



1962

## Book Review

Follow this and additional works at: <https://scholar.smu.edu/smulr>

---

### Recommended Citation

*Book Review*, 16 Sw L.J. 695 (1962)

<https://scholar.smu.edu/smulr/vol16/iss4/9>

This Book Review is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

## BOOK REVIEWS

GREEN BELTS AND URBAN GROWTH. BY DANIEL R. MANDELKER. Madison: University of Wisconsin Press. 1962. Pp. xi, 176. \$5.00.

Professor Mandelker discusses thoroughly and analytically, against a background of English planning law and practice, the "green belt" system. In this undertaking the English are attempting to preserve some of their countryside in the face of the twin problems of urban populace "overspill" and limited land area. Mandelker's book is distinguished by well-ordered research, objective findings, and clarity of expression. A functional approach (except for the background chapters) is followed, with some sacrifice in the organization of subject matter.

Broadly, the book describes (1) how county land use plans are developed, and (2) how land use control is imposed within these plans, particularly as regards the creation and preservation of "green belts."

The differences between the maze of local governments which have original control over planning and land use in England and those in the United States are revealed as minor in comparison with the differences in national control of planning and land use provided by statute in the two countries. Thus, the Ministry of Housing and Local Government in England has a national supervisory authority "to review both county and county-borough development plans and planning decisions." That authority is defined to include "the carrying out of building, engineering, mining or other operations, in, on, over or under land, or the making of any material change in . . . use," which has been assumed to include residential development.

The English legislation is referred to as "mandatory" and the American as "permissive." The comparison is between acts of Parliament in England and state legislation in the United States. Putting to one side the conceded elements of indirect federal control which flow from financial assistance contracts between instrumentalities of the United States and local political subdivisions covering land development matters, federal legislation ordinarily constitutes no authority empowering a creature of the state to act.<sup>1</sup>

---

<sup>1</sup> See *First Iowa Hydro Elec. Co-op. v. FPC*, 328 U.S. 152 (1946); *Washington Dep't of Game v. FPC*, 207 F.2d 39 (9th Cir. 1953), *cert. denied*, 347 U.S. 936 (1954) (second Tacoma case); *City of Davenport v. Three-Fifths of an Acre of Land*, 147 F. Supp. 794 (S.D. Ill. 1957); *City of Tacoma v. Taxpayers of Tacoma*, 307 Wash. 2d 781, 307 P.2d 567 (1957), *rev'd*, 357 U.S. 320 (1958) (third Tacoma case); see also *City of Tacoma v.*

Green belts, the author observes, cannot be precisely described more than to say that they are an "attempt to use planning powers to hold large areas of the urban fringe against further development." According to the Minister of Housing and Local Government, green belts should be several miles wide and encircle an urban area for the purposes of clearly separating town and country and curbing future development of the former. Their objectives are the search for amenity, the protection of agricultural land, the regulation of urban growth, and the furtherance of local government policy-making by preventing an expansion of boroughs that would result in reducing the jurisdiction of county authorities.

Legislation patterned rather closely after the purposes of the English green belt acts was recommended by President Kennedy early in 1961 to the Congress and, sharply modified as to objective, became a part of the Housing Act of 1961.<sup>2</sup> This statute authorizes financial assistance to communities for such uses as parks, recreation, historic, or scenic purposes, and conservation of land and other national resources.<sup>3</sup> However, elements of the green belt idea, to borrow one of Professor Mandelker's chapter headings, have been introduced in this country upon a federal-aid basis. Comprehension of the rather extensive British experience illustrated by *Green Belts and Urban Growth* accordingly can be valuable.

Counties and county boroughs (the larger cities) were required by Parliament in 1947 to prepare development plans indicating the manner in which land should be used and the stages for carrying out proposed developments. All such plans require the approval of the Minister of Housing and Local Government, and although considerable local autonomy exists, the Minister has an independent power of inquiry on his own motion. Appeal likewise lies to him from local planning actions.

