Roman law principle of *imperium,* the overarching control by the State of its citizens, within which *dominium,* the right to private property, had to be couched (Gaudemet, 1995). The effect of conceptualizing property in this way was to place great emphasis on the need to identify precisely what the rights guaranteed by the constitution actually amounted to. Codified law could spell out in immense detail what the rights and duties of citizens and government alike would be. The citizen would know what he or she was expected to do, and what might be expected of the administration. In theory, nothing would be left to chance.

This insistence on certainty and on rights and obligations finds a clear expression in the French planning system. Like most French administrative law, the legislation for town planning is codified but the code, quite apart from setting out processes and procedures, also covers matters of what in Britain would be called policy and not law. Indeed, the distinction between law and policy which is highly significant in Britain is largely absent in France. The detailed land-use plans created under the town planning code are not thought of as a general statement of land-use policy in the way that their British counterparts would be. *Plans d'occupation des sols* (local land-use plans)[1] create zones for every part of the territory they cover, and for every zone there are precise instructions expressed as regulations carrying the force of law. These regulations are written under 15 headings prescribed by the code itself. In this way, the plan becomes a substitute for the code. It identifies precisely how property owners may exercise their rights to *dominium* and what the grounds for decision-making by public authorities will be. As with codified law in general, in theory nothing is left to chance and rights and obligations are clearly specified (see Booth, 1996).

France, no less than Britain, has a system of permits, the *permis de construire,* authorizing specific projects. But although the making and determination of applications bears a superficial resemblance to British practice, the legitimacy of the process has very different foundations. The working of the code gives some indication of this difference. Where the part of the British Town and Country Planning Act dealing with

development control begins with the all-embracing definition of development, in the French code the starting point is an obligation:

> **Whosoever desires to undertake or establish a construction, whether for residential purposes or not and whether or not on foundations, must first obtain a permission to build…(Article L. 421–1)**

Quite apart from the duty that is imposed by this article of the code, we may note that the main thrust of the requirement is in relation to physical development not, as in the British case, to land use.

Where a *plan d'occupation des sols* is in force, a decision must be taken by reference to the plan, and in theory at least, the person making an application will have a very good idea about the acceptability of proposal before the permission is granted. Indeed, a proposal which conforms in every detail to the plan and its regulations must be approved. In this light, the way in which the application is dealt with is by a process distinctly different from that in Britain. The primary concern is to know whether the project is legal in that it conforms to the regulations in force, not whether it is appropriate for the place and the circumstance. Unlike the partial divorce of plan and development control decision in Britain, the relationship in the French case is absolute and binding. As if to emphasize the point, until 1983 decisions were taken by the local mayor acting not in a political capacity as an elected representative but as an agent of the State. Although that is no longer true for much of the country, the mayor's duty is everywhere to uphold the law as much as to further the interests of his or her commune.

Just as with the insistence on flexibility in the British system, the creation of a system that places a premium on certainty has created as many problems as it has solved. The practice of development control in France displays a great deal of discretionary behaviour and political decision-making. Fixed regulations turn out to be considerably less fixed that they at first appear. But there is a significant difference between the discretion offered by British legislation and the discretionary behaviour of French officials. In Britain, in general, discretionary freedom is formally conferred on local authorities by the wording of the Act. In France, the possibilities for exercising discretion are often not explicit. Where there is explicit choice offered by the law, it is confined to the way in which a particular regulation in the code or in the plan is applied. Cumulatively, this may amount to very considerable discretionary leverage on the development proposal to be determined. That in turn has given rise to renewed call for clarity and certainty within the system.

So the legitimacy of the French system of development control depends upon a tradition of law quite unlike that of the common law system of Britain. But though the characteristics of British development control are in

part due to the nature of common law, it does not follow that other countries whose legal systems depend on common law have adopted the same approach to planning as Britain. In the United States, for example, the existence of a written constitution and the emphasis placed on the individual's right to own property led some to question whether the State had any right to intervene in the development process at all. For Americans, the key concept is that of the 'taking' (that is an unlawful denial of the property owner's rights to his or her land) and the question that judges are at pains to determine is whether any form of State action amounts to an unwarranted interference with the rights and liberties of the individual guaranteed by the constitution.

