DISCRETION AND DEVELOPMENT CONTROL: THE UNITED KINGDOM EXPERIENCE

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Introduction

To try to provide a full picture of the United Kingdom experience of development control since the commencement of the *Town and Country Planning Act* 1947 on July 15, 1948 in the space of a short paper an impossible task. Either I have to spend the time giving you a blow by blow account of the evolution of the law over that period: factual, accurate and boring: or I can given an impressionistic overview of the period highlighting what I consider to be the key issues and developments and the general themes running through the period, partial, personal but hopefully interesting. I have opted for this latter approach, and I think that it will be more useful in trying to draw lessons from for other jurisdictions.[1]

There are three preliminary points that may be made by way of setting the scene. First I shall confine my remarks to the experience of England and Wales; the Scottish system, although in essentials the same, is sufficiently different in detail for me to have to plead ignorance of it. The system in Northern Ireland is different again.[2] Secondly, although we are concerned with development control, in England one cannot understand the evolution of the system of development control unless one appreciates its close relationship with the system of development plans. I would emphasise the word "system" because the important point is not that development control in practice just implements the contents of a development plan - it does not, and detailed studies have shown a con-

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1 See M. Grant, *Urban Planning Law* (1982) for an excellent and detailed account and analysis of English planning law

2. Comparatively little has been written on the system in Northern Ireland See on appeals there, Thompson, 'The Planning Appeals Commission of Northern Ireland An Essay on Lay and Professional Justice' (1983) 11 *Int J of Soc of Law* 401.

siderable gap between plan and control of development[3] - but that the style and purpose of, and thinking behind systems of development plans influences the way development control works at least as much as any formal words of law. The hallowed words of the *Town and Country Planning Act* - that in considering whether to grant or refuse planning permission a local planning authority "shall have regard to the provisions of the development plan so far as material to the application, and to any other material considerations" are the same today as they were in 1947 but the actual operation of development control has been transformed out of all recognition since that date, as I will seek to show.

The third preliminary point is that one can detect - and I shall speak of the system in these terms - fairly distinct periods in the evolution of the system; lasting in each case for about a decade. The periods are 1947-58; 1959-68; 1968-80; 1980- . The cut off years are based for convenience sake on well known and publicised events; one must not assume that overnight new practices arose, but in looking back at the system, in trying to make sense of it, and pick out important features, it does help to keep these periods in mind. What I intend to do is to look at each period in turn in the light of the general concern with discretion to see how discretion evolved and was handled in those periods.

First Period: 1947-58

As has already been mentioned, the law from the first conferred a wide discretion on local planning authorities which had to consider each application for planning permission individually in the light of the very broad criteria quoted above. From a refusal of planning permission an appeal lay, as it still does, to the Minister who appointed an inspector, a Ministry official, to hold a hearing and report to the Minister. An official within the Ministry would in practice reach the decision in the name of the Minister. At every step along the line, there was discretion, yet in practice there was initially at any rate, not too much concern about such exercises of discretion. There were various reasons for this. First, in the immediate post-war period, there was not too much private development to control. Second, attention and concern was focussed far more on the need for building permits, that is, permits to obtain the materials needed for construction, and the issue of compensation and betterment. Even when the compensation and betterment provisions of the 1947 Act were first amended and then repealed in the early 50's, a less- than-market-value system of compensation for compulsory acquisition of land remained

3 For the latest assessment, see Healey· 'The Role of Development Plans in the British Planning System. An Empirical Assessment', in (1986) 8 *Urban Law and Policy* (forthcoming)

in being until 1959 which raised far more passion than matters of development control.[4] Thirdly, the new planning system which was introduced by the Act of 1947 produced fairly site-specific plans - detailed guides to permissible land uses with minimal policy content. Furthermore these plans were made by planners whose training was in architecture or engineering, not at that time particularly policy-orientated disciplines, and development control was administered by the same people. So development control, although discretionary in law, was operated in a fairly mechanical fashion in practice, with councillors accepting the fairly down to earth "practical" advice offered them by their officers. Planning committees usually sat in private so few people knew how decisions were made or what factors were in practice taken into account. Fourthly, where there was an appeal, the whole process of decision-making was secret; the inquiry would be in public but the inspector's report was not published and the Minister's decision letter was so brief that it was difficult to piece together the reasons for his decision, or to know anything of what had gone on inside the Ministry once the inspector's report had been received. In any event, and this is the fifth point, judicial review was going through the doldrums during this period with the courts unwilling, and allegedly unable through precedent, to probe the exercise of discretion. So this early period was one of narrowly used, secretive and barely controlled discretion - the administrator's paradise.

