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'Planning Gain': the making of a tax on land values

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PLANNING GAIN is the benefit accruing to a local community in exchange for planning permission for a development. The increasing use of this procedure in Britain draws attention to a principle that has not been fully articulated in the democratic process, but which has a measurable impact on the rights of landowners: namely, that developments permitted by the local authority release profits which the public, through its elected representatives, intuitively believes should — in some measure — accrue to the community as a whole. We have here, then, the operation of a hidden tax, which finds its expression in a variety of ways. The developer provides or pays for specific benefits such as roads or other infrastructure, a leisure centre, low cost housing or in some cases training programmes and jobs. The costs of these amenities are deducted from the price that a developer is willing to pay to the landowner.

This is a partial demonstration of the principle that Henry George established, i.e., that the value of land is created by the community and should justly be returned to the community. This value must be identified and drawn out from the emotional and business turmoil in which it is often concealed, and recognised as another of those 'not yet acknowledged ideas' which mark the emergence of George's realisation as the current synthesis.

The use of land and property development in the UK is controlled by local government authorities who, under the Town and Country Planning Acts, are expected to grant planning permission 'having regard to all material circumstances, unless there are sound and clear-cut reasons for refusal.' Through the operation of this system, the

general public have become aware of the enormous increases in land values which are released by the grant of planning permission where this involves a significant change of use. This is most obvious when farm land is converted to housing or commercial use, where the increase in land values can be a thousandfold. At first sight, it might appear that this increase in value is the Planning Gain, but it is not so. The Planning Gain is in fact the opposite, namely the benefit which the *local authority* can obtain from the developer at the time planning permission is granted. In the USA this is called financial exaction.

The simplest instances arise in quite a small way when a house builder wishes to develop a new estate and the local authority, unable to afford the necessary service roads and sewerage, is forced to refuse planning permission. These situations have become more frequent since central government has cut back grants to local authorities. The builder, mindful of his future potential returns and the state of the market, has been able to include the costs of roads and sewerage in his own costs and thereby obtain planning permission. As this method of operating has grown, developers have been quoted as saying: 'We have to be seen to be giving something back to the community.'

If a developer is refused planning permission by the local authority there is an appeal system which can be invoked. The Secretary of State for the Environment, if he thinks fit, can appoint an Inspector from his Department to hold an enquiry. The Minister may or may not accept the recommendation of his Inspector, but in any case the developer or the local authority can proceed to appeal to the High Court.

Throughout the 1980s the system has been frequently used by developers to appeal against refusals. Local authorities would, for example, refuse an application for an office block in the Green Belt surrounding a town, on the grounds that it was contrary to the locally agreed and government approved strategic plan for the area. On appeal, the Inspector might argue that the development would create employment and that this was an over-riding justification for allowing the appeal.

This sort of situation has discouraged local authorities from refusing planning applications, particularly since they can be penalised for cases which they lose. Furthermore, with declining financial

resources owing to government cut-backs and refusal of government to allow them to spend even the resources gained from the sale of their own council houses, there has been even less capital available for essential local authority provision of new infrastructure and updating of aging facilities. It was therefore not surprising that local authorities came up with ideas for improving developers' prospects of obtaining planning permission. Developers could offer not only to pay for infrastructure but also to provide a village by-pass or refurbish the Town Hall. In addition they had the option of including these extras in their plan or of making a separate legal agreement. If the extras were in the plan and became the subject of a disagreement over the plan, it might have to go through the appeal system, thereby causing delays which could be financially disadvantageous to the developer. A separate legal agreement that was not included in the planning application was not subject to appeal and thus to potential delay.

It is apparent that these arrangements were first of all considered illegal and secondly labelled as extortions applied by an over-zealous or unscrupulous local authority.

The legal position was supposedly answered by a series of Circulars from the Department of the Environment which attempted to clarify the Town and Country Planning Acts. In addition, a body of case law was established by Departmental Inspectors at appeals. It finally became a question of accepting that some form of contribution by a developer *was* valid, but deciding what form it should take became a further problem.

