

LAND FOR INFRASTRUCTURE PROVISION : A COMPARATIVE ANALYSIS  
BETWEEN JAPAN AND THE UNITED KINGDOM

社会資本整備のための土地取得：日本とイギリスの比較分析

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各国の計画制度には通常、社会資本整備に必要な土地取得に関連して共通な問題がみられる。本稿の目的は、イギリスと日本の2つの異なった国においてこの難しい問題がどのように取り組まれているかを考察することにある。このような課題のもつ性格から推察されるように、土地取得を規定する法制度の面に焦点を当てることが必要である。ここではイギリスの地方政府の組織と計画制度についても簡単に説明し、続いて、土地の利用可能性、財源、時期を決定するためにもっとも重要な視点の1つとして、イギリスの地区計画と社会資本整備の関係を分析する。次に、土地取得を規定する日本の制度について説明し、計画手段の法律上の利用可能性という側面よりもむしろ実際的な適用の面から検討する。最後に本稿ではこれら2つの国がもついくつかの比較対照的な課題をとりあげ、分析を試みている。

[I] Introduction

Planning systems usually face one common problem relating to providing land for necessary infrastructure facilities. This Paper aims at exploring the way in which two different systems of planning administration, that of the United Kingdom and that of Japan, tackle this problem. By the very nature of the subject it is necessary to highlight legal aspects governing land acquisition. A very brief introduction to the British local government organisation and planning system is also included. However, the Japanese counterpart is not included because of limitation on volume. Subsequently, the relationship between local planning and land provision for infrastructure in the UK is analysed, since this is the most important single aspect in determining land availability,

funding and timing. The Japanese system governing land acquisition is also introduced and analysed in terms of real application as opposed to legal availability of planning tools. The paper then attempts to analyse certain comparative issues.

[II] Land for Infrastructure: The United Kingdom.

A) Present Methods

Methods employed by local authorities in Britain in the course of securing land for infrastructure purposes will be divided into two main categories: direct and indirect.

(1) Direct Methods.

These methods relate to land acquisition by local authorities

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either compulsorily or by agreement. The statutory grounds on which a local authority, or the Secretary of State can acquire land compulsorily for planning purposes are embodied in Sections 112 and 113 of the Town and Country Planning Act 1971, which is the basic planning legislation in Britain. The general operational framework of the use of compulsory purchase powers is that county councils, district councils and councils of London boroughs are the organisations empowered to acquire land compulsorily. In addition, the Secretary of State has the power, under the 1971 Act, to authorise those local authorities to acquire compulsorily any land in their area being:

i) Land which is suitable for and is required in order to secure the carrying out of one or more of the activities of development, re-development and improvement.

ii) Land acquired for a purpose which it is necessary to achieve in the interest of good planning of the area in which the land is situated.

There is no obligation on the acquiring authority, however, to undertake any activity themselves in order to achieve the purpose of the acquisition. "The question of who does the work necessary to achieve the purpose of acquisition is immaterial". (Heap, 1982, p.287). The Secretary of State may authorise a local authority to acquire land which is within the area of another local authority. However, he must consult with the latter authority before authorising the acquisition. These powers of acquisitions are expressed in four methods as described below.

### 1) Compulsory Acquisition of Land for Highways.

-----The Secretary of State or a local highway authority may be authorised to acquire land compulsorily for "providing or improving any highway which is to be provided or improved in pursuance of an order made under the 1971 Act" (Heap, 1982); or for any other purpose for which land is required in connection with such an

order, or for the purpose of providing any public right of way.

As to procedure for acquisition, a Compulsory Purchase Order is made under the Acquisition of Land Act 1981, following the steps specified in the Compulsory Purchase of Land Regulations 1982. Moreover, the Secretary of State is empowered, under Section 113 of the 1971 Act to acquire any land compulsorily which is necessary for public service. An "Order" is a legal tool used in Britain to execute an Act. Therefore, whilst the Town and Country Planning Act 1971 specifies the purposes for which compulsory purchase may be made, the Acquisition of Land Act 1981 makes it possible to actually acquire the land compulsorily by means of an Order, which is enforceable by law.

