DEVELOPMENT BRIEFS AND DEVELOPMENT PLANNING IN MALTA§

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Abstract. The drafting and issuing of Development Briefs is the responsibility of the Planning Authority. Such briefs rigorously regularise land uses and related activities within the areas which they cover. This paper investigates the rationale behind the issuance of Development Briefs within the contemporary local planning system. By drawing parallels with the British planning framework, various options are investigated whereby compensation may be sought/demanded due to excessive planning gain requested as part of a Development Brief prepared by the Planning Authority from developers. By way of concluding the argument, reference is made to the provision contained in the Development Planning Act with respect to Governmental involvement in planning decisions.

Introduction

Development Briefs aim to provide guidelines for permitted development in specific sites (Department of the Environment, 1992; Greed, 1996), guidelines which incorporate various parameters such as traffic, land use and socio-economic environment. Though it is strongly argued by the Planning Authority that a given Brief is, for a given site, the most sensitive planning solution possible which takes into account the local amenities and the developer's potential, it is frequently felt by developers that the Authority is overreaching its powers to the detriment of the developer. This paper, while questioning the legitimacy of the Planning Authority in drafting such Briefs, inquires into the possibility of chal-

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lenging the form and substance of a Development Brief on matters of law with the aim of deriving compensation from the competent Authority. Three ways of obtaining compensation are referred to. These are: compensation for adverse planning decisions, compensation through the *actio de in rem verso* and compensation through an action for damages.

Requirements as to the Form of a Development Brief

Development Briefs must be issued by the Planning Authority as per Para. 1.8 of the Structure Plan for the Maltese Islands (1990) (henceforth referred to as the Structure Plan), and neither the Development Planning Act (1992) nor the Structure Plan itself give further details regarding their issuance. According to Para. 1.8(1) of the Structure Plan,

> "A primary responsibility of the Planning Authority is to secure the implementation of the Structure Plan by preparing more detailed plans for particular areas or sectors of activity"

Development Briefs feature among such plans. From the said paragraph it appears that only the Planning Authority may issue a Development Brief, and thus no Brief may be considered as legally valid unless issued by the Planning Authority. However, the Planning Authority may delegate its functions as per Section 5(4) of the Development Planning Act which states:

> "Subject to retaining overall control and supervision, and otherwise observing the provisions of this Act, the Authority may delegate any one or more of its functions or powers under this Act under such conditions as it may deem appropriate".

Requirements as to the Substance of a Development Brief

Here the question to be asked is : What kind of conditions can be imposed by the Planning Authority in a Development Brief? A brief look at the relevant functions and powers of the Planning Authority provides an insight into the matter.

Functions of the Planning Authority

According to Section 5 of the Development Planning Act,

> "The functions of the Authority shall be the promotion of proper land development, both public and private, and the control of such development in accordance with approved policies and plans".

One question arising from this statement is: Which Authority is to decide what constitutes "proper" land development? It is the Planning Authority itself. But what if it is obvious in a given circumstance that the Planning Authority has not decided correctly? Neither the Development Planning Act nor the Structure Plan contain an answer. One can argue that final responsibility always rests with Parliament since, under Part III of the Act, the Structure Plan prepared by the Planning Authority had to be approved, and presumably may be refused in whole or in part, by the elected representatives in Parliament.

Another pertinent question is : What are "approved" policies and plans? The Development Planning Act, as amended in 1997, has clarified this. Section 5 of the Act, as amended, refers to control of development in accordance with "policies, plans and conditions approved by Government and with procedures as approved by the Minister." The clear implications of this Section are that the Planning Authority shall not in future be able to take any decision whatsoever regarding development control unless it is in line with Government policy.

