MILLS & REEVE

briefing

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The Uthwatt Report

1 Introduction

The "what report" I hear you say. This now little consulted report is the foundation of the modern town and country planning system. I decided to read it on my sabbatical.

The report is remarkable in many ways, especially for its date. Commissioned during the Second World War, in January 1941 the "Expert Committee on Compensation and Betterment" to give its full title, reported in September 1942. The members are relatively unknown today. Chaired by Mr Justice Uthwatt they were James Barr, a Past President of the Chartered Surveyors Institution (as it then was) Gerald Eve, another of its Past Presidents[1] and Raymond Evershed K.C. who later became a judge and Master of the Rolls. Interestingly, the secretariat for the Committee was provided by the Inland Revenue and Estate Duty Office, though it reported to the Minister of Works and Planning.

The terms of reference were twofold:

> "To make an objective analysis of the subject of the payment of compensation and recovery of betterment in respect of public control of land;
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> To advise as a matter of urgency what steps should be taken now or before the end of the war to prevent the work of reconstruction thereafter being prejudiced. In this connection the Committee are asked
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> > to consider (a) possible means of stabilising the value of land required for development or redevelopment and (b) any extension or modification of powers to enable such and to be acquired by the public on an equitable basis,
> > to examine the merits and demerits of the methods considered;
> > and to advise what alterations of the existing law would be necessary to enable them to be adopted."

The report is 170 pages long (price 2s 6d[2] at the time by the way) and what I want to do in this note is to summarise the main problem it considered, describe its main recommendations and then comment upon them, with particular reference to planning today.

2 The problem

Inevitably there is a bit of history. The Barlow Commission, appointed in 1937 had reported in 1940 that the progress of planning was seriously hampered by the difficulties encountered by local authorities with the system of betterment and compensation. The emphasis in the view of Uthwatt[3] was on the need for post-war reconstruction but also that a long term solution needed to be found.

[1] and also partner in the firm of surveyors which bears his name.
[2] 12.5p
[3] i.e. the commission as a whole, not just its chairman.

Some of the aspects of reconstruction will strike a chord with us today. The City Engineer of Birmingham described the challenge of redeveloping a 300 acre site, medium size, with issues such as 6,800 dwellings, 15 industrial premises, 105 minor factories, 778 shops ("many of them hucksters' premises") 7 schools, public utilities, railway viaduct and canal. The approach however is more patrician; 5,400 of the dwellings were described as "slums to be condemned" and we might smile at the reference to "hucksters".

Uthwatt was also conscious of the requirements to locate industry and build adequate housing, in addition to post-war reconstruction. Improvement of living conditions and economy were major drivers.

The first difficulty it saw was the control of development of undeveloped land. Land for example in a beauty spot, a coastal area or on the edge of towns might command a high value, but for reasons of amenity or agriculture, its development might be highly undesirable. But to prevent development of such areas under the Town and Country Planning Act 1932 placed a liability on local authorities to compensate landowners for the deprivation of development value.

This led Uthwatt to articulate the principle of floating land value[4]. Development value "floats" over all land. When permission is granted to develop a particular part, the development value settles on it in full. Uthwatt stated that wisely imposed planning control does not diminish the total sum of land values "but merely redistributes them". But when paying compensation for individual pieces of a large compulsorily acquired area, the probabilities of a part being developed exceed the possibilities and so the value of individual pieces of land taken in aggregate exceeds the floating value.

The indefinite liability of planning authorities to pay compensation if they forbade development was identified by Uthwatt as "unquestionably the greatest obstacle to really effective planning". And it was the potential for over-valuation rather than principle of compensation which was the problem.

They pointed out that in theory the shift of land value to land actually developed should match the diminution suffered by other land. However, no scheme of redistribution of this betterment had been satisfactorily devised. But the Commission hinted at its proposed solution when describing the problems: "It is obvious…that if all the land of the country were in the ownership of a single person or body, the mere shifting of values from one piece of land to another would not call for any financial adjustments and the need for paying compensation or securing betterment would disappear".

3 The Solution

The solution had two main parts, depending on whether the land was developed or undeveloped. There was also a system proposed for the recovery of "betterment" or part of it.

3.1 The major proposal – undeveloped land outside towns

There would be a prohibition on all development of undeveloped land outside town areas without the consent of the Central Planning Authority. Compensation for loss of development value would be paid from a pot representing the fair value to the State of development rights as a whole. It would be distributed according to the development value of the various holdings.

[4] They were clearly not the first to do so.

