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FUTURE DIRECTIONS IN PLANNING  
IN SCOTLAND

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Department of Town and Regional Planning,  
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## SUMMARY

The thesis examines recent changes in planning legislation in relation to development control in Scotland and concludes with a number of observations as to the likely future direction of planning in Scotland.

Part 1 provides a number of foundation chapters on which the remainder of the study is built. These include an examination of the development of Scottish planning in the 1970's, development control and the relationship between development control and local plans.

Part 2 examines the legislative changes themselves by firstly looking at the philosophy of the present Conservative Government which came to power in 1979, and secondly, how that philosophy has been implemented through the changes. The area of structure plan approval is also briefly examined in order to highlight the fact that it is not only in development control that the government have made an impact. Finally, the changes are evaluated by comparing what has been done with the declared philosophy of the government. A number of failings and contradictions are identified.

Part 3 takes a much broader scope by raising the question of alternative development control systems to the one already in existence in Scotland. Different systems are examined along a continuum of discretion and the link is made between one of these systems, recent literature on the subject and the developments described in Part 2. The working of such a system is examined in detail, that of zoning in Ontario, Canada.

The thesis ends by concluding that the development control system in Scotland, given recent changes, is on the brink of a radical transformation towards a more zoning based system which would reduce discretion but increase certainty to the developer.

Future development, however, is closely linked to what happens in the rest of the country. The advantages and disadvantages of such a transformation are discussed and it is suggested the likely implications should be strong enough to discourage this.

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## ABBREVIATIONS

- C.C.S. - Countryside Commission for Scotland.
- C.O.S.L.A. - Convention of Scottish Local Authorities.
- G.D.O. - General Development Order.
- G.E.A.R. - Glasgow Eastern Area Revival.
- H.I.B.D. - Highlands and Islands Development Board.
- P.A.G. - Planning Advisory Group.
- P.A.R.C. - Planning Act Review Committee.
- R.T.P.I. - Royal Town Planning Institute
- S.D.A. - Scottish Development Agency.
- S.D.D. - Scottish Development Department.
- S.P.Z. - Special Planning Zones.
- S.S.D.P. - Scottish Society of Directors of Planning.
- S.S.H.A. - Scottish Special Housing Association.
- S.T.A.R.P.S. - Scottish Tourism and Recreation Planning Studies.

## INTRODUCTION

### The Future Orientation of Planning

The activity of planning has always been concerned with the future to some degree, for example, in working towards pre-set goals and objectives, in creating the conditions wherein particular forms of society might thrive, in the provision of facilities and infrastructure that are forecast as being needed. Many of the early pioneers of planning had their own ideas about the future, both in environmental and societal terms: men like Howard, Owen, Salt, Unwin and many others. One modern criticism of planning is that it lacks men and women of similar foresight, vision and idealism. But that does not mean that planning is any less concerned about the future now than it has been in the past. In recent years, planning has awoken to the need to think about the future, not only in terms of the kind of society within which planning takes place, but also the role of planning in that society and the contribution to be made through the creation and operation of various mechanisms and controls.

Two particular events highlight this. Firstly in 1976 the Royal Town Planning Institute (R.T.P.I.) published a report entitled Planning and the Future (R.T.P.I. 1976). The report examined the mechanism of public intervention and tried to indicate the kind of planning system which might satisfy the social, economic and environmental needs of society. The most fundamental question of the review was how planning could most effectively be directed towards improving the human condition. The report stressed the political nature of planning, arguing that planning could never be free from politics and that a firmer ethical and philosophical base for planning was needed. The report saw planning as part of a wider integrated process aimed

at achieving social economic and environmental needs of the community. Principles for a new approach were put forward as follows:

- planning should focus on the community and its needs;
- planning should accept that the complicated pattern of human lives be reflected in the planning process;
- that there should be more speed and co-ordination within the planning process.

The aim of the report was to present a new and wide ranging approach to planning but, as Law (1977) notes, its recommendations were not accepted by everyone. Some felt that tampering with the existing system would have little effect in solving the problems of the day, while others felt that the study group preparing the report had not confronted the issues highlighting the crisis of legitimacy in planning.

Secondly, and more recently, an inquiry into the planning system was initiated by the Nuffield Foundation under the chairmanship of Lord Flowers. Some expressed surprise at the setting up of such an enquiry in early 1983. For example, the R.T.P.I. (Finney 1983) "felt there was no evidence of any major failing in our planning system to support an inquiry of this kind". The inquiry team is not expected to report until early 1985 but has in the meantime issued three working papers defining the activity and scope of planning from the point of view of the team and summarising suggestions for reform from various bodies submitting evidence (Nuffield Foundation 1983). The purpose of the inquiry is to examine the operation of the planning system and to make recommendations concerning its reform.

In between these two large scale investigations into planning and how it should continue to develop, numerous papers,

articles and conferences have carried forward discussion of planning and the future (Lock 1984; Thorburn 1982 and 1983). This thesis is concerned with the future, in terms of what the planning system will be like and how the system is expected to develop in the years ahead.

It is concerned with an examination of recent developments of planning legislation in Scotland and in particular development control, and seeks to draw pointers or indications from these developments as to likely future directions in Scottish planning. Before this can be done, a clear understanding of the nature and operation of the present system is needed. This is provided in Part 1 of the thesis (a full description of how the thesis is structured is given at the end of this introduction). The planning system of course, cannot be isolated from either planning practice or wider questions as to the scope, function and purpose of planning. Cherry (1982, p.112) notes four relevant questions:

- how much planning is thought to be desirable?
- what forms of planning can we best arrange?
- what levels of planning will be thought desirable?
- what focus for planning?

The starting point for the detailed examination of recent developments in planning legislation is being taken as May 1979. This was the date when the present Conservative Government came to power based on a radical right wing philosophy promising many changes in all areas of government concern and activity including planning. Many of the changes introduced since then have been based on the government's political philosophy. This philosophy has a distinct and clear cut view of what kind of planning system the country should have and the role of that planning system within the development process.

Any trends identified in the changes made to legislation will be set within the overall context of corresponding trends in planning practice and thinking. The re-election of the Conservatives in 1983 ensures a period of nine years (1979-1988) in which present policies will prevail and so allows a time period long enough to bring about lasting change in the planning system.

The study is limited to an examination of developments in planning legislation in Scotland. Many people forget that there are within the U.K. three distinct planning jurisdictions: Scotland, Northern Ireland, and England and Wales. Scotland has developed its own distinct planning system. In broad terms it is similar to that which operates elsewhere in the U.K. but with certain differences, innovations and peculiarities. Planning in Scotland also takes place within a different structure of central and local government, a separate legal system and diverse economic conditions.

Scottish planning is sufficiently different and distinct to deserve independent study. Chapter 1 seeks to determine in what ways Scottish planning is distinct and what are its characteristics and to identify the influences on the system.

But to cover all aspects of planning in Scotland would be an immense task. Therefore, the thesis concentrates on the development control system and examines the hypothesis that recent changes introduced by means of legislation have changed the nature, function and role of development control. It is contended that a new form of development control system is emerging, introduced in piecemeal fashion rather than as a result of some overall national, comprehensive review. The actual changes and their impact on the development control system are examined, as is the wider question of the relationship between development control and development plans. Finally,

a number of 'alternatives' to the present system of development control will be examined and lessons will be drawn from specific studies of overseas planning systems as the thesis examines the possibility of the future development control system in Scotland moving closer to the future system in England and Wales and both being different in kind from the present system.

#### The Present Condition of the Planning System

Although the joint Association of District Councils and Association of Metropolitan Authorities in responding to the Nuffield Inquiry stated (A.D.C./A.M.A. 1983, para.5):

"This paper is not intended to suggest that there is anything inherently wrong with the planning system because it is considered basically sound and effective in achieving its objectives"

the general view of commentators, practitioners and the general public is that planning is not quite what it should be. As a result it has found itself under attack from both within and outwith the profession. McAuslan (1977, p.238) comments that:

"There is little doubt that planning, whether narrowly conceived as land use control or broadly conceived as the making of arrangements for the future, is in a state of crisis. It is a crisis of legitimacy - of whether the planning system as it has existed for 30 years has not, at the end of the day, done more harm than good."

Issues which highlight this crisis include, according to McAuslan, the plight of the inner cities, the planning of and decision taking on the motorway programme and the development of energy resources. Who should decide on these issues; should it be the planners and administrators, local communities and groups, or even individuals? McAuslan also notes that much of the concern with planning is with the quality of the product, i.e. the environment, and that planners are often criticised for becoming too involved in the design process thereby thwarting flair and design skills, producing an environment or individual

buildings that can be described as bland and boring and not preventing concrete jungles with no character or attention.

Other writers (Blake 1977, Davies 1980 and Hall 1979) note low morale among planners, political indifference, and lack of support. The confidence and idealism of the past have now been replaced with cynicism and scepticism, the case for planning now no longer remains evident, while the features of planning are seen as being stripped away by a government which has been labelled anti-planning. The task of planners has also changed from planning in a climate of economic growth and prosperity to planning in a climate of decline and poverty with new needs for urban renewal, job creation, and so on.

Hall (1979) comments that the blood and fire have gone out of British planning and although the machine still ticks on, the spirit is gone leaving it purposeless with a lack of excitement, vision and enthusiasm. The product is sharply criticised and both major and minor development proposals generate a great deal of opposition and hostility. The mood of the age may be thought to be anti-planning.

The task has also changed. It was generally assumed until the late 1960's that the economic and demographic forces of urban growth would generate self-sustaining pressures for development which planners could shape and guide, regulate and co-ordinate. But the motors of growth failed and planners were compelled to play a more robust part in generating development and bolstering existing enterprises. The foundations of the post-war system have been undermined, and the activity of planning is not borne on a current popular vision and idealism, nor will it be able to stand rocklike with the strength of support it enjoyed in the early post-war years (Lock 1984 p.7). The consensus that existed for many years concerning the purpose of planning has now gone. Grant (1982 pp.12-14) notes that it

was uncertain how long it lasted anyway in recognisable form. The R.T.P.I. study on planning and the future (R.T.P.I. 1976) identified the early 1970's as the time when the general consensus on planning objectives began to dissolve, representing a questioning of long accepted assumptions and placing a more critical and more cynical interpretation on the motives underlying planning policy and the nature of its administration.

This then is the present condition or state of planning. It provides the base on which the legislative and related changes in practice have been and are being made. The reforms suggested by the present government are based on a particular understanding and perception of the problems and condition of the planning system, and this forms a starting point for the thesis rather than a total examination of the planning system as it has developed since 1947.

Planning is under attack from all sides, from developers, the general public and even planners themselves. But is not some of this criticism deserved? The following examples show that this may well be the case. The fact that although these examples are used to provide backing to this interpretation, they could also be used to show that planning can be flexible, that there are problems over which tier of government should be responsible for various functions and that delay may be acceptable in order to secure an alternative use to a listed building, and perhaps demonstrate that one of planning's biggest problems is to put its own house in order by giving greater attention to principles and less to the system.

1. The first example concerned a row of terraced houses used by the University for teaching purposes in the Hillhead area of Glasgow. When the change of use occurred in June 1975 the main concern in the area, which is a designated conservation area, was on-street parking. In this example a wall separating the back

garden areas of the houses from a private lane which runs along the back of the houses was demolished and the gardens turned into parking. Now in 1984 an application to convert the same property to student residences has been submitted and the planners are asking for the wall to be re-instated and much of the parking to be removed. A clear case of different priorities in the same area at a different period of time which in this example means a turnabout in policy. Could it not be that the public and developers become angry and disillusioned with planning when charges of inconsistency can be levied?

2. In Lanark, in 1981, planners were at the centre of a row for designing a multi-million pound road which would never be built. The local plan showed a relief road in the southern part of the town which would have gone through a bank, a Grammar school, and a number of historic sites and gardens, a road which S.D.D. as trunk roads authority, had no plans to build. S.D.D. stated there was no need for such a road, and if they did decide to build such a road it would take a northerly route where only derelict property would be affected. Clydeside District Council responded by stating that they had drawn up the route in consultation with Strathclyde Region, acting on behalf of S.D.D., and were convinced that their route was the one which would cause least disturbance throughout the town. Could not disillusionment and anger be expected when different authorities and departments cannot seem to agree on major proposals which when publicised could cause uncertainty and blight?

3. In July of 1981 Gas Board workers drilled bore holes through the door lintels and brickwork of a 120 year old listed 'Greek' Thomson terrace in Ibrox, Glasgow without listed building consent.

Rev. Donald MacDonald of the Iona community, housed in the building, described it as "an act of sheer vandalism" and called for Scottish Gas to restore the terrace to its original condition. The Board replied that they were unaware of the fact that the building was listed (category A) but agreed to carry out cosmetic surgery and pointed out that they were installing a gas system which was to conform with building and safety regulations. A Glasgow Herald editorial noted "our stubborn refusal to see the merit and quality in the tenement street-scapes" and condemned the Board for its actions but also noted the change in attitude from destruction to preservation. Does puzzlement not result when controls are created to protect the nation's heritage and then such controls are ignored, in this case by a public corporation?

4. Still on listed buildings, this time concerning a listed church in Stirling. A Scottish opposition spokesman was to press for an adjournment debate in the Commons over what he described as "the scandalous delay" by the Scottish office in deciding whether to allow partial demolition of a listed building. Frayland of London, a property developer, wanted to demolish part of the South Church and go ahead with a £1 million development and threatened to pull out if an early decision was not made. Mr. Malcolm Rifkind, the Scottish Office Minister with responsibility for planning, promised a quick decision, but local M.P. Mr. Harry Ewing attacked civil servants in the Historic Buildings Branch of S.D.D. as historical relics who keep themselves in jobs by taking years to make decisions (Smith 1982). When the decision was finally made, the plan for partial demolition and redevelopment was rejected with opposition to the proposals coming from two major amenity groups, the Civic Trust and the Scottish Georgian Society. However,

Stirling District Council Labour group leader Mr. M. Comarty described as morally wrong any move to prevent development where there was not any alternative. This case highlights the problem of conserving buildings, finding alternative uses for them and the delay of making decisions.

5. Councillor John Hope speaking at the R.T.P.I. Scottish Branch conference in June 1982 attacked planning proposals which did not require planning permission, particularly those of a military nature such as the extension of the airport at Stornaway for an enlarged N.A.T.O. base, new firing ranges in the Pentland Hills and the proposed expansion of the nuclear armaments base at Coulport to accommodate Trident, as creating disillusionment and cynicism where planning inquiries although held, were nothing short of a pretence and where findings/recommendations were over-ruled by the Secretary of State.

6. In Edinburgh in 1983 two appeal decisions were allowed for major housing developments at Swanston Farm and Brunstane, in the green belt and prime agricultural land respectively. These decisions were heavily criticised for allowing development on such sensitive sites and against policy indicated in the National Planning Guidelines. Councillor Sam Campbell of Midlothian District Council described the decisions as tragic mistakes and hoped they would not be repeated. Councillor George McNeil said the Secretary of State's decision and subsequent statement to a delegation of Lothian councillors that the government were committed to a policy of firm restraint on green belt development "is like someone committing a crime and then saying they will not do it again". The view of the deputation as a whole was that the government had lost the confidence of the local authorities in planning and that the two decisions could undermine successful policies of restraint in the green belt and of promoting development in urban areas (Scott 1983).

Such examples could be reproduced all around the country, over and over again; they serve to demonstrate that planning is in some instances its own worst enemy and that planners should not be surprised to face opposition to policies or proposals or to any move to increase their powers or influence. Nor should they be surprised that planning comes under attack for delay, bad administration, confusion as to policies, disagreement between organisations and departments, the breaking of policies, bad decisions, abuse of powers and so on.

These examples might also suggest that a reduction in the discretion which planners have might be no bad thing. If this is the case, planners will have to be bold and restate the basic principles applicable to planning in the mid 1980's, and put forward a strong case for the retention of their present powers.

Planning seems to be a topic on which everyone feels they have a right to say something. Martin O'Neill (1982) Labour M.P. for Clackmanan and East Stirlingshire, commented during the committee stage of the Local Government and Planning (Scotland) Bill:

"I suppose in some respects we are all town planners, because at some time in our life most of us live in cities so we can all speak with great authority. I suppose my authority is none the less for the fact that I have no qualifications whatsoever in the subject".

Developers and architects met in the course of this study are quick to point out that on the whole they are not anti-planning, although they do have plenty to say on the present condition of the system. Typical reactions include responses revolving around the idea that planners are local authority bureaucrats, having no understanding of the pressure on architects and consultants who have to exist in the real world. They are

generally resentful of the interference of planners in detailed design work, think planners are too rigid and do not do enough to stimulate development. Planning tries to do too much and the result of planning in environmental and aesthetic terms is generally unsatisfactory. The two tier system was also criticised as leading to too much conflict and producing confusion over who does what. These feelings and criticisms have also been shared by the wider public who seem to blame planners for everything and anything wrong in the environment. This in many cases has led to a dissatisfaction and disillusionment with the planning system.

The thesis is divided into three main parts. Part 1 seeks to lay the foundation of the study and recognises the need to understand the present system before going on to examine recent changes and how those changes will affect the system. The first chapter looks at planning in Scotland, and its nature and characteristics by looking at its development and identifying influences which have led to particular characteristics. The second chapter examines development control, that part of the planning system the thesis is concentrating on. In particular, the chapter looks at the question of what development control is, the element of discretion in development control and ideology in development control. It concludes by highlighting the importance of development control in the system as a whole. The third chapter further examines the relationship between development control and local plans. Development control is not isolated from forward planning and this chapter looks at these links and the problems and nature of local plans in providing guidance for development control.

Part 2 of the thesis examines in detail the legislative changes which have been made and applied to Scotland by examining

the present government's political philosophy and its emergence in planning. This is done in two main ways. Firstly, the changes are described in chronological order, and secondly common links between the many changes are identified. Not all the legislative changes are described or commented on; only those which are regarded in the context of the thesis as being of major importance. These include changes which have a direct relationship to the government's philosophy, those which have a development control role or link and those which have a wide general significance or impact. This part of the thesis goes on to examine one further way in which the government's philosophy has been put into action, that of structure plan modifications, and seeks through this study to cross check the extent to which the government's philosophy is apparent at the strategic level where legislative change has been less. Included in this part of the thesis is a section on the views of those involved in Scottish planning on what has happened. Finally the period between the 1983 General Election and the time of writing is examined to find out whether the government have continued during their second period of office to implement the philosophy of their first term of office.

Having examined the changes made to the system, the thinking that lies behind them, and the effect of them on the planning system, the third part of the thesis asks what it all means. What kind of planning system is being created or will evolve from the cumulative effect of the present developments? The government's philosophical base has been supported by a number of different commentators and strong support has been given for what has been called libertarian planning. The key element in development control and one which the government have already limited is discretion. Chapter 10 looks at a number of alternative types of planning systems based on differing

elements of discretion. It is contended that the planning system in Scotland is moving towards one based on less discretion. One such system is examined, that of zoning, in Ontario, Canada. Some of the recent changes are interpreted as moves towards such a system. The thesis ends by considering how the Scottish system will fare in this climate and whether its independence will be reduced.

One particular problem in the undertaking of this study has been the lack of appropriate literature about Scottish planning. Articles in the mainstream planning journals tend to assume that the planning system is the same across the country and so do not make any allowances for the different system, circumstance and therefore practice of planning, north of the border. What literature there is tends to be highly specialised and focuses on a particular topic or subject. Young's (1978) book on planning law in Scotland remains the most comprehensive but it is now out of date. Other good sources of information on Scottish planning came in a series of articles in The Planner of May/June 1980 and more recently in the July 1984 edition of Town Planning Review.

The situation has been greatly helped with the start in 1980 of a new journal devoted to Scottish planning entitled Scottish Planning Law and Practice. This has included not only articles and regular features on new legislation, circulars, details of recent court cases and appeals, but a more broad based approach to and reporting of Scottish planning practice. The editorial of the first edition stated (S.P.L.P., 1980, p1)

"Until now, however, there has been no journal devoted to the law and practice of planning in Scotland. It is not through lack of talent or as we hope to show, through lack of something to say. The problems and challenges facing Scotland are certainly no less for its being a small country. In this field, as perhaps in others, we believe Scotland deserves a specialist publication ..... we aim to

provide a forum for comment and debate and to this end will endeavour to publish articles and notes on a wide range of matters related to planning."

Since its launch (by the Planning Exchange and Law Society of Scotland) the journal has been a good source of information and comment on Scottish planning and has filled what was an enormous gap.

The problem, however, still remains of a lack of literature on Scottish planning as a whole. This has made the task of undertaking this study extremely difficult in the early stages and is the explanation of the effort and space devoted to the first chapter. Such literature as has been available has been of enormous help. This has been supplemented with a wide series of interviews with a number of those involved in Scottish planning including planners, academics, councillors, architects and developers. A full list of those interviewed is given in Appendix A and their views and comments drawn on and presented throughout the text. These interviews have helped to provide an understanding of the problems, nature and characteristics of Scottish planning from a variety of sources and points of view.

Further to the literature and interviews, another means of data collection has been attendance at a number of conferences where the opportunity to hear the main speakers and meet people has been invaluable. Again, those conferences attended are listed in Appendix B.

Part 1 examines the nature and characteristics of the Scottish system and elements within that system associated with development control and local plans.

**PART 1**

## PART ONE

### CHAPTER 1. THE SCOTTISH PLANNING SYSTEM: AN OVERVIEW OF ITS DEVELOPMENT IN THE 1970's.

#### 1.1. Introduction

As stated in the introduction, Part One of the thesis seeks to lay the foundation of the study. Since the concern is with planning in Scotland this first chapter seeks to examine the development of the Scottish planning system during the last decade or so with a view to establishing the characteristics and nature of that system. The decade of the 1970's is the main focus for this examination although in some instances the events of the 1960's are equally important as some developments during this period did not become fully effective until the 1970's, for example, the Planning Advisory Group (P.A.G.) report into development plans and the initiation of the investigation into local government. The review traces developments up to 1979 when the present Conservative government came into office, with important consequences for the planning system. These are outlined in Chapter 4. Again, there is some overlap timewise as some of the developments examined in this chapter continue past May 1979 and examination of these will help to further understanding of the characteristics and nature of the Scottish planning system.

There are many influences on the development of the Scottish planning system; local government, public acceptance, law, the state of the national and local economy, and the personalities of those involved. As Cherry (1982, p.14) notes:

"Adopted forms of town planning do not simply 'occur'. Neither can town planning be regarded solely as the product of enlightenment: a natural altruistic response to intolerable conditions. Nor is it necessarily the product of the development of professional skills. These matters are important, but we should first look at the

context in which they are grounded. I have argued that political and related institutional influences help to explain particular directions of change. This is the political dimension of town planning."

This chapter cannot and does not seek to examine the impact of all these influences, but rather concentrates on two: the administrative framework for planning provided by both national and local government, and the general economic condition of the country both in growth and decline. Examination of these two influences will help to give an understanding of the nature and characteristics of the Scottish planning system as the chapter traces how the planning system has evolved and adapted in response to these two influences. The findings of each section will be brought together in a summary at the end of the chapter and supplemented with views and opinions on these matters gained from interviews held with various people involved in the Scottish planning system.

It must be stated that the distinction between national and local level made in the following section is in some senses an artificial one. Pressure for change may have manifested itself at both levels but . . . . . one or two changes at a national level may . . . . . have their most dramatic and profound impact at the local level (or vice versa). A further problem is that this distinction between national and local level creates problems in terms of following developments in a chronological basis.

There are and have been many influences on the development of Scottish planning. The ones which are highlighted here have been chosen because they are important and have led to a great deal of change and development. It is often difficult to isolate any single influence and to go on to attribute any single development or change to it alone. Real life is much more complex as perhaps this chapter would indicate, but some

simplification may be justified to help gain an understanding

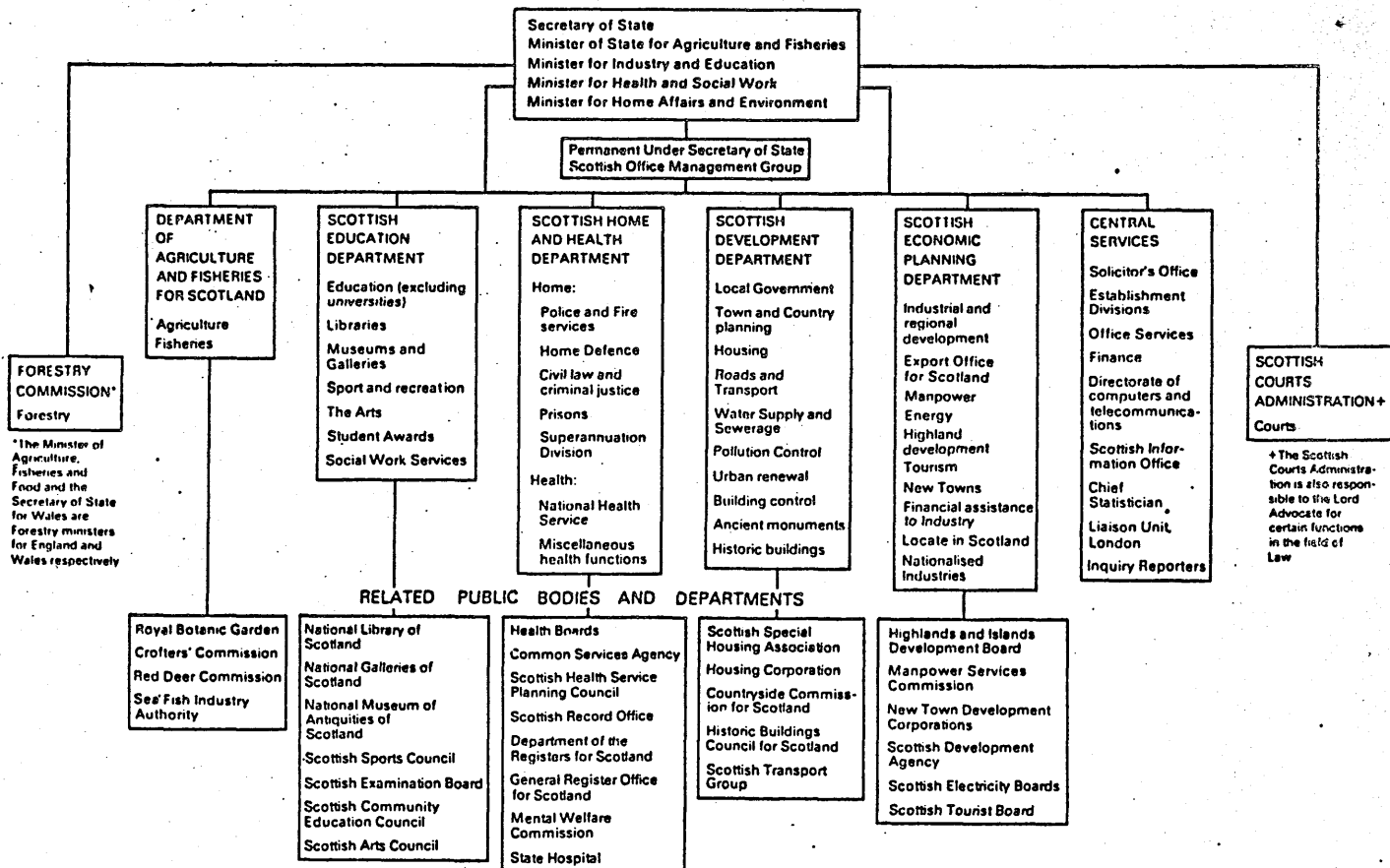
of the Scottish planning system.

## 1.2. The Administrative Framework for Scottish Planning: National Level

### The Scottish Development Department and the Role of the Centre

The Scottish Office administrative structure was reorganised in 1962 when all existing planning and development functions were brought together under one department. Thus the Scottish Development Department (S.D.D.) was born. The department is one of five main departments and a Central Services department which make up the Scottish Office. Its functions include local government, town planning, housing and historic buildings. A full list of functions is given in Figure 1. Politically, the Department is the responsibility of the Scottish Office Minister for Home Affairs and the Environment.

Figure 1: Structure and Functions of the Scottish Office



The Minister has a responsibility for planning "to ensure a consistency and continuity in the framing of a national policy for land use". Four main instruments are available to him in carrying out this duty: policy statements, White Papers and circulars; approval or modification of development plans prepared by local authorities; decisions on individual cases; research and advice and information. Thus the centre has a clear role in planning in Scotland and planners on the whole see relationships between local authorities and the centre as being generally good. Administrative and technical staff within S.D.D. are easy to contact and many planners are on first name terms with S.D.D. staff thus signifying close, personal relationships. Informal contacts and relationships are the norm. This is due mainly to the small scale of the country and to the small size of the planning community which allows people to get to know one another fairly quickly. The centre has in the past played a powerful role in initiating a number of regional and sub-regional studies from the Clyde Valley Plan of 1946 through the series of studies carried out in the late 1960's to the West Central Scotland Plan of 1974. McDonald comments (1983, p.123) that the ebbs and flows of regional planning in Scotland have been less marked than in England due to a commitment to ideas of regional planning in internal organisation and personnel of the Scottish Office. Other central developments (which will be examined in this chapter) are the National Planning Guidelines and Regional Reports.

In a small country such as Scotland those at the centre do not have too much difficulty in keeping tabs on things and of knowing what is going on in different parts of the country. They are therefore in a position to monitor the planning system and advise authorities of problems and developments elsewhere.

Planners seem to take the view that the centre does not interfere in the day to day work of the authorities and thus leaves them a great deal of freedom to get ahead with their work. A further aid to intimacy and co-operation is the fact that the entire local government system in Scotland is represented by one single body, the Convention of Scottish Local Authorities (C.O.S.L.A.). Local government thus speaks with one voice to central government in any negotiations which take place. The convention also operates as a kind of employers' association in the affairs of local government, and it often stands between the individual authorities and the government or the trade unions. Despite the combination of regional and district authorities in C.O.S.L.A. there has been strain between the two levels and the overwhelming domination of Strathclyde region often makes the smaller authorities feel powerless. C.O.S.L.A. has a very small staff and yet it is expected to carry the weight of representing the whole local government system.

A number of those interviewed commented that having one single local government organisation was good in that it allowed the local authorities to speak with one voice. This was seen on the whole as a strength but tended to cover up any disagreement within C.O.S.L.A. between Regions and Districts, urban and rural areas, Labour and Conservative controlled authorities. Gillett (1983, p.5) notes that in reviewing planning legislation, C.O.S.L.A.'s role has been reactive rather than one of taking the initiative and pushing ahead with their own ideas. The strength of the local authorities through an organisation such as C.O.S.L.A. lies not in the ability to resist or modify government decisions but in the administrative discretion they enjoy in many parts of the work.

In 1972 the House of Commons Select Committee on Scottish Affairs considered the question of land use resource in Scotland in its widest terms and in great detail and tried to identify procedures and practices which could be modified in the interests of more efficient planning.

The Committee was set up on May 10th 1971 comprising of fourteen members chaired by Mr. John Brewis M.P. and with special advisers Prof. J.J. Coppock and D. Diamond. The Committee came at a time of "considerable intellectual activity" concerning planning going on in other places at the same time and it was hoped the Committee could make a positive contribution to this. Also, strong winds of change were about to make themselves felt - the implementation of the 1969 Act, the reform of local government and the entry of the country into the E.E.C. All would have important consequences for planning. The machinery and policy direction of planning would need to be renewed. This was what the Committee set out to do.

Throughout their deliberations the Committee had been aware of the wide field they had set out to explore, of the difficulties both planners and planning authorities were faced with, of the complex situations with which they had to deal and the fact that there was no general solution to the many problems which had to be solved in the light of local conditions. The Committee did however agree that the allocation of land use through the planning system was a challenging but worthwhile task with great potential benefits for all citizens.

Although recognising that much had been achieved in the past, often in difficult circumstances, the Committee realised that improvements could be made, and were especially critical of the ability of the Scottish Office to co-ordinate and guide

the use of the national resource, i.e. land. The main points of their recommendations were fourfold:

- to achieve a more integrated and comprehensive view of urban land;
- to raise the quality of the urban environment;
- to produce the best use of land; and,
- to achieve and maintain the public's confidence in the planning system.

Detailed proposals of the Committee included the establishment of a top level working party to make recommendations on the content of a national structure plan for Scotland, and that priority be given to the establishing of the industrial strategy of this plan; that all local authorities set up Environmental Management Committees to ensure that acceptable standards for environmental quality were provided and that a link be made between the various committees dealing with matters that affect environmental quality; that the Scottish Office establish a Commission for the Urban Environment which would be responsible for developing and publishing indices of environmental quality with respect to urban areas and for advising central and local government on environmental standards and how they could be achieved; that a Central Advisory Unit already in existence should set up a working party to make specific recommendations about the content and organisation of the information system required for the national structure plan; that S.D.D. take a number of specific steps to obtain information on staffing of local authority planning departments and that they review the effectiveness of many recent experiments in planning; that applicants for planning permission be required to notify adjacent proprietors; and that existing inquiry procedures be examined and recommendations forwarded as to how these could be streamlined and that a scheme of financial

assistance to objectors be implemented. Thus, as the above list shows, the recommendations of the Committee were as wide ranging as was the field of study (Select Committee on Scottish Affairs 1972, paras 452-459).

The Government in its response to the report (S.D.D. 1973) agreed with the analysis of the Committee that there was a need for more effort and guidance at a national level giving greater impetus to positive planning and to secure better control and planning of Scotland's physical resources. They, however, rejected the institutional proposals put forward believing they would create more problems than they would solve. Three measures were proposed which would help remedy the difficulties the Committee had noted. Firstly, the establishment of a Standing Conference of Regional Authorities; secondly, the creation of a Standing Committee on land use and thirdly, formulation of a set of guidelines on aspects of land use which should be examined for Scotland as a whole.

Subsequently an environmental forum was established under the chairmanship of the Countryside Commission with representatives of government departments and agencies and environmental groups to act as a channel of communication between the public and private sectors. The Standing Committee was formed in 1973 and guidelines were prepared on a number of issues with some important initiatives in relation to land classification and information on rural land use also being undertaken. The Department of Agriculture, Food and Fisheries provides the Chairman for the Committee which still meets four times a year and has three Working Parties. The Committee has no formal remit and the aim has been to encourage a wider consideration of matters which are the prime consideration of each of the constituent agencies (see Coppock 1979).

The Select Committee's proposal of a national structure

plan was rejected as being too rigid and impracticable. The Government believed that the advantages of having such a plan could be achieved without a formal plan through building up the series of guidelines on aspects of land use which could be examined for Scotland as a whole.

Overall, the Committee served a very useful purpose, it took some important initiatives and helped in some ways to enable different public agencies to become more aware of each other's problems and work as well as providing opportunities for increased co-operation and co-ordination. On the other hand the private sector was not included in the review other than in giving evidence to the Committee, nor was there any opportunity for public comment on the deliberations or findings. The objectives put forward by the Committee were agreed by the Government, but not the means of achieving them, the Government's view being that they could be achieved by simpler and more direct adaptations of the existing planning machinery and arrangements rather than those proposed by the Committee. At the close of their observations the Government concluded that the changes which would be introduced as a result of the Committee's work along with the provisions of the 1972 Planning Act and the forthcoming arrangements of local government reorganisation would substantially improve the quality of decisions taken about the use of land in Scotland.

#### National Planning Guidelines

Following on from the decision to issue a series of guidelines on different aspects of land use rather than prepare a national structure plan, the first set was issued by S.D.D. in 1977 and included subjects such as industrial sites, rural conservation, petrochemical developments and aggregate workings. A single guideline on coastal planning had been previously issued in 1974 dealing with pressures for coastal development arising

from the activities of the oil industry. Figure 2 lists the guidelines issued from 1974.

Figure 2: National Planning Guidelines and Land Use Summary Sheets

1974	Coastal Planning	
1977	Aggregate Working	
	Large Industrial Sites	(now withdrawn)
	Rural Conservation	(now withdrawn)
	Petrochemical Developments	(now withdrawn)
	Agricultural Land	
	Landscape and Recreation	
1978	Location of Major Shopping Developments	
1981	Agricultural Land	
	Land for Housing	
	Land for Large Industry	
	Land for Petrochemical Developments	
	Rural Planning Priorities	
	National Scenic Areas	
	Nature Conservation	
	The Coast	
	Aggregate Working and Forestry	
1984	Skiing	

Land Use Summary Sheets

1. Agriculture	(revised 1981)
2. Forestry	"
3. Nature Conservation	"
4. Landscape Resources	"
5. Land for Industry	(issued 1976)
6. Oil, Gas and Petrochemicals	(issued 1977)
7. Electricity	(issued 1976)
8. Aggregate Working	(issued 1977)
9. Water Supply	(issued 1978)
10. River Condition	(issued 1978)
11. Population	(revised 1981)
12. Housing	"
13. Recreation and Tourism	"
14. Characteristics of Rural Communities	(issued 1981)
15. Groundwater	"

The guidelines themselves attempted to define land based resources or potential for development which were of national significance, suggesting safeguarding policies which might be incorporated into other plans and specifying those applications which might impinge unacceptably on the resource or potential of land to be referred to the Secretary of State for determination. From such a base it was hoped that the Secretary of State would achieve a considerable degree of disengagement from more local and detailed decision making and as policies were adopted for

safeguarding certain national issues, new ones could be considered.

The accompanying circular, 19/1977 dated 16th May 1977, required planning authorities to notify the Secretary of State only about those applications likely to raise nationally important issues, irrespective of conformity to the development plan. Eleven such categories of development were identified, most closely related to the guidelines.

The guidelines were also accompanied by 8 Land Use Summary Sheets the purpose of which was to draw up a factual account of the resources the guidelines were dealing with and indicate those characteristics of the land or the patterns of activity which could be considered nationally significant. The past changes, present situation and indications for the future are summarised. The purpose of these sheets is threefold: to report the current state and character of the resource, to define its national significance, and to review the past changes and likely future demands, indicating the likely implications for planning. Topics covered include forestry, agriculture, land for industry and so on.

Further guidelines were issued in 1978 on major shopping developments, while in 1981 the whole series was revised and extended. The potential conflicts between protecting high quality farmland and provision of an adequate supply of land for housing are at the heart of the new guidelines. The revised set brought the total number of guidelines to ten and land use summary sheets to fifteen. The guidelines have been subject to some criticism but can be seen as an innovative attempt by S.D.D. to provide national policy guidance to local planning authorities and as a means of central government disengaging from the detail of local planning.

The existence and use of a planning tool such as the guidelines has brought benefits to the operation of the planning

- a local planning authority would be able to explain to a greater extent than before the way in which structure and local plans take account of national policies;
- a higher degree of co-ordination and compatibility could emerge between the various sectors of central government;
- through sharper definition of government objectives it became more readily possible to separate issues of national importance in which the Secretary of State must retain an interest from those which are genuinely local matters and over which it was appropriate for the local planning authority to exercise full responsibility;
- the guidelines provide a comprehensive picture of government policy over land and resource use;
- in successfully harnessing the participatory potential of the guidelines, the public could be involved in more important decisions about Scottish land use.

Although the guidelines are often looked upon in terms of the advantages they bring to planning in Scotland, they do have a number of disadvantages. For example:

- S.D.D. may be interfering in detailed decision making at the local level;
- local authorities may become too reliant on S.D.D.

However, these disadvantages are heavily outweighed by the advantages the guidelines bring. The adopted policy of S.D.D. disengagement could, if it affected the further production of guidelines, lead to problems in that authorities could lose a valuable source of expertise, advice and help and lead to increased variation in practice and standards across the country.

#### The Review of the Management of Planning

With much of public opinion indicating that planning had failed, particularly in the inner cities and rural areas, S.D.D.

undertook a major review of the management of planning in the mid 1970's.

The first stage, begun in 1974, looked at the problems of delays and procedures in relation to public inquiries with a view to reducing delay, removing unnecessary formalities and improving the effectiveness of inquiries in examining major and controversial planning proposals. This followed on from earlier changes introduced in 1972 when increasing development pressures had resulted in a considerable increase in the number of planning applications and inquiries. It became apparent to the Secretary of State that he was not able to discharge his responsibilities for ensuring that inquiries were held and that reports were made reasonably promptly if he was dependent on part time fee-paid Reporters. A Chief Reporter for Public Inquiries was therefore appointed on a full-time salaried basis along with two other Reporters. This team would continue to be supported by part time Reporters. These arrangements gave the Secretary of State more control over the programming of inquiries and were designed to prevent unreasonable delay. A memorandum of guidance on inquiries was issued with Circular 14/1975 in February 1975 and was the first product of the Review.

The second stage began in October 1975 when the Convention of Scottish Local Authorities (C.O.S.L.A.) was invited by S.D.D. to nominate officials to take part in a joint working group with officials from S.D.D. to review planning procedures. The group was set up and subsequently prepared a report which was considered by the Planning Committee of C.O.S.L.A. in September 1976. Something of the fruits of the group's discussion and findings were incorporated into two S.D.D. circulars on development plans and development control issued in 1976.

of broad questions relating to planning. A discussion paper based on the report prepared previously by the Working Group was issued in April 1977 (S.D.D. 1977) to a wide range of individuals and organisations with an interest in the planning process and was well publicised through the press. The document took the form of nine separate discussion papers and associated questions requiring a considered and thoughtful response. The document raised fundamental and important questions such as, what do we expect of planning?, and does development control work to the benefit of all? The document suggested that both government and local authorities relied too heavily on planning legislation and rule book answers in allocating industry and finance and in the location of buildings and people. Many criticisms were also made of planning: in short that the planner was unable to respond easily to changing economic demands, rapid decision making and community involvement.

Some of the suggestions put forward for consideration included relaxing planning controls over various kinds of developments, adopting a stricter degree of control in some areas than in others, reducing statutory consultation for planning applications and replacing them with general guidelines supplemented by discretionary consultation, that the scope of permitted development be extended and that charges be introduced for dealing with planning applications. The paper also stated that three factors would have to influence what proposals were finally accepted:

- because of the devolution issue, it would be inappropriate to promote large scale legislative changes;
- changes which added to the cost of the system were deemed unacceptable;

-the Secretary of State would be unwilling to be drawn into matters that were for the local authorities to decide.

Over 80 responses were received to the document and in 1978 further discussions were held with interested parties on those issues where there was no general agreement or clear consensus of opinion. Where there was, action was initiated as, for example, in relation to the publicity given to planning applications, and the preparation of advice on design guidance for planning authorities.

#### National Involvement Through Agencies

In Scotland the State plays a more important role than it does in England. At national level this is carried out through a variety of public agencies and organisations. Much of what has happened in the past has been initiated through such bodies: creation of new towns, urban renewal, countryside protection, housing provision and so on. Boyle and Wannop (1982, p.45) point out that "the allocation of central government resources on a geographical basis through special agencies has a well established history in Scotland." The rising involvement of government agencies in urban renewal and rehabilitation in particular may though have been at the expense of expansion of action of local authorities. For example, the Scottish Special Housing Association (S.S.H.A.), now the second largest housing authority in Britain after Glasgow District Council, the Housing Corporation and Housing Associations, and the Scottish Development Agency (S.D.A.) in factory provision and land renewal, carry out tasks which could be carried out within local authorities.

Two of the most important agencies are development agencies, the Highlands and Islands Development agency (H.I.B.D.) and the Scottish Deveeopment Agency (S.D.A.). The H.I.B.D. was set up

the local authorities were not able or not thought to be able to tackle. The Board can be broadly described as a regional equivalent of a new town development corporation but with economic powers of a greater range and flexibility (Grieve 1980).

The experience gained from the operation of the Board and the growing awareness of Scotland's economic problems led the then Labour administration to create the S.D.A. in 1975 designed to cover the whole of Scotland but concentrating on more urban-industrial problems. The creation of such an agency was one of the recommendations of the West Central Scotland Plan published in 1974. Since then the Agency has become involved in a wide range of activities, more fully described in section 1.3.

In addition to the more wide ranging powers of the two development agencies, Lyddon (1980, p.67) suggests that there is more of an influence on Scottish planning practice from a large number of single objective agencies that exist in Scotland than the scale of relationships allow in England. Because of the small size of the country problems can be easily grasped and communicated and co-operation and joint activities between the different agencies can be more easily achieved. For example, the Scottish Tourism Recreation and Planning Studies of the mid 1970's, S.T.A.R.P.S., can be described as a system devised by four of the national agencies (Countryside Commission for Scotland, Forestry Commission, Scottish Tourist Board and the Scottish Sports Council) acting together in assisting the Regional and Island authorities to prepare integrated strategies for sport, outdoor recreation and tourism. The agencies involved provided the local authorities first with a national framework by preparing a joint statement of their policies and then issued a guide outlining procedures for preparing regional strategies. There is evidence to suggest that the exercise

has aided other planning activities and that the strategies themselves filled a gap in the system of statutory plans.

With such a large number of single objective agencies covering topics such as countryside, fine art, tourism, sport, new towns and housing, problems can and do occur in terms of conflict and disagreement over what should be official policy. Those disagreements can find themselves being aired in public at times, for example, in the way in which various agencies lined up for or against the Lurcher's Gully ski development proposal in the Cairngorms at the public inquiry held in 1981 (see Figure 3.)

Administrative Framework for Scottish Planning - National Level:  
Summary.

In looking at some of the developments in Scottish planning with regard to the national administrative framework, the following points can be noted by way of a summary:

- government responsibility for planning is located in one department, S.D.D.;
- S.D.D. has a clear role within Scottish planning and has a number of means at its disposal to exercise that function;
- relations between central government and local government are good, both among members and officers;
- there is a history or tradition of central involvement in regional and sub-regional studies;
- the centre has been concerned to disengage from the detailed running of planning;
- there has been innovation in the use of National Planning Guidelines to provide a national policy framework on some issues;
- there is a large and growing involvement of public agencies in the planning scene.

Figure 3: The Lurcher's Gully Public Inquiry

The Participants

For		Against	
Supporter	Primary Proponents	Primary Opponents	Supporters
Highlands and Islands Development Board	Cairngorm Chairlift Company	Nature Conservancy Council	Scottish Wildlife Trust
Scottish Sports Council	Highland Regional Council	Countryside Commission for Scotland	Royal Society for the Protection of Birds
Scottish Tourist Board		Grampian Regional Council	
Scottish National Ski Council		Reindeer Co. of Gt. Britain	
Ski Clubs		Mountaineering Council of Scotland	British Mountaineering Council
Aviemore interests		Scottish Countryside Activities Council	North East Mountain Trust
		Badenoch & Strathspey Conservation Group	Ramblers Association
		Cairngorm Club	Grant of Rothiemurchus
		Individuals including local hotelier	
<u>Notable non-combatants</u>			
Local interests especially outwith Aviemore area			
Forestry Commission			
National Trust for Scotland			

Source: Aitken, B. Seminar given Glasgow School of Art. Dept. of Planning, 1981. Nov.

Although this summary may appear to suggest that everything is working well and that there are no problems, this is not the case. The following section examines the administrative framework for Scottish planning at a local level.

### 1.3. The Administrative Framework For Scottish Planning: Local Level

During the 1960's central government realised that neither the planning system nor the local government system within which it operated, were functioning as efficiently as they might. This sparked off major investigations into both planning and the local government system, both of which will be examined in this section. Firstly, the planning system.

The development plan system introduced in 1947 had been in operation for some 15 years but increasingly plans were criticised as being too rigid, cumbersome, and inflexible for contemporary needs. In response to the growing demand for some sort of action the Planning Advisory Group (P.A.G.) was commissioned to investigate the development plan system. Their report (P.A.G. 1965) entitled The Future of Development Plans highlighted defects in the 1947 system and went on to suggest the replacement of the former detailed development plan with a new two tier system. The top tier plan would be called a structure plan and although retaining the need for Ministerial approval, would be primarily a statement of policy and would identify relationships between major land use groupings, transport and communications. The lower tier plans called local plans would put forward detailed proposals for an area and would be set within the general context provided by the structure plan. The report also made mention of a variation of the local plan to be called an action area plan. These plans would be identified in the structure plan and would be designated for areas where large scale development, redevelopment or improvement was to take place within a short space of time.

It was hoped the new system would be able to provide the opportunity of creating a more positive and less static guide to development than previously. The Minister would cease to be responsible for detailed supervision of local land use planning and a greater degree of public interest and involvement in the planning process would result.

The Report's recommendations were incorporated into the Town and Country Planning (Scotland) Act of 1969, the consolidating Planning Act of 1972, modified by the Local Government (Scotland) Act of 1973 and finally implemented along with introduction of new local authorities in 1975.

#### Local Government Reorganisation

As indicated in the previous section, not only did the development plan system undergo examination and reform, so too did the local government system. The Government appointed a Royal Commission chaired by Lord Wheatley in 1966 to examine local government structure and functions. The Commission's terms of reference made it clear that the reappraisal of local government in Scotland should start with a reorganisation of its structure, the assumption being that the existing structure was no longer adequate and needed to be reformed. The functions of local government were also seen as important. The relationship between structure and functions was crucial and had been previously stressed by P.A.G. whose recommendations for reform of the planning system could only be implemented by a reform in the structure of local government.

The criticisms levelled against local government and presented to the Commission can be summarised as follows (all relate to the small size of many authorities which had an adverse effect on the exercise of functions):

- that areas were not being planned effectively;
- that the fragmentation of authorities and responsibilities

the preparation of joint plans by neighbouring authorities, or worse, that local rivalry prevented any consultation at all;

- that there was a lack of regional planning within the realms of local government at a time when this type of planning was becoming popular and widely accepted;
- that authorities were too small to attract and pay the specialists required for planning thus leading to slow preparation and poor quality of development plans;
- that planning departments were small and generally had a low status in local government and so their sphere of influence was small.

The Commission's report, published in 1969, (Royal Commission on Local Government in Scotland 1969), identified the main defect in local government as structure and based their reform on four objectives of effectiveness, local democracy, power and involvement. A complete reform of both structure and functions was put forward based on a two tier system. The planning function was to be split, with the upper tier being responsible for structure or strategic planning and the lower tier being responsible for local planning and development control. Wheatley saw the two tier planning system as proposed by P.A.G. as being inextricably linked with the new two tier local government structure his Commission was putting forward.

Certain basic principles underlay this split of the planning function:

- that planning should be conceived as an activity undertaken at various levels and responsibility for planning at a particular level should rest with the organ of government at that level;
- that within the broad frame of reference provided by

the planning authority at the level above, an authority should have clear responsibility for the plans they themselves draw up;

- that the Secretary of State would still have an executive responsibility at an all-Scottish level.

The Commission believed the splitting of the planning function between the two tiers would result in both structure and local planning being pursued more effectively and would not fragment the unity of planning as some had feared.

Government progress in responding to the report was inevitably delayed by the general election of 1970 which saw the Labour administration replaced with a Conservative one. Almost immediately the new government confirmed their commitment to the reform of local government, but it was not until the February of 1971 that an official response to the Wheatley Report was published (Scottish Office 1971) in the form of a White Paper. The government stated that although they were committed to reform they did not accept all the recommendations made by Wheatley but did accept it as a foundation on which the new system could be built. Their proposals differed in two main respects to the proposals put forward by the Commission. Firstly, they increased the number of Regions from 7 to 8 and Districts from 37 to 53, and secondly transferred the housing function from the region to the districts.

These proposals were incorporated into the Local Government (Scotland) Bill introduced into Parliament in November 1972 and adhered to by the government's original proposals in the White Paper except to create a most purpose authority for the Western Isles similar to that proposed for Orkney and Shetland. Further changes however, were introduced as the Bill passed through Parliament. In one case, active lobbying from councillors and others in suburban areas around Glasgow was successful in

**FIFE REGION**

Region ; or Islands Area .....

**Sutherland**

District .....

**ORKNEY ISLANDS AREA**

**SHETLAND ISLANDS AREA**

**TERN ISLES ISLANDS AREA**

**HIGHLAND REGION**

Ross and Cromarty

Caithness

Sutherland

Banff and Buchan

Moray

Nairn

Skye and Lochalsh

Inverness

Gordon

**GRAMPIAN REGION**

Badenoch

Strathspey

Kincardine and Deeside

Lochaber

Angus

**TAYSIDE REGION**

Perth and Kinross

**FIFE REGION**

**STRATHCLYDE REGION**

Argyll and Bute

**CENTRAL REGION**

Stirling

North East Fife

**LOTHIAN REGION**

Dumfries

West Lothian

Midlothian

East Lothian

City of Edinburgh

West Lothian

Midlothian

East Lothian

City of Edinburgh

West Lothian

Midlothian

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West Lothian

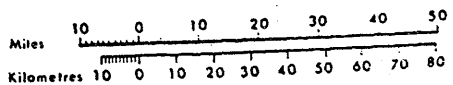
Midlothian

East Lothian

City of Edinburgh

**INDEX TO DISTRICTS  
NUMBERED IN STRATHCLYDE**

- 1. Clydebank
- 2. Bearsden and Milngavie
- 3. Cumbernauld and Kilsyth



other the Fife Region was created.

The extent to which the Bill as finally passed reflected the original proposals and concept is disputed, but what has emerged is a highly varied system of regional administration differentiated by size, functions and geography within which planning is carried out. Figure 4 shows the new Regions and Districts and Figure 5 the split of functions between the two tiers.