### 2) Acquisition by Agreement

-----The second method is to reach an agreement with those holding an interest in the land. A local authority may acquire by agreement any land which they require, for any purpose for which a local authority is authorised to acquire land compulsorily under Section 112 of the 1971 Act. This, naturally, includes land for development, re-development or improvement, or land needed to achieve good planning of an area. Local authorities can, in other words, negotiate an agreement on land they can otherwise acquire compulsorily.

### 3) Compulsory Acquisition of Open Space Land

-----Until the Acquisition of Land Act 1981 (when open space land was acquired for other purposes), the acquiring authority had to submit the appropriate Order to a Special Parliamentary Procedure unless the Minister issued a certificate certifying that equally advantageous land would be provided in exchange or that the land was needed for road improvement and no alternative land was necessary. However, under the 1981 Act (Section 19) the Secretary of State can give his certificate without the need for "exchange

land", provided the open space land, which is being taken, does not exceed 250 sq.yards (about the same in sq. meters) in area; nor is required for the widening or drainage of an existing highway (or both) and that the provision of "exchange land" is unnecessary.

#### 4) Acquisition of Land for Purposes of Exchange

The 1971 Act specifically empowers local authorities to acquire land, whether compulsorily or by agreement, which is required in order to be given in exchange for:

- i) Land acquired for planning purposes (including highways).
- ii) Green Belt land (as defined in the Green Belt (London and the Home Counties) Act 1938, acquired for any purpose specified in a development plan.

### (2) INDIRECT METHOD

This category includes one method, which is called in this paper "indirect" because it does not operate on the basis of acquisition of land by the local authority as such, and because it is the outcome of a proposed private development of land for uses other than infrastructure. This method is popularly known as "Planning Gain", and is legally called "Section 52 Agreement". The later legal title derives from Section 52 of the Town and Country Planning Act 1971, allowing local planning authorities to enter into detailed negotiations with private developers in order to secure some public benefit as the authority thinks appropriate.

"Planning Gain" is, therefore, the result of negotiations between the local planning authority and the private developer. Any such agreement "may contain such incidental and consequential provisions (including provisions of financial character) as appears to the local planning authority to be necessary or expedient for the purposes of the agreement." (Heap, p.116, 1983). A "Section 52 Agreement" may achieve for a planning authority many aims,

arising out of the control of the development of land, which the authority would not have been able to achieve if it would have granted a permission loaded with conditions. These aims sometimes mean securing land for parks and playgrounds within the developed area, sharing the costs of constructing a new bypass, or the costs of developing and improving a certain element of the local infrastructure, such as access and local distributors.

The philosophy behind "Planning Gain" is one that recognises that the local community has some intrinsic right and entitlement to part of the profits generated by private development activities in that specific community, i.e., over and above the tax on profits that the developer pays to the State (the whole of the community) on his profits. In other words, "Section 52 Agreement" localises leveying some form of community charge, thus entrusting the local planning authority with defining the extent to which a developer may contribute to the improvement or development of the local infrastructure facilities.

### B) THE PLANNING SYSTEM AND LOCAL GOVERNMENT

A two-tier system of local government operates in Britain. The upper tier, the counties, roughly corresponds to prefectures, whereas the lower tier, cities and districts, correspond to cities, towns and villages in Japan. Each level consists of two main parts, an elected body of local politicians, called the council, and a professional body consisting of various technical departments, including planning, highways, education, social services etc. In some authorities planning and highways departments are merged in one department. Land dealings of local authorities are usually the province of an estates department, rather than the planning department. The basis of the current planning system is the Town and Country Planning Act 1971. Counties must prepare statements of policy reflecting the likely demand on different land uses, local economic

development etc. These are called "Structure Plans", and they are written statements with diagrams indicating possible locations of development, i.e., generally they are not site-specific. Cities and districts, on the other hand, must prepare "District Plans" in accordance with Structure Plan policies. District plans are written statements and site-specific at the same time. Healey (1983, p.97) defines statutory local plans as an "administrative not legal device. They are advisory not mandatory in that authorities are not required to make a decision as specified in a local plan. The proposals, . . . , are not legally binding on anyone." To implement those plans, development control is operationalised through a "Planning Permission". Most developments, save those specified in the General Development Order, require planning permissions granted usually by the City or District Council acting on the recommendation of the Planning Officer. In the preparation phase, plans are subject to "Public Inquiries", which is a statutory consultation procedure. Local planning, therefore, is an element of great importance in the planning system, particularly in the provision of infrastructure.

