THE LAW COMMISSION

(LAW COM. No. 45)

TOWN AND COUNTRY PLANNING BILL

REPORT ON THE CONSOLIDATION OF CERTAIN ENACTMENTS RELATING TO TOWN AND COUNTRY PLANNING

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To the Right Honourable the Lord Hailsham of Saint Marylebone, Lord High Chancellor of Great Britain

The Town and Country Planning Bill which is the subject of this Report consolidates the Town and Country Planning Act 1962 and the enactments passed between that Act and the present time in the field of town and country planning. In order to facilitate a satisfactory consolidation we are making the recommendations set out in the Appendix to this Report.

All our recommendations except that in paragraph 11 are intended to remove anomalies. Some of them are certainly not of "substantial importance" and could therefore have been dealt with as "corrections and minor improvements" under the Consolidation of Enactments (Procedure) Act 1949. But others, though not of great importance, cannot unhesitatingly be placed in this class. The recommendation in paragraph 11 deals with a minor point of substance consequential on the enactment of the Town and Country Planning Act 1968.

The Department of the Environment have been consulted and agree with our recommendations.

LESLIE SCARMAN,
Chairman of the Law Commission.

24 May 1971.

APPENDIX

Note: In this Appendix the Town and Country Planning Act 1962 is referred to as the Act of 1962.

Duration of conditions relating to office development

1. Section 18(2) and (3) of the Control of Office and Industrial Development Act 1965 provide that conditions subject to which planning permission has been, or is deemed to have been, granted under the provisions of Part I of that Act are to cease to have effect on the date on which that Part expires. Sections 85 to 87 of the Town and Country Planning Act 1968 provide for further cases in which conditions relating to office development are required to be, or are deemed to have been, attached to planning permissions. We recommend that s. 18(2) and (3) of the Act of 1965 should also bring these conditions to an end on the date referred to above.

Effect is given to this recommendation in clause 86(2) and (3) where the reference to " these provisions " covers clauses 79 to 81 in which ss. 85 to 87 of the Act of 1968 are consolidated.

Power to award costs in appeals to Secretary of State against enforcement notices

2. Section 64(1) of the Act of 1962 provides that s. 290(5) of the Local Government Act 1933 (which authorises a government department holding an inquiry to make orders with respect to the costs of the parties) shall apply in relation to proceedings before the Secretary of State on an appeal under Part IV of the Act of 1962. By virtue of paragraph 22(*a*) of Schedule 9 to the Town and Country Planning Act 1968 this provision applies to appeals under Part II of that Act or under Part IV of Schedule 5 to that Act. The effect is that s. 64(1) applies to appeals under all the enactments consolidated in Part V of the Bill except s. 14(3) of the Civic Amenities Act 1967 which is consolidated in clause 103(3). We see no reason for excluding an appeal under s. 14(3) from the power to award costs conferred by s. 64(1) and recommend that s. 64(1) should apply accordingly.

Effect is given to this recommendation in clause 110(1) where s. 64(1) of the Act of 1962 is consolidated.

Enforcement notices deemed to have been duly served if appealed against

3. Section 64(3) of the Act of 1962 provides that where a person has appealed to the Secretary of State under Part IV of that Act against any notice, neither that person nor anyone else can later claim that the notice was not duly served on the person who appealed. By virtue of paragraph 22(*b*) of Schedule 9 to the Town and Country Planning Act 1968 this provision applies to notices under Part II of that Act or under Part IV of Schedule 5 to that Act. The effect is that s. 64(3) applies to notices under all the enactments consolidated in Part V of the Bill except s. 14(1) of the Civic Amenities Act 1967 which is consolidated in clause 103(1). We see no reason for treating a notice under s. 14(1) differently from other types of enforcement notice and recommend that s. 64(3) should apply to it.

Effect is given to this recommendation in clause 110(2) where s. 64(3) is consolidated.

