

Has the Town and Country Planning Act 1990 Stood the Test of Time?

Clive Moys

Radcliffe Chambers

☞ keywords to be inserted by the indexer

Introduction

In this year of momentous anniversaries² the planning system has reached a modest milestone. 25 years (or, perhaps, a generation) has now passed since the enactment of the Town and Country Planning Act 1990. So it is worth while taking stock, reflecting, and asking: Has the 1990 Act stood the test of time?

Overview

The aim of this article is to consider this question through the prism of four topics of planning law: namely, plan-making; development control or decision-taking; planning agreements; and the enforcement of planning control.

The context

The planning system is, of course, a subject of much controversy. England being a relatively small and densely populated country means the pressures upon our finite supply of land are considerable. Additionally, the impact upon land values which our regulatory system brings about is complex. Some would contend that development pressures—responding to economic, social, environmental or technological change—build up faster than planners can plan. Whether one speaks of “planning” in the positive sense of improving the amenity of land, or of “planning control” in the negative sense of restricting undesirable use and development of land, controversy and dispute is never far away.

The media provides a regular supply of examples. It may be that of the major house builder versus those who wish to preserve and protect the countryside, and particularly, the Green Belt. Alternatively, the billionaire in Hampstead who wishes to demolish and rebuild his home, or the oligarch in Kensington and Chelsea wanting to add a mega basement to his, versus other local residents wishing to avoid the inevitable disturbance and disruption that such developments would cause. Or, the pop star wanting to refurbish his grade II* listed home in Holland Park, versus a “guitar legend” neighbour concerned about the potential effect upon his grade I listed home.

The impact upon land values and issues of compensation, betterment or planning gain, and blight regularly arise and may seem intractable. The growing awareness and appreciation of the need to protect our physical yet fragile environment, of sustainability and climate change. All of these competing interests and demands have to be accommodated within the planning system.

Complex and technical issues may be relevant (for example, “fracking”) and the views of those involved, or simply caught-up in the planning system, are often strongly held. Politicians (at all levels), bureaucrats,

¹ This article is based on the Nigel Mayhew lecture which I delivered on 23 November 2015.

² 1215 Magna Carta, 1415 Agincourt, 1815 Waterloo.

experts, planning officers and those directly involved or affected all have their role to play. The democratic element, both in the sense of public participation and of decision-making by politicians, has far reaching implications. It is not, therefore, surprising that the criticisms are perennial and often contradictory (e.g. too slow and restrictive for some developers and yet too quick and permissive for some opponents of development).

Setting the scene

In the article “A Fit Country: The Impact of the Great War on Town and Country Planning”,³ Gregory Jones QC and Charles Streeten provided an interesting insight into the genesis of town and country planning from ancient times. I would like to take-up the story with the enactment of the Town and Country Planning Act 1947 (the 1947 Act).

The Town and Country Planning Act 1947

1 July 1948 was a momentous day. It was the “appointed day” on which our present system of planning control, as set out in the 1947 Act, became law. It may be hard for us today to appreciate just how radical this Act, heralding the nationalisation of the right to develop land, actually was. In the lyrical words of John Betjeman’s poem:⁴

“In a few years this country will be looking
 As uniform and tasty as its cooking.
 Hamlets which fail to pass the planners’ test
 Will be demolished. We’ll rebuild the rest
 To look like Welwyn mixed with Middle West.
 All fields we’ll turn to sports grounds, lit at night
 From concrete standards by fluorescent light:
 And over all the land, instead of trees,
 Clean poles will whisper in the breeze.
 We’ll keep one ancient village just to show
 What England once was when the times were slow—
 Broadway for me. But here I know I must
 Ask the opinion of our National Trust.
 And ev’ry old cathedral that you enter
 By then will be an Area Cultural Centre.
 Instead of nonsense about Death and Heaven
 Lectures on civic duty will be given;
 Eurhythmic classes dancing round the spire,
 And economics courses in the choir.
 So don’t encourage tourists. Stay your hand
 Until we’ve really got the country plann’d.”