Second Period: 1958-68

The year 1958 is chosen as the starting date for this second period, as two events in that year laid the groundwork for the transformation of the exercise and control of discretion in the system of development control. The first event was circular 9/58 from the Ministry of Housing and Local Government, which gave effect to the acceptance of the recommendations of the Franks Committee on Administrative Tribunals and Enquiries that inspectors' reports should be published. The second event was the *Tribunals and Enquiries Act* which allowed for the judicial review of, *inter alia*, ministerial decisions on planning appeals. It is impossible to over-estimate the importance of these two events from our perspective; they have probably had more influence on the development of administrative law in the UK than any other events in the post-war period. Their influence on the planning system can be seen as both direct and indirect; direct in that publication of inspectors' reports opened up the whole process of central government decision-making in this area and allowed lawyers, councillors, officials and ordinary people to begin to understand

4. *Report of Committee on Administrative Tribunals and Enquiries,* Cmnd. 218 para. 278.

what mattered on appeals; what factors were taken into account and what were unimportant; how often inspectors were overruled by Ministers and their officials and why and what was the relative usefulness of plans and "other material considerations".

The indirect effect was greater still. First, it acted as a clear signal to the courts that there was a greater official willingness to tolerate judicial review and thus began the process which via the House of Lords decision of *Ridge* v. *Baldwin* in 1963[5] has led to considerable judicial activism generally in the control of discretion over the last two decades,[6] and specifically in the planning field where there has been an explosion of cases regulating the inspector's conduct of the inquiry, the content of the report, and the ultimate decision.[7] Secondly, and I mention this now, discussing it in more detail in the context of the next period, the opening up of the appeal process contributed both to the growth of amenity groups who began to use the inquiry as a vehicle for the expression of their views on planning issues, thus widening the scope of debate and of matters to take into account in exercising discretion on any planning decision, and to the opening up of local authority decision-making processes. This development was encouraged too by legislation in its own right but this too may be seen as part and parcel of a new climate of greater administrative openness generated by the Franks Report and its acceptance by central government.

There are developments too in planning practice during this period which must be mentioned. Under the Act of 1947, plans had to be revised every five years. This decade saw the revision process well under way but with significant differences from the first round of plans. First, plans, particularly the approval of them by central government, began to fall increasingly behind schedule; years would elapse between the making of a plan and its approval so that an approved plan would be hopelessly out of date and already in the process of being revised when approval was formally notified. This meant that, increasingly, reliance came to be placed on "other material considerations" in development control rather than the development plan, and other material considerations could and did consist of draft plans, unofficial plans, policy statements etc., all vaguer than an old style 40's approved development plan.

In any event, and this is the second point, thinking on planning was moving in the direction of a more policy-orientated plan so the second generation of 40's development plans had a greatly enhanced policy con-

5 [1963] 2 All E.R 66.
6 Grant, supra. n 1, chaps. 7 and 8; J P.W B. McAuslan, *The Ideologies of Planning Law* (1980) chap. 6.
7. J B McLoughlin, *Control and Urban Planning* (1973) esp chaps. 3-6

tent which both increased delays in approval and increased the scope of discretion at the development control stage, as more general policy factors were available to be taken account of. This move towards a more policy-orientated planning process culminated in the report of the Planning Advisory Group in 1965 on *The Future of Development Plans* which recommended a two tier system of development plans, a structure plan dealing in broad brush terms with major policy issues affecting land and its development in the locality - this plan would not be site-specific - and a local plan which would, still within a policy context, narrow down to more site-specific proposals.

Thirdly, a significant development in planning offices was taking place which in my view also contributed to increased reliance on the "other material considerations" aspect of development control which heightened the discretionary element. As planning staffs grew in size, and became more professional, so a bifurcation grew up between the development plans section and the development control section of the office.[7] I do not want to exaggerate this, as particularly in small offices there continued to be interchange, but a definite distinction became apparent between the two types of jobs, assisted, no doubt, by the fact that in the pre-1972 reform local government system, many district councils derived their development control powers from delegation from countries and had no plan-making powers at all. Bifurcation contributed to less attention being paid in development plans in development control decisions; different people did different jobs and used different materials for their respective jobs.