Where lands were to be developed either publicly or privately, the owner's interest would be compulsorily acquired for its value, as it stood. As development value had already been paid there would be no development value paid on acquisition. If the land was required for a private development a lease would be granted for a period chosen by reference to the nature of the development. It would be a type of building lease with an obligation to develop, enforceable by forfeiture if the development were not carried out. Personal residential development was to be excepted; there would be no compulsory acquisition, but a licence granted for the erection of a house.

3.2 Developed land

Here, Uthwatt was mainly concerned with war damage and with the need to carry out large scale redevelopment of poor accommodation and badly planned areas. The Birmingham example and others in London and other major conurbations were prominent in their thinking. Their proposal was that local authorities should have extended powers of compulsory purchase for war-damaged areas and to accelerate redevelopment. Even undeveloped land in towns was excluded. "Their inclusion would involve centralised control where local control should be predominant. …If within a town, land is required for planning purposes the land should be bought outright. There is indeed no point in buying development rights in undeveloped land within the limits of a town."

It is also important to note that development rights in developed land were not transferred to the State, and the 1932 Act with its system of schemes would continue to operate.

3.3 Compensation

That then leads to the question of what compensation should be paid. The rules then were not so different then from now. Basically, open market value was to be paid. Rule 3 provided that the special suitability or adaptability of land for a purpose to which it could be applied only in pursuance of statutory powers should not be taken into account. Consistent with its view that private landowners should not benefit from public development needs, or subsidies, Uthwatt recommended that the rule should be extended to the possibility of land (including land not being CPO-d) becoming subject to any public scheme of development (or prohibitions on development), works done or change of use under any such scheme. Thus, increase in development value arising from public demand for land, as opposed to private demand, would not form part of compensation.

3.4 Betterment

This meant the increase in value of land arising from central or local government action. The Committee traced an impressive line of statutes dating from 1427 which recovered some proportion of value increase attributable to public actions. These included the Town Planning Acts 1909 and 1932, which extended recovery to the effects of planning schemes. Under the 1932 Act 75% of betterment could be recovered by local authorities and in Parliamentary debates, the principle had been accepted, even by opponents. However, for various reasons, including the difficulty of identifying just the betterment element, it had not worked well and little betterment had been recovered. So Uthwatt recommended cutting the Gordian knot and obtaining a fixed proportion of the increase in value, whatever the cause. There would be a periodic levy on annual increases in annual site values.

It would work like this. The annual site value of all developed land would be ascertained following the passing of the legislation. There would be a periodic revaluation, every five years. The increase would be subject to 75% levy in each of the following five years. It is important to note that the value being ascertained is annual site value[5] not capital value.

What about undeveloped land? That would be covered by the development rights scheme. Uthwatt said that for such land "we are satisfied that nothing less than the development rights scheme…will provide a solution to that part of the betterment problem".

3.5 What else did Uthwatt recommend?

Uthwatt recommended many other detailed changes to CPO procedure and valuation rules. This note addresses only the major aspects of a 170 page report. But I do want to draw attention to the proposal that national development should be in the hands of a Minister for National Development. National policy would be set by a committee of ministers over which he would preside. The schemes of development would then be executed by the relevant departments. The day to day administration of the development rights scheme would be in the hands of a Commission, but it would be subject to Parliamentary (we might say "democratic") control by giving the Minister a power of direction. The Commission would have a full time chairman and a member of the economic staff of the Minister. Other commissioners would be part time and, "The opportunity should be seized of securing the service upon the Commission of persons who, by their experience of public affairs, their knowledge of the needs of industry or their knowledge of land utilisation, will ensure common sense administration, and command for the Commission the confidence of the public".

4 Dissent

Whilst James Barr signed the report, he did so with reservations and wrote a four page note about them. He seriously criticised the proposal to exclude from any CPO compensation any value derived from public demand (the changes to Rule 3 described in paragraph 3.3 above). The Committee had justified this saying that the existence of CPO powers carried with it the acceptance that private land ownership carries with it the duty to surrender land when needed for the needs of the community. It followed in their view that satisfying those needs should not be a source of private profit. This he said was an indefensible argument. There was no private enterprise in housing any more. So much so that the market for land in Scotland was dominated by Government demand of about 75%. If that were to be ignored, he argued that there would be no open market price.