An important issue in this regard relates to "material considerations". According to Section 33(1) of the Development Planning Act,

> "In determining an application, the Authority shall have regard to ... any other material consideration, including aesthetic, sanitary and other considerations"

Though, the phrase "material consideration" is not defined in the Development Planning Act, the most eminent "material considerations" considered by the Planning Authority is the implementation of the Structure Plan. Section 33(1) itself mentions "aesthetic" and "sanitary ... considerations", which considerations both feature in the Structure Plan.

Development Briefs and the Structure Plan

Development Briefs as issued by the Planning Authority, though mentioned in the Structure Plan, do not appear to fall completely within the general scope of this said Plan. Para. 4.7 of the Structure Plan states that

> "Until the Local Plan for any particular area is approved, development control procedures will be derived from existing legislation, the Development Planning Act and the policies and guidelines of the Structure Plan".

Moreover, the importance of the Structure Plan within the general body of planning policies is attested to by the fact that according to Section 20 of the Development Planning Act, the Structure Plan and any review thereof requires the approval of the House of Representatives.

Para. 1.8(5) of the Structure Plan states that

> "Development Briefs ... relate to single sites and should prescribe all matters affecting the form, content and design of the development. They need not be confined to planning requirements".

From Para. 1.8, it appears that Development Briefs, together with other plans that the Planning Authority is bound to prepare, are meant to help "secure the implementation of the Structure Plan". The implementation of the Structure Plan is expressly stated in the same Para. 1.8 as being "A primary responsibility of the Planning Authority". Development Briefs should complement the implementation of the Structure Plan and not hinder it.

Para. 1.2(4) of the Structure Plan states that part of the purpose of the Structure Plan is to "identify and promote opportunities for development and harness private sector resources to assist in carrying out that development". Effectively harnessing a resource entails using the potential of that resource to the full, and it is highly questionable if this can be accomplished through conditions in Development Briefs which tend to stifle rather than promote private sector involvement in a project. This could be just what would happen if conditions such as, say, imposing the provision of free parking space and public open space, are insisted upon.

Para. 3.1 to para. 3.4 of the Structure Plan deal with the overall strategy of the Structure Plan. Para. 3.1 stresses the need for Malta to "harbour existing resources, create new ones, and manage both efficiently". Para. 3.3 notes that "The primary resource which can be created is national wealth", and that "every effort has to be made to encourage wealth production".

Taking Para. 1 and 3 together, one will conclude that property developers constitute a resource, since they possess both "wealth and skills" (Para. 3.4). Hence, the Planning Authority must not place demands on developers which would lead to a financially unsustainable depletion of their resources in particular, and of the Maltese planning sector in general. Such an attitude would have the long-term effect of discouraging "wealth production", and would undermine efforts to achieve the goals of the Structure Plan. In fact, Para. 3.4 points out that

> "The Structure Plan essentially comprises a series of policies aimed at managing development. If development can be regarded in this way, there is every possibility that the goals of the Structure Plan can be realised".

Long Term Effect of Planning Gain vs Development Costs

Admittedly, Para. 3.2 of the Structure Plan emphasises the need to "rationalise the way in which development is organised, and to get the most from those areas which are already built-up or planned". However, the question that one must inevitably ask is : Is it rational to attempt to extract as much planning gain as possible out of a development project at the risk of seeing the whole project founder?

It must be kept in mind that a developer faces a multitude of costs due to various factors, and one expense will often lead to another, giving rise to an accumulator effect. A developer who decides to embark on a given project because he concludes that it would be viable – having taken into account, to the best of his ability, of all possible costs and risks to his investment – may well find that the terms of a Development Brief do not make it feasible to carry on with the project.

The unrestrained implementation of the concept of planning gain may

therefore turn out to be a double-edged sword for a Planning Authority, and belie what is stated in Para. 5.4 about "the [Structure] Plan as an instrument whose basic intention is to secure the greatest good for the greatest number [of people]".

