THE 1963 PLANNING ACT and SUBSEQUENT LEGAL MILESTONES

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RTPI Ireland seminar on FIFTY YEARS OF PLANNING LAW
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1934 TOWN AND REGIONAL PLANNING ACT

- Introduced a coherent system of positive and regulatory planning
- Two significant differences
  - Adoptive
  - Nature of planning schemes
- 1939 Amendment Act made no fundamental change to the basic position
THE PLANNING SCHEME

• Intended to have force of law
• Interim period – control of structures
to protect potential of the Scheme
• Scheme to be made “with all convenient speed”
• *Modern Homes v Dublin Corporation* [1953]
• Draft scheme submitted to Minister in 1957
  - 3,600 objections

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DISPOSING OF THE DUBLIN SCHEME

• 1958 First Programme for Economic Expansion
• turn of the decade – dual problems of prosperity and urban decay
• urban renewal – 1961 Charles Abrams Report
• 1947 Town and Country Planning Act
• Planning Bill introduced in Dail - November 1962
  Minister Neil Blaney MRTPi (Honorary)
MAIN OBJECTIVES

• Establishment of a flexible nationwide planning system
• Promotion of industrial and commercial development and urban redevelopment by local authorities
• Preservation and improvement of amenities
• Establishment of an equitable and efficient compensation system

- Minister’s Second Reading Statement
OVERVIEW of 1963 PLANNING ACT

• Division of functions – councillors & manager
• Act short by comparison with 2000 Act
• Main interests of government and legislature
  - accommodation of economic development
  - protection of property rights
• Fragmentation / Localisation
  - 87 planning authorities for 2.8m pop
THIRD PARTY APPEALS

• Rights framed inclusively in 1963
• 1934 Act interim period controls intended to be temporary but draconian
  - so absolute right of appeal to Minister
    s. 59 “any person aggrieved”
• Wording carried forward into 1963 Act
  s. 26(5) “any person”
FIRST AMENDING BILL MARCH 1974

• 1973: 3,520 appeals dealt with
  216 from third parties
  4,000 appeals received
• Ministerial support for oral hearings:
  “third parties who might otherwise hesitate to assert their rights against big commercial, industrial or development concerns”
• 1976 Planning Act transferred appellate function to An Bord Pleanala from 15.3.1977
AN BORD PLEANALA

- Independence
- Chairman a High Court judge
- 4 to 10 ‘ordinary’ members, one a civil servant
- All full-time and salaried
- Absolute discretion regarding oral hearings
  - residual Ministerial power
- £10 refundable deposit unless vexatious
- £30 fee introduced in 1983

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POLITICS AND THE BOARD

• appointments by Minister Ray Burke in June 1981
• 1983 Act reconstituted Board
  - appointments restricted to nominees of prescribed cultural, professional, commercial and environmental organisations
• Critical in reputational foundation
INSPECTORS’ REPORTS

• Originally confidential, available only through a motion of discovery
• “a resource lost to the community”

_An Foras Forbartha: 1963_

• 1995 Local Government (Planning and Development) Regulations required all documents on appeal files to be made available to the public from 3 days after the determination of the case
COMPENSATION

• Major concern in 1963
• Constitution Articles 40 and 43
• Removal of ‘hope value’ of land
• 1963 Act exceptions:
  traffic hazard and sanitary / public health
• *Central Dublin Development Association* case challenge to development plans
CONSTITUTIONAL INTERPRETATION

is conditioned by “the passage of time” Walsh J

• 1980s Culture of Compensation
• *Grange Developments* case - £1.87m
• *XJS Investments* case - £2.38m
  “constitutionally proper ?” Judge McCarthy
• 1990 Act included zoning as non-compensatable
• Part V of 2000 Act held constitutional by the Supreme Court

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• Minister’s Second Reading Statement on the 1962 Planning Bill, Dail Debates, Vol.197, 22 November 1962
• Daly, M. E. (1997), The Buffer State, Dublin: Institute of Public Administration
• Twenty Years of Planning – a review of the system since 1963, An Foras Forbartha, 1983
• In the Matter of the Claim of XJS Investments Ltd. v Dun Laoghaire Corporation [1987] ILRM 659
• In the matter of Article 26 of the Constitution and in the matter of Part V of the Planning and Development Bill 1999 [2000] 2 I.R.321

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