

**MAKING DEVELOPERS PAY--
BRITISH VERSUS AMERICAN EXPERIENCE IN THE 1980'S**

by

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ABSTRACT

During the 1980's, governments in both Britain and the U.S. were increasingly inclined to shift costs and obligations onto developers. In the U.S., a variety of methods were experimented with, but the predominant technique which emerged was to impose mandatory, fixed exactions and "impact fees." In Britain, local authorities negotiated legal agreements which frequently involved "contributions." This thesis evaluates the negotiation of agreements in Britain in light of contrasting U.S. experience with developer finance.

The thesis begins by setting developer finance in historical context, describing how and why different methods of developer finance emerged in the two countries. Planning research and literature in Britain and the U.S. are analysed and compared to identify important research questions regarding the attitudes of planners and developers, the rationale for obtaining developer payments, the process for obtaining payments, factors affecting local government success in extracting payments, the incidence of developer payments, and the presumed effects of developer finance on planning and development control.

The core of the thesis describes empirical research conducted in England, analysing how local authorities in a high-growth region used agreements between 1985 and 1990. An important feature of the research is that it examines local authority use of agreements in a specific geographic and planning context. This research calls into question many widely held assumptions about how planning agreements have been used, and suggests that, in the British context, negotiated agreements have significant planning advantages. The thesis argues that an important criteria for evaluating developer finance is how it functions in relation to regional planning and growth management objectives, and that additional geographically-based research is needed in both countries to evaluate the effects of developer finance on patterns of development, and on the achievement of planning policies.

To Lynne, my wife of 25 years.

Your support and encouragement made this thesis possible.

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GLOSSARY OF ACRONYMS

ACIR	Advisory Commission on Intergovernmental Relations
ALBPO	Association of London Borough Planning Officers
APA	American Planning Association
AWA	Anglian Water Authority
CCC	Cambridgeshire County Council
CDBG	Community Development Block Grant
CNT	Commission for New Towns
DC	District Council
DoE	Department of Environment
DoT	Department of Transport
DLT	Development Land Tax
DV	District Valuer
FAR	Floor Area Ratio
FBA	Fixed Benefit Area
GLC	Greater London Council
HbF	Housebuilders Federation
ICMA	International City Management Association
LCC	London County Council
LPA	Local Planning Authority
MGL	Massachusetts General Laws
NHBC	National House Building Council
OHPP	Office-Housing Production Program (San Francisco)
PAG	Planning Advisory Group
PDC	Peterborough Development Corporation
PDA	Planned Development Area
PILOTS	Payments in Lieu of Taxes
PUD	Planned Unit Development
R & D	Research and Development
RDC	Rural Development Commission
RTPI	Royal Town Planning Institute
TCPA	Town and Country Planning Association
TDR	Transfer Development Rights
TIF	Tax Increment Financing
UDAG	Urban Development Action Grant
UBR	Uniform Business Rate
UK	United Kingdom
US	United States

CHAPTER ONE: INTRODUCTION

The Trend Toward Developer Finance

In the United States and Britain during the 1980's, it became increasingly common for local governments to extract payments from, or impose other kinds of obligations on developers in exchange for the granting of planning permission. And yet, in neither country was the shift toward developer finance the consequence of a centrally directed and consciously adopted policy at the national level. Rather, in both countries, developer finance emerged from the bottom up. Perhaps as a result, remarkably little empirical research has been conducted in Britain, or at the national level in the U.S., to evaluate the potential long term effects of developer finance on the practice of planning and development control, and on patterns of development. What effect has developer finance had on the willingness of local planning authorities to grant planning permission, on where planning permission has been granted, and on the types of projects which have received planning permission? What types of communities have been most successful in utilising developer finance? And what factors have strengthened the ability of local planning authorities to obtain payments from developers? This thesis will attempt to provide answers to these and other previously unasked questions, and to test the conventional wisdom which has arisen on the subject of developer finance in the absence of sound empirical research.

In Britain there has been considerable disagreement and debate about whether the negotiation of agreements has been fair or overly burdensome to developers. The fact that this seemingly simple and fundamental question has provoked widely opposing views and interpretations is an indication of the fundamental confusion which has existed about the nature and effects of developer finance. This confusion is a reflection of the fact that the nature and effects of developer finance can vary significantly, depending on the methods used, and on how those methods are applied in specific contexts. The effects of developer finance can best be understood and judged by evaluating how it has been used in specific contexts. Indeed, the effects of developer finance may vary substantially, depending on exactly *what* developers have been required to pay for, and on *how* and *when* they have been made to pay.

Urban Development, Land Values and Developer Finance

The question of whether making developers pay has been onerous or fair to developers is difficult to confront without considering the relationship between developer finance and land values, and whether developer finance has had a positive or negative effect on land values. A number of British commentators (McAuslan,1984; Keogh,1985) have suggested that British local authorities' practice of encouraging (or possibly forcing) developers to agree to make "contributions" in exchange for obtaining planning permission

has been nothing less than a local attempt at taxing gains in land value-- i.e. betterment. Thus, a consideration of the problem of developer finance raises important questions about the redistributive aspects of developer finance. It also raises broader questions about the effects of planning, development control, and infrastructure investment on land values and development gain.

In attempting to plan and manage growth and development, planning authorities make decisions, and take actions which have a profound impact on land and property values. Sometimes those actions have an extremely negative impact on land values on some areas, while enhancing values in other areas. In the U.S. considerable attention has been focused on the need to compensate owners of properties which have lost economic value as a result of public actions or imposed restrictions. However, the overall effect of actions taken by public planning authorities has almost always been generally positive. "Planning authorities have not only redistributed large amounts of income and wealth but have actually created income and wealth" (Balchin and Kieve, 1986, 125). Indeed, it might well be argued that one of the principle unstated objectives of planning and development control in both Britain and the United States has been to enhance property values.

Three kinds of activities undertaken by public authorities can have a distinctly positive impact on land values. *The preparation of plans* for the future development of areas is often sufficient to create positive expectations, and will often have the effect of increasing property values. "Local authorities' plans of an area greatly influence land owners' expectations regarding price level. The more definite the plans for how a given area is to be used, the higher are the prices asked on sale of the land..." (Svensson, 1974, 73). In a very real sense, plans prepared by public authorities have represented "a speculator's guide" (Hall, 1973, 434), encouraging development and increasing land values in selected areas, while discouraging development in others. A second way in which public authorities have enhanced land values, and the profitability of development, has been through the exercise of *development control*. The extent to which land values have been enhanced by restrictive development controls has been repeatedly emphasised in the literature on town planning produced in Britain (Hall, Thomas and Drewett, 1973; Drewett, 1973; Pearce, Curry and Goodchild, 1978; Ravetz, 1980; Walters, 1983; Balchin and Kieve, 1986). Making land more costly (and valuable) has been far from detrimental to major landowners and developers. As Rydin has pointed out,

... development control is vital to the land speculation activities of housebuilders, both in maintaining the attractiveness of certain development locations and in granting such development rights to a limited number of landowners... The grant of planning permission on a particular site, in these circumstances, greatly increases the value of that site. Thus it is to the benefit of local landowners, including housebuilders with landbanks held for capital appreciation, if generally restrictive planning control coexists with the possibility of planning permission being granted on their land (Rydin, 1986, 29).

Not only has development control had an important influence on land values, but it also has had an important effect on the profitability of development. Barras (1985,94) argues that “the more restrictive is development control, the higher is the rate of development profit, even though the total volume of profit may be reduced.”

The third way in which public authorities can have a major positive impact on land values is by making investments in *infrastructure* to support development. The term “infrastructure,” derived from the Latin “infra,” meaning “below,” has been used generally to refer to a “wide range of structures ... on or under the ground for which the public sector has the main responsibility” (GLC,1985, 2). Types of structures and improvements most commonly thought of as “infrastructure” are roads and transport facilities (including bridges and tunnels,) water supply and distribution facilities, sewers and surface drainage facilities, gas and power lines, and other basic structures and facilities which are essential for the development and economic functioning of modern communities. Over time, the term “infrastructure” has been used in an increasingly broad sense to include additional improvements, community facilities such as fire and police stations, schools, libraries and community centres, as well as open space, recreation improvements, and other amenities. As noted by Whitehead (1983) and Shoup (1983), extending infrastructure to previously unserved land will have the effect of significantly increasing the value of that land. Public investments in transportation improvements can have a particularly pronounced and positive effect on property values (Misczynski, 1978c,105; Bajic,1983). As Neutze (1974,91) has observed, “... public investments in urban services (roads, railways, sewers, schools, parks, airports, etc.) are among the most important determinants of future [land] values.” Infrastructure provision can have such a major impact on the value of land that speculators will tend to anticipate extensions of urban services, so that the price paid for agricultural land is often “well above what it would fetch for agriculture” (Neutze,1970,316). Moreover, “As the prospect of urban infrastructure improvements draws close the price of agricultural land on the fringe rises still further” (Ibid.). The provision of public sewer and water facilities will substantially increase land values in areas benefiting from these facilities, creating windfalls for landowners (Walters, 1983). There is really no way that public authorities can avoid taking actions which exert effects on land values. If infrastructure is *not* extended to facilitate development in new areas, land with such infrastructure already available will become all the more valuable, and the owners of that land will reap the windfall.

Of the three above-mentioned actions that public authorities can take to enhance the value of land, the provision of public infrastructure is probably the most essential and important in enabling new, wealth-creating development to occur. The preparation of plans, although often having a positive impact on property values, cannot in and of itself assure that development will occur. Moreover, although planning regulations may raise the value

of land with planning permission by preventing inappropriate development from occurring, the exercise of regulation alone may not be sufficient to create the positive conditions necessary to stimulate development. For productive development to occur on undeveloped land, it is often necessary that basic infrastructure and public facilities be provided. The finance of infrastructure and facilities in support of development has traditionally been an important responsibility of city and local governments, and a potentially important tool for the management and control of development. As Healey (1988,14) has noted “the need to relate urban development to infrastructure investment in more efficient ways” has been an important goal of public sector urban planning.

The physical development which generally occurs in areas where infrastructure is provided is the most visible sign of the effects of public infrastructure expenditure. But there are other less visible effects, such as on the landscape of land values, and on levels of investment and earnings. As Doebele (1982, 1) has pointed out, the process of urban development is “a wealth-producing process.” It should, therefore, somehow be possible to raise the revenue necessary to finance infrastructure improvements that are crucial for that wealth-creating process to proceed. The ironic fact, though, is that cities have been increasingly “impoverished,” (Ibid.) and therefore unable to finance public infrastructure improvements with revenues raised through traditional means of taxation. “The resources available [to public authorities] for maintaining existing infrastructure and investing in new structures has ... deteriorated” (Cars and Snickars,1991, 7). And so in many parts of the world, including Britain and the U.S., there has been a worsening cycle of public disinvestment in infrastructure.

The ability of governments to finance new infrastructure has been doubly strained, because land values have risen as a result of public actions.

Local authorities who buy sites in developing areas for services as and when required normally have to pay a price which reflects the value of that land for some form of development, and the value will normally have been enhanced by the provision or the prospect of provision of those and other public services ... Thus local authorities may have to make a ‘double payment’ for land required for statutory purposes in the sense that they are paying a price which reflects the benefit of services which they themselves or some other public authority are providing (Sheaf Committee, 1972, para 39).

How then can governments, which are increasingly short of money, afford to provide the infrastructure and facilities necessary for development and wealth creation? One solution would be for local authorities to attempt to recoup some of the value which they have helped to create. “In some cases, land prices rise as a direct result of expenditure by public authorities, e.g. a new road. It seems reasonable that the authority concerned should, if it is feasible, be able to recoup some of the rise in land values” (Hallett and Williams,1988a, 10). The seriousness of the problem seems to underscore the need for new approaches to developer finance. As Doebele has argued (1982, 2), “If the situation is

ever to be remedied, new institutions must be established, instruments that will permit governments to recapture at least a part of the wealth created by urbanization... enough to permit them to install new services as rapidly as they are needed.”

The concept of *recouping* increases in land value as a means of financing the provision and improvement of public infrastructure and facilities is not a new idea. Some of the most historically significant and successful past examples of city planning and improvement were made possible by capturing the increased value created through planning and infrastructure investment: the planning and development of Washington D.C. in 1791 (see Reps,1987); the building of Central Park in New York in the 1850's (see Fogelson,1986); the monumental replanning and rebuilding of Paris by Napoleon III and Baron Von Haussman between 1854 and 1869 (See Pinckney,1958); and the development of Letchworth and Welwyn Garden Cities in the early Twentieth Century. Perhaps the most dramatic demonstration of the feasibility of financing public infrastructure by recouping the increased value was the ambitious New Town building programme carried out in Britain by the British Government after World War II. Twelve New Towns were initially designated in 1947, and between 1948 and 1970 another 16 New Towns were established. Between 1947 and 1976, the government invested a total of £1,682,386,278 in building the New Towns (Osborn and Whittick,1977,66). The strategy of up-front public investment and subsequent recoupment of value was remarkably successful in financial terms. The first 12 New Towns, “taken together, paid their way within 12 years from their start” (Ibid.). The 16 towns designated after 1947 “took about 15 years to repay their capital investment and interest to the Treasury” (Ibid.). More recent research by Heim (1990) suggests that as the government-funded programme of developing new towns in England proceeded, the Treasury began to recognise the potential not simply of off-setting costs, but for making a competitive rate of return on its invested public funds.

Despite these successful past models, with the election of conservative administrations at the national level in Britain and the U.S. toward the end of the 1970's, the notion that the government should take the lead in financing infrastructure improvements with public funds fell increasingly out of fashion. Quite to the contrary, national governments in both countries looked for ways to reduce levels of taxation and public expenditure. Funding provided by national governments to local governments was especially vulnerable to cutbacks. Confronted with these fiscal limitations, local governments in both countries searched for alternative means of finance, and in the process appeared to find it increasingly attractive to look to developers to pay for facilities and improvements which were formerly financed publicly through general taxation.

Differing Approaches to Developer Finance

In the U.S., payments from developers were extracted in the context of a largely

prescriptive, zoning-based planning system, which afforded local planning authorities little discretion in reviewing applications for development, and relatively little opportunity to negotiate with developers regarding the content of their development or proposals, or additional benefits which might be provided to the community in return for approval. In the context of this prescriptive approach to development control, the most common approach to developer finance was for local governments to impose mandatory charges (*exactions* and *impact fees*), which were entirely non-negotiable, and which were the same for all similar developments within a given community. In Britain, there was much less willingness to impose mandatory obligations and exactions on applicants for planning permission. The one way in which local authorities could hope to impose obligations on developers was by negotiating consensual agreements, containing possible offers of “contributions.” The process of negotiating “contributions” from developers came to be known as the negotiation of “planning gain.” “Planning gain” came to refer to any desired public benefit secured by a local authority in the process of granting planning permission (Kayden, 1988, 163). Jowell, who conducted the first intensive study of negotiated contributions, defined planning gain as “... the achievement of a benefit to the community that was not part of the initial application (and was therefore negotiated) and that was not of itself normally commercially advantageous to the developer” (Jowell, 1977a, 418).

The most unique characteristic of the “planning gain” approach to developer finance was that the gains achieved by the community, (i.e. additional costs imposed on the developer) were obtained largely through a process of *bargaining*. The process of bargaining, in the context of urban planning and development control, has been described as “case-specific land use policy making that benefits both the public and private sectors,” as opposed to “‘rule application,’ where the public sector applies some set of already-established policies, such as a zoning ordinance, to a proposed development” (Kirlin, 1985, 1). Put another way, the practice of obtaining planning gain was based on “negotiation and consensus, rather than unilateral dictate.” (Grant, 1985, 88)

The following scenario describes one way that planning gain might be achieved:

An applicant approaches a planning officer for informal advice about a proposed development. ... The applicant would be told that his proposal at present would never meet with the approval of the elected members. On the other hand, if the applicant were prepared to incorporate a number of residential units within the development, and perhaps to dedicate some public open space, the members would be likely to be far more sympathetic. The applicant would then draft a formal submission incorporating these ‘gains’ (Jowell, 1977a, 73-74).

Under the above scenario, the developer entered into negotiations *before* actually submitting a formal application for planning permission, and then modified his application for planning permission to incorporate features desired by the local planning authority (LPA). Under this scenario, gains achieved by the LPA would be incorporated in the

development proposal, and there would not necessarily be a need to enter into a formal planning agreement. A second way in which planning gain could be secured would be by negotiating a legal agreement *after* a planning application has been submitted. The local authority would agree to grant planning permission subject to the applicant agreeing to assume certain specified obligations -- and possibly even to make a financial contribution to the local authority. In such cases, the gains "offered" up by the developer might be viewed as the "price" of obtaining planning permission (McAuslan, 1984,84).

Experience as an American Planner Which Motivated This Research

I initially became interested in the problem of developer finance in the course of my work as Planning Director for a small city in the U.S. (33,000 population, 35 square miles). I began work as Planning Director for Northampton, Massachusetts in 1980, just one month before a referendum (called "Proposition 2 1/2") was passed which prevented municipalities in the state of Massachusetts from increasing their property tax collections by more than 2.5% per year. This statewide law effectively limited the ability of the City of Northampton, and other cities in the state, to finance and provide new infrastructure and facilities to serve new development. To make matters worse, from 1984 through 1988, there was a major development boom in Massachusetts (Case,1992), which was accompanied by surging property values. As a result of the constraints of Proposition 2 1/2, the city was unable to raise sufficient revenue from local property tax collections to meet the needs and demands for new infrastructure and facilities occasioned by new development.

Local governments in the U.S., faced with increased financial demands for facilities and services, and with decreased revenues, could respond in any of three ways. They could try to slow down and discourage new development. They could reduce public infrastructure expenditure. Or, they could seek to raise additional money from sources other than the property tax, and to impose special fees on new developments.

As the boom intensified in Northampton, there was increased citizen and political pressure on the city's Planning Department and Planning Board to implement measures to limit and stop development. There were calls for increasing minimum lot size requirements, for lowering allowed densities of development, and even for imposing a fixed limit on the number of building permits which could be issued in a given year. Responding to this pressure, the city first reduced its public works budget by cutting back on plans to improve and widen roads. Then excess capacity in public schools, which could have assured the ability to absorb new school children from new developments, was eliminated by closing and selling surplus schools. Lastly, the city attempted to raise additional money through user fees, by raising fees charged for water and sewer services. (Much of the cost of water and sewer had previously been paid for out of property taxes.)

However, the city was not able to impose development impact fees on new developments. In Massachusetts during the 1980's development boom, there was no enabling legislation at the state level authorising municipalities to impose impact fees to cover the cost of needed off-site improvements.

The experience of attempting to plan for and control growth, at a time when public funds were inadequate to meet the needs of new development and when public attitudes toward growth and new development had become increasingly antagonistic, led me to begin to consider the issues and questions which are explored in this thesis.

- How can and should local government finance the public infrastructure and facility costs of new development?
- To what extent should developers and landowners be expected to pay the public costs imposed by their developments, including off-site costs?
- What methods of developer finance make the most sense in terms of equity and efficiency, and in terms of achieving the objectives of planning and development control?

Reasons For Conducting Research in Britain

As an American-trained planner I welcomed the opportunity to study how local planning authorities and planners in Britain approached the problem of trying to secure contributions from developers. Although British planners have often looked to the U.S. for new ideas and approaches to planning and development control, I agree with Haar (1984, xii) that Americans have much to learn from the example and experience of British planning and development control. England offered a number of advantages as a context in which to carry out empirical research on developer finance. British planners have "pioneered" not only in the planned development of cities, but also in attempting to "capture for the public... planning-induced increases in property values"(Ibid.). The logic of conducting research on developer finance in Britain was further reinforced by the fact that the British planning system-- by maintaining tight control over development, and by producing a compact settlement pattern which has been highly efficient in terms of public infrastructure investment-- has had a much greater impact on land values and development gain than has the American planning system. As a result, it seemed reasonable to expect that the relationship between payments from developers and the value of development rights might be clearer in Britain than in the U.S., and that planning authorities in Britain might consider the value of permission to the applicant, as well as the cost of required improvements, when seeking contributions from developers.

The long history of debate in Britain over the concept of "betterment," and the numerous attempts which have been made in Britain to publicly capture gains in land value, made Britain all the more appropriate as a context for research. Indeed, the ideas of

American economist Henry George (1884)-- that land values are publicly created and should therefore be taxed-- appear to have struck a more responsive chord in Britain than in the U.S. George's ideas were taken up in a modified form in the Uthwatt Committee Report on *Compensation and Betterment*, which was issued in 1942. The Uthwatt Report proposed that control over all development rights of land should be nationalised, and vested in the state. By nationalising development rights, the state would, in effect, be able to claim ownership of most future increases in land value. The report proposed that a periodic levy should be imposed, at a rate of 75%, against increases in annual site values, as a way of "securing for the community a share of community-created increase in annual site values of property..."(Ibid.,§342, 152). Furthermore, it recommended that local authorities be given expanded authority to buy land compulsorily, so as to enable them to directly recoup increases in value produced by town planning schemes and public improvements.

Although the specific recommendations contained in the Uthwatt Committee Report were not immediately implemented, the Report did have a major influence in shaping the direction of post-war land use planning and tax policy in Britain. In the years that followed, three attempts were made by successive Labour governments to tax betterment. Under the 1947 Town and Country Planning Act, development rights in Britain were nationalised. Increases in land value resulting from public improvements, from the approval of town planning schemes and from the granting of planning permissions were made subject to a development charge, which was set at 100% of the gain in value (Cullingworth, 1988, 159). This approach to the taxation of property value increases was adhered to for six years. In 1953, the 100% levy on betterment was abolished for private land transactions, but public authorities continued to acquire land based compulsorily at below-market prices, imposing a 100% tax on betterment on the land that they purchased, and in effect creating a dual land market (McAuslan,1984). This unequal treatment of land gains was ended by the 1959 Town and Country Planning Act, which restored "'fair market price' as the basis for compensation for compulsory acquisition" by public authorities (Cullingworth,1988, 168).

The second attempt at the national level in Britain at taxing increases in land values came with the passage of the Land Commission Act of 1967. The intent of the Act was to assure that "the right land is available at the right time for the implementation of national, regional and local plans" and "to secure that a substantial part of the development value created by the community returns to the community and that the burden of the cost of land for essential purposes is reduced"(White Paper,1965, para. 7). Under the act, a Land Commission was established, which was intended to intervene in the private land market to publicly acquire land that would then be made available for development at a reasonable cost. A second feature of the 1967 Land Commission Act was that it also introduced a new betterment levy, set initially at 40 percent (Cullingworth,1988, 169). It was originally intended that the betterment levy would be increased at various intervals, to 45 per cent and

then to 50 per cent, but it never was. (Cullingworth, Ibid.) One problem with the Act was that, like the 1947 development tax, the betterment levy was only applied when increases in development value were realised through sale or permission to development (Drewett, 1973, 220). There was no tax on holding land, and therefore little reason not to continue holding it (Ibid.), especially given the pledge of the Conservative Party that it would, once elected, immediately abolish the tax. Thus if landowners were simply patient enough to withhold their land from sale or development until the Conservatives took office, they could expect to get full market value free of the tax (Roberts, 1977, 27). As a result, although the intention of the Land Commission Act was to lower land prices, the actual effect it had was to produce a shortage of developable land and, in turn, a sharp increase in land prices (Ibid., 15). Under these conditions, the levy turned out not to be a tax on betterment at all, because it was not paid by landowners, but by purchasers of land in the form of higher land prices. The Conservatives won the next national election and the Land Commission Act was abolished in 1971. The provisions of the Land Commission Act lasted just under four years (McAuslan, 1984).

A third attempt to impose a tax on increases in land value was made in 1976 with the adoption of the Development Land Tax (DLT). The DLT was adopted after a major development boom, during which immense profits had been made through speculative commercial development, particularly in Central London as a result of highly restrictive development control policies. As a result of the huge increases in building rents which occurred during the period, a remarkable political consensus arose that "unearned" development gains should be taxed. The surge of property values and rents had "served to underline.... the possibilities for securing a share in development profits on behalf of the community" (Keogh, 1985, 203). Even among Conservatives, there was a recognition that some form of tax was needed to deal with "the irresponsible behavior and excessive profits" of certain developers (McAuslan, 1984, 82). When initially applied, the first £160,000 of realised development value was subject to relief, but further realisation of development value above that was charged at a rate of 80 per cent. The tax was subsequently reduced to a top rate of 60 per cent, applicable after the first £50,000 of realised development value, which remained free of tax (McAuslan, 1984, 83).

Although apparently similar to the 1947 and 1967 acts in its attempt to capture increases in land value, the Development Land Tax of 1976 was different in one very important respect. Under the DLT, *local authorities* (rather than central government) recouped the tax on betterment (Ibid, 79). In designating local government as the vehicle for collecting gains in development value, the DLT thus appears to have provided an important transition leading toward the negotiation of planning gain by local authorities. In fact, tax rules that accompanied the imposition of DLT encouraged the negotiation of planning gain in a specific way. If a local authority imposed an expensive planning gain agreement on a developer it simply meant that he would pay less development land tax than

he would have done, because he was able to claim allowance for the cost of financing the planning gain (Ward, 1982, 83). The tax provisions of DLT in effect underwrote planning gain contributions by developers, and established a pattern of reliance on developer contributions for infrastructure through planning gain (Grant, 1986, 105).

The DLT never fulfilled its promise, either as an instrument of planning and land policy, or as a means of raising revenue for public facilities and improvements financed by local governments. It is estimated that a simple tax set at 60% of development values *should* have brought in an annual return to the National Treasury of approximately £600 million (Grant, 1986, 11). In actual practice, the amount collected was only a small fraction of that sum, because DLT was an “event-based tax,” and landowners simply avoided the tax by not conducting land transactions. The most that was collected from DLT in any single year came in 1982, when £38.3 million was collected, and the average annual amount collected from DLT over the four year period 1979-1982 was only an approximate £26 million (Ibid., 12). The Development Land Tax was abolished in March 1985.

Given this history, it was probably inevitable that efforts by local government to extract “contributions” in exchange for granting planning permission would be perceived as yet another attempt to collect betterment. According to McAuslan (1984, 84), planning gain appeared to be, “in effect, a decentralised local attempt to ensure that some of the financial gains from obtaining of planning permission accrue to the local community.” McAuslan’s assessment was echoed by Keogh (1985, 222), who argued that “planning gain is an ad hoc local tax with an arbitrary impact on the process of development.”

Convergence of British and American Development Control

A comparison of British and American approaches to developer finance appeared particularly appropriate and timely given signs that the British and American systems of development control were tending to converge in the 1980’s. (For a summary description and comparison of traditional zoning in the U.S., and the British approach to development control, see Appendix One.)

The traditional way in which development has been controlled in the U.S. in the past has been through highly prescriptive, but at the same time fairly permissive zoning ordinances. This approach to development control has provided developers with a high degree of certainty. It has also tended to minimise the degree of control that local planning authorities have been able to exert over development. Under traditional zoning, a great deal of development has been allowed “by right.” The only requirement has been that development must conform to the provisions set forth in the appropriate ordinance regarding allowed uses, maximum building height and density, required setbacks from the property line (front, side and rear,) required parking and landscaping, sign limitations, etc. Zoning as traditionally applied has essentially been a “cookbook” approach to development

control. As long as proposed developments meet the preset requirements established in the ordinance, local planning authorities must approve them. Conversely, if the proposed developments do not meet the requirements of the ordinance, then local planning authorities are bound to deny them permission. Under this approach, there has been little or no basis for granting of exceptions, and little basis for negotiation.

However, by the 1980's, U.S. development control had begun to undergo some significant changes. In the first place, "... zoning restrictions have become increasingly stringent over time and over the development of any given community..."(Fischel,1985, 249). There has been a trend away from allowing development "as of right", and an increased tendency toward the adoption of ordinances which require that developers apply for and receive "special permits" prior to undertaking development. For example, in downtown Boston development controls have been tightened so much that it is now the case that "little can be built as of right"(King,1990, 8). Indeed, in the U.S. the rules and procedures governing development have become increasingly complex, and developers have faced increased uncertainty as a result.

Another factor which allowed local planning authorities in the U.S. to exercise greater discretion, and in turn to exert greater control over development, has been the trend toward the use of "flexible zoning techniques," such as Planned Unit Development (PUD) zoning, floating zones, overlay zones, conditional rezoning, and contract zoning. The trend toward more flexible zoning became noticeable at the national level in the 1970's (see Meshenberg,1976), but increased and accelerated in the 1980's. One of the most commonly used flexible techniques of development control has been PUD zoning, which provides an alternative to the fixed requirements of standard zoning. Under PUD zoning, all standard zoning limitations on building height and setbacks, project density, and allowed uses are waived, and "the city and the developer bargain over the scope and character of each project..."(Susskind and McMahon,1988, 203). What is unique about the PUD process is that "...the developer and community... negotiate every feature of the project..." and there is ample "opportunity for the developer to strike deals and compromises with the community"(Fischel,1985, 35). Another form of flexible zoning which has become increasingly popular in the 1980's has been "performance zoning"(see Kendig,1980). Rather than requiring that every new development conforms to preset physical dimensions, "performance zoning" focuses on controlling the by-products and impacts of development, and on assuring that new developments meet certain minimum performance standards. An important factor which led Kendig and others to advocate a performance-based approach to development control was the realisation that rigid and prescriptive zoning ordinances had "failed to protect the environment..."(Ibid.,3), and that a more flexible site-by-site evaluation of the impacts of proposed developments was necessary to produce environmentally acceptable development.

A good example of the flexible approach to development control in the U.S. in the

1980's was the innovative "Land Development Guidance System," first developed and applied in Fort Collins, Colorado. This approach received considerable national acclaim and was subsequently copied, adapted and applied in communities elsewhere in the country. In an attempt to control the high rate of growth it was experiencing, and to improve the quality of development, Fort Collins adopted a system of development control which allowed very little development by right. To obtain approval to develop, a developer had to earn a specified minimum number of "points." Unlike standard zoning, the Fort Collins approach did not tell developers exactly how they had to design their projects. Nor did the ordinance set a fixed limit on the density of development. Rather, developers could increase the density of their developments by earning more points, by including desired features and amenities specified in the ordinance, by assuring that adequate infrastructure was provided, and by mitigating development impacts. How much the density could be increased depended on "how far the developer [could] shape his proposals to score the necessary points on the city's guidance scale for greater density..."(Wakeford,1990, 208). One of the goals of the city was to minimise traffic impacts of proposed developments. Thus the Fort Collins development guidance system offered developers density bonuses if they constructed developments which contained both housing and commercial uses. Commercial developers were also granted higher densities for projects located near residential areas (thus minimising the need for travel), near transit routes, or if they promised to institute vanpool programmes (Cervero,1988, 199). Developers could also increase project densities by increasing the provision of open space and landscaping, which mitigated and neutralised the impacts of their projects on nearby areas (Wakeford,1990, 98).

As a result of the changes described above (the tightening of development controls, and the increased flexibility and discretion in reviewing applications on a case by case basis) development control in the U.S. appeared to be moving at least partially toward the British model. Meanwhile, an opposite trend appeared to be underway in Britain in the 1980's, as British development control appeared to be moving toward a more fixed and predictable system of development control, like that in the U.S. Under the Town and Country Planning Act of 1947, as amended in 1971, developers were faced with a high degree of uncertainty when submitting applications for planning permission. There were no fixed zoning plans to guide developers as to what types of development might be acceptable, or approvable on specific sites. Rather, local planning authorities could decide whether to approve or deny applications for planning permission on a case by case basis. However, in the 1980's steps were taken by the government of Margaret Thatcher to provide developers with greater certainty and a more predictable framework of development control. Circular 22/80 represented an important shift in policy emphasis toward what became known as a "presumption in favour of development." The circular advised local planning authorities "always to grant planning permission, having regard to all material

considerations, unless there are sound and clear cut reasons for refusal”(DoE,1980). Another step which loosened development control was the adoption of the Revised Use Classes Order in 1987, which cut the number of separate use classes, and increased the number of different uses within each use class-- thereby increasing the ability of owners to change uses without having to obtain specific permission. At the same time, British development control was becoming more predictable. With the issuance of a consultation paper in September, 1986 on *The Future of Development Plans*, and Planning Policy Guidance 12 in November 1988, the government set in motion a process which required for the first time that development plans should be prepared “covering the whole of each District.” Under this new approach to planning, a prospective developer could look at a local development plan, and find specific areas delineated on a map allocated for specific types of development-- just as is done in American zoning plans.

As the above discussion has shown, approaches to development control in the U.S. and Britain became more similar in the 1980's. This apparent convergence of British and American development control in the 1980's made a comparison of British and American approaches to developer finance all the more relevant and timely.

Research Approach

This thesis has three basic purposes. The first purpose is to describe and compare the different approaches to developer finance which were used in Britain and the U.S. in the 1980's-- how they evolved, their rationale and legal basis, and the issues and questions which these practices raise for planning and development control. The second purpose is to present and analyse data compiled through empirical research documenting how agreements were used in a specific region of Britain over a five to seven year period. The third purpose is to interpret the data collected in Britain in light of American experience.

During the first phase of my research, I carried out a thorough review of planning literature and research on the negotiation of planning gain in Britain, and on various methods of developer finance in the U.S. I also conducted an initial round of 28 interviews in Britain with planners and public officials in local government, planning consultants and chartered surveyors, solicitors, university-based researchers, officials at the Department of Environment and developers. The purpose of these interviews was to identify a range of local government approaches to developer finance, and to compile information on a cross-section of agreements signed in various localities in the South East of England. I also conducted an additional 8 interviews in the United States to provide contrasting American views and perspectives on approaches to developer finance. These initial phases of my research served to identify issues and questions which needed to be addressed in geographically focused research.

In the second and most important phase of the research, I conducted empirical

research within an area located in the South East of England, comprehensively documenting how a number of local planning authorities in that region used agreements in practice. My initial intention was to document the extent to which British local authorities negotiated agreements to obtain funding from developers for infrastructure improvements. My interest in this question was heightened by the fact that the primary reason local governments in the U.S. have used developer finance has been to obtain financing for infrastructure improvements. However, in the course of conducting research in the field, as I began to compile data on local authority use of agreements, I decided to broaden the scope of the research to document *all* uses of agreements, whether or not they involved contributions.

It should be noted that the empirical research which I conducted was limited to Britain. I made no attempt to compile original data on developer finance in the U.S. What I have done, instead, has been to bring my knowledge, gained from twenty years of planning experience in the U.S., to bear on an examination of how developer finance worked in Britain in the 1980's.

The field research I conducted in Britain had the following specific purposes:

- To document the frequency with which local planning authorities signed agreements; the frequency with which agreements contained contributions; the nature and extent of developer contributions; and the extent to which developer contributions were directly related and beneficial to the developments making the contributions.
- To document the characteristics of projects which were subject to agreements.
- To discover local planning authority attitudes toward negotiating contributions from developers.
- To describe the process whereby agreements have been negotiated, and the extent to which offers of contributions affected local planning authority decisions regarding the granting or denial of planning permission.
- To analyse geographic variations in the practice of using agreements to impose obligations on developers, and factors which affected local authority success in obtaining contributions, the ability of local authorities to obtain contributions, and the ability or willingness of developers to make them.
- To analyse and describe how local authority use of agreements, and attitudes toward agreements evolved and changed over time.
- To analyse the use of agreements in relation to established planning policies, and to determine whether or not the content of agreements was consistent with those policies.

The Structure of the Thesis

The thesis contains nine chapters. Chapter One observes that local governments in both Britain and the U.S. in the 1980's appeared to become more reliant on funding from

developers, and that different approaches to developer finance were followed in the two countries. Because the negotiation of developer contributions in Britain has raised the question of whether local authorities have used agreements to capture betterment, much of this first chapter is devoted to a discussion of the effects of plan-making, development control and infrastructure finance on land values and development gain. This discussion establishes an important conceptual framework for evaluating British and American approaches to developer finance.

Chapter Two begins by describing the factors and forces which led American local governments to make increased use of developer finance in the 1980's. The balance of the chapter is devoted to describing the many different tools of developer finance which have been used in the U.S.-- their planning rationale and legal basis, and how and where they have been used. Chapter Three shifts back to Britain, describing the legal and institutional basis for negotiating agreements in the British system of development control, and how and why the negotiation of agreements led inevitably in the 1970's and 1980's to the negotiation of developer contributions. The chapter also reviews central government policy statements on agreements, and the growing tension between central government policies and local authority practices. Chapter Four synthesises what is currently known and believed about developer finance in Britain and the U.S., and puts forward a list of issues and questions which are important in understanding the effects and implications of various approaches to developer finance. The chapter reviews what is known about the negotiation of agreements and developer contributions in Britain from previous research and published accounts in books and journals, and contrasts British research findings and opinions with those in the U.S. This review makes it clear that many important research questions remain unanswered about how agreements have been used by local planning authorities.

The core of the thesis, Chapters Five through Eight, is devoted to a description of empirical research I conducted in England between October 1989 and April 1992. This empirical research was conducted in an attempt to provide concrete answers to the research questions and issues which were raised and discussed in Chapter Four. Chapter Five describes the study area which was chosen for research, and the methodology and research design used in carrying out research within that study area. Chapter Six presents data compiled at the county level describing how agreements were used over a five year period 1985-90, and trends in agreements during that period. Chapter Seven analyses geographic and locational variations in the use of agreements, and shows how the signing of agreements, and the contents of agreements varied from district to district. This chapter also identifies and evaluates various factors (such as development pressure, rates of growth, degrees of planning constraint, and political affiliation) which might explain the varying degrees of success which local authorities had in securing contributions. Chapter Eight describes how local authority policies and practices on agreements evolved between April 1990 and March 1992, in the aftermath of the study period. This chapter also

analyses the impact of the water infrastructure charge which was implemented as of 1 April 1990, and compares what developers paid under negotiated agreements against what they paid once under mandatory fixed infrastructure charges were imposed. Chapter Nine, summarises the findings of the empirical research which was conducted in England, offers a number of explanations for the surprising findings of the research, and offers an American planner's assessment of the advantages and disadvantages of negotiated agreements as a means of infrastructure finance, and as a means for achieving planning and development control objectives.

CHAPTER TWO: EVOLUTION OF DEVELOPER FINANCE IN THE U.S.

A sign of the times:

... 22 prisoners have literally punched and kicked their way out of the East County Jail in San Diego County, California in the past year. The County Board of Supervisors decided to economize by substituting plasterboard and styrofoam for the four inches (10 centimeters) or more of concrete that were supposed to go into the walls [of the county jail]. So far, the voters have refused to approve taxes for a new jail (*International Herald Tribune*, 11 June, 1990).

The Decline in Federal Funding and the “New Federalism”

The shift toward private finance in the U.S. was not driven by ideology, but was rather a pragmatic response to the increasingly untenable position in which local governments found themselves in the 1980's. “In a favorable fiscal environment, it is unlikely that privatization -- as a strategy for providing goods and services that conventionally were in the public sector ... -- would have been considered nearly as attractive”(Netzer,1988,36). The “New Federalism” enunciated under the administration of President Ronald Reagan was the initial catalyst which set in motion the trend toward a more localised system of development finance.

Throughout the post World War II period, and through the 1960's, public expenditure was absorbing an expanding share of the U.S. national economy, and “a sizeable fraction of that expenditure was for infrastructure and other public capital” (Netzer, Ibid.). Most of the truly expensive infrastructure constructed in the United States in the Twentieth Century was in fact paid for by the federal government (Nicholas,1990, lect.). For example, the federal government financed 100% of the cost of the 41,000 mile U.S. Interstate Highway System. To finance this massive public works project, and to provide continued funding for highway improvements, the federal Highway Trust Fund was established in the 1950's, funded through a four cent per gallon federal tax on gasoline. The federal government also played the lead role in financing the construction of other major transportation facilities, such as tunnels, bridges, port facilities and airports. The federal government provided most of the capital funding grants for the establishment and expansion of subway and public transit systems in major cities, and this funding was substantially expanded in 1964 with passage of the Urban Mass Transportation Act. The federal government played the lead role in financing the development and improvement of public airports. In 1972 the Congress amended the Federal Water Pollution Control Act, and committed billions of dollars to a Wastewater Construction Grant programme which funded improvements to local sewerage systems (Joint Economic Committee,1984,6). In older central cities, the federal government financed an ambitious programme of “urban

renewal," including the demolition of deteriorated and "obsolete" structures, and public investments in infrastructure and facilities to encourage new private development. From the 1960's until 1974, when it was terminated, the federal urban renewal programme pumped more than \$13 billion into the rebuilding of American cities (Segalyn,1990, 430). Throughout this period, prior to the 1980's, "there was never a system of local finance for infrastructure"(Nicholas,1990,lect.).

During the 1970's, however, the first steps were taken toward shifting greater responsibility to units of local government, when President Richard Nixon signed legislation establishing the Federal Revenue Sharing programme and Community Development Block Grant (CDBG) programmes. Under these two programmes, grant funds formerly distributed to local governments in categorical grants were pooled together to form lump-sum "block grants." The stated purpose behind "block grants" was to give local governments much greater flexibility in deciding how to spend the federal revenues that they received.

The most significant steps toward expanding the responsibilities of states and local governments, however, came in the 1980's under what President Ronald Reagan called the "New Federalism." The goal of the "New Federalism" was to redefine inter-governmental responsibilities, and to shift responsibilities from the federal government to state and local governments. But there was a price to be paid for this increased state and local role: federal funding to state and local governments steadily *decreased*. In the late 1970's, the federal government provided 25% of revenue contained in state and local budgets; by 1990 it provided only 17% (*New York Times*, December 30, 1990, 1). Cuts in federal funding for infrastructure were particularly severe. Adjusting federal spending for inflation, federal infrastructure funding was actually cut 6% per year, every year, from 1974 through 1989 (Nicholas,1990, lect.). One dramatic indication of the reduced federal funding for infrastructure was the decline over time, in real terms, in the amount of money raised for the Federal Highway Trust Fund through the federal gas tax. The federal gasoline tax, which was set at 4 cents per gallon in the 1950's, remained at that level until 1983, when it was increased modestly to 5 cents per gallon (ACIR,1984, 28). However, this increase was trivial compared to the increase in the price of gasoline between the 1950's and 1980's. As a percentage of the cost of gasoline, the federal gasoline tax actually fell significantly during the period, while the cost of constructing highways and bridges rose substantially. Nicholas (1990, lect.) has estimated that to keep the federal gas tax in line with inflation, it should have been increased 96 cents per gallon in 1990.

By the 1980's, the national decline in infrastructure investment was becoming increasingly a subject of national debate. A study carried out for the U.S. Congress by the University of Colorado Graduate School of Public Affairs found that, in all regions of the U.S., the need for future infrastructure was "greatly in excess of historical expenditure

levels" (Joint Economic Committee, U.S. Congress, 1984, 81). The study found that public infrastructure expenditure was greatest for highways and bridges, transport, and water and sewer systems, but these were also the areas where infrastructure needs were greatest relative to available revenues (see Table 2.01). No region in the country was immune from this shortfall in infrastructure spending. On a regional basis, projected shortfalls in infrastructure spending were expected to range from \$74 per capita to \$166 per capita (Ibid., 62).

Table 2.01: Projected U.S. Infrastructure Needs Versus Revenues, 1983 - 2000 (Billions of \$)

	<u>Needs</u>	<u>Revenues</u>	<u>Shortfall</u>
Highways and Bridges	720	455	265
Other Transport	178	90	88
Water	96	55	41
<u>Sewer</u>	<u>163</u>	<u>114</u>	<u>49</u>
Total	1,157	714	443

Source: Joint Economic Committee, U.S. Congress

The Taxpayers' Revolt and Changing Attitudes Toward Development

Another factor which undoubtedly hastened the shift to developer finance was the growing "taxpayers' revolt." When local governments sought to raise additional money by increasing local property taxes, they met with increased local taxpayer resistance. The first indication of this "taxpayers' revolt" came in 1978 in California, with the passage of Proposition 13, which cut local property taxes in half, (*New York Times*, December 30, 1990, 16), and limited property tax increases in the future.

For properties purchased after the passage of Proposition 13, the tax is limited to one per cent of the purchase price. Thereafter, as long as the property is not resold, the tax levy can increase by no more than two per cent per year, regardless of the rate of property appreciation. When the property is sold, its market value is adjusted to the purchase price, and the tax can again increase by two per cent per year. For properties purchased before 1975, the tax is based on the property's 1975 market value. This value is increased by two per cent per year (Dowall, 1988, 162).

As a result of Proposition 13, property taxes in California fell from 21.7 percent of cities' revenues in fiscal year 1977-78 to 13.4 percent in fiscal year 1985-86 (Chapman, 1991, 15-16).

Two years later, in 1980, voters in Massachusetts approved Proposition 2 1/2,

which limited property tax increases to 2.5% per year (a rate approximately one-half to one-third less than the rate of inflation). By 1985 some 30 states had adopted some form of explicit limitations on the amount of fiscal resources available to state and/or local government (Kirlin,1985 ,2). As a result, property taxes, which had risen on the national level to 5 percent of personal income in 1971-72, fell back to 3.4 percent of personal income by 1981-82 (Netzer,1988, 36).

The tax revolt had its most serious impact on the ability of local governments to finance infrastructure improvements. "Because local governments can no longer increase tax rates... infrastructure costs cannot be financed through tax increases" (Dowall,1988, 162). One way in which state and local governments tried to cope with this problem was by reducing and postponing infrastructure investments. During the 1960's, 20 percent of total state and local government spending was devoted to infrastructure, whereas it fell to less than 10 percent in the 1980's (Ibid., 37).

Toward the end of the 1980's there was increasing empirical evidence that growth and new development was financially undesirable, and that local communities would be financially better off if less development occurred. Studies of the fiscal impact of new development conducted in California after Proposition 13 was enacted found that "In all cases, new development was a net fiscal loser" (Misczynski,1987). Recent empirical research has confirmed that growth has placed increased fiscal burdens on local governments. Analysis of data from 248 large counties throughout the U.S. for the period 1978-1985 revealed that growth contributed to higher *per capita* spending levels (Ladd,1990a). "The finding that population growth was associated with rising per capita spending lends empirical legitimacy to the fiscal concerns of established residents in fast growing areas" (Ibid.,15). Not surprisingly, citizen attitudes toward accepting new development hardened in the 1980's. A survey conducted of communities in New Jersey found that "less than one-third of the people in rural and new suburban areas wanted 'some' or a 'great deal' of growth in their hometowns"(Neuman,1991, 346).

Because they were unable to raise taxes on existing residents, local governments had two courses of action open to them. They could try to slow down or stop development. And they could at the same time to try to shift a greater share of the costs of development onto private developers.

Local governments sought to restrict and discourage new development in variety of ways. They tightened development controls to make it more difficult and costly to undertake development, revised zoning ordinances to limit what developers could build "as of right," and lowered allowed densities of development. It was also increasingly common for local governments to adopt moratoriums on development, and/or to impose limitations on the number of building permits which could be issued, or the amount of development which could occur, in a given period of time. Inadequacy of local infrastructure was

usually the primary justification for imposing such limitations on development. Infrastructure provision thus became an important tool for managing and limiting development. In turn, municipalities became less and less inclined to make it easy for development to occur by publicly assuming the costs of infrastructure and facilities required by new development.

The capacity of infrastructure in various areas increasingly provided the basis and rationale for local growth control ordinances. Some localities adopted “phased growth ordinances,” under which they channeled public infrastructure investment into particular areas allocated for development, while failing to provide infrastructure investment in other areas, and in turn restricting development in such underserved areas. Increasingly, communities “adopted a philosophy that it is not the responsibility of local government to fund public facilities to accommodate growth,” and that if new development were to be allowed, it had to pay its own way (Singell and Lillydahl, 1990, 82). In this context, it became increasingly clear to developers that if they wanted to develop in areas where the existing infrastructure was inadequate, then they would have to be willing to pay for the cost of providing the necessary facilities and improvements.

A clear indication of the growing importance of infrastructure in controlling growth can be seen in the “concurrency” requirements adopted in 1985 as part of Florida’s “Local Government Comprehensive Planning and Land Development Regulation Act.” The “concurrency” requirement, simply stated, “prohibits [local planning authorities] from permitting new development unless adequate infrastructure is, or soon will be, in place to support that growth” (Koenig, 1990, 4). Under the Act, each local government must prepare comprehensive plans for the provision of essential public facilities, and for the coordination of public facilities with new development. Local governments must also establish minimum standards of provision for specified public facilities and services. Public facilities and services specified in the Act include transportation and traffic circulation, sanitary sewer, drainage, potable water, natural groundwater recharge, solid waste disposal, schools, parks and open space, recreation facilities, conservation, and housing. Having set minimum standards for those specified facilities, the Act states that “a local government shall not issue a development order or permit which results in a reduction in the level of services for the affected public facilities below the level of services provided in the comprehensive plan of the local government” (Florida Institute of Government, 1991, 86-87). It is significant that these demanding “concurrency” requirements were implemented at a time when the level of public funding for infrastructure was falling far short of what was needed to meet the demands of new development. A state comprehensive plan completed in 1987 “estimated that ... \$52 billion would be needed statewide by the end of the century to meet identified needs for public facilities. Taxes and fees... will cover only a fraction of the estimated cost” (Koenig, 1990, 4). It thus became increasingly likely

that developers wishing to carry out developments would have to assume a greater share of the infrastructure costs.

Tools of Developer Finance

In the U.S. in the 1980's, there was no single approach to developer finance. Rather, a wide variety of approaches and techniques were used. Methods of developer finance varied among the 50 states, but there was also significant variation in approaches within any given state. In the United States, developer financing "emerged bottom-up, through a variety of uncoordinated local initiatives, without a national statute or policy to guide them, and no uniform language to describe them" (Alterman, 1990, 162).

Although the "American approach" to developer finance defies simple characterisation, an attempt has been made to classify these different methods of developer finance according to their major characteristics. As shown in Figure 2.01, methods of developer finance in the U.S. basically fell into one of two main groups. Some methods of developer finance in the first group were primarily *rule-based* and *prescriptive*. Other methods of developer finance in the second group were more *flexible and market-oriented*.

Figure 2.01: Types of American Developer Finance

Type One: Rule-Based and Prescriptive -- Mandatory

Regular Exactions

Fixed fee, based on cost
(beneficial to development)

Impact Fees

Extreme Exactions

Fixed fee, not based solely on cost
(not beneficial to development)

Linkage

Inclusionary Zoning

Type Two: Flexible -- Optional

Benefit-based charges

(Benefits given, benefits received)

Special Assessments
Tax Increment Financing
Incentive Zoning

Market-based charges

(Payments influenced by
market conditions, and relative
bargaining strength of parties)

Transfer Development Rights
Public/Private Partnerships
Negotiated Development
Legal Agreements

Within each of these two types of developer finance, there were also important differences in how developer obligations were calculated. Exactions and impact fees, for example, tended to be based on the *cost* of providing needed services. Extreme exactions, such as linkage and inclusionary zoning, tended to be based more on judgments about community *need* and *ability to pay*. Among the flexible methods of developer finance, there were also important differences in how developer obligations were determined. Costs imposed on developers by means of Special Assessments, Tax Increment Financing and Incentive Zoning tended to take into account both the *cost* of required improvements *and* the *benefits* received by applicants. The amount that a developer paid was affected by market conditions, and the relative bargaining strength of the respective parties.

Rule-Based, Prescriptive Approaches to Developer Finance

In the U.S., the practice of making developers pay took place predominantly within the context of a zoning-based planning system which was traditionally prescriptive in its approach to the regulation of development. Under traditional zoning, there was little basis for local planning authorities to judge individual schemes on their merits, or for standards to be varied based on unique situations. Most zoning ordinances in the U.S. have traditionally set out clear rules and standards, to which all new development has had to conform. In any given zone, certain types of development are allowed, while other types of development are not. And all development must conform to the fixed standards imposed by the ordinance, in terms of building height, project density, building set-backs, parking, etc. Under such a system of development control, there is little if any opportunity for negotiation or the exercise of discretion. Given the prescriptive and non-negotiable nature of development control in most of the U.S., it is probably not surprising that the most widely used methods of developer finance in the U.S. involved the imposition of uniform and fixed charges which did not vary with market conditions, and which were entirely non-negotiable. Two types of fixed charges are distinguished in the literature-- exactions and impact fees. Like the application of traditional zoning requirements, the imposition of exactions and impact fees involves the routine application of predetermined standards and rules.

Exactions -- On Site

Alterman and Kayden (1988, 24) have defined "exaction-based developer provisions" as being "those public benefits *required* of private developers by the public sector through the land-use regulatory process." In the U.S., the imposition of exactions on developers for on-site improvements has been a common practice since the 1920's. Required exactions have normally been specified in municipal regulations governing the subdivision of land. In order to subdivide land for sale which does not front on an existing

public road, a developer is typically required to construct on-site roads, sewers, drains, and water lines, etc. to specifications set by the municipality, and then to dedicate and transfer those completed facilities, including the land and rights of way on which they were constructed, to the municipality. Some municipalities imposed exactions requiring dedications of land for public open space, although this was less common.