In the local context, an unrestrained policy of planning gain would also be negating the recommendations of the Chief Executive of the Planning Authority himself, as expressed in the Planning Authority's 1994 Annual Report:

> "In particular, the perceived image of planning as negative, imposing only controls and restrictions must change, and be replaced by the idea that planning is positive with a major emphasis in promoting acceptable development within a proper framework of safeguards for the fragile environment".

Furthermore, in striving for planning gain to the exclusion of other relevant considerations, the Planning Authority would be going against the principles of Respect and Openness as enshrined in its own Mission Statement, from which principles are derived the policies of "equality of treatment and opportunity for all" and "decisions based on proper justification through looking at problems with a broad perspective". Imposing on a developer costs which go beyond those which he could reasonably be expected to predict when embarking on a project is not very indicative of a broad outlook on matters, and is consequently hard to justify.

Further to what has been pointed out above, trying to make a planning gain from a development in order to better the surrounding environment contains the inherent injustice of making the developer pay for the commission of past planning errors which he was probably not even remotely involved in, and which might well have been committed by the relevant Planning Authority itself, or by its predecessors.

The conclusion is therefore that one should not attempt to extract planning gain from a development project without consulting the developer. Moreover, any far-sighted Planning Authority would do well to consider subsidising at least a fixed part of the extra costs incurred by developers to fulfil planning gain requirements in a Development Brief. This could be a form of "public sector investment in the upgrading of

infrastructure" as recommended in Para. 3.8 of the Structure Plan, assuming that parking areas, say, are part of the infrastructure. Taking up the example of a parking area, a subsidy given for such a purpose should arguably be granted over and above the financial contribution which the Planning Authority is bound to give for a carpark catering for additional car spaces to those required for a given development, and should be paid from funds accumulated through contributions paid as part of the Commuted Parking Scheme. The Planning Authority originally levied such contributions against developers who did not have the necessary parking provisions in their projects. Developers who make good for any lack of car parking spaces in the area should be reimbursed the expenses of the extra parking spaces which the development is going to generate.

Development Briefs utterly fail to incorporate such a positive and innovative concept. Not only that, Development Briefs usually impose on the developer the added burden of funding a significant part of the construction costs of any new road junctions close to the site, which junctions would normally be intended to improve traffic safety and would therefore represent yet more planning gain to be squeezed out of the developer's funds.

Challenging a Development Brief in Court

In a democratic State where the power to govern emanates from the law and is therefore exercisable within the limits set by the same law – whether it be the Constitution or some other law – all the actions of the executive authorities of the State, that is the various public bodies involved in administrative roles, must to a lesser or greater extent be subject to review by the judicial authorities of the same State.

A Development Brief, which is an administrative decision, legally enforceable, can be challenged in case of procedural or other legal defects or if normal rules of Natural Justice have not been adhered to.

Section 33 of Development Planning Act

When Section 33 of the Development Planning Act, which deals with development permissions, has not been complied within a Development

Brief, one could argue the fact that the Planning Authority has apparently not had regard for certain "material considerations" in establishing some of the conditions contained in the Brief, may render the issuance of the said Brief defective at law. Section 33(1) of the Act lays down that in determining an application, the Authority shall have regard to any material considerations. It is true that Section 31 of the Act, which deals with development orders, leaves it to the Planning Authority's discretion whether or not to impose any conditions for the granting of a development permission, and to determine which condition or conditions will be appropriate in a given situation. On the other hand, this discretion may be considered as circumscribed by the above-cited mandatory requirement that ".....the Authority shall have regard to ... any other material considerations".

Consequently, if the Authority were to disregard any material consideration, it would be acting *ultra vires*, since it would not be respecting the terms under which the legislator, that is Parliament, saw fit to grant it the power to deal with applications for development permission. One may however query who is to decide what constitutes a "material consideration".