Compensation for planning decisions restricting new development: withdrawal of claims

4. Section 108(5) of the Act of 1962 provides that where a claim for compensation under Part VI of that Act is transmitted to the Secretary of State he shall give notice of the claim to every person appearing to him to have an interest in the relevant land. The Secretary of State is not obliged to give this notice if the claim is withdrawn and provision is made for enabling him to invite the claimant to withdraw his claim

if, inter alia, it appears to the Secretary of State that compensation is excluded by s. 101 or s. 102 of the Act. Since 1962 there have been further enactments excluding compensation under Part VI of the Act of 1962, viz. s. 8(5) of the Control of Office and Industrial Development Act 1965, s. 24(4) of the Industrial Development Act 1966 and s. 67(6) of the Town and Country Planning Act 1968. We recommend that s. 108(5) of the Act of 1962 be amended so that the Secretary of State is also able to invite the claimant to withdraw his claim in any case which the Secretary of State thinks is within these later provisions.

Effect is given to this recommendation in clause 154(5)(*a*) of the Bill where the reference to clause 147 covers clause 147(3) in which the later enactments are consolidated.

No withdrawal of constructive notice to treat

5. Section 152 of the Act of 1962 provides that the power conferred by s. 31 of the Land Compensation Act 1961 to withdraw a notice to treat is not to be exercisable in the case of a notice to treat which is deemed to have been served by virtue of any of the provisions of Part VIII of the Act of 1962. These enable a person, in certain circumstances, to serve a purchase notice or " blight notice " the effect of which, if confirmed, is to oblige the relevant public authority to acquire the interest of that person. The public authority is thereupon deemed to have served a notice to treat and the subsequent procedure is analogous to that where a notice to treat has been voluntarily served by the authority except that the notice cannot be withdrawn.

Section 42 of the Town and Country Planning Act 1968 enables a person to serve a " listed building purchase notice " if his application for listed building consent is refused and certain other requirements are fulfilled. The proceedings on, and effect of, such a notice are set out in Part III of Schedule 5 to that Act which closely corresponds to the provisions of Part VIII of the Act of 1962 relating to purchase notices. There is, however, no provision corresponding to s. 152. We recommend that this section should cover listed building purchase notices also. If a notice to treat which is deemed to have been served under Part III of Schedule 5 to the Act of 1968 could be withdrawn the whole object of those provisions would, of course, be defeated.

Effect is given to this recommendation in clause 208 where the reference to the provisions of Part IX of the Bill covers clause 190 in which s. 42 of the Act of 1968 is consolidated.

Notification of order relieving statutory undertakers from obligations rendered impracticable

6. Section 168 of the Act of 1962 enables " the appropriate Minister " to make an order relieving statutory undertakers from obligations rendered impracticable by certain planning decisions and other events. Subsection (5) provides that the provisions of s. 11(1) of that Act are to have effect " subject to any necessary modifications " in relation to an order made under s. 168. The effect is to apply the notification requirements laid down by s. 11(1) in relation to development plans. Since s. 11 is prospectively repealed by the Town and Country Planning Act 1968 the re-enactment of s. 168(5) in its present form would make it necessary for the reader to consult a repealed provision. It is plainly preferable, therefore, that any re-enactment of s. 168(5) should itself set out the notification requirements. We recommend that, in doing so, the manner of publishing the notice and the persons to be notified (in addition to those who have made objections or representations and have asked to be notified) should be left to the discretion of " the appropriate Minister " and not be laid down by regulations or directions given by the Minister of Housing and Local Government (now the Secretary of State) as provided in s. 11(1). Regulations and directions are natural where, as in s. 11(1), the action in question is to be taken by a local planning authority; but they are not really appropriate as between one Minister and another. It is possible that the reference in s. 168(5) to " necessary modifications " already gives effect to what we propose but we have thought it better to deal with the matter specifically.

Effect is given to this recommendation in clause 235(5).

Assessment of statutory undertakers' compensation

7. Section 173(1) of the Act of 1962 provides that where the amount of any such compensation as is mentioned in subsection (1) of s. 171 of that Act falls to be ascertained in accordance with the provisions of that section, the compensation shall, in default of agreement, be assessed by the Lands Tribunal. Section 171 covers compensation to statutory undertakers for loss consequent on certain planning decisions or the compulsory acquisition of their land or the extinguishment of their rights. Section 73(7) of the Town and Country Planning Act 1968 creates a new type of compensation analogous to that covered by s. 171 of the Act of 1962. We recommend that s. 173(1) of that Act should cover this also.