After an enquiry by the Property Advisory Group appointed by the Department of the Environment in 1981, the Department attempted clarification by producing Circular 22/83. Planning Gain was described as

> Obligations and benefits which extend beyond the development for which Planning Permission has been sought

and gave the definition:

> 'Planning gain' is a term which has come to be applied whenever, in connection with a grant of planning permission, a local planning authority seeks to impose on a developer an obligation to carry out works not included in the development for which permission has been sought or to

> make some payment or confer some extraneous right or benefit in return for permitting development to take place.

The circular gives some rather unclear guidelines and declares 'The essential principle to apply 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.' 'But this does not mean that an authority is entitled to treat an applicant's need for permission as an opportunity to exact a payment for the benefit of ratepayers at large.'

But this is exactly what has happened in practice. Thus the planning system does not attempt to handle the economic consequence of its land use control. The original 1947 Act had introduced the ideas of betterment and compensation but these have long since been abandoned. Betterment was defined as 'any increase in the value of land resulting from the granting of planning permission'. The Development Land Tax introduced in 1976 was an attempt to restore to the community the increase in the value of land arising from planning permission but it was ineffective and was abolished in 1985. Since then Planning Gain has been an informal means of securing benefits for the community in association with a proposed development. In order to save time on planning discussions and to avoid the appeal system, developers will now readily enter into negotiations with local authorities (LAs). Some agreements are well in excess of the guidelines contained within Circular 22/83 mentioned above.

The Environment Secretary himself subsequently appeared to recognise Planning Gain by giving the go-ahead for a mixed business park and residential development on a 30-acre green belt site in Langley, Berkshire (*Estate Times,* March 3, 1989). The Planning Gain includes a five-acre park provided by the developer for public use with additional funds for future maintenance, infrastructure, and two acres to be sold to a housing association.

The London Docklands Development Corporation

The authority for the development of the huge, derelict London Docklands site in the East End has been vested in the London Docklands Development Corporation (LDDC) and not with the

LAs covering the area. Nevertheless, in 1987 one of these LAs, Tower Hamlets Borough Council, was able to make an agreement with the developers of the 71 acre Canary Wharf site in which they would provide 2,000 jobs for local people (and a penalty of £7,000 for each job below this figure) and £2.5m over an eight-year period for the training of local people in high tech. and other skills. Although this may have seemed a great victory for Tower Hamlets at the time, the developers will hardly notice the cost.

In a similar agreement the London Borough of Newham and the LDDC have a 'social and community compact' for the provision of 1,500 new homes at fair rent, 25% of jobs for local residents and £10m for community facilities and an equity stake in certain developments. In this way the case for providing some benefit to the community is being publicly recognised.

Social and Economic Aspects

Whilst there is much anguish amongst many property developers about the inclusion of social and economic aspects and 'politicisation' of planning which they regard as exclusively a quasi-technical subject, some developers are taking the initiative. For example, the Chairman of a development company offered Camden Borough Council the sum of £2m and a proportion of the site for public open space in return for planning permission to develop the former St. Columbia Hospice on Hampstead Heath.

At the same time the Property Advisory Group established by the Department of the Environment who had said that 'We are unable to accept that, as a matter of general principle, planning gain has any place in our system of planning control' were completely ignoring the social and economic aspects of Town and Country Planning. In practice Local Authorities are more and more taking advantage of the opportunities presented by planning applications to supplement their funds and at the same time to gain some benefit for their community. As yet there is no sign that the benefits that they are seeking relate to the real, much greater long-term benefits that accrue to the developer. Any return is seen by the Local Authorities as a share of the short-term or immediate 'betterment' conferred.

Many councillors are largely ignorant of the benefits that are being lost.

