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LEGAL EFFECTS OF DEVELOPMENT PLANS IN
DECISION MAKING PROCESS

BY

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INTERNATIONAL ISLAMIC UNIVERSITY
MALAYSIA

2008

“In preparing for battle, I have always found that plans are useless, but planning is indispensable”

Dwight D. Eisenhower

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ABRIZA MOHAMMED

A dissertation submitted in fulfilment of the requirement
for the degree of Master in Comparative Law

Ahmad Ibrahim Kulliyyah of Law
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ABSTRACT

The planning system regulates the development and use of land in the public interest. The system as a whole, and the preparation of development plans in particular, is the most effective way of reconciling the demand for development and the protection of the environment. Planning decisions on proposals to build on land, or change its use, should not be arbitrary. They must be considered against clearly set out criteria. The statutory development plan provides the primary basis for this consideration, therefore, forming the essential framework for planning decision-makers to rely upon in executing their functions. This is reflected in a number of statutory provisions found in Town and Country Planning Act 1976. This thesis analyzed and discussed in detail the operations of these provisions.

With the increasing weight being placed on the plan as the major factor in the determination of planning applications, it is increasingly likely that there will be a greater number of challenges to the way in which the plan has been prepared and adopted by the local planning authority. This thesis examines the developments in English law in relation to the various challenges and constraints posed on the implementation of development plans that could be used as reference for the Malaysian. Finally, a few recommendations are presented to ensure efficient and effective planning delivery system.

ملخص البحث

إنَّ من أهم نتائج هذه الدراسة أن التقوى في الإسلام كمحددٍ للشخصية المسلمة اظهرت تأثيراً قوياً على سلوك معلمي المدارس، وذلك ببذل جهودٍ إضافية خا.

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Ainul Jaria Maidin
Supervisor

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Dean,
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DECLARATION PAGE

I here declare that this dissertation is the results of own investigation, except where otherwise stated. I also declare that is has not been previously or concurrently submitted as a whole for my other degree at IIUM or other institutions.

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DEDICATION

To my husband

Mohd Shahid Mohd Mustafa

whose love, patience, and sacrifice will always be an inspiration for me,

and to the memory of my parents

Mohammed Ali & Merdziah Ab Ghani

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- East Barnet UDC v British Transport Commission* [1962] 2 QB 484
- Edwin H. Bradley & Sons Ltd v Secretary of State for the Environment* [1982] 47 P & CR 374
- Electricity Supply Nominees Ltd v Secretary of State and Northavon District Council and Kingswood Borough Council* [1992] JPL 634 2 PLR 70
- Enfield London Borough Council v Secretary of State for the Environment* [1975] JPL 155
- Fourth Investments Ltd v Bury MBC* [1985] JPL 185
- Gillenden Development Company Ltd v Surrey County Council* (1997) JPL 944
- Gregory v Camden LBC* [1966] 1 WLR 899
- Hall Aggregates (South Coast) Ltd v New Forest District Council* (1996) EGCS 108
- House of Lords in Great Portland Estates v City of Westminster* [1985] JPL 108; [1984] 3 WLR 1035; [1985] AC661
- Jeantwill Ltd v Secretary of State and Cherwell District Council* [1993] JPL 445; (1992) ECGS 128
- JS Bloor Ltd v Swindon BC* [2001] EWHC Admin 966
- Laing Homes Ltd v Avon District Council* [1994] JPL 1010; 67 P & CR 34; 1993 3 PLR 23
- Lee Freddie & Ors v Majlis Perbandaran Petaling Jaya & Anor* [1994] 3 AMR 42
- Leigh Estates (UK) Ltd v Secretary of State and Woking Borough Council* [1996] JPL 217
- Leila Dulcie Allana Labrooy v 9 Ors v Majlis Bandaraya Ipoh & Anor* [1995] 4 CLJ 727
- Low Moh Sun v Majlis Perbandaran Pulau Pinang* [1992] LR/PP/15/92
- Modern Homes (Whitworth) Ltd v Lancashire County Council* (1998) EGSC 7
- Nottinghamshire County Council v Secretary of State* [1999] JPL June Update