This second period then can be seen as the cusp, or the long drawn-out turning point between the relatively unsophisticated planning system of the first period where matters of discretion were not thought to raise many contentious issues and the third period to which I will now turn, very different indeed from the first period. In this second period, discretion began to emerge from the shadows, began to expand in scope and began to feel the impact of a still relatively unsophisticated judicial review.

Third Period: 1968-1980

This period may be seen as the golden age of the discretionary decision in planning and its regulation by various means in administrative law and the political process. It is, I am inclined to believe, this period which commentators and practitioners from other jurisdictions tend to refer to and want information on when issues of discretion in the planning system come up for debate. Important and central though this period is however, I hope that my summary of the preceding two decades has been sufficient to indicate that it did not spring fully armed from the head of some planner or civil servant but emerged from trends already ap-

parent in those periods.

The period starts with the passage of the *Town and Country Planning Act* 1968 and once again the close link between development plans, and development control provides the key to understanding this period. The Act introduced the two tier policy-orientated structure and local plan system foreshadowed in the Planning Advisory Group Report[8] mentioned earlier, and specifically required planners to take account of regional, economic, transport, and population factors in drawing up plans, and allowed them to take account of a whole range of other non-physical and land-orientated factors. The Act seemed to have enshrined the role of the planner as, in the words of one influential book of the period, "the helmsman steering the city",[9] a helmsman however who was encouraged to make use of policy documents but not specific and accurate charts as he set out on his voyage. The Act left the provisions on development control alone but inevitably, and in my view properly, practice in development control began in this period to reflect the official new thinking on plans. If plans were to be wide-ranging policy documents, then development control should specifically begin to take account of the economic, social, demographic, and fiscal implications of proposals for development. Development control began more quickly to move from its origins in the vetting of the physical and land use factors of a development to a kind of wide ranging assessment of the likely impact of the development.

One particular matter which must be singled out here for specific mention is planning gain - the acquisition, by a local planning authority, of some material benefit for the community - a car park, open space, community centre etc. - from the prospective developer over and above what that developer was initially proposing to do, as a "price" for the agreement to grant planning permission.[10] This practice was barely in evidence at the beginning of the period; aided by a change in the law in 1968 which permitted local planning authorities to make agreements relating to land without needing to obtain the approval of the Minister, by the end of this period there was scarcely a planning authority which could not point to some facility, even if it was only a bit of open space, gained from a developer as the "price" of planning permission. The old style development control process of formal application, brief recommendation to a committee of councillors, decision in line with recommenda-

8. Published by H.M.S O. (1965.)

9 J B. McLoughlin, *Urban and Regional Planning* (1969) 86

10 The literature on this is now voluminous For a good survey up to 1981 see Loughlin, 'Planning Gain, Law Policy and Practice' (1981) *Oxford Journal of Legal Studies* 61. See too *Planning Gain Report of the Property Advisory Group* (1981) and Jowell and Grant, 'Guidelines for Planning Gain?' (1983) *Journal of Planning Law* 427

tion was replaced, or at the very least found itself operating alongside, a much more negotiative process - informal discussions, committee debates on proposals, revisions, consensus and an agreement on how to proceed. Planning gain grew out of this approach to development control, just as this approach to development control grew out of the more policy-orientated approach to plan-making; the planner was becoming an urban manager.

Other factors played a part in the development of a much more sophisticated approach to the use of discretion in this period. The first to be mentioned is public participation. This was beginning to emerge in the preceding period but it received an enormous fillip by the Act of 1968 which specifically required an input of public consultation in the process of plan-making and by circulars which came out during this period urging consultation in various aspects of public development and development control. These pressures to develop public consultative processes locally, combined with the effective conferment of an administrative right on "third parties" - parties other than the developer and the local planning authority - to appear and participate in planning inquiries,[11] together contributed to the process of development control becoming a much more open and policy-orientated process; issues were raised and discussed and therefore had to be responded to and commented on by local councils and inspectors which the officials within the system might have preferred to keep out of sight. Indeed the growth of public participation and the growth of a negotiative approach to development control may be seen as closely related. First, planning officers began to find themselves negotiating with both sides; the objections of participators were used to wring concessions from developers; the possibility of planning gain was held out to objectors as a way of buying them off (or outflanking them by appealing to a wider community). Second, control of development by agreement and negotiations on financial matters could be and were used as reasons to exclude public participation on grounds of confidentiality. Thirdly, developers had an incentive to agree some gain with local authorities if the alternative was a refusal followed by a long drawn out and wide-ranging planning inquiry in which all and sundry could come along and speak their piece.

