COMMITTEE ON THE PRICE OF BUILDING LAND

REPORT

TO THE

MINISTER FOR LOCAL GOVERNMENT

IRELAND

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DUBLIN:
PUBLISHED BY THE STATIONERY OFFICE.

To be purchased from the
GOVERNMENT PUBLICATIONS SALE OFFICE, G.P.O. ARCADE, DUBLIN 1,
or through any Bookseller.

(Prl. 3632) 27½p

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COMMITTEE ON THE PRICE OF BUILDING LAND

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Dr. M. O'Donoghue, Department of the Taoiseach.

Mr. J. T. O'Meara, Department of Local Government.

Mr. L. Reason, Office of the Revenue Commissioners.

Mr. D. F. Ryan, Valuation Office.

REPORT

TO THE

MINISTER FOR LOCAL GOVERNMENT

ROBERT MOLLOY, Esq.

INTRODUCTION

1. You appointed us in January, 1971, with these terms of reference:

"1. To consider, in the interests of the common good, possible measures for—

(a) controlling the price of land required for housing and other forms of development,

(b) ensuring that all or a substantial part of the increase in the value of land attributable to the decisions and operations of public authorities (including, in particular, decisions and operations relating to the provision of sewerage and water schemes by local authorities) shall be secured for the benefit of the community.

2. To report on the merits and demerits of any measures considered, with particular reference to their legal and administrative practicability.

3. To advise on what changes in the present law may be required to give effect to any measures recommended".

2. By advertisements in the daily press on the 13th February, 1971, we sought written submissions from interested parties. We also wrote to the organisations which we thought had a special interest in the matters within our terms of reference and invited them to give us their views. Officials from Dublin Corporation and a delegation representing the Construction Industry Federation supplemented their written submissions by oral evidence to us. A list of those who sent submissions is given in an Appendix. Some of the organisations to which we wrote set up special committees to prepare statements of their views. These showed that considerable time and thought had been given to their preparation. We gratefully acknowledge the help we have received.

3. We have read and discussed legislation, reports of official committees, parliamentary debates, decided cases and published articles from many countries. We had the advantage that Volume 1 of the 1971 Census appeared when the first draft of this Report had been prepared and we have been able to check the conclusions we had reached against the information in it. There is a large volume of literature on the matters we have to consider because the disproportionate increase in the price of land suitable for building near cities and towns has been a recognised social problem in Europe, America and elsewhere for more than a century and the necessity for a land policy and for town planning of some type is

now generally accepted. We have decided that we will not give a list of all the written material which we have considered; it would be very long and we are writing a report, not a bibliography. We believe that we have read all the main reports and legislation on the matters within our terms of reference.

4. The work done by our Secretary, Miss Beth Ann O'Byrne of the Department of Local Government has been admirable and we are very grateful to her. She was not assigned as a wholetime secretary to this Committee but despite her other duties, she has succeeded in handling the mass of paper which we have received with great ability and efficiency.

5. We have held 59 meetings at two of which we heard oral evidence.

CHAPTER I

THE RISING PRICE OF LAND SUITABLE FOR BUILDING AND SOME EXAMPLES OF DEALINGS IN IT

6. In recent years there has been a remarkable increase in the prices paid for serviced land suitable for building and for potential building land near cities and towns in the State. In this Report we use "serviced land" with the meaning of undeveloped land which has the main services (water, sewerage and drainage) close to it while "potential building land" means undeveloped land near a city or town which will probably be provided with services in the near future. The disproportionate increases in the prices paid for both kinds of land are illustrated by figures of comparative prices prepared for us by the Valuation Office. These show that between the beginning of 1963 and the end of 1971 the average price of serviced land in County Dublin increased by 530%. In the same period the consumer price index increased by about 64%. In County Dublin the average price per acre of serviced land was £1,100 in 1960 and £7,000 in 1971 and the average price per acre of potential building land was £300 in 1960 and was £2,500 in 1971. The cases we have examined corroborate these conclusions. These disproportionate increases are not confined to the County of Dublin: similar ones have occurred in the other counties which contain cities and large towns.

7. In a recent study[1] of prices agreed to be paid in England since 1965 at 1,700 auctions of land suitable for building and sold with the benefit of planning permission, Mr. McAuslan has shown that the *median* price (which he regards as the most suitable indicator) of an acre of land suitable for building and sold with planning permission in the belt which is 21/40 miles from London rose from £11,800 an acre in 1965-66 to £20,600 in 1969-70 and to £43,030 in 1971. In the belt which is 13/25 miles from Birmingham, the price of an acre of land suitable for building and sold with planning permission rose from £8,500 in 1965-66 to £14,000 in 1969-70 and to £20,328 in 1971. In each case the increase in price between 1969-70 and 1971 was greater than that between 1965-66 and 1969-70. He also expressed the view that the principal cause of the increase in the price of land is the increase in the price of existing houses.

8. Similar trends in the prices paid for serviced and potential building land have been a feature in many European states and in

1. McAuslan: "Residential Land Prices". Estates Gazette 15th April, 1972. p. 294.

the United States of America, Canada, Australia and New Zealand. The suggestion sometimes made that these increases are a feature peculiar to Ireland and that they are the result of some defect in our institutions or in our system of government and laws is inaccurate.

9. While it is possible to indicate the general trend in land prices, it is difficult to obtain precise details of specific transactions. Although we have received a number of vague allegations about speculation in land, we have not been given details of any transactions which would support this charge. We therefore sought other sources of information. We could not ask the Revenue Commissioners for assistance because returns made to them are confidential. A second potential source is the Registry of Deeds but the memorials registered there do not show the purchase price paid. Transfers in the Land Registry are a third potential source but the Registrar of Titles may allow an inspection of them in special circumstances only. As we did not have any information about transactions or the dates of transfers, we could not ask for specific deeds and the Registrar of Titles has no legal authority to allow anyone to conduct an investigation into unspecified transactions. We therefore examined a number of cases which have been heard in public in the courts and which illustrate the size of the profits made by dealings in serviced and potential building land. We have also obtained details of other cases from the Valuation Office and from the Corporations of Dublin and Galway. The cases which we have examined show the large profits which have been made on dealings in serviced and potential building land and the way in which some of these were carried out so that tax liability on the profits was avoided. We have information about many other cases of large increases in the prices paid for serviced and potential building land but as we were unable to get reliable evidence about them, we have decided that we should not refer to them. We now give a summary of some of the cases we have investigated: —

A. In 1938, a farm of land containing 128 acres with a substantial residence on it in Clondalkin, County Dublin was purchased for £3,600 when it had no value as building land. The lands have not yet been provided with services but in 1971 the Corporation of Dublin decided to acquire them for their building programme. They negotiated an agreed purchase price of £192,075 with the owners. This was reasonable having regard to prices which were being paid for similar land near Dublin. There was no element of speculation whatever. This is an increase in price of over 5,000% between 1938 and 1971.

B. In October, 1964, 60 acres of land in Castleknock, County Dublin were sold for £67,000. In March, 1965, the purchaser sold them to a finance company for £160,000 and so made a profit of about 140% in a few months. Planning permission to develop the lands was granted to the finance company on the 6th September, 1968.

C. In September, 1964, an agent for an undisclosed principal signed a contract to buy 46 acres of land in the Rathfarnham district of Dublin, which were liable to an annual rent of £30, for £95,000. On the 31st March, 1965, the purchaser (S. Ltd.), which had been a dormant company the shares in which had been acquired for the transaction, entered into an agreement with another company (A. Ltd.) by which they agreed to grant leases to the nominees of A. Ltd., and A. Ltd., who were to do all the development and building, agreed to pay £229,000 for the benefit of this agreement. In April, 1965, the original vendors transferred the land to S. Ltd. In December, 1966, a successful application for planning permission to develop the land was made by S. Ltd. On the 28th February, 1967, S. Ltd. passed a resolution for voluntary liquidation and on the 4th April, 1967, they sold their interest as landlords under the agreement of March, 1965, to another company (L. Ltd.) for £62,500. Those who were fortunate enough to be shareholders in S. Ltd. realised a profit of £196,500 (over 200%) within three years. Moreover, some of those who were shareholders in A. Ltd. were also shareholders in S. Ltd. This case illustrates the legal sophistication which is a feature of many recent dealings in land suitable for building. The lands were transferred by S. Ltd. to A. Ltd. so that S. Ltd. could be put into liquidation and the proceeds distributed not as a dividend, which would have been liable to income tax and sur-tax, but as a distribution in a winding-up which is a capital payment and so not liable to tax.

D. On the 14th December, 1964, R. agreed to sell 15 acres of land suitable for building in County Dublin to A. for £11,264. On the 21st January, 1965, K. lodged an application for planning permission to develop the land but subsequently withdrew it. On the 15th March, 1965, the 15 acres were, on the request of A. and K., transferred by R. to N. Ltd. which was a company incorporated in the State in 1961 but which had never traded and whose issued shares had in 1965 been acquired by K. and others. K. lodged another application for planning permission and apparently felt that it would be granted because on the 31st March, 1965, he contracted to pay £50,000 (which was subsequently paid) for a licence to enter on the land and to develop it and N. Ltd. agreed to grant leases to purchasers of houses to be built on the land. Planning permission for the development was granted on the 7th April, 1965. On the 14th April, 1965, K. incorporated a company called T. Ltd. and on the 1st August, 1965, N. Ltd. sold the 15 acres of land to T. Ltd. for £60,000 subject to the licence. On the 20th August, 1966, N. Ltd., which had made a profit of £48,736 (over 400%) in two years on the transaction, passed a resolution for voluntary liquidation. The purpose of these complicated inter-company transactions was to ensure that the profit would not be liable to tax.

E. On the 23rd November, 1966, F. gave an option to P. Ltd. to buy 88 acres of land at Balally, County Dublin. The price of

the option was £5 per acre and P. Ltd. agreed to pay the market price of the land prevailing at the time when they exercised the option. On the 18th August, 1967, F. agreed to sell the same land to G. for £150,000 and G. subsequently bought the option from P. Ltd. for £35,000. The price to G. was therefore £2,100 an acre.

F. In March, 1968, M. agreed to sell 280 acres of agricultural land at Clondalkin, County Dublin to D. Limited for £200,000. M. then refused to complete the sale and a law suit to compel him to do so was begun. The case was eventually settled on terms that D. Ltd. agreed to pay an additional £22,000 for the lands. The total purchase price was thus £222,000 which was equivalent to about £790 an acre. On the 30th August, 1968, the Dublin County Council made a compulsory purchase order in respect of 232 acres of the land which was confirmed by the Minister for Local Government on the 27th November, 1969. The sale by M. to D. Ltd. had been completed on the 31st January, 1969. In subsequent negotiations the Council made an effort to compromise the claim for compensation by D. Ltd. by proposing to buy 150 acres of the land at a price of £1,200 per acre and undertook, if this offer was accepted, to provide services for the remaining lands which D. Ltd. wished to develop. This proposal was refused. As the parties could not agree on a price for the lands which the Council wanted to acquire, the matter was referred to the Official Arbitrator appointed under the Acquisition of Lands (Assessment of Compensation) Act, 1919 (which we propose to refer to throughout this Report as "the Act of 1919"). No services had been provided for any of the land in 1968 or at the date when the Official Arbitrator made his award but it was probable that these would be available in 1971. The Council's argument was that the lands should be valued as agricultural land on the 16th April, 1970 (the date when the notice to treat was served and which is the relevant one for the assessment of compensation), while D. Ltd. contended that the price which the lands would realise if sold on the open market by a willing seller as potential building land was what the Arbitrator had to assess. The arbitration was held on the 25th February, 1971, and the Official Arbitrator made his award in the form of a case stated for the High Court on the 25th March, 1971. He accepted the argument put forward by D. Ltd. and awarded £450,000 (equivalent to £1,940 an acre) compensation. He stated that if he had accepted the Council's contentions, he would have awarded £150,000 (equivalent to £647 an acre). On the 16th July, 1971, the High Court decided that the Official Arbitrator's decision to award £450,000 was correct and this judgment was affirmed by the Supreme Court in July, 1972. D. Ltd. thus got a gross profit of £228,000 on their purchase. The case is of great illustrative value because it shows not only the amount of the profits which can be made by a judicious purchase of land but also how the development potential increases the price of land, which is used for agriculture,

only when it is near a city. The effect of the award was that the price put on the development possibilities of the 232 acres was £300,000 (£1,293 × 232). This element, which exists in the case of all potential building land, is what attracts the speculator and if the profit escapes taxation (as it sometimes does), the prizes become very alluring.

G. In 1963, lands in Ballyfermot Upper were sold by A. to B. at a price equivalent to £195 an acre. In 1964, B. sold them to C. & Co. Ltd. at £258 an acre and in September, 1970, C. & Co. Ltd. sold them to M. Ltd. at £6,480 an acre.

H. In 1971, about 60 acres for which all the services had been provided at Templeogue, County Dublin were sold to a building firm for £420,000. In 1972, an adjoining area of 7½ acres was sold for £75,000. The average price for the total holding was £7,300 an acre.

I. In 1971, 2 acres of potential building land in County Galway were sold for £20,000.

J. In 1951, a plot of land containing 1 acre and 2 roods and a field containing 2 roods in Athlone were bought for £650. In 1972, when all the services had been provided, they were sold for £11,000.

K. In 1972, a piece of land containing 1 acre and 2 roods in the City of Galway which did not have any buildings on it and which had all the services available was sold for £11,310.

L. In 1972, 20·692 acres of developed land with outline planning permission in Bray, County Wicklow were sold for £121,000 (£6,000 an acre).

M. In 1972, a finance company agreed to pay £70,000 for 6 acres of land at Finglas in the City of Dublin for which planning permission had been granted. This was £11,666 an acre.

N. The Urban District Council of Bray wished to acquire lands at Old Conna which were within the urban district. In 1968, the Town Clerk made a verbal agreement with the owner of 30 acres of land in Old Conna for the sale to the Council of these lands at a price of £1,550 per acre. The owner did not sign a written agreement and refused to complete the sale. The Council were advised that they had little chance of success in an action to enforce the agreement. So they made a compulsory purchase order in respect of the lands and this was confirmed by the Minister for Local Government on the 21st May, 1971. As the parties could not reach agreement on the amount of the compensation, it had to be assessed by the Official Arbitrator, who on the 9th December, 1972, awarded £130,000 (£4,333 an acre). This figure did not include anything for compensation for severance or for what is quaintly called "injurious affection"

and claims for these items are still pending. Thus the price of the lands increased between 1968 and 1972 from £1,500 an acre to £4,333 an acre, an increase of almost 180%. The award was reasonable having regard to other prices paid for land in the urban district.

O. The Corporation of Galway wished to acquire one acre of land in the City of Galway for development for recreational purposes. The one acre was part of a larger holding and so the owner claimed that he was entitled to be paid compensation for severance and for injurious affection in addition to the price. Agreement as to the compensation could not be reached and the assessment of it was referred to the Official Arbitrator. On the 25th May, 1972, he decided that the compensation payable was £14,260. This amount consisted of £7,030 as compensation for the lands and £7,230 as compensation for severance and for injurious affection.

P. In 1969, the Dublin County Council required lands at Swords for housing and schools. In May, 1969, B., the owner of 35 acres, verbally agreed to sell them to the County Council at a price of £1,775 per acre. The County Council was at this time taking the preliminary steps to make a compulsory purchase order for a larger area in Swords which included B.'s lands. The compulsory purchase order was made by the Council on the 15th July, 1969, and was advertised in the newspapers. In August, 1969, B. and his auctioneers were informed that it had been made. In October, 1970, B.'s auctioneers informed the Council that the lands had been sold and that any further enquiries in relation to them should be addressed to H., a solicitor. The County Solicitor immediately notified H. that the lands concerned were included in a compulsory purchase order and that B. had agreed to sell them to the Council for £1,775 an acre. B. transferred the 35 acres to I. B. Limited in October, 1970, for £55,000. I. B. Limited was not a building or development company. In December, 1970, two months after I. B. Limited had purchased the lands for £55,000, they sold them to the M. Investment Company Ltd., for £111,167. The compulsory purchase order was confirmed by the Minister on the 13th January, 1971.

As there was no contract in writing by B. to sell the lands to the County Council at £1,775 an acre, he could not be compelled to transfer the lands to the Council at this price. Agreement as to the price to be paid by the Council could not be reached and when a notice to treat had been served, the assessment of compensation became a matter for the Official Arbitrator. The M. Investment Company Ltd. claimed that the compensation should be £285,140, which was equivalent to £8,150 an acre. The County Council argued that the compensation should be assessed at £1,775 an acre, the price which B. had verbally agreed to accept, and that as I. B. Ltd. and the M. Investment Company Ltd. knew of the compulsory pur-

chase order when they bought the lands, the prices paid subsequently should be ignored. On the 17th July, 1972, the Official Arbitrator awarded £172,000 for the 35 acres: this was equivalent to £4,900 an acre. I. B. Ltd. thus made a gross profit of £56,167 and the M. Investment Company Ltd. one of £60,833. If B. had completed the sale at the price which he verbally agreed to accept, the price to the County Council would have been £62,125: they had ultimately to pay £172,000. The difference appears to represent a speculative profit.

10. These large increases in the prices of serviced and potential building land would not have taken place if the services (water, sewerage and drainage) had not been or were not intended to be provided by the local authority. If these were not available or were not likely to be provided in the near future, the price of the land would have been that for agricultural land. Therefore, the provision of the services by the local authority is largely responsible for the difference in price between agricultural land and serviced and potential building land and so, it is said, the community which provided the services has a legitimate claim to all the profit.

11. The increase in price caused by local authority works is usually referred to as "betterment", a subject which we discuss in detail in Chapter III. In Chapter IV we discuss some of the legislative attempts which have been made here and in other countries to secure some of this enhanced price or betterment for the community. Before we deal with these matters we think that we should give a description and analysis of the causes of the upward trend in land prices in recent years so that a conclusion can be reached as to whether this will continue.

CHAPTER II

THE CAUSES OF THE INCREASE IN THE PRICE OF LAND

12. Chapter I has shown that there has been a sharp increase in land prices during the past decade. Since the amount of land available is, for all practical purposes, fixed, the influences on prices must stem predominantly from the demand side. One demand factor of importance is population. An increasing population will require more land both to supply an increased amount of food and raw materials and to cater for extra housing and other needs. Between 1956 and 1961 the average annual net emigration was 42,400, between 1961 and 1966 it was 16,121 while between 1966 and 1971 it was 10,781. In contrast to the population decline of the 1950's there was a significant rise in population during the past decade (from 2,818,000 to 2,978,000). As this was the first sustained increase for more than a century it marked an important turning point and is a basic factor in our inquiry.

This increase in the size of the population was accompanied by other changes which are also of significance. The proportion of the population living in cities and towns has continued to increase rapidly. The 1971 Census shows that in 1961 the aggregate city and town population was 1,299,000 and that in 1971 it had risen to 1,556,000. This latter figure was 52·2% of the total population and is to be compared with 35·5% in 1936. Another influence has been the increase in the household-forming age group of the population and in the proportion of married persons in that group. The marriage rate has risen since 1957 from 5·1 per 1,000 of the population in that year to 7·3 per 1,000 in 1969. The decline in emigration has resulted in large increases in the numbers of those in the principal marrying age groups (persons between 20 and 39).

13. For housing purposes the most relevant demographic figure is the number of married couples living in the State. Between 1951 and 1961 the increase in this number was about 4,500 which was an average annual increase of 450. Between 1961 and 1966 the average annual increase was 4,400, a rate almost 900% greater than that in the previous decade. This has produced a totally new situation in relation to housing needs.

14. A growing population with increasing numbers of married couples concentrating in urban areas provides a strong potential source of upward pressure on land prices in these areas. Whether or not this potential price rise takes place will depend primarily on a second major factor, income levels. The relevance of these is that while an impoverished population may desire to have more land or buildings, its ability to pay for them will be very limited. In contrast, an affluent community will be able to afford better accommodation

and will if necessary pay higher prices for houses and land. In comparison with earlier years, incomes grew rapidly during the past decade. In 1961 gross national product was £727 million (£258 per head) while in 1971 it had risen to £1,922 million (£645 per head). Much of this income increase represented a general price inflation, but even when allowance is made for this, there has been an increase of 38% in real income per head.

15. It is the combination of an increasing population and rising incomes which provides the basic mechanism for the continuing upward trend in the price of land for development purposes. Other factors can operate to accelerate or slow-down the pace of such price increases but it is unlikely that they can arrest it completely.

16. The presence of inflation, especially if it is accompanied by ample credit facilities, is an example of a factor which will serve to accelerate the upward price trend of houses and land. Because land prices may be expected to move upwards with other prices and because inflation greatly diminishes the real burden of interest charges on borrowed funds, investors and speculators will be attracted to land as an appreciating asset which can be acquired and held at little risk and cost. Public authorities may themselves contribute to this process. In 1967 a special allocation of £3 million was made to the Dublin Corporation to enable them to purchase land in advance for letting or resale to small builders. Whatever the long term effects of this may be, its immediate short term consequence was to add to the upward pressure of demand for land in the Dublin area.

17. Changes in technology or in the extent to which it is applied are a factor which can influence land prices in either an upward or downward direction. For example, improved production methods may mean that less land is required for the production of food and raw materials, and hence an increase occurs in the amount of land which can be made available for development purposes. Similarly, improved building techniques, which permit the construction of high-rise buildings, reduce the amount of land required for urban development. Again, improved transport facilities which give better access to outlying locations are an example of how the initial pressure of demand for space in one area may be eased by diverting it to new locations.

18. The actions of public authorities are a further factor which may influence the trend in land prices. We do not propose to discuss all the ways in which this may happen: two of the more immediately relevant examples, planning legislation and the rate at which serviced land is made available, illustrate the point. The introduction of major planning legislation such as the Local Government (Planning and Development) Act, 1963 (which we propose to refer to throughout this Report as "the Planning Act, 1963") tends initially to add to the upward pressure on land prices. While such legislation is necessary to secure orderly development and, hence,

ultimately greatly benefits the community, its initial impact is to cause delays (while planning requirements are satisfied) and uncertainties (because of the lack of knowledge among the public as to the precise way in which the legislation will operate). These delays and uncertainties, by slowing down the rate at which land suitable for development becomes available in the early phase of new legislation, tend to push up prices for the sites which are available. Delays in the servicing of land will add to the pressure on prices by creating temporary or local shortages of sites suitable for development. Submissions made to us have, for example, contended that one of the main causes of the sharp rise in land prices in the Dublin and other urban areas during the past decade was a scarcity of serviced land. From the information available to us it appears that there is substance in that view.

19. These demand pressures on land are vividly illustrated by the number of dwelling units which have been provided. During the period from 1950 until 1962, about 6,000 dwelling units a year were provided by private builders and public authorities while in the year to 31st March, 1972, 15,921 were built. The longer term view is that between 1st April, 1960 and 31st March, 1972, 127,000 housing units were built and 110,000 were reconstructed. The total number of housing units in the State is now about 730,000 and of these, about 355,000 have been built since 1922. 194,000 of these 355,000 have been built by private builders for sale and 161,000 have been provided by local authorities.

20. While a scarcity of serviced sites accelerates price rises, we do not believe that the ample provision of serviced land would of itself halt the upward trend of land prices. Demand for building land comes from the volume of potential development and the price paid for such land will reflect, and in turn be reflected in the prices paid for the houses, factories, offices or other buildings erected on it. As population and incomes rise, the initial tendency is for the prices of existing buildings to be bid up. As this demand pressure mounts, the development of "green field" sites and the redevelopment of existing urban sites becomes more profitable. This stimulus to new building in turn means greater interest in, and competition for, available land. In such a situation of strong demand, servicing increased quantities of land will help to moderate the pressure on land prices, because it will provide developers with a wider choice of locations, but there is no reason to expect that it will completely halt the upward trend. The basic mechanism of rising demand and prices for *existing* buildings will continue to stimulate new building and hence maintain a buoyant demand for land.

21. The demand pressures outlined above have been further added to in practice by the purchase by a number of large firms in the building industry of blocks of unserviced land near cities. In or near Dublin they have acquired about 4,000 acres which they will presumably hold until services are provided. These lands should meet their requirements for many years to come. Whatever the longer

term benefits to the firms concerned may be, this process of advance acquisition intensifies demand and price rises in the short run.

22. A further factor which may serve to raise land prices occurs in cases in which the price of land compulsorily acquired by a local authority is determined by official arbitration. Under the Act of 1919 the Official Arbitrator must determine the price as being that which the land would make if sold on the open market by a willing seller to a purchaser who is prepared to pay for its building potential. There is inherent in this system the likelihood of over-valuation. This tendency results from the fact that part of the compensation to the owner consists of an award for the potential development value of the land. This potential development value is necessarily speculative because no one knows the precise form which future developments will take, and so each owner claims that his land should be valued on the most favourable basis. Since the probability of development is not capable of precise arithmetical calculation, arbitrators find themselves faced with a range of estimates and tend to assess compensation on a basis which, in the interests of fairness, favours owners. Hence the official arbitration system under which the rules for the assessment of compensation in the Acts of 1919 and 1963 must be applied tends to inflate land prices.

23. Paragraphs 12 to 22 are in outline a description of the causes of rising land prices: an upward trend in demand caused by increasing population and rising incomes on which a number of other influences such as inflation, technological changes, public authority activities, the legal system and speculation are superimposed. All these may operate to cause fluctuations in land prices.

24. The next question is whether building land prices will remain stable in the future or whether they will rise or fall. We believe that many of the causes which produced the upward trend of the past decade will continue. Our view is that if the present free market system of determining price is allowed to continue, the price of building land will continue to move in an upward direction. The actual pace of such an upward trend can be greatly moderated by appropriate action. For example, a reduction in the rate of inflation would be a moderating influence on land prices. An increased supply of serviced land would also make a contribution towards achieving this result. This, however, would require an increased expenditure on such services which could be only at the expense of other forms of public expenditure. In this connection we agree generally with the conclusions of the National Industrial Economic Council in their Report on Physical Planning. They referred to the scarcity of serviced sites, particularly in Dublin, and continued: "Until now, there has been no overall target for the size of Dublin or for major developments within the Dublin area. Growth has been largely spontaneous and allowed to proceed at its own pace. This has meant there has been no clear target for infrastructural requirements. And since the provision of the basic services—especially water and sewerage—generally cannot be

expanded gradually (this can only be done in terms of relatively large schemes), it has been inevitable that provision and requirements would get out of phase with each other. . . . In addition, in our opinion, too large a proportion of the funds made available in the past for building and construction within the public capital programme was devoted to current housing in Dublin and other cities, and not enough to the provision of the water and sewerage which would make possible the provision of more houses, factory buildings, etc. at a later stage. In this sense the composition of the public capital provision may have been defective. It is not difficult to understand why this could happen. The pressures for more houses were strong and urgent and it is not, therefore, surprising that as much resources as possible were devoted to building houses. In circumstances of financial stringency—such as during 1965-66—the bulk of restrictions tended to fall less heavily on house building than on the provision of water, sewerage and other services. This happened because it was in the short-term less unpalatable to cut or delay such work than to cut house-building or spread house completions over a longer period. Moreover, the long-term costs of reducing allocations for the basic services tend to be underestimated or forgotten. . . . Whatever the reason, the result was that the mix of output as between building houses now and providing the basic services now which would lay the basis for houses and other buildings in future was not optimal. The consequences can now be seen in the present deficiency in infrastructure, especially in Dublin."

25. Since the publication of that report there has been increased provision of schemes for sanitary services. In the Dublin area, for example, six minor schemes had been completed by 1970. Other major schemes are now being carried out and their completion within the next few years should provide an adequate supply of serviced land to meet demands in Dublin up to the mid 1980's. Schemes to increase the supply of serviced land are in progress in other cities and towns where substantial growth in population is anticipated.

26. We do not propose to discuss the controversial question whether the price of land or high wage costs or unduly large profits are the main cause of the high prices which are being asked for new houses. Those connected with the building industry maintain that the price of land is the main cause, while others make charges of excessive profits. The high cost of land has certainly contributed to the increase in the price of new houses. Those who blame the high price of land for the increases in the prices of building cannot logically object to our proposals which will, we believe, stabilise the price of land suitable for building if the local authorities make an intelligent and energetic use of the new powers which we think should be conferred on them.

CHAPTER III

BETTERMENT

27. When a local authority carries out a scheme for sanitary services or builds a road or does other improvements, the land which benefits from these will get a higher price when sold. This increase in price is called " betterment ", an ambiguous term because it is sometimes used to describe the increase in the price caused by the works, sometimes to describe the increase in price brought about by all economic and social forces including planning schemes and sometimes to describe the part of the increase which ought to be recoverable from the owner. The right of the community to share in this increase in price has been considered by many commissions in Britain during the past eighty five years. Despite the reports and the many legislative attempts to find a practical way in which some part of it could be recovered for the benefit of the community, betterment, in the sense of the increase in price caused by local authority works, still benefits only the owners of the property which is improved by the works. One legislative attempt was made in the State to recover part of betterment for the community but no claim had ever been made under it when it was repealed in 1963.