### C) LAND for INFRASTRUCTURE and the LOCAL PLANNING

The degree of inter-action between local planning and infrastructure provision, particularly roads, may be appreciated when it is realised that ca.150000 miles of roads, and almost 90% of urban roads are the responsibility of local authorities (Leitch Report, 1977). The First Report from the Transport Committee, "The Roads Programme" (1981), specifies that "the vast majority of the nation's roads are, . . . , the primary responsibility of the county councils, the motorway and trunk road system accounting for only about 6300 miles of the total network of about 200000 miles of roads." Trunk roads, however, are the direct responsibility of the Secretary of State for Transport. The proportion of the volume of roads under the responsibility of

county councils leaves no doubt as to the importance of studying the provision of land for infrastructure in function of local planning, i.e., structure and district plans. This relationship is all the more significant because it represents the inter-phase between land use planning and transportation planning at an operational level. This relationship will be examined in this paper from two angles. The first is that of organisational arrangements. The second relates to a combination of financial programming and local planning. Since these two aspects are very strongly related to each other, the treatment of the topic will examine their inter-dependency in allocating and releasing land for infrastructure, particularly roads.

#### i) Organisational arrangements

The interest of public agencies involved in land and development in Britain may be grouped in three broad categories:

a) Providers of community welfare services;

b) public corporations engaged in production and the provision of nationwide services;

c) infrastructure agencies, providing and maintaining basic service networks. (Healey, 1983, p.221)

The third category relates directly to this study's topic. It includes Regional Water Authorities responsible for water, drainage and sewerage provision since 1974. This evolution has only left the major part of road development and improvement under the power of county councils. Power supplies are provided by national agencies. The relationship between highway departments and planning departments is a particularly difficult one, even when the two departments are merged. Their scale of priorities is often different depending on their perception of the "public interest". Healey (1983, p.132, 220) indicates that "...it is rare for these

agencies to be involved in joint work arrangements...", and that non-planning departments "...may feel that their perception of issues and their priorities have been distorted by planners, while planners may feel that their colleagues in other departments lacked real interest and commitment...This reservation possibly applies even more to the involvement of the infrastructure agencies - County Highways,[etc]..." This situation is mainly the outcome of fragmentation of responsibilities within that part of the public sector with interests in land development, and of the fact that their interest in land is instrumental to some other purpose, such as roads. These interests overlap in a complex way causing severe co-ordination problems, which are ultimately reflected on the timing of land allocation for infrastructure as well as, although to a lesser extent, on the exact location of road lines among other elements. Elkin (1974) and carried out case studies and showed that plans were frequently amended as Highways authorities changed their minds and were indecisive about actual roadlines.

#### ii) Financial - Local Planning Considerations

-----This element is governed by two main administrative tools, namely local plans and "Transport Policies and Programmes (TPP)". Local plans are defined above. TPPs are "...annual statements of policy which form the basis for grant aid and for loan sanctions. They contain not only financial estimates for the year but also (1) a statement of the county's transport objectives and strategy over ten to fifteen year period; (2) a five-year rolling programme for the implementation of the strategy; and (3) a statement of past expenditure and physical progress, and the extent to which objectives and policies are being met..." and that TPP will consist of a series of "...inter-related proposals covering both capital and current expenditure over the whole transport field-public transport, roads, parking, traffic management, pedestrians...[and will include] the

allocation of expenditure between different parts of the county as well as between different types of expenditure." (Cullingworth, pp160-61, 1982). In other words, TPPs are comprehensive statements of objectives and policies which local highways authorities plan to undertake in their areas, together with an expenditure programme.

The main difference in procedure between local plans and TPPs is that the later does not require much consultation. The main point of their relationship is the fact that a road proposal can be included in the local plan if it was already included in a TPP. If it is not included within a TPP it may be left out of the local plan, or indicated with a broad reservation, or an area of search may be indicated. Since road proposals are usually vital for understanding other policies, this situation forms a major problem of this relationship which directly affects releasing land for roads and other uses. In other words, Highways authorities must agree with the priorities of planning authorities, and express that agreement by including the road proposal in their TPP. On many occasions, however, this agreement is difficult because of differences in priorities. Another reason for that difficulty arises from the fact that financing of transport projects follows a different timetable to the preparation of structure plans. In many such cases planning authorities have resorted to reaching a "Section 52 Agreement" with developers in order to finance sections of a bypass or a road scheme, although this approach has left the actual roadline unclear in the unconstructed sections.