In the 1980's, the practice of requiring developers to dedicate land for public use, and to construct on-site public improvements increased considerably, and the purposes for which such exactions were imposed widened. Exactions involving dedications of land have been much more common than exactions involving cash payments. A survey of development exactions published in 1987 indicated that 58 per cent of local governments required cash payments as compared to nearly 90 per cent for land dedication or building requirements (Frank and Rhodes, 1987 as reported by Wakeford, 1990, 194). However, in recent years it has become increasingly common for municipalities to seek cash payments in lieu of land dedications. By obtaining cash payments, it is possible, for example, to establish a large park on a centrally located, accessible site, rather than having to have small pieces of dedicated park land scattered haphazardly among various developments. State courts were not initially inclined to support the practice of requiring cash payments, but more recent court decisions have tended to sustain them (R.M. Smith, 1987, 14). For example, "... the Wisconsin Supreme Court upheld an ordinance requiring a subdivider to pay \$200 per lot instead of dedicating land at that value for school, park, or recreational needs..." (Ibid., 15). A Utah court upheld an ordinance requiring the developer to pay the cash equivalent of seven percent of the subdivided land for flood control and recreational purposes," and in Oregon, a court upheld required cash-in-lieu payments, even in the absence of an assurance "that the money collected would be used to directly benefit subdivisions regulated" (Ibid.).

Impact Fees

In the 1980's, a new form of exaction appeared, which became known as "impact fees." The use of impact fees increased substantially in the U.S. during the 1980's, especially in high growth areas (Bauman and Ethier, 1987). Impact fees are a type of exaction because they are not voluntary but are, rather, *required*. The fees "are levied only against new development," and must be paid "as a condition of permit approval" (ICMA, 1988, 2). A major feature of impact fees, which has distinguished them from more traditional types of exactions, is that they have been applied to obtain payments for *off-site* as well as *on-site* improvements. Also they have much more frequently involved *cash* payments than has been the case with traditional exactions. The assumption in levying an impact fee is that "it is possible to allocate to each development its proportionate share of the future cost of providing public services, such as parks and highway

improvements” (R.M. Smith, 1987,16).

The imposition of impact fees by local governments in the U.S. is a relatively recent phenomenon. According to the results of a survey published in 1987, 35% of all impact fee ordinances in effect in 1987 were adopted between 1980 and 1985, another 36% were enacted in the 1970's, and only 10% were in existence before 1960 (Bauman and Ethier,1987, 59). In Florida, more than 40 local governments enacted impact fee ordinances between 1985 and 1987 (Siemon,1987, 115). A survey conducted by the International City Management Association in 1986 found that communities in 36 states used exactions or impact fees to finance capital projects (ICMA,1988, 3). California had the most communities using development exactions and impact fees-- with Florida having the second most, followed by Washington, Oregon, Colorado and Texas (Ibid.).

“Once the legal reasoning behind impact fees became accepted, it dissolved any geographic restriction on location of the facilities, allowing local authorities to require provision of major citywide or even regional facilities....”(Bosselman and Stroud,1986 as quoted by Alterman,1990,166). Moreover, once they were allowed to impose financial charges and fees, rather than simply requiring dedications of land, local governments found it easier to charge developers for a greatly increased range of facilities and services. Impact fees were not only used to fund *off-site* sewage treatment plants, potable water supply and distribution improvements, storm drainage facilities, roadways and interchanges, and solid waste disposal facilities, but also off-site parks and recreation facilities, public schools, public buildings such as libraries, fire stations and police stations, and other community facilities (Nicholas,1990,lect.). In some communities, impact fees were even used to pay for the provision of law enforcement, emergency medical services and facilities, and public cemeteries (Ibid.).

Two key court cases in Florida signified the shift toward seeking cash payments as well as land dedications, and toward obtaining payments for off-site as well as on-site facilities. In 1978, in *Contractors & Builders Association v. City of Dunedin*, a Florida appellate court upheld the imposition of a fee on the construction of homes and buildings at the time of connection to municipal water and sewage systems for the purpose of paying for the capital costs of expanding the city's water and sewer system (R.M. Smith,1987,16). And in a 1983 case, *Hollywood, Inc. v. Broward County*, a Florida court upheld an ordinance requiring developers to dedicate at least 3 acres of land for every 1000 residents in a proposed subdivision, to pay an amount of money equivalent to the value of the land that would have been dedicated, or to pay a fee set by a schedule in the ordinance (Ibid.,16-17). The only limitation imposed by the ordinance was that the developer's funds had to be spent to acquire land within fifteen miles of the property which generated the payment (Ibid.,17).

The legality of impact fees was challenged by developers in a number of state

courts, as well. In reviewing the legality of different various impact fee ordinances, state courts applied different legal tests. Three main legal tests emerged were:

- the “reasonable relationship” test
- the “specifically and uniquely attributable” test
- the “rational nexus” test

The least demanding and loosest test of the legality of impact fees is the “reasonable relationship test.” It is this test that state courts in California applied in upholding the use of impact fees. Any impact fee which bore a “reasonable relationship” to the development and its impacts was found to be legal.

The “specifically and uniquely attributable” test is the most stringent (Whiteman,1990, 2). This test asserts that a developer cannot be charged for a given capital improvement unless that improvement is directly necessitated by a particular development. Since most major infrastructure improvements are forced by cumulative growth, it is often impossible to meet the test, and in states where this legal interpretation has been upheld, the effect has been to make the widespread use of exactions illegal (Whiteman,Ibid.) The “specifically and uniquely attributable” test has been applied by courts in Illinois and Rhode Island (Callies,1990,lect.).

The principles underlying the "rational nexus" test were first articulated in a 1976 Florida court case. According to the Florida court, three conditions must be met for an impact fee to be legal:

- the new development must require that the present system of public facilities be expanded;
- the fees imposed must be no more than what the local government unit would incur in accommodating the new users of the system;
- the fees must be expressly "earmarked" for the purposes for which they were imposed, and kept in a separate account (Snyder and Stegman,1989, 59).

In other words, for a “nexus” to exist “there must be a finding that a particular development will create a need... and that the amount of the exaction bears a roughly proportionate relationship to the need generated by the development” (Susskind and McMahan,1988, 216). Under the “rational nexus” test, a developer can be required to pay "for only the costs of the portion of the facilities needed by the development, and not for the total cost of infrastructure from which it only partially benefits" (Snyder and Stegman, 1989, 57).

Local impact fee ordinances which have met the above tests have often specified that the funds collected must be deposited into dedicated accounts specifically reserved for

the approved purposes (rather than deposited into the municipality's general fund.) Provisions have also often been included in ordinances requiring that the funds be spent for the approved purposes within a specified time period-- and if not that the funds be returned to the developer.

In most states the legality of impact fees has hinged has been whether the fees are judged to be a tax, or a form of regulation (Snyder and Stegman,Ibid., 61). Courts in states which have upheld impact fees as legal have tended to rule that impact fees are *regulatory* in nature, rather than a *tax* on development., and are implemented for the purpose of protecting public health, safety and welfare. State courts which have ruled against impact fees have tended to view impact fees as an unauthorised and selective *tax* on development, violating the equal protection clause of the U.S. Constitution. California and Colorado present exceptions to the rule, because of the uniqueness of their *state* constitutions. Courts in California and Colorado have upheld the legality of impact fees even while recognising that impact fees may constitute a selective tax on development. In so doing, the California and Colorado courts have allowed local governments in those states wide discretion to set and impose whatever fees they deemed appropriate -- even in situations where there was no pressing public facility need requiring the collection of a fee. In Orange County, California, \$1.3 million was raised for school construction by imposing fees on new development at a time when the district had more than a dozen empty elementary schools, and when there was no need to build new schools (Fulton,1987,7-8). Elsewhere in California, local governments collected “payments for roads, schools, or libraries that were nowhere near the development in question... on the theory that the development increased the overall demand for those facilities” (Ibid., 8).

If and when state enabling legislation has been passed authorising the use of impact fees, it still remains for each individual municipality to adopt and implement its own impact fee ordinance and fee structure. In theory, the amount of the fee imposed should be directly related to the costs that a particular development imposes. “An impact fee is calculated backwards, based on what it costs to deal with the impacts of development” (Nicholas,1990,lect.).

Proponents of impact fee ordinances have argued that the adoption of impact fee ordinances encourages and necessitates local planning. They argue that communities which wish to adopt impact fees sustainable in court must carefully analyse their local infrastructure capacity, prepare forecasts of demand for future growth, and formulate local plans and policies to guide and control that growth. Localities must also estimate the future impacts of different types of development on a wide array of public facilities and services based on certain accepted formulas and standards, calculate the cost of upgrading local facilities to deal with those anticipated impacts (adding in a factor to take account of increased construction costs and inflation,) and allocate those costs on a per unit basis to

different types of development in some defensible manner.

The concept underlying impact fees has been that the amount paid by each unit of new development should be proportionate to the costs that it imposes on the community. But deciding how to apportion infrastructure costs to different types of development has proven to be a difficult task. Some local governments invested in major planning and fiscal studies to justify the formulas they adopted for allocating such costs. However, other localities relied on cruder “rules of thumb” to apportion costs. Some localities allocated costs proportionate to the amount of frontage of a given property, or alternatively based on the size of a parcel (i.e. acreage). In other cases, fees varied depending on the number of bedrooms in housing developments, or on the amount of floor area in commercial developments (Whiteman,1990, 1). Some localities apportioned costs based on the relative valuations of different properties-- placing the highest burden on land having higher property assessments (Snyder and Stegman,1989, 70).

Some local governments simply imposed a flat rate charge which took no account of variations in lot size or frontage, house size, number of bedrooms, etc. Sewer connection charges were frequently assessed as a uniform cost per home, without taking into account the distance from the existing main drain-- even though the public cost of providing the sewer connection increases proportionately with that distance. The problem with this approach is that “uniform fees provide no incentive for development to occur in one place instead of another, and arbitrary fees provide the wrong incentives” (Ibid.,30).

With the passage of time, local governments became more experienced in devising and using impact fees, and some became quite sophisticated in using impact fees as a tool for growth management. For example in San Diego, three basic areas were designated -- urban, urbanising, and rural-- each with its own system of fees (Fulton,1987, 10). These areas were called Fixed Benefit Areas (FBAs). This approach allowed the City to set fees which more accurately reflected the true physical and social cost of development in different locations-- to impose high fees in areas where infrastructure provision was more costly, and lower fees in areas where infrastructure costs were lower.

Developers in urban (already developed areas) pay no fee. Developers in urbanizing areas pay fees that are considerable but do not discourage growth. Developers in rural areas, because they must pay the full freight of long-distance infrastructure, must pay very high fees (Fulton,1987, 10).

The San Diego infrastructure assessment charge is important and unique in a number of respects. “Benefit assessments have traditionally been used for public improvements such as streets, water mains, and sewers. By utilizing benefit assessments to fund transit systems and fire stations, the FBA scheme extends the use of benefit assessments to those public facilities traditionally financed out of general revenues” (R.M.Smith,1987, 21). Within the North University FBA of San Diego, developers and

landowners were expected to pay 96% of the \$55 million cost of providing infrastructure and public facilities, with only approximately 4% paid for out of the city's general revenues (Ibid., 23). Fees levied against properties in San Diego were also used to provide parks, libraries, school buildings, and police stations. Another unique feature of the implementation of San Diego's infrastructure assessment charge was that it was levied not only against developers who wished to develop their property, but also against owners of *undeveloped* property as well. The charge is recorded as a lien against that property, and is "payable in one lump sum at the time the building permit is issued, or, if the improvement has not yet commenced, at the time of the commencement" (Ibid. 21).

Linkage Fees

Wakeford has characterised "linkage fees" as an "extreme type of exaction" (Wakeford,1990,194). "Linkage fees" are somewhat similar to "inclusionary zoning," in that they were invented to increase the provision of affordable housing by private sector developers. What is different about linkage requirements is that they have attempted to impose these additional housing requirements on developers of large-scale *commercial* projects (whereas inclusionary zoning has most often been imposed on *residential* projects).

The argument commonly put forward to justify the adoption of linkage fees was that new high-rise office space buildings, employing thousands of people, led to increased housing demand, increased housing costs, and in turn a shortage of low and moderate cost housing. Therefore, it was argued, developers of new high-rise office buildings should contribute financially toward the alleviation of the problems they have helped to create, by financially contributing toward the provision of low and moderate cost housing.

A number of cities, including Boston, San Francisco, Sacramento, Chicago, Seattle, Santa Monica, and Hartford adopted linkage payment requirements during the early and mid-1980's, at a time when they were experiencing surging demand for the development of new, high-rise office buildings. The fact that the market for high-rise office space at the time appeared to be so lucrative, made it an easy political target for those who argued that some of this new-found wealth should be shared with people who were less fortunate (Susskind and McMahon,1988, 205).

The Linkage requirement for commercial developers in Boston began in 1983, with the adoption of Article 16. Under linkage, developers were required to pay an exaction of \$5 for each square foot of gross floor area in excess of one hundred thousand square feet. These payments were mandatory, and could not be reduced through negotiation. Linkage payments collected from developers were deposited into a special fund, called the Neighborhood Housing Trust, dedicated to the creation of new low and moderate cost housing in the city. A portion of the linkage funds paid by developers was also used for

the cost of providing job-training for low income persons. Developers were allowed to pay the exaction in twelve equal annual installments spaced over twelve years, with the first installment due within 24 months of the granting of the building permit. Legal agreements were routinely entered into between the City and developers to assure payment of the fees over the 12 year period, and to enforce other stipulations related to planning approvals.

Once the city adopted its \$5 per square foot fee, that fee remained unchanged, despite a severe downturn in the downtown property market. The amount of the fee is specified in the city's Zoning Ordinance and can only be changed by officially amending the zoning ordinance. As of 1991, no thought had been given to revising the fee either upward or downward. In the judgment of the person administering the Linkage programme, the fee was relatively small, representing less than 5% of total development costs, and not in itself a major deterrent to development (O'Malley, 1991, int.).

San Francisco's office-housing linkage programme (OHPP) was adopted in 1985, at a time when there was intense pressure by private developers to build high-rise office buildings in the city. It was also a time when there were growing citizen demands for major high-rise development to be curtailed or sharply limited. "Coincident with the passage of the ordinance the city adopted a downtown plan that limited office space growth" (Goetz, 1989, 67). Under the San Francisco OHPP, the number of housing units a developer had either to provide or pay for was based on an estimate of the additional housing demand that would eventually be generated by the proposed office development. The formula used in calculating the additional housing demand assumed that office use generated one employee per 250 gross square feet, that 40 percent of all office employees resided in San Francisco, and that 1.8 working adults occupied each residential per unit (Ibid.).

An important feature of the San Francisco programme has been its flexibility in allowing developers to meet its requirements in a variety of ways, and its use of incentives rather than rigid requirements. The ordinance encourages developers to provide larger housing units (i.e. containing two, three, and four bedrooms) by counting each bedroom provided as a credit against a developer's housing obligation. Thus, "[i]f a developer wished to fulfill an obligation of 50 [units],...25 two bedroom units would be an acceptable option"(Ibid.,68). Developers receive a four-for-one credit for units which are affordable to low income households, a three-for-one credit for units affordable to moderate income households, and two-for-one credit for affordable rental housing units which involve some other form of rental subsidy (Ibid.).

The San Francisco ordinance does not *require* that developers provide low income housing, but encourages the provision of low income units by offering the above-mentioned additional housing credits. If a developer chooses not to provide the needed housing directly, he can make arrangements for the needed housing to be provided by

others somewhere in the city. For example, developers can meet the linkage requirement by providing “gap financing” that allows other developers to build housing units affordable to low and moderate income people. Or, alternatively, the developer may chose to make a cash payment to a dedicated affordable housing fund, which the city can then use to develop new, affordable public housing. The ordinance does not specify how much a developer must pay toward the provision of new affordable housing if he chooses not to provide the new housing directly. Rather, the amount that a developer is required to pay will vary, depending on the specific circumstances and costs involved.

Prior to the adoption of the linkage programme in Boston, the City had a zoning ordinance which allowed several developers to build 600 foot high office towers (King,1990, 7). When linkage was adopted in Boston, the City simultaneously adopted a new zoning ordinance which capped most new office buildings at 155 feet, with up to 465 feet permitted in areas where development was encouraged (Ibid.). After this significant down-zoning was accomplished, the Floor Area Ratio (FAR) of development reflected in land values was significantly greater than the amount of development which could be undertaken by right. “In effect, all downtown commercial projects must seek zoning relief to gain a FAR that will allow profitable development” (Susskind and McMahon, 1988, 211-212). Other cities also “down-zoned” their downtown areas to limit the level of as-of-right development and to increase opportunities for securing benefits from developers. In 1982, when New York City adopted a sweeping revision of zoning in the Mid-town area, it reduced allowed floor area ratios from 18-21 to 15-18 (Whyte,1988, 250).

Linkage fees imposed on office developers have varied considerably. The linkage fee imposed in San Francisco in 1985 was \$5.35/square foot (Susskind and McMahon, 1988, 204). Sacramento, California’s linkage fee ordinance requires commercial developers to pay up to 95 cents a square foot to the city’s low-income housing fund (*Planning / APA*, October 1991). Fees collected are not negotiable. The only way to avoid payment of the fee is not to proceed with development.

During the property boom of the 1980’s, the Boston Linkage programme produced a significant flow of revenue for the production of affordable housing. Between 1983 and 1990 Boston’s office/housing linkage requirements were applied to 41 separate development projects, resulting in developer commitments of \$76 million to housing projects (King,1990, 5). As of mid-1990, 2900 new housing units had been built with funding from developer linkage payments-- 84 percent of them affordable to low and moderate income persons (Ibid.).

Linkage has represented an extreme developer exaction-- requiring office developers to pay for purposes which one might argue are unrelated to the developments which occasioned the payments. For that reason, some legal experts, such as David Callies, believe that linkage fees face an uncertain legal future in the U.S. Nevertheless,

courts in key states have ruled that there is a sufficient connection between new commercial development and the need for affordable housing to sustain linkage fee ordinances.¹

Inclusionary Zoning

During the 1980's, as housing costs escalated, and as the federal government decreased its financial support for the provision of low-cost housing, local governments devised inclusionary zoning ordinances in an attempt to shift some of the burden of providing affordable housing onto private developers. "Inclusionary zoning" ordinances in the U.S. typically required private developers to include affordable, low-cost housing units in their developments, or to provide those units on another site, or to make a financial contributions so that affordable housing could be provided by the city or some other entity on another site, as a condition for obtaining permission to build. Some local inclusionary zoning ordinances required that up to 20-25 percent of the units in specific developments be affordable to low and moderate income persons, that a portion of the units constructed by a developer be dedicated to the local public housing authority or to a non-profit housing agency, and/or that the developer agree to make even more substantial payments into a dedicated affordable housing fund. An ordinance adopted in 1987 in Princeton Township, New Jersey "required developers either to construct low-cost housing, or to donate 10 per cent of their land to the township, or to contribute to an affordable housing trust fund a fee of \$42,700 per affordable unit required (equivalent to a contribution of \$17,080 per acre...)" (Wakeford,1990, 236).

Like other zoning provisions, inclusionary zoning ordinances were adopted locally, subject to state approval. Thus, inclusionary zoning ordinances varied considerably among different states, and among different communities. In some localities, the provision of affordable housing in new residential projects above a certain size is stated as an absolute requirement. However that did not necessarily assure that affordable housing units would be provided; a developer could escape the provisions simply by not constructing new housing units in localities that adopted such provisions. In some localities the inclusion of affordable housing has been encouraged by offering an incentive in the form of a density bonus. A developer who agreed to include affordable housing units in a proposed development would thus be permitted to build at a higher density. The idea was that the increased income and profits generated by being able to develop and sell/or rent more units would off-set or exceed the loss of income resulting from the inclusion of lower-priced housing units.

Most inclusionary zoning ordinances required developers to include the desired

¹ A court of appeals in San Francisco in the fall of 1991 upheld the constitutionality of Sacramento's linkage ordinance, which required non-residential developer to make payments to the city's low-income housing fund.

affordable housing units *within* their proposed development. This requirement reflects a social policy goal of encouraging "income-mixing" in new development. However, some communities which have adopted inclusionary zoning ordinances have incorporated provisions which permit flexibility in where the affordable housing units can be provided--so that a developer may choose to build the affordable housing units on a site which is separate from the main development.

The goal behind the enactment of inclusionary zoning was to spread the burden of providing low and moderate income housing more equally in communities, especially between wealthy suburbs and more economically depressed inner cities. But developers were often reluctant and unwilling to provide low and moderate income housing in the very areas where it was most needed. A 1987 study report prepared at the Woodrow Wilson School, Princeton University, found that many suburban municipalities were not providing their required share of low and moderate income housing within their municipal boundaries (Wakeford,1990, 246). Moreover, critics of inclusionary zoning, such as Ellickson, contend that inclusionary zoning requirements tend, unwittingly to intensify the very housing problems they are designed to ease.

[M]ost 'inclusionary' programs are ironically titled because the programs are essentially taxes on the production of new housing. These taxes can be expected to increase general housing prices, thus further limiting the housing opportunities of moderate-income households. In short, despite what their proponents assert, most inclusionary ordinances are just another form of exclusionary practice (Ellickson, 1982, 136-137).

Flexible Approaches to Developer Finance/ Benefit- based

Special Assessments

The use of "special assessments" has provided local governments with a means of paying for some or all of the cost of improvements that afford direct benefits to particular properties. "Special assessments are based on a formula that relates the charge against a parcel of property to the services or benefits received" (Thomas and Colton,1989, 111-5 to 111-6). In some states, such as Massachusetts, special assessments are referred to as "betterment levies." Special assessments actually represents a hybrid between rule-based and flexible approaches to developer finance. Special assessments are prescriptive, and rule-based in the sense that they are levied in a manner which is similar to a tax, and are based on a formula. However, special assessments are a highly flexible tool of developer finance. The decision as to whether or not to levy a special assessment can only be made after consultation with the owners of affected properties. Under Massachusetts General Laws (Chapter 80, Sec.297), a number of steps must be taken before a special assessment, or betterment charge is levied. First, a public hearing must be held, and all owners of

affected properties must be sent specific notice of the public hearing. Also, two-thirds of the affected property owners must vote to approve the assessment. However, once the special assessment has been approved, it becomes mandatory, and must be paid by owners of all affected properties. The special assessment, once collected, must be spent within the district exclusively for the infrastructure improvement for which it was given.

Special assessments have a long history in the U.S., but their popularity has tended to rise and fall with the property market. "Special assessment reached its peak of popularity during the first 30 years of this century" (Misczynski, 1978, 314). During that period, up until the Stock Market Crash of 1929, property values were rising, and local governments made heavy use of special assessments as a way of financing public improvements related to development.

In 1913, cities with populations greater than 100,000 obtained an average of 12 percent of their revenue in this way, and in four cities-- Los Angeles, Kansas City, Portland and Oakland-- special assessments were responsible for 20 percent of total revenue... Almost every large city used special assessments. The rapidly growing cities of the west were particularly avid users (Ibid., 315).

However, the overuse of special assessments had dire consequences in the 1930's, as land values depreciated. When property values fell, the financial justification for the improvement, and the ability to repay the cost, was undermined. "The depression of the 1930's caused widespread delinquencies in payment of special assessments that had... been levied to construct ... physical improvements in platted subdivisions... Special assessment liens were foreclosed, [and] only a fraction of the assessments due were realized..." (R.M. Smith, 1987, 6). The severity of the problem was compounded by the fact that the failure to require developers to construct physical improvements on their properties had led to "the premature subdivision of land" and in turn to "an oversupply of partially improved subdivisions" (Ibid., 5). As a result of this negative experience with special assessments, more and more cities took the approach of requiring developers to construct required physical improvements as a condition of obtaining subdivision approval.

In the 1980's there was a revival in the use of special assessments to finance infrastructure projects. In California there was a surge in use of special assessments, following passage of Proposition 13, which limited the ability of local governments to raise revenue from property taxes (R.M. Smith, 1987, 19-20; Chapman, 1991, 16). The advantage of special assessment revenue was that it was exempt from the limitations imposed by Proposition 13. Special assessment districts also proliferated in Florida and Texas (Nicholas, 1987, 89).

Special assessments have been used by local governments to finance the construction of roads and sidewalks, sewers, storm drains, street lights, and parking facilities. In rarer instances they have been used to obtain private financing for parks, tree

planting, and public amenities. The concept behind a special assessment is that the charge levied against any given property should be proportionate to the benefit that it receives from the public improvement. As specified by Massachusetts General Law, for example, "no such assessment shall exceed the amount of such adjudged benefit or advantage." (MGL, Chapter 80, 297). In practice, however, it is technically very difficult to measure benefit. "... [N]o one knows how to measure benefits accurately... [and] this problem is especially acute for special assessments... because of the tradition that the amount of assessment against each parcel be determined *before* the project is constructed" (Misczynski, 1978, 323). This technical problem was essentially solved in the U.S. by pragmatically basing the assessment, not on the *benefit*, but on the *cost* of the project. Costs were apportioned according to convenient rules-of-thumb, such as relative frontage, relative lot size or assessed value. In no case can the amount of money raised through a special assessment exceed the public cost of the project. In most typical cases, the amount raised through special assessments contributes only a portion of project cost. During the late 1980's approximately 5% of the revenue used in local government in the U.S., excluding education, was raised through special assessments (Wakeford, 1990, 193).

Tax Increment Financing

As property values in most parts of the U.S. rose in the 1980's, and as local governments searched for new ways of paying for public improvements, it became increasingly attractive to finance geographically targeted infrastructure and public improvements through the method of Tax Increment Financing (TIF). Tax increment financing, or tax increment bonds were first devised and used in California during the early fifties (Joint Economic Committee, 1984, 124), but came into widespread use in the 1980's. TIF is a method of funding public investments "... by recapturing, for a time, all or a portion of the increased tax revenue that may result if the redevelopment stimulates private investment" (Casella, 1985, 1). Thus TIF provided a way for cities to raise money and spend public money in particular areas, without raising property taxes in areas not benefiting from those improvements. In effect, TIF gives owners of selected properties a special benefit (concentrated infrastructure and public improvements) which will raise the value of their properties, in exchange for asking them to make increased *payments in lieu of taxes* (PILOTS) against the increases in property values within the targeted area that result from the public investment.

State laws authorising the use of TIF have been specifically drafted to limit the use of TIF to areas which have been officially designated by the municipality as "blighted", and not likely to be developed or improved without TIF funded improvements (Hood, 1990, ii). In addition, state TIF legislation typically establishes a number of procedural requirements. Under 1986 Missouri legislation, for example, a draft TIF plan must be prepared, including

a statement of project objectives , costs, sources of up-front funds, assessed values, existing land uses in the area, relocation plans, and estimated dates of completion for the TIF project. A public hearing must also be held, and all taxpayers in the area must be notified of the hearing 45 days in advance; and the final version of the TIF plan and ordinance must be officially voted on and approved by the locally-elected government within a certain time of the public hearing. Thus, under this process it is likely that the plan for publicly financed improvements that is finalised will reflect the concerns and interests of owners of affected properties. Under the law, TIF financing can only be used in cases where the parcels included in the district will “substantially benefit” from the proposed TIF-funded improvements (Gilmore and Bell,1990, 4).

The point in time when the TIF district is established becomes the “base year” for purposes of calculating future tax increments. As of that "base year" the local property tax revenue that the local government unit will receive from the area is effectively “frozen” (ACIR,1984, 27). Bonds are then issued to finance the costs of public improvements (i.e. land assembly and infrastructure improvements, etc.) From that point on, all increases in the valuation of property in the area produced by this injection of investment (i.e. increases in value of existing properties and new development in the area) become subject to PILOTS, which are diverted to the designated TIF agency to pay back the cost of the TIF bonds. The period of time that this diversion of increased revenue can continue is limited to a period of between five and thirty years, depending on state enabling legislation (Casella,1985, 1).

As of 1985, thirty-three states in the United States had adopted TIF enabling legislation (Kim,Forrest and Przepyszny,1985, 11). California was one of the most active states in making use of Tax Increment Financing. For example, San Jose, California made extensive use of TIF districts to finance downtown public improvements and amenities. However, not all localities were equally able to make use of the advantages of tax increment financing.

Although disadvantaged communities might have most need for the program's putative benefits, these places have been least able to ... attract investors ... or to sell their bonds on the marketplace. Thus... prosperous towns and suburbs have been the heaviest users. Cities like Palm Springs, Santa Barbara, and Belmont have designated their most valuable and booming areas as redevelopment zones; the city of Indian Wells, with one of the highest per capita incomes in the world, made all land within its city limits (even wilderness) an official redevelopment area. The city that went deepest into redevelopment debt was tiny City of Industry, which began the process with the largest tax base per capita of any city in the state (Logan and Molotch,1987, 174-175).

TIF provided a seemingly painless, and therefore politically attractive way, of financing public improvements. Indeed, given its attractiveness there has been

considerable risk of overuse. Local governments would sometimes delineate “a larger district than necessary in order to ‘capture’ PILOT funds from more property owners (who may not directly benefit from TIF improvements)” (Hood,1990, 10). In other instances, localities used TIF to fund public improvements which themselves had little or no impact on property values (which would have risen anyway). Thus, TIF was a tool which seemed to be prone to abuse. TIF can be “like casting a fish-net across the landscape to catch all the increases in property values that occur” (M. Bunnell,1989, int.).

There are also risks for cities in making too great a use of tax increment financing. Future increased tax revenue generated within TIF districts is, in effect, siphoned away from general city revenues. Thus, if a TIF district accounts for too large a proportion of a city's area, there might not be enough money available in the future from property tax collections to cover future increases in the costs of city-wide services and facilities. For that reason, legislation authorising TIF typically included provisions to assure that TIF districts do not represent too large a proportion of a municipality's property tax base. South Dakota stipulated that a project in municipalities with over 5000 population may not exceed 12 per cent of the valuation of taxable property; and in Minnesota, no more than one percent of the total area of a city can be included in any one project and not more than three percent of a municipality may be included in all projects (Kim *et al.*, 1985, 11-13).

Incentive Zoning

Another way of financing public improvements at little or no cost was through the technique of “incentive zoning,” which involved granting a developer some special development right, such as the right to build a bigger building, in exchange for the developer providing some desired public improvement. The first incentive zoning ordinance was devised in New York City, in 1961. Under this ordinance, the City granted a 20 percent density bonus within a designated area of Midtown Manhattan to developers who agreed to set their buildings back from the street and to construct a pedestrian plaza that met the qualifications in the ordinance (Barnett,1982, 72). Over ensuing years, numerous developers took advantage of these incentive provisions by building new skyscraper office buildings along Sixth Avenue (the Avenue of the Americas.)

When in 1967 a developer applied to New York City's Planning Commission for permission to build an office building on the site of the Astor Hotel larger than the zoning ordinance permitted, the Commission decided that, in exchange for this special advantage, the developer should include and construct a legitimate theatre in the building. “After negotiation, the Planning Commission determined that a 20 percent larger tower was a legitimate form of compensation for the costs of building a theatre-- costs that could not be paid for out of the income the theatre would generate” (Barnett,Ibid., 78). The City proceeded to formalise its planning and design objectives, and to publish guidelines

whereby future developers could obtain permission for increased building density, by adopting special provisions for the "Theatre District."

After its adoption of the Theatre District, New York City proceeded to delineate a number of additional Special Zoning Districts. The planning and design objectives were different in each of the Special Districts, based on the differing characteristics and needs of the different districts, and the differing planning objectives. In the Fifth Avenue District, density bonuses were offered to developers who included specified retail uses at ground level of office buildings (excluding airline ticket offices and banks, which were already overly abundant). Density bonuses could also be obtained for providing through-block pedestrian connections, arcaded sidewalks, shopping arcades, atriums, gallerias, building setbacks with plazas, and "vest-pocket" parks. (Whyte, 1988) Inclusion of housing on upper floors of office buildings was also encouraged in the Fifth Avenue District by means of density bonuses (Ibid.,83-84). In the Lincoln Center Special District, incentive provisions were tailored to encourage the inclusion of small shops and restaurants which would operate at night when Lincoln Center was open (Ibid.,80). "To spur developers to build continuous sequences of arcaded sidewalks, a special Lincoln Square Zoning District offered floor-area bonuses to developers of buildings along Broadway if they would provide arcaded sidewalks..." (Whyte,1988, 246). In another use of incentive zoning, the City offered a 20 per cent density bonus to developers willing to build subsidised theatres within proposed new developments. A density bonus was granted for the Phillip Morris Building in Midtown Manhattan, in exchange for having most of the first floor of the building set aside to accommodate a branch of the Whitney Museum. Cash payments were also encouraged. Developers were allowed to build bigger buildings if they agreed to pay for improvements to subways stations and other transit-related improvements. In 1990, a major development firm paid \$13 million to connect its building to the subway system, and in return was allowed to increase the floorspace of the building by 20% over the maximum allowed for the zone in which the project was located (*New York Times*, August 26, 1990).

Incentive zoning provided city planning departments in major American cities with a powerful tool for managing development, and for achieving publicly desired objectives at little or no cost. The "trick" to this approach was, in effect, to "create a currency in the public domain that then [could] be traded" (Wakeford,1990, 225). Other cities followed New York City's lead by incorporating incentive provisions in their zoning ordinances. San Francisco enacted zoning provisions offering density bonuses to developers who provided arcades, plazas and other amenities (Barnett, Ibid.). Developers of downtown office buildings in Boston were offered density bonuses of up to 10 percent for devoting space to non-profit arts groups or to businesses from nearby Chinatown (King,1990, 9). Planning permissions for projects of over 100,000 square feet became conditional on the provision of day care centres (Ibid.). Cincinnati, Ohio adopted zoning provisions

allowing an automatic 20 per cent increase in allowable Floor Area Ratio for any project that completed the City's design review process, and design review was required if a major parking garage was included in the project (Getzels and Jaffe,1988). The Planning Commission in Coral Gables, Florida granted developers a 20 percent density bonus if they designed and constructed their building in a "Mediterranean" architectural style. In a number of New Jersey communities, density bonuses were available to developers to encourage the provision of low and moderate income housing (Wakeford,1990, 222). In rural and suburban communities, density bonuses were offered to encourage developers to save and restore landmarks and historic buildings, and to preserve farmland and open space.

As American cities gained greater experience in using incentive zoning over time, they became more aware of the need to calibrate the incentives given to developers to the value of the public benefits they provided. Seattle's density bonus system was adjusted over time to account for changes in the value of land (Getzels and Jaffe,1988, 17). Up until 1984, San Francisco's incentive provisions were determined on the basis of "marginal cost-to-profit." Under this approach, "the cost of providing each square foot of an amenity... [was] defrayed by a specific amount of square feet of bonus floor area equal in value to the amenity cost"(Ibid.,19). San Francisco abandoned its bonus system in 1984, when it adopted its downtown plan establishing a ceiling on new office space. The City reduced FARs and allowed heights, and shifted from incentives to exactions (Ibid., 20).

The use of incentive zoning by certain American cities was a transitional step toward greater flexibility in American development control, and toward increased negotiation. Indeed, with the invention of "special districts" and incentive zoning, development control became increasingly ad hoc and subject to modification on a case by case basis. With the proliferation of "special districts," zoning provisions became negotiable, as "...developers [tried] to negotiate even the basic requirements of special zoning districts..." (Barnett,1982, 101), and as cities became more inclined to respond to the opportunities which flexibility offered.

When a 1977 staff study stopped to count up the changes in the zoning resolution since the comprehensive revisions adopted in 1961, it turned out that the zoning resolution had grown from 937 sections to 2131, and only 27 percent of the current total had remained unchanged since 1961. Sixteen percent of the sections had themselves been amended since they were adopted. In addition to these text changes, there were about 1200 map changes during the same period (Ibid.,100-101).

Flexible Approaches to Developer Finance/ Market-Based

Transfer Development Rights

The concept of Transfer Development Rights (TDR) was first devised and promoted in a highly influential book by John Costonis entitled *Space Adrift* (1974). Costonis devised TDR as a way to preserve historic buildings, without having to pay the enormous cost of either publicly acquiring the properties, or compensating owners for their loss of development rights and profits. The problem, as Costonis saw it, was that historic buildings were usually smaller than what could be built by right under zoning. Thus there was often considerable economic pressure to tear down an historic building to make way for the construction of a much larger, new building. But it would not be necessary to demolish historic buildings if their owners could sell unused development rights and transfer them to other sites. TDR as an approach to historic preservation was first used on a significant scale in New York City. Among the landmark buildings protected through TDR were Grand Central Station and St. Bartholomew's Church. Development rights from landmark sites in Midtown Manhattan were purchased by Donald Trump to make his Trump Tower much bigger than otherwise would have been allowed (Barnett, 1982).

TDR was used in a more ambitious manner as a means of protecting a large, environmentally sensitive area in the state from development pressure, by deflecting that development to more appropriate areas. In 1979, the State of New Jersey passed the Pinelands Protection Act, with the intent of preserving and protecting over 1 million acres known as "the Pinelands," an area which comprised approximately 22% of the area of the entire state. The goal of the Act was to significantly limit development within the Pinelands, and to encourage development to occur instead in designated growth centres outside the Pinelands. At the prompting of the state, a comprehensive plan was prepared for the Pinelands Area, involving the participation and input of 52 municipalities and 7 counties. Had the plan which was prepared called for prohibiting or severely limited building within the Pinelands without the TDR provision, then there is little doubt that the courts would have ruled that such an action constituted a "taking" of private property. Under those circumstances, the state and/or local governments would have been required to compensate property owners up to the full market value of the property, and the huge damage payments that would have been required would have led to the abandonment of the scheme. Instead, the 1979 Act established a Pinelands Commission, along with a Central Bank to facilitate the selling and buying of development rights. Owners of property in restricted areas of the Pinelands were able to sell their unused development rights (which were called Pinelands Development Credits) to owners of properties in designated regional growth areas (Babcock and Siemon, 1985, 146). In turn, the state adjusted its capital spending programme to give priority to infrastructure improvements in designated growth

areas, and to encourage and reinforce development in those areas, rather than in the Pinelands. The Pinelands experiment proved to be a remarkable success. It is reported that in the 5 years following the adoption of the plan, ninety-six percent of all development was located in areas designated for growth (Ibid., 156).

Negotiated Development and Use of Legal Agreements

In the U.S., the most common approach to planning and development control has been to set mandatory rules and standards, and to enforce standards in a consistent and prescriptive manner. Planners in the U.S. have never been comfortable with the idea of bargaining and negotiating with developers. "To planners [in the U.S.], bargaining seemed uncomfortably unprofessional. It compromised purity, the detachment, of the planner's vision and skills" (Popper, 1985, 27). But by the mid-1980's, there were indications that a more positive attitude toward bargaining was emerging:

... now, spurred by their loss of faith in standard devices like comprehensive plans, hard-and-fast zoning ordinances, and regulation itself, planners, developers, and the public have all begun to rely more on bargaining-- indeed to expect it... The new bargaining has new upscale labels: negotiated development, conflict resolution, collaborative problem solving, case-by-case decision making (Popper, 1985, 27).

One factor which may led to increased acceptance of negotiation was the federal Urban Development Action Grant (UDAG) programme. Under the UDAG programme, which began in 1978 and operated until 1988, the federal government offered grants to municipalities which they could invest in approved private development projects. Approximately \$500 million in grants were made each year during the life of the programme. What was unique about the UDAG programme is that it "taught cities how to be deal-makers... UDAG staff went into the field instructing city officials how to bargain"(Segalyn, 1990, 433). The amount that a locality might invest in a particular project, and the terms of that investment (whether it was an outright grant or a loan), were not set in advance by statute or formula, but were instead to be negotiated on a case by case basis. In cases where the city was considering loaning money to a developer, the terms of repayment (interest rate and time period) would have to be negotiated. Most importantly, any repayment of UDAG loans was back to the municipality, rather than to the federal government, so that the municipality approving the development had a direct and positive financial interest in the deal which they were negotiating.

The increased respectability of negotiation was also indicated by the growing number of books and articles which emphasised the usefulness of negotiation and mediation in resolving conflicts and "getting things done." A number of books on negotiation became national "best-sellers," -- such as *You Can Negotiate Anything*

(Cohen1980) and *Getting to Yes* (Fisher and Ury, 1981). Articles by Talbot (1983), Susskind and Ozawa (1983), Susskind,Bacou and Wheeler (1983) and Forester (1983) focused on the growing importance of negotiation and mediation in planning and development control. They suggested that planners could play an important role in mediating development-related disputes. Perhaps because of the growing attention paid to negotiation, it became increasingly common for local governments in the U.S. to enter into negotiations with developers as a way of achieving public objectives.

Major downtown development projects undertaken in the 1970's and 1980's which gained national acclaim for their excellence in planning and design frequently came about through a process of public/private negotiation. For example, the redevelopment of the historic Faneuil Hall Marketplace area in Boston, which involved a complex negotiated agreement between the City of Boston and developer James Rouse, became a model for other such negotiated developments. The City owned the land and historic buildings which provided the basis for the project. In the past, the City might have been content to simply select a developer, and sell the land outright to that selected developer. Instead, the Faneuil Hall Marketplace project "broke new ground for public finance," in that the City of Boston regarded itself as a co-investor in the project, and wished to share in the future profits of the scheme (Frieden and Segalyn,1989, 137). The public/private "deal" negotiated in relation to Faneuil Hall project was soon followed by other projects involving profit-sharing agreements in other cities. During the 1980's, numerous other major projects were carried out in American cities involving negotiated development agreements, such as: the Harborplace project in Baltimore; the Town Square project in St. Paul, Minnesota; Fountain Square in Cincinnati; and Horton Plaza in San Diego (Ibid., 133-153). Another major development project carried out on publicly owned land subject to the terms of a complex development agreement was the huge Battery Park City project in New York City-- a project which involved the construction of 6 million square feet of office space and 14,000 housing units (Light,1985, 42). Under the agreement, the developer (Olympia and York) agreed to contribute a portion of the profits generated by the development over a period of years to support the construction of low and moderate-income housing throughout the City (Gill,1990,70; Fainstein,1991,28). Total contributions in excess of \$1 billion dollars are expected (Gill, Ibid.). The agreement also specified that the developer would construct, dedicate, and thereafter maintain significant portions of the project adjoining the Hudson River for public use, including a continuous public walkway and landscaped areas along the river.

Every major commercial or institutional development which was approved in the 1980's by the Boston Redevelopment Authority (BRA) involved the negotiation of a "Cooperation Agreement," and these agreements typically contained offers of significant contributions (O'Malley,1991, int.). Contributions sought by the BRA in these

Cooperation Agreements were in addition to the payments required of commercial developers under the city's Linkage programme (discussed earlier in this chapter). The standard sequence of events, as described by a senior official at the BRA, was as follows:

A developer would apply to the City to rezone a property as a Planned Development Area (PDA). Under PDA zoning, the project could be as large as the City wished to allow. Designating the area as a PDA was, in effect, a way for the City to grant an exception to the zoning without having to meet the strict legal test required for a variance... The application for rezoning would be submitted to the City Council, which would make the final decision... By the time the rezoning came before the City Council, the BRA would have already met with the applicant and attempted to negotiate a "Cooperation Agreement" containing offers of developer contributions. The BRA would tell the applicant that it couldn't guarantee zoning approval, but that it would support the re-zoning application, if the applicant and the BRA were able to reach a satisfactory agreement (Webb,1991, int.).

Once an agreement was signed, the BRA would prepare Master Plan in support of the rezoning. In most cases, the Council acted in accordance with the recommendation of the BRA.

During the 1980's, the City of Boston extended the negotiation of agreements to most major developments, including those which did not require rezoning to Planned Development Areas. The City adopted an ordinance requiring that, before any project of 100,000 square feet or more could be granted planning approval, a Transportation Access Plan had to be prepared. In preparing the Transportation Access Plan, the City would study the existing situation, and the expected impacts of the proposed project, and negotiate with the developer regarding measures to mitigate those impacts (Garver,1991,int.).

In Ann Arbor, Michigan, it became common for the City and developers of major commercial and residential projects to enter into "site development agreements" in which the developer agreed to construct roads and other essential infrastructure. Developers were not required to make such contributions, "but if they didn't, the improvements might not be done for a long time" (Overhiser,1992,int.).

In some parts of the country, local governments took advantage of strong development pressures to negotiate significant contributions from developers in exchange for granting regulatory certainty. The first state in the country to enact legislation authorising local governments to enter into agreements with developers for the purpose of granting regulatory certainty was California, which passed the Development Agreement Act in 1979 (Coward,1989); the second state was Hawaii in 1985 (Callies,1989); and the third was Florida in 1986 (Taub and Rhodes,1989). The main reason behind enactments of this kind was the perceived need to protect developers of large-scale projects (requiring many years to complete and substantial up-front expenditures) from future changes in zoning and

land use regulations which might jeopardise completion of the project.

... although a United States developer may have automatic development rights in accordance with ...zoning, he has no guarantee that the scheme will not be changed or other regulatory requirements imposed once the development process has commenced. To secure that guarantee on a major project he may be willing to assume substantial infrastructure responsibilities (Callies and Grant,1991, 239).

The increased reliance on developers to provide infrastructure formerly funded publicly through taxation, gave added impetus to the signing of agreements guaranteeing developers regulatory certainty.

The problem of regulatory security [was] magnified by the abandonment of tax-based infrastructure finance in post-Proposition 13 California. So long as government was building public facilities, the developer's up-front risk was minimized. Now that developers are often required to finance project-related infrastructure, their risks are magnified and the need for security is greater (Coward,1988, 220).

Under California law, developers could negotiate with local governments to have their currently held development rights permanently "vested." Once "vested," a developer was guaranteed the right "to complete all phases of their projects, even if a growth control measure is passed before buildout" (Fulton,1989, 4). In order to obtain such regulatory certainty, however, developers had to agree to make significant contributions, and to confirm such commitments in the form of legal agreements. Courts in California have not required that such agreements meet the so-called "rational nexus" test (Callies,1990 lect.). Despite that fact, developers in California were often eager to enter into agreements with local governments. In addition to allowing developers to purchase regulatory certainty, the process of negotiation also afforded developers "the legal opportunity to engage in open-ended bargaining on virtually all aspects of the community's land use controls" (Coward,1989, 9).

Increased use of legal agreements was also reinforced by the environmental movement, and by increased interest in mitigating the impacts of development. Throughout the 1980's, laws, standards, and procedures enacted to protect the environment became increasingly complex and demanding. Major developments were required to complete complicated environmental impact reviews, and to demonstrate that they would not cause a deterioration in air and water quality, generate excessive noise, fumes or emissions, or adversely affect officially designated historic structures and districts. State and local laws to protect wetlands were tightened, and increasingly enforced. As a result of this increase in environmental legislation, there was an increased tendency to negotiate with developers regarding measures to make proposed developments environmentally more acceptable.

“With the advent of environmental review, local governments ... gained the power to demand that developers mitigate the adverse effects of their projects. Mitigation could take any form (land, buildings, or cash) and was usually negotiated on a case by case basis” (Fulton,1987, 8).

A 1986 survey of local government use of development agreements in California was conducted by the University of California at Berkeley. The survey of 40 local governments found that the most frequently cited reason for entering into development agreements was to obtain private developer contributions for infrastructure costs.

Table 2.02: Reasons for Signing Agreements, California Local Governments

	<u>No.</u>	<u>Percentage</u>
Infrastructure/Public	23	57.5%
Land Dedications	14	35.0%
Low Income Housing	8	20.0%
No Special Conditions	4	10.0%
To Settle Lawsuits	3	7.5%

Source: Study by University of California at Berkeley, as reported by Cowart (1989,30)

As of the end of 1989, approximately 500 development agreements had been signed in California (Callies,1990,lect.). A more recent survey of 450 cities and counties in California, reported on by Callies and Grant (1991,241), found that 150 local government units were using development agreements. Another 100 localities expressed interest in using agreements (Ibid.).

Agreements have also been used in other ways, to require and coordinate the private provision of infrastructure related to large private developments. Sacramento, California used agreements to help coordinate the development of tracts of land under separate private ownership. Agreements were used “to equitably divide the cost of infrastructure among several developers”(Porter,1989,151). “Recapture agreements” were used to allow developers of major developments to construct off-site infrastructure improvements needed for their developments, and then to collect funds back from owners of adjoining properties benefiting from the improvements.

Conclusions

Amidst the wide variety of approaches to developer finance in the U.S. there were really two main approaches. Most localities followed the traditional rule-based approach, setting and imposing fixed, mandatory fees. In large parts of the country, planning authorities remained distrustful of systems of development control which allowed planners and public officials to negotiate with developers. Meanwhile, in areas with strong property markets, it became increasingly common for municipalities to act opportunistically, and to capitalise on strong market conditions by seeking to negotiate exceptional benefits and contributions from developers in exchange for granting either planning permission or regulatory certainty. As Alterman has observed, "It is as yet difficult to assess which trend will dominate the U.S.A.-- greater formalization or more negotiated arrangements; likely they will continue to co-exist" (Alterman,1990, 168).

CHAPTER THREE: EVOLUTION OF DEVELOPER FINANCE IN BRITAIN

Most of the tools of developer finance used in the U.S. to shift costs and obligations onto developers described in Chapter Two have been either entirely absent, or rarely used in Britain. For example, special assessments have received surprisingly little use in Britain. The London County Council promoted Bills to Parliament in 1890, 1892 and 1893 seeking approval to levy a betterment charge as a means of financing the cost of street widening and bridge improvements along the Victoria Embankment, “but were unable to secure the acceptance of the principle” (Uthwatt, 1942, para. 267). It was only after considerable study by a Select Committee of the House of Lords that the principle of assessing a charge for the cost of improvements was (apparently reluctantly) accepted in 1895 (Uthwatt, *Ibid.*, para 267; Mischynski, 1978, 312). Other than that notable case, special assessments have rarely been used, except to finance the construction of seawalls and barriers protecting coastal properties from storm damage.

There has also been considerable reluctance in Britain to finance public improvements through user fees. Homes and businesses have traditionally been charged a flat fee for water services, rather than a variable fee based on the amount of water they use. Tolls for the use of bridges, tunnels, and motorways are also not common in Britain. A recent exception to this rule has been the privately financed Dartford Bridge, which opened in 1991. Under a deal negotiated through the Department of Transport, the private consortium built the bridge and will collect tolls from the users of the bridge for up to 20 years to recover its investment and make a profit. After that period, the bridge will be turned back to the government (and perhaps the tolls eliminated.)

Particularly striking from an American perspective has been the unwillingness of public authorities in England to impose exactions and fees on on landowners and developers when land is developed. American planning authorities have routinely required developers to dedicate land for roadways, and to construct various types of public infrastructure, including roads and curbing, sidewalks, lighting, water lines, sewers and surface water drainage systems. But such has not been the case in Britain.

Very little in the way of exactions is permitted in England. It is apparently assumed in England that governmental entities will provide parks, roads and the like. One would have to turn the clock back in America to a conservative state law in the 1940's to find a situation where the public costs associated with new development were so minimally imposed on developers (Hagman and Pepe, 1974, 557).

In Britain, with its centrally controlled system of government and development control, there has been only one way for local governments to obtain benefits or payments from developers, and that has been by negotiating agreements. Three factors appear to

have pushed local authorities toward negotiating agreements. First, the flexibility and discretion incorporated into the British planning system after World War II led naturally to negotiation between local planning authorities and developers. Secondly, local authorities found it increasingly difficult to finance infrastructure costs related to new development, as a result of strict financial limitations placed upon them by central government. Thirdly, the negotiation of agreements has been encouraged by the fact that local planning authorities have been limited in their ability to achieve planning and development control objectives by means of conditions.

Discretion and Negotiation in Development Control

The transformation of the British planning system after World War II, from reliance on fixed plans, toward a more flexible approach to development control, produced a development control system in which almost everything was negotiable. Under the 1932 Town and Country Planning Act, development control in Britain was primarily “regulatory and restrictive” (Cullingworth, 1988, 5). Planning authorities, in effect, prepared zoning-like plans which specified the uses and densities of development allowed in particular areas. By way of contrast, the 1944 and 1947 Town and Country Planning Acts provided for a more flexible form of regulation, with allocations of land made with a “broad brush” (Jowell, 1977a, 66). Under these Acts, “the rigid detailed zonings of the 1932 Act system” were to be avoided (Ibid.). The most explicit evidence of this flexible approach to planning was the inclusion in the 1947 Town and Country Planning Act (and subsequent Town and Country Planning Acts through 1991) of the “material considerations” clause, which stated that:

... where an application is made to a local planning authority for planning permission, that authority, in dealing with the application, shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations, and--

a.)... may grant planning permission, either unconditionally or subject to such conditions as they think fit; or

b.)... may refuse planning permission (TCPA 1971, Section 29).