That question was successfully resolved for zoning ordinances in the 1920s by the *Ambler Realty v. The Village of Euclid* case following which zoning became an acceptable part of American way of life. The justification of the Euclid case was that zoning could be equated with other forms of 'police' powers which the State legitimately exercised to ensure the rights of everyone. At the time, Euclid was seen as a famous victory for planning, but as Haar (1989) has pointed out, the reason that zoning so quickly established itself in the United States was because developers saw a considerable advantage in a system that introduced a degree of order into an otherwise chaotic land market. And of course for residents too zoning had its distinct attractions. Put grandly, it was the means by which their constitutional rights as owners and occupiers could be guaranteed. In more cynical terms, zoning would become the means by which the physical and social character, and particularly the latter, could be protected from unwarranted invasion.

In theory, zoning ordinances were the detailed expression of policy set out in land-use plans. In practice, zoning ordinances appear to have developed a life of their own existing as often as not in isolation as the only planning document that applies in many urban areas. Even more than French *plans d'occupation des sols,* zoning ordinances all too often appear to freeze a *status quo,* and offer nothing in terms of a prospective vision. Zoning has also fuelled American litigiousness. The narrow constraints of zoning ordinances, far from deterring unwanted development, seem merely to have encouraged the legal ingenuity of developers. Overcoming these constraints has led to battles to be fought out in court, the 'zoning game' eloquently evoked by Babcock (1966) and Babcock and Siemon (1990). In this context, the flexibility of the British development control system begins to look enviably attractive, not least because it only rarely involves the courts.

The rigidities of American zoning have elicited ingenuity in the planning profession, too. Cullingworth (1993) and Wakeford (1990) have noted the various devices that some American zoning ordinances have used to create flexibility and choice and to allow for negotiated development. The critical

reaction to these devices is not all negative. Wakeford wondered whether the 'special interest' zoning used in San Francisco, which allowed the city authorities to protect areas of a particular mixed-use character from market forces, might not be useful in Britain. Far more doubtful has been the technique of 'incentive zoning', first introduced in the New York zoning ordinance of 1961. The zoning allowed, but did not require, the provision of a plaza in exchange for an increase in floor area ratio, as a means of encouraging developers to provide public open space. The policy worked to the extent that downtown New York has acquired a large number of such plazas and the device has been used to secure other ends in cities across the United States. Yet as Cullingworth (1993) points out, the utility of providing downtown Manhattan with so many plazas is far from clear and the cost of doing so has been great. Above all, the benefit is not tied to a coherent planning policy. In the search for flexibility, zoning had moved away from a simple declaration of development rights and constraints.

The conclusions that we can draw from such comparisons are not that one system of development control is necessarily better than any other. More to the point is the fact that all systems of planning face inherent problems: how to contain future uncertainty; how to allow for appropriate response to the unforeseen circumstance; how to ensure that discretionary behaviour is exercised responsibly. The response to such problems is of course the product of the political, administrative and legal culture of particular countries. The unwanted effects of these diverse responses are equally diverse. Emphasize certainty as the key attribute of a system of control and you find that the subterfuges used to surmount constraints threatens the very legitimacy of the system. Elevate flexibility as the touchstone of the effective planning system and you may find yourself enmeshed in impenetrable ambiguities which do not serve anyone very well (for a further discussion of these ideas see Booth, 1996). But all systems have struggled with problems that have been central to debates in Britain. What should the connection be between the decision taken on individual projects and longerterm policy contained in plans? How do you ensure that policy is respected in the determination of planning applications? What do you do if policy no longer seems relevant to the decision to be taken? These are questions that have to be addressed if development control in whatever guise is to work at all.

