Book Review:


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After reading _Negotiating Development_, one is assured that a planner from almost any advanced-economy country visiting a British local planning bureau will be likely to feel at home. A common paradigm is seen in the relationships between planners, developers, and consumers. Planners in many countries negotiate with developers with similar purposes in mind, but call the practice by different names: Americans call it "exactions" (a term with some pejorative connotations) and the British call it "planning gain" and more recently, "planning obligations."

The high-powered team behind this book includes the well-known British planning and development theorist, Patsy Healey, and a leading authority on British planning law, Michael Purdue. With the researcher Frank Ennis, they constitute a team that has produced an exquisitely engineered merger of theory, law, and empirical evidence of practice.

The book begins appropriately with a planning-theory perspective, showing how negotiated development is well-grounded in the demise of the "public interest" rationale for planning. Instead, the function of urban planning is to mediate among competing interests; to expose the dimensions of potential negative externalities and internalize them; and to channel mitigation claims.

Despite fundamental differences between "the planning system" in Britain and that in the United States—and indeed, most other countries—the similarity in negotiations practice is striking. While the book's purpose and scope are not comparative, readers from other countries will easily draw the relevant comparisons, as I shall do for American planners.

For the past five decades, the British planning system has had almost no equivalent to zoning or legally binding land use plans. It calls for a unique marriage of discretionary ad-hoc decisions about development proposals with an important role for development plans. The balance between the two has shifted back and forth in recent years: Mrs. Thatcher's government promoted a "project-led" approach, giving plan documents less weight; Mr. Major's government has sought to shift toward a "plan-led approach." Despite this pendulum, the negotiated mode of development decisions has flourished and indeed expanded. The British have had legal authority to draw a contract between planning authorities and developers since 1969.

As in the United States, the negotiations practice has grown bottom up, only later becoming partially institutionalized. It started with the more traditional on-site infrastructure and land grant requirements (the British do not use the term "dedications"), and expanded to include off-site infrastructure and facilities and, recently, some "social-policy" benefits. A 1991 national-government circular (a legally nonbinding but highly obeyed form of British planning administration) has clarified and expanded the authority to negotiate not only for land or construction, but also for financial sums to be paid for planning and development purposes.

The authors usefully distinguish among three ways in which planning obligations may arise. These will be familiar to American readers: first, as an operational requirement without which the development cannot proceed; second, as a requirement to address the adverse impacts of the project; and third, as a windfall-capturing mechanism.
We also learn of important differences. British courts, like U.S. courts, have been asked to rule on the legality and boundaries of planning obligations; but the first time this issue came up directly before the highest level, the House of Lords, was in 1995. The issues raised have been different from those typically raised in the U.S. The “taking issue” is not mentioned, because the interface is with statutory law. British courts have generally been somewhat more positive toward planning obligations than American courts are. They have not required the link between impacts of the development and the benefits obtained to be as rigorous and causal as the American “rational nexus” test. The readers will easily understand the legal issues, thanks to the transparent way in which they are set out.

Another major difference is that there has been little attempt to substitute impact fees for negotiated benefits. A further difference is that British planning policy has been adamant against using negotiated agreements to allow the community to gain from windfalls, because this issue has received ample national-level discussion, and has been enacted into legislation several times but repealed each time. In the United States, there has been less overt discussion of windfall recapture, and virtually no state-government legislation, although some negotiated exactions or linkage fees probably step partly into this zone.

The authors report research findings about 206 agreements drawn by local planning agencies in five local authorities between 1984 and 1991. The number of agreements is surprisingly small, representing only one percent of applications for “planning permission.” However, these agreements pertain mostly to more complex and large-scale projects. The findings cannot be compared to the United States without taking into account the special traits of British development control. In Britain even a single-family home in an existing development is counted as an application, alongside the most complex projects. In the U.S., only the latter would require a zoning change or variance and therefore be open to negotiation. So the real rates, if calculated comparatively, might not be too dissimilar.

The authors also report on the scope and content of the agreements. Here, I sense some real difference from the United States. In the United Kingdom, planning obligations are mostly about infrastructure and landscaping. Public facilities are exacted only in a small minority of cases, and social facilities and affordable housing even less. This difference is probably grounded in the different roles of local governments and state/national governments in financing or building the various types of facilities.

The authors conclude that, on balance, negotiated practices carry benefits for both planning authorities and—yes—for developers. The former are challenged to look explicitly at adverse impacts of development and to think of ways of mitigating them. Planners also gain a flexible tool that can fine-tune requirements and maintain proportionality among projects. Developers gain a legitimate way to make their case and convince planning authorities of the benefits of their proposals while tailoring the requirements to the circumstances of each particular development. The authors do not recommend the American emphasis on impact fees, which they view as losing out on some of the positive opportunities of negotiated development.

_Negotiating Development_ is an excellent empirical study of developer obligations. It also provides a superb window into broader issues of British planning law and practices. The authors have succeeded in keeping their word to make the discourse almost jargon-free by defining their terms so that non-British readers can easily understand. This is a rare achievement.