Local planning authorities were not required to base their decisions on planning applications solely on the content of the official development plans. Rather, the LPA could also take into account “other material considerations,” -- a phrase which was left deliberately vague and undefined. As Grant has forcefully put it (1982, 277), “It is on the face of it, one of the least fettered discretions in the whole British administrative system, especially bearing in mind the potential distributional effects of planning decisions.” Thus,

the range of “material considerations” was broad enough to include a consideration of factors such as “housing, transportation, recreation and leisure facilities and the effect of the development on the social balance of the community”(Loughlin,1981, 61). As the Nuffield Commission Report of 1986 argued, “The general test applied in the courts that any consideration which relates to use and development of land is capable of being a ‘planning consideration’ sensibly places the emphasis on the circumstances of each application and means that no exhaustive list of material considerations can be produced”(Nuffield Commission,1986, para 9.14 and 9.15, 153). Indeed, the exercise of discretion under the British system has been so sweeping that it has appeared to Hallett (1988, 190) that the system has operated “largely outside the law, in the sense that local planning authorities had complete discretionary power to give or withhold planning permission, subject to an appeal to the Secretary of State (who also had complete discretionary power.)”

Given the lack of fixed plans, and the considerable discretion exercised by local planning authorities, it is not surprising that local planning authorities and developers frequently engage in negotiation. Indeed, it has been commonplace under the British system for developers to negotiate with planning authorities prior to submitting planning applications (Marsh,1990,int.; Dimoldenburg,1990,lect.). The negotiation of planning agreements including planning gain simply took the exercise of discretion and negotiation one step further.

Financial Pressures on Local Authorities

In Britain, as in the U.S., efforts by national government to reduce overall public expenditure levels of taxation played a role in encouraging a shift toward developer finance, although probably not to such an extent as in the U.S. The trend toward decreased government infrastructure expenditure actually began in Britain in the 1970's, and continued throughout the 1980's. “Until the early seventies, the amount spent in the public sector was based upon the Public Expenditure Survey (PESC),” which attempted to forecast the demand for public expenditure in the future (Synnott,1983, 58). The concept at the time was that “the level of demand for a publicly provided commodity or service was the dominant factor in the allocation of public resources”(Ibid.). However, in the mid-1970's, fiscal policy concerns took precedence, and planning was made subservient to public expenditure policy. As a result, public sector capital spending as a proportion of Gross National Product (GNP) steadily declined. In 1974, public sector capital spending represented 5.7% of GNP, but by 1983 it had fallen to just 2.0% of GNP (GLC,1985, 68). Capital spending by London Authorities in 1985 was more than £100 million a year below the level of spending which existed in the mid-1970's (Ibid., 9-10). Over that same period, the Greater London Council's gross capital expenditure authorisations (set out in

the Money Bill) had been reduced by approximately 30% in real terms (Ibid, 3).

Because of their capital intensiveness, public water authorities were particularly vulnerable to cuts in funding from the Treasury (Synnott,1983, 59). The regional water authorities became increasingly “subject to annual borrowing limits and capital expenditure ceilings set by Central Government” (Ibid., 16). Budget restrictions imposed earlier in the 1970’s by the Labour Government were made even tighter when the Conservative Government of Margaret Thatcher took office in 1979. Shortly after taking office, “the inherited expenditure plans of Labour for 1980/81 [for the RWA's] were cut back by 4%, and for 1982/83 by 8%”(Ibid., 59).

Throughout the 1980's, steps were taken by central government to limit local government expenditure, with particular attention on limiting local authority *capital* expenditure. The first step was taken in 1981 with the passage of the Local Government Finance Act. “The new legislation replaced the [former] system of loan sanctions with annual expenditure allocations to each authority” (Travers, 1986, 141). These allocations effectively limited the amount that local authorities could spend on capital improvements each year. Under the Act, the government could set specific spending targets for each local authority, and could impose grant penalties if an authority spent above its target (Ibid., 125). Furthermore, the government added an additional layer of control on the finances of local government. “Up until 1981-82, the Government had controlled authorities powers to borrow money to fund capital expenditure. From 1981-82 onwards control was exercised over expenditure” (Ibid. 137).

Local governments were initially able to supplement the revenues available to them, and to compensate for funds cut by central government, by selling off capital assets, such as land with planning permission. Indeed, from the 1970's through the 1980's, the proportion of local government capital expenditure financed through the sale of capital assets increased substantially, while the importance of borrowing decreased. In 1974-75, approximately 84% of all local government capital spending was financed through borrowing; by 1982, only 51% of local government capital spending was funded through borrowing (Travers,1986, 139). In its first few years of the Thatcher administration, the government actually appeared to encourage local authorities to be more enterprising by raising money in this way. As of 1981-82, local authorities could use 100% of the net receipts obtained from the sale of capital assets to supplement their allocations of government funding, and by so doing could increase their level of capital spending above the level set by the government. However, that financial advantage was soon eliminated.

Subsequently limits were put on the proportion of a year's receipts which could be used within that year. In 1983-84, 50% of housing and non-housing capital receipts (with small exceptions) could be used. By 1985-86 the proportion of housing capital receipts available was cut to 20 per cent. The proportion of an authority's receipts which could be used to increase their basic allocation has thus

been severely cut back (Travers,1986, 142).

These limitations imposed by central government on local government finance had the unintended effect of making it all the more advantageous for local authorities to negotiate contributions from private developers. By signing an agreement calling upon the developer to construct the facility, rather than having the local authority spend its own money constructing the facility, a local authority could escape the borrowing and spending limitations which the government sought to impose. "By shifting a capital cost onto the private sector, the authority benefits not only to the extent of the interest charges it would otherwise have to meet, but also to a much greater extent, in terms of grant gain" (Grant,1986, 102).

In an apparent effort to discourage this practice, the government issued the so-called "Ridley Rules" in March,1989, which stated that the cost of any facility constructed for a local authority by a private developer would be deducted from the local authority's Prescribed Expenditure (Stevenson,1990, int.). Nevertheless, some local authorities were still able to get around this restriction through an even more convoluted use of agreements. They discovered that if the developer paid the local authority the money for the facility, and then the local authority immediately paid the developer back, and *then* the developer constructed the facility, then it would not have to be deducted from local authority's Prescribed Expenditure (Ibid.). The ingenuity of local authorities in escaping central government spending limitations through the use of agreements became one of the hallmarks of the planning gain game. In response, a new rule was enacted by the government on April 1, 1990, whereby 50% of the revenues obtained by a local authority through planning gain must go toward repaying local debt (Ibid.).

Limitations on the Use of Conditions

The need for planning agreements was considerably intensified by legal restrictions placed on the ability of local authorities to restrict and regulate the use of land by attaching conditions to planning permissions. Writing in 1975, McAuslan found a large number of rulings by the Minister in which conditions imposed on developments were deemed excessive and *ultra vires* (McAuslan, 1975, 426-429). The most important legal principle limiting the use of conditions was articulated by Lord Denning in 1958 in the case of *Pyx Granite Co. Ltd. v. Minister of Housing and Local Government*. The principle articulated in the *Pyx Granite* case was that "The condition, to be valid, must fairly and reasonably relate to the permitted development" (Grant, 1982, 338). In the words of Lord Denning, as quoted by Grant (Ibid.), "The planning authority are not at liberty to use their powers for an ulterior object, however desirable that object may seem to them to be in the public interest." As a result, local authorities were prevented from using conditions to require

developers to provide low cost housing. In a 1974 ruling, in *R. V. Hillingdon Borough Council v. Royco Homes*, the court ruled that a condition attached to a planning permission designed to restrict occupation of dwellings to persons on the local authority waiting list was invalid (Redman, 1991, 214).

Conditions were regarded as particularly inappropriate for the imposition and enforcement of off-site obligations. Court rulings prevented planning authorities from using conditions to achieve environmental improvements for areas affected by proposed developments (Grant, 1982,340) and from using conditions to “achieve balanced planning gains, by requiring the cessation of activity on one site in return for permission to undertake it elsewhere”(Ibid.,342). Local authorities were also prevented from imposing conditions for the purpose of requiring financial contributions.

The doctrine has emerged that a condition may be invalid as unreasonable if it requires the applicant to give up or contribute money, and or other rights to the authority, or if it otherwise interferes with his proprietary interests. The question is one of principle, rather than of quantum, and its inflexibility in the context of land development has led authorities and developers to alternative forms of relationship, primarily through planning agreements (Grant,1982, 343).

Although Circular 1/85 appears to have been intended to clear up the confusion regarding when conditions could and could not be used, in many ways it only added to the confusion. The overall thrust of the Circular was that local authorities should use conditions wherever possible, and avoid unnecessary use of agreements.

It may be possible to solve a problem posed by a development proposal equally well by imposing a condition on the planning permission or by concluding an agreement under section 52 of the Act or under other powers. The Secretaries of State consider that in such cases the local planning authority should impose a condition rather than seek to deal with the matter by the making of an agreement.... (DoE Circular 1/85,para 10, 40817).

What the Circular failed to recognise was that one of the main reasons for entering into agreements was to impose restrictions which would be *ultra vires* if imposed as conditions (Loughlin,1981). “It is precisely because most of the matters now covered by Section 52 Agreements would be *ultra vires* if they if they were made the subject of a planning condition that local planning authorities have taken to insisting upon the completion of section 52 agreements before planning permission is granted” (Heap and Ward,1980, 635). Echoing that same point, Litchfield has observed that,

... the guidelines [in Circular 1/85] encourage the control [by conditions] of the very matters which come outside conditions, by a separate agreement under Section 52.... ; it is precisely because conditions cannot be achieved in relation to the planning permission that they must be 'voluntarily' offered by the developer. In

brief, a process which does not stand up in regulatory planning law is legitimised in contract law (Litchfield, 1989, 69).

Statutory Authorisation for Agreements

Authorisation for local authorities to enter into legal agreements was first conferred on local authorities by Section 34 of the Town and Country Planning Act of 1932 (Ward, 1982, 75; Keogh, 203-4). Similar authorisation was included in the 1944 and 1947 Town and Country Planning Acts. However, agreements could not be entered into without the consent of the Minister, and "this made them rather cumbersome instruments of control" (Ward, 1982, 75). The requirement of Ministerial approval for agreements was lifted in 1968. Prior to that happening, the evidence is that agreements were little used. Between 1964 and 1968, when the requirement of Ministerial approval was still in place, only 500 agreements were approved by the Minister for the entire country (Ibid.). The lifting of the requirement of Ministerial review of agreements in 1968 represented a major step in allowing agreements to be more widely-used in development control. Even after removing the requirement of ministerial review however, the use of agreements was still limited by law to the enforcement of negative controls, and could not be used to enforce positive obligations on developers.

In 1971, local authorities received much broader authorisation to use agreements to achieve positive planning objectives. Section 52 of the Town and Country Planning Act of 1971 permitted authorities to enter into agreements "for the purpose of restricting or regulating the development or use" of land and buildings, and provided that "any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the local planning authority to be necessary or expedient for the purposes of the agreement" (TCPA, 1971, s52, (1)). The legal basis for granting such power was that the local authority was deemed to "be possessed of adjacent land," and the purpose of allowing the authority to enter into such legal agreements was "to place the authority in the same position as a landowner entitled to enforce a restrictive covenant against an adjoining landowner" (Grant, 1982, 364).

Legal authority for local authorities to enter into agreements was further reinforced by subsequent statutes. Under the Local Government Act of 1972, s.111, local authorities were given the power "to do anything... which is calculated to facilitate, or is conducive or incidental to, the discharge of their functions." Nevertheless, the ability to use agreements was still limited by the fact that most local authorities could only use such agreements to enforce covenants of a restrictive nature (Ward, 1982, 76). Although some local authorities, such as those undertaking town centre redevelopment schemes, had been individually granted special powers by Parliament to enter into positive agreements in the 1960's (Grant, 1975, 503), it was not until the passage of Section 126 of the Housing Act

of 1974 that all local governments were given the power to enforce positive provisions in Section 52 agreements against successors and assigns (Ward 1982, 76; Loughlin, 1984, 240). The provisions of Section 126 of the Housing Act of 1974 were subsequently superseded by Section 33 of the Local Government Act (Miscellaneous Provisions) of 1982, which reiterated that local authorities had authority to enter into agreements and enforce positive covenants relating to land for the purpose of “securing the carrying out of works on or facilitating the development or regulating the use of land in the Council's area...”

Additional authorisation for the use of agreements related to highway infrastructure improvements was provided in the 1980 Highway Act. Section 38 of that Act authorised highway authorities to enter into agreements related to the construction and adoption of internal roads, footpaths, and cycleways. Section 278 of the 1980 Highway Act Act authorised highway authorities, as well as the Department of Transport, to enter into agreements with developers related to privately-funded improvements to county and trunk roads, related to newly permitted developments.

The provisions originally included in Section 52 of the Town and Country Planning Act, authorising local authorities to enter into agreements which were enforceable against successors in title, were retained without alteration throughout the 1980's. The Town and Country Planning Act was revised again in 1990, and the provisions contained in Section 52 of the former act were shifted to Section 106 in the new act. Nevertheless, no substantive change was made in the wording of the provisions related to agreements.

Central Government Policy on Developer Contributions

Over a period of many years, various policy statements were issued by central government on the subject of planning agreements and developer contributions. One of the first policy statements issued by the government on the subject of developer agreements was Circular 54, issued in 1967. The circular was directed at what the government saw as the growing practice of local authorities seeking contributions from developers for the provision of car parking facilities (Hawkes, 1981,91). The Circular stated that “it was improper for a decision on a planning application to turn on the readiness of a developer to make a financial contribution in lieu of the provision of car parking spaces” (Ibid.).

Many years passed without additional government comment. The first important government policy statement on agreements in the 1980's was Circular 22/80, which was issued in November, 1980. The Circular formally acknowledged that agreements had a useful role in facilitating and regulating development.

Problems may arise when development is proposed where the necessary infrastructure is not available and pending its availability the consequences of development would be unacceptable..... In preference to a refusal on the grounds

that infrastructure is lacking it is better to consider whether the problem can be solved by an agreement with the developer under section 52 of the Town and Country Planning Act of 1971. Even if it is a compelling objection that provision of the necessary infrastructure would be too costly, the possibility that the developer would offer a section 52 agreement which adequately met the objections should be explored before a refusal is issued...

Where the particular problem is one of creating or aggravating an existing sewerage overload pending new works in prospect, it may be right to grant permission if it seems certain that the houses will not be ready for occupation before the works are complete..... If the prospect of the completion of [sewerage] works being completed on time is not firm, the situation might be covered by a section 52 agreement under which occupancy or rate of building depends on completion of the works as specified" (Circular No. 22/80, para 9-10, 40484-40485).

Circular 22/80 was not, however, to be the government's last word on planning agreements. Indeed, even as it was preparing to issue Circular 22/80, the government was aware of the possible need to modify and/or clarify government policy on agreements. Eight months prior to issuing Circular 22/80, the government turned again to the Property Advisory Group, to provide advice on what the policy of the government should be on agreements. As noted by McAuslan (1984,85), the PAG, because of its composition, was extremely sensitive to the needs of the development industry. The PAG delivered its report to the Minister of the Department of Environment in July, 1981. In it, the PAG defined planning gain as arising "when, in connection with the obtaining of a planning permission, a developer offers, agrees or is obliged to incur some expenditure, surrender some right or concede some other benefit which could not, or arguably could not, be embodied in a valid planning condition" (PAG,1981, 4). This definition reflected the perception of planning gain was very onerous to developers. The PAG's definition, for example, failed to acknowledge the possibility that, in certain cases, offers of contributions might be initiated by developers in an attempt to obtain a permission which otherwise might be refused. Given this narrow and one-sided definition, the PAG concluded that planning gain had no place in the legitimate exercise of planning control.

Our main objection to the general idea of planning gain is that, as soon as a system of accepting public benefits is established which goes beyond the strict consideration of the planning merits of a proposed development, the entire system of development control becomes subtly distorted, and may fall into disrepute. Developers may come forward with schemes to which no conceivable planning objection could be raised, but be left with the impression that if they are not prepared to offer up some wholly extraneous planning gain, their application may receive a less sympathetic or less speedy consideration; there might have to be an appeal against a deemed, if not an actual, refusal of permission, which will cause expense and delay; and in the end, in order to overcome purely political difficulties which could not in any way be explained in technical, planning or legal terms, the developer may simply give way, and pay up. It is, in our view, utterly inconsistent with the principles of sound public administration that any member of the public

should be left with the impression that he can receive more expeditious or more sympathetic treatment by offering a collateral benefit to the public authority with which he is dealing (PAG,1981,7-8).

The PAG Report had considerable influence on the drafting of Circular 22/83, which was to become the operative government policy statement on planning gain throughout the rest of the 1980's. Circular 22/83 begins by acknowledging receipt of the PAG's report, and the need for new "guidance to local authorities and others concerned" in light of the report. The definition of planning gain presented in Circular 22/83 reflects the influence of the PAG report. According to Circular 22/83, "planning gain" arises "whenever, in connection with the grant of planning permission, a local planning authority seeks to impose on a developer an obligation to carry out works not included in the development for which permission has been sought or to make some payment or confer some extraneous right or benefit in return for permitting development to take place" (DoE Circular 22, 1983, 1).

Circular 22/83 acknowledged that agreements may "assist towards securing the best use of land and a properly planned environment," but stated that "this does not mean that an authority is entitled to treat an applicant's need for permission as an opportunity to obtain some extraneous benefit or advantage or as an opportunity to exact a payment for the benefit of ratepayers" (DoE Circular 22, 1983,2). The Circular lays out a test of "reasonableness" which any obligations imposed on developers must meet. According to Circular 22/83, the obligation:

- must be needed to enable the development to go ahead...
- in the case of financial payments, such payments must contribute to meeting the cost of providing such facilities in the near future; or
- must be otherwise so directly related to the proposed development.... that the development ought not to be permitted without it...

Furthermore, the *extent* of the obligation being required or sought from a developer must be "fairly and reasonably related in scale and kind to the proposed development."

Circular 22/83 also sought to limit the practice of accepting commuted payments from developers for the cost of maintaining, public facilities, particularly those constructed and provided by the developer. In cases where a developer was willing to contribute to the capital costs of a public facility, "the developer's responsibility should be limited to providing what is needed in the first instance," and "... the costs of subsequent maintenance should normally be borne by the authority or body in which the asset is to be vested" (DoE Circular 22/88, 4).

Circular 1/85 stated that "no payment of money or other consideration can be required when granting a permission or any other kind of consent" (DoE Circular 1/85,

para 63, 40826). This directive against seeking cash payments was again reiterated in Planning Policy Guidance 1 (PPG 1), issued in 1988, which stated that “the planning authority is not entitled to use the mechanism [a Section 52 Agreement] and the applicant’s need for planning permission as an opportunity to exact a payment for the benefit of ratepayers at large” (PPG 1, 1988, para 25, 6056). Nevertheless, PPG1 reiterated the government’s recognition of the important role of development agreements, by saying that:

There are matters which, while necessary in planning terms if a proposed development is to proceed, cannot be dealt with by way of a planning condition.... This may be so, for example, where the action is not reasonably within the power of the applicant to secure.... In such circumstances, it may be possible to grant permission if the matter is made the subject of an agreement under, for example, section 52 of the 1971 Act or a similar provision. Used in this way, agreements can assist towards securing the best use of land and a properly planned environment (DoE, PPG 1, 1988, para 25, 6056).

The 1990 White Paper on the environment, *This Common Inheritance*, summarised the government’s view of agreements in a way which was remarkably consistent with Circular 22/83. First, it emphasised the need for certainty in the development process. “Everyone has the right to know the basis on which planning applications are decided” (White Paper, 1990, 84). Secondly, the statement reiterated that “authorities must not try, unfairly, to use the applicant’s need for planning permission to seek payments or other benefits which are not related directly to the proposed development” (Ibid., 88).

Based on these official government pronouncements, many commentators concluded that the attitude of the Thatcher Government toward planning gain was largely negative. According to McAuslan, “... an attempt has been made [by central government] to impose some controls on planning gain and generally to whittle down the ambit of discretion in development control at the local authority level” (McAuslan, 1988, 692). Nevertheless, the government did relatively little to limit the use of agreements, and the negotiation of planning gain (Marsh, 1989). Indeed, the government appeared torn by competing and opposing concerns.

It is ideologically committed to regulatory systems that will work efficiently and will produce development with a minimum of delay. To many developers, planning gain achieves just that by minimising risk and delay. On the other hand, the government is ideologically opposed to any form of taxation burden on the private sector that might inhibit the attractiveness or profitability of development and therefore is deeply suspicious of planning gain (Grant, 1989, 86).

Despite its apparent reluctance at seeing *local* authorities become too successful in negotiating developer contributions, as the 1980’s progressed central government appeared to become increasingly interested in negotiating contributions from developers for trunk

road improvements As indicated in a report issued by the Department of Transport entitled *New Roads by New Means*, the central government supported the idea to negotiating highway contributions, and of entering into agreements, “when they enhance the capacity of the network for general road users” (DoT,1989, § 8). Although central government appeared to object to local governments extracting significant contributions from developers, under Section 278 of the 1980 Highways Act the government, through the Department of Transport, was often more than willing to enter into agreements with developers for contributions to improve roads which were part of the national trunk road system. As Callies and Grant (1991, 225) have observed, “central government has pursued similar aims [as local authorities] in regularly seeking developers contributions (commonly at the rate of 100 percent) to finance new works on main highways where they are required to accommodate new development.”

Evolution of Local Authority Policies on Agreements

When the Town and Country Planning Act was amended in 1971, including the amended provisions for agreements included in Section 52, the use of legal agreements to achieve planning objectives was still in its infancy, and formal policies at the local authority level regarding how agreements would be used were non-existent. The first local authority policy statement on agreements was put forward by the Greater London Council (GLC) in 1972. The policy statement, which appeared in the Greater London Development Plan Statement Revisions (GLC,1972), declared that all large office developments should provide “planning advantages.” The planning advantages specified in the plan were: redevelopment of areas of poor layout or design; provision of residential accommodation in conjunction with the development; improvement of the public transport system, especially in relation to interchanges and railway termini; provision of specific benefits in the form of buildings, land or other facilities for the use of the public; conservation of buildings or places of architectural or historic interest; and provision of small suites of offices, particularly if available on a rental basis (GLC,1972, §4.16, 18).

The GLC's policy of seeking “planning advantages” in relation to large office development schemes had a direct impact on the planning policies of individual boroughs, inasmuch as the Boroughs had to refer all applications pertaining to developments of any significance to the GLC for its concurrence (Stevenson,1990, int.). Writing in 1974, Ratcliffe was able to report that the “planning advantages” policy initiated by the GLC had been independently incorporated in the local development plans of a number of London Boroughs (Ratcliffe,1974, 149). The legal significance of including the “attainment of planning advantages” in local development plans was that the pursuit of planning gain became a valid “material consideration” related to applications for planning permission --- conferring upon the custom a higher degree of legitimacy (Ratcliffe,1981,411), and thereby

presumably making it less likely to be over-ruled on appeal. According to Ratcliffe, most large development companies had come to "accept the inevitability of planning gain and are increasingly prepared to provide an element of community benefit in their proposals (Ratcliffe, 1974,149).

Examples of purposes achieved by London Boroughs through the requirement of "planning advantages," reported by Ratcliffe were:

- To establish and enforce a ratio between permitted commercial floorspace and the required provision of council housing.
- To implement conservation policies-- ... where the local authority required the developer... to rebuild a previously damaged historic monument in return for central area office permission.
- To achieve the provision of public amenities that would not otherwise have been supplied... (Ibid.).

The GLC policy of seeking "planning advantages" from large-scale office development schemes, expressed initially in the 1972 Draft Revisions, were retained virtually unchanged in the final version of the *Greater London Development Plan (GLDP)*, which was officially approved by the Secretary of State for the Environment on 9 July 1976. It is interesting to note that the Secretary of State let Policy 4.15 stand without comment or alteration. Section 4.15 of the 1976 GLDP reiterated that new office developments granted permission within approved areas would be expected to provide "planning advantages." The specific planning advantages called for were similar to those articulated in the initial 1972 document: improvement of the public transport system at railway termini and interchanges; provision of buildings, open space, pedestrian access and other facilities for public use; redevelopment of areas of poor lay-out or design; conservation of buildings or places of historic or architectural interest; provision of residential accommodation in conjunction with the development; provision of small suites of offices, particularly on a rental basis (GLC, 1976b, §4.15, 30).

A separate "Issue Paper" released in 1976 stated that it was the GLC's policy was to "introduce strict restraint" on most types of proposed new commercial development outside the 106 centres designated in the plan, and that all development in the designated towns centres was expected to produce "community benefit..." (GLC,1976a).

Based on these early policy statements, it does not appear that during the 1970's there was much emphasis on using planning gain to finance basic infrastructure needed in support of development. The only significant infrastructure item contained in the list of planning advantages related to "improvement of the public transport system at railway termini and interchanges"-- but the literature of the 1970's does not provide indication that this was much used. In general, there appears to have been a greater emphasis in the

1970's on assuring a balance of housing and commercial development, the inclusion of social housing, the conservation and restoration of historic buildings, and the provision of public amenities and social benefits. Writing in 1975, Malcolm Grant reported that "as far as can be gathered, for there are no official statistics available, the use of agreements has not been widespread in the past" (Grant, 1975, 506). However, Grant also noted at that time that local authorities were beginning "to shift the burden of infrastructure costs from the authority to the developer," and that planning agreements were playing an increasingly "central role in such arrangements..."(Ibid., 507). In the opinion of Jowell (1977b), the property boom of the early 1970's was an important factor contributing to the surge in planning gain negotiation.

By the 1980's, a consensus appeared to be emerging that the practice of making developers pay was becoming widespread. According to Ward (1982), local authorities had succeeded in persuading developers that agreeing to pay for much, if not all, of the cost of new sewers, roads or other public facilities was the only way to overcome problems of "prematurity" in areas where existing infrastructure was at capacity. (Ward,1982, 76). McAuslan (1984, 84) put forward the view that agreements were being "widely used..." and frequently required developers to contribute "toward putting in infrastructure to make the land developable-- roads, sewers, water pipes, and the like-- an infrastructure that customarily was put in by local authorities..." And in 1986, eleven years after his 1975 article on planning gain negotiation, Grant reported that "Over the past 15 years or so there has been a substantial shift in responsibility for the provision of off-site infrastructure from the public sector to private developers" (Grant,1986, 99).

Conclusion

Local authority policies and practices related to agreements and contributions appeared to evolve significantly from the 1970's through the 1980's. Most observers agreed that this evolution was driven almost entirely by *local* planning authorities, in the face of central government opposition. Moreover, as indicated by Grant's 1986 assertion, quoted above, the belief had taken hold among knowledgeable observers that the negotiation of contributions for off-site infrastructure improvements had become widespread-- perhaps even commonplace.

Review of recent history suggests that local planning authorities in Greater London were probably first to recognise and exploit the potential for negotiating "planning advantages" and contributions, and that experience in negotiating agreements and contributions very likely diffused from Greater London boroughs to local authorities outside of London. However, the extent to which local planning authorities in districts outside London took hold of this approach has not been firmly documented, and there is some basis for believing that local authority use of agreements has been uneven.

Throughout the 1980's, central government frequently reiterated its opposition to the practice of requiring contributions in exchange for planning permission, and sought to limit the scope of developer obligations to those contributions which were directly related to and necessary for developments to be approved. Increased central government concern regarding local authority use of agreements, combined with impassioned statements by the PAG and individual developers, tended to heighten the perception that the practice of extracting contributions was becoming commonplace throughout the South East.

As noted at the beginning of this Chapter, there has been a long tradition in Britain of financing infrastructure almost entirely with government funds. Given that tradition, and the lack of experience with alternative methods to privatise the finance of development-related infrastructure, it is not surprising that any tendency toward shifting costs to private sector developers, even a small trend in that direction, would excite a storm of controversy and debate.

CHAPTER FOUR: PERSPECTIVES ON DEVELOPER FINANCE

The negotiation of agreements and contributions in Britain raises a number of important research issues and questions. Some of these have received attention in previous research and the planning literature, but findings and opinions have often conflicted. The purpose of this chapter is to review current knowledge, professional opinion, and research findings related to issues and questions which are relevant to evaluating the negotiation of agreements and contributions in Britain, as contrasted against the U.S. approach to developer finance. American research findings, observations and opinions are introduced at various points in the discussion, not only to provide contrasting perspectives, but also to aid in interpreting British attitudes and practices related to developer finance.

Definitions

As noted in Chapter Two, planners in the U.S. in the 1980's devised numerous techniques and approaches to shift public costs and responsibilities onto private developers. The impetus for this shift toward developer finance came largely out of financial necessity. Local governments in the U.S. were finding it increasingly difficult to raise sufficient revenue locally to meet the costs of development, because of cut-backs in federal spending on infrastructure, and because local tax-payers were increasingly unwilling to bear additional costs to sustain growth. In Britain, the origins and purposes of negotiated agreements were more ambiguous. Rather than talking about "making developers pay," planners and researchers in Britain have talked about the negotiation of "planning gain." Various definitions of "planning gain" have been put forward-- most of them extremely broad. In general, the term "planning gain" has been used in such a way as to encompass almost any outcome which a local authority might view as desirable. Marsh (1989, 155) defined planning gain as "a benefit to the community, achieved at no cost to that community ... usually secured by the developer and LPA signing a planning agreement before planning consent is granted." The loose way in which the term "planning gain" has been used has led to a great deal of confusion. As Stephen Byrne (1989, 10) has observed, there has been a "... tendency to lump together all obligations and requirements made by local planning authorities under the generic term 'planning gain.'"

I suggest that, at the most basic level, there have really been only *two* major types of agreements-- agreements *with contributions*, and agreements *without contributions*. A "contribution" is offered when an applicant for planning permission agrees to incur some private cost (either to make a direct expenditure, to give up something of economic value, or to accept a loss of potential income), thereby enabling a public authority to obtain a public improvement or benefit that it or some other public authority would otherwise have had to spend public funds to obtain. Under this definition, the following offers by

developers would be classified as a “contribution:”

- contributing money for capital improvements;
- donating land or easements at no cost;
- constructing some improvement which would not otherwise have been required to serve the proposed development;
- constructing infrastructure improvements and/or public facilities to a standard or capacity greater than the developer would normally have been required to provide to meet the needs of the proposed development;
- donating some completed improvement;
- leasing completed space to the public authority, or some other entity (such as a housing association) designated by the local authority at reduced or no cost;
- including unprofitable uses in the proposed project (i.e. low-cost housing, small commercial spaces, a creche, etc.) desired by the public authority;
- allowing public access and use of privately owned land and facilities;
- selling land to a public authority at less than market cost;
- assuming responsibility for maintaining land or facilities for public use, either permanently or for some specified period;
- paying money to a public authority toward the cost of operating and maintaining public land or facilities.

Although Marsh (1989) has argued that planning gain has allowed local authorities to achieve public benefits at “no cost,” in my view the definition of contribution should be flexible enough to include offers from developers which allow a local authority to achieve a benefit at *less* cost than it would otherwise have incurred. It should be noted that, as opposed to Jowell’s definition of planning gain, the definition of “contribution” which I propose does not require that the contribution be commercially *dis-advantageous* to the developer. Rather, contributions offered to the local authority, which are beneficial to the local authority, might also be beneficial to the developer.

For ease of description, agreements with contributions are hereafter referred to as “contributory” agreements. Agreements without contributions are referred to as “non-contributory” agreements.

Institutional Context

Although the negotiation of agreements and “planning gain” has generated a lively public debate, and a large number of articles in the literature, remarkably little empirical data has been compiled documenting *how often* agreements have been signed, *why* agreements have been signed, *how often* agreements have involved contributions, what kinds of contributions have been offered, etc. One factor which has undoubtedly hampered the conduct of systematic research has been the fact that the negotiation of agreements between developers and local authorities is almost always carried out in secret (Grant,1975, Grant,1982; McAuslan,1984). Identification and documentation of agreements has been further impeded by the fact that local authorities have not been required to record information about agreements in local planning registers. As a result, detailed information about agreements and their contents has been difficult to obtain. “The Government has consistently resisted proposals to have planning obligations entered in the public register of planning applications and decisions, insisting that entry in the register of Local Land Charges Register was sufficient” (*Encyclopedia of Planning Law and Practice*, 1991/5, 3). A major reason for the reluctance, according to Sir George Young, has been that “developers... may worry that the precise terms of the obligations that they have entered into might be widely known and that commercially confidential information might fall into their competitors’ hands” (Ibid.). Given this emphasis on secrecy, the negotiation of agreements and planning gain has seemed to be a clandestine activity that cannot stand the light of day. In the words of Martin Loughlin (1982, 353), “Planning gain occupies the conceptual space between the legitimate use of conditions and corruption.”

Local authorities have probably also been reluctant to have systematic and detailed information compiled about agreements they have negotiated. As noted in Chapter Three, during the 1980’s there was increased tension between central government and units of local government, as central government sought to limit local government expenditure and discourage the negotiation of excessive contributions from developers. Given this institutional tension, local authorities have probably been quite guarded with regard to data on agreements, and certainly have not gone out of their way to assist researchers in compiling data on agreements -- for fear that publication of such information might provoke further central government action adverse to local government interests.

Lastly, an absence of litigation has kept agreements out of the public view, and made it difficult to monitor changes in policy and practice related to agreements. In the U.S., local government practices in obtaining contributions from developers have been continually tested in well-publicised court cases. Court cases and judicial rulings have established accepted standards and guidelines, and provided a way to “track” the evolution of local government practice. But in Britain, the signing of agreements has generated little case law. Developers have been able to appeal directly to the Secretary of State when they

have felt that local authorities were making unreasonable requests for contributions. The ready availability of this administrative remedy greatly reduced the need for formal litigation. A second reason for the lack of litigation has been the fact that "Unlike planning conditions, terms of an agreement are not subject to appeal" (Grant,1975, 507). The rationale for not allowing appeals of agreements has been that agreements are consensual, and that developers would not sign agreements which they felt were contrary to their interests. Thus, even if developers were legally permitted to appeal the terms of agreements which they signed, it seems unlikely that much case law would result.

Facts and Figures

The first systematic research examining the practice of planning gain negotiation was carried out in the 1970's by Jeffrey Jowell. Jowell sent out a postal questionnaire to 28% of all English local authorities (106), and obtained an 82% response rate. He followed up on the questionnaire by conducting in-depth interviews with 20 randomly selected planning or legal officers. In the questionnaire, local authorities were asked to estimate the number of occasions since 1 April, 1974 that they had achieved a "planning gain" in connection with an application for commercial development. Jowell defined "planning gain" as "the achievement of a benefit to the community that was not part of the initial application (and was therefore negotiated) and that was not of itself normally commercially advantageous to the developer" (Jowell,1977b, 418).

One limitation of Jowell's study was that the questionnaire asked only about planning gains associated with *commercial* development. Local authorities were not asked about planning gains secured in relation to residential schemes. Jowell's definition of planning gain also excluded gains negotiated by local authorities *prior* to the submission of applications (i.e. gains which were *included* in applications so as to improve the prospects for obtaining approval). Another limitation was that Jowell relied on local authorities to tell him how they had used agreements, and did not attempt to compile accurate first-hand data on the number of times local authorities obtained contributions for various purposes.

Approximately one-half of all authorities who responded to Jowell's survey (44 of 87) reported that they had achieved some kind of planning gain. The types of "gains" that local authorities reported having achieved, and the percentage of local authorities that reportedly achieved each type of gain, are shown in Table 4.01

Based on local authority responses, Jowell discerned two basic types of gains: "those that do and those that do not involve the authority in receiving a gift from the developer" (Ibid., 430). Seven of the nine purposes of agreements documented involved some kind of "gift." Two of the purposes of agreements did not involve gifts -- "specification of use" and "extinguishing existing use." In the terminology I have adopted for this research, seven of the nine purposes of agreements identified by Jowell were

contributory. On the other hand, the two *non-contributory* purposes of agreements ranked high in percentage terms as reasons for signing agreements. Indeed, the non-contributory purpose of “specification of use” was the most frequently cited purpose for which agreements were signed.

Table 4.01 Gains Reported by Local Authorities (Jowell,1977b)

29.0%	Specification of use
19.5%	Public rights of way on the developer's land
18.4%	Dedication of land to public use
16.1%	Extinguishing existing user
9.0%	Commutated payments for car parking
6.9%	Provision of community buildings
6.9%	Provision of infrastructure
6.9%	Gift of site or buildings for residential use
6.9%	Rehabilitation of property

A second study of the use of planning agreements by local authorities was conducted by J.N. Hawke, who compiled data on how agreements were used between 1977 and 1980. Based on responses from 328 local authorities, Hawke found that local authorities signed agreements for eight reasons:

- Restriction of occupancy
- Abrogation, restriction or modification of land uses
- Regulation of future development of land
- Regulation of complex development
- Sewage and drainage requirements
- Acquisition of planning gain
- Pollution control
- Enforcement

Six of the eight purposes identified by Hawke were *non-contributory*, being related to regulatory purposes of development control. Two of the eight purposes (sewage and drainage requirements, and the acquisition of planning gain) involved gifts or contributions. Although his research findings did not indicate *how often* local authorities made use of planning agreements for various purposes, Hawke’s research led him to believe that the negotiation of planning gain was becoming more common. “Increasingly infrastructure and other ancillary facilities are being provided by the developer through agreements requiring the works to be undertaken directly by the developer or indirectly through his financial contribution to the works” (Hawke,1981, 89-90). In Hawke’s opinion, developers were frequently expected, through planning agreements, “to provide sewerage and highway facilities beyond the boundaries of the development site” (Ibid.) Developers also frequently offered commuted sum payments for parking, in lieu of the

provision of required car parking spaces on site (Ibid.).

The only comprehensive study to-date of the use of agreements within a defined geographic area was conducted by David Henry (1982), who systematically researched and analysed how agreements were used in the district of Wokingham. Henry conducted his research on two levels. First, he studied how planning agreements were used in conjunction with large-scale, primarily residential developments approved in three specific areas in the 1970's -- Lower Earley, Woodley Airfield, and Woosehill. Secondly, he analysed the use of planning agreements throughout the District during the period 1974-1981. Much of development that was occurring in Wokingham during the 1974-81 period was on "green field" sites, where new sewer and water systems and highways were often needed.

Henry found that a total of 133 agreements were signed in Wokingham between 1974 and 1981. Analysis of the content of those 133 agreements produced the breakdown of purposes shown in Table 4.02. Of the 218 purposes for which agreements were signed, 112 were for highways and other infrastructure. Henry's data, obtained from first-hand examination of the context of actual planning agreements, rather than by means of questionnaire, suggested that developer contributions for highways and other infrastructure were more common than was initially believed based on the research carried out by Jowell and Hawke.

Table 4.02: Agreements Signed in Wokingham, 1974-1981 (Henry, 1982)

Highway improvements (or provision)	32
Infrastructure	86
Other Sites	21
Reinstatement of gravel and mineral workings	6
Environmental impact	9
Phasing	11
Complete as per planning permission	15
Public access	13
Use restrictions	25

Henry found that developer contributions took two forms: either the developer constructed the improvements himself; or he paid a negotiated sum of money. However, the basis for calculating a developer's contribution tended to vary. Sometimes it was based on a percentage of the cost of the improvements, but other methods for calculating a developers' payment were also used (Henry, Ibid.). Where a number of developers were involved, the payment could be "calculated from the number of acres of developable land owned... or... based on the number of dwellings (either a fixed rate or a percentage of the sale price)..."(Ibid., 57).

Many of the gains which Henry identified in Wokingham would technically not

have been counted under Jowell's definition of planning gain. As noted earlier, Jowell defined planning gain as "a benefit to the community that was not part of the initial application." Henry found that negotiation of planning agreements frequently began *prior* to the submission of an application for outline planning permission, and that gains desired by localities were frequently *included* as part of the initial application, rather than negotiated after the application was submitted (Ibid., 47).

Seven of the nine purposes of agreements identified by Henry had little if anything to do with "gifts" or contributions, and can thus be classified as "non-contributory." The "other sites" category described by Henry involved "a mixed bag of provisions," which local authorities imposed in agreements because they could not be legally imposed as conditions. Examples given by Henry of activities included in this category were: the removal of a mobile home or piece of equipment from a distant site; the demolition of an existing building within a given time of another being constructed elsewhere; or the alteration or cessation of certain activities on a distant site if consent were given on another. Henry found that agreements were particularly useful in regulating the phasing of large-scale developments, since the development of large sites typically involved the need to coordinate the actions of multiple landowners. In such cases, agreements were used to establish a contract binding different private land owners in the consortium, so that "...what was negotiated was the extent of involvement of each of the parties in the development, i.e. who could provide what, more akin to partnership agreements..." (Ibid.).

A very important finding of Henry's research was that a substantial majority of the provisions contained in agreements were *positive* in nature-- i.e. imposing positive obligations as opposed to placing limitations and restrictions on the developer and on future owners. One hundred and eight provisions contained in the agreements identified by Henry were positive in nature, 35 were negative, and 30 were both positive and negative (Ibid., 63). Even when the provisions were *negative*, such provisions could be seen as serving both the interests of the local authority and the developer. For example, limiting the number of units that could be completed until major highway works were completed could be in the interest of all parties, "particularly if two or more developers were involved to avoid prejudicing the successful implementation of each others scheme" (Ibid., 59).

In a report prepared for the National House Building Council (NHBC), Martin Elson (1989) reported on the results of a study he conducted analysing recreation and community provision in 49 large-scale, privately-developed housing schemes of 750 units or more. The 49 projects were widely dispersed, but were located generally "in an arc" west of London. In addition, the report contains case histories of 11 additional very large residential projects outside the study area that involved "innovative" arrangements for recreation and community provision. Elson found that Section 52 agreements were often used to obtain gains in the provision of recreation, open space and community facilities.

Unfortunately, Elson's study was not specifically intended as a study of planning agreements, and therefore he did not take advantage of the opportunity to conduct a controlled study comparing recreation and community provision in developments with and without agreements. As a result, his study does not provide evidence that agreements encouraged developers to provide *greater* amenities and facilities than they would have otherwise chosen to provide. It is possible, as Henry (1982) suggests, that developers might have chosen to include recreational facilities and amenities on their own, without being forced to by localities, because they recognised that such amenities made their developments more valuable and marketable.

Research conducted by Byrne indicated that matters covered in agreements fell into five distinct areas:

- Those matters that are legitimately related directly to the development-- the physical infrastructure or associated facilities without which the project should not be approved;
- Those that are related to achieving a mix of uses to bring about a balance in the area, including low cost housing and employment;
- Those matters which can reduce the impact of development or produce a compensating improvement in conditions and a balance of advantage in favour of approval;
- Matters relating to safeguarding important aspects of heritage, either buildings or matters of archaeological importance;
- Those matters which are unrelated or remote in location or substance from the development proposed. (Byrne, 1989, 10)

Prior to conducting detailed empirical research within a selected study area, I interviewed various planning officers and planning consultants. Through those contacts I obtained copies of 24 planning agreements signed in 19 different local authorities. Ten of the agreements were signed in seven boroughs of Greater London: Camden (4); Greenwich; Hammersmith; Hounslow; Merton; Newham; and Tower Hamlets. Fourteen of the agreements were signed in twelve local authorities scattered throughout the southern half of the British Isles: Aylsham; Bracknell (3); Downton (near Salisbury); Long Stratton (between Norwich and Ipswich); Northampton; Rogerstone, Gwent, Wales; South Cambridgeshire; Stowmarket; Swindon; Woking; and Wokingham. The specific contributions offered in the 24 agreements, and the number of times those contributions were offered, are presented in Table 4.03.

Table 4.03: Contributions in Twenty-four Selected Agreements

<u>Type of Contribution</u>	<u>Times Offered</u>
Pay for construction of public roads	11
Construct public roads and donate when completed	4
Pay for public transport improvement	3
Construct sewer/drainage infrastructure	1
Pay for sewer/drainage infrastructure	2
Construct additional parking for public use	2
Donate land for public purposes (schools, libraries, community centres, parks, etc.)	8
Construct public facilities, community improvements, amenities	7
Pay for public facilities, community improvements, amenities	9
Pay money toward cost of maintaining public areas, facilities	2
Provide affordable housing	3
<u>Pay money for no specified public purpose</u>	<u>2</u>
Total Number of Contributions	54
Average Number Contributions per Agreement	2.35

Three of the twenty-four agreements which were analysed contained no offers of contributions, but rather were signed to achieve non-contributory purposes. One of the non-contributory agreements was signed to assure that an existing use (a commercial car park near Heathrow Airport in the Green Belt) would be terminated within a period of years. Two other agreements were signed to mitigate negative environmental impacts associated with proposed new uses-- setting limits on noise, industrial emissions, and hours of operation.

The Frequency of Agreements

As noted in Chapter Three, a consensus emerged in Britain in the 1980's that the negotiation of agreements and contributions was becoming increasingly common. However, empirical evidence to substantiate the perceived trends in agreements has been scarce. Only Henry's 1982 study in Wokingham provides concrete data on the number of agreements signed over a period of years. As shown in Table 4.04, the number of planning agreements signed in Wokingham varied significantly from year to year, from 2 in 1975 to 31 in 1980. However, the data seems to indicate that, over time, there was a trend toward signing more agreements. The average number of agreements signed per year over the eight year period was 16.6 agreements. During the first four years, 1974-1977, the average number of agreements was 9.75 per year; during the next four years, 1978-1981

the average number of agreements was 23.5 per year.

Table 4.04: Planning Applications and Agreements in Wokingham, 1974-1981 (Henry,1982)

<u>Year</u>	<u>Outline Applications</u>	<u>Full Applications</u>	<u>Agreements</u>
1974	240	1320	6
1975	216	1548	2
1976	217	1454	13
1977	154	1307	18
1978	185	1747	21
1979	242	1890	20
1980	278	1832	31
<u>1981</u>	<u>189</u>	<u>1218</u>	<u>22</u>
Total	1721	12,313	133

One of the only official counts of agreements signed nationally was provided in a May 1989 document, issued by the Department of Transport (DoT). In that report, the DoT reported that 50 agreements had been concluded in the three year period between April 1986 and April 1989 calling for developer contributions for trunk road improvements, and that another 50 were “at an advanced stage of preparation” (DoT,1989a, 7). The report also asserted that “local highway authorities are increasingly getting considerable contributions from developers towards by-passes, relief roads, and other improvements” (Ibid.).

One reason for assuming that the use of negotiated agreements with contributions has increased has been that it became increasingly common during the latter half of the 1980’s for local authorities to adopt official policies stating their intention to seek contributions. In the Autumn of 1989, for example, the Berkshire County Department of Highways and Planning issued a formal policy statement entitled “Infrastructure, Service and Amenity Requirements for New Development in Berkshire.” That policy statement indicated that contributions would be sought from developers, for educational facilities, social services, libraries, highways, and fire services, and for any other facility or service needs which might be directly related to proposed developments-- and that contributions would be sought for off-site as well as on-site improvements. East Hampshire District Council adopted a policy that stated, “Developers will normally be required to contribute to the cost of any improvements which need to be made to the physical, social, and recreational infrastructure, both on and off site, in order to enable the development to proceed” (as quoted in MacDonald,1991, 4). The London Borough of Ealing adopted a policy of using applications for commercial development as occasions for seeking to achieve social and economic benefits (employment, job-training, child care, etc.) for local

residents, particularly women, minorities, and the disabled (Knibbs, 1989, int.). The gains which Ealing sought to extract from commercial developers were described in a "Community Benefit Fact Pack," which was given to prospective applicants for planning permission, and was widely publicised. However, the adoption of policy statements calling for the negotiation of contributions cannot necessarily be interpreted as proof that local authorities have actually sought such contributions in all cases. James Barlow at the University of Sussex surveyed over 360 local authorities in 1991 to determine the extent to which local authorities negotiated agreements to achieve the provision of social housing. Although a large number of local authorities had adopted policies calling for the negotiation of contributions for social housing, few such contributions had actually been negotiated, and very little new social housing had been produced as a result (Barlow and Chambers, 1992).

Attitudes

Attitudes Toward Agreements

It has frequently been assumed that planners and local planning authorities have been eager to negotiate contributions from developers. The research which Jowell conducted during the 1970's led him to believe that few local authorities objected in principle to indulging in bargaining as a means of achieving public gains. According to Jowell (1977a, 71), "where gain was not sought, the reason seemed to be less in disapproval of bargaining (only three authorities expressed this view) than in the lack of opportunity to achieve gains..." Writing in 1981, the Head of the Department of Estate Management at South Bank Polytechnic reported that "In my own experience there are a great number of planners and plenty of planning authorities who support the concept of planning gain and are only too keen to engage in such transactions"(Ratcliffe, 1981, 408). The 1985 Nuffield Commission Report on Town and Country Planning argued that local planning authorities should be able to impose costs on private developers, particularly in cases where they would otherwise be required to refuse planning permission because the existing public infrastructure was inadequate. The Nuffield Report further argued that the scope of contributions obtained from developers should be expanded to include contributions in the form of land, buildings and facilities for "social infrastructure," such as schools, health, recreational or other community facilities. *Planning and Environmental Law Bulletin* (1991, 22) expressed the view that "For some time many planning authorities have taken a bullish view toward planning gain."

According to proponents of "public choice," an important factor leading to the increased use of negotiation has been the desire of planners and government bureaucrats to increase their influence and importance (McAuslan, 1988, 691). Reade (1987, 210) has

blamed the “increasing reliance on bargaining with developers rather than on clearly stated policies and standards” on the “continued growth of the planning profession.” Notwithstanding this widespread perception that planners have been eager to negotiate planning gain from developers, there is little empirical evidence to prove that planners have in fact been active agents in promoting the negotiation of agreements. They may have wanted to obtain contributions, but they have probably also felt the need to proceed with caution and restraint in negotiating with developers. “Bargaining often has unsavoury connotations to the public, and can only be rendered respectable by means of being presented as the rational devising of means of achieving laudable public goals” (Sillence,1986, 200).

There are a number of reasons planners might be reluctant to allow decisions on planning applications to be influenced by offers of contributions. In the first place, the negotiation of planning gain tends to draw attention to the tradeoffs which are often involved in planning decisions, and to the fact that projects which are approved might have disadvantages as well as advantages. “Many planners have difficulty accepting the idea of negotiation and compromise with private developers. Compromise means something less than perfect” (Pike,1991, lect.). The negotiation of measures to mitigate the negative impacts of development also tends to draw attention to the redistributive aspects of development control, and to the fact that a grant of planning permission for a specific development may benefit certain parties and interests, while harming others. The negotiation of agreements with developers “comes down to engaging with money, and dealing with money issues can be unpleasant. The training of planners has not prepared them to deal with financial issues and tradeoffs” (Ibid.). Planners have tended not to want to think about, let alone publicly acknowledge the redistributive aspects of planning and development control. Planners have commonly assumed that “the goal of the planning system is to achieve an efficient land use allocation,” and that “redistributional issues... are irrelevant” (Loughlin,1980, 13).

Another reason planners may have had difficulty in accepting negotiation of planning gain as a legitimate exercise of planning and development control is that it appears to conflict with the traditional concept of how planning should be conducted. The dominant model of planning, which planners have promoted and felt most comfortable with, has been the “rational- comprehensive” model of planning (Lindbloom,1973; Sillence,1986, 67). According to this traditional model, the goal of planning is to move toward the achievement of long-range objectives (the plan), and every individual decision should be made with those long range objectives in mind. In many ways the desire for rationality and comprehensiveness through planning reflects a desire for consistency and predictability. A plan is, in fact, “a set of rules governing human conduct” (Jowell,1977a, 65). The negotiation of planning gain on a case by case basis clearly falls far short of this

“rational- comprehensive” model of planning. Instead, planning gain negotiation appears to be aligned with a much less respected model of planning -- known as “incremental” planning (Baybrook and Lindbloom,1963; Lindbloom,1973; Faludi,1973).

The experience of planner Drew Stevenson may be indicative of the skepticism and uneasiness many planners have felt when called upon to negotiate contributions from developers. Prior to becoming Director of Planning of the London Borough of Hammersmith, Stevenson was Director of Planning Policy at the Greater London Council (GLC), beginning in 1982. In that capacity, Stevenson was responsible for drafting the policy statements on “planning advantages” contained in the 1983 revised Greater London Development Plan. (See Chapter Three for discussion of planning advantages called for GLDP.) However, Stevenson lost faith in negotiation as a way of achieving community benefits, because of what he saw as the “flawed” use of the planning advantages policy by London boroughs (Stevenson,1990, int.). Stevenson came to the conclusion that local planning authorities need to adhere to a much more prescriptive approach, and to limit the parameters of negotiation. “My views toward planning gain have changed... I now think we need direct planning policies saying what developers can or can’t do” (Ibid.).

Across the Atlantic in the U.S., support at the local government level for the negotiation of development agreements on an ad hoc basis has appeared stronger among locally *elected* officials than among planners. Agreements have appealed to elected officials as a “convenient way of simplifying complex problems, and of not making long-range decisions” (Porter,1989, 149).

Elected community leaders often are reluctant to ponder long range futures and reticent to make commitments for development of land uses and public facilities that might transpire in 20 years. Long-range comprehensive planning... [has not appeared to be a] useful exercise to many political leaders... By contrast, development agreements appear to represent more concrete realizable mechanisms for planning because they refer to specific parcels of land, propose fairly detailed development over relatively short times... and tie specific improvements in infrastructure and approaches to financing to each phase of development. Development agreements seem to relate conveniently to ‘real world’ planning at an understandable scale (Porter,1989, 149).

