

# Land-Use Planning In Britain and New England

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## **Introduction**

In the summer of 1987, the Center for Rural Massachusetts (at UMass/Amherst), along with the National Park Service, the Vermont Land Trust, the Quebec-Labrador Foundation/Atlantic Center for the Environment and the Countryside Commission for England and Wales, co-sponsored a "Countryside Stewardship Seminar" in the Connecticut River Valley in western Massachusetts, involving land-use professionals from Great Britain and New England.

The underlying purpose of this brief description and explanation of the main points of difference between the two planning "systems" adopted by each country was to make it easier for British and American participants to understand each other. Separated as we are by a common language (as Churchill wryly observed), communication of ideas and concepts would be further thwarted by lack of agreement on basic premises, which participants might otherwise have assumed are shared by their international counterparts.

No such assumptions should be made, because some of the greatest differences between the two "systems" stem from widely diverging philosophies, and others are an outgrowth and expression of vastly different ways of managing and holding ownership of the land, based upon long historical tradition in both countries. It is hoped that this description would help prepare our British visitors for what they would see here but, more importantly, that it would also help them to understand why the rural land-use and settlement patterns in New England are the way they are today.

Rather than attempt to be comprehensive, this monograph uses a more selective and focused approach, highlighting four broad areas which, in the author's opinion, illuminate the essential contrasts in the way that land-use planning is conducted in rural Britain and rural New England. This paper does not necessarily reflect official views of the University of Massachusetts. Responsibility lies solely with the author, who has formulated a personal view based upon five years of professional training and experience in British planning, followed by a decade working as a land-use planner in rural New England. The topic areas covered below include development rights, land tenure, planning level and adoption procedures.

## **Development Rights**

One of the primary reasons why British and American land-use planning methods are so different is that, in the United States, the degree of legally permissible land-use regulation is defined by the Constitution, which protects landowners from restrictions which are so strict as to constitute a significant "taking" of property rights, without adequate compensation. In the case of a clearly defined public hazard arising from development of certain land-types (e.g., floodplains and wetlands), courts have upheld statutory prohibition of filling or construction. On environmentally sensitive lands of a somewhat less fragile nature (e.g., aquifers), restriction to low-density residential zoning is legally permissible, as is the exclusion of particular high-risk commercial or industrial operations (such as gasoline stations, which could pollute the groundwater).

However, the vast majority of land does not fall into such environmental categories, and is therefore presumed to be developable under law. For example, farmland that is not located in a

floodplain must be “zoned” for one or more types of development. Along highways it is typically zoned “commercial”; along by-ways it is often designated for residential development. The only reason that planning permission could be withheld is if public sewer were not available, and if the soil were incapable of receiving household waste-water (via septic tanks and leaching fields), as determined by official soil percolation tests. In this context, the most effective method of protecting farmland has been for conservation minded organizations to purchase it, or to purchase at least its “development rights” (typically about 80% of its normal market values as developable land). Within the US, the Commonwealth of Massachusetts has utilized this approach probably more than most other states. It has spent approximately \$45m to acquire the development rights to 18,400 acres of land, comprising about 3% of the state’s total farmland. A full 97% of this non-renewable resource remains completely unprotected (except for farmed floodplains, where development can be legally excluded). Because the \$7,000/acre cost for development right acquisition is too high to enable the state to have a really significant impact in this endeavor, new planning strategies are being devised to increase the effectiveness of regulatory tools in preserving farmland. Chief among these are “transfer of development rights” and “mandatory clustering”; they can be supplemented by private-sector initiatives such as “limited development”. (These terms are best described in detail by case studies.)

In strong contrast, the British Parliament essentially nationalized development rights when it passed the 1947 Town & Country Planning Act. Although some compensation was paid at the time, it did not represent nearly the sum it would have, had the legislation been enacted in the US. It would have been not only economically infeasible to pay the full value of this lost potential; it would have also been illogical, because there was not enough development pressure to justify a presumption that every acre would actually be developed. Therefore, in rural Britain, land contiguous to the existing built-up areas, but lying beyond the development boundaries established on official planning maps, is kept in agricultural use -- until such as it is needed to expand those communities. Planners there are free to select expansion based upon rational criteria such as the availability of public water or sewerage; proximity to jobs, shops, services, schools, etc.; and fertility of the soil for food production.