Peel Investments (North) Ltd v Bury Metropolitan Borough Council [1999] JPL 74;
(1998) EGCS 67

*Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn.
Bhd.* [1976] 1 MLJ 135

Petronas Dagangan Berhad v Majlis Perbandaran Pulau Pinang [1994] LR/PP/13/94

*R (on the application of JA Pye (Oxford) Ltd. Bellway Homes and the Housebuilders
Federation) v Oxford City Council* [2001] PLCR 330

R v Carlisle City Council, ex p Cumbrian Co-operative Society Ltd [1986] JPL 206

R v Hammersmith and Fulham London Borough Council ex p People Before Profit
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R v Secretary of State ex p Islington London Borough Council [1995] JPL 121

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R v Secretary of State ex p West Sussex County Council [1998] JPL November Update

R v St Edmundsbury BC, ex p Investors in Industrial Commercial Properties Ltd
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*Ravebuild Ltd v Secretary of State and Hammersmith and Fulham London Borough
Council* [1996] JPL 107

Reigate and Banstead BC v Secretary of State [1996] JPL 307; [1995] 3 PLR 1

Re Poyser & Mills' Arbitration [1964] 2 QB 467

Simpson v Edinburg Corporation [1961] SLT 17

Stirk et al v Bridgnorth District Council (1996) EGCS 159

St Albans District Council v Secretary of State of the Environment [1992] 66 P & CR
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Thames Water Utilities v East Hertfordshire DC [1995] JPL 706

The Bath Society v Secretary of State [1991] JPL 663; 62 P & CR 565, 1 WLR 1303;
1 All ER 28

*The Black Country Development Corporation v Sandwell MBC; Park Lane Property v
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Westminster City Council v Great Portland Estates plc [1985] AC 661

LIST OF STATUTES

Development Plans (Structure and Local Plans) Rules 1984
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CHAPTER ONE

INTRODUCTION

BACKGROUND

Sir Desmond Heap has described the development plan for an area as ‘*a sort of blueprint for future development*’¹. United Kingdom’s Planning Policy Guidance (PPG1)² sets out the purpose of the planning system and the role of development plans as follows-

“The planning system regulates the development and use of land in the public interest. The system as a whole, and the preparation of development plans in particular, is the most effective way of reconciling the demand for development and the protection of the environment. Thus it has a key role to play in contributing to the Government’s strategy for sustainable development by helping to provide for necessary development in locations which do not compromise the ability of future generations to meet their needs.”

The Town and Country Planning Act 1976 (Act 172) (“TCPA 1976”) of Malaysia, also similarly provides for the preparation of development plans. The TCPA 1976 splits the development plan into two parts, a state structure plan to be prepared by the State to cover the whole of the State; and a local plan to be prepared by the local planning authority to cover the whole of local planning authority area³.

The TCPA 1976 defines development plan, in relation to an area, as the local plan for the area; or if there is no local plan for the area, the structure plan for the area⁴.

¹Desmond Heap, *An Outline of Planning Law*, 10th edn., London, Sweet and Maxwell, 1991

²PPG1, *General Policy and Principles*, (1997) para 39

³ Section 8 and section 12 TCPA 1976

⁴ Section 2 TCPA 1976

A structure plan sets out the key strategic policies and provides framework preparation of local plans. It must include a written statement of the State Authority's policies and general proposals in respect of the development and use of land in a State. It includes measures for the improvement of the physical living environment, the improvement of communications, the management of traffic, the improvement of sosio-economic well being and the promotion of economic growth, and for facilitating sustainable development⁵.

Local plan, on the other hand, must contain a written statement, formulating the authority's detailed policies for the development and use of land and building in its area⁶. The local plan must also contain a map illustrating each of the detailed policies and certain illustrative materials⁷.