A typical development plan would consist of a series of maps and a brief written statement containing a zoning directive for the entire rural area of the county to the effect that "existing uses remain undisturbed and that non-agricultural development be allowed only exceptionally in individual cases considered on their merits." Such a

---

Taxpayers of Tacoma, \_\_\_ Wash. 2d \_\_\_, 371 P.2d 938 (1962) (fourth Tacoma case); *City of Tacoma v. Taxpayers of Tacoma*, 43 Wash. 2d 468, 262 P.2d 214 (1953) (first Tacoma case).

<sup>2</sup> 75 Stat. 183, 42 U.S.C. §§ 1500(a)-(e) (Supp. 1961).

<sup>3</sup> An additional objective originally proposed—that open land be acquired if it has "economic and social value as a means of shaping the character, direction, and timing of community development" or "scientific or esthetic value"—was eliminated from the legislation as enacted. See the report on H.R. 6028 in H.R. Rep. No. 47, 87th Cong., 1st Sess. 41-45 (1961); *id.* at 61-64 (minority views).

plan is proposed by the county and subjected to a full hearing before an inspector attached to the Minister's staff. Next a report is submitted to the Minister, who makes his decision without further hearing. No case directly adjudicating the status of the Minister's determination of a planning appeal has yet been brought.

Development control is accomplished separately through action upon planning applications for the development of the land. Here the local action is informal and taken in closed session. If the project is refused or conditionally approved, the applicant has an appeal to the Minister, who conducts a formal hearing *de novo* through one of his inspectors. Ministry review of the inspector's report is strictly a staff-type review with no further hearing accorded. Decisions generally are *ad hoc*, and precedents are apparently neither made available on any general basis nor given any special consideration by the Minister. Similarly, the local planning authorities in arriving at their initial decisions do so using the plan as a guide only. They consider each application on its merits, giving no particular attention to precedent unless a previous determination concerned the same situs.

In England, lack of a written constitution makes the planning legislation controlling. Since that legislation does not provide for judicial review on the merits, such review is reduced effectually to questions of interpretation. Judicial disinclination to interfere with the planning process apparently causes the courts further to limit their review so that it encompasses little more than the determination of whether planning actions (including actions on applications) are *ultra vires* of the statutes.

The circumstances under which an owner will receive compensation if he is denied permission to develop his land are also, of course, governed by statute. The following hypothetical situation furnishes an interesting illustration of when a statutory exception to payment of compensation will apply.

Green owns a lot, one tenth of an acre in size, which is at the end of a ribbon of houses on a country road. It adjoins a cultivated field. If planning permission to build a house on the lot is denied, Smith [*sic*] probably will not get compensation. The ministry will probably ignore the incidence of legal ownership and hold that the lot can be farmed with the adjacent field. Were the lot in the center of the string of houses a different answer might be given.<sup>4</sup>

---

<sup>4</sup> Under the 1947 planning law, compensation is payable if a denial of planning permission (to build) has deprived the applicant of any "reasonably beneficial use" of the land "in its existing state," *e.g.*, no account is taken of any "prospective use of the land which would involve new development" (pp. 38-39).

Professor Mandelker's use of case studies is most helpful. They cover the results of conversations with Ministry and local officials, as well as analyses of existing surveys and data. Random samples of the case studies interspersed in his chapters are: the basic map; the administrative process of applying for a "planning permission," indicating how development controls operate; the form of the local planning refusal; the application of local green belt policy in practice; and the "continuing imbalance" of national population growth despite the green belt policy.

The book is much too closely packed with interpretative analyses, case studies, statistics, descriptions of English land policies, administrative processes, and many other matters of interest to be described in this Review except in the most general terms. It should be a significant reference work for one broadly interested in land use planning and in local governmental affairs. It should also prove beneficial to those interested in zoning, subdivision, and related matters. Through these areas of regulation, supplemented by public acquisitions of land for parks, playgrounds, and similar uses, and more recently by federally-assisted urban renewal activity, the United States has been attempting to solve its land planning problems locally in a manner less disruptive of private property interests and concepts than green belt ideas appear to be.

*John L. FitzGerald\**

---

\* Visiting Professor of Law, Southern Methodist University.