SOCIAL AND POLITICAL IMPLICATIONS OF THE LAW RELATING TO SYSTEMS OF PLANNING PERMISSIONS IN ZAMBIA

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ABSTRACT

The reception of English Planning Law in Zambia is twofold. First the English Town and Country Planning Legislation was received with such adaptations as the circumstances required. Secondly, the decisions of English Courts and British Ministers have been used as precedents. The innovation of control of subdivision is our own although this principle might have been received from South Africa where similar provisions are found.

The history of Planning Legislation commenced with the Town Planning Ordinance 1929 which was passed before Southern Rhodesia passed its own Act. The Southern Rhodesia Town Planning Act has provisions similar to those in our first Planning Ordinance. It is debetable whether or not this Rhodesian legislation was modelled on our own since South African legislation has similar provisions.

The control mechanism of both development and subdivision of land is the provision whereby no subdivision or development may be undertaken without prior consent of the Minister or the Planning Authority. In cases where such prior permission is not obtained then the Minister or the Planning Authority may either serve enforcement notice on the culprit or if the developer has undertaken development or subdivision

which can be authorised under the provisions of the Act, such development or subdivision may be granted permission when and if the developer makes any application. If a developer is served with an enforcement notice then he may be required to demolish the structure erected or discontinue the use commenced without permission. This is the most effective control of both development and subdivision of land.

The area of control is, however, limited to areas along the line of rail. Planning control does not apply to what was formerly known as Native Reserves and Trust Land. It may be pointed out that both the Government and the Mines are excluded from the provisions of the Town and Country Planning Act except that where there is an approved development plan in force in any area, then Government must consult the Planning Authority before development is undertaken. Though this is not a legal provision squatter compounds are not within the ambit of the Planning Law. At present, however, the Housing (Statutory and Improvement Areas) Act 1974 makes provisions for exempting Statutory and Improvement Areas from the provisions of the Town and Country Planning Act.

Whether or not planning control is effective is another matter. Control of development is less effective or non-existent in the squatter compounds. This lack of effective planning control is creating slum

conditions in Zambia. The Government is trying to arrest this trend in the following ways :-

(1) By regrading of the Squatter Compounds and the Site and Service Settlements. The Site and Service Settlements will, in future, be known as Statutory Housing Areas. Tenants of plots in such areas will be granted Certificates of Title. Facilities offered in other areas formerly known as "White areas" and Locations will be made available to the Statutory Housing Areas. The same will apply to what are now known as Squatter Compounds which when upgraded will be known as Improvement Areas. The only difference is that in these areas the tenants will not be given Certificates of Title but will be issued with Occupancy Licences which will be for a period of not more than thirty years. However, all facilities such as batter and tarred roads; tapped water, electricity, clinics, schools and community centres will be made available to these areas.

(2) The second solution is that of establishing regrouped villages and model villages in rural areas where residential plots, arable land and indeed grazing land will be allocated to such villages. Facilities provided for in Statutory Housing Areas and Improve-

ment Areas will also be provided to regrouped or model villages. These will be planned villages more or less on the lines of New Towns in Britain. Trading Sites and Industrial Sites will also be provided. There will also be Rural Reconstruction Centres where the Zambian Youth will be given some training in some trades although the emphasis will be on agriculture. The purpose here is to make Rural Areas more attractive than they are at present so as to arrest migration into Urban Areas.

It is rather disturbing to note that the Registration and Development of Villages Act No. 30 of 1971 has not made provision for the regulation of the establishment of villages. It has failed to control the establishment of smaller villages. It has merely provided for the control and registration of villagers in those villages in which they are inhabitants.

This Act has also provided for Village Productivity Committees. The purpose here is to encourage the increased production in rural areas with the consequent increases in the people's living standards and arrest migration of the rural population into towns. To this extent this Act has similar purposes with that of Regrouped Villages and Reconstruction Centres.

CHAPTER I

HISTORY INTRODUCTION

ENGLISH INFLUENCE

Before the Scramble for Africa when the Colonial Administration partitioned Africa into various colonies, protectorates and dependencies, the various African tribes had legal systems. Some, like those of Uganda, Basutoland and Barotseland, to mention just a few, were highly advanced, others, however, had primitive legal systems especially amongst the nomadic tribes. In those countries of Africa where customary laws held sway African land law prevailed. In some tribes it was necessary to obtain permission to settle in a particular place from the Chief. In a village, however, the village headman, who acted as the representative of the tribal chief, allocated sites for residential purposes as well as arable and grazing land. A playing ground was normally set aside for ceremonial occasions where dances took place.

When the Colonial Administration took over the reign of power in these dependencies, they introduced their legal systems. Zambia, like most of the former

British Colonies and Protectorates has inherited from England its legal institutions and systems. It is, therefore, proper to look to the British Parliament for the system of planning law in Zambia. It is equally proper to note the reasons that led to the introduction of a system that "imposed a code regulating the development of land in the interest of the community"[1] before one can effectively understand the reason and the need for planning law in the then territory of Northern Rhodesia. It is axiomatic that the British Administrators were influenced by the British system and institutinns they knew best.

Due to the Industrial Revolution in the nineteenth century in Great Britain, the population in that country not only moved from the rural to urban centres but also increased tremendously. It was that profound revolution through which Great Britain passed in the last two hundred years that brought about the need for and the problems associated with town and country planning[2]. There was a tremendous growth of population and population growth and industrial revolution transformed Britain from a predominantly agricultural country into an industrial nation.

Conditions in those industrial towns were shocking, factories were built side by side with residential houses. The sanitary conditions were appalling. No satisfactory system then existed for building construc-

tions. Conditions under which the workers lived were very unsatisfactory[3] and compared fairly with conditions in our squatter compounds of today. It was at this stage of development that politicians and administrators, in trying to solve problems of over-crowding, poor sanitary conditions and the sprawling of big cities, started to look to public health first and then to housing and finally to town and country planning as solution to their problems. The liberty of the land owner to use his land as he pleased had to give way to planned development. "The restraint novel and indeed revolutionary as it was when introduced"[4] had to be accepted as a satisfactory solution.

It would not indeed be of value to repeat the detailed history of planning law as evolved in the United Kingdom because it has been dealt with amply in some books by English lawyers and historians and information is readily available for those who are interested.[5] It is because of the availability of information that no detailed discussion will be made of the English Public Health and Housing Acts which are the forerunners of English planning legislation. Nonetheless, as the English town and country planning legislation has much in common with our own legislation, a summary of the relevant legislation will serve as a useful foundation for comparative purposes.

HISTORY OF BRITISH PLANNING LEGISLATION

On the third day of December 1909, the British Parliament passed an Act which was intended "to amend the law relating to the Housing of the Working classes, to provide for the making of Town planning schemes".[7] That legislation became the foundation of the modern English Town and Country Planning. It has much in common with our earliest Town Planning legislation namely the Town Planning Ordinance 1929.[8]

Of great relevance to our planning legislation is the British Housing and Town Planning Act which has the provision for the preparation and approvals of Town Planning Schemes "with the general object of securing proper sanitary conditions amenity and convenience in the laying out and use of land and any neighbouring lands".[9] Provision was also made for the establishment of the Local Government Board[10] which was the approving authority of all schemes, very much on the same lines as the Town Planning Board provided for in the first Northern Rhodesian Planning Ordinance[11] and in the first Southern Rhodesian Town Planning Act[11a] and also in the first Bechuanaland Protectorate Town and Country Planning Proclamation.[12]

This Housing and Town Planning Act was followed by a further enactment by the British Parliament on the 31st day of July, 1919 of similar name.[13]

Provisions were made in this Act for the Local Government Board to order the preparation of Town Planning Schemes[14] if the Local Planning Authorities concerned failed or neglected to prepare such scheme when its population necessitated such a preperation.[15] There were certain amendments to these Principal Acts which included the amendment of 1943.

These Town Planning"Acts of 1909 to 1943 had been based on the concept of Planning Schemes, such schemes were undoubtedly useful in ensuring that new developments conformed to certain standards of amenity and convenience and in controlling changes in the use of existing buildings, but new problems were coming to prominence and it soon became obvious that the planning scheme was unsuitable for dealing with these".[16] It was, therefore, necessary that the new system of planning control be devised.

It was to this end that a more ambitious Act namely the Town and Country Planning Act 1947 was passed.[17] This Act repealed all previous planning Acts and made what can be regarded as a fresh start, a new approach to town and country planning problems. Although this 1947 Act was repealed by the Town and Country Planning Act, 1962, and after certain amendments to the 1962 Act, the Planning Law in Britain was consolidated in the Town and Country Planning Act 1971. One has to concede that the present Zambian

Town and Country Planning Law is indeed based on the English Town and Country Planning Act, 1947, with such adaptations and variations as the local conditions required.

ZAMBIAN PLANNING LEGISLATIVE HISTORY

As previously indicated, there is no doubt that the Northern Rhodesia Legislative Council was influenced by the connection of White settlers and British Administrators with the United Kingdom when in 1929 our first legislation on Town and Country Planning was passed. The British Administrators as well as settlers were educated and grew up in the United Kingdom. The only system of law which they knew and understood was English. Even those who came from what is today the Republic of South Africa came to Northern Rhodesia at a time when in that country the Bench and indeed the Legal profession was English[18] in outlook and indeed in training so that they also shared this English outlook with other settlers and British Administrators.

By its provisions, the Northern Rhodesia Town Planning Ordinance 1929, established the Town Planning Board whose functions and powers consisted in receiving and considering applications for the establishment of townships and replanning of proclaimed townships and private townships and to

advise the Governor thereon and generally to carry out duties imposed upon it by that Ordinance.[19]

This Ordinance provided also for the general plan on the following lines.[20]

(a) Contours of the whole area affected at such vertical intervals as the Director of Surveys might require were prepared

(b) The design or layout of the township, dimensions of streets, sanitary lanes and plots had to be shown.

(c) The allocation if any of districts or zones within townships for residential commercial industrial or other purposes had to be made.

(d) Provisions of land for public places, education, health and other Government and Local Authority purposes had to be made.

In addition to all these the Act made provisions for the preparation of schemes which required approval of the Governor as was the establishment of townships after consideration by the Town Planning Board.

It is indeed gratifying that Northern Rhodesia took a lead over both Southern Rhodesia and Bechuanaland Protectorate in the making of provisions for Town Planning despite the fact that Southern Rhodesia had by then internal self-government. Both the

Bechuanaland and Southern Rhodesia Governments made extensive use of the Northern Rhodesia Town Planning Ordinance 1929 in their Proclamation 1961 and Act 1933 [22] respectively.

The Northern Rhodesia Town Planning Ordinance 1929 was first amended by the Town Planning (Amendment) Ordinance (No. 13 of 1931). This particular Ordinance provided for the vesting in the Crown of all public places in private townships and thus depriving owners of such land of the necessary compensation resulting from such compulsory acquisition. This had similar provisions to those of Land (Conversion of Titles) Act 1975 which has taken away the reversion of freehold properties from the owners without payment of compensation. Such vesting in the Crown of public places took place if and when a general plan was filed with the Town Planning Board.

It would appear that the Government became responsible for the construction and upkeep of such public places but such upkeep by Government ceased once the private township or approved private township became a proclaimed township or urban district.

In 1937 there was a further amendment of the Town Planning Ordinance 1929 by Town Planning Ordinance (No. 22 of) 1937 which was of little significance in that it merely provided for the Secretary of the Lands Department functioning as a Secretary to the Town

Planning Board.

As the Principal Ordinance of 1929 referred to Townships it appeared as though private and approved private townships were outside the ambit of the Ordinance; to facilitate zoning of areas within such private and approved private townships the definition of townships was enlarged to include private township, approved private township and proclaimed township by the Town Planning (Amendment) Ordinance (No. 24 of) 1948.

In 1949, however, an important amendment was made to the Principal Ordinance by the Town Planning Ordinance (No.8 of) 1949 which prohibited, after the publication of an order under Section 24 of the Principal Ordinance pending the approval of the Scheme or within 12 months or until the scheme was approved (whichever happened), without prior permission of the Town Planning Board :

(a) the erection alteration or addition to any building or other work of any nature or description;

(b) the alienation of any land

(c) the changing of the existing use of any land.

It is apparent that this Ordinance contained provisions similar to those contained inthe Land (Conversion of Titles) Act 1975 insofar as prior permission is now required and must be obtained from

the President before alienation.

The Board was empowered to prohibit the use of a building in contravention of the above provisions or if the new use was not in conformity or interfered with the amenities of the neighbourhood. These were very important and far-reaching provisions.

By Town Planning (Amendment) Ordinance (No. 12 of) 1953 plans had to be published in the Gazette in order that the Plan and its conditions might become binding on all persons concerned.

In 1954 the Northern Rhodesia Legislative Council passed two amendments to the Principal Ordinance.

The first was the Town Planning (Amendment) Ordinance (No. 11 of) 1954 which made provisions for the deeming of certain lands to be established townships if the subdivisions made thereon were of less acreage than twenty acres. In such circumstances the owner of the land was under an obligation to apply to the Town Planning Board for the establishment of a Township. The Director of Surveys could not approve diagrams for subdivisions made before the Town Planning Board has approved the establishment of the township in question on an application made to it.

The Second amendment was made by the Town Planning (Amendment) Ordinance (No. 25 of) 1954. The Ordinance provided for :

(i) the zoning of areas for residential, trade, business, industrial or other purposes;

(ii) the designation of an area of re-development.

It also made extensive provisions for duties of Responsible Authority in particular with regard to redevelopment of any area. The Responsible Authority was empowered to Purchase by private agreement or compulsorily for the purposes of re-developing any area designated as such in the approved scheme. Designation of areas is not popular in Britain at present since it lowers the value of land so designated. It has, in fact, been abandoned.

The Town Planning (Amendment) Ordinance (No. 37 of) 1956 carried the spirit of the First Planning Amendment of 1954 in that erection of more than one building on a Plot was deemed to be the establishment of a township solong as such building were intended for residential, industrial or commercial purposes. This particular Amendment had excluded buildings erected on a piece of land for agricultural purposes.

Erection of more than one building on a single plot for the purposes of residential, industrial and commercial purposes constituted an offence punishable with a fine of Five hundred pounds (one thousand Kwacha). Buildings erected without permission could be demolished.

This provision is the forerunner of our enforcement notice provision in our present day Town and Country Planning Act Cap. 475.

In 1958 the Legislative Council yet made a further amendment. This was the Town Planning (Amendment) Ordinance (No. 20 of) 1958 which provided for the Governor in Council making any of the following decisions, on receipt of draft schemes prepared by Responsible Authority submitted to them through the Town Planning Board;

(i) Approve the scheme absolutely

(ii) Modify the scheme and return the scheme to the Town Planning Board who in turn transmitted the modified scheme to the applicant, who might accept the modified scheme or reject it. The applicant had to inform the Board within stipulated time otherwise the application for approval would be deemed to have been abandoned.

(iii) To reject the scheme absolutely.

The Town and Country Planning Law in Northern Rhodesia was then contained in three separate ordinances as given hereunder :-

(a) Town Planning Ordinance then Chapter 123 of the Laws of Northern Rhodesia.

(b) Township Ordinance Chapter 120.

(c) Municipal Corporation Ordinance Chapter 119.

Under the Municipal Corporations Ordinance Chapter 119 provision was made for the preparation by the Municipality of a zoning plan showing areas within which specified trades, businesses and industries were to be established and also reservation of areas exclusively for public parks, squares and residential purposes. It became an offence to carry on any trade, business or industry within the Municipal areas outside the limits of areas set apart for such trade or industries.[23]

Under the Townships Ordinance Chapter 120 of the Laws of Northern Rhodesia preparation for zoning schemes was provided for and these zoning schemes defined areas to be used as residential general business, industrial, open spaces and other purposes. A zoning table which indicates the types of buildings and the user of buildings and land was made.[24] Once such zoning schemes had been prepared it was an offence to use buildings and land contrary to the scheme.[25]

Because Northern Rhodesia was a British Protectorate, any legislative progress in any field in Britain had a profound impact on the trend of legislation in that Protectorate as in any other British Colony. Once the English Town and Country Planning Act 1947 was enacted by the British Parliament it was

inevitable that the Northern Rhodesia Legislative Council would follow in the footsteps of the British Parliament. Both the Barlow Report[26] and The Scott Report[27] must have formed part of the library of the British Administrators in Northern Rhodesia. It is well known that these reports had a tremendous impact on the British Administrators and must have had the similar effect on the Northern Rhodesia Administrators. So profound was the impact of the English Town and Country Planning Act 1947 that the Northern Rhodesia Legislative Council, after waiting to see how this enactment functioned in the United Kingdom, passed what is now Zambia's present Town and Country Planning Act. This Ordinance (as it was then called) was passed on the 23rd day of September, 1961.[28] This Principal Ordinance was amended by the Town and Country Planning (Amendment) Ordinance (No. 25 of) 1962 which provided for the appointment by the Minister of the Planning Authorities whose functions were :-

(i) The preparation of the development plan

(ii) the exercising of the functions under Section 24 of the Principal Ordinance.

It also made provisions for persons whose interest in any land may be effected by the decision on appeal of the Town and Country Planning Tribunal to have the right to be heard by the Tribunal. The amendment was

made before the Act came into force which was on the 16th November, 1962.

The objects of the Town and Country Planning Ordinance 1961 as amended were as follows :-

(i) To Repeal the Town Planning Ordinance Chapter 123 of the Laws of Northern Rhodesia, Section 80 of the Municipal Corporation Ordinance Chapter 119, and Section 27(a) of the Townships Ordinance Chapter 120.

(ii) To make provision for the appointment of planning authorities.

(iii) To establish the Town and Country Planning Tribunal.

(iv) To make provisions for the preparation and revocation of development plans.

(v) To make provisions for the control of development and subdivision of land.

(vi) To make provisions for assessment and payment of compensation in respect of planning decisions.

(vii) To make provisions for the preparation, revocation or modification of regional plans.

(viii) To make provisions for matters connected with and incidental to the foregoing.

This was undoubtedly revolutionary legislation in the same manner as the British Town Planning Act 1947. It did away with the Town Planning Board. Before the Board was abolished it performed the same functions more or less as the defunct British Local Government Board except that in the three countries of Northern Rhodesia, Southern Rhodesia and Bechuanaland Protectorate, the Town Planning Board considered applications for the establishment of townships and private townships. This has no relevance to the Development Corporation under the English New Towns Acts 1946 and 1965 which is intended as a solution to the outspread of large cities and over-crowding. Discussions of this is reserved for discussion on squatter compounds and control of influx into Urban areas and Regrouped villages or model villages and Reconstruction Centres.

The 1961 Planning Ordinance, however, retained the provisions of subdivision and the need to obtain planning permission before subdivision can be made. This particular provision is found also in both the Southern Rhodesia Town Planning Act [29] and Bechuanaland Protectorate Town and Country Planning Proclamation 1961.[30] These kinds of provisions are also numerous in South Africa[31] in which permission is necessary before subdivision is undertaken. Firstly, it is necessary under the Natural Resources Develop-

ment Act 51 of 1947. Secondly, permission for subdivision of a piece of land is now governed by the South African Environment Planning Act 88 of 1967. Thirdly, there is a further Act, namely, the South African Subdivision of Agricultural Land Act No. 70 of 1970. Fourthly, in the Cape Province of South Africa, however, subdivision of land in Townships is governed by the Township Ordinance No. 33 of 1934.

It is, therefore, likely that Southern Rhodesia and Botswana adopted South African Legislation on the question of subdivision and the Northern Rhodesia Legislative Council might have also copied from South Africa the principle of control of subdivision.

A point of interest is the manner in which the definition of development in Zambia Planning Law is limited to building operations and the long list of exceptions. This seems to imply that mining and agricultural user were of considerable effect on our planning legislation. The English definition on the other hand, covers both mining and engineering operations and to that extent it is wider and the list of exceptions is shorter. In all fairness the English definition of development is not "in pari materia" with our own. Cases on English development should, therefore, be looked at in their right perspective. As the word development is of vital importance, much will be said about it in Chapter 3 of this work.

There have been several amendments to the principal ordinance and regulations have been made under it. All these make up our present Town and Country Planning Act Cap. 475 of the Laws of Zambia. There has been a tendency on the part of the Zambian Parliament to amend the Town and Country Planning Act in Acts dealing with other matters without explicitly saying so and the spate of such legislation seems to have come in vogue since 1974. These will be discussed in a later Chapter. For the time being, one may rightly say that our Law in Town and Country Planning can be found in the following :-

(a) Town and Country Planning Act Cap. 475

(b) Legislations dealing with other subjects but touching on certain aspects of Town and Country Planning Law

(c) Circulars from the Ministry of Local Government and Housing

(d) Decisions of Zambian High Court and Supreme Court, the former Zambian Court of Appeal and Federal Supreme Court now defunct.

(e) Decisions of the Town and Country Planning Tribunal

(f) The approved development plans so far as they do not conflict with the statute law on the subject.

CHAPTER 2

DEVELOPMENT AND SUBDIVISION

No discussion will be made of the procedures followed when a development plan is prepared by a Planning Authority before it is approved by the Minister and the procedures adopted after its approval. To do so would be outside the scope of this work and would require a work on the whole Town and Country Planning Law in Zambia. At the onset it may be said that this work will be limited to Part V of the Act now Cap. 475 of the Laws of Zambia and the relevant Regulations and indeed case Law.

The most important aspect of our present inquiry is the scope of Section 22(1) wherein both development and subdivision are defined. Subsection 2 of Section 22 is relevant to the extent that it shows where the need for planning permission exists.

The provisions of Part V of the Act, therefore, apply to four different areas of the Country namely:-

(i) Areas in respect of which there is an order made under the provisions of the Act for the preparation of a development plan

(ii) Areas subject to an approved development plan

(iii) Such areas as are within a distance of twenty miles from the boundaries of an area mentioned in paragraph (i) and (ii) above

(iv) Such areas as may be specified by the Minister of Local Government and Housing by Statutory Notice.

In these four areas, no development or subdivisions of land may be undertaken without first obtaining planning permission except that the Government of the Republic of Zambia may undertake such development and subdivision without planning permission.[1] Provisions, have however, been made for Government to have prior consultations with the Planning Authority where such development is undertaken in an area subject to approved development plan. In case of disagreement between the Government and the Planning Authority the matter has to be referred to the Minister who, in turn, refers it to the Town and Country Planning Tribunal which gives and advisory opinion although this is not binding on the Minister. "The decision of the Minister on any written submission made to him shall be final and shall not be challenged in any Court proceeding".[2] These words are indeed intended to exclude judicial review, whether or not they serve

this purpose can be usefully found from Court decisions. In re Gilmore's application[3] Lord Justice Denning had this to say about the phrase "shall be final".

"I find it very well settled that the remedy by certiorari is never to be taken away by any statute except by most clear and explicit words. The word final is not enough. That only means without appeal. It does not mean without review. It does not mean without recourse to certiorari. It makes the decision final on the facts but not on the law".

In other words, there is no right of appeal where the phrase "shall be final" is used but the subject is entitled to have the decision of the Minister reviewed. It cannot, therefore, exclude the right of the owner of property to seek a declaration from Court to the effect that the Minister's decision is ultra vires.[4] Should the Statute provide that the Minister's decision shall be final this would not exclude judicial review provided for in the Zambian Constitution[5] but the provision goes further and states that such decision "shall not be challenged in any proceeding whatsoever". This very sweeping exclusory phrase appears in some of the statutes we are going to deal with in this work con-

sequently we have to consider some English cases which may throw the light on their construction. In the case of Smith vs East Elloe Rural District Council[6] it was construed that

"There is not alternative construction that can be given to it, there is, in fact, no justification for the introduction of the limiting words such as "if made in good faith" and there is the less reason for doing so when those words would have effect of depriving the express words (in any legal proceedings whatsoever) of their full meaning and content". In other words, these words are construed as excluding both appeal and review.