Figure 5: Main Local Authority Functions

Regional Councils

Education  
Careers Service  
Social Work  
Strategic Planning  
Roads  
Lighting  
Public Transport  
Water and sewerage  
Police  
Fire  
Civil Defence  
Consumer Protection  
Rating  
Registration of Births, Deaths  
and Marriages  
Industrial Development

District Councils

Housing  
Local Planning  
Development Control\*  
Libraries\*  
Environmental Health  
Refuse Collection and Disposal  
Health and Safety at Work  
Licensing (Liquor, Betting and  
Gaming, Taxis, etc.)  
District Courts  
Public Conveniences  
Tourism  
Leisure and Recreation  
Museums and Art Galleries  
Parks

\*Except in Highland, Borders and Dumfries and Galloway regions where the function is regional. The three islands councils are responsible for all functions, but police, fire and aspects of education and social work are shared with Highland region.

Source: English & Martin (1983) Social Services in Scotland p.7.

The new local government and planning systems were introduced on the same day, May 16th 1975. The 9 regions, 3 island authorities and 53 districts replaced the 430 previous elected councils made up of 4 cities, 21 large burghs, 176 small burghs, 33 counties and 196 districts (of which the cities, large burghs and counties had been previously planning authorities).

The Wheatley Report also recommended that each of the new authorities should submit to the Secretary of State a management organisation scheme for two main reasons:

- there was so little experience of new concepts of management to draw on in Scottish local government at the time;
- the danger of starting off the new structure of local government with an unworkable or undesirable form of management ought to be avoided at all costs.

A working group on Scottish Local Government Management Structure was appointed in June 1972 and produced its report (known as the Paterson Report) in September 1973. The report found that structures of Scottish local authorities were still largely traditional and favouring a corporate management approach to local government policy making, made proposals to facilitate such an approach. These included a Chief Executive Officer without departmental responsibility, a management team, committees and departments organised on a programme area basis and, in the four large regional authorities, policy planning units as part of the executive office. A political equivalent to the management team was also suggested among members and so the Report recommended the adoption of a policy and resources committee, which would have responsibility for:

- identification of fundamental objectives;
- co-ordination of activities of other committees;
- settling of disputes between other committees in accordance with the overall objectives of the council;
- monitoring and review of the performance of service committees.

Virtually every new Scottish local authority quickly and enthusiastically implemented the new Paterson structures which

were intended to introduce corporate management to Scottish local government. Howat (1979, p.7) notes though "that adoption of the Paterson structures is a necessary but not a sufficient condition for the introduction of a corporate approach ..... evidence suggest that the commitment to corporate management is not as deep as would seem from the management structures". Such a change required not only a change in structure, but also one in attitude and a commitment to corporate management: such a change did not occur in a sufficiently large number of authorities involved.

### Regional Reports

Section 179 of the Local Government (Scotland) Act 1973 required the Regional authorities to submit a regional report to the Secretary of State. The report was to allow regions to review their development plan priorities and programmes and would provide the Secretary of State with the earliest and best practical information on regional problems, priorities and programmes, so allowing him to discharge more effectively his own planning responsibilities. The report was to be prepared within the authority on a corporate basis with its keynotes of simplicity and brevity providing a broad policy framework within which the activities of the local authority and the development of structure and local plans could take place. The report was not intended purely to be a physical planning document but was intended to encompass the full range of functions which had an implication for land use. The following points indicate why such a document was deemed necessary at this time:

- An examination of the implementation of the new planning system south of the border had highlighted many difficulties such as plan making becoming too time consuming and an over elaborate technical process. The Scottish Office was determined to avoid such difficulties in Scotland, regional

- The introduction of corporate management into some local authorities, heightened the need for a master or policy plan. This plan would be a means of generating aims, objectives and alternative policy options covering the whole scope of local authority activity. The regional report was seen as the means of meeting this need;

- The regions were completely new forms and agencies of local government, totally unrelated to what had gone before. Therefore it was important for them to avoid the difficulties of the implementation of the new plan system as experienced in England, to adapt and pursue corporate planning and management and to allow them some opportunity of coming to terms quickly with the problems of their areas, and to develop some form of priority for action and investment and to give their new corporate organisation some opportunity to function as such. The fact that the first reports were to be submitted one year after reorganisation would allow this to happen quickly;

Past experience of regional and sub-regional studies had been fairly productive in terms of methodology but had suffered a crisis of credibility in terms of implementation. The particular Scottish emphasis on the need for regional authorities with executive powers which had existed since the days of the Clyde Valley Plan had not been met in the new local government structure. Planning documents could now be prepared taking a region-wide view: the regional report was such a document.

The first round of reports was to be submitted by May 1976 although some authorities were a little late. In just under two years after reorganisation the majority of the country was covered by a regional report which set out an overall review of problems

and priorities and put forward a comprehensive policy framework.

The authorities themselves benefitted from the preparation of the reports (Brown 1977):

- local authorities were forced to examine the complete range of services they provided and to assess problems, priorities and gaps in service provision;
- local authorities equipped themselves with a data bank invaluable in the subsequent preparation of structure and local plans;
- local authorities were made to face up to working corporately;
- the regional report provided a means of bringing problems to the attention of the Secretary of State, and the general public.

Central government also benefitted from the reports because they provided an overview of problems and issues faced by the new local authorities at a single point in time; it allowed comparisons between regions to be made; and provided Scottish Office staff with valuable experience preparatory to dealing with structure plan submissions.

Following the recommendation of the Martin Report that the Secretary of State consider calling for a second round of reports, the Chief Executives of the Regions and Island authorities were consulted. Following the consultation, in line with the wish of the Secretary of State not to be seen to be prescribing local government activity, it was decided not to require the submission of a second round. It has though been open to any authority to prepare and submit a regional report whenever they wished. A number of authorities initially intended to do this but only Tayside and Central produced a supplementary report, but since then Central has emerged as the only region to continue the exercise.

Following the success of the Scottish National Party in the mid 1970's when they collected 30.4% of the popular vote in Scotland and 11 Parliamentary seats in October 1974 and the report of the Kilbrandon Commission on the Constitution in 1973, devolution became one of the political issues of the mid 1970's. Howat (1976, p.11) notes that this effectively diverted attention away from local government just as the system was about to settle. This might have had the advantage of taking the pressure away from the authorities but they were directly involved in the devolution issue because the proposed Assembly would have taken responsibility for a significant proportion of their activities. The issue came to a head with the laying before Parliament of the Scotland Bill by the then Labour administration. The proposal contained in the Bill for setting up an Assembly was decided by a referendum held in 1979, which led to the withdrawal and repeal of the Act.

Had the provisions of the Act been accepted by the Scottish people, responsibility for a variety of subjects including planning would have passed to a Scottish Assembly with executive powers over devolved matters. The main concern at the time was that the Assembly in conjunction with the two tier system of local government would result in Scotland being over-governed, leading to administrative duplication, excessive bureaucracy and over-taxation. A general presumption was that if the Act were to become reality, one tier of the new local government system would have to go, with the main target being the regions. This can be seen as somewhat ironic when one recalls the emphasis placed on the need for some form of regional government and planning during the time of Wheatley and perhaps also premature when one considers that the new system of local government was only a few years old, a time period not long enough for

the system to prove itself one way or the other.

The image of the new authorities as bureaucratic, remote from the public, with too many new staff being paid inflated salaries was perhaps distorted, but did contribute to some form of resentment being expressed towards them.

Had the regions disappeared, the problem would have been to determine afresh in what form the regional idea as a planning concept could be retained.

However, not all the commentators believed that it was inevitable that local government reform would have followed the implementation of the devolution proposals. Midwinter (1979) for example, concluded that there was no consensus among social political or administrative forces concerned with the machinery of government for such a reorganisation.

#### The Stodart Inquiry into Local Government in Scotland

The devolution debate was only one factor which hindered the settling in of the new authorities. Their popularity was lowered due to the unfamiliarity of the public with the new system the image of bureaucracy, high spending and over staffing, the constant sniping of the media, the changing financial circumstances under which local government was operating and the conflict between the tiers, especially where responsibility was shared or not properly defined.

This led the Conservative government when elected in 1979 to appoint a Committee of Inquiry into local government to review its performance. Anthony Stodart, a former Minister, was appointed to chair the Committee whose terms of reference were restricted to examining the system and proposing changes which were consistent with the maintenance of the two tier system.

The Committee reported on January 28th 1981 and its final report aroused interest and controversy because of the recommendations which might have been made had the remit of the inquiry

seen widely. This was because several authorities had submitted evidence concerning winning back all-purpose status. These claims were rejected but the report made clear that many of the problems inherent in the two tier system could be rectified by establishing a network of single tier authorities. This would seem to mark the beginning of a new period of uncertainty over the future of Scottish local government.

The recommendations of the Committee were that the major responsibilities of each tier would remain unchanged and in functions where the responsibility was split, as in planning, some minor administrative changes were proposed so as to clarify where responsibility lay. In planning, the Committee's view was that the division of responsibilities be retained but with some improvements and refinements in procedure. The main issue was the exercise of regional call-in powers which were to be retained: perhaps ironic when one considers the Committee's main thrust was to end concurrency and duplication in both functions and responsibilities. The Committee felt that only if such powers were retained could the regions safeguard their strategic policies. A number of alternatives to the call-in were investigated but the Committee concluded that the best option was the present power more clearly defined and procedurally streamlined.

The government's conclusions on the Committee's recommendations were announced on June 17th 1981. In total the Committee recommended some 72 changes, 60 of which were accepted by the government with some minor variations. These changes would be implemented either by legislative or administrative change where appropriate.

Consideration of the Stodart inquiry and the government's response leads one to believe that despite the image, the local government system was working well. On the other hand, the

Committee may have in the long run done something of a disservice to local government by arousing district aspirations for the introduction of a network of single tier authorities. This, as Hayton (1981, p.13) suggests, is bound to be unsettling for all those concerned as well as wasting both time and resources in pleading special cases.

### Summary

The period of the 1970's was one of great change and instability for the administrative framework for planning at the local level. The main issue was one of the relation between the planning function and the structure of local government.

Both these factors were subject to a great deal of change with the introduction of the new two tier planning system and local government system. This led to a variety of approaches to planning and local government arrangements in different parts of the country. Local government experienced not only a change in structure but a continuing debate on both structure and the allocation of functions through the devolution debate and Stodart inquiry. Local government management organisation and practice also changed with the emphasis on the corporate approach worked out to the greatest extent in the Regional Report, an entirely Scottish product.

These changes brought associated changes in staffing in the local authorities in two main ways. Firstly, the number of staff employed increased. Both tiers now had planning responsibilities, increased workload with the new plans and bigger areas to administer. This needed more staff, and secondly the changes in staffing often led to younger personnel in positions of responsibility bringing with them new ideas and innovations in a context of wider, more fundamental change.

The new councils are diverse, both in geographical and functional terms, ranging from the single tier island councils to

conflicts as regions and districts have often battled over differing points of view and policy. This has not been confined to authorities of differing political complexion.

This section has highlighted the impact on the development of the Scottish planning system of the administrative framework both at national and local levels. In the introduction to the chapter it was stated that a second main influence would also be studied, that of the general economic condition of the country and its effect on the planning system. This is closely linked to the planning system. It determines for example, both the number and types of applications. In general, the healthier or more prosperous the economic situation, the more applications and the greater the pressure for development and the associated problems of infrastructure and facility provision. On the other hand, when the economy has suffered, planners have had fewer applications and less pressure for development but the problems of the management of change and coping with the problems of dereliction and unemployment have increased. The following section examines how planning has developed in relation to the general economic condition.

#### 1.4. Scottish Planning and the Economy: Response to Growth

This section seeks to examine the development of Scottish planning in response to various economic pressures related to both growth and decline. Very simply the 1970's can be divided into two halves, the first dominated by concerns relating to growth, and the second dominated by concerns relating to decline. However, in some areas, especially those with older traditional industries, the problems of decline have had to be faced over many decades. The section examines only a number of developments including North Sea Oil, major retail developments and urban renewal. These are all major developments which have had a long

## Oil and Gas

The years between 1970 and 1975 saw the bulk of exploration, discovery and equipping of the off-shore oil and gas industry, although these activities continue to the present day and have spread to the west coast of the country. Advances in oil-related technology brought with them new demands on land, labour, and infra-structure on shore with consequent social, economic and environmental effects. Each stage of the oil-related process of exploration, extraction, transportation and processing, made its own new set of demands and had its own consequences (Lyddon 1976). Planning practice reveals a wide range of both central and local government responses as they sought to adapt their own procedures and outlook to meet these new demands, problems and responsibilities.

In 1972, S.D.D. commissioned a coastal survey aimed at distinguishing between stretches of coastline where developments might be grouped and others where they might be resisted. This resulted in the publication of the Coastal Planning Guideline which set out policy guidelines for the development and conservation of the coast and identified preferred development and conservation zones. Procedures were also introduced whereby local authorities would have to notify the Secretary of State of all oil-related developments thus allowing him to keep up to date with all developments and providing a context within which Scottish Office decisions could be made. Planning Advice and Information Notes on a wide variety of oil-related matters were also issued at the time.

At the local level the main framework for dealing with oil and gas related development was the development plan system. However, by the time the new two tier system was introduced in 1975, most of the major development applications had already

been dealt with. These major applications for platform building sites, on-shore processing facilities and so on, put a severe strain on both the planning system and local authorities and were accompanied by a chorus of criticism which sought to point out that the planning system was not dealing with the demands placed on it. However, only a small number of major development applications actually went to a public inquiry.

When the first applications for major developments were received, most plans had no provision for oil-related development while some areas such as Sutherland and Shetland had no plan at all. The demands placed on the planning system were simply not foreseen. One main problem was the shortage of both experienced and suitably qualified staff. This was mitigated to some extent by the Scottish Office who gave financial aid to some authorities to employ consultants or by giving direct professional help to prepare development plans.

Local authorities faced tremendous problems in dealing with oil and gas related development apart from the incomplete coverage of development plans. The attitudes of developers were not known, central government policy was continually evolving and changing, while the technology of the industry was constantly changing. Paget and Llyod (1981) suggest that planning did not respond adequately to the oil and gas programme. They give two reasons. Firstly, because land use planning did not attempt to plan in advance in a positive way for petroleum related developments, but instead reacted in a traditional negative manner to private development initiatives. Secondly, the planning assessment of development proposals was done in site specific terms thereby excluding consideration for alternative sites. This led to an all or nothing dilemma for the given site with no consideration of the optional or second best site. Government, they argue, remained keen to

secure an orderly co-ordination of off-shore resource development but less attention was paid to the on-shore planning and strategic co-ordination of public and private investment. However, this experience has led to important developments in planning procedures and created a certain degree of expertise which can be put to good use as oil exploration continues not only in the North Sea, but off the west coast and in the Clyde estuary. These include dealing with new types of applications for oil platform construction yards and on-shore processing plans, assessing the impact of oil-related development on various kinds of communities, dealing with new technical considerations and the planned expansion of settlements. This expertise can be shared. On the whole, the experience with oil has indicated that the centre does have a role in planning but that the distinction between national and local issues is sometimes unclear.

#### Planning and Major Retail Developments

As early as 1970, S.D.D. were receiving representations from local authorities concerning the problem of exercising development control over the construction of major shopping centres, usually with generous parking facilities and located on the periphery of heavily populated areas. Such developments, if allowed to go ahead, would have important implications for the role, function and development of existing town centres and main shopping areas. As no readily available information was at hand, S.D.D. sought details of any such applications received from a wide variety of authorities and an indication of their views.

In light of these consultations and a study of similar experience in England and Wales, Circular 43/1971 was issued, outlining the main characteristics of such developments and the considerations to be taken into account when dealing with them. The circular stressed that such developments could provide a very

valuable additional service to shoppers but also warned of the likelihood of serious effects on existing centres. Local planning authorities were asked to give careful considerations to applications of this kind and to ensure that all larger developments were fully publicised and where appropriate, subject to consultation and consideration of the neighbouring planning authority.

The possible impact of these kinds of developments was highlighted in West Central Scotland where a number of outstanding applications of this type were identified, any one of which could if granted, affect shopping patterns in more than one local authority area and in some cases, were in excess of what the area could economically support. The Secretary of State then issued a Direction to all local authorities requiring them to notify him of certain shopping related applications. He would then consider whether to call in the application or not.

Between 1975 and 1976 a large number of applications were called in while some others went to appeal. The following years saw a continuation of concern over such developments and their implications and widespread pressure for the approval of superstores, hypermarkets and other major forms of shopping development. In 1978 a National Planning Guideline and Circular 65/1978 were issued and recognised that a balance had to be struck between preserving the best of the old and allowing new forms of retailing to replace the old and inefficient retail floor space inherited from the past, and indicated a general presumption of development of major retail facilities on greenfield sites. Encouragement was given to developments which would help improve established centres, especially those within areas in need of renewal. This shows that some developments have wider implications than purely local ones and in Scotland this means the involvement of the Secretary of State through National Planning Guidelines or notification and call-in procedures.

## Summary

Only two examples of planning problems and associated responses related to economic growth have been examined but both have been related to major developments which have had significant effects. Although major oil developments have now passed through the planning system, hopes of oil being found off the west coast and in the Clyde estuary, where B.P. have been granted an exploration licence in early 1984, could lead to more. Growth continues to the present day but in different spheres; for example, in private sector house building activity and retailing changes pose their own particular problems such as sex shops, video shops and changes of use from retail to non-retail.

The two examples examined in this section are characterised by:

- the quickness with which the problem grew and became evident;
- the unpreparedness of local authorities and their ignorance of the phenomena, problems and associated land demands;
- the strong, direct role of the centre;
- the development of new approaches and planning instruments such as National Planning Guidelines, notification and call-in;
- the increased research and sharing of information;
- the highlighting of deficiencies and weaknesses in the present system including the non-consideration of alternatives when dealing with major development proposals.

The following section examines the planning system's response to decline.

### Response to Decline

If the early part of the decade was characterised by planning responding to various forms of economic growth, the latter part of the decade has been characterised by responses to decline with

little growth, urban decline and growing problems of dereliction. Successive governments have addressed the problem of decline mainly based on the regional policy aiming to attract mobile capital to locate in the depressed and declining regions. More recently, both national and local government have become involved in a wide variety of approaches to decline both in the form of urban renewal and job creation. Traditional local government responses have been to allocate land for industrial use, provide property and serviced sites and a wide range of financial incentives and grants.

In the light of the increasing awareness of and attention being paid to problems of urban decline S.D.D. established their Urban Renewal Unit in 1975 to provide advice and co-ordinate the response of central government to local authority schemes in deprived areas, to undertake or commission relevant research and to act as a focal point for policy formulation on urban renewal. Contact was quickly established with those authorities with major concentrations of deprivation, identified by the 1971 Census, with the aim of establishing how best to tackle such problems.

Following redevelopment schemes in many towns and cities in the '60's and early '70's through the means of the Comprehensive Development Area, a new form of urban renewal project was launched in 1976 in the East End of Glasgow called the Glasgow Eastern Renewal (G.E.A.R.) project.

The project was initiated with the objective "to bring about in a co-ordinated way the comprehensive social, economic and environmental regeneration of the East End, and create the conditions for the development of a balanced and thriving community". Both Strathclyde Region and Glasgow District agreed to work in

partnership with each other and other agencies including the S.D.A. and S.S.H.A., other appropriate bodies and the people of the area. The project area covered 4,000 acres and contained a population of 45,000.

The project is run by a Governing Committee consisting of members of the bodies mentioned above plus the Greater Glasgow Health Board, the Housing Corporation and the M.S.C. with a Scottish Officer Minister as chairman. This committee is responsible for the overall plan and programme of action for the area and is supported by a Consultative Group of senior officials with the task of day to day co-ordination. The formal job of co-ordinating the project lies with the S.D.A. who prepare overall policies and programmes which are then submitted to the Governing Committee for approval with the Consultative group as well as performing its usual functions of providing for and promoting industrial and commercial development, environmental improvement and land clearance. King (1981 p.42) identifies two positive features of an initiative such as G.E.A.R. Firstly, the role of S.D.A. as a complement to the actions of the other authorities and bodies, and secondly, the feature of the project to inspire confidence in, and focus attention on, an area previously characterised by an air of hopelessness. Despite the increasing signs of action in the area, the period of the project's existence has seen unemployment increasing and public confidence in the project not what it was made out to be (Nelson 1980) although inward investment has been attracted. It was calculated that total money spent to 1981 was £115m of which £20m was 'new' money, or 18% of the total (Roger Tym and Partners 1982, p.81). This has been basically public money but private money has also been attracted, for example in new housing developments. But G.E.A.R. is significant

because it marked the beginning of a new emphasis on urban planning policy. The previous emphasis on decentralisation and urban expansion ended with the abandonment of Stonehouse new town in 1976 advocated in the West Central Scotland Plan and continued in the strategy of Strathclyde Region to switch attention and resources back to the older urban areas.

But G.E.A.R. was only one area where the Scottish Office Urban Renewal Unit was involved. The Unit continued to develop its contacts with those authorities with major concentrations of deprivation and to be closely involved with them in developing comprehensive schemes to combat their particular problems. The unit also continued to sponsor two experimental initiatives begun previously as part of the government's attack on deprivation.

Firstly, the Community Development Programme initiative at Ferguslie Park, Paisley, set up in 1969 and ended in 1976. This was an experiment concentrating on small pockets of deprivation with the aim of co-ordinating services and encouraging participation. Secondly, the Comprehensive Community Programme begun in 1974 as a programme focusing on areas of highly concentrated urban programmes, the aim being to identify the whole range of problems of an area and to draw up a set of policies to tackle them. The programme was tested out in four areas, one of which was Motherwell, where the experiment came to a conclusion in 1978 with the production of a report and recommendations sent to the relevant local authorities for consideration.

While the first action was being taken in the G.E.A.R. project, the Unit in conjunction with Glasgow District and Strathclyde Regional Councils agreed proposals for two further renewal projects in Glasgow in Maryhill and Priesthill. Thus the area based approach to tackling urban problems continued to be preferred (and variants of the approach were employed by the

Resources for the unit increased along with its scope. The increase was directed towards funding of co-ordinated rehabilitation programmes in areas of urban deprivation. For example, resources for the urban programme increased from £6m in 1977-78 to over £20m in 1980-81. The policy approach to direct funds towards co-ordinated rehabilitation programmes was in line with proposals outlined in a government White Paper of 1977 out of which came the Inner Urban Areas Act 1978. This gave additional powers to local authorities with serious inner area problems to enable them to play a part in the economic development of their areas. Nine such areas were designated by the Secretary of State. Expenditure under these new powers would qualify for capital allocations and grant assistance under the expanded Urban Programme.

#### The Scottish Development Agency

Previous sections looked at the role of government agencies working in Scotland and of the approaches to urban renewal. One feature of the Scottish planning scene which brings these two threads together is the S.D.A. Set up in 1975 with a broad remit of furthering economic development, the maintenance, provision and safeguarding of employment, the promotion of industrial efficiency and international competitiveness and the improvement of the environment, the agency set itself the target "to foster the regeneration of the Scottish economy".

It was quickly involved in the G.E.A.R. scheme where it had the co-ordinating function and which led on to a variety of other area based projects on the Task Force and Integrated Project models (see Figure 6) and a restructuring of the Agency with the formation of an Area Development Directorate to oversee the rising involvement of the agency in such projects. "The degree to which Area Projects are demonstration projects or are a major encroachment by central government on the traditional

responsibility of local government for urban renewal is unclear (Boyle and Wannop, 1982, p.50) but these projects have provided a new style local planning and development in urban areas whereby a government agency co-ordinates capital programmes and various initiatives/programmes of other bodies.

Figure 6: THE AREA PROJECTS OF THE S.D.A.

<u>Project Type</u>	<u>Period</u>	<u>Total Budget £m</u>	<u>Expected Agency Budget £m</u>
1. Comprehensive Urban Renewal. G.E.A.R.	1976-1987	305	76
2. Task Force			
Garnock Valley	1979-1984	22.5	19
Clydebank	1980-1985	23	21
3. Integrated Projects			
Blackness	1981-1984	8.1	6
Leith	1981-1984	8	7
Motherwell	1982-1987	57	37
Dundee	1982-1985	24	18
Coatbridge	1983-1986	15	10.7
4. Self Help			
A.S.S.E.T.	1981-1984		3
Kilmarnock	1983-1986		0.15
Wigton	1983-1986		0.49
Denny/Bonnybridge	1983-1986		2.8

Source: S. Gulliver (1984) The Area Projects of the S.D.A.  
Town Planning Review, Vol.55, No.3, p.323.

These projects and the activities of the agency as a whole include factory building, aid to firms, encouragement of small businesses, land renewal and environmental improvements. McDonald (1983, p.123) comments that "In its activities, the Agency is edging the local authorities into the background inspite of the joint nature of the ventures. As an arm of central government it has embraced local authorities who are in no position to refuse the advances of their well-heeled suitor."

Again this section has highlighted only a few examples of attempts to combat economic and physical decline - both examples point to a dominant role of the centre. That is not to say that local authorities and others are not doing things.

There is greater involvement in more grass roots/self-help/community based responses. These extend across a number of areas - in housing, employment and social services. Donnison (1983) notes the following characteristics of local government responses and developments in local services:

- devolution and decentralisation - powers devolved, staff and budgets decentralised to work from local area offices to make services more accountable, accessible and attractive;
- economic orientation - specialised, centralised, service orientated styles of administration are giving way to more opportunistic economically orientated styles;
- new forms of enterprise - co-ops, community businesses etc.;
- community development - programmes originating in community groups, taking a variety of forms - arts, community businesses, housing associations.

He concludes that "a hierarchical, service-orientated system of government is gaining an economically-orientated, area focused community-based character".

In decline, the physical environment has been an important factor - to improve it has been one central plank of response to aid capital attraction and investment as well as factory provisions and land use allocations. A number of schemes and initiatives such as locally based enterprise trusts have also appeared, in many of which planners are involved. As for G.E.A.R. there is not only direct agency involvement, but a partnership between agencies and local councils which has been duplicated in other area projects and special initiatives derived outwith

the statutory planning system.

### 1.5. Conclusion - The Nature and Characteristics of Scottish Planning

This chapter has not sought to be comprehensive in seeking to identify all the developments in Scottish planning or the influences which led to these developments. The developments examined have on the whole been ones which have taken place at a national (Scotland) level rather than regional or local level. This is in order to gain some insight into the system as a whole rather than concentrate on local variations and adaptations which undoubtedly are present. Across the board four main features of the Scottish system stand out: the regional system of local government, the rising public stake in renewal and rehabilitation through government agencies, the existence of national planning guidelines and regional reports. The main influences on the development of these features have been the reorganisation of local government, the introduction of the new two tier planning system, the discovery and exploitation of North Sea oil and gas, the shift of vision from growth to industrial and physical renewal, the traditional emphasis on regional and sub-regional planning, and the continued desire of central government to disengage from the detailed decisions of local authorities in planning matters. The decade of the 1970's has been one of great change, and Figure 7 charts the main developments as outlined in this chapter.

Much the same picture as to what are the main characteristics and overall nature of the Scottish system came out of a series of interviews held on the subject with a number of leading personalities in Scottish planning (a full list of interviews is given in Appendix A). A summary of the main features of Scottish planning which came from the interviews is given below:

- central/local relations are closer than in England;
- there is a greater involvement of the centre in planning

Figure 7: THE DEVELOPMENT OF SCOTTISH PLANNING

<u>DATE</u>	<u>EVENT</u>
1964	P.A.G. Report on Development Plans.
1965	H.I.D.B. set up.
1969	Town and Country Planning (Scotland) Act.
1970	Urban Programme begun.
1971	Local Government White Paper published.
1972	Town and Country Planning (Scotland) Act.
"	Select Committee Report on Land Use.
"	Coastal Survey begun.
1973	Local Government (Scotland) Act.
1974	Coastal Guidelines produced.
1975	Local Government reorganisation.
"	Urban Renewal Unit (S.D.D.) set up.
"	S.D.A. set up.
1976	Regional Reports introduced.
"	G.E.A.R. project begun.
1977	Town and Country Planning (Scotland) Act.
"	National Planning Guidelines issued.
"	S.D.D. Review of the Management of Planning.
1979	Devolution referendum.
1980	Martin Report.
1981	Stodart Report.
"	National Planning Guidelines reissued.

Source: Compiled by author from information contained in this chapter

- there is a strong history of regional planning, the potential for which remains through the regional system of government;
- planners form a closeknit community in Scotland because of the small scale of the country;
- there is less conflict in the local government system than in England because of the structure of local government and the distribution of functions;
- the existence of a separate legal system has meant Scotland having its own planning legislation;
- developments tend to fall behind those of England which means that the development can be modified in light of experience and local circumstances;
- Scottish planning is innovative.

Many of these features include a direct contrast with England, although the questions were not aimed at asking for a view of the differences between the two systems. The view that emerges from interviews is that planners do not think that the planning system in the two countries is all that different, although there are many minor, technical differences reflecting the existence of a separate legal system and local government structure in Scotland, but that the planning climate is different and unique and can never be replicated elsewhere.

One of the issues which emerges from the existence of both National Planning Guidelines and Regional Reports is whether Scottish planning is innovative. There is a difference of opinion among planners as to whether Scottish planning is innovative or not. In some sense it depends whether they are talking about national or local government, past or present. A number of those interviewed commented that what innovation there was in Scottish planning has come from the centre, but that it has declined as

number of others take the view that local authorities are innovative in that a range of approaches to plan preparation, problem solving and economic initiatives can be identified. A question remains as to whether these factors can be described as innovation in the real sense of the word. An alternative view is that Scottish planning lags behind that in England in terms of technical skill, practice and education developments and that local authority planning practice is like taking tried and tested solutions from a catalogue. In times of economic difficulty new ideas cannot be implemented because of lack of resources and unwillingness to take risks. On the other hand some authorities may well see such times as ideal for thinking out new ideas and practice.

A general view however is that local authorities themselves are becoming more innovative. At reorganisation, a lot of young and inexperienced people found themselves in senior jobs. Now after having got to grips with the job and the new planning system and having rode the storms of uncertainty over the future of local government created by the devolution debate and the Stodart Inquiry, they are beginning to get ideas translated into practice. The closeknit nature of Scottish planning means that new ideas can be easily spread and put into action across the country.

The tone of the chapter has been more positive than negative in the sense that it has probably given the impression that Scottish planning is on equal terms if not better, than elsewhere in the country. However, everything is not as rosy as perhaps has been made out. The main features of Scottish planning listed above could be said to have a negative side. For example, although central-local relationships may be closer, this could quite easily lead to central domination, a theme picked up by a

dependent on the centre, afraid to act without permission of their Lords and masters. Another feature of Scottish planning is the involvement of public agencies. The danger is of course that such agencies, as arms of the centre, could take away resources, opportunities and perhaps staff from the local authorities. Agencies may also develop their own programmes and priorities which conflict and in some instances take precedence over those of democratically elected local authorities. The sense of a closeknit community among planners may also have its benefits but it could lead to no or little innovation as everyone does the same and the climate then becomes claustrophobic.

The introduction to the thesis highlighted the fact that planning as an activity is at present in a state of crisis. That being so, having examined the development of the planning system in Scotland and come to some conclusions regarding the nature and characteristics of that system, questions arise about the ability of Scottish planning to overcome or to face this crisis. This crisis is primarily one of the legitimacy and relevance of planning. One has to ask therefore whether Scotland is better or worse off because of planning, and whether its planning system has the capacity to adapt to change.

In some senses these are impossible questions to answer. The clock cannot be turned back to find out how things would have developed had there not been planning or if the planning system had been much different. No one could ever say that every attempt at planning has been a success, the examples of planning gone wrong highlighted earlier in the chapter prove that. Sometimes failures can be on a much larger and more spectacular scale. But despite those it would seem that Scotland would be a lot worse off than it is at present if planning had not existed. For example, one wonders what would have been the environmental and other

allowed to go ahead without control, or if large new shopping developments had been built around our existing built up areas. The benefits of planning control cannot always be fully appreciated. However, examples of bland, boring architecture and new environments can be found in most towns and it is easy to blame planning for them. Perhaps the greatest benefits can be identified in rural areas where the planning system has sought to conserve and protect various landscapes and ecological resources from modern development pressures.

Planning in Scotland has this in its favour, that at a time of national reviews of development control and thinking about planning in the future, it embarked on in-depth studies of its own. There was the 1972 Select Committee Report, the Martin investigation and most importantly, the 1977 Review of the Management of Planning undertaken by S.D.D. The 1977 Review opened up the planning system to full investigation and discussion and allowed those involved to comment on the system and make suggestions for change. This was the only example of a comprehensive review of planning undertaken in Britain and included both a wide range of participants and topics. This gives the impression that planning in Scotland has been open to influence and moulding to suit the period in which it exists.

Planning also has this in its favour, that it has developed responses to particular situations. One thinks of the National Planning Guidelines, and Regional Reports developed by central government and the various initiatives and innovations now being introduced by many local authorities. This makes planning relevant and shows its willingness to tackle the problems being faced by various communities and so makes planning more acceptable and needed.

controversy and criticism that have affected planning over the whole country. In particular, planning is part of local government activity, which in the aftermath of reorganisation in 1975, suffered in terms of public acceptability and support. Local government, as has been noted, was looked on as being too extravagant, taking on too many new staff and paying inflated salaries. Planning may well have suffered because of this. But reorganisation did have a beneficial side to it in that it brought into positions of responsibility men and women of a younger age and dynamic character which has helped planning to become more relevant to modern pressures and problems.

During the study, a number of those interviewed did express views on what they saw as the negative features of the Scottish system. Wannop, for example, made the comment that he thought Scottish planning technically backward, that strategic thinking has emerged from the Scottish Office and not the local authorities and that local planning was like taking tried and tested solutions from a catalogue. Dobson also thought that innovation in the past had come from the centre (to the extent that planning in Scotland is dominated by the centre) and that things are done by the book. O'Carroll commented that the fact that reorganisation left a lot of inexperienced people in top positions has shown itself in practice. Wilson too made the comment that planning practice is stereo-typed, that things are done more by the book and when new ideas do emerge by the time they get to Scotland they are old hat. So the image or assessment of how planning stands in Scotland is not all positive.

Despite these negative features, the positive features discussed above have enabled it to perhaps weather the storm better than elsewhere. Relations between central and local government are, on the whole, good, and there seems to be a widely

held view that somehow planning in Scotland is in a better condition that in other parts of the U.K. But Scottish planning is subject to all U.K. influences, nowhere more so than in development control, the area of planning on which the thesis seeks to concentrate.

The following chapter seeks to lay the second foundation for this study by examining development control.

2.1. Introduction: What is Development Control?

A legal framework for the control of development by the State was established well before the 1947 Act which introduced the planning system in its present form: for example, in the Town and Country Planning (Interim Development) Act 1943 and the Town and Country Planning Act 1945. But these were essentially war prompted measures and Heap (1983, p.81) describes them as "fairly modest stuff". The 1947 Act gave to both central and local government wide discretionary powers to prohibit undesirable development and use of land. The Planning Act was also accompanied by other powers relating to new towns, national parks and the distribution of industry. Thus the regulatory framework for the control of development was provided and laid down. Heap (1982 p.5) identifies the root of the regulatory system created in 1947:

"There is a basic principle in English common law derived from the Romans, the English common law of nuisance which in the Latin maxim means 'so use your property that you do not unduly hurt the property of your neighbour'. Town planning is an extension of that thesis - a view of planning related to a conception of a right to a continued enjoyment of a pleasant environment."

The law therefore, being derived from Roman origins, is primarily concerned with property. Planning has a wider scope and might be said to be about people. Therein lies the possibility of conflict: law concerned with property, planning concerned with people.

In the context of this study a key question relates to how recent legislative change has affected this central feature of the planning system. Will it remain as prominent as before, and if so how will it be changed? And if not, what will replace it?

legal framework established by the 1947 Act immediately contradicted the system of common law which had been in existence since Roman times. The contradiction can be explained as follows. The common law position is a law of nuisance providing minor limitations on an owner's right to do what he wishes with his property. The aim of this approach is to protect the interests of property owners and is one which embodies the ideology of private property. The development control system, on the other hand, is operated not in the interests of individual owners but the public at large (see section 2.5 for a further exploration of these competing ideologies).

But common law provisions proved inadequate to deal with a complex urban industrial society and although the 1947 Act was one of the most dramatic and complex pieces of post-war legislation enabling the public sector to intervene to a greater degree than previously in private decisions to develop, it would be wrong to think its purposes were new. Grant (1982, p.4) comments:

"But much of the content of the 1947 Act was more a consolidation and refinement of earlier measures than a revolutionary departure from them and despite reforms in procedures and methodology, the ever shifting balance between private property and state power there is a continuity of purpose and ideology which links directly the 19th century measures with contemporary planning."

Development control can be described as a process where the State intervenes in the property and development market in order to regulate the use of land in the interest of the public. At a more operational level, it can be described as "the process whereby an application for planning permission is considered by the planning department and other persons and a decision issued" (Harrison 1979, p.27). Few people would argue about whether it is proper for government to impose restrictions on the way land is used in such a crowded island as Britain. What perhaps

extent to which the ordinary citizen should have a say in the matter. The system as it exists in the U.K. has been described as probably the most comprehensive and sophisticated in the world (Alder 1979, p.1).

The 1947 Act established the basis that an application for planning permission had to be both submitted and approved before 'development' (defined in the Act, now Section 19 of the Town and Country Planning (Scotland) Act 1972) could take place. This has meant that the planning application has become a basic element in the system, much of which has been built around it. In Scotland it is the districts who have the responsibility for determining planning applications although in three regions, Highland, Borders and Dumfries and Galloway, they as general purpose authorities, have the responsibility for development control as do the three island authorities. Once an application has been received one of three decisions will be issued; planning permission will be granted with or without conditions being imposed or will be refused. It is important to note that the U.K. system of planning control is exactly that, a system, and not a set of controls such as the Building Regulations, and has bound together both the plan making and control functions with an obligation placed on local authorities to administer control in accordance with the plan and other material considerations (see section 2.2).

The reason why a planning application has to be submitted to the local planning authority for permission to be given before development can go ahead is because the system of control, as introduced in 1947, relies on a formal and drastic limitation of traditional private property rights. The 1947 Act nationalised the right to develop land, except the right to occupy land in its existing use. The Act also allowed for the nationalisation

the development of the land. Since it was the community that created development value, that value, or a proportion of it, should be returned to the community.

The intention of the legislation was clear enough, to recoup for the community the development value created by the existence of the planning system. The nationalisation of development value (created by the existence of the planning system) was nothing more than a logical consequence of nationalising development rights. The government of the day took the view that owners of these rights should be compensated on a once and for all basis for the loss of that value. Once the principle of expropriation of development rights had been embodied in law there was no moral or legal reason why landowners should receive profit from the development of their land. Where planning permission was to be granted, a development charge had to be paid by the developer.

This original system has been subject to many changes and modifications through the years, with little agreement between the political parties about how to deal with the compensation/betterment issue. The latest attempt introduced by the Labour government in 1975 in the form of the Community Land Act was repealed by the Conservatives in 1980.

The 1947 Bill was described by its architect Lewis Silkin as "long, technical and complex, and naturally in some respects controversial" but the objectives set down for the new system of development control were such that few could find reason to quarrel with them. Silkin succeeded in drawing together a wide range of support which cut across party political boundaries and managed to disguise the potential conflicts contained in the legislation concerning the reallocation of wealth and resources

Although development control has been described as the most important part of planning, of all the regulatory machinery established in the early post war years, none has proved as controversial as planning control (Grant 1982, p.1). It is an activity which has been subject to a great deal of criticism: that it is too rigid or too flexible, that it is too restrictive or too permissive, that it is too adventurous or too conventional, that it is too comprehensive or too narrow, that it is responsible for allowing thoroughly unsatisfactory developments, that it has held back job creating developments and so on.

A number of those involved in the planning system from the private sector did express various criticisms of the operation of development control during interviews. Plenderleath, a partner in a Glasgow firm of architects was resentful of planners imposing detailed site control, was critical of delay in deciding planning applications and felt planners did not seem to give enough encouragement to development. Zegleman, a planning consultant with Bovis Homes, considered the present planning system a failure and that planners were involved in too much and to a degree of detail which was unnecessary. McCulloch, another architect, thought planners typical bureaucrats, having no idea of the pressure on architects and developers and criticised planners for their lack of experience of the outside world and for rarely being able to comment on aesthetics.

On the other hand, a number of elected members of different political complexion and from different kinds of district expressed the view that the planning system is working well and is fair to both objectors and applicants.

Although development control has been subject to a great deal of change since 1947, the basic system remains much as it

its scope in relation to advertisements, trees and listed buildings.

Heap (1983, p.81-82) identifies the outstanding feature of the British system of land planning control since 1948 as:

- the system is obligatory in that local authorities are required to prepare structure and local plans;
- the system is democratic in that control is exercised by the elected representatives of the people;
- the system is open in that the public can participate in decision making;
- the system is administrative in that decisions are made by politicians and not the courts;
- the system is bifurcated i.e. has two branches of plan making and development control;
- the system is rooted in the principle that land ownership gives no right to develop.

This basic system of development control, described as the sharp end of planning, has until recently been very much the unglamorous, unsung part of planning. It was not uncommon to hear of planning and development control being spoken of as two different activities with a prevailing attitude that development control could plod on by itself while the most important issues were dealt with in development planning. Simmonds (1978) identifies a number of features of development control which tended to reinforce this view of development control as a separate specialism in planning:

- development control is quasi-legal in appearance;
- development control is generally concerned with case rather than project work;
- planners in development control are constantly involved with members of the public;
- development control has an immediate and direct impact.

difference in attitude resulting from specialisation, there is no room he says, for either ivory tower policy makers or blinkered development controllers, a view supported by Clawson and Hall (1973,p.154) who state that development control and development plans are part of the same system and the two cannot be meaningfully considered apart.

Whether it is because of this perceived difference between development control and development plans or not, development control has traditionally been viewed as a low status, unimportant and job. The most important review of planning since World War Two, the P.A.G. report on the future of development plans, made only a passing reference to development control in terms of "tidying up the system of development control through better management". The R.T.P.I. professional working party considering the 'Future of Planning' (R.T.P.I., 1976) virtually ignored development control other than in an exhortation that more positive planning be added to the prevalent system of negative control. (This can be partly explained by the fact that at the same time another R.T.P.I. study was investigating development control, see R.T.P.I. 1978). Development control has also been of little interest to researchers and has played a relatively minor part in the education of planning. McLoughlin's study (1973) revealed the typical development control worker to be underpaid, overworked, under-qualified, older and having poorer career prospects than his counterpart in development plan work. It is therefore not too surprising to find the system coming in for criticism given the nature of those who operated it.

In more recent years development control has begun to emerge from the shadows and has received more attention and interest than previously. Crow (1980, p.40) notes that this change in fortunes for development control has come about because

and other criticisms directed at the system. It has been subject to three major reports (R.T.P.I., 1978: Dobry 1976 and House of Commons 1977), none of whose recommendations have been fully implemented. Much of the evidence presented to these investigations was so critical that Davies (1980, p.7) describes the effect as turning development control from being a Cinderella to being a fully paid up ugly sister. Vickery (1978), however, takes a more positive attitude and claims that developments in the last decade or so have meant development control finding its feet again and gaining a new role and importance within planning as a whole. Factors instrumental in this he describes as:

- qualified planning teams being set up in District Councils with local government reorganisation producing more authorities with development control powers and responsibilities and a consequent increase in the number of planners working in development control;
- better back up resources being obtained for development control planners;
- job satisfaction among development control officials has been raised while the self-imposed superiority of development planners has worn off due to the failure of and disillusionment with structure plans;
- there has been a closer relationship between development control staff and local plan staff which has meant the better implementation of local plans.

Davies (1980, p.7) suggests that the renewed interest in development control is also due to the growing interest in local planning as top tier structure plans have been approved and perhaps at a deeper level, it reflects changing attitudes within planning itself as a professional and administrative activity and changing expectations concerning the role and achievements of planning.

Section 26 of the Town and Country Planning (Scotland) Act 1972 provides that in determining a planning application a local planning authority should have regard to the provisions of the development plan and other material considerations. Planning law, like most administrative systems, functions largely through statutory discretion. The development control officer is therefore placed in an unenviable and impossible position under different and conflicting demands in the determination of an application from the applicant, local residents, objectors, consultees, and his own professional judgement. Many planners would of course defend discretion on the basis of professional expertise and judgement but the system does leave itself open to criticisms of an ad hoc response, allowing the personal bias of the planning officer to dominate the decision.

Although local authorities have a great deal of discretion in the determination of a planning application, that discretion is confined by a number of factors. Jowell (1973) notes that constraints on discretion differ depending on whether the element of discretion is high or low. Where that element is high, constraints will include concepts such as the public interest, fairness and reasonableness. Where it is low, constraints will include rules. But development control in the U.K. is not a rules dominated process, Boynton (1980, p.71) notes that "we have rejected a rigid plan making system which would by reference to zoning and other ordinances give owners reasonably clear and unequivocal rights". Development control decisions take place in a complex legal and political and administrative context where objectives change over time.

Among other constraints on the scope of discretion of a planning authority, are administrative structures through which decisions are taken, the courts, procedural safeguards built

into the planning system such as the appeal system and the influence of established relationships and understanding between public agencies. In planning, the most important constraint on the exercise of discretion is policy which informs the exercise of discretion and acts as a link between individual decisions and planning objectives and promotes consistent handling of planning applications. Policy is made known through structure and local plans but they themselves do not have a direct legal impact on land development. Each application for planning permission is determined on its individual merits with the development constituting only one input into the wider decision making process. The relationship therefore between development control and forward planning is loose. The provisions of the development plan are only a consideration insofar as they relate to the application and are material to it, with the policies in the plan guiding the planning authority in the exercise of their powers and informing developers on the likelihood of obtaining planning permission. The planning authority may not lawfully fetter their discretionary powers either by adoption of a blanket policy or by delegating them to some body or person not entitled to use them.

Discretion does not allow a planning authority totally to ignore the provisions of the plan nor to allow substantial departures willy nilly. The Development Contrary to Development Plans Direction of 1981 issued by the Secretary of State for Scotland helps local authorities to steer a middle course. The Direction allows authorities to grant planning permission for developments contrary to the development plan if certain steps have been complied with. In the case of plans approved by the Secretary of State, he is to be notified if an authority propose to grant planning permission to such a development.

McAuslan (1980) takes the view that discretion in decision

He notes that although a duty is imposed on officials, its substance and scope is left for them to determine. Thus, if plans are used more in development control work, both the plan and the ideology of public interest are strengthened and the importance of individual decisions and the ideology of private property are reduced. In recent practice, the plan has been reduced from the central position in development control and material considerations have become more important.

The study of material considerations has advanced in recent years with various writers seeking to explore questions relating to what considerations/factors a planning authority can legitimately consider when determining a planning application. The leading judgement on this issue is that of Lord Widgery in *Stringer v. Minister of Housing and Local Government* who stated "that any consideration which relates to the use and development of land is capable of being a material planning consideration." This, as Watchman notes (1983, p.36) leads to two important questions. What considerations should be accepted as being related to the use and development of land i.e. a planning consideration, and does it follow that they are also material considerations? Various writers including Watchman (1983) and Loughlin (1980) have attempted to examine the scope of material considerations and to identify a number of general principles. A general rule which may be applied is that a material consideration must first of all be a planning consideration and be material to the application in question.

Over time there has been a move to widen the scope of material considerations beyond the traditional aesthetic and physical amenity considerations to embrace wider social and economic issues. McAuslan (1980) notes that this progression has not been consistent over time but as the scope of material consider-

ations has widened, public interest ideology has been strengthened. The courts on the other hand have sought to limit this expansion of the scope of material considerations as they fulfil their role as the guardians of the ideology of private property. Although traditionally they have limited the scope to negative protective features of physical amenity, they have in recent years been seen to be moving towards accepting some wider public interest considerations. A danger of this, as McAuslan (1980, p.163) notes is that as more factors are taken into account in the determination of a planning application there are more opportunities for procedural errors and the courts which espouse a narrow private property approach to material considerations will be more likely to justify quashing a decision on procedural grounds.

Watchman (1983, p.73) comments that much of the case law on material considerations coincides with a period of planning law reform and an era of intense judicial activity and creativity in the area of administrative law. He notes that the scope of control has widened to include questions of a socio-economic nature and can no longer be seen as merely concerned with public amenity and exterior aesthetics of buildings, although there may have been a time lag in the judiciary catching up with these developments. As planners have attempted to extend their jurisdiction to include matters which did not relate to judicially recognised planning problems and concerns, the judiciary became more interventionist to prevent any abuse of power and were wary of attempts by planners to increase their powers. Watchman (1983, p.73) suggests that there are clear signs that the judiciary are beginning to recognise that planning and planning considerations are now much wider than they have allowed for in the past and that the legal parameters of material planning considerations may well be extended to include those matters not presently encompassed by the courts.

widening of the scope of considerations that a planning authority will take into account when determining a planning application, and which also reveals the discretionary nature of the control system, is the issue of bargaining. This issue has been one of the most controversial in town planning in recent years and concerns the question of how far planning authorities should use the prospect of a grant of planning permission as a bargaining counter to extract some sort of benefit or gain from a developer. Jowell (1977) describes the phenomenon as follows:

"In the last decade it has been shown that planning authorities are achieving broad aims by entering into agreements with developers under a growing number of statutory powers. Instead of deciding applications for permission in accordance with relatively objective criteria, on a judicial model, decisions are being made in accordance with a contractual model, with the attendant dealing and bargaining, with power playing a role in the decision. Planning permissions are bartered for dedication of public land, infrastructure contributions, the provision of public facilities including land or building for local authority housing. The reason for the increase in bargaining is, it is submitted, directly related to the widening of criteria for decision that have been discussed. The wide discretion of the decision maker leaves a good deal of room for manoeuvre, and hence for compromise, embodying through a contractual arrangement, standards that the courts with their strict view of permissible planning criteria, would be unwilling to sanction."

Bargaining can be differentiated from planning agreements to the extent that a developer may be willing to enter into an agreement with the planning authority, which is of value to both parties. Bargaining on the other hand suggests that the planning authority are seeking to extract from the developer something which he is not willing to concede. A local authority may then use its position as the approving authority of the sought planning permission to extract some sort of gain. Where planning by

agreement to be made a number of criteria should be met: both parties must be willing to discuss the application and related issues and to negotiate; there must be a solution in practical and physical terms to the planning objection; and the economics of the agreement need to be investigated to ensure that the proposed agreement is worthwhile. Caddy (1978) suggests a number of tactics to be used by the planning authority when involved in planning by agreement to exploit their dominant position. These include insisting on legitimate requirements, persuading the developer to achieve more than these requirements and to use delay.

Agreements between developers and planning authorities can be made under Section 50 of the Town and Country Planning (Scotland) Act 1972 which states that:

"A local planning authority may enter into an agreement with any person interested in land in their area (in so far as the interest of that person enables him to bind the land) for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement; and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the local planning authority to be necessary or expedient for the purposes of the agreement."

In recent years planning authorities have made increasing use of bargaining in development control. There are a number of reasons for this:

- planning by agreement is seen as an alternative to purely regulatory control;
- it shows the desire of planning authorities to achieve objectives that they cannot achieve under normal control;
- reductions in public expenditure may mean that authorities

and other kinds of facilities;

- in areas of restrictive planning control, agreements may provide developers with the means of going forward to implement their development proposal;

- where development plan coverage is lacking or is out of date, planning by agreement may emerge as a means of filling the policy gap.

The practice of planning by agreement has been subject to much criticism in that it can lead to an abandonment of proper planning considerations and stated policy, it has the air of selling planning permission, an authority may demand that a developer provide facilities which the planning authority itself should be providing and it may fetter the use of other planning powers of the local authority. On the other hand the practice has several advantages. For example, it allows constraints to be imposed on developers which would be beyond the scope and legality of conditions, it can provide a positive way of implementing planning policy, it can be used to make an unacceptable development acceptable and can add an important dimension to the aspect of implementation.

In 1981 the Planning Advice Group (P.A.G., 1981) an independent study organisation run by the government departments responsible for planning, issued a report on the topic entitled 'Planning Gain', and concluded that, subject to certain exceptions (which would probably be quite major in practice), bargaining for planning gain was unacceptable. The main argument put forward to support this view was that if planning permissions were to be linked to the willingness of developers to offer colateral benefits by way of agreement, then the whole planning system would fall into disrepute. The report also advocated the provision of guidance by the Secretary of State on the proper

benefit which could not validly be obtained by way of condition.

The report was heavily criticised on a number of grounds. For example, Jowell (1982) claims that the report should be taken to task for the light treatment of a problem that goes right to the heart of modern development control and for ignoring related complex issues. Also ignored were the reasons why the use of planning gain has increased and its place in the planning world, as were issues of mechanics, law and procedure for reform. The most important criticism which came from many quarters was that the approach to the subject was too narrow.

Jowell (1982) noted that the practice, although having its dangers, also had advantages both for developer, the local authority and the public. He argued that bargaining for planning gain would not disappear, there being powerful reasons why it should continue with any attempt at blanket prohibition leading to a call for its return as developers would be faced with too many refusals of planning permission and local authorities would be faced with the loss of a valuable source of private contribution to public planning objectives. In its response to the report the R.T.P.I. (1982) claimed that planning gain was an integral part of the planning system and that to restrict planning gain would lead to lower standards of planning and development without bringing any commensurate benefit. They saw negotiation between planner and developer as a normal procedure which could lead to some changes in the details of the proposals, attachment of conditions or some form of planning gain being extracted. Planning gain could not be abandoned they advocated without reconsidering the role of development control function as a whole.