Requirement to Give Reasons

An indication that the legislator also intended the Planning Authority's discretion under Section 33.2 to be subject to judicial review like other instances of exercise of discretion by administrative authorities, is accorded by the fact that the same Section 33 requires the Authority to "give reasons ... for any condition imposed by it". This makes it easier for the Courts to check whether the Authority has exercised its discretion correctly at law. Although the Development Planning Act makes provisions for redress on issues related to development control through the Development Control Commission and the Planning Appeals Board, there is nothing stipulated with respect to planning control decisions such as those controlling Development Briefs. In such a case, the Code of Organization and Civil Procedure would apply, specifically Para. 469A which deals with the judicial review of administrative action.

Appeal Contrasted with Review

At this point a distinction has to be made between appeal from admin-

istrative action and review of administrative action. An appeal amounts to a reconsideration of a decision of some lower Court or Authority on its merits. On the other hand, in judicial review the Court does not substitute its decision for that of another Authority, but merely limits itself to ruling on whether the order or act which is being attacked could have validly been issued or effected at law. If the Court finds for the plaintiff, the Authority's act will be annulled.

From the above, it is evident that an appeal is more far-reaching as a remedy. However, an appeal is frequently limited by the enabling legislation to points of law only, and can only be entered in the instances specified by the enabling legislation; that is not all decisions of an Authority may be appealable.

Appeal under the Development Planning Act

Under the Development Planning Act, the right to appeal is granted expansively. A developer may appeal to the Planning Appeals Board on any matter relating to the Planning Authority's "development control" function, and such right of appeal should therefore also extend to the issuance of a Development Brief. The Planning Appeals Board's decision is final; however, if the developer finds that the Board has wrongly interpreted a law, or has omitted to take a relevant law into consideration, he may appeal to the Court of Appeal.

Protection of Fundamental Human Rights

Besides administrative remedies, there are two other possibilities for persons aggrieved by the conditions in a Development Brief to acquire redress from the Courts, namely through the Constitution and under the Convention of European Human Rights. This is because the right to enjoy one's property without hindrance is a right which is recognised by the Constitution, which is the highest law of the land.

The protection granted to property owners and developers is twofold: In the Declaration of Principles contained in Chapter II of the Constitution of Malta (Section 18), the State declares itself morally bound to encourage private economic enterprise. Section 21, although drawing attention to the fact that no Principle contained in the declaration is

enforceable in any Court, goes on to state that the principles contained therein "are nevertheless fundamental to the governance of the country and it shall be the aim of the State to apply these principles in making laws."

Besides the above, Section 37 of the Constitution lays down that

> "no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition –
>
> a) for the payment of adequate compensation;...."

As shall also be argued below, the compulsory utilisation of private property for public use required by Development Briefs should be seen as equivalent to a compulsory acquisition of property.

Compensation for Adverse Planning Decisions

British Legislation

The present planning system in Britain, on which the contemporary planning system in Malta is modelled, is rooted and developed in several Town and Country Planning Acts undertaken this last half a century. Significant Town and Country Planning Acts are those enacted in 1947, 1954, 1959, 1962, 1968, 1971 and 1990 (Halsbury's Laws of England, 1992 ed). The Town and Country Planning Act, 1962, though not the latest on the subject-matter being dealt with, is significant with respect to the concepts embedded vis-à-vis issues arising from adverse planning decisions rather than for any direct applicability of the actual provisions of law.

To be entitled to compensation under Part IV of the 1962 Act, a person must

i) own an interest in the land to which the adverse planning decision relates;
ii) the whole or part of the land affected by the decision must have an unexpended balance attached to it; and
iii) the owner's interest must be depreciated in value by the adverse decision.

Compensation is not available in respect of certain types of adverse planning decisions listed in Section 101 of the Town and Country Planning Act. These include:

i) Refusal of permission for any development which consists of or includes the making of any material change in the use of buildings or other land – for example, refusal of permission to carry out structural alterations for the purpose of converting a dwelling house into offices.
ii) Imposition of conditions in regard of the following matters (*inter alia*):
    a) the number or disposition of buildings on the land,
    b) the dimensions, design, structure or external appearance of any building or the materials to be used in its construction,
    c) the manner in which any land is to be laid out for the purposes of the development, including the provision of parking, loading and fuelling facilities on the land, and
    d) the use of any buildings or other land.