28. Originally the concept of betterment was confined to a distinct and direct advantage from an improvement carried out by a local authority. The Royal Commission on the Housing of the Working Classes, in their first Report presented in 1885, defined betterment as " the principle that rates should be levied in a higher measure upon the property which derives a distinct and direct advantage from an improvement, instead of upon the community generally, who have only the advantage of the general amelioration in the health of the district ". The suggestion was that a higher rate should be levied upon the property which had got the advantage of works carried out by the community. In 1894 a Select Committee of the House of Lords on Town Improvements (Betterment) defined the principle as " that persons whose property has clearly been increased in market value by an improvement effected by local authorities should specially contribute to the cost of the improvement ". The Scott Committee dealt with the subject in their second Report in 1918[1] and recommended that " as a general principle where the State or a local authority by a particular improvement has increased the value of neighbouring land, the State or local authority should be entitled to participate in such increased value," so that part of the enhanced value would go in redemption of the cost of public improvements.

1. The Scott Committee presented three reports: Cd. 8998 and 9229 (1918) and Cmd. 156 (1919).

29. A planning scheme affects the price of all land near cities and towns because improvements are carried out under it or because, without any expenditure, it prevents the development of land which would otherwise have been used and so increases the price of other land or because it imposes conditions relating to density of building. Therefore, one effect of the acceptance of the idea of imposed town planning was to widen the concept of betterment to include increases in price caused by planning schemes. This widening of the concept was reflected in Section 58 (3) of the Housing and Town Planning Act, 1909 (which did not apply to Ireland) which provided for the recovery of betterment in cases where any property was increased in value by the making of a town planning scheme. Nothing was ever recovered under this section.

30. In Ireland, Section 72 of the Town and Regional Planning Act, 1934, provided that whatever the value of any property was increased by the coming into operation or enforcement of any provision in a planning scheme or by the execution of any work by a planning authority under the scheme, every person having any estate or interest in the property became liable to the local authority for a payment for betterment of three-fourths of the amount by which the value of the estate or interest of the person in the property was so increased. Sections 73, 74 and 75 contained very elaborate provisions for the recovery of this. These sections extended the concept of betterment in Ireland to an increase in the value of property caused by the operation or enforcement of any provision in a planning scheme.

31. The experience with these sections in the 1934 Act gives a lesson about all previous legislation on this matter which it would be folly to ignore and which is corroborated by the melancholy history of similar legislation in Britain. The ideas which inspired the sections in the 1934 Act were admirable but as no planning scheme under the Act ever came into operation, no collection in respect of betterment was ever made. When the Act of 1934 was repealed by the Planning Act, 1963, no similar provisions appeared in it.

32. The Uthwatt Committee which made its final report in 1942[2] pointed out that while betterment was not specifically defined in any general Act " it may now be taken, in its technical sense, to mean any increase in the value of land (including the buildings thereon) arising from central or local government action whether positive, e.g. by the execution of public works or improvements or negative, e.g. by the imposition of restrictions on other land ". We have mentioned in paragraph 27 that betterment is an ambiguous term. Sometimes it is used to describe the increase in the price of land caused by works carried out by a local authority, sometimes to describe the increase by all causes and sometimes to describe the part of the increase which ought to be recoverable from the owner. Because it is impossible to distinguish the part of

2. The Uthwatt Committee made an interim report in 1941: Cmd. 6291 of 1941. Its final report was Cmd. 6386 of 1942.

the increase in price caused by works carried out by a local authority from that caused by general economic and social influences, any legislation to recover anything in respect of betterment, when used in the first or narrow sense, is certain to fail. A development levy or charge, if it is to be effective, would therefore have to be assessed on the difference between the price realised on sale or development and a base value; the levy or charge would then be a percentage of the difference. The base value is easily determined when there has been a sale contemporaneous with the date on which the base value is to be fixed but when there has not been, its ascertainment would be extremely difficult. It would also be necessary to exempt some transactions from it and the legislation would necessarily be complex. The assessment and collection of a development levy or charge would make a new, large administration organisation necessary and would lead to much litigation. Most of the amount paid in respect of the levy or charge would ultimately be passed on to the purchaser and the effect of it would be to strengthen the forces which are increasing the price of land. Even if the proceeds of the levy or charge were paid to local authorities to help them with their housing programmes, the administrative costs of collecting it would be so large that the net amount which they would receive would be small.

33. The views expressed in paragraph 32 are supported by the history of legislation and the reports of committees in Britain which have dealt with this topic. As there is some similarity between our legal and administrative framework and that in Britain, we propose now to outline that history and the main conclusions of expert committees which have dealt with the matters within our terms of reference.

CHAPTER IV

LEGISLATION AND REPORTS IN BRITAIN

34. Many of the suggested " solutions " to the problem of increasing land prices have been tried in Britain and the history of their experience with many of the suggested changes in the law is of considerable assistance. We wish to emphasise that many of the changes suggested to us, while attractive in general principle, involve such complicated legislative and administrative detail that they are unworkable. What follows is an outline of the British legislation which is extremely complex. The Town & Country Planning Act, 1947, contains 120 sections and 11 schedules and was amended in 1951, 1953, 1954 and 1959. All the legislation on the matter was then consolidated in the Town & County Planning Act, 1962, and this was drastically amended in 1968. All the legislation was again consolidated in 1971.

35. The first attempt to tax the increase in the value of land was made in the celebrated Finance (1909-10) Act, 1910. This was a duty of £1 for each £5 of increment value (it was therefore called " increment value duty ") and was payable (a) on any sale of any interest in land or on the grant of any lease for a period of more than 14 years, (b) on the death of any person when the land was liable to death duties and (c) in the case of land held by a corporate or unincorporated body so that death duties were not payable, in 1914 and in every subsequent fifth year. It was payable on all increment value accruing after the 30th April, 1909. Increment value was defined as the amount by which the site value of the land on the occasion on which increment value duty was to be collected exceeded the original site value of the land ascertained in accordance with the provisions of the Act of 1910. All the provisions of the Act which dealt with this topic were immensely complicated. A valuation of all land in the country and four different values of each parcel of land had to be made for the purpose of the assessment of the duty. From the beginning it was clear that the entire scheme was too complex for the public service as it was then organised and a number of legal decisions made it completely unworkable. The increment value duty was repealed in 1920 but the obligation to get the stamp showing that particulars for its assessment had been delivered was retained in Ireland.

36. A number of schemes for the recovery by local authorities of some part of the increase in the price of land caused by betterment were submitted to the Commission on the Distribution of Industrial Population (" The Barlow Commission ") which recommended[1] that

1. Cmd. 6153 of 1940.

an expert committee should be appointed to consider compensation, betterment and development. Such a committee was established in January, 1941, under the chairmanship of Mr. Justice Uthwatt. Its terms of reference were to " make an objective analysis on the subject of the payment of compensation and recovery of betterment in respect of public control of the use of land; 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 and in this connection 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 land to be acquired for the public on an equitable basis ".

37. The report of the Uthwatt Committee includes a masterly examination of the subject of betterment. They dealt with the methods, some of which had been used and some others which had been suggested, for the recovery of betterment for the community.

38. One of the suggestions which they considered was giving local authorities the right to acquire compulsorily land which had been or would be improved by local authority works at a price determined by reference to its use value before the works were carried out. Compensation assessed on this basis would not therefore include anything for the development potential which the works carried out by the local authority have created. In this way the increase in price caused by local authority works would accrue to the local authority which would get the benefit of it by selling the lands at their full market price or by letting them at the economic rent. This method is usually called recoupment because the local authority are recouped for some part of the gross cost of the work which they have carried out by the profit which they make on the sale or letting. Recoupment as a principle had not been adopted at all in Ireland and in Britain, when the Uthwatt Committee reported; it had been restricted to cases where roads, streets and bridges had been constructed or widened. In Ireland our laws about compulsory acquisition were, until 1946, based on the assumption that the only property which a local authority should be authorised to acquire compulsorily was that needed immediately for the works which they wished to do. By the Local Government Act, 1946 a power conferred on a local authority to acquire land for a particular purpose was to be deemed to include a power to acquire land which the local authority did not require immediately for that purpose but which in their opinion they would require for that purpose in the future. The members of the Scott Committee were opposed to the adoption of the principle of recoupment because they thought it undesirable that local authorities should be encouraged to engage in what they called " land speculation ". They thought that betterment could be recovered by direct charge and that acceptance of the principle of recoupment was unnecessary. This assumption that betterment could be recovered by direct charge does not appear to have been borne out by subsequent experience: schemes for the recovery of betterment by direct charge or levy appear to have failed.

39. The Scott Committee reported in 1919. The change in view between that date and 1942 is shown by the recommendation of the Uthwatt Committee: "In our view purchase for recoupment is a sound principle and the most effective of the existing methods by which a public authority may secure increases in value of property which their activities have created".

40. The principal recommendations of the Uthwatt Committee were that the development rights in all land outside built-up areas should, on payment of fair compensation, become vested in the State and that there should be a prohibition against development of such land without the consent of a Central Planning Authority. The undeveloped land, deprived of its right of development, was to remain the property of its owners who could use it as they wished but they could not develop it. When lands were required for public purposes or for approved private development, the owner's interest would be purchased by the Central Planning Authority under compulsory powers and as the development value would already have been paid for, the price was to be fixed on the basis that the development potential was to be ignored. The result of this, the Committee thought, would be that the Central Planning Authority would be able to purchase land outside built-up areas at the existing use value. The Committee regarded this as one of their most important recommendations; in their view the high price which local authorities had to pay for land was the main reason why many desirable development works were not carried out. When land was required for private development, it would be acquired by the Central Planning Authority and then leased (and not sold) to the developer for a term of years at the full market rent. The Committee recommended that in the case of developed land, there should be a valuation of the annual site value made each five years (when the valuations for rating purposes are revised in England) and that an annual levy should be made on the amount by which the new annual site value exceeded the original one assessed when the first annual site value was ascertained. This recommendation for an annual levy was not adopted by the British Government.

41. The recommendation that all development rights in undeveloped land should vest in the State was accepted by the Government but was "improved" (the fate of the recommendations of many expert committees) by extending it to all land, developed and undeveloped, by the Town and Country Planning Act, 1947. This Act, which introduced a new planning code, had, as its basis in principle, the concept that an owner of land had no right to develop it or to change its use and so all development rights were nationalised. The Act set up a Central Land Board which was to levy development charges. The development rights in all land in Britain were valued at £300 million which was to be distributed among the owners of the rights and a development charge of 100% on the increase in the value of the land caused by the grant of planning permission become payable when the land was developed. The Central Land Board could also compulsorily acquire land for resale

and so compel the owner to part with his land for permitted development at existing use prices. The power of the Central Land Board to acquire land compulsorily for the purpose of resale for development was discussed and its existence affirmed in three Courts (The High Court, the Court of Appeal and the House of Lords) in *the Earl of Fitzwilliam Wentworth Estates Co. v the Minister for Housing and Local Government* (1952) A.C. 32. A new basis of compensation for compulsory acquisition was established under which the land was to be valued on the basis that planning permission for most forms of development would be refused. Compensation for compulsory acquisition was thus to be assessed on the "existing use" principle and development potential was to be ignored.

42. The system of development charges created by the Act of 1947 was very attractive in principle but did not work well. If land had a value of £1,000 on the basis of its existing use and £5,000 when considered as building land, the owner should have been willing to accept £1,000 for it and to look to the £300 million fund for the remaining £4,000. The purchaser faced with the development charge of £4,000 should have been unwilling to pay more than £1,000 for the land. In practice however, because land owners were unwilling to sell their land at existing use value, the lands were sold for a price greatly in excess of £1,000 and the purchaser then had to increase the price of the buildings to recover the development charge and the price which he had paid for the land. One of the effects of the Act was thus to increase the price of buildings. The British experience establishes that development charges and betterment levies are invariably passed on to the purchasers who have to pay them in the form of increased prices. Also, the assessment of the amount on which the development charge was to be levied created considerable difficulties as there were and always will be differences of expert opinion as to valuations and there was no appeal from the official assessment.

43. The system of development charges met with such widespread opposition and resulted in such large increases in the prices of new buildings that it was ended by the Town and Country Planning Act, 1953, which also suspended the distribution of the £300 million fund. There has been much inconclusive discussion as to whether the cause of the failure of this ambitious scheme was that the development charge of 100% was too high or that the scheme was defective in principle. It is significant that no attempt has been made to revive development charges in their original form since they were repealed in 1953.

44. Between 1953 and 1959 there were two systems in Britain for determining the price of undeveloped land. On a sale to a private person, the owner got the full market value while on a compulsory acquisition, a public authority could pay only the existing use value plus the 1947 development value. The Town and Country Planning

Act, 1959, abolished the dual system and provided for the payment of the full market value in all cases.

45. In 1962 a short term capital gains tax was introduced in Britain. In 1965 a general capital gains tax was brought in and the two were merged with effect from 1971-72. In addition the Land Commission Act, 1967, introduced a betterment levy payable when development value was realised on the sale or development of land. This levy which was at the rate of 40% was payable on the difference between the market value (M V) and the base value (B V) and the difference, which was known as net development value (N D V), was liable to the levy. B V was 110% of the current use value so small profits made on the sale of houses did not attract the levy. The gains tax was linked to the betterment levy so that gains tax paid was a permissible allowance against the levy. The Act also established a Land Commission which was to assess and collect the betterment levy and to buy land for resale. During its short period of operation the Land Commission bought only 2,200 acres of land and disposed of 318 of these for development. It was wound up in June, 1970, when betterment levy was abolished.

46. Paragraphs 41 to 44 of this Report are based on the legislation, on Heap's "An Outline of Planning Law" and on Megarry and Wade's "The Law of Real Property". The Committee thank the Hon. Mr. Justice Robert Megarry of the High Court in England for his prompt reply to a request for information.

47. The British legislation was again consolidated in the enormous Town and Country Planning Act, 1971, which has already been amended by the Town and Country Planning (Amendment) Act, 1972.

CHAPTER V

THE PURCHASE BY LOCAL AUTHORITIES OF LAND SUITABLE FOR BUILDING

48. One of the methods suggested for restraining the rise in the price of land has been the purchase by local authorities of a pool of land in anticipation of demand so that they could subsequently release some of what they had bought when the price of land became too high. When this happened, the local authority could then help to reduce the price by putting some of the land which they had bought on the market. This policy has been tried in the Dublin area in recent years where the increase in the price of land suitable for building had become very noticeable in 1966. One of the consequences of this increase was that builders without large capital resources could not purchase land. A number of voluntary associations and co-operatives had been formed to provide houses for their members and the increase in the price of land made it impossible for them to do this. Much of the land in the County of Dublin which would be suitable for building when services had been provided had already been purchased by the bigger building companies. If houses are not built by the private sector of the building industry, the demand on the local authorities to provide accommodation becomes more insistent. The City and County Manager, Mr. Macken, was concerned with the difficulties which the rising price of land was creating for small building firms and for the housing programmes of local authorities. The amount of capital available for housing is limited and if the price of land goes up, the number of houses which can be provided by local authorities must be less. In March, 1967, he wrote a report for the members of the City Council, County Council and of the Corporation of Dún Laoghaire in which he drew attention to the problems which the rise in the price of land was creating and to the necessity to take action to try to keep it down. His report included this passage:

> "The competition for land, even remotely available for development, has been so keen that even the public authorities (in cases where they have reached agreement for the purchase of land at high prices) find that builders and other speculators come in and offer a still higher price and in some cases have succeeded in prevailing upon the owner to sell to them rather than the local authorities. Even land for which drainage is not available at present has been purchased in the belief that when drainage becomes available the price of land will remain sufficiently high to ensure a profit to the speculator who believes that he will eventually obtain at public expense free main drainage and water facilities. These speculators feel that once they have bought the land at any price that that must be the

minimum price they will get for it. The result has been that the price of undeveloped land has been inflated entirely out of its real value and the local authorities have had to pay exorbitant prices, even for land for the housing of working classes ".

We think that this was and still is a correct assessment of the situation. He advocated that the three local authorities should co-operate in the purchase of land near the city, so that they could provide sites at low prices for the private building industry. His hope was that though they would have to pay relatively high prices, their ability to put land on the market when the price rose would tend to keep it down and would ultimately bring it to a level nearer to what he called " the real value ".

49. The three authorities decided to adopt this policy; a Government decision in 1967 that the Ministers for Finance and Local Government should consult with the Dublin Corporation as to whether it was possible to find a solution to the problem of the shortage of building sites in the Dublin area made it possible for the three authorities to carry out this policy. The discussions between the Ministers and the local authorities led to a decision by the Minister for Finance to make a special allocation of £3 million from the Local Loans Fund to the Dublin Corporation to be provided over a period of three years. This was to be applied in acquiring land which was to be made available to builders and, particularly, to small builders in order to increase the amount of medium priced housing and to reduce land costs. With this money the Dublin Corporation purchased 1,902 acres of potential building land at an average price of £1,604 an acre; this was in addition to that bought for municipal housing.

50. On 30th September, 1972, 1,747 fully serviced sites containing 191 acres had been allocated to small builders and co-operative building associations by the Dublin Corporation out of the 1,902 acres and 153 acres of land had been sold in blocks to eight larger firms. The Corporation have charged £1,300 for each fully serviced site or £1,100 when the purchaser is a local authority tenant or is on their approved housing list. When land has been disposed of in blocks, they have charged £4,500 an acre which includes £1,500 as a contribution towards the costs of bringing services to the boundaries of the lands.

51. Thus, 344 acres only out of the 1,902 purchased have been put on the market and of these, 3,080 houses have been built or are in course of construction. Of the remaining 1,558 acres about 760 have been zoned for housing, about 440 for industrial and other commercial purposes, about 260 for open spaces and about 98 for roads. The debt charges for the borrowing of the £3 million for the year which ended on 31st March, 1971, were £284,964 and the income from the sales and letting of the lands was less than the interest and development costs.

52. We think that the rate at which the Corporation have up to now put the lands bought by them on the market has been too slow to have had any significant effect on the price of serviced and potential building land. Land bought by the Corporation has been taken off the market and this has contributed to the scarcity. We think that the slow rate of disposal has been caused in part by the Corporation having bought land for which services could not be made available rapidly. The completion of the Dodder Valley drainage and other schemes should make it possible to speed up the rate at which sites will be disposed of to builders. The Corporation have informed us that they propose to release a further 500 acres of land for housing development before March, 1974. Another contributing cause to the slow rate of release was the decision to give preference to small building firms when allocations of land were being made. We think that this decision was an error and we strongly advocate that the Corporation should allocate sites for houses in the lower price ranges to all firms that apply for them. This view has been put forward to us by the Construction Industry Federation and we agree with it. We do not however accept their main argument which was that local authorities should not buy any land unless they require it for municipal housing.

53. The acquisition of land by local authorities for resale to builders or to the ultimate purchasers can help to stabilise the price of land or, at least, to prevent it rising very rapidly. It will have this effect however only when there is a rapid and efficient disposal of the lands purchased. If this does not happen, the result of acquisitions by the local authorities is a further disproportionate increase in the price of land suitable for building.

CHAPTER VI

SUGGESTED METHODS FOR DEALING WITH THE DISPROPORTIONATE INCREASE IN THE PRICE OF SERVICED AND POTENTIAL BUILDING LAND

54. What we have already written shows that any legislation introduced to deal with the matters in our terms of reference must have two aims, the reduction or, at least, the stabilisation of the price of serviced and potential building land and the acquisition by the community on fair terms of the betterment element which arises from the execution of works by local authorities. These aims do not necessarily coincide: legislation which provided for the acquisition of the betterment element by any form of levy or taxation will usually increase the price of all land.

55. We have considered many suggestions for achieving the two aims. We propose to state in outline what they are and then to deal in detail with each of them.

A. A scheme by which the price of all building land would be controlled.

B. Nationalisation of all building land and payment of compensation.

C. Nationalisation of the development rights in all building land and payment of compensation for these. The land when required for development would then be purchased by a Central Agency or a local authority at its existing use value.

D. A capital gains tax on profits arising from the disposal of land suitable for building.

E. A betterment levy on the difference between the price realised on the disposal of land after planning permission had been granted and the market price of it based on its existing use.

F. A scheme under which owners of land suitable for building would be obliged to offer it to the local authority in whose area it was before they sold or developed it. We propose to call this the " right of pre-emption ".

G. An amendment of the Planning Act, 1963 so that planning permission would be granted on the condition that the developer would pay to the local authority the total cost of the works which have or will have to be carried out by the latter and which facilitate the proposed development.

H. A high rate of stamp duty payable by the vendor on the transfer or lease of land suitable for building.

I. The imposition of a new tax levied annually at a progressive rate on the site value of lands suitable for building for which planning permission (including outline permission) had been granted. The site value would not be the present rateable valuation but a modern assessment of the letting value.

J. A scheme under which land would be zoned by the planning authority for different uses and the compensation paid to owners on compulsory acquisition would be related to the specified use.

K. A scheme under which pre-emption (suggestion F) would be combined with a special levy payable by the vendor on all sales of land in areas designated by the local authorities. We propose to refer to this as "the pre-emption and levy scheme".

L. A scheme under which lands which had been increased in price by local authority works and which are in areas designated by the High Court could be acquired by local authorities and the owners compensated by reference to the existing use value. We propose to refer to this as "the designated area scheme".

A. A system by which the price of all building land would be controlled.

56. We have been unable to find any workable system by which the price of all building land could be controlled. Price control can operate successfully only when applied to commodities which can be classified by reference to characteristics such as their composition, size or weight. But land cannot be classified because each acre has unique features which may affect the price. (How much is to be allowed for a view of the mountains?) Therefore any system of price control of land involves ultimately the fixing by an independent tribunal of a fair price or a market price for each piece of land involved. This would mean that an elaborate structure of tribunals would have to be established and this would be costly, cumbersome and slow. We therefore reject price control of land as such as a solution.

B. Nationalisation of all building land and payment of compensation.

57. This policy has been frequently advocated. Those who support it have never stated how building land is to be defined. In one sense, for example, all land in cities, towns and villages is building land because if the buildings are demolished, the land becomes suitable for building. If the proposal is intended to apply to all land with building potential, the identification of such land would be extremely difficult. If the proposal is that all building land should be nationalised, then a tribunal would have to be established to decide whether land was building land or not and how much should be paid for it. The amount of compensation which would be payable if all building land was nationalised would be enormous. Instant nationalisation of all building land would impose an immediate

financial and administrative burden which neither the State nor the local authorities could bear and it would seriously interfere with development. It is therefore not a solution.

C. Nationalisation of the development rights in all building land and payment of compensation for these. The land when required for development would then be purchased by a Central Agency or a local authority at its existing use value.

58. The scheme for the nationalisation of development rights is put forward in various forms. One idea is that the development rights in all land in the State should be nationalised on payment of compensation. Another is that the development rights in land outside the existing cities and towns should be nationalised. Each of these has the feature that the right to develop the lands would be vested in a State Agency or Central Planning Authority and that there would be a prohibition on all development without their consent. When the lands were developed, the Authority would collect a development charge or levy which would represent the difference between the value of the land with the benefit of the planning permission and its value before this was granted. This Authority could also acquire lands at their existing use value and lease them for development. Each of these schemes would involve payment of compensation to those whose rights were acquired. If the development rights for each piece of land in the State are to be valued, an elaborate administrative and semi-judicial organisation would be necessary. If, however, instead of this, an estimate of the value of the development rights of all the land in the State were to be made and a fund of this amount (which would be very large) to compensate the owners were established, the insoluble problem of fixing the value of the development rights in each piece of land would arise. We are convinced that neither of these proposals offers a workable solution to the problem of rising land prices. It is significant that nationalisation of all development rights in land outside built-up areas was suggested by the Uthwatt Committee and that the British Government extended this scheme to all land. The scheme was completely unworkable and the whole elaborate structure of compensation and development charges established by the Town and Country Planning Act, 1947, had to be abandoned. We feel certain that such a scheme would have the same fate here.

D. A special gains tax on profits arising from the disposal of land suitable for building.

59. It has been suggested that there should be a capital gains tax on profits arising from the disposal of land suitable for building. The question whether there should be a tax on capital gains generally is outside our terms of reference. It would, however, be difficult to justify the imposition of a tax on capital gains arising from dispositions of land suitable for building and the exemption of other capital profits from the tax. If the tax were confined to profits from such dispositions, the problem of defining the land whose disposal gives rise to the liability would arise. Is it to be levied

on land which may in the future be suitable for building? Who is to decide what land is suitable for building? A further substantial objection to this proposal is that it would not reduce the price of serviced and potential building land; it is highly probable that it would increase it and in our view, any proposal which we make must offer a reasonable prospect of reducing or, at least, stabilising the price of serviced and potential building land. There is the further objection to this proposal that methods of arranging the transactions so that the tax will not be paid will be discovered. The history of the 25% stamp duty imposed in 1947 on the purchase of land by persons who were not Irish citizens gives a vivid illustration of the difficulties of collecting such a tax. It is notorious that the proceeds of this stamp duty were small, that purchasers who were not citzens of Ireland were able to buy land without paying the 25% stamp duty and that each effort to prevent one way of avoidance usually led to complicated legislation which had then to be amended some years afterwards. The 25% stamp duty was ultimately abolished in 1965 and was replaced by a system under which the consent of the Land Commission to all sales of land outside cities and towns to persons who were not citizens of Ireland was necessary.

Prior to the Finance Act, 1965, a liability to tax on profits from dealing in land arose only when the taxpayer was carrying on the trade of dealing in land. Under the Finance Act, 1965, a wide-ranging charge to income tax was imposed on profits arising from dealings in or developments of land. This legislation aroused considerable opposition and was replaced with retrospective effect in 1968 by provisions which ensured that the charge to tax would be imposed on profits arising from disposals of land which, but for certain technical considerations, would have been regarded as trading transactions. The significant difference between the 1965 and the 1968 legislation was that the later Act confined the liability to tax on profits arising from the disposal of land to cases in which a business—in the ordinary sense of that word—of dealing in or developing land was being carried on.

E. A betterment levy on the difference between the price realised on the disposal of land after planning permission had been granted and the market price of it based on its existing use.

60. This is another form of special tax on the realised increase in the price of land caused by local authority works or by the grant of planning permission. As the levy would be assessed on the difference between the price which the lands would probably make if put on the market before the work was carried out or planning permission granted and that which they realised after the works had been carried out or the planning permission had been granted, it would be necessary to fix the base value of the land and this would make a new, elaborate administrative organisation necessary. We have already described in paragraph 45 the betterment levy system which was introduced in Britain in 1967 and which was repealed in 1970. This levy was payable when development value was realised on the disposal or other dealing in land. If the levy is

assessed on the owner of the land, he will increase the price which he demands and so the immediate effect of the levy will be to increase the price of serviced and potential building land. This will cause an increase in the price of all buildings on the land.

F. The right of pre-emption.

61. The underlying idea of this is that owners of land suitable for building who wish to sell or lease it would be compelled to offer it to the local authority in whose area it is before they could complete the sale or lease. This, it is said, would make it possible for each local authority to have a supply of land which they could put on the market when this was necessary to keep the price stable. It would have the additional advantage that it would make it possible for local authorities to acquire key areas without the delays inherent in the present compulsory acquisition system. It is also said that such a system would have the further advantage that it would reduce competitive pressures on the price of land.

An owner who intended to sell or lease lands suitable for building would be obliged to offer them to the local authority who could accept the offer within a specified time. If they did, the owner would be compelled to sell the lands to them at the market price determined by official arbitration. If they did not, the owner would be free to sell the lands on the open market within a limited period. If after the period had expired, the owner has not sold the lands but subsequently decided to do so, he would have to offer them again to the local authority. Such a system has been introduced in Denmark and we have examined the legislation there.

The right of pre-emption would have to be confined to land suitable for building and this necessarily involves a decision by some authority on the areas to which the system is to apply. One suggestion is that the local authority should have power to zone the lands required for urban expansion and that the obligation to offer lands should apply only to those so zoned. As the local authority would have to pay the full market price determined by arbitration for the lands which they decided to acquire, the owner would get the whole increase in price attributable to works carried out or to be carried out by the local authority. The main objection to this scheme is that it does nothing to secure for the community any of the increase in the price of land which is attributable to local authority works.

While a pre-emption scheme has some attractive features, it would not achieve either of the aims mentioned in paragraph 54.

G. An amendment of the Planning Act, 1963 so that planning permission would be granted on the condition that the developer would pay the local authority the total cost of the works which have or will have to be carried out in connection with the proposed development.