Much of the controversy surrounding planning gain has come from England, but a recent study by Rowan-Robinson and Young (1982)

a questionnaire survey among planning authorities in Scotland they concluded that the use of planning agreements in Scotland was increasing, although from a variety of motives. These included:

- to give emphasis to conditions in the planning permission;
- to avoid the prospect of a successful appeal to the Secretary of State against a condition;
- to ensure an alternative means of enforcement;
- as a result of uncertainty about the validity of particular conditions;
- to control matters clearly beyond the scope of conditions;
- the scale and complexity of the proposed development has led the planning authority to seek a degree of flexibility of control and management of the development which would be beyond the normal range of planning permission;
- to overcome objections which would have otherwise led to the refusal of permission;
- prompted by doubts about the financial stability of the developer or by his poor record of compliance with earlier conditions on planning permissions.

The study shows that most agreements are being used in relation to the control of development as an alternative to purely regulatory control and that there is little evidence of planning gain. In reviewing the study, Grant (1983) notes that the authors assume that planning gain is a problem confined to England and Wales and that agreements raise few comparable problems in Scotland. To assume this, he states, would be to underestimate the pressures which have moulded planning gain south of the border, pressures from which Scotland has no immunity.

One general impression which emerges from the discussion on planning by agreement is that developers are forced into accepting

and Kingsbury (1983) in a study examining the applicant's view of development control found that they "regarded such agreements as a useful means of resolving a conflict of views for certain types of proposed development" (p.291). However, many of those with experience of planning agreements remarked that two trends were beginning to undermine the usefulness of this option. One is that as a long drawn out process, it can delay development and secondly, that local planning authorities have now got used to using such agreements, that they are asking too much of them, with applicants claiming that the extra costs involved now threaten the economic viability of some schemes.

The British development control system in summary, is discretionary in nature. A planning authority in determining an application does so on the merits of the application and has regard to the development plan and other material considerations which have widened in scope, a feature not accepted with the same degree of enthusiasm by the courts. This reveals, to some degree, the desire of planning authorities to escape the rigidity of control they can exercise through development control as does the ever increasing use of the practice of planning by agreement and the associated search for planning gain. Important issues for the future development of planning include the extent to which the development control system maintains its high element of discretion, and whether the balance between the consideration of the development plan and material considerations will remain as it is or tip one way or the other. Clearly the move towards increasing the scope of factors taken into account when making development control decisions shows that local authorities at least want to escape the limitations on the scope of control placed on them.

The previous section highlighted recent moves through the widening of the scope of material considerations and the growth of planning by agreement. These developments may be seen as signs of a move towards more positive forms of intervention through development control. A crude distinction may be made between positive and negative powers. Positive powers may be defined as those intended to ensure that land is used in a specific way. Negative powers on the other hand merely forbid undesirable activities from taking place and leave the initiative to propose and carry out development to some other body than the local planning authority. Positive planning is primarily interventionist and can take a variety of forms. For example, the new towns programme, the regional economic strategy, land assembly, development undertaken by planning authorities, the use of grants and subsidies, and the use of planning agreements. The attractions of positive planning are clear and the Pilcher Committee (1976, para 3.10) pointed out that it includes the power to carry out or ensure that others carry out (necessary development and redevelopment) in the right places, at the right time and to the right standards.

In practice, however, the implementation of positive planning has not been easy. Grant (1982, p.500) points to three reasons why this should be so:

- the political debate surrounding planning powers;
- the financial aspect of such powers;
- the ability and suitability of local authorities as entrepreneurs and the problem of reconciling the planning aims with the commercial side of planning.

Development control has often been criticised for being a system pre-eminent in negative controls and inadequately endowed with positive powers. Grant (1982, p.499) describes development

control as "primarily a regulatory function", that is, negative.

In the time from 1947 development control and the planning system as a whole have been viewed in different ways, sometimes as part of a wide range of land planning and development measures all designed to intervene positively in the public interest, and at other times, development control seems to have been expected to operate as a semi-independent activity where the regulatory model has been dominant and development control has been relied on as the major planning tool rather than fulfilling a supporting or co-ordinating function. Harrison (1979) divides the period from 1947 to 1972 into four distinct phases during which different ideas were dominant.

- (1) 1944-51. The planning concept during this period was of a wide range of centrally directed activities with a lot of development by the public sector and a strong emphasis on positive planning.
- (2) 1952-64. During this time less reliance was placed on direct intervention and more on private development and indirect regulation, mainly through planning control. Positive planning became more difficult. Land use planning became isolated from a social policy strategy and planning concepts such as conservation and containment became dominant.
- (3) 1964-72. This period saw lots of reforms and important developments in planning with the publication of the P.A.G. report on development plans and the investigation into local government form and functions. Prevailing regulatory models were on the whole unchallenged, but there was some renewed emphasis on regional policy with various related institutional innovations. The development control system was maintained in this changing environment but remained isolated from a co-ordinated approach to development.

(4) 1970-72: This period represented a time of uncertainty, conflict and experiments in planning practice and a time also of retreat into more limited regulatory models.

The 1970's was a period characterised by the politicisation of planning, the emergence of the inner city problem and a change in attitude towards resources and the role of the state in society as a response to economic decline (in that resources became scarce and the state was expected to intervene more) (McKay 1982, p.60). In development control, the 1970's saw increased demands for participation and voicing of complaints with regard to the social economic effects/implications of planning decisions. The criteria used in determining applications for planning permission widened from purely physical/amenity considerations towards more social/economic ones (McAuslan 1980, pp.151-152).

Despite this changing context for development control, one significant feature has been the continued existence of the indirect regulatory system or model of control. Even when new ideas were being considered and new developments were going ahead, the regulatory machinery was maintained without dramatic changes in procedures (and perhaps attitudes). Cherry (1982, p.47)

comments:

"The statutory planning system of development plan preparation and the day to day control of development, according to the provisions of the plan, tended to lapse into dull, regulatory, local authority bureaucracy. What had promised to be bold and imaginative turned out to be sterile and couched in terms of professional mumbo-jumbo."

Although planning seems to have been less directly interventionist and positive, after the immediate post-war years, it would be difficult to say that purely regulatory ideas ever became dominant. Never-the-less, the machinery and policy framework suggests that within development control, local

role in the interests of physical order rather than as managers of those physical, social and economic changes associated with the development and use of land.

In summarising the period from 1947, Harrison (1972, p.258-9) notes the following points:

- there was a continuing influence of the containment philosophy with its emphasis on protecting the countryside;
- there was a consistent belief in physical order as a means of achieving economic and social aims;
- development control was used as a protective measure independent of social, and economic objectives and costs;
- there was a tendency to rely on established methods and accepted definitions in order to ensure a consensus about planning.

Centrally issued advice was also more definite on physical standards, spatial order and visual amenity than on other factors. (Harrison, 1979, pp.83-84) Thinking in development control crystallised therefore into concepts such as containment, presumption against development in the countryside, amenity, public interest, exclusion of non-conforming uses and so on. In a system designed to achieve specific objectives related to physical criteria, planning became characterised as elitist. It was designed to be a system to control change but instead became a system for the restriction of change in favour of sectional interests, rather than the wider public interest (Clawson and Hall 1973, p. 178). Simmie and Hale (1978, p.9) support this view, commenting that the machinery of development control has been shown to "reflect rather than modify the distribution of power, and therefore land use rights", its main purpose being to control trivial and aesthetic judgements rather than the workings of the economy and society.

and negative in the post war years does not mean to say that it has not achieved anything. Cowan (1980, p.214) notes that as a negative function, many of its achievements go unnoticed while planners get blamed for being too restrictive rather than praised for the beneficial use of their power. Former Secretary of State for the Environment, Mr. Michael Heseltine, speaking at the Town and Country Planning Summer School in 1981 noted that the success of development control relies on negative powers which cannot be abandoned. But he called for a new approach in which planning could play a "positive, activist and constructionist role" (Heseltine 1981, p.11). Something of this change can be seen in the developments outlined in the previous section. These developments point to a number of substantive questions regarding the role and function of development control: what should be the role of development control, what sorts of activity should be brought under control, what is development control trying to achieve? Different perspectives on these questions can be put forward by different groups which provide a framework for conflict and disagreement, and something of these perspectives will be examined later in the thesis.

As far as Scotland is concerned, there is no literature on the operation or development of development control covering an extended period. It is fair to assume that many of the influences mentioned above have been felt north as well as south of the border, but perhaps at a slightly later date. The emphasis in Scotland has not been on development control but on regional, sub-regional studies and involvement of the centre. The 1977 Review of the Management of Planning (S.D.D. 1977) recognised that planning is initially and mainly a means of controlling and guiding the use of land and the processes of

Committee suggested that Scottish authorities paid more attention to day to day needs than longer terms ones which showed itself in the lack of advance in plan preparation, that there was a lack of forward thinking and that on the whole, planning tended to be negative.

Evidence from these two main studies of Scottish planning in the 1970's suggest that practice has been more negative than positive. (Crow (1981, p.40) comments that development control received attention only when in the early 1970's the economic and development booms flooded the planning system with applications causing a growing backlog of unattended cases and a rash of complaints relating to delay. Despite the findings of major reports, little was done to ease the problems of delay or improve the speed or efficiency of the system.

#### 2.4. The Legal Aspect of Development Control

Parliamentary legislation is the cornerstone of the planning system. Grant (1982, p.36) notes that nearly all new planning initiatives promoted by central government need fresh legislation which becomes a symbol of commitment to reform and change. Planning is entirely the product of legislation while "development control is only, in law an administrative procedure constrained by a legal definition to development" (Davies 1983, p.12). The importance of legislation in planning cannot be underestimated. Shaw (1982, p.9) comments:

Planning without legislation can only be wishful thinking. It is essential, to ensure that changes do, or do not occur in certain places at given times. But there may be scope for non-statutory and discretionary procedures provided that the power to intervene has statutory force. Apart from controlling land uses etc. legislation should help to achieve positive development objectives by encouragement, promotion, support and guidance of development. It should safeguard the interests of communities as a whole as well as serve policies and objectives of governments."

planning system it does not state the aims and objectives of planning. This means that there is and cannot be any clear consensus as to the purpose of planning. The administration of planning is placed in the hands of the politicians. Planning, therefore, is established as a process of political decision making.

Political will is a crucial element in the adoption and operation of any planning system. As legislation is a means to achieve government objectives it has to be enacted by Parliament and therefore has to have both political and official support. But it has limitations as it can only be passed within the constitutional framework, common law precedents, and concepts of equity and justice. Legislation is also influenced by land tenure considerations, the state of the economy, finance, the political will to enforce it after it has been enacted, public support and adequate staff and resources needed to enable the system to function (see Commonwealth Association of Planners 1982, pp.7-8).

Grant (1982, p.36) suggests that it is easier to introduce new laws rather than repeal old ones, thus leading to a steady build up of powers. Certainly planning legislation has become more complex and detailed, being made up of an ever increasing number of Acts and associated statutory instruments. But Grant goes on to suggest that planning legislation is unsympathetically handled by both drafters and departmental advisers which results in it becoming highly technical and poorly integrated and lacking in overall coherence. Interpreting and understanding it becomes difficult for both the professional and the layman. This leads to the irony that planning, as an administrative and legal system which relies in general on public support, shows every sign of slipping away from popular intelligibility.

system it seems strange that the "interaction between planning and legal praxis has demanded little concern from either profession or either school of academic discipline" (McEwan 1983, p.1). He goes on to state:

"This lacuna is both explicable and irrational; explicable in the sense that the nature of professional specialisation ..... has inevitable repercussions on academics and inhibits communication and mutual understanding; irrational in the sense that planning in the U.K. is built on a complex foundation of statutory provision mixed with a high density administrative compound: consequently, planning practice is unusually dependent on the law and the legal profession and the ideology or ideologies which underpin them."

Jowell (1977) notes that planning and law have a number of similarities, which one would expect to draw the two disciplines together. These are that both are concerned with the control and guidance of change, both are concerned with the resolution of conflict in the interests of social justice and stability, both interact with the legislative process and both are concerned with the identification of social values.

In recent years the legal aspect of development control and planning has received greater consideration as there has been a great deal of legislative change in the planning system, and legal issues have been raised concerning aspects of development control. For example, the widening of the scope of material consideration and the debate about planning gain. In Scotland, a new journal entitled Scottish Planning Law and Practice was launched in September of 1980 by the Planning Exchange and the Law Society of Scotland to focus attention on Scottish planning law and related practice.

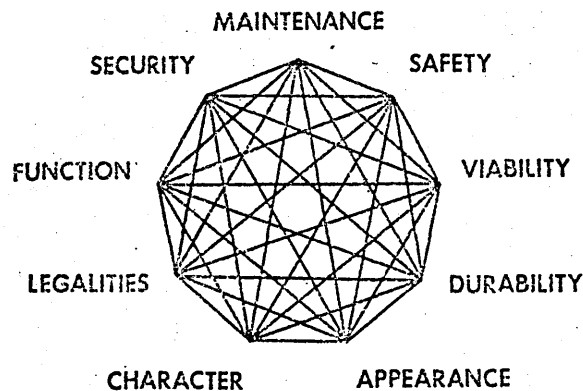
In considering development control, Alder (1979, p.2) suggests a number of reasons why it is worth studying:

ordinary citizen;

- it is one of the most intensively litigated areas of administrative law and provides a focus for the analysis of several difficult and controversial questions in the field of judicial review of administrative action.

Planning decisions take place within a framework of legal and political processes which involve a variety of participants; the developer, local authority and objectors. The legal considerations are only one part of a wider and complex number of factors relating to a building. This is shown in Figure 8.

Figure 8. THE DEVELOPMENT WEB



Source: Fulton (1982) Infill. Leaflet designed as part of M.A. (Design) Degree Show. Glasgow School of Art. December.

It would be wrong to think of planning law as neutral. Legislation is drawn up with regard to a country's size, resources, state of development, political, economic, cultural and social circumstances (Commonwealth Association of Planners 1982, p.7). The way in which legislation is drawn up will reflect the preconceptions and preoccupations of the legislators, while its terminology will reflect what is considered to be important and therefore specific value judgements. Failure to recognise this in the past meant that planning law itself was a contributor to the development of the planning profession's ethos of

planners being necessary to accompany it. (Harrison 1972, p.259). In legal terms there have been a number of concepts which have had a limiting influence on the development of the planning system. For example, reasonableness, natural justice and equity. These and other similar concepts provide the background against which planning legislation is framed and operated.

McAuslan (1980, p. 2) notes that the law is more than just words. The ways in which they are put together and interpreted he states, embody ideologies and beliefs about power and society (see Section 2.5). Thus there is a clear danger when other countries adopt the system of planning and development control as it operates in the U.K. either in whole or part, and view it as a neutral framework for the exercise of power but not in itself biased or in support of or against any particular philosophy or ideology governing the exercise of that power.

Planners are given their power through an Act of Parliament and Scottish legislation seems on the whole to follow about a year behind England. Much of the detail is increasingly being reserved for subordinate legislation through statutory instruments. Because of the strong link between development control and the law, this is an area where lawyers have played a more significant part than in other areas of planning.

McAuslan (1980, p.147) notes that as a property owner sees the planning system as something which stops him from doing what he wants with his property and land, a natural reaction is to seek legal or other professional advice to overcome such a non-natural barrier. This reaction is taken account of by the provision of the appeal procedure and hearings for land owners within the administration of development control. These in turn, provide the entry point for lawyers who by means of legal reasoning are pushing the development control decision

non-legal commentators and planners.

Recognising the role of the law and lawyers in development control the courts must also be considered. Boynton (1979, p.68) comments that the British planning system gives little role to judiciary, unlike other systems (American and German for example) where the rights of owners and land-use plans are more precise than they are in the U.K. In the U.K. owners' rights lie in the hands of government and so an owner relies for a decision as to his rights on the interpretation of policies by the person or body who has prepared or approved the policies. Planners themselves do not regard the influence of the courts to be very important in planning. Hagman (1980, p. 168) in consulting a number of leading planning personalities in the U.K. as to their views on the most important events and influences on the development of planning in the 1970's found that only one out of the twenty two people consulted cited a case or judicial decision as important. This, he concluded, reflected the relatively insignificant role of the courts as they have no constitution against which to measure legislative and executive Acts. Some respondents did note increasing court activism in planning as courts have come to look upon some administrative decisions as quasi-judicial and thus subject to standards of notice, hearing impartiality, lack of bias and so on.

Grant (1982, p.608) identifies the two main functions carried out by the courts in relation to planning as:

- the resolution of disputes as to the interpretation of legislation;
- the supervision of the exercise of power by statutory bodies under general principles of administrative law.

interpretation closely linked with the validity of action taken. In short, the statutory interpretation in planning law is primarily concerned with assessing the limits or the powers conferred on planning authorities as interpreted by the courts. This century has seen a large system of control and related bureaucracy emerge to control the use and development of land. The legislation has provided the framework but the bureaucracy has been left to establish the goals of the system and to implement policies and take decisions to achieve them. In this system it is hardly surprising that disputes occur between property owners and officials. Many of these disputes revolve around the limits imposed by the courts on the power of the planning authority to pursue policies.

The role of the courts then is supervisory and is concerned with matters of law and not of policy, not with the quality of the decision but of the quality of the decision making process. In the same way as legislation is not neutral or void of ideology of philosophy, neither are the courts. McAuslan (1980) sees them as guardians of the ideology of private property, although he notes that in recent years there is evidence of more explicitly public interest considerations becoming relevant in judicial decision making. Loughlin (1980, p.14) notes that the courts are responsible for frustrating an alternative vision of planning revolving around the concept of need. Planning aims, he states, which embrace wider considerations that have traditionally been the case, are frustrated by placement in a legal straitjacket.

Grant (1982, pp.610-611) notes that the distinction between law and policy is a fundamental doctrine of judicial review and suggests that the demarcation between the two has remained intact since 1947. However, in that time, the extent of judicial review has developed dramatically and the demarcation line has

review over the quality of decision making or planning. This supervision exercised by the courts over the planning process has a profound influence over the way it operates. Some lawyers (Boydell 1979) have expressed a view that they would favour an extension of judicial review in development control in an attempt to have a more consistent application of the principles of administrative law. But as the concept of judicial review is related to procedural law, an obsession with procedures could result with a refusal or reluctance to examine the wider planning aspects of the case. Such an approach may well bring the law into disrepute and lead to public dissatisfaction. Clearly the extent to which planning decisions should be subject to judicial review is a complex issue and one which needs to be placed within a wider context of the kind of planning system we want.

#### 2.5. Ideology and Development Control

In recent times various writers have subjected various substantive aspects of planning to rigorous criticism, but strangely enough law has escaped. McAuslan (1980, p.1) suggests that few practitioners believe planning law to be in need of fundamental change. There is an assumption that law provides a neutral framework for the exercise of power but is not in itself biased for or against a particular philosophy or ideology governing the exercise of that power. The legal impact on the planning system has been ignored while lawyers view the law of planning as above and beyond reproach and in no way a contributor to the present crisis in planning.

But now, of all the elements which go to make up land-use planning, law is considered to be in need of fundamental re-examination. McCallum (1976, p. 25) comments:

"to secure any real understanding of how societies perceive and organise to solve their planning problems one

organisation."

In doing that McAuslan (1979, p.2) claims that:

"The law's contribution to the current disarray of planning can be understood in terms of the ideologies of law - the ideologies that the makers, users, operators and interpreters of the law bring to bear on and so infuse the law with that their ideologies become the ideologies of law. The law on closer examination is still a complex web of instructions but no longer neutral ..... a weapon in the struggle about the type of planning system that we should have."

McEwan (1983, p.1) notes that "it is in the nature of ideology to mask the complex interest in an Act" and that "in ideological terms the procedural or adjectival law within which such proposals are placed further obscures the ways in which various interests are being promoted or ignored". Law may be looked at in two ways. Firstly, as depicting the consciousness of society. Secondly, law may be seen as reflecting the particular interest of those who have the power to translate such interests into public policy, the tool of a dominant group in society to perpetuate such dominance (see McEwan 1983, p.3)

Britain is usually characterised as a liberal, pluralist and democratic society. (Simmie 1984, p.7) Planning as part of society would be expected to reflect these characteristics. The level of commitment to these ideals/characteristics would be expected to be indicated in law. McAuslan (1980) has argued that the development of planning law in the U.K. has enabled three distinct and competing ideologies to be given much sharper focus. These are as follows:

1. The ideology of private property. This ideology argues that the law exists and should be used to protect private property and its institutions. This may be called the traditional common law approach to the role of law and is

- advocated by the legal profession
2. The ideology of public interest. This ideology argues that the law exists and should be used to advance the public interest, if necessary, against those of private property and may be called the orthodox public administration and planning approach to the role of law and is advocated by local authorities and the planning profession.
  3. The ideology of public participation. This ideology exists and should be used to advance the cause of public participation against the other two and may be called the radical or populist approach to the role of law and is advocated by particular interest groups.

McAuslan goes on to argue that the context of planning law and its administration supports an ideology of public interest and at points will combine with that of private property to combat that of participation as it is seen as a threat to the power and position of the bureaucracy in government and of private property in society. The history of planning law indicates a constant ebb and flow between the ideologies of private property and public interest with one being dominant over the other at any given time. Different parts of the planning system may reflect the dominance of one or the other ideology. The continued dominance of these two ideologies and repeated 'community of interest' to defeat the ideology of participation is done to maintain the status quo of the existing state of property relations in society, socio-economic order and system of government and administration. McAuslan (1980, p.9) comments:

"Planning law is then a system of law and in its detailed provisions and modus operandi is not a tool for the redistribution of resources from rich to poor - but is a tool for the maintenance of the present allocation of resources."

but each approach squeezes out the ideology of participation which threatens both their ideology and position in the system. As the structure of society is challenged by the proponents of public participation, that ideology and the existing governing and planning elite are irreconcilable.

## 2.6 Factors Highlighting Importance of Development Control

Section 2.1 showed that in the past development control has not been a prominent part of the planning system. This however has changed in recent years with increased concern, interest and research being directed towards development control. As stated in the Introduction to the thesis, it is development control which is the main focus of concern within the context of this study of examining recent developments in planning legislation. But why should development control be the main focus? This section seeks to provide a number of pointers to why development control has been chosen.

### The Function and Role of Development Control

Development control has been until recently a rather neglected area of planning. This is somewhat surprising when one considers that development control is the main means by which the State directly intervenes to regulate the use and development of land and to implement both national and local policies, an intervention which is justified by a concern to act in the public interest. Development control also affords a substantial degree of discretion to local authorities in terms of administrative organisation, policy background and in the execution of the control function. Thus, development control is of interest to those concerned with the study of public policy making and implementation of these policies.

Development control is also important when one considers the number of development applications which pass through the

system each year. Table 1 shows the total number of applications received by planning authorities in Scotland between 1975 and 1982.

Table 1 Planning Applications in  
Scotland 1975-1982

Year	Number of Applications	Percentage Determined within 2 months
1975	12,652*	-
1976	36,643	-
1977	33,368	-
1978	38,882	75.7
1979	39,385	74.7
1980	40,146	72.6
1981	36,540	71.2
1982	32,874	76.1

\*from May 16th to December 31st only

Source: S.D.D. and House of Commons, Hansard, Issue 1285,  
July 22nd 1983, Written Answers, cols. 259-260.

The figures show a gradual rise in the number of applications in the late 1970's with a peak in 1980. In determining these applications, development control has a direct impact on the environment by its ability to allow, prevent or modify a development in terms of location, scale, appearance and timing.

#### An Area of Public Concern

Development control is an activity where the public come face to face with planners and planning, and also to some extent local government itself. This can happen in a number of ways:

- by directly applying to the planning authority for planning permission;
- by being notified of a neighbour's intention to develop;
- by coming across newspaper adverts or site notices which give intimation of development proposals.

If development control, as has been stated, is operated in the public interest, then the public should be involved and concerned about the operation of the system. However, what is the public interest? Is there such a thing and if there is, how can it be defined? To what extent should the planning process

allow individuals and the public to have a say in the decision making process, and how? Various opinions are forwarded as to the role of development control. Some see it as a means of protecting private property rights and some see it as a neighbourhood protection service. Whatever the role, development control is according to Raison (1978) the most tangible of planning instruments in the U.K. and has the greatest effect on the public. It is here, therefore, that the public may judge the worth and value of planning as a whole.

#### An Area of Professional Focus and Debate

During the 1970's development control was subject to three major inquiries (Dobry 1973, House of Commons Expenditure Committee 1977, R.T.P.I. 1978). Each inquiry put forward long lists of recommendations for change, a reflection of their own dissatisfaction with the development control system although none were fully implemented. The three reports together provide a useful commentary on the operation of the development control function with evidence of its main faults, the key issues seen to require attention and a number of recommendations for improvement. The findings have not met with universal agreement but have fuelled discussions of the role of development control.

These studies have, according to Davies (1980), concentrated on procedures rather than substance: on how the system works rather than what it is for. When discussion turns to matter of substance it tends to be about the aims of development control rather than its achievements. In her review of research on development control, Underwood (1981, p.183) concludes that there is little published which can be said to constitute a considered review of development control practice. Official reports and reviews, she says, do bring together much useful information, but much of the evidence is anecdotal in form and often relates to the operation of planning in general rather than on development

development control practice is limited in scope and analysis and is scattered among a variety of sources.

#### An Area Where There are Distinct Differences from England and Wales

Chapter 1 concluded that planning in Scotland has developed differently than elsewhere in the U.K. These differences are perceived by planners presently working in Scotland, many of whom have experience of working both in Scotland and England. The relative importance given to these differences is, however, a matter in which there seems to be no real agreement as to the significance of the differences. Some see them as superficial, others as more deep rooted and fundamental. One area where there are differences between the two systems is the legal system itself. Examples of differences between England and Scotland include the call-in powers given to the Regions, building standards, compulsory local plans in Scotland and detailed legislative and procedural arrangements.

These variations and many others of perhaps a more minor and technical nature, do reflect the fact that the planning system in Scotland is not identical to that in England and Wales. Investigating the differences and further changes and developments in Scottish planning legislation is therefore justified. Given that the Scottish system is different, it is interesting to see how changes introduced into it will affect its development. There may well be lessons to be learnt and applied, both in terms of success and failure, elsewhere.

#### An Area Where There has Been a Great Deal of Legislative Change

One crude indication of the commitment of a government to any area or topic is to determine the volume of legislative activity associated with it. In planning, there has been a great deal of legislative change since 1979 both in terms of major acts and subordinate legislation. This follows a period of relative calm

after the introduction of the new local government system and development plan system in 1975 which also saw a great deal of legislative activity in the planning system. The changes in legislation are examined in Chapter 5 in detail.

Development control is an area where the majority of planning staff are employed, it is statutory and involves both the general public and elected members. It is also interesting as recent issues such as the growth of material considerations demonstrate. It also points to more fundamental questions about the aims of planning, its legitimate concerns and its powers.

The chapter has examined development control as one part of planning now coming into prominence. Perhaps in the past it has been more of a negative, regulatory function. But that does not mean to say that nothing has been achieved. In recent years there have been more attempts to make development control more relevant by means of the extension of material considerations and increased use of bargaining in favour of wider public interest considerations.

### 3.1 The Importance of the Development Plan

The development plan, which in British terms covers both the strategic structure plan and the more detailed local plan, is the central planning policy document although there are numerous other policy plans such as the Housing Plan and the Transport, Policies and Proposals (T.P.P.) Plan. The development plan is a statutory document, its preparation is required and governed by legislative provisions and it remains in force until altered or suspended. The plan acts as a guide to and constraint on authorities exercising development control powers and helps to co-ordinate development investment and activity. A plan's influence is largely dependent on the extent to which it can influence events in the real world in accordance with its objectives. This is of course, a very difficult thing to predict and so some plans will have a greater impact than others.

The plan may be implemented or achieved in a number of ways: positively, by influencing action by the local authority, other public sector departments or agencies and private developers, and negatively, by preventing development going ahead which is contrary to the plan through the development control process.

Local plans (the lower tier contribution to the development plan on which this chapter concentrates) have been described as the workhorses of the reformed planning system (Grant 1982, p.115). They are intended to develop and detail the broad strategy contained in the structure plan and to elaborate how these policies will relate to individual areas and sites. They also provide a basis for the exercise of development control. The 1972 Act defines a local plan as a map and written statement, its purpose being to formulate in such detail as the authority think appropriate, the authority's proposals for the development and other use of land in that part of their district, or for any description

In recent years the role and importance of local plans has been stressed by the Scottish Office, a point identified by Thomson (1984) in her study of local plans in Scotland. This was commissioned by S.D.D. to evaluate local plan production and performance at the end of 1982 with a view to recommending improvements in these areas. The general aims of the study were to (The Planning Exchange 1982, pp.1-2):

- assess the factors which affect the production of local plans;
- assess the factors which affect the performance of local plans in operation;
- make recommendations on means to improve local plan production and performance.

A detailed case study of some eighteen local plans was conducted, reflecting a range of plan areas, planning authorities and different stages of preparation including adoption.

Thomson found that:

"The Scottish Development Department has consistently taken the view that total local plan coverage throughout Scotland is a desirable long term objective although, acknowledging limited staff resources, it has advised local planning authorities that priority, in the first instance, should be given to those areas where changes are expected and development pressures are likely to be greater." (Thomson 1984, p.1)

Local plans have been stressed in the following ways:

- P.A.N. 30 on local plans stated (S.D.D. 1984, p.2) that "the purpose of local planning is to guide development and changes in land use so that the physical environment can best serve the community";
- S.D.D. Circular 24/1981 on development control stated (p.3) that "up-to-date local plans containing clear state-

forms of development in specific parts of their area can greatly simplify the consideration of applications."

-S.D.D. Circular 21/1983 on housing land supply argued that local plans should provide for adequate land supply as they set out in detail the provisions of the development plan, thus leading to well founded decisions and certainty. (S.D.D. 1983, para.8);

- P.A.N. 29 on Planning and Small Businesses stressed the important role of local plans in giving an indication of the attitude towards development and in providing information and certainty to developers (S.D.D. 1982, para. 2.3-2.9)

The list is not intended to be comprehensive, but simply to highlight the fact that central government see local plans as important and necessary, at a time when planners perhaps feel the planning system is under attack.

A number of those involved in Scottish planning would endorse the importance of the local plan, for example, former Scottish Office Environment Minister, Mr. Allan Stewart, speaking to the R.T.P.I. Scottish Branch Conference in 1982, spoke not only on the importance of having plans but in operating them in close co-operation with those whose development proposals they are intended to guide. The plans are needed to identify opportunities and priorities and to allocate resources. Plans must, he said, remove doubt and uncertainty and provide an adequate basis for decision making.

During an interview, Chief Reporter to the Scottish Office Reporters Unit, Mr. A.G. Bell, shared these views on local plans, particularly as they affected appeals. He commented that a local plan gives the best guidance of all to a Reporter in an appeal situation, but only if the plan was up to date. In the absence

progress and to consider to what extent it would remain the same in its final form. Decisions using draft plans were not to be ruled out. He went on to say that a Reporter will look at the local plan for as much help as he can get and will not seek to overturn local plan policies, as long as the plan was clear cut and up-to-date, thus making the Reporter's job much easier.

Further comments on the Reporter's view of a local plan were received from Mr. William Cape who worked as a part time Reporter before his recent retirement. He commented on the fact he had found in his experience, local plans to be more useful than structure plans and that he was keen to stress the need to get some sort of local plan formulated quickly to form the background of development control decisions. He thought it important for a planner exercising responsibility for development control to have some sort of plan to work on, on which he could base his judgement and decision.

Practising planners on the whole see local plans as being useful in providing an overall framework but also recognise that local plans do have certain limitations and that they can never cover every eventuality. For example, Hanley is sceptical of local plans in that although they were intended to provide a framework for development control this has not happened. Early plans, he says, took too simplistic a view. Local plans seem to be about consensus planning whereas development control is more complex and complicated than local plans give credit to. Tough suggested that local plans could have a more effective role if more emphasis were given to the policy aspect. Developers have a mixed view, with some using local plans regularly and others relying on personal consultation with planning officials for their information. For example, views expressed during

interviews include those of Pienderleath who commented that planners sometimes stifled development by failing to finalise plans, but he did make regular use of plans and did find them helpful in providing guidance as to what was or was not acceptable. McCulloch on the otherhand did not make a great deal of use of local plans, preferring instead to extract any information from planners by means of informal discussion prior to a formal application being made. Thomson (1984, p.55) concluded in her study of local plans that there was scant evidence to suggest that local plans were being used to any great extent outside the local plan-making authority and that some practices within authorities suggested that once the plan has been produced it is forgotten.

Despite the importance of local plans, both local plans and structure plans have been subject to much criticism in recent years. Thomson's recent study of local plan production and performance (Thomson 1984, pp.47-48) include the following:

- timescales of plans are not always explicitly stated thus leading to confusion;
- many plans lack an overall strategy and an assessment of the plan's overall impact;
- plans have no definition of concepts such as policy or proposal;
- implementation, monitoring and review sections are generally weak;
- the plan's message is not always clearly portrayed on the proposals map;
- content is biased more towards justification rather than implementation;
- the variation in the range and complexity of issues is not reflected in the size of document, in other words there are few short, simple plans.

(1981) has criticised local plans on a number of counts: they do not always set clear priorities and opportunities for development; plans sometimes become too preoccupied with an authority's own proposals; participation programmes have failed to involve all sections of the community; business interests have not been sufficiently consulted in the formulation of plans; and plans have failed to give a clear direction towards the future.

Another source of criticism of local plans from a Scottish point of view is Wannop (1980, pp.10-11). He notes that at the time of writing, although many large towns had started local plan preparation, only Inverness had reached draft stage, while none of the four cities had proposed a city plan (and still have not) and of the 82 plans to cover the four cities, only three had been completed and adopted in Glasgow and none at all in the other three (at April 1984 of the 69 plans which are scheduled, only 17 have been adopted).

Thus there was no prospect of the cities having a complete coverage of local plans fitting together to give a unified view on a constant time horizon. Wannop also criticised plans for failing to promote their areas, and acting as a prospectus which could help investment in urban areas.

A number of other points, not directly criticism, but observations on the experience of a number of local planning authorities were put forward by Kennedy (1982, p.109). They were as follows:

- the necessity of achieving total coverage raised the possibility that resources would be spread unevenly with the later plans getting less;
- conflict with regions impeded the implementation of a local plan.

with sectoral plans of the local authority;

- sometimes there would be a lack of realism in local plans in terms of budgetary cycles and other sectoral plans;
- there was a lack of systematic monitoring of local plan progress, while difficulties in amending or reviewing plans were seen as contributing to the lack of flexibility which made synchronisation difficult;
- there was little attempt to account for uncertainty in local plans;
- local plan content was dependent on and reactive to private sector demands and pressures;
- planners working in local plans were aware of the need to maintain a high degree of credibility with other departments, agencies and private sector.

Local plans have been much criticised, perhaps not unexpectedly as local authorities have a 'first go' at preparing them. Only in a limited number of areas have authorities completed comprehensive coverage and moved on to preparing a second round of plans. The lessons are still being learnt, and as they are, no doubt they will be applied in the future. However, despite the criticisms and failings of local plans so far, they remain an important part of the planning system and central government remains committed to full coverage.

### 3.2 The Purpose and Function of The Local Plan

The key to understanding the purpose and function of the local plan in Scotland is to be found in Planning Advice Note 30 (S.D.D. 1984). Prior to the publication of this P.A.N., which replaced a number of earlier ones, S.D.D. conducted their own appraisal of local plans and further commissioned the study mentioned above and found them often to be ambiguous, vague and not providing a sufficient degree of certainty to developers or

authorities in terms of achieving comprehensive coverage of plans and the quality of plans produced. (Williamson 1981, para. 14 and Thomson 1984, p.1). This appraisal was initiated because of an awareness of the deficiencies and weaknesses of local plans prepared up to that point. New advice was needed to speed up production of good effective plans.

P.A.N. 30 sets out the purpose and function of a local plan to be as follows: (S.D.D. 1984 para. 1).

- to stimulate and encourage development where appropriate;
- to indicate land where there are opportunities for change;
- to apply national and regional policies;
- to give a clear locational reference to policies for the development, change of use or conservation of land, and to proposals for development;
- to show how those who have an interest in the area, e.g. the authority, private owners, residents, commerce, industry, developers and investors could contribute to the implementation of the plan;
- to provide an adequate basis for development control;
- to indicate the intended future pattern of land use and development in the area by showing how existing development and the policies and proposals of the plan fit together.

All these functions are equally worthy of attention and investigation. However, in the overall context of this thesis, it is the last function of providing an adequate basis for development control that will be examined. In the previous chapter it was noted that development control and local plans are linked in that a planning authority when determining an application for planning permission will have regard to the

The value of having an up to date policy base in a local plan was also stressed by the R.T.P.I. in its Practice Advice Note on handling planning applications (R.T.P.I. 1981, p.123):

"Development control decisions need to be underpinned by firm, clear, relevant and up to date plans and policies which can be readily identified and understood by professional and lay people alike. Where there are no local plans, policies should be prepared to give clear guidelines for detailed planning to supplement structure plans. Other policies should be clearly set down and in all other cases, plans, policies, standards and criteria should be published by the local planning authority."

But the relationship between local plans and development control goes further. It is not just that local plans should provide an adequate basis for development control, often it is through the means of development control that a plan is implemented. This is noted by P.A.N. 28 (S.D.D. 1981, p.5) which states that the written statement should explain the links between local plan policies and the decision making process (implementation will be examined in Section 8.7) Underwood (1981, p.144) also recognises the importance of the development control, local plan relationship, in that development control is the major vehicle for implementing plan policies at the local level and that policy outcomes in local plans are only realised incrementally through decisions on individual cases and depend on a range of factors other than the development plan.

To return to the role of the local plan in putting forward development control policies, the importance of this function of the local plan cannot be over emphasised. And it is a function in which there can be some degree of public involvement. A number of commentators stress the importance of involving the public in the local plan preparation process and in the formulation

of development control policy. S.D.D., for example, in their 1977 review (S.D.D. 1977, p.10) stated that making development control policies open to close public involvement in preparation seemed desirable and could perhaps be the main focus for participation rather than at the level of individual planning applications. Donnison (1983, paras 9-11) points to the need of having policies for growth or development based on strong political leadership, informed by open debate which produce recognised conclusions about social priorities. Guidelines developed in such a way, he says, bring consensus and give the planning authority the ability to proceed. Without such an open public debate on policies, the local planning authority, he argues, will lose its power to reporters, courts and lawyers as policy is made on an ad hoc basis by these people outwith the influence of the local planning authority.

Williamson (1981, p.3) points out that local plans should not be seen only in terms of proposals but that their role as a basis for development control work is perhaps more important. Only by founding development control in the statutory local plan can the planning system work at its most efficient. Otherwise, developers challenge decisions and there is varying use and interpretation of non-statutory documents and ad-hoc policy statements leading to delay, confusion and an unnecessary burden on the system through expensive and time consuming appeals.

Ray (1983) points out that without forward planning, development control becomes a bureaucratic, sterile, ad hoc regulatory system which fossilises attitudes and loses any real purpose. The development controller therefore becomes an environmental policeman. Forward planning through both structure and local plans provides an opportunity to insert vision into planning and decides where the community ought to be moving and that this can involve the public which adds some degree of

credibility to the system. One clear danger is that without some sort of forward planning, with accepted policies laid down in some form the pragmatic, short term view will prevail and this may lead to a bending or reversal of the policies that are to be implemented. A further danger is that once having established planning policies, one can become trapped by them. However, a slavish commitment to policy is unlikely to happen given the discretionary nature of the British development control system.

Having therefore established the importance of the local plan and its varied functions but particularly that of providing an adequate basis for development control, the following section seeks to examine local plan progress in Scotland in terms of to what extent the aim of S.D.D. of achieving comprehensive coverage is being met.

### 3.3 Local Plan Progress in Scotland

In Scotland, S.D.D. have maintained an ongoing commitment to the objective of complete coverage by local plans first put forward in the 1973 Local Government (Scotland) Act. Following local government reorganisation and the introduction of the new planning system there was therefore a call for the early preparation of local plans. They could be prepared in advance of the structure plan and given the patchy coverage of up to date old style development plans, many authorities began to prepare programmes for plan making and quickly went ahead in preparation of the new plans. Other authorities however, remained unconvinced by the arguments for an early start and waited for a clearer context to be provided by the relevant structure plan and were in some cases unsure as to the need for complete coverage and their ability to achieve it quickly.

In considering how local plan work could best go forward, bearing in mind limited staff and resources and the competing

authorities have taken the view that a single plan covering the whole district is the best means of achieving coverage quickly and efficiently and see a particular advantage in being able to consider the competing claims on land and resources to be settled across the board in a single exercise. Kennedy (1982, p.105) makes the following general points on a District plan:

- such a plan is seen as an effective link between a region wide structure plan and a district;
- management decisions and a consistent policy approach are easier to achieve in one document;
- priorities can be decided on a district wide basis and so no advantage accrues to the area which might have had the first local plan;
- such a plan can tie in with and complement other district wide plans;
- it can lead to a better co-ordination and setting of priorities.

At present, four authorities in Scotland have adopted this approach. They are Banff and Buchan and Gordon Districts in the Grampian Region and Monklands and Inverclyde Districts in Strathclyde Region.

However, despite the advantages that such an approach can bring, most authorities have opted for the preparation of a number of plans over time and some have started in priority areas, others choosing a non-priority area as a training ground to gain experience for the more difficult and complex plans ahead. Even with a multiplicity of plans some authorities have acted quickly and indeed have achieved comprehensive coverage i.e. Highland Region.

At present, only four (and they are those with District wide plans) authorities have achieved full coverage of local plans. Many doubts continue to be expressed with regard to the requirement

for complete coverage given the recent reductions in public spending, increasing constraints on resources and the fall in confidence following the failures of many early plans. Where speed has been essential, some authorities have gone ahead and prepared non-statutory plans which have been adopted as interim policy statements. This happened in Motherwell district for example. Other authorities however, such as West Lothian, have rejected the call for total coverage and as mentioned, are seeking to cover their area with a mixture of local plans, policy statements and settlement statements.

Progress towards the goal of comprehensive coverage has been disappointingly slow. Many plans have taken longer than expected to prepare and the statutory expression of policies for all areas of Scotland is still some way off and given the stance of authorities like West Lothian, one has to wonder whether the goal will ever be achieved. Even when plans are completed, they have to be kept relevant and up to date and should be monitored to check on the implementation of policies contained in the plan.

S.D.D. have encouraged local authorities to review their local plan programmes and to secure coverage more quickly. They have stressed the following (Kelly and Evans 1979):

- up to date plans help ease the problem of development control;
- local plan exercises could be more modest in character and set out development control policies and proposals for the immediate future;
- small area plans could be amalgamated to achieve coverage quickly;
- that publicity and consultation should be concentrated at draft stage and it need not be onerous or time consuming;
- some authorities have found a short account of main policy aims useful in giving a focus to local plan preparation.

a change in emphasis in plan preparation in some areas. Larger plan areas were being tackled, lengthy surveys were less in vogue, tighter timetables were being aimed at and many authorities had an increasing commitment to local planning. Table 2 shows plan progress over time.

Table 2. Local Plan Progress 1978-84

<u>Date</u>	<u>No. Plans Being Worked</u>	<u>No.Plans needed for coverage</u>	<u>No. Adopted</u>
Spring 1978	119	424	1
" 1979	-	400	13
" 1980	195	345	24
" 1981	232	333	50
" 1982	258	325	66
" 1983	263	312	92
" 1984	270	306	128

Source: S.D.D. Development Plan Bulletin, published quarterly.

The table shows that over time the number of plans being worked upon and adopted has steadily increased while the number of plans required for coverage has decreased (see below). In a comparison of the rate at which development plans were being prepared and approved in Strathclyde, under the old and new plan system, Coon (1981) concludes that whereas it took five years to submit half the plans after 1947, it was likely to take ten years to reach the equivalent stage with local plans. Although the approval time of the new plans had been reduced, this was outweighed by the longer time taken to reach the finalisation stage. Coon commented that the coverage of the region by adopted local plans would continue at an even slower pace than coverage of approved development plans under the old system, and this despite greater experience and a larger planning profession.

In addition to the time taken for complete coverage to be achieved, some concern has been expressed at the time taken to prepare an individual local plan. Williamson (1981, para. 14) notes that the underlying trend has been a reduction of the time

taken for each stage and for the plan to be completed overall. As ideas have been developed, working practices defined and advice from S.D.D. disseminated, the process has become shorter. Table 3 shows the average time for plans to reach adoption for plans started between 1975 and 1979.

Table 3. Time taken to complete Local Plans  
-1975-1979

<u>Year Plan started in</u>	<u>Number of Plans</u>	<u>Average time in months</u>
1975	6	59.2
1976	13	39.2
1977	22	34.0
1978	14	23.6
1979	6	17.3

Source: Williamson 1981, Local Plan Progress. Paper given at Symposium held at the Glasgow School of Art, January 15th 1982, p.3.

Thomson's findings of speed in the plans included as case studies which had reached adoption stage indicated that the average time spent on plan preparation was three years ten months and that although some of the case studies which were more recently started appeared to be on course for speedier preparation, there were others which showed little sign of improvement. (Thomson 1984, p.29).

One of the ways in which planning authorities have sought to increase the speed of plan preparations has been for authorities to revise the number of plans needed for comprehensive coverage. There is now a very definite trend of fewer local plans. The following table illustrates the most dramatic reductions of plans among Scottish local authorities.

<u>District</u>	<u>No of Plans required Winter 79/80</u>	<u>Spring 1984</u>	<u>Change</u>
Edinburgh	19	14	-5
Falkirk	12	9	-3
Dunfermline	11	5	-6
Clydebank	8	4	-4
Inverclyde	5	1	-4
Renfrew	11	6	-5
Highland	30	23	-7
Shetland	14	6	-8

Source: S.D.D. Development Plan Bulletins.

P.A.N. 28 (S.D.D. 1981, para.3) stated that the original number of plans would take an unacceptable time to complete, so fewer plans covering larger areas could be dealt with almost as easily. It also urged local authorities to keep their programme and pattern of local plan coverage under review and that priority for plans should be in areas where pressure for change was the greatest.

The major issue in local plan production has been the preparation time. Thomson (1984, p.55) identifies the main factors which have led to production delays as ones which "are largely within the control of the plan making authority." The two main factors she also identifies are the weak internal management and organisational framework set up within the local authority to process a local plan, and secondly, the relationship between the local plan and its respective structure plan. Delays can be caused by the mistiming of preparation leading to one plan getting out of sequence with the other or perhaps because of a basic conflict between the two plan making authorities either on subject matter or on proposed time horizons.

The extent to which local plans have been prepared to cover Scotland and the speed in which they are prepared are two important factors in providing a policy base from which to

quality of the plans and the clearness with which they set out policies. The following section seeks to examine the quality of local plans.

#### 3.4. The Quality of Local Plans - How well do Plans set out Policies?

The planning process generates an abundance of policy statements which issue from all levels of government, cover a wide range of topics and provide guidance on land uses and other matters relevant to a planning authority when determining planning applications. A question remains as to how well local plans do this.

Section 3.1 has already noted the fact that local plans have been subjected to some criticism, some of which relates to the presentation of the plan and therefore to the overall quality of the plan. Further to those criticisms, Williamson (1981 paras. 13-14) notes a lack of distinction between land use or development control policies and other policies in the local plan. He states that:

"plans do not generally adequately set out criteria for the control of development, i.e. development control policies, as required by the regulations. There is a preponderance of plans revolving around proposals with only secondary importance being given to development control policies. Even then many development control policies are too flexible and their implementation wide open to interpretation."

He then goes on to list a number of criteria which development control policies should meet:

- they should deal only with the development or other use of land;
- they should be limited to the local plan area;
- they should be clearly distinguishable in the text as a policy;
- they should deal with criteria for the control of development;

- they should be location specific;

- they should be self-contained, not relying on another document;

- they should be sufficiently clear to inform a development controller whether a planning application would accord or not.

Lamb and Brand (1983) have considered a practical evaluation of policies by examining a number of policy statements from local plans which have been tested at appeal. They conclude that many policies provide an unsound basis for decision making and go on to suggest a number of criteria that might be employed in assessing what weight should be given to the various policy statements. Those criteria are as follows:

- incapable of implementation;

- inconsistency between policies produced at different levels of government;

- policies containing ambiguous or ill-defined terms;

- inconsistency between different documents produced by the same level of government;

unnecessarily restrictive policies.

One major factor which contributes to the quality of a local plan is the level of detail a plan contains. To be capable of use, a local plan, particularly in a development control situation, needs to be of some considerable detail. But how detailed can or should plans be? A number of advantages and disadvantages can be identified relating to a high degree of specificity in local plans. These are set out below.

Advantages:

- high specificity makes it easier to tell whether decisions are being made in accordance with policy or not;

- high specificity helps to dispel uncertainty in the minds of the public and developers as to the future intentions of the Council;

- reasonable specificity about the assumptions on which the policy depends and the expected effects of the policy can contribute to improved future policy making.

Disadvantages:

- development plans are surrounded by lengthy formal procedures and in a changing environment specific policies are likely to become out of date very quickly. Specificity can become something of a 'strait-jacket' in these conditions;

- policy, by its very nature, generalises and indicates, how the Council intends to deal with certain classes of decision over a wide area. Local circumstances surrounding individual decisions are likely to vary in a number of ways yet policy statements in plans are applicable to the whole area;

- specificity in policy often politically contentious among elected members who do not like to be tied down by highly specific statements of policy - this may inhibit their ability to respond to political pressures and constituency interests.

(from Adens, D. Monitoring and Review of Scottish Structure Plans, Interim Report, September 1983)

Pountney and Kingsbury (1983, p.147) note that although development control requirements are perhaps unnecessarily detailed for quiescent areas the system cannot be easily applied to areas undergoing rapid change. It is in development control that the abstractions of plan preparation come face to face with reality, therefore the plan must be relevant to the local situation. The level of detail is a factor of the experience, number and turnover of staff, so for example, with inexperienced staff and a high turnover, a higher degree of specificity can be useful. However, situations can and do change rapidly and plans do take a considerable amount of time and effort to change. In

those situations less specificity in the plan may be more appropriate to allow for greater flexibility. There is therefore, a clear conflict of interests between having a plan which is detailed enough to inform the public and meet the development control needs of the authority, yet which retains some flexibility to accommodate inevitable changes. Thus the degree of detail directly affects the balance between flexibility and rigidity of a local plan.

Ray (1983) notes the danger of being trapped by a policy. Given the discretionary nature of the development control system, this situation could be avoided as planners seek to retain maximum flexibility when determining an application for planning permission. It also raises the question of whether planners actually believe in and have confidence in the plans that they produce. If they did, so runs the argument, they would stick to them. This position however fails to recognise that circumstances can and do change thus directly affecting the relevance of policies. A plan can become easily out of date and it would be wrong to impose policies, however 'right' they were at the time when the plan was prepared, in a totally different set of circumstances.

Underwood (1982) is one commentator who has recognised the tension between the poles of certainty and flexibility where plans have to meet rapidly changing and uncontrollable circumstances. This she illustrates by comparing the U.K. and Dutch system of local plans. The Dutch system is one based on the concept of legal certainty in very detailed plans and so, in theory, the system is unrealistically rigid. In practice, however, all parties find ways of by-passing plan requirements. The U.K. system on the otherhand is more flexible where development control provides the main arena for realistic negotiation and

allows incremental changes to policy to be made in response to emerging changes and pressures. The example of the change of policy concerning a row of terraced houses used by the University of Glasgow quoted in the Introduction is a good illustration of this. The danger with such a system is that development control can become purely responsive and ad hoc with little basis in publicly accountable policy frameworks. Boynton (1979, p.71) comments on the present system in operation in the U.K.:

"We have devised a system of planning control which removes all prospects of development from owners. We have rejected a rigid plan making system which would by reference to zoning and other ordinances give owners clear and unequivocal rights. We have a plan making system which does not guarantee certainty or consistency of decision".

He goes on:

"We must ensure that local plans have the degree of precision that P.A.G. intended. If certainty is an objective of planning control, local plans can help to secure it. The danger is that planners and politicians may prefer uncertainty either through inertia, the desire to promote contractual relationship with developers or an over emphasis on the value of flexibility."

But how does the private sector view the debate between flexibility and rigidity? Capner (1982) comments that the most important need of the private sector is for local plans to put forward policies and proposals for land release on residential commercial and industrial uses. He says that plan preparation has gone on too long, is too complicated and involves too much data collection. Problems are compounded by the inflexible attitudes of the local planning authority whose view seems to be that if a proposal is not in the plan, the application is refused, although he does accept that plans cannot anticipate every eventuality. He also points out that there is a danger

that departures from policies and proposals in the plan can undermine public credibility in the plan and plan making process, especially where the public have been involved in plan preparation and have been encouraged to be so. Some authorities, according to Capner, accept that plans are open to change if they can be convinced that circumstances have changed and that the essential elements in the plan would not be compromised or that specific community gain could be achieved. "Any increase in flexibility in the planning system acknowledges that the development controller can provide a useful contribution in his role as broker" (Pountney and Kingsbury 1983, p.149). Added flexibility certainly increases the scope of planning authorities to achieve results which will be acceptable to all parties concerned but it can become a drawback if a decision is disputed.

Grant (1982, p.149) notes that it is the development control officer's dream to have both a firm up to date and flexible plan to work from but recognises that no plan, however well it may be conceived, can make provision for every changing circumstance. The level of detail of a plan therefore rests on two factors. Firstly, the ability of the plan to predict the future, and secondly, the extent to which a plan is to be followed.