These words came again for consideration by the House of Lords in the case of Anisminic Limited vs. Foreign Compensation Committee[7] where it was held that if they (the Commission) reach the wrong conclusion as to the width of their power, the Court must be able to correct not because the Tribunal has made an error of law, but because as a result of making an error of law they have dealt with and based their decision on a matter with which on true construction of their powers, they had no right to deal.

In other words the Minister or the Administrative Tribunal or indeed Subordinate Court cannot determine their jurisdiction by making an error of law.

Such decision is, therefore, subject to judicial review. How Zambian Courts will react when confronted with similar circumstances is difficult to forecast. It is true that the English decisions are respected by and are very persuasive in Zambian Courts but they are not binding on our Courts. The decision of the Aniseminic Case has, therefore, introduced uncertainty in this field. Surely certorari cannot be excluded in this way. A tribunal surely cannot put something beyond the Courts by saying that the particular matter is within its jurisdiction when it is not - and so the Courts must always examine a claim that the tribunal had no authority. In the English case of R -v- Secretary of State for the Environment ex parte Ostler [7a] where the Respondent had failed to apply to Court within the period of Six weeks from the date of the publication of the Order as required by that Country's legislation the Court held that the words "not to be questioned in any legal proceedings whatever" were absolute and that an order could not be challenged in a Court after the expiry of the statutory period. The case of Aniseminic was distinguished on three grounds one of which was that the decision of the Secretary of State to confirm an order after an inquiry by the Inspector was essentially administrative and such action could not be equated with a purely judicial function which could be questioned on the ground that it was a nullity and was made without jurisdiction. The

case of Smith -v- East Elboe Rural District Council was affirmed.

The discussion has, to some extent, been a digression and academic but one must remember that neighbouring land owners may be affected by the Minister's decision in that their lands may be effected adversely by development being undertaken by the Government. The case of Clays Industries Lovering Pochin and Company Limited -v- Plymonth Corporation[7b] has given a clue as to what the "adjacent to" means. In that case the phrase has been defined as close to or nearby or lying by its significance or application in point of distance depending on the circumstances in which the word is used. In this connection the word "neighbouring" can be construed to mean adjacent to". It is here where such persons may be seen to challenge the Minister's decision.

The powers of Planning Authorities in the granting of planning permissions have to a certain extent been whittled down by the provisions of Land (Conversion of Titles) Act[9] and two other Acts which will be dealt with shortly. The following provisions[9] of Land (Conversion of Titles) Act are of special interest for our purpose.

(i) "Notwithstanding anything contained in any other law or in any deed instrument or document but subject to other provisions of this Act no person shall Sub-divide, sell, transfer, assign, sublet,

mortgage, charge or in any manner whatsoever encumber or part with possession of his land or any part thereof or interest therein without prior consent in writing from the President".

(ii) "The President may in granting his consent under subsection (1) impose such terms and conditions as he may think fit and such terms and conditions shall be binding on all persons and shall not be questioned in any Court or Tribunal."

It is, therefore, necessary to obtain the President's (now delegated to the Commissioner of Lands) consent before the Planning Authority can grant planning permission to subdivide. This being a later statute amends the provisions of Section 22 of Town and Country Planning Act Cap. 475 insofar as the only requirement for subdivision is the planning permission of the Planning Authority. It is now necessary to obtain the planning permission as well as the President's consent. Indeed the Town and Country Planning Act provided for such additional consent [9a], It is necessary to obtain consent from the Director of Roads and also the Local Authority has to give permission under Public Health (Building) Regulations.

It may be desirable to reserve the question of conditions to a later discussion and the question of what type of conditions the President may impose on giving consent will be discussed simultaneously with conditions to be attached to planning permission.

The question of the phrase "shall not be questioned in any Court" has already been dealth with.

The other two Acts which affect the Town and Country Planning Act are The Housing (Statutory and Improvement Areas) Act 1974 and the Roads and Road Traffic (Amendment) Act 1974. The Housing (Statutory and Improvement Areas) Act provides that [10]

> "Subject to the provisions of the Act and notwithstanding anything to the contrary contained or implied in any written law or in any document a Council may in a Statutory Housing area (a) with the approval of the Minister subdivide any land (b) in accordance with specifications prescribed by the National Housing Authority erect any building on any piece of land". The same applies to Improvement Area.

In other words Local Authorities which are not Planning Authorities can now undertake development and subdivision of land without first obtaining planning permission, in both Statutory and Improvement Areas when such areas are designated pursuant to the Act, contrary to the provisions of Section 22 of the Town and Country Planning Act.

When the Housing (Statutory and Improvement Areas) act becomes operative some squatter compounds will be legalised being upgraded as improvement areas.. It is obvious that in these areas no President's consent for subdivisions will be necessary since the Housing (Statutory and Improvement Areas) Act 1974 is a special enactment relating

to these areas yet the Land (Conversion of Titles) Act 1975 is a general Act which is applicable to all lands. It is apparent that although the Land (Conversion of Titles) Act 1975 is a later Act and that generally it may be taken that its provisions amend those of the earlier Acts on the same subject, this alone will not enable the provisions of this Act to override those of the Housing (Statutory and Improvement Areas) Act. It is trite law that for the provisions of an Act dealing with specific subject to be repealed by the provisions of the later general Act such repeal must be expressed or should indicate that such repeal or amendment is intended. In the case of Edward Yapwantha Chirwa[10a] where a refugee was detained pending deportation under the provisions of the Immigration and Deportation Act, the Court held that since a refugee was provided for under the Refugees (Control) Act 1970 and the method of his deportation was provided for therein, he could not be deported under the provisions of the Immigration and Deportation Act.

In the words of Mr. Justice Cullinan "(it) seems to have been so enacted as to provide special status and safeguard for refugees. The machinery for their deportation was provided for under Section 10 of the Refugees (Control) Act. That section provides certain safeguards which are not apparent in the apparently unfettered discretion conferred upon the Minister under

Section 22(2) and Section 24 of the Immigration Act. It seems to me that the intention of the legislature in enacting the Refugees (Control) Act would be defeated if such safeguards could be discarded by resorting to an alternative machinery under Immigration and Deportation Act."

It is because of fear that the more favourable terms provided for under Housing (Statutory) and Improvement Areas) Act 1974 may be defeated by resorting to the Land (Conversion of Titles) Act 1975 that in Statutory and Improvement Areas the provisions of the Housing (Statutory and Improvement Areas) Act should override those of the Lands (Conversion of Titles) Act 1975.

It is not doubted that the provisions of the Housing (Statutory and Improvement Areas)Act 1974 will have tremendous effect on the powers of the Planning Authorities and indeed of the Town and Country Planning Tribunal. It is, therefore, worth noting the following provisions of this Act :

> "Notwithstanding anything to the contrary contained in any written law, the provisions of such law insofar as they are inconsistent with the provisions of this Act shall not apply to the land comprised in a Statutory Housing Area or in an Improvement Area".

Despite the provisions of Section 22(2) of Town and Country Planning Act, land in both the Statutory Housing Areas and Improvement Areas will be excluded

from the force of planning control. In fact the Town and Country Planning Act has been expressly excluded.[11a]

The other Act which impinges on Town and Country Planning Act is Roads and Road Traffic (Amendment) Act 1974 which provides that "Notwithstanding any provisions contained in any Act, the Board shall have power to :

(a) approve the siting of dwellings and public houses by the roadside".[12]

This, therefore, appears to mean that the Planning Authorities must seek and obtain approval of the Roads and Road Traffic Board before granting planning permission for development near the roadside as to siting.

It would appear that the provisions of the Roads and Road Traffic (Amendment) Act 1974 were to some extent met by the provisions of the Town and Country Planning Development Order Regulations insofar as they provide that[13] "Before granting permission for development in either of the following cases, whether unconditionally or subject to conditions, the Minister or Planning Authority shall consult the following Authorities :-

(a) Where it appears to the Minister or Planning Authority that the development is likely to

affect adversely any land in the area of any local or township authority, with such authority.

(b) Where it appears to the Minister of Planning Authority that the development is likely to create or attract traffic which will result in a material increase in the volume of traffic entering or leaving a main road or using a level crossing over a railway, with the appropriate highway or railway authority!

Similar provisions appear in the Town and Country Planning Subdivision Order Regulations where it concerns subdivisions. As already pointed out the most important words for our purposes are subdivision and development as both require planning permission before they are indeed undertaken.

SUBDIVISION

Subdivision is defined in relation to land as the division of any holding of land into two or more parts whether the subdivision is affected for the purposes of conveyance, transfer, partition, sale, gift, lease, mortgage or any other purpose and subdivide has a corresponding meaning.[14] It may be said that sub-division is "the creation of a new unit of land by dividing an existing unit into two or more portions or parts."[14a] One cannot divide his farm, small-holding, plot or stand into two or more units or pieces without first obtaining planning permission.

In considering applications for subdivision of agricultural land the planning authority has to look at the provisions of Town and Country Planning Act.

The principles laid down are :-

(i) No subdivision shall be less than twenty-five acres in extent. This applies to land outside the area of a development plan or approved development plan.

(ii) There shall be no further subdivision of a plot of twenty-five acres.

(iii) The land to be subdivided is not considered to be of high agricultural value.

(iv) No installations of public services at the expense of Government becomes necessary as a result of subdivision or subdivisions. The conditions (II) & (IV) apply to applications for subdivisions of land for residential purposes and it is the opinion of the Department of Town and Country Planning that there is a statutory requirement to impose such conditions when granting planning permission.[15] In case of subdivision for other purposes, however, the planning authority will grant permission if it is considered that such "approval will be in the best interest of Zambia."[16] One may go further and say that a subdivision which is considered to be in the best interests of the Local Authorities may be approved.

Since there is no provision similar to our own with regard to subdivision in the English Town and Country Planning Act 1971, one will have to look elsewhere for guidance as regards principles which have to be taken into account in considering applications for subdivisions. Unfortunately, there is very little or no litigation at all on the question of subdivision in this country. There is, however, a case of I.T. Daal vs. The City Council of Lusaka where the Tribunal held that there was no evidence of urgent need for smallholding and that Planning Authority must consider each application on its merit and that there is some onus on the appellant for subdivision to adduce evidence concerning such vital information as access, services to the proposed subdivisions, surface development etc. before the application can be considered. Since Town and Country Planning legislations in both Rhodesia and Botswana have provisions similar to those in our Chapter 475 it would serve a useful purpose to look at cases decided by Courts in those countries as they will assist us to construe our own provisions. In a Rhodesian case of Miller vs. Minister of Local Government[17] where the Minister refused to grant permission to subdivide, the Court held that "the policy of the outline plan was sound and to allow the proposed subdivision would run counter to it because Lot 2 would not constitute an economic agricultural unit, its

proper function was clearly complementary to the remainder of the farm."

The case of Kennedy vs. Minister of Local Government[18] was followed and indeed confirmed in this case. In the case of Kennedy, the Appellant had applied to subdivide his farm which was situated in a predominantly agricultural area. The proposed subdivision was separated from the rest of the farm by a road. The Court among other things held that the proposed subdivision would not constitute an economic agricultural unit.

It would be apparent that the principal consideration here was that to permit subdivision the unit must be a viable economic unit. It is obvious that in considering the applications for subdivision one has to consider whether if granted the subdivision would conflict with the approved development plan and secondly, whether such subdivision would be an economic agricultural unit. The same reasoning was reached in the case of De Pullo vs. Minister of Local Government[19] where an application was refused on the grounds that the grant of such application would result in the creation of uneconomic agricultural unit. It was held further that it would not be good planning to subdivide a farm into units of restricted potentialities and that the units should have co-ordinated rather than scattered development.

The other principle which seems to emerge from Rhodesian cases is that permission to subdivide will be refused if the grant of subdivision will result in

undue strain on services in conflict with the principle of efficiency and economy in the process of development. This is so in case of subdivision intended for residential user. In the case of Dickinson vs. The Minister of Local Government [20] the Appellant who had bought a farm in Rusape District of Rhodesia built a house thereon. He later applied for permission to subdivide the farm. The Court held that to allow such subdivision would result in patchwork development which was calculated to result cumulatively in undue strain on services in conflict with the principle of efficiency and economy in the process of development and that to subdivide the farm would increase the burden on public services such as electricity, telephone, roads, police and so on. That the creation of purely residential subdivision would quite likely lead to an expectation of further subdivision with consequent increase in farm prices. Whether or not the Zambian Town and Country Planning Tribunal will accept the opinion of the Rhodesian Court is another matter.

It is known that the question of additional Police or depletion of it by development has been held not to be sufficient reason for the Planning Authority to reject an application for planning permission. In the case of Albert Edward Ball vs. Western Planning Authority,[21] the Tribunal held that "First he said that if Mr. Ball's project were allowed, a need would arise for Police supervision of the bar lounge and police personnel for that could only be found from Kitwe with resultant depletion of

the policing resources in the Municipality. I very much doubt if that could be regarded as an interest in land. The interest relates not to land but to services, and in particular to police services". The reasoning in the Zambian Decision is supported by the decision in the English case of J. Murphy & Sons Ltd. -v- Secretary of State for Environment [21a] where it was held that the cost of developing the site was not to be regarded as material consideration in the question of an application for developing of a site for housing.

The same reason advanced in the case of Kennedy vs. The Minister of Justice T.251 which was to the effect that "In view of the Court subdivisions could also be successfully formed if farming was restricted to horticulture i.e. market gardens and flowers". In other words, the plot which can only be used for one type of farming is not economic. No doubt the Rhodesian Courts could have based their decision on another ground namely that the desirability of preserving the existing permitted use which, according to the case of Clyde & Co. -v- Secretary of State for Environment [21b], is a material consideration within the scope of Town and Country Planning legislation.

The case of Dickinson vs. The Minister of Local Government just quoted advances also another reason on which application for permission of a subdivision can be refused. The Court held that "Indeed if sub-

division is permitted in this instance, it will be difficult to refuse it in another instance. There is no apparent reason why similar cases should not occur and it is likely that other cases with circumstances no less or no more cogent than those on which the appellant relies will occur."

In other words, planning permission which will create a precedent will be refused. This is not the position in Zambia where the Town and Country Planning Tribunal has taken the Stand that [22]Refusals of permission are often due to the fear of setting up a precedent which is likely to embarrass the authority dealing with other applications of the same kind in the same area. There is sometimes but not always, real substance in this argument. The merits of particular cases differ widely and where, apart from precedent, there are good reasons for allowing an applicant to carry out development, the fact that the granting of permission in this case may lead to other applications being made should not be accepted as sufficient reason for refusal. It does not necessarily follow that those other applications should be granted. It may sometimes be necessary for the planning authority to take the line that whilst they will consent e.g. to the erection of one or two houses in a particular place, they will not consent to more." This was the case

of John Pieter Liebenberg vs. The Municipal Council of Luanshya in which these remarks were made.

The English and Zambian approach seems to be more logical in that for one subdivision not much public services will be required yet for many subdivisions surely much more burden will have to be borne by the Public Authorities. On this ground alone the Planning Authority can refuse an application for permission to subdivide. The other ground on which subdivision has been refused in Rhodesia is that there is no need for such division. In other words, need or lack of need is vital consideration before the Rhodesian Planning Authority.

In the case of the Estate of Woods vs. The Minister of Local Government[23] it was held that there is no evidence to establish that there exists a need for residential plots in the area of the Appellant's subdivision. In other words, this case reaffirms that application for permission to subdivide will be refused if it would create a precedent and if there is no need for such a subdivision.

The question of need has been repeatedly rejected by the Tribunal but one would agree that the case of Tom Sichone vs. Southern Planning Authority [24] was decided on the question of need. Indeed in the case of John Pieter Liebenberg vs. The Municipal Council of Luanshya[24a] the Tribunal indicated that

"need may be so overwhelming as to justify the overruling of normal town planning consideration." It is apparent, therefore, that even in this country public need may be material in the grant or refusal of planning permission. This is so despite what the Tribunal said in the case of P.N. Patel vs. The Municipal Council of Livingstone[25] namely that "need or lack of need is irrelevant to our consideration" as the same Tribunal said further that "if there is public need for a further Bar that is for the Liquor Licensing Board to decide not for us." It is, therefore, maintained that public need is relevant in these matters despite what the Tribunal may say. It is, therefore, apparent that public need or lack of such need influences the Planning Authority and indeed the Tribunal in granting or refusing planning permission. Clyde & Co. case was also decided on the basis that there was a need for additional flats in private sector which would relieve the public sector since there is an acute shortage of accommodation. Here the Court took into consideration the welfare of the community.

When considering applications for permission to subdivide, the planning authority should bear in mind that the applications should be dealt with speedily and that unless the decision is given or refused within 90 days of the receipt of an application, the application will be deemed to have been approved by the decision of the appropriate authority.[26] It has

also to consult those authorities which it has by law to consult namely local or township authority if subdivision is likely to affect adversely land in their areas and to consult the appropriate highway authority or railway authority if any development which is to come about as a result of such subdivision is likely to create or attract traffic. Indeed the Roads and Road Traffic Board has to be consulted with regard to siting of any likely building. The other fact which attracts planning permission is development. This will be the subject of the next Chapter.

CHAPTER 3

DEVELOPMENT

Development means the carrying out of any building, rebuilding or other works or operations on or under land or the making of any material changes in the use of land or buildings but shall not include :-

(a) Changes of use of land or buildings where the existing and the proposed uses both fall with in the same group of land or building uses which may be prescribed

(b) The carrying out of works for the rebuilding maintenance, improvement or other alteration of any building being works which effect only the interior of the building or which do not materially affect the external appearance of the building.

(c) The construction of roads in an area not subject to a development plan or approved development plan, in respect of which the Director of Roads is the highway authority

(d) The carrying out by a highway authority of any works required for the maintenance or improvement of a road being works carried

out on land within the boundaries of a road or road reserve

(e) The carrying out by any local or township authority or any statutory undertaker of any work for the purpose of constructing, inspecting, repairing or renewing, any sewers, drains, pipes, cables, rails or such other apparatus as may be prescribed

(f) The construction or use other than for human habitation of any building or the use of any land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such

(g) The use of any land for the purpose of mining or agriculture, including the creation and use of buildings for such mining or agricultural purposes, but excluding the siting of buildings within three hundred feet from the centre line of any road or proposed road

(h) The erection of temporary buildings required in connection with any development for which planning consent has been given for a period not exceeding twelve months or for such longer period as the Minister or the planning authority may permit

(i) The construction and maintenance of roadways, paths, standings and similar paved areas within a holding or within any public open space

(j) Development outside a development plan area in any of the following namely forest reserves, protected forest areas and game reserves but excluding the siting of buildings within three hundred feet from the centre line of any road or proposed road

(k) Any other operation which may be prescribed.[1]

It will be apparent that Zambian definition of development excludes mining and engineering operations and appears to be limited to building operations and change of use which is material and to this extent it is narrower than the English definition.[2] It is also of limited application since it does not apply to Trust Land or Lands in the Reserves,[3] Except insofar as Regional Planning is concerned. Because the Zambian definition of development is narrower than that of the English Act the case of Coleshill and District Co. Ltd. -v- Minister of Housing and Local Government and Another [3a] in so far as it relates to the removal of embankments, which has been held to be engineering operations, is not authoritative but the decision in so far as it refers to the removal of blast walls is persuasive in our Court. In particular the following quotation from

it is of great assistance to our definition of building operations.

"I think it is inherent in the Minister's decision that the operation of pulling down the conyrete walls (which were an integral part of the various buildings) would involve structural alterations to the buildings and would therefore Constitute development within the statutory definition" as it would effect the external appearance of the building.

No doubt the case of Thomas David (Porthcawl) Ltd. and Another -v- Penybont Rural District Council[3b] which decided that if a development consisted in the carrying out of the mining operations then every shoveful was a separate act of development which could be subject to enforcement Notice if carried out without planning permission is not of any legal validity in this country since the word "development" as used in our Act does not include both engineering or mining operation.

It is of interest to note that Botswana, Rhodesia (Zimbabwe) and Zambia have similar provisions concerning the need for planning permission before subdivision of land is undertaken. This also is in the Republic of South Africa. This provision is foreign to English Planning Law. One needs to remind oneself that these countries introduced town planning before they were industrially developed and agriculture was then and is

still accorded a high position and is regarded as the future mainstay of these countries economic developments. This appears to be the reason which prompted the legislature in the then Northern Rhodesia to provide that "The Minister may in any subdivision order in respect of land situated outside the area of a development plan or approved development plan grant permission:

(a) For residential purposes or purposes ancillary thereto provided that ;

(i) No subdivision shall be less than twenty-five acres in extent

(ii) A condition that there shall be no further subdivision of the subdivision is stipulated by him in the approval

(iii) The land to be subdivided is not considered by the Natural Resources Board to be of high agricultural value".[4]

It appears to be the same motivation that led to the delegation of the Minister's planning powers to the Natural Resources Board[5] where subdivision of agricultural land is concerned. The purpose here was to stop the subdivision of agricultural lands into smaller pieces of land which are too small to be economically viable. It is, therefore, apparent that economic consideration were of paramount importance

in making these provisions.

The same motivation can be seen in the English decision where a company manufacturing steel castings sought permission to extend its factory to nearly twice its size. The local planning authority rejected the application and refused to grant the planning permission applied for on the basis that the extension would increase injury to local amenities and may aggravate the situation which was already bad. The Minister on appeal to him reversed the decision of the Local Planning Authority and granted permission "as there was immediate need for expansion of existing works to enable the Company to meet their commitments and satisfy important export demands."[6]

The first leg of the definition of development is the word building. This defines building in the following terms: "Building includes any structure or erection and any part of a building as defined but does not include plant or machinery comprised in a building."[7]

For every development, therefore, one would expect either of the following :-

(a) That there has been a building erected or rebuilding or extension made

(b) There has been material change in the use of a building or land. In other words,

> building used formerly for instance as a school has been converted into a shop or such other use not the same user group as a school.[8]

In the case of Cheshire County Council vs. Woodward[9] it was held that building as defined in the Act as referring to any structure or erection which can be said to form part of a reality and changes the physical character of the land. Once a building is erected on a piece of land the land changes in form whereas if plant or machinery is fixed on the land, the land does not change, the physical character of the land remains the same.

Erection is defined in the Zambian Town and Country Planning Act as meaning in relation to buildings to include extension alteration and re-erection.[10] It is, therefore, apparent that whenever there is no physical interference with the land by building operations or other operations similar to building, there cannot be development unless there is material change of use of land or building.

In the case of Sarah Papenfus vs. The Lusaka City Council[8] Mrs. Sarah Papenfus had applied to the Lusaka City Council for permission to use Stand 34 as a play centre which application was refused. In this case the question of material change of use was dis-

cussed by the Town and Country Planning Tribunal. The following extract from that decision may be of value here :

"No building operations were proposed here; at most what the appellant was trying to do was to make a change in the use of Stand 348 by opening her registered nursery there to children over the age of seven years. In our view this could not be regarded as material change in use."

In other words, for change to be material it must be substantial and must be of a different user group from the existing use. The establishment of a nursery catering for the under-sevens does not change the use of the buildings existing on the Stand.

However, the decision seems to have gone further when it was held that "the appellant required accordingly no planning permission and her application for planning permission should not have been entertained but dismissed in limine."