The original intention of this dual system was based on the assumption that road planning forms an integral part of the process of planning. Department of the Environment Circular 4/79, "Memorandum on Structure and Local Plans" (para.2.27, 1979) defined this relationship:

"The county council's transport policies form an integral part of

the overall development policy. The structure plan should formulate policies for the means of movement of people and goods by road... It will provide a framework for local plans and for transport policies and programmes (TPP)... The plan should formulate policies and general proposals for the county council's primary road network..." As Healey (p.222, 1983) indicates "structure plans and local plans should provide [infrastructure agencies] with information on future location of demand [for their services]." For County Highways Authorities, this means demand for small-scale access on the one hand, and for by-passes on the other. Usually there are very few problems with the former which can be negotiated away. The latter, however, demands more resources, particularly that those authorities are "...typically balancing the priorities for making the road network more efficient for strategic movements and the demand for by-passes and other adjustments to remove the costs of strategic traffic movements from particular communities." (Healey, p.223, 1983).

Throughout the last decade, reduced public expenditure has aggravated the problem, and has made reaching agreements on road investments between planning and highways authorities one of the most difficult issues in local plans.

**[[II]] LAND for INFRASTRUCTURE : JAPAN**

The Japanese system for acquiring land for infrastructure purposes may be divided into three main categories.

1) Acquisition by Agreement according to Civil Code Provisions.

This method relies on direct negotiations between landowners and local or central government. It is the most widely used tool of acquisition. The agreement is legally expressed in deeds. One main factor must be born in mind, namely the time value of money for a land market in which price levels increase sharply. This element is most important as regards the period of negotiations.

2) Acquisition by Compulsory Purchase

Initially, the "Expropriation Act 1951" (S26) regulated this method. However, it aimed at protecting property rights in such a way that the procedure became too complex and the Act itself too rigid. Because land prices continued to rise and the procedure took a long time, it became a very inefficient and expensive tool of acquisition. Under the circumstances it was substituted by the "Special Measures Act concerning Acquisition of Land for Public Use 1961" (S36). This Act provided certain new elements embodied in emergency measures. These measures made it possible to acquire land compulsorily at the initial, rather than final cost of land. This element aimed at neutralising the impact of the length of time of negotiation in terms of rising land prices. It also aimed at speeding up land acquisition arrangements. Examples of the application of this Act include the Tokaido Shinkansen and the Hanshin Express-way constructed for purposes of the Tokyo Olympic Games. The Act is still valid today.

3) Land Acquisition before the actual Project.

Land acquisition using compulsory purchase powers is rarely applied in Japan because of the inherent socio-cultural value of land. Therefore, acquisition by agreement is the usual method employed. However, the continuous and sharp rise in land prices makes this option rather difficult for reasons of time and cost. Consequently, public authorities have resorted to accumulating a land reserve at the planning, rather than the project stage. To operationalise this approach a number of measures were introduced in order to enable the authorities to gain access to funds as well as to comply with procedural formalities. The main measures are the following:

i) The "Urban Development Credit Fund Act 1966" (S41):

This Act enables local authorities

to gain access to funds allocated in a special budget, controlled by the Ministry of Finance, which is called "Treasury Investment Loan" (Zaisei Toyushi). This is a necessary measure since, at the planning stage, a project is not necessarily listed in any capital or current budget, and as such there are no specific funds allocated for its implementation. More recently, in 1985 (S60.9), an additional measure was added. It established a "Road Development Fund". Prior to the establishment of this system, the "Road Special Account" (Gasoline Tax) was mainly used for road construction. Under the new arrangement, improvement of buildings along the road, as well as for land acquisition for large-scale and specific road construction projects at an early stage. The later is particularly interesting since the usual budget can only be used at the project stage, which is quite difficult because of rising land prices and annual budgetary constraints.

ii) The "City Planning Act 1968" (S43)