### 3.5 Non-Statutory Plans and Policy Statements

Development plans have often been criticised as being of little value in guiding and controlling development, a failure which is added to by the inability or unwillingness of the planning authority to keep them up to date. If for any reason plans are either not prepared, not kept up to date or are too rigid, the temptation is for a planning authority to prepare non-statutory policies and plans and to leave a statutory policy vacuum thus allowing the system to lapse into ad hoc policy making. In recent years there has been a growth in the use of non-statutory plans and policy

reflect a growing disenchantment with statutory planning i.e. the complex procedures involved in preparing or amending a plan, the limitations on issues that can be covered and included and so on.

Yet non-statutory plans have played a highly significant part in U.K. planning over the last 20 years or so (Grant 1982, pp. 138-144). Before the approval of old style development plans under the 1947 system all planning was non-statutory. When these plans were approved and became operative, discretion was narrowed considerably and local authorities had little freedom to depart from the provisions of the development plan. Over time things have changed considerably until in the present the courts have come both to recognise and accept discretion in the planning system and government has come to accept that non-statutory planning offers an interim solution to the problems of delay in statutory plan approval.

The function of non-statutory plans, of which Ray (1983) notes there are three main types: those to cover areas, individual sites or particular kinds of development. Bruton and Nicholson (1983) provide a comprehensive list of the forms of non-statutory plans, see Figure 9. Non-statutory planning documents in most cases, have been used as a temporary expedient, so allowing an authority to maintain up to date plans and policies, although Slack (1982) argues they are not substitutes for the real thing.

Figure 9. FORMS OF NON-STATUTORY PLANNING DOCUMENTS

Development control policy or practice notes.	Development briefs.
Informal local plans.	Single topic based statements.
Other policy statements.	Local plan briefs.
Informal joint studies.	Special area work.
Design guides.	

Source: Bruton and Nicholson 1983. Non-Statutory Local Plans and Supplementary Planning Guidance. Journal of Planning and Environmental Law, p.434.

Scotland still remains some way off from the goal of comprehensive coverage of local plans, and to some extent this is a gap which non-statutory planning documents have filled. Such documents have the advantage of being flexible because there is no statutory provision to prescribe their form and content. There is a danger though that such documents may be used to over-ride the formal plan making process and so deny public involvement and the procedural safeguards which exist in statutory planning. Statutory plans may offer a greater degree of legitimacy for policies but non-statutory planning may be more appropriate if a review or reappraisal is needed before preparing a fresh planning framework. They can also be advantageous from the point of speed, flexibility, easy preparation, flexibility and robustness. Slack (1982) notes that "undoubtedly supplementary planning guidance has a role to play as a very positive stage between a formal local plan and development control".

S.D.D., while maintaining the comprehensive coverage requirement, have recognised that non-statutory policy statements do exist and are used, but go on to make clear that they are not part of the development plan, and that they can only be considered under the heading of a material consideration. Planning authorities then are free to prepare such documents, but not instead of development plans.

In her study of local plans in Scotland, Thomson (1984, p.44) notes that there is little difference, from the local plan making authority's point of view, to be found in the degree of commitment ascribed to either statutory or non-statutory policies. Most of the non-statutory policies which have emerged have evolved over the years without reference to public consultation procedures, although there are exceptions (Thomson 1984, p.45).

ory and non-statutory policies and one to which Reporters may attach some significance in reaching planning appeal decisions. As for the status of non-statutory policies at appeal, Mr. Bell, Chief Reporter, commented in an interview that where there is no local plan a Reporter will consider other policy statements adopted by the local authority. Cape, again in a personal interview, (an ex-reporter, now retired) stated that Reporters dealing with appeals will pay great attention to both formal and informal local plans or even local authority policy decisions having council backing. Therefore, almost as much status is given to non-statutory plans as is given to statutory plans.

A number of writers have argued for a greater emphasis on non-statutory documents. Healey and Elson (1982) suggest that local plans may only form a baseline for negotiation between a developer and the planning authority, with the policy being formulated more significantly through other kinds of documents. Thorburn (1983, p.7) put forward a suggestion to abolish the distinction between statutory and non-statutory plans as one of his suggestions to improve the planning system. He stated:

"it is hard to see any justification for the present division between formal local plans and informal planning policies, guidance, briefs and plans. The division between formal and informal documents is arbitrary and may not be consistent even within the area of a single authority."

A summary document which brought together various suggestions from a series of regional conferences held to discuss the Thorburn paper also supported this idea (Thorburn 1983, p.6):

"no-one at the regional conferences supported maintaining the present distinctions between local plans, informal plans, design briefs and supplementary planning guidance. All of these documents indicate the policy stance for the time being of the local planning authority. They need

to be kept up to date. All should be subject to the appropriate amount of public participation, and if necessary, investigation by a Ministry inspector."

A minority view was that great importance should be placed upon the plan which has followed specific procedures to approval, regardless of the quality of its content or the time which has elapsed since its preparation.

The Scottish regional session however, promoted a different view. The conference report states (R.T.P.I. 1983, p.1):

"The suggestion in the paper that the distinction between statutory and non-statutory plans should be ended was criticised on the grounds that it might do more to down-grade the existing statutory plans than to up-grade the non-statutory plans."

Non-statutory policies may be termed alternatives to the statutory system. Two particular kinds of alternative have made their mark in Scotland in recent years. They are the planning agreement of enterprise zones and the S.D.A.'s area project management agreement. Only the latter is discussed here, the enterprise zone concept is explored later in Section 6.2. Two important questions related to these new developments are firstly, to what extent are they complementary or in contention with the statutory planning system and secondly, to what extent do they offer lessons for local planning?

Mr. John Condliffe, of the S.D.A., speaking of the various area projects at a Planning Exchange seminar in 1981 on gaining credibility for planning (1981, pp.4-5) described the activities of the Agency as being basically complementary to the statutory planning system especially in the fields of urban and land renewal and economic development. Commentators such as Wannop take a different view (expressed in an interview) that the S.D.A. are taking on board a lot of work which local authorities should be doing but have either failed to do it or have not done properly.

the Agency he says, is now doing a lot of both strategic and local plan work in the sense of identifying priorities and undertaking urban renewal work.

Area projects can be divided into four groups: the disaster response in Clydebank and Garnock Valley through Task Forces; G.E.A.R.; smaller integrated projects such as those in Blackness, Leith and Coatbridge and self-help projects. These integrated projects are the ones, suggests Condliffe, that have the most obvious comparability with local plans and their operation may indicate possible lessons for local plan implementation. Such projects are characterised by:

- having specific objectives (realistic rather than comprehensive);
- having quantifiable targets and limited time horizons;
- having well defined strategies to meet targets in the short timescale;
- having a commitment of resources from those taking part in the project to meet the targets.

The aim of the projects, Condliffe went on to say, should not lead them to compete with local plans, rather they would be complementary, approaching problems which could not be easily confronted within the confines of a local plan. The basis for these projects is contained in the Project Agreement. It emerged from criticisms of earlier involvements and is constituted to present a review of opportunities and problems within the project area coupled to agreed expenditures by the S.D.A. and its local authority partners. Specific investments in such things as roads, sewerage and environmental improvements are specified in the agreement as is the duration of the project. Targets are in most cases quantitative and readily monitorable, for example, number of jobs to be created. Wannop (1984, p.317)

evaluation, the project agreements contain important potential for creative urban planning and provide a new model within the statutory system of development planning."

Gulliver (1984, p.325) notes that the agreement when drawn up formally commits both the Agency and the local authorities to a defined programme and a level of expenditure. It is not legally binding but its 'moral' force is strong. It has problems at the operational stage but has imposed a much needed discipline into the project formulation stage. Local authorities no longer have an open ended access to Agency resources with no strings, instead they become partners to a negotiated contract which specifies their responsibilities and obligations to the project. One danger though which Gulliver notes, is that the agreement by over formalising programmes and budgets may reduce the flexibility of the project and constrain the ability to respond to changed market circumstances and conditions.

One example of where both an area project and a local plan exist side by side is in Coatbridge. The following reply was received in response to a question on the relationship between the area initiative and the local plan covering the area involved (Cowe 1983):

"Monklands District is covered by one District wide comprehensive Local Plan which was adopted early this year. The S.D.A.'s Area Initiative (the Coatbridge Project) relates to an area identified in the Local Plan as an improvement area declared by the District Council under the Inner Urban Areas Act. The aims and objectives of the Coatbridge Project as contained in the Project Agreement were drawn up in consultation with the District Council and are by and large compatible with the Local Plan, the exception being some of the sites identified, for private sector housing in the Project Agreement. However as the sites in question were derelict and within the built up area and not likely to be developed for industrial/commercial purposes the Council

accepted their identification for housing purposes in the Project Agreement and decided to take this into account in the next review of the Local Plan.

Therefore in the case of Monklands District the Project Agreement could be said to be complementary to the Local Plan due to the fact that the problem which the Project Agreement addresses in one which was identified in the Local Plan. Indeed it was the District Council which after deciding to declare an improvement area, approached the S.D.A. seeking their assistance to tackle the problems of industrial decline and dereliction in the Project Area.

Turning to your question on whether Project Policies support or undermine Local Plan proposals as I have already stated the Project Policies by and large support and indeed arise from Local Plan Policies and Proposals.

However, in considering any private sector proposal there is no doubt that the S.D.A. and the Local Authority's have different parameters with the result that the S.D.A. are likely to support a private development initiative even where it is directly contrary to Local Plan policies. Given the nature of the different organisations involved in the Project Agreement this is understandable. However I consider that such cases are likely to be a minority and that most proposals generated by the Project will conform with Local Plan Policies and Proposals.

The S.D.A.'s attitude to the Project Agreement once it is concluded seems to be that it sets the scale of commitment by the various partners and gives a very general outline of the objectives to be achieved and the Policies and Proposals to be used in implementing these. Therefore even after the Project Agreement has been signed the situation regarding what actually is implemented on the ground seems to remain very fluid so far as the S.D.A. are concerned. Obviously circumstances are going to change over the period of the project and there is therefore a need for some degree of flexibility but it would appear from our experience of the first 8 months of the Coatbridge Project that the implementing division of the S.D.A. consider the Project Agreement as being no more than a

aims and objectives of the project. Given this it is difficult to answer your question as to whether the Project Agreement is a suitable means of implementing policies and proposals."

Although this is only one example, it presents the project agreement as being complementary to the local plan rather than opposing it. From interviews with staff at Clydebank District, they too take the view that the local plan is not in conflict with the enterprise zone proposals although in this instance, the local plan has lagged behind the enterprise zone in preparation and timing. But given the land use structure of the town and the policies being pursued there should be few problems in integrating the two. Certainly both area projects and enterprise zones have been designed for specific purposes, one of which is to make things happen on the ground. The status of a plan, whether statutory or non-statutory may be argued as being of little relevance, if the policies and proposals contained in the plan are not implemented, a part of the local planning process that Thomson (1984, p.56) finds has been somewhat neglected as authorities have put most effort into preparing the plans. The following section examines the implementation of plans.

### 3.6. The Implementation of Plans

In recent years there has been an increasing emphasis on implementation within planning. Former R.T.P.I. President Geoffrey Booth took as his 1980 Presidential theme Getting Things Done. He said that planning was an activity judged by what happens on the ground (Booth 1979). In 1981 the R.T.P.I. annual conference also stressed the importance of action and took its theme Planning Achievements on the Ground. The present Conservative Government have also urged the importance of action and of taking steps through legislation to create enterprise zones, urban development corporations, loosen planning standards

detail in later chapters). On a wider plane, as social and economic problems have worsened as a result of the present economic recession, planners and other public sector officials have had little choice but to become more involved in more action orientated projects and policies and in developing new solutions to old and familiar, yet growing, problems. In light of dwindling resources, the whole question as to how to implement plans and to pay for committed projects has had to be thought through. In some authorities projects have had to be axed, while others have attempted to develop new lower cost solutions and initiatives and to be more robust and responsive to the demands placed on them.

Implementation is important because planners need to be seen to be doing something useful and worthwhile. It is central to the credibility of planning and planners. Plans are viewed by the public as being commitments to action and so tend to be judged by their results. Plans need to be both realistic and capable of being implemented. Planners have sometimes been criticised for allowing plans to become an end in themselves and behaving as if the purpose of planning was to produce plans (Denman 1983, p.60). If plans are not implemented disillusionment will result, public confidence in planning and in those who plan will be lacking, support will fade and the planning system will be weakened.

Local plans are viewed by many as a key element in promoting policies designed to guide and control change yet there is a great deal of discretion on the part of the local authority in how they will implement any part of the plan. Underwood (1981, p.100) notes that it is generally assumed that planning policies contained in development plans will be implemented through the development control process. However, a number of different

Blacksell (1977) working on the East Devon Area of Outstanding Natural Beauty found an almost non-existent relationship between development decisions and landscape and key settlement policies. A second study by Anderson (1980) in the Sussex Downs concluded that structure plan policies for restraint of growth in rural areas had been adhered to remarkably closely. Neither study probed the reasons for the pattern of decisions found, but, quoting work done at Oxford Polytechnic on restraint policies operating in South East England, Underwood put forward a number of reasons why plan policies may be difficult to implement:

- there may be an inadequate understanding of social and economic pressures which generate demand for land use change and development;
- policies may be inadequately expressed;
- there may be disagreements between tiers as to the interpretation of policy;
- inadequate attention may have been given to how the policies would be implemented;
- there may be limited powers available to the land use planning system.

Williamson (1981, para 18) says of the implementation of plans, "most plans think of implementation largely in terms of proposals rather than the enforcement of negative controls."

Recent work at the Building Research Establishment on the implementation of local plans (Kingsbury 1982) found that not all development control officers want a detailed, comprehensive, unambiguous policy framework as this reduces the opportunity for negotiating the best solution for each site. In places undergoing rapid change, detailed statutory policies may be thought of as a hindrance as the authority seeks the maximum degree of

study of a sample of deposited local plans and associated development control decisions, the most striking finding was the proportion of decisions not covered by any specific policy in the written statement or proposals map of the relevant plan. This proportion ranged from 24 to 65%. An examination of the types of application indicates that plans provide guidance for a markedly greater proportion of change of use applications (206 out of the 252 decisions examined) compared with applications for building, engineering or mining operations (346 out of 613 decisions examined).

Kingsbury then goes on to make a number of suggestions for increasing the effectiveness of local plans (1982, pp.3-4):

- local plans should provide an adequate and clear framework for development control;
- where guidance of development is one of the purposes of a plan, vagueness in the wording of policies should be avoided;
- change of use policies should be checked to ensure combinations of these do not give officers ambivalent policy guidance;
- listing of area and plan wide policies on the proposals map and the preparation of an index of all development control policies to let people find out quickly the relevant policy framework for each application;
- development control staff should be involved in the early stages of plan preparation;
- the low level of integration between a local plan and development control can be overcome in larger departments by the organisation of a department.

As far as relationships between local plan and development control sections in Scottish local authorities, Thomson (1984, p. 51-52) found there was some degree of consultation between the two sections. Practice between authorities differs, some have both functions combined and exercised by area teams whereas in other authorities, the local plan section may be only notified or consulted on some development control applications; the applications they see may be determined by themselves or otherwise by the development control staff. In some instances development control policies can be difficult to interpret or be so weak as to make compliance either difficult or impossible and so are not referred to as they would be indefensible in an appeal situation. This could be remedied by closer consultation and co-operation between the two sections. The main use of local plan policies by development control staff is as an additional reason for refusing an application. The first response is often to quote established development control policies, practices and criteria and then to turn to the local plan as a safety net and reference to the local plan tends to occur when an application is recommended for refusal.

### 3.7 Summary

In Scotland then, local plans are important. S.D.D. are still aiming at comprehensive coverage and there has been a number of recent indicators to stress how important they are to provide a policy base at a detailed level. But they have been criticised from a number of sources and for different reasons, including in an S.D.D. sponsored study. The criticisms must raise doubts as to the form and usefulness of local plans as presently conceived.

Local plans are closely linked to development control in that local plans provide the policy base for development control

and that development control is the main vehicle for implementing local plans. Development control needs forward planning to be most effective although slavish commitment to the plan is both unlikely and undesirable and has been rejected in the U.K. in the past.

Local plan progress in Scotland has been slow and the quality of plans has not come up to expectations. One important issue has been that of flexibility versus rigidity. Given various constraints relating to time and resources, uncertainty and the need for flexibility, the balance in recent practice tends to tip in favour of making plans less detailed. There has also been a growing use of non-statutory documents either substituting for statutory plans or for a short temporary period. This trend reflects in some sense the rejection in practice of statutory plans.

Having taken time to examine the area of development control and its relationship to local plans, the thesis moves on to examine the changes made to the planning system by means of new legislation. The following chapter in particular looks at the present government's overall planning philosophy while subsequent chapters look at the changes made to planning legislation in detail. Many of the issues and developments in recent practice highlighted in this first part of the thesis will be developed in later chapters.

PART 2

4.1 The Government's Overall Philosophy

Part 2 of the thesis looks in detail at the changes which have been made in recent years and applied to Scotland by first of all examining the present government's general philosophy and how that has been applied to the activity of planning in terms of the actual changes as they have been introduced chronologically and then by common aim. Not every change is either described or commented on, rather, only those which either have a direct relationship with the government's philosophy, are new or have a wide or general application and significance to planning. This part of the thesis also examines a further way in which the government's philosophy has been put into practice, that of modifications made to structure plans and seeks to determine if some of the same considerations that have clearly been in evidence in legislative changes have been influential in structure plan modifications as one area of the planning system where the government have a direct impact and influence. These developments are then evaluated by attempting to match what was promised with what has actually occurred and includes a section on the views of many people involved in Scottish planning at all levels as to what has been happening. Finally, the period between the 1983 General Election and the time of writing is examined to see how the government have continued to implement their philosophy during their second period of office.

A great deal of material is contained in this part of the thesis. The purpose in bringing it before the reader is to discover evidence as to what has been happening and why it has happened.

The crisis in planning outlined in the introduction, began to be apparent during the 1970's. This was a decade when the

'apolitical consensus' evident in planning during the post war years, was broken. Arguments gained ground against the ultimate benevolence of the State and in favour of the removal of the fetters on private enterprise. There was a growing belief that local authorities were failing to direct aid to those in greatest need and were multiplying the difficulties of those they were intending to serve. State intervention and the bureaucracy that was needed to underpin it was criticised as costly, inefficient and wasteful (Cherry 1982, p.67) Town planning was not immune from these developments. Cherry (1982, p.67)

comments:

"The limitations of town planning, long concealed, now came into the open and could not be protected by the soft-centred idealism of earlier years. Town planning was good at little things, often perhaps inconsequential; it could regulate environmental detail very well, but could do relatively little to achieve the grand futures being promised. Above all, it was better at stopping things happening than creating things new. Town planning, long held to be benevolent, now had critics which saw it as positively malevolent."

It was into this situation that the present Conservative government were returned to office in the general election of May 1979 under the leadership of Mrs. Thatcher. Their election manifesto (Conservative Party 1979) promised sweeping reforms and changes in many areas and was built on an increasingly noticeable shift to the right within the party. It was built on three main planks: to roll back the frontiers of the State, to reduce public expenditure and to maintain a strong commitment to the operation of the free market mechanism. From this ideological standpoint, described by Thornley (1981) as "the biggest break in politics since 1945", many changes have followed. The activities of the Government in the field of planning cannot be understood properly without seeing them as being deeply embedded in a broader

fundamental ideology that is seeking to redefine the role of the state, the market and public officials, sometimes called 'Thatcherism'.

The economic aspects of the new government's approach were built on monetarism, an approach to economic policy which advocates that inflation can be checked by controlling money supply. The doctrine of monetarism emerged in the late 1960's from the Chicago School of economists centred upon Professor Milton Friedman. The doctrine is based on the belief that Keynesian style interventions in the economy were both inflationary and inefficient and has as its central thesis the notion that government intervention should be limited to the maintenance of a stable relationship between money supply and the productive capacity of the economy. Within this stable monetary regime, free market processes can be relied upon to achieve optimum economic results. The doctrine also provides an economic rationale for privatisation of public services and the reduction of public spending. (see Howl 1982, p.10).

Government activity is therefore limited to aiding the functioning of the free market, to creating a climate for entrepreneurship and risk taking, to freeing constraints on the private sector, to halting state interference and expansion. There is therefore a desire to create a framework within which the market process can flourish and an accompanying renunciation of state activities that produce unnecessary distortions of the market and expansion of those that foster market conditions.

By minimising government activity monetarism claims to enhance the freedom of the individual. Freedom is defined in individualistic terms favourable to business and middle income interests: freedom to exploit power in the market place, to make money and dispose of it according to personal preferences.

Monetarism has no concept of freedom in amore social egalitarian sense which reflects the needs of those without economic power, for example, freedom to enjoy a standard of living permitting full participation in the life of the community or freedom to control democratically the powerful economic institutions that affect the individual's welfare. The overall effect therefore of Monetarist doctrine is to provide theoretical perspectives which legitimise a distribution of economic power and resources highly favourable to upper and middle class interests (Friedman 1977).

To make such a doctrine acceptable to the electorate as a whole various images have been created in a major campaign to change people's attitudes in favour of the government and its philosophy. Images of welfare scroungers, excessive tax burdens, inefficient nationalised industries, uncontrollable unions and so on have become common. In this context the ideological attack has been mounted.

Within this ideological approach to government, there is an antagonism towards planning, which could be described as its polar opposite (Thornley 1981). Swan (1979, p.6) comments that:

"Under Mrs. Thatcher it seems likely that planning in common with other local authority functions will become more politically controversial than it has been in recent years."

Thornley (1981) suggests that to identify the impact of the new philosophy on planning one could look at whether individual property rights have received greater emphasis, or whether one could detect a shift from government control of land use to control via the legal system and whether market principles in land use planning have been reinforced, protected and encouraged. The following section seeks to examine the application of the general philosophy of the Conservative government to the planning system.

The Conservative manifesto (Conservative Party 1979)

issued for the 1979 general election gave some indication of what was to come. For example, it stressed the traditional Conservative concern of private home ownership by stating that "unlike Labour we want more people to have the security and satisfaction of owning property" (Conservative Party 1979, p.286). Warnings were also given about the planning system itself in that "we shall make planning restraints less rigid" (Conservative Party 1979, p.287).

Right from the start the government made clear it was committed to planning. Mr. Heseltine (1979, p.25), Secretary of State for the Environment, speaking a few months after the election at the Town and Country Planning Summer School declared that:

"I have no intention of wrecking the planning system developed in the last 40 years or so in this country. What I do have is every intention of using every means in my power to bring that system up to date."

The same commitment was given two years later. Speaking at the Summer School, Heseltine said (1981, p. 11):

"I remain as I long have, committed to the concept of planning. Britain would be poorer without it and it is to me unthinkable that the broad philosophy of development control will ever be set aside. Our land resource is too limited, the pressure on it too great to contemplate such a prospect."

From a Scottish perspective, Mr. Allan Stewart, appointed in April 1982 to succeed Mr. Malcolm Rifkind as Parliamentary Under Secretary at the Scottish Office with responsibility for local government and planning, stated in a speech to the R.T.P.I. Scottish Branch conference in June of that year:

"Planning is not a luxury - an optional extra - it is an essential, civilised and civilising activity, but it must be readily available, easily understood and relevant to current and future land use problems and proposals."

that commitment to planning though, was one based on the philosophy described in Section 4.1. The implications of the application of the philosophy to planning began to be detailed through Ministerial speeches and proposals for legislative change. In outlining the new approach to planning, Heseltine (1979) speaking to the Summer School made it clear that he had no intention of wrecking the system developed over the last forty years, nonetheless he believed "we have ended up with a system that tries to do too much. We have ended up with a hierarchy of planning, planners and plans in which the simple objectives have become obscured and for which the actual and imposed costs have soared" (Heseltine 1979, p. 26).

He wanted a streamlined process and argued that structure plans should not be used as a vehicle for putting over every matter of interest of the authority who prepared it and new plans were not to have another round of large expensive data collections or surveys. Unnecessary public sector controls were to be scrapped, delay in decision making was to be reduced, the system was to move away from being negative and unresponsive and a change in attitude of those involved in administering the system was called for. The link between planning and the wider economic problems was acknowledged with Heseltine describing planning as "one contributory factor among many" as the cause of the country's economic problems. Planning, he said, had a role in recovery in being able to produce results quickly and efficiently and should not stand in the way of creating conditions favourable to economic growth.

This was a speech "very different in tenor and content from any of his predecessors. It was a break with the past, shaped by a new approach to the role and influence of the State" (Cherry 1982, p.68). It was a speech which set out to make planning a tool of the market economy (Thornley 1981).

Heseltine returned to the Summer School two years later in 1981 (Heseltine, 1981) urging planners to "play a more positive, activist and constructionist role." Again, he called on planners to create the necessary conditions for investment and job creation, he attacked unimaginative design and the waste of underused land, much of it in public ownership and asked planners to be more flexible in controlling development.

Key elements therefore in Heseltine's approach to planning were making planning more responsive to demand (a service to developers), a system which is efficient and where decisions are taken speedily, a system that does not constrain development (including reduction in planning controls) but seeks to create the necessary conditions for economic growth, and a more positive attitude of planners towards their task.

With the general philosophy of the government stressing individual freedom and the removal of State interference and involvement, the detailed application of that philosophy to planning clearly incorporates an antagonism towards bureaucracy of which planners are a part. Government propaganda has created a climate of mistrust of the public official, painting a picture of such officials as being too numerous and working inefficiently. Their role, therefore, has become increasingly questioned. The claim of planners to be neutral guardians of the public interest has been firmly denied by the government whose aim is to loosen the influence of planners over development decisions and transfer decisions to the market, legal system or taxation where they can be free from planner imposed concepts such as equity and the public interest. The trend therefore, is to reduce the sphere of influence of planners while speeding up the bureaucratic process, otherwise bureaucracy becomes arbitrary in its decision making and evolves a life of its own and so, according to the government, needs to be controlled.

from a Scottish point of view, Malcolm Rifkind (Scottish Office Minister 1979-1982) in his only comprehensive statement about the future development of Scottish planning under the Thatcher government at the R.T.P.I. Scottish Branch conference, Hamilton 1980, outlined five objectives for Scottish planning:

- the release of enterprise;
- quicker decision making;
- the efficient use of staff and resources;
- for decisions to be taken by the authority or person closest to the problem;
- the protection of the rights of the individual.

Other matters raised by Rifkind in the same speech included the need for modest updating of structure plans, speedier preparation of local plans, greater co-ordination of city planning, relaxation of control and quick decisions. Since this time, legislative changes and centrally issued advice have followed with remarkably frequency, these are examined in Chapter 5.

Government desire is clearly for less control. However, some would argue that this is planning's most effective function and has brought many benefits, a fact not unnoticed by Heseltine (1981, p.11). The combination of economic recession and the introduction of this philosophy into planning has created a climate of opinion which favours development and places less emphasis on detailed control. Existing control mechanisms have been criticised because of delay and inefficiency. Many of these criticisms have clearly been justified. However, to what extent is the emphasis on avoiding delay really a veil for dropping many criteria involved at present in decision making? The implications for planners of this crusade-like campaign for more speed and efficiency are that planners will be put under severe pressure to make decisions quickly which may mean having to drop some of the factors they would have taken into consideration when

making a decision. Lack of information may leave a planning officer no alternative but to refuse an application, which could well be the wrong decision. Fast decisions need not necessarily be good decisions.

This approach to planning comes at a time when there has been an increasing volume of literature advocating the need for and role of planning from a right wing political perspective which embraces the intellectual traditions of Adam Smith, Burke, Mill, Lord Acton, Friedman and others. Collectively, these writers stress freedom of the individual, the benefits of market forces and entrepreneurship, the rule of law and the perils of bureaucratic control of the economy and society. This is the libertarian perspective (Sorensen and Day 1981), a perspective which has been generally ignored by planners. But it is a perspective which the present Conservative government has embraced and has sought to put into practice in recent years. The development of this perspective in terms of policies and legislative proposals highlights the link between planning and politics, a link made more explicit by the government as many of the legislative changes examined in the following chapter have their roots in their political perspective. The next section discusses this relationship between planning and politics.

#### 4.3. Politics and Planning

The use of planning by the present Conservative government as a vehicle for implementing party political views is not new. Anthony Crossland, former Labour Secretary of State for the Environment, writing in 1972 on planning as a means of implementing the Labour party's social policies commented (quoted by Swan 1979):

"A Labour policy for the environment will show a special concern for the goal of equity ..... Environmental goals should be particularly apt for the Labour movement for they

require policies and attitudes which come more easily for a left wing party."

The relationship between planning and politics has not always been recognised. Self (1972, p. 398) comments that "in Britain it used to be possible to say that the planning of the environment was to a considerable extent, outside or above politics." But when one examines the history of the compensation and betterment provisions of the 1947 Act and traces their development as one set of proposals was introduced by one government, then repealed or modified by the next government of the opposition party, it is clear that the political nature of planning has been evident. In the past the link between planning and politics has been confined to this one issue. Nowadays, the whole of planning is recognised as a political activity as McCallum (1976, p.7) notes:

"Public planning should be considered a basically political activity: it derives its authority from and is administered by political systems and sub-systems; it intimately concerns the basic distribution of welfare in society; and its ends and means are largely established through political discussion and decision."

In the past, however, planning has sought to escape from politics, a development that encouraged a greater reliance upon professional expertise than the experts themselves could possibly deliver (Self 1972, p. 398). May (1981) has developed an analysis of the politicisation of planning in Britain, identifying three distinct phases in this development.

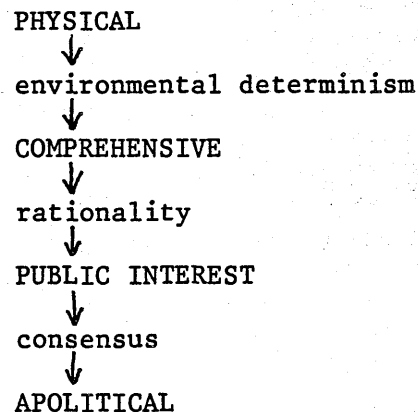
The first phase he dates between 1947 and 1964 and calls the Apolitical Phase. During this time planning was based on the time honoured precepts of the public service - as a technical profession, employed to carry out members' decisions and to advise them in the making of those decisions. Politics was seen as the concern of the politicians, and them alone.

Such an attitude was made possible by the bureaucratic tradition of the public service, of which planners were now a part, and also by certain beliefs about their own activities. May (1981, p.2) identifies four 'myths' that planners held to:

- (i) Planning was concerned about the physical environment.
- (ii) Planning was comprehensive.
- (iii) Planning and its results were in the public interest.
- (iv) Planning was apolitical.

Thus the philosophy of planning could be represented by Figure 10, the four 'myths' linked together by three related beliefs.

Figure 10. THE APOLITICAL PHILOSOPHY OF PLANNING



Source: May (1981, p.2). An Approach to the Politicisation of Town Planning in Britain. Leeds Polytechnic Planning Research Unit. Occasional Paper 28.

The acceptance of such a philosophy of planning depended on a number of factors. Firstly, politics played such a peripheral role in British culture; secondly, that the public service was in a sense removed from politics and so could retain a value-free, neutral stance; thirdly, that there was little party based difference in planning issues with both parties accepting the need for planning; and fourthly, the acceptance, on the whole, by the general public of planning and its decisions.

between 1964 and 1979. During this phase the 'apolitical' image of planning began gradually to change. There were three main developments in this change.

(i) The Perception of Planning by the Public

The first major impact of planning came in the 1960's through the property boom of that time and major town development/redevelopment schemes. Previous action in New Towns had only directly affected relatively few people and in fact continued pre-war ideals while the immediate post-war effect of planning had been delayed by the tight government control on building activity. A new environment was being created with planners seeing the opportunities for problem solving through direct action while the impact of a new and 'bigger' technology began to make itself felt. Planners, responsible for much of this new environment, had to take their share of the blame and disappointment as the apparent claims and hopes turned sour when the hoped for benefits failed to materialise.

(ii) Changes in the Planning Profession and its Attitudes

Numerous internal professional debates took place during this time. Subjects covered included the impact of planning on the environment, the role and function of planning in both present and future, membership qualification and so on. These debates took their toll. Planning ended up on the defensive, while also coming under the influence of other social science disciplines which replaced the sole concern for the physical environment with social and economic ones. It was recognised that an improved physical environment did not solve all the problems planners were dealing with, while the way planners thought and reasoned (the rational model) was attacked and discredited.

(iii) Wider Political Change

This change in the image and nature of planning took place

during a time of wider political change. Britain joined the E.E.C. local government was reorganised, the constitution came under examination, devolution became a major political concern, minor political parties began to increase their share of electoral success, pressure groups campaigning for specific local and national issues finally emerged as fully grown political animals, local politics took on a more party political look, and public participation was introduced into planning. All these factors had some influence on planning and its transition to a political activity.

The third phase in the politicisation of planning, May calls the political phase which begins in 1979 and is clearly linked with the return to national political office of the Conservatives. He states (May 1981, p. 17)

"Planning, then, has become what perhaps it should always have been as an arm of government, political."

This has happened, May concludes, inspite of the attitudes of planners (who have on the whole, lacked the necessary understanding and skills to prosper in a politicised environment) and politicians (until the last five years). May 1981, p. 21) likens the increasing politicisation of planning to growing up with "the complexities of life beginning to show the limitation of adolescent dreams". Therefore any approach to planning needs to be more subtle and show a greater awareness of its potentials and limitations. The realisation by planner, politicians and public alike that planning is political is therefore a relatively recent event. May (1981, p.1) commenting on the 1979 General Election:

"(it) brought to power a government which has undertaken what is probably the most ideologically based review of planning since the 1947 Town and Country Planning Act."

This chapter has shown how the present government came into office in 1979 with a clear philosophy and began to apply it to

the field of town planning. How, in detail, that has been achieved is documented in the following chapter, with the area of development control highlighted. Planning and politics are related and the following chapter will seek to show that changes and developments in planning can be and have been brought about by means of the applications of a particular political philosophy.

5.1. Introduction

The previous four chapters have set the scene for the examination of changes in legislation relating to Scottish planning as introduced since 1979. New planning legislation is not an annual occurrence, it depends very much on the priority which government gives it and the energies of the relevant minister (see Wilbraham 1982). From the volume of changes introduced since 1979 one can only conclude that the present government have attached a great priority to the review of planning and that the relevant Ministers have been energetic in pressing reforms and amendments to the planning system and have been committed to many of the related substantive issues that lie behind the changes.

The next two chapters examine the changes in two main ways. Firstly, by giving a brief overview of the main legislative provisions as they have been added to the statute book in chronological order. This section is not meant to be comprehensive: it does not detail every change made, rather it seeks to draw attention to the fact that there has been a great deal of legislative activity in the planning field and to highlight the main or most important provisions. This section will be therefore mainly descriptive. Secondly, by examining the changes on a thematic basis, many changes, although introduced at different times and as parts of different Acts or statutory instrument, are seen to be connected by relation to a common subject. For example, changes relating to publicity and consultation for planning

a more compact and analytical framework for examining the changes than looking at them in detailed chronological order.

Although the main thrust of the thesis is to concentrate on aspects of development control it is contended that it is not only in the realm of legislative change that one can identify both the philosophy of the present government being put into action and the political nature of planning. The role of the Secretary of State for Scotland in approving structure plans for the four main urban areas in relation to the single issue of land release for housing is examined in a following chapter.

Legislative changes have been introduced in two main ways. Firstly, by means of an Act of Parliament. In the following section, six Acts are considered, three of which relate to Scotland only, and the other three to the U.K. as a whole although in the latter case all parts of the Act may not be relevant for Scotland. For example, in the Local Government, Planning and Land Act 1980, of its eighteen parts, five do not apply to Scotland and a further seven only have limited application. The Wildlife and Countryside Act 1981 also has limited applicability to Scotland. The second main area through which legislative change has been introduced is by statutory instruments. These detail the broad framework provided for in the main Acts. In some instances, such as neighbour notification, an important new legislative provision can be introduced through statutory instrument rather than by primary legislation. Modern Parliamentary practice would seem to indicate that governments are having recourse to this means of introducing legislation more often than before. This is because it allows the Act to concentrate on providing the main framework and leaves the details to be worked out and applied later thus saving Parliamentary time and allows the Government some discretion to make up the details and to change

Circulars are also important. These explain the relevant Act and/or statutory instrument and the programme or timetabling of the implementation of the new legislation. They are also used to publicise government policy. New circulars are not necessarily binding rules of law unless the Minister is specifically making a direction by way of a circular, for example, the Town and Country Planning (Notification of Applications) (Scotland) Direction 1981 explained in S.D.D. Circular 20/1980 on Development Control in National Scenic Areas. Despite this, because of the Secretary of State's role in appeals against refusal of planning permission or granting permission subject to conditions, the policies contained in the circular may be, in substance, as important as rules in some cases, with policies being regarded as material considerations in the determination of an application for planning permission.

There would seem to be no consistent interpretation from the courts as to the legal status of circulars (see Henderson 1980). Two cases highlighted in the Journal of Planning and Environmental Law in September 1982 led Purdie (1982) to conclude that both the Inspector or Reporter and the Secretary of State are bound in law to have regard to the relevant policies set out in circulars. This, he continues, has two important implications: firstly, it means that subject to the ad hoc repudiations of such policies, discretion of the Inspector/Reporter and Secretary of State becomes strictly limited by those policies, and secondly, that the policies themselves will become the focus of sharp dissension by lawyers as to their exact meaning. As circulars are not drafted with the same precision as statutes and statutory instruments, words and phrases in them may be forced to take fine shades of meaning which were never intended. The following section traces the introduction of new planning legislation in

## 5.2 An Overview of Recent Changes in Scottish Planning Legislation

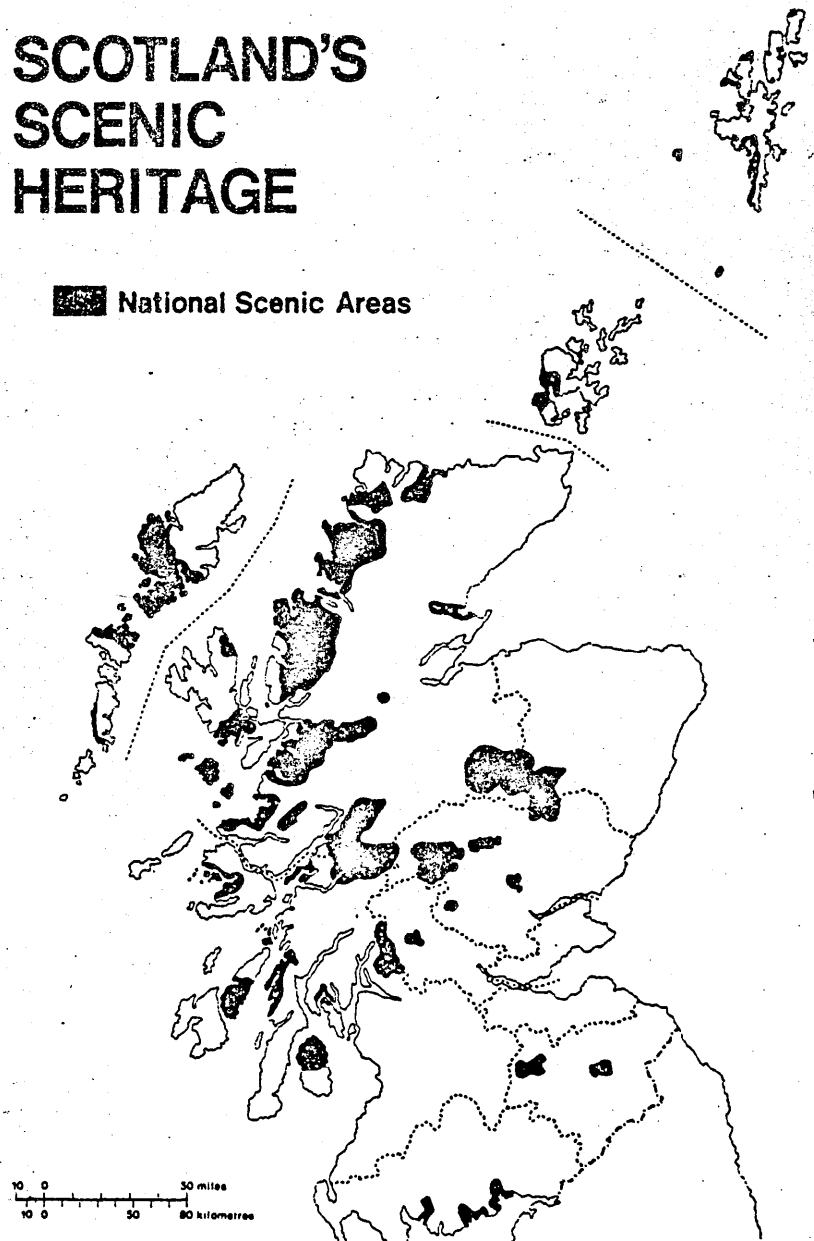
Figures 11, 12 and 13 list the Statutes, Statutory Instruments and S.D.D. Circulars which have been related to legislative change in the planning system in Scotland since 1979.

In dealing with the changes as they have been passed in chronological order, the first one of any significance is one effected through a statutory instrument, the new development control arrangements introduced in National Scenic Areas in August 1980 (August 1981 in Highland Region and the Western Isles). These areas, shown in Figure 14, were first identified by the Countryside Commission

Figure 14. NATIONAL SCENIC AREAS

# SCOTLAND'S SCENIC HERITAGE

 National Scenic Areas



Source: S.D.D. Circular 20/1980. Annex B.

Figure 11. ACTS OF PARLIAMENT RELATING TO PLANNING 1980-1984

<u>Act</u>	<u>Date of Royal Assent</u>
Local Government, Planning and Land Act 1980	3/11/80
Local Government (Miscellaneous Provisions) (Scotland) Act 1981	11/6/81
Countryside (Scotland) Act 1981	27/7/81
Town and Country (Minerals) Act 1981	27/7/81
Wildlife and Countryside Act 1981	30/10/81
Local Government and Planning (Scotland) Act 1982	30/7/82

<u>Name</u>	<u>Number</u>	<u>Date*</u>	<u>Relevant Circular</u>
Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 1980.	1980/1675	22/12/80	47/1980
Town and Country Planning (Inquiry Procedure) (Scotland) Rules 1980	1980/1676	22/12/80	47/1980
Town and Country Planning (Determination of Appeals by Appointed Persons) (Inquiry Procedure) (Scotland) Rules 1980	1980/1677	22/12/80	47/1980
Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 1981	1981/443	1/4/81	13/1981
Town and Country Planning (Develop- ment by Planning Authorities) (Scotland) Regulations	1981/829	3/8/81	24/1981
Town and Country Planning (General Development) (Scotland) Order 1981	1981/830	3/8/81	24/1981
Town and Country Planning (Tree Preservation Orders and Trees in Conservation Areas) (Scotland) Amendment Regulations	1981/1385	27/10/81	-
Regional Park (Scotland) Regulations 1981	1981/1613	14/12/81	38/1981
Countryside (Scotland) Act 1981 (Commencement) Order 1981	1981/1614	5/11/81	38/1981
Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (Scotland) Regulations 1982	1982/758	1/6/82	14/1982
Town and Country Planning (Mineral) (Scotland) Regulations 1982	1982/973	14/7/82	-
Local Government and Planning (Scotland) Act 1982 (Commencement No 2) Order 1982	1982/1397	1/11/82 & 29/1982 1/4/83	
The Countryside (Scotland) Regulations 1982	1982/1467	16/11/82	33/1982

\*Date refers to date when Statutory Instrument came into operation

Town and Country Planning (Grants) (Scotland) Amendment Regulations 1983	1983/108	7/3/83	-
Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983	1983/1509	1/12/82	32/1983
Town and Country Planning (Use Classes) (Scotland) Amendment Order 1983	1983/1619	1/5/83	-
Town and Country Planning (General Development) (Scotland) Amendment Order 1983	1983/1620	1/5/83	-
Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 1983	1983/	1/12/83	33/1983
Town and Country Planning (Tree Preservation Orders and Trees in Conservation Areas) (Scotland) Amendment Regulations 1984	1984/329	11/4/84	
Town and Country Planning (Enforce- ment of Control) (Scotland) Regulations 1984	1984/236	14/5/84	6/1984
Town and Country Planning (General Development) (Scotland) Amendment Order 1984	1984/237	14/5/84	6/1984
Town and Country Planning (Develop- ment by Planning Authorities) (Scotland) Amendment Regulations 1984	1984/238	14/5/84	6/1984
Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984	1984/467		10/1984
Town and Country Planning (Special Enforcement Notices) (Scotland) Regulations 1984	1984/995	12/8/84	
Town and Country Planning (Crown Land Applications) (Scotland) Regulations 1984	1984/996	12/8/84	

Figure 13. S.D.D. PLANNING CIRCULARS 1980-1984

<u>CIRCULAR</u>	<u>NUMBER</u>	<u>DATE</u>	<u>CANCELLED/ AMENDED</u>
Development Control in National Scenic Areas	20/1980	19/8/80	amended 19/77, 30/77
Development Affecting Trunk and Special Roads	26/1980	22/8/80	
Exemption from Listed Building Consent	28/1980	1/10/80	amended 4/76
A. Developments In Vicinity of British Gas Installations, Notification Procedures			
B. Commercial Pipelines, Planning Advice and Notification Procedures	39/1980	12/11/80	
Local Government, Planning and Land Act 1980	46/1980	18/12/80	
Planning Appeals	47/1980	22/12/80	cancelled 6/64, 20/76, 42/78
The Urban Programme in Scotland	7/1981	25/2/81	cancelled SW5/1969, SW9/70
Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 1981	13/1981	25/3/81	
Local Government (Miscellaneous Provisions) (Scotland) Act 1981 Financial Circular	16/1981	22/7/81	
Development Control	24/1981	3/8/81	cancelled 14/65, 52/75, 76/75, 34/36, 57/76, 64/76, 30/77, 28/80
Provision of Public Buildings: Consideration of the Needs of the Disabled	29/1981	7/10/81	
Town and Country Planning (Tree Preservation Orders and Trees in Conservation Areas) (Amendment) (Scotland) Regulations 1981	31/1981	22/10/81	
Countryside (Scotland) Act 1981	33/1981	15/12/81	
Wildlife and Countryside Act 1981	3/1982	8/1/82	
Local Government, Planning and Land Act 1980, Disabled Persons Act 1971	4/1982	13/1/82	

Town and Country Planning (Minerals) Act 1981	5/1982	8/2/82	
Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (Scotland) Regulations 1982	14/1982	27/5/82	cancelled 13/81
Safeguarding of Aerodromes, Technical Sites and Explosive Areas Town and Country Planning (Aerodromes) (Scotland) Direction 1982	16/1982	14/7/82	cancelled 50/64, 93/73
Local Government and Planning (Scotland) Act 1982, Finance Circular	20/1982	1/9/82	cancelled 26/80
Local Government and Planning (Scotland) Act: Planning Provisions	29/1982	15/10/82	
Countryside (Scotland) Act 1967, The Countryside (Scotland) Regulations, 1982	33/1982	16/11/82	amends 82/75, 38/81
Hazardous Substances	39/1982	17/12/82	
Wildlife and Countryside Act 1981. Code of Guidance on SSS/5	1/1983	7/1/83	amends 3/82
Disposal of Surplus Government Land and Development by Government Departments	18/1983	6/6/83	cancelled 49/77
Private House Buildings Land Supply: Joint Venture Schemes	21/1983	20/7/83	
Structure and Local Plans	32/1983	25/11/83	
Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 1983	33/1983	29/11/83	cancelled 14/82
Opencast Coal Mining	4/1984	27/2/84	
Local Government and Planning (Scotland) Act 1982	6/1984	16/3/84	amends 24/81
Forestry Consultation with Local Authorities	7/1984	9/5/84	
Planning Controls over Hazardous Development	9/1984	30/3/84	
Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984	10/1984	9/4/84	cancelled DHS 88/49, 13/61, SDD 28/65

Town and Country Planning  
(Scotland) Act 1972. Section  
50 Agreements

22/1984 3/8/84

Town and Country Planning  
(Scotland) Act 1972. Planning  
Appeals

26/1984 20/8/84 cancelled 7/77

for Scotland's study on 'Scotland's Scenic Heritage' published in 1978 (Countryside Commission for Scotland 1978). Existing arrangements in these areas, formerly National Park Direction Areas, had been criticised as "somewhat haphazard, burdensome and leading to expensive paper work". New arrangements introduced through Circular 20/1980 and two Directions relating to notification of applications to the Secretary of State and the restriction of permitted development in National Scenic Areas, would mean less interference from S.D.D. in day to day planning and development control while retaining essential safeguards for the protection of this important part of the national heritage. The new arrangements mean that if a planning authority proposes to grant planning permission for certain types of specified developments in these areas, then they must consult the Countryside Commission for Scotland (C.C.S.) If the C.C.S. advise against the granting of planning permission or recommend a grant of permission subject to conditions and the local planning authority decide to ignore that recommendation, then the authority must notify the Secretary of State who will decide whether or not to call in the application. Some forms of permitted development have also been restricted in these areas and under the arrangements introduced at this time, will be subject to an application for planning permission in the usual way.

The first main piece of legislation relevant to this review was the Local Government, Planning and Land Act of 1980. It was an act which suffered a long and sometimes bitter passage through Parliament, was very complex and of limited application to Scotland. The two most important provisions concerned the introduction of new concepts into the U.K. planning system: the enterprise zone and planning fees.

The enterprise zone was the culmination of a set of ideas first proposed in 1969 to create planning free zones in which industry and commerce could flourish without bureaucratic interference and containment. The proposals, as implemented by the government, combine a range of fiscal and tax incentives and a relaxed planning regime as an experimental means of encouraging private enterprise and attacking urban decay and economic decline in a number of areas around the country. Initially 11 zones were designated in 1981 and a further 13 in 1983. Three are located in Scotland at Clydebank, Tayside and Invergordon (enterprise zones are considered in more detail in Section 6.2).

The introduction of planning fees for applications for planning permission was one of the most controversial features of the Act. The basic aim was to recoup some of the cost of public expenditure, initially set at a level of 3/5 of development control. The scheme was introduced in April 1981. Circular 13/1981 describes the circumstances under which fees would be payable, and details on the categories of fees and the arrangements for the collection of fees.

The circular promised a review of the fees scheme and the level of charges after one year. This was carried out and new regulations introduced, operative from June 1st 1982. Fees were raised by an average 10% and a number of changes made to the detailed regulations. Later on that year, S.D.D. carried out a more detailed review of the operation of the system and asked for suggestions for change and improvement. A further rise in fees of 7% was introduced in late 1983.

Following regulations introduced in 1976, about one-third of appeals were delegated to Reporters for determination thus leading to a significant reduction in the time taken to process an appeal. There was no detectable reduction in the acceptability

of decisions to appellants or local planning committees. In 1978, the percentage of delegated cases was raised to between 70 and 80% and appeals continued to be dealt with significantly faster than those by the Secretary of State. In 1980 further changes introduced by statutory instrument had the effect of delegating almost all appeals to the Reporters although a few remained with the Secretary of State (for example, those linked to listed buildings and advertisement appeals) and he retains the power to recall any delegated appeal for his own decision. New rules were introduced for the conduct of inquiries where the decision was both delegated and not delegated, and changes made in the form and length of the report which would be prepared after the hearing to produce a more compact report, again in the interests of speed.

The second statute relevant to this review is the Local Government (Miscellaneous Provisions) (Scotland) Act of 1981.

The sections relevant to planning relate to the relaxation of a number of central government controls over local government, mainly relating to the involvement of the Secretary of State in the preparation of structure and local plans. The aim was to eliminate waste in the public sector, to reduce central government control over local government, clarify accountability, streamline administration and cut back on red tape. The amendments relating to plan preparation provide the Secretary of State with powers of general prescription rather than individual direction to achieve consistency throughout the country. Powers of direction removed include those to direct an authority to institute a new survey for all parts of the district or to keep certain matters under review; to direct the content of a structure plan or the form and content of a local plan; to direct the preparation of a local plan after the structure plan

for the area has been approved, and to direct further publicity and consultation after the Secretary of State had considered the statement of Local Plan publicity and consultation by the authority.

Another Act relating to Scotland only was the Countryside (Scotland) Act of 1981. This Act was drafted as a series of textual amendments to the Countryside (Scotland) Act of 1967. Two of the most important new provisions were for the establishment of regional parks and management agreements.

The regional park is conceived as being an area extensive in size, located in attractive countryside, part of which was to be devoted to the recreational needs of the public and be convenient to large population centres. Unlike country parks they will be of mixed land use and will be designated by a regional authority after consultation with the appropriate districts and notification of those with an interest in the land.

Management agreements enable the local authority and the C.C.S. to preserve or enhance the natural beauty of the countryside or to promote its enjoyment by the public. Once made, the agreement is binding on all parties and recompense is available to those having an interest in the land through grants or other forms of financial assistance. The scope of agreements is virtually unlimited, covering anything the consenting parties agree to and can include both positive and negative action. Agreements are seen as long term measures.

Other provisions in the Act related to an extension of the definition of open countryside, further provisions with regard to access agreements, powers of the Secretary of State in relation to the acquisition of land for public access, powers for district and island authorities to control noise in the countryside and an extension of powers to make by-laws.