Although *elected* officials in the U.S. may have found the negotiation of short-term gains highly appealing , to many American planners, the negotiation of public gains through ad hoc agreements has appeared to be “a substitute” for planning (Cowart, 1989, 34). The Director of Planning of Cambridge, Massachusetts had this to say about negotiation:

Planning Board members in Cambridge [Mass.] are wary of opening the door to negotiated deal making. They don’t want to put [elected] public officials into that position. It could open the door to considerable abuse. In American cities, I’d be

very wary of a flexible process (Rosenberg, 1991, int.).

Professional planners in the U.S. have appeared much more inclined to support the imposition of mandatory, fixed fees, than to advocate the negotiation of consensual agreements. For example, the Massachusetts Section of the American Planning Association issued the following policy statement: "Massachusetts Planners encourage the use of development impact fees as a more predictable and standardized method of ensuring that new development pays its fair share of the cost of public infrastructure, in preference to negotiated exactions" (APA New England Chapter *Bulletin Board*, April 1992, 7). A 1986 survey of California cities and counties conducted by Robert Cervero of the University of California at Berkeley found that over two thirds of respondents favoured the use of fixed impact fees as opposed to "negotiated exactions" (ICMA, 1988, 4). A frequently cited reason for the low ratings given to negotiated financing programmes, according to Cervero, was that "developers are more skilled at bargaining than are planners, public administrators, or public engineers" (Ibid., 5).

In the U.S., the operation of government has been heavily influenced by certain guiding principles, and the imposition of predictable, fixed fees has been compatible with those principles. For example, the "Equal Protection Clause" of the U.S. Constitution requires that persons and properties be treated equally under the law. Given this requirement, it has been difficult in the U.S. to justify negotiation and other flexible approaches to developer finance as means for assessing costs against developers. As lawyer Fred Bosselman has observed, flexible approaches to developer finance, such as those involving negotiation, run the risk of replacing the "rule of law" with the "rule of man," and "pose serious legal problems because what is gained in flexibility may be lost in inequity" (Bosselman, as quoted by Bauman and Ethier, 1987, 62). A somewhat similar concern has been expressed in Britain, that the negotiation of planning gain has represented "the abandonment of the legal value of 'evenhanded justice,' of like cases being treated alike" (Jowell, 1977, 431).

No systematic research has yet been conducted on the *attitudes of developers* toward making contributions to local planning authorities. It has been assumed in many circles that developers are uniformly and consistently opposed to any extraction of contributions by local authorities. That certainly was the message of the Planning Advisory Group (PAG) Report of 1981, which was sweeping in its condemnation of efforts by local authorities to obtain contributions in exchange for granting planning permission. (See Chapter Three for discussion of PAG Report.)

Despite frequent public expressions of opposition to planning gain by developers, some commentators have questioned whether developers have really been fundamentally opposed to offering contributions in all instances. As early as 1974, John Ratcliffe (1974, 149) expressed the view that large development companies frequently "accept the

inevitability of planning gain and are increasingly prepared to provide an element of community benefit in their proposals.” A 1989 discussion document issued by the Royal Town Planning expressed a similar point of view when it stated that “... there is widespread acceptance among developers, housebuilders, politicians and others that major developments should contribute, not only to the necessary physical infrastructure and impact abatement measures, but also to meeting social needs indirectly related to their development”(Byrne,1989, 9).

To fully understand the attitudes of developers regarding the negotiation of planning gain, it is important to recognise that developers may agree to offer planning gain for different reasons, and under different circumstances. Ratcliffe has identified four types of planning gains:

- Those which a developer is only too pleased to provide as they do not detract significantly from the profitability of the proposed scheme and might even enhance the environmental amenity of the project.
- Those elicited from a developer whose proposal would otherwise receive planning permission-- albeit at appeal-- but are bestowed upon an authority to expedite approval and preserve an amicable relationship.
- Those which are obtained where properly an application might well not receive approval, would certainly involve protracted negotiations and would be likely to attract onerous conditions even if permission were eventually granted.
- Those deemed acceptable to an authority where it is unlikely that planning permission would be forthcoming, even at appeal, but where the gain is considered to compensate for the detrimental impact of the proposal (Ratcliffe, 1981, 407).

Ratcliffe’s classification of different types of planning gain provides a useful reminder that developers often have *positive* reasons for agreeing to make contributions, and often gain some benefit in return. Thus, although developers have often expressed sweeping and unqualified opposition to having to make contributions, the positions and attitudes of developers are likely to vary, depending on specific circumstances, and the nature of contributions sought by local authorities. According to a representative of the Housebuilders Federation, the main concern of developers “is that local governments are expecting and extracting contributions that go beyond what is necessary for the development itself ” (Coates,1989 int.). The main concern of developers in Britain thus appears to be that contributions they make be used for improvements which are related to, and beneficial to their developments.

A 1990 survey conducted by Rosslyn Research for KPMG Peat Marwick sheds additional light on what may be the evolving attitudes of developers. Seventy-seven percent (77%) of the 30 developers surveyed felt that the negotiation of planning gain had a

legitimate place in the planning system, and 90% felt that planning gain was a useful tool for affecting public opinion (Rosslyn Research,1990). More specifically, a majority of developers surveyed (57%) agreed with the statement that “planning gain can result in developments that may not have occurred”(Ibid., 24). These survey findings suggest that a sizeable proportion of developers have come to recognise that offers of contributions can advance their own interests, and improve the likelihood of obtaining planning permission, particularly in areas where there is strong citizen opposition to new development. In the words of a spokesman for a consortium of Britain’s ten largest private developers, “The big problem today is that no community wants development. Given that basic political and economic fact, it has become absolutely essential for developers to be able to offer planning gain as a way of overcoming local resistance to proposed development” (Bennett, 1990,int.). Furthermore, the cost to the developer of offering contributions is softened by the fact that developer contributions for infrastructure are generally tax deductible (Callies and Grant,1991, 225).

Citizens have apparently begun to recognise the advantages of agreements in terms of enforcement, and in certain cases have encouraged LPAs to sign agreements (Thomas, 1991, int.). If, for example, a local planning authority wished to require that noise from a factory not exceed a specified level, or to limit the times of day at which trucks could load and unload, it could attempt to place limitations on activities by means of conditions. “But if an obligation is imposed as a condition, then it would be up to the local planning authority whether or not to enforce the condition” (Ibid.). However, if a legal agreement has been signed, a third party can intervene to *force* the local authority to enforce compliance (Ibid.). The desire of citizens to assure that restrictions imposed at the time of planning permission are enforced therefore may be a factor encouraging LPAs to sign more agreements.

Attitudes Toward Growth and Development

In Britain, surprisingly little attention has been paid to the relationship between local government attitudes toward growth and the negotiation of agreements and developer contributions. Has the imposition of charges on developers reflected a positive or negative attitude toward new development? Equally if not more important, has the extraction of payments and benefits from developers led to a more positive attitude toward development, and made local planning authorities more willing to approve applications for new development?

In the U.S. there is considerable evidence that the imposition of charges on developers has often arisen because local governments, and local citizens have adopted a *negative* attitude toward new development. Developer finance in the U.S. has been justified by two arguments. First, it has been argued that the need to improve and expand

public facilities and services has arisen almost exclusively because of new development. Secondly it has been argued that existing residents derive no benefit from new and improved facilities which are provided, but rather that new residents are the primary beneficiaries.

These claims are only partially correct. When per capita income is rising, “even communities with slow population growth need to invest in infrastructure improvements,” because existing residents place increased demands on public facilities and infrastructure (Altshuler *et al.*, 1991). Also, existing residents often do benefit from the provision of new facilities, and from the up-dating and expansion of infrastructure. Furthermore, when impact fees are imposed existing residents are often the direct beneficiaries of windfall gains when they sell their homes, because impact fees often discourage the development of new housing, thereby allowing existing homes to command a higher price (Singell and Lillydahl, 1990).

Although U.S. proponents of impact have clearly exaggerated the extent to which new development has adversely affected existing residents, the fact remains that “the act of imposing impact fees indicates that a legislative determination has been made that insufficient public benefits exist to warrant increased general taxation” to finance facilities in support of new development” (Nicholas, 1988, 138). Impact fees have been imposed on new development so as “to protect existing property owners from either a loss in the quality of public services or an increase in taxes as a consequence of growth” (Nicholas, 1987, 95). Or, as Wakeford (1990, 209) has put it, impact fees have represented a “political tax imposed in order to slow down growth or at least satisfy existing constituents that new growth [paid] its own way.”

What effect, if any, has developer finance had on the willingness of local planning authorities to approve new development? Fainstein (1991, 3) has argued that limited public funding from traditional sources has prompted cities to encourage development, and to enter into private/public partnerships so as to leverage private investment “while seeking to obtain some public benefit as part of the bargain.” Frieden and Segalyn (1989) have expressed a similar view, based on their research of public/private partnerships in American cities in the 1980’s. They argue that the need of municipalities to raise additional revenue locally encouraged public officials to act “...more like developers and less like rule-bound bureaucrats....”(Ibid., 134). However, it is important to keep in mind that local authorities in Britain and the U.S. have differed considerably in their ability to generate revenue locally, and in the extent to which they have benefited economically from new development. Because local governments in the U.S. have generated a large proportion of their revenue directly from the locally administered property tax, they have tended to benefit economically when new development has taken place. Thus, new development has traditionally been welcomed in most American communities as a contributor to public as

well as private wealth. This coincidence of shared economic interests between local governments and private elites has made American cities into “growth machines” (Logan and Molotch, 1987), and produced intense competition among local governments for new development that will enhance the local tax-base. On the other hand, in Britain “competition among local governments for growth in the property tax base... is virtually unknown” (Ibid., 148). The reasons for this lack of competition for growth are again largely rooted in the structure of British local government finance. Very little local government revenue in Britain is generated locally. Moreover, grants from central government, which have accounted for approximately 75% of local government revenue, are not adjusted upward when local property valuations increase as a result of new development.

...there is no incentive to local politicians under this system to permit new development to occur so as to swell local revenues. All property tax (the ‘rates’) revenues on commercial property are now paid to the central government and redistributed to all local authorities on a per capita basis. Moreover, the allocation of government grants is designed to even out the resource differences between local authorities (Callies and Grant, 1991, 224).

What effect, if any, has the negotiation of contributions had on the willingness of British planning authorities to grant planning permissions? Mather (1988, 7) has argued that “Introducing an explicit ‘price’ for planning permission [as through the negotiation of planning gain] could strengthen the preparedness of local authorities to grant consent.” Keogh, too, seems to suggest that the negotiation of planning gain should make LPAs more willing to approve applications for development.

If planning authorities are allowed to bargain for planning gain, and respond to this opportunity with effective negotiation, they will have every incentive to ensure that the rate at which land is taken for development is optimal... It is clear that the flow of land to developed use is less likely to be restricted where planning gain is permitted than it is under a system of absolute standards. (Keogh, 1985, 216)

Indeed, concern has been expressed that the negotiation of contributions might encourage local planning authorities to approve too much development. “If anything, there is a danger that permitted development might overshoot the social optimum by allowing some development that could not cover its social cost” (Keogh, 1985, 216). Similarly, Bowers (1991, 11) warns that the negotiation of planning gain may introduce an undesirable bias in favour of approving development, “since it constitutes immediate and tangible benefits to offset against what are frequently uncertain and generally unquantifiable costs.” Bowers’ and Keogh’s arguments are based on economic theory, and expectations about how LPAs should rationally behave. In actual fact, however, we do not know for sure that the

negotiation of agreements has increased the willingness of local planning authorities to grant planning permission.

Process

To many observers, the process of negotiation has appeared highly mysterious, and outside the realm of traditional planning processes. According to Henry, "... the process whereby [planning gain] is produced is often obscure" (1982, 84). According to Loughlin, "The process is discretionary, with few formal controls imposed on the use of powers to negotiate gains..." (1981, 89), and appears "to circumvent the formal process of development control" (Ibid., 65).

In the literature on agreements, there are few detailed accounts of the *process* whereby agreements have been signed, or of the circumstances under which agreements have been signed. In the absence of such detailed accounts, there has been a tendency to assume that the negotiation of agreements has proceeded in a largely *ad hoc* fashion, with local authorities *taking advantage* of opportunities to negotiate contributions, rather than using agreements in a deliberate way to achieve established planning policies and objectives. Two of the only written accounts of the negotiation process, by Marriott (1967) and Elkin (1974), describing how contributions were negotiated for two major office building projects in Central London in the 1960's, tend to reinforce the impression of opportunistic local authority use of agreements.

The first and most celebrated of these two cases is that of the Centre Point office development. The London County Council (LCC) wished to construct a roundabout at St. Giles Circus, at the intersection of New Oxford Street and Charing Cross Road, but lacked sufficient money to acquire the land needed to construct the improvement. The developer, was aware of the LCC's funding problem, and approached the Chairman of the Planning Committee in the autumn of 1958, offering to provide the land needed by the LCC for the road improvements in exchange for receiving permission to build a high-rise office building at the intersection (Elkin, 1974, 63; Marriott, 1967, 113). After almost a year of negotiation, the developer submitted a planning application in mid-August 1959 requesting permission to build a 24 story office complex containing 140,000 square feet of space (Elkin, Ibid., 65). After the initial application was submitted, the developer pressed the Council for additional floorspace, based on the high cost of assembling the land. In turn, the LCC engineer saw the developer's request for additional floorspace as possibly allowing the LCC to obtain more road width (Ibid., 66). The final scheme which was approved allowed the developer to construct a 34 story office tower containing a total of 313,000 square feet-- 173,000 square feet more than the developer additionally applied for (Ibid., 69).

In the second case of a major negotiated contribution, described by Marriott, the

LCC had developed plans to widen Euston Road, but its ability to obtain the land needed for the road-widening was jeopardised by the fact that a developer had obtained outline planning permission to build a 120,000 square foot office building at a key intersection. The LCC was short of funds, and could not afford to “buy off” the developer (Marriott, 1967, 158). Instead, the LCC and the developer negotiated an agreement. The developer agreed to acquire and donate the land the LCC needed for the road widening; in return the LCC agreed to grant permission for a massive office development containing as much office space as would have been permitted had the developer retained all of the land in private ownership. “In this way the local authority received perhaps £2 million worth of land for their road and in return... allowed the volume of building, which would have stood on the road, to be heaped on to the rest of the site”(Ibid., 162).

Despite the skillful way in which developers manipulated the LCC in the cases described by Marriott and Elkin, it has frequently been asserted that developers have been at a significant disadvantage when faced with the need to negotiate agreements with planning authorities who hold monopoly power over the granting of planning permission. According to Heap and Ward local authorities frequently misuse their “monopoly power of the grant of planning permission,” by allowing “self-interest to enter into their considerations” (Heap and Ward, 1980, 636). This characterisation of the negotiation process as one-sided-- i.e. strongly favouring LPAs and disadvantaging developers-- conflicts with “the notion of bargaining [which] presupposes that participants both have something of value to provide and something of value to gain”(Loughlin, 1981, 63).

The major concern expressed in the U.S. has not been that developers might be treated unfairly, but that developers, if allowed to negotiate deals, will almost inevitably take advantage of public authorities. A study of 15 agreements negotiated in New York City, carried out by the New York State Comptroller in 1988, provides support for that conclusion. The New York State study found that in granting density bonuses to developers in exchange for obtaining public amenities such as plazas and subway station improvements, planners in the City of New York gave away much more than they received (Frieden, 1990, 426). The study found that the value of public amenities donated by developers totaled \$5 million, while the market value of bonus floor area was \$108 million (Ibid.).

According to planning gain consultant Richard Fordham (1990, 580), “the development industry [in Britain] is becoming increasingly adept at using PR techniques on local voters: picking some long felt local want and presenting a scheme in the form: we’ll build you a by-pass if you let us add 20 percent to the size of ... settlement...” No longer is it possible for local authorities to simply enforce preestablished standards and rules. “Skillfully handled by a developer, planning gain can bring considerable political pressures to bear on local politicians to grant planning permissions” (Grant, 1989, 85). As one

consultant admitted to me, negotiating with local officials in certain districts is like “taking candy from a baby” (Interview, speaker asked to remain anonymous).

Developers may actually enjoy a number of advantages in negotiating with local authorities. First, “public officials engaged in ... negotiations often exhibit a range of skill, knowledge and experience in dealing with developers”(Beatley,1988, 92). City planners often lack technical skills in real estate finance, and therefore will often be “at a serious disadvantage” when negotiating with developers (Segalyn, 1990, 436). Second, successful negotiation requires “monolithic behavior” (Cars and Snickars,1991, 23), and local authorities are usually incapable of such monolithic behavior. Planning authorities often find themselves torn by desires to achieve multiple objectives. They are subject to conflicting opinions from planning committee members and planning staff, and also to conflicting pressures from citizens, affected residents, and the press. Developers, on the other hand, tend to have very focused objectives, and know what they want to accomplish. Third, developers will usually have better information than planners about the costs and expected rates of return of proposed scheme. Any contribution which a developer offers is likely to have been carefully calculated, and clearly within the limits of the profitability of the project. Lastly, developers, by temperament and inclination, tend to enjoy the process of negotiation much more than professional planners, and are usually very good at it.

Developers love negotiation. Not only is it the way they make money; there is something about the process that appeals to the temperament of people who go into real estate development in the first place (Barnett,1982, 100).

One way to deduce who is taking advantage of whom in Britain would be to discover who usually takes the initiative in suggesting that a contribution be made. Many writers and observers have assumed that local planning authorities have almost always taken the initiative in seeking contributions from developers, and that developers have had to respond to those “requests.” Heap and Ward (1980, 636) claim that “... more often than not, the initiative for these agreements comes from the authority, who then proceed to indicate to the developer that his planning permission depends upon his willingness to do as they ask.” As noted in Chapter Three, this view of planning gain was reflected in Circular 22/83, which defined planning gain as an obligation which was *imposed* on a developer.

Despite the widely held assumption that local planning authorities have been the instigator’s of negotiated agreements, there is some contrary evidence in the planning literature. In both the Centre Point and Euston Centre case studies, it was the *developer* who took the initiative in offering contributions in exchange for obtaining a generous planning permission. Furthermore, research conducted by Loughlin (1981,64) revealed that developers routinely offered major packages of benefits “apparently on their own

initiative" in connection with applications for permission to build out-of-town hypermarkets. In the research he conducted in Wokingham, Henry (1982, 64) found that "it will normally be the developer's action... which will initiate the agreement process."

As reported in Chapter Three, a policy statement was included in the 1972 Greater London Development Plan (GLDP) calling for the negotiation of certain "planning advantages" from proposed office developments. The fact that such a policy statement was adopted seems to suggest that, in Greater London at least, the negotiation of planning gain was a purposeful activity deliberately undertaken by local authorities. However, Bowers (1991) portrays a different picture, suggesting that local planning authorities may not necessarily know *what* they want when major planning applications are put before them. "An alternative view... would be that the it [the process of negotiating planning gain] is one of *discovery* of the community interest..."(Bowers,1991, 10). Offers of contributions by a developer may help the local authority to clarify not only what it wants to obtain in contributions, but also to test and measure the depth of its objections to a proposed development.

As shown in Chapter Two, American communities have experimented with a variety of methods of developer finance. This diversity of approaches has inevitably led to some confusion regarding the underlying basis, or rationale, for seeking developer contributions. The most commonly used methods for obtaining developer finance-- exactions and impact fees-- have been theoretically and legally justified based on the *cost* of required infrastructure and facilities (Nicholas,1992). However, the fact that impact fees have varied so dramatically within the U.S., with some communities imposing high fees, while others imposed low fees or none at all, seems to suggest that fee levels may have been influenced by additional factors, and not solely by cost alone. (See discussion later in this chapter on "Geographic Variation.") Meanwhile, many communities have used techniques of "benefit recapture,"-- granting special development benefits to developers in exchange for contributions. Communities which have used such methods of benefit recapture have attempted to some extent to equate the *amount paid* by the developer with the value of the *benefits received*. Even within the same jurisdiction, different tests have sometimes been applied. "While in one development exactions may be assessed on the basis of the benefit principle, in another they may be assessed according to a notion of culpability" (Beatley,1988, 92).

The debate in Britain over planning gain has also been fueled by confusion and disagreement regarding the basis for seeking developer contributions. As Grant (1982,333) has observed, "the rules" whereby developers have made contributions to capital costs have often been "arbitrary and ill-defined." Some writers have suggested that local authorities have sought contributions based on the *value* of planning permission. For example, Heap and Ward (1980, 632) have charged that "the scale of community-benefit

provision which is being required of the developer is frequently assessed mainly, if not exclusively, by reference to the estimated profitability of the completed scheme.” However, there is very little hard evidence that local planning authorities have actually taken into account the value of planning permission when negotiating agreements. “Most LPAs do not do the sums to discover whether the fullest legally justifiable set of planning gains can be afforded by the developer”(Fordham,1990, 580). Moreover, very few local authorities appear to have employed valuers to advise them in conjunction with their negotiations with applicants.

A second basis for negotiating agreements could be to mitigate negative externalities and social costs associated with proposed developments. Bowers (1992) has described this second category of gain as “compensatory gain,” as opposed to “betterment gain,” as described above. Keogh (1985) has argued that the negotiation of planning gain provides a mechanism for charging developers for the social costs imposed by their developments. According to Bailey (1990), developer contributions should be sought to mitigate the negative environmental impacts of development schemes, and to compensate the community for losses of amenity, traffic congestion and noise, etc. This conception of planning gain assumes that local authorities are able to predict the future impacts and ramifications of proposed developments, and to fairly attribute costs to new developments. “The problem of defining to what extent the developer can be required to contribute to other works beyond his own development seems to depend upon being able to attribute ‘externality effects’ directly to his works”(Henry,1982,66).

A third possibility is that local authorities have sought contributions when infrastructure and public facility improvements have been needed for development to occur. In contrast to the uncertainty engendered by negotiations based on the estimated value of planning permission, a need-based approach would provide a more predictable basis for arriving at developer contributions. As Ridley and Fawcner (1987, 16) have pointed out, “it is easier to assess charges based on the costs that various properties impose...” than to “accurately predict and assess the benefits received by properties...” Economists have typically argued that fees imposed on developers should be based on the marginal costs of infrastructure so as to encourage an efficient pattern of development. Assessing charges based on marginal cost should encourage development to occur in “low-cost areas (already provided with infrastructure)... in preference to areas outside the existing infrastructural system”(Bailey,1990, 441). However, it is not clear that local planning authorities in practice have sought contributions based on need, or on the marginal cost of required improvements. According to Callies and Grant (1991,224), there has been “no ... proportional relationship between the *need* [italics added] generated by the development and the sum contributed.”

One final possibility is that the negotiation of agreements has had little to do with

the above mentioned considerations. Indeed, some commentators have suggested that negotiations have primarily been influenced and shaped by the relative *bargaining strength* of the two parties (Callies and Grant,1991; Tiesdell and Oc, 1991).

The Factor of Delay

The government, through its collection and publication of statistics reporting on the percentage of planning applications approved by local authorities within eight weeks, has focused considerable attention on the problem of delay, and urged local authorities to issue decisions on planning applications in a timely fashion. Keogh and Evans' (1992) analysis of the private and social costs of planning delay has drawn renewed attention to the issue of delay.

It has frequently been claimed that local authorities have used delay to force reluctant developers into making contributions. As one developer put it, "... planning authorities hold a very valuable negotiating position, *the ability to delay* [italics added], and it is this trump card which has secured bargains, even blackmail settlements, for the issue of valuable planning consents" (Osborne,1989, 30). Nevertheless, no systematic research has been conducted comparing the length of time it has taken developers to obtain planning permissions *with* versus *without* agreements, or the length of time involved in signing agreements *with* contributions compared to agreements *without* contributions.

The Role of Planners in the Negotiation Process

Many writers have appeared to assume that planners have played a leading role in negotiating agreements with developers. However, little research has been carried out to analyse and describe the roles planners have actually played in negotiating agreements, and the roles played by other local authority actors. In the absence of such research, it cannot necessarily be assumed that planners have dominated the negotiation process. Henry found that "In terms of the amount of influence over the form of an agreement and its contents, the legal department is perhaps as equal in importance as either the developer or the planning officer"(Henry,1982, 76). In some localities responsibility for negotiation might conceivably be delegated to other parties such as district solicitors, Chief Executives, or to specially constituted teams of negotiators.

Research conducted in the U.S. has suggested that planners in the 1980's were more likely to engage in mediation and negotiation than they had in the past. Schon (1983,109) has argued that new models of planning were emerging, and that planners were more likely to assume the role of "intermediary." This "intermediary" role, is more like the traditional role of the lawyer (Schon,Ibid., 209). But how have planners adjusted to this new role? Research conducted by Forester (1987) led him to conclude that planners found it difficult to adjust to the mediator role. According to Forester (Ibid.,309-310), "the

emotional complexity of the mediating role makes quite different demands on planners than those that they have traditionally been prepared to meet.”

Outcomes

When impact fees and exactions have been levied in the U.S., all developments, regardless of size, have had to pay fees. However, because the negotiation of agreements is costly and time-consuming, British LPAs have not been able to negotiate agreements for each and every permission. What, then, determines whether or not an agreement is negotiated? Is there a threshold size below which British local authorities feel it is not worth negotiating agreements? At what threshold of project size have local authorities felt it was worthwhile to seek to obtain contributions?

According to Healey, *et al.*(1988,101), planning and infrastructure agencies have generally found it easier to secure financial contributions from developers of large-scale projects, because of their inherent economies. Nevertheless, some local authorities, such as the London Borough of Tower Hamlets, had a policy during the 1980's of seeking planning advantages “from all office developments over 200 square metres” (Redman,1991, 208). The London Borough of Islington developed a plan in 1986 which stated that planning benefits would be sought from all office developments over 10,000 square feet, and benefits *might* be sought from developments between 5000 and 10,000 square feet. (Ibid.) According to MacDonald (1991,5) a few authorities set thresholds for negotiating planning agreements as low as 50 houses and 100 square meters. Nevertheless, there is no hard evidence that, in practice, local authorities adopting such policies negotiated many agreements for projects that small.

Another important question is whether local authorities have been equally inclined to seek contributions from commercial and industrial projects as from residential projects? An understanding of the spread of contributions among major types of development is not only of interest in its own right, but could also shed light on the rationale and purpose for negotiating contributions. As Bowers (1992, 1332) has pointed out, it is reasonable to assume that “commercial and industrial uses of land confer negative externalities; [whereas] there are no externalities associated with housing.” If Bowers' assumption is correct, then a differential tendency toward negotiating contributions from commercial and industrial developments could indicate a desire to mitigate negative impacts of development.

The Size of Developer Contributions

Previous research has produced little solid data on the magnitude and relative significance of developer contributions. In the absence of such data, perceptions of how much developers have paid have been shaped to an inordinate degree by individual

accounts of the content of selected agreements, which have been repeated and passed on in speeches and journal articles. Based on these highly selective, and often-repeated accounts of agreements, a common folklore has been built up about agreements, conveying the impression that local authorities have often succeeded in extracting exceptionally large offers of contributions, and that such contributions have often been extraneous and unrelated to the developments seeking permission. One of the most frequently-related accounts of planning gain folklore is that the London Borough of Camden sought contributions for the pension fund of displaced workers in the newspaper publishing industry in return for granting permission for an office building on Gray's Inn Road. Although a request for such a contribution may indeed have been sought, an examination of agreements signed for the project at the Camden Planning Department produced no evidence that such a contribution was ever, in fact, agreed to. In another frequently mentioned account, it has been reported that Winchester City Council sought £153,000 in infrastructure contributions from a developer of merely three houses. However, again, it seems that this request for contributions came to no effect, inasmuch as the terms sought by the Council were disallowed on appeal.

A review of the literature on planning gain yielded a number of selective accounts of contributions offered in agreements. For example, Debenham, Tewson, Chinnocks (1988) reported that a developer agreed to build and donate to the local authority a new community hall, and indoor cricket and tennis facilities, in exchange for obtaining permission to build a 38,500 square foot superstore. Elson (1989) reported that, in exchange for obtaining permission for a major residential development, a developer agreed to contribute 8 percent of the average selling price of each dwelling to the local authority, with a guaranteed minimum total payment of £660,000. Wakeford (1990) reported that a developer agreed to construct and donate a leisure centre with swimming pool, social housing, two churches, and an extension to the town centre gardens, in exchange for receiving permission for a 400,000 square foot shopping centre. These and other highly selective accounts of the contents of agreements have reinforced the perception that local authorities have been highly successful in extracting significant contributions from developers.

Interviews I conducted prior to carrying out systematic research within in a selected study area yielded additional accounts of how much local authorities had negotiated from developers. The former District Valuer for the London Borough of Southwark reported that Southwark District Council generated £16 million in planning gain in 1989 (Yates,1990, int.). The Head of the team in charge of negotiating agreements for Bracknell District Council reported that through January 1990 Bracknell had commitments of contributions for infrastructure improvements from developers worth a total of £19 million, including £1.5 million for the development of new community centres (Hawkins,1990, int.). Additional contributions were reportedly also obtained by Bracknell to secure

housing units at 40% off the market price, which were then transferred to housing associations (Ibid.). The estimated value of planning gain extracted by Bracknell through 1989 was £13,000 per dwelling unit-- £27,000 per unit if the value of land acquired for open space was included (Ibid.). It should be emphasised that the figures reported in Bracknell pertained to *offers* of contributions, not to what the local authority actually *collected*. Offers of contributions are generally received by a local authority only if and when the developer proceeds to implement development. In many cases developers decide not to implement the permissions which they have received.

The first and only known systematic attempt at estimating the value of negotiated developer contributions was carried out in 1989 by the Essex County Council Highways Department, on behalf of the County Surveyors Society. The Essex County Highway Department mailed out a survey to 47 counties in England and Wales in March, 1989 (at the end of the 1988-89 fiscal year) for the purpose of estimating the cash value of developer contributions for highway network improvements negotiated over a period of years. Survey questions were intentionally phrased to elicit data about developer contributions for highway improvements likely to result in "*significant benefits to the general traveling public.*" Respondents were instructed to exclude from their estimates developer contributions for roadway improvements which simply met the traffic needs of the new development and which did not result in any significant benefit to other traffic.

The data compiled through the survey suggests that the total value of developer contributions for beneficial traffic improvements was substantial, and that the value of developer contributions for highways was increasing. For 1987/88, county councils reported developer contributions totaling £42,300,000; contributions valued at £70,000,000 were reportedly negotiated in 1988/89. It was estimated that, at the time of the survey, developer contributions achieved through Section 52 agreements contributed 13% of capital spending on local authority roads, and 5% of spending on trunk roads and motorways. Looking ahead to 1989/90, county councils reported that they expected to receive a total of £133,000,000 worth of developer contributions for beneficial highway improvements. Not all counties were equally successful in negotiating developer contributions, however. Seventy percent of all developer contributions reportedly negotiated between 1987 and 1990 was obtained in counties located in the Southeast and Southwest, while the remaining 30% was divided among the remaining seven regions. Moreover, planning gain receipts appeared to be increasing in the Southeast and Southwest at a much faster rate than in other parts of the country. A five-fold increase in developer contributions for highways, from £12.9 million in 1987/88 to £60.1 million in 1989/90 was reported in the Southeast, whereas in other parts of the country (such as the East Midlands and Wales) yearly receipts of planning gain for highway improvements were expected either to remain level, or to decline (Essex County Council Highways

Dept., 1989).

Unfortunately, the Essex County survey data cannot be accepted as wholly reliable. According to J.W. Patient (1990, int.), who directed the study, "people tended to significantly over-estimate developer contributions." There are a number of reasons for believing that the estimated values of contributions given by county officials in the survey were inflated.

In the questionnaire I tried to be clear to have respondents exclude expenditures that solely benefited the development. Responses should have included only those expenditures that created 'significant benefits to the general travelling public.' Still, from talking to people afterwards I am convinced that people did not adhere to this distinction. They included expenditures that were only necessary for the traffic of the development (Patient, 1990, int.).

Estimates of developer contributions may have been inflated for other reasons as well. Although the questionnaire asked for an estimate of *actual* developer receipts for 1987/88, respondents often failed to make this distinction. In many cases, respondents appear to have reported the total value of improvements *offered* by developers, rather than the total value of improvements actually *received*. Also, figures reported for 1988/89 and 1989/90 were estimates of *expected future receipts*, and respondents may have been overly optimistic in estimating the value of future planning gain. One last factor which made it difficult for respondents to provide accurate estimates of the value of contributions was that developer contributions were often received in the form of completed improvements constructed by the developer. County officials could only guess what such improvements actually cost developers.

The Incidence of Developer Finance and the Collection of Betterment

Most of the debate in Britain about the negotiation of agreements has revolved around the question of whether local authorities have used agreements as a way of collecting betterment. In the U.S., the major focus of research and debate has been about the 'incidence' of developer finance-- in other words *who* ultimately bears the cost. Is the cost paid for by the landowner (in the form of a reduced land price), by the developer (in the form of reduced profits) or by occupants of the property (in the form of higher property prices or rents)? The incidence of developer payments is clearly fundamental to the question of whether betterment has been collected. If costs assessed against developers are financed by paying landowners less money for their land, or by developers through reduced profits, then betterment has been collected. However, if charges imposed on developers are passed forward to consumers in the form of higher property prices and higher rents, then "none of the windfall has been recaptured from the original owners, and the ethical meaning of the tax is lost" (Hagman and Mischzynski, 1978a, xxxii). Thus,

although the terminology in the two countries has been different, the issues and concerns raised in the parallel debates have overlapped to a considerable degree.

In Britain, it has been widely assumed that costs of contributions paid by developers have in most cases been incident on landowners. According to Callies and Grant (1991,225) “the most likely explanation in relation to a green field site” is that the burden of the contributions will fall most directly “upon the price paid for the land by the developer.” One possible explanation for the belief that costs of planning gain have been passed back to landowners has been the fact that in England many people believe that betterment *should* be assessed, and that local communities *should* be able to achieve benefits by capturing a portion of the increased value that they have created. As Hallett (1988,186) has put it, in Britain there has been a long-standing “obsession” with “creaming off the ‘unearned increment.’” The following statement by Litchfield is indicative of the view that betterment should be collected:

The impact of planning gain will inevitably be to cause land values to fall. The developer will earn a profit, but the passive landowner, who does nothing, will get less. This is fair. It is a transfer of gain from the landowner to the community (Litchfield,1989, lect.).

One problem with assuming that costs are passed back to landowners, however, is that the imposition of planning gain by local authorities has been regarded as largely unpredictable. Developers appear not to have known what contributions they have to make, and have therefore been unable, presumably, to take those costs into account when purchasing land for development. As Grant (1982, 372) has pointed out, “Where requirements are known with certainty in advance of site acquisition they will affect the price paid for the site, and thus the advantage of a clear code is that it might act as an informal tax on development values.” On the other hand, the more unpredictable the costs, the more likely it is that those costs will be passed forward to purchasers and tenants (Nicholas,1987, 96). Given the apparent unpredictability of planning gain negotiation, there is at least some basis for questioning the assumption that costs of planning gain will necessarily be passed back to landowners.

Despite the importance of the question of “who pays” related to the debate over betterment, there has been little or no empirical research in Britain documenting the actual incidence of costs imposed in agreements (Bailey, 1990). In the U.S., on the other hand, investigators and researchers have invested an inordinate amount of time and effort attempting to measure the incidence of fees imposed on developers. Most of this research has indicated that, despite the predictability of impact fees and exactions, it is unlikely that costs have been passed back to landowners.

Developers can pass impact fees along to landowners only if the market for buildable land is highly competitive and if supply can be expanded just as quickly as demand warrants. That is not possible, because expanding the supply of buildable land requires installation of the very infrastructure for which development impact fees are supposed to pay (Huffman, Nelson, Smith and Stegman, 1988, 54).

Empirical research conducted in Loveland, Colorado and Sarasota County, Florida evaluating urban land price changes in response to the imposition of development impact fees found that "Urban land prices will rise rather than fall in response to imposition of impact fees" (Nelson, Lillydahl, Frank and Nicholas (1991,1). To be more precise, for every dollar levied in impact fees, property values tended to increase 85 cents (Nelson, 1990, lect.). The author's theorise that the positive relationship between impact fees paid by developers and urban land prices is evidence that "impact fees imply a contract for development that is worth more as a package than no fees and uncertain development" (Ibid.). Research conducted independently by Skaburskis (1991,16) found that "In stable housing markets, development impact fees increase lot prices by an amount that is approximately 20 percent greater than the fee."

The least likely party to pay the so-called "developers' fee" appears to be the developer.

Developers cannot pay impact fees in the form of lower profits since, in a competitive economy, profits are already at levels of return that justify the cost, bother, and risk of investment compared to alternative uses of investment capital. Developers will stop production and not resume until demand exceeds supply to a point where necessary profit levels are restored (Huffman, Nelson, Smith and Stegman, 1988, 54).

Only when the rules change after the developer has bought the land and committed himself to carry out development can it be said that the developer actually pays the fee (Wakeford, 1990, 209). Thus, most research in the U.S. points to the conclusion that the cost of impact fees and exactions has been passed on to buyers and tenants in the form of increased property prices and rents (Nicholas, 1987; Bauman and Ethier, 1987; Soble 1988; Huffman, Nelson, Smith and Stegman, 1988; Singell and Lillydahl, 1990). One factor which has increased the likelihood that costs are incident on consumers is the fact that "impact fees are levied most in areas of intense growth pressures, which are precisely the kinds of environments that enable land owners and developers to pass the additional costs on to the final tenants of the property" (Levine, 1989, 2).

The frequently-stated rationale for imposing impact fees has been that "existing residents should not be expected to subsidize new development" (Nicholas, 1987, 99). The fact that costly infrastructure improvements, such as new sewage treatment plants, schools, water supply and distribution systems, etc., tend to be "lumpy" has only served to

intensify demands of existing residents that new residents be assessed special fees. When capital investments are “lumpy” rather than continuous, “existing residents have to carry the costs of infrastructure in excess of their needs until growth catches up...”(Wakeford,1990, 198). However, as impact fees and exactions have become more common, some writers have expressed concern that existing residents have used impact fees to unfairly shift costs onto new residents. According to Bauman and Ethier (1987,65) impact fees and similar exactions have been used to shift capital costs “from the general public tax base to a discrete segment of the public: those citizens buying and renting newly constructed housing.” R. M. Smith (1987) has put it even more strongly. “What began as a means for preventing a subdivision from shifting to the municipality the responsibility for installing public improvements has been transmuted into a device by which municipalities are shifting to private land developers the cost of facilities and social programs for the general public that local government can no longer afford”(Smith,1987, 28). Moreover, research in the U.S. suggests that existing residents (those who own property) often benefit handsomely from the imposition of impact fees.

First, rising entry and production costs reduce supply until excess demand forces rents to rise. Owners of existing holdings therefore gain increased rents if their property is competitive with new, more expensive buildings that must pay the fees. They gain another windfall when the jurisdiction uses impact fees to upgrade community facilities, thereby making the community even more attractive (Huffman, Nelson,Smith and Stegman,1988, 55).

Empirical research conducted in the U.S. on the incidence of impact fees has shown that new home buyers have often have had to “incur an increase in housing price that is greater than the impact fee” (Singell and Lillydahl,1990, 91). Snyder and Stegman (1989) found that developers had to “mark up” impact fees by approximately 28 percent to take account of their additional costs of financing and carrying the impact fee until it could be collected at the time properties had to be sold. Soble (1988) has calculated that an additional fee of \$2,376 per home for the construction of a new school will, when financed over the life of a thirty-year mortgage financed at 12.5 percent, ended up costing each homeowner \$13,878.

Given that the burden of new impact fees in the U.S. has fallen so directly on new residents, some American researchers have begun to consider the *equity* of development impact fees. In a major study conducted for the Urban Land Institute, Snyder and Stegman(1989) concluded that, under certain circumstances, levying fees on new development may serve to redress imbalances in costs between existing and new residents, and to create greater equity in financing. However, whether or not it is equitable and efficient to impose impact fees on new development (i.e. new residents) will depend on the *rate of growth* that is occurring in the community, as well as the *rate of interest* at which a

locality could finance infrastructure through municipal borrowing (Snyder and Stegman, Ibid.). If the rate of growth is greater than the rate of interest at which the public sector can finance the capital improvement, then, according to Snyder and Stegman, the imposition of impact fees is cost-justified in terms of maintaining equity. On the other hand, if the rate of growth is *less* than the rate of interest for borrowing, impact fees are not justified. An interesting implication of Snyder and Stegman's research is that the need and justification for seeking payments from developers will vary over time. Indeed, there may be reason to expect that the negotiation of developer contributions should be cyclical, and at least somewhat related to the business and property development cycle.

An indirect but straight-forward way researchers might use to deduce if local authorities have collected betterment would be to analyse the exact purposes for which developers have made contributions. Such an examination of specific purposes should reveal whether contributions offered by developers have been related (and therefore beneficial) to the developments which occasioned them, or unrelated (and therefore onerous). The importance of distinguishing between "beneficial" and "onerous" taxation has been emphasised by Evans (1985). "Onerous" taxes are levied for purposes which provide little or no benefit to the parties which are forced to pay. Evans gives the following example of an onerous tax, and its negative effect on property values. Suppose that Borough A levies a tax on all properties in the borough to subsidise the housing costs of a small number of residents in its area, but Borough B, adjacent to Borough A does not. Under those circumstances, he argues, rents and property values will fall in Borough A relative to Borough B (Evans, 1985, 166). "Beneficial taxes, on the other hand, pay for goods and services which benefit the tax payer" (Ibid.), and as a result can have a positive effect on the value of properties which are assessed. An example of beneficial taxation would be if a local authority taxed properties for the purpose of improving roads and roadway landscaping which generally enhanced the value of properties in the district.

Henry's 1982 study of planning agreements signed for three large-scale residential developments in Wokingham (in Lower Earley, Woodley Airfield and Woosehill) included a useful evaluation developer contributions in agreements in terms of whether they were beneficial or onerous to developers. In all three cases, planning agreements were negotiated which required the developer to make cash payments for on-site and off-site infrastructure, such as roads and drainage (Henry, 1982, 45). Similarly, in all three cases, developers were required to dedicate or donate land for community facilities, schools and open space. But in Henry's opinion, these developer-financed improvements could not be regarded as solely a gain for the local authority. "It would be a mistake to presuppose that the purpose of an agreement is only to achieve a gain for a particular party" (Ibid., 46). Rather, obligations imposed on developers through planning agreements tended to achieve a dual purpose. "In all cases with one exception, these [improvements financed by

developers] could be considered essential to the development, but have the potential to benefit a catchment area beyond the boundaries of the site”(Ibid., 45). Only in one instance, where a developer was required to dedicate land to the District Council, did Henry find a requirement imposed on a developer which was not “commercially advantageous” to the proposed development. This led Henry to conclude that “the classic view of local authority opposition to development unless some 'gain' is offered is not true in the major sites described”(Ibid., 47). On the contrary, study of these three major cases showed that “one of the results of this process [of negotiation] is that benefits can be identified for all parties, as well as some losses”(Ibid., 49).

Opponents of planning gain have sought to place strict limitations on what developers can be asked to make contributions for. Tucker (1978) and Heap and Ward (1980) have argued that developers should not be asked to provide facilities which it is the duty of the local authority to provide. Ward (1982,77) has argued that “The courts have made it clear that if a planning authority seek to use their powers to achieve some ulterior object, notwithstanding that the object may be connected with one of their other functions such as housing or highways, they will be guilty of a misuse of their powers as a planning authority.” He therefore argues that it is “unjustified” for local authorities to require developers to: provide roads or sewers in excess of what is required by the development; provide open space and community facilities in excess of what is required by the development; or to construct council housing for the local authority (Ibid., 77).

According to a report by Debenham Tewson & Chinnocks (1988, 7), gains secured by local authorities through bargaining have often been “divorced, both functionally and geographically, from the proposals to which they relate.” As if to corroborate that conclusion, a 1990 survey of 112 local authorities and 30 developers conducted for KPMG Peat Marwick, found that the types of planning gain benefits *most preferred* by local authorities have been contributions for open space, off-site infrastructure, and highways. However, the survey also found that, in practice, “Most planning gain agreements related to on-site benefits only...”(Rosslyn Research, 1990, 19). Only 1 in 10 of developers, plus a mere handful of authorities reported that they believed that the balance of benefits had changed toward the provision of off-site benefits (Ibid., 20).

Consistency with Established Plans and Policies

Many writers seem to assume that the main reason for agreeing to make contributions has been to obtain waivers and exceptions from established planning policies. According to Bowers (1992, 1329), planning gain is negotiated when a planning application “is in some respect at variance with the statutory plan.” Loughlin (1981, 65) has argued that the possibility of obtaining contributions “might affect the objectivity of the authority in performing its role of evaluating the planning merits” of proposed schemes.

Local planning authorities might be willing “to trade off planning standards in order to obtain direct gains”(Ibid.,90). Critics of planning gain negotiation have alluded to such concerns, arguing that the negotiation of agreements is inconsistent with the proper exercise of development control. As developer Trevor Osborne (1989, 30) put it, “How can this [the practice of soliciting contributions while reviewing pending planning applications] be a logical or sensible way in which to carry out the development control function. A development is either justified and acceptable or it is not....”

There has appeared to be a very real risk possibility that the ability to negotiate contributions might tempt local authorities to approve developments which should be properly refused. Indeed, the willingness and ability of developers to offer contributions to planning authorities might be greatest in exactly those areas where planning policies have sought to exert the greatest constraint on development.

There is the fact that the developer’s willingness to agree to onerous terms is likely to be greatest in circumstances where planning controls are most rigid-- not simply because of a realisation that something substantial might be needed to induce the authority to relax their policies, but because of the vast potential difference between the value of the land with no permission and no apparent prospect of it, and its value with permission for development. This *quid pro quo* approach to planning may lead to thoroughly bad development, because the less likely the prospect of permission under established plans and policies, the greater the increment in land value if permission is actually granted (Grant,1982, 359).

Martin Loughlin’s 1978 case study of the negotiation of developer contributions by Harrow Council suggests that local authorities have been willing to grant exceptions to established plans and policies in exchange for contributions. Harrow Council agreed to grant planning permission for a 91,000 square foot office development, in return for which the developer agreed: to construct a community centre which would be leased to the local authority for 125 years at a peppercorn ground rent; to include 18 residential flats in the development; to construct specified roadworks and transfer a petrol filling station property to the local authority for traffic management purposes at their own expense; to reimburse the Council for the cost of a roundabout and pedestrian underpass to be provided adjoining the site; and to make a number of parking spaces available for public use without charge in connection with a nearby British Railways station (Loughlin,1978, 291). The LPA agreed to enter into the deal despite the fact that the proposed development was in “conflict with the Development Plan, and with the GLC’s strategic policies for housing and employment” (Ibid.). According to Loughlin, the Harrow case shows how the judgment of local planning authorities related to meeting local needs could be clouded and undermined by the lure contributions.

In this case ... it is hard to resist the conclusion that this decision was significantly

affected by the willingness of the developer to provide a package of benefits to the authority. In such a situation the financial incentives may well hinder the authority's ability to undertake a reasoned calculation of the merits and drawbacks of such schemes....(Loughlin, Ibid.).

Henry's research in Wokingham led him to a different conclusion, even though he recognised that there were risks in making "over-enthusiastic" use of planning agreements. He reported that "... in the Wokingham example, where gains have occurred these would appear to be the result of seizing an opportunity rather than an overt policy to seek out considerations...."(Henry, Ibid., 80). He also recognised that the negotiation of agreements was often not an outgrowth of the preparation of forward-looking plans and policies, but rather was often a process of *reacting* to private sector initiatives. Nevertheless, Henry's overall conclusion was that agreements could play a useful role in achieving positive planning objectives. "In an area where the overwhelming majority of development has been left to the private sector, the planning agreement has been vital in articulating and protecting the interests of both the public and private sector, and in coordinating development"(Ibid., 83). Planning agreements were useful because they allowed a district planning authority to "achieve a saving on public spending," and also "to retain a measure of control over a development not found in planning permission"(Ibid., 81).

In the U.S., planners have generally supported the adoption of impact fees and exactions, and have expressed few reservations about the consistency of such charges with the achievement of legitimate planning objectives. Nelson and Nicholas (1990, lect.) have argued that the adoption of impact fee ordinances has encouraged local governments to undertake comprehensive planning and to assess the adequacy of current facilities and infrastructure in relation to current and projected rates of growth. However, the negotiation of agreements has not been viewed so benignly. The fact that bargaining leads to a perception of "shared interest between the public and private sectors" (Kirlin,1985,5) has prompted concern that public officials might be encouraged "to behave like developers, rather than guardians of the public interest" (Porter,1989, 150). In the U.S. there has been a particularly strong view that planning authorities must deal with developers at "arms-length", and should not allow financial considerations to affect decisions either positively or negatively.

Zoning regulations and specific zoning decisions should not be tied to income generation for general public purposes. The Study Commission believes that such a practice, even if directed toward a worthy objective such as housing, would distort the purpose of zoning and could have damaging effects. If the real estate market... is to be tapped to provide necessary monies... then the obligation should take the form of a tax to be imposed uniformly on a broad base of real estate activity, not solely on projects requiring discretionary zoning actions (Development Commitments Study Commission, 1984 Report to Mayor of New York City, as

quoted in Marcus,1988,78).

Geographic Variation

Experience with developer finance in the U.S. suggests that there is likely to be considerable geographic variation in the use of developer finance by local governments. Data compiled from 35 local governments in five states by James Nicholas (1990) found that impact fees charged by local governments have exhibited significant geographic variation. For example, road impact fees imposed by localities on new single family homes ranged from a low of \$130 to a high of \$7,348; the average road impact fee was \$1521 per unit (Nicholas, 1990). School impact fees varied from \$135 per unit to \$2,096 per unit, with an average fee of \$559 (Ibid.). Similarly dramatic differences in fees were found for other infrastructure and facilities such as parks, police and fire protection, and libraries (Ibid.). Some of this variation might be explained by differences in the cost of providing facilities and infrastructure in different locations, and some communities clearly set much higher standards of infrastructure provision than others. However, the major difference appears to have been that some local governments sought to recover a much greater share of facility costs from developers than others. Some governments have sought to recover up to 80% of development costs from developers while other's have been content to recover a much lower percentage of costs (Seskin,1990,int.). Although no empirical data has been compiled on this point, the ability to shift a large percentage of infrastructure costs onto developers has appeared to be have been at least partially related to the relative strength of local property markets.

Local governments in prosperous, fast-growing areas on the east and west coasts of the U.S. extracted the most from developers during the 1980's. Boston and San Francisco-- both of which experienced major development booms-- were able to impose major costs on downtown developers, and to obtain payments for subsidised housing, because developers were anxious to develop in those cities during that period (Sawicki,1989, 358). In Hawaii, where developable land was more expensive than anywhere else in the U.S., local governments were able to impose exactions amounting to 60% of the development gain achieved by obtaining planning permission (Lowry and Kim,1991). Meanwhile, local governments in slow-growing areas of the country found it economically infeasible to impose such fees. For example, "...in a city like Atlanta, where a downtown address is not considered very special, concessions are made to virtually anyone proposing to locate economic activity there"(Sawicki,1989, 358).

Have all local authorities in Britain been equally likely to make use of agreements, and to obtain contributions? Or have some localities been much more active than others in using agreements and in negotiating contributions? Keogh (1985,226) has put the question another way, by asking "to what extent do local authorities compete for development

through variations in the 'planning gain price' of development...?" And if there has been significant variation among localities in using agreements, *what factors have affected the ability of LPAs to negotiate agreements with contributions?*

A number of factors might conceivably affect the ability of public authorities to obtain contributions from developers. Some of those factors might be: development pressure; degree of planning constraint exerted on development; rate of growth; characteristics of the area (urban versus rural, political affiliation); proximity of development sites to publicly-funded highways; extent of central government intervention.

It would seem reasonable to expect that local authorities should be in the strongest position to negotiate contributions in areas which are experiencing the greatest amount of development pressure. However, the degree of constraint exerted by the planning system may be an even more important factor affecting the value of planning permission, and in turn, the willingness of developers to offer contributions.

...the degree of restrictiveness in planning sets the limits on development and is instrumental in determining the value of development. If planning is highly restrictive, the value of development land, and of property in the market, will be high (Keogh and Evans, 1992, 693).

A third variable which might affect the ability of local authorities to negotiate contributions is the rate at which growth is occurring. A 1986 survey of the use of development agreements in California by the University of California found that "The absolute growth in population showed a strong relationship with the use of agreements..." (Coward, 1989, 22).