This is surely not the right approach to such a problem. The right approach would appear to have treated such an application as an application for determination whether planning permission was required[11] and the appellant Mrs. Papenfus should have been told that in the view of the Planning Authority, no planning permission was required. This reasoning is supported by Lord Davies's decision in the case of Wells and

Another -v- The Minister of Housing and Local Government and Another[8b] where it was held that "In a planning application there must be taken to be an implied invitation to the planning anuthority to determine, if they are of that opinion, that planning permission is not required.

The decision is important in that if a "proposed use" does not fall within the same use group as the "existing use" this in itself does not constitute a "material change of use". In this case, therefore, there was no material change of use.

In the case of Liebenberg vs. The Municipal Council of Luanshya[12] the Tribunal accepted that the change of use of a building from that of a place of worship to residential, constituted a material change of use since the two uses did not fall within the same user group and, consequently, there was a need for planning permission before such change would take place. This was based on the user groups under the Planning Authority's approved development plan. In England the position with regard to the question of material change of use had been decided on general principle that "change is material if it matters having regard to the planning control." In this connection the following points may arise :

(i) In most cases the first question to be asked will be whether the change of use will completely alter the character of land or building

(ii) Where an existing use is intensified, it is necessary to ask whether such intensification will be such that as to be construed as nuisance and thus be regarded a material change of use of the buildings or land

(iii) If the change of use only partially alters the character of the land or building, it will be necessary to ask whether such partial change is material for some other reason

(iv) In some cases, the answer may depend on the kind of land or building under consideration."[13]

In the case of East Barnett Urban District Council vs. British Transport Commission,[14] a case in which some part of land belonging to the British Transport Company was used as coal-stocking, the other part was vacant and the third portion consisted of buildings used as workshops and the last portion was used as a siding. It was held on an application by Vauxhall Motors to use the land as transit depot and storage of motor vehicles that there was no material change of use where land was used throughout as storage and transit depot. The fact that coal was used first and later oil, did not matter.

In Guildford Rural District Council vs. Penny[15] it was held that a change in use is likely to be material where it would involve substantial burden of services

which the local authority will be called upon to supply. In this case, a certain field was used as a site for eight caravans. The number was eventually increased to twenty-seven. The local planning authority served an enforcement notice. The Court of Appeal, however, held that an increase or intensification of use might in some circumstances amount to a material change of use.

In the case of Birmingham Corporation vs. Minister of Housing and Local Government and Habib Ullah,[15a] the applicant Habib Ullah had purchased two houses which before purchase were used as a single family residence. Ullah converted this into a house to let in lodgings. The Court on appeal remitted the case back to the Minister who had previously held that there had been no material change of use since in the Court's opinion such intensification of use could amount to material change depending on the fact and degree in the case. Where a house formerly used by one family housed more than two families the Court held that [15b] "Persons may live separately under one roof without occupying separate dwellings..... The existence or absence of any physical reconstruction is a relevant factor, another is the extent to which the alleged separate dwellings can be regarded as separate in the sense of being self contained and independent of other parts of the same property".

No doubt the circumstances of each case have to be taken into account in arriving at a right and fair decision.

EXCEPTIONS TO WHAT CONSTITUTES DEVELOPMENT

It has been apparent that much that would have been development has been excluded by Section 22(4) of the Town and Country Planning Act from being so. There are ten exceptions in the definition to what constitutes development. The exceptions are far more numerous than are found in the English definition, according to Sections 12 of the Town and Country Planning Act 1947.

Development means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of material change in the use of any buildings or the land.

The Act, however, gives the following exceptions :-

(i) the carrying out of works for the maintenance improvements or other alteration of any building, being works which effect only the interior of the building or which do not materially affect the external appearance of the building

(ii) the carrying out by a local highway authority of any works required for the maintenance or improvement of a road, being boundaries of the road

(iii) the carrying out by a local authority or statutory undertaker of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cable or other apparatus including the breaking open of any street or other land for that purpose

(iv) the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such

(v) the use of land for the purposes of agriculture or forest and the use for any of those purposes of any building occupied together with land so used

(vi) in case of buildings or other land which are used for a purpose of any class specified in an order made by the Minister, the use thereof for any purpose of the same class.

It will be obvious that the exceptions here are fewer than these in the Zambian Act. It is indeed true to say that the exception as regard agriculture is found in both ours and the British Acts.

It will have been obvious that there is no development if one changes the insides of a building but if one

tampers with the outside appearance of a building, there is a likelihood of it being classed as development unless the alteration does not materially affect the external appearance. It is, therefore, necessary that the alteration should make the building look different if viewed from the outside for such alteration to be material. The construction of roads, sewers, drains and pipes and indeed the maintenance thereof are not development so long as they are undertaken by the Director of Roads; Statutory undertakers, or Local or Township Authority.

It is equally true that the construction of a fowl run or pigsty would not constitute development, although the construction of a pigsty may constitute nuisance to neighbours or may cause health hazards in which case the Local Authority may step in to stop what is indeed contrary to Public Health Regulations. Mining and Agriculture are excluded by statute. This is intended to boost mining and agricultural industries and avoid delays in getting planning permission when the job should be done. The erection of temporary buildings required for development purposes is an exception to development. The maximum period allowed in which development in a particular case should be commenced and completed is twelve months although the Minister or the Planning Authority may extend such time. Surely it will be extended if development is not completed within such time. In his paper, McClain

regards this as one cause of squatter settlement. He maintains that squatter settlement arises when the temporary buildings permitted under the planning legislation become permanent and new houses or huts spring around those already erected under limited permission.[17] The example he gives of building contractors' camp is surely true of Garden Compound, George Laing and Roberts (Chawama) Compounds in Lusaka.

It frequently happens that a residential use is ancillary to a church use. It is equally correct to say that residential use may become ancillary to commercial or industrial such as in cases of flats built on top of offices, and factories. It is also possible that an industrial use may be ancillary to non-industrial use. Can it then be argued that there is in each case an industrial building which can be used as such for any other industry. In an English case of G. Percy Trenthan Limited vs. Gloucestershire County Council, it was held by the Court of Appeal that the use of buildings for housing farm equipment and machinery by the farmer did not constitute such respository,[18] assuming for a moment that such use was as it could not be separated from the rest of the farm house and buildings as a unit. The Court of Appeal took the same stand in the case of Brazil (Concrete) Limited vs. Amersham Rural District Council and the Minister of Housing and Local Government.[19] Where an addition is made to a building under a permitted development such an addition

forms part of the original building and takes the character of the old building in all respects. Such additional room cannot be regarded as an appropriate planning unit.[19a] It assumes the character of the user group to which the rest of the building belongs. The Zambian Town and Country Planning Tribunal did not con-sider these cases when the same sort of question arose in the case of J.P. Liebenberg vs. The Municipal Council of Luanshya.[20] In this case, the appellant John Pieter Liebenberg applied to use what was formerly a Dutch Reformed Church Building as a dwelling house. On the plot there were two buildings one used as a Church for Worship and another used as a caretaker's house. The caretaker's house was occupied by the Appellant as a tenant paying a monthly rent of K60.00 and the Church was not longer used for services. The application for a change of use was refused. The Tribunal held that "there were two uses and that it no longer matters whether one use was at one time ancillary to the other."

This, it is submitted, is a wrong approach. The Tribunal should have ascertained which was the main use and which was the ancillary use. Surely in this particular case the use of the Stand for Church use was the main use and that of residential purpose was just ancillary to the main use. No doubt the Town and Country Planning Tribunal made a correct finding of law when it held that the use of Church for residential purpose constituted a material change of use. Conse-

quently, it was a development within the provisions of Section 22 of Town and Country Planning Act.

The question of what constitutes "curtilage of a dwelling house" has been the subject of Court decision in the United Kingdom. In a Scottish case of Sinclair-Lockhart's Trustees vs. Central Land Board[21] it was held that "the ground which is used for comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and treated thereby as an integral part of the same. It is enough that it serves the purposes of the house of building in some necessary or reasonably useful way."

In the case of Pilbrow vs. St. Leonard Shoreditch Vestry[22] it was held by the Court of Appeal that "the question depends upon the construction of Section 250. I do not think that the words of that Section (i.e. premises within the same curtilage) are to be construed with regard to considerations derived from Conveyancing Law, but on consideration relating to the mode of building the object with which buildings have been erected and the manner with which they have been used."

The British Minister has determined that a garden was within the curtilage of a dwelling house although the two were separated by a road.[23] This should be compared with a Rhodesian case of Kennedy vs. The Minister of Local Government where the appellant had

applied to subdivide a plot which was separated from the rest of the farm by a public road which was refused on the basis that such subdivision would not form an independent economic unit. This seems to be the same consideration which prompted the British Minister to regard a garden separated from the house by the road as the garden was reasonably necessary for the confortable enjoyment of the house.

There is no doubt that the Zambian Tribunal will treat these English authorities on "curtilage" with respect, they are very persuasive indeed. It needs to be stressed that when considering the authority of English cases one must always bear in mind that the provisions of Section 12 and 13 of the English Town and Country Planning Act 1962 are not on pari materia with those of Section 22 of our Town and Country Planning Act.

PRINCIPLES ON WHICH PLANNING PERMISSION MAY BE GRANTED OR REFUSED

Our sources as to the principles governing the grant and refusal of planning permission can be found in several English text book written by Lawyers in England, cases decided in the United Kingdom, our own cases and the provisions of our Planning Act.

DESIGN

Design of buildings is one of the matters that

have to be considered by the Planning Authorty and Tribunal[24] on Appeal in determining whether to refuse or grant permission. Design which is ugly may be refused especially if it is not proportional, but the design of a building should not be refused simply because it is new and different from others; doing so would thwart initiative. It is normally necessary that refusal of design should be supported by advice of an architect.

Objections to design is always made where the proposed building is to be surrounded by older buildings of architectural merit. It is debatable whether the Zambian Planning Authority or Planning Tribunal, should refuse an application on this ground. To do so would run contrary to the declared Government policy of integrated development.[25] In other words, high density houses should be freely built side by side with low density houses. This is in accordance with Zambian declared policy of a classless society. In other words, houses of very simple design like the ones found in shanty compounds should be allowed to spring up in such exclusive areas as Kabulonga and Sunningdale. The question of surroundings should not at all come into the picture. Show piece houses should be surrounded by badly designed houses in order to appease the masses. McClain quotes from a Government Circular to Local Authorities the following "You are aware that all our towns still bear the ugly

imprint of colonial segregated housing, low density housing in garden siting contrats unhappily with monotonous rows of high density housing. The Government has, therefore, decided to promote the creation of integrated neighbourhood, in which our people without distinction would enjoy similar amenities and services". Unfortunately, there is little evidence that integration has begun to be implemented except for Kabwata.[26] With the present approved development plans, it is difficult to see how it would be done without contravening the provisions of approved development plans unless it is done on the basis that all residential areas are zoned as such and not "low", "medium" and "high". So long asthe overall residential density of the planned area is not exceeded any type of house may be erected.

AMENITY

By amenity is understood pleasantness or pleasant surroundings. It is true that amenity is the primary consideration in all applications for planning permission. Developments which would injure the local amenity are to be avoided. This is one of the factors which militates against integrated development. In the Rhodesian case of Vacuum Oil Company vs. Bulawayo City Council[27] the Appellant applied for permission for petrol filing station rights on his Stand in Bulawayo. The Respondent refused the application. On Appeal the

Court held that the residential character of a neighbourhood was in itself an amenity, and use which is intrinsically incongruous and not in keeping with the neighbourhood's essential character may be prohibited on that ground irrespective of the impact which use may make upon the senses. In the same manner when considering the question of a day nursery, the fact that there may be a lot of noise caused to the neighbouring houses in a residential suburb may be one of the grounds on which planning permission may be refused. In the case of Malin vs. The Municipal Council of Ndola and another (as it was then)[28] the Appellant Mrs. Malin applied to the Respondent to change use of Plot Number 1136 Ndola from that of residential to that of day nursery. This change of use was material and, consequently, constituted development within the meaning of Section 22 of the Town and Country Planning Act. The Respondent refused to grant the Appellant planning permission. On appeal to the Tribunal, it was held that the premises were unsuitable for the establishment of a day nursery school and that such development would be detrimental to the amenities of the area. Undoubtedly, a person who erected a house in such good class residential area would expect privacy and quiet of such area. A Day Nursery School by its nature would constitute a nuisance because of noise emanating from the children at that school.

The Second Schedule to Town and Country Planning Act deals with the question of Amenity.[29] In considering the question of amenities such matters as reservations of land for parks and recreation grounds or other open space whether public or private has to be taken into account. The following are provided for in the Act :-

(a) Provision for the preservation of views

(b) Places and features of natural beauty and interest

(c) Old buildings of special architectural significance should be retained

(d) Depositing or disposal of old vehicles or waste materials

(e) The pollution of water and such matters have to be taken into account

TRAFFIC AND ACCESS

The suitability of access and any traffic hazards which may result from the development is a relevant consideration. In Zambia this has been considered where public bars and petrol service stations are concerned.[30] Here the question of provision of parking spaces, problems of likelihood of increasing the already frightening number of traffic accidents have exercised the minds of both the Planning Authorities and the Town and Country Planning Tribunal. It is, therefore, apparent that any development that is likely to cause an access problem or that is likely to cause a traffic hazard will be refused. This is the reason be-

hind the provision in the Roads and Road Traffic (Amendment) Act 1974 which requires specific approval by the Roads and Road Traffic Board for siting of public houses and dwelling houses proposed to be erected near the main roads. This provision is in addition to the provisions of Regulation 9(1) of Town and Country Planning Development Order Regulations. In the case of Caltex Oil Zambia Limited vs. The City Council of Lusaka[31] the Appellant's application was refused by the Respondent on the ground that to permit such development would result in excessive congestion of traffic.

The Planning Tribunal concluded that there were two types of traffic problems namely a parking problem and a traffic flow problem. It held that the establishment of Petrol Filling and Service Station would not create any more parking problems than would be created by any other permitted development. The Planning Tribunal reluctantly dismissed the appeal because of traffic-flow problems. In the case of Sichone vs. The Southern Planning Authority,[31] the question of traffic hazard was advanced by the respondent. The Planning Tribunal rejected this argument as it was not supported by evidence of traffic statistics, accident and the like. In other words, there was no evidence on which an option could be based.

CONFORMITY WITH DEVELOPMENT PLAN

Finally, the Zambian Provisions make it mandatory on the planning authority when considering applications for development to have regard to the development plan and to any other material considerations.[32] What constitutes a development plan is laid down in Section 2 of the Town and Country Planning Act wherein both an approved development plan and a development plan are defined, namely that an approved development plan means a development plan and any amendment or modification thereof approved by the Minister under Section 17. Section 17 lays down the procedure whereby a development plan may be approved by the Minister of Local Government and Housing.

Development plan is defined as a development plan and amendment or modification thereof ordered, prepared or in the course of preparation in accordance with the provisions of the Act. When either the Planning Authority or the Town and Country Planning Tribunal is considering an application or appeal for planning permission the provisions of the approved development plan or development plans have to be taken into account. In other words, the zoning or reservation of the piece of land and that of adjoining land has to be taken into account. In fact, the case of Malin vs. The Municipal Council of Ndola was decided precisely on this point. The Tribunal had this to say

about this matter :

"The Area in which the premises are situated being one zoned under the Ndola Approved Development Plan for Detached houses, is one which can be reasonably regarded as a good class residential area, and any one building a dwelling house on a plot in that area might reasonably expect the privacy and quiet of such an area."

OTHER MATERIAL CONSIDERATIONS

The phrase "any other material considerations " is not defined by the Act. One will tend to think that such considerations to be material must be relevant to the purposes of planning. In the case of Daal vs. The City Council of Lusaka[33] the Planning Tribunal held that urgent need might override other planning considerations. By implication urgent public need is one of the material consideration the planning authority has to take in account. Indeed the case of Sichone vs. The Southern Planning Authority although not expressly stated was decided on the question of public need for the bar since the Tribunal held that "even if the first taverns are in operation in two months' time, it seems to us that the facilities in the area will still be woefully inadequate." The nature of proposed development is also one of the matters that should be taken into account. No doubt it is one of the reasons on which Liebenberg's case was decided; the contrast was that between the Church and a dwelling house. Surely

a dwelling house would not interfere with such places for religious assembly. If, for instance, the Bar was the proposed change of use a different decision would undoubtedly have resulted. In Britain it has been held that the cost of developing the site was not to be regarded as material consideration[33b] in the question of an application for developing of a site for housing but the desirability of retaining the existing permitted development[33a] has been held to be a material consideration when a planning application is being considered.

TYPES OF PLANNING PERMISSION

Planning permission may be granted in any of the following ways :-

(i) Permission may be granted by the Minister in an Order providing for certain specified developments and/or subdivision.[34]

(ii) Permission may be granted on an application submitted to the Minister in those cases in which his powers have not been delegated to the Planning Authorities

(iii) Permission may be granted by the Minister on referred applications[35]

(iv) Permission may be granted by the Planning Authority on an application submitted to it[36]

(v) Permission may be granted by default of the Planning Authority.[37]

In dealing with an application for a planning permission "the Minister or the Planning Authority may grant permission either unconditionally or subject to such conditions as he thinks fit or refuse permission."[38] Permission can be granted for the retention of a development or subdivision carried out without permission.

It would appear that the words "as he thinks fit" gives absolute discretion to the Minister or the Planning Authority. In the case of Associated Provincial Picture Houses Limited vs. Wednesday Corporation[39] Lord Greene M.R. had this to say "They(Courts) can only interfere with an act of the executive authority if it is shown that the authority has contravened the law. When discretion of this kind is granted the law recognises certain principles on which that discretion must be exercised, but within the four corners of these principles, in my opinion, is absolute one and cannot be questioned in a Court of Law."

Prof. Wade[40] regards this statement as laying down a principle that Courts should not be used as Courts of Appeal to review the merits of administrative decision. This is the view that the Zambian Courts have taken in these matters.[41]

It is, however, to be seen that the following words limit to some extent the discretionary powers of the Minister and the Planning Authority namely that "in dealing with any such application the Minister or said Planning Authority shall have regard to the

provisions of the development plan or approved development plan, if any, so far as material thereto and to any other material consideration."

The English Courts have taken a view "that the principles to be applied are not I think in doubt. Although the planning authorities are given very wide powers to impose such conditions as they think fit, nevertheless the law says that the conditions to be valid must fairly and reasonably relate to the permitted development. The planning authorities are not at liberty to use their powers for ulterior objects, however desirable that object may seem to be in the public interest."[42]

This same reasoning was confirmed in the case of Pawcett Properties Limited vs. Buckingham County Council[42a] where the Court had this to say "I have arrived, therefore, at the conclusion that this clause is ultra vires as not fairly and reasonably relating to any local planning considerations." This decision was reversed by the House of Lords[42c] who held that the conditions which had been imposed were not ultra vires but nonetheless the principle that "the conditions to be valid must be fairly and reasonably related to permitted development" was reaffirmed.

The more recent case of Kingston upon Thames Royal London Borough Council -v- Secretary of State for Environment and Another[42d] confirmed these cases in the following manner "the two principal restrictions which

have been placed on those words are first that the condition is invalid as being contrary to law unless it is reasonably related to the development in the planning permission which has been granted. It must not be used for an ulterior purpose and must in the well known words of Lord Denning "fairly and reasonably" relate to the permitted development.

The Second restriction on those words which the Courts have adopted in recent years is that a condition which is so clearly unreasonable that no reasonable planning authority could have imposed may be regarded as ultra vires."

The Zambian Town and Country Planning Tribunal has time and again said that refusal of an application should only be "based on legitimate planning objections". In the same manner it has repeatedly said that the incidence of competition is not a matter which the planning authority should take into consideration.[42b] In fact, in giving reasons for its decision in this case, the Tribunal rejected suggested conditions as being not related to planning law. In the case of S.M. Patel vs. The City Council of Lusaka[43] the Tribunal held that "It was not for the Planning Authority to decide whether or not a public house should or should not sell opaque beer for that is the matter for the authority or authorities concerned with the granting of Liquor Licence or permission under Native Beer Ordinance ..... is not in our view a proper planning consideration." After

quoting from the cases of Pyx Granite Company vs. The Minister of Housing and Local Government and Fawcett Properties Limited vs. Buckingham County Council in the case of Total Oil Products (Rhodesia) (Pvt) Limited vs. Municipal Council of Livingstone[44] the Tribunal had this to say. "The condition which the respondent Council is seeking to impose has the effect of making planning permission contingent upon due execution of what is really a collateral project which does not itself require any permission for its implementation. It seems to us that the Respondent Council are attempting to use their powers for an ulterior object namely to ensure that flats are erected on part of this site and this is not, in our view, a legitimate exercise of their powers or discretion".

It is, therefore, obvious that in Zambia the Planning Authorities should look at the provisions of the Second and Third Schedules to the Town and Country Planning Act to see what conditions can be properly imposed. Planning Authorities cannot be permitted to use their powers under the Act for the purposes of other Acts unrelated to Planning Act. Conditions to be imposed by either the Minister in an order made for such purposes and under referred applications or the Planning Authority to be valid should "fairly and reasonably be related to the objects of planning law."

It is perfectly legitimate for the planning authority to grant a temporary planning permission.

In other words, permission limited as to time is a valid permission granted conditionally. This was the type of condition granted in the case of Sichone vs. Southern Planning Authority[45] and that of S.M. Patel vs. The City Council of Lusaka[46]. Unless a permission is of a temporary nature, it remains attached to the building or land, but the developer can surrender the planning permission and the Planning Authority can accept such surrender unless there are very cogent special reason to refuse such surrender that is the ratio decidendi in Levan -v- Collier[46b].

This would lead to the question whether or not squatter compounds which started as labour camps for the labour force of the contractor whilst undertaking a permitted development should be treated as permitted developments, namely that the houses and huts in those compounds should be regarded as permitted developments within the meaning of the Act. It will have been obviously clear that such squatter settlements have contravened the conditions under which planning permission was deemed to have been granted. For such squatter compounds to even be considered as "permitted development" to-day the housing would have to be erected on the site of the building enjoying a valid planning permission and in the course of construction.[48] "Squatter" development as such as permitted administratively but completely illegally. In other words, the continued existence of such settlements violates the

planning law and such settlements should strictly have been or be demolished. There have been various factors which led to these squatter settlements remaining as such without being demolished, and the subject will be dealt with in another Chapter. For the time being, it is relevant to say that they are existing without the law. There is a frequent reference in some writings in this Country that the erection of squatter settlements or villages without appropriate planning permission is permitted by traditional usage i.e. by what is usually called customary law.

Whether that is true for some areas such as the Northern Province where Chitemene system obtains cannot be regarded as true for every part of the country. In Western Province for example, where the land tenure approximates the English system, except that leasehold tenure is unknown, persons cannot settle wherever they want to unless they both obtain prior permission of at least the area (Silalo) Chief (Induna) before a settlement can be allowed. Even after settlement has been approved, sites for residential houses have in each case to be allocated by the Village Headman. Besides residential sites, sites for play grounds, burial, arable and grazing purposes have to be allocated by such a Headmen. In the Colonial days the Barotse Litunga had, in conjunction with the Barotse National Council, ordered that houses built had to be of certain

dimensions depending on whether the person erecting such a house was a man or a single woman. In other words, the customary law dictated the terms on which settlements could be erected. Invariably new settlements had to be confirmed by the District (Senior) Chief or the Litunga himself. It is, therefore, not correct to say that in every part of Zambia, people can erect houses or establish new villages as and when they so desired. There are various customary laws regulating such establishments.

