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Richard ANDREWS

Vloga podjetnika v tržnem gospodarstvu

The Role of the "Developer" in a free market Economy

Na pobudo Urbanističnega inštituta je Richard Andrews kritično orisal vlogo in delovanje investitorjev oz. podjetnikov (developerjev) v sistemu planiranja prostora v Veliki Britaniji. V prispevku govori o značilnostih dveh osnovnih tipov podjetnikov:

- podjetnikov, ki delujejo s ciljem multiplicirati vrednost kapitala z nakupom in preprodajo zemljišč ali posesti, in
- podjetnikov, ki investirajo kapital (najbolj pogosto lastnega) zato, da bi ustvarjali povračilo v obliki rente ali profita.

Delovanje prvih, ki je zelo kratkoročno, in delovanje drugih, ki pomeni zavarovanje dolgoročne vrednosti naložbe, je hkrati pod nadzorom lokalnih upravnih služb, ki imajo - razen kontrole in ugotavljanja skladnosti s planskimi cilji višjega nivoja - možnost vplivati predvsem na usklajevanje interesov podjetnikov z interesi lokalne skupnosti.

Mag. Richard Andrews predava na Šoli za arhitekturo na Birmingham Polytechnic ter je konzultant za prostorsko planiranje.

In this short essay, I will attempt to identify the main aspects of the functions and activities of the developer within the British system of development and planning control: the Development Process.

It is important to identify first the functions of the State in the promotion and control of development under the present British system. In this sense the State is comprised of three major components:

1. Central Government (elected)
 - House of Lords
 - House of Commons
2. Government Agencies
 - Direct (ie Ministry of Transport, Ministry of Defence, Ministry of Education etc), these are departments of Central Government;
 - Indirect, ie QUANGOS (QUasi Autonomous Non-Government Organisation), these are non-elected (such as New Town Development Corporations, Urban Development

Corporations, and until very recently the Central Electricity Generating Board, the regional water authorities etc)

3. Local Government (a "two-tier" elected system)

- County Councils, responsible for education, police, transport, minerals

- Local or District Councils - responsible for most other local functions.

Briefly the roles of these three components can be summarized below:

1. CENTRAL GOVERNMENT, responsible for setting up and modifying the controlling legislation that governs the Town and Country Planning system, including forward planning (Development Plans) and Development Control.

(It should be noted that, since 1947, all development rights to privately owned land, have been taken over by the State - therefore, while it is normal to have private ownership of

land at all levels, from individual houses to giant industrial corporations, these owners do not have the right to develop their own land, and are required to obtain planning permission from the State, via the District or Local Council, for all forms of development (there are certain exceptions to this rule). "Development" is defined as all forms of building construction or a Change of Land Use.)

Central Government, through the Department of the Environment also controls the appeal system - see below.

2. GOVERNMENT AGENCIES may very often carry out development without going through the normal procedure for obtaining planning permission, and in effect, operate much as a similar agency would in Yugoslavia - they usually draw up their own plans, and carry out development directly, or provide funding for development in accordance with those plans. In this sense they act as direct development agencies.

3. LOCAL GOVERNMENT administers the Planning System, established by Central Government, under powers contained within the Town and Country Planning Legislation i.e. the Counties draw up the "Structure Plans" (the upper tier of the two tier forward planning system) which are basically policy documents (not plans in the geographic sense): the Districts draw up Local Plans (the lower tier) which are geographically based plans, relating to Land Use, and which form the basis of the Development Control system, also administered by the District Councils, in accordance with the Structure Plans. Development Control is the process of assessing the planning applications for development submitted by other Local Government Departments or, by far the greater number, by private sector agencies, which may range from individuals wishing to extend their own houses, through to giant industries developing new factories, or commercial or office premises.

It is at this point that we should explain the concept of the **developer**.

The Developer is primarily concerned with initiating development in some manner, for a financial return, either for himself or, more often, for some third party who may not wish to be involved in the process, and who is therefore prepared to pay a premium for the initiating work to be done for him.

Thus the Developer can be of two different types:

A. The developer who operates to multiply the value of Capital by buying and selling land or property capable of development. His "Profit" is generated by:

- having identified the development potential of a property or site;
- purchasing the site or property before the increase in value that this development potential would generate, has been attached to the site or even recognised by other agencies or the Local Planning Authority (LPA)
- enhancing the value by obtaining the necessary permissions from the LPA to be able to develop the site or property;
- reselling the site or property with the permissions attached (it is normally the case that Planning Permission runs with the land, not just the owner or applicant at the time that the permission is granted).

This form of Developer often uses borrowed capital to initiate his schemes.

It is apparent that this form of developer has little or no interest in the longterm effect of the proposed development, in terms of the wider costs to the community of any such given development, such as infrastructure costs, community or environmental effects, or other negative effects. (I will come back to this point at the end.)

B. The Developer who wishes to invest capital (often his own) in order to generate a "return" or "yield" in the form of rents or profit on a trade or function carried out from the premises to be developed. This form

of developer will be maintaining a long-term interest in the development, and is therefore far more concerned to cover, and avoid the prospect of, longterm costs generated by his development, be they financial (infrastructure costs or environmental damage) or qualitative (inappropriate development generating activity or traffic for which the site is unsuitable in the longterm and which may therefore "blight" the site in future).