Barr was also critical of the betterment levy proposal. It had detailed provisions for giving credit for an owners capital expenditure. A maximum of four per cent of capital expenditure would be deducted from the annual site value. And the Committee considered that by setting the levy at a proportion of the increase in site value rather than the whole, the value of improvements before the first valuation date which had not yet been reflected in the site value would be allowed. They knew this was rather rough and ready. Barr said the mere 4% deduction was wrong in principle as the whole or a substantial part of the increase in site value could be attributable to alterations. There was no allowance for interest and setting the levy at 75% rather than 100% did not deal with that he held.

Finally he had five further short criticisms, noting that the scheme would be difficult and expensive to administer, and that it was one-way; whilst betterment was taxed, there was no recompense for "worsement".

[5] Not a term in much use today, from quick internet research it is related to the letting value of the property. It is worth bearing in mind that at the time, property was also subject to Schedule A tax and property was subject to rates in both cases on annual values.

4 Reflections from 2010

As we know, on the "appointed day", 1st July 1948, development rights over all land were vested in the state[6]. From thenceforth, no development could take place without planning permission. This was geographically wider than Uthwatt had proposed. The division between undeveloped and developed land, between town and country was abandoned. And as I have read the Report, I have found it increasingly difficult to see any real rationale for the distinction.

What I find really interesting is the Committee's position on the need for control and on compensation. Uthwatt was clear that planning control and national development to improve the state of the nation's housing and towns was a necessity[7]. It was a social and economic necessity. They saw no difficulty at all with very strong levels of state control over and involvement in development. The nationalisation of development rights caused them no difficulty whatsoever. However, they also believed that the expropriation of development rights should be compensated. Modern human rights law and philosophy would say the same. At this however, I reach a rather frustrating point, because I do not know what became of their proposal for a compensation fund; the 1947 Act is not available on-line and further comment on that is going to have to await my return to the office and take its turn with other matters. Wikipedia, in a very brief article says that a fund of £300 million was set aside, but my understanding is that the fund was inadequate and I would hesitate before relying on the article. It is an important point because we assume today that it is acceptable to move and remove development rights (the LDF can be changed, local planning authorities have considerable discretion in deciding planning applications) with no further compensation.

It is also important because of the continuing debate over CIL[8]. Some people justify CIL on the ground that the grant of planning permission is a gift of increased land value[9]. So exacting a levy is acceptable. But that argument does not hold good unless the initial nationalisation of development rights was compensated. The grant of planning permission merely restores to the landowner his original right.

It also revives in me the desire to know more about the reason for presumption in favour of development; I read many years ago that it was articulated by Lewis Silkin, the Minister for Town and Country Planning from 1945 to 1950, but have not been able to find where. It seems to me that it could be a corollary to the expropriation of development rights.

It is instructive to note that planning was seen as essential to economic well-being; enabling and directing development were vital steps for Uthwatt. Today however, planning is seen by many people, politicians, economists and laymen alike as an impediment to economic growth and enterprise. It is certainly not seen by planners as a key building block for a thriving economy, rather as a means to prevent the undesirable.

The 1947 Act of course gave planning control to local authorities, not a Central Planning Authority as proposed by Uthwatt. This is interesting in the context of the Infrastructure Planning Commission, a central body for major development. It is unaccountable to Parliament, though the Secretary of State does have powers of direction. My criticism of that position is well known, and the Conservative party when in Opposition earlier this year came out in favour of ministers taking the actual decisions. I suspect however that Uthwatt would have found the IPC as originally enacted to be acceptable. It is not so different from their proposal.

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[6] by the Town and Country Planning Act 1947.

[7] It's worth remembering that just a few years after the war we saw the New Towns Movement and the case of Franklin v. Minister of Town & Country Planning (1948) which illustrates the determined and slightly patrician approach of the ruling classes at the time, the post-war Labour Government.

[8] Community Infrastructure Levy

[9] This argument works better for Planning Gain Supplement, CIL's predecessor proposal, as CIL is officially justified as a levy to provide infrastructure.

I also find it rather surprising that so much energy should have been put into devising a planning system at a time when the nation was engaged the most comprehensive international armed conflict the world has ever known. The terms of reference make it clear that the Government was working in the confident belief that our nation would emerge victorious – why else bother with the issue? This is a tribute to the Government of the day but it also shows that the creation of a good planning system (which we nowadays take for granted) was so important that the work had to be done even in wartime.

So in conclusion, what major things have I learnt from my reading of Uthwatt? First that planning was a positive move, an essential for economic growth. Second that the nationalisation of development rights was to be accompanied by compensation. Third, that there was acceptance, as early as 1909, that betterment should be taxed. Fourth, as for most research, there is more to be done.

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