It is interesting to note that though British law limits the conditions which entitle an owner to compensation; there is in the same law another device for the benefit of owners – the "Purchase Notice". This remedy is applicable in all cases where planning permission is refused or granted subject to conditions, and may be availed of where the owner of the land claims that it is incapable of reasonably beneficial use

i) in its existing state, or
ii) if developed in accordance with conditions imposed.

The local authority then either complies with the purchase notice or, if it decides against complying, leaves the matter in the hands of the Secretary of State to decide.

Maltese Legislation

The closest that Maltese law arrives to the purchase notice in British law is the "Expropriation Order". However, Maltese law makes no provision enabling the owner to apply for such an order, and the Maltese owner can only force Government to expropriate by taking the matter to Court. Nevertheless, since Court action is usually effective in forcing Government to issue a requisition order, Government normally complies of its own accord.

Under the Land Acquisition (Public Purposes) Ordinance, enacted in 1935, when Government requires a given piece of property for public use, the owner is entitled to the fair value of the property if the land is expropriated.

Section 5 of the Land Acquisition (Public Purposes) Ordinance states that

> "The competent authority may acquire any land required for any public purpose, either –
> a) by the absolute purchase thereof; or
> b) for the possession and use thereof for a stated time, or during such time as the exigencies of the public purpose shall require; or
> c) on public tenure".

The concept of public tenure enables the owner – after the lapse of ten years from the date when possession was taken by the Commissioner of Lands – to apply to the Land Arbitration Board for an order that the land be purchased, or acquired on public tenure, or vacated.

The term "public purpose" is not found in Development Briefs issued by the Planning Authority. However, the definition of "public purpose" in the Land Acquisition (Public Purposes) Ordinance is wide enough to cover the setting aside of land for public use. In fact, according to Section 2 of the Land Acquisition (Public Purposes) Ordinance, a public purpose is

> "any purpose connected with exclusive government use or general public use, or connected with or ancillary to the public interest or utility (whether the land is for use by the Government or otherwise) or with or to town-planning or reconstruction ... and includes any other purpose specified as public by any enactment."

At present, it is not considered possible under Maltese Law for an owner to whom a development permit has been denied to constrain Government to purchase the land. However, it might be argued that by imposing conditions such as those usually integrated in Development Briefs which relate to public use of the land, Government will through the Planning Authority be circumventing the law, which requires it to pay compensation in return for obtaining land which it intends to

utilise for its, and therefore the public's, benefit. In other words, should not the fact that Government in forcing an owner to set aside part of a given amount of land for a public purpose be seen as constituting a form of expropriation? Following such reasoning, Government should be bound to expropriate the land or, at least, to acquire it limitedly in regard to possession and use, and thus pay a rent.

British Compulsory Purchase Act, 1965

Under British law, the danger of allowing the expropriation of only a part of an owner's land has been felt so keenly that the Compulsory Purchase Act, 1965, prohibits compelling a person to sell only part of a "house or other building or mandatory, or of a park or garden belonging to a house, except where the Lands Tribunal is of the opinion that the part can be taken without material detriment to the remainder".

There is no reason why the concept should not be adopted under Maltese Law and extended to cover even building sites, especially in view of the fact that

a. it is no less detrimental in terms of land value to requisition part of a building site than to requisition part of a house or garden, since every building site is of its very nature destined to have a building erected thereon;
b. the same applies to land intended to accommodate a development project, since reducing the amount of land readily available for a project is bound to be detrimental to the profitability of the said project and
c. the Land Acquisition (Public Purposes) Ordinance is in a general way based on British legislation : this is evidenced by the existence of similar acquisition procedures under the relevant laws of both countries, and by the existence of similar compensation rules.