The Town and Country Planning (Minerals) Act 1981 received the Royal Assent on the same day, July 27th, as the Countryside (Scotland) Act 1981. The Act implemented in modified form, some of the recommendations of the Stevens Committee report on Planning Control Over Mineral Working (H.M.S.O. 1975). These included:

- mineral planning permissions being subject to a time limit of sixty years (or less if imposed by the planning authority);
- a new duty is placed on district and general planning authorities to review mineral operations with a view to making necessary changes in the terms of planning permissions;
- a new power is given to district and general planning authorities to make an order prohibiting the resumption of operations where they have ceased for two years. A suspension order may be used where operations have ceased for at least twelve months and can require certain steps to be taken to protect the environment;
- where planning permission for mineral operations is granted, an after-care condition may be imposed which requires that land should be planted or cultivated for a period of up to five years at the expense of the operator once operations cease and to make it suitable for agriculture, forestry or amenity;
- the working of mineral wastetips was brought under planning control.

Certain of these provisions were brought into effect in February 1982: full details are contained in S.D.D. Circular 5/1982.

August 1981 saw the publication of Circular 24/1981 on development control which introduced the new General Development

Order (G.D.O.), notification of applications to the Secretary of State Direction, Development Contrary to Development Plans Direction, and the Development by Planning Authorities Regulations. The Circular states that "the Secretary of State considers that swift and sound decision making continue to be the main development control priority" (S.D.D. 1981, para. 3) and that proposals which will generate jobs and wealth should be dealt with sympathetically with special priority being given to manufacturing industry. The circular also highlights the process of negotiation between the planning authority and developers as a potential source of delay and asks authorities to weigh up carefully whether the benefits that could come from prolonged negotiations would justify the delay in making a decision. A number of procedural and administrative arrangements which would speed up decision making without reducing the quality of the decision made were suggested to local authorities. These included delegation of decision to officers, more frequent committee meetings, monitoring of applications within departments to monitor progress, to reduce consultees to those whose interest are clearly affected, issue decisions to applicants promptly after the decision was made and have up to date local plans containing clear statements of policy towards particular forms of developments in specific parts of their area. The circular does, however, recognise that two of the most frequent sources of delay are outwith a planning department's control that of failure of the applicant to submit all the information required, and the time taken by consultees to let the planning department have their comments.

The new G.D.O. which is introduced and explained by the circular includes two main changes. Firstly, the increase in permitted development limits, and secondly, the introduction of neighbour notification. This requires an applicant for planning permission to notify his neighbours of the fact that he has

applied for planning permission (both provisions are dealt with in detail in Section 6.2).

The two directions relating to notification of applications to the Secretary of State and development contrary to development plans are both intended to reduce the number of applications being notified to the Secretary of State while ensuring that development proposals in which there is a national interest continue to be drawn to his attention. Notifiable developments are divided into two groups: those to be notified on receipt of the application and those to be notified if the planning authority propose to grant permission. In the case of the second direction, it makes clear that development plans are not binding but that developments contrary to the plan, if given planning permission, should be publicised and the Secretary of State notified. He will then decide whether or not to call in the application for his own determination.

The development by planning authorities regulations make a number of important changes to the previous regulations of 1975. Generally, if a planning authority wishes to develop, it must give notice of intention to develop to the Secretary of State. If he does not require an authority to make a formal application to him for planning permission within a specified time, permission is deemed to be granted.

The same month of August 1981 also saw the publication of a new set of National Planning Guidelines. Ten topics were covered, including agricultural land, land for housing, and land for industry and petrochemical developments. The guidelines are accompanied by fifteen land use summary sheets which describe past changes, present situation and where appropriate, indications for the future for a variety of land uses. Related notification procedures (see above) ensure that planning applications which raise national issues are notified to the Secretary of State

and so may be called in for determination by him.

The next Act of planning significance to come on the statute book was the Wildlife and Countryside Act 1981. Like the Local Government, Planning and Land Act 1980, it proved to be complex, controversial and of limited application to Scotland. Of the sections related to Scotland, as indeed in the rest of the country, most attention has been centred on the measures designed to improve the protection of Sites of Special Scientific Interest (S.S.S.Is). A new procedure is laid down for the Nature Conservancy Council (N.C.C.) to follow in notification of owners and occupiers of land when it is proposed to either designate a new S.S.S.I. or to extend an existing one. Three months notice should be given and representations/objections received be considered. Owners and occupiers of land within S.S.S.I.s are also required to give three months notice of their intention to carry out any operations which would affect the features of the site that make it of special scientific interest.

A further provision intended to restrict operations in certain S.S.S.I.s is that given to the Secretary of State to apply Nature Conservation Designation Orders after consultation with the N.C.C. to certain of the more important sites threatened by operations. An order could delay operations for up to twelve months allowing the N.C.C. to negotiate a management agreement or promote a compulsory purchase order. Compensation would be payable by the N.C.C. for the cost of abortive work or loss directly attributable to delay beyond a period of three months. This provision highlights the central principle of the Act that conservation should rely on voluntary agreements between land owner and public agency and be profitable to the land owner or that enough money would be available to buy threatened lands.

In the following year, 1982, the last of the six Acts covered in this section was passed. This was the Local Government and Planning (Scotland) Act 1982. The Act falls into three main parts: rating provisions, the reallocation of functions between the two tiers of local government following the Stodart Committee report, and the operation of the planning system in Scotland. The planning provisions take the form, as in the case of the Countryside (Scotland) Act 1981, of textual amendments to earlier legislation, the main ones as follows:

- streamlined procedures for the adoption and alteration of structure and local plans;
- a new section 23 procedure which provides that all forms of advertisement and notification of planning applications should be controlled by development order;
- a new right of appeal is created against the non-determination, refusal or conditional grant of planning permission required by a condition imposed on an earlier grant of planning permission;
- power given to local planning authority to vary a planning permission without necessitating a fresh application;
- clarification of some dates and time limits relating to the date of approval of planning permission and call in procedure;
- clarification of the powers of regions as planning authorities relating to call-ins; regions given powers to enter into section 50 agreements and to take enforcement action to protect a structure plan;
- changes made to the provisions relating to enforcement designed to speed up the system and allow planning authorities to deal with breaches of control more flexibly.

the remainder of the period from mid 1982 to the general election of 1983 saw little by way of major legislative change. Many of the provisions of other acts have been brought into force during this time and a number of important circulars and related advice were issued.

Included in this category was Planning Advice Note (P.A.N.) 29 issued in November 1982 on planning and small businesses. This stressed the importance of a speedy and efficient planning system to the operations of small businesses and that local planning authorities should appreciate the diverse requirements of small firms and their need for support. The advice note also stressed that local authorities could assist small firms by giving an indication of their attitude towards development as early as possible and by responding quickly and positively to all enquiries and applications, and that authorities should minimise delay and uncertainty and where possible anticipate the needs of the business community.

This section has given a brief descriptive overview of the legislative changes relating to planning that have been introduced since 1979 till the general election of 1983. Not every change has been mentioned, only those that are seen to be important or significant, and of those that have been mentioned, details have been sparse. This has been deliberate as the following chapter will detail some of the changes mentioned here and a fuller picture of the changes is given in the relevant Act, statutory instrument or circular. Little too, has been said of the processes by which these changes have come about. Again, this is examined later, in Section 8.2 when the reasons for the changes are examined.

What this chapter indicates is that over the last few years, a great deal of change has been introduced into the Scottish

statutory planning system, described by some as a flood of changes. These changes have been backed by an explicit political approach to planning outlined in Chapter 4 and expressed through legislation and government advice.

Rather than examine the changes as they have occurred in chronological order as this chapter has done, the following chapter examines the changes in a more detailed and analytical way by means of grouping changes together in terms of the general aim of the changes.

6.1 Introduction

With the volume, and in some instances the complexities of the changes in planning legislation made in recent years, it has been extremely difficult for anyone to take time to view the changes as a whole and to consider their cumulative effect and impact on the total system of development control. Development control officers, for example, grapple with familiarising themselves with the new provisions and consequent administrative arrangements and procedures. Lawyers delve into the legal nitty gritty and detail and become enveloped in legal niceties and loopholes. S.D.D. administrators hurry on to the next task that awaits them. Academics, who have only recently turned to development control for research opportunities, tend again to concentrate on one area.

Individual changes, or at least some of them, have grabbed the lion's share of attention, for example the introduction of neighbour notification and planning fees. This chapter seeks to widen the scope of the examination of legislative changes from looking at them individually to looking at them together under a number of general topics. This has its own problems:

- changes in legislation have been so many and varied, it is difficult to consider them all at once;
- some changes are very technical and difficult to grasp without getting immersed in detail;
- the changes differ in the impact they will have on the planning system.

An encouragement to those affected by legislative changes was given by Scottish Office Environmental Minister Mr. Allan Stewart speaking to the R.T.P.I. Scottish Branch Conference in 1982 when he said he did not envisage any additional major changes to the

(see Chapter 9). Calling a halt to major legislative change thus allows observers an opportunity to take stock of what has happened so far and to determine the impact of the changes on the operation of the planning system and on planning practice.

## 6.2 Changes Relating to a Reduction in Planning Control

This first grouping of changes which have been introduced at different times but concerned with the same topic is of two changes that relate to the nature, scope and operation of the development control system. These changes are:

- the increase in permitted development limits under the G.D.O.;
- the planning side of enterprise zones.

### The Increase of Permitted Development Limits under the G.D.O.

Section 21 of the Town and Country Planning (Scotland) Act 1972 empowers the Secretary of State to issue development orders. These can be one of two kinds, a general or special development order. Both types of order may either:

- grant planning permission for development specified in the order, or for development of any class so specified;
- or
- in respect of development for which planning permission is not granted by the order, provide for the granting of planning permission by the local planning authority on an application made to the local planning authority in accordance with the provisions of the order.

The effect of the first part or function of the order, is to remove the exercise of planning control from the local authority. This is known as permitted development. The extent of permitted development is set out in Schedule One of the Town and Country Planning (General Development) (Scotland) Order 1981. Most of

the activities which come under the heading of permitted development may be described as relatively minor development and are often uncontroversial. The inclusion of such development under the definition of permitted development relieves the planning system from having to deal with an increased volume of applications for minor development which would on the whole receive planning permission if they were to be put through the system.

Despite arguments from some quarters in the past that permitted development limits should be raised so that an increasing number of developments would not have to go through normal planning procedures, "the prevailing philosophy since 1947 ..... has been to cast the net of development control broadly and to accept that many minor applications may be caught by it" (Grant 1982, p. 146). For example, in 1977, attempts by the Labour government to relax planning controls by increasing permitted development limits were met with fierce opposition and were finally defeated in the House of Lords. George Dobry (1975, Chapter 7) in the course of his review of development control, wanted to retain the broad scope of control but to streamline its management by dividing applications into two categories. On the other hand, a move towards increasing permitted development limits was recommended by the House of Commons Expenditure Committee (1977, para. 88-90) in its report on the development control system. They concluded that concentration on too much minor development was clogging up the system and so recommended a broadening of the exemptions from control conferred by the G.D.O.

Relaxing planning control over minor developments was one of the suggestions put forward by the S.D.D. in their review of the management of planning in 1977 (S.D.D. 1977, pp. 4, 11-12). The majority of responses seemed to favour this although a proposal

to relax planning control on small-scale development whose only effect is on immediate neighbours (S.D.D. 1977, p.4) was met with divided opinion. S.D.D. furthered consideration and discussion on the merits of relaxing planning control over minor developments in a letter to C.O.S.L.A. dated August 27th 1979 seeking comments on a number of proposed changes. These included the raising of permitted development limits on both industrial and residential development. C.O.S.L.A.'s response was that such proposals were unacceptable. In the case of residential development, house plots were becoming smaller and that would mean a greater proportion of the plot could become developed and so the proposals, if implemented, would afford less protection to neighbouring proprietors. In the case of industrial development C.O.S.L.A.'s concern was that extensions may eat into areas agreed in the original planning approval for parking or amenity planting and that some development may increase hazards to neighbours. Only in these cases would the extension of permitted development be unacceptable.

Further consultations between S.D.D. and C.O.S.L.A. took place in 1980 with a letter from S.D.D. to C.O.S.L.A. of November 12th 1979 inviting comments on proposed changes to the G.D.O. A meeting between S.D.D. Staff and C.O.S.L.A. advisors took place on March 3rd 1980 and the report of the meeting was considered by C.O.S.L.A.'s Planning Committee at its meeting of May 16th 1980. Again, they endorsed their previous decision of opposing any extension to permitted development on residential development and made representations to S.D.D. that a comprehensive review of the G.D.O. in the light of existing and proposed amendments be made.

In England in March 1980, D.o.E. published a consultation paper on relaxing planning controls over minor developments (D.o.E. 1980). The proposals were aimed at assisting the planning system "reduce the proportion of the Nation's wealth consumed

by the public sector. Specifically, the proposals were aimed at effecting a reduction in the number of minor applications passing through the system, to economise in spending and staffing and to free staff and resources to concentrate on major applications. These objectives lay behind the proposals to reduce control in Scotland also.

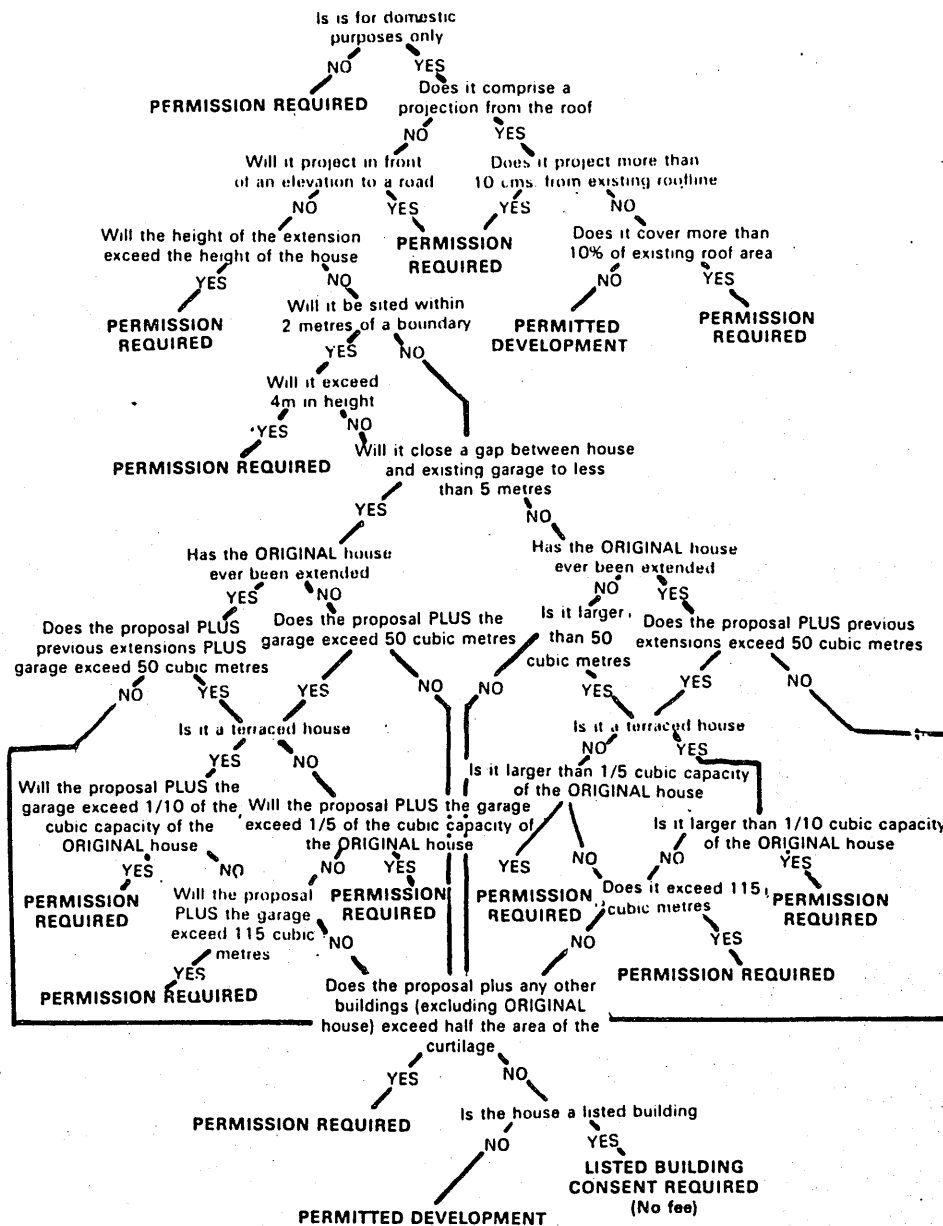
The R.T.P.I. (1980) in its response to the consultation paper considered the proposals as outlined by the government peripheral to the stated objectives while from a Scottish viewpoint Crow (1981) revealed that 78% of Scottish planning authorities were opposed to a relaxation of planning control over minor development, while only 15% were in favour, with 7% undecided. A detailed case study in Dundee over a six month period by Crow (1981) carried out for an undergraduate thesis, revealed that the proposed changes would only reduce the volume of work by 4%, while further investigation revealed that those applications which would now escape the need for planning control were generally the sorts of applications which could be processed to the satisfaction of all the parties and without a substantial commitment of resources, thus refuting the reasons stated by the government as to why permitted development limits should be raised. A reduction in the number of applications was not, therefore, likely to lead to a more expeditious handling of other planning applications, especially since the main factors causing delay were identified by Crow (1981) as statutory consultations, committee timetables and failure by applicants adequately to complete administrative requirements in submission of planning applications.

The changes, as introduced by the 1981 G.D.O., included greater relaxations in permitted development in Scotland than in England, but with fewer safeguards. For example, in the case of

house extensions, the previous permitted development limits of adding an extension of up to 10% of volume up to a maximum of  $115\text{m}^3$  was raised to 20% with the same cubic volume limit. In England, the limit was raised from 10% to only 15% and the old limits were retained in the case of terraced houses, conservation areas, and Areas of Outstanding Natural Beauty while in Scotland, the old limits were retained only in the case of terraced houses. Further provisions were introduced into the Scottish regulations with regard to distance between an extension and site boundary which should not be less than 2m, and so on. The changes made to Class 1, that is, relating to residential development, led to, in the opinion of most planners, a more complicated situation than before with full plan details being needed before determining whether the proposed development came under permitted development or not. These differences, according to Gillett (1984, p.70) reflect the fact that in Scotland there is less concern about bad neighbour development and the desire for any type of development, especially industrial, is greater. Another possible explanation could lie in the differences in Building Regulations between Scotland and England. In Scotland, there is a minimum room size with stipulated floor area and ceiling heights. Therefore the difference could be accounted by the fact that with the extension of the same floor area, a larger cubic volume would result in Scotland. Figure 15 shows how complicated the provisions became.

Industrial permitted development was also extended to include a change of use from one of the special industrial classes to general or light industrial use and a change of use of small premises from industry to wholesale warehousing and vice versa. The main changes to permitted development of all classes is shown in Figure 16. Despite changes in permitted development, the definition of 'development' in Section 19 of the 1972 Act remains

**Figure 15. THE COMPLEXITY OF THE G.D.O.**



Source: Angus District Council, reproduced in Planning, 473, 18/6/82.

the same. The decision at where the line is to be drawn distinguishing permitted development from non-permitted development is an arbitrary one, but is one which cannot be treated in isolation:

"any decisions to change the scope of permitted development would clearly be affected by any decisions emerging from a wider discussion about what we want from planning and how we want the system to perform". (S.D.D. 1977, p.11)

The views of planners on the increase in permitted development limits was mixed. The following views were expressed during inter-

views. Dobson, for example, recognised that the changes did give greater freedom but they worked against much that had been achieved in the past by means of design guides and environmental improvements. He also noted the difficulties planners would now have in deciding whether a particular proposal for development was permitted development or not. Wilson commented that the changes were making it easier for both developers and individuals and she does not like that. Reid believed the changes were based on the planning system as it has to respond to pressure for growth in the South East rather than in the rest of the country, while Searle was in favour of easing permitted development limits because the resultant standard of the environment was no better with control than without it.

The views of Councillors have been equally mixed. Councillor Morrison (Independent) Chairman of Perth and Kinross District Council Development Control Committee, commented that "I think there will be pressures from developers to simplify the planning system and take away some of the controls that councils have. I hope they are not successful." Councillor Robinson (Conservative) of Bearsden and Milngavie supported the move to greater freedom but rejected a free for all. Councillor Hutchinson (Conservative) of Eastwood though commented that the relaxation of controls had caused his district, a high amenity residential area to the south of Glasgow, a number of problems in that some developments were now going ahead and being detrimental to environmental amenity. Labour Councillors were equally determined to maintain public controls over private development.

These changes were no doubt welcomed by developers, industrialists and individual householders wishing to expand their premises. The views of planners have, however been more conservative. But the increase in permitted development limits

The following are the main changes in the permitted development classes:-

- (i) Class 1 (Development within the curtilage of a dwelling-house) is changed to increase the percentage by which houses can be extended from 10% to 20% subject to the existing maximum of 115 cubic metres, but this increase does not apply to terrace houses. All extensions exceeding 4 metres in height within 2 metres of the site boundary or which would result in more than 50% of the curtilage being built over are excluded from permitted development. The erection of garages and coach houses does not count towards the permitted development level if they are sited more than 5 metres from the dwelling-house; however if the house is subsequently extended to within 5 metres of such a garage or coach house the cubic content of the garage or coach house will count against the permitted development level.
- (ii) Class III (Changes of Use) has been extended to include (a) a change from one of the special industrial classes to general or light industrial use and (b) a change of use of small premises, not in excess of 235 square metres, from industry to wholesale warehousing or vice versa. A change from use as a shop for the sale of motor vehicles to any type of shop is no longer to be permitted development.
- (iii) Class IV (Temporary buildings and uses) has been amended to exclude from permitted development the temporary use of land as an open air market.
- (iv) The limit for permitted extensions to industrial buildings in Class VII has been increased to one-fifth subject to a maximum increase of 1,000 square metres (previously one-tenth subject to a maximum of 500 square metres).
- (v) The class of permitted development (formerly Class XVIII) relating to development sanctioned by Government departments has been removed. Powers to enable the Secretary of State to approve development under the Electricity (Supply) Acts 1882-1936 and the Electricity (Scotland) Act 1979 are now contained in Class XV E.
- (vi) There are three changes to Class XX(c) (previously Class XXI(c)) (Development by Planning Authorities). The cost limit below which developments are permitted is raised to £50,000; "bad neighbour" development (i.e. the types of development listed in Article 5(1)(a) to (o)) is excluded from the Class; and it is made clear that the permitted development applies to works and does not include material changes of use.

Source: S.D.D. Circular 24/1981 Development Control. Annex D. p.6.

have not been the only change relating to the nature and scale of control that has been pushed through in recent years. The creation of enterprise zones is another. The following section examines the enterprise zone concept.

#### Enterprise Zones: The Planning Side

Enterprise zones were formally introduced by Section 179 of the Local Government, Planning and Land Act 1980. The zones can be described as spatial measures reflecting the overall economic and planning philosophy of the government, a philosophy which places hope for the future well being of the economy firmly in the hand of the private sector. The zones are designed to provide a stimulus to local and national economies. The concept of the enterprise zone owes its development to two men, Peter Hall and Sir Geoffrey Howe.

Hall had put forward the idea of the "Free Port" or "Crown Colony" to a meeting of the R.T.P.I. on June 15th 1977 as an essay in non-plan where small selected areas of inner cities would be simply thrown open to all kinds of initiatives with minimal control. Hall also put forward several other recipes for the resuscitation of the U.K.'s older inner city areas and rather than advocating the abandonment of control, he stressed the basic need for highly planned and totally managed environments. Only in this way, he stressed, would the new, selective science based industries and research, education and tourism be attracted to the inner areas. He suggested that authorities would most likely find success in a combination of his various recipes rather than in pursuit of any single one in isolation.

The idea was then taken up by Sir Geoffrey Howe in a speech to the Bow Group in the Isle of Dogs on June 26th 1978. His proposed solution had three main themes:

- 'free' planning consents to any industrial or commercial

- building that didn't frighten the horses in the streets
- and which complied with basic health and safety requirements;
  - compulsory auctions of land held too long by public bodies;
  - old town renewal agencies - single minded authorities with the same kind of functions as New Town agencies but with a remit in older areas.

Once in office the idea was passed to a committee of Ministers by the Prime Minister, from there to the Department of Industry and finally to the Treasury. Sir Geoffrey formally introduced the idea in his budget speech of 26th March 1980 and details were published the same day in the D.o.E. Consultation Paper (D.o.E. 1980). In addition to the major financial measures, the Government's general approach to the planning system of cutting out petty bureaucracy, simplifying arrangements, placing responsibility and costs where they belong and encouraging positiveness and a sense of urgency, have all been embodied in the proposals documents. The Consultation Paper (D.o.E.1980) stated that the purpose of the zones was to test as an experiment how far industrial and commercial activity could be encouraged by removal of certain fiscal burdens and by the removal or streamlining of certain statutory and administrative controls, thus helping to regenerate inner areas.

Comparing the original ideas put forward by Howe and Hall and the proposals as implemented, there has been some disagreement as to the extent to which the original proposals have been watered down. From the ideas expressed by both Hall and Howe most people were led to believe that the ideas when translated in action would result in a total abandonment of control. This has never happened and although the original ideas may be described as a radical attempt to provide a market based alternative to inter-

vention to solve inner city problems, the reality, as implemented is somewhat different. The end result is in some respects, a very complex planning mechanism while other controls have remained intact. This planning mechanism explicitly recognises and acknowledges the importance of the public sector for land assembly and infrastructure provision and of the planning authority allocating land uses and safeguarding particular sites.

Enterprise zones represent areas where planning controls have not been abandoned, but simplified. This is effected through the preparation by the Enterprise Zone authority of a planning scheme. In the management of an enterprise zone the responsible authority, either local authority or urban development corporation, are responsible "for ensuring that conditions are as favourable as possible for development in the enterprise zone" (D.o.E. 1980). In seeking to do this the planning scheme will outline:

- the planning proposals for the area;
- the policy to be adopted regarding development applications including reserved matters and non-conforming activity;
- the administrative arrangements to be adopted to ensure the speedy handling of planning applications and building control regulations approvals.

After designation of the enterprise zone by the Secretary of State, the enterprise zone scheme will give planning permission for developments specified in the scheme. That permission will be subject to any conditions or limitations specified in the scheme and the approval of the enterprise zone authority regarding any reserved matter specifically required by the scheme. In practice, conditions or limitations have been used to enforce the necessary controls over polluting or hazardous developments. Where the matter is a reserved matter, the approval of the enterprise zone authority is needed, but only for the matters specified.

Planning permission granted by an enterprise zone scheme may be used at any time while the designation remains in force. However, where a scheme is modified, development started before the modification takes effect will be able to continue during the life of the enterprise zone even if it is outside the terms of the modified scheme. Potential developers may apply to the local authority for determination of whether a particular development proposal is granted planning permission under the scheme. Developers can also apply for planning permission for any development within the enterprise zone area in the normal way. Existing planning permissions may be implemented and development authorised by the G.D.O. may be carried out. Where proposals for an enterprise zone scheme or amendment are in conflict with those contained in the structure and local plans for the area, a duty is placed on the responsible authorities to review the plans and, if necessary, to amend them.

There may be smaller areas within the enterprise zone where the full range of planning permissions granted by the scheme are not appropriate, perhaps to protect the amenity of an adjacent residential area, or safeguard an area around an existing hazard. These sub-zones may therefore contain a more restrictive planning regime by either restricting the range of developments which are granted planning permission under the scheme by imposing additional conditions and limitations, or a combination of both. It is intended, however, to keep these sub-zones to a minimum.

The planning agreement represents a broad brush land use zoning plan which outlines the uses and activities compatible with the specific characteristics of a zone. The planning approach incorporates a certain degree of flexibility in that each scheme can be tailor made to each individual zone. It also gives a degree of certainty in that the planning regime is clearly set out

and the maximum amount of information is made available for the prospective developer, thus contributing, in the government's view, to the creation of conditions necessary for stimulating economic growth and activity.

The planning provisions of the enterprise zone package represent a distinctive departure from the normal way of dealing with planning proposals to develop. Instead of dealing with applications individually on their merits with reference to the development plan and other material considerations, an application is set against a pre-determined scheme. If the development conforms to the scheme, no formal application is needed and permission is given, although approval may be needed for reserved matters. The idea of giving planning consent through a document of some kind is not new - the principle lies behind the G.D.O. and the use classes order, although not to the same extent as in the enterprise zone.

The benefit of such an arrangement to developers is cast in some doubt given that over 70% of applications are decided within the statutory period of two months, many authorities give priority to proposals relating to industrial developments, and that in the enterprise zones they will still have to comply with a whole range of controls and regulations.

During the course of the study most of those interviewed commented that they were well aware that if the zones were successful there would be no need to pretend that it had been the contribution of the relaxed planning regime. Specifically, Wannop said the enterprise zone scheme did show there was an alternative to a statutory local plan while Tough reckoned the zones could point towards a new kind of planning where development would have to meet pre-published criteria. Gregor however, senior development control officer at Clydebank, stressed that from his

planning. Public land ownership is important he said to the success of the scheme, and because it is difficult to think of everything at the inception of the scheme, the strongest package possible is needed. He stressed that development control was an important aspect of planning although he would not be surprised at attempts to further loosen controls.

As for the impact of the relaxed planning regime on helping to attract firms into the zones and on environmental quality within the zones, Roger Tyms and Partners, appointed by the Government to monitor the zones, conclude (1983) that the relaxed planning regime is not the main incentive for firms moving into the zones and that many of the probable environmental disasters which were forecast have not taken effect. Tyms points out that enterprise zone developments compare very well and in some cases are an improvement, on similar kinds of development in terms of layout, design and appearance generally and of new buildings. In general, the enterprise zones have not resulted in vastly deleterious effects on land use policy. The lifting of planning controls is a matter of secondary importance to developers moving in, the time saved is helpful but not of fundamental importance. The report comments (Tyms 1983, p.106):

"One cannot necessarily conclude from this that developers regard the relaxed planning regime as unimportant, but clearly its importance for most developers is secondary to rates relief, industrial buildings allowances, the availability of serviced sites, access and the general competitive advantage of an enterprise zone over other locations in a time of recession."

On the other hand, the report states, some developers have not found the relaxed planning regime helpful. These are developers where planning permission would have been easily obtained anyway, where agreement still needed to be reached on reserved matters or

where there was delay in the approval of building, safety or other regulations remaining in force. The fear that zones would lead to a lower standard of building have also been dealt a blow by the report. This fear has not been realised, although in some cases there are exceptions to the generally good standard of development.

These findings were reaffirmed by the Third Year Monitoring Report (Tyms 1984). They stated that "in general new developments on enterprise zones are being constructed to normal standards entirely compatible with what might have been expected under normal planning control. In fact in a number of schemes higher than average standards are being achieved". A number of reasons were put forward to account for this. In the first place a lot of floorspace completed in the last year went through the planning system in the normal way (34%) generally because permission was applied for before designation. Another factor is that a considerable amount of new construction has been carried out by public agencies such as S.D.A. in Clydebank who build to generally high standards. The latest report also found that very little of new development conflicted with what would have been planning policy without the zone designation and that in general, developers found the planning regime beneficial, some thought it saved time, others that it removed unnecessary interference and offered the advantage of certainty.

The original idea of an area of non-plan has in practice been replaced by a series of complex planning regimes which have acknowledged the importance and role of the public sector in a variety of ways. Enterprise zones are not a licence to developers to do as they want and where they want, exclusions and restrictions by development type and location within the zones are not unknown. Planning control has not been abandoned in enterprise zones,

is the way in which that control is exercised. Enterprise zones represent a form of planning which allows quick decisions on individual proposals and provides a planned framework for both public and private investment where the presumption is clearly on allowing development but with a number of built in safeguards.

### Summary

The two topics of the increase in permitted developments and the planning sides of enterprise zones have been investigated in some detail. These have been two of the most important developments in planning legislation in recent years. The concept of permitted development is not new, what has been is the increase in those limits. These two developments are significant in that each of them, in its own way, represents a change in the scope of development control and the way in which that control is exercised. Both represent a move away from the basic system of development control as it has operated in the U.K. since 1947 in that any development proposal has been subject to a planning application to the local planning authority. The need for the individual application is reduced in both cases as the limits of permitted development are raised and as more enterprise zones are designated around the country. Both the G.D.O. and the enterprise zone scheme in themselves grant planning permission through documents which are prepared beforehand and have legal status and reduce the need for applications for express planning consent. If a proposal comes within the limits of permitted development or it is in accord with the enterprise zone scheme, permission is deemed to be granted. There are of course important issues such as the extent of detail of such documents and the place for public participation and debate within the process of preparation of the documents and the policing or enforcement of

these documents. Grant (1982, p.66) suggests that these recent changes which have been in the direction of releasing planning controls "are all examples of a new approach that involves centralised dismantling of local controls." The local input into the determination of permitted development limits is non-existent while the end product of the enterprise zone planning scheme is a product of negotiation between the local authority and central government. Thus, not only are controls being lessened, but the local influence over the determination of the level of control has been lessened also. Grant (1982 p.66) continues:

"They (changes) represent a questioning of long accepted assumptions. They place a more critical, and certainly a more cynical, interpretation on the motives underlying planning policy and the nature of its administration; and they pose the question not only of whether legal and institution change is necessary but whether any such change can any longer be expected to regenerate the visionary ideals of planning."

### 6.3 Changes Relating to Increased Publicity for Individual Planning Applications

The second group of changes examined in this chapter relate to those which have led to increased publicity for planning applications. These fall into two categories. Firstly, the introduction of neighbour notification under the 1981 G.D.O., and secondly, the new publicity arrangements for planning applications introduced by the Local Government and Planning (Scotland) Act 1982. These are examined in turn.

#### Neighbour Notification

At the heart of the G.D.O. lies the issue of individual freedom of a property owner to do as he wants with his own property and the right of a neighbour to be protected from harmful or unacceptable development. Section 6.2 examined proposals which have been introduced to increase the right of property owners to develop their

own property without having to apply for planning permission.

In order to balance this a scheme of neighbour notification was introduced in Scotland in 1981 the first jurisdiction in the U.K. to make notification of third parties a statutory requirement.

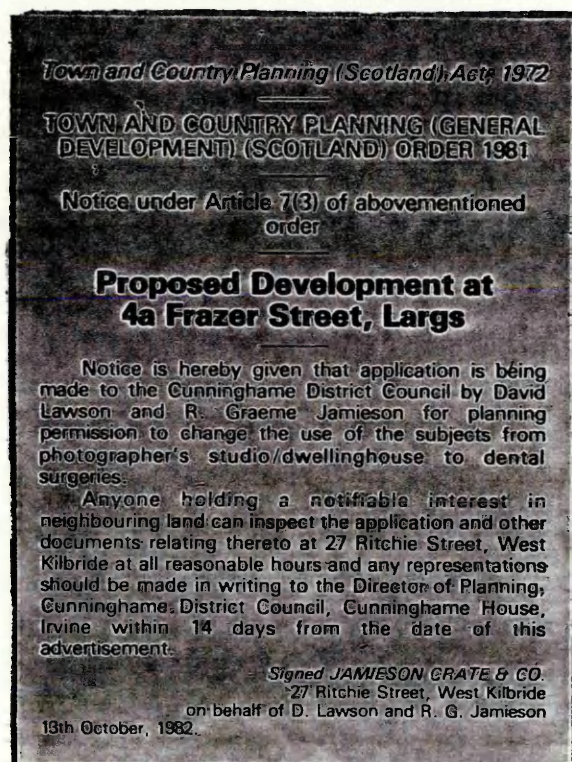
The idea of neighbour notification was first suggested by the 1972 Select Committee Report on Land Use (Select Committee on Scottish Affairs, 1972, para 183) and again by S.D.D.'s review of the Management of Planning in 1977. This document suggested that (S.D.D. 1977, p.11) "a person seeking to carry out certain defined categories of minor development could be required to undertake limited local publicity - perhaps by notifying owners and occupiers of next door properties and perhaps also by posting a site notice." The idea of neighbour notification was further raised by S.D.D. in a letter to C.O.S.L.A. dated August 27th 1979 seeking comments on a number of proposed changes to the G.D.O. Included in these was a proposal to introduce a system of advertising planning applications by advert and/or site notice and that the notification provisions then in operation relating to application for a building warrant should be retained. C.O.S.L.A. replied and took the view that S.D.D. proposals relating to the advertisement and notification of applications was not practicable and that a copy of the application be served on neighbours and that the notification procedure operative in relation to an application for a building warrant be retained.

The provision for neighbour notification under planning legislation was introduced by Article 7 of the 1981 G.D.O. and involved the introduction of a system of notification for applications for full planning permission, outline planning permission and approval of reserved matters, but not for applications to amend a planning permission or vary the approval of reserved matters or those applications already subject to publicity by means of Section 23 of the 1972 Act relating to bad

neighbour developments. Persons notified by means of Section 24 of the 1972 Act, relating to the ownership of the land which was the subject of the application, would also not be notified under the new provisions.

Neighbour notification was introduced on August 3rd 1981 and requires an applicant for planning permission to notify owners, occupiers and lessees of 'neighbouring land' (defined in Article 2 of the G.D.O.) by serving on them a copy of the application and a notice indicating where the plans or drawings may be inspected. If the names and addresses of those with a 'notifiable interest' (again as defined in Article 2) cannot reasonably be found, the applicant can then publish a notice in the press giving the relevant details. Figure 17 shows such a notice.

Figure 17. PUBLICITY NOTICE UNDER ARTICLE 7



Source: Largs and Millport Weekly News, 13/10/82

The applicant is required to submit to the planning authority a certificate which indicates that he has either given notice or that he has been unable to establish to whom he should give notice and that he has therefore advertised, or that he is not required to give notice on the ground that there is no neighbouring land. This certificate has been incorporated into the form for application for planning permission.

The previous requirement for notification under the Building Regulations involved an applicant for a building warrant serving a copy of the application on every affected proprietor, defined as the owner. The sole ground for objection was that the development failed to comply with building standards. These notification procedures continued until 30th November 1981 to ensure that in as many instances as possible notification would take place where planning permission had been granted prior to the coming into operation of the 1981 G.D.O.

On receipt of the application, the planning authority should not begin to consider the application unless it is accompanied by the certificate mentioned above. When the application and certificate have been received, the planning authority have to wait 14 days before determining the application, however, they are under no statutory obligation to take into account submissions or representations received as a result of notification.

The introduction of these new procedures means that there are now two procedures relating to neighbour notification, the procedure outlined above and the procedures already in operation under section 23 of the 1972 Act relating to bad neighbour developments which are subject to site notice and newspaper adverts. Brand (1982, p.72) comments that "this is a regrettable anomaly - there being no 'personal' notice of developments which are likely

to have greater adverse effects on neighbours. A further 'anomaly' is that under the old Building Regulations notification procedures every 'development' was notified. Under the new arrangements only developments which are subject to an application for planning permission will be notified. With the increase in permitted development already mentioned under the 1981 G.D.O., a large number of minor developments will not be notified because those developments do not need planning permission.

A great deal of attention has centred round the definition of 'neighbouring land', 'notifiable interest' and the role of the planning authority in checking the certification of applicants (see Brand 1982). The onus of notification lies with the applicant and not with the planning authority. Elsewhere, notification procedures have attracted the attention of the Ombudsman. However, he can only get involved where it can be shown that notification is the responsibility of the local authority. Whether the Ombudsman will take the view that the local authority has any responsibility to ensure that the certification submitted by the applicant is correct or not remains to be seen.

New provisions, introduced in 1984, and coming into operation on 14th May extended neighbour notification to cover all types of developments, including those previously advertised as bad neighbour developments. The definition of neighbouring land was also extended to clarify its application to developments taking place in, and neighbouring land consisting of, buildings divided into separate units such as blocks of flats and tenements. The definition will also cover land across the road from development proposals - although the requirement will be waived where it would involve unduly onerous notification procedures such as in areas of tenemental property.

S.D.D.'s 1977 review of the management of planning considered publicity given to planning applications and concluded that the present situation was one of confusion in that some types of application needed to be advertised, others did not and that there was no consistency over who had the responsibility to advertise, the applicant or the local planning authority. (S.D.D. 1977, p.13). It asked, how many people spot such adverts, read them and make representations about them, and, do representations that are made reflect minority or unconstructive views and do they help the planning authority to make a better decision? It went on to suggest, "should planning authorities be left in all cases to decide whether an application for planning permission needs to be advertised. And if not, should all adverts be placed by the planning authority so as to achieve distinctive and informative presentation, with costs falling on the applicant?" (S.D.D. 1977, p.13). Response to these suggestions suggested the majority were against giving complete discretion to the planning authority to decide whether advertisement was necessary, but did favour a distinctive style of advertisement, although opinion differed on whether the cost should fall on the applicant or the planning authority.

Section 41 of the Local Government and Planning (Scotland) Act 1982 substituted a new section 23 to the 1972 Act. This new section 23 provided that all forms of advertisement and notification of planning applications should be controlled by a development order covering all applications for planning permission generally, or those of a prescribed class. Newspaper adverts would be now placed by the planning authority who would recover costs from applicants. The intention was that these adverts would be placed in a block, so being more conspicuous and attracting the attention

of the public. But before such changes could be implemented the G.D.O. needed to be amended.

In January 1983, S.D.D. issued a consultation paper (S.D.D. 1983) seeking comments and suggestions for changes to the G.D.O. necessary when the new powers to regulate publicity were exercised. The paper stated that at present, publicity depended on the type of application and nature of the site. The new section 23 would allow application of the three methods of publicity, site notices, personal notification and newspaper notices, to a wide variety of applications. The paper pointed out that in considering improvements to the present system, there was a need to avoid imposing unnecessary and intolerable burdens on applicants and that it must be accepted that there would never be the perfect system as appropriate notification may vary according to the type of development and location of the site. It was accepted as unreasonable that all three methods would be required in respect of one application although some form of publicity should be given in every case. Some types of application may merit a particular kind of publicity while others may merit more than one.

From consideration of some of the responses (C.O.S.L.A. 1983 and R.T.P.I.(S) 1983) the general feeling among planners in Scotland was that neighbour notification should be extended to cover all applications; newspaper adverts should continue to be used (perhaps in conjunction with notification), using the block advert principle; and that site notices as the least successful method, although in theory the most simple and potentially effective, should have a reduced role or be abandoned altogether.

In August of 1983, a further consultation paper was issued (S.D.D. 1983) having taken into account representations received

as a result of the earlier paper. A new scheme for publicity and consultation was put forward containing the following elements:

- site notices for bad neighbour development to be discontinued;
- neighbour notification to be extended to cover bad neighbour developments and the definition of neighbouring land to be extended to cover land across the road from development;
- press adverts to be mandatory for all bad neighbour developments and in the case of other development where one or more neighbouring interests could not be identified;
- adverts to be grouped together and cast in straightforward terms;
- the new arrangements extended to cover applications for reserved matters;
- the new arrangements to be framed to avoid duplication with publicity concerned with sections 24 and 25 of the 1972 Act and the appropriate modifications being made to procedure for development by planning authorities and government departments.

These arrangements will be brought into force by statutory instrument on May 14th 1984. An example of the new block advert for planning applications is given in Figure 18.

#### Summary

These two developments represent a dramatic step forward in conferring upon third parties the right to be made aware of development proposals which will either directly affect them or are to be initiated in the local area as a whole. The neighbour notification procedures are new while the other two methods (site notices and newspaper adverts) have been used for some time but have now been altered. Whether these developments have come because of an increasing realisation of the importance of the

Figure 18: PUBLICITY FOR PLANNING APPLICATIONS

**CITY OF GLASGOW DISTRICT COUNCIL**  
**PUBLICITY FOR PLANNING AND LISTED BUILDING APPLICATIONS**

The applications listed below, together with the plans and other documents submitted with them, may be examined at the Planning Department, City of Glasgow District Council, 84 Queen Street, Glasgow, G1 3DF between the hours of 9 a.m. and 4.30 p.m., Mondays to Fridays.

**Town and Country Planning (General Development) (Scotland) Orders 1981-84.**

DA/No.	ADDRESS	PROPOSED DEVELOPMENT
849/84	98 Byres Road, G12 8TB.	Use of shop as restaurant and hot food shop.
859/84	564 Castlemilk Road, G44 5EZ.	Erection of petrol filling station on site of previous petrol filling station.

Representations regarding any applications within this category should be made in writing to the above address within 14 days.

**Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1975.**

LBA No.	ADDRESS	PROPOSED DEVELOPMENT
100/84	9 Westereraigs, G51.	Erection of residential development following part demolition of Listed Church and demolition of Listed Manse.
104/84	9, 11, 13 Park Circus Place, G3.	Alterations and repairs to roofs of Listed Buildings.
105/84	3 Miller Street, G1 1EA.	Display of non-illuminated projecting sign.
106/84	42 Buchanan Street.	Frontage alterations.
107/84	90 Trongate, G1 5RT.	Installation of cash dispensing machine on frontage of bank premises.
108/84	12 Royal Crescent, G3 7SL.	Demolition and reinstatement of chimney stack and painting of Listed Building.
109/84	7 Buchanan Street, G1 3HL.	Display of set of neon lettering back panel.
110/84	86 St Vincent Street, G2 5TE.	Formation of two lighting troughs to two existing fascia signs.
111/84	155 Buchanan Street, G1 2JX.	Display of set of internally illuminated letters and two illuminated window signs.
112/84	12 Grosvenor Terrace, G12 0TB.	Subdivision of dwelling into 3 self-contained flats and formation of ground floor patio.
113/84	19 St. Vincent Place, G1 2DT.	Use of basement as car park.
114/84	20 Mirrieles Drive, G12 0SH.	Erection of side garden boundary wall and double gate.
115/84	29 Royal Exchange Square.	Display of set of internally illuminated fascia letters and internally illuminated projecting panel sign.
116/84	112 Nithsdale Road, G41 5RA.	Addition of gas flue vent and metal grille on front elevation of listed tenement building.
117/84	40 Kilbirnie Street, G5 8HX.	Erection of signs of frontage of Listed Building.
118/84	177-179 West George Street, G2 2LB.	Demolition of existing building and erection of new park.

Representations regarding any applications in this category should be made in writing to the above address within 21 days.

J. H. RAE, Director of Planning

Source: Glasgow Evening Times, May 18th 1984.

on the extensive stages of publicity and consultation carried out in relation to a local or structure plan is not clear.

However, the R.T.P.I., Scottish Branch, comment (1983, p.1):

"The sole purpose of publicising applications is to give the public the opportunity to comment on development proposals prior to their determination by a planning authority."

Certainly, there are difficulties in having arrangements that prove acceptable to all parties. It would seem that these developments, designed to increase public knowledge of development proposals, will lead third parties to believe that their rights are being extended and strengthen the view of planning as a neighbour protection service, a rôle which the 1977 Review seemed to place little importance on (S.D.D. 1977, p.5), but a rôle which is seen as a valuable part of their work by authorities (C.O.S.L.A. 1977, p.3). Despite increased opportunity for consultation, the crunch issue is whether representation received as a result of them, will aid the quality of decision making and strengthen third parties vis a vis the increased permitted development limits and general attitude of freeing development from constraints. Recent improvements seem to aid third parties and view development control as a neighbour protection scheme. This is a view C.O.S.L.A. seem to accept but not S.D.D.

#### 6.4 Changes Relating to Publicity and Consultation in Relation to Development Plans

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In contrast to increased opportunity and new procedures designed to increase the opportunity to be made aware of individual planning applications, the situation in relation to development plans is quite different. Under the Local Government (Miscellaneous Provisions) (Scotland) Act 1981, a number of central government controls over plan making were relaxed as

central government changed its approach in achieving consistency over the country from one of detailed intervention to one of general prescription. Included, were the powers of the Secretary of State to prescribe places where a local plan should be made available by the planning authority for inspection; the requirement that the Secretary of State should consider the statement of local plan publicity and consultation undertaken by the planning authority; and the power to direct the authority not to take any further steps for the adoption of the plan until adequate consultation and publicity had been carried out. One of the most controversial of the changes was the repeal of the Secretary of State's power to inspect the publicity and consultation statement of an authority preparing a local plan. Under the new arrangements an authority will still have to undertake publicity and consultation and prepare the statement of what they have done. The dropping of the requirement that the Secretary of State's scrutiny of publicity and consultation led to fears that authorities would become less concerned about these matters and would seek only to fulfil the minimum statutory requirements.

Further changes were made to publicity and consultation procedures relating to development plans by the Local Government and Planning (Scotland) Act 1982. These included discretion being given to Regional and Island authorities to allow them not to go through full consultation procedures for minor structure plan alterations; discretion given to the Secretary of State as to whether he will hold an Examination in Public into a structure plan or not; local planning inquiry on a local plan only being mandatory if objectors demand one; the ability of a local planning authority now to modify the local plan before adoption without holding a public local inquiry; and new simplified procedures for local plan alterations which are not significant. Full details

of these provisions can be found in S.D.D. Circular 32/1983.

These provisions are clearly designed to speed up the process of plan preparation and adoption/approval, and according to former Scottish Office Minister Mr. Allan Stewart, help authorities "to achieve a quicker response without eroding essential public involvement." (Stewart 1982). Whether that is true or not remains to be seen, but there is a suspicion that the opportunities for public involvement in the plan making process are being squeezed and that statutory rights are being replaced by increased discretion to the local authority. Boyle and Brand (1981, p.37) provide some evidence that participation at the level of development plans has not been as successful as hoped. They conclude:

- (1) The principle of participation has been lost in practice, legislators are uncertain as to their basic objectives and have failed to consider the implications of superimposing the notion of public involvement on the existing decision making process;
- (2) Neither central or local government was equipped with resources and knowledge to develop meaningful public involvement, and in the absence of a definition, 'adequate' has become a meaningless term;
- (3) Publicity and consultation are no longer considered a means of facilitating plan preparation, it is seen as a delaying factor to be given less emphasis or be removed all together.

Boyle and Brand point out that although the spirit of participation has been lost in the plethora of legal and bureaucratic regulations, planning remains one of the few public functions to offer the public an opportunity to influence decision making. The failure of participation at development plan level and the increased opportunity and emphasis on participating at the level of the

individual application seem a long way away from the proposal put forward in 1977 that public participation should be concentrated on the preparation of local plans and policies and that there should be a shift of consultation away from specific applications towards general policies. (S.D.D. 1977, p.10).

#### 6.5 Changes Relating to the Speeding up of the Planning System

The concern for speed in making planning decisions has been expressed many times by Ministers, for example Mr. Michael Heseltine speaking to the Town and Country Planning Summer School in 1979 said (Heseltine 1979, p.27):

"The aim of planning control is a balanced and reasonable decision. But this need not imply delay and compromise. Slow decisions are not necessarily better decisions. And slow decisions do not necessarily mean different decisions."

S.D.D. Circular 24/1981 on development control commented that "the Secretary of State considers that swift and sound decision taking should continue to be the main development control priority" (S.D.D. 1981, para.3). A number of changes in legislation have been introduced to increase the speed of decision making. These include the planning arrangements in enterprise zones, the increase in permitted development limits and the changed procedures for structure and local plan preparation. Other changes which can be grouped under this heading are as follows:

- (1) Changes introduced into appeal procedure so that the majority of applications are dealt with by Reporters with delegated powers and not by the Secretary of State (see S.D.D. Circular 47/1980 and related statutory instruments).
- (2) Time limits imposed by the 1982 Act with regard to call-ins by Regions in terms of the time within which the region can call in an application, the time within which a District can appeal to the Secretary of State against a call in and a strict timetable being placed on the determination of the call in.

(3) Changes introduced in the 1982 Act relating to enforcement which were designed to speed up the system and allow authorities to deal with breaches of planning control more flexibly.

These are only a few examples of measures designed to speed up the process of development control. Many have argued that speed is not necessarily a good thing in that it could lead to quick decisions being made without full regard to all the factors involved (see Blake 1980).

Certainly, one of the most common complaints of development control is delay. In recent years, some of the strongest criticism has come from the volume housebuilders. Laurie Barratt writing in S.P.L.P. (1983, pp.9-10) criticised the time taken by planning authorities in Scotland to decide on applications as compared with authorities in England. In Glasgow and Edinburgh, he said, the average time for deciding applications for new sites was four months and it was not unusual for some applications to take six months even when the need for housing was admitted as pressing. He also criticised the Secretary of State over time taken to issue decisions following public inquiries and a failure by planning authorities to comply with time limits.

One of the means central government has used to make planning authorities conscious of their performance in development control decisions has been the publication of a league table of performance every quarter in England and Wales. This simply reveals the total number of applications received and the percentage dealt with in the statutory two month period. In a letter to C.O.S.L.A. of June 7th 1982, S.D.D. sought comments on proposals to publish a league table in Scotland showing the relative performance of planning authorities in regard to the determination of planning applications. C.O.S.L.A.'s Planning

- advise S.D.D. that it was opposed to the publication of the league table since it considered the figures did not in any way reflect the relative performance of planning authorities;
- to ask S.D.D. why it wished to publish the league table and what it proposed to do with the figures which had been obtained and to publish details of its own activities relating to speed of appeal decisions, call-ins and so on;
- to advise S.D.D. that if a decision were taken to issue the league table, that a full explanation of how the statistics had been obtained and their meaning should be published at one and the same time.

These views were contained in a letter to S.D.D. of June 25th 1982.