62. This proposal is that the Planning Act, 1963 should be amended so that the planning authority could refuse to give permission for development unless the owner or the developer agreed

to pay the entire cost of the local authority works necessary for the development. The apportionment of the cost of local authority works between all the owners who benefit from them would be extremely difficult and would lead to prolonged arbitrations and litigation. For example, a drainage scheme is not usually carried out in relation to land owned by one person but to serve an area where the lands belong to many owners. A further objection to this proposal is that the apportioned costs which the developer would have to bear would be passed on to the ultimate purchaser. The result would be that the land owner would get the enhanced price for his lands while the ultimate purchasers would have to pay for the local authority works. This would not reduce the price of the lands and would substantially increase the price of the buildings. It would not therefore achieve either of the aims we have mentioned.

The Royal Institute of Chartered Surveyors suggested in their submission that the present development contribution payable in certain areas under Section 26 of the Planning Act, 1963, as a condition of granting planning permission should be increased by introducing a two-part contribution. The first would be payable for connections to the existing services. The second would be applied in building up a fund to be devoted solely to the provision of further drainage facilities. All the evidence shows that the present development contribution is passed on to the ultimate purchaser and so increases the price of the buildings.

H. A high rate of stamp duty payable by the vendor on the transfer or lease of land suitable for building.

63. This duty would be payable by the vendor on the transfer or lease of lands suitable for building. Under the existing law stamp duty is always paid by the purchaser and therefore if this proposal was adopted, somebody would have to decide what lands would be subject to it and, as we have already pointed out, it is difficult to define building land. If the duty is high, methods of arranging the transaction so that it will not be payable would probably be discovered. Its main effect would be to increase prices. In cases where the duty was paid we would expect it to be passed on so that it would ultimately be borne by the purchaser of the buildings on the land.

We therefore do not think that a high rate of stamp duty payable by the vendor would achieve the desired objectives.

I. The imposition of a new tax levied annually at a progressive rate on the site value of lands suitable for building for which planning permission (including outline permission) has been granted. The site value would not be the present rateable valuation but a modern assessment of the letting value.

64. One of the reasons why the price of serviced and potential building land is so high is that some of the owners of such land do not want to sell or develop it but prefer to retain it either because they hope they will ultimately get a higher price than that then offered or because they have lived on the lands for many years and

do not wish to sell them. The rateable valuations of land are so low that there is little taxation of land on which there are no buildings.

It has therefore been suggested on a number of occasions during the past sixty years that a special tax on land suitable for building levied annually until the land has been developed would induce those who own it to sell it for development and that this would increase supply and so keep the price down. The first suggestion was that the tax would be levied on the site value of the undeveloped land and not on the rateable valuation and would be fixed at such a level that failure to develop the lands would involve large annual payments. The imposition of such a tax was part of the land policy of the Liberal Party in Britain before the First World War but was never introduced.[1] Site value rating is regarded primarily as an alternative means of raising local revenue in which case it would apply to all land. The proposal which we are discussing related to land suitable for building. One feature of this suggestion is that the area of land which would be liable to the tax would be small because most of the serviced land in the State has already been built on and lands for which services have not been provided could not reasonably be taxed on the basis that they were suitable for building. It would be necessary to exempt some lands such as institutional lands, sports grounds and golf and race courses from it. The expectation of larger profits in the future would make it likely that the small number of owners involved would pay the tax and retain the lands. We do not think that such a tax would materially affect the amount of land put on the market and there would be such a small area of land liable to it that the cost of its assessment might well exceed the yield.

A modern version of this idea is the imposition of a new tax levied annually at a progressive rate on the site value of lands suitable for building for which planning permission (including outline permission) has been granted. The tax would be levied at a higher rate in each year after the planning permission had been granted and the base of the tax, the site value, would not be the present rateable valuation but a modern assessment of the letting value of the land. Outline planning permission has been obtained for some land for which services have not been provided but approval will not be granted until the services are available. Under the Local Government (Planning and Development) Act, 1963, (Permission) Regulations, 1964 (S.I. No. 221 of 1964), the grant of outline planning permission does not authorise the carrying out of any development. It indicates the planning authority's general approval of the type of development but before the development may actually be carried out, an additional approval by the planning authority of the details of the proposed development is required. An outline permission may be revoked (*The State (Cogley)* v *The Corporation of Dublin* (1970) I.R. 244) but a liability to compensate for the revocation may then arise. Most of the serviced land in the State has already been built on and lands for which outline planning permis-

1. "The Land Campaign—Lloyd George as a social reformer" by H. V. Emy in "Lloyd George—Twelve Essays" ed. by A. J. P. Taylor (1971).

sion has been granted have in the majority of cases not been developed because services are not available. Lands which cannot be developed because services have not been provided could not reasonably be taxed on the basis that they are suitable for building. The main result of such a tax would be that owners and developers would not apply for outline planning permission until the services had been provided and then there would be a short interval only between the grant of outline planning permission and final approval. The area of land which would be liable to such a tax would be so small that the tax would not affect the amount of land put on the market and the assessment of the letting value on which this tax would be based would lead to prolonged litigation. We think it probable that if such a tax were imposed, the yield from it would be very small and that the cost of its assessment might well exceed the ultimate proceeds.

J. A system under which land would be zoned by the planning authority for different uses and the compensation paid to owners on compulsory acquisition would be related to the specified use.

65. The proposal is that the Planning Act, 1963 should be amended so that it would provide that a local authority, when making a development plan under Section 19, would be given power to specify more precisely than they can now the use which would be made of lands in the future. Under the Planning Act, 1963 the local authority when making a development plan must state " the particular purpose " for which they propose the lands should be used and particular purpose is specified as " residential, commercial, industrial, agricultural or otherwise ". This power (usually referred to as " zoning ") does not authorise the local authority to distinguish between lands to be used for different kinds of housing. The proposal is that the local authority should have power to specify the general type of housing for which the lands are to be used and that the compensation payable on compulsory acquisition would be determined by reference to the specified purpose for which the lands had been zoned. Thus, if lands were zoned for low cost housing, the compensation payable, if they were acquired compulsorily, would be less than that payable if they had been zoned for high cost housing or for commercial purposes. However, if the use to which it was proposed to put the lands was subsequently changed after acquisition to a higher priced use, the owner would become entitled to additional compensation. The broad feature of this scheme is that the zoning of land by the local authority would determine the amount of compensation payable and compulsory acquisition.

There are many compelling objections to this proposal. We assume that it means that the rules regulating the amount of compensation awarded on the compulsory acquisition of land should be amended so that the arbitrator, when assessing the compensation, would take into consideration the purpose for which the lands have been zoned but unless a scale of compensation were fixed by law for each category of zoning, the Official Arbitrator would have to award

the market price. It would be impossible to frame a scale of compensation based on prospective use which would be just for more than a few years because in inflationary conditions alterations in it would be inevitable. Amending legislation would therefore have to be introduced frequently. Moreover, land which is zoned for low cost or high density housing will not necessarily be worth less on the market than that zoned for high cost building and so, it would be a complex task to frame a scale of compensation for each type of use. There is the further difficulty that the scale of compensation would have to be related to the particular city or town near which the land is situated.

The fundamental objection to the proposal however is that the local authority, who are also the planning authority and who may be acquiring the lands, would by their decision as to zoning, be determining the scale of compensation which would be payable. It is a highly undesirable principle that an authority which is acquiring property should be able to determine or affect the compensation payable for it.

K. The pre-emption and levy scheme.

66. The main features of this scheme are (i) the local planning authority would have power to designate the land required for urban expansion in their area during the following ten years having regard to current development plans, (ii) the decision as to the boundaries of the designated areas would be an executive function of the local authority performable by the City or County Manager and there would not be a right to object to or appeal against it to any superior authority or to a court, (iii) any owner of land in a designated area who wished to dispose of a substantial interest in it would be bound, before he did so, to offer that interest to the local planning authority and could dispose of it only if the authority declined to purchase it. Acceptance of the offer by the authority would have the consequence that the sale would be treated as if it were a compulsory acquisition under the Housing Acts and so the rules for assessment of compensation in the Act of 1919 and in the Planning Act, 1963 would apply, (iv) there would be a special stamp duty payable by the vendor on all sales of land in a designated area and the net proceeds of this would be paid by the Revenue Commissioners to the local authority in whose area the land was and would be applied by them for capital purposes, (v) the right of the local authority to collect a contribution towards the expenses of providing the services as a condition of giving planning permission would be revoked and, in its place, there would be a levy on development in certain limited cases such as the development of land on which the special stamp duty referred to in (iv) had not been paid on a disposal of the land within the preceding five years, (vi) compensation for refusal of planning permission in connection with land in the designated area would be liable to a levy equivalent to the stamp duty referred to at (iv).

This proposal has been put forward by our colleagues Mr. Murphy and Mr. O'Meara. The first objection to it is that it gives the City and County Managers power to designate areas and thereby to

decide that levies are to be paid on some dealings in land and not on others; their decisions will therefore determine finally whether some owners of land in the State and not others will be liable to the heavy levies which are proposed. A tax of this kind might be held to be repugnant to the Constitution because taxes must be imposed by general rules applicable to all those who reside in the State and not by decisions of officials. Moreover we think it undesirable that any official should have such responsibility imposed on him. When dealing with suggestion F. we stated the objections and weaknesses of the pre-emption scheme. The local authority would have to pay the full market price for any lands which they purchased. The levies which are proposed would be payable by the vendor but they would probably be passed on to the purchaser and they would therefore increase the price of serviced and potential building land. An owner who wished to sell his lands would take the levy into account when fixing the price at which he would dispose of them and as the supply of land near cities and towns is limited, most of the levy would ultimately be borne by the purchasers of the buildings on the land. The history of the levies and taxes in Britain since 1947 shows that all types of levies and development charges invariably increase the price of land. Lastly, methods of avoiding payment of the levy would be discovered: tax lawyers and accountants are very ingenious and they would quickly discover ways of carrying out the transaction so that the heavy levies would not be payable. The whole sorry story of the 25% stamp duty on the transfer of lands would be repeated.

We give one example of a method of avoiding payment of the levy which would have to be dealt with but which would require the most complex legislation. If an owner of land wished to develop it and transferred it to a family company for a nominal consideration and if the company then made contracts with builders to develop the lands and agreed to grant leases to the ultimate purchasers of the buildings, the owner would get his profit by selling the shares in the company which owned the ground rents. Therefore the levy, if it was to be effective, would have to be extended to the sale of shares. This would necessarily involve that it would be payable on the sale of some shares and not on others and the definition of the cases in which it would be payable on transfers of shares would be extremely difficult. How is the levy to be collected if the shares in the company which owns the land are owned by another company incorporated in the Channel Islands or in the Isle of Man?

We have decided that we cannot recommend the scheme put forward by our colleagues. We believe that though it might moderate the rises in the prices of serviced and potential building land, it would not stop the disproportionate increases in them nor would it capture any substantial part of the increased prices for the community.

L. The designated area scheme.

67. This is a scheme under which a new jurisdiction would be conferred on the High Court to designate areas in which in the

opinion of that Court the lands will probably be used during the following ten years for the purpose of providing sites for houses or factories or for the purposes of expansion or development and in which the land or a substantial part of it has been or will probably be increased in market price by works carried out by a local authority which were commenced not earlier than the first day of August, 1962 or which are to be carried out by a local authority. The first day of August, 1962 was the date on which the Planning Act, 1963 was published as a Bill. It is also the date fixed by Section 26 (2) (g) of that Act for determining whether payment of a contribution in respect of works carried out by a local authority may be made a condition of granting planning permission. The High Court judge would be obliged to sit with two assessors one of whom would have valuation experience and the other would have town planning qualifications. The function of the assessors would be to advise and assist the judge but the ultimate decision for which written reasons would have to be given would be his. When an area had been designated by the Court, the local authority would have power to acquire all or any part of the land within it within ten years after it had been so designated at its existing use value at the date when the application to assess the compensation was made plus some percentage of that value together with compensation for reasonable costs of removal but without regard to its development potential. If agreement as to the amount of the compensation had not been reached when the local authority, having decided to purchase the lands, applied to have the price fixed, it would be assessed by the High Court judge sitting with the two assessors. Until the local authority made this application to the Court, the owners of land in a designated area would retain their rights as owners and could sell or lease the lands but all development would require planning permission.

Section 26 subsection (1) of the Planning Act, 1963 provides that where application is made to a planning authority for permission for the development of lands, they may grant it subject to or without conditions or they may refuse it. The subsection then reads: " and in dealing with any such application the planning authority shall be restricted to considering the proper planning and development of the area of the authority (including the preservation and improvement of the amenities thereof), regard being had to the provisions of the development plan . . ." If this restriction on the powers of a planning authority to refuse applications for planning permission continued to apply to lands in a designated area, one of the main aims of the scheme would be defeated. We envisage that the local authority will acquire most of the lands which are in designated areas and which have not been developed at the date of the order designating the area. But local authorities could not immediately acquire all the land in such areas after the orders designating them had been made and so it is essential that development in these areas should continue and that planning permission should be granted in appropriate cases. Most of the new dwelling units in the major urban centres are now being built in what will probably be designated areas. If planning permissions could not be granted in respect

of lands in designated areas, all private development in these areas would cease and the price of existing houses would be immediately increased. If however the planning authorities could not refuse to grant planning permission on the ground that the land is in a designated area and that they intend to acquire the land within the ten year period, they will be compelled to grant planning permissions for most of the lands in designated areas before they have acquired them and it is unlikely that they will acquire developed lands. The relationship between the designated area scheme and the Planning Act is one of the most difficult problems we have had to consider.

After much debate we have decided to recommend that Section 26 subsection (1) of the Planning Act should be amended to provide that a planning authority or the Minister on appeal may refuse to grant planning permission for any development of lands in a designated area on the ground that the land to which the application relates is in a designated area and that the local authority intends to acquire the lands within the ten year period. We also recommend that the decision of the planning authority on a planning application in relation to land in a designated area should be an executive function of the planning authority performable by the City or County Manager and that his decision should not be subject to a direction by the elected members of the planning authority under Section 4 of the City and County Management (Amendment) Act, 1955. If, however, planning permission is refused on this ground and if the Minister on appeal confirms the refusal, the owner of the land should be entitled to apply to the High Court to compel the local authority to purchase his land at existing use value plus the percentage of it which we recommend in a later part of this Report but the Court should have a discretion to refuse the application if it thought it just to do so.

If refusal of planning permission in relation to lands in a designated area gave rise to a liability to pay compensation under Part VI of the Planning Act, the financial burden on local authorities would be so heavy that the scheme would be unworkable. The amounts awarded for compensation for refusals of planning permission have recently been so large that planning authorities have been reluctant to refuse permissions. We accordingly recommend that the Planning Act should be amended to provide that when planning permission is refused by the planning authority or the Minister on appeal for development of land in a designated area, there should be no right to compensation under Part VI of the Planning Act.

We envisage that the designated areas may include some built up areas which the local authorities would not, in most cases, acquire. Their aim should be to acquire all the lands in the designated areas except (a) those which are the property of any religious denomination or any educational institution (Article 44 Section 2.6° of the Constitution prevents these being acquired except for necessary works of public utility), (b) existing dwellings, shops, offices and factories and (c) property used for community, recreational and sporting purposes (parks, playing fields, and golf and race courses) so long as they are used for these purposes. They may not however be able to do this within the ten year period and the Court should

have power, on the application of the local authority, to extend the period within which lands in a designated area may be acquired for a further period of ten years. This power to extend the time should be limited to cases in which the local authority succeed in proving to the Court that there have been reasonable grounds for their failure to acquire the lands within the ten year period.

The right of the local authority to apply for an order designating an area should not be limited to one application within the ten year period. The legislation should provide that the right may be exercised by any number of applications made at any time in relation to any lands. The result should be that when plans for local authority works have been prepared and approved, the local authority will apply to designate the area in which the lands will be increased in price by the works. The application should be made before the works are carried out though at the beginning of the operation of the scheme, applications will be made in respect of works carried out since the first of August, 1962.

When the lands in a designated area have been acquired by the local authority, they would be leased by them for private development or would be used by them for their own purposes. Leasing the land has the advantages that the local authority will be able to impose such covenants on the tenant as are required for orderly development and, in the cases of leases of business premises, to provide for rent reviews at the end of each seven or ten year period. But if the Landlord and Tenant (Ground Rents) Act, 1967 applied to these leases, the tenant could escape from the covenants by purchasing the interest of the local authority under the lease and thus defeat one of the main aims of the scheme. The Landlord and Tenant (Ground Rents) Act, 1967 should therefore be amended by providing that it does not apply to local authorities.

An appeal on a question of law but not on one of fact from all decisions of the High Court when exercising the new jurisdiction to the Supreme Court should be given.

The foundation in principle of this scheme is that the community is entitled to acquire land at existing use value plus some percentage of it when it can be established by evidence that works carried out by the local authority have increased the price of the lands. This price however is also increased by the decisions of the planning authorities in their development plans as to the future use of the lands. Zoning may add a considerable amount to the price. We do not think that an increase in price caused solely by decisions of a planning authority as to zoning can be classified as betterment. Legislation which provided that a local authority could acquire lands at existing use value plus some percentage of it when their price had been increased not by local authority works but by planning decisions only would, in our view, be unjust and probably repugnant to the Constitution. We therefore do not recommend that the designated area scheme should apply to lands in relation to which the sole cause of the increase in price is the decision of the planning authority as to their future use.

Provision should also be made in the legislation that any owner of an interest in land in a designated area who enters into a written

or oral contract (whether legally enforceable or not) for the sale or lease of any interest in the land should notify the local authority of the area where the lands are situate that he has entered into the transaction and the total consideration which he has agreed to accept. The owner should be obliged to furnish to the local authority any document relating to the transaction which they request him to give to them. Failure to notify the local authority that such a contract has been made or to give such documents should be a criminal offence which may be tried summarily and conviction of which would carry a penalty of £100.

CHAPTER VII

ARGUMENTS FOR AND AGAINST THE DESIGNATED AREA SCHEME

Arguments for the designated area scheme

68. We think that the community is entitled to the whole of the increase in price in undeveloped land which is attributable to works carried out by local authorities. The amount of this increase can however never be precisely quantified. It is possible to prove that an increase in price of undeveloped land has or will occur as a result of works undertaken by a local authority; it is not possible to isolate the amount of the increase caused by them. If therefore the principle that the community has a valid claim to the whole of the increase in price in undeveloped land which is attributable to works carried out by a local authority is accepted, the only way in which this can be made effective is by giving local authorities the right to acquire at existing use value all the undeveloped land which will be increased in price by the works which they carry out. As the price of such land has been increased in part by general economic influences which are not included in the concept of betterment, the owners of it have a valid claim to something more than existing use value. We recommend that they should be given 25% of the existing use value as an addition. Payment to landowners of existing use value at the date of acquisition plus 25% of it is in our opinion a reasonable compromise between the rights of the community and those of the landowners. We have already referred in paragraph 38 to the recoupment method of recovering for the community the increase in the price of land caused by local authority works. We agree with the view of the Uthwatt Committee that purchase for recoupment is the most effective of the methods available by which public authorities may secure for the community the increases in the price of property which their works have created.

69. If a further disproportionate rise in the price of serviced and potential building land is to be avoided, it thus becomes a choice between taking all the increase—caused by betterment and by general economic influences—by applying the principle of recoupment and therefore giving local authorities the right to purchase at existing use value plus 25% of it or taking none of it and leaving the existing position unchanged.

70. The first and main argument for a designated area scheme then is that it will give the community most of the betterment element in the price of serviced and potential building land which is acquired by the local authority. The local authority have, in our

view, a legitimate claim to this: the works carried out by them have created it. All schemes which give part of it to the Central Government or to a State Agency or to local authorities have failed either because the taxes were avoided or because the levies were ultimately paid by the purchasers. A scheme under which a large amount of taxation would be payable but which would cause a corresponding increase in the prices of the buildings on the land would, in our view, have failed to achieve its principal social aim.

71. The second argument is that the scheme will have the result that it is unlikely that anyone will pay more than the existing use value plus 25% of it for serviced and potential building land near cities and towns. The local authority will be able to acquire the land at this price and so no one will pay more than this for it. If our proposals are accepted, there is a reasonable prospect that the disproportionate increase in the price of serviced and potential building land will cease and the scheme will, we think, end speculation in this type of land. The owner of the land will know the existing use value and if the local authority can acquire the land at a price equivalent to 125% of this, there will be no room for a speculative profit.

72. The third argument is that the scheme will enable the price of land for selected uses to be reduced. We would expect local authorities when leasing land to seek the highest price or rent for commercial developments such as offices or factories but for social purposes, such as housing or schools, we would expect land to be made available on terms which covered costs only.

73. The fourth argument is that it will make it possible for local authorities which have acquired land to impose conditions as to the type of building to be erected and its ultimate price to the purchaser. When the local authority decide to dispose of land within a designated area for building purposes, we think it desirable that they should do so by making agreements with builders to grant leases to them or their nominees when the buildings have been completed and that these should impose stipulations as to the type of building and its price. The local authority can then refuse to grant a lease if the conditions in the agreement have not been observed. The scheme will strengthen the powers of local authorities and will, we think, enable them to introduce some element of price control of new houses. The leases of industrial and commercial sites should be granted for premiums or fines and an annual rent or at rents which may be reviewed at intervals of 7 years. A clause permitting such a review has become a common commercial practice and there is no reason why it should not be adopted by local authorities. If however the Landlord and Tenant (Ground Rents) Act, 1967 continued to apply to leases granted by local authorities, the tenant could in some cases get a release from all the covenants in the lease in relation to use by purchasing the local authority interest. This would defeat one of the main advantages of the scheme. This is why we have recommended that the Landlord

and Tenant (Ground Rents) Act, 1967 should be amended so that it will not apply to any leases granted by local authorities.

74. As the local authorities will be entitled to purchase lands in a designated area within 10 years after the order is made, it will be possible for them to have an acquisition programme which has regard to the capital available and the pace at which development is proceeding in their area.

75. Another advantage of the scheme is that it will increase the annual revenue of some local authorities because of the profits made from commercial and business lettings.

76. We are hopeful that the scheme we propose will end the disproportionate rise in the price of undeveloped land suitable for building. This is undesirable because it increases the prices of houses and factories, makes development expensive and gives indefensible profits which are earned not by risk-taking but which flow from the services provided by the local authorities. The speculator in land near cities and towns cannot lose and so the public regard such profit as unearned and unjustified. These profits which have received wide publicity make the achievement of restraint in money incomes, particularly those of employees, difficult.

Arguments against the designated area scheme

77. The first and main objection to the scheme is that it is said to be repugnant to the Constitution. This is of such importance that we deal with it separately in a subsequent chapter. We are convinced that the scheme is not unconstitutional provided that the legislation stipulates that the compulsory power of acquisition under it may not be exercised in respect of the property of any religious denomination or of any educational institution (see Article 44 Section 2.6° of the Constitution).

78. Our colleagues who do not agree with our proposals have also urged that the scheme will have the result that there will be two different codes of law dealing with compulsory acquisition of land by local authorities. One will apply to land which is outside the designated areas where the price payable will be the full market price and where compensation under the Planning Act, 1963 will be payable for refusal for permission to develop. The other will apply to land within the designated areas where a different and lower measure of compensation for acquisition will be the rule. It is true that there will be two codes of law in relation to compulsory acquisition by local authorities but this is not necessarily an argument against the scheme. If the two categories of land were comparable, then it would be unjust to single out one for harsher treatment but they are not. The whole point of the designated area system which we propose is that it seeks to identify the land which is enhanced in price by local authority works and to treat it differently

to land in general. There is nothing unjust in having two codes of law in relation to compulsory acquisition.

79. A further argument is that the scheme will not normally apply to built-up areas in cities and towns where large profits are being made in land transactions connected with redevelopment. But in most built-up areas the works designed to provide the services were carried out many years ago and the increases in prices during the past decade in property in these areas are not necessarily the result of anything done by local authorities but are primarily a reflection of the prosperity of the community and of urbanisation. Increases in price caused by these influences cannot be regarded as being included in betterment. When the increase in the price of land can be attributed in part to works carried out by local authorities, the community has a legitimate claim to part of the increase in price and this claim can be made effective only by giving the local authority the right to acquire the lands at existing use value plus a percentage of it. When however the increase in price is not wholly or partly the result of works carried out by the local authority, the community has a right to acquire at market price only and not at a lower sum. Legislation which authorised the acquisition of property at a price under the market price when it could not be established that works carried out by a local authority had contributed in whole or in part to that price would probably be held by the Courts to be repugnant to the Constitution. Our proposals are just because they take for the community the increases in price which the local authorities have created and because they give the owners of the lands the existing use value plus 25% of it. Thus they get the price which they would have got on a sale if the local authority works had not been or were not likely to be carried out.

80. Another argument against the designated area scheme is that it is unjust to acquire serviced and potential building land at existing use value plus 25% of it because, it is said, this deprives the owner of most of the development profit. In paragraph 131 we recommend that the legislation should provide that in any case where the price paid or agreed to be paid for land before the date of the publication of this Report is higher than the existing use value plus 25%, the compensation should be the higher price and the appropriate interest thereon. If this safeguard is adopted, we do not see anything unjust in our proposals. They are in our view the logical culmination of the trend visible in legislation since the Public Health (Ireland) Act, 1878 away from the individualistic view of property towards one which, while preserving private property in land as an institution, recognises that the exercise of the rights which it confers must be limited in the interests of the common good. No rational individual regarded price control of essential commodities during the Second World War as being unjust: the goods whose prices were controlled were necessary for life as people knew it and, as the supply was limited, it was necessary to have control.

81. Another argument which may be advanced against our proposals is that land will not be acquired by local authorities when it should be and that when it is decided to do so, the delays in connection with the acquisition and disposal of it will have the result that fewer dwelling units will be built than would have been if the existing system had been allowed to continue. The slow rate at which the Dublin Corporation have released the lands acquired by them since 1967 gives some support to this argument. But the large number of housing units which local authorities have provided since 1922 (161,000 out of a total of 355,000) and the immense volume of work created by the Planning Act, 1963 which has been successfully undertaken by them shows what they can do. We feel confident that the local authorities will rise to the challenge presented by the powers which we suggest should be conferred on them.

82. Thirty years ago the Uthwatt Committee reported that the high cost of land and the fear of large awards of compensation for refusals of planning permission were the main obstacles to planned development of cities and towns. All experience in Ireland and Britain since then shows that their views were correct. We think that the principle that a landowner whose lands are being acquired by a local authority should be paid the full market price for them should be modified when it conflicts with the common good which requires that the price of serviced and potential building land near cities and towns should be limited by reference to its existing use value.

83. We have considered whether the establishment of a Central Land Board to acquire land suitable for building throughout the State would be advisable. We do not recommend this. Such a Board would have to function in the area of each local authority and its activities would overlap those of local authorities and competition and rivalry between them would follow. Some local authorities already own considerable amounts of land and some of their staff have experience in managing it. The creation of a Central Land Board would mean another State body. There is no justification for this when there are organisations in existence which can do the work.

84. The effect of our proposals on planning permissions already granted in respect of land in designated areas and other transitional issues give rise to problems of some complexity. These are discussed in the more detailed statement of our proposals in Chapter X. We have thought it advisable to discuss the constitutional aspects of the scheme before we deal with the modern legislation in Italy and Northern Ireland which shows that the concept of an owner of land being entitled to the full market price for it when it is acquired by a local authority has been substantially modified.

CHAPTER VIII

THE CONSTITUTION

85. We recommend that the High Court should be given a new jurisdiction to designate areas in which in the opinion of that Court the lands will probably be used during the following ten years for the purpose of providing sites for houses or factories or for the purposes of expansion or development and in which the land or a substantial part of it has been or will probably be increased in market price by works carried out by a local authority which were commenced not earlier than the first day of August, 1962 or which are to be carried out by a local authority. When lands are included in such an area, the local authority would have power within ten years after a Court order has been made to acquire all or any of the lands at their existing use value at the date of the acquisition plus 25% of it. The lands within a designated area would be subject to the restrictions on development imposed by the Planning Act, 1963 but the right to compensation for refusal of permission to develop given by Part VI of that Act would not apply to any such lands. When the local authority decided to acquire the lands, the compensation payable would be assessed by the High Court and would be the existing use value at the date of the application to assess the compensation plus 25% of it. The result would be that an owner of lands within a designated area would not get the full market price for them if the local authority decided to acquire them.