It is, however, amazing to observe how financial considerations are being recognised by the Inspectors appointed by the Department of the Environment to consider appeals. A private school in Berkshire wished to allow a development of private houses on part of its playing fields in an area designated for conservation. The money derived, it was claimed, was to fund an expansion and improvement of the school which would not otherwise be possible. The planning permission refused by the Local Authority was granted in the appeal. Although in this example the gains to be made are recognised, they were given back to the developer!

The Royal Opera House

The most notorious case is that of the Royal Opera House in Covent Garden, London. The proposal to extend the Royal Opera House was described by the Covent Garden Area Plan of the Westminster City Council as 'probably the most significant single project in the area'. That it was essential to undertake a program of modernisation and reconstruction to ensure the Royal Opera's future national and international reputation was accepted. However, the local authority considered the proposed development scheme to be a radical departure from the Action Plan because of the element of office accommodation to be provided on part of the site, and damaging because it also involved the near-total demolition of the Floral Hall, a listed building. The Opera House had estimated that the improvement would cost £56m, of which £33m would be met by profits from the commercial element of the proposed development, with the balance of £23m being raised privately. The authority accepted that 'in the current climate the project will not be able to rely on public funds'. There were therefore uncertainties with regard to securing the substantial amount of additional funding required. The Covent Garden Community Association opposed the development on the grounds that the inclusion of the office accommodation for financial reasons was impermissible and was not a 'material consideration'. However, the appeal was granted by the High Court and typical of the nonsensical arguments used is the final summing up:

> Financial constraints on the economic viability of a desirable planning development are unavoidable facts of life in an imperfect world. It would be unreal and contrary to common sense to insist that they must be excluded from the range of considerations which may properly be regarded as material in determining planning applications. Where they are shown to exist they may call for compromises or even sacrifices in what would otherwise be regarded as the optimum from the point of view of the public interest. Virtually all planning decisions involve some kind of balancing exercise. A commonplace illustration is the problem of having to decide whether or not to accept compromises or sacrifices in granting permission for development which could, or would in practice, otherwise not be carried out for financial reasons. Another, no doubt rarer, illustration would be a similar balancing exercise concerning composite or related developments, ie, related in the sense that they can and should properly be considered in combination, where the realisation of the main objective may depend on the financial implications or consequences of others. However, provided that the ultimate determination is based on planning grounds and not on some ulterior motive, and that it is not irrational, there would be no basis for holding it to be invalid in law solely on the ground that it has taken account of, and adjusted itself to, the financial realities of the overall situation.

Thus we have the extraordinary situation where the financial needs of the developer are recognised as a justification for developments that are socially, environmentally and economically against the interests of the community. However, it is generally the more obvious cases of windfall gains by local farmers whose land is used by developers that strikes home to the general public and particularly to local councillors who are frustrated by seeing it happen and are helpless to alter the situation, in which domination by central government continues.

One year later the arguments over the developments of the Royal Opera House still continue.

Nevertheless, in this way, those who have never heard of Henry George and land value taxation are instinctively aware of the injustice of such a situation and are demanding some recompense to the community. The Georgist case is being made and its natural justice is becoming apparent.

In the Counties

A more parochial example is given typically by a local authority in the North West of England where permission has been granted for a supermarket in the center of one of its towns, Knutsford in Cheshire County. The site is the only remaining open space in the center of the town and the Planning Gain is to finance the building of tennis courts in the outskirts, which is a directly related benefit, and the renovation of the Civic Hall, which is not. The local Knutsford Town Council and the townspeople are violently opposed to the plan but are powerless to stop it. The Macclesfield Local District Authority, which gave the permission, will have acted under potential government pressure because they would have to pay all the legal costs if they lost an appeal against it. Presumably the benefits gained for the community represent the best deal that could be obtained in the circumstances.

Disparity in Land Values

The huge differences in land values between the South and the North of England provide another example of the relationship between land values and the local communities.

Since 1985, land values have roughly doubled in the South East of England, whereas in the derelict formerly industrialised areas of the North some sites, damaged by pollution, they have often fallen considerably. The difference between the two is strikingly visible.