A reply from S.D.D. dated September 9th 1982 and considered at the meeting of C.O.S.L.A.'s Planning Committee on October 1st 1982 (item 11) commented:

"In the light of the Convention's strong opposition to publication, we would be prepared not to pursue our proposal for the present provided that the Convention would be agreeable to considering with us, and representatives of the Scottish Society of the Directors of Planning the scope for undertaking a modest exercise to examine the reasons for the significant difference between authorities."

The letter went on to say that what they had in mind was a small random sample of applications to establish the factors which influence the time taken to reach a decision. This the Committee agreed to.

In May of 1983, the Secretary of State announced that a research project was to be commissioned to investigate the reasons for delay in handling planning applications, believing there was a need for thorough examination to establish more clearly the nature of delay and the reasons for them. Three

objectives were identified for the inquiry:

- to identify and describe factors (internal and external to the planning authority) which affect the pace of decision making;
- to assess the importance of these factors;
- to put forward recommendations aimed at improving the performance of planning committees. (see Scott 1983).

Further attention was brought to the issue of delay in the determination of planning applications in a speech given by Sir George Sharp, Chairman of Glenrothes Development Corporation, at a handing over ceremony of an innovative factory development in the new town in June 1983. Sir George castigated Scottish planning authorities and other development agencies for their go-slow attitudes and obstructionism towards small businesses which could create jobs, resulting in job creators becoming entangled in a sticky mass of 'planning waffle'. He went on to say that better co-ordination was needed between local authorities and other development agencies to ensure that business ventures had the best possible opportunity to establish themselves, survive and expand. Support which could be given to projects with good development potential was not always forthcoming and even when it was available, it was often produced by such slow and tortuous routes as to make those whose enterprises might create work, wring their hands in despair. Sir George went on to suggest a short, sharp investigation to find out if the encouragement given in the 1981 development control circular was being implemented.

These calls for action over the sluggish processing of planning applications from small businesses with job creating potential were answered by the Secretary of State who told him of the inquiry which was being instigated and would start soon. Consultants were being asked to put particular emphasis on the procedures

adopted by authorities in dealing with applications from small and medium sized businesses. These, the Secretary of State recognised, had a crucial role to play in the creation of new employment and he shared the view that planning procedures should be so designed as to ensure that applications were determined with the minimum delay consistent with sound decision making. C.O.S.L.A. and S.S.D.P. had both recognised that there was room for improvement and had approved the project.

C.O.S.L.A. Planning Chairman, Councillor Alex Sharp (Fife), later on the same month defended the record of planning committees dealing with applications. Local authorities, he said, were anxious to deal with applications speedily and soundly and see that there had been no delays inspite of additional administrative tasks (see Section 6.6). Priority was given to all matters concerned with the generation of employment at a time of economic difficulty and high unemployment. Local authorities would not pretend that the existing planning system is perfect and would accept the need to monitor closely performance and introduce the necessary adjustments and changes (see Scott 1983).

The research project was begun in the summer of 1983 with a London based consultants M.V.A. appointed to undertake the nine month project. The research will address the question of what is a reasonable time to process applications for different types of development and for different kinds of planning authority in relation to their respective type and size of workload. Suitable performance criteria will be established together with an assessment of the relative importance of factors causing delays. The aim of the project is to recommend measures to improve performance in specified circumstances.

Although the final report has yet to be published, findings of the research indicate that the deveeopment control system

seems to work reasonably well. The following figures were mentioned by Janet Brand who was part of the study team at a seminar on alternative planning mechanisms at the University of Strathclyde on May 8th 1984. Over 70% of all applications are dealt with within two months and 87% within three. On a sample survey of 25 applications per Scottish authority, 22% of applications are advertised, with 11% receiving objections; 90% are approved, 7% are refused and 30% either withdrawn or not determined. These figures would seem to indicate the system is working well and should be left alone.

#### 6.6 Changes Relating to Increased Administration in Local Authorities

Despite the government's concern for speed and efficiency and the introduction of a number of changes designed to further these objectives, a number of other changes, which may have been introduced for good reasons, seem to have the effect of working against them by increasing the administrative aspect of development control. In some cases, this has been recognised by the government who have not been willing to release extra resources. For example, Circular 13/1981 (S.D.D. 1981, para.16) recognised that the introduction of planning fees would make additional demands on local authority resources, but stated that these should be capable of being found within existing staff levels.

Examples of such changes which have increased the administrative element of development control include:

- (1) The introduction of planning fees. An application for planning permission must be accompanied by the correct fee. This has to be checked by planning department staff. If the correct fee has not been submitted, the application cannot be determined;
- (2) The changes made to Class 1 of the G.D.O. in 1981 have had the effect of making the class extremely complex and

interpretation thereof difficult. This means that telephone enquiries from members of the public with regard to whether planning permission is necessary for a proposed development, are much more difficult to answer without detailed plans (see Figure 16 ).

- (3) The introduction of neighbour notification leaves planning authorities in something of a quandary. Do they check the validity of the certificate which the applicant has to complete stating that he has complied with the necessary requirements? Most authorities do not seem at the moment to do so, but any decision from the courts or from the Ombudsman which would indicate that authorities should undertake this task would result in an extra administrative burden for the planning authority.
- (4) The introduction of new publicity arrangements (see Section 6.3) places a responsibility on the planning authority to undertake the advertising of relevant applications in a newspaper and then to reclaim the cost from the applicant.
- (5) The Building Standards (Scotland) Amendment Regulations 1980 transferred responsibility for considering daylight, sunlight and privacy considerations from the Building Control authority to the planning authority. These are extremely difficult factors to consider and although the reason for the transfer of responsibility was to allow greater flexibility in dealing with them, it has the effect of placing an extremely difficult and extra task on the planning authority.

These are a few examples. They have been significant and numerous enough for planning officers to comment during interview that the planning system has been made more complex. But they come at a time when resources to local authorities have been cut back and extra staff are a luxury that most authorities cannot

afford. Dobson (1980) claims that with these extra responsibilities and no extra resources, the productivity of existing staff members has risen dramatically to compensate for this.

#### 6.7 Changes Relating to Different Levels of Control being suitable for Different Areas

Despite the general thrust of government policy to reduce control and give developers and property owners greater freedom, in some cases control has been increased. These include:

- (1) new provisions introduced in the Town and Country Planning (Minerals) Act 1981 designed to impose stricter environment control over Mineral workings (see Section 5.2);
- (2) provisions contained in the Wildlife and Countryside Act 1981 designed to protect Sites of Special Scientific Interest;
- (3) new development control arrangements introduced in 1980 to safeguard areas of scenic value and beauty, i.e. the national scenic areas;
- (4) strengthening of enforcement and listed building procedures in the Local Government and Planning (Scotland) Act 1982.

These stronger controls relate to areas or activities which have traditionally been given some degree of added protection in the past, such as conservation areas and areas of special natural beauty. These compare with other changes such as the extension of permitted development limits in the G.D.O. (except in the case of terraced buildings) and the planning arrangements in enterprise zones which reduce the extent of control the planning authority could normally hope to exert.

The gap, in terms of the degree of control exercised between areas deemed to need a strong degree of control and areas that do not is being widened. Interestingly, at least one developer, Bredero Consulting Ltd based in Aberdeen, take a different view. They impose their own detailed conditions on the use of land and

property which they develop through a deed of conditions which buyers of their property are made aware of and have to agree to. Conditions relate to the colour of paintwork, restrictions on the keeping of caravans on the property, conducting a business from the house and the keeping of pets. These conditions are drawn up by the developer beforehand, and according to Director Mr. Cook (speaking at seminar held in Department of Town and Regional Planning, Glasgow University, February 23rd 1984) are one of the main factors in the success of the company. They keep standards of estates high and help to maintain and increase the value of the properties. Although the result may be the retention of an attractive residential environment, the main motive for such conditions is purely commercial.

The issue of having different levels of control in different areas is not new. Conservation areas, Areas of Outstanding Natural Beauty, green belts and so on, have been in existence for some time now. But what is new is that the gap between the strictly controlled and the more 'free' areas, seems to be growing. The issue was raised by the 1977 Review (S.D.D. 1977, pp.4-5):

"However, all areas are not alike in their physical characteristics or in the attitudes and wishes of local people, and a case could be made for adopting a stricter degree of control in some areas than would apply generally. Such areas would be likely to include conservation areas, areas of high landscape value, or areas where major positive efforts are being made by planning authorities ..... to create a high standard of surroundings by new development or improvement. These areas of more restrictive control could be indicated in local plans, drawn up in consultation with the local public. There may also be areas - within some industrial estates, for example, where a greater than normal degree of permitted development could be allowed. These flexible arrangements could make it easier for planning authorities to concentrate their development control resources on the areas and the kinds of development which require most attention."

with the majority of respondents although C.O.S.L.A. felt there should be a general level of control from which local departures were an exception to this rule as it would probably lead to confusion and even greater criticism of planning than existed at the time. Their response (C.O.S.L.A. 1977, para.10) stated:

"There is a further danger in the adoption of further degrees of development control. This is that such a system might well create what are seen to be second class areas. There might well be produced a feeling that the local authority do not care about areas where lower levels of development control are enforced. There must also be taken into account the reaction of developers to different degrees of development control. There must be considered the possibility that developers will keep down costs by cutting the standard of amenity in any development to what is the accepted level for any particular area."

#### 6.8 Changes Relating to Clarifying the Responsibilities of each Authority

A number of changes can be identified which seek to clarify the responsibility of each of the tiers involved in the planning process. An associated theme is that of central government disengagement from day to day detailed intervention. The 1977 Review stated (S.D.D. 1977, p.7):

"The Secretary of State has no doubts that planning authorities, as responsible, democratically elected bodies, must be left to carry out their statutory duties without close supervision by him. He does not propose to intervene ..... in local planning matters, and he is adopting arrangements whereby he will be notified as planning Minister only of those planning applications which raise questions of national interest."

This led to the new notification procedures introduced with the 1981 G.D.O. In other ways too, the centre has sought to reduce its role - the relaxation of powers over planning authorities of control and direction under the Local Government (Miscellaneous Provisions) (Scotland) Act 1981 and increased delegation of

level, Stodart's recommendations were all about clarifying responsibility while the Local Government and Planning (Scotland) Act 1982 strengthened the position of the regions in some matters.

These adjustments have been made under the influences of the centre wishing to disengage (although across the board, central government control of local authorities has been increasing, especially in relation to finance) and after some years of operating the new planning and local government systems, changes have been made in the light of that experience in order to make the system more efficient and streamlined.

#### 6.9. Summary

One of the most distinctive features of the recent development of planning has been its increasing politicisation (see McKay 1981, p.60 and May 1981), although the way and extent to which this has happened is not universally agreed. McKay (1981, p.67) for example, points to fragmentation as groups, individuals and communities have responded to urban change by mobilising on an ad hoc basis while the main political parties have remained close together on land use policy. (see also Cox 1980). Thornley (1981) takes a different view, seeing the present government's approach to planning as one which has its roots in a radical, right wing political framework which has firmly and finally broken the so called post-war politics of consensus. No one would now deny that planning is a political activity; politics cannot be taken out of planning any more than planning can be taken out of politics although planning is now perhaps more overtly party political. That being so, how then is the political element in planning made manifest. One way is through government decisions both at a national and local level by means of new legislation, departmental circulars, ministerial decisions, policy making, plan preparation and so on.

in recent years have been considered under a variety of headings. Not every change has been referred to, but rather a selection which helps to illustrate some of the themes contained within them. Many changes do reveal elements of government philosophy working their way through the system and ending up as new or amended legislation. This chapter, however, has shown that as this has happened, there are a number of contradictions which reflect the fact that the government's philosophy has not been considered or implemented comprehensively.

This may be because, as Gillett (1983, p.74) notes, "general planning policies excite little discussion. It takes a particular case for passions to be aroused.". Other areas of policy making, such as housing, hold more weight and political interest and therefore have a more thorough examination and debate. Gillett (1983, p.11) again comments that "in Scottish attitudes to planning there was not present to the same extent as in housing policy a tradition of legislating in a substantially different way from England and Wales."

Although this thesis has concentrated on legislative change as a means through which the government has put into practice its own particular philosophy, there are a number of other ways in which governments influence things. One such area, that of the approval of structure plans is examined in the following chapter.

7.1. Introduction

This chapter considers the political element in structure plan approval in Scotland, highlighting the controversial issue of housing land release around the main urban areas. This is a subject which has produced friction and disagreement between the local authorities, central government and the private housebuilders and one which has been firmly placed on the political agenda. It can be argued that since the approval of structure plans is in the hands of the Secretary of State, then any decision must be 'political'. The logic of this deduction may be somewhat questionable and the existence and importance of other factors in the approval process must be recognised:

- (1) technical considerations relating to structure plan regulations and centrally issued advice (S.D.D. 1981, 1976, 1977);
- (2) the influence of the civil service bureaucracy through which the submitted plan must pass;
- (3) the influence and pressure of objections/representations received by the local authority during the various stages of the plan preparation process.

Figure 19 shows structure plan approvals to date in Scotland and Table 5 shows the extent to which the four plans under consideration (i.e. those which encompass the four main urban areas) have been subject to modification. This takes a variety of forms and includes a partial change of wording (50%), complete rewriting (35%) and deletion (15%) (Coon 1982).

Table 5. Modifications made to Structure Plans

Plan	Statutory Policies			Non-Statutory Policies	
	Total	No.Modified	No.Temp.App.	Total	Modified
Lothian	141	17	38	12	0
S'clyde	31	16	8	28	11
Aberdeen area	34	9	0	39	0
Tayside	80	9	0	35	2
<b>TOTAL</b>	<b>286</b>	<b>51</b>	<b>46</b>	<b>112</b>	<b>13</b>

Source: Coon (1982).

The reasons why modifications were made are many and are spelled out in detail in the appropriate decision letter issued by the Secretary of State. Some of the most common are as follows. Firstly, a policy may be deemed to be inappropriate. For example, Strathclyde's policy of setting targets for public sector house building in a number of areas (Strathclyde Regional Council 1979, pp.26-7) was viewed by the Secretary of State as unrealistic and unjustified. (S.D.D. 1981, para.4). Secondly, a policy may not be considered sufficiently precise. For example, policy RES 8 of the Strathclyde plan (Strathclyde Regional Council 1979, p.28) on the role of the new towns was deleted and new wording substituted (S.D.D. 1981, para.6) to make clear the actual role of the new towns. Thirdly, a policy contained in a structure plan may conflict with national policy. For example, in the Lothian plan (Lothian Regional Council 1978, para. 226) the Council urged the government to make more money available to it for land purchase under the Community Land Act. The Secretary of State replied that he was not going to do this in light of government policy to abolish the Act (S.D.D. 1979). Fourthly, a policy may not be considered flexible. This reveals

Figure 19: STRUCTURE PLAN APPROVALS IN SCOTLAND

Structure Plan	Submission Date	E.I.P.	Time from submission to E.I.P.	Final Modifications	Time from E.I.P. to Modifications	Total time for submission
Lothian	May 1978	Oct. 1978	5 months	December 1979	14 months	19 months
Lothian Alteration (1)	April 1981	-	-	August 1982	-	16 months
Orkney	September 1978	March 1979	6 months	November 1979	8 months	14 months
Shetland	February 1979	June 1979	4 months	February 1980	8 months	12 months
Highland	June 1979	Nov. 1979	5 months	July 1980	8 months	13 months
Highland Alteration (2)	April 1983	-	-	March 1984	-	11 months
Borders	December 1979	May 1980	5 months	December 1980	7 months	12 months
Strathclyde	May 1979	Nov. 1979	6 months	January 1981	14 months	20 months
Strathclyde Alteration (3)	January 1982	-	-	April 1983	-	15 months
Aberdeen Area	August 1979	Feb. 1980	6 months	May 1981	15 months	21 months
Aberdeen Area Alteration	November 1981	-	-	July 1982	-	8 months
Tayside	June 1980	Dec. 1980	6 months	April 1982	16 months	22 months

Tayside Alteration (4)	December 1983	-	-	July 1983	-	
Central - Western Rural Area	October 1981	-	-	July 1982	-	9 months
Central - Stirling/Alloa	August 1980	March 1981	7 months	July 1982	16 months	23 months
Fife - Kirkcaldy/Dunfermline	June 1982	-	-	July 1983	-	12 months

- NOTES: (1) The Secretary of State required an alteration to the Lothian plan by December 1980 including revised housing policies. The existing policies were valid until June 6th 1982.
- (2) The Secretary of State encouraged Highland Region to prepare a more detailed settlement policy dealing with employment and infrastructure and to be submitted by the end of 1982.
- (3) As (1). Existing policies valid until June 6th 1982, alteration required by December 31st 1981
- (4) Alteration for high technology industry in Dundee

Source: S.D.D. Development Plan Bulletins. Published Quarterly

itself in the determination of the Secretary of State to release land for housebuilding on the periphery of urban areas when there was in theory enough land available elsewhere (for example in reference to the Tayside plan see S.D.D. 1982, p.5). A number of other minor reasons might also be used to justify the modifications made, and on the whole can all be described as 'technical' reasons.

Investigating modifications from a political point of view is, of course, not easy. The reason 'policy conflicts with national policy' is perhaps a first step. On the specific issue of housing land release, the Secretary of State found a great majority of the policies contained in the plans under investigation unacceptable and many were therefore modified (or in the case of Lothian and Strathclyde, given only temporary approval). In general he found calculations of available land for house building to be over-estimated and demand underestimated. These modifications must be seen in conjunction with the government's overall housing and planning policies which contain elements such as an emphasis on the private sector, making planning less restrictive and increasing choice in terms of house type and location (Conservative Party 1979). The demand for increased land release on greenfield peripheral locations may of course conflict with established planning policies and concepts (i.e. urban containment, greenbelt, an emphasis on inner area redevelopment and the need to preserve prime agricultural land) although in some cases such policies may serve to direct housebuilders into areas previously ignored by the private sector (Cameron 1981, chp. 3).

The National Planning Guidelines (S.D.D. 1981, p.5) recommend that structure plans provide for a five year land supply for development and "some margin above the calculated need." Although

structure plans allocate land for development they have also sought to control the activities of private builders, yet Cameron (1981, p. 34) concludes that "planning appears to stand remote from the 'principa media' which influence private house-builders" while market forces, over which planners have no influence, play a leading role in postponing or bringing forward land for development, irrespective of land allocation policy.

In each of the four plans under consideration the volume and location of land allocated for housing development was an issue chosen for investigation at the Examination in Public (E.I.P.) As all structure plan approvals in Scotland so far have been under the present Conservative government, a certain degree of (political) consistency in plan approval and in the making of modifications to housing land allocation policies can be assured. The remainder of this chapter seeks to examine each of the four plans in detail.

## 7.2 Lothian

The original plan contained 37 policies related to housing; 5 restricted development on greenfield sites, 11 restricted development at specified locations, 5 allowed development at 4 specified locations and the remainder were mainly concerned with layout. The E.I.P. report concluded that the original plan was based on the belief that there was more than enough land available for house building. This was not however accepted by the Secretary of State who directed the region in conjunction with the District Councils and other interested parties to prepare alternative proposals by the end of 1980 (S.D.D. 1979). The original policies were given temporary approval until June 1st 1981 to provide interim guidance while the alteration was being prepared.

The alteration containing the modified housing policies was

submitted to the Secretary of State in April 1981 (Lothian Regional Council 1981) and incorporated the most recent District Housing plans which indicated a need over a five year period of between 18,000-20,000 homes. The assessed housing requirement to 1986 was calculated to be 12,810, a figure which the Secretary of State accepted as the lowest level of requirement, but he deemed it prudent to consider a higher level in light of uncertainties regarding forecasting of population and housing demand and also to allow a measure of flexibility to withstand changes in social or economic trends.

In the proposed modifications to the alteration, (S.D.D. 1982) the Secretary of State accepted that on a purely arithmetical basis there were adequate opportunities for housebuilding presently available and enough potential housing land to meet requirements to 1986. However, to achieve some degree of flexibility to meet any increased demand and because of the difficulties of bringing forward, in the short term, sufficient sites, that were both marketable and available to the inner urban areas, the Secretary of State rejected the proposal not to approve any further greenfield sites and made an allocation for 5,000 dwellings (2,000 in Edinburgh). Land for this allocation was to be on non-agricultural land or land of restricted agricultural potential and was to avoid to the maximum extent possible, land in the green belt.

Local Authorities in Lothian then combined to oppose additional allocations, taking the view that the original policies were beginning to take effect and that this was not the time to depart from them. Lothian region claimed that there was no evidence of the rate of housebuilding being constrained by land shortages. They also believed that the proposed modifications would result in a less efficient use of scarce public resources and that it was contradictory to make this extra land allocation

when the Secretary of State himself had reaffirmed the objective of protecting both the greenbelt and prime agricultural land.

Despite these protests, the final modifications (S.D.D. 1982) included the controversial extra land allocations. The decision was however warmly welcomed by the Regional Council this time around now that political control had switched from Labour to Conservative in the Regional elections of May 1982. The Secretary of State again emphasised the need for flexibility and expressed some doubt as to whether the development of inner area sites and rehabilitation of older properties could contribute as much as the Region expected, and satisfied himself that additional sites would involve little, if any, encroachment into the greenbelt.

### 7.3. Strathclyde

The Strathclyde structure plan identified the two main problems facing the region as unemployment and urban deprivation (Strathclyde Regional Council 1979, p.5-10) both of which had been exacerbated by planned and unplanned movements away from the conurbation to the outer suburbs, settlements and new towns. The plan's aim was to reverse this trend by making the conurbation more attractive for both working and living in and to restrict development opportunities outside it. To adopt such a strategy at such a time of limited growth clearly had its dangers. For example, it implied a very close match between land supply and demand. If too much land was made available then the sites developed may not necessarily have been the best ones and if too little land was made available, investment and development may have been lost to the region.

In the modifications made to the plan the key infill, or redevelopment in preference to greenfield sites, policy was retained but reworded, thus making it anomalous (S.D.D. 1981, para.3).

Private housing targets for nine inner areas and the number of public sector houses to be provided within each District were deleted for lack of justification. The new towns policy was also altered to allow expansion to meet a proportion of second generation needs as well as housing to match employment growth. Only two housing policies were granted approval beyond June 1st 1981 - the remainder were given only temporary approval until that date as the Secretary of State accepted the conclusion reached in the E.I.P. report that the prohibition of development on greenfield sites would be likely to result in a shortfall of land for private housebuilding.

The alteration containing the re-assessment of housing land and supply was submitted in January 1982 (Strathclyde Regional Council 1981) and proposed modifications issued in September 1982 (S.D.D. 1982). The Secretary of State accepted that the revised policies went some way to meeting earlier reservations about the shortage of land for private housebuilding but considered it necessary to make a number of modifications to ensure adequate supplies of land. Thus, extra allocations were made in the Clyde Valley area, at Paisley and East Kilbride; locations chosen to maximise the use of existing infrastructure capacity, to support established urban areas and to provide a better range of housing opportunities.

The single most controversial issue to arise from these modifications was the proposal to release greenfield sites for 3,000 dwellings at East Kilbride and to reaffirm land release for 1,200 dwellings at Irvine. These proposals rekindled the disagreement between the region and the new towns, initiated with the original bias of the plan being towards the inner areas and the modifications made to allow the new towns to cater for second generation housing needs. The new release of land at

East Kilbride on prime agricultural land and in an area previously regarded as greenbelt came with the postponement of other locations described by Councillor C. Gray as "more favourable". The Secretary of State reasoned that such a proposal had been necessary to clarify the role of the new towns and was in line with national policy.

#### 7.4 Aberdeen Area

Following long arguments at the E.I.P. concerning the location of the large number of new houses proposed in the plan, the Reporter recommended that the housing policies should all be re-considered. Instead, they were rewritten by the Secretary of State and contained a maximum allocation up to 1983 (rather than 1986 as in the submitted plan) and sought to discourage the over zoning of land for development (S.D.D. 1981, pp.2-4). In reality, the new allocations had the opposite effect, resulting in an annual allocation rate almost twice that of the original one. These new allocations included generous allowances for choice and the Secretary of State, while agreeing with the need to provide for extensive development in this growth area, asked for a tighter definition of additional housing land in local plans.

An alteration to the plan including revised housing policies was submitted in November 1981 (Grampian Regional Council 1981) and proposed modifications issued in May 1982 (S.D.D. 1982). These sought to reduce the minimum number of houses for which planning permission must be granted in the plan area in the period 1979-88 from 20,900 to 20,000. This reduction took into account the differing opinions concerning future population growth and housing demand and aimed to strike a balance between over and under provision, pending the plan review due in 1983.

reference was also made to the desire of the Secretary of State for a speed up in the completion of local plans for potential development areas in order to provide the basis of detailed planning at local level.

#### 7.5. Tayside

Of the 23 policies in the Tayside plan (Tayside Regional Council 1980) related to housing, only one policy was modified, that concerning housing land allocation for Dundee, arguably the most important policy. The submitted plan estimated on the basis of need, a requirement of 5,000 houses by 1986, needing an additional land requirement for 1,850 dwellings. The Secretary of State, however, recalculated demand not on the basis of need but on the basis of current trends in local house completion rates (S.D.D. 1982). This gave a requirement of only 3,000 dwellings by 1986. The plan was subsequently altered giving an additional land allocation for only 1,100 dwellings. Although demand and supply were recalculated for Dundee, the allocation of land for 1,240 dwellings in Perth, for which no justification was given in the plan, was not modified. Coon (1982, p.28) comments that "it seems unlikely that a methodology judged to be faulty could come up with the wrong answer for Dundee but the right one for Perth."

The Secretary of State, while acknowledging the apparent balance between land supply and demand, took the view that certain sites, particularly in inner areas, were not always attractive and suitable to private builders for a number of reasons. He also noted that a tight land allocation may also inhibit individual choice and restrict the entry of new firms into the house market. By allocating an additional supply of land for 1,100 dwellings the Secretary of State increased the surplus of allocated land above the completion rate from 600 to 1,700 dwellings (see Table 6).

Table 5. Housing Land Allocation for Dundee

	No. of Dwellings Required to 1986	Land Availability	Shortfall	Allocation
Plan	5,000	3,150	-1850	1850
SOS Modification	3,000	3,600	+ 600	1100

Source: Tayside Structure Plan and Secretary of State's Modifications

This, according to the Secretary of State, represented a "reasonable balance for strategic land release subject to reconsideration in the light of experience of actual housebuilding performance". In times of recession that completion is bound to fall, thus the surplus becomes larger. We can conclude that the modifications do nothing to solve Dundee's chronic housing problems.

7.6 Conclusion

Although the technical details in each of the four plans are very different, a number of common threads can be identified. The single issue of the volume and location of land allocated for housebuilding in the structure plans examined led in all four cases to additional land being allocated. The main beneficiary of these additional allocations will be the private housebuilder whose role was continually stressed. For example, "the Secretary of State believes that a substantial proportion of housing needs in the Aberdeen area should be met by private sector and he would encourage the Regional and District Councils to consider in conjunction with private housebuilders, the steps which could be taken to facilitate this" (S.D.D. 1982). The reason for this increased emphasis in private sector activity can be found in concepts such as flexibility, choice and the difficulty of using inner area sites, although self imposed constraints such as

protecting greenbelt and agricultural land from development reveals traditional Conservative conservation concerns (and also a wider conflict of inner areas versus suburbs, and in Strathclyde, the added dimension of the conurbation versus the new towns). Such were the repercussions of the modifications made to the submitted plans that three of the councils concerned submitted an alteration to the plan which contained revised housing policies (although two of them were under direction from the Secretary of State to do so).

Where additional housing land was allocated, the Secretary of State warned that local plans should be prepared as soon as possible and that Districts should not delay in approving proposals for residential development in areas identified in structure plans because the relevant local plan had not yet been prepared. Scottish Environment Minister, Mr. Allan Stewart, speaking to the annual lunch of the National House Building Council (Scotland) in October 1982 claimed that the first round of structure plans had not made adequate provision for housing land but alterations to the plans and the Secretary of State's modifications had significantly boosted land supply. He commented:

"We hope that by the end of this year, with the approval of structure plans or alterations for all areas of the country where development is significant that private housebuilders will be able to plan ahead with a greater degree of assurance than in the past."

Stewart also warned:

"We have made it clear in approving structure plans, that once a structure plan has been approved we would not normally expect there to be any question of decisions on planning applications or appeals being held in abeyance until local plans have been prepared. Where a structure plan makes provision for housing in a particular area and

there is no local plan, decisions should be taken about the precise identification of sites to meet structure plan provision in response to planning applications. Where a planning authority refuses to come to a decision before a plan has been prepared the Secretary of State will not hesitate to do so on appeal to him."

Since this speech was made a number of appeal decisions by the Secretary of State have made clear that the above warning was meant. This is perhaps most clear in Lothian region where a decision of February 1983 released 82 acres within the green belt for around 750 homes at Swanston Farm.

This area was rated as being of prime agricultural quality, yet was released for housing development contrary to the National Planning Guidelines (S.D.D. 1981, p.4). This decision led to much controversy putting at serious risk the region's infill policy and leaving egg on the face of the Secretary of State whose principle and practice were not seen to be the same (see Reid 1983). In this instance the Secretary of State's decision can clearly be described as 'political' in that he has ridden roughshod over the wishes of the elected councils of the area, ignored centrally issued advice and made a mockery of a planning policy previously sanctioned by himself.

With only four plans and one issue examined it is difficult to come to any firm conclusion about the extent to which political influences can, and do, lead to modifications made to structure plans. On the whole the Secretary of State has supported the various strategies put forward by the Regional Councils, but not (in whole) the means proposed to fulfil these strategies. His modifications, although subject to some degree to publicity and consultation are not perhaps subject to the same degree of scrutiny as the initial proposals forwarded by the Regions. The Secretary of State holds a great deal of power, not only to make sure that appropriate and necessary modifications are made,

but to see that they are implemented (especially through the medium of appeal decisions as shown above).

This analysis has focused on the political role and influence that can be and is exercised by the Secretary of State as regards the approval of structure plans in Scotland. It cannot be forgotten that political influence of one kind or another, can be and is exerted on the plans during their preparation in terms of the problems identified, priorities made and resources allocated. It is interesting to note that some plans have been prepared under the control of a number of local administrations, which may or may not have changed in political composition and control, while plan approvals have been made under the same national administration.

This chapter concludes that there is some detectable political input in the approval of structure plans (although it is extremely difficult to quantify this and the sole criterion of measurement has been against stated government policy). It has demonstrated clearly that the political nature of planning has shown itself recently in an area other than in changes in legislation, namely the modifications of structure plans by the Secretary of State for Scotland. Having established this, the question needs to be asked as to how well the political philosophy of the present government has been put into effect. Both that philosophy and how it has been implemented have been examined in previous chapters. How well these two fit is examined in the following chapter, and more specifically how well the objectives set out for Scottish planning by the previous Scottish Office Minister for planning, Mr. Malcolm Rifkind, have been met.

8.1. Objectives for Scottish Planning

Malcolm Rifkind, former Scottish Office Environment minister from 1979-82, outlined five objectives for Scottish planning at a speech he made to the R.T.P.I. Scottish Branch in January 1980. These were:

- the release of the spirit of enterprise;
- to ensure that decisions were taken more quickly;
- to ensure the efficient use of staff and resources;
- decisions to be taken by the authority or person closest to the development;
- to safeguard the right of the individual.

In outlining these objectives, Rifkind went on to say that Government did not want to embark on radical change to planning in Scotland. His successor, Allan Stewart, again speaking to the R.T.P.I. Scottish Branch, this time in June of 1982, described the changes as evolution, not revolution in Scottish planning. He accepted that in such a complex society as ours, planning was essential. He commented that the existing system had developed sensitively and had shown itself to be of considerable benefit to local areas and communities. He saw development plans as being extremely useful documents as a persuasive part of the planning process but not necessarily being the final word. Structure plan updating was therefore essential, but should be an extremely modest exercise carried out continually to ensure that any change in circumstance was applied and developed as and when it occurred.

Rifkind did not make it clear whether his objectives were things to be aimed at or criteria for measuring a successful system, that is, concentrating on what the planning system does rather than how it is done. From the use of the objectives by Stewart in the speech already mentioned, it would seem Rifkind's

concern was with the latter interpretation. In his speech, Stewart seeks to evaluate the Scottish system against Rifkind's objectives. Nowhere in recent Ministerial speeches or in S.D.D. circulars is the purpose of planning spelled out. It can, however, be inferred from national policies which provide a framework within which local planning authorities deal with the detail. The 1977 Review stated (S.D.D. 1977, p.4):

"Planning was initially, and still is mainly, a means of controlling and guiding the use of land and the processes of change in the environment. It is not an end in itself but serves the need for alternative or competing choice for the use of land to be discussed and informed decisions made. It can guide and control the location and scale and pace of development both negatively and ..... more positively. Although it can contribute to the solution of a wide range of social problems it cannot either cause or cure them on its own".

C.O.S.L.A. in their response (1977, para.7) commented that generally the public probably expect too much of planning and that perhaps planning itself attempts too much.

The present Government have their own idea/conception about the purpose of planning (outlined in Section 4.4) and more clearly, how that should be implemented. Thus the objectives outlined by Rifkind and the review of them by Stewart in the context of recent legislative change must be considered here. Lyddon (1981) has also made some comments on these objectives put forward by Rifkind which are included in the text.

The first objective, that of releasing the spirit of enterprise, was described by Stewart (1982) as the "fundamental key objective". A number of strands can be identified which go to make up this objective. These include freeing private enterprise from the bonds of bureaucracy, the creation of wealth, the speeding up of the planning system and fostering an attitude of being more permissive towards development proposals. Certain of the

Governments' actions can be said to have been aimed at achieving this objective. The creation of enterprise zones as areas where a series of planning and fiscal measures are combined to encourage enterprise and the raising of permitted development limits allowing minor development to go ahead without the need for express consent are two good examples. In addition, a number of other developments related to the relationship between planning and business have helped to stress the importance planning has in helping industry. P.A.N. 29 (S.D.D. 1982) on Planning and the Small Firm urged planning authorities to pay more attention to the needs of business; Circular 24/1981 on development control (S.D.D. 1981, para.4) encouraged local authorities to give priority to applications which would create jobs while S.D.D. announced a research project in April 1982 entitled 'Business Involvement in Plan Preparation and Implementation' to consider the involvement of the business community in local planning. The aim of the project is to provide advice on how plan makers and business users can improve communication in the development of plans and to show how plans are relevant to business users.

Both Lyddon and Stewart, in the speeches referred to above, stressed the important role of development plans in achieving the release of the spirit of enterprise. Policies could provide the framework for investment and highlighting opportunities for development, thus communicating to prospective developers in a positive way. However, both pointed to the slow progress towards full coverage of plans in Scotland and that plans often concentrate too much on an authority's own proposals and that too much effort has in the past gone into preparing the plans rather than implementing them. It is a cause for concern, therefore, that so many plans are still not operational (see Section 3.3) and so produce,

according to Stewart, delay, confusion and more appeals than usual.

In seeking to achieve this objective of releasing more enterprise some considerable moves forward have been made. It remains to be seen whether these measures in themselves will create more enterprise and jobs. One of the main features of the present Government's attitude to planning has been that planning control is a major factor in preventing development from going ahead, a hypothesis which concludes that compliance with planning and building controls have imposed a burden on embryonic economic activity. However, to lay the blame for the nation's economic activity solely at the feet of bureaucratic control and planning activity in particular, shows a certain poverty of analysis and a simplified attempt to understand the factors shaping national and local economies in the late 1970's and early 1980's. Certainly planning has sought to control development in the south east of the country where there remains pressure for development. But to apply a national remedy for what is a regional problem is surely wrong.

Changes in planning legislation designed to achieve the second objective of ensuring that decisions are taken more quickly have been previously examined in Section 6.5. Lyddon further stressed the need for having up to date plans to ensure this objective. He said (1981, p.4):

"There is evidence to show that where a structure and local plan clearly define what would be appropriate development, delay and conflict and public inquiries have been avoided. Indeed it now seems that no part of the country can be exempt from the unexpected hence coherent development control policies and local plans are required for all parts of the country".

Stewart again stressed the main development control priority as being "swift and sound decision making" (S.D.D. 1981, para.3) and that over 70% of applications received in Scotland in 1981

had been determined within the two month statutory period.

Performance figures, see Table 1, have improved in Scotland since 1980 to reach a level better than that for the last five years. However, this has been at a time when the total number of applications has dropped from 38,882 to 32,274.

Despite the overall improvement, Stewart commented:

"However, the differences between authorities are still considerable, The top 30 authorities decided over 90% within two months while the bottom three authorities decided less than half in the same period".

Likewise, in appeal procedures, changes have been introduced, namely increased delegation to Reporters, which seem to have helped to speed up the system. However, as has been noted, speed is not the only nor the most important factor in decision making and although the planning system is being speeded up, it may be at a cost of all relevant factors not being taken into account and thus leading to more bad decisions and conflict between developers and planning authorities.

At a time of cuts in public spending and economic decline, the efficient use of resources becomes an important issue. Lyddon questions the fact as to whether Scottish planning has managed to adapt to a system based on the management of existing resources which seek to maximise the current potential for development rather than allocating (non-existent or little) growth and expansion. Scottish experience over the last decade or so would seem to suggest that this changing emphasis is one which planning authorities have faced and adapted to as they have had to face up to changing economic circumstances.

It has previously been noted that the present Government's philosophy contains an antagonism towards bureaucracy and particularly to high levels of staffing in both central and local government. This has led to a campaign to reduce staffing levels, compounded by public spending cuts which have prevented many

authorities from filling vacant posts. Highland Region though, are a good example of an authority which has managed complete local coverage but with few staff (although this says nothing about the quality of the plans). Although development plans may be expensive to produce, no one seems to be making out a case to abandon plan preparation because of costs, although there is the need now for more efficient use of resources in their preparation and the maximum use and potential of plans to be made. In development control the introduction of planning fees have helped to offset some of the cost of the operation of the system.

Although commitment to full coverage of plans remains, the continuation of some local authority departments is in doubt. In Lothian, for example, the physical and policy planning departments were combined in 1982 with the loss of a number of senior posts. In England too, a number of authorities have reorganised departments to reduce staff and save costs. At district level, in some authorities, planning departments could well be organised as one element of a Technical Services department instead of on their own.

The fourth objective of decisions being taken by those closest to the problem has also been dealt with in Section 6.8. Central government have been committed to disengagement from detailed planning at local authority level while functions have been clarified between the two tiers of local government. The completion of structure plans has allowed Regions to set down a broad strategic policy framework under which Districts can plan.

Freedom of the individual again has been one of the main planks of present Government's policy. Changes to the permitted development levels in the G.D.O. are proof of that. However, that has to be balanced with the rights of neighbours to be

protected from harmful development and so there has been an increasing emphasis on publicity for individual applications. With planning law being an amalgam of the ideology of public interest and private property, the freedom of the individual must be placed within the context of a wider public interest.

In summary then, the five objectives outlined by Malcolm Rifkind are clearly related to the overall planning philosophy of the government and many of the changes which have been introduced have helped to achieve one or more of these objectives. Overall, this section has suggested that these objectives, to some extent, are being met but with associated problems and issues which must also be considered. The path to achievement is not an easy one. If there is one common element which comes across from the comments of both Lyddon and Stewart, it is the importance of having up to date development plans covering the whole of Scotland. The relationship between local plans and development control has been previously explored in Chapter 3. The remainder of this chapter further explores reactions to the implementation of the present Government's planning philosophy.

## 8.2 The Ideological Attack

Since coming into office in May 1979 the Government have made many changes to the planning system. From an examination of their declared philosophy, a radical reform of planning resulting in new policies, initiatives and approaches may have been expected. Many of these policies have now been translated into action.

Support for viewing the changes as a radical reform of the planning system comes from Stevenson (1984) who sees them as a sustained attack on the credibility of town planning. This, he says, has been partially an attack on statutory planning through removing certain proposals of areas from local authority control by enterprise zones (and in England, further by special development

orders and Urban Development Corporations) and partially by an attack on planning's sphere of influence. Changes are all part of a tendency towards giving greater freedom to the market and towards the centralisation of decision making and control.

A different view is forwarded from other writers. Hall (1983, p.52) comments that the developments of recent years represent "a change in degree rather than in kind".... and that "it could be argued that Heseltine was not undermining the 1947 system; rather, he was enabling it to work more expeditiously and more effectively". Hebbert (1980, p.398) identifies within the Heseltine approach a commitment of sorts towards maintaining some existing planning policies such as the regeneration of inner city areas, environmental improvement, and conservation.

Cox (1980) and McKay (1980, p.66) take the view that despite policy innovations in some areas (abandonment of regional planning, transfer of all development control powers in England to Districts, an increase in the private sector and so on), many of the changes to planning powers and responsibilities merely extend on work within earlier reforms (increased control over local expenditure, emphasis on inner city renewal and so on).

Cox concludes (1980, p.277):

"Looking beneath the veneer of Conservative policy, their innovations are not as radical as one might think. In some cases, innovations introduced under Labour have been maintained ..... when they appear to serve a useful purpose. Nevertheless, on balance, the changes introduced do represent an erosion of the attempts by Labour to create a more positive public sector role in planning in favour of a 'regulatory' approach aimed at responding to development decisions, emanating from the private rather than public sector."

Cox continues that "it is only in the more 'ideological' area of state land ownership that government has attempted radically

to alter policy, even here there is a degree of continuity with Labour legislation."

Although the present Government may have "undertaken what is probably the most ideologically based review of planning since the 1947 Town and Country Planning Act" (May 1981, p.1), the approach in practice has led to many changes, some radical, some not so radical, but on the whole not to the extent that their philosophy demanded. The views of planners in Scotland are that the changes in practice are not as severe as they were led to believe. A number of reasons can be put forward to explain this.

(1) The Motives for Introducing Change

Mr. Robert Gordon, former Principal in Planning Division No. 2 at S.D.D. suggested three main reasons why so many legislative changes had been introduced at a Planning Exchange seminar held in 1981 (held Dundee, October 23rd 1981):

- political, relating to the Government's political philosophy;
- financial, relating to the intention of reducing public expenditure;
- administrative, linked to ongoing administrative reviews.

These three reasons are not mutually exclusive and it may be that a conflict of objectives could occur. For example, the provisions introduced to give greater publicity to individual planning applications do not enable a speedier planning system and may in fact lead to increased delay, as well as further complicating the system.

A number of those interviewed in the course of the preparation of this thesis have commented that the changes have not followed a comprehensive review of the planning system but have been introduced on a piecemeal basis. However, many of the changes highlighted were aired in the 1977 S.D.D. review of the management of planning including the introduction of neighbour notification,

relaxation of permitted development and disengagement by the Secretary of State.

The influence of C.O.S.L.A. must also be considered.

They, along with the Scottish Society of Directors of Planning, are consulted on proposed legislative change, their role, according to Gillett (1983, p.5) being more a reactionary one than initiating. Some proposals do however come through C.O.S.L.A. from individual authorities desiring changes, which in some cases have been implemented. For example:

- At its meeting of September 7th 1979, the Planning Committee considered a letter dated July 27th 1979 from Lanark District Council to make representations to the Government to make the necessary amendments to allow the local authorities to charge for planning permission. The letter stated the Council's position "that it is much better to have a service paid by the applicant rather than have the standard of service reduced". At the same meeting a letter from S.D.D. dated August 23rd 1979 informing C.O.S.L.A. of the Government's intention to introduce charges was noted. The Committee passed an amendment to the effect that it accepted the principle of charging for planning permission but sought discussion with S.D.D. on the detailed application of the principle.

- At its meeting of May 16th 1980, the Planning Committee considered a letter from Banff and Buchan District Council dated April 10th 1980 asking for support for representations to be made to S.D.D. to simplify the arrangements for amending planning permission which then required Section 42 procedure (of the 1972 Act) to be used. The Committee agreed to write to S.D.D. asking them to clarify the position and requested a meeting at officer level.

A reply from S.D.D. dated August 1st 1980 stated the

department's position that any alterations or plans for which planning permission had been issued was invalid unless the Section 42 procedure had been used. However, a provision in the Local Government and Planning (Scotland) Act 1982 now allows minor amendments of planning permission without the need of reverting to Section 42 procedure.

- A third example concerns a letter from Angus District Council dated December 21st 1981 considered at the Planning Committee meeting of January 8th 1982. This letter asked the Convention to make representations for an amendment to the Use Classes Order to prevent conversion of offices to taxi offices, because of the disturbance to local residents that such an uncontrolled use entailed. The Committee, though, broadened the issue and agreed to press for an amendment for a general review of the Order and seek a specific amendment to support Angus District Council. This issue was specifically mentioned in the Consultation Paper issued by S.D.D. in July 1983 outlining a number of proposals for change to the Order.

(11) The Ideological Approach is not Pursued to its Limits

The political realities of any given situation may be such as to prevent the implementation of policies in their ideological entirety. These could include the implementation of a policy generating local or more widespread hostility with the danger of losing electoral support. The ideological approach of the present government has not been pursued to its limits. For example, government policy does not always follow ideological dictates on land and development. Despite setting up land registers and pressing public authorities to dispose of surplus land and putting pressure on top tier authorities through structure plan modifications, the Land Authority for Wales, a public sector land owning and development agency, has been allowed to continue, although in a more limited role than previously.

The new role for the authority is more akin to that of a private sector firm. It is interesting to note its change of role rather than the abolition of the Authority.

On another front now that enterprise zones have been established the free market might be expected to emerge as the main decision making mechanism in certain designated areas. However, the way in which zones have been implemented is some way from the original free for all and does require a high level of public sector involvement. This and other recent developments in planning, have shown that the public sector does have a clear and definite role in land deveeopment. At a more local detailed level, changes in development control have sought to balance the right to develop with the right of neighbours to be protected from harmful development; planning therefore remains as much a neighbourhood protection service as it did.

#### (111) The Personality Problem

A third factor centres around the personalities involved in planning at Ministerial level. In Scotland, there have been three Ministers with responsibility for planning since 1979. Mr. Malcolm Rifkind, Mr. Allan Stewart and Mr. Michael Ancram, two of whom have had experience (Rifkind and Ancram) on local authority planning committees. With the wide scope of responsibilities these Ministers have, planning has played a fairly minor role. Indeed the first two ministers only made one major speech each on planning while Mr. Ancram in just over a year in office has yet to make a major speech on planning.

Even in Scotland, Labour Opposition spokesmen for Scottish affairs have not had much to say about planning. They are, however, active in the detailed Committee stage of Bills as a reading of the relevant minutes will testify. In these situations the party political battles are kept to a minimum but are still

evident. Planning therefore has not received as much political clout or interest in Scotland as other issues. Indeed Gillett (1983, p.74) comments that "general planning policies excite little discussion. It takes a particular case for passions to be aroused."

The first Secretary of State for the Environment in England Mr. Michael Heseltine was very different. Hebbert (1980) notes a difference between him and his predecessors as "the difference is, Mr. Heseltine actually believes his philosophy. He has vision and upholds it with a confidence verging upon arrogance." Heseltine was a man with strong convictions, high ambitions and a flamboyant style. He put planning firmly on the political agenda. His successors have had less of a public profile and less of an image of planner basher.

The translation of the Government's philosophy into practice has not been without its consequences. McAuslan (1981, p.215) commenting on the Local Government, Planning and Land Act 1980 (only part of which is applicable to Scotland) comments:

"they (changed laws) make use of and indeed strengthen the very processes of centralisation of government decision making, increases in administrative discretion decreases in local government autonomy and exercises of political and administrative power through speeches, circulars and threats unsupported by law."

The Government came to power committed to ideas of firmer but less government, a return to the rule of law, and a return of power to local control. Reality today seems to be different. The legal and administrative power of central government over local government have increased while the nature of interventions and accretions of power have taken the form of conferring wide discretion on the Minister rather than on the basis of clear and challengeable rules of law (a large number of recent provisions

give discretion to the Minister to make detailed regulations and provisions without the same degree of Parliamentary scrutiny).

Reflecting upon what has taken place over the last few years, it has to be said that much of what the government has set out to do has been brought into effect and is now part and parcel of the planning system. The system is different although the essentials remain. However some changes have been profound and could have the potential to alter the system radically if developed. The government's philosophy has not been fully implemented, a function of problems and political realities.

### 8.3 Reactions to Government Action

Although many changes have been made to the planning system they do not always come easily:

"There is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to conduct than to initiate a new order of things. For the reformer has enemies who profit by the older order and only lukewarm defenders in all those who profit by the new order."

(Machiavelli 1513)

In some respects, there has been an overall negative reaction to government changes simply because of the vast number of changes that have been introduced and the problems of familiarisation that such a massive overall change brings. Much of the initial reaction to the changes introduced by the Government from the planning profession was from a defensive standpoint. "When in danger or in doubt, run in circles, scream and shout" (Anon) seems to have been the norm. This arose from an interpretation of the Government's intentions as being to dismantle or sweep away the planning system. The Government's philosophy was quickly labelled 'anti-planning' although Ministers were quick to point out the commitment of the Government to planning.

Commentators have been in some doubt as to what kind of planning system the Government was committed to.

When considering reactions to recent changes in planning legislation, the wider context and condition of planning as outlined in the Introduction to the thesis must be taken into account. Planning was seen as bureaucratic and interfering, planners were disillusioned, apathetic and unable to communicate with those for whom they planned. The image was tarnished in the public eye and faced calls from all directions for reform and change. Thornley (1981, p.1) summed up the situation saying "this is the first time planners have had to argue their case in such a fundamental way since before the Second World War."

Former Scottish Office Minister Allan Stewart speaking to Scottish planners in June 1982 pointed out that the role of planning must always be questioned and examined if planning is to remain relevant and responsive. However much support could be given to such a view, there are obvious dangers to such constant scrutiny, which to some extent are evident in the development of planning in recent years. First of all, planning can become introspective and be so concerned with its own role and status that it neglects those whom it serves (see May 1981, pp.14-16). Secondly, that any search for improvement or change is not met with sympathy and understanding but instead with "the zealous professional preservation of the status quo". Thirdly, that changes introduced do not lose sight of the objective of planning. The R.T.P.I. (1979) writing to Secretary of State for the Environment Mr. Michael Heseltine, commented:

"The Institute is deeply concerned that admirable intentions to speed up the development control system may lose sight of the objective which is to provide a better planned environment for us all."

Not all commentators were as pessimistic. Self (1980, p.141) commented:

"Horizons have been narrowed and planning has conflict instead of consensus and awaits a new mix of goals geared to circumstances and opportunities that have changed. The fundamentals have not changed."

A similar view was given by Lyddon (1981, p.2) who said:

"While there have been various changes recently affecting the planning system, these are considered to be fairly peripheral. The essentials are still very much the same."

One danger is that attention is focused not on the policies being pursued but on the personality behind the policies. This has been more of an issue in England than in Scotland. A number of differences in changes between Scotland and England can be identified: the difference of permitted development limits, the introduction of neighbour notification, the retention of the call-in powers of regional planning authorities and the non-implementation of urban development corporations in Scotland are a few examples. Differences were not only apparent in detail but on a broader front. For example, in the tone of government advice to planning authorities. The D.o.E. Circular 22/80 on development control was described as marking "something of a change of philosophy on the Government's part" (S.P.L.P. 1981, p.1). When the equivalent Scottish circular appeared in August 1981 it was natural that comparisons should be made with its southern counterpart. The Scottish circular turned out to be less critical and contained less that planners could argue with and led the S.P.L.P. Editorial column to comment that "to this extent there seems to be some evidence of further divergence between the two systems." (S.P.L.P. 1981, p.1)

This difference between England and Scotland has been explained in a number of ways. Some would put it down to the fact that civil servants and politicians in the Scottish Office are more ready to listen and take account of views expressed to

them than their opposite numbers in the Department of the Environment. Others would point to the fact that because of the longer experience of economic decline, local authorities have had to be more positive and because of the various initiatives which have developed, planning is seen in a better light and therefore more protected from attack. Often these initiatives have little to do with the statutory planning system. For example, West Lothian District Council have turned to the preparation of locally based economic and community initiatives rather than complete local plan coverage. Such initiatives will have an effect on people's perceptions of the planning system.

In examining how planners in Scotland have reacted to the Government's planning philosophy and how that philosophy has been implemented in detail, one can categorise reactions (given while conducting interviews with a variety of people involved in Scottish planning in the course of preparing this thesis) as follows:

(1) Reaction to change on a philosophical/principle level

It is important to note that however much an individual planner may dislike the changes being introduced by any government he must continue to work within the legal framework set down by Parliament. Reactions in this category can be subdivided into two groups:

(a) Reaction to the Broad Philosophy of the present Government

Most planners accept that many of the changes recently introduced come from a strong political motivation or philosophy although as Barrie points out, as past Chairman of the Scottish Society of Directors of Planning (S.S.D.P.), some changes have been introduced as a result of pressure and consultation with the local authorities (see Section 8.2). His view is that the Government

are not out to scrap the planning system, although he sees within the changes no provision to help an economically depressed area such as Dundee. Others take a different view. Dobson concludes that the Government are out to decimate the planning system, pointing out that certain additions such as charges and neighbour notification procedures work against declared objectives such as increasing speed and simplifying the system. Elsewhere (Dobson 1980), he criticises government for constantly tinkering with the planning system and not undertaking a comprehensive review of planning. Others such as Wannop and Reid, while perhaps sympathetic to the aims the Government has set in its reform of planning, are not convinced of the validity of some assumptions which underly the Government's attitude and action. For example, the belief that planning controls hinder economic development. If some see the threat to planning, its role, function and future, coming from the government, Wannop takes a different line. In his view the main 'threat' to Scottish planning comes from the consequences of the failure of development planning i.e. the reduction in the role and status of Regional planning departments and the increased role of the S.D.A. in urban planning/renewal. Overall, reactions to the changes have been more noticeable. Shiel suggests this is because the link/relationship between planning and politics is now more pronounced. Therefore, it has been easy to assume the government were anti planning.