86. Would legislation based on these recommendations be repugnant to any provision of the Constitution? If it were, it would be invalid (Article 15 Section 4 of the Constitution). We have been told that a number of legislative proposals considered by the Government during the past six years to deal with the problems created by the disproportionate rise in the price of serviced and potential building land have been rejected because, in addition to many other difficulties, each of them was thought to be repugnant to the Constitution. In order to express an opinion as to whether our proposals are legally valid it is necessary to deal with the relevant provisions of the Constitution and the decisions of the Supreme Court and of the High Court on them.

87. The first constitutional difficulty arises from Article 40 Section 3 and Article 43. Both are in that section of the Constitution which has the heading " Fundamental Rights " : Article 40 Section 3 which is in that part which has the sub-heading " Personal Rights ", reads:

> " 3. 1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen."

Article 43 reads:

"PRIVATE PROPERTY

1. 1° The State acknowledges that man in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.

2° The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property.

2. 1° The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.

2° The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good."

88. Although the article dealing with property rights is not included in that part of the Constitution which is headed "Personal Rights", the reference to property rights in Article 40 shows that these rights are protected by the general guarantee in Article 40 Section 3. The property rights referred to in Article 40 Section 3 are those specified in Article 43 (see the judgment of the Supreme Court in *Foley* v *The Irish Land Commission* (1952) I.R. 118 at p. 152). Subsection 1 of Section 1 of Article 43 is a recognition that man has a natural right to the private ownership of external goods, an expression which certainly includes land. (The Irish text of the Constitution refers to a share of worldly wealth and not to external goods). Subsection 2 is a guarantee that the State will not pass any law which will attempt to abolish the right of private ownership or the right to transfer or to bequeath and inherit property. Our recommendations are not an abolition of the right of private ownership or of the general right to transfer or to bequeath and inherit property. Section 2 of the article recognises that the rights given by Section 1 ought to be regulated by the principles of social justice and that the State may delimit (teora do chur) the exercise of these rights so that their exercise will be regulated by the principles of social justice. It seems to us that it is contrary to the principles of social justice that the owners of land should make large profits from works carried out by local authorities when these are paid for partly by all the citizens and partly by ratepayers. The Constitution does not give to each citizen the right to get the full market price for any of his property which he decides to sell. If it did, then all price controls would be repugnant to the

Constitution and we are convinced that this is not the law. Moreover, if each citizen has the right to get the full market price for any part of his property which he decides to sell, each owner of house property must have the right to get the full market rent for it when he lets it. But if this is the law, the Rent Restrictions Acts and the Landlord and Tenant Acts, both of which regulate the amount of rent which a landlord may lawfully get for some types of property and which, in effect, prevent him from realising the full market price on sale of the property by giving privileges to tenants, are repugnant to the Constitution. Nobody has ever suggested this in the thousands of cases under those Acts which have come before the Courts.

89. The judgment of the Supreme Court in *Buckley* v *The Attorney General* (The Sinn Féin Funds Case) 1950 I.R. 67 is sometimes stated to be authority for the proposition that when the State or a public authority acquires property compulsorily, the Constitution requires that they must pay the full market price for it. The decision does not give any support to this proposition as a general statement of the law. The case related to an Act of the Oireachtas by which an attempt was made to deprive some citizens of all their rights to funds lodged in Court (The Sinn Féin Funds) in respect of which they had begun a law action at the date when the Act was passed. The Act did not contain any provision for compensating them. Mr. Justice O'Byrne, who gave the judgment of the Supreme Court, pointed out that the power of the Oireachtas to delimit the exercise of the rights of property so as to reconcile that exercise with the exigencies of the common good arose only when there was a conflict between the exercise by the citizens of their property rights and the exigencies of the common good and as there was no conflict in relation to the Sinn Féin Funds the legislation was repugnant to the Constitution. There is however clearly a conflict between the exercise of the rights of property and the exigencies of the common good in the case of serviced and potential building land. The free market principle means that the owners of such land get large unearned profits to which they have not contributed in any way and which result in substantial additions to the cost of the buildings subsequently erected. The community however has got a legitimate claim to such profits because citizens in their capacity as taxpayers and ratepayers bear the costs of servicing such lands and hence the community has a right to be recouped. The alleged right of landowners to get the full market price for something in limited supply (a right which we believe does not exist) is not consistent with the common good.

90. The later decision of the Supreme Court in *Foley* v *The Irish Land Commission* (1952) I.R. 118 shows that the interpretation which we have suggested of the decision in *Buckley* v *The Attorney General* (1950) I.R. 67 is the correct one. *Foley's case* related to the constitutional validity of Section 2 of the Land Act, 1946. This provided that when a holding of land has been allotted to but not vested in a purchaser and when the holding included a dwellinghouse, the

Land Commission might give a direction to the purchaser to reside continuously to their satisfaction in the dwellinghouse and if he did not do so, they could recover possession of the land from him. Mr. Foley brought a lawsuit in which he claimed that this section was unconstitutional because it was inconsistent with the article of the Constitution relating to property. The action, in so far as it was based upon constitutional grounds, failed. In the course of the judgment of the Supreme Court which was delivered by Mr. Justice O'Byrne, it was pointed out that in *Buckley's case* there was no suggestion that any conflict had arisen or was likely to arise between the exercise by the plaintiffs in that action of their rights of property in the trust moneys and the exigencies of the common good. The judgment continued: "The argument put before this Court on behalf of the appellant (Mr. Foley) when reduced to its logical conclusion seems to involve the proposition that any limitations placed by the Oireachtas on private property which may result in the loss of that property by the owner is repugnant to the Constitution and accordingly void. If this argument be sound, the Constitution has certainly placed serious fetters upon the legislature in dealing with property rights and the Court is not prepared to accept such a far-reaching proposition".

91. In *The Attorney General* v *Southern Industrial Trust Limited* (1960) 94 I.L.T.R. 161 the constitutional validity of Section 5 of the Customs (Temporary Provisions) Act, 1945 was in issue. It provided that if any goods whose export was prohibited by any enactment were exported in contravention of such enactment, they were to be forfeited. Mr. Simons bought a motor car with the aid of a hire purchase loan from the plaintiffs, the Southern Industrial Trust Limited, so that they became the owners of the car. By a Control of Exports Order the export of motor cars without a licence from the Minister for Supplies was prohibited. Mr. Simons exported the car to Northern Ireland when he had not a licence from the Minister authorising this. The car was subsequently brought back to the State and was seized by the Customs authorities who claimed the right to forfeit it under Section 5 of the Customs (Temporary Provisions) Act, 1945. The Attorney General then brought an action for a declaration that the car was forfeited. The Southern Industrial Trust Limited, who were the owners of the car, claimed that Section 5 of the Customs (Temporary Provisions) Act, 1945 was repugnant to the Constitution because it made it possible for the Customs authorities to seize and retain the car without paying any compensation. The hire purchase company had not been involved in any way in the illegal export and they claimed that the section deprived them of their property rights in the car and so was repugnant to the Constitution. This argument was rejected by the High Court and by the Supreme Court. The judgment of the Supreme Court was given by Mr. Justice Lavery and in the course of it he said . . . "What emerges is that the State, recognising the general right of private ownership, has for many years claimed the right in particular circumstances to divert the ownership of the citizen in particular chattels. In the view of the Court this right must be

recognised as a delimitation of the exercise of the general right and therefore valid under the provision of Article 43 Section 2.2° if the other requirements of the Constitution are satisfied. The positive requirement is that the limitation should be with a view to reconciling their exercise with the exigencies of the common good (Article 43 Section 2.2°). The declaratory provision is that the exercise of the rights ought in civil society to be regulated by the principles of social justice. As has been stated, these are matters primarily for the consideration of the Oireachtas . . . " Another passage in the judgment emphasises that confiscation of a particular chattel is not the abolition of the right of property.

92. Another judicial statement of the effect of the articles in the Constitution is in the *Central Dublin Development Association Ltd. v The Attorney General* in which judgment was given in the High Court on the 6th October, 1969. In the course of that judgment an attempt was made to summarise the effect of the Constitution in relation to private property in these terms:

" 1. The right of private property is a personal right.

2. In virtue of his rational being, man has a natural right to individual or private ownership of worldly wealth.

3. This constitutional right consists of a bundle of rights most of which are founded on contract.

4. The State cannot pass any law which abolishes all the bundle of rights which we call ownership or the general right to transfer, bequeath and inherit property.

5. The exercise of these rights ought to be regulated by the principles of social justice and the State accordingly may by law restrict their exercise with a view to reconciling this with the demands of the common good.

6. The Courts have jurisdiction to enquire whether the restriction is in accordance with the principles of social justice and whether the legislation is necessary to reconcile this exercise with the demands of the common good.

7. If any of the rights which together constitute our concept of ownership are abolished or restricted (as distinct from the abolition of all the rights), the absence of compensation for this restriction or abolition will make the Act which does this invalid if it is an unjust attack on property rights ".

93. Our proposal is not that a local authority should have power to acquire land anywhere at a price below its market price. It is that a court should be authorised to operate a form of price control in designated areas. In that sense the proposal involves a delimitation of property rights but one which is no more restrictive than other forms of price control. We believe that this delimitation is not unjust because the landowners in question have done nothing to

give the land its enhanced value and the community which has brought about this increased value should get the benefit of it.

94. The next question under the Constitution which we have had to consider is whether the power to designate an area within which the local authority could acquire land at its existing use value plus 25% is an administration of justice: if it is and if it is not an exercise of a limited function or power of a judicial nature, it must be entrusted to a judge appointed under the Constitution. Section 1 of Article 34 of the Constitution provides that justice is to be administered in courts established by law by judges appointed in the manner provided by the Constitution and except in special and limited cases prescribed by law, is to be administered in public. Article 37 provides that nothing in the Constitution is to operate to invalidate the exercise of limited functions and powers of a judicial nature in matters other than criminal matters by any person or body of persons duly authorised by law to exercise such functions and powers although such person or such body of persons is not a judge or a court appointed or established as such under the Constitution.

95. The constitutional validity of an Act of the Oireachtas which gave power to a tribunal which did not consist of judges and was not a court to authorise the compulsory acquisition of land was considered by the Supreme Court in *Fisher v The Irish Land Commission* (1948) I.R. 3. Section 39 of the Land Act, 1939 gave power to the Land Commission to resume (used in the sense of acquire) in whole or in part any holding vested under the Land Purchase Acts in them or in the Congested Districts Board for Ireland where the resumption was for the purpose of relieving congestion or for the provision of land for re-sale or for increasing the food supply or for the improvement or rearrangement of holdings. The procedure for acquisition was that the Land Commission were to give notice to the owner of the lands of their intention to apply to the Appeal Tribunal for an order authorising them to resume the holding and the owner could then petition against this. The petition was to be considered and all questions under it were to be decided by the Lay Commissioners who were not judges and whose decision was to be final subject to an appeal to the Appeal Tribunal on a question of law. Mr. Fisher, who owned lands which the Land Commission wished to resume, brought an action in which he claimed that Section 39 was repugnant to the Constitution because it authorised the exercise of judicial power by a tribunal whose members were not judges. His action was dismissed by the High Court and by the Supreme Court. The grounds for the decision were stated in this way by Chief Justice Maguire: "Once it is admitted that the Oireachtas may expropriate owners of land for the purposes of the Land Act, it follows that the statutes could have specified particular parcels of land to be taken as e.g. by setting them out expressly in a schedule to the Act. Owing to the wide range of the Acts, this course would have been extremely difficult and cumbersome, and the lands could have been specified only after elaborate depart-

mental inquiries. The Oireachtas adopted a different and much more convenient course. It gave to the Land Commission general power to take land for the purposes of the Acts; but provided that before doing so, certain specified steps should be taken. These steps seem to us to have been specified so as to ensure that lands should be taken only after elaborate inquiry by responsible officials of the Land Commission. In making these enquiries and coming to a final decision as to whether the particular parcel of land should be taken, we are of opinion that these officials are determining no question of legal right, but are considering and determining whether for the purpose of effectuating the general purposes and policy of the Acts, it is necessary to acquire the particular parcel of land. Taking this view we are of the opinion that all the steps contemplated by subsection (2) are steps to be taken in an enquiry of a purely administrative character and that the subsection does not contemplate or intend the determination of any question of legal right, either by the Lay Commissioners or by the Appeal Tribunal". The decision of the Lay Commissioners did not therefore involve a ruling on whether a legal right existed but was to be based on considerations of public policy only; the Lay Commissioners had not to decide a conflict of legal rights and so their power to decide whether the Land Commission should be allowed to resume the holding was not an administration of justice.

96. The Constitution, however, does not define what the administration of justice is nor do the Constitutions of the United States of America, Australia and other States which include provisions under which the administration of justice is entrusted to courts. The tendency when deciding whether a particular power is or is not an administration of justice has been to take some features as being so characteristic of it that their presence shows that justice is being administered. These features are: (a) a dispute as to the existence of legal rights or a violation of the law, (b) the determination of the rights of the parties or the imposition of liabilities or the infliction of a penalty (c) the final determination of legal rights or liabilities or the imposition of penalties (d) the enforcement of those rights or liabilities or the imposition of a penalty by the executive power of the State which has been called in by the court to enforce its judgment (e) the making of an order by the court which, as a matter of history, is an order characteristic of courts in this country (see *McDonald v Bord na gCon* (1965) I.R. 217). There are some questions which courts may have jurisdiction to decide but which are not an administration of justice. The exercise of the jurisdiction which courts have over wards is not, for example, an administration of justice. A decision may be an administration of justice though all the features we have mentioned are not present.

97. The decision of the Minister for Local Government as to whether a compulsory purchase order made under the Housing Act, 1966 or under any of the many other Acts which authorise compulsory purchase, should be confirmed or not, is administrative and is not an administration of justice. The only issue before the Mini-

by trustees on trust for the purposes of a religious order? When property is held by trustees for the members of a religious order or for the purposes of an order, it is doubtful whether it could be regarded as being the property of a religious denomination. The second question, as to the meaning of "diverted" (a word which first appeared in Irish constitutional history in the Home Rule Bill 1893), is solved in part at least by the Irish text which uses the words "do bhaint díobh" which conveys the idea of taking or acquiring. (In *Ulster Transport Authority* v *Brown* (1953. N.I. 79), one of the judges said that divert can, though it may not necessarily, involve a taking). It is doubtful whether land which it is proposed to acquire for municipal housing only could be regarded as being diverted for necessary works of public utility. But if the land was being acquired because it would be suitable for letting to builders who intended to construct houses or factories, the proposal would certainly not be to acquire it for necessary works of public utility. Therefore a law which authorised a local authority to acquire compulsorily land which was the property of a religious denomination or of an educational institution for the purpose of letting it to builders would certainly be repugnant to the Constitution.

105. The difficulties for our proposals created by Article 44 Section 2.6° can be dealt with in one of two ways. One is to define a designated area in such a way that it cannot include the property of a religious denomination or of an educational institution. The objection to this is that property which belonged to a religious denomination at the date when the order designating the area in which the property was situate was made would be permanently outside that area and so could never be compulsorily acquired even if the land was subsequently sold. This would considerably increase the price of the property. The other way is to provide in the legislation that when the local authority apply to the Court to assess the compensation for any property the owners of it should have the right to have the application refused if they establish that it is the property of a religious denomination or of an educational institution. The second seems to us to be the better solution to an extremely difficult problem.

106. During our discussions it has been suggested that the legislation which we propose is repugnant to the Constitution because it discriminates against the owners of land in a designated area. The argument is that owners of land outside a designated area will be entitled under the law to the full market price if their lands are acquired while those whose lands are in a designated area will get existing use value plus 25% only. The suggestion that this would make the law repugnant to the Constitution is based on Article 40 Section 1 which reads:

> "All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and

moral, and of social function" and on Article 40 Section 3 which we have already quoted.

Article 40 Section 1 is a guarantee that citizens of the State will, as human persons, be held equal before the law. It relates to their essential attributes as persons, to those features which made them human beings. It has nothing to do with their property rights. Article 40 Section 1 has been considered by the Supreme Court in two cases, *The State (Nicolaou) v An Bord Uchtála* (1966) I.R. 567 and *Quinnsworth v The Attorney General* (not yet reported) in which judgment was given on the 2nd April, 1971. In the first of these cases the judgment of Mr. Justice Walsh contains this passage (at p. 639): "In the opinion of the Court Section 1 of Article 40 is not to be read as a guarantee or undertaking that all citizens shall be treated by the law as equal for all purposes but rather as an acknowledgment of the human equality of all citizens and that such equality will be recognised in the laws of the State. The section itself in its provision 'This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function' is a recognition that inequality may be or must result from some special abilities or from some deficiency or from some special need and it is clear that the Article does not either envisage or guarantee equal measure in all things to all citizens. To do so regardless of the factors mentioned would be inequality".

107. Article 40 Section 3 does not in our view require that the same measure of compensation should be given for all property in the State which is acquired compulsorily. If the legislation is just, the State may prescribe different standards of compensation particularly when the increase in price is the result, in part, of works carried out by the community.

108. During our discussions it has also been suggested that the legislation which we propose is repugnant to the Constitution because it makes it possible for a local authority to discriminate between owners of land in a designated area. Our scheme will mean that designated areas will probably include some built-up areas and it is unlikely that the local authority will acquire houses or industrial buildings. The owners of these will probably be able to sell them at their full market price. Moreover the local authority may decide that they will not acquire all the undeveloped lands in a designated area though we hope that they will. In a later part of this Report we suggest that they should not acquire property used for sporting and recreational purposes when it is used for these purposes. The argument against our proposals is that the designated area scheme will make it possible for local authorities to discriminate between owners of land in a designated area by acquiring some of the properties in it at existing use value plus 25% and by not acquiring others. Neither Section 1 nor Section 3 of Article 40 prohibits legislation giving local authorities a right to acquire some property at a price under its full market price provided that the legislation is just. Under our scheme the local authority may acquire

any property in a designated area at existing use value plus 25% and so all property in such an area will be liable to be acquired on these terms. The possibility that a power of acquisition may be misused does not mean that such a power may not be created.

109. Our proposals are, in our view, not repugnant to any part of the Constitution provided that the legislation confers the jurisdiction to designate areas (including the determination of all questions under Article 44 Section 2.6°) and to assess compensation on the High Court and provided that the power to acquire property compulsorily does not apply to the property of any religious denomination or of any educational institution.

110. The meaning of the articles in the Constitution dealing with property rights and of Article 44 Section 2.6° is however uncertain and as a speedy judgment on the validity of the legislation is desirable we respectfully recommend that the President, when asked to sign the Bill, should refer it to the Supreme Court under Article 26 of the Constitution for a decision whether it is repugnant to the Constitution. Such a decision is final (Article 34 Section 3.3°). If this is not done, the constitutional validity of the legislation will almost certainly be challenged by the ordinary process of an action in the High Court and an appeal to the Supreme Court and this will result in uncertainty for a considerable period.

CHAPTER IX

LEGISLATION IN ITALY AND NORTHERN IRELAND

111. The designated area scheme may seem radical to those whose thinking on property matters inclines them to favour the claim of the individual against that of the community. The principle on which it is based, that land which is suitable for building should be acquired by the local authority at a price which ignores the development potential and which is related to existing use value has, however, been accepted by the Italian Parliament in a Law passed on 22nd October, 1971 (No. 865). We wish to thank the Italian Ambassador and his staff in Dublin for providing us with the text of it.

Chapter II of the Law has the heading " Rules for expropriation for public utility ". Article 9 stipulates that the provisions of the Law are to apply to the acquisition of buildings required for the purposes stated in Chapter I (subsidies for buildings), to the purchase of land required for carrying out town planning, to the reclamation of urban built-up areas, to the reconstruction of buildings or districts destroyed or damaged by war or natural calamities and to the purchase of areas included in the zones of expansion mentioned in a Law of 1942. The local authorities which are given power to arrange for the acquisition of land for public utility (and this includes town planning) have to deposit a report on the work to be carried out and maps on which the areas to be acquired are shown with the secretary of the municipality where the buildings are. A list of the landowners and plans showing the current town planning arrangements has also to be lodged. The mayor then notifies the persons whose lands are to be acquired that their property is included in the plans, and when he has considered their views, he sends the documents to the President of the Regional Board who then fixes a provisional amount of compensation for the acquisition by applying the rules in Article 16 of the Law. The Law also provides that the parties may agree on the amount of compensation for indemnity but that if agreement cannot be reached, the rules in Article 16 are to be applied. These provide that the Technical Treasury Office is to decide each year before 31st January the average agricultural value in the previous year of lands within the various agricultural regions defined according to the latest official publication of the Central Statistical Office. This average agricultural value is to be calculated having regard to the type of cultivation actually practised. The article then provides two standards of compensation, one for areas outside built-up areas and the other for lands within built-up areas and within areas defined as historic centres by the town planning bodies. The compensation for land outside built-up areas and historic centres is the average agricultural value appropriate to the type of cultivation carried on where

the lands to be expropriated are situate. The compensation for lands within built-up areas or historic centres is to be calculated in a very complicated way but we do not think it necessary to describe this. When the amount of compensation is being determined, the suitability of the lands for building and any increase in value attributable to town planning decisions are to be ignored. If the lands being acquired are capable of being cultivated by " a direct farmer owner ", the compensation to be awarded is double the existing use value. If the lands to be acquired are being cultivated by a tenant, the owner is paid the existing use value and the tenant is paid a similar amount. The compensation will thus in many cases be double the existing use value. Any landowner may appeal to the court of appeal for the territory against the estimate of the Technical Treasury Office of the average agricultural value but the basis of compensation remains the average agricultural value calculated by reference to the type of cultivation carried on.

112. We realise that the institutional framework and laws in Italy are very different to ours and that the attitudes to property rights may be different in the two countries but the similarity of the basic concept in the Italian Law and in our proposals is striking. The Italians are as attached to their land and property as are the Irish and if the principle that the development potential is to be ignored when assessing compensation for compulsory acquisition has been accepted by the Italian Parliament, we cannot see any reason why a system based on this concept should not be accepted by the Oireachtas in relation to land where the development is made possible by works carried out by the local authorities.

113. The Italian precedent is not, however, the only one. In Northern Ireland, the New Towns Act (Northern Ireland), 1965, made provision for the establishment of new towns. When the Minister of Development was satisfied that it was expedient in the interests of Northern Ireland that any area of land (whether or not it included an existing town) should be developed as a new town, he could, by order, designate that area as the site of a proposed new town. When such an order had been made, the Minister of Development was given power to acquire either by agreement or compulsorily any of the land within that designated area and if he exercised this power, he could make a vesting order vesting the land in the Ministry. When the Minister had made an order designating the area of a new town, he could establish a new town commission which was also given compulsory powers of acquisition. Section 15 (7) of the New Towns Act, 1965, which is based upon corresponding British legislation in relation to new towns, deals with the compulsory acquisition by the new town commission. It reads:

> " Without prejudice to Section 16 of the Lands Tribunal and Compensation Act (Northern Ireland), 1964, in assessing compensation payable in respect of the compulsory acquisition of any land under this section, no account shall be taken of any

increase or diminution in the value of the land that is attributable to the existence of the new town".

Section 16 of the Lands Tribunal and Compensation Act (Northern Ireland), 1964, reads:

> "16 (1). In assessing compensation payable in respect of the compulsory acquisition after the passing of this Act of any land (in this section referred to as "the relevant land"), no account shall be taken of any increase or diminution in the value of the relevant land which is attributable to the carrying out or the prospect of the carrying out, of so much of any development on the relevant or on other land which has been, or is being, or is proposed to be acquired (compulsorily or otherwise) for the purposes of the same scheme or project of development for which the relevant land is being or has been acquired, as would not have been likely to have been or to be carried out if the acquiring body or authority had not acquired or did not propose to acquire the relevant land or that other land.
>
> (2). In this section "development" includes any building operations or rebuilding operations and any use of the land or any building thereon for a purpose which is different from the purpose for which the land or building was not being used".

The effect of Section 16 of the Act of 1964, is that any increase or diminution in the value of land attributable to development which was not likely to have been carried out if the acquiring authority had not or did not propose to acquire the land was to be ignored. The effect of Section 15 (7) of the New Towns Act, 1965, is that land which is acquired by the new town commission is to be valued on the basis that the development value arising out of the existence of the new town is to be ignored. Whatever development value exists apart from the new town may be the subject matter of compensation but the increment arising from the decision to establish a new town does not have to be paid to the owner of the land.

114. Paragraph 33 of the N.I.E.C. Report on Physical Planning written in March, 1969, is misleading in its account of the legislation in Northern Ireland. It reads:

> "In the case of Craigavon an order was made vesting the full area required for the new city's development (6,000 acres) in the Minister of Development, the land to be taken up by the Craigavon Development Commission as required. The compensation to be paid was fixed by reference to the market value, at the vesting date in 1966, of the land in its existing use, subject to allowance being made for such increases in its value as seemed likely to occur without the full Craigavon development."

The restriction on compensation imposed by the legislation did not apply to land acquired by the Minister of Development. It applied only to land acquired by the new town commission. More-

over, there is nothing in the New Towns Act about existing use. The Act provides that the existence of the new town and any development value which this creates are to be ignored in assessing compensation for lands compulsorily acquired by the new town commission.

The significance of the legislation for our purposes lies in the power of the Minister of Development to designate an area as the site of a proposed new town and the restriction on compensation payable on compulsory acquisition within that area.

CHAPTER X

RECOMMENDATION AND DETAILS OF THE SCHEME

115. We are of opinion that the designated area scheme has many advantages and that these completely outweigh the arguments against it. We therefore recommend its adoption. We have already given the main features of it. There are, however, certain details which we now propose to describe.

116. As the definition of a designated area will be the most important part of the Bill which will embody our proposals (if they are accepted by the Government), we have thought it appropriate to draft one:

> " designated area " means an area which in the opinion of the High Court is one: (a) in which the lands will probably be used during the following ten years for the purpose of providing sites for houses or factories or for the purposes of expansion or development, and (b) in which the land or a substantial part of it has been or will probably be increased in market price by works carried out by a local authority which were commenced not earlier than the first day of August, 1962, or which are to be carried out by such local authority ".

117. Planning permissions granted before orders are made designating areas present many problems. If one of the effects of planning permission given before the date of such an order was to prevent all the lands in respect of which it was granted being included in a designated area, then many applications for permission would be made between the date of publication of this Report and the making of the orders designating areas. As planning permission includes outline permission, the result would be that the scheme we advocate would not come into effective operation until many years had passed. It is, however, essential that the ordinary process of granting planning permissions for desirable developments should go on. But if planning permission had the effect of preventing lands from being included in the designated area, there would be a major defect in the scheme. We are therefore of opinion that an order designating an area may be made so that it includes lands in respect of which planning permission has been granted before the date of the order. When an order designating an area has been made, it is essential that planning permissions in respect of land in it should continue to be granted in cases where it is proper to do so but it is equally important that the effect of planning permission should not be to exclude land in respect of which it is granted from the compulsory powers of acquisition at existing use value plus 25%. Section 30 of the Planning Act, 1963, provides that planning autho-

rities may revoke or modify any planning permissions which they have given and, if they do this, they may be required to pay compensation or they may be required to buy the land in respect of which the permission was given if it has become incapable of reasonably beneficial use in its existing state (Section 29).

The best solution to this extremely difficult problem is that planning permissions granted before or after the date of an order designating an area should continue to be effective and to authorise the development to which they relate if the lands in respect of which they are given are in a designated area. However, an application by a local authority to the Court to assess the compensation payable on the acquisition of the land should have the effect of revoking any permissions granted in respect of lands included in the application except in so far as they relate to work carried out at the date of the application to the Court and to the completion of buildings whose construction had started at the date of the application.

118. As some of the elected representatives who serve on local authorities may be reluctant to use the powers of applying for an order designating an area and to purchase lands within it, we think that the decision to apply to the Court for an order designating an area and to buy lands within such an area should be executive functions of the local authorities performable by the City or County Manager. He should not require the sanction of his Council for the exercise of either of these powers and they should not have power to control his decisions on either of these powers under Section 4 of the City and County Management (Amendment) Act, 1955. The Minister for Local Government should also be given power to direct a local authority to apply for an order designating a specified area or to purchase lands within it.

119. A statutory obligation should be imposed on each local authority to make an application to the Court in relation to all land which falls within the definition of a designated area. As it will be impossible to make applications immediately in relation to all the lands which come within the definition, the legislation should provide that the obligation on Managers to make applications to designate areas should, during the first five years after the legislation is passed, be confined to lands in the vicinity of the larger urban areas which should be specified in the legislation or prescribed by the Minister. At the end of this period the obligation should be applied to such other areas as the Minister may by order prescribe.