PERMISSION WITH DEFECTIVE CONDITIONS

Since permission can be granted subject to such conditions as the Minister or the Planning Authority deems fit. It is quite obvious that for a condition to be valid it should only relate to permitted development and that an approved development plan may have such provisions as conflict with the provisions of the Town and Country Planning Act especially those Schemes which are deemed to have been approved within the Act but which were made before the Act was promulgated under the former legislations, such conditions and provisions will not be valid. The question is what happens to the planning permission subject to a defective condition if for instance the Court or Planning Tribunal holds that the condition imposed is not a proper planning condition. Should the permission stand without such condition or should the permission

fall with such condition. In the case of Pyx Granite Company Limited vs. Ministry of Housing and Local Government and another[49] it was held that "permission given has been subject to those conditions and nonconstant but that no permission would have been given at all if the conditions had not been attached. The consequence would be that if any of the conditions imposed were held to be bad as imposed without jurisdiction, permission would fall with it."

There is no doubt that the Judge was concerned with conditions as there imposed. It would not be right and proper to regard this statement as the general principle of law. It is far wider a statement to be so regarded. It must, however, be noted that these remarks were obiter dictum and were not the ratio decidendi. This far-reaching statement of law was adopted in the case of Hall vs. Shoreham Urban District Council,[50] The better view of law is that for planning permission to fall with defective condition imposed in it, the condition should be fundamental. This view has been confirmed by a recent case of R -v- London Borough of Hillington ex parte Royco Homes Ltd.[51a] where the Local Planning Authority had granted planning permission subject to four conditions some of which were bad conditions. The Court held that a condition that went beyond anything that Parliament could have intended was un-

reasonable and that where conditions which were not ultra vires could not be severed from other conditions when they are all intended for a single purpose and such conditions are so fundamental then all the conditions are accordingly void. This correct approach was that expressed in the case of Kingsway Investments (Kent) Limited vs. Kent County Council[51] where it was held that "to consider whether the conditions goes to the root of the permission in other words would planning authority have granted permission without the conditions in question." The nature of the condition itself has to be carefully considered to see if it relates to the development itself. It is, therefore, possible for the condition to be struck out by Court or Tribunal leaving permission to stand without such condition. In some, cases however, where conditions imposed are fundamental to the planning permission, planning permissions cannot be allowed to stand without those conditions. In such circumstances, striking out the conditions annuls the permission granted. The case of Kent Country Council -v- Kingsway Investments (Kent) Limited.[51b] is also of interest in that case Lord Guest had this to say "It seems to me that planning permission is entire. If a condition as to its grant flies off owing to its invalidity the whole planning permission must go, and it is impossible to separate the outline permission without the time limit from the grant. The good part is so inextocably mixed up with the bad that the whole must go." Each case will, therefore, depend on its particular facts. No hard and fast rules can be laid

down. No doubt, although we have no decided case in Zambia, one will tend to believe that Zambian Courts and indeed Planning Tribunal, will follow English authorities.

NATURE OF DIRECTIVE THAT THE MINISTER CAN GIVE TO PLANNING AUTHORITIES

By Section 26(1) the Minister is empowered to give directions as to applications to be referred to him by the Planning Authorities. There appears to be, and there are usually, two ways in which the Minister may give directives to the Planning Authority:-

(a) By statutory instrument, the Minister may make regulations for carrying out the purposes of the Town and Country Planning Act.[52] The question of the validity of such statutory instrument depends now on whether or not the procedure adopted by the Minister accords with the provisions of the Constitution of Zambia and also of the provisions of the Interpretation Act. Unless a statutory instrument is validly enacted any purported action thereunder is invalid. The question of vires of the Statutory Instrument was taken up in the case of Feliya Kachasu vs. The Attorney-General[53] and it is possible that the question validity would be similarily decided.

(b) BY CIRCULARS: The Minister may give directives to the Planning Authority by circulars. The question of the legality of circulars has arisen in English Courts. Are those circulars subordinate legislation, are they mere administrative instructions and if they are not, what is their legality or otherwise ?

In the case of Blackpool Corporation vs. Looker[54] Lord Scott L.J. had this to say about circulars; "of such secondary or sub delegated legislation as I call it for clarity, neither the general public, of which the defendant in this case is typical, nor the legal adviser of an affected member of the public, however directly he may be, he has any source of information about his rights to which he can turn as of right and automatically."

This was particularly true in the case of Bwanamfumu Phiri vs. The City Council of Lusaka where although the Appellant's Advocate was aware of the fact that no planning permission for squatter compound public houses was required he could not touch on the precise circular. This resulted in the Tribunal saying in effect that all structures erected in squatter's compounds are there in contravention of the Town and Country Planning Act and that the fact that all buildings

are erected there illegally the Appellant could not rely on the existence of such illegally erected structures for his case. In other words, "neither two wrongs nor one hundred wrongs make right." Surely Planning Authorities which allow several persons to erect houses,shops and bars in certain areas without planning permission cannot be heard to say that one person out of the several persons should be required to get planning permission and to comply strictly with the provisions of planning law. This will be tantamount to denying such a person a right of being treated without discrimination on any ground whatsoever. The Tribunal even in this case conceded that "indeed it appears that in the area the semblance of planning control has broken down."

In yet another English case of Patchett vs. Leathem[55] a Circular was castigated in the following manner :-

"At least four times cursed. First, it has seen neither House of Parliament; secondly, it is unpublished and is inaccessible even to those whose valuable rights of property may be effected; thirdly, it is a jumble of provisions, legislative, administrative or directive in character and sometimes difficult to disentangle one from the other; and fourthly, it is expressed not in the precise language of an Act of Parliament."

Undoubtedly it makes the position of circulars very uncertain. Are they administrative instructions without legal validity or are they only directives to the Planning Authorities or are they legislative. Indeed, even Judges are not agreed on the precise nature of what the circulars are. In England, therefore, the nature of circulars is uncertain.

In Zambia, however, the provisions of both the Constitution and those of the Interpretation Act leave no doubt as to the nature of circulars, they are not statutory instruments i.e. they are not subordinate legislation. A statutory instrument takes effect only after it has been published in the Gazette. Since Ministerial circulars are neither published nor laid before Parliament they are not statutory instruments, consequently, they have no legal validity whatsoever. In our law, the publication is not only directive as it is in India, and the United Kingdom, but mandatory provision of the Constitution which have to be complied with.

Neither the Planning Authority nor the applicant could rely on the provisions of the Circulars. Even if the Minister directs a Planning Authority by a circular to refer applications for certain types of developments or subdivisions to him if no reference to him is made by the Planning Authority this will not

invalidate the permission so granted. If the Minister wishes to give a legally binding directive, it would be better to do so by a statutory instrument. If this is not done and the Planning Authority, either by error or wilful act, fail or neglect to refer such applications to the Minister but grant permission itself, permission so granted by the Planning Authority would certainly be proper and validly granted. If such permission is revoked the applicants can recover costs resulting from abortive development. The question which remains to be considered is whether or not permission so granted if revoked before any expenditure is undertaken, the would-be developer would be entitled to compensation pursuant to the provisions of the Act.

COMPENSATION FOR REFUSAL OR CONDITIONAL GRANT OF PLANNING PERMISSION

The Town and Country Planning Act makes provisions under Section 34 for payment of compensation in the following cases :-

(a) Where planning permission is refused

(b) Where planning permission is granted subject to conditions -

(c) Where planning permission is revoked or conditions are attached to planning permission already given.

The most important provisions are contained in Section 35 of the Act. It provides that :-

(a) If it is shown that as the result of the refusal to grant permission or the granting of permission, subject to conditions, the value of interest of any person in the relevant land is less than it would have been if permission has been granted or if it had been granted without permission then compensation is payable.

If an order is made requiring the use of the land to be discontinued or imposing conditions for the continued use of such land or requiring any building or work on any land to be altered or removed, then compensation is payable. If it is shown that any person has suffered damage as a result of the order by depreciation of any interest in the land to which he is entitled or is being disturbed in his enjoyment of the land then in that case he is entitled to interest.

Since the passing of the Land (Conversion of Titles) Act 1975, land in Zambia has ceased to have value. Only unexhausted improvements on the land have value. In other words, fences, buildings, boreholes and dams for instance, have value but undeveloped land has no value. From this, it would appear that these provisions of the Town and Country Act have been repealed by this 1975 Act insofar as no interest in land as

such would depreciate in value which does not exist. This is an anomaly in our law which does not accord with commercial facts. Surely a commercial site in the City Centre is more valuable than a commercial site in the rural area, since potential customers are more in town centre than in rural area. The law, however, says the land has no value so it does not have value.

One will only concede that compensation is still payable where the planning authority requires any person to remove or make alterations to his buildings where such buildings enjoy a valid planning permission or are deemed to enjoy such a permission. In the first place, putting up a building costs money and removing it costs money still. In this case, compensation is payable for abortive expenses. This is surely the same where alteration of the building, if done under the Town and Country Planning Act, is done. Expenses so incurred need to be reimbursed by the Planning Authority. The expenses are incurred at their expense and indeed should be recouped from them.

There appears to be no compensation payable under these provisions for the discontinuance of use since the building still stands although it cannot be used for the new purpose without adaptation. One would think that for costs incurred in making the necessary alterations to suit the new use, one needs compensation.

There is a possibility for Government trying to subvert these provisions by requiring such alteration under the Public Health Building Regulations where no

provisions for compensation are payable. The difficulty will be that under such regulations, there is nop provision for discontinuance of use. If for instance, the house is declared as unfit for human habitation, the owner of such a house can make the necessary repairs to bring it to the standard of being fit for human habitation. Once it is in such condition, the Local Authority cannot stop the occupier from using it as a dwelling house. If, for instance, the Local Authority which is a Planning Authority, requires the house which is being used as a Day Nursery to cease from being so used, it must act as a Planning Authority if it wishes for instance such a building to be used as a residential house only.

The case of Westminister Bank Ltd. -v- Minister of Housing and Local Government[56] is an authority for the proposition that where there is multiplicity of legislative controls the Authority can use any of them even if the other involves the payment of compensation unless there are "special circumstances which make it unreasonable or an abuse of power to use one of those methods."

CHAPTER 4

THE ENFORCEMENT OF PLANNING CONTROL

There are three sets of circumstances in which planning law can be enforced. The first relates to the revocation of permission already granted. If it appears to the Minister or the Planning Authority that planning permission should not have been granted or that permission would only have been granted subject to certain conditions, then the Planning Authority can revoke such permission or attach conditions to the continued use of the land or building. This specific provision has been made in order to maintain the principle of good planning.

(1) It must, however, be noted that the power to revoke or modify planning permission to develop or subdivide land can only be done if

(a) the carrying out of the building or other operations have not been completed

(b) if the permission relates to change of use at the time before such change has taken place.

The question of whether or not compensation is payable for such revocation or modification of planning permission has been dealt within the previous Chapter of

this work. The revocation or modification of planning permission for carrying out of building or other operations shall not affect such operations as has been already carried out.

By Section 18 of Town and Country Planning Act at least once in every five years after the date on which a development plan for a particular area was approved by the Minister, the Planning Authority, shall be obliged to carry out fresh survey of the area as may be prescribed and shall submit a report and survey of such area together with such alterations, additions and substitutions to the approved plan as it would appear to the Planning Authority necessary.

This provision is not exclusive since the Planning Authority may from time to time submit to the Minister proposals for the revocation or modification of the approved development plan as may appear to the planning authority expedient. The purpose of this section is to maintain good planning as in the previous case of revocation or modification of planning permission. The question is what is the result of default in making this quinquennial review of development plan. The question has been raised before the Town and Country Planning Tribunal but it was left open. It is, however, submitted that the provision is merely directive and not mandatory. In which case default of such survey does not make approved development plan invalid.

It is, however, considered better to have this quinquennial review so as to keep abreast with the principles of good planning.

If the Planning Authorities fail to carry out their duty the Minister has general powers of making regulations for carrying out the Act into effect. It is submitted that Section 53 of the Act is so widely drawn as to incorporate what is termed in English Planning Legislation "default powers" whereby the Minister may carry out the duties of Planning Authorities which default in their functions. In other words, the Minister can appoint Town Planners to undertake the review of approved development plans and making such revocation or modification as may appear necessary.

Pursuant to Section 7(1) of the English Town and Country Planning Act 1962 if the Local Planning Authority fail to prepare and submit to the Minister for his approval a development plan or amendments to an approved development plan, the Minister may himself take appropriate action to make a development plan or request other Local Planning Authority to do so. In this case, it would be in order for the Minister of Housing and Local Government by statutory instrument to require Southern Planning Authority to carry out a new survey of either Lusaka City Council planning area and/or its additions or that of Living-

stone Municipal Council planning area and submit a report of such survey to the Minister for his approval.

The third method of planning control is by enforcement notice. These are the far-reaching provisions of the Town and Country Planning Act. If development or subdivision is carried out without the necessary planning permission or if the condition under which permission was granted has not been complied with, then the Planning Authority can serve an enforcement notice on the culprit calling upon him to demolish such building or other operation carried out without the necessary planning permission. Such notices were served by the Lusaka City Council on persons involved in the cases of Buanamfumu Phiri vs. City Council of Lusaka and Cullen Kashunda vs. The City Council of Lusaka. There are several cases such as that of Bandala vs. Northern Planning Authority[3] where enforcement notices were served. The legal issue which was raised by the case of Bandala vs. Northern Planning Authority was whether grant of permission express or otherwise by the official employed by the Planning Authority binds that Authority. The view held by the Tribunal is that the Planning Authority can by itself exercise the power to grant or refuse planning permission. It doubted whether the Committee of the Planning Authority has power[4] on the principle that delegatus non potest delegare.

This seems to be a sound principle of law. In England in the case of Southern-on-Sea Corporation vs. Hodgson[5] it was held that the fact that the borough engineer had told a prospective developer that permission was not required did not prevent the authority from serving an enforcement notice. In other words, the Officer of the Planning Authority has no power to stop the Local Planning Authority from serving an enforcement notice by his express or tacit approval of development which is found to have required planning permission. The ratio decidendi in the above case was applied in Norfolk County Council vs. Secretary of State for Environment and Another.[5a] The developers had applied to the Local Planning Authority for permission to extend their factory. The Planning Authority refused to grant the permission applied for. The Authority's Planning Officer whose duty it was to notify applicants of the decisions of the Planning Authority erroneously informed the developers by a letter that permission had been granted. This mistake was quickly corrected by sending another letter to the applicants Solicitors informing them of the Planning Authority's correct decision. The developers appealed to Courts arguing that since the first letter conveyed a grant a a permission should be deemed to have been granted. The Court nonetheless confirmed the principle that a Planning Authority cannot be bound by the error of its Planning Officer as such Officer's duty consisted only in

conveying and was authorised to convey the decision of the Planning Authority. This is sound principle of law, but whether or not it is good common sense is another matter. It differs from the organic theory of company law where the director of the company may in certain circumstances bind his company in the same way an agent may bind his principal in certain circumstances in contractual law if he has some express or implied authority or if he is in a class of servants who always deal with such matters. In the case of Southend-on-Sea Corporation vs. Hodgson the engineer who gave advice was the Authority Planning Officer the same manner as was the case of Bendale vs. The Northern Rhodesia Planning Authority where the Planning Officer-in-Charge gave an express or tacit approval to the developer namely Mr. Bendale who incurred expenses on the basis of such advice. This is the same position in Norfolk County Council's case. In a country like Zambia with illiterate majority there appears to be some injustice in following these English cases. Law should adapt itself to the Society in which it works what is good for Britain is not good for Zambia.

Once the Planning Authority has decided to serve an enforcement notice, such notice to be valid, must comply strictly with the law. Unless it does so, the Tribunal or the Court on appeal can declare the enforcement notice invalid.

In the first place, the enforcement notice can

only be served within four years of the carrying out of such development or the non-compliance with the condition imposed on the permission. The purpose, therefore, of planning legislation is to control development. Whether or not such control is effective in Zambia is another matter. On the basis of what the Tribunal said in the case of Bwanamfumu Phiri vs. The City Council of Lusaka, it would appear that there is no effective control in all squatter compounds. Control is, therefore, effective in some areas but non-existent in other areas, where the majority of the people live.[7] More of this will be said when the question of influx control is considered, for the moment it is only necessary to mention it here.

SERVICE OF AN ENFORCEMENT NOTICE

The enforcement notice may be served by either the Minister or the Planning Authority to whom functions under Section 24 have been delegated; provided that the service of such notice must be served within four years of any development or subdivision being carried out without the granting of planning permissions or in case of non-compliance with condition or limitation.

The enforcement notice must be served as soon as possible and in case of change of use, immediately the change of use takes place. The enforcement notice must be served on both the owner and occupier. It may also be served on any other person having interest in land such as the mortgagee.

Such enforcement notice may be served in the following manner :-

(a) by delivering it to the person on whom it is intended to be served

(b) by leaving it at the usual or last known address of such a person

(c) by sending it by prepaid registered post to his last known address

(d) in the case of the Company by serving it on its Secretary or clerk to the Company or by serving it on its registered office.

MAIN CONTENTS OF ENFORCEMENT NOTICE

In the first place, an enforcement notice should state the particular development or subdivision that has been carried out without planning permission or the condition which has been carried out without planning permission or the condition which has not been complied with.[8] In an English case of Francis vs. Yiewsley & Western Drayton Urban District Council a notice which ignored the fact that the planning permission had been granted for a limited time which had expired was held to be invalid when it only recited that development had been carried out without planning permission as it was based on false premises.[9] Secondly, the enforcement notice must state the date on which it is intended to take effect and such date must not be less than twenty-eight days from the date of service of such notice.[10] Unless this specific provision is adhered to strictly, the enforcement

notice will be held to be invalid.[11] Such was the position in the case of Bwanamfumu Phiri vs. The City Council of Lusaka where the Respondent was unable to prove when the enforcement notice was served and the notice was held to be invalid. It is, therefore, commonly stated that the enforcement notice must show two dates namely the date of taking effect and the date by which the necessary action should take place. It may be of interest to note that if, as was done in the case of Bambury and Another -v- London Borough of Hounslow and Another,[11a] if an enforcement Notice in proper form is served on both the occupier and the land-owner on different dates then such service makes the Enforcement Notice defective and it was held that such defect is fatal and cannot be cured by an appeal. It is because such enforcement Notice would have to take effect on different dates. The date on which an enforcement Notice takes effect is an essential matter to its validity.

The form of enforcement notice as shown on Page 110 of the Town and Country Planning Act Cap. 475 was criticised by the Planning Tribunal in the case of Bwanamfumu Phiri vs. The City Council of Lusaka[12] in the following terms :-

"Some confusion is perhaps caused to the Planning Authorities by the prescribed form of Enforcement Notice in the Schedule (Part 1) to the Enforcement Regulations. In paragraph 3 of that prescribed form, there is reference to "the date of this notice".

It would perhaps be better if that were amended to read "the effective date of this notice." Nevertheless, the effective date of the notice is clearly stated in paragraphs 5 and that, in all the circumstances does not comply with Section 34(4) of the Act." The fact that an enforcement notice has been complied with does not discharge it. The enforcement notice remains valid and applies to future violations Section 33(1) states that "Compliance with an enforcement notice, whether as respects

(a) demolition or alteration of any building or works or

(b) the discontinuance of any use of land or

(c) any other requirements in the enforcement notice shall not discharge the enforcement notice

Reviving or reinstating of any development, building or works that has been demolished or altered in compliance with an enforcement notice does not discharge it.

When a developer demolishes buildings which enjoy planning permission and thereafter without permission erects some other structures the Planning Authority can lawfully serve an enforcement Notice requiring the developer to remove unauthorised structure without at the same time requiring him to restore the building which enjoyed planning permission. In the case of Iddenden and Others -v- Secretary of State for the Environment and another[12a] this particular point was settled.

The person on whom an enforcement notice has been served may appeal to the Town and Country Planning Tribunal within twenty-eight days of such a notice. The Tribunal may do any of the following :-

(i) if satisfied that permission was granted for the development to which the enforcement notice relates or that no such permission was required or that the condition imposed have been complied with may discharge the enforcement notice concerning such appeal.

(ii) if satisfied that the enforcement notice has not complied with the provisions of the Act the Tribunal shall allow the appeal.

(iii) in any other case the Tribunal shall dismiss the appeal.

(iv) the Appellant may urge the Planning Tribunal that planning permission ought to be granted for the development or subdivision to which the enforcement notice relates.

The Tribunal can grant permission if taking into account the provisions of the approved development plan or development plan and/or any other material consideration permission should be granted. This would be in accordance with the intention of the Legislature in providing in Section 27(1) of the Act in the following manner :-

"The power to grant permission to develop or

subdivide land under this part, shall include power to grant permission for the retention on land of any buildings or works constructed or carried out thereon before the date of the application for such permission or for the continuance of any use of land instituted before that date."

In the case of LTSS Print and Supply Services Ltd. -v- Hackney London Borough Council and Another[12b] it was held that a man cannot revert to a previous use of his property without planning permission if such use was discontinued in favour of a fresh use involving development. What this case decided is therefore that if a person has an existing use of his property and abandons such a use in favour of one which accords with a development plan then such a person will not in future revert to the previous use of the property without planning permission.

(v) It may also be argued before the Tribunal that what is assumed in the enforcement notice by the Planning Authority to be development, does not constitute development pursuant to Section 22 of the Town and Country Planning Act.

(vi) Since the enforcement notice has to be served within four years of the erection of the building or work complained against or within four years of the change of use or violation of condition imposed the aggrieved person may urge the Court that the enforcement notice is barred by time limit.

In other words, that what is complained of in the enforcement notice took place more than four years ago.

In the case of Nelsovil vs. Minister of Housing and Local Government[13] it was held that the burden of proof lies upon the appellant to establish the ground that the development is barred by time limit. It is very difficult for the Planning Authority to refute such evidence once established by the Appellant. It, therefore, appears that the burden cast on the appellant is not very heavy.

APPEALS

Zambia has followed an independent path unlike in England where the Minister determines appeals and where such determination is based on recommendations made by the Inspector appointed by the Minister to hear evidence and make recommendations made by the Inspector but has to take into account national policy and the decision may ignore recommendation and centre only on policy. This mode of decision has been criticised as not being proper as one "who hears should decide", although supporters of this method say that decisions made by the Minister are purely administrative and should not be decided solely on evidence. However, there has been a new approach since the Town and Country Planning Act 1968 and some appeals can now be heard and determined by the Inspectors. Special categories of appeals have been set apart as being suitable for decision by Inspectors.[14]

The Minister can as pointed out ignore the findings of fact and indeed the recommendations made by the Inspector although he should not take into account fresh evidence without affording the appellants an opportunity to comment on such evidence. The appellants were not afforded such an opportunity in a case of French Kier Development Ltd -v- Secretary of State for Environment and Another[14a] and the Court held that the Appellant's interests had been substantially prejudice and that in the circumstances the Appellants were entitled to a clear and intelligible statement of the reasons of the decision. It is apparent that the Courts are trying to restrict the unfettered administrative action.

IN Zambia, a special Tribunal known as the Town and Country Planning Tribunal has been set up to deal with all appeals.[15] It is presided over by a legally qualified person who sits with two members of the Tribunal one of whom has to be chartered planner or a person holding similar qualifications. The Judicial Service Commission appoints a President. There are provisions for the appointment of Vice President who acts in the absence of the President or during the President's incapacity.

Section 11 makes the following provisions as regards appeal :-

(i) Any person whose interest in any land may be affected by any decision of an

appeal by the Tribunal shall have the right to appear and be heard on the hearing of an appeal.

(ii) The Tribunal shall hear and determine the matter of the appeal and is empowered to make an additional order or an order in substitution as it thinks fit. It can award costs to any party to the appeal.