It has been widely assumed that boroughs in Central London have been aggressive in negotiating contributions from developers. Nevertheless, even London boroughs have varied considerably in their use of agreements. When the Association of London Borough Planning Officers (ALBPO) surveyed the 33 boroughs in Greater London in 1989 it found that local authorities were divided into three roughly equal groups. Of the 22 boroughs which responded to the survey, eight (36%) had "no specific policies for planning gain other perhaps than the office policy contained in the Greater London Development Plan, namely that in granting applications for major office developments there should be the attainment of planning advantages...." (ALBPO, 1989, 4-5). Boroughs in this first group made relatively little use of agreements. Seven boroughs (32%) made moderate use of agreements. Boroughs in this second group typically had "more extensive policies than those in group one, embracing not only GLDP office policy but also policies in respect of commuted car parking, the provision of community and leisure facilities as part of major redevelopment schemes or the provision of housing as part of a mixed development" (Ibid.). Boroughs in this category reported that they signed between 6 and 27 agreements

per year (Ibid., 7). Seven boroughs (32%) were categorised as falling in group three, and were the most active in using agreements. Boroughs in this third group used "the process of negotiation to encompass a very broad spectrum of planning gain"(Ibid.,5) and tended to enter into a higher number of Section 52 Agreements. One borough in this category reported that it entered into, on average, 40 to 50 agreements per year (Ibid.,7). Many of the gains negotiated by localities in this group were judged by the ALBPO report as falling outside the guidelines set down in Circular 22/83.

The results of the ALBPO survey serve as a reminder of how little is currently known about how local authority use of agreements has varied, and why. What factors explain why some local authorities use agreements more broadly and frequently than others? Have local authorities outside Greater London been less apt to negotiate agreements than boroughs in Greater London. Have *rural* planning authorities been more or less likely to negotiate agreements with contributions than *urban* districts? Land values in urban areas will be much higher than in rural areas, but gains in land value resulting from planning permission and the provision of infrastructure may be greater in percentage terms in rural areas than in urban areas. Moreover, the provision of new infrastructure may be more crucial for development to occur in rural areas than in urban areas, where existing infrastructure is already in place (albeit often at capacity).

The proximity of development sites to publicly-funded road improvements might have an impact on the negotiation of agreements with contributions. If LPAs were motivated by a desire to capture betterment, one of the best ways to do so would be to seek contributions from developments located in close proximity to publicly funded road improvements. Also, developers might be relatively willing and able to offer contributions when undertaking projects on sites made valuable by public highway investments.

It has often been assumed or implied that Labour authorities have been more inclined to try to force developers into making excessive contributions than Conservative local authorities. However, current evidence as to the effect of political affiliation on the willingness to negotiate contributions is relatively weak. According to Marsh (1990,int.), Conservative local authorities in outlying areas have often been particularly aggressive in negotiating planning gain. "These are areas where stockbrokers live, and these financial people participate in local government and understand deal-making. They favour policies of tight constraint, and at the same time drive a hard bargain"(Ibid.). In their research into the negotiation of contributions for social housing, Barlow and Chambers (1992) found that "Conservative councils were just as likely to pursue developer contributions for social housing as Labour councils," and political stability was more important than political affiliation in determining whether contributions would be obtained (Barlow,1991,int.).

The extent to which the Secretary of State over-rides local planning authorities, by granting planning permissions on appeal, is another variable which might possibly have an

effect on the ability of local authorities to obtain contributions. It is also conceivable that the willingness and inclination of the Secretary of State to intervene and undermine local planning authorities might be partially or indirectly influenced by local authority political affiliation.

Effects on Development

Given the fact that a central purpose of urban planning is to shape the spatial distribution of development, perhaps the most interesting and important question for planning is this: what effect has developer finance had on patterns of development? Economists have long been aware that the pricing of infrastructure is likely to affect spatial patterns of development. Neutze (1970, 322) has pointed out that new urban development "is seldom required to pay the full costs its imposes on urban network services-- especially roads." In the U.S., the underpricing of public infrastructure, at least in the past, has appeared to be part of a conscious policy of encouraging development. The negative side effect of underpricing public infrastructure has been that it has encouraged low density "urban sprawl," and led to too great a demand for transportation (Lee,1981). If infrastructure costs were equated with actual costs, then the net effect would be a more compact and efficient pattern of development, and less difficulty in providing transportation infrastructure (Ibid.).

There are a number of ways in which a policy of "making developers pay" might affect patterns of development. If charges levied against developers are made equal to the marginal cost of providing infrastructure, then developers will presumably have an economic incentive to build in areas in close proximity to existing infrastructure. At least in theory, the negotiation of contributions on a case by case basis offers the possibility for local authorities to adjust and impose charges to more accurately reflect marginal costs. On the other hand, an inherent weakness of fixed fees is that they tend *not* to reflect the varied public costs associated with developing in different locations. As Wakeford (1990,259) has pointed out, lump sum impact fees "distort developers decisions and lead to less efficient use of infrastructure." Even worse, a system of uniform fees subsidises developers who develop sites which are poorly located in terms of existing infrastructure.

The effects of developer finance on the density of development is also an important issue. It is possible that developers might attempt to offset the cost of those contributions by trying to generate additional revenue, by making their projects bigger or more dense. Similarly, local authorities wishing to maximise their collection of planning gain might be inclined to allow developers to make their projects bigger and more dense if it meant they could obtain even greater gains in return. A private consultant who has specialised in planning gain related the following case:

We ran 'the numbers' on the proposed Bishopsgate project, and advised the community to support an increase in the amount of office space and in the size of the project. Increasing the size of the project increased its profitability and in turn its ability to generate community benefit (Marsh,1990, int.).

In the U.S., one of the main criticisms of incentive zoning, a type of developer finance described in Chapter Two, has been that it has encouraged municipalities to allow developers to increase the density of their projects as a way of financing desired public facilities and improvements. According to William Whyte (1988), the reliance of New York City on incentive zoning produced buildings which were bigger and taller than they should have been-- resulting in unwanted congestion, loss of sunlight, and increased pressures for even more dense development. In one case in New York City, "City negotiators stretched the zoning regulations to the limit and then added a 20 percent bonus in exchange for requiring the developer to renovate a nearby subway station. With the bonus the building limit was up to 2.7 million square feet of floor space, more than in the Empire State Building"(Frieden and Segalyn,1989, 252).

Economists have argued that requiring developers to pay for infrastructure costs related to their developments should produce development which is more dense, and more compact. However, researchers in the U.S. have begun to recognise that, in certain planning contexts, greater reliance on developer finance may have the opposite effect. Developer finance may, in fact, loosen constraints on development-- allowing developers to overcome infrastructure limitations which had formerly provided planning authorities with the justification for denying planning permissions in underserved areas. As a team of American researchers observed,

... the payment of impact fees essentially establishes a contract between the fee-payer and the local government. (Nicholas, Nelson and Juergensmeyer,1990) In return for the fee, the [local government] promises to deliver public facilities and services more-or-less *on demand* ... (Nelson,Lillydahl,and Frank,1990, 16).

In Florida, recent evidence has suggested that costs imposed on developers for highway improvements were often greatest for developments in highly developed, highly congested areas; as a result, developers were encouraged to build low density developments in less developed areas, where public infrastructure costs were lower. DeGrove (1992, 7) reports that Florida's "'pay as you grow' mandate of concurrency... as initially applied... tended to exacerbate the problem of urban sprawl."

Developer Finance and the Property Market

One last, but very important research question is how developer finance has varied over time. Changes in obtaining contributions may suggest that local authority attitudes

and practices related to agreements have evolved and changed over time. The ability to secure contributions from developers may also rise and fall depending on changes in the strength of the property market.

In the United States, the use of impact fees and exactions intensified during a period when the real estate market in many parts of the country was thriving. Acceptance of developer financing was eased, and opposition neutralised, by the fact that land values in most parts of the country were rising. Advocates of impact fees have generally failed to acknowledge the extent to which the ability to impose such fees was dependent on market conditions. By 1990-91, the property market in many parts of the U.S. had seriously collapsed. Nevertheless, planners in the U.S. continued to push for the adoption of impact fee and exaction ordinances, and for the adoption of strict growth management statutes.

As a profession, planners have tried to convey the impression that the exercise of planning and development control has been based primarily on technical considerations, and that economic or market considerations play a minor role. However, particularly in the area of planning gain negotiation, market factors may be crucial in determining the willingness of developers to make contributions, and the ability of local authorities to secure them. During the 1980's there was a growing recognition, particularly in British planning circles, that market forces often did, and should, exert an influence on planning and development control. Case study research conducted by Healey (1982, 13) showed that although the planning system has often been presented "as the public sector regulating or managing the private sector," in practice there is often a considerable amount of "interpenetration across the public/private boundary." Grant conveyed a somewhat similar message when he noted that,

There is a complex, two-way relationship between market forces and planning regulation, and authorities who ignore or misunderstand market pressures may find that development fails to take place following the grant of permission, or that it proceeds in a different way than envisaged by them (Grant, 1982, 290).

Given the cyclical nature of the property market, it might be assumed that developers would be most willing and able to offer contributions when market conditions are most favourable. On the other hand, given the market's ups and down, developers may not necessarily be willing to give away potential profits to local authorities even when times are good. As one developer put it:

As a developer I can confirm that [development] is a high-risk and cyclical business and if on occasion an exceptional profit is made this will be used to finance other developments or balance less successful speculation. Developers' margins are as a norm not high and in downturns in the market they are often eliminated altogether... It is not always the case that there is sufficient enhancement in value to allow any planning gain to be achieved... (Gill, 1991, 36).

Variations in market conditions over time may also affect local authority attitudes and policies toward seeking contributions. Weiss (1991) has observed that public sector policies in the U.S. related to the regulation of development have tended to be adopted *in response* to development cycles. When the real estate market has declined, public policies have been adopted to stimulate and encourage development. When the economy has become over-heated, public policies have been adopted to slow down development, and regulate excesses. There has almost always been a lag between real estate cycles and the adoption of public policies in response to those cycles. “Few substantive public policy changes are made at the high point of the cycle when real estate is booming” (Weiss, Ibid., 3). Public policies designed to curb excesses of development tend to be adopted only *after* the boom is over, when the downturn has already begun (Ibid.). An important implication of Weiss’ findings is that public policies are almost always out of sync with property market cycles, and tend to fail because the conditions they were intended to address are no longer present. A further irony is that the failure to synchronise policies with market cycles may have the effect of intensifying market swings. Barras (1985, 99) has warned that public authorities have all too often exercised development control in ways which have “tended to reinforce rather than smooth out the [development] cycle.”

The above discussion provides a potentially useful perspective from which to evaluate local authority use of agreements. How quickly did local authorities react to rising property markets in seeking developer contributions? Did local authorities experience increased success in negotiating contributions as the property market surged between 1984 and 1988? And after 1988, when the property market softened, did local authorities negotiate fewer contributions? Lastly, but equally important, did local planning authorities moderate and temper their policies on seeking contributions as the property market continued to weaken between 1990 and 1992? Or did they press and expand their efforts to obtain contributions even in the face of a declining property market?

CHAPTER FIVE: METHODOLOGY AND STUDY AREA

Introduction

In the previous chapter, a number of crucial issues and questions relevant to an understanding of developer finance were identified. To provide answers to these questions, I decided to carry out intensive research within a defined and contiguous area in Britain. My decision to carry out geographically-focused research was based on a belief that it was important to evaluate developer finance in relation to on-going planning and development control, and its possible impact on patterns of development.

Previous researchers who have studied the negotiation of agreements have relied heavily on questionnaires asking local authorities to describe how they had used agreements. I decided instead to collect first-hand data from actual local authority records and files, to document how local authorities in actual fact had used agreements. Collecting data first-hand allowed me to compile accurate statistics on the *frequency* with which agreements were signed, on how often they involved contributions, and the exact purposes for which contributions were made. Such a precise statistical description of agreements could not be obtained by sending questionnaires to local authorities.

I also decided to conduct interviews in person as much as possible, rather than by means of telephone. An important reason for conducting first-hand interviews was that I wanted to discern the *attitudes* of local authority planners toward negotiating contributions (as possibly distinct from official written policies). I felt that it would be difficult to gauge such *attitudes* through a questionnaire sent to local authority officials. I also wanted to become familiar with the characteristics of the communities and areas where agreements had been signed, to better understand the planning context.

The advantage of surveys and questionnaires is that they make it possible to obtain responses from large numbers of local authorities, from all over the country. However, asking officers or staff of local planning authorities to fill out questionnaires describing how and why they used agreements in the past, even in the recent past, may not be the best way of obtaining an accurate picture of what has actually been occurring at the local level.

Planners work in teams, ... and belong to a profession, all of which carry their own blinkered view of the world. They have personal and intellectual differences of opinion with colleagues and the public. Their decisions have implications for people, for jobs, for leisure opportunities, for accessibility, and so on. Any research which attempted to come to terms with such complexity would always have to be aware of the questions: 'Why was that meaning given to that action at that time?' (Sillence, 1986, 207).

Respondents to questionnaires may not necessarily mean to provide inaccurate

responses, but their responses may nevertheless be misleading. People may find it hard to distinguish between how they *actually* performed, and how they *tried* to perform, and therefore answers provided on questionnaires may reveal more about *intentions* than about actual past *practice*. Respondents may also be inclined to emphasise successes in negotiating agreements rather than failures. This suspicion was confirmed in the course of personal interviews I conducted in the course of this research. I found that local authority planners frequently attached great importance to agreements they were in the process of attempting to negotiate. They were usually extremely confident that the agreements they were working on would eventually be signed. However, follow-up interviews often revealed that the agreements, which seemed so close to being signed, often actually weren't signed, and the contributions which were expected were not realised. This discovery suggests that planners may be overly optimistic when responding to questionnaires. Respondents may also find it difficult step back in time, and to accurately describe their attitudes and practices regarding agreements in the past, as opposed to their current attitudes and practices. Indeed, the only way to accurately assess how local authorities felt about negotiating agreements in the past is by going into the field, by finding the agreements they signed, and by reviewing the actual content of those agreements.

The fact that I was a foreign observer, and had prior professional experience as a planner in the United States, was an advantage in carrying out this research. When I contacted local authorities, requesting interviews and access to planning department files, I explained that I was an American-trained city planner, and a former planning director of an American city, and was conducting research comparing British and American approaches to developer finance. This introduction was successful not only in obtaining interviews with chief planning officers, and other local authority officials such as solicitors, but also in obtaining access to planning department files and records. Once I established my mission, and became known to local officials, I was usually accorded a high degree of cooperation, and in most cases was allowed considerable freedom in examining relevant project files, including internal memoranda and notes related to permissions which were subject to agreements. Moreover, in interviews I believe that local planning officials were less guarded in expressing their views than they might have been had I been a British investigator, because I was planning to return to the U.S. and was therefore unlikely to use my research findings to embarrass them with DoE and government officials.

Choice of Study Area

Current opinions and perceptions about how local authorities have used agreements have been disproportionately influenced by reported accounts of how agreements have been aggressively used by Boroughs in Greater London. And yet, experience in Central London

in using agreements may be unrepresentative of experience elsewhere in the country. Conditions in Greater London, particularly in Central London, are very different than in most other parts of the country where development is occurring -- in terms of the cost of land, sizes of development sites, intensity of development, and availability of infrastructure. In London, most land has already been intensively developed, and few large open sites are available for development; the cost of land is usually high; and infrastructure is often already in place, so that new development may not be dependent on the provision of new infrastructure. Outside of London, development projects are more likely to involve large green field sites; land costs are comparatively low, and are likely to represent a smaller proportion of total development cost; and new infrastructure and public facilities are more likely to be needed for new development to occur. Another significant difference which needs to be recognised is that local governments in Greater London, at least since the dissolution of the Greater London Council (GLC) in 1986, have functioned in a different governmental context than local authorities in most other parts of the country. With the demise of the GLC, there is no longer any overall strategic planning authority in Greater London. Instead, London Boroughs are unitary authorities. With no other layer of government between them and central government (such as county government), Boroughs in London are no longer constrained by the need to conform to an overall strategic regional plan. (In other parts of the county, local planning authorities are guided, and to some extent constrained, by the need to conform to county structure plans.) Moreover, as sole local government providers of public infrastructure and facilities not provided by central government, Boroughs in London have greater infrastructure responsibilities than local authorities outside London, and as a result possibly more to gain from negotiating contributions from developers than local authorities in other parts of the country. (Outside London, county governments are important providers of infrastructure and public facilities, and would be likely to claim at least some of the contributions obtained from developers.) For all of these reasons, the use of agreements in Greater London may be unrepresentative of how local authorities have used agreements elsewhere in the country. I therefore decided to choose a study area outside Greater London.

I further decided to select a part of the country where development demand and land values had risen sharply in recent years, and where conditions appeared favourable for negotiating contributions from developers. Conditions thought to favour the negotiation of agreements were: above average rate of growth ; intense development pressure; strong planning constraint; and substantial public investment in improving highways and other transportation infrastructure. It was also important to select an area which was large enough to yield a substantial number of projects which were subject to agreements, and also large enough to contain within it areas of greater and lesser development demand, and

greater and lesser planning constraint, etc., so as to allow for an evaluation of the importance of factors thought to have an affect on the use of agreements. Finally, it was important to select a study area which contained within it a number of different local planning authorities, so as to make it possible to observe and compare local authority attitudes and behavior, and the effects of different local planning policies.

Based on these criteria, I selected the County of Cambridgeshire, in the region of East Anglia, as the study area for research (See Figure 5.01). During the 1980's, East Anglia was one of the fastest growing regions in Britain. Moreover, Cambridgeshire was the fastest growing county in East Anglia. Between 1980 and 1990, the population in Cambridgeshire increased by 69,534 (12%), from 598,660 to 668,200. During the period 1980-89, Cambridgeshire was the second fastest growing County in Britain in terms of population, out of 64 counties, trailing only behind Buckinghamshire (Cambridge Regional Economic Review,1990, 37). During the period 1981-89, traffic in Cambridgeshire increased 78%, an average of 7.5% per year, compared to the nationally observed annual rate of 4.5% (Cambridgeshire County Council,1991a). Moreover, growth in the region appeared to be accelerating. Traffic volumes on County roads increased 8.5% in 1989 alone (Ibid.).

Property markets are shaped not only by past trends, but also, perhaps to an even stronger extent, by expectations about the future. The feeling of prosperity and optimism in Cambridgeshire was fueled not only by the county's strong growth during the 1980's, but also by the expectation of continued strong growth in the 1990's. It was forecast that Cambridgeshire would be the fastest growing county in population during the period 1989-2000, with an expected annual growth rate of population of 1.27% per annum (Cambridge Regional Economic Review,1990, 37). Out of 64 counties, Cambridgeshire ranked fourth in employment growth between 1980 and 1989, and was expected to rank second in employment growth between 1989 and 2000, with an annual growth rate in employment of 1.3% per annum (Ibid.).

The County of Cambridgeshire covers an area of 1315 square miles (over twice the area of Greater London), and is comprised of seven local authorities: the shire county of Cambridgeshire; and six district authorities-- Cambridge, East Cambridgeshire, Fenland, Huntingdonshire, Peterborough and South Cambridgeshire (see Figure 5.02). At the time this research was undertaken, two of the local authorities (Cambridge and Peterborough) were controlled by the Labour Party, while the four district authorities (East Cambridgeshire, Fenland, Huntingdonshire and South Cambridgeshire) were controlled by the Conservative Party. Cambridgeshire County Council was also Conservative. Each of the six district authorities was responsible for the preparation of local plans and policies, and for reviewing and acting on planning applications for the development of sites within

Figure 5.01

CAMBRIDGESHIRE, EAST ANGLIA
AND GREATER LONDON

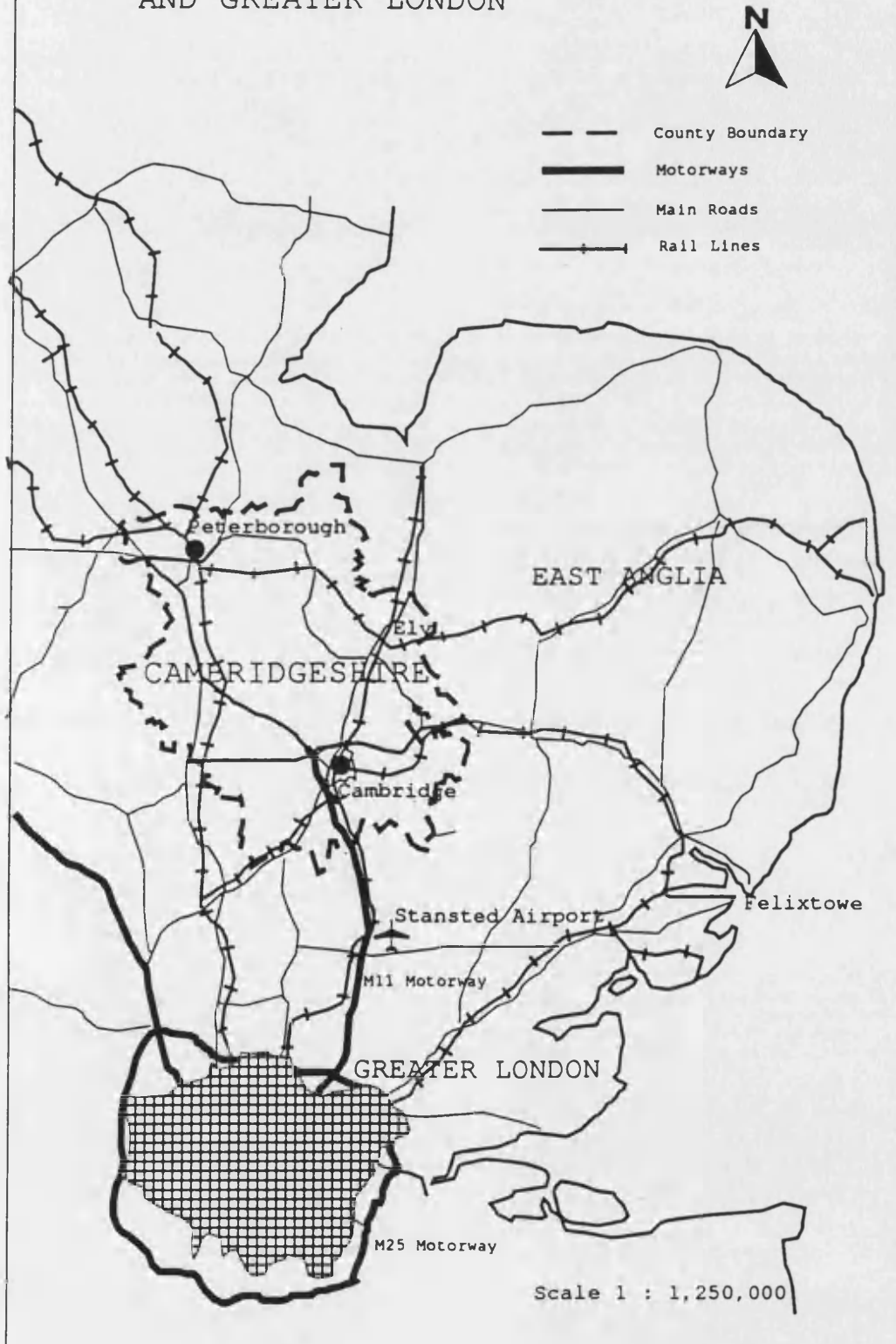
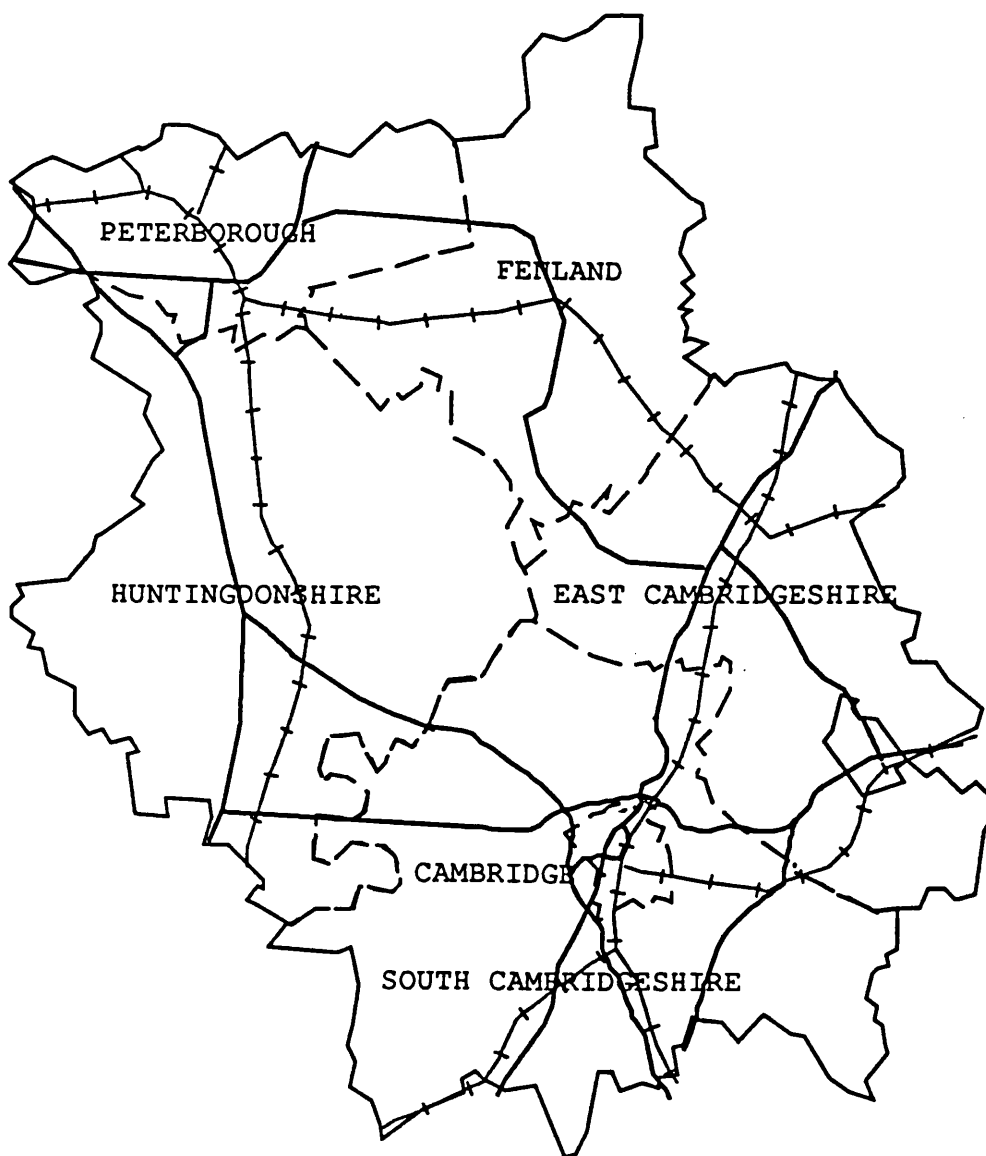


Figure 5.02

CAMBRIDGESHIRE DISTRICTS



- District Boundaries
- Main Roads
- +— Rail Lines

Scale 1 : 500,000

its boundaries. At the same time, these district authorities were also subject to the overall guidance of the Cambridgeshire Structure Plan, which was prepared by the Cambridgeshire County Council. Thus, the selection of Cambridgeshire afforded an opportunity for two levels of study. Firstly, it was possible to analyse how agreements were used over time within a large region which was subject to a single unified strategic plan. Secondly, it was possible to examine geographic variations in the use of agreements, and to compare and analyse the attitudes and behavior of six different, contiguous district authorities.

A significant stimulus to growth in Cambridgeshire was the fact that a publicly-financed New Town was developed within a 15,940 acre area in Peterborough. The designation of Peterborough as the site for a New Town in July 1967, and the appointment of the Peterborough Development Corporation (PDC) in February 1968, marked the beginning of a period of rapid and sustained growth in Peterborough. In April 1970, when construction of the New Town began, the population in the New Town area was 86,000. In March 1988, the population in the New Town area had increased 56% to 133,885 (PDC, 1988). During the same 18 year period, employment in the New Town Area increased 64% from 45,500 to 74,570 (Ibid.). Throughout the period, public officials and community leaders in Peterborough maintained a distinctly positive attitude toward growth and development. One major reason why growth was welcomed during this period was that most of the cost of public facilities and infrastructure related to new development was paid for with government funds made available through the Development Corporation. An agreement was entered into between the Minister of Housing and Local Government and Peterborough, with the approval of the Treasury, assuring that there would be "no undue burden" placed on the local authority for the costs of accommodating new development (Bendixson, 1988, 47). Under the agreement, "up until 1981-82 the development corporation would pay 85% of the cost of the main roads, £4 towards amenities for every person housed by the development corporation, and 50% of the capital costs of schools as soon as education investment became burdensome" (Ibid.). Capital expenditure by Peterborough Development Corporation peaked in 1980/81 at £29 million. From 1970 through 30 September 1988, over £452 million was spent in Peterborough on public investment, for purposes such as the construction of 26.5 miles of new or improved primary roads, and the construction of 23 new schools (Ibid., 218).

The attractiveness of Cambridgeshire as a residential and business location was further enhanced in the 1980's by a number of major publicly funded transportation infrastructure improvements. The M11 Motorway was extended from Bishops Stortford to Cambridge in 1980, making the southern half of the County increasingly accessible and attractive for development. Completion of the Cambridge Northern Bypass in 1979, and improvement and widening of the A604 (a main east-west highway) also gave a boost to

development in Huntingdonshire and particularly along Cambridge's northern fringe. Electrification of rail lines to Cambridge from London, completed in 1987, cut rail travel time between Cambridge and London by up to 30 minutes. This major improvement in rail passenger service made the Cambridge sub-area increasingly attractive as a place for London commuters to live, and had a very positive impact on the housing market in the area. The designation of Stansted Airport as London's third airport in 1979, and construction of a major airport terminal at Stansted capable of handling 15 million passengers per year (*M11 Corridor Review*, September 1990, 3), and the anticipated construction of a direct, express passenger rail link between Cambridge and Stansted Airport (which began service in 1991), further reinforced the perception of Cambridgeshire as an advantageous business and residential location. High-speed and frequent passenger rail service between Peterborough and London also reinforced the locational importance of Peterborough, and communities along the Peterborough-London rail corridor, such as Huntingdon and St. Neots.

During the second half of the 1980's, the Cambridge area achieved increased prestige as a corporate location. The area developed the reputation of being an English equivalent to the "Silicon Valley" in California. An influential study by Segal Quince Wicksteed (1985) entitled *The Cambridge Phenomenon: The Growth of High Technology Industry in a University Town* drew attention to the to the large number of high tech businesses which had been formed as spinoffs from the University of Cambridge (involving commercial applications of knowledge gained from University research), and to the unique prospects for growth in and around Cambridge. Follow-up studies confirmed that the M11 Corridor region was fulfilling its economic promise, and had the potential of rivaling the prosperous Thames Valley / M4 Corridor west of London as a national centre of high tech employment growth (Breheny and Hart, 1986; Breheny and Hart 1989a; Breheny and Hart 1989b). Developer awareness of the strengths and assets of the M11 Corridor as a desirable locus for future development projects was further stimulated by a new monthly publication, based in Cambridge, entitled *M11 Corridor Review: A Monthly Analysis of Expansion Trends*, which began publication in December 1986. The following is typical of the message and up-beat tone of monthly issues of the publication:

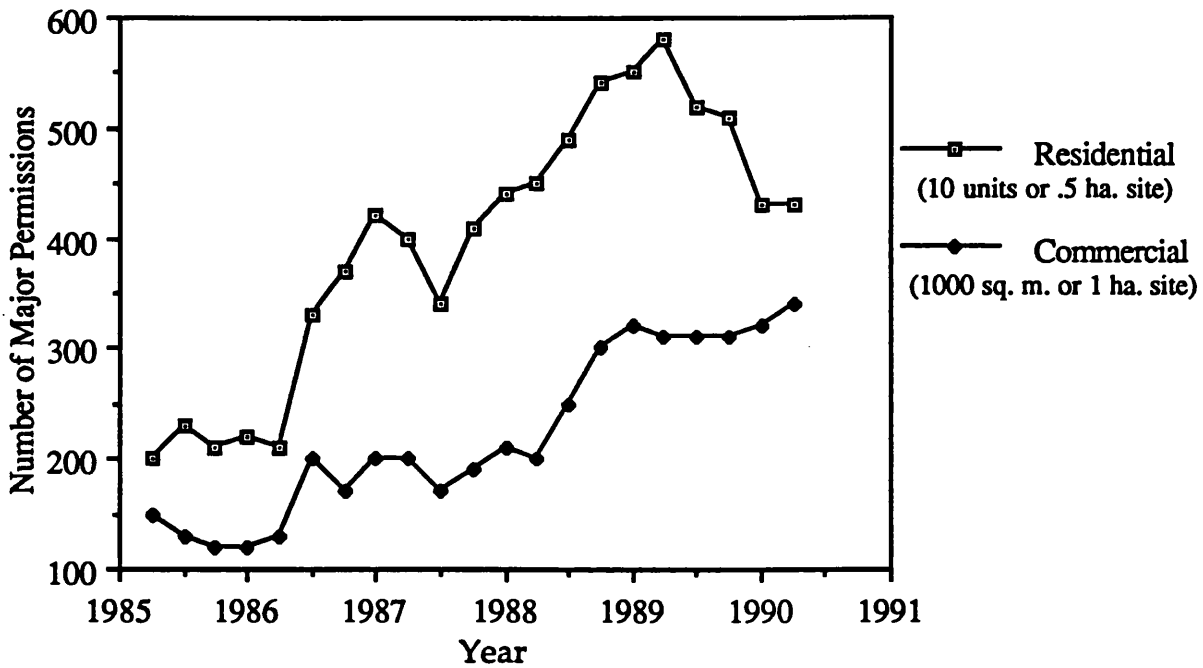
The reasons for growth of both jobs and people are well documented: the continuing expansion of high technology firms, both locally formed and, increasingly, those attracted to the area from elsewhere; improved communications, particularly to London, making Cambridge more attractive to commuters; the planned expansion of Stansted; the enormous number of visitors to Cambridge, all spending money in the city; and the rapid growth of East Anglia and the emergence of Cambridge as a regional service centre (Cambridge Publications, November 1988, 17).

The Boom of the 1980's

In Britain during the mid to late 1980's, as in the U.S., there was a development "boom." The "boom" was particularly evident in London, where a total of 2.3 million square metres of office space was given planning permission between 1984 and 1988 (Diamond, 1991, 82). "The peak in applications for planning permission was reached in mid-1987, with over 840,000 square metres..." (Ibid.). However the boom was not limited to London. Throughout the South East of England, there was a surge of development activity. As shown in Figure 5.03, the number of planning permissions granted throughout the Outer South East region rose steadily from 1985 onward. The number of permissions for major residential projects in the Outer South East peaked in the first quarter of 1989; permissions for major commercial projects peaked in the first quarter of 1990.

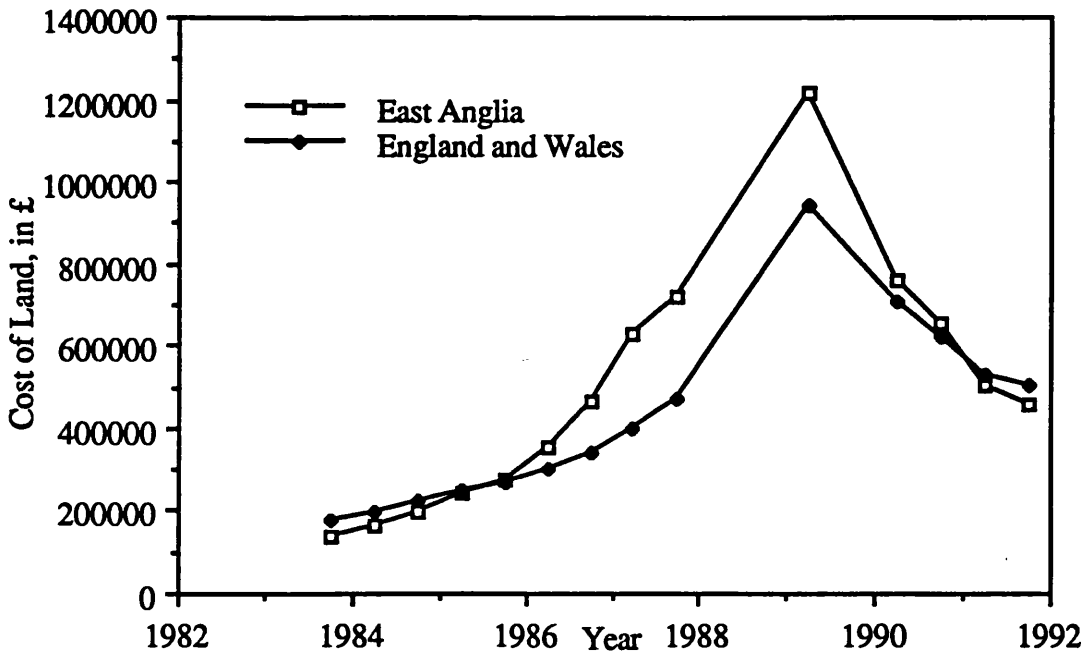
In the East Anglian region, the boom was more intense than in most parts of the United Kingdom. As reported in the *Financial Times* (4 November, 1988, 17), "Rental growth in East Anglia has been among the highest of the English regions." Although housing land prices in East Anglia lagged behind those elsewhere in England and Wales between 1980 and 1984, by 1988 housing land prices in East Anglia were running 595% above 1980 prices, compared to 316% for England and Wales as a whole (see Table 5.01). As shown in Table 5.02, the rise in the value of bulk land sales for residential development was particularly strong. The price of bulk residential land in East Anglia in Autumn 1983 was £135,000 per ha., significantly less than the price which pertained in England and Wales as a whole. However, by Spring 1989 the price per hectare of bulk land for residential development in East Anglia had risen approximately over 800%, to £1,219,000 per ha., at which point it was significantly higher than the price for bulk residential land in England and Wales as a whole. This data is represented graphically in Figure 5.04. Similarly, the cost of new homes built in East Anglia rose much sharply during the 1980's than in most other parts of Britain. As shown in Table 5.03, the mix-adjusted price index of new homes in East Anglia increased 293% between the first quarter of 1983 and the first quarter of 1989, compared to 211% in the United Kingdom as a whole. Over the course of the decade of the 1980's, East Anglia also led all regions in Great Britain in terms of the average annual number of house completions per 1000 population. An average of 6 new houses per 1000 population was completed in East Anglia in the years 1980-1990 (DoE, 1990, 56). The second most active region in terms of house completions was the South West, which had 5 house completions per 1000 population during the same period (Ibid.).

Figure 5.03:
Permissions for Major Projects, Outer South East



Source: DoE, Land and General Statistics Division

Figure 5.04:
Cost of Land for Residential Development (£ Per Hectare)
(Bulk Land Sales)



Source: Inland Revenue Valuation Office

Table 5.01 : Private Sector Housing Land Prices (Per Hectare)

<u>Year</u>	<u>Average Price East Anglia</u>	<u>% Change Since 1980</u>	<u>Average Price England and Wales</u>	<u>% Change Since 1980</u>
1980	£60,420		£102,820	
1981	£41,060	-32%	£114,210	11%
1982	£77,090	28%	£133,690	30%
1983	£69,740	15%	£151,580	47%
1984	£74,160	23%	£159,800	55%
1985	£137,780	128%	£198,170	93%
1986	£130,080	115%	£261,270	154%
1987	£205,260	240%	£354,400	245%
1988	£419,930	595%	£427,250	316%

Table 5.02 : Land for Residential Development, Bulk Land Sales, Per Hectare

<u>Year</u>	<u>Price Per Ha. East Anglia</u>	<u>% Increase Since 1983</u>	<u>Price Per Ha. England and Wales</u>	<u>% Increase Since 1983</u>
Autumn 1983	£135,000		£174,000	
Spring 1984	£163,000	21%	£194,000	11%
Autumn 1984	£196,000	45%	£220,000	26%
Spring 1985	£240,000	78%	£246,000	41%
Autumn 1985	£272,000	101%	£267,000	53%
Spring 1986	£350,000	159%	£301,000	73%
Autumn 1986	£467,000	246%	£343,000	97%
Spring 1987	£625,000	363%	£399,000	129%
Autumn 1987	£718,000	432%	£468,000	169%
Spring 1989	£1,219,000	803%	£943,000	442%
Spring 1990	£761,000	464%	£706,000	306%
Autumn 1990	£651,000	382%	£621,000	257%
Spring 1991	£505,000	274%	£529,000	204%
Autumn 1991	£458,000	239%	£504,000	190%

Source: Inland Revenue Valuation Office, Property Market Report

Although East Anglia had more of a boom than most other parts of the country, it also experienced a greater deflation of property and land values than other parts of the country after 1988. As shown in Table 5.03, house prices in East Anglia declined almost 24%, compared to a decline of approximately 12% in the United Kingdom as a whole. Similarly, after 1989 the average price of bulk land for residential development in East Anglia fell sharply. The average price of bulk land for residential development in Autumn 1991 was only slightly more than one-third what it was in Spring 1989 (see Table 5.02).

Table 5.03: Change in Mix-Adjusted New House Price Index, 1983-91

<u>Period</u>	<u>East Anglia Index</u>	<u>Annual Change (Percent)</u>	<u>United Kingdom Index</u>	<u>Annual Change (Percent)</u>
1rst Qtr.1983	100.00		100.00	
1rst Qtr.1984	115.10	15.1	112.50	12.5
1rst Qtr.1985	136.80	18.9	125.00	11.1
1rst Qtr.1986	154.60	13.0	134.30	7.4
1rst Qtr.1987	183.80	18.9	150.30	11.9
1rst Qtr.1988	234.80	27.7	164.50	9.4
1rst Qtr.1989	293.00	24.8	211.10	28.3
1rst Qtr.1990	269.90	-7.9	205.10	-2.9
1rst Qtr.1991	227.00	-15.9	190.10	-9.2

Source: Nationwide Building Society House Price Index, First Quarter 1991

Perhaps the clearest evidence of the development boom in Cambridgeshire, and the eventual bust, can be seen in the number of planning applications submitted in the County between 1979 and 1990 (see Figure 5.05). After a period of declining applications between 1979 and 1982, the number of planning applications in Cambridgeshire rose steadily. The period from 1985 through 1988 saw the sharpest increases in planning applications, with applications peaking during 1988. But after 1988, the number of planning applications dropped precipitously.

The rising demand for development in Cambridgeshire, and the increasing cost (and value) of land, was reflected in rising office and industrial rents in the two major commercial centres in the county. In Cambridge between March 1984 and March 1990, office rents increased 179%, and industrial rents rose 175% (see Table 5.04). Rental increases in Peterborough were somewhat more modest than in Cambridge, because of the greater supply of office and industrial premises, but were still substantial (see Table 5.05). Office rents in Peterborough rose from £5.25/square foot in 1984 to £13.50 per square foot at the beginning of 1990. Industrial rents increased 120% during the period. It is interesting to note that commercial and industrial rents did not fall in 1989 and 1990, as the property market in the County weakened.

Figure 5.05:
Applications Per Year Cambridgeshire, 1979-1990

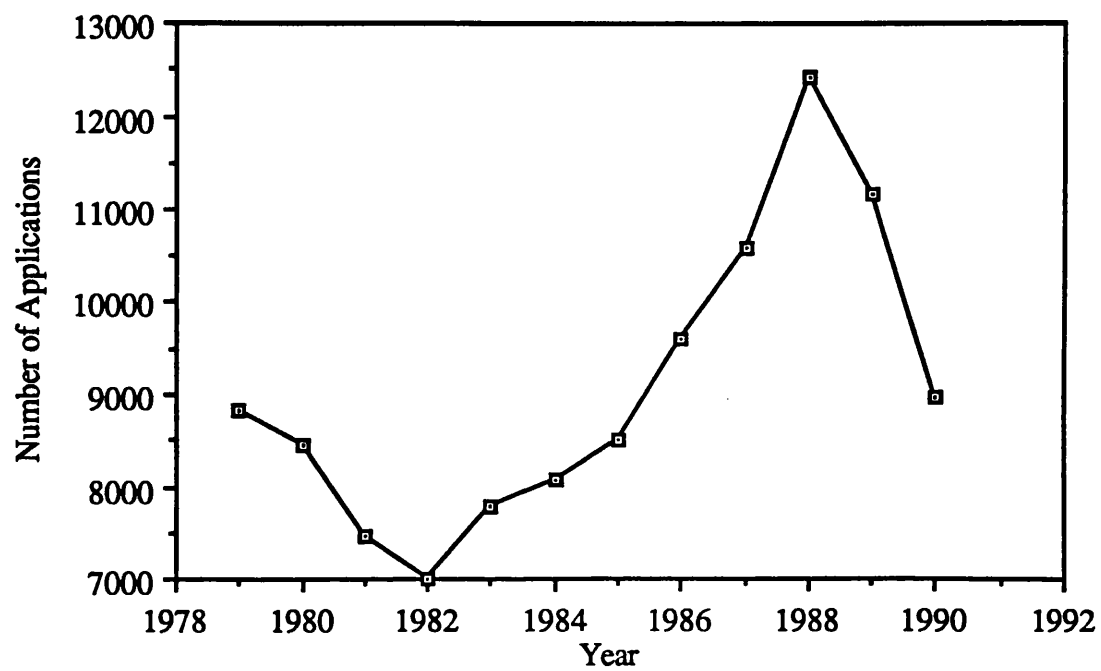


Table 5.04: Office and Industrial Space Rental Trends-- Cambridge

	<u>Rent/Sq. Ft.</u> <u>Offices</u>	<u>% Change</u> <u>From Prev. Yr.</u>	<u>Rent/Sq. Ft.</u> <u>Industrial Space</u>	<u>% Change</u> <u>From Prev. Yr.</u>
First Qtr. 1990	£19.50	21.9%	£5.50	22.2%
First Qtr. 1989	£16.00	39.1%	£4.50	28.6%
First Qtr. 1988	£11.50	21.1%	£3.50	16.7%
First Qtr. 1987	£9.50	11.8%	£3.00	33.3%
First Qtr. 1986	£8.50	6.3%	£2.25	12.5%
First Qtr. 1985	£8.00	14.3%	£2.00	0.0%
First Qtr. 1984	<u>£7.00</u>	<u>7.7%</u>	<u>£2.00</u>	<u>0.0%</u>
Increase, '84-90	£12.50	179.0%	£3.50	175%

Source: Jones Lang Wootton, 50 Centres: A Guide to Office and Industrial Trends

Table 5.05 : Office and Industrial Space Rental Trends-- Peterborough

	<u>Rent/Sq. Ft.</u> <u>Offices</u>	<u>Percent Change</u> <u>From Prev. Yr.</u>	<u>Rent/Sq. Ft.</u> <u>Industrial Space</u>	<u>Percent Change</u> <u>From Prev. Yr.</u>
First Qtr. 1990	£13.50	35.0%	£4.50	18.4%
First Qtr. 1989	£10.00	25.0%	£3.80	26.7%
First Qtr. 1988	£8.00	6.7%	£3.00	25.0%
First Qtr. 1987	£7.50	15.4%	£2.40	6.7%
First Qtr. 1986	£6.50	18.2%	£2.25	2.3%
First Qtr. 1985	£5.50	4.8%	£2.20	7.3%
First Qtr. 1984	<u>£5.25</u>	<u>5.0%</u>	<u>£2.05</u>	<u>0.0%</u>
Increase, '84-90	£8.25	157%	£2.45	120%

Source: Jones Lang Wootton, 50 Centres: A Guide to Office and Industrial Trends

As planning applications in Cambridgeshire increased, greater numbers of planning permissions were granted by local planning authorities in the County. As shown in Table 5.06, the number of housing units granted planning permission peaked in 1988, when permissions were granted for a total of 13,581 new housing units. Thereafter, the number of housing units granted permission began to fall. Permissions for commercial development also peaked in 1988 (see Table 5.07). In contrast to the data on housing permissions, the amount of commercial development granted permission remained at a fairly high level 1989 and 1990.

Table 5.06: Number of Housing Units Receiving Permission in Cambridgeshire, 1982-1990, by Type of Permission

<u>Year</u>	<u>Outline</u>	<u>Final</u>	<u>Total</u>
1982	2157	4242	6399
1983	1627	5352	6979
1984	2414	5007	7421
1985	3438	6359	9797
1986	4222	6803	11025
1987	4127	6527	10654
1988	4902	8679	13581
1989	5555	7068	12623
1990	2320	2932	7252

Table 5.07: Amount of Permitted Commercial Development Per Year, Cambridgeshire, 1982-1990

<u>Year</u>	<u>Outline Permissions Site Area (hectares)</u>	<u>Final Permissions Floor Area (sq. metres)</u>
1982	46.41	144,713
1983	61.56	255,117
1984	53.35	361,589
1985	25.09	287,917
1986	76.39	307,602
1987	142.63	424,617
1988	154.36	554,108
1989	144.99	523,153
1990	150.20	508,599

Operative Planning Policies in Cambridgeshire

One of the important questions which this research seeks to answer is whether local authorities in Cambridgeshire used agreements in ways that undermined and conflicted with established plans and policies. Thus, before attempting to analyse and interpret the data which was collected on agreements signed in Cambridgeshire between 1985 and 1990, it is important first to review county structure plan policies which were operative during the study period.

As noted by Sellgren (1989,50) "... although the planning system may be seen as negotiative, negotiation is not conducted in a vacuum, but takes place within a more or less firmly established policy context." Indeed, district planning authorities in Cambridgeshire were not simply free to grant any permissions they wished. Rather, local plans and policies, and actions by district planning authorities on individual planning applications,

were circumscribed by the county planning authority, and the county-prepared structure plan. The study period 1985 -1990 was actually affected by two county structure plans: first, the 1980 Structure Plan, which was officially adopted in 1979 and which was the official Structure Plan of the County through 1989; and the 1990 Structure Plan, which was in the process of being prepared during much of the study period. Draft copies of the proposed 1990 Structure Plan were first distributed for public consultation in 1986, and the final version of the plan was approved by the Secretary of State, with revisions, in 1989. As a result, proposed changes in planning policy being considered for inclusion in the 1990 Structure Plan probably had some effect on development control decisions, and the actions of developers and landowners, during the study period, even though it was not the official plan.

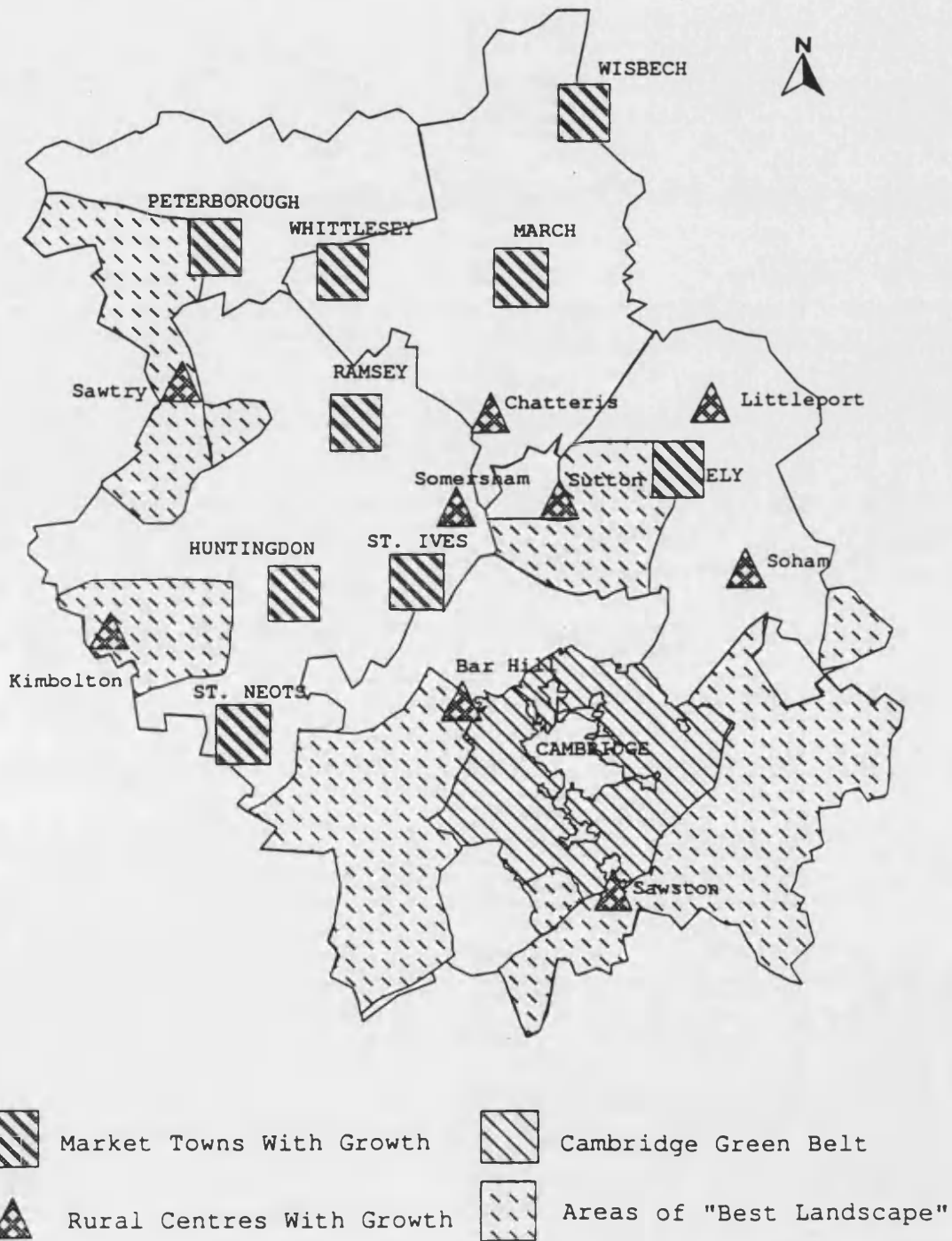
A "Key Diagram," representing the general planning and development control policies contained in the 1980 Structure plan, is presented in Figure 5.06. The 1980 Structure Plan allowed and encouraged growth in a number of market towns (Peterborough, Huntingdon, St. Neots, St. Ives, Ely, Ramsey, March, Whittlesey and Wisbech) and to a lesser extent in certain rural centres (Bar Hill, Sawston, Sawtry, Kimbolton, Soham, Somersham, Sutton, Littleport and Chatteris). At the same time, the 1980 Structure Plan sought to constrain development in many other areas. The most severe constraint on development was in the 3- 5 mile wide Cambridge Green Belt. The plan also classified large parts of the county as "areas of best landscape," where development was discouraged. Areas designated by the plan as having the "best landscape" were heavily concentrated in the southern third of the county. Other areas identified as having the "best landscape" were located around Ely, and in western portions of Huntingdon and Peterborough. Six rural centres located either within the Green Belt or in "areas of best landscape," (Bottisham, Cottenham, Comberton, Melbourn, Linton and Yaxley) were identified for "little growth." Five of the six rural centres designated in the 1980 Structure Plan for "little growth" were immediately outside Cambridge.