120. Because cities and towns have grown in size and population and because the demand for houses has increased, it has become necessary for local authorities to acquire lands outside their areas and they have been given power to acquire lands compulsorily in such cases. It will, we think, be inevitable that local authorities will wish to designate areas outside their functional areas so that they may subsequently acquire lands within these areas. There may, therefore, be a clash of interest between the two local authorities

concerned. The legislation to give effect to our proposals should accordingly provide that when a local authority wishes to apply for an order designating an area outside its functional area, it should notify the local authority in whose area the lands are situate of its intention to do so and that the two authorities concerned may then make a joint application for an order designating an area. If the local authority in whose area the lands are situate does not wish to join in the application then the local authority seeking the order in respect of lands outside its area should be allowed to apply for such an order and should have power to acquire the lands subsequently at existing use value, plus 25% of it. When a joint application is made and is granted in respect of any lands, the Court should have power to determine which authority should be allowed to acquire the lands if any dispute should arise between them about this.

121. The effect of the designated area scheme will be that the local authorities will become the owners of most but not necessarily of all the land within such areas. In some cases we envisage that so long as the land continues to be used for its existing purposes, it need not be acquired by the local authority. The types of land in this category are property used for sporting and recreational purposes (parks, playing fields, golf and race courses and property used for community purposes) and existing dwellings, shops, offices and factories. Our view is that if at any future date, an application for planning permission to develop any of these properties is made, the local authority could at that stage acquire them and pay compensation on the scale applicable to other land in a designated area.

122. Another category of land which presents difficulties is that for which planning permission has been granted and which is being developed at the date when the order designating the area is made. In paragraph 117 we expressed the view that planning permissions granted before an order designating an area which includes lands for which permission has been granted has been made should remain effective until the local authority applied to assess the compensation for acquisition. Development under these permissions will therefore continue. In cases where planning permission has been granted and the development has started, the acquisition of any part of the lands by the local authority would cause delay and uncertainty and the local authority should not as a matter of policy, acquire the lands.

123. Our colleagues Mr. Murphy and Mr. O'Meara have objected to our proposals because the power of the local authority to acquire land in a designated area is discretionary and not mandatory in the sense that the local authority will not be under a legal obligation to acquire all the lands in a designated area. This, they say, will have the consequence that there will be discrimination against those owners whose lands are acquired. We have discussed the constitutional aspect of this in paragraph 108. The argument is that because developers may get outline planning permission and because local authorities will not generally acquire land for which planning per-

mission has been given where the work of development has started, developers will continue to offer prices for land which will be considerably greater than existing use value plus 25%. This would have the result, it is said, that land prices would continue to rise and that some owners would get more than others. This will occur however only if the local authorities fail to use their powers to acquire at existing use value plus 25%. If there is a general belief that this power will be used, prospective purchasers will not pay inflated prices. We recommend in paragraph 131 that where land has been purchased before the date of the publication of this Report, the compensation on compulsory acquisition should be the purchase price plus interest if this exceeds the existing use value plus 25%. We emphasise, however, that this should apply only to purchases made *bona fide* before the date of the publication of this Report. It is essential to the success of the scheme that prices paid after the date of the publication of this Report should be ignored when compensation for compulsory acquisition of lands in a designated area is being fixed. Our primary reason for not proposing that there should be an obligation imposed on local authorities to acquire all the lands in a designated area is that this proposal would interfere with development in the immediate future. Some building firms have already acquired stocks of land to meet their future needs and there could be considerable delays in development if the local authorities had to acquire these before development could commence. However, once the designated area scheme is in full operation, there is no reason why local authorities should not acquire sufficient land to satisfy all development demands and so local authorities should in the future acquire all lands which are about to be developed. If the designated area scheme is worked in this way, no discriminatory treatment of different landowners will occur and so we feel that our colleagues' fears are not justified. If the scheme does not work because local authorities fail to use their powers in an adequate way to ensure its success, we have suggested that sufficient powers be given to the Minister for Local Government to deal with such a situation.

124. In paragraph 101 we stated our conclusion that the Constitution requires that the decision as to the boundaries of a designated area should be made by the High Court. The tendency in modern legislation has been to give jurisdiction in matters involving decisions on economic and planning matters to statutory tribunals whose members have the necessary technical qualifications to decide the questions which arise. Judicial procedure has the disadvantage that everything has to be proved and this does not lead to speed in decisions. When a new and controversial jurisdiction has been created, it is advisable to confer it on a statutory tribunal because the prestige of the High Court is not enhanced when it is involved in controversies on matters which are regarded as being outside the legal field. Lord Devlin, who has been a Judge in many courts in Britain (the High Court, the Restrictive Practices Court, the Court of Appeal and the House of Lords) has written: "It is a wise instinct which has led Governments so often to entrust the

initiation of new and untried jurisdictions, even when uncontroversial, to statutory tribunals. Non-compliance with the tribunal's order is of course an offence but it is the executive who prosecute and the police, not an officer of the Court, who act. The High Court plays a remote and supervisory role: and if the tribunal suffers from the embroilment, the prestige of the Court is not involved."[1] We think that the constitutional provisions would be observed and that the advantages of a statutory tribunal would be obtained if the judge exercising the new jurisdiction was obliged by the Act to sit with two assessors, one with town planning experience and the other with qualifications in valuation matters.

125. As it is essential that there should be public confidence in the impartiality of the Court and as local authorities will be making applications to it, neither of the assessors should be officers or employees of any of the parties to the application or have any interest in the result of the proceedings.

126. Though it may be unusual that a judge should sit with assessors with technical qualifications, provision for this has existed for many years. Section 39 of the Workmen's Compensation Act, 1934, formerly provided that the Circuit Court Judge might in any case summon a medical referee as assessor to the Court when it was hearing an application for compensation and that any party who applied and paid the necessary fees was entitled to have an assessor sitting with the Judge as a medical referee. Section 74 of the Patents Act, 1964, provides that in any action for infringement of a patent or other proceeding under the Act, the High Court may, if it thinks fit, and shall, on the request of all the parties to the proceedings, call in the aid of a specially qualified assessor and try the case with his assistance and that the Supreme Court may, if it thinks fit, in any proceeding before them call in the aid of an assessor. Within the last ten years there have been two cases (*The Tolbutamide Case* and *Ernest Scraggs and Co. Ltd.* v *The Controller of Patents*) relating to the validity of patents in which highly technical issues of organic chemistry and mechanical engineering arose. In each of them an assessor sat with a judge of the High Court and the advice given was of the greatest assistance. The ultimate decision however was that of the judge.

127. Other examples of judges sitting with persons who are not judges are given by the Electoral Act, 1963, in which an Appeal Board consisting of a judge of the High Court, the Chairman of Dáil Éireann and the Chairman of Seanad Éireann hear appeals from the Registrar of Political Parties in connection with the registration of political parties in the Register and admiralty cases in which, when questions of navigation arise, a nautical assessor almost invariably sits with the judge trying the case.

1. Lord Devlin. "Politics and the Law: a matter of judgment" Sunday Times. 6th August, 1972.

128. In Britain and Northern Ireland the Restrictive Practices Court was established by the Restrictive Trade Practices Act, 1956, to deal with the registration and judicial investigation of certain restrictive trading agreements. The Court was to consist of five judges and not more than ten other members. The judicial members were to be three High Court Judges, one Judge of the Court of Session in Scotland and one Judge of the High Court in Northern Ireland, while the other members were to be persons who appeared to the Lord Chancellor to be qualified to be members by reason of knowledge of or experience in industry, commerce or public affairs. The Court was to consist of a presiding judge and at least two other members for the hearing of any proceedings and the opinion of the Judge or Judges sitting as members of the Court on any question of law was to prevail. A decision of the Court on a question of fact was to be final but an appeal on a question of law could be brought to the Court of Appeal. The Restrictive Practices Court has heard many lengthy and complicated cases and has dealt with them with expedition. The judgments, which deal with what are primarily economic matters but which have a legal background, are of a remarkable quality and we are not aware of any substantial criticism about the work of the Court.

129. We recommend that the legislation should provide that the Court should have power to give its decisions in stages on applications to designate areas. It will obviously be impossible to deal in one hearing with the entire applications by some local authorities in connection with designated areas because the amount of land which they will seek to include will be very large. The Court should therefore have power to deal with the applications in stages. The decision of the Court should be by written judgment in which the reasons are set out. The volume of judicial work has increased greatly in recent years and the time of the seven judges of the High Court is now fully occupied. We recognise that the work involved in exercising the new jurisdiction which we recommend will be heavy. In our view one judge should eventually be assigned full time to this work so that there will be continuity in practice. When the Restrictive Practices Court was established in Britain and Northern Ireland, the number of High Court judges in England was increased by three and the members of the Court of Session by one so that the additional work which the Act created could be done (Section 32 of the Restrictive Practices Act, 1956). It is also our view that the staff of the Court, such as the Registrar and the assistants, should be assigned whole time to the exercise of the new jurisdiction.

130. The legislation should as far as possible be a complete statement of the new jurisdiction which is to be conferred on the High Court and should include all the powers which the Court will require to exercise the jurisdiction effectively. The powers of the Court should not be given by reference to other Acts except the Planning Act, 1963, and the legislation should be a complete statement of the law which the Court is to apply and of the principles for the

assessment of compensation for the compulsory acquisition of land within a designated area which the local authority decide to acquire. All the rules in relation to the determination of compensation in the Land Clauses Consolidation Act, 1845, in the Act of 1919 and in the Planning Act, 1963, should be expressly excluded. When a local authority decide to acquire any land within a designated area they should be obliged to effect the acquisition in such a way that the lands in that area belonging to an owner will not be severed unless the owner agrees to the acquisition of part of his holding without compensation for severance. This has the added attraction that the difficult problem of compensation for severance will not arise.

131. We have thought it advisable to draft the provisions which should be included in the new Act in relation to the assessment of compensation.

Rules for the assessment of compensation for land acquired under this Act.

The Court shall when assessing compensation for lands acquired under this Act apply the following rules:

I. No allowance shall be made on account of the acquisition being compulsory.

II. The compensation shall be the amount which the lands might be expected to realise if sold in the open market on the date when the application to assess the compensation is made to the Court when sold by a willing seller on the basis that the lands could never be used for any purposes other than those for which they were being used at the date of the application to the Court to assess the compensation plus 25% of such amount.

III. Without prejudice to the generality of rule II, no account shall be taken of:

(a) the existence of proposals for development of the land or any other land by any person or by a State or local authority,

(b) the probability or possibility of the land or other lands becoming subject to a scheme of development undertaken by any person or by a State or local authority.

IV. If the compensation assessed under these rules should be less than the price *bona fide* paid for the land before ———— (the date of the publication of this Report), the price so paid together with such amount of interest as the Court shall think just, shall be the amount of the compensation.

V. If the land is subject to any rent or other payment, the said rent or payment so far as it affects the land may on

the application of the local authority be redeemed and extinguished on such terms as to the Court seem just.

VI. If the land is subject to any easement or public right of way or to any profit a prendre or customary right, such easement, public right of way, profit a prendre or customary right may, on the application of the local authority, be extinguished on such terms as to the Court seem just.

VII. The special suitability or adaptability of the land for any purpose other than that for which it was being used at the date of the application to the Court to assess the compensation shall not be taken into account.

VIII. If the land or any structures thereon are being used in a manner which could be restrained by any court or which is contrary to law, no compensation shall be awarded in respect of such use.

IX. If any person shall be residing either as owner or tenant on the land acquired by the local authority at the date when the application to assess the compensation is made, the Court may award to such persons such compensation for the expenses caused by the removal to other premises as it shall consider just.

X. Regard shall not be had to any depreciation or increase in value attributable to

(a) the land or any land in the vicinity thereof being reserved for any particular purpose in the development plan or

(b) inclusion of the land in a special amenity area order.

XI. No account shall be taken of any value attributable to any unauthorised structure or unauthorised use.

132. As the title to land usually includes many interests, the transfer of it is necessarily a slow process. We have received many complaints about the delays in the conveyance of lands which have been compulsorily acquired. Section 81 of the Housing Act, 1966, provides for the making of a vesting order by the local authority to vest the land in the authority. When such an order is made a conveyance from the owner is not necessary. A vesting order under the Housing Act, 1966, can be made only when the local authority has entered on the lands and the lands have not been conveyed to them within six months after the date of such entry and where the authority consider it urgently necessary that the acquisition of the land should be completed. We think that the new Act should provide that when the compensation has been assessed and satisfactory title has not been shown to the lands within six months from the date of the assessment, the local authority should be empowered to pay the compensation into Court to the credit of the matter and the

Court should then have jurisdiction on the application of the local authority to make an order vesting the land in the local authority free from all claims by State authorities, mortgagees and incumbrancers. Claims by those with estates or interests in the land would then be made and would be ruled on by the Court. Some of the lands to be acquired may be subject to rents and payments charged on the lands to be acquired and lands not being acquired and the Court should be given power to apportion these rents and payments and to charge the part of the rents and payments applicable to the lands being acquired on these lands in exoneration of the other lands subject to the rents and payments. The Court should also be given power to make an order that when the compensation has been paid into Court and a vesting order has been made, the local authority should be put into possession of the lands if those in occupation refuse to leave them. The Land Commission have this power under Section 19 of the Land Act, 1927 and Section 12 of the Land Act, 1953.

133. The judge assigned to this work by the President of the High Court should be given power with the concurrence of the Minister for Justice to make rules of court regulating the practice and procedure in relation to the exercise of the new jurisdiction. This rule-making power should include a provision that the judge may, if he thinks fit, modify the rules of evidence so that affidavits would be admissible in evidence though the person making them did not attend to give oral testimony.

CHAPTER XI

OTHER SUGGESTED CHANGES IN THE LAW

134. If it is assumed that the population will continue to increase and that living standards will continue to rise, the pressure on the scarce land resources of the community is certain to become more intense. One of the features of prosperity which is reinforced by inflation is an increasing competition for land. We have already stated that we have found it extremely difficult to get reliable evidence about transactions in land. We had not power to require the Land Registry Officials to produce transfers of land to us and we could not inspect deeds lodged with them. Our task would have been much easier if we had had either of these powers. As land is a scarce resource, we think that the principle should be accepted that information about dealings in it should be available to the public. We have already recommended that details of dealings in land in a designated area should be given to the local authority. Any member of the public should be able to find out what prices have been paid for land and the nature of the dealings in it. Under the law as it is now, this is not possible. This has the further disadvantage that it is not possible to compile accurate statistics for the whole country in relation to land prices. This information is essential for policy-making decisions.

135. There are two systems of registration relating to transactions in land in the State, registration of title and registration of deeds. They are mutually exclusive in relation to the same estate in the lands and are governed by different Acts, the Registration of Title Act, 1964 and a series of Acts beginning in 1707 commonly called " the Registry Acts ".

136. When the title to land has been registered, the transfers of it are retained in the Land Registry but members of the public have not a right to inspect any of them. Section 126 of the Registration of Title Act, 1964, gives the Registration of Title Rules Committee power to make rules in relation to the inspection of and making copies of or extracts from any register or document in the Land Registry. The relevant rule now in force (the Land Registration Rules 1966) provides:

" 188 (1) The registered owner of property, the personal representative of such owner and any person authorised by the registered owner or his personal representative or by an Order of the Court or by these rules but no other person, may inspect a document filed in the Registry on a dealing with the property of the owner.

(4) The Registrar may, in special circumstances and on such terms as he thinks fit, permit a person to inspect a document filed in the Registry ".

The result is that the Registrar cannot allow anyone except the registered owner of property or his personal representative or someone authorised by him to inspect documents by which land is transferred unless special circumstances exist. We think that it would be in the public interest that there should be a much more extensive right to inspect all documents retained in the Land Registry. We accordingly recommend that a rule should be made by the Registration of Title Rules Committee that any person should have the right to inspect, make copies of and take extracts from any transfer of land retained in the Land Registry on payment of an appropriate fee in respect of each document inspected.

137. The other system of registration applies to land the title to which has not been registered. It is a system of registration of documents and the date of registration determines the priority. Registration is effected by lodging a memorial which is an abstract of the deed. A copy of this may be obtained by anyone on payment of a small fee. The contents of the memorial are regulated by Section 7 of the Registration of Deeds Act, 1707, which does not require that the purchase price should be stated. The result is that the memorials of deeds never show the price paid. We think that the public should be able to find out what prices have been paid for land and that the Registry of Deeds Act, 1707, should be amended so that the price paid must be stated in the memorial. We understand that a bill is being drafted to consolidate and amend the whole system of registration of deeds and we have already written to the Minister for Justice and to you recommending this change.

138. Most of the speculation in land which takes place would not be possible without the facilities which are made available by financial institutions. We invited the Irish Banks Standing Committee to send us their view and on the 20th May, 1971, they wrote: "The member Banks fully support any measures designed to control, for the benefit of the community, the price of land for housing and other forms of development. They wish to make it quite clear that it is their agreed policy, in conformity with Central Bank guidelines on credit, to refuse generally to grant advances for speculative purposes and to state that this policy is actively pursued whenever, in the particular case of land purchases, an element of speculation is involved or detected. Notwithstanding this effort to discourage speculation it is necessary to appreciate that the main difficulty with land purchases is for a banker to distinguish between what is and what is not speculation. As a result, it is inevitable that instances can arise where accommodation granted for apparently genuine investment in land eventually turns out to be a speculative transaction. This inability to detect initially the nature of the transaction may be due either to the terms in which the borrower makes his application or to subsequent change of purpose on his part. Whatever the reason

a bank is practically powerless to prevent such speculation until the true nature becomes apparent only after the deal is completed. Although such cases are rare nevertheless the Banks welcome any proposals to reduce or prevent them and other forms of speculation in building land. Any measures intended to curb them should, if they are to be effective, embrace all the lending institutions in the financial sector".

It is a debatable question whether it is possible to advise any scheme of credit control which will enable or require a bank or any financial institution to distinguish between advances for the purchase of property with the intention of developing it and those for speculative purposes. We recommend that the Central Bank should examine this question.

139. Changes in town planning law except in so far as they affect the price of land are outside our terms of reference. We have, however, received many suggestions for improvement. Some of the suggested reforms would, we think, put some restraint on speculation in land and buildings and so we make the recommendations in the next four paragraphs.

140. When planning permission is given, there is no time limit imposed within which the development which it authorises must be completed. The result is that permission for development given in 1973 may not be used for many years. In the meantime the price of the property will have been greatly increased by the existence of the permission. We do not see any advantage in prescribing a period within which the development must be started because such a requirement could be easily complied with by carrying out some preliminary work. We think that the Planning Act, 1963 should be amended so that a planning permission, whether outline or otherwise, should cease to be effective to authorise any development unless it was completed within a time specified by the planning authority or, when the permission has been given before the date when the amending Act comes into operation, within a period of five years from that date. An obligation should also be imposed on all planning authorities, when granting permissions, to specify a time limit for the completion of the work.

141. In some parts of the State there have been open, deliberate, conscious breaches of the Planning Act, 1963 and of the conditions attached to permissions. When prosecutions are brought in the District Court, nominal penalties only are imposed. This leads to a contempt for the law and to a feeling of frustration by planning officers. We think that the law should be amended so that a planning authority may apply to the High Court for an injunction to restrain breaches of the Planning Act, 1963 and of the conditions attached to permissions, although they cannot establish the likelihood of irreparable damage. Under the existing law an injunction cannot be granted to a planning authority to restrain unauthorised development because they cannot establish that they have a sufficient interest in the matter to justify the grant of an injunction or that

irreparable damage would follow if the injunction was not granted. We think that every planning authority should be entitled to get an injunction in the High Court to restrain breaches of the Planning Act, 1963 or of the conditions attached to planning permissions without proof of damage or loss to the planning authority.

142. We have already referred in paragraph 67 to Section 26 subsection (1) of the Planning Act, 1963 under which a planning authority must, when dealing with an application for permission, consider only the proper planning and development of the area. There has been a number of applications for planning permission for the development of lands in respect of which a local authority have made a compulsory purchase order which has been submitted to the Minister for confirmation but on which he has not yet given a decision. The Planning Act, 1963 does not authorise the planning authority to refuse to consider these on the ground that a compulsory purchase order has been made. We think that the Planning Act, 1963 should be amended so that it will provide that a planning authority shall have power and shall be deemed always to have had power to decline to consider any application for planning permission when it relates to lands in respect of which a compulsory purchase order has been made by a local authority.

143. The awards of compensation for refusal of planning permission have been so large that planning authorities are reluctant to refuse permission when their decision to do so may involve them in liability for compensation. When planning permission is refused on the ground that water supplies or sewerage services are not available for the development or that the existing water supplies or sewerage services are not adequate for the development, compensation should not be payable. Further, if planning permission is refused because any existing capacity is reserved to facilitate the development of other land in the area in accordance with an order of priority indicated by the planning authority in the development plan, compensation should not be payable. Section 56 subsection (1) (b) of the Planning Act, 1963 is ambiguous and may not exclude compensation in such cases. We therefore recommend that the entire paragraph (b) of subsection (1) of Section 56 should be repealed and a new paragraph inserted so that the relevant parts of the section will read :

56—(1) Compensation under Section 55 of this Act shall not be payable—

(b) in respect of the refusal of permission to develop land if the reason or one of the reasons for such refusal is—

(i) that there are not any water supplies or sewerage services for the proposed development or

(ii) that the water supplies or sewerage services available are inadequate for the proposed development or

(iii) that the existing capacity in the water supplies or sewerage services is required to facilitate the develop-

ment of other land in the area in accordance with an order of priority indicated by the planning authority in their development plan or

(iv) that a road lay-out for the area or part thereof has not been indicated in the development plan or has not been approved of by the planning authority or by the Minister on appeal.

144. We have received complaints from a number of local authorities about the amounts awarded by the Official Arbitrator on the assessment of compensation for compulsory acquisitions of land. These complaints are not justified. The Official Arbitrator must decide the cases which come before him in accordance with the law and on the evidence which is offered. The price of all types of land has risen steeply in recent years and the awards must reflect this. Under the existing law a compulsory purchase order authorises but does not oblige a local authority to purchase the land included in it. Service of a notice to treat creates a contract by the local authority to purchase the interest to which it relates and Section 84 of the Housing Act, 1966 obliges the Official Arbitrator to assess the value of the land and the other heads of compensation at the date of the service of the notice to treat. We think that the relevant date for the assessment of compensation should be the date of the confirmation of the compulsory purchase order by the Minister and that the Official Arbitrator should be given power to award interest at such rate and for such period as he things fit. We therefore recommend that the Act of 1919 should be amended to provide that the value of land should be assessed by the Official Arbitrator as the amount which the land if sold in the open market by a willing seller on the date of the confirmation of the compulsory purchase order by the Minister might have been expected to realise. We also recommend that if a compulsory purchase order is made by a local authority and confirmed by the Minister, the owner of the lands should have the right to require the local authority to purchase his interest in the lands at a price fixed by the Official Arbitrator.

145. The Act of 1919 should also be amended to provide that the Official Arbitrator, when making his award, should be obliged to show the division of the compensation under these heads:

(a) the value of the lands

(b) compensation for disturbance

(c) compensation for severance

(d) injurious affection

(e) loss of goodwill

(f) interest.

146. Under the Act of 1919 the Official Arbitrator may state any question of law which arises before him for the decision of the High Court. We think that when any question of law arises before

the Official Arbitrator, he should be obliged to state a case for the decision of the High Court if any of the parties to the arbitration request him to do so.

147. The statute law relating to the compulsory acquisition of lands and the assessment of compensation is now a thoroughly confusing patchwork. Anyone who has to answer a question on this branch of the law finds himself compelled to start his enquiry with the Lands Clauses Consolidation Act, 1845 and then to work his way through a jungle of Acts extending over a century. We give one instance of the way in which the Oireachtas expresses itself as it illustrates the complexity of the law. The Third Schedule to the Housing Act, 1966 contains this provision:

> "2. The modifications subject to which the Lands Clauses Acts and the Acquisition of Land (Assessment of Compensation) Act, 1919, shall be incorporated in a compulsory purchase order shall be as follows:
>
> (*i*) notwithstanding the repeal by this Act of the Housing (Miscellaneous Provisions) Act, 1931, "two" shall continue to be substituted for "three" in article 6 of the Second Schedule to the Act of 1890".

Finding out what this means involves a study of the Lands Clauses Consolidation Act, 1845, the Housing of the Working Classes Act, 1890, the Housing (Miscellaneous Provisions) Act, 1931 and the Housing Act, 1966.

The law relating to all compulsory acquisitions by local authorities should be amended and consolidated into one Act. This has been done in Britain by the Compulsory Purchase Act, 1965. When this is being done, consideration should be given to dispensing in some cases with the requirement in the Third Schedule to the Housing Act, 1966 that if anyone lodges an objection to a compulsory purchase order, a public local inquiry must be held before the Minister confirms it. This causes long delays. We think that the Minister should not be obliged to hold a public local inquiry into the confirmation of a compulsory purchase order when the local authority certify that the acquisition is a matter of urgency. The Minister should then request the local authority and the parties objecting to send written statements of their cases to him within a period of three months. These should be supplied to all those who have sent statements and a reasonable opportunity should be given to answer the arguments which are put forward. When this procedure is adopted, the Minister should be obliged to give his decision with reasons within three months after the receipt of the last of the statements.

148. Section 23 of the Public Health (Ireland) Act, 1878 provides that the owner or occupier of any premises within the district of a sanitary authority shall be entitled to cause his drains to empty into the sewers of that authority on condition that he gives notice of his intention to do so and that he complies with the regulations of that authority relating to the way in which the connection is made.

The question whether this section creates an unconditional right to connect a drain into a sewer has been the subject of debate since the Act was passed (see *Molloy* v *Gray* (1889) 24. L.R. (Ir.) 258). We recommend that the law should be amended to provide that notwithstanding the provisions of any Act, an owner or occupier of any premises may not without the consent of the sanitary authority connect his drains into a sewer unless the drains were constructed as part of a development for which planning permission has been obtained under the Town and Regional Planning Act, 1934 and the Town and Regional Planning (Amendment) Act, 1939 or under the Planning Act, 1963.

149. We conclude with a quotation from the report of the Uthwatt Committee because it summarises our general approach:

> "The denser the population, the more intensive the use of land becomes in order that the limited area may be capable of furnishing the services required; the more complex the productive organisation of society, the more highly developed must be the control of land utilisation exercised by or on behalf of the community".

JOHN KENNY (Chairman)
MARTIN O'DONOGHUE
L. REASON
*D. F. RYAN

B. A. O'BYRNE (Secretary)
7th March, 1973.

*See Addendum on following pages

ADDENDUM OF MR. D. F. RYAN

1. Public Authorities

The Committee's terms of reference have posed some problems of interpretation for me.

While I am a supporter of, and a signatory to, the designated area scheme propounded in the majority report, I think that in the context of our terms of reference the definition of a designated area subsumes public authorities as local authorities.

Section 12 (2) of the Acquisition of Land (Assessment of Compensation) Act, 1919 defines the expression land in very broad terms. It also defines a "public authority" as any body of persons, not trading for profit, authorised by or under any Act to carry on a railway, canal, dock, water or other public undertaking.

This latter definition seems to me to apply equally to a government department or a local authority but not to public or semi-State bodies which theoretically are capable of making a profit.

2. Decisions of Public Authorities and Betterment

I am also of opinion that a very special and considerable betterment arises from the decisions of public authorities irrespective of any works they may carry out.

When a planning authority makes a development plan or grants a planning permission the value of land may be immediately and dramatically enhanced.

Local authorities have zoned lands for development where piped services are not available and are unlikely to be available for some considerable time. If such lands were included in a designated area, I do not see how the decision of the local authority could be divorced from its commitment, at some future date, to carry out the necessary works. Therefore, I see nothing inequitable in securing the increase in value for the community resulting from the decision only.

3. Levies, Taxes and Stamp Duties

Since land is fundamental to, and is a basic need of the community, it follows that the requirements of the community override those of any individual. I feel that a levy or stamp duty on all private transactions would form a bridge between the price of lands acquired by a local authority in a designated area and that of lands changing hands privately either inside or outside a designated area.

There has been support from a number of quarters for something of this nature. One suggestion put forward has been for a graduated tax on land ranging from zero at existing use value to a high proportion at uses of maximum value—the tax to be imposed by central taxation and refunded to the local authority as a fund for land acquisition, development, etc.

The Royal Institution of Chartered Surveyors suggested that the

existing development charge be replaced by an increased two-part levy partly for connection to services and partly as a contribution to a fixed fund solely for the provision of extended drainage facilities.

If a capital gains tax can be operated successfully in Britain, it should be also possible to operate such a tax here. Land being of such vital importance to the community, profits from land sales could be regarded as being in a very special category and not comparable to profits arising from speculation on the Stock Exchange or in urban commercial property.

With a designated area scheme functioning properly, there would seem to be little prospect of any levy, stamp duty or tax being passed on to the ultimate house owner. Any such charge would in my opinion, mitigate any apparently discriminatory aspects of the majority scheme and should make it more acceptable to the public at large.