This introduction of comprehensive legislative planning control, presided over by the Minister of Town and Country Planning,⁵ established what has proved itself to be an enduring framework. Nonetheless, thereafter, the pattern of almost constant legislative activity has brought about evolution by amendment

³ Gregory Jones QC and Charles Streeten, “A Fit Country: The Impact of the Great War on Town and Country Planning” [2015] J.P.L. 544.

⁴ *The Town Clerk’s Views* published by John Murray (Publishers) in 1948.

⁵ Created by the Minister of Town and Country Planning Act 1944.

and consolidation: first in 1962, and then again in 1971, by the Town and Country Planning Acts of those years.

The Town and Country Planning Act 1990

The third consolidation of the planning legislation came on 24 May 1990 when the Town and Country Planning Act 1990 (the 1990 Act) received Royal Assent. The outcome of this consolidation was, in fact, four separate Acts which included listed buildings and conservation areas; hazardous substances; and consequential provisions—compactly “the planning Acts”. The consolidation was undertaken by the Law Commission.⁶

The fact that planning law, policy and procedure rarely, if ever, stand still is amply illustrated by events since 1990. The following are but some examples of the primary legislation that has been enacted: the Planning and Compensation Act 1991 made amendments to decision-taking, planning agreements and enforcement. The Local Government Act 1992 introduced “unitary authorities” with sole responsibility for planning in their respective areas. The Planning and Compulsory Purchase Act 2004 introduced substantial changes with regional spatial planning and changes to the plan-making process. The Planning Act 2008 introduced a separate statutory regime for nationally significant infrastructure projects as well as the community infrastructure levy. The Localism Act 2011 heralded neighbourhood planning, assets of community value and other features of the so-called “localism agenda”. The Growth and Infrastructure Act 2013 brought important changes to the development control system and planning obligations. The Enterprise and Regulatory Reform Act 2013 made changes to the law concerning listed buildings and conservation areas. Whilst writing, the Housing and Planning Bill has embarked upon its Parliamentary passage.

To the list given above, one could add primary legislation dealing with Scotland, Wales, Human Rights, the Environment, Greater London and many other topics, together with European regulations, subordinate legislation, and planning policy and guidance. Additionally, there is a regular out-pouring of case law. In fact we now also have the Planning Court designed to speed up the resolution of planning cases.⁷

The four topics

Not only is the term “planning” ambiguous and capable of meaning different things to different people, the definition of “planning” has changed over time and remains controversial. The character and nature of planning is, I think, illustrated by the topics selected, albeit it would have been possible to have looked at other aspects of the planning system.

Topic I: Plan-making

Broadly speaking, land use planning involves two interrelated components or tasks: namely, “planning” or “plan-making” in the sense of formulating documents expressing intentions for the future development of any given local planning authority’s area. The term “plan” can, and often does, include a multitude of statements, strategies, guides, diagrams, written policies and so forth. Secondly, “development control”, that is to say, the determination of any application for permission or consent required under the planning Acts; in other words, “decision-taking”.

Essentially, the process of planning is the antithesis of a laissez-faire approach to the use and development of land and is heavily reliant upon what the plan says. So this is a good place to start. However, it is important to appreciate that “what the plan says” creates the framework within which actual decisions of

⁶ *Report on the Consolidation of certain enactments relating to Town and Country Planning.*

⁷ From April 2014 the Planning Court began life as a specialist court within the Administrative Court.

local councillors (planning inspectors on appeal), council officers (smaller development), the Secretary of State, or more probably a civil servant, if “called in” or “recovered” on real planning applications take place.

The importance of the development plan (its name has changed over time) has been a constant feature since 1947. The 1990 Act formulation is at s.70(2):

“In dealing with such an application [for planning permission] the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material consideration.”

However, change was immediately upon us as s.54A of the Act was, in fact, added.⁸ It provides:

“Where in the making of any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.”