Thus in Wokingham, Berkshire, near London in the South East, a new industrial estate is being built on farming land near the village. The government, having approved the plan, is standing aside as 'only a regulator'. The developer is happily contributing £10m for roads out of his land value gains.

On the other hand, in Stockton-on-Tees in the North East of England where there are 34,000 unemployed, the LA is clearing four feet of concrete from a site which was formerly iron and steel works and a shipyard. Plenty of government money is available to subsidise the new industries that will, it is hoped, follow. The Tees-side Development Corporation has been set up and is undertaking river-bank strengthening, road construction and infrastructure provision;

huge waste tips are being cleared. In this way negative land values are being eliminated. The local Member of Parliament sees nothing wrong with this government intervention — it is his party's government and he has a marginal seat.

The point is that the difference between the two sites in the South East and the North East is apparent for all to observe. The developer in the S.E. pays some of the value back, called Planning Gain, and in the N.E. the developer is a government sponsored body and the builders and businesses, far from contributing Planning Gain, will be compensated for the low land values despite the future potential gains.

It should be observed, however, that although the impact of land values and *increasing* land values is now widely recognised and seen to be unfair, it is only quantified when sales are made and windfall gains are publicised. The facts are established and the injustice exposed but the solution still has to be proclaimed.

Change of Land Use

The net result of the intervention by government in planning decisions and improvement programs is to bring about changes in land use, thereby considerably increasing land values for the benefit of developers. One of the most striking examples of such intervention was the pronouncement by Nicholas Ridley, Secretary of State for the Environment who said (*Financial Times,* 8/9 July 1989) he was 'minded' to approve plans by Consortium Developers, a group of 10 British housebuilders, which wants to build a new town of 4,800 homes called Foxley Wood in north Hampshire. The application had already been rejected by the Local Authority and by a public enquiry Inspector appointed by the Minister who had said that the harm the development would inflict on conservation interests, the countryside and highways outweighed the benefits of granting planning permission. The Junior Environment Minister said (*Financial Times*, 8 July 1989).

> The settlement could make an important contribution to meeting housing needs in north-east Hampshire and would be preferable to the further large-scale expansion into open countryside of existing towns and

villages, where there are already problems of congestion and overloading of local services.

The Planning Gain in Foxley Wood was to be a complete settlement with all its necessary infrastructure. Subsequently Mr Ridley's successor as Secretary of State 'has minded not to give planning permission'. More publicity.

Donation of Public Land

Another government move that recognises land values is the invitation to private developers to build community facilities for mentally ill people in return for being given prime housing land now occupied by the big Victorian asylums in which the mentally ill were housed. They call this maximising value for money but it is in reality short-term political gain in return for long-term community loss of increased land values.

A particularly interesting recognition of the actual value of land by people who have previously claimed that it cannot be properly valued has also come from the Department of Health Services. In a supposed attempt to make the hospital service more financially accountable and efficient, it has been instructed to work out the cost of all its individual services; these will ultimately be published for doctors who will thereby know where to send patients for the most cost-effective treatment. Hospitals have been told to include in their costings interest and depreciation of buildings and land. Buildings and land in use are to be valued at market rates for existing use; surplus land and buildings will be valued on the basis of alternative speculative use. 'Ministers hope this will act as an incentive to managers to use capital assets efficiently' (*Financial Times*, 20 June 1989). Thus although the value of land in relation to planning use permission is recognised, land is not distinguished from capital.

Good Design Constrained by Land Values

Architects and local authorities are in conflict over good design. Redevelopment of offices in Gloucester Road, London was rejected by Westminster Council on grounds of poor design, overdevelopment, excessive plot ratio and failure to provide sufficient planning

advantages. However, on appeal, the Inspector said the Council 'was overzealous in its exercise of development control, and aimed at a standard of design that was unnecessarily high.' Undoubtedly high land purchase prices put pressure on funds that might otherwise be used to produce better design and construction.