The Objects of Control

The discussion so far has focused on development control as a process, but rather begs the question of what we want to control development for. What becomes clear from both the origins and the current practice of development control in Britain, as well as from the systems of control in other countries, is the diversity of objectives. Such objectives are both

explicit and implicit, to be teased out of statements of intent and arguments that are used to justify decisions taken. The very earliest forms of control over urban development appear to have been generated, not by some vision of a public interest distinct from the private rights of individuals, but specifically as a means of protecting and defining the rights of individuals to be defended from their neighbours' activities. The doctrine of nuisance, conceived first of all in terms of protection from physical inconvenience caused by faulty gutters or privies or defective party walls, allowed the legal system to intervene in neighbour disputes and set out rules by which individual behaviour might be measured and property rights defended. What at first applied to the fabric of cities came in time to apply to the activities which took place on land and in buildings. Well before the beginnings of modern town planning in the twentieth century, a whole series of uses were identified as nuisances and a landowner or a lessee could hope for protection from the likes of tallow chandlers and iron founders.

The way in which apparently private interests should nevertheless have come to be resolved in a public arena gives rise to two further considerations. One is the implied belief that private disputes did in fact impinge on public good order. The other is the evident assumption that the State had a role in creating and defending private property rights. The distinction that successive governments have tried to maintain since the passing of the 1947 Town and Country Planning Act between matters of public interest, which the Act was designed to address, and private disputes, which were outside remit, looks flawed in relation to the historical origins of control.

Questions of a public interest which lay over and beyond the interest of private property owners do also inform early attempts to control urban form, however. Fear of fire and later the desire to control development in the interests of public health have an important pedigree in the origins of the modern development control system. Such control meant limitations had to be imposed on building materials and building form, and also more generally on layout and spacing. Layout was also controlled to protect another acknowledged public interest, the maintenance of the King's Highway and of back lanes and alleys. The way in which such control was exercised was by the imposition of building lines, so that no individual property encroached on the right of free passage.

From the relatively limited concern with fire, health and highways the scope widened in the twentieth century to cover a whole series of functional criteria. To the desire to protect a building line, never lost, have been added other physical criteria for the layout of roads. To spacing of buildings has been added the concern to ensure adequate private and public open space and sufficient privacy. The underlying intention has been that the environment should *work* for its users, even if the ways in which

functionality is expressed imply professional and public values that are not always fully articulated.

A second area of public interest which became the object of control from the seventeenth century onwards is the control of appearance. Aesthetic control has been highly contentious from the very beginning and has tended to pit conceptions of public interest against a belief in individual liberty of action. Quite what public interest is expressed through aesthetic control is open to debate. It is clearly not a case of art for art's sake, even if a concern for visual delight is also present in the rationale for controlling design. Images of public order and of the good life all appear to be contained in this rationale. Appearance may also signify social status and in this way control of design may become a proxy for control of the social, as well as means of securing the aesthetic, character of an area. Yet appearance clearly matters deeply to people and fights over aesthetic control today are themselves probably witness to the fact.

Control over the social character has always been a major concern. In Britain, government policy has insisted that planning has to do with use and development of land and that the character of the user is irrelevant to the decisions to be taken. Yet there is reason to doubt that existing residents and owners have constrained their thinking in this way. Fears that new development would not merely spoil the view but bring the wrong sort of people seem to have been prevalent, not only in class-ridden Britain but elsewhere, too. In the United States, the problem of 'exclusionary zoning', ordinances specifically designed to keep out undesirables, has remained a topic of debate. The trouble is that control intended to deal with a land use and the physical environment can all too easily be manipulated to protect social character. It is usually quite possible to find a justification that sits squarely within the framework of planning law for attempts to influence the kind of people who move into an area.

Finally, in Britain, control over land use as opposed to physical development has come to be seen as having a public, not simply a private, dimension. What began by being defined as a nuisance that impinged on a person's private rights came to be interpreted as having a generalized effect. The right to be protected from the harmful effects of polluting industry or from excessive noise, or the right to the quiet enjoyment of one's own surroundings came to be seen as collective, not private and personal. In these circumstances, individual owners should no longer have to rely on private initiatives to ensure that right: for the State to intervene to promote the general welfare through the control of land use was entirely appropriate.

Development control has, therefore, been concerned to promote a bundle of different ends which are not always consistent. If there is any kind of overall consistency it is that the disparate ends all involve visions of a good life in which harmony in the built environment reflects, and is sometimes

used to mould, social harmony and public order. The problem is that the visions of the good life that may be expressed in the development control process may themselves be in conflict. What starts as the will to promote living conditions that create opportunity for everyone can lapse all too easily into a desire to protect an ideal environment for a chosen few.