Thus it came about that the development plan was given pride of place over other “material considerations” (which, for those less familiar with planning terminology, means the body of factors identified in the case law as relevant to any given planning application or situation).⁹

From 1997, the new Labour Government’s commitment to regionalisation began to be reflected in regional planning guidance and then the Planning and Compulsory Purchase Act 2004 which introduced further substantial changes to the planning system. Some of the causes of the change included wider debate upon “spatial planning” at the EU level, the New Labour agenda for modernising and “joined-up” government, together with the familiar refrain that the planning system acted as both a brake upon economic development and yet failed to do enough to protect the environment.

The Planning and Compulsory Purchase Act 2004 s.37(6) now provides:

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

So the word “shall” has been replaced by the word “must”. As a matter of substance this change is of little, if any, effect. We now have a “plan-led” system, albeit one achieved by an early amendment to the Act.

Whilst the constant flow of reforms of the planning systems in Britain can be said to have “gathered an unprecedented pace in the 2000s”,¹⁰ since its formal inception in 1947, the existence of these two components has remained a constant.

Spatial planning

Plans can be formulated at one or more spatial levels. For example, regional, county, district, borough or even, since 2011, the neighbourhood. Part II of the 1990 Act (ss.10–54) sets out the detail of the Unitary Development Plan applicable in London and the metropolitan areas and the structure (county) and local plan (districts) applicable everywhere else, save for unitary authorities, post 1992. All the detailed provisions concerning surveying, consultation, examination, adoption and so forth is set out in Pt II, subordinate legislation and policy guidance.

The 2004 Act did, for the first time, define a statutory purpose for “planning”:

⁸ Amended by the Planning and Compensation Act 1991 s.26.

⁹ The *Encyclopaedia of Planning Law and Practice* identifies 18 specific examples: Vol.2 P70.16 onwards.

¹⁰ Cullinworth and Nadin, *Town and Country Planning in the UK*, 15th edn p.85.

“It is the statutory duty of plans to contribute to sustainable development. This means high and stable levels of economic growth and employment, social progress, effective protection of the environment and prudent use of resources.”

The main aims of the reforms were: to increase flexibility and community involvement, to “front-load” decisions, to integrate with other strategies and introduce “soundness” in terms of content, process and evidence base.

Were the 2004 reforms a success?

In the words of one leading textbook:

“The outcome of the reform was a very complex system with a battery of new acronyms and terms which made it incomprehensible even to professional planners, let alone members of the public.”¹¹

By as late as 2011 only 21% of local authorities had approved their core strategies as the new regime was called, envisaged as one of the key components of the local development framework (i.e. the plan). It should, however, be noted that this state of affairs is nothing new. The 1947 Act had envisaged that within three years’ of enactment (i.e. by July 1951) all plans would have been submitted for ministerial approval. In fact, only 22 out of 148 planning authorities hit the deadline.¹²

Government policy was, however, once more on the move culminating in a White Paper in 2007 which accepted that even whilst the 2004 reforms were bedding-down further reform was still necessary.¹³ The Planning Act 2008 was enacted introducing a new system for approving major infrastructure projects of national importance (there has been long-standing concern over the time taken to reach decisions on major development projects such as Heathrow’s Terminal 5), a new Community Infrastructure Levy, and stream-lining the planning application process.

New Labour eventually passed into history and, with the advent of the Coalition Government in 2010, the stage was set for another wave of reform to sweep over the planning system. The promise of the move towards “localism” led to the Localism Bill being published in December 2010, receiving Royal Assent in November 2011.

The Localism Act 2011

Reform of the planning system is a key feature of the 2011 Act. Regional Spatial Strategies were abolished and replaced with a duty to co-operate. How effective this change will prove to be is highly debatable. The main provisions of the Localism Act fall under four broad categories: new freedoms and flexibilities for local government; new rights and powers for local communities and individuals—e.g. assets of community value, the community right to bid and the like; reforms designed to make the planning system more democratic and effective; and reform to ensure that decisions about housing are taken locally.

The National Planning Policy Framework (“NPPF”), introduced in March 2012, was a welcomed rarity in that it actually reduced the documentation setting out Government planning policy. In the Ministerial foreword¹⁴ readers were told that “over a thousand pages of national policy” had been replaced by “around fifty, written simply and clearly”. Whether, as asserted, this has “allowed people and communities back into planning” is more questionable.