The second general factor was the role of the courts. In retrospect this decade can be seen too as the golden age of judicial control of administrative discretion. The courts became more sophisticated in their handling of concepts, they pushed further into the administrative practices to a greater range of decisions. In the area of planning they conced-

11. McAuslan, supra n 7, chap. 2.

ed standing to amenity groups and other third parties, began to insist that local planning authorities adopt fair procedures when considering planning applications, especially where they were involved as landowners or as partners in the development, and began too to indicate what were or were not permissible matters to take into account under the rubric of "other material considerations". It was this last development which in some respects is of the greatest importance. The grounds of intervention were procedural — the duty to take account of relevant and ignore irrelevant considerations — but the effect was substantive. The courts during this period gave their approval to the more wide-ranging policy-oriented approach to development control; economic factors, social factors, the implication for other possible proposals, fiscal considerations, were all sanctioned as being relevant factors to take account of under "other material considerations" indeed in some cases, if it could be shown that they had not been taken account of, that was a reason for quashing the decision of the Minister or the inspector.[12]

This last point directs our attention to the third factor. Under the Act of 1968, the Minister was empowered to delegate certain classes of decisions to inspectors, and he duly did so. This decade saw the rapid growth of the inspectorial decision and this too influenced the nature of the discretionary decision; and the controls thereon. If the inspector was to make the decision, it was important to ensure all the issues were put before him or her - this encouraged the activity of amenity groups and other third parties in planning inquiries - and to ensure that the inspector considered all the issues and based his decision on them - this encouraged the activity of the courts to control and supervise inspectorial decisions. So removing decisions from Ministers led to a more open, participative and supervised system of appellate decisions but also a more wide-ranging approach to those decisions. Paradoxically then, while judicial control may have enhanced procedural safeguards on discretionary decisions in the planning system, it also sanctioned a wide meaning to "other material considerations" and thus widened the substantive scope of discretion.

By the end of this decade, we could see the growth of what, without exaggeration, could be called a system of community planning. Nominally the system of development control was by law, located in local planning authorities with an appeal to the Minister or his delegate and was concerned with whether a specific planning application should or should not be granted. Practice over the years however had expanded this system,

12. McAuslan, supra n.7, chap. 6, Loughlin, 'Planning Control and the Property Market' (1980) 3 *Urban Law and Policy*; Stephen and Young, 'An Economic Insight on the Judicial Control of Planning Authorities' Discretion' (1985) 7 *Urban Law and Policy* 133.

so that development control was the handle by which the community could participate in the management of its environment. Nominally the system was concerned with technical planning matters, and was supervised by the courts applying technical legal concepts. In practice, it had become an intimate part of the local political process in which legal controls though not irrelevant were peripheral, and political factors were becoming more and more important. Planning was seen more clearly as being concerned with decisions about the allocation of scarce resources and that is very much a political and not a technical matter.

Fourth Period 1980-

At this point we must turn to the fourth period which began in 1980 and is still in being. I emphasised in my conclusions on the third period the increasing primacy of politics in the process of development control and it is the existence of the political factor and conflicting political approaches to the planning system which provide the key to understanding what is happening in the system now. Politics it seems to me has intruded at two levels - and in diverse directions. First, consider the local level. At the local level, as the system of development control has increasingly been seen as part of the local political process, so straightforward party political inputs have begun to be made into the system. In some places, the planning system as a whole is seen and used as machinery for encouraging and promoting public sector led economic development; the planner is the entrepreneur, using all the machinery at his disposal to promote development; development control is one of those pieces of machinery and via negotiations can be used in a positive fashion. Other places again see the total system as a tool for redistributing wealth or for the application of egalitarian social policies - as indeed the new town programme in the 40's was designed to do. Yet other authorities have attempted to use the development control process as a means of preventing the expansion of their areas or at least the expansion of them by low cost houses. Provided all these different policies are implemented in accordance with legally proper procedures, the courts have no role to play in supervising them; indeed as we saw in the third period, judicial decisions made possible a much more politically partisan approach to development control by sanctioning an expansion in the scope of other material considerations.