Effect is given to this recommendation by clause 240(1) where the reference to clause 238 covers compensation under clause 237(3) (see clause 238(1)) in which s. 73(7) of the Act of 1968 is consolidated.

Exercise of powers in relation to Crown land

8. Section 199(1)(*b*) of the Act of 1962 provides that, in general, the restrictions or powers imposed or conferred by Part III, Part IV and certain other provisions of that Act shall apply and be exercisable in relation to Crown land to the extent of any interest therein for the time being held otherwise than by or on behalf of the Crown. By virtue of s. 25(4) of the Control of Office and Industrial Development Act 1965 and s. 60(2) of the Town and Country Planning Act 1968 this provision now applies also to the restrictions and powers contained in the Act of 1965 and Part V of the Act of 1968. In the result, s. 199(1)(*b*) can be consolidated so as to apply to all the restrictions and powers contained in Parts III, IV and V of the Bill except those in three clauses which are derived from ss. 6, 13 and 14 of the Civic Amenities Act 1967. The first of these (clause 101) enables a local authority to execute, at its own expense and after notice to the owner, works which are urgently necessary for the preservation of an unoccupied listed building. The second two (clauses 62 and 103) impose a duty on the owner of the land to replace a tree in respect of which a tree preservation order is in force if it is removed or destroyed illegally or in certain other cases. The local planning authority can serve a notice to enforce the duty and, if necessary, do what is required at the expense of the person in default. We understand that Her Majesty and the Crown Estate Commissioners, who have been consulted by the Department of the Environment, are agreeable to the application of s. 199(1)(*b*) of the Act of 1962 to these provisions of the Act of 1967 and we recommend that the section should so apply.

Effect is given to this recommendation in clause 266(1)(*b*) where the reference to Parts IV and V of the Bill covers the clauses mentioned above.

Application of Act to Isles of Scilly: assimilation of order-making procedure

9. Section 7 of the Local Government Act 1966 (grants for development and re-development) replaced s. 184 of the Act of 1962. The application of s. 184 to the Isles of Scilly was governed by s. 203 of the Act of 1962 but the application of s. 7 of the Act of 1966 is governed by s. 39 of that Act. No order relating to s. 7 has yet been made under this section. Section 39 of the Act of 1966 differs from s. 203(1) by omitting the requirement that the Minister (now Secretary of State) must consult the Council of the Isles of Scilly before making an order. We recommend that s. 7 of the Act of 1966, on being taken into the consolidation, should be governed by s. 203(1) as was originally the case with s. 184 of 1962.

Effect is given to this recommendation in clause 269(1) which, by virtue of Part I of Schedule 21, applies to clause 250 in which s. 7 of the Act of 1966 is consolidated.

Service of notices in respect of ecclesiastical property

10. Section 205(1) of the Act of 1962 provides that where under any of the provisions of that Act a notice is required to be served on an owner of land and the land is ecclesiastical property, a like notice shall be served on the Church Commissioners. By virtue of s. 104(3) of the Town and Country Planning Act 1968 this provision

now applies also to notices served under that Act. But it does not apply to notices served under ss. 6 and 14 of the Civic Amenities Act 1967. We recommend that these notices too should be subject to the requirement in s. 205(1) of the Act of 1962. This will have the result that the provision in the Bill corresponding to s. 205(1) will be able to apply to all notices under the enactments consolidated in the Bill.

Effect is given to this recommendation in clause 274(1) where the reference to " the provisions of this Act " covers clauses 101 and 103 where ss. 6 and 14 of the Act of 1967 are consolidated.

Application of capital moneys under Settled Land Act in relation to listed building

11. Section 206(3) of the Act of 1962 provides that the classes of works for which capital moneys may be applied under the Settled Land Act 1925 are to include works specified by the Minister as being required for properly maintaining a building in relation to which a building preservation order is in force and which is settled land. The Town and Country Planning Act 1968 abolished building preservation orders as from 1st January 1969 so that there are no longer any buildings of the kind mentioned in s. 206(3). We recommend that this provision should now apply to all listed buildings within the meaning of the Act of 1968.