Inadequacy of Compensation Provisions

Unfortunately, since the amount of acquisition rent (or recognition rent in the case of acquisition of land on public tenure) payable is assessed at the estimated yearly rental value, the latter option would be rather less advantageous to the owner than the granting of a development permit would have been, or even than the full acquisition of the land by

Government. However, it is certainly not much worse than the present situation, where the owner is forced to subsidise the use of property by the public.

Actually, the best deal for the owner given the law at present – and the fairest – would seem to be full acquisition of the land by Government, since according to Section 27 of the Land Acquisition (Public Purposes) Ordinance the value of the land is calculated on "the amount which the land if sold in the open market by a willing seller might be expected to realise".

However, it need hardly be pointed out that the compulsory purchase of land by Government every time some amelioration of an area for the benefit of the public is intended would be counterproductive. It would discourage development initiatives from the private sector, which initiatives are crucial to the development of a country since Government cannot be expected to come up with all the ideas.

Consequently, a more productive approach would be a collaboration with developers which would see Government shouldering its full share of expenses made in the public interest.

Injurious Affection

Another interesting concept found under British law is the concept of "injurious affection". "Injurious affection" is a legal term employed to describe a situation where the exercise of statutory powers causes harm to an owner's property.

One way of causing injurious affection could be to require that a certain amount of land be set aside for public use, as is being requested in Development Briefs. The aim of such conditions in Development Briefs will obviously be to obtain a certain amount of planning gain. However, apart from the legal and philosophical implications of such a *modus operandi,* as outlined above, it bears underlining once again the real danger that by pushing too hard, the Planning Authority will not obtain anything at all. Indeed British planning authorities are very wary of demanding too much "planning gain" in case no development occurs at all due to unacceptably reduced profit margins to the developer.

The importance of striking the right balance where treatment of applications for development is concerned has been acknowledged by the Chairman of the Planning Authority in the conclusion to the 1995 Chairman's Report, wherein he states that

> "It is essential that resources continue to be managed in a sustainable manner with responsibility towards future generations, negotiating trade-offs between economic growth, social programmes and environmental conservation. This continues to be the central task of the Planning Authority...".

British law does not give the Secretary of State the right to refuse to grant compensation under Section 101 Para. (iii) (c) of the Town and Country Planning Act, 1962, without allowing the developer to charge a fee for the supply of services to consumers. Thus, for example, the developer cannot be forced to provide free parking without being granted or allowed to derive compensation.

The same goes for requests that the developer set aside other land for use by the public, such as providing open spaces purely for public use. All the more so when the land in question is a prime development site.

Compensation through the *Actio de In Rem Verso*

If a developer has, by an act of his, increased the amount of wealth possessed by Government on behalf of the public, then Government ought to be made to pay for such service, if not the Planning Authority. This is based on the concept of unjustified enrichment.

In order for the *actio de in rem verso*, which is exercisable in the case of unjustified enrichment, to succeed, three elements would have to be present: enrichment, a causal link and an element of injustice.

Enrichment

Undoubtedly, the public is going to benefit from the allocation of space for public use as required by a development brief. Such benefit may not be easily quantifiable, but it can be calculated, possibly by calculating how much it would cost the Government to provide a similar area with

similar facilities on land with similar characteristics, which would have to be bought from a third party at the prevailing market price.

Link

The action of the plaintiff must be established as having given rise to the unjustified enrichment of the defendant. If a developer, at the Planning Authority's request, will be ceding part of the land for public use, then the public will be benefitting.

Enrichment and the Plaintiff

If there is a juridical fact which authorises the defendant to legally retain the value of the enrichment in his favour, then the action will not be successfully exercisable. Para.1.8(5) of the Structure Plan provides that

> "Development Briefs are somewhat similar in nature to Planning Briefs but relate to single sites and should prescribe all matters affecting the form, content and design of the development. They need not be confined to planning requirements".