In both cases, but particularly A, the Developer is normally interested in obtaining maximum development potential from a site, and it is therefore the role of the Local Planning Authority to exercise their powers of Development Control to ensure that wider negative effects are not allowed to occur. This will in part have been anticipated at a policy level, by the Structure Plan policies, but it is also at the Local Plan level that Development Control must seriously anticipate the pressures for development, together with the problems that particular types of development may generate. It has to be remembered, however, that while the Town and Country Planning System is designed to protect against bad development, it does not have any really effective positive powers in order to implement development. Thus the Planning System must remain a rearguard action against bad development, with little or no power to promote good development except indirectly through advisory documents like Planning Briefs. This aspect is an important point because as long as there is no guidance to say what can be developed on a particular site, there will always be pressure from private sector developers to "overdevelop" given sites, to improve their trading position or investment; and the "potential" for development on a particular site is the primary determinant of its valuation. If a site is therefore "overvalued", the purchasing developer may well "push" the Development Control System to the limit, on the justification that he "needs" a particular scale for

development to "service" or generate sufficient return for his investment. In the case of there being no Planning Brief for a site, the Local Planning Authority (the District Council) will have to waste valuable manpower resources "fighting" a particular case of unsuitable development, by a developer who may well be prepared to spend considerable sums of money (often a small percentage of the eventual increase in value of the site) in such a fight.

This is where the Appeal system becomes important: in the event of a Local Planning Authority refusing Planning Permission, the applicant can appeal to the Secretary of State for the Environment (the Minister), to override the L.P.A. While the S.o.S. (or his Inspector) has to pay attention to the established Planning Criteria (in the relevant Structure Plan, and Local Plans), he can still override the decision of the LPA, if it can be shown that the Determination of the application by the LPA was incorrect on Planning Grounds. As these are often a matter of professional opinion, rather than fact, it is often the Developer who can afford an expensive case presentation, who will win the day. This may not be in the best interests of the community, or the longterm condition of the site in question, but, unless considerable resources are spent by the LPA to prepare Planning Briefs and general design and planning guidance notes (such as the Essex Design Guide) it may well prove impossible to withstand the pressure from private developers when a situation of high demand (such as for private housing in South-East England) exists.

From an opposite viewpoint, Developers themselves may be under pressure to increase development potential on any site above that indicated by the LPA, given that they are subject to outside forces from third parties (such as a client "end-consumer" who has specific design criteria or limitations by the nature of his business; or the raising of interest rates on money borrowed)

and it may prove cheaper in the medium term to fight the negative decision of the LPA through the Appeal System, rather than to concede to the demands of planning or design criteria set out by the LPA, which would have enabled a positive decision to be obtained from the LPA.

As already explained, the Appeal system is the method whereby an aggrieved Applicant (subject to a refusal of Planning Permission) may take his case to the Secretary of State through the "Planning Inspectorate". In this event, the S.o.S (or his appointed Inspector) may overrule the Decision of the LPA. In this way, the Central Government of the day can, in fact, use the Appeal system as a means of rapidly modifying established Central or Local Government policy. For example, "Green Belt" policy is well established throughout the Planning System, as a means of protecting the Countryside around large cities. However, there is constant pressure for the relaxation of Green Belt restrictions, and such relaxation can be implemented piece-meal by Central Government, without consulting the relevant Local Authority, simply by allowing a few appeals to succeed against the LPAs, to indicate the shift in policy. It is in this manner that the number of appeals granted to private developers recently, has risen quite dramatically.

At the present time, many developers are playing heavily on this situation, to the detriment of the Planning System, and often to the disadvantage of Local Communities.

In order to overcome some of the obvious disadvantages and problems created by the Independent Developer who operates entirely for his own interest, there has been, for a number of years, a process of development whereby the private developer enters partnership with the Local Authority, the former motivating the development and often providing financial resources from the private sector, while the latter facilitates the development by using its Compulsory Purchase

Powers to assemble large sites (where before there were multiple ownerships) and its statutory powers to provide infrastructure etc. In this way, the Community may well benefit from the development in two ways:

- in the provision of facilities funded by the Private Sector eg. shops, offices, etc;

- the provision of public facilities and improvements to infrastructure provision through finance or construction made available as part of the private development scheme.

In this way, often called Partnership Schemes, the private sector developer gains a development that would otherwise be refused; while the Local Authority retains considerably more direct control of the development, together with often achieving community facilities at no expense to public finance - this last aspect is called "Planning Gain".

It can be seen, therefore, that there are major problems and pitfalls within the development process, whereby developers can (and do) take advantage of the weaknesses in the control system, to make profit at the expense of the community in general - however there is equally the opportunity, through careful monitoring and anticipation of problems, for the passive planning system of Local Government to harness the "drive" provided by the private sector Developer, in a manner that will be of longterm benefit to the community either through the free provision of facilities for public use, or by partnership with the private sector to generate finance and income for both sides: the Developer and the Community.

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