Land Values Recognised as Company Assets

In the economic boom years of the late 1980s there was considerable activity in both company take-over struggles and in corporate strategies to avoid being taken over. The revaluation of a company's assets for either purpose was commonplace, and the sudden realisation that property and land shown in the company accounts at purchase price was worth a lot more money drew attention to the significance of land values.

A typical property developer, Chesterfield Properties, revalued its net assets at the end of 1988 by £5 to £14 per share. Shares leapt by £1 to £9.50. Independent revaluation of its investment properties on an open market value basis threw up a surplus of £77m. The total includes the value of One Buckingham Gate just opposite Buckingham Palace, which is their prestige office development.

Other companies were drawn into the land speculation game. *The Financial Times,* 12 July 1989 said:

> It would have been difficult five years ago to have imagined that British Aerospace would become controversial not because of its mainstream business but because of its desire to exploit property assets which had fallen into its lap through the purchase from the Government of Royal Ordnance.
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> Its control of sites at Enfield and Waltham Forest, in north and north east London, and their long-term potential for mixed development following the closure of RO plants, has (sic) been the subject of parliamentary scrutiny and angry debate.
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> In the same way, the privatisation first of AB Ports and then of BAA, once British Airports Authority, has led to a re-rating on the market because of their extensive property assets.
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> Simply by virtue of the commercial activity at airports, BAA is an important landlord of retail property. AB Ports, on the other hand, has waterside holdings which can be, indeed are being, steadily developed. Both groups have acquired property development companies — Lynton

by BAA and Grosvenor Square by AB Ports, the better to harness their opportunities.

In similar vein, the privatised National Freight Corporation has found that extensive landholdings adjacent to railway stations have justified the establishment of a separate company which not only looks after NFC operational needs but develops in its own right.

and on the 20th July:

BAe has 37 sites scattered round the UK, of which six are surplus to its manufacturing needs. Five of these have come into its hands through its takeover of Royal Ordnance for £190m in April 1987 and Rover for £150m in August 1988.

It is the exploitation of these five sites — Waltham Abbey, Enfield and Patricroft from RO and Bathgate and Cowley South from Rover — which have excited political controversy. The arguments have circled around the issue of whether BAe paid a fair price for state assets or whether, given property development potential, it got them on the cheap. The Government has continually pointed to the fact that the sale of Royal Ordnance was by open competitive tender.

But the greatest public outcry was caused by the privatisation of the 10 Water Boards of England and Wales. The new owners inherited millions of acres of land, some of which will be potentially saleable at enormously increased prices. The general public appeared to be incensed, not only because they saw this land as their natural birthright but because they knew that it was bought by local authorities with their (ratepayers') money. It was also clear to any observer that this was unadulterated land and not buildings or 'property'.

There is a twist in the tail of this story: monies derived by the new water companies from the sale of land will be used to improve water purity to European standards. The alternative would be to increase charges or to subsidise with taxpayers' money.

Traditional Landowners

One might imagine that with all the business activity involving land speculation and property development, the traditional land owners were disappearing. Nothing could be further from the truth.

Of the 200 wealthiest people identified by the *Sunday Times* in 1989 there were:

57 landowners
53 retailers, distributors or service companies who own city sites
31 property developers or builders
14 publishers or owners of communication fortunes
5 bankers
6 brewers
19 financial dealers or traders.

More than half represent old or inherited money. The newspaper itself draws the conclusion that 'The ducal fortunes are all based on holding on to large amounts of land and property.'

For example Gerald Grosvenor, Sixth Duke of Westminster, is easily Britain's richest person next to the Queen. The 300 golden acres of Mayfair owned by the Grosvenor Estate form the linchpin of his fortune. These were the dowry of Mary Davies, the 12-year-old bride of Sir Thomas Grosvenor, in 1677. Today the family estate also embraces 13,000 acres outside Chester, including the family home Eaton Hall, 100,000 acres of Scottish forest, 12,000 acres of Vancouver, Hawaii office blocks and an Australian sheep station.