¹¹ Cullingworth and Nadin, *Town and Country Planning in the UK*, 15th edn p.115.

¹² MHLG *Annual Report 1950–1954*, p.61.

¹³ 2007 White Paper, “Planning for a Sustainable Future”.

¹⁴ The Rt Hon Greg Clark MP Minister for Planning.

It is possible to conclude this first topic by observing that whatever the 1990 Act has to say about the law on plan-making, this is only ever part of the picture. This is because of the vital role that planning policy, “the software of the system”, plays.¹⁵ In the words of NPPF para. 14:

“At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.”

More recently the government launched web-based supplementary planning practice guidance.¹⁶

Topic II: Development control

In the words of Mr Steve Quartermain, the DCLG’s Chief Planner:¹⁷

“Planning is about getting the right stuff in the right place at the right time.”

Whilst this statement is beguilingly simple the truth, of course, is more complicated. If one takes housing as an example of “the right stuff” we are constantly told of the national housing shortage which is most acute in London and the South East. Yet it is apparent that housing shortages are a regular feature of the planning scene just as are cycles of property booms¹⁸ and recessions¹⁹ which have proved resistant to eradication despite what Gordon Brown, whilst Chancellor of the Exchequer, may have said.

If one considers the phrase “at the right time”, the planning philosophy of “predict and provide” has often proved inaccurate and been discredited by the unfolding of events. As to the “right place”, this is plainly highly subjective. Again taking the current housing shortage, building expensive executive homes in the London and Home Counties’ Green Belt is unlikely to be “the right place” in the sense of helping to meet the needs and aspirations of would-be first time buyers in London.

The right to develop land is not conferred through development plan policies which merely give an indication of appropriate future land uses, but only (subject to exceptions) through the process of the determination of individual applications for planning permission.

It is necessary to understand that planning control rests upon two essential foundations. First, the very broad definition of development as meaning any building, mining, engineering or other operation in, on, under or over land, or the making of any material change in the use of land.²⁰ Secondly, that it is “unauthorised development”, and may become unlawful, to carry out development without first obtaining planning permission.²¹

In attempting to evaluate how far the 1990 Act has stood the test of time we should begin with the position under the 1990 Act. Part III: Control of Development is set out at ss.55–106C. Whilst the essential foundations have not changed the system has a number of complications and some of the detail has. For example, the ways in which it is possible to obtain planning permission.

Before considering some of the detail, it is worthy of note that there has been a gradual evolution from “development control” to “development management”. This is really more of a cultural change which has not required a change in the law nor of administrative processes, but rather a change in philosophy and attitude. Essentially, it may be seen as a move towards a more enabling or collaborative role whilst retaining a clear, measured and overall view of the plan’s objectives and how those may be, and are being, achieved.

¹⁵ The late Lionel Read QC joint article with Martin Read, [1994] J.P.L. Occasional Papers 32.

¹⁶ March 2014 DCLG.

¹⁷ RTPI Conference, 27 February 2014.

¹⁸ Late 1960’s, early 1970’s, mid-1980’s and the present.

¹⁹ Mid 1970’s, early 1990’s, post 2008.

²⁰ 1990 Act s.55(1).

²¹ 1990 Act s.57(1).

Some milestones between the 1990 Act and today can be stated. First, the 2004 Act introduced the “local development order” allowing a local planning authority to extend permitted development rights within its area. So far there has been a very low take-up.

Secondly, the Development Management Procedure Order 2010²² consolidated the earlier (1995) detailed procedural rules for handling planning applications. As from April, we now have the Town and Country (Development Management Procedure) (England) Order 2015.²³

Thirdly, the General Permitted Development Orders of 2008, 2013 and 2015²⁴ have, together with the Town and Country Planning (Use Classes) Order 1987²⁵ (as amended), brought about significant detailed changes.