In dealing with an application for planning permission, section 22 of the TCPA 1976 requires the local planning authority to take into consideration such matters as are in its opinion expedient or necessary for proper planning. The aspects that the local planning authority, need to take into consideration in dealing with an application for planning permission are as follows:⁸

- (a) provisions of development plans;
- (b) directions given by State Planning Committee;
- (c) any matters proposed and is likely to be incorporated in the development plans;
- (d) development proposal report prepared by the applicant; and
- (e) objections made by owners of neighbouring land.

⁵ Subsection 8(3) TCPA 1976

⁶ Subsection 12(3) TCPA 1976

⁷ Subsection 12(4) TCPA 1976

⁸ Subsection 22(2) TCPA 1976

The TCPA 1976 also clearly specifies that any proposed land and building development that fails to conform to the requirements stipulated in the development plan must not be allowed to be carried out by the local planning authority⁹. In *Tok Kwee Jee v Tay Ah Hock & Sons Ltd and Town Council of Johor Bahru*¹⁰, it was held-

“The local planning authority must ensure that in approving a planning permission, they do not contravene with statutory provision in a development plan. The prohibition in section 145 (of the Town Board Enactment) requires the Johor Town Council to refuse any proposal for any new building unless such plan is in conformity with the approved plan. It is a statutory duty imposed on the council. And the council is liable in damage for breach of duty imposed if it is thought the duty is not of the benefit generally but of individuals or of a particular or definable class of the public; provided that the Enactment provides no remedy, civil, for such breach.”

Planning decisions on proposals to build on land, or change its use, should not be arbitrary. They must be considered against clearly set out criteria. The statutory development plan provides the primary basis for this consideration, therefore, forming the essential framework for planning decision-makers to rely upon in executing their functions.

Town and country planning system as regulated by the TCPA 1976 is clearly seen as being concerned with the production of plans for land utilisation and the control of development carried out by others.

At present, Malaysia has 118 structure plans, of which 95 have been gazetted and adopted. These structure plans were prepared for local planning authority areas before the 2002 amendments to the TCPA 1976¹¹. Within that, there are 168 local plans, of which only 65 local plans have been gazetted and adopted¹². With

⁹ Subsection 22(4) TCPA 1976

¹⁰ *Tok Kwee Jee v Tay Ah Hock & Sons Ltd and Town Council of Johor Bahru* [1969] 1 MLJ 195 p. 201

¹¹ Jabatan Perancangan Bandar dan Desa, “*Laporan Penerimaan Akta Perancangan Bandar dan Desa 1976*”, (unpublished) 2 July 2004

¹² Refer to Appendix B.

development plans in place, the local planning authorities will soon be faced with the challenges of fully implementing the development control system using the development plans. Even now, only a small number of local planning authorities have chosen to adopt Part IV to Part IX of TCPA 1976, that is provisions relating to development control, enforcement and appeal. Many others choose to use existing building control system, which does not give them the necessary power. Thus it is important to study the importance of development plan in guiding planning land use and control of development when it comes to enforcement.

OBJECTIVES OF THE STUDY

This research proposes to examine the role of development plans in the planning system especially the significant role it assumes in assisting planning decision makers in arriving at planning decisions. This research will also investigate the level of implementation of this system in local authority area in order to examine the importance and impact of development plan on decision making process. Finally, this research seeks to propose recommendations on how to improve the development plan system in Malaysia to make it more functional and credible.

Having worked with the Federal Department of Town Planning for more than 10 years, the researcher has discovered that the development plans prepared by the government have not been fully utilised by the local planning authorities in the decision making process. A study is needed in order to identify and evaluate why the development plan system has not gained prominence in the town and country planning system in Malaysia.