(iii) It may either allow or dismiss the appeal. If the appeal is allowed the Tribunal will afford the Minister or the Planning Authority the opportunity of suggesting conditions if any to be imposed on the planning permission it wishes to grant it.

The Town and Country Planning (Appeals) Regulations (Government Notice No. 50 of 1963) make provisions for the manner in which the appeal is to be submitted and to whom the notice has to be submitted. Before dealing with the provisions of Appeals Regulations, it is essential to deal with the provisions of Section 29 of Town and Country Planning Act.

If the applicant is aggrieved by the decision of the Minister or Planning Authority, he may within twenty-eight days of receipt of such decision or such extended period as the Tribunal may grant appeal to

the Tribunal.

The Tribunal shall not entertain an appeal in the following circumstances :-

(i) if it appears to the president or vice president of the Tribunal that permission for that development or subdivision could not have been granted otherwise than subject to the conditions imposed having regard to the provisions of Section 25 and of appropriate development order or subdivision order or to any other directions given under such order.

(ii) if the Minister has certified at the time of making decision or if the decision is that of a planning authority, the Minister has certified within seven days of the making of such decision, that such decision is in the national interest.

The following are the main provisions of the Appeals Regulations :-

Every Appeal shall be commenced by a written notice of appeal in quadruplicate to be served on the Secretary of the Tribunal. The Appellant shall also serve on the Secretary the Appellant's case in quadruplicate, which is a statement setting forth the grounds of appeal and all facts which he considers relevant and material to his case and his contentions in law based on such facts.

The question which arises is whether the Applicant who does not file with the Secretary to the Tribunal a proper Notice within time but merely writes a letter intimating his intention to appeal is barred from proceeding with his appeal. In the case of Howard -v- Secretary of State for the Environment[15a] the Solicitors of the Appellant wrote to the Minister indicating their intention to appeal. Although the Minister had told them that such Notice was defective the Solicitors inadvertently delayed the posting of the proper Notice. The Court held that the provisions of the Act requiring Notice within specified time were mandatory and those prescribing the form the Notice would take were merely directive and therefore such Notice was valid and that appeal should be heard even if grounds of appeal are received out of time.

The Secretary then serves copy of notice of appeal and copy of the appellant's case upon the respondent who is invariably the Planning Authority. In some cases the objector may be joined as a second respondent.

The President or the Vice President of the Tribunal shall then cause the advertisement to be made calling upon interested parties to be heard at the hearing of such appeals.

Within 14 days of the receipt by the respondent of the notice of appeal and appellant case, or such

extended time as may be agreed to by the president or vice president the respondent shall lodge with the secretary a statement known as respondent's case setting out the following :-

(a) the reasons for the decision appealed against

(b) which of the allegations in the appellant's case he admits as correct and he denies and

(c) all other facts which he considers relevant and material to the determination of the appeal and

(d) his contentions in law.

The Tribunal has set out certain standards it has to follow in its decision. In the first place the Tribunal has ruled that "The Tribunal is not a Court, nor is a Planning Authority, when considering an application, a Court. But, whereas the Planning Authority's functions are primarily administrative, the Tribunal's are primarily judicial and although the Tribunal is not a Court,it is at least a judicial body and as such is under an obligation to discharge its functions judicially and in accordance with the rules of natural justice."[16] In other words, the Tribunal is a special Tribunal and not an administrative Tribunal. Its concern with policy if any is not pronounced as it is concerned more with pleadings as laid

down in the Appellant's case, the respondent's case and objector's case if any as well as evidence before it, unlike an Administrative Tribunal which concerns itself with matters of policy. In the case of Total Oil Products (Rhodesia) (Pvt) Limited vs. Municipal Council of Livingstone, it was held that the parties to the appeal were bound by the pleadings contained in their cases and they cannot go outside them" except with leave of the Tribunal.

Secondly, it has been laid down that "so far as onus is concerned, these proceedings being an appeal of judicial nature, there is undoubtedly an onus on the appellant to show that the decision appealed against is wrong and ought to be set aside ..... But the onus which an appellant must discharge before he can succeed in an appeal must not be confused with the onus relating to the application for development or subdivision." The onus is on the planning authority to show that development or subdivision should be refused.[18] In other words, the burden of proof is on the planning authority to show that the planning permission should be refused or granted subject to conditions. The onus cast on the appellant is very light in these matters. This is the position in England.

Rhodesian, Authorities, however, portray a different picture as can be shown by the decision of the Court in the case of Dickinson vs. The Minister of Local Government where it was held that "the conclusion towhich I have come in the light of the fore-

going consideration is that the Appellant upon whom the onus rests has failed to show that to grant his application would be in accordance with sound planning."[19] This decision was approved and followed in the case of the Estate of Wood vs. Minister of Local Government in the following words :-

"The onus is upon the appellant to show that the view which the respondent took of the matter was the wrong view."[20] In other words, the appellant has to discharge a very heavy burden of proof indeed. The Planning Authority has virtually no onus to discharge. This is based on the general theory that he who affirms must prove.

All those Rhodesia decisions contract sharply with what was said by the Zambia Town and Country Planning Tribunal in the case of John Pieter Liebenberg vs. The Municipal Council of Luanshya that "Although on a town planning appeal there is some measure of onus on the appellant to show that the decision appealed against is wrong, nevertheless, so far as the original application for planning permission is concerned it was for the Planning Authority to be satisfied taking into account only relevant considerations, that the proposed development was against public interest, before rejecting the application, and it was not for the applicant for planning permission to show the converse."

This is the attitude the Tribunal took in the

following cases A.G.W. Greyling vs. Southern Planning Authority pages 4 - 7; T. Sichone vs. Southern Planning Authority paragraph 21 and Total Oil Products (Rhodesia) (Pvt) Limited vs. The Municipal Council of Livingstone and that of Albert Edward Ball vs. Western Planning Authority.

Thirdly, the Tribunal can summon witnesses and take evidence. The Tribunal may take evidence on oath. Both the President and the Vice President of the Tribunal have power to administer the oath. It may make such investigations as may be necessary in order to arrive at a just decision in any matter before it. These powers are provided for under Section 12 of the Town and Country Planning Act. Regulations 11 of the Appeals Regulations provides that the Appellant, the Respondent and the objector or their legal representatives shall be given full opportunity of being heard and of calling such witnesses and producing such evidence as they deem fit. In cases where any of the parties is not legally represented and he appears not to do justice to his case, he shall be assisted to represent himself adequately by putting questions to the interested parties and their witnesses.

The Tribunal may inspect the sits of its own volition or at the request of any of the parties and may adjourn the case if it is in the interest of justice to do so.

The Tribunal takes the view that it would be better if the Planning Authority invited applicants for planning permission to put their cases where it is proposed to reject the application so as to satisfy the principle of natural justice. This was the reason why the Tribunal was critical of the manner in which Mrs. Malin's application was handled by Ndola Municipal Council, Nonetheless, it also took the view that since appeals will eventually come to it for determination and that the Planning Authority was an administrative body it was not so serious that the Appellant was not heard at the time his planning application was heard. This was discussed in the case of Malin vs. Municipal Council of Ndola and another. Whether the Tribunal should have adopted this course is hard to accept in view of the decision of the case of Ridge vs. Baldwin.[21] The fact that the Planning Authority is an administrative body does not in itself exempt it from observing the rules of natural justice. The case of Malin vs. Municipal Council of Ndola may be contrasted with that of Chendeeka vs. Luanshya Municipal Council in which the Court held that when considering[22] an application for a trading licence the rules of natural justice had to be observed by the Local Authority. This seems indeed to be good law. Planning law constitutes a system of licensing or regulating developments of land consequently what applies to other licences must obtain here. Since

appeals from the Town and Country Planning Tribunal lie to the High Court, the Tribunal is bound by the decision of the High Court. Although the decision of Malin vs. The Ndola Municipal Council has not been overruled nonetheless the ratio decidendi in the case of Chendeaka vs. Luanshya M.C. is binding on the Tribunal and should similar situation arise the Tribunal would tend to follow the decision of the High Court especially if this particular decision is brought to the notice of the Tribunal. Although the case of Kangombe vs. The Attorney General[22a] was decided on different grounds the obiter dictum in that case tends to show that even the executive or administrative body must follow the rules of natural justice in particular the audi alteram partem. No doubt the Court lower than that Court will respect the views expressed by it and will undoubtedly follow such obiter dictum although they are not bound to do so.

The Act provides "that the Tribunal shall not make any order which would operate in conflict with any provisions of an approved development plan."[23] The Tribunal, has however, interpreted that proviso to mean that "if there is irreconcilable conflict between the scheme (approved development plan) and the Ordinance (the Act), the Ordinance must prevail." This is not only good sense but resting on authorities of the doctrine of ultra vires. In other words, the legislature does not intend that an approved develop-

ment plan should be in conflict with the Planning Act under which it is made.[24]

It is also a principle guiding the Tribunal that it "could not purport to do something which the planning authority itself could never have done."[25] In other words, the Tribunal in making its decision must have "regard to the provisions of the development plan or approved development plan, if any, so far as material thereto, and to any other material consideration."[26]

Two other points have to be noted with regard to appeals. The first is that the person aggrieved by a planning decision either because his application has been refused or that it has been granted to him subject to conditions which he does not consider to be appropriate in the circumstances may appeal to the Tribunal within twenty-eight days of receipt by him of such decision which decision has to be in writing.[27] The Zambia provisions are, in fact, contrary to the decision in the Rhodesia case of Ali Adam Properties (Private) Limited vs. Salisbury City Council which was to the following effect "To be entitled to appeal in this matter the appellant must qualify either as applicant or assuming that Clause 38(1) is relevant as a person aggrieved. The question here is whether the Appellant for the purpose of Clause 17(6) was the applicant. On the evidence Shell was the applicant and the appellant was not.

In contract law, an undisclosed principal may assume rights and obligations following from a transaction entered into by his undisclosed agent. No authority has been cited to show that an analogous rule operates in the sphere of administrative law."[28] The ratio decidendi in the Rhodesian case seems to fit in with the English Authority of Buxton vs. Minister of Housing and Local Government where it was held that objectors were not persons aggrieved and that only the appellant to the Minister who is invariably the applicant is the person aggrieved.[28] In Zambia, on the other hand, the law has made provision for a person dissatisfied with a planning decision, if he has an interest in land which may be affected by such a decision, to appeal to the Tribunal within twenty-eight days of such decision. The Tribunal may extend the time within which to appeal. Such provision is not only good common sense but also necessary in view of the fact that planning permission, the landlord if dissatisfied with either refusal of such application for permission or with the conditions imposed on the grant of permission, may appeal to the Tribunal.. Such provision should be interpreted liberally as that seems to be the intent of the legislature. The most effective way of thwarting appeals which in some countries may be used for political purposes is that "if the Minister certified at the time of making decision, or if the decision is that of planning authority to whom functions have been granted under Section twenty-four, the Minister has

certified within seven days of the making of such decision, that decision is in the national interest" the Tribunal shall not be required to entertain such appeal. There are enormous powers which should be exercised with extreme care. In fact, even jealousy or hatred can influence Councillors who are members of the Planning Authority that they may be tempted to ask the Minister to make such a certification in order to block the propspective appellant from appealing. One may go further and say that political motivation may be used to bar the would be appellants. In Africa there is witch hunting for political enemies the possibility of using such powers is very real but there is no remedy as it is not possible to prove bad faith unlessone of those attending the meeting spies on the other members and turn the appellant's witness.

There is also a provision whereby an objector can be heard. The objector must be a person whose interest in any land may be effected by any decision. Such person can be heard at the appeal. Regulation 7 of the Town and Country Planning(Appeals) Regulations sets down that every notice by the objector of intention to be heard must be in quadruplicate and shall contain the residential or business and postal address of the objector at which service on him can be effected. The objector's case contained in his statement should set forth what he considers relevant and material to his

case and his contention in law based on such facts and grounds.

The question is who is the objector, what is the nature of interest in land which he should have to entitle such a person to be regarded as an objector in terms of both the Act and the Appeals Regulations.

The Tribunal in the case of Ball vs. Western Planning Authority has this to say "I rejected that argument. In my view the interest to be shown must be an interest which is certain. It may be present or future or even contingent interest. But it must be certain in the sense that it is ascertained." For Kitwe City Council it was argued that two interests which were likely to be effected were the need for Police supervision and the consequence depleting of policing resources in the municipality. This argument was rejected by the Tribunal as such interest could not be regarded as interest in land. The question of reduction in profit was also considered and this too was also rejected as it was not a proper planning factor to be taken in to consideration.

In the case of Total Oil Products (Rhodesia) (Pvt) Limited vs. The Municipal Council of Livingstone, the Motor Traders Association and the Livingstone Chamber of Commerce could not be heard as objectors in view of the definition of objector under the provisions of Regulation 3 of Appeals Regulations as read with Section

11(1)(a) of the Town and Country Planning Act since they both had no interest in any land which might be affected by the Tribunal's decision. Such interest must be certain and not speculative. Loss or reduction in profit is not a proper matter for planning consideration.

Once the Tribunal has decided to allow the appeal, it is obliged to seek the Planning Authority's views as what the Planning Authority deems suitable conditions to be imposed if any in accordance with the provisions of Section 11(1)(c) of the Act.

Once these views are communicated to the Tribunal, the Appellant should be given an opportunity to comment on them. It is trite law that the Tribunal will only impose such conditions as are of pure planning nature in accordance with the decision in the case of Pyx Granite Company Limited vs. Minister of Housing and Local Government already discussed.

CONCLUSION

From what has been discussed in the foregoing pages, it has been clear that the Zambia Planning Legislation has inherited a lot from the English Planning Law. The decisions of Town and Country Planning Tribunal have followed English decision where the provisions are similar. It would be far from the truth to say that the Tribunal has solely

based its own decisions on English Authorities since it has also followed the views expressed by the United Kingdom Minister responsible for Town and Country Planning as reproduced in Heap's Encyclopaedia of Planning Law. There is no doubt that English Planning Law has been introduced into Zambia or rather that we in Zambia have received English law as our own. We have, however, the innovation of sub-division which is alien to the English Planning Law. This seems to have been imported from South Africa as both Botswana and Rhodesia have similar provisions both countries have adopted South African law as their legal systems. Whether or not the reception of English Planning Law is to be condemned as is done in the Squatter Manifesto is difficult to say but one may be tempted to say that in modern industrial conditions, the standards of buildings have to be set up and unfettered development should be a thing of the past. The disadvantages of lack of control of development in squatter compounds are so numerous to mention.

The squatter compounds have as it were became dens of criminals. Most robbers who commit murders for money and car thieves are living in squatters. These men are unemployed but can easily erect a hut in squatter compound as it does not require money but merely physical power. The Authorities do not have an accurate population figures for those living in squatters consequently social services such as schools, clinics and welfare halls cannot be made available for them and where such services are

made available there are so inadequate as to make them of little value. This can be seen in January each year when schools open.

The residents of squatter compounds are mostly unemployed and indeed unemployables consequently malnutrition is prevalent amongst children in such places. The sanitary conditions of squatter compounds have much to be desired and in case of outbreak of such diseases as cholera the danger is likely to be enormous. No doubt this is the reason the Party and its Government is working behind clock to remedy the situation and upgrade the Squatter Compounds. Development and sub-division of land by individuals have to be controlled in the interest of the community. The places where heavy and noxious industries have to be situated appear to require control if only to avoid noise, bad smells and nuisance generally and certainly in the interest of amenity.

It is of interest to note that the provisions of subdivisions which are also enshrined to foster better agricultural production and [illegible] are of great economic importance, to these predominantly agricultural countries. Whether or not the Planning Control is effective in all areas where the Planning Act is in force is hard to say but gathering from what is said in the case of Bwanamfumu Phiri vs. The City Council of Lusaka, there is no doubt that control system has broken down in what is termed squatter compounds. There are many

more persons living in squatter compounds and site and service settlements than those living in other areas of our cities and towns. If this situation is allowed to continue then there will be many slums in Zambia.

The manner in which such situation can be corrected seems to be the control of influx of people from rural areas into urban areas by means of Model Villages and Rural Reconstruction Centres on the lines suggested hereinafter and also by arresting this influx by making the Rural Areas better and attractive by industrialisation and modernisation than they are today. This will form the subject of the following chapters.

CHAPTER 5

CONTROL OF INFLUX INTO TOWN AND RISE OF SHANTY (SQUATTER) COMPOUNDS IN ZAMBIA

COLONIAL ERA

During the colonial days the then Territory of Northern Rhodesia was divided into three special areas, Native Reserves, Trust lands and Crown lands.[1] It is in the first two that the bulk of the population lived in accordance with the British system of Indirect Rule, the natives were ruled by the Colonial Administrators in these two areas through their Chiefs and African customs were, in the main, left intact.[1a] In the Crown land, farms were allocated to white settlers and towns were established and in this area, English law was in the main used. This is in accordance with the British people's ethnocentric attitude and their superior race notion.[2] In fact, the Hilton Young Report supported an apartheid system as now operated in South Africa and it recommended such a system to countries of East and Central Africa in the following terms :

"In the complicated racial conditions which prevail in Eastern and Central African Local Government

institutions, provided that native and settled areas are arranged in homogeneous blocks of adequate extent, offer a field in which each race can control and direct its own more immediate affairs and learn to exercise responsibility unhampered by the complicating presence of the other. In this way they can allow free room for expression of individuality of communities entirely diverse in their traditions, habits experiences and requirements."[3] This is what South Africa says in defence to their system of Apartheid which system is used as means to retain power in white hands for as long as it is possible. It is a solution to their problem of how power can be retained.[4]

With such a system in vogue it is quite simple to see how Africans were regarded as visitors to towns of Northern Rhodesia and how it was necessary for Africans to be restricted to their own home areas. Foreigners to Africa became owners of the best parts of Africa by sheer manipulation of the African who were not used to such treacherous tricks.

The Order in Council[5] which can be regarded as the Grund norm never sanctioned discrimination as was practised in Northern Rhodesia. In fact, it made provisions whose implications barred discrimination as was practised in Northern Rhodesia.[6] In other words, the Order in Council was the Constitution of Northern Rhodesia and no law should have been made which restricted the rights of natives to live

wherever they pleased. This was, however, not the position. Several legislations were made which restricted the influx of natives into towns. All Africans living in towns were there for the convenience of the white man. Unless they held a Chitupa (Identification Certificate) they were not allowed to move from their homes into Urban Areas. Unless they either had an employment permit or visitor's permit, they could not live in the urban areas[7] and the native woman to live in Urban Area had to produce a marriage certificate which enabled her husband to get married quarters.[8] It was by this law obligatory for every local authority to earmark a certain place as African Housing Areas in their particular jurisdiction.

There is no doubt that Indirect Rule was resorted to as a means since "the scrapping and replacement of existing institutions needed men and money if not munition." It is for this convenience that the British Government introduced indirect rule.[9] This, therefore, encouraged migrant labour and discouraged any permanent urban African labour force.[10]

One may be tempted to say that by this system of apartheid as adopted in Northern Rhodesia, limited number of Africans would live and work in "European Areas", but the majority would live in the Reserves. By doing this the influx of natives into urban areas was effectively controlled. The Industrial Revolution had, at that time, not reached Zambia. There was then

no need to worry about Planning law. There was no need for a back to the land policy since the majority of the people regarded Rural Areas as their permanent homes.

It is only during the fight for independence that the African first realised that he was denied from building in towns as he would like to do. Certainly it is at this stage that the Squatter Compound arose.

The other reason which effectively controlled the influx into Zambian towns is that most of the people from Western, Eastern and Southern Provinces worked in Rhodesia and South Africa.[11] After independence, however WENNELA was stopped from operating in these areas. Ulora no longer operated and Smith's regime deported a lot of Zambians. These persons did not go home but came to live in towns and this swelled an already big population in town. It is this period which has attracted Social Scientists and Town Planners and which concerns us now.

INDEPENDENCE ERA

Immediately before independence, the African nationalists began to agitate the masses to fight injustice inherent in the Colonial subjection. They began to advocate for equality in their treatment, equality in their social status as compared with that of the white settlers. Africans began settling where they thought they should build houses and live and were disregarding labour camps and were questionning the theory of being regarded as alien visitors in indus-

trial centres and European indigenous hosts."[12] It is at this stage that George Compound, Misisi Compound, Marrapodi - Mandevu in Lusaka and Malota in Livingstone were built. It is at this stage that the nationalists encouraged the squatter system which has grown to this magnitude that we know it today.

After independence, people flooded "into urban areas in search of job opportunities, better living and educational facilities or in the hope of walking in the corridors of power."[13] This creates slum environments and leads to social disintegration. "Traffic jams, slum housing and over-strained public services, among other indicators, provide visual or threatening disintegration of urban life."

These are the problems which have arisen because of industrialisation which cannot be solved by African tradition. They are problems resulting from industrialisation and over-crowding. These are problems which certainly have no parallel in a primitive stage of development in the world as a whole. Certainly in an African village there was "no industrial squalor to escape from, no desire to improve the lot of manual workers or provide them with rapid transport, and certainly no intention of producing a balanced community."[14] It is, therefore, necessary to import sophisticated techniques[15] from countries which have already devised solutions to the problems associated with modern industrial and urbanised conditions. It

is to this end that one would disregard the theory that the squatters "have evolved a planning philosophy that is based on firmly traditional values modified to suit urban condition"[16] as fallacious since it ignores the fact that there are no traditional values to cope with large numbers of people, traffic jams and long journeys to and from work. Such an approach has been responsible for the planning of such places, as Kaunda Square Site and Service Scheme, which has made no provisions for parking bays for the people living there and no provision for a garden near the house (mandamino in siloxi) so popular among villagers on the assumption that villagers in rural areas live in crowded villages, which is not supported by villagers themselves. After all, even in Britain the truly Planning Legislation only took place in 1909. Prof. Mitchell has admirably put this matter in the following way "Throughout history the technological and cultural advances of societies has been marked by the growth of large cities. Archaelogical reports abound with references to large and complex settlements. But the size of cities and number of cities in any society is limited by the level of technological development. Sheer physical necessity imposes a limit on the size of any settlement in a primitive community. A city the size of London could never exist in a Society without the facilities of modern engineering."[17] Surely where about half a million people live one would not expect the same organisation to exist as

one sees in a village of thirty to fifty people. The problems created by overcrowding have indeed to be solved and the system best suited to solving such problems is by planning law.

The problem is not that they are squatter compounds but that these squatter compounds are operating outside the planning law.[18] This was the opinion of the Town and Country Planning Tribunal in the case of Bwanam-fumu Phiri vs. The Lusaka City Council. This is a problem which requires immediate solution before time runs out. The authors of the Squatter Manifesto believe that the fact that the Squatters ignore planning law is a proof that the present planning law of Zambia imported as it is from British is unsuitable to Zambian conditions. Surely this argument breaks down on the basis that the fact that there are so many traffic accidents in Zambia does not necessarily prove that the Roads and Road Traffic Act is not appropriate to Zambian conditions, nor would one suggest for a moment that because there are many aggravated robberies in Zambia, the law relating to robberies should be scrapped and persons allowed to respect only the law of the jungle. That is surely carrying traditional customs to an absurd extreme.