The importance of the Use Classes Order is that it identifies and organises, into 4 groups, 15 (currently) separate classes of use of land or “use classes”. This is of considerable significance because where a building or other land is used for a purpose within any given use class, the use of that building or other land for any purpose within the same use class does not amount to “development” so planning permission is not required.²⁶

It is necessary to appreciate that the combined effect of the broad definition of “development”, coupled with requirement to obtain planning permission for it, would lead to a vast number of planning applications for minor developments such that the system would grind to a halt if such proposed development had to be dealt with through the normal development management process. Development orders try to tackle this problem by granting “deemed” planning permission for specified types of development, subject to criteria being met, and subject also to various detailed limitations and conditions.

The Secretary of State, sitting at the apex of the planning system, is empowered to make either general development orders or special development orders, applicable to all land (unless otherwise provided) or specified land, respectively.²⁷ The Town and Country Planning (General Permitted Development) (England) Order 2015 is now the principal development order.²⁸ It replaced the 1995 General Permitted Development Order. The importance and amount of detail is such that there is now a new book dedicated to permitted changes of use.²⁹

For this second topic it is possible to conclude that the most important changes have been wrought by subordinate legislation rather than amendment to the 1990 Act.

Topic III: Planning agreements

From a modest beginning, pre-dating the 1947 Act,³⁰ the power of local planning authorities to enter into agreements with landowners regulating the development or use of their land provides another example of controversy within the planning system. From the early 1970’s commentators were referring to “the sale of planning permission” or “cheque-book planning”.

During the property boom, at the start of the 1970’s, the opportunity to extract “planning gain” from the would-be developer was both realised and then acted upon by local planning authorities. Whilst requiring a developer to pay for infrastructure required as a direct consequence of any given proposed

²² Town and Country Planning (Development Management Procedure) (England) Order 2010 (SI 2010/2184).

²³ Town and Country (Development Management Procedure) (England) Order 2015 (SI 2015/595).

²⁴ Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (SI 2008/2362), Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 (SI 2013/1101) and Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 (SI 2015/659).

²⁵ Town and Country Planning (Use Classes) Order 1987 (SI 1987/764).

²⁶ 1990 Act s.55(2)(f) and Town and Country Planning (Use Classes) Order 1987 (SI 1987/764) art.3(1).

²⁷ 1990 Act s.59(3).

²⁸ With effect from 15 April 2015.

²⁹ Martin H. Goodall, *A Practical Guide to Permitted Changes of Use* (October 2015).

³⁰ Town and Country Planning Act 1932 s.34 with the approval of the Secretary of State.

development, e.g. highways works, sewers, landscaping, and so forth, were seen as legitimate planning purposes, other items, added to the local planning authority “shopping list”, were more controversial.

The 1990 Act replaced earlier statutory provision with s.106. Today it is very rare to see an application for planning permission for anything but the most modest development which does not contemplate (perhaps by draft heads of terms), and factor into its viability appraisal, the costs of making provision pursuant to a s.106 planning obligation. Equally, any resolution to grant planning permission will be made subject to the execution of a satisfactory s.106 obligation.

Once again it was not long before it was necessary to amend the 1990 Act. From 25 October 1991, the power to enter into a “planning agreement” was repealed and replaced with the power to enter into a “planning obligation”.³¹ In essence, a planning obligation may be either by agreement, or made unilaterally if agreement is not possible. Their scope is wide ranging.

Government Circular 5/2005 “Planning Obligations” explained their purpose as being: “to make acceptable development which would otherwise be unacceptable in planning policy terms.” The three examples given: a proportion of housing being affordable; compensation for loss of open space; and the mitigation of increased public transport provision are all common enough.

The “store wars” battles fought between rival food-retailers in Plymouth, Witney, Oxfordshire and Wolverhampton helped clarify the correct legal approach to this vexed topic.³²

The list of facilities provided by private developers is both long and expanding. In the residential development sector, in addition to affordable housing, be it social rented, key worker, or sheltered, examples include: sports facilities; community centres; schools; health and childcare facilities; public transport; waste and recycling facilities; open space; landscaping; and, even, emergency services. In the commercial development sector the list includes public transport provisions and green travel plans. Under the rubric “community needs”, contributions for public art; town centre improvements; training and recruitment initiatives; and cultural plans have all become common place.