Planning policies put forward in the 1990 Structure Plan were broadly similar to those contained in the 1980 Structure Plan, although there were some changes in emphasis (Vigor,1990,int.). For example, the 1990 Structure Plan exerted even greater constraint on development south of Cambridge, so as to maintain a buffer of countryside between Cambridgeshire and urbanising areas to the south. The Key Diagram contained in the 1990 Structure Plan classified most of the area south, east and west of Cambridge as either being in the Green Belt, or as "Areas of Best Landscape." Furthermore, the village of Sawston, located south of Cambridge, which was designated for growth in the 1980 Structure Plan, was no longer identified for growth in the 1990 Structure Plan.

Both the 1980 and 1990 Structure Plans sought to limit new office and industrial

Figure 5.06

1980 Cambridgeshire Structure Plan Policies






development in the City of Cambridge, except in cases involving the development of space for high technology and research and development firms requiring a Cambridge location. However, the 1990 Structure Plan was even clearer than the 1980 Plan in seeking to disperse new commercial and industrial development away from Cambridge and toward to other districts and towns, so that other parts of the County could share in the employment growth and economic prosperity generated by Cambridge's increased reputation as a business and industrial centre. This policy of dispersal was given added impetus by a major study by the Department of Land Economy of the University of Cambridge Department of Land Economy (1989), which concluded that the growth effects due to the growing concentration of high technology firms in Cambridge did not need to be limited to the Cambridge area, and recommended strategies for dispersing future growth to secondary centres in the county and region. In addition, the 1990 Structure Plan strengthened and extended the policy of constraining major housing development in the area surrounding Cambridge. The 1990 Structure Plan admitted the need to produce enough new housing in Cambridge and South Cambridgeshire to meet local housing needs, but-- even more than the 1980 Structure Plan-- sought to discourage the building of new housing in and around Cambridge which would attract commuters to London to live in Cambridge (Vigor,1990,int.).

One important planning policy change which did occur in the 1980's, and which was reflected in the 1990 Structure Plan, was an important revision to the Cambridge Green Belt. When the A45 Cambridge Northern Bypass was completed in December 1978, running east and west along the northern fringe of Cambridge, it was built through the Cambridge Green Belt. As a result, the undeveloped land lying between the new bypass and the northern edge of the City was shown in town maps as being in the Green Belt. The City of Cambridge favoured removing the land south of the A45 from the Green Belt, so that it could be developed to accommodate high-technology and research and development (R&D) firms. South Cambridgeshire District Council, on the other hand, contended that the land was still officially in the Green Belt, and sought to refuse planning permission for a proposed science and office park development on its side of the boundary. (For further discussion, see Appendix Two-- Selected Agreements, St. John's Innovation Park.) In 1984, the Cambridgeshire County Council's Green Belt Local Plan called for the removal of much of the land south of the A45 from the Green Belt. Then in March 1989, in approving the Cambridgeshire Replacement Structure Plan, the Secretary of State directed that additional land south of the A45 be removed from the Green Belt. A total of 55 acres of land was removed from the Cambridge Green Belt in these two separate actions (see Figure 5.07). To compensate for this loss of Green Belt land, an even larger area was added to the Green Belt south of Cambridge. Figure 5.08 provides an overview of the

Figure 5.07

Land Removed From Green Belt Cambridge Northern Fringe

-  Green Belt
-  Removed in 1984
-  Removed in 1989

Scale 1 : 180,000

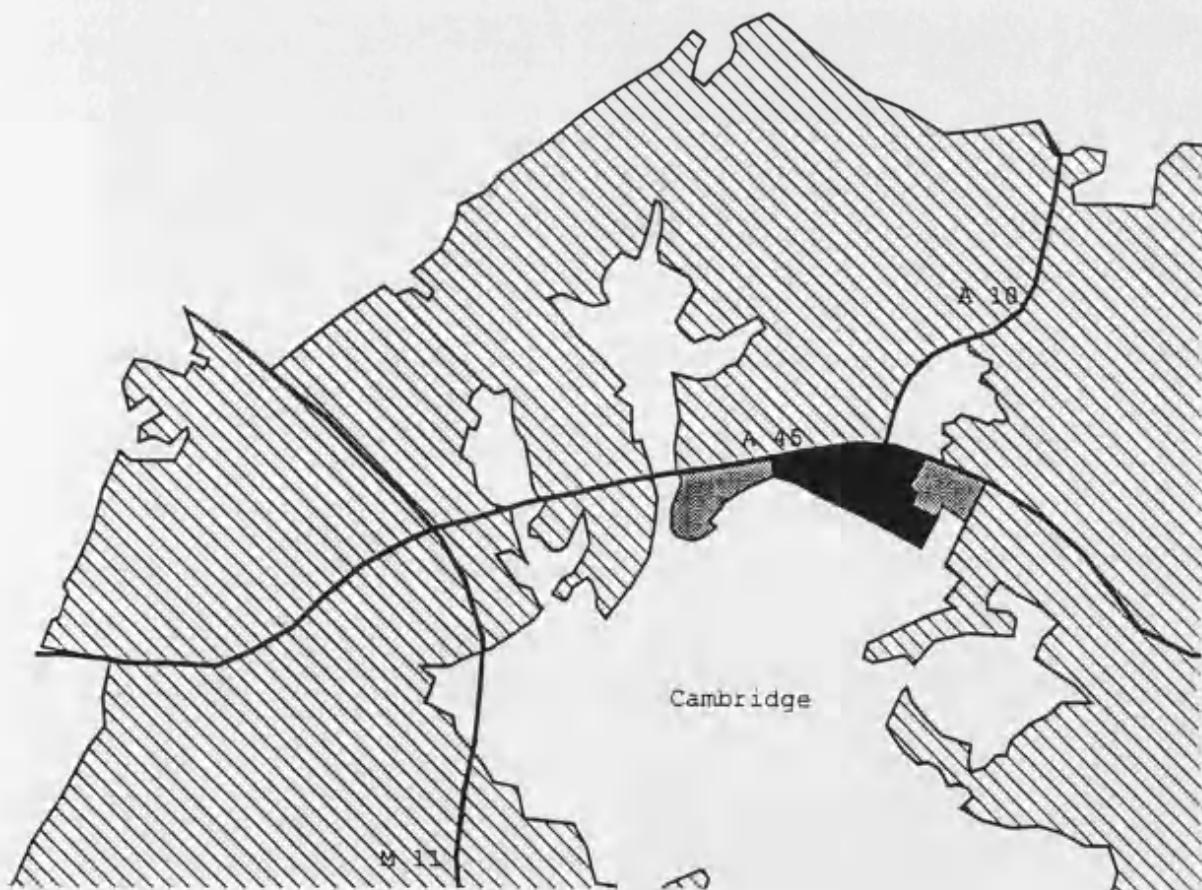
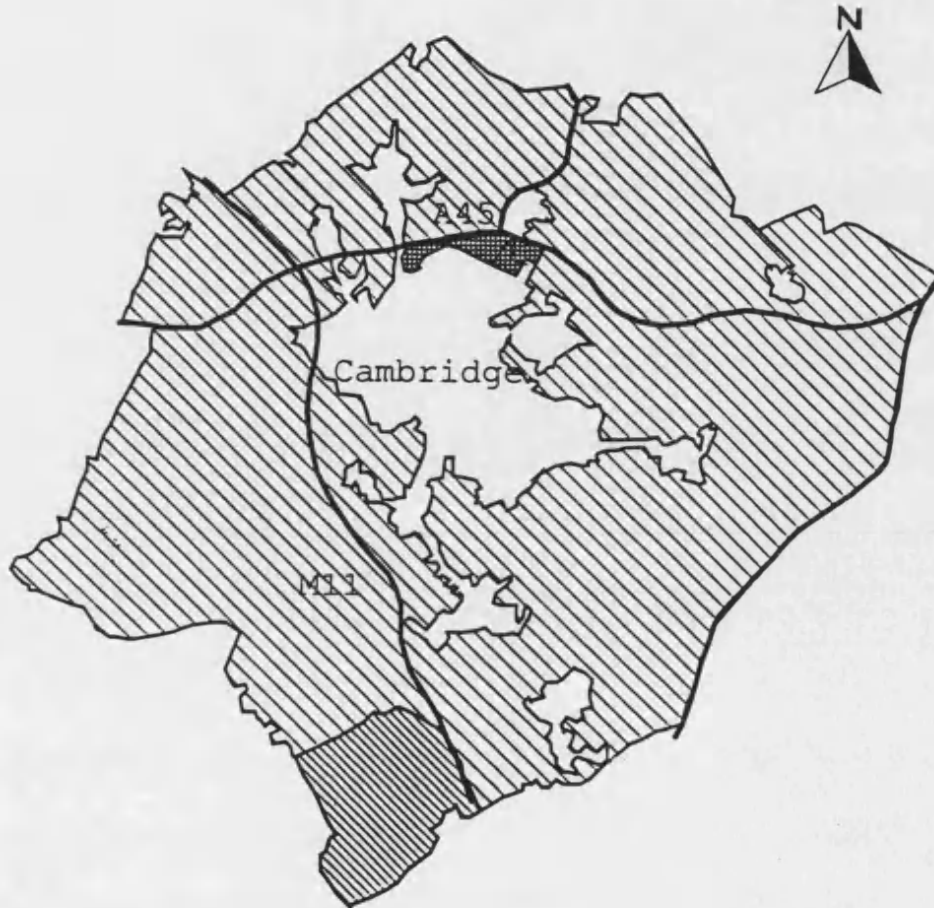


Figure 5.08

Changes To Cambridge Green Belt 1984-1989



Green Belt

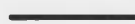


Added to Green Belt in 1984



Removed from Green Belt, 1984-89

Cambridge Northern Fringe
(See Next Figure For Details)



Main Roads

Scale 1 : 180,000

Cambridge Green Belt, showing areas added to and removed from the Green Belt between 1984 and 1989.

Two major new planning ideas were put forward in the 1990 Structure Plan which had major implications for the negotiation of agreements. First, the 1990 Structure Plan stated that developers would be expected to bear a much greater share of the burden of providing facilities and infrastructure related to new development. The 1989 County Structure Plan policy on developer contributions and agreements was as follows:

Developers will be expected to provide sites and buildings for community facilities and infrastructure needed to serve the development or to contribute to provision in proportion to the scale of development. The local planning authorities will be looking to the developers of any proposals requiring new infrastructure or new community facilities (or the expansion of existing facilities), to provide sites and to cover the costs of construction. In the case of smaller developments contributions towards such provision will be sought. This provision may include, for example, roads, schools, libraries, sports and leisure facilities, open space, day centres and health centres etc. as may be necessary. These requirements will normally be secured by legal agreements, including arrangements for phasing, and financial guarantees. Such agreements should be secured before the granting of planning permission (Cambridgeshire Structure Plan, Explanatory Memorandum, March 1990, 83).

This policy of seeking developer contributions was accompanied by specific standards for the provision of facilities and amenities related to new development. For example, Policy R5 stated that “Playspace should be provided in all new residential areas of more than 20 houses at a standard of 15 square metres per dwelling. Such playspaces should have a minimum size of 1000 square metres, and shall be equipped...”

The second major new planning idea was that a considerable share of new development in Cambridgeshire would be accommodated in at least two privately-developed New Settlements. The idea of the New Settlements was in many ways connected to the previously-cited policy on developer contributions, since it was expected that agreements would be negotiated through which developers of the New Settlements would agree to make substantial contributions toward the provision of need public infrastructure and facilities. The need for a new method of accommodating growth in Cambridgeshire was to some extent forced by a slow-down in the pace of development within the Peterborough New Town, and the phase out of the Peterborough Development Corporation in 1988. For example, whereas the 1980 Structure plan called for the construction of 23,700 housing units in Peterborough in the 1980's, the 1990 Structure plan called for the construction of only 18,600 new units in Peterborough between 1990 and 2000 (5100 fewer than was called for in the 1980's). Given this decrease in growth within Peterborough New Town, and increased constraint on development south of

Cambridge, new areas had to be designated to accommodate future growth. Existing market towns, and a number of rural centres, such as Chatteris, Ramsey, Soham, etc., were designated to handle increased amounts of new development. But other areas for development also needed to be designated. In a bold planning move, Cambridgeshire County Council proposed that at least two New Settlements be developed outside of Cambridge to accommodate a total of 4500 new housing units. Precisely where these Cambridge New Settlements were to be located was not specified in the plan, but it was envisioned that they would be located somewhere generally along the A45 or A10 corridors, either in South Cambridgeshire or in East Cambridgeshire. In the Spring of 1989, a third, and much larger, proposed New Settlement, expected to accommodate 5300 new housing units, was added to the Cambridgeshire Structure Plan by the Secretary of Environment (*M11 Corridor Review*, November 1991, 6). The site for the third New Settlement, specifically selected by the Environment Secretary, was a 2000 acre disused brickworks property, formerly owned and operated by London Brick Co, located to the South Township of Peterborough, located partially in the Southern Township of Peterborough, and partially in Huntingdonshire.

Development Pressure and Development Control in Cambridgeshire

Although development pressure was relatively strong in Cambridgeshire throughout much of the study period, development pressure was undoubtedly more intense in some local authorities than in others. One frequently used index of development pressure is the number of planning applications per year per 1000 population.

Table 5.08: Development Pressure Per District, 1984-1989 -- Applications Per 1000 Population.

	<u>Applications / Year (6 Year Avg., '84-'89)</u>	<u>Average Pop. 1980-1990</u>	<u>Applications Per 1000 Pop.</u>
Cambridge	1302	103,170	12.74
East Cambs.	1427	58,260	24.49
Fenland	1362	71,000	19.18
Huntingdon.	2267	137,000	16.55
Peterborough	1197	146,000	8.20
South Cambs.	2508	112,700	22.25

According to the data in Table 5.08, districts in Cambridgeshire which experienced the most development pressure, in rank order, were East Cambridgeshire, South Cambridgeshire, and Fenland. Peterborough and Cambridge were apparently under the least development pressure. While this data is useful in that it suggests that there was

considerable pressure for development in rural districts of Cambridgeshire, it is also somewhat misleading. A crude index of applications per 1000 population always tends to produce low scores for heavily built-up areas (Hebbert, 1992). Moreover, highly publicised policies of constraint in Cambridge and South Cambridgeshire undoubtedly had the effect of discouraging the submission of planning applications in those high demand areas-- because developers were convinced that they stood little chance of obtaining approval.

Table 5.09 presents data showing the percentage of all Section 29 planning applications (residential and commercial applications, major plus minor applications) approved in the six districts between 1985 and 1991. The data shows that the highest overall rate of approval of planning permission was in Peterborough, and the lowest rate of approval was in South Cambridgeshire.

Table 5.09: Percent of Section 29 Planning Applications Approved, 1 April, 1985 - 30 March, 1991

Cambridge	73%
East Cambridgeshire	73%
Fenland	80%
Huntingdonshire	78%
Peterborough	86%
South Cambridgeshire	65%

Source: DoE Development Control Statistics

Table 5.10: Percent of Major Development Applications Approved, 1 January, 1985 - 31 December, 1990

	<u>Residential</u>	<u>Commercial</u>
Cambridge	59%	61%
East Cambridgeshire	73%	81%
Fenland	75%	91%
Huntingdonshire	66%	83%
Peterborough	82%	82%
South Cambridgeshire	49%	73%

Source: PS-2 Quarterly Reports Filed by Local Authorities with DoE

A more revealing and discriminating way of measuring the constraint exerted by individual planning authorities is to exclude minor planning applications, and instead to consider the percentage of *major* planning applications which the various planning

authorities approved. It is also useful to distinguish between approvals of commercial and residential projects. As shown in Table 5.10, local planning authorities in Cambridgeshire exerted much greater constraint on major applications for residential development than they did on major applications for commercial development. In Fenland, for example, 91% of all major commercial applications were approved, compared to 75% of major residential applications. In South Cambridgeshire, 73% of all major commercial planning applications were approved, but only 49% of major residential applications. Only in Peterborough and Cambridge did planning authorities approve roughly equal percentages of major commercial and residential applications. Comparing Tables 5.10 and 5.09, we see that rates of approval for major residential applications were almost always *lower* than for all Section 29 planning applications, while rates of approval for major commercial developments were almost always *higher* than for all Section 29 planning applications. Only in Cambridge was the rate of refusal of major commercial planning applications lower than the rate at which it approved all Section 29 applications-- which is a clear indication of Cambridge's effort to constrain major commercial development.

Patterns of Growth and Development in Cambridgeshire in the 1980's

Not all districts shared equally in the growth that occurred in Cambridgeshire between 1980 and 1990 (see Table 5.11). These differences in rates of growth were to some extent the product of differences in market demand, but were also influenced to a considerable degree by planning and development control policies drafted at the county level, and implemented by local planning authorities. For example, the population in the City of Cambridge actually decreased by 540 persons (-.01%) during the decade, not because there was no demand for additional housing, but because the planning authority sought to discourage the construction new housing, other than to meet local needs. The largest increase in population was in Huntingdonshire, where the population increased by 22,000 (17%).

Table 5.12 presents data showing the number of new houses completed in the six districts in the county between 1982 and 1984, and between 1985 and 1990. As shown in the table, more new houses were completed in Huntingdonshire between 1985 and 1990 than in any other district in the county. However, comparing the average number of housing completions in 1982-84, against the period of 1985-90, we find that the greatest growth in housing completions, in percentage terms, was in the rural districts of Fenland and East Cambridgeshire. By way of contrast, *fewer* houses were completed on an annual basis in the urban districts of Cambridge and Peterborough between 1985 and 1990 than in 1982-84. The fall-off in house completions in Cambridge was particularly dramatic, given the fact that 1985-90 was a boom period.

Table 5.11: Change in Population, by District, 1980-90

<u>District</u>	<u>Population 1980*</u>	<u>Population 1990*</u>	<u>Change</u>	<u>Percent Change</u>
Cambridge	103,440	102,900	-540	0%
East Cambs.	54,920	61,600	6,680	12%
Fenland	66,800	75,200	8,400	13%
Huntingdonshire	126,000	148,000	22,000	17%
Peterborough	136,600	156,000	19,400	14%
<u>South Cambs.</u>	<u>110,900</u>	<u>124,500</u>	<u>13,600</u>	<u>12%</u>
Total	598,660	668,200	69,534	12%

Source: CIPFA Finance and General Statistics

* Local Authority's own estimate

Table 5.12: House Completions by District, 1982-84 Versus 1985-90

	<u>1982-84</u>	<u>Avg./Yr</u>	<u>1985-90</u>	<u>Avg./Yr</u>	<u>% Change 82-84/85-90</u>
Cambridge	1487	496	2416	403	-19%
East Cambs.	1101	367	3234	539	+47%
Fenland	1351	450	4828	805	+79%
Huntingdon.	3201	1067	9013	1502	+41%
Peterborough	4360	1453	8330	1388	- 4%
<u>South Cambs.</u>	<u>2536</u>	<u>845</u>	<u>5269</u>	<u>878</u>	<u>+ 4%</u>
Total	14,036	4,679	33,090	5,515	+18%

Source: Cambridgeshire County Council

Monitoring of commercial and industrial development by Cambridgeshire County Council did not begin until 1986. Therefore no statistics are available to compare the amount of commercial space that was completed during the study period (1985-90) against that of a prior period. However, data compiled for 1986-1990 (see Table 5.13) indicates that Peterborough was the primary centre for industrial, office and retail development in the County. Huntingdonshire was the second most important district in terms of industrial and office development, while Cambridge was second in terms of new retail floorspace. Little retail development occurred in East Cambridgeshire or in South Cambridgeshire.

Table 5.13: Commercial Floorspace Completed 1986-1990

	<u>Industry and Offices Completed (sq. m.)</u>	<u>Retail Floorspace Completed (sq. m.)</u>
Cambridge	128,450 (16%)	14,436 (21%)
East Cambs.	44,030 (6%)	381 (1%)
Fenland	55,625 (7%)	9,899 (14%)
Huntingdonshire	169,394 (21%)	9,618 (14%)
Peterborough	265,130 (34%)	30,289 (44%)
<u>South Cambs.</u>	<u>127,734 (16%)</u>	<u>3,766 (6%)</u>
Total	790,372 (100%)	68,389 (100%)

Source: Cambridgeshire County Council, Land Use Monitoring Unit, December 1990

Although varying levels of market demand for different types of development certainly played a role in the uneven pattern of development, the distribution of development within the County was strongly shaped by County planning policies, and by local planning authorities who operated within the framework of those County policies. According to a report prepared by the Land Use Monitoring Unit of the County Council, during the 3 1/2 year period from the middle of 1986 through December 1989, 80% of all housing completions in Cambridgeshire took place in areas targeted by the structure plan as "growth settlements" (CCC,1989c).

As development activity increased in Cambridgeshire after 1985, there was an inevitable increase in speculative activity. Applications for planning permission were often submitted in the absence of concrete plans for development, simply in the hope of profiting from the rise in land values. One indication of this speculative activity can be seen in data on the volume of outstanding, unimplemented planning approvals.

Table 5.14: Unimplemented Approvals -- Housing Units

	<u>31 Dec. '86</u>	<u>30 June '88</u>	<u>31 Dec. '89</u>
Cambridge	1572	1906	1988
E. Cambs.	1883	2121	2831
Fenland	3376	4223	7149
Huntingdonshire	6421	6412	6712
Peterborough	2952	5076	5081
<u>South Cambs.</u>	<u>3590</u>	<u>3202</u>	<u>2861</u>
Total	19,784	22,940	26,587

Source: Cambridgeshire County Council, Land Use Monitoring Unit, December 1989

As shown in Table 5.14, unimplemented approvals for housing rose substantially in the county between the end of 1986 and the end of 1989. Only South Cambridgeshire had fewer unimplemented planning permissions for housing in December 1989 than in December 1986. In East Cambridgeshire, the number of unimplemented approvals for housing in December 1989 was 50% greater than in December 1986. In Fenland, the number of unimplemented housing units with planning permission more than doubled between December 1986 and December 1989. In fact, according to a monitoring report prepared by Cambridgeshire County Council, by December 1989 there was a 22-year supply of land with planning permission for housing in Fenland, based on the rate of development forecast in the Structure Plan (CCC,1989c, 2).

By the end of 1990 there was also large supply of commercial land with unimplemented planning permissions, particularly in some districts. As shown in Table 5.15, the total amount of land with outstanding planning permission for industrial development at the end of 1990 was 513 hectares-- almost three times greater than the total amount of industrial land that was developed during three and a half years, from mid-1986 through the end of 1990. The largest supply of land with outstanding permissions for industry/warehousing/high tech. was in Fenland (169 hectares). As 1990 ended, there was also an ample supply of unimplemented permissions for office development (see Table 5.16). Over half of the office space with outstanding permission was in Peterborough, while a third was in Huntingdonshire.

Table 5.15: Industry / Warehouse / High Tech. Completions and Take-up, by District (Hectares)

	Completions Mid 1986- End 1990	Under Construction End 1990	Outstanding Permissions End 1990
Cambridge City	6.13	--	13.12
South Cambs.	30.54	4.92	47.54
East Cambs.	15.68	2.44	62.09
Fenland	21.24	4.78	169.64
Huntingdonshire	49.75	13.04	110.66
<u>Peterborough</u>	<u>50.17</u>	<u>7.19</u>	<u>109.72</u>
Total	173.51	32.37	512.77

Source: Cambridgeshire County Council, Land Use Monitoring Unit, December 1990

Table 5.16: Office Completions, Take-up, and Outstanding Permissions, by District (Square Metres)

	<u>Completions Mid-1986- End 1990</u>	<u>Under Construction End 1990</u>	<u>Outstanding Permissions End 1990</u>
Cambridge City	98,020	13,340	18,969
South Cambs.	33,731	8,306	14,162
East Cambs.	7,939	1,950	3,741
Fenland	6,188	713	4,241
Huntingdonshire	39,324	14,855	65,358
<u>Peterborough</u>	<u>67,993</u>	<u>99,169</u>	<u>118,152</u>
Total	253,195	138,333	224,623

Definition of the Study Period

An attempt was made to select a study period long enough to allow for an analysis of how local authority use of agreements has varied and changed over time. On the other hand, it was not possible to go back in time too far in researching local authority project files, and still be assured of accuracy and completeness. With the passage of time, there was an increased likelihood that old project files would be missing or incomplete. At the County Highway Authority, because of space limitations, project files were put in storage after seven years because of space limitations. Another consideration which set a limit on the research period was that it was desirable to be able to conduct follow-up interviews with planning staff about particular projects and agreements. This became more difficult to do as more years passed, given frequent staff turnover. Thus, practical considerations helped to set a limit the time period of the research.

It was especially important to try to define a time period during which the “rules of the game,” (i.e. government policy regarding agreements, government taxing policy related to betterment, etc.) were largely the same. In March 1985 the Development Land Tax was abolished. While the Development Land Tax was in effect, developers were much less inclined to want to obtain permission to develop land, and local authorities were less inclined to rely on agreements to obtain contributions. It therefore did not appear wise to extend the study back much before March 1985. It also did not seem to make sense to extent the study period beyond 1 April 1990, inasmuch as from that day forward developers were required to pay a mandatory fixed fee (called an “infrastructure charge”) toward the capital costs of improving and expanding off-site water-related infrastructure. With the imposition of the infrastructure charge, it presumably became less necessary for local authorities to sign agreements with developers involving contributions for sewer and drainage infrastructure. According to the Department of Environment (1989,9), with the

water infrastructure charge in place, “planning decisions should no longer turn on the willingness or otherwise of developers to enter into agreements under section 52.”

With these two benchmark dates in mind, the study period which was chosen was 1 January 1985 through 31 March, 1990. Throughout this study period, there was no change in official central government policy on planning agreements, as expressed in Circular 22/83. It was only after the study period ended, that the government issued revised policy statements and legislation affecting the use of agreements : Circular 7/91 on *Planning and Affordable Housing* (May 1991); and the 1991 Planning and Compensation Act. (For a discussion of developments after the study period, see Chapter Eight.) The only significant legal and institutional change during the study period which may have had an effect on the negotiation of agreements was the privatisation of the regional water authorities, which took effect in September 1989.

The choice of 1985-1990 was fortunate, inasmuch as it encompassed a period during which the property market swung both up and then down. For much of the study period, the property market was rising and buoyant, and developers might have been particularly willing to offer contributions. However, during the end of the study period, the market was weakening, and developers might have been less willing to offer contributions. Thus, the study period afforded an opportunity for evaluating the effects of the changes in the property market on the negotiation of agreements.

Research Approach in Cambridgeshire

Collection and Analysis of Data on Planning Permissions

Two special requests for computer-generated data were made to Cambridgeshire County Council. First, a computer print-out was obtained which provided an accurate accounting of the total number of residential and commercial planning permissions granted by individual districts in Cambridgeshire between 1 January 1985 and 30 March 1990, including planning permissions granted on appeal, broken down on a quarterly basis,

Secondly, a more detailed computer print-out was obtained which provided specific information on planning permissions which were granted for projects of a major size (defined as 50 or more housing units or 900 or more square metres of commercial and industrial floor space), broken down by individual districts. For each major project listed, the following information was obtained:

Application number
Type of application (Outline, Final or Reserved Matter)
Grid Reference Number
Size of Site
Type of Project

Address
Name of applicant
Date of application
Date approved
Size of Project (Amount of floorspace or number of housing units)

Identification of Agreements and Permissions Subject to Agreements

An initially difficult and challenging aspect of this research was how to compile a complete list of all agreements signed in each district in Cambridgeshire during the period of study. None of the six district planning authorities, nor the Cambridgeshire Council Council, maintained a register of planning agreements they had signed. Moreover, with frequent staff turnovers within planning departments, members of the planning staff often did not know whether or not previous planning permissions had been subject to planning agreements.

The difficulty of compiling a complete list of planning agreements was initially confronted in a pilot study carried out in the City of Cambridge. The only way to identify permissions in Cambridge which involved agreements appeared to be to manually search the project files of each and every planning permission granted during the study period. After fifteen days of combing the files of planning permissions in Cambridge, I met with the District Solicitor, who informed me that all signed planning agreements were kept in notebooks in the Local Land Charges Office. I knew when a Section 52 agreement was signed it was recorded as a "local land charge," but that did not necessarily mean that copies of agreements would be kept in notebooks in the Land Charges Office. (It should be noted that no one in the Planning Department mentioned, or appeared to know, that all planning agreements were kept in the Land Charges Office.)

In most of the other districts in Cambridgeshire, I also found that the Local Land Charges Office was the place to go to compile a complete list of planning agreements. Only at East Cambridgeshire were copies of signed planning agreements entered into the Planning Register maintained in the Planning Department. At South Cambridgeshire, copies of agreements were filed in notebooks kept in the Land Charges Office-- not chronologically, but by parish. In Peterborough, where very few agreements were signed before 1988, the Land Charges clerk luckily decided on her own initiative to keep copies of agreements in a folder in her desk. The greatest difficulty in identifying and obtaining agreements was at Fenland District Council, where the Land Charges Office did not place signed planning agreements into notebooks. Complicating the search for agreements was the fact that planning agreements were often signed in Fenland without referencing the number of the planning application which occasioned the agreement-- so that it was often difficult to link planning agreements to planning applications. Moreover, a large number of

planning agreements were not kept at the District Council Offices, but were eventually found to be kept at the offices of a private legal firm retained by the District to assist it in drafting agreements. Fortunately, a clerk in the Local Land Charges Office maintained an informal list of Section 52 agreements for her own use, which included names of applicants and project locations.

Once Section 52 Agreements were identified, I went back to the Planning Departments in each district and requested the relevant project application files for review. The project application files contained a wealth of information, including considerable data on the proposed project and site, site maps, internal memoranda within the Planning Department and between planning officers and district solicitors, reports and recommendations from the Chief Planning Officer and staff, minutes of planning committee meetings, letters to the planning authority from the Anglian Water Authority and the county water authority commenting on proposed schemes and the possible need for infrastructure contributions, communications back and forth between local authority officers and applicants, etc. Reviewing these project application files often made it possible to reconstruct the sequence of actions, and back and forth negotiations, that accompanied projects which were subject to agreements. Through a review of material in project files, I was also able to identify instances where the content and nature of proposed developments, and offers of contributions, changed over time based on the negotiations.

Interviews

Interviews were conducted within the study area with local authority officials in Cambridgeshire (chief planning officers, planning staff, technical officers and staff, and district solicitors). These interviews were helpful in a number of ways. I was able to learn about local authority attitudes toward negotiating agreements and contributions, as well as to uncover background information on specific projects which involved agreements. I was also able to gain insights on LPA policies and practices regarding agreements which were not necessarily reflected in official plans and policy statements. Twenty-three different district authority officials were interviewed over the course of the study, some of whom were interviewed more than once. In each local authority, I conducted at least 3 interviews. The maximum number of interviews conducted in an individual district authority was 7. I also interviewed senior officers of the regional water authority (Anglian Water Authority), as well as officers of the National Rivers Authority, and the Commission for New Towns (CNT). Related to the study of agreements in Cambridgeshire, I conducted 52 interviews, as follows:

- Local authority officials-- planning officers, technical staff, and district solicitors(32);
 - County Structure Plan Officer and staff(3);
 - County Highway Authority planners and engineers(5);
 - Anglian Water Authority officials(5);
 - Developers and the National Land Coordinator of The Housebuilders Federation(6);
 - Commission for New Towns(1)

Other Sources of Data

To obtain as accurate and complete a picture as possible of the planning and development context in Cambridgeshire, and of the forces and factors affecting local authority use of agreements, I sought additional data through the following methods and sources:

Examination of Documents

- County Structure Plans of 1980 and 1990
- Monitoring reports of "Outstanding Commitments for Housing," and "Outstanding Commitments for Commercial Land," compiled by the Corporate Planning Department of Cambridgeshire County Council
- Issues of *Chartered Surveyor Weekly*, *Estate Times*, and *M11 Corridor Review*-- for data on development projects and local authority actions during the study period
- Relevant local plans and policy documents, planning department studies and reports, progress reports, proposals and draft policies, etc.
- Newspaper articles about relevant projects and developments in Cambridgeshire
- Development control statistics-- General Development Control Returns ("PS 2 reports")-- prepared on a quarterly basis by local planning authorities for the Department of Environment
- Data on major publicly-funded trunk road and county road improvement schemes completed during the 1980's, and anticipated highway improvement schemes for trunk roads and county roads scheduled for completion in 1990-1993
- Anglian Water Authority Annual Reports and Financial Statements

Observation

- Site visits to selected projects involving agreements with significant contributions(18)

Agreements Counted and Not Counted

My initial intent in conducting research in Cambridgeshire was to document and evaluate the use of agreements under Section 52 of the Town and Country Planning Act (TCPA) of 1971, as amended. What I had read about agreements in the planning literature led me to believe that most agreements were signed at the district authority level under the provisions of Section 52 of the Town and Country Planning Act. (The provisions of Section 52 were later incorporated unchanged as Section 106 of the 1990 TCPA, which was adopted on 24 May 1990.) However, in researching agreements at Local Land Charges offices it soon became clear that agreements were frequently signed which referenced legislation other than the Town and Country Planning Act. I found agreements that were signed under Section 111 of the Local Government Act of 1972, and others which were based on Section 33 of the Local Government Act (Miscellaneous Provisions) of 1982. Such Section 33 and Section 111 agreements were not counted in this research if they were signed without also referencing to Section 52, TCPA.

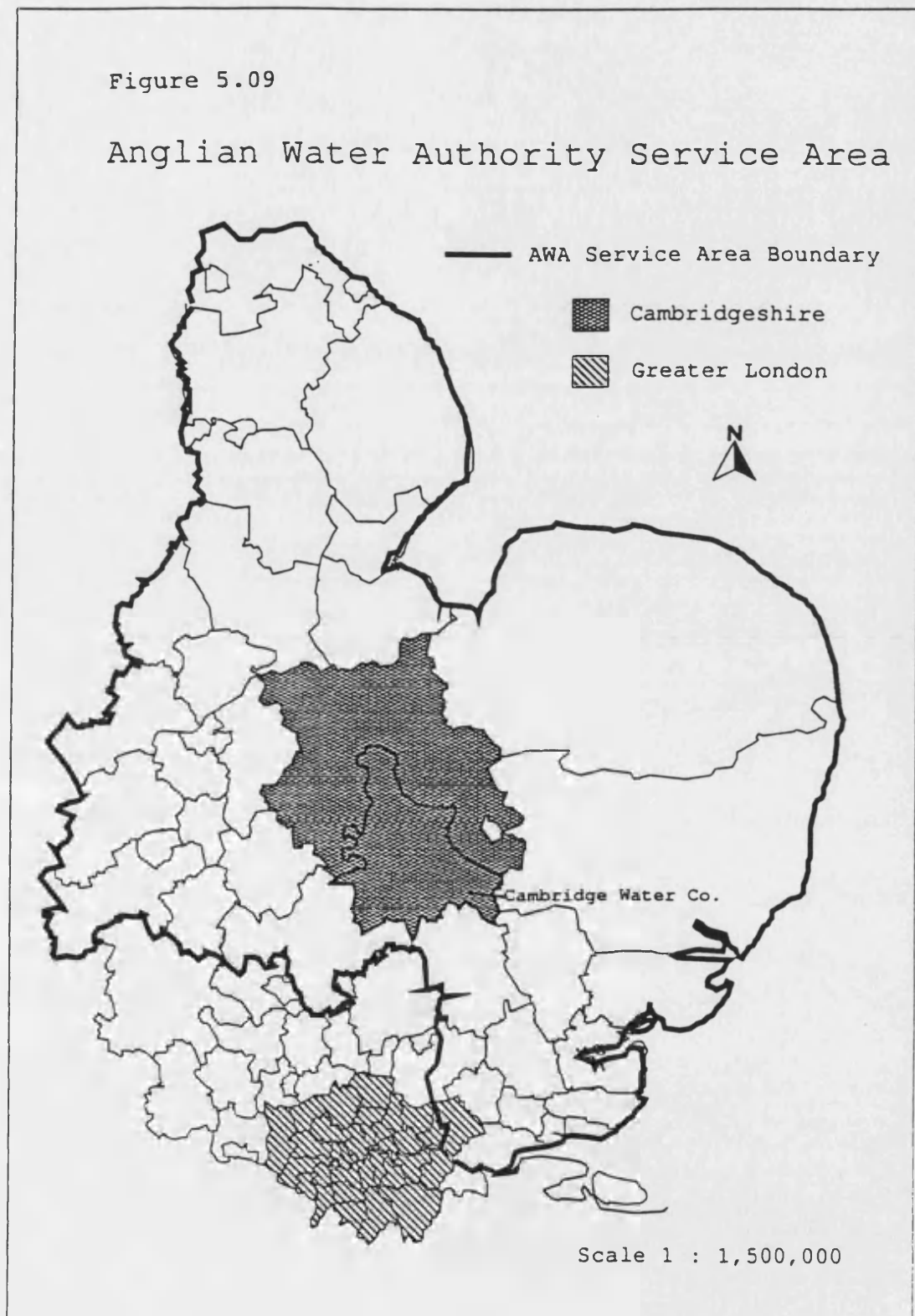
Another type of agreement signed at the district level were agreements providing for the dedication and maintenance of amenity areas, including play areas and internal footpaths. Such agreements might be entered into between developers and local districts, or in certain cases with individual parish councils responsible for managing and maintaining open space. Authorisation for entering into such open space agreements was cited as Section 9 of the Open Spaces Act of 1906. Such open space agreements were not counted unless they also referenced Section 52, TCPA. A significant number of agreements were found to have been signed, not by district planning authorities, but rather by Anglian Water Authority and the County Highway Authority.

Water-Related Agreements-- Foul and Surface Water Sewers

For purposes of water infrastructure facilities and services Cambridgeshire is served by Anglian Water Authority. The geographical relationship between Cambridgeshire and the much larger Anglian Water Authority region is shown in Figure 5.09. Prior to 1974 the provision of water-related infrastructure and services was the responsibility of local districts and councils. However, governmental arrangements for the provision of water and sewer services underwent a major reorganisation in 1974, at which time ten

Figure 5.09

Anglian Water Authority Service Area



public regional water authorities were created, one of the largest of which was Anglian Water Authority. Figure 5.09 also shows that part of Cambridgeshire is served by the Cambridge Water Company, a private water company. Within the Cambridge Water Company district, water-infrastructure responsibility is divided between Cambridge Water Company and Anglian Water Authority. Cambridge Water Company is responsible for providing "clean water", and Anglian Water is responsible for "dirty water" i.e. foul and surface water sewers. The service area of Cambridge Water Co. includes all of the City of Cambridge and South Cambridgeshire District council, as well as a portion of Huntingdonshire, including St. Ives and Ramsey.

Given the rate of growth in Cambridgeshire, it seemed likely that a large number of agreements might have been signed during the 1985-90 period involving developer contributions for water-related infrastructure. Indeed, a study of water infrastructure provision in East Anglia, issued in 1991, reported that:

The system [in East Anglia] is close to full capacity in most areas and requires fresh investment before it can be expanded. For this reason, Anglian Water recoups the cost of local infrastructure from developers, and because of past under-investment, does it to a greater extent than other utilities (Rural Development Commission, 1991, 32).

There were two major types of agreements signed by Anglian Water Authority during the study period-- "Section 18" agreements and "Section 30" agreements.

Section 18 Agreements

Most of the agreements signed by Anglian Water Authority during the study period were based on Section 18 of the Public Health Act of 1936, related to the public adoption of sewers. Section 18 Agreements were usually signed when developers constructed sewers needed for particular developments, with the intention of transferring the completed works to be adopted and maintained by the Authority. In some few cases, work covered by Section 18 agreements extended somewhat beyond the site for which permission was granted, such as make a connection between the new on-site sewer and the existing off-site sewage system. However, most Section 18 Agreements were limited to covering the provision of on-site site sewers needed to serve the proposed development. Thus, Section 18 agreements has not been intended or used to impose additional off-site infrastructure responsibilities on developers, but rather to assure that the sewers constructed on site by developers are constructed properly before the public authority accepts responsibility for maintaining them.

Section 18 agreements which were signed without referencing the provisions of Section 52, were not counted because they were deemed to involve matters which had no

bearing on whether planning permission would be granted or denied. Agreements which referenced Section 18 were only counted if they related to the construction of *off-site* sewers, and if they also specifically referenced Section 52.

Section 30 Agreements

In attempting to develop land, developers frequently found themselves in what is referred to as a “ransom situation”-- being unable to acquire land or easements across someone else’s land to connect a proposed new development to the existing sewer network. In such cases, a developer might request (requisition) the Water Authority to use its statutory power to acquire the needed easement for the sewer by serving notice to the adjacent landowner(s), and to construct the sewer connection. Agreements entered into under such circumstances were typically based on Section 30 of the Anglian Water Authority Act of 1977.

When Section 30 agreements were signed in Cambridgeshire they were always accompanied by a Section 52 agreement, because assurance that the off-site infrastructure connection could be made was needed before planning permission could be granted. For this reason, contributions negotiated under Section 30 were effectively counted in the process of counting Section 52 agreements. As required by the 1973 Anglian Water Authority Act, all Section 30 Agreements must be registered as a local land charge--and were therefore able to be identified in Local Land Charges Offices.

Private Agreements With Internal Drainage Boards

Although Anglian Water Services was the major actor in signing agreements in Cambridgeshire, it should be noted that agreements for surface water drainage were also sometimes signed with private Internal Drainage Boards. However, such agreements signed by private Internal Drainage Boards were not counted in this study.

Highway-Related Agreements

A search of legal agreements revealed a number of highway agreements based on provisions of Section 38 of the 1980 Highways Act. Section 38 allows public highway authorities to adopt land for new roads (and by inference, to acquire roads built by developers on their land), by agreement. Section 38 does not say anything explicit about improving or widening *existing* public highways, and its provisions are not intended to cover the construction of new roads on land not being donated. In theory, Section 38 agreements should only be used when a road is constructed on land owned by the developer, and when the land and completed road is to be adopted and maintained by the

highway authority. When *off-site* highway improvements are constructed or paid for by a developer, then a Section 52 agreement should be used. However, in practice the distinction between Section 38 and Section 52 agreements was sometimes blurred. In cases where a developer was constructing a new turning lane within an existing public highway, connecting to a new estate road, either a Section 38 or a 52 Agreement might be used. In one case, a major off-site highway improvement constructed by a developer (the alteration of an existing public highway and the construction of a new roundabout) was covered by a Section 38 Agreement, rather than a Section 52 agreement. On the other hand, Section 52 agreements were often signed which related to nothing more than the construction of on-site estate roads by developers.

All Section 52 agreements signed by the County Highway Authority pertaining to highway improvements were counted, including those which simply pertained to on-site improvements. Section 38 agreements which imposed significant off-site highway obligations *were* also counted. However, Section 38 agreements which simply applied to on-site estate roads, and which did not cite the provisions of Section 52, were *not* counted.

Highway agreements could also be signed under Section 278 of the Highways Act of 1980. Such agreements were signed when there were developer-funded improvements to trunk roads under the responsibility of the Department of Transport. Because Section 278 agreements always involved off-site highway improvements, and were often crucial to obtaining planning permission (removing traffic objections which otherwise would have required denial of planning permission), it was decided that any such agreements signed during the study period should be counted.

CHAPTER SIX: FIVE YEARS OF AGREEMENTS

In this chapter, data is presented and analysed at the county level, documenting how planning agreements were used in Cambridgeshire between 1 January 1985 and 31 March 1990. In Chapter Seven the data is broken down and analysed by geographic location within the county to identify variations in local practice, and factors which may have affected the ability and willingness of local authorities to use agreements to obtain contributions or achieve other planning objectives. The importance of this empirical research is that it provides, for the first time, an accurate measure of the extent to which agreements were used, the purposes for which they were used, and factors and conditions which affected their use. By compiling data on agreements over a 63 month period, the research also provides a direct measure of how local authority use of agreements evolved and changed over time.

Three hundred forty-nine planning permissions granted in Cambridgeshire between 1 January, 1985 and 31 March, 1990 were subject to the terms of planning agreements. Two hundred and fifty (72%) of those planning permissions were residential, and ninety-nine (28%) were commercial.

206 Residential Planning Agreements Signed During Study Period

44 Residential Permissions Subject to Agreements Signed Prior to Study Period

88 Commercial Planning Agreements Signed During Study Period

11 Commercial Permissions Subject to Agreements Signed Prior to Study Period

349 Total Permissions Subject to Planning Agreements

The number of planning permissions subject to agreements was remarkably small compared to the total number of planning permissions granted. As shown in Table 6.01, a total of 14,127 planning permissions were granted in Cambridgeshire during the study period. Thus, only 2% of all planning permissions were subject to agreements. The high proportion of agreements signed for residential projects (72%) was generally consistent with the fact that 71% of all planning permissions granted during the period were for residential development.

Table 6.01: Planning Permissions 1985-1990, Cambridgeshire

	<u>Residential</u>	<u>Commercial</u>	<u>Total</u>
1985	1596	840	2436
1986	1773	791	2564
1987	1893	842	2735
1988	2320	827	3147
1989	2108	601	2709
1990 (3 mo.)	402	134	536
Total	10,092 (71%)	4,035 (29%)	14,127 (100%)

Source: Cambridgeshire County Council

County-wide data on planning permissions was also analysed to estimate the *proportion of newly permitted development* that was subject to planning agreements. This analysis was carried out separately for residential and commercial development. In cases of outline planning permissions, where the area of the site was known but the exact amount of new development was not specified in the application, the amount of development which might eventually take place on the site was estimated using densities and floor area ratios of development which generally prevailed in the district.

During the study period, planning agreements were signed for a total of 12,025 housing units. Permissions for another 3901 housing units were subject to agreements signed prior to 1 January 1985. Thus, it is estimated that planning permissions for 15,926 housing units were subject to planning agreements. During the same period, a total of 59,777 housing units received some form of planning permission. Although this figure clearly overstates the actual total amount of newly permitted residential development, inasmuch as it includes both outline and final planning permissions and therefore double-counts a number of developments, it nevertheless provides a useful benchmark. Using this figure as the basis for comparison, it is estimated that more than a quarter (27%) of all newly permitted housing was subject to planning agreements.

59,777-- total housing units which received permission
 15,926-- total housing units covered by agreements (27%)

A much smaller proportion of the total amount of commercial development permitted in Cambridgeshire was subject to planning agreements. It is estimated that, during the 63 month study period, permissions were granted in the County for a total of 4,373,228 square metres of commercial floor area. During that period, planning agreements were signed for commercial developments which had a total estimated floor

area of 417,578 square metres. Permissions for another 38,866 square metres of commercial floor area were subject to planning agreements entered into prior to the study period. Thus, 456,444 square metres (only approximately 10%) of newly permitted commercial floor area was subject to planning agreements.

Planning Applications Which Occasioned the Signing of Agreements

As shown in Table 6.02, there was a strong tendency to negotiate agreements in relation to applications for outline planning permission. Sixty-nine percent of the agreements for major residential projects were signed related to outline permissions-- twice the rate of outline permissions which characterised major residential permissions without agreements. Forty-eight percent of all major commercial agreements were signed at the outline stage, a finding that is impressive given that only 10% of all commercial planning permissions in the county, and 28% of all major commercial permissions, were outline permissions.

Proponents of the use of planning agreements to secure developer contributions have frequently argued that the cost of developer contributions is passed back against the cost of the land. However the ability to pass back the cost of contributions will likely to vary, depending on the stage in the development process that the agreement is negotiated. If an agreement is negotiated earlier in the development process, before the land has been purchased, it is more likely that the cost of the contribution can be passed back to the landowner, and taken out of the value of the land. However, if an agreement is signed at a later stage, after the land has been purchased, there would be less likelihood that the cost of the contribution could be taken out of the value of the land-- and therefore a greater likelihood that the cost would have to be borne by the developer. Thus, the strong tendency in Cambridgeshire to negotiate planning agreements at the outline stage appears highly significant.² It suggests that parties who signed agreements were often in a good position to pass the costs of contributions back against the enhanced value of the land, and were therefore relatively willing and able to offer contributions.

² For the information of American readers, under the British planning system, applicants can apply for planning permission in two basic ways. They can apply directly for *Final* planning permission by submitted a detailed planning application. Or they can submit a less detailed application for *Outline* permission. Outline permission does not allow an applicant to proceed with development, but it does establish the *principle* that a particular site can be developed for a certain type of development, and therefore serves the purpose of conferring a new value on the property. Having obtained Outline permission, an applicant wishing to proceed development must obtain Final permission by applying for approval of *Reserved Matters*.

Table 6.02: Types of Planning Permission in Cambridgeshire, by Type of Development

	Residential		Commercial	
	<u>Outline</u>	<u>Final*</u>	<u>Outline</u>	<u>Final*</u>
All Permissions During Study Period	3725 (37%)	6367 (63%)	409 (10%)	3626 (90%)
Major Projects Without Agreements	54 (38%)	90 (62%)	57 (28%)	144 (72%)
Major Projects With Points of Agreement	41 (69%)	19 (32%)	21 (48%)	23 (52%)

* Data on Final Permissions Includes permissions relating to Reserved Matters

Additional insights regarding the possible incidence of developer contributions was gleaned from the content of Section 52 Agreements. Agreements reveal the name and address of the applicant, and thus indicate whether the address of the applicant is the same as the subject property. Agreements similarly reveal whether the applicant is an individual, a married couple, a group of landowners owning contiguous pieces of land, or a professional developer. Moreover, agreements routinely state whether the applicant owns the land in fee simple, or has a contract to purchase the land. In cases where there was some doubt, additional information was collected by examining project files, and by questioning planning staff who were familiar with the applications. In this way, it was possible to categorise applicants who signed planning agreements as shown in Table 6.03.

Table 6.03: Status of Applicants Who Signed Agreements for Major Developments

<u>Applicant Status</u>	<u>Major Res. Proj.</u>	<u>Major Comm. Proj.</u>
Long-time landowner	31 (53%)	16 (36%)
Developer had contract with landowner to purchase the property upon obtaining planning permission	16 (27%)	8 (18%)
Developer owned the property outright in fee simple	12 (20%)	20 (45%)
Total	59 (100%)	44 (100%)

One striking finding from the data in Table 6.03 is that 80% of all major *residential* agreements were signed either by landowners, or by developers who had contracts with landowners to purchase the subject properties when and if planning permission was obtained. In other words, over four-fifths of all major residential agreements were signed in situations where it was likely that the cost of developer contributions could be passed back to the landowner. Approximately fifty-five percent of applicants who signed agreements for major *commercial* projects were in a position where they might hope to pass the costs back to landowners. Forty-five percent of major commercial agreements were signed developers who had purchased the properties which were the subject of planning permission, and therefore in no position to pass costs back to the former owner.

Further analysis was carried out to identify more precisely the economic interests of landowners who signed major agreements, and who at the time of the signing of the agreement had not entered into contracts to sell their properties to developers. The point of this analysis was to determine in each case whether the landowner was applying for planning permission so as to carry out a proposed development himself-- i.e. where the landowner was the prospective developer-- or intended to sell the property with planning permission to someone else who would carry out the development. A landowner selling a property after obtaining planning permission might receive somewhat less money as a result of entering into an agreement, but would be enriched nonetheless. However a landowner who intended to carry out the development himself would be faced with having to pay the cost of contributions out-of-pocket, at a time when money was flowing *out* rather than *in*. As a result, landowners undertaking developments themselves might be expected to be more resistant to making contributions-- at least for purposes which were not absolutely necessary for development to proceed.