According to Section 33(2) of the Development Planning Act,

> "The Authority shall have power to grant or to refuse a development permission, and in granting it may impose any condition it may deem appropriate; but the Authority shall give reasons for its refusal or for any conditions imposed by it".

Section 33(1) of the Development Planning Act states that in determining an application, and therefore including in the imposition of any conditions it deems appropriate, the Planning Authority shall have regard to the development plans, to representations made in response to the publication of the proposal and to any other material consideration, including aesthetic, sanitary and other considerations.

Apparently, the Planning Authority may impose any condition as long as

i) it deems such condition appropriate,
ii) it gives a reason or reasons for the imposition of such a condition, and
iii) it observes the requirements of Section 33(1) of the Development Planning Act.

Lack of Possibility to Exercise Action

It would seem that unless the particular power exercisable by the Planning Authority in issuing a Development Brief is successfully challenged in Court through any of the aforementioned means in such a manner that the Court will annul the Development Brief in question, the *actio de in rem verso* would not succeed, since the enrichment accruing to the public would be justified at law.

On the other hand, if the above-mentioned power is successfully challenged in Court, there would be no scope for exercising the said action, since the Planning Authority would be precluded from imposing the condition or conditions giving rise to the unjustified enrichment.

Compensation Through an Action for Damages

According to Section 4 of the Development Planning Act, 1992, "The [Planning] Authority shall be a body corporate, having a distinct legal personality and capable, subject only to the provisions of this Act, of suing and being sued ...". The Planning Authority may thus by its actions expose itself to claims for damages if it is found that it has acted in a manner not strictly in conformity with the Development Planning Act, or has breached some other law which applies to its operations, or has delayed unduly in deciding on an application.

Such damages may well be considerable, running into thousands of Maltese Liri. Scenarios which may easily come to mind are instances where the Planning Authority creates difficulties in order not to grant an application for development, without having a sound legal basis for taking such a stance, as well as the imposition of unwarranted conditions which cannot really be justified under the Development Planning Act or the Structure Plan. Of course, the developer has to suffer loss, since otherwise there would be no scope for an action in damages. But in such circumstances, losses are incurred very easily. After all, time is a resource, and there are other cost-increasing factors to be taken into account when a developer is forced to change his development plans.

Ministerial Involvement

According to Section 38 of the Development Planning Act, 1992, where any proposed course of action of the Planning Authority touches upon matters of Government policy, it is envisaged that the Inter-Ministerial Planning Committee, a committee composed of Ministers as per Section 6 of the amending Act, will be involved.

Where any Government department or body corporate established by law applies for a development permission and the Planning Authority refuses to grant such a permission, the matter is to be referred to the Inter-Departmental Planning Committee which shall be composed of one representative from each department or body corporate involved in the request for permission. If the matter is not resolved by the said Committee in agreement with the Planning Authority, the issue goes before the Planning Appeals Board. The Board has the power to make recommendations, but the ultimate decision on the issue is in the hands of the Cabinet as per Section 38(4) of the Development Planning Act.

Bearing in mind the general trend of the recent amendments outlined above, and in the best interests of efficiency, where projects which have the backing of Government and which are in line with Government policies are being proposed, the Planning Authority should avoid unnecessary bureaucracy, since it will only amount to a waste of taxpayers' money and create further expenses for the Government-backed developers.

Final Comments

From the descriptions and comments presented above, the following conclusions may be drawn:

- Development Briefs, though mentioned in the Structure Plan, do not appear to fall completely within the general scope of the Plan;
- Development Briefs should complement the implementation of the Structure Plan and not hinder it;
- Although the Development Planning Act makes provisions for redress on issues related to development, there is nothing stipulated with respect to planning control decisions such as those controlling Devel opment Briefs; and

- Compensation may be sought/demanded by developers from the Planning Authority due to escessive planning gain requested as part of a Development Brief.

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