(b) Reaction to Individual Parts of the Government's Package

The single most criticised element of the many changes which the Government have introduced has been charges for planning applications. Most criticism has centred on the Government's assumption that applicants for planning permission are receiving a service not enjoyed by the community generally and that 'licence'

fees are therefore appropriate. Most planners have concluded that such an assumption is unjustified arguing that statutory controls over land use benefit the community as a whole who should bear the cost of the development control system. Doubts and criticisms have been made about the proposals on a matter of principle and concerning the detailed operation of the scheme. For example, Local authorities have been unable to recoup all the costs involved (the calculated fee income being deducted from the Rate Support Grant) and that administration costs have been increased. Hutchinson described fees as a 'tax on development'.

Reaction to the changes in permitted development levels in the G.D.O. by most planners is acceptance of the principle of less control. Some however, (i.e. Dobson) did not seem to think it was good to give private developers more freedom to do as they wished. The application of this principle in special areas such as the Clydebank Enterprise Zone, now joined by one at Invergordan and another in Tayside (Dundee & Arbroath) highlights a number of issues. The premise that compliance with planning regulations and control impose a burden on embryonic economic activity is surely a simplistic analysis of the nation's economic problems, while one has to question how far the removal/relaxation of planning control will or can increase development. The danger most planners fear is that such assumptions could easily be assimilated into the conventional wisdom of government, and so represent a threat to the future of our present planning system.

## (2) Reaction to Changes at the Operational/Implementation Level

The large number of detailed changes in legislation and practice which have been introduced in the life of this present government has presented problems for those who have had to deal with and implement the changes. There is, for example, the

initial problem of becoming acquainted with and knowledgeable about the changes and developing an attitude of mind which focuses on the new and not on the old. Problems have also been experienced with regard to particular items:

- there has been confusion over interpretation of the new G.D.O. permitted development limits for house extensions;
- a feeling that planners are becoming more bureaucratic (glorified office boys) with the extra amount of paper work connected with fees, neighbour notifications, day/sunlight codes etc;
- charges not only unjustifiable, but are cumbersome and anomalies have been detected in the detail;
- the ability of planners to give advice on the need for planning permission over the phone or counter has been negated due to complexity of G.D.O.;
- changes mostly confined to development control, development planning could do with the same 'kick in the pants'.

Although some planners agree in principle with many of the changes introduced, problems over details and implementation may well have had the effect of turning planners against them, thus joining forces with those who would oppose the changes on grounds of principle in the first place, so creating a stronger, united opposition.

Overall many planners feel and have openly expressed their views that Government has done little to streamline planning procedures, in fact the introduction of fees, neighbour notification and changes in the G.D.O. had the opposite effect. It is the local authorities, not the S.D.D. or the Government who have to take the blame for delays which push up costs while at the same time staff levels are being cut back.

the inadequate thought and preparation that has gone into the drawing up and introduction of the legislation. This has manifested itself in two main ways. Firstly, in new legislative provisions being ill-thought out or worded leading to confusion and misinterpretation. For example, the complexity of Class 1 of the new G.D.O. and the anomalies which appeared in the fees regulations. Had these, and other things, been properly thought through, much confusion would have been prevented. Secondly, in at least two cases, the relevant circular and/or regulations concerning a change were not made available to local authorities until only a few days before the new provisions were due to come into force. For example, in the case of fees, when first introduced in April 1981 the new regulations and circular arrived in most local authorities within seven days of the implementation date so leaving authorities with little time to make the necessary administrative changes while at the same time being flooded with applications in an attempt to beat the fees.

### (3) Reactions to Consequences of Change

Criticisms and comments have also been made relating either to certain issues which a particular change may have raised or the realisation of the likely consequence of the change. Again, one could consider the consequences of individual changes or the package of changes as a whole. The latter will be dealt with here, the former having been touched on in Section 3.2.

What is clear is that Scottish planners do not have any real single consensus about their overall views to the changes. Planners, like everyone else, have their own views and opinions. However, a number of diverse threads are identifiable. There does seem to be among Scottish planners broad agreement with the aims of making the system more speedy, efficient, responsive

and positive. However, there is no agreement overall on how best these broad aims can be achieved. Some planners would suggest there are strong arguments for believing that the actions Government have taken have in fact worked against these objectives/aims, and what we have (at least initially until planners become more aware/used to the new provisions) is more bureaucracy, less speed and more delay.

It is clear that despite the fears of some that planning survives (in some form at least) as an activity of government although its role and relative importance/influence may have changed. The hard liners, such as Dobson, remain believing the Government's aim is to decimate the system. The result of changes, he says, is that local authorities become hampered and frustrated in many ways leading to less initiative and innovation as things are done by the book. The effect of all the changes on how the public perceive planning is also important. One view (supported by Dobson and Reid) is that planning is suffering from the Government's attack on bureaucracy. The public now see planning as irrelevant, wasteful, interfering, so planning loses credibility and cynicism and disillusionment set in, in both public and planner. O'Carroll's view is somewhat different, he sees the changes as having been very necessary as planning had been becoming fat, and complacent, not having the correct priorities, and being excessively insistent on environmental protection over against economic requirements and that planners were insular. With most of the changes directed at development control, he suggests development planning could well do with something of the same treatment. Hutchinson meanwhile wonders where it's all going to lead us.

These views are mostly those of planners and academics with a great deal of involvement and interest in Scottish planning.

more and more, other groups involved in planning such as developers and the public. One other group of people who are involved in planning are Councillors. A number of Councillors at District level, all of whom serve on their planning committee and some of whom have been members of C.O.S.L.A.'s Planning Committee, were interviewed in Spring of 1984. Their views are expressed below.

On the whole Councillors believe the planning system is working well and is fair to both applicants and objectors. Most reject the criticisms made that planning delays development and is involved in too much detail although there is a realisation that planning does have its problems and something needs to be done about them. Most authorities have their own system for ensuring councillors are kept up to date with recent applications and their progress, including those which have proved to be controversial. Delegated powers to officers and sub-committees are the norm and help to speed up the decision making process. Councillors reject the idea of a free for all, even Conservatives who do not feel easy with the move towards less control. This is mainly because such councillors represent high amenity areas where the effects of reduced control would be more noticeable and have greater effect than in other areas. They are responsive to local feeling and objections and will support the wider community - they have to if they wish to be re-elected. Planning is viewed as a worthwhile activity with the Planning Committee seen as one of the few areas where members can serve and achieve something worthwhile. Party politics, on the whole, plays no or little part in decision making. This is less so in the case of the larger urban authorities where party groups are better organised and more active. This is not to say that politics has no part to play in planning decisions. It does, but it is based

on an individual member's view and opinion about the application in question. If politics is all about having an opinion about how a decision is made, then as one councillor suggested, planning does clearly involve making political decisions.

There is of course a broad split of opinion against or in favour of what the Government have sought to change in planning depending on the political view or orientation of the individual concerned. The most important changes have been the extension of permitted development, neighbour notification and planning fees.

But Governments do not last for ever and the term of the Government would have ended in May 1984. There was then the possibility of the Government continuing in office or being replaced with an alternative party who could have reversed some of the trends and policies and introduced some of its own innovations. Whatever would happen, the period from 1979 would go down as one of the most significant in planning history.

9.1. The 1983 General Election

Having examined the Government's philosophy towards planning, how it has been implemented and the extent to which the two match, it is clear that there is a deficiency between what the Government wanted to do and what they have been able to do. This however, should not take attention away from the fact that a new and radically different direction has been given to the planning system in Scotland, making it speedier, more efficient and more responsive to the demands of the market place.

In connection with the interviews carried out with a number of those involved in Scottish planning, the last question which was put to every respondent concerned their views on the future of planning in Scotland. Responses can be roughly divided into one of two categories with about equal support being found for each. Firstly, there were those who on the whole were optimistic about the future. Particular comments referred to the fact that the necessary changes had now been made and so the system could settle down and get on with its job, the Government had given no indication that it was their intention to scrap the planning system and that the changes had to be accepted and lived with, with planners trained to adapt to changing circumstances and to work in a variety of contexts. Secondly, there were those who were pessimistic about the future. Particular fears and concerns mentioned included the growing influence of the S.D.A. at the expense of local authorities, the lack of resources and power to achieve anything meaningful at a local level, the increasing centralism of national government and the increased complexity and continued bad image of planning.

Behind both these responses was a further concern, the future of the Conservative Government. A general election would need to

be held before May 1984. Would the Government be returned or would there be a change? The election would represent an important milestone in the development of planning. If the Conservatives were returned perhaps more of the same could be expected, a win indicating general public support for what had been done. But there were alternatives with both the Labour Party and the Alliance Parties putting forward proposals for more positive use of planning and the reinstatement of regional economic planning. Planning then was at a crossroads, it could develop in a number of ways depending on which party was returned to power.

Any hopes that the Conservatives might be defeated and that the direction in which they had taken planning would be reversed were dashed with their return to power with an increased majority at the election held 9th June 1983. The result was described as a landslide. Thus the scene was set for a further and continued development of the policies already begun (it would be wrong to think that the election was lost or won on the merits of planning policies, other issues such as the economy, defence, unemployment were far more important).

As for the new government's thoughts on planning, their manifesto had stated that (Conservative Party 1983):

"In our crowded country the planning system has to strike a delicate balance. It must provide for the homes and workplaces we need. It must protect the environment in which we live."

Although the manifesto did not detail many proposals in relation to planning, it did warn of the intention to bring back into use thousands of acres of derelict land in public ownership thus reducing the need to build in the countryside and in the green belt. It also forecast some degree of tighter control over open cast mining and intensive livestock units near residential

areas. The manifesto had a lot to say about what had been achieved in the first four years of Conservative administration and seemed to give the impression that there were not many further amendments to be made to the system other than what already had been implemented. The role in which the Government saw planning is perhaps indicated by the fact that the discussion on planning in the manifesto was contained in a section entitled "encouraging free enterprise".

The 1983 General Election also saw ministerial changes both north and south of the border in relation to responsibility for planning. In Scotland, Mr. Michael Ancram replaced Mr. Allan Stewart and in England, Mr. Patrick Jenkins replaced Mr. Tom King. (for more details on Ministers with planning responsibilities see Section 6.2) Jenkin, following his predecessor, Michael Heseltine, spoke at the Town and Country Planning Summer School in 1983 (Jenkin, 1983). In his speech he floated the idea of extending the diluted planning regime found in enterprise zones. Notice of circulars on industrial development and design control was given and the opportunity taken to outline the position of the Government on the greenbelts and affirmation of the commitment to planning. Speed of decision making and the importance of planning aiding economic recovery were two familiar themes which also received an airing.

Since the 1983 General Election there have been no major legislative changes. What has happened is that various regulations and related circulars connected with implementing legislative provisions enacted previously or bearing the fruit of earlier consultations between S.D.D. and the local authorities, have been enacted. The most important development has been the issue of a consultation paper on the creation of Special Planning

Zones, a planning regime similar to that at present in operation in Enterprise Zones. This and the other main legislative development in the period from June 1983 are described in the following section.

## 9.2. Legislative Change Since the 1983 General Election

The first development of any importance was the issue of Circular 21/1983 on July 20th concerning land supply for private house building and joint venture schemes between private developers and local authorities. The circular aimed to provide guidance to local authorities to help sustain the Government's policy of encouraging growth in private housebuilding. The circular noted that the private sector had become the main provider of new housing in Scotland, that the Government welcomed this and expected it to continue. To this end local authorities were asked fully to recognise the needs of the private housebuilding industry and presumably to meet them. This is not the first time the Government had encouraged more land to be released for private housing because builders claimed that planning restrictions were slowing output (see Chapter 7). However, the circular offered no new evidence of these claims. Previously, the 1981 National Planning Guidelines had indicated that there should be regular reviews of housing need and land supply by the local authority in consultation with the builders while structure plans should provide for a five year supply. The circular went one step further by encouraging builders involvement in also assessing housing demand in local housing market areas. The problem of some builders holding large land banks would be solved by allocating more land but would not include land the authority, did not believe would be developed. Inner city authorities would be expected to undertake programmes of land assembly to achieve renewed objectives. Planning applications

would not be refused or deferred because of the absence of a local plan, if an application was submitted in accordance with the structure plan in advance of local plan completion and permission was refused, the Secretary of State would not feel constrained by the absence of a local plan in making a decision in the likelihood of an appeal being made to him.

The circular clearly represents a further extension of the Government's free market philosophy with a clear bias to the needs of the private house builders. C.O.S.L.A.'s Planning Committee expressed the following concerns about the circular (Crofts 1983, p.83):

- its singular approach failed to address itself to wider planning, housing and economic contexts;
- the apparent indication of government bias towards accepting the unsupported demands of the private house-builders, rather than recognising the validity of establishing methods of predicting the housing needs of the people;
- its failure to recognise the responsibility of local authorities through structure and local plans to make balanced judgements about the priority and location of private building in their overall schemes for their areas;
- its emphasis on the need for timeous planning decisions generating the risk of encouraging planning by appeal.

In November 1983 new structure and local plan regulations and an associated circular were issued. The circular, number 32/1983, summarises recent changes to primary legislation affecting the procedures for the preparation of development plans brought about by the Local Government (Miscellaneous Provisions) (Scotland) Act 1981 and the Local Government and Planning (Scotland) Act 1982, and describes the general principles which the Secretary of

State considers should be borne in mind by planning authorities in preparation of plans and alterations to them. The circular and regulations replace those previously issued in 1976.

Changes relate to four main areas: powers of direction by the Secretary of State, plan content, publicity and consultation, and in relation to the local plan inquiry. These are outlined briefly below:

- (1) Removal of powers of direction. Several little used powers of direction of the Secretary of State over local plan preparation were removed, including those relating to bodies to be consulted, the submission of extra documents, the appointment of a particular reporter and the persons to be notified about any modifications.
- (2) Plan content. The structure plan should now contain guidance for local plans while local plans have to assess the implications of structure plan policies for their areas. The list of matters now to be contained in plans is much shorter and economic and social issues are no longer required to be considered. There is still no requirement to make a modified version of the plan when alterations are proposed.
- (3) Publicity and consultation. There are three main changes. Firstly, the procedure by which an authority could be required to undertake more publicity on a local plan has now been withdrawn. Secondly, a structure plan authority whose statement of publicity and consultation has been returned, i.e. rejected, is now required to submit a brief account of additional steps to secure publicity. Thirdly, the new regulations require an authority preparing a structure or local plan alteration who think that publicity and consultation is not necessary to submit a statement of their reasons.

(4) The local plan inquiry. Copies of the objections to be considered and the proposed modifications should be made available for inspection and copies of the plan are to be sent to the Secretary of State and the Region before the plan is adopted. If an objector to proposed modifications so requires, then a second local inquiry must be held.

These new regulations came into force on December 1st 1983.

Circular 6/1984 issued on March 13th 1984 contained advice on planning provisions contained in the Local Government and Planning (Scotland) Act 1982 to be brought into force on May 14th 1984. Three related statutory instruments on the provisions were also issued. The main topics covered were publicity for planning applications, enforcement and call-ins by Regional Councils. The latter two of these will be explained here, the arrangements for increased publicity having been described in Section 6.3.

The new enforcement regulations were designed to reduce delay in enforcement procedures and to enable planning authorities to respond more flexibly to breaches of planning and listed building control. The most important change is that planning authorities are empowered to specify in an enforcement notice which may be served on the owner, lessee and occupier of, and persons with an interest in, land where the planning authority consider a breach of control has taken place, steps to be taken to bring the land into a condition acceptable to them. This new power is an alternative to the power, which is still available to them, to specify the steps to be taken to restore the land to its original condition before the breach of control occurred. The change will allow the planning authority to specify minor alterations to a building erected without planning permission

where they would have been prepared to grant permission in the altered form had an application been made to them.

The new arrangements for call in by a Regional Council provide that they may do so where the application in question is contrary to an approved structure plan or where it raises a major planning issue of general significance. The criteria used in the past were that the application was contrary to the approved structure plan or that it raised a new planning issue of general significance to the district of the regional authority. Districts are now required to submit to the Regional Planning Authority a weekly list of planning applications received by them. This will make sure that regional planning authorities are made aware of an early stage of all planning proposals which may require action on their part.

Circular 10/1984 issued on April 9th 1984 introduced the new advertisement regulations and provides advice on the operation of advertisement control. The 1984 regulations replace those of 1961 and came into operation on May 2nd 1984. The main changes relate to the extension of the scope of control, the grant of deemed consent for additional classes of advertisement, and new procedures for the discontinuance of advertisements with deemed consent.

- (1) Scope of control. This is extended in a number of ways:
- advertisements displayed in a building in such a way as to be visible from outside and which are within 1m of any external door or window are now subject to control (directed at window stickers);
  - the definition of advertisement is extended to cover adverts on captive balloons; display will be allowed for a maximum of ten days in any year except where the site is in a conservation area, area of special advertisement control

or a national scenic area;

- controls over advertisements on vehicles have been strengthened although a general exclusion of such adverts from control is not to apply during any period when a vehicle is used primarily for the display of advertisements.

(2) Deemed consents, some additions.

- advertisements displayed on hoardings enclosing construction sites while construction is in progress (with certain limitations and conditions);

- illuminated advertisements displayed on business premises (again with some limitations);

- advertisements within buildings, up to 10% of an area of a window or door within which they are displayed may be covered by an advertisement.

(3) Discontinuance orders, new procedures. The old system of challenge, that is of calling for an application for an advertisement displayed under deemed consent and then refusing planning permission, was cumbersome. A new procedure of issuing a discontinuance notice for an advertisement or site has been introduced. This can be taken when an authority consider it expedient in order to remedy a substantial injury to amenity or possible danger. There is a right of appeal against the issue of such a notice.

Two further circulars to note are Numbers 22/1984 and 26/1984 relating to Section 50 Agreements and Planning Appeals respectively. Circular 22/1984 seeks to give some guidance on the circumstances in which planning authorities might wish to impose obligations on those with an interest in land. It makes clear that "the question of imposing a condition or obligation ..... should arise only where it is considered that it would not be appropriate to grant permission in the terms sought which is not subject to

such a condition or obligation". The circular goes on to explain the legal aspects of agreements and advises authorities that they should have regard to the extent to which the agreement will assist in securing the best use of land and a properly planned environment.

An authority is not entitled to treat an applicant's need for permission as an opportunity to exact a payment for the benefit of ratepayers at large and then lists criteria which the Circular states should be applied in a "test of reasonableness" as to whether an agreement is required are:

- whether it is needed to enable the development to go ahead, e.g. provision of adequate access, water supply and sewerage and sewerage disposal facilities; or
- in case of financial payments, will contribute to meeting the cost of such facilities in the near future; or
- is otherwise so directly related to the proposed development and to the use of the land after its completion that the development ought not to be permitted without it, e.g. the provision, whether by the developer or by the authority at the developer's expense, of car parking in or near the development or reasonable amounts of open space related to the development; or
- is designed in the case of mixed development to secure an acceptable balance of uses.

In addition, a further test has to be applied. This is whether the extent of what is required or sought is fairly and reasonably related in scale and kind to the proposed development. Finally, a final test is whether what the developer is being asked to provide or help to finance represents in itself a reasonable charge on the developer as distinct from being financed by national or local taxation or other means. The essential

principle indicates the circular, is that the facility to be provided or financed should be directly related to the development in question or the use of the land after development.

The circular concludes with some advice on how agreements might relate to specific examples while an appendix illustrates the application of the general principles outlined above to the provision of car parking.

Circular 26/1984 notes that the number of appeals are being maintained at a high level and the Secretary of State is concerned to ensure the development control system should function speedily and efficiently. It also provides guidance on how local planning authorities can contribute to meeting this objective without prejudice to the fundamental principles of fairness, thoroughness and consistency. These can be considered under three headings.

Firstly steps to eliminate unnecessary appeals including complete and up to date local plans, decisions on applications within the two month period, a clear statement of conditions or reasons for refusal and applicants to be advised of adjustments to their proposals which could improve the chances of a favourable decision. Secondly steps to be taken in connection with appeals determined by written submissions and public inquiries including increased use of written submissions, shorter timetables and greater use made of unaccompanied site visits. Thirdly, other steps including authorities offering views on conditions they might consider appropriate if an appeal is upheld.

But the most important new legislative development to have emerged since the 1983 General Election was the issue of a consultation paper on proposals to establish Special Planning Zones (S.P.Z.) (S.D.D. 1984) as an extension of the planning regime in operation in enterprise zones. The proposals are examined in the following section.

Following the introduction of special planning arrangements in enterprise zones and a commitment by the Government to extend this simplified form of planning control, consultation papers on the introduction of Special Planning Zones (S.P.Z.) were issued in May 1984 in both Scotland and England. The consultation paper indicates that the zones would be introduced by local authorities who would first of all publish a plan showing the boundary of the zone and specifying development for which planning permission would be granted by the scheme and any conditions or limitations that would be attached to the general permission. There would be provision for public consultation on the draft scheme, a right of objection by the public and where necessary, a public inquiry. After adoption of the scheme, which would involve either direct Ministerial approval or some reserve power for Ministerial intervention if deemed necessary, the local authority could confer planning permission on any development falling within the terms of the scheme. Other developments would require planning permission in the usual way.

The consultation paper gives examples of where the zones would be most suitable. For example, for areas of new development including housing, areas allocated for industrial and commercial activity including science parks and similar types of development where a flexible approach is required to permit a variety of uses. Other possible uses could include an extension or redevelopment of existing industrial estates or to attract new investment into areas of derelict or abandoned land in the inner cities. Examples of how a S.P.Z. could be used in such areas is given in Annex A to the consultation paper. Having indicated where the proposals could be applied the paper states that the zones would not be

appropriate for National Scenic Areas, conservation areas, green belts or for development involving hazardous or polluting substances/processes.

The proposals clearly draw on the experience of enterprise zones, but without the other fiscal and financial benefits of the zones. The proposals would need new legislation to which there is at present no firm commitment but are being published in the form of a consultation paper "in order to invite comments on them and to stimulate discussion on the scope, purpose and methods of planning control". (S.D.D. 1984, para.1). The idea of extending the planning arrangements in operation in enterprise zones had been floated by Environment Secretary Mr. Patrick Jenkin in 1983, most notably during his speech to the Town and Country Planning Summer School in September. Speaking to a conference of the Royal Institute of Chartered Surveyors in London on May 1st 1984, he said:

"The enterprise zone experiment gives us experience of the operation of a greatly simplified form of planning control. Consultants monitoring the enterprise zones have noted that fears that they would lead to lower environmental standards have not been realised. Developers have welcomed the enterprise zone planning scheme because of the certainty it provides. It also signals a co-operative attitude towards development on the part of the local planning authority. I believe the time has now come to take this process a stage further."

It could be questioned whether this interpretation of the consultants' report on the operation of the enterprise zones is correct. The last Report (Roger Tym and Partners 1984) noted that planning agreements provided a blanket planning permission but also outlined a number of exclusions and limitations mainly defined in special sub-zones. The result was that there was little conflict between resulting development and

prevailing planning policies and that there was no overall significant reduction in the quality of development in the zones. Overall, the report stated, the simplified planning regime has not been a significant factor in the enterprise zone experiment. The zones have never been universally applauded by the planning profession because of their attack on planning control. The S.P.Z. consultation paper is derogatory about planning controls. The paper continues the Government's train of thought that planning is holding up development and so needs to be relaxed. Town and Country Planning Association Chairman, Mary Riley commented that "good planning control is a very positive tool of development. It is a sad commentary that the Government does not seem to see it this way."

The interpretation of the success or otherwise of enterprise zones and the extent to which this can be attributed to the planning provisions is a crucial issue. The evidence indicates that the planning arrangements are welcome and important but by no means the main cause of success. The fear that some held that any success which enterprise zones might have would be attributed to the simplified planning regime and then used to justify the extension of this type of planning has come true.

Something else arising from the S.P.Z. proposals being based on the experience of enterprise zones is that, in the planning arrangements in enterprise zones, a number of fundamental aspects of established planning procedures are by-passed. For example, the arrangements do away with the need for a local survey and public local inquiry, the associated channel of objection for individuals affected by development proposals and negates the possibility of integrating the enterprise zone

with the prevailing policies for the local area. The extension of the enterprise zone concept in S.P.Z. proposals represents an extension to the by-passing of planning procedures and a threat to the importance of public involvement at the level of the individual application, a feature highlighted in Scotland since the introduction of neighbour notification procedure.

The consultation paper states that one advantage of the new zones would be that developers would be relieved from having to pay fees (S.D.D. 1984, para.11). This will cause antagonism between such developers and those who have to pay and it could lead to the ridiculous situation of a major development escaping the payment of planning fees yet an individual householder adding an extension having to pay fees. Local authorities will be concerned over the possible implications of lost fee income with there being a demand from them that losses be taken into account by the government when calculating rate support grant.

The new proposals also increase the gap in terms of the degree of strictness of planning controls across the country. The view of the Government is that the new designation should not weaken existing restraint policies such as those in operation in green belts and conservation areas. However, it may be that people living in such areas will be resentful against a greater freedom to develop being granted elsewhere and see the restraint policies and associated designations as an unnecessary hindrance on them. Conservation areas, for example, could become more elitist or else lose their special character as the restrictions on right to develop are ignored. Even at present there is a lack of credibility in enforcing tighter controls in such areas. In the West End of Glasgow there are 300 enforcement notices concerning replacement windows which have been served but not acted upon (West End Times 1984). There is little chance of

of these being followed through. If developers and householders are not at present brought to face up to breaches in planning control, might not the situation become worse when the scope of control is reduced but maintained in special areas such as conservation areas.

As for reactions to the proposals, they have been greeted with a guarded welcome by the profession and local authority associations. From interviews carried out since the publication of the proposals, mainly with councillors at District level, reaction in Scotland is firmly against the introduction of such zones. There is nothing in the paper that takes account of Scottish planning practice and experience, the consultation paper having been prepared in London and minor changes been made by S.D.D. staff only of detail and not of substance.

As for detailed reactions, the Scottish Society of Directors of Planning issued a quick response to the Consultation Paper and stated that the "time and effort which would be required to introduce the necessary legislation and then to designate individual simplified planning zones would be disproportionate to the benefits gained. It would also add unnecessary complications to the planning system" (Patterson 1984, p.8). The paper also points out that the proposals if used in connection with residential development, would go against current trends such as the extension of neighbour notification and that the only authorities likely to jump at the zones would be those facing severe economic difficulties (the ones that in reality are seeking to make things as easy as possible for prospective developers). The response from S.S.D.P. hits back at the basis of the paper that planning holds back development by stressing there is no evidence to suggest that there are jobs locked up in filing cabinets and that developers have much more

difficult procedures to go through than planning.

Mr. W. Morrison, Independent Chairman of Perth and Kinross District Development Control Committee, stated in a letter that:

"The Discussion Paper on S.P.Z.'s is a very disappointing document. The general public are asking for more control not less, the S.P.Z. concept is not consistent with good planning and has no place in this district."

This reaction to the proposals is not untypical. Allan Reid, Director of Planning of Cunningham District Council, saw the S.P.Z. proposals as an attempt not to improve the planning system but to dismantle it and totally rejected the implication that planning was restrictive and proved to be a major obstacle to development. Councillor I. Hutchinson of Eastwood District likewise rejected the proposals, especially in the context of an established high amenity residential area where the objective was to maintain standards. It was wrong, he said, to base the proposals on the enterprise zone experience which he described as "commercial bribery". From published material and interviews held since the paper was published, the indications seem to be that planners and local members alike are vehemently opposed to the proposals. The likelihood of them ever becoming law would seem therefore to depend on the extent to which the Government want to introduce them. This Government has in times past proved that it will introduce proposals which are not accepted and agreed to by planners and others in the development industry, for example planning fees, a concept which was almost universally condemned and criticised at the time of consultation and introduction.

Since the 1983 General Election, other than the proposed Special Planning Zones, the most important developments have been the issue of Circulars on private housebuilding and Section 50 agreements. The main concern, however, relates to the

future of Special Planning Zones. They have been subject to much criticism with outright opposition to what lies behind the proposal, the dismantling of planning control and the suggestion that planning control inhibits development.

The period since 1983 has been a quiet one, although that was promised by Mr. Stewart at his speech to the R.T.P.I. Scottish Branch conference in June 1982. Planners have been glad of that, giving them time to get used to the changes which have been implemented. This part of the thesis has shown what has been happening and how planners have reacted.

A relevant and important question relates to what kind of planning system will be the norm in the future and to what extent will an alternative type of planning system replace the one we have at present. Given that the recent changes have provoked questions relating to the future of planning and the extent to which planning should retain control over development, the third part of the thesis examines various alternatives both in theory and practice based on the theme of discretion which this present government has attacked and sought to limit.

10.1 Introduction

The first two parts of the thesis have sought to provide the necessary background to this study and to examine in detail the way in which the Government has introduced change into the planning system, particularly in relation to development control. Some of the immediate reactions and issues related to these changes have been examined but it is the long term implications of the changes that this part will concentrate on. Chapter 10 examines further suggestions for change made by various commentators and participants in the planning system, all of which have certain things in common and have some similarity with the Government's philosophy. Alternatives to the planning system are examined in theory and a detailed study is made of the operation of zoning in Ontario, Canada. Enterprise Zones and the proposed Special Planning Zones give a hint that the U.K. system of development control could be moving more towards a zoning based system. The zoning system as it operates in Ontario is the most sophisticated in the Provinces in Canada and has been influenced by U.K. planning through the transfer of ideas and personnel across the Atlantic. It is therefore an appropriate system for study.

When thinking about the changes which have been made to the planning system the question has to be asked, what is it that these changes lead us towards? Is it just a few relatively minor changes or do they represent something more, a move towards a different way and style of planning? Do recent developments represent more than just seeking to improve the present system? Some commentators, such as Alan Reid, Director of Planning at Cunninghame District Council and Councillor John Hope of Midlothain District Council have expressed the opinion

during interview that the Government neither wishes to modify the present system or introduce another but to get rid of the system altogether.

The present system hinges on the element of discretion and it is that the Government have attacked above all.

Chapter 2 stressed the discretionary nature of the U.K. planning system, a feature which has been subject to much criticism and has certain inbuilt dangers such as the scope for abuse and the fact that decisions may be taken with no or little relation to established planning policies as well as a lack of certainty and predictability. The operation of such a system is dependant to a great extent on the performance of those who make policies and administer them (Boynton 1979, p.69). One of the features of the Government's approach to planning has been to attack the poor performance of planners measured in terms of the number of applications determined within the statutory two month period and the rate of plan completion and coverage. Given these problems, the main approach of the Government has been to cut back on planning controls, improve the speed of decision making, relate some controls more to forward planning documents and to develop the concept of different levels of control for different area. These changes have been introduced against a backcloth of a Government who are less persuaded than governments in the past of the merits of public planning i.e. state intervention in the land use and development process. Despite the rhetoric of central government, the changes that have been introduced in Scotland in the last few years have not been as severe as had been originally feared. Much of the planning system remains intact with only minor changes or amendments.

Alongside the actions taken by the Government a number of commentators have presented a variety of solutions for the reform of the planning system. In a real sense there are as many solutions and suggestions for change as there are planners. These can and do range from minor proposals to deal with a particular problem to a series of wide ranging changes which would radically alter the planning system and the place of development control within it. Such proposals may legitimately be called 'alternatives' to the present system and have much to commend them for serious thought and discussion. It is not altogether surprising to find such suggestions coming forward given the present condition of the planning system and planning as a whole outlined in the Introduction to this thesis and the growing concern among those involved in planning with the development of planning system, planning practice and planning in the future.

When some of the proposals for reform or change are examined, two things that stand out are their variety and their similarity. Certain ideas seem to surface again and again although coming from different sources. One of these ideas is to make the planning system less discretionary and increase the certainty and speed of decision making, and related to this, from some quarters, a call to privatise planning control. Such an idea is supported by the following writers.

Senior (1978) for example, notes the paradox that although development control is operated in the public interest, the public place a reliance on the system to protect private property interests which the law does not regard as rights. He argues that if people are denied a remedy through the development control system for an encroachment on what public opinion has come to regard as a right, then they must be able to find redress outside

development control, that is, in common law. To prevent this from happening Senior advocates a development control system based on regulations similar to the building regulations. An application in conformity to the regulations would be automatically granted. Such a system, Senior suggests, could release planners from the tediousness of development control work to concentrate on positive planning. Inherent in his proposals is the view that development control is negative and does not achieve much.

Another contributor in this vein is McBride (1979). In seeking to examine the problem of delay in development control, he points to the fact that evidence on the extent of delay or its consequences is very limited (a fact that has become less so in recent years). He puts forward the view that explanations for delay can be found in the lack of specific criteria for decision making and the lack of legal rules governing the process of development control. Although the main reason for the setting up of the Dobry inquiry on development control in the 1970's was the problem of delay, McBride notes that the relationship between development control and development plans was not examined. What Dobry did do was to note the over-riding need for a clear, comprehensive and consistently applied policy framework if development control decisions were to be fair, correct and consistent which could be achieved by complete coverage of up to date structure and local plans.

Noting such problems as those of time, the degree of specificity and the need to find political consensus on such broad based policy plans, McBride goes on to ask whether if there was a complete coverage of plans, would they in fact provide an adequate basis for development control in terms of a clear and comprehensive policy framework, and if so, would it

be applied consistently so as to achieve certainty and fairness? His answer is no. He argues that plans do not provide adequate standards for decision making thus leading to delay, uncertainty and inconsistency in outcomes. Such flexibility, however desirable is unlikely to serve the objectives of fairness, consistency, certainty or of effective plan implementation. An alternative approach is needed which limits discretion while addressing concerns for the effective public management of development control.

Zoning plans are such an alternative, he argues, based on the conferral of a legal right to develop when the proposal is consistent with an existing plan and zoning ordinance. Such a system would create a right, enforceable if necessary by judicial action. Plans would identify land use zones and ordinances would set down the detailed standards which could be devised to take account of economic and social policies. Decisions would therefore conform to ascertainable standards stated in advance, there would be much closer co-ordination between plans and control, plans would have greater authority and public participation would be made more meaningful.

Raison (1977) is another who strongly supports this approach. He argues for a reform of the present system by making local plans more binding and detailed and by developing a stronger law of nuisance. Such a system he says, could be speedy, give greater freedom to the individual and remove arbitrary decision making.

Jones (1982) although putting forward the same line of thought, takes his ideas a stage further and advocates the replacement of public control with private control. He argues that local authorities' powers of planning control should be abolished and replaced with a system based on the law of nuisance and land use covenants with cheap land use tribunals or courts acting as arbitrators in case of dispute. There would be greater

freedom for small businesses to locate in residential and agricultural areas and communities would be encouraged to draw up private restrictive covenants for their areas. Building control also would be privatised.

Many of Jones' proposals were incorporated into the Omega Report published by the Adam Smith Institute (1983) on local government policy. The theme of their proposals was to speed up procedures, loosen control and transfer it from the public to private sectors. Central to their ideas was the creation of three types of planning zone. Firstly, 'restricted zones', covering conservation areas, Areas of Outstanding Natural Beauty and green belts, which would be under direct Ministerial protection. Secondly, 'industrial zones', covering certain inner city or derelict areas where almost any development would be welcome and the only regulations in operation would be health and safety ones. Thirdly, 'general zones' covering the rest of the country where restrictions would be minimal.

The views of this not exhaustive list of commentators do highlight ideas being currently put forward to reform the planning system. The bias in the proposals is in support of the government. This should not negate the fact that there are as many proposals to reform planning the other way (Howl 1982). The proposals quoted above show that among certain commentators there is a degree of support for the Government and what it is seeking to do. A background paper recently published (Nuffield Foundation 1983, Paper C) gathers together a comprehensive list of suggestions for reform of the planning system. The list contains many of the ideas outlined above. These include:

- relaxation of the G.D.O. to widen the category of permitted development linked with greater use of nuisance law, courts, neighbour protection codes/standards, and adoption of some

precisely specified planning standards as legal requirements;

- local authorities enabled to use Special Development Orders to extend the range of permitted development not requiring planning permission.
- use of American type zoning system - no need for planning permission unless contrary to the plan;
- abolition of other material considerations component of development control so that development decisions have to be made on basis of a statutory plan.

In all the ideas and proposals, a number of common elements occur:

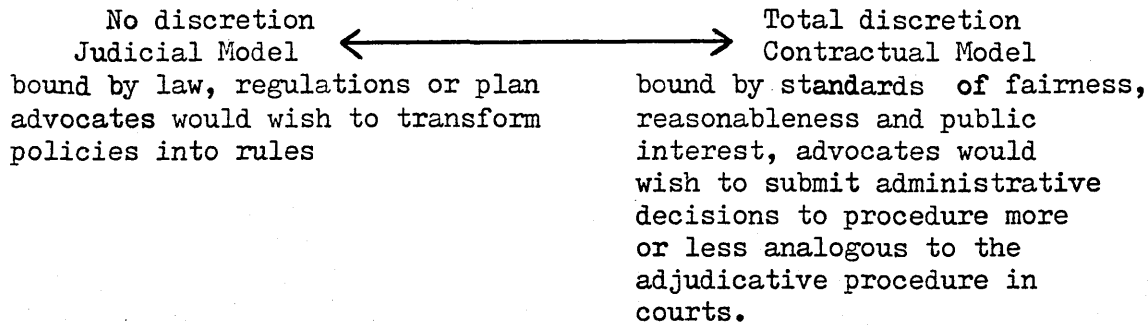
- proposals to reduce the level of discretion in the present planning system;
- proposals to make local plans more detailed and binding;
- planning permission being granted in reference only to compliance with the local plan and any associated regulations;
- creating a stronger law of nuisance and transferring control from the public to the private sector;
- a general relaxation of control and related strengthening of private property rights.

These and other suggestions concerning the nature of the development control system can be fitted into a framework of different models of planning control. These are examined in the following section.

#### 10.2. Models of Planning Control

A framework of different models of planning control can be related to the level of discretion a planning authority has in exercising its development control powers. Discretion can range along a continuum from a point where discretion is nil to a point where discretion may be total. This is shown in Figure 20.

Figure 20: A CONTINUUM OF DISCRETION



Source: Adapted from Jowell (1977). The Limit of Law in Urban Planning and (1973) The Legal Control of Discretion.

The types of planning system at the two extremes of the continuum can be labelled the judicial and contractual models. The latter model is one where official decisions are submitted to adjudicative procedures (using the word adjudicative in the sense of an independent arbitrator settling a pre-existing dispute between two other parties). The former model is a process of submitting official decisions to pre-determined rules. Advocates of this model would wish to submit administrative decisions to procedures more or less analogous to those carried out in courts of law and accompanied by some or all of the associated features. Policies, which are broad statements of general objectives would be transformed into rules (see Jowell 1973).

The judicial model (or rules based model) reflects a political philosophy which views as unacceptable the unlimited freedom of administrative decision making where the decision maker is not subject to the direct accountability of the electorate. Rules are needed therefore to reduce the free exercise of discretion and provide specific standards against which official decisions can be measured. It could be argued that predetermined

rules allow justice to be done. Two or more like parties can be treated uniformly and people will not be punished by rules applied post facto. This model rests on a philosophy and concept of justice and the need for certainty and predictability. However, this says nothing about the quality of the rules themselves or that the administrator acts with integrity in any sense other than treating like cases alike. Rules have certain virtues or advantages:

- they confine the bounds of discretion and provide a guide to its exercise;
- uniformity and evenhanded justice are values associated with the legal decision based on treating like cases alike;
- rules recognise the need for certainty and predictability in human affairs although rigidity and legalism can be the outcome;
- rules are routine and so allow affected persons to get to know them, they announce and clarify policy and facilitate obedience and can often reduce workload;
- ↪ rules can act as shields in that they protect officials from undue pressures and tensions.

On the other hand, rules have certain defects in the sense of imposing rigidity and legalism. Rules reduce options, depersonalise decisions, do not come with an explanation of the decision, they may contain variable content and impose unintended hardship. Rules therefore permit unreasoned legalistic official behaviour with no apparent relation between fidelity to the rule and organisational ends.

The alternative contractual model is a form of decision making which assures to the affected party a particular form of participation in order to present proofs and arguments for a decision in his favour. This can take a variety of forms which

have developed and approximate the formal judicial procedures in courts of law such as inquiries, tribunals, examinations and so on. The guarantee of participation and the opportunity to challenge provides an incentive to administrative integrity because it allows parties to the dispute to be involved in the decision making process. This allows a case by case elaboration of laws incrementally and enables the administrative body to deal with cases as they arise.

The defects of such a system are as follows:

- decision making may be conducted in secret and so exclude an important element of discretion, openness. Secrecy also fosters the opportunity for corruption;
- any element of bargaining allows and requires power to determine the outcomes which can deal to inducements on the one hand and threats on the other.

In such a system the opportunity for challenge does not relate to the nature of the substantive right being claimed while the existence of adjudication determined rights does not reflect on the content of that right. Thus challenge may be made to an administrative decision on a reason that may seem trivial and insignificant. Such a process may also contain costs, have the potential to damage relationships between the parties involved and contain the possibility of retaliation on the part of the party who comes off worst. The model is less suitable for communication, and public involvement and is limited as a planning device, geared more towards the resolution of individual disputes rather than to the managerial tasks related to the modern planning system.

Examining the way the planning system has developed in light of these two models of planning control, Jowell (1977) notes that the 1947 system, although intended to be a broad brush

approach, did in fact develop as a rules based model. Plans became incredibly detailed and allowed little or no room for discretion. In putting forward reasons why this should have happened, Jowell notes that planning theorists stress the heavy design bias of planning and an obsession with plan design in the form of a blueprint rather than a more open ended planning method. A jurisprudence analysis on the other hand would stress factors militating towards certainty, predictability and accountability. Thus the 1947 system led to rigid plans that were not responsive to change and which rapidly became out of date. Over time, however, the element of discretion has increased as more and more development control decisions bore less and less relation to the development plan as the plans became increasingly out of date.

When P.A.G. put forward their proposals for a reform of the development plan system they advocated a move away from the rule of law model to a more discretionary model, a move to less specificity and the use of wider criteria in decision making. Jowell (1977) notes the move from the rule of law model in development control in terms of increased discretion and wider criteria for decision making is only following what went before in the change of development plan system after P.A.G.

Jowell also notes that there are limits to the law in urban planning and gives three reasons for that limitation:

- the structure of decision making in development control tends to be dyadic, that is two-sided, which is a structure of decision making based on compromise, bargaining and the avoidance and resolution of conflict;
- a necessary element is that each side has something to give or concede which is of value to the other;
- if a continuing relationship is necessary and both sides

have to continue to live and deal with each other, both sides are therefore keen to strike a reasonable stance and so even bad bargains are more acceptable than a broken relationship.

Given the second and third reasons, the dyadic structure will encourage bargaining. When plans are based more broadly and there is a general lack of consensus concerning planning goals and strategy, flexibility can be increased and planning goals can be widened further. Authoritative decisions therefore become difficult and so leave the decision maker with a high degree of discretion, manoeuvre and so, compromise.

The move to a more flexible approach is not confined to planning and must be seen in a wider context, that is, the move to corporatism (Jowell 1977). Corporatism views formalised bureaucracy as introducing rigidity which constrains both the state and the subject. The corporatist state will retain adaptability by not codifying its powers and by passing general enabling legislation which confers more discretionary powers. Corporatism rejects the rule of law and seeks results rather than the maintenance of rights or of interests, and aims for the achievement of the collective good. It makes the informal system normal, typical and more importantly, required (see also Pahl and Winkler 1976).

Although the development of planning would seem to indicate a shift to a more discretionary model, the philosophy of the present government and some of the changes they have introduced into the planning system would indicate otherwise. There is a strong philosophical basis to improving performance of planning authorities, creating greater certainty and an ideological commitment to the rule of law model. The various suggestions for a move toward such a model in addition to those of the government were outlined in Section 10.1.

but if it is true that the development control system is heading for a more formal, legalised and less discretionary base, how would it operate? what would be its strengths and weaknesses? The following section seeks to examine one such system, that of Ontario, Canada, where development control is exercised through the zoning by-law

The fact that a detailed examination of an alternative system which is less discretionary is focused on zoning is deliberate. Zoning has always held a certain degree of fascination for planners in the U.K. who have been more familiar with a development permit system of control. Recent developments in this country including the planning regimes in operation in enterprise zones and the more recent proposals for the establishment of Special Planning Zones hold more than a coincidental similarity to a zoning type system. It is therefore worth investigating the detailed operations of such a system. Ontario has the most complex system of control compared with other Provinces in Canada and contains much of the country's population, urban areas and industry.

This stage of the study coincided with a visit to Toronto where the system was studied at first hand and access gained to literature unavailable here. The visit provided an opportunity to speak with a number of people involved in the planning system. The results of the study are set out in the following chapter.

11.1 Planning in Canada

Historically, planning has been the responsibility of the Provincial governments. Through time each has developed its own legislation which means in effect there are ten separate planning systems across Canada. The Provinces, having been granted sovereignty over their own responsibilities, have in turn delegated much of their power to the Municipalities.

Municipalities, the local form of government, were first divided into counties and then into cities, boroughs, towns, villages and townships. Regions were first introduced in 1953 in the form of the Metropolitan Toronto, the first attempt in North America at two tier local government. There are now thirteen regions which along with restructured counties, (restructured in the sense of having been given more powers and responsibilities), form the upper tier of local government in southern Ontario. The planning responsibilities of the upper tier depended, until the 1983 Planning Act, on the Provincial Act which formed the individual region, meaning that different regions had different planning powers.

With regard to planning, municipalities have never been accorded full decision making authority. The legal and administrative limitations on that authority have reflected widely held beliefs that such restrictions were both necessary and important. Planning instruments which have been made available to all municipalities have not always been used in the same way, so actual practice varies greatly. In addition to the municipalities themselves, there are also a number of separate special purpose boards which have the responsibility for such things as education, electricity supply and police. No more regions are likely to be created since there is strong political resistance

to the creation of what is seen as another level of unnecessary bureaucracy.

## 11.2 Planning in Ontario

The framework for land use planning in Ontario is provided by the Planning Act. The Act deals with a variety of matters including the creation of planning units and the organisation of them into a hierarchical system, provides for the preparation of the official plan establishes the system of subdivision control and enables municipalities to enact zoning by-laws. The Act had its beginnings in 1946 in legislation which overhauled and replaced earlier legislation. Planning measures prior to 1946 were generally narrowly based, limited in application and fell far short of what the emerging Canadian planning profession was demanding (see Hulehanski 1982, Hason 1977 and Dakin 1974). The 1946 Act gave increased importance to planning as a function of local government and provided the framework for the development of planning in Ontario in the post-war period.

Since 1946, municipalities, often encouraged and assisted by the Province, have developed systems of planning and development by implementing the available instruments of the legislation in various ways to suit their own circumstances, problems, and resources. As time went by, however, deficiencies apparent in the day-to-day administration of the system, along with court cases, provided the impetus for a series of amendments to be made to the legislation.

One problem associated with such a pragmatic response to legislative change is that various measures contained in the same (amended) Act may have different origins, reflected for example, in different procedural arrangements. This can and has indeed led in the past to an unco-ordinated and non-integrated

system. These operating deficiencies have been seen by some as an indication of more general and fundamental faults with the system. Such a view has influenced a series of successive reviews throughout the late 1960's and 1970's culminating in the Planning Act Review Committee (P.A.R.C.) and a comprehensive revision of the Planning Act.

The Planning Act is not, however, the only legislation which affects the operation of the planning system. Other statutes such as the Municipal Act (which sets out the powers, responsibilities and procedural arrangements for municipalities) and the regional government legislation such as the Metropolitan Toronto Act and the Ontario Planning and Development Act which enables the Province to act in certain ways by giving it power to develop plans for any area it designates as a 'development planning area' (such as the Niagara Escarpment) are all important. These statutes however assume the existence of and are all based on the provisions of the Planning Act.

### 11.3 Zoning

Creators of the planning system in Ontario shunned the broad discretionary controls of land development in favour of the zoning procedure which establishes clearly in advance of development (in theory at least) the uses to which land may be put. Zoning might be described as "the use of a police power which divides a community into zones or districts according to the permitted uses of lands in order to control and direct the use and development of properties in the city" (Moore 1979, p.317). Zoning by-laws establish broad land use zones and give a precise context within which the municipality can make a decision on a development application. The precise uses to which zoning by-laws can be put is shown in Figure 21.

34. (1) Zoning by-laws may be passed by the councils of local municipalities:

1. For prohibiting the use of land, for or except for such purpose as may be set out in the by-law within the municipality or within any defined area or areas or abutting on any defined highway or part of a highway.
2. For prohibiting the erecting, locating or using of buildings or structures for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or upon land abutting on any defined highway or part of a highway.
3. For prohibiting the erection of any class or classes of buildings or structures on land that is subject to flooding or on land with steep slopes, or that is rocky, low-lying, marshy or unstable.
4. For regulating the type of construction and the height, bulk, location, size, floor area, spacing, character and use of buildings or structures to be erected or located within the municipality or within any defined area or areas or upon land abutting on any defined highway or part of a highway, and the minimum frontage and depth of the parcel of land and the proportion of the area thereof that any building or structure may occupy.
5. For regulating the minimum elevation of doors, windows or other openings in buildings or structures or in any class or classes of buildings or structures to be erected or located within the municipality or within any defined area or areas of the municipality.
6. For requiring the owners or occupants of buildings or structures to be erected or used for a purpose named in the by-law to provide and maintain loading or parking facilities on land that is not part of a highway.

Source: The Planning Act, Ontario, 1983, section 34.

Zoning has its origins in the law of nuisance and in restrictive covenants, both of which offered limited and generally ineffective controls over externalities generated by other properties.

Zoning therefore developed to protect neighbourhoods from land uses with negative local external effects and to designate restricted zones in which such uses were not permitted. It has some flexibility in terms of the severity required and can indicate the uses which are either allowed or prohibited and tries to ensure that new development is consistent with existing buildings in terms of use and built form.

Although most development in Canada is privately built, "control ..... is necessary even though it is still viewed by some as an infringement on their rights to enjoyment of property" (Fitzpatrick 1982, p.12). Forms of development control vary from municipality to municipality but are generally centred on the use of the zoning by-law which has developed as the main tool for controlling land use and implementing a municipality's official plan. Although the legislation provides a number of other development control instruments which are uniform across the province, the manner in which the various instruments are used is not. This may be due to the fact that the legislation does not provide any guidance on the exercise of controls and there is no agreement on the purpose of the control process. Each municipality has therefore developed its own system and processes (P.A.R.C. 1977, p.16).

The overlapping nature of various control instruments (see Figure 22) allows for a variety of ways in which the management of control can be operated. The wider range of concerns which zoning covers does not always mean the automatic primacy of that instrument in controlling new development. Zoning may be the main tool for controlling development in some municipalities and

Figure 22. THE OVERLAPPING NATURE OF DEVELOPMENT CONTROLS

<u>Components of Control</u>	<u>Control Mechanism</u>
1. Form, (lay out, density etc))	) )
)	Subdivision ) )
2. Type or land use	) ) Plan
)	) Zoning )
3. Location	) )
)	) )
4. Timing	) Processing of )
)	Proposals )

Source: P.A.R.C. (1977) Operation of Municipal Planning, Background Paper No 2, p. 16

not in others, but most will have some sort of zoning by-law in operation. The normal use of zoning has been described as:

"To cover the municipality by a 'predominant use' or existing use or holding by-law. Thus most development can only be permitted by piecemeal rezoning or zoning amendments. This process, which is usually accompanied by site plan approval process and specific agreements, may or may not implement a plan". (P.A.R.C. 1977, p.19).

Zoning has its own particular problems as a means of controlling development and implementing plan policies. Particularly in an area expected to change and where new development may be of a different scale, form and use than that which presently exists and when it is difficult to determine in advance the appropriate form of development in terms of detailed density and built form. Municipalities have met this problem in two particular ways:

- (1) Enacting by-laws which permit uses, densities etc which are less profitable than those which are viewed as potentially appropriate. A developer would therefore, if he wanted to go ahead, apply for rezoning which could be granted subject to various conditions and agreements being imposed by the municipality. This process can be described as site specific rezoning.

(2) Areas could be zoned for development regarded as appropriate but which would only go ahead after the municipality has had the chance to examine in detail the plans and proposals. This process can be described as site plan control.

These two procedures point the way to a greater degree of control being exercised over individual development proposals, as opposed to blanket approval being given through the general zoning by-law, a process aided by the introduction in 1973 of site plan control.

Although zoning by-laws must conform to general policies set out in a municipality's official plan, the relationship between the two is not as clear cut as it might appear to be. P.A.R.C. noted that the relationship between the plan and development controls was weak (P.A.R.C. 1977, p.14). The following reasons were given:

- the plan may be too vague to be of any help;
- the plan may be too detailed and may also be indistinguishable from zoning by-law, so a clear policy statement may be missing;
- the plan may be outdated;
- the plan may not indicate clearly how long term planning aims are to be met.