At the central level, the second leg of this political development, a very different political philosophy is taking hold, one that also has decided views on development plans and development control, views which do not accord with the views and actions in the local authorities, both left and right. This point is I think worth making; much of the conflict between central and local government in the UK in the 80's is a straight

left - right confrontation, but this is not so in the area of planning. Here the conflict is between local authorities of all political persuasions for whom the planning process and particularly development control is an important tool for their management of their environment, and a central government whose basic philosophy on this matter is: "let the market decide; get off the backs of developers and allow them the freedom to make commercial judgments of when, where and how to develop".[13] Government has, I believe, realised that such a philosophy cannot be introduced via judicial decisions cutting down discretion or via wholesale legislative changes, so it has endeavoured to undermine the local community approach to planning via circular and changed administrative practices.[14] The thrust of central government policies has been to cut down on the making of local plans, cut out specific social policies in structure plans which it must approve, advise against more than the statutory minimum of public participation in plan making and development control, urge the delegation of decision making in development control to officers, facilitate the substitution of appeal by private written submissions for public local inquiry and introduce specific new planning devices which remove decision making from local authorities and vest more discretion in central government.

It is tempting to consider the innovation of Enterprise Zones[15] and Simplified Planning Zones,[16] the most recent proposal, purely in terms of a laudable attempt to reduce discretionary decision making development control which, despite the best efforts of the courts, was running out of control. But this is at best only a quarter of the explanation. The zones do and will entail a reduction in discretionary decision making - areas of land are and will be set aside for specific categories of development - industrial, commercial, residential - and therefore development within those categories, which comply with the terms and conditions for development within the zones, will be able to go ahead without the necessity for further planning permissions. But more important is the shift in discretion from local authority to central government which allocates Enterprise Zones to competing local authorities, and approves the specific details of each Enterprise Zone before it comes into being. It is not yet clear whether the procedures for Simplified Planning Zones will be the

13. *Lifting the Burden,* Cmnd. 4060.
14. For example, urging the virtues of deciding appears via written representations rather than by public local inquiries. The former approach, now extensively used, operates in private (shades of pre-Franks inquiries) and cuts out third parties.
15. An extensive literature now exists on Enterprise Zones. For a useful survey and bibliography, see Lloyd and Botham, 'The Ideology and Implementation of Enterprise Zones in Britain' (1985) 7 *Urban Law and Policy* 33.
16. Housing and Planning Bill (U.K.), 1986.

same but local authorities and planners fear they may be and are concerned about the proposal for that reason, pointing out that even now through the medium of the planning brief - a detailed statement, plan and specifications of what will be permitted on a site set aside for development - a developer can obtain a permission valid over a long period of time for a major development to be completed in phases, and that minor modifications of existing regulations would permit local authorities to develop their own variants of Simplified Planning Zones.

The shift in the locus of discretion, from a relatively open local exercise of discretion to closed central exercise, is a political decision, taken for political reasons - to facilitate the establishment of a more market-orientated approach to land development — and has nothing whatsoever to do with worries about the amount of discretion being exercised. Indeed, shifting the locus of discretion over Enterprise Zones has reduced the possibility of its proper control; political control is less since answerability to Parliament for these sorts of decisions just doesn't operate; control via public participation is less, first because local authorities are not required to consult anybody when putting together an Enterprise Zone for presentation to the Minister, though they must provide an opportunity for the making and consideration of representations, and secondly there is no requirement for the Minister to consult with anyone or have even a private hearing of objectors before confirming a scheme. Finally, though the courts are empowered on a case being presented to them, to overturn a scheme for an Enterprise Zone if it is beyond the powers of the Minister, this is extremely unlikely to happen, so judicial control is nominal only.

Another aspect of the discretionary process of development control, may also be mentioned at this point for it too is coming to the fore in this period. I mentioned that one part of the legal reforms introduced in 1968 was the delegation of decision-making powers to inspectors. Inspectors are appointed and paid by the relevant Ministry — the Department of the Environment — and controlled by a Chief Inspector but otherwise left remarkably free to get on with their job of hearing and deciding on appeals.[17] About 95% of all appeals are not decided by inspectors either after a hearing or by written submission. No direct political control is exerted over them and Ministers will not answer in Parliament for their decisions, even though they are given in the name of the Minister. Their decisions can be and sometimes are challenged in court for some

17 For a masterly survey of the inspectorate, see Barker and Couper, 'The Art of Quasi-Judicial Administration the Planning and Appeal and Inquiry Systems in England' (1984) 6 *Urban Law and Policy* 363.