It may also be argued that top ranking taxation advisers would devise methods to render such levies or duties ineffective. It seems hard to accept that equally top rate advisers would be incapable of producing suitable counter-avoidance methods.

D. F. RYAN,
7th March, 1973.

MINORITY REPORT

CHAPTER I

INTRODUCTION

1.1 We regret that we are unable to agree with the principal recommendation in the majority report, which is that local authorities should be empowered to acquire compulsorily land required for housing and other development in areas designated by the High Court, on the application of the local authorities concerned, and that the compensation to be paid for such land should be based on existing use value.

1.2. Otherwise, we agree generally with the findings and recommendations of the majority of the Committee.

In particular, we subscribe to their endorsement of the views expressed by the National Industrial Economic Council in their 1969 "Report on Physical Planning" about the adverse effects on building land prices and on the cost of housing and other development caused by inadequate investment in the sanitary services programme. The Construction Industry Federation, in their submission to the Committee, also argued very strongly that failure to provide adequate capital for sanitary services works has been a major factor in the inflation of the price of serviced land. The Irish Branch of the Royal Town Planning Institute, in majority and minority submissions, stressed the same point, as did a number of other bodies who made submissions to the Committee. We do not think that these arguments can be controverted. The facts available to the Committee provided evidence that the level of expenditure on the provision of water and sewerage facilities in the 1960's was not sufficient to meet the increasing demand for serviced land for housing, industry and other purposes. The result has been that the pressures of demand (aggravated in some cases by speculative dealings) have greatly increased the prices that can be commanded for the restricted amount of serviced land available. A short-fall in investment in sanitary services is all the more serious in that many of the schemes involved may take several years to plan and execute and if investment is curtailed (as occurred in the 1960's) it may be a considerable time before a really satisfactory rate of progress can again be achieved. For example, the assembly of the necessary professional and technical staff required to plan and design new schemes, and the building up of the civil engineering industry to enable it to cope with them, are obvious constraints. We think that there is a clear case for the positive commitment of more capital to meet the needs of the sanitary services programme for a con-

siderable period ahead (with particular reference to areas where large-scale urban expansion is planned). If the capital needs of the programme are not given a higher priority than has heretofore been the case, it is inevitable that land prices will increase still further and the achievement of regional and local planning objectives will be made more difficult and costly. In some areas, the result may be failure to reach targets for the creation of additional employment and for the expansion of urban populations because of the absence of the basic services needed to accommodate development on the scale desired. Serviced land is the basic raw material of most building development and it should not be allowed to go into short supply.

1.3. We agree also with the general acceptance in the majority report that there is need for a more active land policy on the part of local authorities. Such action was advocated in many of the submissions received. For several years, local authorities have been urged to acquire land for building in advance of the provision of services and well ahead of building programme requirements. Some of the authorities have acquired extensive areas and these land reserves have been used to meet their own requirements and to provide sites for private housing, industry and other development. Some other authorities, however, have not been so active. We consider that all authorities for areas where large-scale urban expansion is expected to take place must be assisted and encouraged to engage in land acquisition programmes which would enable them to direct the orderly and progressive development of the areas concerned, and to exercise a regulatory influence on building land prices, and indirectly on housing prices, by releasing land for private development as the need arises. This sort of activity is an essential part of the planning and housing functions of the local authorities and, without it, they can have little hope of properly fulfilling the major development role envisaged for them in the recent White Paper on Local Government Reorganisation.

1.4. It is essential that a more extensive land acquisition programme should be accompanied by an efficient programme for the disposal of land at reasonable prices to meet private development needs. If land is not released in sufficient quantity and at the right time to meet these needs, the value of the programme would be seriously diminished.

1.5. The disposal rate so far achieved by Dublin Corporation in respect of the considerable areas acquired by them with the aid of the special allocation of £3 million made available to them by the Government from 1967 onwards has not been as rapid as was originally expected. The reasons for this are understandable. They are explained in the following extract from a letter dated 19th October, 1972, received by the Committee from the Corporation :—

"When the schemes were introduced, we were aware that requirements in regard to servicing of land would present a

problem but undertook where necessary to carry out transitional works for drainage, water and roads to ensure that development would not be delayed. In practice, this has happened, and such works were carried out to make the land in Tallaght available to builders. Problems have arisen, however, in relation to planning and roads. Apart from Tallaght the bulk of the lands acquired by the local authorities for these schemes are in the areas of the proposed new towns at Blanchardstown and Clondalkin. The orderly development of these new towns requires the production of action plans which in turn are dependent on the determination of acceptable road patterns. It is only recently that the actual location of the new box ring road and the radial intersections have been determined. These determine the exact location of the roads for the new towns and enable the detailed action plans, essential for the land release programme, to proceed. Some months ago the City Manager initiated a programme for the production of action plans and detailed layouts for the areas concerned which would enable the release of 500 acres of land for housing development up to March, 1974. These plans will be available in February/March next and the Construction Industry Federation has been informed of the proposal to release additional land on these dates".

Given the problems described, the fact that the Corporation disposed of sites for over 3,000 houses in the first two years of operation of the scheme must be acknowledged. The effect of the scheme on house prices is significant. The Committee were informed by the Corporation in the same letter that on one estate of 700 houses then under construction at Tallaght, on land made available by them, three-bedroomed centrally-heated houses were being sold within a range of £4,600-£4,800, net. We are satisfied that if the disposal rate of land can be accelerated, as we have been assured it will be, and if the Corporation can continue to make developed sites or blocks of building land available at fixed prices to all builders in need of land, the programme should have the effect of stabilising or possibly reducing the prices obtainable for building land in the open market and should materially assist in holding down house prices. If builders can be assured of a supply of land from the Corporation to meet the needs of their organisations, they ought to be less disposed to pay high prices for land being put on the market by private owners. Similar results could be achieved elsewhere.

1.6. There are obstacles in the way of more extensive land acquisition by local authorities. One of the most serious is the heavy financial burden which would have to be borne by the authorities until the land is put to profitable use. We think that it will be necessary for the Minister to consider special financial arrangements (e.g. deferment of interest charges) under which the authorities would be helped with this burden, at least on a short-term basis. Action of this kind was recently taken in Britain.

1.7. Some of the submissions received by the Committee would suggest that there is room for the development of greater co-operation between the local authorities and the building industry in a number of ways. It would be desirable for the Minister to consider whether steps could be taken to ensure that the industry and the local authorities are more fully informed of their respective programmes, problems and needs in relation to the supply of building land. Such arrangements could be made on a regional basis through the agency of the Regional Development Organisations. Closer contacts between the industry and the local authorities might also help to remove some of the planning control problems of which the Construction Industry Federation complained in their submission to the Committee.

1.8. In Chapter II, we explain why we are unable to agree with the main recommendation in the majority report. We accept (Chapter III) that some legislative action is needed, and in Chapter IV we give details of the alternative scheme which we put before the Committee for consideration. In Chapter V, we discuss the merits and demerits of this alternative scheme, and in Chapter VI we deal with changes in the law which we consider necessary to enable the local authorities to pursue more effective land policies.

CHAPTER II

REASONS FOR DISAGREEMENT

2.1. We do not agree that local authorities should be given power to take over land compulsorily at less than what would be regarded as its real value under existing law. The legislation recommended in the majority report would have this result for the landowners affected.

When local authorities are empowered to acquire land compulsorily at present, and there is failure to reach agreement on the amount of compensation to be paid, the compensation is assessed by an arbitrator in accordance with the rules contained in the Acquisition of Land (Assessment of Compensation) Act, 1919. The fundamental rule which must be applied by him in determining the amount of compensation is that the value of the land is to be the amount which the land might be expected to realise if sold in the open market by a willing seller. The majority report recommends that this rule should be abandoned in the case of land being acquired compulsorily by local authorities in certain areas. We consider that legislation to give effect to this recommendation could not be regarded as just.

2.2. We accept that the present arbitration system may not be entirely satisfactory and that the law under which it operates may require to be amended—this is a matter we discuss in more detail in Chapter VI of our report—but we do not consider that there is any justification for a radical departure from the basic compensation principle on which the present code is founded.

2.3. Our views have been influenced by the results of the detailed study of the land prices problem undertaken in the Department of Local Government on the instructions of successive Ministers from 1966 onwards. Copies of all the more important documents connected with this study were made available to our colleagues on the Committee, and we have no reason to believe that they found any serious fault with the conclusions reached as a result of the study—at least within the context of the legal advice given to the Minister and the Government at the time.

2.4. One of the first ideas considered in the Department was whether the compensation code might be amended so that compensation on the compulsory acquisition of land by local authorities would be based on existing use value. This idea was examined in detail and it had to be abandoned eventually because of what appeared to be insuperable Constitutional difficulties. The critical point in the advice given to the Minister and the Government was

that the relevant provisions of the Constitution must be interpreted as meaning that while the exigencies of the common good can readily require compulsory acquisition from an unwilling property owner, it is virtually impossible to show how the common good requires that he should not be paid market value for it.

A further serious problem was that if local authorities were empowered to acquire building land compulsorily at an arbitrary price level it would not follow that other building land would change hands at the same price level in the open market. The result would be that a dual price system would be created, under which people whose lands were taken from them compulsorily by local authorities would be compensated at a fixed level related to existing use, whereas other people selling in the open market would get full market value. The Minister and the Government were advised that legislation which would have such a discriminatory effect would be almost certain to be held by the Courts to be repugnant to the Constitution.

2.5. Several other proposals for possible legislation were also examined in the Department before the Committee was established, but all of these were eventually judged to be impracticable, either for administrative or financial reasons, or because they would give rise to Constitutional difficulties similar to those described in the preceding paragraph. It would be superfluous to go into details about these other proposals now, but we felt it necessary to refer specifically to the proposal relating to the existing use value idea because it had a vital feature in common with the scheme recommended in the majority report.

2.6. We consider that the legal advice given to the Minister and the Government before the Committee was established was correct. The basic issue involved is clear—whether it is justifiable that land should be made available for development by taking it from its owners and paying them a price which is less than its market value. In our view, this would not be justifiable. If the law is changed so that local authorities (and, perhaps, other public bodies) can take over land compulsorily for compensation based on existing use value, it will represent a fundamental change in the State's attitude towards private property rights. At present, the law recognises that the right to own property includes the right to use it in the most profitable possible way. It is true that the exercise of this right has for long been subject to restrictions imposed in the interests of public health, safety, morality, etc. and, in more recent times, to controls related to orderly planning and development and the rational use of land. The Planning Act of 1963, however, is based on acceptance of the fact that the potential development value of land is an inherent part of its value. Planning permission has to be obtained under the Act for any substantial form of development; if, however, permission is refused compensation may be payable for the consequent reduction in the value of any interest in the land. Compensation is not payable in a number of cases where it can be shown that the proposed development is premature, or that it is not for particular reasons

in the interests of the common good, or where permission is available for other forms of profitable development.

If the existing use value principle for the acquisition of land compulsorily for public purposes is applied, it means that the development rights at present attaching to the land affected would be extinguished *without compensation* and the compensation provisions of the 1963 Act would cease to apply to such land. This would be a very severe limitation on private property rights. For example, its effect would be that the owner of an area of, say, 100 acres at present in agricultural use but provided with the services needed to enable it to be used for building would, if the land is acquired compulsorily by a local authority, receive compensation based on its agricultural value. If we assume that the average price of agricultural land in the area is £500 an acre, he would receive £50,000. If the law had not been changed, he might have expected to receive five to ten times as much. It may be argued that the present situation encourages speculation and that this justifies a drastic change in the law. But if the law is changed, its application will not be limited to "speculators", since they cannot be legally defined and isolated for special treatment. All the landowners affected would be liable to the same restrictions. We do not believe that such a severe attack on private property rights can be justified, and we are unable to accept that legislation which would result in the application of an arbitrary compensation principle (either generally or in relation to the property of particular persons) would be in conformity with the Constitution.

2.7. Our colleagues may be said to have partially accepted a policy which has been advocated in some quarters in recent years. This is that *all* building land should be brought into public ownership at prices determined by reference to existing use. A policy along these lines was recommended to the Committee in the submission received from the Irish Congress of Trade Unions. In their submission, Congress stated: —

> "We have no doubt that the legal, financial or administrative problems involved in implementing the principle of the taking of building land into public ownership are soluble. An appropriate amendment to the Constitution would overcome any Constitutional difficulty. The community cannot accept that a narrow legalistic definition of property rights should prevent the resolution of the problem of making land available at reasonable prices for housing purposes. . . . It would accordingly be desirable that such Constitutional and legislative amendments should be enacted as would make it possible for public authorities to acquire land for building and amenity at reasonable prices, that is, at prices that would discount the increase in land values that has been created by the actions of the community and by the fact that suitable land is necessarily in short supply relative to demand, in the neighbourhood of expanding centres of population. It is not necessary that all building land and amenity land should be acquired by public authorities in a

single operation. We would envisage that local authorities should have vested in them whatever area of building and amenity land is likely to be required under or in advance of their development plans in the period up to the end of the century or, at least, in the foreseeable future. Land could be taken up as required. On the crucial issue of compensation, this should be fixed by reference to the market value of the land in its existing use as at a date to be determined, which date should not be later than the vesting date. An element of compensation related to the rise in the general price level between the vesting date and the date on which the land is acquired might be considered ".

2.8. The proposal that all building land should be brought into public ownership at prices based on existing use would mean a form of nationalisation of building land. This type of solution is discussed briefly in the majority report and is rejected on administrative and financial grounds. As this proposal has so frequently been put forward as the " obvious " solution to the land prices problem, we consider that a fuller statement of the objections to it is desirable.

2.9. The first question that would have to be resolved in connection with the proposal is what is meant by " building land ". The expression " building land " is used by some of the advocates of the policy as if it were synonymous with " housing land ", but this is not so. The intention may be that the proposal would relate only to land specifically zoned or designated for housing, but this would be impracticable. For one thing, land-use zoning is and must be flexible, as examination of the development plans made under the Planning Act of 1963 will show. For another, housing development (or residential development, as it is usually described in the development plans) does not and cannot mean the construction of houses and flats alone. For years, legislation has properly recognised and provided for the fact that housing development must necessarily make provision for ancillary development, e.g. shops, offices, churches, schools, open spaces, etc. Sections 56 and 57 of the Housing Act, 1966, set out the present powers of housing authorities in respect of such ancillary development. It follows that it would not be feasible to isolate and define " housing land " as such; even if it were possible to do so, however, we consider that it would be indefensible that such land would become subject to mandatory compulsory purchase at an arbitrary compensation level, while land zoned for, say, commercial or industrial development would escape the net. To overcome this inequity, it would be necessary to make the system applicable to *all* land zoned for new development, irrespective of type.

2.10. The complexities involved in such a system would be very great. It would have to be decided whether it would apply to all or any of the land lying within the confines of built-up areas (e.g. land required for centre-city housing or urban renewal) or only to virgin land lying on the periphery. It is possible that the system would

apply only to the " new " land required for building purposes, but if the policy were applied in this way, it would still mean that there would be two separate planning, acquisition and compensation codes in operation, and we consider that this would be almost impossible to defend.

2.11. If, however, we can assume that dual acquisition and compensation codes were acceptable, and that it was possible to devise some system whereby new land required for urban expansion could be formally designated, and that the local authorities would be required to take over all such land at existing use value, difficulties would still remain, e.g. :—

(a) Some of the land that would be affected is already serviced and in course of development. Other portions of it are subject to existing valid planning permissions. In some cases, the permissions would have required payment to the local authorities of contributions towards the cost of services provided or to be provided by them. Considerable areas of such land are in the hands of developers and are held by them as reserves to support their building programmes; in most cases, they will already have been paid full market value for the land. It is difficult to see how all such land could be made subject to mandatory compulsory purchase by local authorities at existing use value without causing chaos in the building industry and imposing grave injustice.

(b) The proposals would mean the end of acquisition of land by agreement by local authorities in the areas affected. At present, acquisition by agreement is much more frequent than resort to compulsory purchase powers. The Irish are tenacious as regards the ownership of property and are formidable bargainers when it comes to settlement of prices. It would be naïve to expect that if the proposal that all building land should be brought into public ownership at prices determined by existing use was given legislative form, landowners would part willingly with their lands for prices which took no account of their development value and which would be considerably less than prices recently paid for the land or other land in the vicinity in the open market. The result would be that the local authorities would have to be equipped with drastic new powers of expropriation. It is clear that the existing compulsory purchase system, with its provision for objections, public and local inquiries and the possible exclusion of lands from the operation of a Compulsory Purchase Order by the Minister or the Courts could not be allowed to continue. If land could be shown to be " building land " within the meaning of the proposals, that land would become subject to mandatory compulsory purchase by the local authority and there would be no room for any system under which some owners could escape by appealing or objecting to a higher authority.

(c) What would be involved, therefore, is a form of nationalisation of new building land. The designation of the land for development would make it subject to mandatory compulsory purchase. The right of private sale of such land would presumably have to be eliminated. The local authorities would have to be given a monopoly in dealings in the land. Building development in the areas affected, be it for housing, commerce, industry or any other purpose, could take place only on land made available by the local authorities. Apart from the other objections to such a system, we consider that the attempted exercise by the local authorities of monopolistic powers of the type described would result in severe disruption of the building industry. The effects on the housing programme could be catastrophic.

(d) The proposal would require very large public expenditure on land acquisition, even though compensation would be assessed on the basis of existing use value. We doubt if the capital required could be made available.

2.12. We agree with our colleagues, therefore, that nationalisation of building land does not offer a practicable solution because of the administrative and financial problems it would create. This is true irrespective of the basis on which compensation would be assessed. If, however, compensation were to be based on the existing use of the land affected, as has been advocated, there would be the more serious objection which we have already raised—that the proposal would be an unjust attack on the property rights of the people whose land would be compulsorily acquired under it.

2.13. Advocates of this policy have suggested from time to time that it has been successfully applied in other countries. We have found no evidence to support this claim as far as any western democracy is concerned.

Such evidence as we have, indeed, would suggest that the imposition of arbitrary compensation rules on the acquisition of land for public purposes is incompatible with the general political and social philosophy of a free market economy such as exists in this country. For example, detailed monographs prepared by 17 European countries and the U.S.A. for the E.C.E. Seminar on the Supply, Development and Allocation of Land for Housing and Related Purposes held in Paris in 1965 showed that the only country among those reporting that had abolished private property rights completely, while allowing citizens to enjoy personal use rights of houses, etc., was the U.S.S.R. In the other countries with controlled economies, co-operative and private ownership co-existed with State ownership. In all these countries, however, property rights appeared to be generally restricted to a right of use. Such a right was usually guaranteed by law. Land and buildings so held could be passed on to heirs or sold to third parties; sales to third parties were subject to controls, but on this point there is a significant statement in the

report on "Practice and experience in land acquisition policies" presented at the Congress of the International Federation for Housing and Planning held in Dublin in May, 1969:— "The problem of market stability for real estate by price control systems takes on still greater relief when one confronts the phenomenon encountered both in countries with planned economies and those with free-market economies: the phenomenon of black-market, under-the-table buying and selling".

It appears to be generally the position in free-market countries that property rights extend beyond the right of use and that people disposing of property can expect to get a price which reflects development value where this exists.

2.14. In the majority report, mention is made of a recent law passed in Italy which is intended to have the effect of giving municipalities power to acquire land for public purposes at prices related to agricultural use. We do not accept that this example can be used as justification for the adoption of extreme measures in this country, particularly since we have no evidence that the Italian law has been or ever will be successfully applied.

The New Towns Act (Northern Ireland), 1965, is also cited in the majority report as a further precedent in support of the policy recommended by our colleagues. We do not agree that this Act, or the earlier British legislation from which it was derived, can be interpreted in this way. The scope and purpose of the 1965 Northern Ireland Act is explained in the following extracts from the Second Report of the Craigavon Development Commission, published in March, 1967 (the italics are ours):—

> "In June, 1965, the New Towns Act (N.I.) was passed. This Act differs from its British counterpart in a number of respects and, in particular, it is proposed that it should deal more fundamentally with area or sub-regional development as opposed to immediate local development. Accordingly the Northern Ireland Act, when authorising an Order designating land as the site for a proposed new town, states that the Order *must indicate the area of actual new town development* and an additional area over which there would be unified planning control. . . ."
>
> "In July, 1965, the Minister of Development designated as a site of a new town an area of approximately 100 square miles which included the Boroughs of Lurgan and Portadown and the Rural Districts of Lurgan and Moira. In the same month, the name Craigavon was adopted for the new city . . . and in October the members of the Craigavon Development Commission were appointed. *Subsequently, a Vesting Order was made by the Ministry of Development in relation to that part of the designated area lying between the Boroughs of Portadown and Lurgan, this Order became operative on 8th June, 1966, and an area of approximately 6,000 acres, known as the distinguished area, was transferred to the Ministry of Development. . . .*"
>
> "The Craigavon plan incorporates an urban core or inner

area and a rural envelope or outer area. . . . This whole core area is related physically and functionally to a defined rural hinterland. . . ."

"A rise in the outer area population and a replacement of obsolete dwellings will offer good prospects of reshaping the nature of existing settlements. The main plank of policy for this reshaping will be the establishment of village settlements. *Apart from these villages, the main changes likely to come about in the rural area will arise from changing farm patterns and the development of recreational zones*".

It is apparent from these extracts that the Craigavon development represents a "rural city" concept, with a built-up centre and a large area of predominantly agricultural land around it. The land required to accommodate the new urban centre was acquired by the Ministry in one single operation. Compensation for this land had to be assessed in accordance with the rules contained in the Lands Tribunal and Compensation Act (Northern Ireland), 1964. These rules correspond with the rules applicable here, the basic rule being :—

"The value of the land shall . . . be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise".

The principle of market value is reinforced by a provision in Section 16 of the 1964 Act that any increase or diminution in the value of the land being acquired attributable to the prospect of the land or other land being used for the purposes of the development for which the land or such other land was being acquired was to be ignored. This provision corresponds with Rule 13 which was added to our compensation rules by the Planning Act of 1963.

The position, therefore, is that land acquired by the Ministry to accommodate the urban core had to be paid for *at market value.* Some of the land lying on the fringes of Lurgan and Portadown was already building land or potential building land and had to be paid for as such. It was, no doubt, hoped that it would be possible to acquire the agricultural land lying between the two towns which was to form part of the centre of the new city at or close to agricultural value, because this land had no foreseeable development value at the time and might never have been used for building but for the decision to establish the new city. In practice, difficulties arose in securing possession of some of this land and there is evidence that the Ministry may have been obliged to be generous in assessing compensation for the land. Substantial amounts for disturbance were also paid. The compensation issue was the subject of many questions in Stormont, particularly after some of the owners affected refused to give up possession of their land and obstructed the Development Commission's contractors. The Minister of Development stated in reply to a question on 23rd February, 1967, that prices for land at Craigavon which had been taken over by the Ministry and in respect of which compensation had been settled up to that time ranged from just over £300 to £1,242 an acre. He added :— "They (the prices) do not take into account any

sums payable by way of compensation for disturbance, which are over and above the compensation for the value of the holdings. *In all cases they include development value where development value exists".*

The provisions of Section 15 (7) of the Northern Ireland Act of 1965 which is quoted in the majority report apply only to the acquisition of land by a Development Commission. They do not apply to land acquired by the Ministry for the establishment of the built-up area of the new city. We do not see, therefore, how the 1965 Act can be cited as lending support to the proposition that the law here should be changed to permit the acquisition of *building land or potential building land* at existing use value.

2.15. Existing use value was operated in Britain as the basis for the assessment of compensation for land acquired compulsorily by local authorities, Ministers of State, and other public bodies, between 1947 and 1959. British experience in the application of the principle is of particular interest to this country because of the connection between our legal systems. The law in Britain, as here, implies acceptance of the fact that the development value of land is an inherent part of its value. Thus, the Town and Country Planning Act, 1947, which was largely based on the recommendations of the Uthwatt Committee, and which in effect nationalised all development rights, *provided for the payment of compensation for those rights out of a central fund.* Under the 1947 Act, development of land (with certain exemptions) was made subject to planning control. The carrying out of such development involved payment of a development charge representing the difference between the value of the land in its "unrestricted" state and in its "restricted" state, i.e. the difference between the value of the land including its development potential (as established by the planning permission) and its existing use value. Refusal of planning permission did not attract compensation since the owner no longer possessed the development rights and he was to be compensated for the loss of such rights where their existence was established. If land was acquired compulsorily for public purposes, compensation was to be based on existing use value.

2.16. The financial provisions of the 1947 Act never worked satisfactorily. The Act was based on the theory that if the State acquired all development rights, and paid compensation for them, and if the rights for a particular area of land had to be "bought back" by a private developer by way of a development charge, when planning permission for development was obtained, the effect would be that building land would change hands *in the open market* at existing use value. What really happened was that owners would not sell their lands at this value and prospective developers were obliged to pay considerably more. Consequently, they had to pay for the development rights twice over; they paid the owner the full market value of the land and then had to pay a development charge which was intended to be 100% of the difference between existing use value and market value.

There was the further anomaly that whereas private developers were forced to pay prices that included development value, local authorities and other public bodies acquiring land compulsorily did so at existing use value. This situation led to increasing difficulties and criticism, which caused the Franks Committee in their report on "Administrative Tribunals and Enquiries" (July, 1957) to include the following comment:—

> "One final point of great importance needs to be made. The evidence which we have received shows that much of the dissatisfaction with the procedures relating to land arises from the basis of compensation. It is clear that objections to compulsory purchase would be far fewer if compensation was always assessed at not less than market value. It is not part of our terms of reference to consider and make recommendations upon the basis of compensation. But we cannot emphasise too strongly the extent to which these financial considerations affect the matters with which we have to deal. Whatever changes in procedure are made, dissatisfaction is, because of this, bound to remain".

2.17. Substantial changes had been made in the system introduced by the 1947 Act before the Franks report was published. In November, 1952, the British Government published a White Paper on the practical difficulties which had arisen in the working of the 1947 Act and on their proposals for amendment. One of the most important points made in the White Paper was that the development charges payable under the 1947 Act had removed the incentive to private landowners to make their land available for development and that the existing use value principle introduced by the Act had either the effect of keeping land ripe for development off the market or the principle broke down altogether so that developers had to pay a much higher price for building land than existing use value and then had to pay a development charge on top of it. Private development was, therefore, seriously inhibited or only carried out at inflated cost.

The fact was that the public were either unable or unwilling to grasp the principle involved in separating the development value of land from the value of the land in its existing use, and had come to regard the development charge not as the purchase price of an additional right but as a particularly onerous tax, especially in the case of an owner wishing to develop his own land (one reason for this was that whereas claims for compensation for loss of development rights had not yet been met, the development charge was payable on the grant of planning permission—an owner was thus required to pay a charge to "buy back" rights of which he had been deprived but for which he had not yet been compensated).

Because of these difficulties, it was decided to abolish the development charge altogether and instead of paying compensation for loss of all development rights out of a central fund (as had originally been proposed), to pay compensation, subject to certain restrictions, as and when the development of land was prevented or severely restricted by refusal of planning permission or by the imposition of

conditions on the grant of such permission. It was, in fact, decided to hand back development rights to private ownership. These proposals were given immediate effect in the Town and Country Planning Act, 1953, an emergency measure to deal with the more urgent problems. A more comprehensive Act was passed in 1954.

One of the effects of the amending legislation was that the private land market was no longer inhibited by the existence of the development charge. Another effect, however, was to perpetuate a dual price system, under which prices paid for building land sold in the open market were considerably higher than the prices paid by acquiring authorities when similar land was taken over compulsorily for public purposes. This arose because the 1954 Act retained the existing use value principle in respect of compensation for land compulsorily acquired by local authorities, Ministers of State, etc.

This two-tier price system created a growing gap between prices realisable in the open market and prices payable on compulsory acquisition. Inevitably, this gave rise to severe criticism of the system (including the criticism by the Franks Committee quoted in paragraph 2.16). It is interesting that some commentators noted that, although the system was to their financial advantage, many local authorities disliked it because of its obvious inequity and that there were cases where they were not willing to proceed for the compulsory acquisition of lands ideally suited for their purposes and selected less desirable alternative lands solely because the compensation payable worked out less unfairly to the owners. This anomalous situation was eventually brought to an end by the Town and Country Planning Act, 1959, which restored open market value as the basic rule for the assessment of compensation for land acquired compulsorily for public purposes. This rule has not since been altered in Britain.

2.18. We do not consider that a two-tier system of the kind that operated in Britain between 1947 and 1959 could operate here because of the Constitution.