This weak relationship in part reflects the fact that land use regulation through zoning predates the introduction of the plan as a legal document, and that the existence of a plan is a prerequisite for some planning actions and not for others, including zoning. A further problem is that where a new plan or plan amendment is adopted, previously adopted zoning by-laws remain in force whether they conform to the plan or not. Once approved, a zoning by-law is deemed to conform to the plan whether it does or not, and so has the force of law. (A way round this

problem is of course to amend both the plan and the zoning by-law simultaneously.)

Zoning has been subjected to much criticism, especially in recent years with so many studies and reviews being conducted. Common complaints have been that zoning is too rigid, too detailed, too expensive to administer, too time consuming, and too cumbersome and deficient in controlling dynamic change and does not give enough control over individual developments. The central issue has been the relative merits of the zoning approach to development control over and against the development permit system.

#### 11.4 Reviews of the Planning System

The review of the planning system commissioned in 1975 by the Provincial Ministry of Housing was only one of a number of similar studies conducted in the late 1960's and 1970's. Figure 23 lists the main published reports. With such a volume of material available from a wide variety of sources it is interesting to note the development of similar and related viewpoints, such as in relation to development control, to use Cullingworth's words "a strong push ..... in the direction of a development permit system" (1978, p.89).

#### Figure 23. MAIN PUBLISHED REPORTS ON ONTARIO PLANNING

- 1964 Royal Architectural Institute of Canada, Reflections on Zoning.
- 1967 Ontario Law Reform Commission Tentative Proposals for the Reform of the Ontario Law Relating to Community Planning and Land Use Controls (J.B.Milner)
- 1969 Ontario Law Reform Commission, Some Less Tentative Proposals for Development Control (J.B. Milner)
- 1971 Ontario Law Reform Commission. Report on Development Control.
- 1973 Ontario Economic Council. Subject to Approval: A Review of Municipal Planning in Ontario.
- 1975 Royal Commission on Metropolitan Toronto. Background Report 3, The Planning Process in Metropolitan Toronto.

The first set of studies undertaken by J.B. Milner for the Ontario Law Reform Commission was very influential in developing attitudes and proposals contained in later reports. He points out that:

"the chief inadequacy ..... was that present zoning enabling laws make it difficult for the local council to prescribe appropriate development. If the prescription is far in advance of any development it is likely to be ill-informed ..... Although in practice, zoning by-laws are amended from time to time, the amendments are frequently still based on insufficient information and further amendments are usually asked for when the developer is ready to go ahead. It is the necessity for this final amendment that prompts a review of the law ..... The real worth of the process (zoning) may have been only to 'freeze' land use until a decision could be made." (Milner, 1969, p.1)

Milner's particular interest in development control emerged partly because of political pressure in that various municipalities were submitting private Bills to the Ontario legislature for more flexible development control powers. He found no great pressure however, to dispose of the traditional zoning by-law in favour of a development permit system. Zoning remained a useful tool for protecting existing properties. The problems over its use had arisen due to the fact that it was being used for purposes not originally intended. Milner's main thrust of reform was therefore that existing legislation should be modified to adopt site plan powers for areas where development pressures were great and which municipality would define. Traditional zoning would remain operative elsewhere. (For discussion of Milner's proposals see Dakin, 1974, pp. 39-53).

A second important contribution to the debate came from the publication in 1973 of the Ontario Economic Council's report entitled 'Subject to Approval'. This report noted that zoning was a reasonably effective development control tool when used

for its original purpose of maintaining the established character of an area and protecting property values. It also noted that zoning did have certain disadvantages which included a lack of qualitative controls and an inflexible and cumbersome amendment procedure. Such problems were seen as handicaps when zoning was used as a development control tool in areas where change was either intended or expected. Although the report made no specific proposals, it did highlight deficiencies in the system and point the way to reform.

1973 also saw the introduction of site plan control in Ontario by means of an amendment to the Planning Act. Site plan control authorised municipalities which had an official plan to pass by-laws prohibiting or requiring the maintenance and use of certain defined facilities and other matters (see Figure 24) as a condition of development or redevelopment of land or buildings in the municipality or in defined areas of it. The power allows the municipality to exercise control over development additional to that given in the general zoning by-law, and to do so with regard to certain details of development after the proposals have been submitted. These powers were introduced partly as a response to the desire of some municipalities for more authority but also to give explicit statutory authority for controls which many municipalities had been exercising previously through indirect and often legally uncertain procedures.

In a review of the operation of site plan control in Ontario, Reed (1978, p.64) concludes that the introduction of the new power did enable municipalities to exercise control over certain details of development in a more direct, efficient and legally valid manner. The moves toward increased use of site specific rezoning prior to 1973 indicated, in practice, a move towards a more discretionary type system. Site plan control

As a condition to the approval of the plan and drawings .....  
a municipality may require the owner of land to

(a) provide to the satisfaction of and at no expense to the municipality any or all of the following:

1. Widenings of highways that abut on the land.
2. Facilities to provide access to and from the land such as access ramps and curbing and traffic direction signs.
3. Off-street vehicular loading and parking facilities, either covered or uncovered, access driveways, including driveways for emergency vehicles, and the surfacing of such areas and driveways.
4. Walkways and walkway ramps, including the surfacing thereof, and all other means of pedestrian access.
5. Facilities for the lighting, including flood-lighting of the land or of any building structures thereon.
6. Walls, fences, hedges, trees, shrubs or other groundcover or facilities for the landscaping of the lands or the protection of adjoining lands.
7. Vaults, central storage and collection areas and other facilities and enclosures for the storage of garbage and other waste material.
8. Easements conveyed to the municipality for the construction, maintenance or improvement of watercourse, ditches, land drainage works, sanitary sewage facilities and other public utilities of the municipality or local board thereof on the land.
9. Grading or alteration in elevation or contour of the land and provision for the disposal of storm, surface and waste water from the land and from any buildings or structures thereon.

(b) maintain to the satisfaction of the municipality and at the sole risk and expense of the owner any or all of the facilities or works mentioned above; including the removal of snow from access ramps and driveways, parking and loading areas and walkways;

(c) enter into one or more agreements with the municipality dealing with and ensuring the provision of any or all of the facilities, works or matters mentioned and the maintenance thereof.

Source: Section 40 of the 1983 Ontario Planning Act

has led to a decreasing reliance on this strategy, although the two used together do provide a greater degree of control over developments on an individual basis. The introduction of site plan control has helped to confirm the development of the Ontario planning system to one where a greater degree of control was being exercised over individual developments.

Given such strong and powerful influences, the Provincial government commissioned the first comprehensive review of the planning system since 1946. The three man committee under the Chairmanship of Prof. Eli Comay were given a wide remit:

1. To examine the nature of planning in Ontario in terms of the:

(a) Goals and objectives of municipal and provincial planning.

(b) Role of government in planning; relationship of planning to provincial and municipal responsibilities.

(c) Results and products of planning; social economic and environmental consequences.

(d) Alternative concepts of the nature of planning.

2. To examine the planning system and planning process in Ontario including the legislative framework, regulatory mechanisms, planning structures, planning procedures and public involvement in planning. (P.A.R.C. 1977, p.181).

Many commentators have criticised the committee for taking a somewhat narrow approach to such a wide remit. Cullingworth (1978, p.5) for example, comments that "the recommendations deal with the design and structure of an improved engine to drive an ill-defined machine". Planning is seen by the committee as having only to do with the Planning Act, other associated legislation is ignored and the definition of planning chosen was one restricted to physical terms only.

The Committee undertook their mammoth task through means of submissions, commissioned studies and public meetings and published their report in June 1977. The province immediately initiated a programme of response aimed at determining reaction to the report and at developing a new Planning Act. Figure 25 shows the timetable of events associated with the review and introduction of the new legislation.

Figure 25. TIMETABLE OF EVENTS ASSOCIATED  
WITH THE REFORM OF THE PLANNING  
ACT

1975		P.A.R.C. Commissioned by Provincial government.
1977	June	P.A.R.C. Report published
1979	May	White Paper published by Government of Ontario.
1979	Dec	Draft of new Planning Act published for comment.
1981	Oct	Response to White Paper and draft Planning Act published by Government of Ontario.
1982	Mar 9th	First reading of Planning Bill in Parliament.
1982	Mar 9th	Second reading of Bill.
1983	Jan 25th	Third reading of Bill.
1983	Jan 27th	Royal Assent given to Act.
1983	Aug 1st	Act became operative.

The proposals put forward by the Committee were based on certain assumptions made covering the nature and function of planning, the role and responsibility of government and the nature and function of planning legislation. Specifically, they were based with three aims in mind:

(1) To let the municipalities engage effectively at the local level.

- (2) To allow the Province to secure its own interests in municipal planning.
- (3) To ensure that the needs and interests of other participants were given their due regard.

The proposals also had two main thrusts:

- (1) To lodge increased decision making authority and responsibility in planning at the local level.
- (2) That the onus of development control be changed from the present where a developer has to justify his proposals to one where the onus is placed on the objector to say why the proposal should be rejected.

Thus municipalities would be assigned final authority over all their planning instruments subject to appeal procedure or provincial veto. The Provincial role would be restricted to guidance and assistance of lower tier authorities rather than supervision and approval as previously. The focus of control would therefore, change with direct Provincial control over municipal planning being replaced by a system of checks and balances. The aims and principles outlined above were not immune to criticism (Cullingworth 1978, Katary 1978 and Hitchcock and Kjellberg (Eds) 1980) but were generally accepted by the Province (Government of Ontario 1979, pp.27-30).

#### 11.5 P.A.R.C. Proposals (Zoning)

It is not the intention of this section to detail all the proposals made by P.A.R.C., but rather to concentrate on those specifically made with regard to the zoning system. The proposals are in some cases a refinement and development of previous ones although others merely formalise what had become standard practice. Given the comprehensiveness and extent of the review of the Planning Act undertaken by the Province it is perhaps surprising to note that the new Act did not significantly change the planning process in Ontario. Many older provisions remain.

Tunnacliffe (1982, p.136) comments that the new Act "reflects the period in which it has been created, one of conservative building on the past rather than introducing significant new innovations".

Given the trend noted above towards more control over individual development proposals, it is interesting to note P.A.R.C.'s dismissal of the development permit system in favour of the retention of the existing, but improved, zoning system.

"While a development permit system can provide flexibility, we see a number of important disadvantages. A development permit system is inherently discretionary; it contains a large potential for decision making outside the framework of established and properly adopted planning policies. There are considerable public costs from the exercise of discretionary control powers: an almost total lack of certainty and predictability; a potential for the misuse of municipal power in order to extract improper advantages from development proponents; and a much higher potential for arbitrary decision making on the part of municipal councils and their officials. We are convinced that these costs far outweigh the potential benefits of a development permit system."

(P.A.R.C. 1977, para 11.4)

Although in favour of retaining zoning, P.A.R.C. recognised the system's deficiencies and proposed to "broaden the scope and effectiveness of development review (site plan control) and of interim development control" (P.A.R.C. 1977, para 11.5). What the P.A.R.C. proposals were thus pointing to was a more flexible development control system offering more control over individual developments as well as a variety of other controls, all based on zoning, for different situations and purposes (which might be argued as being a development permit system in essence if not in kind).

The retention of an improved zoning system was overwhelmingly endorsed by respondents to the P.A.R.C. proposals, as it was by the Provincial government, with the condition "that it should be improved by recognising in legislation the various purposes for which zoning is used". The government agreed that the good points of a development permit system could be achieved through a combination of available (though improved) development control instruments. The past problems of using zoning for different purposes would be overcome by using the different zoning controls proposed by P.A.R.C. in their own particular context thus giving municipalities more flexibility and the public more certainty. The proposals recognised three levels of control: long term, short term and site plan control. These are described below as incorporated into the new Act.

#### Long Term Zoning Controls

##### (1) Holding By-Laws

This provision was designed to 'hold' development in two categories (for rural land to be converted to urban uses and for properties where the impact of development could not be properly assessed in advance of specific proposals) to allow consideration of both impact and timing of the proposed development. The by-law would specify the use to which land, buildings and structure could be put during the period of the hold and after the hold was removed. To operate such a by-law a municipality must have a policy statement setting out the objectives to be achieved. The by-law is not limited time wise, nor is it subject to normal rezoning amendment procedure, since it has its own procedure specified in the Act.

(2) Bonus Zoning

Most parties recognise that it is not always possible for innovative forms of development to result when seeking to meet specific objectives established in the official plan through a general zoning by-law. This could be achieved through granting an increase in some of the matters covered by zoning, such as density, in return for meeting some particular objectives. Zoning could therefore be in a position of being used to achieve specific policy objectives. The new Act now allows for this to happen. The objectives to be fulfilled, applicable bonuses, and criteria for use would be set out in the general zoning by-law. If the criteria sets out in the by-law are met, the bonus could be granted automatically and enforced through an agreement made between the developer and the municipality, which would then be registered against the land. The bonus zoning allows some degree of flexibility in the operation of long term zoning controls.

Short Term Zoning Controls

(1) Interim Controls

These controls allow a municipality to use interim control where developing or reviewing land use and development policies for an area, to ensure that future options are not preempted while the policy is being prepared. Such a by-law would have the effect of freezing development in the area in which the by-law was operating. The by-law would suspend the provision of existing zoning and specify the uses acceptable during the period in which the by-law was in force. Such a by-law can last up to one year and can be extended for up to a further year. Prior zoning

becomes effective again in the event of the interim by-law lapsing with no new one being passed. Once an interim control by-law has been passed no new interim by-law can be passed for the same area for three years. The Act provides for its own notification and appeal procedure in connection with this by-law.

(2) Temporary Use By-Laws

Before the new Act, temporary use by-laws were restricted to zoning for parking only. This has now been extended to include a wide variety of uses, and the use of such a by-law needs to be based in policies set out in the official plan. Temporary uses can include uses normally prohibited under general zoning. The by-law will define both the area and the time duration of the by-law (not over three years and with the possibility of an extension of up to three years). The temporary uses become prohibited again when the by-law lapses or either the old zoning or new zoning provisions take effect.

Site Plan Control

Site plan control has been retained in the Act as a development control tool for municipalities to use. The operation of site plan control requires the adoption of a policy statement setting out the objectives and principles to be employed in the operation of the control and the areas in which the control would apply. The by-law would set out the criteria to be used for reviewing development proposals, and the classes of development subject to review and general procedure. It is important to recognise that site plan control has no power to change either density or height, these being matters dealt with in the general zoning by-law. Any agreements reached between the developer and municipality as a result of site plan

control are registered against the land. If a municipality fails to approve a site plan control application within 30 days or if an owner/developer is not satisfied with the demands placed on him, then he can appeal and have his case referred to the Ontario Municipal Board (a tribunal appointed by the Province to hear planning inquiries, approve plans and judge cases where there is a dispute or objections).

#### 11.6 Conclusions

The planning system in Ontario provides a good example of how a system based on the use of zoning by-laws has developed over time. The development control system differs sharply from that in operation in Scotland and the U.K. as a whole as the right to develop is conferred by meeting detailed requirements set down beforehand in the zoning by-law as against a system where an application for planning application is considered against a variety of factors including the development plan. Although the founders of the Ontario system shunned the broad discretionary controls over land development embodied in the development permit system, argument in the last ten to fifteen years has centred on the relative merits of such a system versus the more familiar zoning system. This has resulted from a growing realisation of the weaknesses and failures of the zoning system and pressure from municipalities to exert more control over individual developments. The report of the Planning Act Review Committee (P.A.R.C.) and the overhauling of the Planning Act, have led to the retention of the zoning system, but in an improved and expanded form to provide a number of new zoning powers for use in different situations. The Provincial Government hope that the provision of these new powers will help to produce a more effective zoning and development control process. The general zoning by-law, for so long abused and misused, will be

returned to the use it was originally designed for, that of providing existing neighbourhoods with stability and designating land for future development. Municipalities will now be in a position to choose the appropriate control for specific needs and circumstances, thus leading to a more rational use of zoning powers. The new range of powers should prevent municipalities from retaining obsolete by-laws which force developers to apply for rezoning and allow the municipality to exert a degree of control not originally intended. In this respect, P.A.R.C. did recommend a mandatory five year review of zoning by-laws. The Province however, did not agree with this but have given the Minister a reserve power to direct municipalities to review their by-laws. It is not expected that every municipality will use all the new powers but rather select those most appropriate to its needs.

The retention of the zoning system over and against the introduction of a new system is significant. A number of reasons can be identified as to why zoning was retained. Firstly, P.A.R.C. rejected the development permit system for exactly the same reason as Britain has accepted it, that is, because of its high degree of discretion. Instead of seeing discretion as something positive which would give them a greater degree of flexibility and influence over individual developments, P.A.R.C. saw it as something to be feared because of its potential for abuse and preferred decisions to be grounded in procedures and criteria laid down clearly beforehand. Secondly, the familiarity of those involved in the development industry with the zoning system mean that although zoning has faults, most people have become used to them, accepted them and got on with the job, and even begun to rely on it to protect various interests and investments. Therefore to change the rules of the game in too

radical a way would perhaps have created more problems than it would have solved. Thirdly, a continuing lack of professional planning staff presented difficulties in many smaller municipalities. There, zoning ordinances would be drawn up by consultants and operated by clerical staff. A rules based system was therefore both preferable and necessary for the majority of municipalities. Fourthly, the general mood of the time was one of conservative building on the past rather than introducing significant new innovations, so many older parts of the Act remain.

The relative merits of one type of development control system over another are not all that is at issue. A far deeper and more fundamental question has been to what extent should municipalities be able to exert control over individual developments, and what sort of planning mechanism should be created to deal with areas undergoing rapid change and redevelopment. Ontario and Scotland differ in terms of the system of development control they have chosen in response to these questions. Ontario municipalities must have felt constrained by the rigidities of the zoning system in the past but in practice found ways round these constraints. Although practice and the findings of earlier reports seemed to point the way to a move over to the development permit system, in the end it was not to be.

The new Planning Act has given municipalities a variety of new zoning controls for use in different situations and for different purposes. The decision to retain the zoning system and introduce a variety of controls may however backfire in that the system as a whole is made more complicated, especially where a combination of controls may be used. It is possible that the new controls will in time provide a greater degree of certainty for the public in that they will know what controls

are being used and for what purpose.

The new planning system in Ontario will give municipalities a greater degree of control over development but still within a framework where the purpose and extent of control is clearly laid out beforehand. Many of the new controls are directly related to policy statements which must be set out in the official plan. And before adopting that plan or related zoning by-law, the municipality will have to ensure that adequate information is made available and that one public meeting at least is held at which those present can make representations. Thus, the new controls will be set within the context of an overall publicly accountable framework.

Clearly the increased use of zoning by-laws as the main development control tool means a more legislative system. The experience of Ontario has been to try to shake off the rigidities of that system and to use planning controls in a more positive way. The development permit system has been rejected, but its advantages can be achieved through a revamped zoning system. This system is more flexible, responsive, and enables municipalities to exert greater control over individual developments than previously. A rigid, negative, legalistic system has not proved itself capable of meeting the demands placed upon it. The main lesson would seem to be that there is a way of providing a greater degree of certainty to the public and developers yet at the same time enabling some flexibility on the part of the municipality.

Having made some investigation into the nature of alternative systems based on the element of discretion in decisions relating to development proposals and one particular system based on zoning, the aim of the thesis at this point is to try to bring all that has been said to bear upon the consideration of future direction of planning in Scotland.

One of the main findings of the thesis is that planning in Scotland has developed somewhat differently from planning elsewhere in the U.K. but will develop less independently in the future. Chapter 1 investigated the development of planning in the 1970's, looking both at its features and at the influences which led to the emergence of those features. The chapter showed that Scottish planning has certain distinctive features which are not part of planning elsewhere in the U.K. On the other hand, it is the same basic planning system of development control and the preparation and implementation of the structure and local plans which exists and is operated on both sides of the border. The difference may therefore be of degree rather than kind, it being the detailed working of the system and the general climate and circumstance within which planning takes place that makes the difference. The four main features of the Scottish planning system (the regional system of local government, regional reports, national planning guidelines and an increasing public sector involvement) are all a function of matters in which Scotland has retained some degree of independence and control such as the legal system, a separate local government system and organisation of national government in the form of the Scottish Office. Scotland has never set out to create for itself a separate planning system. Even if it wanted to, it could not have done so. Proposals would need the approval of Parliament at an all U.K. level. Where there is room for discretion is in the administrative application and detailing of the system. Even in the review of recent legislative change contained in Chapter 5, three of the six main relevant Acts relate to the whole of the country although they have varying degrees of application to Scotland.

Traditionally, legislative change has followed that in England or has taken place around the same time. Gillett (1984, p.60) comments that "in planning the tradition has been to adopt English legislation". Even in the more recent changes that tradition seems to have been continued. Only neighbour notification has been a new purely Scottish innovation, others have been introduced across the country or have been detailed changes to such aspects as local and structure plan regulations and advertising regulations, which are all slightly different in Scotland. Gillett (1984, p.6) comments that "in Scottish attitudes to planning there was not present to the same extent as in housing policy a tradition of legislating in a substantially different way".

As for the four distinctive features of Scottish planning, although their most recent developments were covered in Chapter 1 it is worth bringing them up to date as to the time of writing (1984). The regional system of local government has been retained, the Stodart Inquiry accepting the two tier system and reallocating functions in order to reduce concurrency. There is, however, continued debate concerning the relative merits of a two tier system over a single tier system and perhaps a degree of uncertainty following the publication of the Stodart Report.

Regional Reports, so often held up as one of the jewels of the Scottish planning system, seem to have been allowed to fall into oblivion. Most Local Authorities have had neither the willingness nor finance to prepare subsequent reports since the first round while the lack of resources and manpower needed at Scottish Office level to respond both quickly and corporately has acted as a deterrent to seeking a second round of reports. The stated policy of central government on disengaging itself

from the detailed affairs of local government also militates against a direction from the Secretary of State for more reports. Without the need to comply with a direct request, local authorities have not produced subsequent reports. With a second round never called for, it would seem that the Regional Report could lapse. Given the interest which has always been shown in them and their potential as a co-ordinator of economic, social and physical planning objectives, this would be most unfortunate. But once there have been a number of reviews of structure plans, there could well be an opportunity to revive them.

The National Planning Guidelines on the other hand continue to go from strength to strength with the series revised and extended in 1981 and a further addition in 1984 with a Guideline on skiing developments. They clearly have a strategic role to play within Scottish planning although it remains to be seen in what way they are developed. A crucial question concerns whether they will be extended to cover urban areas and non-physical characteristics for example. The Scottish experience may be the impetus to transfer the guidelines to the rest of the U.K.

With regard to the fourth characteristic of a large scale public sector involvement, there is little sign of change despite the Government being in favour of the private sector as against the public sector and committed to a programme of privatisation. There has been some reduction in funds available to public bodies, some degree of privatisation of some services, selling of public assets, and a change in direction or policy of some organisations (for example the Scottish Special Housing Association now concentrating on special needs housing rather than general provision). The scale and extent of operations of

the agency most closely related to planning, the S.D.A., seems to grow with more Area Projects and a move into the service sector of industry as well as manufacturing. Councillor J. Hood of Clydesdale District Council commented in a letter dated 6th July 1984:

"The primary responsibility for industrial development and derelict land clearance is vested in a central agency, the S.D.A. The role of the S.D.A. raises the whole question of resources. No longer are local authorities able to take the primary role in any initiative as the restrictions on expenditure, both capital and revenue, make them dependent upon other agencies, individually or in a multi-agency arrangement. The present government insists that private sector should wherever possible, be one of those agencies. The result is that local authorities find it extremely difficult and complex to promote their priorities for planning."

Recent developments within planning as a whole have had direct effects on these four main characteristics of the Scottish planning system. But to what extent have these developments come about by what has gone on solely in Scotland?

The answer must be that a combination of both Scottish and national influences have shaped these developments. At a national level, government policies of disengagement, privatisation, cost savings and so on have been brought to bear on Scottish planning. The National Planning Guidelines have survived and developed, but under the present government it is doubtful if they would be expanded to cover non-physical criteria. And although the influence of public sector agencies is strong, there are moves to increase the burden of activity taken by the private sector.

It would seem to be the case that more and more changes within the Scottish planning system are related to influences of a national proportion. One theme many political commentators

have drawn attention to in recent years is the increasing centralisation of British politics. S.D.D., the government department with responsibility for planning in Scotland, has not escaped change. It has lost staff, resources, has been unable to acquire fresh faces and has had to comply with a policy of disengagement. It has also been at the centre of repeated rows with local authorities over finance which has led to strained relations between the two levels of government. It has been criticised over lack of involvement. Allan Reid, Director of Planning at Cunninghame District Council, commented in an interview held on July 17th 1984 that he believed S.D.D. planning was in a kind of retreat, unsure how to advance. It would like to become more involved but either could not or failed to grasp opportunities open to it and was pursuing a regulatory rather than promotional role. In Reid's view therefore, Government policy has led to paralysis within S.D.D.

Therefore, both by accident and design, the ability of S.D.D. to influence planning seems to be becoming less. For example, the recent consultation paper on Special Planning Zones was developed in London and then sent to Edinburgh where only a few, minor changes were made to take account of some differences in the Scottish system. It could of course be argued that local authorities are beyond the period of needing a nursemaid which was the situation for some authorities after reorganisation with not enough qualified and experienced staff to operate the system. However, the experience of Regional Reports could indicate that Scottish local authorities are now unwilling to undertake tasks without direction from above, in a time of increasing scarcity of resources. Some authorities such as West Lothian District Council are however, forging ahead with programmes of local economic initiatives, proving that some

authorities are prepared to undertake new tasks and initiatives outside the statutory planning system. The question may therefore be one of priorities with some authorities unprepared to use resources for other than statutory tasks.

The uniqueness of Scottish planning depends on the existence of certain phenomena which are purely Scottish, although the influences on these are becoming more centralised. Scotland still retains its separate legal system, local government system and the administrative uniqueness of the Scottish Office. These factors guarantee that in some respects Scottish planning will continue to be different. The Scottish Office retains some flexibility in applying the planning system to the Scottish scene but whether Scottish civil servants are happy if they can harmonise practice with Whitehall or whether they want to be tied down to policy decisions made in Whitehall is another question. In planning, there has been a tradition of adapting English ideas to suit Scottish circumstances both in terms of legislation and case law and to take account of experience gained in the south.

Overall, Scottish planning is different in detailed application and practice but in broad terms it remains the same basic system as that operated elsewhere in the country. It has unique features, but these are not enough to make the system as a whole separate. The Scottish system could be likened to a standard production model of a car which has been customised to suit the requirements of a particular customer. The ability of the Scottish Office to develop a completely different system is constrained, even if that were thought desirable. Change would need U.K. Parliamentary approval for new legislation: that would seem unlikely if the same changes were not being introduced over the whole of the country.

The Introduction to the thesis highlighted the fact that planning as an activity is in a state of crisis: a crisis of legitimacy. Is planning relevant, has it done more harm than good, do we need planning? If the answer to the last question is yes, then how should it be organised and practised, for whom and for what ends? It was noted that planners have brought some of the criticisms upon themselves and are partly to blame for the predicament of planning. Planners perhaps had an inflated view of their role and advocated action they did not have the powers to control, while some decisions can be looked back on with hindsight as wrong or stupid.

The aim of planners therefore has been to try to make planning more acceptable. But this has been made more difficult with a Government identified as being against planning and seeking to dismantle the planning system. Planners have therefore, had to argue their case from first principles but there has been no impact from this on the general public through the media as criticisms of the planning system grow and are given publicity. If planners have been faced with making planning more acceptable, the Government have gone about the same task but in a different way, by seeking to speed up and simplify the system. The investigation of legislative changes showed that these objectives have not been achieved and that the system has been made more cumbersome and complex. Government have simply stated that we need planning, but their view of what that entails would seem to a regulatory control function, related in particular to conservation. Planning has been made more acceptable to developers with controls being loosened and opened to a greater influence of market forces. The aim of the planning system seems now to be couched in terms of meeting or serving the ends of the developers rather than the wider public interest,

other.

Planning has become more political or maybe more correctly the political aspect of planning has been increasingly recognised, and used. The courts have maintained their positions as guardians of the private property rights and, until relatively recently, have stood firm against moves within planning to widen the scope of decision making to include social and economic concerns as well as physical ones. Despite demands from both outwith and within the planning system, development control has remained a negative regulatory function and has had to suffer criticisms and complaints for being too restrictive. The aspirations of planners to introduce a wider scope of planning have been in some senses thwarted by the lack of positive powers available to planners.

In Scotland, planning as an activity has never really been a political issue. Views on particular issues tend not to follow party lines. Gillett (1984, p.59) comments that "town and country planning does not arouse party political controversy to anything like the same extent as housing, and discussion of planning policies therefore takes place in a very different atmosphere. The principles of planning do not figure very largely in party statements and manifestos, nor are decisions at national level usually made on party lines". He later says (1984, p.74) that "it takes a particular case for passions to be aroused". Shadow Scottish Secretary, Mr. Donald Dewar M.P. has never really attacked the government on planning issues. He has had plenty to say about other topics but not planning. In the Committee stage of Bills, opposition M.P.'s have been hard at work making amendments and debating various points. But this kind of work is more constructive than

the usual political verbal battles and the party political element, although evident does not always come to the fore. At a more local level, Councillors are very concerned with the views of the local residents and do bow to pressure exerted at a local level. Party politics, again, does not take a major part in the determination of planning applications but most Members do recognise that many of the changes which have been introduced have been so from the basis of a particular political outlook and that individual applications can and do raise political issues. One Member even went as far as to state that his authority's planning committee was not political, the Committee being composed of eight Members with seven of them from one political party and the eighth being a representative of the ratepayers. A Committee could not however, be more political than that.

As indicated above, Scottish planning is becoming more open to the influence of developments elsewhere in the country. The crisis through which planning has passed has been as applicable to Scotland as elsewhere. Given the uniqueness of certain features of the Scottish planning system and planning scene, these have in some ways helped and hindered Scottish planning to deal with the crisis. For example, local government went through a phase after reorganisation where it was criticised and its image badly tarnished: too many staff, all too highly paid, increased bureaucracy, the public sector gone mad. As part of local government, planning's image and acceptability was bound to suffer. The distribution of the planning function between the two tiers would and did not only cause conflict but created some sense of confusion in the public eye. Given the economic situation in most parts of the country, there has been no room for authorities to continue a negative approach

to planning and development. Some authorities may have retreated into an attitude of doing all that was statutorily required of them and nothing else. The greater intimacy and smaller scale may have helped planners to share problems and solutions and helped harmony between tiers and between local and central government. Public sector agencies provide money for projects and particular expertise but may prevent authorities doing what they could be doing otherwise. Authorities may come to depend on the centre rather than getting on with the job themselves.

As well as trying to cope with the crisis in planning, the late 1970's saw the dominance of regulatory models in development control challenged, more demands made for participation, a realisation of the social and political impact of planning decisions and a widening of the scope of criteria used in planning decisions. These developments can be interpreted as a direct outcome of the crisis. Then came the present Conservative Government with their own particular philosophy and its application to planning.

A key word which might be used to sum up the government's philosophy is "facilitate". Many of the changes which have been introduced have been aimed at allowing things to happen rather than simply regulating the development which is already taking place or planned to take place. Planning is now to be fast and simple, responsive to local conditions and creating the right kind of conditions for investment and development. In other words, a tool of the market economy.

Previously in Chapter 4, Thornley's suggestion as to how great an impact the Government's philosophy would have on the planning system were noted. These included whether individual property rights have received greater emphasis, whether one could detect a shift from government control of land use to control

via the legal system and whether market principles in land use planning have been reinforced, protected and encouraged.

Individual property rights have received greater emphasis, the increased permitted development limits is an example of this. Through this there is the greater potential for neighbour disputes as development goes ahead without planning consent, leaving aggrieved neighbours to turn to the courts to protect their own interests rather than through the neighbour protection service that planning has operated. This theme has been taken further by the Adam Smith Institute, who in their recent paper on local government reform (Adam Smith Institute 1983) advocate the replacing of the public system of control with a private one. Market principles also have been encouraged and given much greater rein in Enterprise Zones, Freeports and Urban Development Corporations. The attitude of the Government has been to reduce control and leave market forces to dictate, for example in private housebuilding, leading to planning by pressure rather than planning by principle.

In most parts of the country outside Grampian and the South East, there remains little pressure for development apart from the recent growth, supported by the government, of private sector house building activity, and any development, whatever it may be, is usually seen as good development. The system of development control that was created after the war to deal with a growing economy producing lots of development opportunities is no longer relevant today in time of a stagnant or shrinking economy and little development pressure. The aim therefore of the government has been to make planning more responsive, creative, positive and promotional. As this has been worked out, a vast number of changes in planning legislation have been introduced. Chapter 5 noted five themes in the changes:

- changes related to the nature, scope and operation of the planning system;
- changes relating to publicity for individual planning applications;
- changes relating to publicity and consultation in development plans;
- changes relating to speeding up the planning system;
- changes relating to increased administration in local authorities;
- changes relating to different levels of control suitable for different areas.

These have been in some ways an extension of developments in the past, but they have been taken much further by this present Government and introduced in some instances by some new forms of arrangements or legislative provision. Looking at these themes and placing them in the context of the present Government's attitude toward planning and the general economic situation, a number of things can be noted, all of which relate to the shift mentioned above from regulation to facilitation (see Underwood, 1983).

1. There has been a move to a contractual mode of intervention

Chapter 2 noted this development in development control, and despite government philosophy dictating against this (in theory at least) the explosion in the use of Section 50 agreements and controversy about planning gain has been taking place during the lifetime of the present Government. The private sector have been encouraged to become involved in local authority decision making, for example over housing supply and demand, partnerships are much more common between public and private sector and much of recent legislation has left large opportunities for discussion, discretion and agreement before being finally implemented.

Planning officers now take time and effort to discuss development proposals with applicants while developers and architects find pre-submission discussions useful and necessary. All these and other developments have led to a move to a contractual mode of intervention.

2. There has been a by-passing of statutory planning machinery by ad hoc planning mechanisms

In Chapter 5 it was noted that fewer development proposals are being made through an individual planning application. Changes which have led to this include the increase in permitted development rights and the use of planning schemes in enterprise zones. These all would indicate a high degree of dissatisfaction with the statutory system and, despite all the attempts of reform and change, would indicate some desire on the part of both government and local authorities for something different.

3. There has been an increased corporatist tendency

Chapter 1 noted that at the same time as local government was reorganised, so too was the management structure and operation of the new authorities. The key to that reform was corporate management with the regional report introduced as a corporate document of the local authority highlighting problems, opportunities, programmes and priorities. However, corporate management encountered problems and although most authorities had the structure for corporate working, they were not working corporately. In more recent times the corporate idea of working together has re-emerged in Scottish local authorities and public agencies. There has been an increased emphasis on public agencies and local authorities working together, for example in the S.D.A.'s area projects, enterprise zones, and subject plans for areas such as Loch Lomond and the Forth and Clyde Canal. The public and private sectors now also work more closely together in various industrial and housing developments, renewal schemes, Enterprise Trusts and so on.

4. There has been a reduced emphasis on consumer demand (public participation)

The public in some senses are being squeezed out of the planning process in many areas, except it must be stated in the realm of the individual application where neighbour notification and new publicity arrangements now operate. Elsewhere, publicity and consultation arrangements for local plans have been cut back and, with the developments listed above, moves to contractual modes of intervention (between planning authority and developer), a by-passing of statutory planning mechanisms and the moves of public and private agencies working more together all come together to exclude the individual. The developments at the level of the individual application can be seen as a move to counterbalance these other moves which see public involvement as time consuming and delaying, hindering rather than aiding the facilitation process since most people who become involved in the planning process as third parties do so as objectors seeking to prevent the development going ahead.

In this move to facilitation, what will planning be like in the future? Will there be some kind of alternative system to the one we have at the present? What indications are there in recent changes as to future directions in planning in Scotland?

It would be wrong to think that things have remained the same in the past five years. They have not. Planning has developed and changed, but as was noted a number of basic elements to the planning system do remain. These were identified as:

- a definition of development in planning legislation;
- a duty on local authorities to produce a development plan;
- the need to apply for planning permission;
- the opportunity to appeal against a refusal of planning permission or a grant subject to conditions;
- the ability of the Secretary of State to call in an application.

In some senses these elements are now being challenged, as is the whole system of planning. In England concern is growing over the future of urban strategic planning following the abolition of the metropolitan counties and regional planning is now no longer existent. Scotland remains better off with the Scottish Office and S.D.A. planning regionally and the regional system of local government ensuring that the main urban areas are planned as part of a wider area (McDonald 1983). It is development control that would seem to be getting all the attention and where things may happen that will change the nature not only of development control, but of planning.

Development control remains the same in that the five elements identified above remain in place, but for how much longer? Recent changes and developments have the potential to alter radically the system of development control and planning. The machinery to do this has been created, is in place and is working, and revolves around changing the nature of the development control system from a discretionary one revolving around a plan and other material considerations to one which revolves around permission being granted automatically when a development proposal is in accord with a plan or/and set of regulations. Such a scheme gives certainty, freedom to develop within certain defined limits, speed, and flexibility as each scheme can be tailor made to suit a local area and its relevant circumstances. Such a scheme already exists in enterprise zones. One key question as to the future centres around the issue of to what extent will the government extend the system of planning control in operation in enterprise zones to other areas of the country.

Another indication of the possible move to zoning concerns a D.o.E. Consultation Paper on Special Development Orders (S.D.O.s) S.D.O.s can be used to grant planning permission for specified

developments in specific places. In the past they have been used to grant permission in either unusual or unique circumstances. These include development within designated areas of new towns, for atomic energy development, for development in ironstone areas in England and in areas of Urban Development Corporations. In June 1981, the D.o.E. issued a consultation letter entitled 'New Uses for S.D.O.s' (D.o.E. 1981) and outlined some proposed new uses for S.D.O.s and invited responses. These uses are outlined in Figure 26 and were described by the R.T.P.I. (1981, para.1) as "represent(ing) one of the most significant changes to the planning machinery which have been canvassed by the present government".

Figure 26 NEW USES FOR S.D.O.s

<u>Area to which the S.D.O. might apply</u>	<u>Nature of Permission</u>
<u>Industrial</u>	
1. Existing estates	a. To extend existing buildings up to 50%. b. To change use.
2. Industrial improvement areas	Outline permission for general industrial, light-industrial and warehousing.
3. Land proposed for industry in a local plan.	Outline permission for general industrial, light-industrial and warehousing.
<u>Housing</u>	
1. Land proposed for housing in a local plan.	Outline permission
2. Residential areas suitable for large estates where the authority is anxious to stimulate development but where the market is slack.	Full permission, subject to conditions relating to car parking and access.
3. Residential areas suitable for low density, high quality estates where market forces can be expected to produce high standards in every respect.	Full permission, subject to conditions relating to density and access.
<u>General</u>	
Urban sites of special significance where the developer is prepared to proceed by way of open competition.	Full permission

Source: Department of Environment Consultation Paper. New Uses for S.D.O.s issued June 6th 1981.

Proposals to grant outline planning permission for land designated in local plans for housing and industry were described as the most significant, (Finney 1981) and the most fundamental change to the relationship between development planning and development control. This proposal would relate to land that had been identified by the local authority as being appropriate for development during the process of plan preparation and so the Secretary of State as the person who would make the Order, would be giving effect to a decision already made by the local authority but would now avoid the need for formal planning permission. The R.T.P.I. in their response to the paper commented (1981, para.11) that "inevitably, this will be seen as a movement towards planning through zoning and a careful study should be made of the nature of the American zoning ordinances which the Institute understands are becoming quite complex." If plans were to be used in this way, then a lot more work would need to go into plan preparation than at present, the R.T.P.I. commented (1981, para 11) that:

"It would also be necessary to cover by the equivalent of a brief built into a local plan, the proposed arrangements, service infrastructure and matters relating to design, landscape and ancillary requirements".

The Government also seem to be of the view that if the local plan process was seen to be a more positive operation, then developers and builders would be more supportive of the local plan system which is facing problems of credibility.

The proposals clearly represent a departure from previous ways of using S.D.O.s. The aim of these proposals "to stimulate development by providing the developer with the prospect of speed and certainty of decision with the minimum of red tape" (D.o.E. 1981) has been challenged by those opposing the proposals. They represent an erosion of decision making at a local level, mean reduced

opportunities for public participation and represent a significant change in the relationship between development control and the development plan. Since the proposals were announced, S.D.O.s have only been used three times, two of which relate to major redevelopment schemes on London's south bank, both of which have proved controversial and have been linked with architectural competitions. The third concerned the granting of permission for installing and maintaining a new telecommunication network on land which is in operational use by British Railways by the Mercury Consortium, a use which has been regarded as a sensible and necessary use of an S.D.O. It remains to be seen whether government will use S.D.O.s to any great extent as outlined in the 1981 Consultation Paper.

A further indication of a move towards zoning was highlighted in a recent report produced by the Adam Smith Institute the Omega Report (A.S.I. 1983). This advocated 3 types of planning zones:

- restricted zones covering conservation areas, A.O.N.B.s, green belts, these would be under direct ministerial protection;
- industrial zones, covering certain inner city and derelict areas where almost any development would be welcome, the only regulations would be health and safety ones;
- general zones, covering the rest of the country where restrictions would be minimal.

Thornley (1984) notes that restricted zones already exist, industrial zones can be likened to enterprise zones and the only gap at present lies with the general zones. These could take the form of what we have already discussed, planning permission granted for development through a predetermined document. Such zones could replace the present planning system and be supplemented

with detailed building regulation controls and a greater reliance on the courts through the laws of nuisance.

This extension or introduction of the zoning system is possible. The machinery is there to make it happen. However, the implications of such a transformation of the planning system must be realised before this comes about. The most important and fundamental ones are listed below:

1. Zoning attacks a fundamental part of the development control system

What is meant here is that the importance of the individual planning application, on which much of the present system has been built, could be drastically reduced and if the alternative zoning system was fully developed, perhaps done away with all together. At present there is a certain degree of discretion in dealing with applications on their individual merit, although that discretion is not total. It does have its own constraints. The recent S.P.Z. Consultation Paper was somewhat derogatory about present planning control, referring to (S.D.D. 1984, para.2) "the uncertainty and delay of discretionary planning control". There may well be a degree of delay while an application is considered (recent personal experience working in a development control section offers evidence that a great proportion of delays are due to insufficient information being supplied by the applicants or poor quality of drawings) but the present system does ensure that applications are considered against the development plan and therefore planning policy objectives which are related to the democratic process and public participation. A further trend of recent years, identified in Chapter 2, was the extension in the scope of material considerations. This has meant that planning applications are being considered against an ever growing number of factors. A rules-based zoning system is the opposite and tends to restrict the

and ones based on physical criteria at that.

A further advantage of individual applications is that details of the planning history of the site can be gathered over time as fresh applications are made. Site history does have an important input into the determination of an application and without it a poorer decision could result. Site history could include a range of valuable information including details of permissions sought in the past, uses and activity related to the site and views of those consulted and neighbours.

The loss of the application means not having the same degree of supervision over development activity and the precedence of private interests over public ones.

2. Heightens difference in level of control in operation in different parts of the country

It is recognised and accepted that this is to some extent the situation in the country at present. There are a number of areas where planning controls are more strict than elsewhere. For example, in conservation areas, National Scenic Areas, Areas of Outstanding National Beauty and Sites of Special Scientific Interest. The view of the Government seems to favour retention, and indeed even strengthening of such controls, but at the other extreme to allow more freedom to develop in those areas not deemed worthy of special control. The plethora of special areas and zones of control can be most confusing with different standards and rules applying and can lead to resentment in those areas where standards are lower, with people wondering why they have to accept what is not suitable elsewhere. An opposite reaction can also occur with those in special areas becoming

resentful at not being allowed to do what is seen to be happening elsewhere. They may decide to ignore the controls and deliberately flout the law thus leading to enforcement problems. This is presently an issue in Glasgow's West End Conservation Area where, notwithstanding the increased level of control in an outstanding Conservation Area, many residents have had modern replacement windows inserted without planning consent.

The present approaches to zoning through enterprise zones and S.P.Z.s indicate that there is a strong likelihood of controls being further slackened in many areas, thus widening the gap between different areas in terms of the degree of control applied. This can be expected to cause both confusion and resentment and is an unfortunate consequence of the direction in which the planning system is leading.

### 3. A greater delineation between zones of different land uses.

It has now been recognised that post-war planning has led to the artificial separation in many areas of different land uses into large zones of single land use such as housing, industry, commercial and so on. Many of the reasons why this took place were sensible and well supported. People did not want to live next door to large industrial complexes and so on. But in the enthusiasm to create a healthier and more efficient environment the end product was often unacceptable. The featureless peripheral housing schemes around Scottish cities bear an adequate and startling testimony to this. Having learned the lesson, planning policies in recent years have sought to return to some kind of middle ground and be more flexible in terms of allowing a mixture of land uses.

Zoning is not a flexible enough planning tool to allow this to happen without becoming incredibly complex. A crucial question must relate to what extent a zoning type system can be kept

flexible without becoming too complicated. The Ontario experience shows quite clearly that zoning is more suitable for small, stable, single use areas and not for the rapidly changing mixed use areas, so much a characteristic of our older towns and settlements. The present enterprise zone agreements show how complex things can become and that is only dealing with one basic land use. For zoning to work it would have to be extremely complex. To avoid this, there would be a move to maintain areas of single land use thus securing the separation of home, work and play in a less sensitive manner than would now be publicly acceptable.

#### 4. Make the planning system more complex

Despite the desire to make planning more simple and the arms of enterprise zones and S.P.Z.s to further this, they could have the opposite effect of making the system more complex. Zoning necessitates preparing documents beforehand which indicate what is and is not permitted in any one area. This means a fairly lengthy and complicated document. Further, the creation of different zones with different controls will lead to complexity and confusion. No longer will the same standards apply all over the country. This will further alienate the public from the planning system and threaten its credibility, without which planning could not survive.

These implications outlined above of a move towards a zoning based system replacing the present discretionary system indicate that such a move would be a mistake. It will not make the operation of planning control any easier, lead to better public support or understanding of planning, or aid the present difficult circumstances in which planning finds itself.

A crucial issue in any likely move to a system outlined above is the extent to which the recent proposals regarding

Special Planning Zones are supported and then implemented. Even a quick reading of planning journals and newspapers over the last few months would indicate a wide opposition from the planning and other development based professions. There remain too many unanswered questions and issues for the zones to make a quick appearance on the statute book. However, the indication from central government is that these proposals are supported and will become reality, even inspite of the doubts and criticisms.

Behind all the changes and recent developments in planning legislation lie fundamental questions relating to the purpose and role of development control, its place in the wider planning system and relation to the law. Perhaps if these more substantive question were faced, problems concerning what system was in operation would not be quite so prominent. With so much change in recent years and therefore so much attention given to the system these wider issues may have been obscured. They must now be brought forward so that planning can once again have a clear definite purpose and the wide public support it both needs and deserves.

These conclusions may, at the time of reading, seem obvious on account of recent events but back in 1981 when the research was started, this was not the case and they have had therefore to be teased out in a painstaking way. While planners ponder, other events are going to remove some of their options. For example, the relaxation and privatisation of the Building Regulations as reported in the Glasgow Herald of November 30th 1984. Could the same happen to planning? Government Ministers are reported to be studying ways of stimulating small firms by exempting them from planning controls. (Sunday Times, 25th November 1984). These developments seem to

suggest that the fears of many planners are justified and it is not sensible to assume that Special Planning Zones will not go further because there have been a lot of criticisms.

APPENDIX A.

Interviews Conducted During the Course of the  
Research

1. Prof. U. Wannop                      Professor of Urban and Regional  
Planning, University of Strathclyde.  
(June 30th 1982)
2. Mr. R. Lamb                          Senior Lecturer, Department of  
Planning, Glasgow School of Art.  
(July 26th 1982)
3. Miss Janet Brand                    Senior Lecturer, Department of  
Urban and Regional Planning,  
University of Strathclyde.  
(July 26th 1982)
4. Mr. M. Dobson                        Director of Planning and Building  
Control, Stirling District Council.  
(July 14th 1982)
5. Mr. A. Barrie                        Chief Planning Officer, Dundee  
District Council (July 15th 1982)
6. Mr. M. Shiel                         Senior Planning Officer (Develop-  
ment Control), Midlothian District  
Council. (July 20th 1982)
7. Mr. M. O'Carroll                    Assistant Director of Planning,  
Grampian Regional Council  
(July 16th 1982)
8. Mr. D. Watts                        Planning Assistant, Glasgow  
District Council (July 20th 1982)
9. Mr. M. Hutchinson                 Planning Assistant, Kyle and  
Carrick District Council.  
(August 4th 1982)
10. Mr. A. Reid                         Director of Planning, Cunninghame  
District Council. (August 19th 1982)
11. Miss I. Wilson                     Lecturer, Department of Town and  
Regional Planning, University of  
Dundee (October 21st 1982)
12. Mr. J. Searle                       Senior Depute Director of Planning,  
Tayside Regional Council.  
(October 21st 1982)
13. Mr. W. Cape                        ex S.D.D. Planner and Reporter  
(March 3rd 1983)

14. Mr. J. Hanley Senior Planning Assistant, Glasgow District Council. (March 7th 1983)
15. Mr. D. Hogarth Director of Studies, Department of Legal Practice, University of Dundee. (March 9th 1983)
16. Mr. J. Rowan-Robinson Lecturer, Department of Land Economy, University of Aberdeen. (March 11th 1982)
17. Mr. H. Henderson Lecturer, Department of Scots Law University of Edinburgh (April 4th 1983)
18. Mr. M. McEwan Lecturer, Department of Town and Country Planning, Edinburgh College of Art. (March 30th 1983)
19. Miss M. Sorbie Administrative Officer, Scottish Development Department (April 7th 1983)
20. Mr. R. Irvine Planning Officer, Scottish Development Department (April 7th 1983)
21. Miss K. Boreland Architect/Planner (April 18th 1983)
22. Mr. T. Burton Director, The Planning Exchange (April 19th 1983)
23. Mr. I. Plenderleath Partner of Baxter, Clarke & Paul, Architects, Glasgow (October 12th 1983)
24. Mr. H. Zegleman Planning Consultant for Bovis Homes. (October 18th 1983)
25. Mr. P. McCulloch Partner of Project Design Partnership (October 25th 1983)
26. Dr. D. Lyddon Chief Planner, Scottish Development Department (April 6th 1982 and February 7th 1984)
27. Miss S. Thompson The Planning Exchange (25th September 1983)
28. Mr. C. Brand Lecturer, Faculty of Law, University of Liverpool (October 22nd 1982)
29. Mr. B. Parnell Head of Department, Glasgow School of Art (June 25th 1982)
30. Mr. G. Kennedy Planning Assistant, Clydebank District Authority (September 9th 1983)

31. Mr. A. McGregor Chief Development Control Officer,  
Clydebank District Council  
(October 17th 1983)
32. Mr. A. Coon Senior Lecturer, Department of  
Planning, Glasgow School of  
Art (October 27th 1982)
33. Mr. A. Bell Chief Reporter, Scottish Officer  
(November 24th 1983)
34. Mr. Cook Director, Bredero Consulting  
Limited (February 23rd 1984)
35. Cllr. J. Hope Midlothian District Council  
(July 27th 1984)
36. Cllr. N. Bonney Aberdeen District Council  
(June 20th 1984)
37. Cllr. J. Hood Clydesdale District Council  
(July 6th 1984)
38. Cllr. I. Hutchinson Eastwood District Council  
(June 18th 1984)
39. Mr. Henderson Chief Planning Officer, Eastwood  
District Council (June 18th 1984)
40. Cllr. R. Robinson Bearsden and Milngavie District  
Council (June 21st 1984)
41. Cllr. W. Morrison Perth and Kinross District Council  
(July 10th 1984)
42. Mrs. M. Tait Research Fellow, Department of  
Politics, University of Glasgow  
(July 2nd 1984)
43. Mr. G. Fitzpatrick Ministry of Municipal Affairs and  
Housing, Ontario (May 20th 1983)
44. Mr. M. Dake Executive Vice-President, Project  
Planning Associates, Toronto  
(May 25th 1983)
45. Mr. A. Hayworth Vice President, Project Planning  
Associates, Toronto (May 25th 1983)
46. Mr. J. Bousfield John Bousfield Associates Ltd.  
Toronto (May 30th 1983)
47. Prof. E. Comay Comay Planning Consultants Ltd.  
Toronto (May 30th 1983)
48. Mr. P. Moore Planning Officer, Scarborough Borough  
Toronto (May 18th 1983)

49. Mr. D. Barker

Assistant Commissioner, Toronto  
Planning Department  
(May 24th 1983)

50. Dr. C. Carter

Senior Lecturer, Department of  
Town and Regional Planning,  
University of Dundee (March 9th  
1983)

APPENDIX B

Conferences Attended During the Course of  
the Research

1. The Planning Exchange. "New Developments in Scottish Planning Legislation". Held October 22nd 1981, Department of Town and Regional Planning, University of Dundee.
2. The Planning Exchange. "Workshop on Development Control". Held December 16th 1981, Camperdown Mansion, Dundee.
3. The Royal Town Planning Institute. "Planners in the Future". Held January 15th 1982, Royal Town Planning Institute, London.
4. Royal Town Planning Institute. Scottish Branch Annual Conference. "The Challenge of Planning in Uncertain Times". Held June 11th 1982, Battleby near Perth.
5. The Planning Exchange. "Discussion Forum on Enforcement of Planning Control". Held August 23rd 1983, Planning Exchange, Glasgow.
6. Royal Town Planning Institute. "Improving the Planning System". Held April 28th 1983, Mitchell Library, Glasgow.

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