This research aims to analyse the role of development plans and its effect in providing guidance in land use planning in Malaysia. The objectives of this research are as the followings-

- (a) to study the role and effect of development plans in planning decision making process;
- (b) to analyse the decision making process at the local planning authority level; and
- (c) to suggest reforms and recommendations on improving the form and contents of development plans to make them credible and functional.

STATEMENT OF PROBLEM

It is becoming evident that many Malaysians, even the mild mannered ones, have become very frustrated with the present state of the Malaysian environment. At the most general level, opinions expressed in newspapers, radio and television talk shows and seminars and conferences indicate that none of our towns and cities can be classified as shining examples of the beautiful and pleasant cities of the world.

On the contrary, the opinions expressed are that most Malaysian urban areas are characterised by pockets of unsanitary housing areas, ubiquitous hawkers in areas not meant for trading activities and traffic congestion. In areas that have specific geographical features, which normally enhance the quality of urban life, beaches are polluted, rivers are dirty and contaminated, hills have been scraped bare and historic and architecture buildings and enclaves are being destroyed.

The situations in some areas are not just unsightly or dirty, but unhealthy and even dangerous. Many residents have also experienced having their neighbours converting residential houses into factories. The tragic incidence of Sungai Buloh is a

clear reminder that mixing manufacturing plants with residences is an irresponsible act on the part of planners and urban managers. The fire and subsequent explosion of the Bright Sparklers fireworks factory claimed 22 lives and injured hundreds more, including those living in nearby village.

All urban areas in the country are managed by the local governments established pursuant to the Local Government Act 1976 (“LGA 1976”) and many other related laws with the aim of creating a safe and healthy living environment. The Modern planning system, which originated from the United Kingdom was introduced in Malaysia with the TCPA 1976 that was enacted to provide the legal framework to authorise the local government to assume the function of local planning authority.

The principal legislation regulating land use planning is the TCPA 1976 which empowers the planning authorities to regulate, control and plan development and use of all lands and buildings within their areas of jurisdictions. The planning authorities, among others, have to carry out two distinct tasks. One is preparation of development plans and the other is to undertake development control.

To address existing shortcomings, the 2001 amendments to the TCPA 1976¹³ (“2001 Amendments”) made significant changes in the development plan system. Before the amendments, the local planning authorities have to prepare both structure plan and local plan for their areas. To adopt a structure plan, the local planning authority must obtain the approval from the State Planning Committee (“SPC”) and then submit the same to the State Authority for approval and assent. However, to adopt a local plan the SPC’s approval is not a pre-requisite.

The 2001 amendments introduced a requirement to obtain approval from the SPC and State Authority prior to adoption of both structure and local plan. The task of

¹³ Town and Country Planning (Amendment) Act 2001 (Act A1129)

preparing the local plan remains with the local planning authority. The 2001 amendments assign the duty to prepare the structure plan for the whole State, to the State Director of the Town and Country Planning (“State Director”).

At present, most local planning authorities have prepared local plans for areas under development pressure. But these plans will not have any legal effect as they are not gazetted. Development plans are policy documents prepared by development authorities providing guiding principles on the type of development that is permissible. Gazetted local plans not only restrict the rights of landowners and developers but also those of the approving authorities. If a local planning authority approves any development project contrary to an approved development plan, such decision can be challenged in a court of law on the basis that the authorities has acted out of jurisdiction.

Development plans are essential to guide all relevant parties on the permissible development activities in a designated area. Otherwise, landowners or developers will be left to decide their own planning principles, which of course will be on maximising profit. Cultivating the goodwill of planning authorities to make decisions will often go a long way to facilitate plan approval. However, with development plans, all plans submitted to local planning authority will be required to undergo a tedious process of amendment to the proposed development activity to meet the requirements of the provisions of the development plans.

Equally important, development plans provide information to residents of a local authority area on all proposed the future development in their area. There are instances where local residents have hurled unfair accusation on local authorities as not acting in compliance with law if they do not agree with the proposed or approved