procedural defect and no doubt where a decision is quashed for such a defect, all inspectors have their attention drawn to the judicial decision and its implications. But as we all know, judicial control only scratches the surface of the decision-making process. So to all intents and purposes, the inspectorate is uncontrolled, responsible only to itself, an administrative decision-making process lying somewhat uneasily alongside an increasingly political planning process. There is, or there is assumed to be, widespread satisfaction with the work of the inspectorate but I would query whether that will last. First, if written submissions in private continue to develop as a method of dealing with appeals, many individuals and amenity groups will feel cut off from a part of the development control process which they have over the years made extensive use of for putting their views across and, will to that extent regard that part of the process less favourably. Secondly, central government issues circulars on planning policies some of which are extremely contentious. One indeed, on loosening up Green Belts for development had to be withdrawn after outraged cries from the government's own supporters, inhabitants of and therefore staunch defenders of Green Belts. But circulars and other manifestations of central government planning policies can be infiltrated into the planning scene via the inspectorial decision which is much more likely to give effect to thise policies than a local authority. If such a development becomes noticeable, then public confidence in the inspectorate will evaporate as they will cease to be seen as impartial umpires, which, however misguidedly, is how they are now seen, and will be viewed as central government agents pushing central government policies against local wishes.

Conclusions

What conclusions can be drawn from this saga, which like Dallas, seems to have no end and consists entirely of villains, knaves and fools? Such conclusions as can be drawn may not be too helpful to an audience seeking enlightenment, as you prepare for, or are in the midst of your "Leap in the dark" into discretionary development control. But here goes. First, a discretionary system of development control will not necessarily produce better planning — leaving aside what is meant by better — for it is the policies which are to be implemented rather than the manner of their implementation which is the more important factor here. Second, you cannot divorce discretion or a planning system from the political and administrative culture of a society or a governmental system. British society and the governmental system is a discretionary one, a secretive one where the administrative system and the political culture rejects being bound by legal rules and policed by courts. Even the courts are part of and share this culture. They recognise a stopping point in control over

administrative discretion, leaving probably a greater area of discretion uncontrolled than in other Common Law jurisdictions. Furthermore, their control is couched in terms of broad general phrases rather than specific requirements, so that this leaves a residue of discretion both in the administrators and in the courts as to whether in any particular case, the requirements which lie behind the broad general phrases have been attained.

Thirdly, the evolution of the planning system from a technical land-orientated system with limited discretion in practice to a political policy-orientated system with a wide measure of discretion in practice, mirrors trends in British society. Government has become more politicised; the administrative process has become more politicised and so too has the planning process. Each side of the political divide sees the system of planning as a valuable prize to be captured in the all-out political war and shaped to fit and be used to further particular ideological ends. In such a situation, courts begin to see the good sense of beating a tactical retreat from the battlefields, finding that discretion has not been abused, or that the wrong factors have not been taken into account in reaching decisions and that is in general what is happening in the UK now.

Fourthly, I would hazard the opinion that "discretion once acquired will not be foregone". We have a discretionary planning system in the UK and the future as the past will see a re-arrangement of discretion, but not a diminution of it. There is now too much awareness that planning decisions are about the allocation of scarce resources for government in the UK, central or local, of whatever political persuasion, to surrender those decisions either to the allegedly impersonal forces of the market — alleged because *au fond* those forces are operated by the decisions of men and women about what land is to be developed, when and what with — or to judicial tribunals where policy decisions are dressed up via precedents and other species of legal reasoning to appear as technical or common sense decisions. The legal virtues of openness, fairness, public hearings, public review and assessment of the evidence, can be and largely have been grafted on to the political process in this area but that is and will remain the extent of the legal input.

At the end of the day, the question that has to be faced up to is quite simply this: given that development control is a part of the local political process, is it better to recognise that fact, come to terms with it, and structure decision making in such a way that political, administrative and judicial checks on discretion become a part of the planning system, or should one try to ignore that fact, suppress the political element and structure decision-making in such a way that a superficial objectivity and impartiality is imparted to the process? A secondary question which would take us into very deep waters indeed, is who would benefit from each

type of system, but I will not pursue that question now. On the primary question my own view is that to recognise and come to terms with planning as a political process is preferable to attempts to suppress it, that a discretionary development control system is a step in the direction of that recognition, and that one should be thinking in terms of community and political, no less than legal checks on such a discretionary system.