The Green Paper “Planning: Delivering a Fundamental Change” is seen as the start of the discussions about possible change and alternatives.³³ Initially a tariff system was proposed however by 2003 the talk was of a “standard planning charge”.³⁴ But, following Kate Barker’s Review of Housing Supply, it was the “planning gain supplement” which found favour.³⁵ However, by 2007 the idea of the planning gain supplement was consigned to history.³⁶

The Community Infrastructure Levy (“CIL”)

The Planning Act 2008 then laid the foundations for CIL which was, essentially, conceived as a new planning charge to be used entirely to fund a wide range of infrastructure which had been identified through the development plan process. The theory behind this new planning charge is that it would capture more planning gain and “sit alongside” the site specific negotiated s.106 contributions.

The mix of private and public interests at play in the planning system is well illustrated by the controversy over the possible “buying” of planning permission. The controversy as to the roles of the private sector and that of the public sector, in the realm of providing, for example, affordable housing is, of course, an acutely political question.

Not only can you not take the politics out of planning, neither can you remove the economics.

³¹ New ss.106, 106A and 106B added by the Planning and Compensation Act 1991.

³² *R. v Plymouth CC Ex p. Plymouth and South Devon Cooperative Society* [1993] J.P.L 1099, *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 W.L.R. 759 and *R. (on the application of Sainsbury’s Supermarkets Ltd) v Wolverhampton CC* [2010] UKSC 20.

³³ Green Paper “Planning: Delivering a Fundamental Change” 2001.

³⁴ 2003 consultation about *A New Approach to Planning Obligations*.

³⁵ Kate Barker’s *Review of Housing Supply* 2004.

³⁶ 2007 *Pre-Budget report*.

Topic IV: Planning enforcement

The fourth and final topic is that of the enforcement of planning control, the Cinderella of the planning system and historically the weakest link in the chain of planning control. In 1962, Harman LJ memorably said:³⁷

“Hard indeed are the paths of local planning authorities in striving to administer the town and country planning legislation of recent years. It is a sorry comment on the law and those who administer it that between the years 1947 and 1960 they had succeeded in so be-devilling the whole administration of that legislation that Parliament was compelled to come to the rescue and remove a great portion of it from the purview of the courts. Not for nothing was I offered a book yesterday called *Encyclopaedia of Planning*. It is a subject that stinks in the noses of the public and not without reason.

Local authorities, until recently rescued, have had practically to employ conveyancing counsel to settle these notices which they serve in the interests of planning the countryside or the towns which they control. Instead of trying to make this thing simpler, lawyers succeeded day by day in making it more difficult and less comprehensible until it reached a stage where it is very much like the state of the land which this plaintiff has brought about by his operations—an eyesore, a wilderness and a scandal.”

Fast forward to 2011 and, hot on the heels of Mr Robert Fidler’s notorious house built whilst hidden behind hay bales, first the Supreme Court³⁸ and then Parliament³⁹ were required to grapple with some of the technicalities concerning time limits for taking enforcement action.

As Professor Malcom Grant observed in his seminal work *Urban Planning Law*, enforcement has proved by far the most technical and complex area of planning law.⁴⁰ He identifies two main reasons for this. First, the fact that a breach of planning control is not an offence, but rather it may lead to an enforcement notice being served requiring remedial action, from which there is a right of appeal. If there is an appeal (and there often is) the effect of an enforcement notice is suspended pending the outcome. Secondly, the resources available to local planning authorities coupled with the “clumsy” detailed statutory procedures. Planning enforcement is an important topic in its own right and there are at least two textbooks that deal exclusively with the subject.⁴¹

The enforcement provisions in the 1990 Act are in Pt VII (ss.171A–196C). Once again these provisions were very soon to be the subject of amendment. In response to the recommendations made by (the then) Robert Carnwath QC the Planning and Compensation Act 1991, recognising the inevitable complexities and technicalities which had be-devilled planning enforcement, sought to ameliorate the situation.⁴²

It is sometimes said that our planning system can be found within a self-contained code, but this statement is misleading. The truth is that judge-made law and the application of both common law and equitable principles have, inevitably, filled in the missing gaps or established important and enduring legal concepts e.g. “the planning unit”. The list of important planning law cases is long and this article is not the place to consider them.