Under normal circumstances, it would be hazardous to attempt to gauge the *intentions* of persons applying for planning permission. And yet, by virtue of the fact that this study was a retrospective look at a five year period, it was possible in many instances to deduce what the applicant's past intentions were by looking at what actually happened after planning permission was obtained. For example, Trinity College and St. John's College of Cambridge University applied for permission to develop business parks on the northern fringe of Cambridge, and went forward to do exactly that. Long-time owners of a number of large farm properties applied for permission to construct major farm structures, and carried out the proposed improvements themselves. In other cases, it was possible to deduce that a property which was subject to an agreement had been sold by the fact that subsequent detailed and reserved matter permissions were granted to applicants other than the original landowner. In cases where developments were not carried forward, it was still possible to make judgments with reasonable confidence regarding the intentions of

landowner applicants-- particularly when landowners having no development experience applied for planning permission for very large residential developments. In cases where there was uncertainty as to whether the applicant intended to develop or sell the property, planning staff were contacted who were familiar with the project application.

Based on these varied methods for gauging the intentions of developers, judgments were made with reasonable confidence regarding the intentions of approximately half of the applicants who received major planning permissions and signed planning agreements.

TABLE 6. 04: Profile of Landowner Applicants Who Signed Agreements for Major Projects

	<u>Likely to Sell</u>	<u>Likely to Develop</u>
Major Commercial Projects	6 (38%)	10 (63%)
Major Residential Projects	29 (97%)	1 (3%)

As shown in Table 6.04, almost all of the landowners who signed agreements for major residential projects (97%) appeared to have had little or no intention of developing the projects for which they were applying for planning permission. However, the profile of landowners who signed agreements for major *commercial* projects was markedly different. Sixty-three percent of landowners who signed agreements for major commercial projects appeared likely to carry out the proposed developments themselves. This difference in the profile of applicants who signed residential and commercial agreements should be kept in mind when examining data on the contributions offered by residential versus commercial developers, inasmuch as it could at least partially explain why fewer contributions were extracted from commercial developers than from residential developers.

Contributory Versus Non-Contributory Agreements

Jowell identified nine different types of agreements. Six of the nine types of agreements identified by Jowell can be classified as "contributions" as defined in Chapter Four:

- public rights of way over developers' land
- dedication of land to public use
- provision of community buildings
- provision of infrastructure
- gift of site or buildings for residential use
- commuted car parking payment

So as to maintain continuity with Jowell's important earlier study, an attempt was made to retain Jowell's categories of agreements. However, Jowell's categories tended to emphasise the *form* of contributions, and often failed to identify the *public facility* or *infrastructure need* that was met through the contribution. In order to correct this imbalance, a two-tiered classification of contributions was employed, so as to document not only the nature or form of the developer contribution, but also the purposes for which contributions were offered. As a further step toward greater precision, the data was compiled to distinguish whether contributions were obtained from residential or commercial developers. Contributions were categorised as follows:

Purposes of Contributions:

- Water infrastructure improvements (off-site)
 - Foul sewer improvements
 - Sewage treatment plant
 - Sewage pumping station
 - Surface water drainage improvements
- Highway improvements (off-site)
- Footpaths/cycleways
- Schools
- Other public buildings / facilities (community centre, library, police station, public conveniences, etc.)
- Recreation/open space /amenities (playing fields, soccer pitch, recreation pavilion, landscape improvements, preserve landscape, children's play facility, etc.)
- Housing
- Parking
- Public transportation
- Miscellaneous

Forms of Contributions:

- Cash payment toward capital cost of constructing facility or improvement (including commuted payment for construction of off-site parking spaces)
- Construct facility or improvement to specifications approved by public authority, and then dedicate the completed facility or improvement for public use
- Donate land or permanent easement
- Sell land to public authority, at below market price
- Maintain public improvements for a specified period of time
- Cash payment for maintenance or operating expenses
- Joint-funding to expand infrastructure capacity to serve subsequent development in surrounding area

The last developer obligation on this list (i.e. joint-funding scheme) needs some explanation. In certain cases, agreements were signed in which developers agreed to construct sewers or drains to a larger capacity than required to meet the needs of their own developments, thereby helping to meet the infrastructure needs of surrounding areas.

Developers agreeing to assume this obligation were promised some payment from the water authority in return, and such payments were presumably adequate to cover the cost of the additional work by the developer. Nevertheless, for purposes of this study, developers who agreed to construct additional infrastructure capacity under such joint-funding arrangements were considered to have agreed to make a contribution. The fulfillment of this obligation by developers was contributory in that it freed the water authority from spending its own funds to obtain the desired infrastructure, and imposed additional burdens on developers to construct public improvements that were not needed to serve their own developments. Moreover, money paid by the water authority to the initial developer for the added infrastructure capacity was subsequently recovered by the authority by negotiating "contributions" from other applicants seeking planning permission to develop adjacent parcels of land served by the jointly-funded infrastructure. Agreements which provided for jointly-funded infrastructure were classified as *contributory*.

Non-Contributory Agreements

An examination of the content of agreements in Cambridgeshire, as well as of other agreements signed in districts outside Cambridgeshire, revealed that agreements often contained provisions which were unrelated to contributions. For convenience, such provisions in agreements have been called *non-contributory*. Thirteen non-contributory purposes for signing agreements were identified. The first three of these purposes were identified by Jowell in his 1977 study:

- Specify use
- Extinguish existing user
- Rehabilitate/ improve property
- Restrict occupancy
- Control or minimise adverse impacts
- Set timetable/deadline for completion of specified tasks
- Phase development
- Limit total development on site
- Waive right to claim compensation
- Revise terms of previous agreements
- Give notice to local authority
- Preserve historic buildings or artifacts
- Pay legal costs involved in preparing agreement

The following pages provide a more detailed description of the non-contributory provisions found in agreements in Cambridgeshire.

Specify Use: Agreements were frequently entered into for the purpose of specifying the exact use or uses that could take place on a given property, or in a given building, and/or specifically prohibiting other uses. Provisions such as the following were included in agreements: "said property shall not be used otherwise than for residential development"; and "thereafter the only permitted use shall be for town centre retail shopping facilities along with appropriate ancillary uses." Another way in which agreements specified use was by stating that development had to be carried out "in strict conformity with the approved plans," and that the restrictions imposed under the agreement were binding on succeeding owners of the property.

Extinguish existing use rights: This provision was included in agreements to terminate the right to use a given site or building in a way which up to that point had been permitted. The use being extinguished might conceivably be located on the property which was the subject of the planning application, although in most cases it was not. In most instances, this provision was agreed to in connection with applications seeking permission to move an existing use from one site to another. For example, a local planning authority might agree to grant planning permission for an industrial use, or a caravan site, to be moved to a new site, as long as there was assurance that the use would be extinguished at its former site once the move was completed. Under this provision, applicants agreed to give up the right to use a property in a way which had otherwise been permitted. As a result, when applicants agreed to this provision there was always a *quid pro quo* -- i.e. the applicant would agree to give up an existing use right in exchange for receiving planning permission to establish a use on a site where that use was previously prohibited.

Restrict Occupancy: Another not infrequent reason for signing agreements was to restrict the occupancy of land and buildings. Permissions for family annexes were often accompanied by agreements requiring that the new unit be occupied only by family members. Agreements were also found specifying that particular housing units could only be occupied for short stays by "holiday-makers," or by students. Some agreements specified that the local authority had the right to nominate occupants. Occupancy restrictions incorporated into agreements could also be work-related-- specifying, for example, that particular housing units could only be occupied by persons employed in certain activities or on the premises. Permissions for new farmhouses in rural areas were often accompanied by agreements requiring that the new residence be occupied by persons employed locally in agriculture. Occupancy restrictions were also found in a limited number of agreements signed for commercial developments -- i.e., to limit occupancy to local firms or particular types of firms (such as R & D).

Control or minimise Adverse Impacts: Agreements included provisions designed to limit and reduce the impacts which newly permitted development might otherwise impose on adjacent properties. Agreements for major commercial developments included

provisions restricting hours of operations, or the hours during which trucks could load/unload goods. The agreement signed in connection with an application seeking permission to expand London City Airport in the Docklands limited the numbers of flights which could operate at given times and within specified time periods. Another way in which agreements have sought to limit impacts has been by setting performance standards for noise and emissions which the permitted use could not exceed. Agreements have also required the construction of specific physical improvements-- such as fencing, screening, or landscaped mounds or earth banks-- so as to absorb and deflect noise, and/or visually screen unsightly uses.

Rehabilitate/Improve/Preserve Subject Property: Agreements were signed calling upon applicants to restore, enhance, or protect valued features present on the property at the time they have applied for planning permission. Provisions in agreements considered to fall in this category were:

- remove debris from the site
- preserve existing trees and landscaping
- plant trees or landscaping in specified areas
- construct specific on-site improvements -- such as a gatehouse, stone wall, etc.
- demolish a decayed building
- restore a listed building
- preserve and record archaeological finds during site excavation and construction

Set Timetable/Deadline for Completing Specified Tasks: Some agreements specified that development had to commence or be completed by a specified date, or within a certain period of time after the grant of planning permission. Even when a particular date was not specified, wording was sometimes included stating explicitly that the agreement was valid only for the period of that given planning permission. Applicants were advised that if they failed to implement the planning permission within the period of time during which it was valid (which was usually between 3 - 5 years) then the agreement would become null and void, and it would be necessary to negotiate a new agreement in connection with a new planning application.

Phase Development: A variety of provisions were included in agreements requiring that development be phased in various ways. In other words, applicants agreed to undertake or complete certain tasks or aspects of development before commencing or completing other stages of development. The following are examples of the kinds of phasing provisions included in agreements:

- Construction may not commence until plans for sewer and drainage works have been approved.
- No dwelling shall be occupied until the approved sewer and drainage works have been satisfactorily constructed and approved.

- No dwelling shall be occupied until the footpath has been completed to the reasonable satisfaction of the Director of Transportation.
- Construction of units may not begin until the entire spine road has been constructed.
- No more than 20 units may be completed and occupied in a given year.

Phasing requirements were particularly relied upon in cases where permission was being given for the development of large tracts of land owned by multiple landowners.

Limit Development on Site: Agreements were sometimes used to place limits on the amount or types of new development that could be undertaken on sites which were the subject of applications for planning permission. Agreements could limit the total amount of development that could take place (i.e. no more than 150 housing units may be built on the site) or the amount of development in various phases of development (i.e. no more than 8 units in Phase I). Other examples of limitations on development imposed through agreements were: a provision limiting future enlargement of housing units subject to the agreement; a provision stating that "no building on the land shall comprise more than 2 stories, subject to a maximum height of 12 metres to eaves level; and a provision limiting the number of employees who could work in the subject building at any one time."

Waive right to claim compensation: In some agreements, applicants agreed to waive the right to seek compensation for any loss of value or damages resulting from use restrictions imposed by the planning authority in the Agreement. The following is an example of how this provision was sometimes worded: "The applicant hereby further agrees that any rights to claim compensation arising from any limitation or restriction on the planning use of the applicant's land under the terms of this Agreement are waived." This provision could be combined with some other non-contributory provision-- such as the setting of a timetable for commencing development. For example, one agreement included the following wording: "Development must commence within 12 months or the planning permission may be revoked without compensation."

Revise or remove terms of a previous agreement: As the number of properties subject to agreements has grown, new agreements have had to be entered into to revise the terms of previous agreements, or to remove restrictions imposed by a previous agreement (i.e. "the Agreement dated _____ shall cease to have effect").

Notify Local Authority: Provisions have been included in agreements intended to assist the planning authority in enforcing other terms included in agreements, or possibly conditions imposed on the planning permission outside of the agreement. For example some agreements included a requirement that the local planning authority be notified within 21 days of any disposition of legal interest in the property. Such a requirement of notification of a change in ownership was usually related to the authority's interest in

enforcing terms of understanding contained in the agreement-- as in cases where planning permission had been granted to a specific party, and where an agreement stated that the use of the property must revert to its former use if and when there was a change in ownership. Similarly, in agreements which required that certain housing units be made available for as social housing units, wording might be included such as "the applicant shall provide notice to the local authority before each house is made available for occupation, identifying the housing, and stating that the house is ready for human occupation."

Historic and Archaeological Preservation: Agreements were used to require applicants to preserve archaeological artifacts encountered during excavation and construction. For example, one agreement included the following statement: "Safeguards shall be taken to safeguard the recording of any matters of archaeological interest within the site."

Pay legal costs: A significant number of agreements included a provision stating that the applicant agreed to pay the legal costs of preparing the agreement. Although this provision involved a promise to pay money (thus partially conforming with the of a "contribution"), local authorities did not gain net economic benefit from the payment. A local planning authority would not enter into an agreement for the sole purpose of including a provision requiring the applicant to pay for the legal costs of preparing the agreement. Rather, inclusion of this provision allowed local authorities to avoid a cost which might otherwise have deterred them from entering into an agreement. Moreover, the need to spend public money for such a purpose would not have existed without the signing of such agreements. As a result, this provision was considered to be non-contributory.

In many agreements, the exact cost of the preparation of the agreement was not specified. Rather, agreements often included a statement such as "The owner shall pay the council's reasonable costs in the preparation of this agreement." In other agreements the amount of the costs due was specified and limited by stating that the cost might be up to a certain amount. In agreements where the amount of the legal costs was specified, the legal costs imposed ranged from £50 to £260.

Analysis of County-wide Data on Agreements

Using the above definitions of contributory and non-contributory agreements, the 294 planning agreements signed in Cambridgeshire during the study period were analysed and categorised as to whether or not they involved contributions. Agreements which included *only* non-contributory provisions were classified as *non-contributory agreements*. (It should be understood that agreements which involved contributions, and which were therefore classified as *contributory*, may also have included non-contributory provisions.) As shown in Table 6.05 (below), less than half (44%) of all agreements signed in

Cambridgeshire involved contained some kind of contribution, while over half (56%) did not. A somewhat higher percentage of residential agreements contained contributions than was the case with agreements signed for commercial projects.

Table 6.05: Total Agreements Signed-- With and Without Contributions

	<u>Agreements</u>	<u>With Contrib.</u>	<u>Without Contrib.</u>
Residential Projects	206	93 (45%)	113 (55%)
Commercial Projects	88	37 (42%)	51 (58%)
Total	294	130 (44%)	164 (56%)

Agreements Signed for Major Projects

During the 63 month study period, a total of 501 planning permissions were issued for “major projects,” defined here as residential projects of 50 or more units, and commercial projects with 900 sq. metres or more of floor area during the study period. One hundred and three (20%) of those permissions occasioned the signing of an agreement (see Table 6.06).

Table 6.06: Major Permissions Which Occasioned the Signing of Agreements

	<u>Total Perms.</u>	<u>Agreements signed</u>
Residential Projects (50 units or more)	245	59 (24%)
Commercial Projects (900 sq. metres or more)	256	44 (17%)
Total	501	103 (20%)

Source: Cambridgeshire County Council

Eighty-percent of all permissions for major developments were granted *without* agreements. The data also indicates that agreements were more likely to be signed for major residential projects than for major commercial projects. Twenty-four percent of major residential permissions involving the signing of agreements, compared to only 16% for major commercial permissions. Nevertheless, over three quarters of all major residential developments were approved without agreements.

As shown in Table 6.07, a majority of agreements signed for major residential developments pertained to schemes proposed by private, for-profit developers.

Table 6.07 : Types of Major Residential Developments Subject to Agreements

- 46 Private housing schemes
 - 7 Council housing
 - 1 Sheltered housing
 - 1 Council and sheltered housing
 - 1 Private housing including some sheltered units
 - 1 Private housing including shared ownership units
 - 2 Private housing including some council housing
- 59 Total agreements signed for major residential schemes

Similarly, as shown in Table 6.08, all 44 agreements signed for major commercial projects pertained to profit-oriented new construction projects carried out by private developers.

Table 6.08: Types of Major Commercial Developments Subject to Agreements

- 1 petrol station and retail
 - 1 Petrol station
 - 1 Petrol station, restaurant and cafe
 - 1 Petrol station, motel and restaurant
- 6 Office buildings
 - 3 Offices and retail
 - 6 Light industrial space, including warehouses (storage and distribution)
 - 1 Light industrial space and retail
- 12 Business parks (e.g. B1 Class space, light industry + offices)
 - 2 Retail schemes
 - 2 Retail, light industrial space, and offices
 - 1 Multi-use development (hotel, restaurant, light industrial space, petrol station)
 - 1 Heavy industrial facility (machine and rubber company)
 - 1 Private surgical / medical facility and associated beds
 - 1 Garden centre
 - 1 Farm museum
 - 3 Farm buildings (2 with associated dwellings)
- 44 Total agreements signed for major commercial buildings

As shown in Table 6.09, 18% of major commercial planning permissions granted *without* agreements were related to applications for changes of use. Another 8% of

permissions without agreements were for alterations, renovations, and demolitions. In all, 26% of major commercial planning permissions granted *without* agreements were for developments other than new construction. By way of comparison, ninety-five per cent of the 44 agreements signed for major commercial developments pertained to the construction of entirely new buildings on cleared sites. All 59 agreements signed for major residential developments pertained to new housing construction. The heavy preponderance of agreements signed for developments involving new construction suggests that LPAs focused their attention on signing agreements for developments which had significant land use and infrastructure impacts.

Table 6.09: Types of Major Commercial Developments, With and Without Agreements

<u>Type</u>	<u>Permissions With Agree.</u>	<u>Permissions Without Agree.</u>
New Construction	42 (95%)	147 (73%)
Change of Use	0	37 (18%)
Construct Extension to Existing Building/ Building Alteration	2 (5%)	13 (6%)
Demolish and Replace Existing Building	0	2 (1%)
Renovate/Refurbish	0	2 (1%)
TOTAL	44 (100%)	201 (100%)

Table 6.10 presents data on the number of permissions for major developments which were subject to agreements which involved some kind of developer contribution. This data shows clearly that agreements signed for major projects usually involved some kind of developer contribution.

Table 6.10: Permissions for Major Development Subject to Agreements

	<u>Total</u>	<u>With Contrib.</u>	<u>Without Contrib.</u>
Residential agreements signed	59	57 (97%)	2
Commercial agreements signed	44	32 (73%)	12
Res. Permissions Subject to Previous Agreements	44	38 (86%)	6
Comm. Permissions Subject to Previous Agreements	11	11 (100%)	0
Total Major Permissions Subject to Agreements	158	138 (87%)	20 (13%)

Agreements Signed for Minor Projects

Over the course of the study period, almost twice as many agreements were signed for minor developments as for major developments. As shown in Table 6.11, a total of 191 planning agreements were signed during the study period related to minor developments (compared to 100 for major developments), approximately three-quarters of which were for small residential projects. Only approximately one-fifth of all agreements for minor developments involved contributions. Once again, however, significant differences were observed in the treatment of commercial and residential projects. Twenty-four percent of the agreements signed for minor *residential* projects involved contributions, compared to only eleven percent of agreements signed for minor *commercial* projects.

Table 6.11: Percent of Minor Agreements With Contributions

	<u>Agreements</u>	<u>Agreement with Contrib.</u>
Minor Residential Projects	147	36 (24%)
Minor Commercial Projects	44	5 (11%)
Total	191	41 (21%)

Understanding Agreements

Analysis of data compiled on agreements signed in Cambridgeshire helps to shed light on a number of the issues and questions about agreements raised in Chapter Four. What was the average size of projects for which agreements were signed? Were projects with agreements with contributions *larger* than projects with agreements but without contributions? And were projects with agreements and contributions *more dense* than projects with agreements but without contributions?

To answer these questions, data was compiled on the *additional* floor space, and *additional* housing units authorised in planning permissions which were subject to agreements *with contributions*, compared to permissions with agreements but *without contributions*. Permissions granted for changes of use, and for alterations and renovations which did not result in added floor space, were excluded from the analysis.

The data in Table 6.12 presents a two-fold picture regarding the size of projects with agreements. Relatively few housing units (an average of 8) were added when agreements were signed not involving contributions. However, when agreements were negotiated involving developer contributions, much larger numbers of new housing units were involved. Indeed, the analysis suggests that the average threshold size of projects which triggered the negotiation of agreements with contributions was remarkably high.

Table 6.12 : Average Size of Projects With Agreements-- With vs. Without Contributions

	<u>Added Floor Area Comm. Projects</u>	<u>Added Housing Units Res. Projects</u>
Agreements with Contribution	9,165 sq. m. (N=38)	121 units (N=91)
Agreements without Contribution	1,453 sq. m. (N=54)	8 units (N=113)

Further analysis was carried out to compare the size and density characteristics of major projects, with versus without agreements. The size and density of major permissions with agreements but *without contributions* was not included in this analysis because only two such agreements were signed during the study period. In this analysis, only permissions for major projects which produced 50 or more *new* housing units, or which added 900 square metres or more of *new* commercial floor area, were included. Permissions for *changes of use* which did not involve additions of new commercial space were excluded. As shown in Table 6.12, major commercial permissions with agreements occupied substantially larger sites, and involved much larger additions of floor area, than

permissions granted without agreements. Also, contrary to the expectation that projects with agreements would be *more dense* than projects without agreements, the average floor area ratio (FAR) of projects with agreements was actually one third lower (.59 versus .79) than projects granted permissions without agreements.

Table 6.13: Size and Density of Major Commercial Permissions-- With vs. Without Agreements *

	Permissions With Agree. (N = 56)	Permissions Without Agree. (N = 148)
Average Site Area	3.47 HA.	1.06 HA.
Average Floor Area	7323 Sq. M.	3406 Sq. M.
Average F.A.R.	.59	.79

An attempt was then made to analyse and compare the size and density characteristics of commercial developments whose agreements *did and did not include contributions* (see Table 6.14). Major commercial projects whose agreements *did not include* contributions, like those whose agreements included contributions, tended to be larger, and to occupy larger sites, than comparable projects without agreements. One finding which varied from the pattern was that the average FAR of projects with agreements *without contributions* was significantly *lower* than that of agreements *with contributions* (.35 versus .61). However, the small number of major commercial agreements without contributions (12) makes it difficult to place much weight or significance on these apparent differences.

Table 6.14: Size and Density of Major Commercial Permissions -- With vs. Without Agreements and Contributions

	<u>Avg. Floor Area</u> (Sq. Metres)	<u>Site Area (Ha.)</u>	<u>Floor Area Ratio</u>
Permissions Without Agreements (N=148)	3,406	1.06	.79
Agreements Without Contributions (N=12)	5,792	4.20	.35
Agreements With Contributions (N=44)	9,014	3.46	.61

Data compiled for major residential permissions revealed a roughly similar pattern. As shown in Table 6.15, major residential projects with agreements which included contributions occupied sites almost twice as large, and added over 60% more housing units, as major residential projects approved without agreements. Major residential projects with agreements and contributions were also less dense than major residential permissions approved without agreements. The small number of major residential agreements signed without contributions (8) makes it difficult to draw firm conclusions about the characteristics of such projects. In terms of site area and project size, developments approved with agreements but without contributions appeared to resemble major permissions without agreements. However, the FAR of such projects was roughly midway between those of projects without agreements and projects with agreements and contributions.

Table 6.15: Size and Density of Major Residential Permissions -- With and Without Agreements and Contributions

	<u>Avg. Site Area</u> <u>(Acres)</u>	<u>Avg. No. Units</u>	<u>Avg. Density</u> <u>(Units/Acre)</u>
Projects Not Subject to Agreements (N=143)	7.0	89	17.7
Projects Subject to Agree. without Contrib. (N=8)	6.9	79	14.6
Projects Subject to Agree. with Contrib. (N=93)	13.0	146	12.9

There could be a geographical explanation for the observed differences in the size and density of major permissions with and without agreements, and with versus without contributions. It could be, for example, that agreements with contributions were most often signed for sites in out-lying areas, where infrastructure improvements were necessary for development to proceed. In such peripheral and out-lying locations the density of development would naturally tend to be lower than in areas better served by infrastructure and existing public facilities. On the other hand, developers would be less likely to have to make contributions for infrastructure improvements when developing projects in already developed areas, where infrastructure and facilities were likely already in place, and where

the density of development was higher.

Another question regarding the use of planning agreements raised in Chapter Four was whether local authorities may have used delay as a tactic to put pressure on developers to enter into agreements. To test this possibility, data was compiled and analysed on the elapsed time to obtain planning permission (from date of application to date of approval) of major and minor projects with agreements versus projects without agreements. For permissions with agreements, the date of approval was the date the agreement was signed. Data for projects with agreements was further broken down to distinguish whether or not the agreements involved contributions. This data, presented in Table 6.16 provides a clear measure of the extent to which the use of planning agreements lengthened the time required to obtain planning permission.

Table 6.16: Delay in Obtaining Planning Permission-- Major vs. Minor Projects

	<u>Comm. Projects</u>	<u>Residential Projects</u>
<u>A. Major Projects</u>		
Permissions Without Agreements	124 days (199)	150 days (144)
Pts. of Agreement Without Contributions	234 days (12)	Insufficient data (only two projects)
Pts. of Agreement With Contributions	331 days (32)	306 days (56)
Permissions Subject to Previous Agreements (with + w/o Contributions)	190 days (11)	138 days (43)
<u>B. Minor Projects</u>		
Agreements Without Contributions	345 days (40)	289 days (106)
Agreements With Contributions	378 days (5)	340 days (33)

As shown in section A of the table, permissions for *major* projects not involving agreements were issued within an average of 124-150 days. However when planning agreements were signed which involved contributions, it took more than twice as long-- an average of 306 days for major residential projects and 331 days for major commercial projects. A possible explanation, and justification, for this delay may lie in the fact, noted

above, that major projects with agreements tended to be very large, and therefore probably raised numerous planning issues.

Section A also includes data on the elapsed time of permissions which were subject to previously negotiated agreements. Inasmuch as such permissions were not occasions for the signing of agreements, there might be reason to expect that the elapsed time of such permissions would be roughly the same as for other permissions granted without agreements, since no additional negotiations or legal work was involved. On the other hand, such permissions might have triggered certain internal administrative reviews which could possibly prolong the period for obtaining planning permission. The data does not really resolve the uncertainty. Major commercial permissions which were subject to previous agreements took longer to obtain than normal permissions without agreements (190 days versus 124 days). On the other hand, no such added delay was found for major residential permissions; residential permissions subject to previous agreements actually took somewhat less time than permissions without agreements (138 days versus 150 days).

Perhaps the most striking finding in Table 6.16 is that it took an average of 289-345 days to obtain planning permission for *minor* projects which *did not* involve contributions. This finding is especially noteworthy, considering the extremely small size of many of the minor developments which were covered by agreements. Sixty-six (approximately one-third) of the 204 non-contributory agreements applied to only a single housing unit. Eight non-contributory agreements applied to only two units.

Table 6.17 consolidates data presented separately for major and minor developments in sections A and B of Table 6.16, and measures the delay brought about by the signing agreements for all projects, major and minor. As shown in the table, it took commercial developers who signed agreements *with contributions* 337 days to obtain planning permission. It took residential developers who signed agreements *with contributions* 318 days to obtain planning permission. Developers who signed agreements *without contributions* experienced only slightly shorter delays-- 320 days for commercial developers, and 291 days for residential developers.

The difference in approval times between projects *without agreements* and projects *with agreements (but without contributions)* can be characterised as the "delay attributable to negotiation of agreements." The difference in approval times between agreements *with* versus *without* contributions can be characterised as the "delay attributable to negotiation of contributions." The "delay attributable to agreements" was 144 days for residential projects, and 193 days for commercial projects. But the "delay attributable to negotiation of contributions" for residential permissions was only 27 days, and only 17 days for commercial permissions. These differences in the time required to obtain planning permission are graphically presented in Figures 6.01 and 6.02.

Table 6.17: Delay in Obtaining Planning Permission-- With vs. Without Agreements

	<u>Commercial Projects</u>	<u>Residential Projects</u>
Major Permissions Without Agreements	127 days (212)	147 days (186)
All Points of Agreement Without Contributions (Major + Minor)	320 days (52)	291 days (108)
All Points of Agreement With Contributions (Major + Minor)	337 days (37)	318 days (89)
<hr/>		
Delay attributable to negotiation of agreements	193 days	144 days
Delay attributable to negotiation of contributions	17 days	27 days

Figure 6.01: Delay in Obtaining Permission-- Commercial Projects

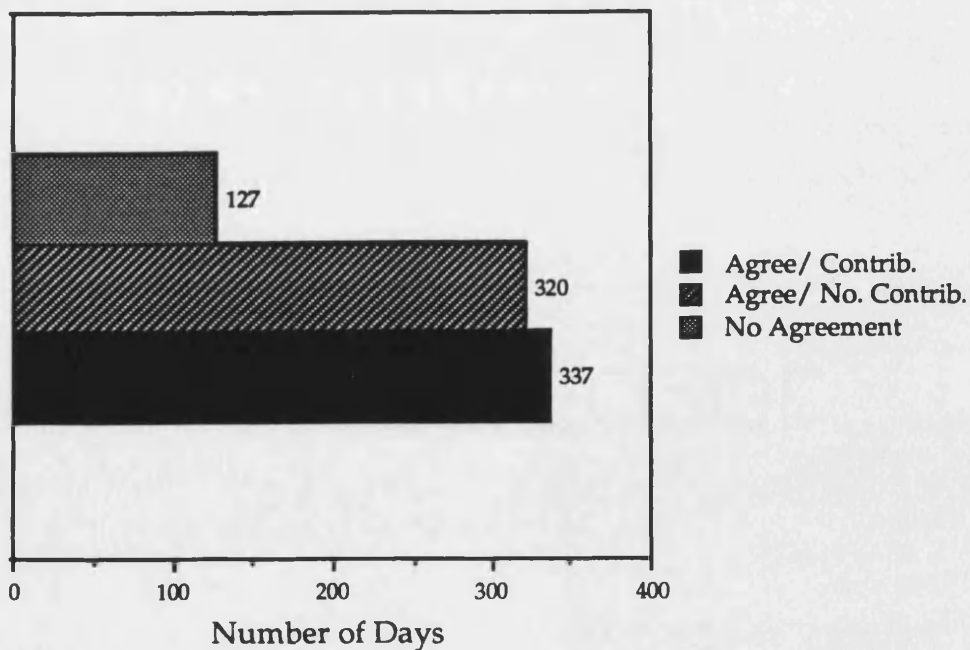
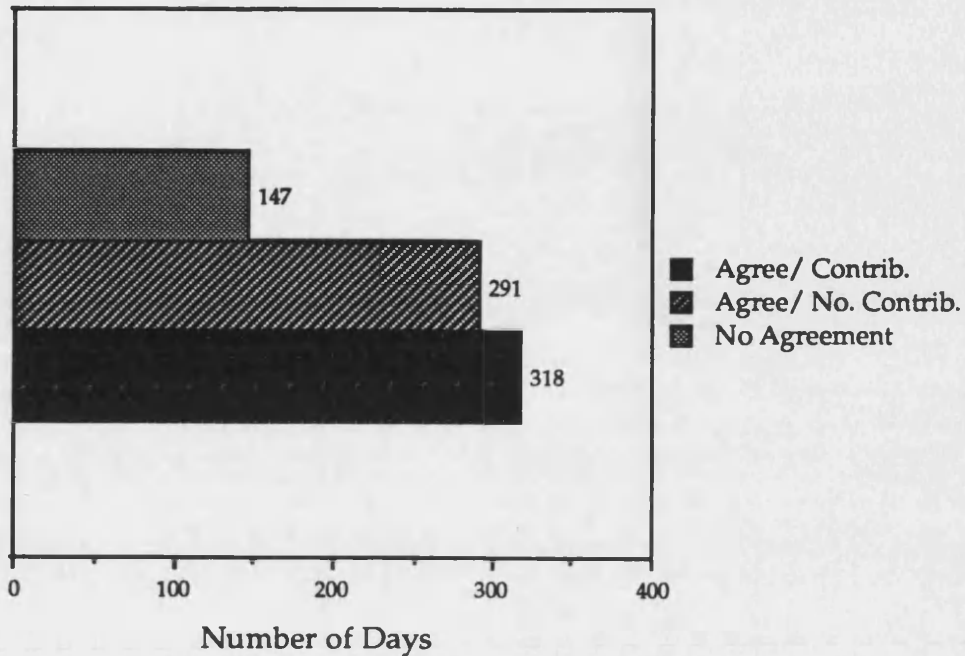


Figure 6.02 : Delay in Obtaining Permission-- Residential Projects



Throughout the 1980's, the DoE monitored the performance of local authorities in issuing their decisions, and compiled and published the results in annual reports entitled "Development Control Statistics." This DoE data unfortunately did not measure the length of time in issuing decisions in days. Instead, it measured the percent of planning decisions in a given year that were issued with 8 weeks, within 9 - 13 weeks, or which took more than 13 weeks. Nevertheless, this DoE data provides a useful basis for placing data for Cambridgeshire in a larger regional and national context.

Table 6.18 compares the performance of various regions in Britain in meeting the 8 week goal in 1985-86. At that time, authorities in East Anglia were *above* the national average in meeting the eight week goal. Seventy-two percent of all decisions in East Anglia in 1985-86 were rendered within eight weeks, compared to sixty-seven percent in England and fifty-one percent in Greater London. Northern regions, and those in the Midlands issued much higher percentages of decisions within eight weeks. Three years later, however, during the height of the boom, authorities in East Anglia had fallen *below* the national average in meeting the eight week goal, with only forty-eight percent of

decisions rendered within eight weeks, compared to fifty-two percent in England as a whole (see Table 6.19).

Table 6.18: Percent of Planning Applications Decided Within Eight Weeks, by Region--1985-86

<u>Region</u>	<u>% Decided Within 8 wks.</u>	<u>% Decided Within 9-13 wks.</u>	<u>% Decided Over 13 wks.</u>
Northern	76	17	7
Yorkshire and Humb.	68	21	11
North West	72	19	9
East Midlands	73	20	7
West Midlands	71	21	8
East Anglia	72	19	9
South East	61	25	14
South West	70	21	9
Greater London	51	30	19
All of England	67	22	11

Table 6.19: Percent of Planning Applications Decided Within Eight Weeks, By Region--1988-89

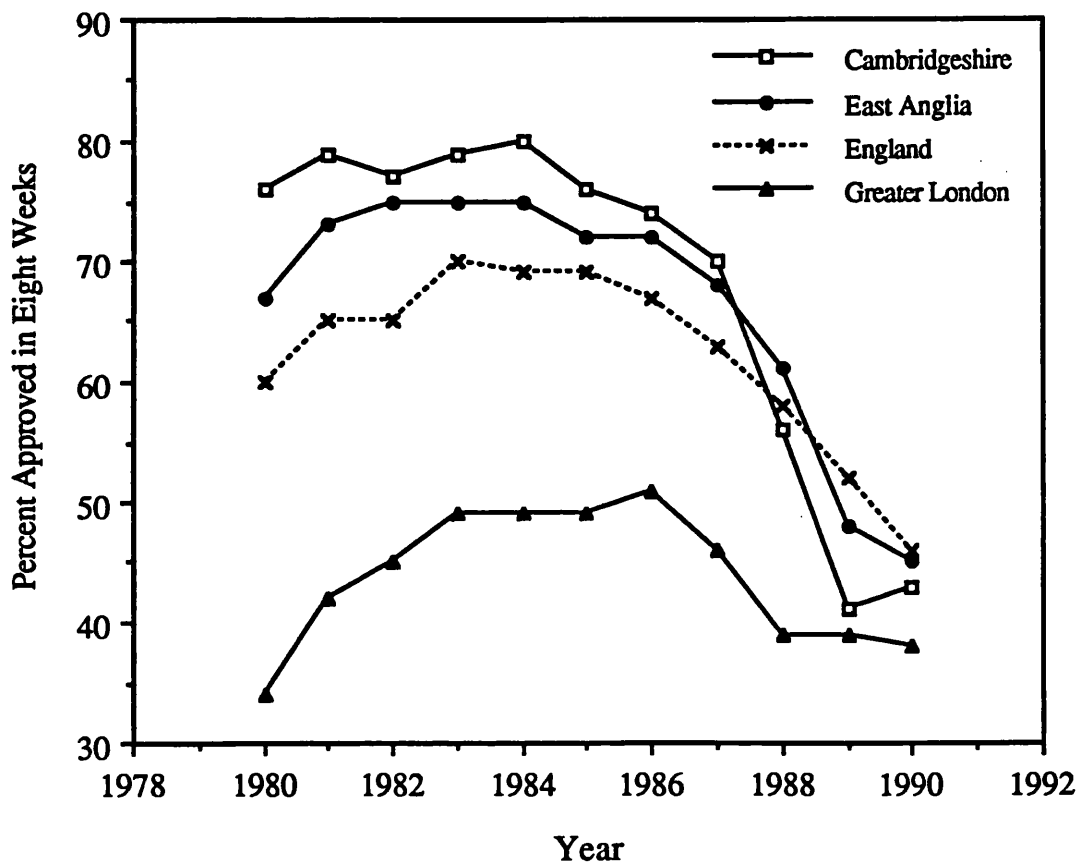
<u>Region</u>	<u>% Decided Within 8 wks.</u>	<u>% Decided Within 9-13 wks.</u>	<u>% Decided Over 13 wks.</u>
Northern	69	21	9
Yorkshire and Humb.	53	30	17
North West	62	26	12
East Midlands	61	26	13
West Midlands	63	26	11
East Anglia	48	30	22
South East	48	30	22
South West	47	33	20
Greater London	39	27	34
All of England	52	29	20

Source: DoE, Development Control Statistics

During the study period, the trend away from making planning decisions within eight weeks was even more pronounced in Cambridgeshire than in East Anglia as a whole. As shown in Figure 6.03, throughout the first half of the 1980's Cambridgeshire authorities determined a higher percentage of planning applications within eight weeks than was the case in East Anglia as a whole. From 1979 through 1985, 75% - 80% of all

planning decisions in Cambridgeshire were issued within eight weeks. However, after 1985 the percentage of planning decisions issued within eight weeks declined precipitously. By 1987, the percentage of decisions made within eight weeks in Cambridgeshire was lower than in East Anglia as a whole, and by 1988 it had fallen to 41%, almost similar to the level of performance found within Greater London. This data clearly suggests that between 1985 and 1990 it took applicants longer and longer to obtain planning permission.

Figure 6.03: Planning Applications Decided in Eight Weeks



An important factor which undoubtedly contributed to delay was the fact that local planning authorities during the boom were being faced with increased numbers of applications, and that they simply did not have the capacity to handle the huge volume of applications in a timely manner. However, data presented earlier in this chapter measuring the length of time involved in obtaining permission with an agreement, compared to the length of time to obtain permission without an agreement, suggests that the increased use of

agreements in Cambridgeshire, and throughout Britain, may have also been partially responsible.

Analysis of Contributions in Agreements

Table 6.20 presents data showing the number of agreements which contained contributions for various purposes. A total of 120 agreements contained contributions for foul sewers, drainage, sewage treatment plants, and sewage pumping stations, making this the largest single purpose for which contributions were offered. Contributions for highway improvements were offered in 53 agreements. The next most frequent purposes for which contributions were offered were footpaths and cycleways (36) and recreation and open space improvements (34).

Table 6.20: Number of Agreements With Contributions For Various Purposes Cambridgeshire

<u>Purpose of Contributions</u>	<u>Res. Agree.</u>	<u>Com. Agree.</u>	<u>Total Agreements</u>
Foul Sewer	31	4	35
Sewage Treatment	19	2	21
Sewage Pumping Station	9	1	10
Surface Water Drainage	42	12	54
Roads	33	20	53
Footpaths / Cycleways	27	9	36
Recreation / Open Space / Amenity	27	7	34
School	7	0	7
Other Public Building / Facility	2	4	6
Housing	10	1	11
Parking	2	5	7
Public Transport	2	0	2
Miscellaneous	1	2	3
Total	212	67	279
Percent	76%	24%	100%

A closer examination of Table 6.20 reveals interesting differences in the contributions made by residential and commercial developers. Contributions for surface water drainage and foul sewers were more frequently agreed to by residential developers than by commercial developers. On the other hand, contributions for road improvements were more common among commercial developers. Thirty percent of the contributions offered by commercial developers were for highway improvements, whereas only sixteen percent of the contributions offered by residential developers were for highway related

improvements. Commercial developers were also more likely to offer contributions for parking than were residential developers.

Contributions for other purposes were relatively infrequent. Only seven contributions were offered for schools (all by residential developers), and only six contributions were offered for other public or community facilities. Eleven contributions for housing were offered-- ten of them by residential developers. The one commercial agreement that appeared to involve a housing contribution was actually a special case, in that it was linked to the sale of city council-owned land to a private developer. (For further discussion, see Barnwell Drive case in Appendix Two--Selected Agreements.)

Contributions by commercial developers for recreation, open space and amenities were rare.

Developers frequently offered contributions in more than one *form*. For example, a contribution for sewers might have involved a donation of land, an offer to build construct the improvement, and also an offer to maintain the improvement once completed. Thus, the total number of contributions offered by developers (i.e. the total number of *forms* of those contributions) was greater than the number of purposes of contributions shown in Table 6.20. Table 6.21 presents statistics on the forms of developer contributions, and is the most accurate way of counting offers of contributions.

Table 6.21: Forms of Contributions Negotiated in Cambridgeshire

	<u>Residential</u>	<u>Commercial</u>	<u>Total</u>	<u>Percent</u>
Pay	41	14	55	14%
Construct	162	45	207	54%
Construct with joint-funding	5	0	5	1%
Donate land or permanent easement	62	14	76	20%
Sell land	9	2	11	3%
Maintain	7	2	9	2%
Commutated sum-- maintenance	9	1	10	3%
Commutated sum -- parking	0	5	5	1%
Sell / lease space at below market cost	5	0	5	1%
Total	300	83	383	
Percent	78%	22%	100%	100%

As shown in Table 6.21, there were 383 separate offers of contributions (i.e. different forms of contributions). Two hundred and seven (54%) of those forms of

contributions involved offers to construct some improvement for a public authority. There were 76 offers to donate land or permanent easements, comprising 20% of all contributions, plus five instances when applicants agreed to sell land to the local authority on terms at less than market cost. It is important to note that only 70 (18%) of the 383 promised contributions involved payments of money-- 60 for the construction of specified improvements, and 10 for the cost of maintaining and operating facilities and improvements once they were completed. Moreover, very few of those offers of money were likely to be collected by the local public authorities who were responsible for granting planning permission. Forty-seven (67%) of all offers of cash contributions were for sewer and drainage infrastructure improvements (their construction and/or subsequent maintenance and operations), and most of those contributions were intended for Anglian Water Authority. Six cash payments (11% of the total) were promised to Cambridgeshire County Council-- five for improvements of county roads and one for a school. One cash payment was offered to the Department of Transport for the improvement of rail public transport. Only 16 (23%) of the 70 offers of cash contributions were for facilities and improvements which it was the responsibility of district councils to provide (i.e., recreation, open space, amenities, parking and miscellaneous improvements). Indeed, local districts and councils -- compared to other authorities such as the County and Anglian Water Authority-- gained relatively little from the agreements they signed. *It is also important to emphasise that when cash payments were offered, they were always offered for the purpose of obtaining some specific public facility or infrastructure improvement. Moreover, there was not a single instance where a payment was offered without specifically stating in the agreement the purpose for which the payment was being made.*

Contributions for the maintenance of public facilities and improvements were relatively uncommon. There were nine instances when developers offered themselves to maintain public facilities and improvements for at least a period of time, and ten offers of commuted sum payments for maintenance -- five for the maintenance of open space and recreation areas and five for the maintenance of sewers and drains. No contributions were offered toward maintaining highways. There were only two offers of contributions for public transport-- both made in connection with one of the proposed new settlements in East Cambridgeshire.

The data presented above gives little indication as to the magnitude of developer contributions, and whether or not these contributions were beneficial to communities. As a way of indirectly measuring this aspect of developer contributions, data was collected and analysed regarding types of highway improvements which were subject to agreements. Five types of road improvements covered by agreements were identified. Keeping in mind the important distinction between "beneficial" and "onerous," as discussed in Chapter Four, it can be seen that three of these types of road improvements were clearly beneficial

to proposed developments. Only two of the road improvements could be viewed as in any way onerous.

- Widen existing public road and/or construct a new turning lane adjacent to proposed development (beneficial)
- Construct estate road on-site (beneficial)
- Construct junction providing direct access into the development from an existing public highway (beneficial)
- Construct a new off-site road, to be adopted and maintained as a public highway (slightly onerous)
- Construct off-site junction improvements (i.e., new intersection or roundabout) some distance from the site, to an standard greater than necessary simply to meet the needs of the proposed development (onerous)

As shown in Table 6.22, the most frequent type of highway agreements called for the construction of junctions connecting new on-site estate roads to existing public highways. Thirty-six per cent of all highway improvements specified in agreements were of this type, and were clearly beneficial to the developments to which they pertained. The second most frequent type of highway improvement carried out or paid for by developers involved widening existing public roads adjacent to proposed developments, including the construction of dedicated turning lanes into proposed developments. Nine of the sixteen offers for this type of highway improvement were obtained from developers of commercial properties (shopping complexes, industrial estates and office parks). Again, highway improvements of this type were directly beneficial to proposed developments. Eight agreements were signed which simply called for the construction of on-site estate roads, without specifying any off-site improvements whatsoever. Thus, 46 (75%) of the 61 highway improvements offered were directly related, and beneficial to the developments which occasioned the agreements. Not only were such improvements beneficial to the proposed developments, but they were indeed absolutely necessary for development to proceed.

Fifteen developer commitments (approximately 25%) involved more substantial, and more onerous, highway contributions which offered benefits to the community at-large. In five instances developers offered to construct new public roads which offered community benefit in terms of traffic circulation. But these offers of contributions were not solely altruistic, since they also made adjacent and nearby land owned by the contributors more valuable for development. Probably the most generous type of commitment from developers involved offers to construct or pay for junction improvements some distance from proposed developments. There were a total of ten commitments for this type of

highway improvement, six of which came from developers of commercial properties.

Table 6.22 : Types of Highway Improvements Covered by Agreements

	<u>Residential Developments</u>	<u>Commercial Developments</u>	<u>Total</u>
Construct New Public Rd.	4	1	5 (8%)
Widen/Improve Existing Public Rd.	7	9 (38%)	16 (26%)
Improve Junction (not adjacent)	4	6 (25%)	10 (16%)
Construct Junction connecting Estate Rd. to Public Hgwy.	17 (46%)	5	22 (36%)
Estate Road (entirely on-site)	5	3	8 (13%)
Total	37	24	61

Analysis of Non-Contributory Provisions in Agreements

Table 6.23 presents county-wide data on *non-contributory* provisions included in agreements signed in Cambridgeshire during the study period (i.e. *all* non-contributory provisions found in agreements, including non-contributory provisions found in agreements with contributions). As shown in the table, agreements signed in Cambridgeshire during the study period contained a total of 454 non-contributory provisions. Sixty-two percent of those non-contributory provisions applied to residential permissions. However, as noted at the beginning of this chapter, 71% of all permissions granted during the study period in Cambridgeshire were residential permissions. On the other hand, 38% of all non-contributory provisions were applied to permissions for commercial development. Only 29% of all permissions granted in Cambridgeshire during the study period were commercial. Thus, even though numerically more non-contributory provisions were found in residential agreements, there was a somewhat greater tendency to impose non-contributory provisions on commercial developments than on residential developments.

Table 6.23: Non-Contributory Provisions in Agreements -- Cambridgeshire

<u>Purpose</u>	<u>Res. Agree.</u>	<u>Com. Agree.</u>	<u>Total</u>	<u>Percent</u>
Specify Use	53	46	99	22%
Extinguish Existing Use	3	10	13	3%
Restrict Occupancy	65	11	76	17%
Minimise Adverse Impacts	3	8	11	2%
Rehabilitate / Improve / Preserve	13	8	21	5%
Set Deadline / Timetable	5	14	19	4%
Phase Development	42	17	59	13%
Limit Development	8	10	18	4%
Revise Previous Agreement	7	4	11	2%
Waive Right to Compensation	1	5	5	1%
Give Notice to LPA	0	4	4	1%
Pay Legal Costs of Agree.	81	36	117	26%
Total	281	173	454	
Percent	62%	38%	100%	100%

One hundred seventeen provisions were found in agreements requiring the applicant to pay for the legal cost of preparing the agreement-- making this the most frequent non-contributory provision in agreements. Forty percent of all agreements required the applicant to pay legal costs. However, that meant that in 60% of all agreements, legal costs involved in preparing the agreements were paid by the local authority. According to Chris Taylor, South Cambridgeshire District Council Solicitor (1991,int.), a poll he conducted of local government solicitors in the South East in January 1991 showed that less than half of all local authorities charged for preparing legal agreements. The next three most common non-contributory provisions in agreements were to *specify use* (99), to *restrict occupancy* (76), and to regulate the *phasing of development* (59). These three non-contributory purposes, when combined, comprised over half (52%) of all non-contributory purposes in agreements. The remaining nine non-contributory purposes occurred relatively infrequently in agreements; none of these nine purposes occurred in more than 5% of agreements, and the nine provisions combined comprised only 22% of all non-contributory purposes included in agreements.

Occupancy restrictions and *phasing requirements* were much more frequently included in residential agreements than in commercial agreements. On the other hand, other non-contributory provisions were more likely to be imposed on commercial developments. For example, provisions intended to *minimise adverse impacts*, to set *deadlines and timetables*, and to *limit development* were found more frequently in

commercial agreements than in residential agreements -- despite the fact that substantially fewer agreements were signed for commercial developments than for residential developments. Similarly, the provision waiving *the right to claim compensation* occurred in five commercial agreements, but in only one of the residential agreements. The provision requiring that the local authority be *given notice* occurred four times in commercial agreements, but in none of the residential agreements.

A majority of occupancy restrictions were imposed on applicants seeking to build a single dwelling unit. The most frequent type of occupancy restriction involved applications to build a farmhouse, or to add a dwelling unit on a working farm, and required that the occupant(s) of the permitted unit be employed on the premises, or in local agriculture. Another way in which planning authorities applied occupancy restrictions to single dwelling units was to require that units added to existing homes be occupied by family members (i.e. as family annexes). Agreements were also used to ensure that certain new residential developments would be permanently available for occupancy by elderly persons. A breakdown of occupancy restrictions found in Cambridgeshire, and the number of times they were imposed in agreements between 1985 and 1990, is given in Table 6.24.

Table 6.24: Residential Occupancy Restrictions in Agreements-- Cambridgeshire

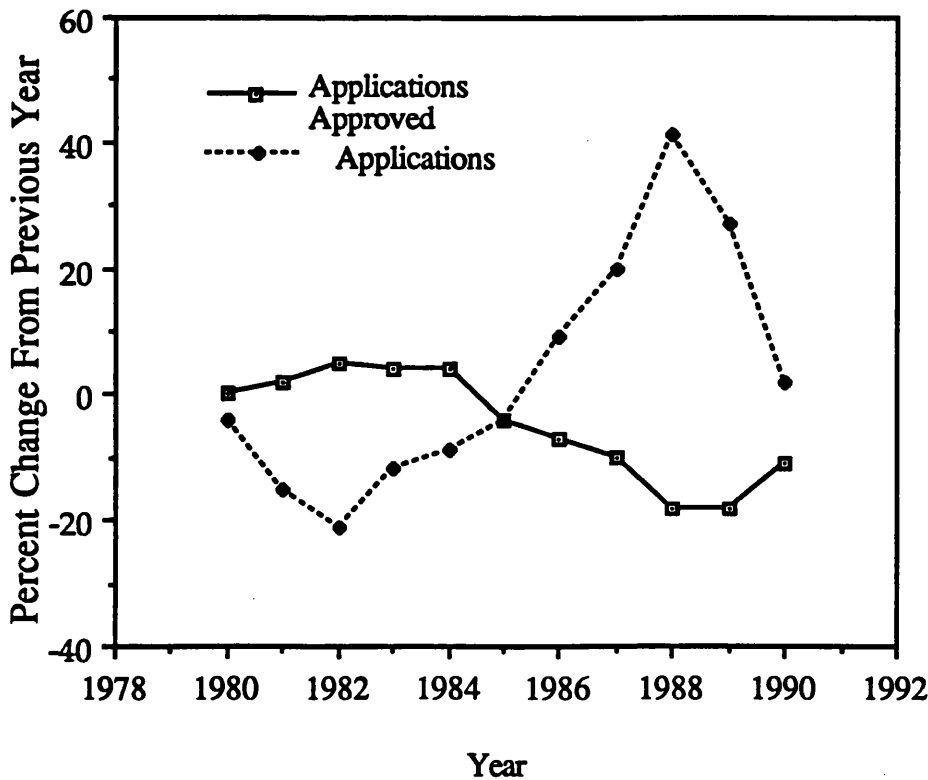
<u>Purpose of Restriction</u>	<u>Times Imposed</u>
Work-related restriction-- units to be occupied only by persons employed on premises or in certain activities (i.e. in local agriculture)	36
Elderly persons	22
Family annexes	3
Students	3
Local residents; local firms; local user requirement	2
Short term, "holiday" flats	2
Local authority has right to nominate occupants	3
Particular categories of firms (i.e. R & D)	1
Occupancy limited to specific occupant or period of time	4
Total	76

Trends During the 1985-1990 Period

As noted in Chapter Five, the 1980's saw a substantial increase in development activity in Cambridgeshire, and a significant rise in planning applications through 1988. This rise in planning applications, indicative of increased development pressure in the

county, probably strengthened the ability of local authorities to secure contributions from developers (should they have been inclined to do so). Equally significant is the fact that local authorities responded to the increased numbers of planning applications by refusing an increased percentage of planning applications. The inverse relationship between changes in planning applications and changes in the overall approval rate of planning applications is graphically shown in Figure 6.04. As the number of planning applications increased between 1982 through 1988, local planning authorities responded by refusing an increasing percentage of planning applications. In 1988, when planning applications reached a peak, and when developers were undoubtedly most willing to offer contributions, local planning authorities approved the lowest percentage of applications during the decade. By refusing an increasing percentage of planning applications as planning applications increased, LPAs enhanced the strength of their bargaining position to seek contributions from developers. On the other hand, when planning applications fell after 1988, LPAs weakened their bargaining position by approving an increasing percentage of applications.