2.19. The relevance of British experience in the application of the existing use value principle in the compulsory acquisition of land for public purposes cannot be overstressed. The main lesson to be drawn from that experience is that the application of the principle is extremely difficult in a property-owning democracy, *even when provision is made for payment of compensation for the loss of development rights involved.* In our view, the financial provisions of the British 1947 Act were based on a fallacy—that if all development rights are nationalised and paid for, and that if land can be acquired compulsorily for public purposes at existing use value, it will follow that land will change hands in the open market at existing use value. British experience shows that this does not happen.

2.20. The elaborate legislation passed in Britain in 1967 which provided for the establishment of a Land Commission to collect betterment levy on any occasion when the development value of land was realised on disposal, development, etc., and to acquire land

for development purposes did not make any alteration to the open market value rule for the assessment of compensation. The Commission was wound up in 1970. Recent reports suggest that the Labour Party in Britain may be considering a policy for outright nationalisation of building land at existing use value, but details as to how this would work are not available. As we have already stated, we consider that such action here would not be Constitutional. The British legislature does not have to operate within the same constraints.

2.21. The question now arises whether a *limited* application of the existing use value principle would be feasible, as suggested by the majority of the Committee.

2.22. What is proposed by our colleagues is that legislation should be passed under which the local authorities would be required to apply to the High Court for orders designating the areas which will probably be used during the following 10 years for the purpose of providing sites for houses or factories or for the purpose of expansion or development, and in which the land, or a substantial part of it, has been or will probably be increased in market price by works carried out by a local authority which were commenced not earlier than the 1st August, 1962, or which are to be carried out by such a local authority. The system would apply to all land falling within the definition of "designated area" given in the majority report. If the High Court decides to make a designated area order in respect of a particular area, the local authority would be empowered to acquire all or any of the land in that area during the succeeding 10 years. The compensation to be paid for any land so acquired would be the existing use value of the land on the date of the application by the local authority to the Court to fix the compensation, plus 25%. The only exception to this rule would be a case where a price paid for the land by the owner before the date of publication of the report was greater than the compensation assessed by reference to existing use value; in such a case, the owner would be entitled to compensation equal to the price he had paid, together with an amount for interest.

2.23. It is not proposed that the local authorities should be required to take over *all* the land in a designated area. They could over a period of 10 years select whatever land in the area they considered necessary for their purposes and exercise their compulsory powers in respect of it. The free market in land in the area would continue and it would be possible for the owners of land in the area (or prospective purchasers of such land) to apply for and obtain planning permission for the development of the land. It is, however, proposed that, in the event of planning permission being refused, the compensation provisions of the Local Government (Planning and Development) Act, 1963, would not apply so that, in effect, the development rights attaching to land in designated areas would be extinguished.

2.24. It is argued in favour of the scheme that it will have the result that it is unlikely that anyone will pay more than a price based on existing use value in a designated area for land for which planning permission has not been given, since it will be known that the local authority would be able to acquire the land at this price.

2.25. We consider that the proposed scheme is unsound for a number of reasons. We have already stated that we consider that the imposition of arbitrary compensation rules, whether on a general or selective basis, would require unacceptable changes in the law relating to private property rights. If the proposition is not acceptable on a general basis, it is still less acceptable when applied to a particular group of land-owners. We consider that the scheme proposed by our colleagues would operate in a discriminatory way. The effect of it would be that the owners of *some lands* in a designated area would be liable to have their lands acquired from them by the local authority at prices based on existing use value. Other owners in the area would, however, be free to sell their lands in the open market, either with or without the benefit of planning permission. Private development of land could continue on the basis of existing planning permissions or permissions obtained later. In such circumstances, we do not see how it can be claimed with any degree of certainty that prices based on existing use value would become the prevailing prices for land in designated areas changing hands in the open market.

It is clear that there would be extensive areas of land within the confines of designated areas which would never become subject to compulsory acquisition by the local authorities. The owners of such land would be able to get planning permission for its development. They would then be able either to sell the land (and we believe that if they did they would be likely to get considerably more than existing use value for it) or alternatively, they could develop the land themselves and collect the development value of it through the prices that they get for the houses or other buildings placed on it. Whichever they did, they would be virtually certain to secure a much greater return from their land than owners whose land is taken over by the local authorities under the scheme.

We consider, therefore, that the scheme could and probably would unfairly discriminate against the owners of land in designated areas whose property is selected for compulsory acquisition by the local authorities and we find it impossible to accept that a system which would operate in such a way could stand up to Constitutional challenge, despite the views to the contrary contained in the majority report.

2.26. Some of the objections we have raised in paragraph 2.25. could be overcome if the legislation were to require the local authorities to take over *all* the land in designated areas. This, however would involve an operation on the same scale as the scheme advocated by those who have suggested that the local authorities should be empowered to take over all building land at existing use value. We have discussed this type of scheme earlier and we have

concluded that it is impracticable. The scheme recommended in the majority report is, in a way, even less attractive, since it could involve discriminatory treatment between different landowners within the boundaries of designated areas. The selective application of the existing use value principle to particular building land is more difficult to justify than a scheme which would apply equally to all such land.

The scheme would also result in other anomalies. The development rights of land within designated areas would be extinguished without compensation. The only people who would be likely to really suffer from this, however, would be those whose land is taken over by the local authority. People whose land is not taken over could realise its development value by selling or developing it. The development rights of property in built-up areas and in other areas outside the boundaries of designated areas would also remain untouched; similarly, the existing planning and compensation codes would continue to operate outside designated areas and the compensation to be paid for land acquired compulsorily for public purposes outside these areas would be at open market value. The final result, therefore, would be that there would be two separate planning, compensation and acquisition codes in operation. Not only, therefore, would there be discriminatory treatment between owners within designated areas, but there also would be discriminatory treatment between land in designated areas and land outside them.

2.27. There are a number of other points about the proposed scheme about which we have reservations. We list these below.

(a) *Definition of "designated area".* The scheme would apply to land in designated areas. The definition of "designated area" in the majority report is as follows:— "An area which in the opinion of the High Court is one (a) in which the land will probably be used during the following ten years for the purpose of providing sites for houses or factories or for the purposes of expansion or development, and (b) in which the land or a substantial part of it has been or will probably be increased in market price by works carried out by a local authority which were commenced not earlier than the first day of August, 1962, or which are to be carried out by such local authority".

We consider that this definition is too wide and too imprecise. It is, for example, stated that the scheme would not normally apply to land in built-up areas. The definition certainly does not exclude such areas, since land in built-up areas will continue to be used in the future for housing and other development and since much of such land either has been or will be increased in value as a result of works undertaken by local authorities (e.g. improved or new water and sewerage schemes, road works, drainage schemes, urban renewal schemes). The stated intention that the scheme would not *normally* apply to such areas, coupled with the proposal that there should be a statutory obligation placed on the local authorities to make applications to the Court in respect of *all* land which falls within the definition of "designated area" leaves a great deal of

uncertainty as to what parts of built-up areas might be affected by the scheme.

(b) *Scope of Scheme.* It is intended that the scheme would be mandatory and that all the local authorities would be required to apply to the High Court for the making of designated area orders in respect of all land in their areas which falls within the definition of " designated area ".

The administrative implications of this aspect of the proposal are not adequately considered in the majority report. There are at present 87 planning authorities—27 County Councils, 4 County Borough Councils, and 56 Borough or Urban District Councils. The 27 County areas contain, in addition to the Boroughs and Urban Districts, 86 towns for which special development plans had to be made under the 1963 Planning Act. Even if the operation of the scheme were to be confined to the land required for the expansion of the 146 County Boroughs, boroughs, urban districts and scheduled towns (and it is not proposed that it should be so confined), the amount of work involved for the local authorities and the High Court would be very great.

We do not believe that the High Court could be expected to deal expeditiously with the large number of applications that would follow from the placing of a statutory duty on the local authorities to make applications in respect of all the land that would fall within the proposed definition of " designated area ". Because of this, the scheme could not be expected to yield quick results.

(c) *Function of High Court.* The main reason put forward for the conferring of power to make a designated area order on the High Court is that the decision to include land in a designated area will have the effect that the owners of land in the area which is acquired by the local authority will not get the full market value for it and that such a power could not be regarded as a limited power within the meaning of Article 37 of the Constitution. We find some difficulty in following this argument. Extensive powers which may have a very significant effect on property values were conferred on the planning authorities and the Minister for Local Government by the Planning Act of 1963. Many of these powers were impugned in the case of the *Central Dublin Development Association Ltd. v. the Attorney General* referred to in the majority report and they were held by the High Court not to be unconstitutional. The precise function of the High Court in the proposed scheme is also unclear. The applications to the Court would be made by the local authorities in the person of the City or County Manager concerned. The primary purpose of the scheme is to give local authorities special powers in relation to land required for urban expansion. The land required for such expansion for many years ahead has, however, already been designated in the development plans prepared by planning authorities under the 1963 Planning Act. Such designation was correlated with the proposals of the planning authorities (as usually expressed in their plans) to provide, where necessary, for extension of basic services or the provision of new services to enable the land to be developed in an orderly and progressive manner along the lines envisaged in the plans. The land

needed for urban expansion has, therefore, been designated already. Most, if not all, of this land would come within the definition of " designated area " given in the majority report.

It seems, therefore, that the functions of the Court would be quite limited as far as designation is concerned. It is implicit in the proposed scheme that landowners affected by an application to the Court could object to the inclusion of their land in the application and that the Court would have to consider the objections. We feel that it should have been indicated what the scope of such objections would be and what would be the powers of the Court in relation to them. It seems to us that objectors would have to be statutorily limited to putting forward arguments as to whether or not the criteria for the definition of " designated area " had been met in the case of their particular land, and that the Court's powers would have to be expressly limited to determine this issue and this issue alone. Clearly, it would be out of the question that objectors could oppose the proposed inclusion of their land in a designated area order on the grounds that they might thereby suffer hardship because of severe financial loss. The questions to be determined by the Court, therefore, would be matters of fact and we are not clear that the responsibility for the determination of such matters must necessarily be vested in the High Court.

(d) *Proposed New Compensation Code.* A revised compensation code which would apply only in designated areas is recommended in the majority report. This code is intended to stand on its own, without reference to the provisions of the Lands Clauses Acts and the Acts amending them. We do not consider that this is feasible and we are of the opinion that it would be essential that any revised set of rules proposed to be applied in particular circumstances would have to be grafted on to the existing compensation code.

2.28. No doubt some of these problems might be overcome by amendments to the proposed scheme.

Our fundamental objection would, however, remain—that the scheme would result in the application of a special compensation system in relation to the property of particular landowners. We are convinced that such a system would be extremely difficult to operate and that, if applied, it would give rise to injustice. We are not satisfied that it would be Constitutional. We have made it clear to our colleagues in the many discussions which have taken place on this issue that it was the discriminatory element in the scheme that most concerned us. If it were proposed that all the development rights in land, urban and rural, should be extinguished without compensation, that all land acquisition for public purposes (whether by local authorities, Ministers of State, statutory undertakers or other bodies) should be at existing use value, that private transactions in land should be taxed in order to take for the community anything realised in excess of existing use value and that all planning permissions had to be paid for, the application of the existing use value principle *might* be defensible. We do not believe for one moment, however, that extreme measures of this kind would be justified or that they would be likely to command public acceptance.

CHAPTER III

POSSIBLE ALTERNATIVE SCHEME

3.1. If our view that open market value must continue to be the basic determinant of the price of land acquired for public purposes is accepted, it has to be considered whether any legislative action to deal with the land prices problem is feasible at all. Our colleagues are of the opinion that the choice is one between the scheme proposed by them and leaving the existing position substantially unchanged.

3.2. We do not accept this. We feel some changes must be made. We do not think that a situation should continue where dealings in building land can result in large unearned profits for individuals, and where local authorities have to compete with private interests in order to secure land required for the expansion of towns and cities and to pay inflated prices for it, when they are able to acquire it. We do not accept that it is in the public interest that local authorities should be forced to compete with other parties in order to secure land needed for progressive and orderly development. This land owes a large part of its value as building land to the decisions of the local authorities themselves to so designate it, and to the investment by them (and by the State, through subsidies) of the large capital sums required to provide the basic services which are necessary in order that building can take place, and we consider that the law should recognise that local authorities have a special claim to such land.

3.3. The powers given to planning authorities under the Local Government (Planning and Development) Act, 1963, to plan the future of their areas, to designate the land required for urban expansion and to determine the extent of new or improved services required to accommodate such expansion are extensive, but we consider that there is need for these powers to be supplemented by new powers which would enable the planning authorities to achieve their planning objectives more effectively. The grant of such new powers would necessarily involve some restrictions on the exercise of private property rights and some amendments to the compulsory purchase code so as to facilitate the more rapid acquisition by local authorities of land required for urban expansion. In some ways, the present legal system acts as a positive deterrent to more effective action by the local authorities. This is particularly apparent in areas where the authorities have to cope with the establishment of large new urban settlements on a scale unprecedented in this country. Dublin County Council, for example, have planning responsibility for the development of three new towns at Tallaght, Blanchardstown and Clondalkin, each of which will have an eventual population

greater than the present population of the city of Cork. Many of the problems and difficulties being experienced in these areas are due to the fact that the planning authority do not own all the land required for their development and the use by them (or by Dublin Corporation) of existing compulsory purchase powers to build up substantial land holdings in the areas can scarcely be described as achieving very quick results. The present system facilitates delays and almost interminable opposition to compulsory purchase. We question whether it is in the public interest that the local authorities should be subjected to such delays. They are acting on behalf of the community, and it is unreasonable that they should be criticised about the slow progress they achieve when they have to operate within the limits of a compulsory purchase system which appears to be unsuited in many ways to modern needs.

3.4. A case could be made for new towns legislation to facilitate the establishment and orderly development of major new urban settlements. Responsibility for the planning and development of each new town would be vested in a special agency, which would be empowered to take over all the land required for its establishment in a single operation and be provided with the powers and capital needed to ensure that the town is developed in a progressive and coherent way. The N.I.E.C. "Report on Physical Planning", published in 1969, suggested that new towns legislation similar to that in operation in Northern Ireland (which is discussed in paragraph 2.14 of our report) might be desirable here. We do not consider that such action is feasible at this stage, because of the very large commitment of public capital investment that would be required. The cost of the development programme for Craigavon, for example, was estimated at £140 million, at 1964 prices. We have no information about the source of the capital allocated for the establishment of Craigavon, but we do not consider that it would be feasible in present circumstances for the Government to provide the capital required to support special new town agencies.

3.5. We are, however, convinced that considerable improvements could be made in the legal machinery available to the local authorities to enable them to exercise more positive control on the pattern of development of new urban areas. This was one of the main reasons for our attempting to devise an alternative scheme to that favoured by the majority of the Committee. We thought it desirable that there should be some alternative available if the scheme recommended by the majority was found to be unacceptable, or if legislation to give effect to it was found to be repugnant to the Constitution following reference of the relevant Bill to the Supreme Court, as recommended in the majority report.

3.6. The alternative scheme is described in the majority report as the "pre-emption and levy scheme". It is discussed and rejected in the report. We still feel that the scheme might form the basis of workable legislation.

3.7. What we propose is that planning authorities should be

given power to designate the land required for urban expansion for a number of years ahead. When land has been included in a designated area order, the owner would not be able to dispose of any substantial interest in it unless the interest has first been offered to the planning authority and they have declined to purchase it. There would be some exceptions to the exercise of this proposed right of pre-emption. Amounts realised on the disposal of land in designated areas would (subject to some exemptions) become liable to special levies payable to the Revenue Commissioners. The development of land in designated areas would also attract payment of levy in a limited range of cases. Amounts collected in levy would be assigned to the planning authorities for the areas concerned and would be used by them for approved capital purposes. Details of the scheme are given in Chapter IV.

CHAPTER IV

DETAILS OF ALTERNATIVE SCHEME

A. Power to designate land for urban expansion

4.1. Planning authorities should be empowered to designate (by an order or a number of orders) the land required for or in connection with urban expansion in their areas or in particular parts of their areas for a period of approximately 10 years ahead. The exercise of the power should be mandatory in the case of certain authorities and discretionary for the rest.

4.2. The expression "land required for or in connection with urban expansion" might be flexibly defined so as to permit the designation by planning authorities (where it appears expedient to them to do so) of land not located within the confines of existing or proposed built-up areas but which may be required for particular types of development e.g. land which may be required to accommodate estuarial or harbour development, the expansion of (national) airports, particular types of industry requiring special facilities such as deep water berthage or large sites located away from built-up areas, etc.

4.3. The following might provide the basis for an acceptable definition of the type of land which could be the subject of a designation order: —

> "Land which is either (a) zoned or reserved in the development plan made by the planning authority for the area (or any variation or draft variation of such plan) for the purpose of accommodating the anticipated growth and expansion of existing cities, towns or other urban settlements, or the establishment of new towns or other urban settlements within the period of approximately 10 years from the date of the making of the relevant designation order, or (b) land which is not located within the confines of existing or proposed urban settlements and which the planning authority, following consultation (where necessary) with the appropriate authorities, consider may be required for particular types of development, including the development and expansion of airports or harbours and industrial development of a particular class requiring special facilities not available in existing or proposed urban settlements."

The appropriate authorities for the purposes of (b) would be the Minister for Transport and Power or the National Airports Authority (when established) in relation to airport expansion, the

harbour authority, if any, in relation to harbour development, and the Industrial Development Authority in relation to the land requirements for special types of industry.

We realise that there might be a problem in confining the application of the system to areas actually zoned or reserved for urban expansion purposes in development plans because in the case of some areas contiguous to existing cities and towns where expansion is taking place or is proposed the planning authorities concerned may not have prepared special statutory development plans. The definition might have to be amended to deal with this problem.

It could also be argued that any new or additional controls that might be considered desirable in relation to land required for estuarial or harbour development or airport expansion should be sought as an extension to existing harbour and airports legislation and that since the Industrial Development Authority already possesses compulsory acquisition powers there should be no need to make provision in the measure suggested by us for the exercise of the proposed controls in relation to land that may be required to accommodate particular industries. We decided, however, to include such areas because the planning authorities are concerned with all aspects of physical development.

4.4. The legislation would need to provide guidance for planning authorities in the determination of the boundaries of the areas which might be made the subject of designation orders by reference to part (a) of the suggested definition contained in paragraph 4.3, i.e. the land required for urban expansion proper. As far as practicable, designated areas should not include areas already substantially built-up, even though such areas may contain pockets of land which are undeveloped or only partially developed. Subject to this exclusion, it is necessary that *all* the land expected to be required for the expansion of the particular city, town or other urban settlement in question or for the establishment of any new settlements should be included in the order or orders to be made. As the proposed definition stands, the land would have to be zoned or reserved in the development plan or plans made by the authority for the purpose of accommodating anticipated urban expansion, i.e. for new housing, industrial, commercial or other building development, for the roads and other public services associated with such development and for the parks, playing fields, amenity areas and other community facilities expected to be required for the benefit of existing or future residents. Areas not zoned for such development, e.g. areas zoned for agriculture, would not be included in designated area orders; the position about such areas would, however, have to be kept under review and their eventual inclusion in the development area of the city or town in question should dictate their inclusion in a later designated area order. Land zoned or reserved for amenity or open space purposes should probably be included only where the land affected has been or is intended to be supplied with the basic services which would (but for the zoning or reservation for open space or amenity purposes) enable the land to be used for building purposes.

4.5. It is proposed that the making of a designated area order should be an executive function performable by the City or County Manager for the area and that his decision should not be subject to a direction by the elected members of the planning authority under Section 4 of the City and County Management (Amendment) Act, 1955. It appears unnecessary that the elective members of Councils should be involved in decisions about the boundaries of designated areas. The determination of the lands to be included will be largely a matter of fact having regard to the location of the lands, the position regarding basic infrastructural services, existing or proposed, etc. The elective members will already have expressed their policies in relation to these matters in their development plans and the designated area orders would have to be based on these plans.

4.6. If necessary, the legislation should make it clear that a planning authority could make a designated area order in respect of lands within their area required for the expansion of a city or town under the jurisdiction of another planning authority. This type of situation could arise in several areas, e.g. in Counties Dublin, Galway and Limerick.

4.7. The power to make designated area orders should be made mandatory for areas where the problem of building land prices is acute or is likely to become acute. These areas would have to be named in the legislation. The Government statement of 4th May, 1972, on the review of regional policy, indicates some obvious areas where major population growth may be anticipated and where it appears essential that special powers to pursue an active land policy should be available to the planning authorities concerned. Where the system is to be mandatory, we consider that it should be possible for the authorities to make the first designated area orders speedily and we suggest that a period of one year from the coming into operation of the proposed measure should be ample. Special transitional provisions to deter speculative dealings in the interim period would be necessary. In other areas where the land prices problem is not so acute, it seems preferable to leave it to the judgment of the individual authorities to decide whether the new powers should be invoked. It has to be faced, however, that even in areas where the problem does become serious, there may be a reluctance on the part of some authorities to avail themselves of the powers. In such a situation, it appears essential that the Minister for Local Government should be able to intervene and the legislation should accordingly provide that the Minister would have power to direct a planning authority to make a designated area order in respect of the land required for urban expansion in their area or in a particular part of it; the Minister would be able to specify the period within which this was to be done, and his direction would have to be complied with.

4.8. The form of a designated area order would have to be prescribed by regulations made by the Minister for Local Government. In the drafting of orders, it would be necessary for a distinc-

tion to be made between land required for urban expansion proper and other land being designated for particular purposes, as described in paragraph 4.2. The order should, we feel, be comparatively simple—it would, for example, be undesirable that planning authorities should have to engage in protracted and detailed investigations about title to the land affected for the purpose of including particulars of ownership, occupation, etc. in the order. The order would require a clear verbal description of the land affected and the boundaries of the land would have to be clearly shown on a map attached to the order. The order and map, or certified copies, would have to be available for public inspection. The making of an order would have to be published in a prescribed manner and regulations would have to require service of copies on certain bodies, e.g. the Revenue Commissioners, the Land Registry, the Registry of Deeds, the Minister for Local Government, the Land Commission and (in some cases) the Minister for Transport and Power, harbour authorities and the Industrial Development Authority.

4.9. We consider that the making of a designated area order should not be the subject of any objection or appeal to a higher authority. The making of such an order is a logical extension of the planning process, the boundaries of the land to be included for the purposes of urban expansion proper will have to be determined by reference to the current development plan for the area and we do not see that there is any greater reason for allowing for review by some higher authority in relation to a designated area order than there is in relation to the development plan itself.

4.10. We consider that a designated area order should come into force a short period after the date of the order. There should be power to review the boundaries of the land included in an order from time to time; there should possibly be a mandatory review at least once in every 5 years, or after any review of the development plan or the making of any variation in the plan which involves any significant alterations in the boundaries of areas designated for urban expansion, or in plans for the provision of basic infrastructural services in the area concerned. Following such review, a new designated area order may be made and the boundaries of the area altered by the exclusion of land which has been developed since the previous order was made and the inclusion of additional lands now designated for urban expansion. The process of publication, etc. would have to be repeated. Where a new order comes into force, it would supersede the previous one. The Minister for Local Government should have power to require the review of an order, if he considers it necessary.

4.11. It is not proposed that there should be any general power for a planning authority to revoke an order or to modify it by the exclusion of any lands therefrom; a possible exception might be made in relation to "other land", i.e. land other than land designated for urban expansion proper, but if the power of revocation or modification is conferred in relation to such land, it should

probably be made subject to the express approval of the Minister for Local Government.

4.12. It may happen as a result of a decision by a planning authority on an application for planning permission or by the Minister for Local Government on appeal that land outside the boundaries of a designated area may in effect be "converted" to building land as a result of the grant of permission. It would be necessary to provide that where this happens the land in question would be treated for the purposes of the legislation as if it were part of the designated area. This will arise where the development is of an extensive character which will require connection to public water supplies and sewerage facilities. It is to be hoped that in practice this will rarely happen, since it implies some jumping of boundaries of designated development areas by particular applicants but it seems desirable that provision should be made for such an eventuality.

B. Right of Pre-Emption

4.13. Where a designated area order is in force in respect of any land, it would not be lawful for the owner of such land (other than "excepted land") to dispose of any interest in the land unless the interest has first been offered to the planning authority for the area.

4.14. The definition of "owner" for the purposes of paragraph 4.13 would be as in the Local Government (Planning and Development) Act, 1963. Other interests in land would be ignored and the control measures envisaged would not apply to them.

4.15. The purpose is to cover every possible manner in which an interest in land may be disposed of so as to give a monetary reward to the vendor. The relevant provisions of the proposed measure would, therefore, need to embrace not only a straightforward sale but also a lease or sub-lease, the creation of any interest in or right over land (e.g. the grant of a building licence), the grant of an option to purchase, or the entering into of any agreement for sale, lease, sub-lease, etc. It is accepted that there may be ways of achieving a real though not apparent change of ownership of land by, for example, the sale of the shares of a company which owns land. This type of evasive action should not have much effect on the right of pre-emption concept since it can only arise where the land is in the hands of a company at the time the designated area order comes into force. In any other case, the transaction would be caught when the land is proposed to be conveyed to a company.

4.16. It follows from the foregoing paragraph that the expression "to dispose of any interest in land" would have to be very widely defined. It would probably be unwise to attempt a definition which would try to spell out all possible types of disposal which ought to be covered by the measure. A possible definition of "disposal" might be as follows:—

"Disposal, in relation to land, *includes* a transfer, assignment,

lease, sublease, a grant of any right over or interest in land, a grant of any option to purchase any right over or interest in land, a contract or agreement for sale or for the granting of any such right over or interest in land but does not include any alienation by devise or by operation of law."

4.17. Exceptions would have to be provided for in the legislation itself and, since it is practically impossible to anticipate all cases where it may be desirable that exceptions should be made, or indeed to judge what the full effects of the exceptions to be provided for in the legislation itself might be, there should be power for the Minister for Local Government to terminate, vary or add to the exceptions by regulation.

4.18. The following exceptions might be provided for initially :—

(a) disposal of land consisting of buildings or of land with buildings on it where the total area of such land does not exceed one acre in extent;

(b) disposal of land to a State authority, local authority, health authority or harbour authority;

(c) disposal of land to a member of the owner's family whether for natural love and affection or similar consideration;

(d) disposal of land by a State authority, local authority, health authority or harbour authority.

4.19. Where an interest in land is offered to a planning authority in accordance with the requirements of paragraph 4.13 the authority should be required, within two months of the receipt of the offer, either to:—

(a) serve notice on the person making the offer that they are not prepared to purchase the interest offered and that he is accordingly free to dispose of it within the period of one year from the date of the notice;

(b) serve notice that they are willing to purchase the interest offered (in which case the notice would have the like effect as if a compulsory purchase order had been made by the authority in respect of the interest, had been confirmed by the Minister for Local Goverment and had become operative);

(c) serve notice that it appears to them that the planning authority for an adjoining area (the "second authority") may wish to purchase the interest offered for the purposes of any of their powers, functions or duties and that the offer has accordingly been transmitted to the second authority;

(d) serve notice that it appears to them that the land may be required for the development or expansion of a (national) airport and that the offer has accordingly been transmitted to the Minister for Transport and Power;

(e) serve notice that it appears to them that the land may be required for the development or expansion of a harbour and that the offer has accordingly been transmitted to the appropriate harbour authority.

It would have to be provided that where an offer was transmitted by a planning authority to a second authority, to the Minister for Transport and Power or to a harbour authority, the second authority, Minister or harbour authority, as the case may be, would have to decide within one month whether to accept the offer or to refuse it and to serve notice accordingly; where the Minister or the authority decides to accept the offer he or they would be invested with compulsory powers in respect of the interest offered.

4.20. If a planning authority to whom the offer of an interest has been made fail to serve notice as provided for in (a) to (e) of the preceding paragraph within the statutory period, they should be deemed on the expiration of the period to have rejected the offer and to have decided not to transmit the offer to any of the other bodies mentioned and they should be required to serve notice to this effect on demand on the person making the offer. He would then be free to dispose of the interest offered within a period of one year from the date of the notice. A similar provision would be required where an offer is transmitted to another body by the planning authority.

4.21. It might be desirable, for the sake of clarity, to provide specifically that where an offer is not taken up or is deemed not to have been taken up the person making the offer would be free to dispose of the interest within one year of the date of the relevant notice; disposal in this context should probably include the entering into a contract or agreement for disposal within the year. The freedom to dispose of the interest would lapse after one year and if the owner wished to dispose of it after that time, it would first have to be offered to the planning authority again.

4.22. Where a planning authority or other relevant body have assented to the disposal of an interest in land, it would be desirable that the relevant instrument should incorporate a certificate to that effect. This would not apply to " excepted land " but, in the case of such land, the instrument should contain a certificate that it is " excepted land ". Penalties should be provided for false declarations.

4.23. In order to eliminate delays in the assessment and payment of compensation in cases where the planning authority or other relevant body decide to exercise their option to purchase any interest offered to them, it would be desirable to provide that the notice to be served by the authority or other body should be accompanied by or should incorporate a notice to treat for the purchase of the interest offered.