Effect is given to this recommendation in clause 275(3).

Exercise of powers in respect of conservation areas

12. Section 1(5) of the Civic Amenities Act 1967, as amended by the Town and Country Planning Act 1968, provides that where any area is for the time being designated as a conservation area, special attention shall be paid to the desirability of preserving or enhancing its character or appearance in the exercise, with respect to any buildings or other land in that area, of any powers under the Act of 1962 or the Town and Country Planning Act 1968. The reference to the Act of 1962 includes a reference to subsequent amendments of that Act including amendments in the Act of 1967 itself: see s. 30(2). But the requirement in s. 1(5) does not apply to powers under other enactments taken into the consolidation which cannot be regarded as amendments of the Act of 1962. It is possible to take different views about which enactments can properly be regarded as amendments of the Act of 1962; but some or all of the following may not be, *viz.* Part I of the Control of Office and Industrial Development Act 1965, s. 7 of the Local Government Act 1966 and ss. 6, 8, 12 and 14 of the Civic Amenities Act 1967.

In the case of Part I of the Act of 1965, s. 1(5) of the Act of 1967 would have effect in relation to the power of issuing or withholding office development permits. Section 1(5) may not have much relevance in this context but there is in our opinion no justification for expressly disapplying s. 1(5) in its consolidated form from the provisions of the Bill in which Part I of the Act of 1965 is reproduced. For what it is worth s. 1(5) *does* apply to the power under s. 38 of the Act of 1962 to issue or withhold industrial development certificates; and we see no reason for distinguishing between industrial development certificates and office development permits. We recommend accordingly.

Section 7 of the Act of 1966 replaced s. 184 of the Act of 1962. It may be doubted whether the Secretary of State's power to make grants under that section is exercisable " with respect to any buildings or land " as required by s. 1(5) of the Act of 1967. But if and so far as s. 1(5) can be relevant to this power we think it should be allowed to apply and we recommend accordingly.

In the case of ss. 6, 8, 12 and 14 of the Act of 1967, s. 1(5) may not have much, if any, relevance. It may be for this reason, or because these sections were regarded as amendments of the Act of 1962, that they were not mentioned in s. 1(5). But it would be incongruous, in a consolidation, to provide expressly that the re-enactment of s. 1(5) is not to apply to the clauses in which those sections are re-enacted and we recommend that they be not excluded.

Effect is given to these recommendations in clause 277(5) where the reference to " this Act " includes a reference to the clauses consolidating the provisions discussed above.

Prescribed forms of notices

13. Section 217(1)(*a*) of the Act of 1962 enables the Secretary of State to prescribe the form of any notice authorised or required to be served by any of the provisions of that Act. This power was not applied to notices under Parts I and II of the Civic Amenities Act 1967 which are included in the consolidation. The relevant provisions are ss. 1(4), 6 and 14. It may be that there is no particular need to prescribe forms for these notices, but we recommend that they should not be excluded from the re-enacted version of s. 217(1)(*a*).

Effect is given to this recommendation in clause 287(1)(*a*) where " the provisions of this Act " covers clauses 101, 103 and 277(4) in which the relevant sections of the Act of 1967 are consolidated.

Application of Act to Isles of Scilly: Orders to be statutory instruments

14. Section 217(4) of the Act of 1962 lists the order-making powers in that Act which are exercisable by statutory instrument. These do not include the power in s. 203(1) to provide for the application of certain provisions of that Act to the Isles of Scilly. In fact the order which is now in force under s. 203(1) has been printed as a statutory instrument: see the Town and Country Planning (Isles of Scilly) Order 1949 (1949/1321; 1949 I, p. 4033). Moreover, some of the other enactments included in the consolidation contain powers to provide for their application to the Isles of Scilly by orders made by statutory instrument. We therefore recommend that s. 203(1) be included among the provisions referred to in s. 217(4) of the Act of 1962.

Effect is given to this recommendation in clause 287(4) which applies to clause 269 where s. 203(1) is consolidated.

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