Development control is conceived as having a clear public interest justification, even if that justification is muddied by the diversity of ends and the difficulty of defining the boundary between public and private interest. Development control is further complicated by having both tactical and strategic elements. Much of the control function is reactive in character and is about securing tactical improvements in projects whose general acceptability is not in question. Many of the functional controls have been of this type. If housing development is to go ahead, then at least the development control process can ensure that road widths and the spacing of houses are adequate. Much aesthetic control is of this order, too: bricks should match the neighbouring development; design detail should reflect the local vernacular. The implied argument is that small but significant gains may be achieved by these means. But universal control of development was introduced in 1947 with the clear understanding that there were strategic as well as tactical objectives to be met in controlling individual proposals. The intention behind controlling land use came to include not only a desire to offset the immediate impact of noise and pollution but also the need to achieve a proper distribution of activities locally, regionally and nationally. In this way, the control of land use became the means of implementing a long-term strategy, not just something to secure gains in the short term. It required, in principle at least, a committed and coherent policy laid out in a plan.

The final point to consider is the way in which public interest is expressed and applied to individual decisions. Here, once again, there are significant differences between the British development control system and those of other parts of the world. In France, for example, the desire to establish legal certainty results in criteria that take the form of fixed regulations, often expressed as measurable standards. Both the planning code and even more the regulations of the *plan d'occupation des sols* set out what developers may or may not do in precise terms. Plot ratios and building envelope controls have proliferated (see Evenson, 1980). In theory nothing is left to chance and the French have exercised very considerable control over the urban design characteristics of their cities. A system that requires local authorities to reflect on the material considerations of a case is clearly not one that envisages fixed regulations as the means by which policy is expressed, nor was it intended to be. Rather, the justification for decisions was expressed as criteria more or less highly elaborated. Where a French mayor will issue a decision notice (which is in fact a legal document) in which a decision is justified by reference to articles of the code

or of the plan in force, the British district council's notice, justified only when the application is refused or a permission is subject to conditions, may make reference only to broad principles. British development control has always relied on ambiguous concepts like amenity to justify decisions, concepts which, however poorly they may be articulated, are nonetheless laden with value and meaning.

The policy base for development control in Britain does not just depend upon broad principles or statements of criteria. In the best traditions of case law, local authorities have tried to evolve their own rules of behaviour which help to limit the open-ended nature of their duties. In this, the role of precedent begins to assume some importance: formulae for dealing with applications are derived from experience and become part of the routine. Local authorities have tended to develop a whole series of supplementary statements and informal policy documents as a way of expressing to themselves and to applicants how they intend to behave. Lists of standard conditions have helped ease the burden that discretionary power places on decision-making, and also lessen the possibility of legal challenge. Local authorities have not only relied on self-generated rules and procedural behaviour, however. Although the law specifically invites an approach based on criteria and not on regulation as a means of breaking the stranglehold of bylaw control introduced in the nineteenth century, the 50 years of universal control have nevertheless been marked by the use of measurable standards as well as by open-ended statements of policy. Dimensional norms, for dwelling densities or road layout or the spacing of buildings or the provision of open space, have all been relied upon. Paradoxically, in a system which was premised on the need for flexibility their use has led to accusations of rigidity. Why the system should have resorted—retreated, perhaps?—to the kind of constraining standards that it was explicitly set up to get away from requires some explanation. It points both to some of the difficulties of a system which implies wide discretion in decision-making and to some important historical continuities. Indeed until the twentieth century, control was to a very large extent applied through measurable standards, and we may argue that the approach had become deeply ingrained in both central and local government thinking. The use of measurable standards can also be seen as a way of giving some order to an otherwise overwhelming freedom of action. And for central government, to advocate the application of such standards is a way of ensuring that local authorities behave themselves (Booth, 1996).

The problem with all these forms of justification is that they leave so much unsaid. Lurking behind terms like 'amenity' is a whole range of professional and public values that may or may not be shared. The same is true of the apparently objective use of measurable standards. What, we might enquire, makes so many dwellings to the hectare or so many hectares of open space per 1000 inhabitants sacrosanct? There must be a strong