Conclusions

This article has attempted to consider the question: has the Town and Country Planning Act 1990 stood the test of time from the perspectives of plan-making; development management; planning agreements

³⁷ *Britt v Buckinghamshire CC* [1964] 1 Q.B. 77 at 87.

³⁸ *Wehyn and Hatfield BC v Secretary of State for Communities and Local Government* [2011] UKSC 15; [2011] J.P.L. 1183.

³⁹ Localism Act 2011, introducing s. 171BA–171BC by amendment.

⁴⁰ Professor Malcolm Grant, *Urban Planning Law* (Sweet & Maxwell, 1982) p.383.

⁴¹ A. J. Little, *Planning controls and their enforcement* and Richard Harwood QC, *Planning Enforcement*.

⁴² *Enforcing Planning Control*.

and the enforcement of planning control. In each of the four topics the primary legislation has been changed and subordinate legislation has helped the evolution. In each sphere the courts have, unsurprisingly, had an important role to play.

If the yard-stick is simply time spent on the statute book then the answer is “yes” in that the 1990 Act has endured longer than either of its three predecessor statutes, albeit in three of the topics considered amendment occurred as early as 1991.

On the other hand, if the yard-stick is to ask whether we now, 25 years on, have a clearer, faster, more certain and less expensive system, then the answer is “no” we do not. Whether another consolidation of the principal Planning Act would achieve those elusive outcomes is highly debatable.

The planning system today is without doubt more complicated than ever before. The *Encyclopaedia of Planning* now extends to nine volumes whereas it was a mere three volumes in 1982. The planning system appears to be under close scrutiny and currently to enjoy a very high profile as evident from the regular recent forays into the fray by the Chancellor of the Exchequer.⁴³

Whether it is a curse or not, those involved with and in the planning system undoubtedly do “live in interesting times”.

It is, of course, much easier to provide a critique of the planning system than to identify and suggest proposals for reform which might prove to be beneficial. I will venture just one. The Community Infrastructure Levy (“CIL”) was effective from 6 April 2010. More than five and a half years have now passed and coverage is still patchy and the regime problematic.

One of the key claimed advantages of this latest system designed to capture more planning gain, was that it would be simple, both to understand and operate. This sort of assertion is regularly made. However, the fact that 2015 witnessed the fifth year in which the CIL regime required legislative amendment, is not a promising start.

It is not unreasonable to predict that the betterment or planning gain problem, that is to say, any increase in value which accrues to the owner of land upon the grant of planning permission, will outlive the CIL regime. In the fullness of time it may go the way of the standard planning charge and the planning gain supplement or, before them, the Community Land Act and Development Land Tax Act and be consigned to history.⁴⁴ It will, perhaps, come to be appreciated that the time, resources and effort which have gone into creating and implementing the CIL regime, were simply wasted. Resources would have been better deployed keeping the s.106 planning obligation regime and negotiating on a bespoke application-by-application basis.

⁴³ “Fixing the Foundations” 10 July 2015, “Four-point plan to get Britain building”, 5 October 2015.

⁴⁴ 1975 and 1976 respectively.

Over time a number of challenges have clarified and added to the list of possible material considerations, particularly as attitudes to the scope of planning have changed. In Westminster City Council v Great Portland Estates plc (1985), it was confirmed that the personal circumstances of the applicant could be taken into account as a material consideration. Since 2010 there have been a number of changes to planning legislation, both primary and subordinate. Only "persons aggrieved" have standing (locus standi) (JB Trustees, Philip Jeans and Sandra Jeans v Secretary of State for Communities and Local Government and Dennis Jeans Development Ltd (2013)). Page 5 of 15. Judicial Review.