But what has happened to the large fortunes amassed by the cotton and woollen industrial barons? Where are the iron and steel manufacturers and the big shipyard owners? Many of these entrepreneurs returned to the community some of the wealth they had acquired. They presented or bequeathed parks, churches, libraries, art galleries and schools, and thereby recorded their names and their generosity for posterity. No doubt their benevolence was a form of paternalism rather than a recognition of the benefits they derived from the exclusive use of land and its products.

The great industrial fortunes of the 19th and early 20th centuries have gone or are seriously diminished. They obviously did not transfer their wealth to the land when they could. The only old industrial family left in the top 200 is that of the Pilkingtons who maintained their position by a technical innovation — the introduction of float glass.

Conclusion

The key rôle of land in the affairs of the Dukes, the newly privatised companies, the board room struggles and the windfall gains by

farmers provided by the planning decisions of local government are regularly drawing attention to the significance of land values. The gains by the owners are regarded by many as a reward for shrewdness, the natural gains of a public lottery. The Planning Gain that retrieves some of these increases for the community is regarded by some as a form of extortion.

Nevertheless there is an increasing recognition of the need for a national strategy in the planned use of land in the national interest. It is but a short step to the realisation that the benefits should accrue directly to society as a whole, which has the moral right to them, rather than — as now — being drawn off by private individuals as the fruits of privilege.

APPENDIX

Government Support for Planning Gain

The implications of Planning Gain were high-lighted at a conference held in London on 2nd March 1990 (Henry Stewart Conference Studies). It was reported that many Local Authorities now provide guidelines on the Planning Gains that they will consider favorably; they may even be sub-divided into Planning Requirements (which relate to a site and its use), Planning Benefits (related to a development, and sought as site conditions and local needs dictate), and Planning Gain (for a shopping basket of community needs negotiated on an ad hoc basis), the latter often blatantly beyond what the Department of the Environment might be expected to agree to on appeal.

However, the chances of appeal are low because, as one speaker (Charles George, a barrister) said: 'The profits of development are usually such that they are scarcely dented by the financial sweeteners that local planning authorities require of developers, whereas the *costs* of delay which are inherent in legal challenge can be considerable in terms of profits deferred and market-opportunities missed.'

The political implications were not neglected. It was recognised that a developer might be expected to contribute directly to a local

community that suffered local drawbacks (e.g. additional traffic) in a development that may have only wider benefits (e.g. regional employment). This is in line with a desire on the part of central government that major infrastructure projects should be 'contributed to' by major private developers. By cutting finance for local government at the same time, the government is practising the transfer of land value gains to local community benefit, albeit in a roundabout way and to a thoroughly inadequate extent. It does, however, seem unlikely that the Planning Gain procedure will be abolished.

The Conference drew attention to an excellent example of the way this concept is being extended to draw in private money to support an extension of the London Underground System:

> This is an example of the ultimate in Planning Gain. After a number of studies the government has accepted the need for a new tube line to connect central London with the inner south east and inner north east London but has also said that the tube line will have to be partly funded by the private sector. The government is reported as having suggested that the private sector will be considerable beneficiaries of the new line and therefore they should contribute to it.
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> No detailed costings of the line are yet available but figures of £15bn have been reported. In addition a figure of £400m contribution to the cost from one of the largest developers has been reported and it appears that the developer may be prepared to make this contribution. Other developers may not be so willing to contribute but at the end of the day their land may be worth significantly more with the line than without.
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> The question at issue is: Should the private sector be asked to contribute to something that would traditionaly have been provided by the state via a public transport undertaking?

The implication of this question is that the community should pay and that the businesses who benefit should make their contribution through their profits tax. How much fairer and more straightforward it would be if the land values were taxed on an annual basis. In this way, the landholders' payments would accurately reflect the benefits they derived from their holdings.