C. Levy on Disposals

4.24. Subject to certain exemptions, a levy would be payable on the disposal of any land in an area in respect of which a designated area order is in force. This would apply only to land required for urban expansion proper. "Disposal", in this context, would have the same wide connotations provided for in relation to part B (Right of pre-emption).

4.25. The levy would be payable by the *vendor* and it would be a percentage of the amount realised on the transaction, or the calculated value of the consideration realised. We consider that an appropriate percentage might be 30%. Levy would be payable on considerations realised in the sale of property to local authorities, State Departments, or other public bodies, in exactly the same way as it would be payable in respect of private transactions. There should be power to vary the amount of levy from a specific date by order made by the Minister for Finance and confirmed by the Oireachtas.

4.26. We suggest that the assessment of the levy and liability to payment of it should be made subject to the adjudication machinery which operates in accordance with Section 12 of the Stamp Act, 1891, as if the levy were a duty, with an appeal to the Commissioner of Valuation under Section 33 of the Finance (1909-10) Act, 1910, as that section now applies in relation to the adjudication of value for stamp duty purposes.

4.27. It should be provided that where a liability to levy arises, no instrument or conveyance would be effective to convey any relevant interest in land until the appropriate levy has been paid and the document duly stamped.

4.28. The proposed levy is not intended to replace the stamp duty normally payable to the Revenue Commissioners on transactions of the kind in question (and this may need to be made clear) but whereas such stamp duty is collected for the benefit of the Exchequer, the purpose of the proposed new levy is to ensure that when the development value of the land is realised (and it most often is realised in disposals) a reasonable proportion of that value is returned to the community. We consider that the legislation should therefore provide that amounts collected in levy by the Revenue Commissioners will (subject to reasonable deductions for administrative expenses) be regularly paid over by the Revenue Commissioners to the planning authorities concerned, the moneys to be used by them for capital purposes as may be determined by the Minister for Local Government, either specifically or generally.

4.29. The existing Finance Act provisions about liability to income tax in respect of profits derived from land transactions engaged in by way of trade would require to be modified or amended in cases where liability to the new levy would arise.

4.30. Exemptions from the levy would have to be provided for.

These exemptions would not be the same as the exceptions to be provided for in the case of the proposed right of pre-emption. Suggested exemptions are :—

(a) disposal of land consisting of buildings or of land with buildings on it where the total area of land does not exceed one acre in extent;

(b) disposal of land to a member of the owner's family for natural love and affection or similar consideration;

(c) disposal of land by a State Authority, a local authority (including the planning authority), a health authority or a harbour authority;

(d) disposal of land where the owner has entered into an agreement with the planning authority under Section 38 of the Local Government (Planning and Development) Act, 1963, and the agreement provides for the retention of the land in its existing state for a period of not less than 20 years, of which not less than 5 years remain to run at the date of the disposal.

As regards (a), the intention is that the value of buildings on land would be excluded for levy purposes; it is assumed that the adjudication machinery available would preclude the apportionment by parties to a transaction of an excessive amount as the alleged value of buildings.

4.31. There should be provision enabling the Minister for Finance, following consultation with the Minister for Local Government, to provide for other exemptions by way of regulations.

4.32. Where exemption is claimed, the relevant instrument should incorporate a certificate to this effect and penalties would have to be provided for in the event of false declarations.

D. Levy on Development

4.33. It is essential that there should be a levy payable on the development of land in a designated area where a levy on disposal has not already been paid within a certain period. Development value is most often realised on the disposal of land, but it can also be frequently realised on the actual development of the land. The (British) Land Commission Act, 1967, provided elaborate rules for the assessment of the market value of chargeable interests where projects of material development were concerned in order to ascertain the amounts assessable to levy. It is considered that an elaborate system of this kind would be unworkable here and it is felt that there may be three ways of dealing with the problem, firstly, by making the levy payable to the Revenue Commissioners in the same way as levy on disposals, secondly, by requiring the planning authorities to collect the levy on foot of a condition

attached to the planning permission to which the relevant development relates or, thirdly, by a levy related to the capital cost of the development concerned. The alternative systems are discussed in the following paragraphs.

4.34. It might be provided that, subject to the exemptions listed later, a person carrying out any development of land in an area in respect of which a designated area order is in force, would be liable to pay to the Revenue Commissioners a levy equivalent to a stamp duty (as in the case of the duty at present payable in respect of office development under the Finance Act, 1969). Levy would not be payable where the land had already been the subject of a levy on disposal in the preceding 5 years. The position where part of the land had been the subject of levy would have to be specially provided for.

4.35. Assessment of levy on development would involve assessment of the sale value of the developer's interest in the land affected at the time of the commencement of the development, taking account of the existence of planning permission for the development in question but excluding the value of any buildings on the land; the value would either have to be agreed or settled through the adjudication machinery. The legislation would have to provide guidance as to how the area of land comprised in a particular project would be determined (this would clearly be one of the most complicated aspects of the system—how much land would be chargeable, how successive developments would be dealt with, etc.).

4.36. It would be necessary to provide that once a designated area order is in force planning authorities would notify liability to levy (in appropriate cases) on the grant of planning permission for development.

4.37. The levy would be payable once development had commenced and the person responsible for the development would be liable to notify the Revenue Commissioners of the commencement. Penalties would have to be provided for failure to notify them.

4.38. Where levy is payable to the Revenue Commissioners in accordance with the foregoing, the levy should override any contribution required to be paid by the planning authority under Section 26 of the Local Government (Planning and Development) Act, 1963, any amount already paid as a contribution should be offset against the levy, and it should be provided that in future cases planning authorities would not be able to require payment of such contributions.

4.39. In addition to exempting the development of land which has already been the subject of levy on disposal in the 5 years prior to commencement of the development (and provision will need to be made for cases where part only of the land affected was subject

to levy) other exemptions should be provided for. Suggested exemptions are: —

(a) development of land made available by a planning authority, other local authority or harbour authority for the purpose of carrying out the particular development;

(b) development by a local authority, airport authority (if established), harbour authority, the National Building Agency and the Industrial Development Authority;

(c) development of land for which planning permission existed on the date the designated area order came into force or development of such land where the development is being carried out on the basis of a later planning permission for development of a similar kind, where the planning authority are satisfied that the development does not represent any substantial intensification of the development to which the earlier permission related (provision would have to be made to cover cases where part only of the land affected was the subject of an earlier permission);

(d) development which is exempted development for the purposes of the Local Government (Planning and Development) Act, 1963, and development for which permission is not required under Part IV of that Act;

(e) development of land for churches, schools, public open spaces and other community facilities;

(f) mineral development;

(g) development consisting of material changes of use;

(h) development which consists of the construction of a house by the owner of the land as his only residence or of the construction of a house on land made available free by the owner to any member of his family (to be defined) for the purpose of the construction of a house as his only residence;

(i) a wide range of development comprising extensions, alterations, etc. of relatively minor character.

Provision would be required for further exemptions to be made by regulation by the Minister for Finance, following consultation with the Minister for Local Government.

4.40. Provision should possibly be made for the discontinuance of the levy payable on office development under the Finance Act, 1969, in areas to which designated area orders relate.

4.41. Levy collected on development would be paid over to

planning authorities and applied by them in the same way as levy on disposals.

4.42. Consideration might be given to providing for a system of payment of the levy by instalments.

E. Alternatives

4.43. An alternative method to deal with the development problem would be to *require* planning authorities to charge a levy either on the grant of planning permission or the commencement of development under the powers contained in Section 26 of the Local Government (Planning and Development) Act, 1963; these might need to be amplified or amended to convert the " contribution " to a real " development charge " which would take account of land values. It seems theoretically preferable that the levy should be assessable and collectible centrally and that it should not be left to the vagaries of the planning machine, with all the attendant complications about appeals, etc. As against this, it has to be recognised that the other system outlined above involves many of the complexities which were a feature of the British Land Commission system and it might be more expedient to opt for a looser, less precise system operated under general planning powers. In this way, the appeals system could iron out difficulties in a way that would not be open to the Revenue Commissioners.

4.44. Another way of collecting some of the betterment on development might be to opt for a straightforward levy (varied according to the type of development) based on the capital cost of the development, but excluding land costs e.g. a builder building 8 houses on an acre of land might incur a total outlay of about £36,000 on land development and building costs. A tax or levy of 4% would yield almost the equivalent of £1,500 an acre which would at present be payable by him to the planning authority in the County Dublin area as a contribution towards the cost of public services provided or to be provided by the planning authority. A man building one house for £4,500 would at the same rate be liable to a levy of £180, against £200 in County Dublin at present. A system of this sort would be more easily administered than one involving theoretical land valuations.

F. Miscellaneous

4.45. Compensation for planning restrictions payable under the Local Government (Planning and Development) Act, 1963, in respect of land in designated areas would have to be made subject to a levy equivalent to the levy payable on the disposal of land in those areas.

CHAPTER V

ARGUMENTS FOR AND AGAINST ALTERNATIVE SCHEME

5.1. The scheme we have described in Chapter IV is open to criticism in a number of respects and we accept that, if adopted, it may need to be very considerably refined and elaborated.

5.2. In the majority report, the scheme is objected to on the following grounds:— (a) that it would confer too great a responsibility on City and County Managers by empowering them to designate the lands to which the scheme would apply; (b) that the pre-emption element of the scheme would not work; (c) that the levies proposed to be exacted on the disposal of land in designated areas and, in certain cases, on the development of land in those areas, would add to the cost of land and development, and (d) that ways of evading the proposed levy on disposals would be found.

5.3. As regards the first objection raised by our colleagues, we took the view that as the land required for urban expansion is already indicated in the development plans made by the planning authorities, and as the scheme we propose would be directly linked with these plans, there should be no greater need to make the Managers' orders subject to review by a higher authority than there was in relation to the development plans themselves.

We do not accept the majority opinion that the pre-emption element of the scheme would not work. A pre-emption right to purchase any land coming on the market in areas required for urban expansion would be a very valuable new power for local authorities. It is notorious that in some such areas at present people intervene in transactions between the local authorities and landowners and make higher offers for the lands concerned in the belief that if the local authorities are interested in acquisition the lands are likely to be serviced in the near future and there is therefore a chance to make considerable profit if the lands can be acquired over the heads of the local authorities. Transactions of this kind have even taken place where the lands affected were the subject of Compulsory Purchase Orders which had been submitted to the Minister for confirmation. We consider that it is undesirable and contrary to the interests of the community that local authorities should be forced to compete with private persons in order to secure land required for orderly urban expansion or that such persons should be able to engage in transactions real or contrived, in order to try to increase the local authority's compensation liability. The grant of pre-emptive rights to the local authorities, as proposed, would put an end to practices of the type we have described and place local authorities in a position to exercise great

influence on the land market. A pre-emption law similar to the one we propose, though somewhat less drastic in scope, has been in operation in Denmark since 1969.

5.4. The third objection raised by our colleagues is that the levy proposed would be passed on and that its ultimate effect would be dearer houses and other buildings. We accept that this could occur, but the problem is that if the open market value principle in the determination of compensation for land acquired compulsorily has to be retained, as we believe it must be, and if the private market in building land is to be allowed to continue, some form of levy or taxation would have to be imposed if any part of the profits realised in land transactions is to be obtained for the benefit of the community. Moreover, we envisage that the additional powers proposed by us would enable local authorities to intervene more effectively in the land market and to build up reserves of land in key areas more quickly; the release of such land as demand required at prices based on acquisition costs, with appropriate additions to cover the cost of any services provided and administrative costs, should have a very significant influence on prices obtainable in the open market, so that any effects the proposed levy might have on the cost of development might not be significant.

5.5. The final objection—that means of evading the proposed levy on the disposal of land in designated areas will be found—is no doubt true, although we are not clear what would be gained eventually by contrived transactions of the kind described by our colleagues. We propose that if levy has not been paid on a disposal, it would be payable on development, so that the land would eventually be caught. In any event, the fear of possible means of evasion being discovered would not be sufficient reason for rejection of the scheme, if it were otherwise considered feasible.

5.6. A more serious objection to the scheme we propose is one not mentioned in the majority report, although it was raised at some of our discussions. This is that the methods suggested for the assessment of levy on the disposal of land in designated areas and (in certain cases) on development of land in those areas, are too crude. We agree that this is a serious weakness in the scheme we propose. A more elaborate system could be devised. The provisions of the (British) Land Commission Act, 1967, which deal with the assessment of betterment levy provide a guide to the type of legislation that would be required if a really comprehensive measure is to be applied. Legislation along these lines, however, would be extraordinarily complex and its operation would necessitate the establishment of a large and costly administrative machine. We do not consider that it would be possible to operate such a system in this country, and it was primarily for this reason that we put forward proposals for a simpler and admittedly cruder system.

5.7. Another objection to our scheme is that the levy on development proposed in certain cases would constitute a "tax on

development". This is true, and the wide range of exemptions proposed was framed with it in mind. It was, however, clear that some provision for a levy on development in certain cases would have to be made; otherwise, there would be an obvious loophole in relation to the proposed levy on disposals. The Committee have had abundant evidence that development value is most frequently realised on disposals and it is on this aspect that we felt most attention should be concentrated. Experience in Britain has shown that it is most often the vendors of building land, and not the actual developers, who realise its development value, or most of it, e.g. in 1967-68, betterment levy charged by the Land Commission on disposals amounted to £1·47 million (89% of the total charged), compared with £0·18 million on the development of land; in 1968-69, the figures were £13·73 million (92%), compared with £1·21 million, and in 1969-70 they were £28·77 million (93%), compared with £2·12 million.

The present position in this country is that the developer is usually obliged to pay the owner of building land a price which reflects its full development value and may then in some areas (e.g. in County Dublin) have to pay the planning authority an additional amount as a contribution towards the cost of public services which facilitate the development of the land. Under the system we propose, this situation would gradually disappear; there is also the factor that no levy on development would be payable where the land is provided by a local authority, and this should encourage the creation of a much greater degree of co-operation between developers and the local authorities in the land acquisition sector than has hitherto been in evidence.

5.8. It can be argued in favour of our proposals that the proposed granting of pre-emptive rights to local authorities in respect of land in designated areas would be of great benefit in enabling them to pursue much more active and effective land policies than are possible under existing circumstances. The proposed levy on disposals would ensure that a substantial part of the amounts realised in land transactions in areas intended for urban expansion would be recouped for the benefit of the local authorities for these areas and could be applied by them for desirable capital purposes. Developers acquiring land in such areas would not have to pay levy provided development is undertaken within a reasonable time and the scheme should provide an incentive for developers and local authorities to co-operate more effectively in securing the progressive and orderly development of expanding areas.

5.9. If the levy system we propose is unacceptable, then we consider other action will have to be taken to ensure that part of the amounts realised in dealings in building land is secured for the community. The possibility of a capital gains tax on such profits is discussed and rejected in the majority report. We think, however, that if no other more effective way of dealing with the problem can be found, a special tax on capital gains related to dealings in build-

ing land would be justified; alternatively, the existing provisions of the Finance Acts, 1965 and 1968, under which profits arising from the disposal of land by way of trade were made subject to income tax should be considerably widened in scope in order to catch all land transactions where development value is realised.

5.10. Irrespective of what form of levy or taxation system may eventually be decided upon, we consider that the powers of pre-emption which we propose should be conferred on the local authorities. These powers should be supplemented by changes in the compulsory acquisition and compensation codes. We deal with these in Chapter VI.

CHAPTER VI

OTHER LEGAL CHANGES

6.1. In the final chapter of the majority report, some changes in the existing law are recommended. These relate to publication of details of land transactions; limitation of the validity of planning permissions; changes in compensation law to provide:— (i) that no account is taken at arbitration proceedings of any price paid or agreed to be paid for the land affected between the date the relevant C.P.O. is made and the date on which compensation is assessed, (ii) that acquiring authorities would be able to withdraw from proceedings after compensation has been assessed, (iii) that any of the parties to arbitration proceedings should be able to require the arbitrator to state a case on a point of law to the High Court, and (iv) that the effective date for the assessment of compensation should be the date of confirmation of the C.P.O. by the Minister, and not the date of service of notice to treat as at present. It is also recommended in this part of the majority report that any legal doubts about the right of a local authority to refuse a connection to public services should be removed, that planning authorities should be empowered to refuse to consider applications for planning permission for the development of land the subject of a C.P.O. which has been submitted to but which has not yet been determined by the Minister, and that more effective provision should be made to deal with unauthorised development. Finally, there is a recommendation that compulsory purchase and arbitration law should be consolidated and up-dated, and that in connection with this consideration should be given to the desirability of restricting the mandatory requirement about the holding of public inquiries where objections to C.P.O.'s are received by the Minister. We agree fully with these recommendations and we consider that they should be implemented irrespective of what other action is taken.

6.2. In Chapter III, we have stated our opinion that the existing compulsory purchase law is defective, and we consider that a full review of it is necessary. We agree with our colleagues that it would be desirable to consolidate into a single Act the law dealing with the compulsory acquisition powers of local authorities and the procedures to be adopted by them and by the Minister in acquisition proceedings. The law dealing with the appropriation and disposal of land by local authorities might conveniently be incorporated into the same measure.

6.3. Compensation and arbitration law also require to be fully reviewed. The six basic rules for the assessment of compensation for land acquired compulsorily for public purposes are contained in the Acquisition of Land (Assessment of Compensation) Act, 1919.

Ten additional rules were added to these by the Planning Act of 1963. Other restrictions on compensation that have to be taken into account by the arbitrator when dealing with the assessment of compensation for land being acquired compulsorily by a local authority under C.P.O. procedure are contained in the Third and Fourth Schedules to the Housing Act, 1966. All of these rules and restrictions are grafted on to the compensation and compulsory purchase law contained in the Lands Clauses Acts.

6.4. The most important of the Lands Clauses Acts from the point of view of acquisition by local authorities is the Lands Clauses Consolidation Act, 1845, which contains the law about several important matters affecting compulsory purchase (e.g. time limit for the exercise of compulsory powers, treatment of interests of absent or untraced owners or of persons under a disability, mortgages, compensation for severance and injurious affection, apportionment of rent charges, entry on land, vesting of land by deed poll on failure to make title, etc.). Many of the provisions of the 1845 Act have become blurred and obscured with the passage of time and with the enactment of legislation which modified or amended some of its provisions, as for example the changes in procedure introduced for acquisition for housing purposes by the Second Schedule of the Housing of the Working Classes Act, 1890. When housing legislation was being consolidated in the Housing Act, 1966, it was necessary to keep the Second Schedule to the 1890 Act alive and to define "Lands Clauses Acts" specially to include the provisions of that Schedule. Every C.P.O. now incorporates the Lands Clauses Acts, as defined in the 1966 Act, as well as the Acquisition of Land (Assessment of Compensation) Act, 1919, and amendments to the 1919 Act effected by later Acts. The present legal position is confused and unsatisfactory and modern consolidating and amending legislation is needed.

6.5. More recourse is had to arbitration for the determination of compensation in Britain and Northern Ireland than is the case here. Owners may have some fear about the possible costs involved in going to arbitration or a feeling that they would not do as well in arbitration as they would by negotiating with the acquiring authority. Local authorities, on the other hand, appear to think that the arbitrator is inclined to favour the owner as opposed to the acquiring authority and there are some grounds to support the belief that the present system may tend towards over-valuation, as stated in the majority report. Whatever the reason, it is a fact that only a small percentage of cases where lands are being acquired compulsorily are referred to the arbitrator for the determination of compensation. In Britain, the Lands Tribunal (a full-time body comprised of barristers and chartered surveyors) has a turnover of about 3,000 cases a year. In Northern Ireland, the Lands Tribunal is also a full-time body; the chairman must be a barrister or solicitor and the other members must be either legal or valuation experts. Here compensation is assessed by a single property arbitrator.

6.6. We feel that some of the weakness in our arbitration system

may be attributable to the absence of an arbitration tribunal with mixed legal and valuer membership. The lack of modern compensation legislation is also a defect.

On the latter point, it seems that the Planning Act of 1963 may not have gone far enough to deal with the effects of modern planning legislation on land values. It has been claimed that Rules 11 and 13 which were added by the 1963 Act should be interpreted as meaning that the element of value attributable to planning policies was to be ignored when compensation was being assessed. In practice, however, it does not appear that these rules could have any effect on the assessed market value of land being acquired. Rule 11 provides that in assessing compensation regard shall not be had to any depreciation or increase in value attributable to the land, or any land in the vicinity, being reserved for a particular purpose in a development plan. We think that it is not correct to suggest that the term " reserved for a particular purpose in a development plan " includes the zoning or designation of land for a particular use. If serviced land which is zoned for residential or industrial use is acquired by a local authority it is evident that the arbitrator would have to assess compensation as the price the land would be likely to fetch in the open market, given the fact that it is serviced and that it has the potential for use for residential or industrial development, a potential which is recognised in, but not created by, the development plan. The development value of such land is a real element in its market value and it could not be removed or reduced by the operation of Rule 11. Its development value may be attributable to a complex of factors—location, accessibility, ease of development, availability of services, designation for development of a particular type in the development plan, etc. Clearly the arbitrator could not be expected to assess the value of the land as if it were land not suitable and available for development. The fact that the land may be designated or zoned for a particular type of development is a factor affecting its value but it would be difficult, if not impossible, for the arbitrator to attempt to isolate the effect of the designation or zoning and it would apparently be wrong for him to reduce assessed market value by the value of that element, even if he could isolate it. If he did this, he would be seriously tampering with the basic market value principle. We consider that Rule 11 must be interpreted as meaning that where land is reserved (as distinct from zoned) for a particular purpose in a development plan (e.g. reserved for use as a car-park or open space, for road widening or the construction of new roads, for a burial ground, etc., etc.) such reservation is to be ignored when the value of the land is being assessed, and compensation is not to be inflated or deflated because of it.

Rule 13 rules out any element of value attributable to proposals for the development of the land or other land by a local authority. The principle embodied in this rule has been applied for many years in the British Courts and it was given legislative effect in Britain in the Town and Country Planning Act, 1959 (it is now contained in Section 6 of the British Land Compensation Act, 1961). Rule 13 is defective in that it is confined to proposals for development by

a local authority; the rule should presumably be of general application irrespective of the identity of the acquiring authority or of the body intending to carry out the development.

If we are correct in our views about Rules 11 and 13, it seems that the combined effect of the Rules is to reinforce the market value principle by ensuring that increases or decreases in value attributable to specific reservations in development plans and development proposals by acquiring authorities are disregarded.

6.7. We consider that the compensation law as it stands is not sufficiently explicit about the way compensation is to be assessed in the light of the effects on land values of the planning code and that a more sophisticated measure is called for, e.g. along the lines of the British Land Compensation Act, 1961. This Act was a consolidating measure which replaced the 1919 Act, parts of the Planning Acts of 1947 and 1959, and parts of the Lands Tribunal Act, 1949. It repeats the six basic rules for compensation assessment but goes on to provide detailed guidance as to how the effects of planning law are to be measured. Thus any planning permission in existence when the relevant notice to treat is served is to be taken into account. In some cases, certain assumptions must be made as to the purposes for which planning permission for the development of the land might be granted. Such assumptions may be derived from the contents of the development plan but in certain circumstances the planning authority may be required to furnish a certificate as to development that might have been permissible. There is provision for appeals against this certificate. The general purpose of these provisions of the Act is to lay down rules which require the Lands Tribunal to establish with as much precision as possible the real market value of the land, including its development potential, by reference to the contents of the current development plan and the policies of the planning authority on zoning, density, etc. Compared with the British Act of 1961, the present Irish legislation appears to provide insufficient guidance for the arbitrator and it seems fair to assume that he will be more influenced by prices recently paid for land in the area than by any assumptions which should be made in regard to the development potential of the particular land being acquired, given the current policies of the planning authority and the contents of the development plan, and the physical limitations affecting the land itself. We consider that the compensation law should be modernised so as to provide a more accurate basis for the assessment of compensation.

6.8. We consider that the actual arbitration machinery should also be reviewed. We feel that there is a strong case for the establishment of a tribunal comprised of legal and valuation experts similar to the Lands Tribunals established in Britain and Northern Ireland. It seems likely that compulsory purchase proceedings by local authorities will become more frequent in future and that a full-time arbitration body may become necessary.

This presupposes much more recourse to arbitration by acquiring

authorities than has been the practice up to now. One reason for this is that we consider that it may be necessary to restrict, either legally or administratively, the present freedom of local authorities to reach agreement on compensation for land which they have been authorised to acquire compulsorily (or for land which they are acquiring without the use of compulsory powers). Action along these lines appears to be necessary because there is evidence that some local authorities, when acquiring land by agreement or when agreeing on the amount of compensation for land being acquired under compulsory powers, may be prepared to pay more than market value for it in order to reach agreement more speedily. This is a most undesirable practice because it sets a new standard for prices in the area and is clearly prejudicial to the interests of the local authorities themselves in the event of arbitration proceedings affecting other lands in the area.

6.9. The problem mentioned in the previous paragraph could be overcome if local authorities without professional valuers on their staff could be provided with an official valuation advisory service. We consider that it would be desirable for the Minister to consider whether such a service could be provided (on a repayment basis) for the authorities concerned. A service of this kind would be of value in ensuring that there was the maximum possible degree of uniformity in the valuation of land being acquired by the authorities, whether by agreement or compulsorily. The service could also assist local authorities in arbitration proceedings and in advising on terms for the disposal of land. It appears that the Valuation Office would be the ideal body to provide such a service, and we recommend that this possibility should be examined.

6.10. There is one final legal change which we put forward for consideration. This is in relation to land for which planning permission has been given. Such a permission enures for the benefit of the land and of all persons interested in the land—subsection (5) of Section 28 of the Planning Act of 1963. A limitation on the validity of planning permissions where the development has not been commenced and substantially completed within a certain time is recommended in the majority report. We agree that some such limitation is necessary and desirable, but we feel that consideration might also be given to the granting of new powers to planning authorities enabling them to require that development for which permission has been given should be completed within a specified period and, that if this is not done, the planning authority should have power either to cancel the permission (except in so far as it relates to any work actually done) or alternatively to acquire the land by means of an accelerated acquisition procedure for the purpose of ensuring that the development is carried out, or completed, as the case may be. We consider that it is undesirable that people should be able to get planning permissions for the purpose of establishing high land values and then hold on to the land indefinitely. This is particularly true of housing land in, or in the vicinity of, built-up areas. The grant of planning permission in such cases should carry with it some respon-

sibility to ensure that the development is carried out within a reasonable time and the existence of special acquisition powers which could be invoked by the local authorities in appropriate cases could do much to ensure that any tendency towards the hoarding of land for which planning permission has been given would be checked.

MICHAEL J. MURPHY
J. T. O'MEARA
7th March, 1973.

APPENDIX

ORGANISATIONS AND INDIVIDUALS WHO MADE SUBMISSIONS TO THE COMMITTEE

Local Authorities

Bray Urban District Council.
Carlow County Council.
Cork County Council.
Donegal County Council.
Dublin Corporation.
Dungarvan U.D.C.
Limerick County Council.
Longford County Council.
Mayo County Council.
Meath County Council.
Monaghan County Council.
Sligo County Council.
Tipperary N.R. County Council.
Waterford Corporation.
Wexford County Council.
Wicklow County Council.

Government Departments

Department of Agriculture & Fisheries.
Department of Lands.
Department of Transport & Power.

Other Organisations and Private Individuals

Agricultural Institute (An Foras Taluntais).
City and County Managers' Association.
Construction Industry Federation and Irish Housebuilders' Association.
Clinton, M., T.D.
Crampton, G. H. C., B.A.I., 18a Argyle Road, Ballsbridge, Dublin 4.
Deegan, James T., & Co., M.I.A.A., 24 South Anne St., Dublin 2.
Devitt, T. C., Arus Mhuire, 126 Navan Road, Dublin 7.
Donovan, R., 23 St. Stephen's Green, Dublin 2.
General Council of the Bar of Ireland.
General Council of Committees of Agriculture.
Hurley, Rev. D., c/o Mr. M. Higgins, 21 St. Joseph's Lawn, Bishopstown, Cork.

Institute of Quantity Surveyors (Irish Branch).
Irish Auctioneers & Valuers Institute.
Irish Banks Standing Committee.
Irish Congress of Trade Unions.
Incorporated Law Society of Ireland.
Industrial Development Authority.
McCarthy, Owen, Official Arbitrator.
Melville, M. F. S., 34 Offington Drive, Sutton, Co. Dublin.
Murphy, Patrick, 6 Gardiner Place, Dublin 1.
National Building Agency Ltd.
Royal Institution of Chartered Surveyors.
Royal Town Planning Institute (Irish Branch), (majority & minority reports).

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