That being the fact, one would agree with the Town and Country Planning Tribunal that because Squatters have erected buildings without permission, the Planning

Authority cannot be denied its rights to compel any squatter by an enforcement notice to demolish the building. The control mechanism has certainly broken down in squatter compounds but that does not alter the law. The only ground on which Government of the day cannot order wholesale demolition is on humanitarian grounds that there are no houses in which squatters could be housed should their houses be demolished wholesale. The other reason is obviously fear of disturbance that could emanate from such an action. One must not forget that social researchers have found out that the majority of people in Lusaka for instance live in squatter compounds and these squatters are registered voters. No Government would temper with the majority of its voters without losing elections. Unless elections are rigged in the manner they were done in both the Nigerian Federal Elections and those of the Western Regional Government of Nigeria, the Government is bound to lose the elections, but what happened in Nigeria as a result of such rigging of elections and other election malpractices is still so fresh in minds of the people of Africa,[19] as to act as a deterrent here. It has been necessary in Zambia, therefore, to look for other solution. The solutions to which Zambia has resorted are :-

(i) The Village Regrouping and Rural Reconstruction

(ii) The improvement of Squatter Compounds and Site and Service Settlements.

Whether these villages are a success depends on a number of factors. It is the purpose of the next chapter to look into the question of village re-grouping and Rural Reconstruction as a solution to outspread of towns and many other social evils connected with urbanisation such as unemployment and increase in crime especially those of dishonesty, offences which were rare in the pre-independence Zambia, but which are rampant now.

The major demerits of the influx control as then practised in Northern Rhodesia was its racial overtone. The control mechanism was based on the skin pigmentation of the individual. Residential areas in urban centres were so arranged as to protray this racism. There were European residential areas, Indian areas popularly known as second class areas, coloured areas and indeed African areas. The merits of the system were undoubtedly the effective control of influx into town and the city control of the would be criminals by registration of all Africans living in town by means of a pass system. Every resident and every visitor in the "African township" was registered and this thwarted the presence of the undesirables. The crime rate was consequently low and crimes of violence connected with theft were non existent. Planning for Social Services, Community halls and other recreational Centres was facilitated by registration by means of pass system since the Authorities knew at any point in time the number of persons living in the African townships.

CHAPTER 6

VILLAGE REGROUPING AND RURAL RECONSTRUCTION

The outspread of towns and cities in Zambia would force other persons to live out to peri-urban areas where their occupants would be far from their jobs, shops and schools in the central area.[1] It is of increasing concern to this country where the poorer section of the community live far from the centre of town whilst the rich are within easy reach of town-centre. There is no doubt that "the city was designed primarily for an expatriate minority population and the planners never thought that our towns would grow to the size they are now. Consequently, the development plans approved some twenty years ago are completely out of date and need revision. Indeed provisions for such review and modification of approved plans are contained within our planning legislation.[2] This is a nice provision but modification of approved plans with the consequent revocation of planning permission entails payment of huge amounts of compensation under the provisions of Part VI of the Town and Country Planning Act. The Governments of developing countries have no sufficient funds to pay for such compensation.

They are preoccupied with raising the standard of living for all persons in their respective countries. The standard of living is too low in the rural areas to permit the use of scarce funds for such wasteful use. In emergent countries the Government's task is economic development, rural reconstruction by building roads, schools, hospitals and various other useful projects such as the construction of dams, big agricultural schemes etc. which would be of immediate benefit to the starving millions.[3] It is because of this that the Government of Zambia has aimed at Village Grouping.[4] Village Grouping or Amalgamation of Villages is not a new concept. Its origin is to be found with the interest shown in this matter by the British South African Company in 1906.[5]

It was primarily intended for administrative control. The trial made at amalgamating villages failed due to the fact that personal, domestic and social disputes multiplied in these amalgamated villages and that economic factors were not taken into account in establishing such villages. Small villages were economically viable and socially desirable. These conditions, although drawn from 1906 experience, may be of relevance today.

Whilst direct rule as opposed to indirect rule obtained in the then Northern Rhodesia Native Authorities were established and were to be responsible for

the control of the large settlements. These were condemned in that they placed excessive pressure upon local resources, they were unavoidably dirty (This is the position with squatter compounds today) and unhygienic, traditional norms became lost and finally not the least, they promoted political, social and religious unrest. This was, in fact, the case with the Lumpa uprisings of 1964 when these religious villages challenged the State authority. In 1945, the Parish System and later Rural Townships, perhaps based on the English New Towns Act, were tried, of them only Mungwi became successful because of making it economically viable.[6] Once it is accepted that to be successful a Grouped Village or model village or Rural Reconstruction Centre must be economically viable then it is necessary to see if that is what is being proposed. One has to look at the Secretary General's Circular No. 12 of 1976 which spells out in some details what is expected in the Regrouped Village and compare it with the New Towns Act 1945-1965 of the United Kingdom. The purpose is to bring people together so that social services can be brought to the people cheaply. Villages are now scattered all over the country and it is not financially possible to have every village supplied with a school, clinic and other services.

Even if we had money, we do not have manpower to man these vital institutions. Thus village regrouping is a means of achieving the country's objective. Rural Reconstruction centres are intended to curb crime rate which is believed to be resulting from unemployment of our young people.

Although one must not forget when talking about crime that aliens too play a major role not only in supplying firearms for the purpose of aggravated robbery but also committing several offences relating to property and persons. The circular, therefore, lays down what is requisite for a better location of Regrouped Village or Reconstruction Centre insofar as Physical Environment is concerned. Briefly these are the provisions of the circular.

1. <u>PHYSICAL ENVIRONMENT</u>

The following are the physical requisites of a regrouped or model village and rural reconstruction centre :-

(a) It must have an adequate and perennial water supply for human consumption, animal husbandry and if possible for irrigation

(b) The land must be fertile enough for the people to grow crops that are suited to the weather and other conditions in the area

(c) If the area is for animal husbandry, there must be enough grazing land. There appears

to be a motion here that if persons are those who are interested in ranching or dairying then enough land to support the livestock must be maintained

(d) Communication must be easy within the area. In other words, the area must be accessible at all times. Places which are either swampy or hilly are to be avoided.

(e) The area should have good natural drainage so that it is neither water-logged nor its gradient so steep as to allow too much rain-water to run off and thereby make the water table of the area too low.

(f) The area should have adequate building materials like clay for brick-making and trees for beams and rafters.

This means that the area has to be properly surveyed so as to indicate where water is to be found, and building materials as provided herein. This, therefore, shows that a proper plan for the area has to be made before the model village or reconstruction centre is established.

2. PHYSICAL INFRA-STRUCTURES

The fault with the system of village regrouping is that it relies heavily on self-help. People who are used to living in scattered villages will not take kindly to living in regrouped villages unless some sort of inducement is provided for

by the State.

The Circular, however, requires that the people should see to it that :-

(i) necessary access roads are constructed

(ii) adequate water supply is available and if possible should be in the form of piped water

(iii) toilets are constructed and where possible a sewage system installed

To provide these physical infra-structures require money. it is indeed true that most villagers have no money and technical know-how to carry out these infra-strucres.

3. SOCIAL INFRA-STRUCTURES

Each regrouped model village or rural reconstruction centre will have the following :-

(a) A school and a nursery for both education of the children and for adult education

(b) Clinic or health centre

(c) Communication connection with the rest of the country

(d) Government agencies like Agricultural Extension Officers, Cooperative Officers etc.

(e) Marketing facilities for agricultural inputs and produce

(f) A party office

(g) Recreational facilities mostly on self-help basis

In these fields, Government will provide manpower and technical assistance.

4. THE LAYOUT OF A REGROUPED MODEL VILLAGE OR A RURAL RECONSTRUCTION CENTRE

Stress is laid on security, so that there are the following provisions :-

(i) The plan of the Regrouped Village or Rural Reconstruction Centre should take into account the defence requirements of the village community.

(ii) To that end there should be access from each direction of the settlement of institutions like schools, markets, party offices and recreational facilities.

(iii) Due consideration should also be given to future expansion of agriculture and any industry in the village or reconstruction centre.

(iv) Provisions should be made in the layout of the villages and Rural Reconstruction Centres for household to have on its plot enough land for market gardening and the growing of a hedge round the house. This is the Garden City theory which seems to have been forgotten by the planners of such places as Kaunda Square and Kabwata in Lusaka where the plots are so small that there is no parking area for even a small car. It is indeed this notion of planning which will

eventually create slums in Zambia.

(v) Finally, the regrouped village should have a cemetery to provide a home for the dead of such a village.

There is no doubt that this is a nice village in which to live. It appears to have been planned properly. Unfortunately, for the system it has no legal backing at all. Unlike the English New Town Act of 1946, it has no Development Corporation[7] to set it on a sound basis. It is a system that has been talked much about but very little is done about it.

The basic principle in this matter is the same as that the overspill of population in towns should be removed.[8] The intention behind the (English New Towns) Act is that new towns shall be self-supporting, self-contained communities living full independent life in all respect."[9] It is indeed true that the new Towns Act pervades our plan for Regrouped Model Village or Reconstruction Centre.

It is not necessary for Government to create a development corporation for the regrouped model villages or reconstruction centres to be success but some machinery other than the will of the villagers should be worked out to provide for the laying out of a Regrouped Village and also the development of such a village before it is fully functionary.

The circular differentiates Regrouped Village from the Rural Reconstruction Centre in that a village should have families or households and yet the Reconstruction Centre is intended for the youths. At

least 800 youths to a Centre. Its residents will, therefore, live there on temporary basis. Although the Centres are intended as places where youths who are likely to loaf in towns can be sent, there is no plan for those who leave the reconstruction centre. Although the scheme is intended to serve as a solution to crime and political disturbances, it may end up as a training ground for the very evils that it is intended to prevent. Those who leave the Centre will require employment. They will have been used to regimentation and can be easily used by subversive elements in the country to cause troubles and untold hardships. Unless means are provided for transferring persons from Rural Reconstruction Centres to Regrouped Villages there appears to be little to gain by the scene.

The Circular from the Secretary-General has laid down certain important aspects of new regrouped villages. When one looks at some of the provisions of the Northern Rhodesia Town Planning Ordinance 1929, there appears to be much similarity especially as regards what to look for before a village is established.

There is no doubt that Village Reconstruction aims at mobilising the nation to improve the lot of those persons living in the Rural Area by providing them with the necessary employment they badly require and to raise their economic standards.

"One method (therefore) of dealing with the prob-

lems created by the outward spread of towns and over-spill from redevelopment of older urban areas is the planned dispersal of population and industry to new and expanded towns."[10] In the place of new expanded towns, one should put regrouped model villages. That would suit what Zambia requires.

There is provision for some industries like bicycle repairs, tin-making, wood-carving, motor-car repairs and certainly repairs of agricultural machinery like tractors, water pumps, ploughs etc. to be carried out at the regrouped villages. This would certainly make villages economically viable. Although it would not eliminate unemployment in urban areas, the system perhaps if done properly would go a long way towards reducing unemployment and increasing exports since many raw materials will be produced by the regrouped villages. It will also, perhaps, reduce our dependence on imported food stuff.

George Kay[11] has predicted that village regrouping is bound to fail on the following grounds :-

(a) There are no advantages to be gained from living in a large village. Most Zambians have come to value freedom of living where one pleases. Socially small independent settlements are highly desirable and viable.

(b) Many Zambians still believe in sorcery and the larger the village the more the witches are imagined to increase and the danger of living in such a village.

(c) Under conditions of over-population, the process of land deterioration begins slowly but gathers momentum as it progresses.

(d) The creation of population densities locally or over a wide area, in excess of the carrying capacity of the land is likely to endanger natural resources that are likely to affect living standards adversely.

There seems to have been no plan for those who leave Reconstruction Centres. They are supposed to learn the art of agriculture but is there a plan for them to be given small-holdings of reasonable sizes when they leave these centres ? It appears that there is no such plan. There appears also to be no relationship between the Model Villages and Reconstruction Centres. The purpose for which these Centres were created will not be served unless the Government devises another system whereby our Grade Seven School leavers are trained in useful trades not necessarily farming because the country cannot depend solely on farming. What is required is an economic viable unit where besides farming other industries and indeed the other occupations are made available in rural areas.

These Centres if not handled properly may create problems of their own. Young men and women who go to these centres will have received some military training and subversive elements may use such skill to the detriment of the State, in particular, and the people in general. This is possible where no arrangements are made for the employment of those who have been trained

at such centres.

Closely related to regrouped or model villages is the question of village registration. The Registration and Development of Villages Act No. 30 of 1971 provides for the registration of every village in the country. All persons living in each village who are of the age of fourteen years and above have to be registered. A person of fourteen years or over who lives in a village who is not an inhabitant of any other village, who, or one of his parents, grand-parents or great grand-parents, was born in such a village, has to be registered. Such person cannot be evicted from such a village. He can only leave the village on his own accord and he can only be regarded as having left such village when he settles in another village and becomes registered in such a new village. In the case of Mwiinda vs. Gwemba[12] Mr. Justice Cullinan decided that absence from a village whilst working in town or along the line of rail is not to be regarded as an intention to leave the village. This same sort of reasoning was made by the High Court of Northern Rhodesia in a case[13] where an appellant who was a former slave in Liyala village of the Western Province, was ordered by the Induna to leave the village because of the manner in which he treated his former master and his relatives. The Court held that the powers of expelling persons from villages can only be exercised by the Litunga and Kuta. Of great importance to our particular purposes is the provision in this Act for village Productivity Committee and Ward Council. The purpose of this Committee is to increase village productivity with the conse-

quent raising of standard of living in the rural areas. If the standard of living in rural areas is raised then the need for dwellers in rural areas to move into urban areas for the purpose of looking for jobs will not arise. The housing problems in town will be much reduced since only those born in towns will eventually require housing and such increase in towns will be restricted to natural increase. The only criticism that can be made against this Act is that there is no provision for restricting the establishment of new villages. By its provisions concerning village productivity committees it appears that new villages can be established with an adult population of not less than twenty persons. This seems to conflict with the very purpose of regrouped villages or model village in the sense that regrouped villages will normally be big villages where facilities such as schools, clinics or rural health centres, community centres industries and shops will be made available whereas smaller villages will have very few people Population in such regrouped villages will permit the provision of all facilities. It is submitted that establishment villages should not in future be allowed if the villages concerned are of such small sizes as to defeat the purposes of village regrouping or reconstruction centres. One would have expected the Government to have restricted the establishment of new villages to those of the sizes of grouped villages in

order to merit recognition. There appears to have been no-co-ordination in the introduction of registration of villages and the introduction of regrouped villages and reconstruction centres. It is submitted that since village regrouping presupposes a planned bigger village such villages should be made the subject of planning law to avoid the future destruction of the pattern of these model villages. This can be done by an Order of the responsible Minister.

CHAPTER 7

THE UPGRADING OF SQUATTER COMPOUNDS AND SITE AND SERVICE SETTLEMENTS

On the 20th July, 1972, the Ministry of Local Government and Housing issued a circular letter entitled "Housing Policy under the Second National Development Plan."[1] It was sent to all Local Authorities. Of great interest to those interested in the question of Squatter Settlement is the following quotation from the Circular :

"Another break through in the Housing Policy is the Government's acknowledgement of Squatter problem and the need for Councils to take action. The first and foremost action necessary is to contain the existing squatter areas to their present sizes and the preparation of serviced plots which should be allocated to the squatters whose settlements will be demolished. Secondly, where, in the case of urban local authorities, there is justification for the retention of a squatter settlement, the Council should plan for its upgrading by planning for the provisions of piped water, "road and refuse removal services, sewage and street lighting and other services."[2]

There are various reasons which led Government to consider upgrading squatter compounds and making them permanent. The first is the political motivation. The people in the squatter compounds are voters and they outnumber those who live in what were regarded in the Colonial days as "white areas." No government would tamper with the majority of its voters unless its dictatorial methods have been so worked out that there is no danger of being overthrown. There have been examples in South Africa and Rhodesia where the oppressed majority have risen in arms to fight oppression and racism.

Tanzania is trying to solve this squatter problem by removing all loafers from urban areas to the rural areas.[3] Whether Zambia will follow suit is yet unknown. From experience so far there is a strong possibility that Zambia may also adopt this solution. One must, however, be reminded that Tanzania has no Constitutional Bill of Rights so that people's movements can be restricted without fear of contravening the Articles of the Constitution. This is not so in Zambia where a man can live[4] wherever he wants to without fear of molestation.

The second reason is financial. The Local Authorities have no money to erect houses for every resident of their area. It becomes not only a solution of acute shortage of houses but also it is in line with the

Zambian spirit of self-reliance. The common folk are, therefore, tacitly allowed to build shelters where they can live. Without these squatter compounds the Local Authorities would have been faced with insurmountable tasks of finding a shelter for every resident.

Besides that, the majority of those living in squatter compounds could not afford to pay the very high rents payable in Council housing areas. Local Authorities are owed a lot of money by their tenants. If all those living in the urban areas were supplied with housing by the Local Authorities, the rent in arrears would not only have increased several times but the Councils faced with problems of finance, would hardly meet their obligations in providing tarred roads, sewerage, piped water, refuse removals etc. If the Local Authorities are unable to render all services to few housing areas, how much more would their problem be increased. There are the real reasons which led Government of the day to think of the upgrading of squatter compounds and also to behave as though they, the Government, did not see that Town and Country Planning Act was being violated by so many squatter compounds being outside the law.

The circular of the 20th July, 1972, therefore, makes provision for the planning of squatter compounds before their being upgraded. In other words, roads will be provided for, schools and clinics will be

provided for and the National Housing Authority will be the approving authority. In other words, the new squatter policy incorporates the idea of planning, National Housing Authority will approve schemes submitted ot it by the Local Authorities. No doubt there will be a uniform type of lay-out for all squatter compounds in the area.

The people living in squatter compounds had no right to the land whatsoever. There is no doubt that if enforcement notices were issued en mass, the tenants would have no legal right to challenge such notices. Firstly, they are mere trespassers who can be thrown out without any legal problem at all. They have no right to be where they are. Even where the Party Branch Chairman[5] have allocated plots, they have no colour of right to do the allocations. It is what Andrew, Christie and Martin call "squatting in the technical sense of taking over someone else's land."[6]

The second is that the buildings were approved under neither the Town and Country Planning Act nor the Public Health (Building) Regulations and no building should be erected in those areas subject to an approved development plan without such consents.[7]

In other words, the Planning Authorities would be perfectly entitled to serve enforcement notices on the occupiers of houses and other buildings within

squatter compounds without incurring heavy compensation payments as provided for by the Town and Country Planning Act.[8] In other words, the Local Authorities are indeed not obliged under the law to recognise squatter compounds. There is one interesting point about whether or not Local Planning Authorities have actually sanctioned shops, bottle stores and beer halls that they found within squatter compounds. The premises are either licensed under the Trades Licensing Act or Liquor Licensing Act or Opaque (Traditional Beer) Act. All cities and municipal council are Planning Authorities[9] as well as being Licensing Authorities under the Trades Licensing Act.[10] Besides that their approval is indeed sought under the Liquor Licensing Act by the Province Liquor Licensing Board.[11] The question is whether or not this approval under these provisions would act as an estoppel to the Councils concerned when and if they desire to enforce the provisions of the Town and Country Planning Act. Would the persons affected successfully plead that there has been a grant by implication since Licenses have been issued by the Councils in their role as Licensing Authorities. This question was raised in the case of Sombai Mangabhai Patel and the Lusaka City Council in its capacity as a Local Authority submitted his

application under the Public Health Building Regulations. The Council's Medical Officer of Health then wrote to the applicant stipulating the conditions under which the building could be made to conform with the standard required for the Bar. The Appellant, Mr. Patel, contended that when he received a letter from the Medical Officer of Health, he regarded that as an implied permission to develop. The tribunal held that "whilst, we can understand the difficulty of a layman being somewhat confused by the multiplicity of functions thrown upon the Respondent in its different capacities as (inter alia).

(a) a planning authority

(b) under Public Health (Building) Regulations

(c) as Local Authority itself building and operating bars, we do not agree that there was any grant of planning permission expressed or implied in this case. The letter and report mentioned in paragraph 4 of this Judgement were clearly in connection with the Applicant's proposed application for a liquor licence."

Whether or not this is a good law is yet to be decided by the ordinary courts of the land. There is no doubt that acceptance of such a decision creates hardships to applicatns. Surely the Council in whatever capacity it works should always take into account

other laws. That does not mean surely that other laws should so influence them as to reach decision, by all means that is not what should be done in view of the authority of Pyx Granite Company Limited's case already quoted. What appears should be done is to draw the attention of the applicant to the provisions of the Town and Country Planning Act and to tell him that permission under this application does not include permission under the Town and Country Planning Act and that this permission should be obtained before unnecessary expenses are incurred. This would not only be fair in a country where its majority are either illiterate or semi-literate but it would be something that a country professing to be humanists should do. Indeed, that would be understandable if it happened in a local authority which is not at the same time a Planning Authority as it happened in the case of Bendela's case.[13] Here the small Local Authorities especially those in the rural areas, cannot surely afford to employ qualified planners and lawyers on their staff, although it is not known how far the present law which makes the Local Government Service Commission employer of all local authorities[14] officers and employees will affect the position.

The other question which was canvassed in the case of Bwanamfumu Phiri and the Lusaka City Council;[15] is also of great relevance to Squatter Compounds. Is it

fair for the Planning Authority which has allowed squatter compounds to mushroom in its area to require one of the many squatters living in a particular squatter compound to comply with the provisions of the Town and Country Planning Act ? Is it fair to enforce planning law in an area where planning law enforcement has broken down ? There is no doubt that legally the Planning Authority has to enforce the Planning Law in all its areas but would that not be discrimination pursuant to the Zambia Constitution[16] to single out one man simply because he is not in the good books of some Councillors of the Planning Authority. Would this not be the same things as in South Africa where "natives" are subjected to treatment not accorded to the "whites". Would it matter whether the man singled out is of the same skin pigmentation as the persons subjecting him to differential treatment ? This was the question which was raised in the Swanamfumu Phiri's case. The Tribunal had this to say about this argument.

"The appellant's advocate points out that in the area near the plot, there is an area known as George Compound formerly called Kapwepwe Compound, which contains literally hundreds of unauthorised structures including several unauthorised bars and beer halls. This contention appears to be justified by inspection. Indeed it appears that in the area any semblance of planning control has broken down.

Nevertheless, neither two wrongs nor two hundred wrongs make a right and we are concerned with the facts of this case which are that on evidence before us that this bar and beer hall have been built without planning permission which was certainly necessary."

Concerning that what the Tribunal said is true assuming there was no Bill of Rights in the Zambia Constitution, the next question would be what is the purpose of planning law ? What is the intention of the Legislature in passing the Zambian Planning Act Cap. 475 ? Was the question of Amenity not one of paramount importance ? How is amenity improved by demolition of one bar and leaving several unauthorised structures standing in the same area ? Surely the decision cannot be supported on the question of the Bill of Rights enshrined in the Zambian Constitution nor can it be supported on the basis of Part V of the Second Schedule to the Act itself. No doubt the fact that the area is a squatter compound is "any other material consideration."[16a].

The other related question is of knowing when such structures in the Squatter Compounds were built in order to see if the four years period has not expired.[17] This was also an issue which was raised in Bwanamfumu Phiri's case already quoted. The Tribunal in that case said "The exact date when the development was carried out is difficult to pinpoint. Accordingly, it is difficult to say whether the four year period within

which an Enforcement Notice under Section 31(1) of the Act can be served has expired or not."

Surely in the case where the other side cannot be expected to know the date and cannot challenge the evidence of the other party, then the unchallenged evidence will stand. So that the Planning Authorities even if they desired to enforce the Planning Law would find it difficult in doing so because of the problems raised by the inaction for a long time. The Law will favour the squatters. Certainly this may be one of the reasons why the Government is now so anxious to regularise the position by giving squatters some sort of tenure be it tenancy or right of occupancy whatever term one uses.