### **Land Tenure**

In New England, the pattern of land ownership has been much more fragmented than has traditionally been the case in rural Britain (and in the rest of Western Europe as well). Rural America has been largely a nation of freeholders, each pursuing his own homestead and mini-estate, with his own freestanding house and complex of barns and outbuildings. As land has been passed down through the generations, it has usually been divided more or less equally among the children. Those who have not wanted to settle there as adults have tended to sell off their holdings to the highest bidder, as land has been viewed primarily as an economic commodity for sale and profit. There are certain families which have cultivated a “land ethic”, but they are not in the majority. Furthermore, American land-use law encourages them to think otherwise, by designating all land outside floodplains and wetlands as legally developable (thereby giving it a market value far in excess of its agricultural value).

On the other hand, in rural Britain, land has traditionally been held by a relatively small percentage of the rural population. Most rural residents who work on the land are employees. Often they live in rented accommodations owned by the family that holds title to most of the farmland in the village. Historically, fragmentation of land ownership has been avoided through the system of primogeniture, and more recently through very strong family bonds, which have been accompanied by a deep feeling of stewardship for the land and a personal commitment to carrying on a traditional way of life. When the 1947 Act was passed, I suspect that most large

rural landowners did not view their land as something to be carved up into housing developments, which would have swelled their villages with many former city-dwellers (most of whom would have been likely to vote Labour, thereby threatening traditional Tory governmental control of the countryside). Most landowners were probably financially secure, or perhaps secure enough not to be overly concerned about losing the development potential of their farmland.

Insofar as the Act was perceived as helping the gentry to maintain their comfortable, quiet rural existence, it was possibly even welcomed by most of them.

Another point worth mentioning is that the British electorate (had they been consulted on this specific proposal) would probably have endorsed it heartily. Most Britons in 1947 were landless, and most rural residents were quite accustomed to living in densely-built villages surrounded by open fields, quite different in character to the scattered pattern of individually-owned farmsteads in rural America. Therefore, the type of planning brought about by the 1947 Act did not threaten them personally or financially, and it did not propose a radical departure from the traditional rural settlement pattern which had evolved over the centuries (in which population was concentrated in nucleated settlements, rather than dispersed across the face of the countryside).

### **Level of Planning and Adoption Procedures**

In the United States, planning essentially occurs from the “bottom up” as contrasted with the “top down” approach utilized in Britain. In America, there is no national statutory framework for land-use planning, except for certain environmental laws and some enabling legislation which enables states to adopt their own laws. Federal courts have provided a body of case-law clarifying the legal limits of local and state land-use regulation. Similarly, most states (including Massachusetts) have enacted various statutes establishing minimum criteria for large-scale development which could affect the environment, and have passed enabling laws permitting towns and cities to adopt local land-use controls. It is at this lowest governmental level that most land-use regulations are drafted, adopted, implemented, and enforced. All of the cities and most of the larger towns have adopted zoning ordinances or by-laws in order to separate uses which are deemed to be inherently incompatible. As written, most zoning by-laws are clumsy tools which often do not make sensible distinctions, and which will create a future that most residents would probably not welcome, if they fully realized the pattern of land-use which will result as new development is built, in accordance with those ordinances.

Many of the smaller towns have adopted regulations based on examples photo-copied from suburban areas, not realizing the eventual “build-out” situation which they will help to create. Many of the less populous towns and villages have either not yet adopted any local land-use regulations, or have adopted totally inadequate documents which are approximately one-fifth as long and as detailed as really needed to address the complexities of land-use control. Such is their prerogative, in the American “system”, which includes the freedom to choose or reject planning. Indeed, because these regulations can be adopted in rural Massachusetts only through a plebiscite method (“Town Meeting”), in which at least two-thirds of those present must approve the proposal in order for it to become local law, it is understandable why most zoning by-laws in small towns are so simplistic.