This category mainly includes Articles 56, 57, 67, the most important of which are the later two. Article 56 specifies that an owner of a piece of land, in an area designated by the prefectural governor for city planning facilities, or is a work execution area of a built-up area development project (excluding land readjustment projects and other for developing basis for new towns), may request that the governor buys his land on current market prices. This provision rests on the grounds that prohibiting construction works will impede the utilisation of the land for the owner. Article 57 specifies that the governor must inform right holders when their areas become projected project sites. In practice, this means that governor is prepared to purchase the land, usually on the basis of a negotiated price. Article 67 stipulates the purchase of land in a projected site area which has been declared by a "City Planning Decision" (Toshi Keikaku Kettei). The price used in practice is the negotiated price. There is one more provision, Article

68, which actually combines compulsory purchase and agreement. It stipulates that land may be purchased by the local authority in response to a request made by the landowner whose land is being expropriated under compulsory purchase measures. In practice the current price is usually paid.

iii) The "Act concerning Promotion to Expand Publicly-owned Land 1972" (S47).

-----This Act aims at promoting land acquisition by local authorities through creating a flexible mechanism, namely a "Land Development Corporation". In practice, local authorities usually establish a "Land Development Fund" (under Article 241 of the Local Government Act 1969) prior to creating a development corporation. The built-in flexibility in borrowing capital from private banks and avoiding lengthy administrative procedures makes it easier to assemble land, particularly with a long-term view. In fact, these corporations not only acquire separate project sites, but also whole neighbourhood areas. Public facilities, such as rivers, parks and roads may also be developed using this alternative. Moreover, the Act provides for a link with the "City Planning Act 1968" and the "National Land Use Planning Act 1974" through Articles 5, 6 and 7. These provisions include the possibility offered to owners of lots larger than 300 sqm in Urbanisation Promotion Areas to request public acquisition of their land. The price is determined on the basis of an valuation exercise. Moreover, the owner of a piece of land larger than a specified area, or whose land is required for a public project must inform the governor. Negotiations concerning the price will be confined to the range determined by valuation.

iv) The "National Land Use Planning Act 1974" (S49.6)

-----Articles 19 and 32 regulate purchases. The former allows authorities to purchase land in indicated areas where rapid increase in land prices is likely through

land speculation. In this case land valuation is employed to determine the price. Article 32, on the other hand empowers authorities to enter into negotiations, with the aim of purchasing land which is unused, and has not been used for neither housing nor business for at least three years. The purchase price is also determined through valuation. In practice, the function of this Act is more of the nature of a threat to landowners. It is regarded as too severe, and its use is truly unusual.

#### 4) Land Readjustment (Kukaku-seiri) and Infrastructure.

No discussion, concerning land for infrastructure in Japan, is possible without a reference to the method of "Area Reduction" (Genbu) and "Replotting" as means of acquiring land for public facilities. This is more so because of the extensive use of land readjustment as the main tool of achieving planning objectives, which are mainly associated with infrastructure provision. 30% of the area of DIDs, for example, has been improved employing this method. And throughout the past century it has been heavily employed saving the taxpayer considerable costs which he would have had to bear should a compulsory acquisition route have been followed. This paper proposes that land readjustment clearly falls within the category of acquisition by agreement, although no direct monetary compensation is paid. In comparison to British methods it falls somewhere between agreement, exchange and planning gain.

#### 5) General Guidelines for Land Development (Takuchi-Kaihatsu Yoko)

This tool is used by cities, towns and villages, not prefectures, for purposes of obtaining some form of public benefit from the developer without compensation. However, this tool is not regulated by an Act. It is a local authority regulation, which proved to be not only important, but also very effective in securing public facilities such as roads, parks,

schools and nursery schools. The tool is applied by different municipalities differently depending on the scale of the project. In large metropolitan areas, 30% of all municipalities in which such a regulation is operational, impose its provisions on housing developments of a land area of 1000sqm. 40%, however, have tightened its application to 500sqm. Between 10-20% have even reduced the area requirement to 300sqm. There are extreme examples of application, such as Hirakata and Sakai cities where the regulation covers practically all developments.

#### [IV] CONCLUSIONS

- 1) The road network in Britain is only one of the items in preparing a plan, and does not assume the same importance as in Japan.
- 2) The powerful role of engineers in planning in Japan is played by professional planners in Britain. The separation between Planning and highways functions is one of the main comparative organisational issues.
- 3) There is a general emphasis on infrastructure planning in Japan, utilising such innovative methods as "Area Reduction" and "Replotting", as opposed to compulsory purchase in Britain. Costs, therefore, are born by those involved and the consumer rather than the taxpayer.

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