To this end, it has been the declared Government "Policy to survey all existing squatter areas and to decide which can be effectively upgraded . . . . . The general policy will be to treat squatters the same as a participant has been treated under a Basic Site and Service."[18] In other words, occupants will be legalised. Such legalisation has already taken place under Housing (Statutory and Improvement Areas) Act 1974.

McClain[19] in his paper on the Legal Aspects of Housing and Planning in Lusaka has raised some interesting questions regarding the effect of the Constitutional provisions especially on the proviso that right of movement provision is not contravened by a

law which makes provisions :-

(a) For the imposition of restrictions that are reasonably required in the interest of defence, public safety, public order, public morality or public health, or the imposition of restrictions on the acquisition or use by any person of land or other property in Zambia, and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society."

He contends that the qualification on the right of movements suggests a number of possibilities for the limitation or reduction of urban population.

(i) That the removal of person from urban areas to rural areas can be justified on the basis of defence, since large concentration of population can expose such people to bombings from our hostile neighbours. Could this really justify the removal of persons from Lusaka and Copperbelt towns to Western and Southern Provinces regrouped villages or reconstruction centres which are nearer to South Africa and Southern Rhodesia, where the danger is greater and where loss of life from bombings and land mines has been the order of the day.

The other possibility he raises is that the Squatter Compound can be a source of diseases and during the time of an epidemic, it would be very explosive area because the health standards are at their lowest, lower than those in a rural village.

The other possibility is that squatter compounds can be dens of criminals. If one looks at the motor vehicle thefts in Lusaka and the places from which car thieves come, this will certainly prove the case for removal of loafers on the lines of rail as has been done in Tanzania. Most loafers live in squatter compounds. The other question is that of lack of housing if squatter compounds were removed. This has been dealt with sufficiently. Squatter compounds have been legalised by the Housing (Statutory and Improvement Areas) Act 1974 as the Government has seen that "Townships have sprung up virtually from nowhere in many cities and towns as well as in the countryside. In future, these will create immense social problems of which we already have enough."[20] It is to correct this trend that the present law has been made.

The Government finally decided to enact a Legislation, this is the Housing (Statutory and Improvement Areas) Act 1974 which provides for the upgrading of squatters.

The objects of this Act are as follows :-

(1) To provide for the letting or transfer of pieces or parcels of land on site and service schemes and buildings on Council housing estates both of which may be declared statutory housing area.

(2) To provide for the establishment of a Council registry for all those Councils having Statutory Housing Area or Improvement Area within their jurisdiction.

(3) To provide for the control of areas known as squatter compounds which may be declared Improvement Areas.

(4) To provide for matters connected with or incidental to the foregoing.

It is (3) above that will be discussed hereafter as it relates to our subject of the upgrading of squatter compounds.

In order to control and limit the ever increasing number of houses erected in squatter compounds, the Act makes the following provisions :-

1. (a) "Every building erected and every improvement effected on any land to which this Act applies shall be in accordance with specifications approved by the National Housing Authority or by the Council in whose jurisdiction such land is situated."[23]

Such provisions surely is intended to save the purpose of Town and Country Planning as well as those of Public Health Building Regulations. It is tantamount to approval of building plans wholesale.

2. The act goes further and provided that[22] "A person shall be guilty of an offence under this Act if he :-

(a) without lawful authority uses or occupies any piece or parcel of land or building in any area to which this Act applies

.....

(c) erects any building or structure in any area to which this Act applies without prior approval of the Council within whose jurisdiction the land is situated."

It is, therefore, unfortunate that this Act does not apply to all squatter compounds since the provisions of the Act applies only to land within the jurisdiction of a Council which has been declared by the Minister as such by a Statutory Order.[23] It is not all that easy for a squatter compound to be declared an Improvement Area. Two conditions have to be satisfied before the statutory order can be made declaring such a squatter compound an improvement area.

(i) the land must be held by Council by way of leasehold or grant thereof has been made to the Council in accordance with the provisions of the Zambia (State Lands and Reserves) Orders 1928 to 1964.

(ii) A plan showing the particulars or details hereafter mentioned and duly approved by the Surveyor-General and the Registrar of Lands and Deeds."

It is, therefore, obvious that not all squatter compounds fulfil these conditions. Some squatter compounds are in private hands and yet others are owned by the State. The exercise will undoubtedly be costly to Councils since land will have to be acquired from either individual owners or the state. In both cases, the preparation of Title Deeds will result in some costs. That will be the same with regard to surveys to be carried. It would have been easier if there were sufficient funds for the purposes of squatter compounds upgrading but as it stands the control machinery will be less effective and too slow.

People will continue to erect houses on lands which they do not own as they feel and no satisfactory method of control has yet been devised.

Those squatter areas which will be subjected to the provisions of the Act will have a plan known as "Improvement Area Plan" which said plan will have to be approved by the Minister in the same manner he approves development plans.[24] Such plan can properly be regarded as a"mini approved development plan" for the area in question.

Such an Improvement Area Plan will contain the following information :-

(i) The name and description of the Improvement Area

(ii) Existing roads if any

(iii) Roads proposed to be constructed

(iv) The existing areas for common user

(v) The proposed areas for common user

(vi) The location of each building identified by a serial number

It is only correct that we inquire into the meaning of the clause "for common user." This clause is not defined by the Act, but it would appear to mean and can only mean a place where all the members of the public have access, such place would mean, schools, clinics, hospitals, welfare halls, places for recreation such as football grounds, cinema halls. This would also include churches etc. The question is does the clause "for common user" include places used for business such as shops, factories, beer halls

and bars ? On the basis that these places are open to the members of the public one would be inclined to say yes.

The Act further makes provision for an occupancy licence[25] which is to be issued to the occupier of a site in an improvement area. It provides that :-

"No person shall, without a licence issued by the Council in accordance with its terms and conditions, build, use, let, create a lien on building erected on any piece of land."

The validity of the occupancy licence is limited to a period not exceeding thirty years. One may assume that occupancy licence for say two years will be issued. One may assume that such occupancy licences will be renewable as of right provided the licensees comply with the terms and conditions of such licence and provided also that he pays regularly his rent reserved by the occupancy licence. Although the Act is silent as to the renewal of the occupancy licence it makes ample provisions for the revocation of such a licence.

The Council may revoke the occupancy licensee on giving the licensee three months prior notice in writing in the following circumstances :-

(a) If the licensee has committed a breach of or failed to comply with any of the conditions of the licence, or

(b) if the licensee has failed to pay a fee prescribed for such a license.

There are many omissions in the provisions of the Act in relation to the improvement areas which are objectionable in that the licensee or rather a former squatter in upgraded squatter compounds is discriminated against. The most obvious is the discriminatory treatment accorded to a squatter vis a vis a tenant in an upgraded site and service scheme as regards tenure. The upgraded squatter can only hope for an occupancy licence and yet a tenant in the site and service scheme can hope for a certificate of title as persons in other areas are afforded and yet the Constitution is very clear that "subject to the provisions of clause 4, 5 and 7 no law shall make any provision that is discriminatory either of itself or in its effect."[26] Surely the effect of this legislation is to discriminate against the upgraded squatter. The validity of occupancy licence is limited to a period not exceeding 30 years, yet the one for an upgraded site and service tenant is unlimited except that the Lands (Conversion of Titles) Act 1975 now makes a ceiling of one hundred years.

There does not appear to be registration requirements for those with occupancy licences yet for others certificates of title will have to be issued and these will have been registered. It will enable those with

such Certificates of Title to obtain duplicates if originals are lost.

The new law has made an improvement in the legal status of the squatter living in upgraded compounds. It has legalised his stay in such squatter compounds. Although there seems to be no moral justification for treating those living in improvement areas differently from those living in statutory housing areas.

It is suggested that this anomaly should be removed by amending the 1974 Act and making uniform provisions for the both Statutory Housing Areas and Improvement Areas.

It is interesting to note that the provisions of Town and Country Planning Act have been expressly excluded from application in areas subject to the Housing (Statutory and Improvement) Act.[27] In other words, Town and Country Planning Act cannot be applied to any building or structure or change of use in the Statutory Housing Areas and Improvement Areas. One may be tempted to say that the Authorities have heeded the advice given by Andrew, Christie and Martin that the modern Zambian Planning law is not appropriate for Zambia Conditions[27a] since about two-thirds of the people living in the urban areas have been excluded from the sting of the Planning Code. Whether or not this is the best interests of Zambia, one doubts it.

Are the people in Zambia interested in the creation of slums, traffic hazards and such other evils which the Planning Law is trying to control, Surely not, it is better to nip these problems in their bud before they come out of control, Prevention is better than cure.

Besides the Town and Planning Act the following Acts have also been expressly excluded from being applied in Statutory Housing Areas and Improvement Areas :-

(i) The Lands and Deeds Registry Act

(ii) The Land Survey Act

(iii) The Rent Act 1972

(iv) The Stamp Duty Act

Another point of difference between the two areas is that in Statutory Housing Areas the employer can erect buildings and be issued with Certificates for those houses provided such house are used to accommodate their permanent employees.[28] There is no comparable provisions for Improvement Areas.

These anomalies should have been detected and corrected. It is indeed true to say that if the country allows slums to grow, then posterity will laugh at this generation for its shortsightedness. This is the reason behind Lusaka Planning problems as the planners failed to forecast the tremendous growth in population that would come about as a result of inde-

pendance. Poorer sections of the community are being made to pay heavily for these mistakes by having to pay high taxi fares or bus fares for their transport to and from their place of employment in what is regarded as a city centre.

This last section has tried to discuss the solution of over-crowding in towns, influx control and ineffective planning control. It is apparent from the discussion, especially about Bwanamfumu Phiri's case, that there is no effective planning control in squatter compounds.

Such controls are done not only discriminatorily but are based on ulterior motives. The Housing (Statutory and Improvements Areas) Act 1974 has, in fact, legalised this absence of control. The National Housing Authority is, in fact, created "the Planning Authority" for these areas although not in name.

The pass system which was based on the person's skin pigmentation was a discriminatory measure but it served the purpose so well that there was relatively no squatter problem. Town Planning then had its full force and effect in the Urban Areas.

Whether or not such a system is bad because it does not have its origin in local customs so are other laws such as company law, insurance law, traffic law. Town and Country Planning Laws comes as a result of industrialisation and over-crowding. Small villages do not require such an advanced system of law. There

are indeed no traffic jams to think of nor is the ordinary man required to walk a long distance to his place of work every day. These problems come only with growth of big cities and towns. Surely a country cannot wait for the problem to grow out of proportion before it is tackled. In the Bible language now is an accepted time. One must remember "to make hay while the sun shines." In big cities of the world, problems caused by bad planning are so enormous that they cannot simply be ignored. Such problems are beginning to show their ugly heads in Zambian cities and towns. There is no earthly reason why Zambia should not use the technical know-how adopted by industrialised countries as our country is making such a remarkable industrial progress and urbanisation of its people.

There is no doubt that if The Housing (Statutory and Improvement Areas) Act 1974 is fully implemented all over the country some if not all the problems associated with lack of control will be reduced considerably. The Authorities will be in a position to know the number of the people living within their borders and will effectively make provisions for social services such as Schools, Hospitals, Health Centres, Recreational Centres with some amount of accuracy. Unauthorised structures will no longer be erected. With the efficient Party Organisation and the ever increasing use of Special Constables crime will be reduced. Since it will then be difficult to erect a house in town unless

the Authority grants a Plot, rural dwellers will find it difficult to live in town especially at the time when unemployment is ever increasing. No doubt there will be some planning in squatter compounds and the ills of lack of planning will be dimished in urban areas.

CHAPTER 6

CONCLUSION

It may be worth at this stage to say something about the Planning Law in Zambia, especially the conclusion reached after having seen how it works.

In the first place, the Town and Country Planning Act does not apply to all the parts of the country. Rural Areas which were formerly known as Native Reserves and Trust Lands are excluded from its ambit. It is, therefore, applicable to the line of rail areas and townships in the Provinces.

Secondly, Government and Mining are not covered by this Legislation. They are exempted. This can be seen from the decision in the case of Bwanamfumu Phiri vs. The City Council of Lusaka.

The law has been violated and the authorities seem to be giving tacit approval to contravention of the law because political consideration have been paramount here, although the Government's humanistic policy may also be responsible for this apparent lack of control. It is unthinkable that the Government can demolish houses of the majority of the voters.

Once houses are demolished wholesale, the likelihood of a vote of no confidence in the Government at polls is very great. Indeed a humanistic Government will consider whether it is in the interest of the country for those squatters to be evicted from their houses and left out in the cold without alternative accommodation. If alternative accommodation were provided at economic rent then it would not be ideal for persons who live below bread line. Surely rent as charged in medium density housing areas is too high for most persons living in squatter compounds. The Government has, therefore, to take such factors into account before they take appropriate action. Is it in the best interest of Zambia to demolish all houses erected in squatter compounds without planning permission ? To do so will be like doing what the Colonial powers were doing when they used to burn down houses in settlements of less than ten men. That action of the Colonial Powers was perfectly right in that the purpose was not to sanction smaller settlements but to encourage larger villages where services would be provided easily in the same manner village regrouping policy attempts to do. The question is what would the subversive elements in the country do if Government demolished houses in squatter compounds ? Would that not be tantamount to giving them guns with which to provoke the public to riots and civil disturbances.

The Government has devised a plan of village regrouping and reconstruction centres. Whether this succeeds, depends on several factors. The first is whether Government has funds to provide services required in these villages and new centres. Are the centres capable on their own of being viable economic units ? Are these villages going to be successful as planned ? If some areas have already regrouped themselves, such as one finds in the Western Province along the fringes of the plain, where villages cannot be distinguished by a stranger since they form one stretch without boundaries, would the Government be justified in providing better services in newly regrouped villages whilst denying the same facilities to those villages already regrouped ? These are the questions which should occupy the minds of Politicians and Administrators.

For the Planning Law to be effective, the area of control should be widened and not narrowed as is being done today. The possibility of offending the future generation is great in that we will have left behind us slums. No doubt a place like Kaunda Square Stage I is a slum.

What is required is the old approach which requires effective control in all areas falling within the planning authority's jurisdiction.

The village regrouping and Reconstruction Centres should not only be left to unqualified youths but to experts in their field so that these villages and centres are not only made attractive temporarily but are made permanently viable economic units. In these Villages and Centres, there should be proper planning control and they should serve as a model of good planning. There is also a need for amending the Village Registration and Development Act to provide for the future recognition and registration of villages of a certain number of adult residents. This would obviate the problems of sparcely populated areas. The District Secretary and/or Rural Councils could be authorised to administer some of the provisions of Town and Country Planning Act so that there may be orderly pattern of settlements in the Rural Areas.

REFERENCES

CHAPTER 1

1. L.A. Blundell et al - Town and Country Planning Property and Conveyancing Library No. 2, London Sweet & Maxwell, 1963 p.3.
2. A.E. Telling - Planning Law and Procedure 3rd Edn. London, Butterworth 1970 p.3.
3. Ibed p.4.
4. Blundell et al op cit p.4.
5. Desmond Heap: An Outline of Planning Law 5th Edn. London Sweet & Maxwell, 1969 pp 1 - 4
6. Public Health Acts 1848 - 1960 and Housing Acts 1890 to 1969
7. Housing and Town Planning Act 1909
8. Town Planning Ordinance No. 60 of 1929
9. S.54 Housing and Town Planning Act 1909
10. Ibid SS.54(4) and 55
11. Town Planning Ordinance op cit
12a. Town Planning Act 1933.
12. Town and Country Planning Proclamation No. 33 of 1961

13. Housing and Town Planning Act 1919

14. Ibid S47

15. Ibid S46

16. Telling op cit p.8.

17. Town and Country Planning Act 1947

18. Town Planning Ordinance No. 60 of 1929 op cit

18a. The Hon. O.D. Schreiner - The Contribution of English Law to South African Law in South Africa The Hamlyn Lectures 1967, London, Stevens & Sons 1967

19. S7 Town and Planning Ordinance op cit

20. Ibid S11

21. Ibid

22. Southern Rhodesia - Town Planning Act No. 34 of 1933

23. S80 Municipal Corporation Ordinance Cap. 119

24. S27a Townships Ordinance Cap. 119

25. Ibid S27(5)

26. Her Majesty's Stationers London Barlow Report CMD 6153

27. Her Majesty's Stationers London - Committee on Land Utilisation in Rural Areas CMD 6378

28. Bechuanaland Protectorate - Town and Country P1 Planning Proclamation - Number 32 of 1961

29. S16 of Southern Rhodesia Act op cit

30. S8 Proclamation op cit

31. R.J.M. Jones - The Law and Practice of Conveyancing of South Africa, Cape Town, Juta and Company 1976 2nd Edn. pp 227 - 232

CHAPTER 2

1. Town and Country Planning Act Cap.475 S22(1)
1a. Ibid S4(8)
2. Ibid Sec 4
3. Re Gilmore [1957] 1 All E.R. 796
4. Pyx Granite Company Limited vs. Minister of Housing and Local Government [1959] 3 All E.R.1
5. Zambia Constitution 29
6. Smith vs. East Ellce Rural District Council [1956] 1 All E.R. 855 at p.859
7. Anisminic Limited vs. Foreign Compensation Commission [1968] 1 All E.R. 208
7a. R. vs. Secretary of State for Environment ex parte Gatler [1976] 3 All E.R. 90.
7b. Clays Industries Levering Pochin and Company Ltd. -v- Plymouth Corporation [1974] 2 All E.R.239
8. Land (Conversion of Titles) Act No. 20 of 1975 S13
9. Ibid S13(1) and (2)
9a. Cap. 475 op cit S52
10. Housing (Statutory and Improvement Areas) Act No. 30 of 1974 S85 and 38
10a. In re Edward Yapwantha Chirwa 1973/HP/1066
11. Housing (Statutory and Improvement Areas) Act op cit S2
11a. Ibid S48
12. Roads and Road Traffic (Amendment) Act No. 35 of 1974 S8A
13. Regulation 9 of Town and Country Planning

Development Order Regulations - Statutory Instruments Numbers 65 of 1965 and 337 of 1969. Government Notices 348 of 1962 and 98 of 1964.

14. Cap 475 op cit S22(3)

14a. Jones op cit p.227

15. Cap. 475 op cit S 23(4)(a)

16. Ibid S 23(4)(b)

17. Miller vs. The Minister of Local Government /1959/2 R & N 347 at p.349.

18. Kennedy vs. The Minister of Local Government /1959/2 R & N 344

19. De Pelle vs. The Minister of Local Government /1959/2 R & N 107

20. Dickinson vs. The Minister of Local Government /1960/ R & N 115 at p. 115.

21. Albert Edward Ball vs. Western Planning Authority TPT decision dated 12th October 1964

21a. J. Murphy & Sons Ltd. vs. Secretary of State for Environment /1973/2 All E.R. 25; /1973/1.W.L.R.560

22b. Clyde & Co.-v- Secretary of State for Environment /1977/ 3 All. E.R.1123

22. John Pieter Liebenberg vs. The Municipal Council of Luanshya TPT decision dated 19th January 1973 p.23.

23. Estate of Wood vs. Minister of Local Government /1961/ R & N 362 at p. 363.

24. Tom Sichone vs. Southern Planning Authority TPT decision dated 25th May 1968

24a. J.P. Liebenberg vs. The Municipal Council of Luanshya op cit.

25. P.N. Patel vs. Municipal Council of Livingstone
    TPT decision dated 26th June 1968

26. Cap. 475 S 28(2)

CHAPTER 3

1. Cap. 475op cit S22(4)
2. SS.12 and 13 of 'the English' Town and Country Planning Act 1947
3. Cap. 475 op cit S3(2) and (3)
3a. Coleshill and District Investment Co. Ltd. -v- The Minister of Housing and Local Government and Another [1969]2 All E.R. 525 at 530.
3b Thomas David (Porthcawl) Ltd. and Another -v- Penybont Rural District Council and Another [1972]1All. E.R.1526
4. Ibid S.23(4)
5. Ibid S.24(5)(ii)
6. Telling op cit p.26 quoting from Bulletins of Selected Appeals Decision VIII/14
7. Cap. 475 S2
8. Sarah Papenfus vs. The Lusaka City Council TPT decision dated 21st October 1963
8b. Wells and Other -v- Minister of Housing and Local Government and Another [1967]2 All. E.R. 1401 at p. 1405
9. Cheshire County Council vs. Woodward [1963]1 All. E.R. at p. 519
10. Cap. 475 S2
11. Regulation 7 Town and Country Planning Order Regulation op cit
12. Liebenberg vs. The Municipal Council of Luanshya op cit
13. Telling op cit p.86

14. East Barnett Urban District Council vs. British Transport Commission [1961] 3 All E.R. 878

15. Guilford Rural District Council vs. Penny [1959] 2 All E.R. 111

15a. Birmingham Corporation vs. The Minister of Housing and Local Government and Habib Ullah [1963] 3 All E.R. 609

15b. Ealing Borough Council vs.Ryan and Another [1965] 1 All. E.R. 137 at 140; [1965] 2 All E.R.404

16. Bwanamfumu Phiri vs. The City Council of Lusaka TPT File No. TPT 06/7/1/9

17. W.T. McClain - Legal Aspects of Housing and Planning in Lusaka paper delivered to Urban Law Seminar April 1976 Nairobi n.p.

18. G. Percy Trenthan Limited vs. Gloucestshire County Council [1966] 1 All E.R. 701

19. Brazil (Concrete) Limited vs. Amersham Rural District Council and the Minister of Housing and Local Government [1967] 111 Sol. Jo. 497

19a. Wood -v- Secretary of State for Environment [1973] 1 W.L.R. 707; [1973] 2 All. E.R. 404

20. Liebenberg vs. The Municipal Council of Luanaya op cit P. 23 para 12.1

21. Sinclair Lockhart's Trustees vs. Central Land Board [1951] S.C. 258

22. Pilbrow vs. St. Leonard Shareditch Vestry [1895] 1 Q.B. 433

23. Charles Fay et al op cit p.75.

24. Blundell et al op cit

25. McClain op cit

26. McClain Ibid

27. Vacuum Oil Company vs. Bulawayo City Council [1961] R & N 295

28. Malin vs. The Municipal Council of Ndola TPT decision dated 17/12/65

29. Cap. 475 p. 41 Part V Second Schedule

30. Caltex Oil Zambia Limited vs. The City Council of Lusaka TPT decision dated 20/2/70 Tom Sichone vs. Southern Planning Authority op cit Sambhai Mangabhai Patel vs. The City Council of Lusaka TPT decision dated 30/9/65

31. Ibid

32. Cap. 475 S. 25 (1)

33. Daal vs. The City Council of Lusaka TPT decision dated

33a. J. Murphy & Sons Ltd. -v- Secretary of State for Environment [1973] 1 W.L.R. 560

33b. Clyde & Co. -v- Secretary of State for Environment [1977]3 All. E.R. 1123

34. Cap. 475 S23(1)(a)

35. Ibid S.23(1)(b)

36. Ibid S24

37. Ibid S28(2)

38. Ibid S25(1)

39. Associated Provincial Picture Houses Limited vs. Wednesday Corporation [1948]1 K.B. 223

40. H.W.R. Wade - Administrative Law 3rd Edn. 1971

p.75

41. Harry M. Mkumbula vs. Attorney General for Zambia (1972) Z.R. 204

42. Pyx Granite Company Limited vs. The Minister of Housing and Local Government and Another [1958] 1 All E.R. 625 at p.633.