In contrast, British planning rests firmly upon a series of parliamentary Town & Country Planning Acts, the first really comprehensive one being that of 1947. This established the present system of development control, through which planning permission is awarded only for proposals meeting the standards set through the nationwide network of County Structure Plans and District Plans. Structure Plans define the overall county strategy for guiding both public and private sector investment decision regarding the location and servicing of new residential, commercial, and

industrial growth. In rural areas it is not uncommon for counties (which are very roughly akin to states in the U.S.) to designate certain town and villages as “growth centres”, target others as sites suitable for a specified level of additional development, with most villages allowed only to receive strictly-monitored infill development. Districts (sub-regions within counties) formulate their own plans, providing much more detail. These must be in accordance with the County Structure Plans, including Action Area plans for specific neighborhoods within certain towns. Unlike Massachusetts (which is one of the few states not requiring the adoption of a Master Plan prior to enacting local land-use regulations), the British approach is to control development through regulations drawn up pursuant to, and in furtherance of, detailed planning documents which enunciate goals and objectives, and which evaluate the consequences of various alternative planning policies for the area being controlled.

In the US, only a few states (notably Florida and Oregon), have succeeded in establishing anything remotely resembling this fairly logical procedure. As President Reagan’s huge electoral victory in 1980 showed, many Americans possess a deep-seated distrust of government, and are especially resentful of strict regulations imposed by higher levels of authority, whose policies they feel themselves powerless to influence. Progressive planning controls adopted at either the local or the state levels have usually been in response to an immediately perceived threat, or in reaction to an undeniable environmental crisis that is obvious to even the most short-sighted voter.

As mentioned above, adoption of local land-use controls requires Town Meeting approval by two-thirds of the voters present (in other New England states the required majority is 50%). Because of this, local planning boards usually try to publicize their new zoning proposals widely, so that residents will at least be well-informed. They also try to word their proposals as simply as possible, for voters who do not understand the provisions will be likely to vote against them. In rural areas where many voters finished their education at secondary school (as is often the case in small towns outside the commuting belts), this can lead to very abbreviated and exceedingly simplistic proposals -- which volunteer members of local planning boards, often working without any professional assistance, feel are better than nothing.

In the British system, there is much less public participation in the direct sense. County Structure Plans and District Plans are drafted by professional staffs, which explain the proposals in detail to members of the subcommittee of the County or District Council. These non-professional members become familiar with planning issues over the time that they serve, and are therefore better informed about the proposals (and the consequences of the alternatives) than the average American voter who has attended a few public hearings conducted by his local planning board. This makes it much easier, or at least possible, to implement sophisticated strategies, whose purpose and fine points would be very difficult to explain at a general public meeting.

## **Conclusion**

Because of the exceedingly decentralized and non-uniform nature of land-use controls in rural New England which (in small towns) are adoptable only by the general electorate, and because these controls are subject to a national legal doctrine presuming the developability of almost every parcel of land, the character of New England is understandably very different from the ambience of rural Britain. Tradition, history, national legislation (or the lack thereof), constitutional provisions, court decisions, and public attitudes have all helped to shape the present state of affairs in each country. Recognizing the importance of these factors should help participants in the Countryside Stewardship Seminar to appreciate the different contexts which influence the ways that their international counterparts perceive planning issues in the various

case study areas. Both American and British participants had to reach out mentally for effective communication to occur between representatives of these different cultures.

The purpose of this short paper was to help participants from Britain and Massachusetts to understand how and why planning approaches in their two countries have evolved in the ways that they have, and to appreciate the reasons for these existing differences. Hopefully this increased degree of mutual understanding freshened everyone's perspectives, and enabled a more fruitful dialogue to occur, and new approaches to rural planning to be generated.

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