42a. Fawcett Properties Limited vs. Buckingham County Council [1958] 3 All E.R. 521

42b. Total Oil Products (Rhodesia) (Pvt) Limited vs. The Municipal Council of Livingstone TPT decision dated 28th August 1964

42c. Fawcett Properties Ltd. -v- Buckingham County Council ([1960] 3 All. E.R. 503

42d. Kingston Upon Thames Royal London Borough Council -v- Secretary of State for the Environment and Another [1974] 1 All. E.R. 193 at page 196.

43. S.M. Patel vs. The City Council of Lusaka op cit

44. Total Oil Products (Rhodesia) (Pvt) Limited vs. The Municipal Council of Livingstone op cit

45. Ibid

46. Ibid

46a. Levan -v- Collier [1967] 3 All. E.R. 907

47. Cap. 475 S22(4)(h)

48. Pyx Granite Company Limited vs. The Minister of Housing and Local Government op cit

49. Hall vs. Shoreham Urban Council [1964] 1 All E.R. 1

50. Kingsway Investments (Kent) Limited vs. Kent Council [1958] 2 W.L.R. 249

51. Cap. 475 853

51a. R -v- London Borough of Hillingtons ex parte Royco Homes Ltd. [1974]2 All. E.R. 643

51b. Kent County Council -v- Kingsway Investments (Kent) Ltd. [1970]1 All. E.R. 70.

52. The Constitution of Zambia Ar. 81
Interpretations Act Cap. 2 S518 and 19

53. Kachasu vs. The Attorney General [1967] HN/273

54. Blackpool Corporation vs. Locker [1948]1 All E.R. 85

55. Patchett vs. Leatham [1949]65 T.LR. 69 at p. 70.

56. Westminister Bank Ltd. -v- Minister of Housing and Local Government [1970]1 All. E.R. 743 at pp. 739 & 740.

CHAPTER 4

1. Cap. 475 SS.30 and 31(2)
2. Ibid S.31(1)
3. Bendela vs. Northern Planning Authority (TPT) Appeal No. TPT/06/7/12/1
4. Liebenberg vs. The Municipal Corporation of Luanshya op cit
5. Southern-on-Sea Corporation vs. Hodson Wickford Limited [1961] 2 All E.R. 40

5a. Norfolk County Council vs. Secretary of State for Environment and Another [1973] 1 W.L.R. 1400

6. Cap. 475 S.31(3)
7. McClain op cit
8. Cap. 475 S.31(3), Kents vs. London County Council [1954] 1 W.L.R. 1357
9. Francis vs. Yiewsley and West Drayton Urban District Council [1958] 1 Q.B. 478
10. Cap. 475 S.31(4)
11. Bwanamfumu Phiri vs. The City Council of Lusaka op cit. p.14.
    Burgess vs. Jarvis and Others [1952] 2 All E.R. 723 at p.725

11a. Bambury and Another -v- London Borough of Hounslow and Another [1966] 2 All. E.R. 532

12. Bwanamfumu Phiri vs. The City Council of Lusaka op cit

12a. Nalsovil vs. The Minister of Housing and Local Government [1962] 1 W.L.R. 404

12b. Iddenden and Others -v- Secretary of State for the Environment and Another [1972] 1 W.L.R. 143.

12c. LTSS Print and Supply Services Ltd -v- Hackney London Borough Council and Another [1976] 2. W.L.R. 253.

13. Cap. 475 S.33

14. Desmond Heap - The New Town Planning Procedures HOW THEY AFFECT YOU London, Sweet & Maxwell 1968

14a. French Kier Development Ltd -v- Secretary of State for Environment and Another [1977] 1 All E.R. 296

15. Cap. 475 SS.6, 11 and 29

15a. Howard -v- Secretary of State for Environment [1974] 1 All. E.R. 544

16. Albert Edward Ball vs. Western Planning Authority op cit

17. Total Oil Products (Rhodesia) (Pvt) Limited vs. The Municipal Council of Livingstone op cit

18. Ibid

19. Dickinson vs. The Minister of Local Government op cit. p.122.

20. Estate of Ward vs. The Minister of Local Government op cit at. p. 363.

21. Ridge vs. Baldwin [1963] 2 All E.R. 523

22. Chendaeka vs. Luanshya Municipal Council 1969 S.J.Z. 14

22a. Kangombe vs. The Attorney General for Zambia S.J.Z. 7

23. Cap. 475 Proviso S.11(c)

24. Garner op cit

Jennings op cit

Cross op cit

25. S.M. Patel vs. The City Council of Lusaka TPT decision dated 30th September 1965

26. Cap. 475 S.25(1)

27. Ibid S.29(1)

28. Ali Adam (Properties) Limited vs. Salisbury City Council (1960) R & N 521 at p. 523

28a. Buxton vs. The Minister of Housing and Local Government [1960] 3 All E.R. 408

29. Cap. 475 S.29(2)

30. Ibid S.11(a)

31. Bali vs. Western Planning Authority op cit

CHAPTER 5

1. Melvin Conant - Race Issues on the World Scene
A report on the Conference on Relations in World Perspective, Honolulu 1954 Hawaii 1955 p.42.

1a. Northern Rhodesia Government Printer - Agricultural Survey Commission Report 1930 - 1932

2. L.G. Troup - Report of the Commission of Inquiry into the Future of the European Farming Industry of Northern Rhodesia Lusaka - Government Printer 1954 P. 31 para 261

2a. Paul A.F. Walter - Race and Culture Relations New York McGraw Hill Book Co. 1952 P. 27.

3. H. Heisler - Urbanisation and The Government of Migration, The Inter-Relation of Urban and Rural Life in Zambia, London C. Hurst & Company 1974 pp 89 and 90

4. J.J. Olivier - Apartheid A Slogan OR A Solution n.p.

5. Central Office of Information Britain - Northern Rhodesia Order in Council 1924

6. Ibid S.42

D.H. Davies - No. 1 Lusaka Some Town Planning

Problems in an African Capital City at Independence - Zambian Urban Studies ed D. Hywel Davies University of Zambia Institute for Social Research 1969 p.7.

7. Regulation 136(2) Cap. 120 op cit

8. African Urban Housing Ordinance Cap. 234 S.5.

9. Colston Research Society - Principles and Methods of Colonial Administration, London, Butterworth, 1950 p.11.

10. Melvin Conent op cit p.42

11. J. Clyde Mitchell - African Urbanisation in Ndola and Luanshya - Rhodes ,Livingstone Institute for Social Research Communication No. 54, Lusaka 1959-66 p.13.

12. H. Heisler - op cit p. 85

13. D.,M. Davies op cit p.1

14. John Collins - No. 2 Lusaka the Myth of the Garden City, Zambian Urban Studies ed By. Hywell Davies University of Zambia, Institute for Social Research 1969 p.5.

15. John Gardiner - No. 3 Some Aspects of the Establishment of Towns in Zambia During the Nineteen Twenties and Thirties, Zambian Urban Studies ed D. Hywell Davies University of Zambia, Institute of African Studies 1970 p.vi.

16. Paul Andrew et al; Squatter Manifesto 1972 Ekistus 100-113 Reprint of the Original Manifesto n.p. at p. 113.

17. J. Clyde Mitchell, op cit p.3.

18. Paul Andrew et al, Squatter Settlements in Zambia The Evolution of a Life Style n.p. p.82

19. B.O. Nwabueze - Constitutionalism in the Emergent States, London Hurst & Company 1973 pp 102 and 108

CHAPTER 6

1. D.H. Davies - op cit p.12
2. Cap. 475 S.18
3. D.K. Kaunda - A Path for the Future, Address by H.E. The President, Dr. K.D. Kaunda, as Secretary General of UNIP on the occasion of the opening of the Sixth General Conference of the UNIP, Mulungushi 8th May, 1971, Lusaka, Zambia Information Services p.6.
4. The Secretary General's Circular No. 12 of 1976
5. George Kay - Social Aspects of Village Regrouping in Zambia University of Zambia Institute for Social Research 1967 P.9.
6. Ibid op cit p.19
7. New Towns Act 1946 S.2
8. Desmond Heap - op cit p.1971
9. A.S. Telling op cit p.29
10. George Kay op cit pp. 42, 45, 49 and 50
11. Paul Mwiinda vs. Dickson Gwaba unreported 1973/HP/1049
12. Mayungo vs. Induna Nalubutu [1960] R & N 677

CHAPTER 7

1. Ministry of Local Government and Housing Circular No. LGH/54/7/3 of the 20th July, 1972.
2. Ibid
3. Africa Hournal (eds) Africa No. 64 December 1976, London.
4. Zambia Constitution Ar. 24
5. Paul Andrew et al op cit p.112
   Paul Andrew et al cit. 50
6. Paul Andrew et al, Ibid 51
7. Cap. 475 SS.22 and 52
8. Ibid S.36
9. Ibid First Schedule
10. Trades Licensing Act Cap. 707 S.8(1)
11. Liquor Licensing Act Cap. 429 S.26(2)
12. S.M. Patel vs. The City Council of Lusaka op cit. p. 18.
13. Bandela vs. Northern Planning Authority op cit
14. Local Government Service Commission Act. No. 33 of 1974 S.6.
15. Swanamfumu Phiri vs. The City Council of Lusaka op cit
16. Cap. 475 S.25
17. Ibid S.31
18. Ministry of Local Government Circular LGH/54/7/3 op cit p.4.

19. W.J. McClain op cit p.13

20. K.D. Kaunda - The 'Watershed' Speech to the National Council of the United National Independence Party Mulungushi Hall, 30th June, 1975, Government Printer Lusaka

21. Housing (Statutory and Improvement Areas) Act No. 30 of 1974 S.40

22. Ibid S.44

23. Ibid S.37(1)

24. Cap. 475 S.17

25. Housing (Statutory and Improvement Areas) Act op cit S.39(2)

26. Zambia Constitution Ar. 25(1)

27. Housing (Statutory and Improvement Areas) Act op cit S.48

27a. Paul Andrew et al, op cit p. 53

28. Housing (Statutory and Improvement Areas) Act op cit S.5(2)(c).

BIBLIOGRAPHY

BOOKS

Africa Journal Limited (eds) - Africa No. 64 December 1976 London

Paul Andrew et al - Squatter Settlements in Zambia : The evolution of a life style n.p. 1974

Paul Andrew et al - Squatter Manifesto 1972 Ekistics 108-113. Reprint Original Manifesto n.p.

Lionel A. Blundell et al - Town and Country Planning Property and Conveyancing Library No. 2 London Sweet & Maxwell 1963.

John Collins - No. 2 Lusaka - The Myth of Garden City - Zambian Urban Studies ed D. Hywel Davies University of Zambia Institute for Social Research 1969

Melvin Conant - Race Issues on the World Scene - A Report on the Conference on Race Relations in World Perspective Honolulu 1954 - Hawaii 1955

7. Colston Research -Principles and Methods of Colonial Administration - London, Butterworth 1950

87. C.A. Cross - Principles of Local Government Law, London Sweet & Maxwell 1962

9. Hywell Davies - No. 1 Lusaka Some Town Planning Problems in an African Capital City at Independence - Zambian Urban Institute for Social Research 1969

10. John Gardiner - No. 3 Some Aspects of the Establishment of Towns in Zambia during the Nineteen Twenties and Thirties Zambian Urban Studies ed. D. Hywell Davies University of Zambia Institute for African Studies 1970

11. J.F. Garner - Administrative Law, London, Buterworth 1974

12. Charles Fay et al (Eds)- Hill's Town and Country Planning Acts 5th edn. London, Butterworth & Co. 1967

13. Desmond Heap - An Outline of Planning Law 5th Edn. London, Sweet & Maxwell 1969

14. Desmond Heap - The New Town Planning Procedures HOW THEY AFFECT YOU London, Sweet & Maxwell 1966.

15. Helmith Heisler - Urbanisation and the Government of Migration. The Inter-Relation of Urban and Rural Life in Zambia. London, Hurst & Co. 1974

16. Ivor Jennings - Principles of Local Government Law 4th edn. ed. J.A.G. Griffith London 1965

17. R.J.M. Jones - The Law and Practice of Conveyancing in South Africa, Cape Town, Juta & Co. 1976

18. K.D. Kaunda - A Path for the Future, Address by His Excellency the President, Dr. K.D. Kaunda as Secretary - General of the United National Independence Party on the occasion of the opening of the Sixth General Conference of the United National Independence Party, Mulungushi 8th May, 1971, Lusaka, Zambia. Information Services.

19. K.D. Kaunda - The 'Watershed' Speech to the National Council of the United National Independence Party, Mulungushi Hall, 30th June, 1975, Government Printer, Lusaka.

20. George Kay - Social Aspects of Village Re-grouping in Zambia - University of Zambia Institute for Social Research 1967

21. J. Clyde Mitchell - African Urbanisation in Ndola and Luanshya - Rhodes Livingstone Institute for Social Research Communication No. 84 1954 - 1966

22. W.T. McClain - Legal Aspects of Housing and Planning in Lusaka; Paper delivered to Urban Seminar April 1976 Nairobi n.p.

23. B.O. Nwabueze - Constitutionalism in the Emergent States, London C. Hurst & Co. 1973

24. J.J. Olivier - Apartheid a Slogan or a Solution n.p

25. The Hon. O.D. Schreiner - The Contribution of English Law to South African Law: and the Rule of Law in South Africa. The Hamlyn Lectures 1967 London : Stevens & Sons 1967

26. A.E. Telling - Planning Law and Procedures 3rd edn. London, Butterworth 1970

27. H.W.R. Wade - Administrative Law, 3rd edn. Oxford

28. Paul A.F. Walter Jr. - Race and Culture Relations New York, McGraw Hill Book Co. 1952

REPORTS AND CIRCULARS

1. Ministry of Local Government and Housing
Circular Number LGH/54/7/3 n.p.

2. Secretary General's Circular No. 12 of 1976 n.p.

3. Her Majesty's Stationers, Britain - Report of the Committee on Land Utilisation in Rural Areas CMD6378

4. Her Majesty's Stationers, Britain - Barlow Report CMD 6153

5. L.G. Troup - Report of a Commission of Inquiry into the Future of the European Farming Industry of Northern Rhodesia, Lusaka Government Printer 1954

6. Northern Rhodesia Government - The Agricultural Survey Commission Report 1930 - 1932 Livingstone 1933

C A S E S

(TPT) stands for Town and Country Planning Tribunal of Zambia and Date relating thereto refers to Date of Judgment. In the Absence of Date File number is Indicated

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A.

1. Ali Adam Properties (Private) Ltd -v- Salisbury City Council (1960) R & N 521.
2. Anisminic Limited -v- Foreign Compensation Commission [1969] 1 All. E.R. 208
3. Associated Provincial Pictures Houses Limited -v- Wednesday Corporation [1948] K.B. 223.

B.

4. Albert Edward Ball -v- Western Planning Authority (TPT) 12/10/64
5. Bambury and Another -v- London Borough of Houslow and Another [1966] 2 All. E.R. 532
6. A.C. Bendela -v- Northern Planning Authority (TPT) 21/8/72
7. Birmingham Corporation -v- Minister of Housing and Local Government [1963] 3 All. E.R. 608
8. Blackpool Corporation -v- Locker [1948] 1 All. E.R. 85
9. Burges -v- Jarvis and Others [1952] 1 All. E.R. 592
10. Buxton -v- Minister of Housing and Local Government [1960] 3 All E.R. 408.

11. Brazil (Concrete) Limited -v- Amersham Rural District Council and Minister of Housing and Local Government [1967] 111 Sol. Jo. 497.

C.

12. Caltex Oil Zambia Limited -v- The City Council of Lusaka (TPT) 20/2/70.

13. Chendaeka -v- Luanshya Municipal Council (1973) S.J.Z. 7.

14. In re Edward Yapwantha Chirwa - 1973/HP/1066

15. Clays Industries Lovering Pochin and Company Limited -v- Plymouth Corporation [1972] 2 All E.R.239

16. Clyde and Company -v- Secretary of State for Environment [1977] 3 All E.R. 1123

17. Coleshill and District Investment Co. Ltd. -v- The Minister of Housing and Local Government [1969] 2 All. E.R. 525.

D.

18. I.T. Daal -v- The City Council of Lusaka (TPT) 30/1/67.

19. Thomas David (Portheal) Limited -v- Penybont Rural District Council and Another [1972] 1 All E.R. 1526

20. Dickinson -v- Minister of Local Government (1960) R & N 115

21. Do Pollo -v- Minister of Local Government (1959) 2 R & N 70

E.

22. Ealing Borough Council -v- Ryan and Another [1965] 1 All. E.R. 140; [1965] 2 W.L.R. 223

23. East Barnett Urban District Council -v- British Transport Commission [1961] 3 All. E.R. 878.

F.

24. Fawcett Properties Limited -v- Buckingham County Council [1958] 3 All. E.R. 521

25. Fawcett Properties Limited -v- Buckingham County Council [1960] 3 All E.R. 503.

26. Francis -v- Yiewsley and West Drayton Urban District Council [1958] 1 Q.B., [1957] 3 All E.R. 529.

27. French Kier Development Ltd. -v- Secretary of State for Environment and Another [1972] 1 All E.R.296

G.

28. Re Gilmore [1957] 1 All E.R. 796

29. A.G.W. Greyling -v- Southern Planning Authority (TPT) 1/6/64.

30. Guilford Rural District Council -v- Penny [1959] 2 All E.R. 111.

H.

31. Hall -v- H. Shoreham Urban District Council [1964] 1 All. E.R. 1

32. Howard -v- Secretary of State for Environment [1974] 1 All. E.R. 344.

I.

33. Iddenden and Others -v- Secretary of State for Environment and Others [1972] 1 W.L.R. 143.

K.

34. Kachasu -v- Attorney General 1967/HN/273.

35. Kangombe -v- Attorney General (1973) S.J.Z. 7

36. Culler Kashunda -v- The City Council of Lusaka (TPT) 5/11/71

37. Kennedy -v- The Minister of Local Government [1959] R & N 107.

38. Kent County Council -v- Kingsway Investments (Kent) Limited [1970] 1 All. E.R. 70

39. Kents -v- London County Council [1954] 1 W.L.R.1357

40. Kingston upon Thames Royal London Borough Council -c- Secretary of State for Environment and Another [1974] 1 All E.R. 193.

41. Kingsway Investment (kent) Limited -v- Kent County Council [1969] 2 W.L.R. 249, [1968] 3 All. E.R. 197.

L.

42. Levan -v- Collier [1967] 3 All. E.R. 907

43. John Pieter Liebenberg -v- Municipal Council of Luanshya (TPT) 17/12/65

44. LTSS Print and Supply Services Ltd. -v- Hackney Borough Council and Another [1976] 2 W.L.R.253.

M.

45. J.D. Malin -v- Municipal Council of Ndola (TPT) 17/12/65

46. Mayimgo -v- Induna Malubita (1960) R & N 677

47. Mead -v- Plumtree [1952] All. E.R. 723.

48. Miller -v- The Minister of Local Government [1959] R & N 347

49. J. Murphy & Sons Limited -v- Secretary of State for Environment [1973] W.L.R. 560.

50. Paul Mwiinde -v- Dickson Gwaba 1973/HP/1049.

N.

51. Nelsovil -v- The Minister of Housing and Local Government [1962] W.L.R. 404.

52. Harry Mwanga Nkambula -v- Attorney General for Zambia (1972) Z.R. 204.

53. Norfolk County Council -v- Secretary of State for Environment [1973] W.L.R. 1400.

P

54. Sarah Papenfua -v- The City Councilof Lusaka (TPT) 2/10/63.

55. P.N. Patel -v- Municipal Council of Livingstone (TPT) 26/6/68

56. S.M. Patel -v- City Council of Lusaka (TPT) 20/9/65

57. Patchett -v- Leathen (1949) L.T.R. 69.

58. Pilbrow -v- St. Leonard Shereditch Vestry [1895] Q.B. 433.

59. Bwanamfumu Phiri -v- The City Council of Lusaka (TPT) 20/1/73

60. PYX Granite Company Limited -v- Minister of Housing and Local Government [1959] All. E.R. 1.

R.

61. R -v- Londonm Borough of Hillington ex parte Royco Homes Ltd. /1974/2 All. E.R. 643.

62. R -v- Secretary of State for Environment ex parte Ostler /1976/3 All. E.R. 90.

63. Ridge -v- Baldwin /1961/ 2 All. E.R. 523

S.

64. Tom Sichone -v- Southern Planning Authority (TPT) 25/2/68.

65. Sinclair-Lockhart's Trustees -v- Central Land Bank /1951/ S.C. 258; /1951/ SLT 121.

66. Smith -v- East Elloe Rural District Council /1956/1 All E.R. 855.

67. Southend-on-Sea Corporation -v- Hodgson (Wickford) Limited /1961/2 All. E.R. 46.

T.

68. Total Oil Products (Rhodesia) (Pvt) Limited -v- The Municipal Council of Livingstone (TPT) 3/3/64

69. G. Percy Trenthan Limited -v- Gloucestershire County Council /1966/1 All. E.R. 701

V.

70. Vacuum Oil Company -v- Bulawayo City Council (1961) R & N 295.

W.

71. Wells and Others -v- Minister of Housing and Local

Government and Another [1967]2 All. E.R. 1401.

72. Westminister Bank Limited -v- Minister of Housing and Local Government [1970]1 All. E.R. 743.

73. Estate of Wood -v- The Minister of Local Government [1961] R & N 362.

74. Wood -v- Secretary of State for Environment [1973]1 W.L.R. 707 ; [1973]2 All. E.R. 404.

TABLES OF STATUTES

NORTHERN RHODESIA AND ZAMBIA

1. The Housing (Statutory and Improvement Areas) Act. No. 30 of 1974
2. The Land (Conversion of Titles) Act No. 20 of 1975
3. The Municipal Corporation Ordinance Cap. 119 of the Laws of Northern Rhodesia.
4. The Town and Country Planning Ordinance No. 32 of 1961
5. The Town and Country Planning (Amendment) Ordinance No. 25 of 1962
6. The Town Planning Ordinance No. 60 of 1929
7. The Town Planning (Amendment) Ordinance No. 13 of 1931
8. The Town Planning (Amendment) Ordinance No. 22 of 1937
9. The Town Planning (Amendment) No. 24 of 1949
10. The Town Planning (Amendment) Ordinance No. 8 of 1949
11. The Town Planning (Amendment) Ordinance No. 12 of 1953
12. The Town Planning (Amendment) Ordinance No. 11 1954

13. The Town Planning (Amendment) Ordinance No. 25 of 1954

14. The Town Planning (Amendment) Ordinance No. 37 of 1956

15. The Town Planning (Amendment) Ordinance No. 29 of 1958

16. The African Urban Housing Ordinance Cap. 234 of the Laws of Northern Rhodesia

17. The African Urban Housing Ordinance Cap. 234 of the Laws of Northern Rhodesia

18. The Roads and Road Traffic (Amendment) Ordinance No. 35 of 1974

19. The Registration and Development of Villages Act No. 30 of 1972

BRITISH

20. The Northern Rhodesia Order in Council 1924

21. The Housing and Town Planning Act 1909

22. The Town and Country Planning Act, 1947

23. The Town and Country Planning Act, 1962

24. The Town and Country Planning Act, 1968

25. The New Towns Act 1946

26. The New Towns Act 1965

27. The Town and Country Planning Act 1971

28. Town Development Act 1952

O T H E R S

29. The Southern Rhodesia Town Planning Act No. 34 of 1933

30. The Bechuanaland Protectorate Town and Country Planning Proclamation No. 33 of 1961

31. The South African Natural Resources Development Act No. 51 of 1947

32. The South African Environment Planning Act No. 88 of 1967

33. The South African Subdivision of Agricultural Land Act No. 70 of 1970

34. The South African, Cape Province, Townships Ordinance No. 33 of 1934