Figure 6.04:
Change in Applications Versus Change in Percent Approved



There is no evidence to suggest that planning authorities consciously adopted a policy of refusing more applications as development pressure increased (or of approving more when development pressure decreased). Nevertheless, the data clearly shows that the odds for approval or denial of planning applications clearly changed over time, and that such changes were related to and shaped by changes in the property market. Why then did local authorities in Cambridgeshire respond to the increased development pressure by refusing an increasing percentage of planning applications?

One possible explanation might be that as the boom progressed, more and more poorly conceived development proposals were submitted which were contrary to established planning policies and which were therefore not approvable. A second explanation might be that as development activity in the county intensified, there was increased opposition to development on the part of citizens, and that local planning authorities bowed to this increased opposition by refusing an increasing percentage of planning applications. Indeed there is some evidence to suggest that opposition to development intensified in the East Anglian region during the 1980's. For example, a 1989 report prepared by the Department of Land Economy of the University of Cambridge found that "In the Ouse Valley, South Cambridgeshire, and in Royston there has been very strong public opposition to further expansion and a belief that these areas have been taking more than their fair share of growth"(University of Cambridge, 1989, 77). Similarly, a feature article on M11 Property Development in the *Financial Times* reported that "The recent surge in residential property prices in East Anglia reflects, at least in part, a desire among new owners to find, and the desire among established owners to consolidate, access to the countryside... there is, then, a powerful lobby against development"(*Financial Times*, 4 November, 1988, 17).

How then did the negotiation of agreements, and agreements with contributions change during the 1985-90 period? As shown in Figure 6.05, the number of planning agreements signed annually in Cambridgeshire increased throughout the study period, from 23 agreements in 1985 to 101 agreements in 1989. During the first three months of 1991 (not shown in Figure 6.05), 29 agreements were signed. Had that pace of signing agreements been maintained throughout the year, a total of 116 agreements would have been signed in 1990.

A more detailed picture of the tendency toward an increased use of agreements is provided Figure 6.06, which plots the number of agreements signed in Cambridgeshire on a quarterly basis. This data shows that the signing of agreements reached its peak during the second quarter of 1988, and remained at a fairly high level thereafter, except for a sharp dip during the third quarter of 1988. The number of agreements signed in the first quarter of 1990 equaled the high reached during the second quarter of 1988.

Figure 6.05: Number of Agreements Signed Per Year

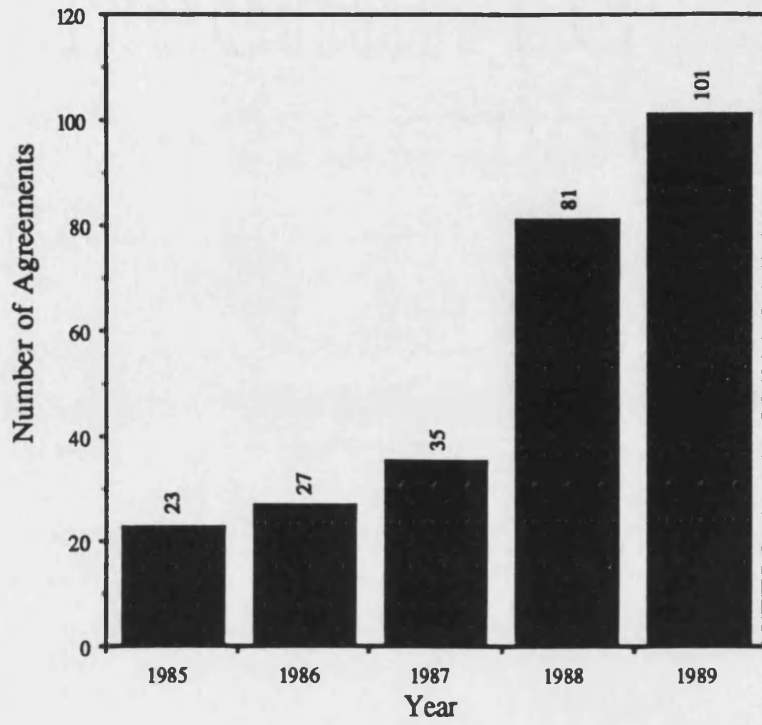
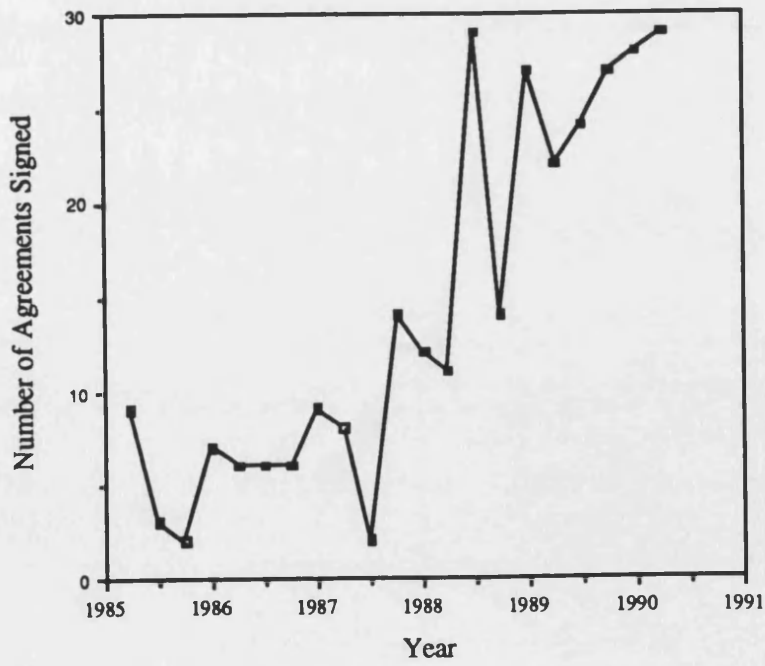


Figure 6.06: Agreements Signed Per Quarter, 1985-90



A breakdown of the data on agreements, differentiating between agreements with contributions and those without contributions, helps to clarify what actually happened during the study period, and helps to explain somewhat the above contradiction. Figures 6.07 and 6.08 present data on the number of agreements signed per quarter for residential and commercial developments which involved contributions. As shown by Figure 6.07, relatively few residential agreements with contributions were signed from 1985 through the middle of 1987. After the middle of 1987, the number of residential agreements with contributions tended to increase, before falling off sharply in the last two quarters. The signing of commercial agreements with contributions lagged well behind that of residential agreements. In 9 of the first 13 quarters of the study period, not a single commercial agreement with contributions was signed. In fact, in the first 13 quarters of the study period only 10 commercial agreements with contributions were signed, whereas during the last 8 quarters a total of 24 such agreements with contributions were signed.

Figure 6.07: Residential Agreements With Vs. Without Contributions

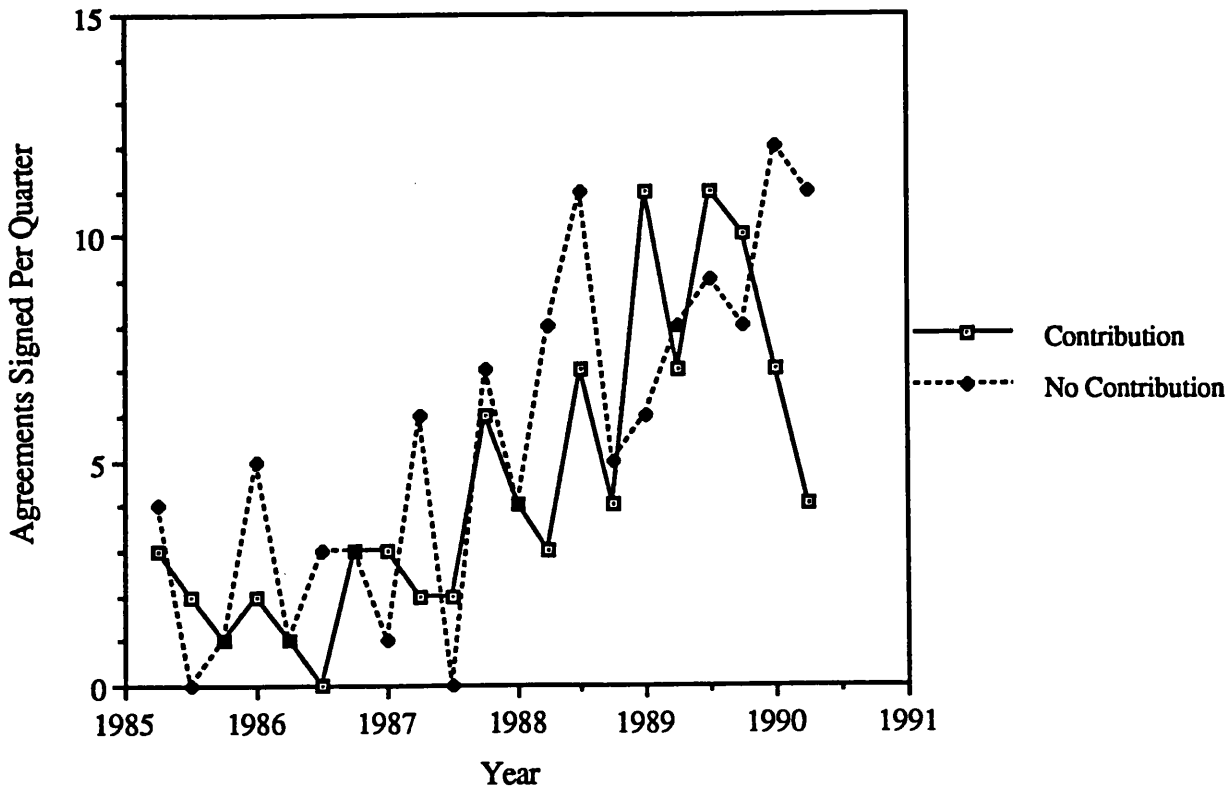


Figure 6.08: Commercial Agreements With Vs. Without Contributions

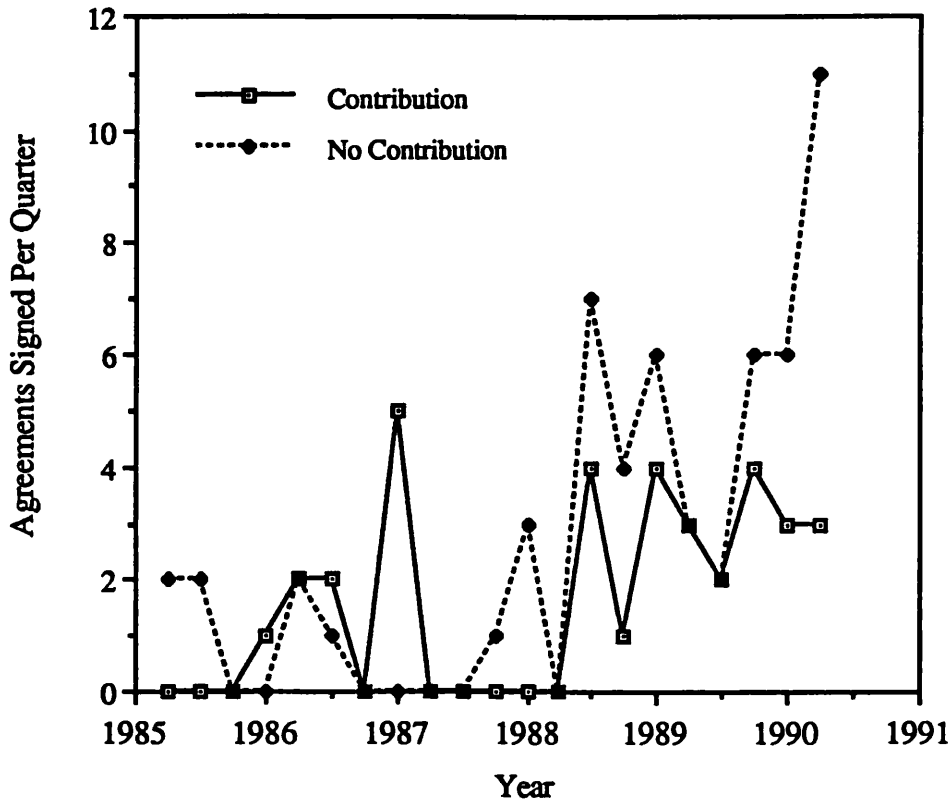
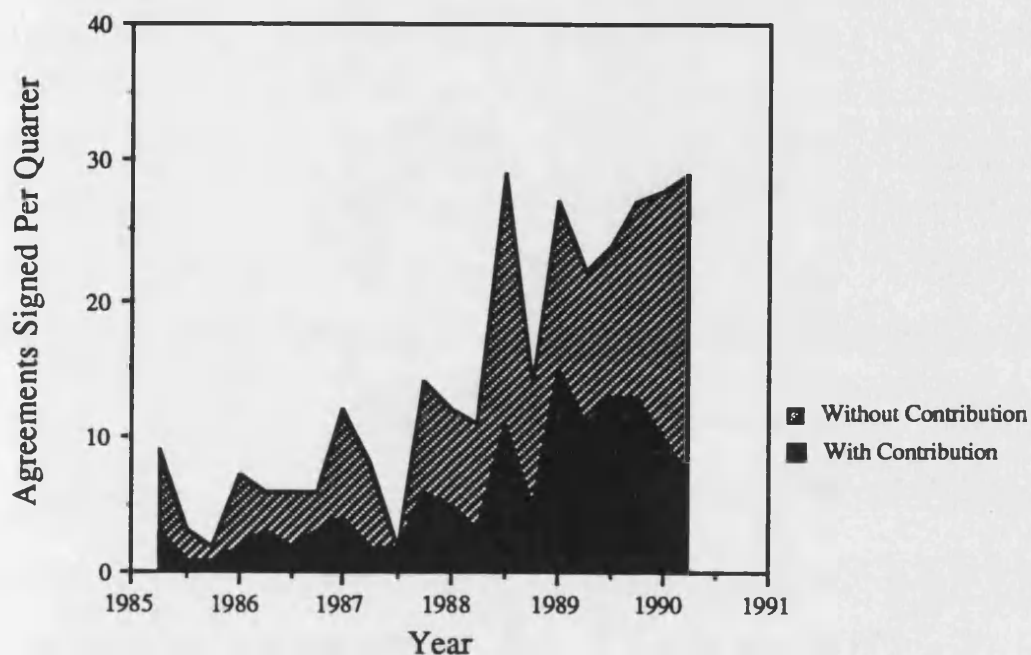


Figure 6.09 presents a composite picture of the total number of contributory versus non-contributory agreements signed per quarter between 1 January 1985 and 30 March 1990. This figure clearly shows that, although the total number of agreements signed per quarter generally increased over time, non-contributory agreements were becoming more numerous than contributory agreements during the latter half of the study period. In fact, at the very end of the study period the number of agreements without contributions *increased*, whereas the number of agreements signed with contributions *decreased*.

The finding that the number of agreements with contributions declined toward the end of the study period, at a time when the property market was in decline, seems to suggest that the negotiation of contributions was sensitive to changing market conditions. The fact that the decline in agreements did not show up statistically until a year or so after the property market began to decline is to be expected, given the fact that it generally took a year or more for agreements to be finalised.

Figure 6.09: Total Agreements With and Without Contributions

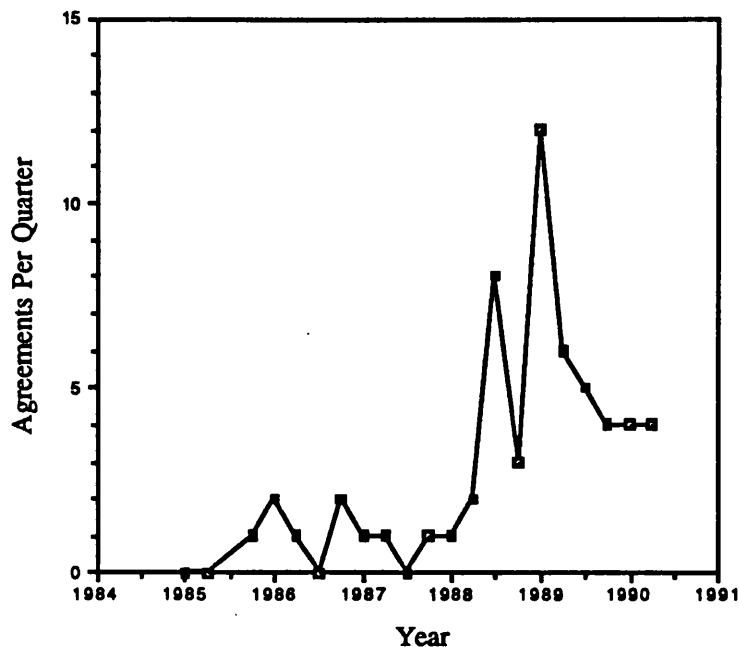


Agreements with Contributions for Highways and Water Infrastructure

The two most frequently offered contributions in agreements were for the improvement of highways, and for the improvement of water-related infrastructure. It is therefore significant to note that offers of contributions for both these specific purposes declined sharply after reaching peaks at the end of 1988. Offers of contributions for these two specific purposes reflected a similar pattern of decline starting in the beginning of 1989.

During the study period, a total of 54 agreements contained offers of contributions for highway improvements. As shown in Figure 6.10, few agreements with highway contributions were signed prior to 1988. In 1988, however, there was a burst of activity in signing highway-related agreements, which lasted approximately one year. The peak number of agreements with highway contributions signed in a single quarter was 12, during the last quarter of 1988. But in the first quarter of 1989, the number of highway-related agreements dropped sharply, followed by two additional quarters of declining contributions.

Figure 6.10: Agreements With Highway Contributions



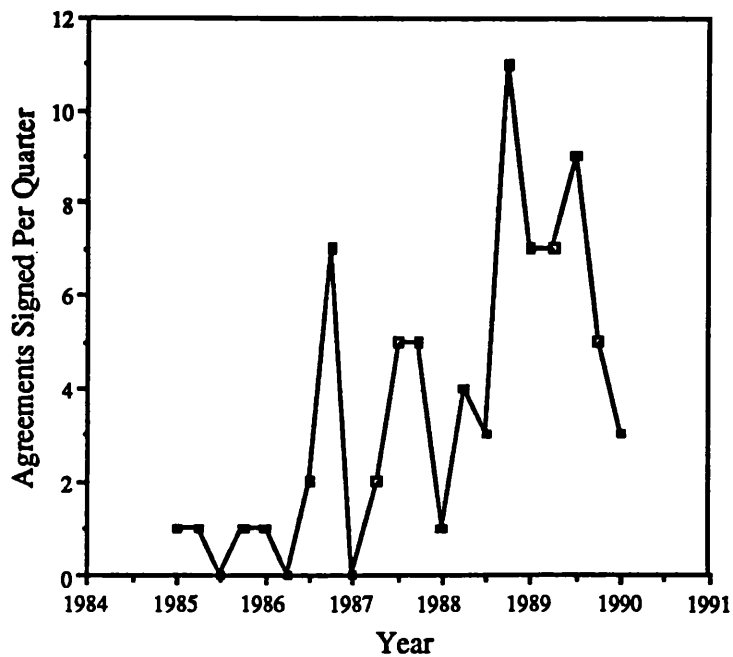
According to a spokesman for Anglian Water Authority (Morrod,1991a,int.), AWA sought to resist requisitions from developers seeking extensions of sewer and drainage lines to serve new development sites. When AWA did agree to use its powers to condemn and acquire rights of way needed for sewer extensions, it tended to encourage developers to construct the sewer connections, subject to a Section 30 agreement assuring that the sewers were properly constructed.

The Authority has preferred to have developers construct needed off-site sewers, rather than having the authority construct them. It saves the Authority the expenditure and effort of having to construct improvements, and then having to recover the money from the developer. And it is almost always less expensive for a developer to construct the sewer than to pay Anglian Water Authority to construct it (Morrod, Ibid.).

There is little question that it was almost always less expensive for a developer to construct the sewer improvements than to have Anglian Water Authority construct the off-site sewer. When AWA did agree to construct the sewer improvements, a developer was required to take out a mortgage, payable over 12 years, at a rate of interest set by the Director General, for the full cost of the project. The developer was also required to provide financial security in the form of a deposit *in advance* for the full amount of the cost of the project-- this financial security to be refunded only after the full amount of the mortgage was paid. Given these stiff terms, it is no wonder that developers so often chose to construct the improvements themselves, as AWA's contractor.

As shown in Figure 6.11, only four agreements with contributions for sewer and drainage infrastructure were negotiated in all of Cambridgeshire during the first year and a half of the study period. During the next three years, through the middle of 1988, there was a noticeable increase the number of agreements with such contributions. During the last two quarters, however, in the period leading up to the water infrastructure charge, the number of agreements with sewer and drainage contributions sharply declined.

Fig. 6.11: Agreements Signed With Sewer/Drainage Contributions



One factor which may possibly have contributed to the decline in the signing of agreements with water infrastructure contributions was the fact that Anglian Water Authority, like other regional water authorities, was officially privatised in September 1989. This transition from a public authority to a private corporation was obviously a major organisational adjustment, and might have temporarily interrupted the signing of agreements with developers. On the other hand, as the time drew closer to 1 April 1990, when the provisions of the 1989 Water Act were to take effect, Anglian Water Authority may have become increasingly unwilling to enter into agreements with developers--preferring instead to wait until after 1 April 1990, when a mandatory infrastructure charge would be automatically imposed.

Appeals

One factor which worked against the ability of local authorities to force developers into offering contributions was the ability of developers to bypass local authorities by obtaining planning permissions on appeal from the Secretary of State. Data compiled on the number of planning permissions granted on appeal between 1982 and 1990 suggests that, as development pressure increased, developers in Cambridgeshire were increasingly successful in appealing non-determinations and refusals of planning permission to the Secretary of State. As shown in Figure 6.12, the number of residential developments granted planning permission on appeal rose steadily after 1982, reaching a peak of 133 in 1989. Between 1985 and 1990, a total of 455 residential developments in Cambridgeshire were granted permission on appeal.

Fewer commercial developments than residential developments were granted planning permission on appeal. As shown in Figure 6.13, the greatest number of commercial permissions granted on appeal was in 1986, when 28 commercial projects were granted planning permission by the Secretary of State. Between 1985 and 1990, 90 commercial projects were granted planning permission on appeal.

Figure 6.12: Housing Permissions Granted on Appeal

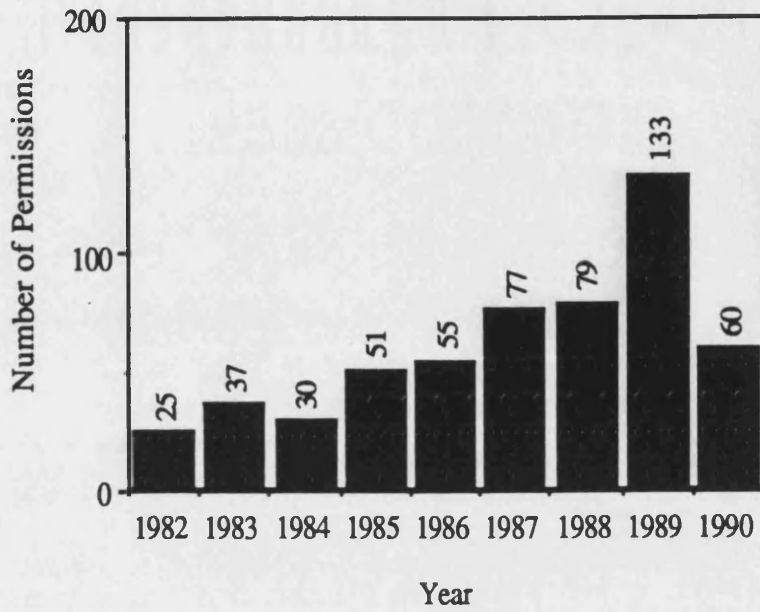
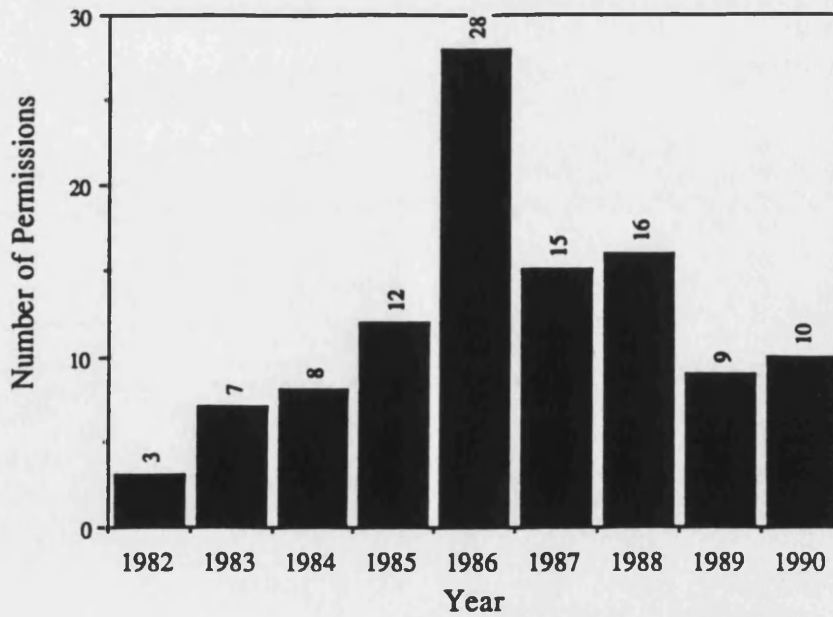


Figure 6.13: Commercial Permissions Granted on Appeal



The analysis of agreements, contributions and non-contributory provisions presented in this chapter has provided an overview of local authority use of agreements in Cambridgeshire. Absent from this analysis has been any reference to specific projects which occasioned agreements. For a brief descriptions of specific agreements signed for specific developments, the reader may wish to refer to Appendix Two-- "Selected Agreements." The brief case studies of selected agreements contained in this appendix describe the specific contributory and non-contributory provisions included in individual agreements, and the circumstances under which agreements were signed. The value of these case descriptions is that they provide a fuller understanding of how agreements were used in specific planning contexts. They also underscore the generally limited scope of contributions obtained in Cambridgeshire, and help explain why LPAs obtained so little from developers.

Summary of Findings

Analysis of agreements signed in Cambridgeshire at the county-level produced the following significant findings:

- Only two percent of planning permissions were subject to planning agreements. The majority of the agreements applied to minor projects, and did not involve developer contributions.
- Agreements which involved contributions tended to be negotiated for relatively large projects (residential projects averaging 121 units, and commercial developments averaging 9,165 square metres of floor area). Agreements which did not involve contributions tended to be negotiated for much smaller developments (residential projects averaging 8 units, and commercial developments averaging 1,453 square metres).
- Because of the tendency to negotiate agreements with contributions for large-sized projects, the percentage of total permitted development subject to agreements was greater than the percentage of permissions subject to agreements (as reported above) seemed to suggest. Approximately 27% of all housing units granted planning permission, and 20% of all newly permitted commercial development, were subject to planning agreements.
- The signing of agreements significantly lengthened the time it took for applicants to receive planning permission. However, there is little evidence to indicate that delay was a factor in forcing developers into agreeing to make contributions. Agreements not involving contributions took approximately as long to process as those involving contributions.

- There was a greater tendency to negotiate contributions from residential developments than from commercial projects. On the other hand, there was a relatively strong tendency to impose non-contributory provisions on commercial developments, to minimise adverse impacts of those developments. Nevertheless, stipulations imposed on commercial developers typically fell short of requiring contributions to compensate the community for social and environmental costs imposed by those developments.
- There was a strong tendency to negotiate agreements in relation to outline applications, suggesting that applicants who signed agreements were frequently in a position to pass the costs of contributions back to landowners.
- Projects which were subject to agreements were actually *less* dense than projects which were not subject to agreements. This finding was unexpected, given previous writings by economists (see Chapter Four) suggesting that the negotiation of planning gain should produce more compact, more dense development.
- Contributions for development-related infrastructure such as sewers, drainage, highways, footpaths and cycleways accounted for over 75% of all the contributions offered by developers. Contributions for off-site sewer and drainage infrastructure comprised the largest single type of infrastructure contribution. With few exceptions, developer contributions were directly related to the developments which were the subject of agreements, and were specifically ear-marked for infrastructure improvements which were necessary for development to proceed. In short, the vast majority of contributions offered in agreements were beneficial (not onerous) to developers and their proposed developments, and did not represent payment of betterment.
- In most cases, developers took advantage of the flexibility offered through the negotiation process by negotiating agreements which allowed them to construct needed facilities themselves, rather than having to pay money for those facilities to public authorities.
- Most cash payments made by developers were collected either by Anglian Water Authority or the County Highway Authority, rather than by the district councils which granted planning permission. Less than 25% of all contributions offered by developers were for facilities and improvements which district councils were responsible for providing-- open space and recreation, social housing, and parking. The small proportion of contributions collected at the district level calls into question the notion that local

planning authorities have used their monopoly power over planning permission to extract contributions for their own benefit.

- The number of agreements signed in Cambridgeshire increased steadily over the course of the 1985-1990 study period. There was a particularly strong trend toward making increased use of agreements for non-contributory purposes. The negotiation of contributions in agreements showed a more variable pattern. Particularly noteworthy is the fact that negotiated contributions dropped off sharply toward the end of the study period, when the property market weakened and development pressure fell.

- Offers of contributions by developers were not sufficient to tempt local authorities to increase their rate of approval of planning applications. As the number of planning applications increased, and as developers likely became more willing to offer contributions, LPAs refused an increasing percentage of planning applications. On the other hand, when the number of planning applications fell sharply toward the end of the study period, LPAs reversed themselves and began to approve an increased percentage of planning applications-- in effect undermining their bargaining position to obtain contributions at a time when developers were least likely to want to offer contributions. These findings suggest that Cambridgeshire LPAs did not act to maximise the collection of contributions.

- As development pressure increased during the study period, the number of permissions granted on appeal by the Secretary of State increased. The increased ability of developers to obtain planning permission on appeal, and to bypass local authorities, further weakened the bargaining position of local authorities in seeking contributions.

CHAPTER SEVEN : GEOGRAPHICAL VARIATION IN USING AGREEMENTS

Conditions in Cambridgeshire during the period 1985-1990 were highly favourable for the negotiation of contributions from developers. "This is a booming region,..., with a fast improving infrastructure..."(Inland Revenue,Autumn 1987, 16). However, public investments in infrastructure benefited some districts more than others. Moreover, as discussed in Chapter Five, rates of growth, market demand, and degrees of planning constraint on development varied considerably within the region. For example, while the county's population increased 12% between 1980 and 1990, Huntingdonshire's population increased 17%, while Cambridge' population actually decreased. In Cambridge and South Cambridgeshire, applications for new residential, commercial and industrial development were subject to unusually severe constraint. Meanwhile, the degree of constraint exerted on residential or commercial new development in Peterborough was uniformly low. Applications for commercial development were even less likely to be refused in Fenland and Huntingdonshire. By the end of the decade, these differential policies of constraint had produced major imbalances within the region between supply and demand. Within the Cambridge Sub-Area, there was a high level of unmet market demand, while in Fenland and Peterborough planning permissions were so freely granted as to produce a supply of land with planning permission well in excess of demand. Within the county there were also differences in political affiliation. Cambridge and Peterborough City Councils were affiliated with Labour, while the four remaining district councils, and the county council were Conservative.

Based on what has previously been theorised about agreements (as discussed in Chapter Four), such significant differences within the region might be expected to have had an impact on the ability, and possibly the inclination, of different districts to negotiate developer contributions. This chapter therefore analyses and compares the data on agreements signed in Cambridgeshire between 1985 and 1990 at the district level. Did local authorities differ significantly in the extent and nature of their use of agreements? How did attitudes and policies of local planning authorities within the region differ toward using agreements? And what factors possibly played a role in shaping local authority use of agreements?

Analysis of the Data on Agreements by District

South Cambridgeshire and the City of Cambridge City signed the most agreements for commercial permissions (see Table 7.01). Fifty-three of the 88 agreements signed for

commercial projects in Cambridgeshire were signed in those two districts. Still, the percentage of all permissions which involved agreements in those districts was relatively small (5% for South Cambridgeshire; 4% for Cambridge). In Huntingdonshire and Peterborough, where much of the commercial development activity in the county was concentrated, few commercial agreements were signed. In Peterborough only .2% of all commercial permissions were subject to agreement.

Table 7.01: Agreements Signed for Commercial Permissions, by District

	<u>Total Comm. Permissions*</u>	<u>Agreements Signed</u>	<u>Percent Perms. With Agreements</u>
Cambridge	598	23	4%
E. Cambs.	394	5	1%
Fenland	578	15	3%
Huntingdon	975	13	1%
Peterborough	819	2	.2%
S. Cambs.	669	30	5%
Total	4035	88	2%

Table 7.02: Agreements Signed for Residential Permissions, by District

	<u>Total Res. Permissions*</u>	<u>Agreements Signed</u>	<u>Percent Perms. With Agreements</u>
Cambridge	605	22	4%
E. Cambs.	1391	8	1%
Fenland	2555	67	3%
Huntingdon	1951	62	3%
Peterborough	1099	10	1%
S. Cambs.	1951	37	2%
Total	9552	206	2%

* Source: DoE Development Control Statistics

As shown in Table 7.02, Fenland and Huntingdonshire signed the largest number of residential agreements. However on a percentage basis, Cambridge was more active in signing agreements. Four per cent of all residential permissions in Cambridge involved agreements. Comparatively few agreements for residential permissions were signed in East Cambridgeshire and Peterborough, where only 1% of all residential permissions were subject to agreements.

Tables 7.03 and 7.04 present data showing the rate at which planning agreements were signed for permissions related to *major* developments, as previously defined. As

shown in Table 7.03, the largest numbers of agreements for major *commercial* projects were signed in South Cambridgeshire (13) and Cambridge (11). In Peterborough, which granted more permissions for major commercial projects than any other district, only 2 major commercial agreements were signed. As shown in Table 7.04, the largest number of agreements for major *residential* projects was signed in Fenland (23), and again the fewest in Peterborough.

Tables 7.03 and 7.04 also show the number of major permissions which were subject to agreements negotiated in conjunction with previous planning applications. Adding these permissions subject to agreements to the number of agreements which were signed, gives the total number of permissions which were subject to agreements (see last column). For both commercial and residential applications, the largest percentages of major planning permissions subject to agreements were in South Cambridgeshire and East Cambridgeshire.

Table 7.03: Major Commercial Permissions Subject to Agreements, by District

	<u>Total Perms.</u>	<u>Agreements</u>	<u>Perms. Subject to Prev. Agree.</u>	<u>Total Perms. Subject to Agree</u>
Cambridge	70	11	8	19 (27%)
E. Cambs.	13	5	1	6 (46%)
Fenland	21	7	0	7 (33%)
Huntingdon	48	6	1	7 (15%)
Peterborough	80	2	0	2 (2%)
S. Cambs.	24	13	1	14 (58%)
Total	256	44	11	55 (21%)

Table 7.04: Major Residential Permissions Subject to Agreements, by District

	<u>Total Perms.</u>	<u>Agreements</u>	<u>Perms. Subject to Previous Agree.</u>	<u>Total Perms. Subject to Agree</u>
Cambridge	15	5	4	9 (56%)
E. Cambs.	17	7	4	11 (65%)
Fenland	58	23	1	24 (41%)
Huntingdon	57	11	15	24 (46%)
Peterborough	60	3	0	3 (5%)
S. Cambs.	38	10	20	30 (79%)
Total	245	59	44	103 (42%)

Tables 7.05 and 7.06 present data showing the number of agreements signed for major developments, and the percentage of such agreements which involved contributions. In four of the six districts in Cambridgeshire, 100% of the agreements signed for major *residential* projects involved contributions. Districts were less consistent in using agreements to obtain contributions related to major *commercial* developments. Forty-six percent of major commercial agreements signed in South Cambridgeshire, and 33% in Huntingdonshire, did not involve contributions.

Table 7.05: Percent of Major Commercial Agreements With Contributions, by District

	<u>Agree. Signed Major Comm.</u>	<u>Agreements With Contrib.</u>	<u>Percent Agree. With Contrib.</u>
Cambridge	11	8	73%
E. Cambs.	5	4	80%
Fenland	7	7	100%
Huntingdon	6	4	66%
Peterborough	2	2	100%
S. Cambs.	13	7	54%
Total	44	32	73%

Table 7.06: Percent of Major Residential Agreements With Contributions, by District

	<u>Agree. Signed Major Res.</u>	<u>Agreements With Contrib.</u>	<u>Percent Agree. With Contrib.</u>
Cambridge	5	5	100%
E. Cambs.	7	6	86%
Fenland	23	22	95%
Huntingdon	11	11	100%
Peterborough	3	3	100%
S. Cambs.	10	10	100%
Total	59	57	98%

Permissions for *minor* development (commercial projects of less than 900 square meters, and residential developments of less than 50 units) were much less likely to involve contributions. Only 11% of all agreements signed for minor *commercial* projects involved contributions (see Table 7.07). In Cambridge, East Cambridgeshire and Peterborough no contributions whatsoever were obtained from small commercial developments. Fenland

and South Cambridgeshire signed only 1 agreement each for minor commercial developments. Twenty-four percent of all agreements signed for minor *residential* projects involved contributions (see Table 7.08). In Huntingdonshire, 51 agreements were signed for minor residential developments, but only 5 (10%) of those agreements involved contributions. In South Cambridgeshire, 27 agreements were signed for minor residential developments, but none of those agreements involved contributions. The one district which was active in extracting contributions from small residential developments was Fenland. Twenty-four of the 44 agreements signed for minor residential projects in Fenland involved contributions.

Table 7.07: Percent of Minor Commercial Agreements With Contributions, by District

	<u>Agree. Signed Minor Com.</u>	<u>Agreements With Contrib.</u>	<u>Percent Agree. With Contrib.</u>
Cambridge	12	0	0%
E. Cambs.	0	0	0%
Fenland	8	1	13%
Huntingdon	7	3	43%
Peterborough	0	0	0%
S. Cambs.	17	1	6%
Total	44	5	11%

Table 7.08: Percent of Minor Residential Agreements With Contributions, by District

	<u>Agree. Signed Minor Res.</u>	<u>Agreements With Contrib.</u>	<u>Percent Agree. With Contrib.</u>
Cambridge	17	4	24%
E. Cambs.	1	0	0%
Fenland	44	24	55%
Huntingdon	51	5	10%
Peterborough	7	3	43%
S. Cambs.	27	0	0%
Total	147	36	24%

Table 7.09 summarises and compares the overall performance of local authorities in signing agreements for all developments, large and small, and shows the wide disparities in behavior among the six districts. Fenland signed more residential agreements than any other district, and secured contributions in 69% of those agreements. Huntingdonshire signed the second largest number of residential agreements, but obtained contributions in

only 27% of those agreements. South Cambridgeshire signed more commercial agreements than any other district, but secured contributions in only 27% of those agreements. Peterborough signed relatively few agreements for projects, but when it did they usually included contributions.

Table 7.09: Percent of All Residential and Commercial Agreements With Contributions

	<u>Res. Agree. Signed</u>	<u>Res. Agree. With Contrib.</u>	<u>Com. Agree. Signed</u>	<u>Com. Agree. With Contrib.</u>
Cambridge	22	9 (41%)	23	8 (35%)
South Cambs.	37	10 (27%)	30	8 (27%)
E. Cambs.	8	6 (75%)	5	4 (80%)
Fenland	67	46 (69%)	15	8 (53%)
Huntingdon	62	16 (26%)	13	7 (54%)
Peterborough	10	6 (60%)	2	2 (100%)
Total	206	93 (45%)	88	37 (42%)

Table 7.10 shows the number of times agreements were signed which contained contributions for various purposes, by district. This data further underscores the extent to which local authorities varied in their use of agreements. For example, a total of 30 agreements signed in Fenland included contributions for roads, but not one agreement was signed in Huntingdonshire involving a road contribution. Fenland signed 22 agreements with contributions for footpaths and cycleways, while not one agreement in Huntingdonshire contained such contributions. On the other hand, Huntingdonshire was the only district in the county to sign agreements obtaining promises of commuted sum payments for parking (5). Among the six districts, Cambridge and East Cambridgeshire used agreements most often to obtain contributions for social and sheltered housing, and for schools. Huntingdonshire signed only one agreement involving a contribution for housing, and none for schools.

Table 7.10: Number of Agreements With Contributions for Various Purposes

Purposes	Cambridge	S. Cambs.	E. Cambs.	Fenland	Hunt.	Pete.
<i>Residential Agreements</i>						
Foul Sewer	6	2	5	7	10	1
Sewage Treatment	1	1	1	8	8	0
Sewage Pumping Sta.	2	1	1	0	4	1
Surface Drainage	6	6	5	17	6	2
Roads	2	4	2	24	0	1
Footpaths/Cycleways	0	6	1	18	0	2
Rec./O.S./Amenity	5	5	3	6	5	3
School	1	3	3	0	0	0
Other Bldgs./Facilities	0	0	1	0	1	0
Housing	4	0	3	1	1	1
Parking	1	0	0	1	0	0
Public Transport	0	0	1	1	0	0
Miscellaneous	0	0	0	0	1	0
Sub-Total	28	28	26	83	36	11
<i>Commercial Agreements</i>						
Foul Sewer	0	1	0	3	0	0
Sewage Treatment	0	0	0	1	1	0
Sewage Pumping Sta.	0	0	0	1	0	0
Surface Drainage	4	5	0	3	0	0
Roads	3	6	4	6	0	1
Footpaths/Cycleways	1	3	0	4	0	1
Rec./O.S./Amenity	2	1*	0	1	1	2
School	0	0	0	0	0	0
Other Bldgs./Facilities	4	0	0	0	0	0
Housing	1	0	0	0	0	0
Parking	0	0	0	0	5	0
Public Transport	0	0	0	0	0	0
Miscellaneous	0	0	1	1	0	0
Sub-Total	15	16*	5	20	7	4
TOTAL	43	44*	31	103	43	15

* Contribution of £200,000 by Tesco not mentioned in agreement, not counted

More detailed analysis of the total numbers of contributions, and the forms those contributions took in each district, revealed the following variations in local practice.

(Detailed tables showing forms of contributions by district can be found in Appendix Three.) Huntingdonshire obtained 24 contributions for sewer-related infrastructure (foul sewers, treatment plants and pumping stations), followed by Fenland (22), Cambridge (14) and East Cambridgeshire (11). The fewest sewer-related contributions were obtained in Peterborough (2). The most contributions for surface water drainage were obtained in Fenland (21), in South Cambridgeshire (15), and Cambridge (14). The fewest drainage-related contributions were again in Peterborough (2). The high number of water-infrastructure contributions in Huntingdonshire, compared to the total number of contributions obtained by that district, is particularly noticeable. Indeed, the total of 31 contributions for foul sewer and surface water infrastructure in Huntingdonshire comprised 63% of all the contributions the District extracted through agreements. The small number of water-related developer contributions in Peterborough is also worthy of comment. Peterborough was the only district in the County during the study period where developers could undertake development in relative certainty that they would not be asked to contribute for sewer and drainage infrastructure. One possible explanation for the absence of developer contributions for water infrastructure in Peterborough might be that water infrastructure in Peterborough was more adequate than in other districts, due to previously high levels of prior public infrastructure expenditure in support of the New Town.

Districts in Cambridgeshire had a definite tendency to impose more contributions on residential developers than on commercial developers. For example, all fourteen of the contributions Cambridge obtained for sewer-related infrastructure were from residential developers. Twenty-three of the twenty-four contributions Huntingdonshire obtained for foul sewer-related infrastructure were from residential developers. Such disparities in obtaining sewer-related contributions might have some planning rationale, in that residential developments may place greater demands on sewers than certain types of commercial developments. However, a more likely explanation is that LPAs at the time viewed commercial and industrial development as being more beneficial and desirable than residential development, because of its job generation, and therefore usually did not ask commercial and industrial developments for infrastructure contributions. When offers of contributions were obtained from commercial developers they were almost always for purposes which were strategically related to and necessary for the development of commercial properties, such as for surface water drainage and roads.

Local authorities extracted relatively few contributions for maintenance costs for public facilities, although again some did so more often than others. South Cambridgeshire obtained seven contributions for maintenance-- the largest number obtained by any District. Huntingdonshire and Peterborough extracted only one contribution for maintenance, East Cambridgeshire two, Cambridge three, and Fenland four.

Comparison of Districts-- Contributions Per Agreement

The best way of measuring and comparing the extent to which LPAs used agreements is probably not the number of agreements with contributions, but rather the average number of contributions per agreement for each district. As shown in Table 7.11, the largest number of contributions per residential agreement was in East Cambridgeshire (5.6 contributions per agreement), with Cambridge a distant second (2.05). Huntingdonshire obtained by far the fewest contributions per residential agreement. County-wide, residential agreements contained an average of 1.46 contributions per agreement.

The data for commercial agreements is slightly more ambiguous. Peterborough, which signed only 2 commercial agreements, had the largest number of contributions per agreement (3). Fenland, which signed 15 commercial agreements, secured the second highest number of contributions per agreement (1.6). Cambridge and South Cambridgeshire obtained relatively few contributions per commercial agreement. Huntingdonshire secured the fewest number of contributions per agreement (.62). Within the County as a whole, commercial agreements contained an average of only .94 contribution per agreement.

Table 7.11: Contributions Per Residential Agreement, by District

<u>District</u>	<u>Res. Agreements</u>	<u>Contributions</u>	<u>Contributions Per Agreement</u>
Cambridge	22	45 (38*)	2.05 (1.73*)
South Cambs.	37	45	1.22
E. Cambs.	8	45	5.63
Fenland	67	109	1.63
Huntingdon.	62	41	0.66
Peterborough	10	15	1.50
County Total	206	300 (293*)	1.46 (1.42*)

* Data in parenthesis eliminates "contributions" obtained from sale of land at Nuffield Road

Table 7.12: Contributions Per Commercial Agreement, by District

<u>District</u>	<u>Com. Agreements</u>	<u>Contributions</u>	<u>Contributions Per Agreement</u>
Cambridge	23	17 (15**)	.74 (.65**)
South Cambs.	30	23	0.77
E. Cambs.	5	5	1.00
Fenland	15	24	1.60
Huntingdon	13	8	0.62
Peterborough	2	6	3.00
County Total	88	83 (81**)	.94 (.92**)

**** Data in parenthesis eliminates “contributions” obtained from sale of land at Barnwell Drive**

Some qualification is needed in interpreting the data shown for the City of Cambridge in Tables 7.11 and 7.12. Follow-up interviews, and examination of project files, revealed two cases in the City of Cambridge where “contributions” were obtained in connection with the sale of district land. Seven so-called contributions were obtained in connection the sale of city-owned land at Nuffield Road for residential development. Two major contributions were received by Cambridge in connection with the sale of land at Barnwell Drive for commercial development. (For a full description of the Nuffield Road and Barnwell Drive cases, see Appendix Two, “Selected Agreements.”)

Taking into account the circumstances under which these two agreements were signed, it is clear that in these were not really “contributions” at all, but rather a different way for the City to receive payment for land it was selling-- allowing the City to escape revenue and expenditure limitations imposed by the central government. Removing these “contributions” from the totals (see data in parentheses in Tables 7.11 and 7.12) reveals that the City of Cambridge did even worse than originally supposed in obtaining contributions from developers. In terms of obtaining contributions from residential developers, Cambridge was only slightly above average, and well below the performance of East Cambridgeshire. From commercial developers, Cambridge negotiated only .65 contribution per agreement (only slightly more than Huntingdonshire, which negotiated the fewest commercial contributions). The poor performance of the City of Cambridge in obtaining contributions-- despite the fact that the City was philosophically receptive to the idea of seeking contributions, and exerted considerable constraint on development-- is indeed one of the surprise findings of this research.

Local Authority Policies, Attitudes and Contexts

To some extent, the variability of local authority behavior was due to the fact that attitudes toward agreements and developer contributions were evolving. Also, it took time, especially for some rural local authorities, to gain confidence and experience in using agreements. For example, Fenland District Council signed only 4 Section 52 agreements prior to 1985-- the first of which was signed in 1979. In the first three years of the study period, Fenland signed only 12 agreements (an average of 4 per year). It was after 1987 that the District's use of agreements accelerated. Between 1 January, 1988 and the 1 April 1990 the district signed 70 agreements (an average of over 31 per year). Sixty-seven of the 82 agreements signed in Fenland during the study period were for residential developments.

Local authority use of agreements also varied because the contexts in which different local planning authorities were operating were very different, and the planning objectives in the various districts varied as well. The following section briefly reviews the planning contexts in each of the six districts, and the attitudes of local authorities toward agreements, as revealed through interviews with local planners and solicitors, and through a review of local authority plans and policy statements.

Cambridge and South Cambridgeshire -- The Cambridge Sub Area

The unique geographical relationship between Cambridge and South Cambridgeshire makes it difficult to discuss one district's planning and development control policies without discussing comparable policies in the other. Cambridge and South Cambridgeshire both faced essentially the same strong market pressures for new development, and in the face of such pressures both exerted considerable constraint on development. New development within built-up areas of Cambridge was largely limited to renovation and minor expansions, and opportunities for major new construction projects were extremely limited. With the City of Cambridge completely surrounded and constrained by South Cambridgeshire and the Green Belt, and with few opportunities for new development within the historic university city, major projects receiving planning permission from Cambridge tended to be frequently located along the outer edges of the city. Similarly, development control policies constraining development in South Cambridgeshire had the effect of pushing development inward toward Cambridge. Not surprisingly, therefore, developers seeking planning permission for major development projects frequently focused their attention on sites on or close to the boundary separating the two districts.

An important element of development control policy in Cambridge was that new office and industrial space should only be occupied by research and development and high technology firms. This highly selective policy of constraining ordinary commercial and

industrial development, while allowing and to some extent encouraging “R and D” firms, was an important trademark of development control policy in Cambridge. The other unique policy in Cambridge-- and the other exception to the policy of constraint-- was the policy of allowing new development if it provided premises for “local users.” A “local user” was defined as an existing firm which had been located in Cambridge for 2 years, or which had 50% of its clients located in Cambridge (Lane,1990,int.). This “local user” requirement was included in both the 1980 and 1990 Cambridgeshire Structure Plans, and was an official element of planning policy in Cambridge throughout the 1980’s. Although the planning criteria adhered to in Cambridge appeared to limit the types of commercial development to be permitted, they actually catered to the fastest growing sources of demand for new commercial space in the City (Segal Quince Wicksteed, 1985). Indeed, the city’s policy of attempting to constrain commercial development and employment growth in Cambridge was only modestly successful. *The Independent* (26 May, 1991, 4) reported that “Between 1981 and 1989, 16,000 net new jobs were created [in Cambridge], despite the city’s earnest attempts to discourage investment that could go elsewhere.”

Throughout much of the study period, the Planning Department in Cambridge lacked a formal or consistent policy on using agreements to obtain contributions. Instead, the City pursued a largely ad hoc approach toward the negotiation of developer contributions. The ability of Cambridge to negotiate contributions from developers was hampered by a lack of consensus regarding what benefits should be sought from developers. “There is not a lot of consensus in Cambridge about what should be sought. There are differences of opinion, and there is intense opposition to development” (Studdert,1992,int.).

Some of the policy drift in Cambridge was clearly due to a lack of continuity in the position of Chief Planning Officer, and to the fact that during almost one quarter of the study period the position of Chief Planning Officer was vacant. In January 1988, Cambridge’s City Planning Officer, D.W. Unwin, died unexpectedly. Throughout 1988, when planning applications were at their highest point, the Chief Planning Officer position was vacant, and the Department was headed by an Acting Director. “It was a period of flux and strain, and there was a lack of clear direction in the Planning Department.” (Winterbottom,1990b,int.). In January 1989, John Popper became Chief Planning Officer in Cambridge, and quickly gained a reputation for his aggressiveness in seeking to negotiate contributions from developers. According to Popper, “In negotiating with developers, it’s all economics. If they have a lot to gain, we push pretty hard” (Popper,1990,int.). It was during the period when the Planning Department was headed by Popper that Cambridge first began to develop formal policy statements on developer contributions. In April 1989, the Environment Committee of the City formulated what it called an “interim policy statement” on the negotiation of planning gain. Two policy statements were, in fact, drafted-- one for business and retail developments, and one for residential developments. Policy 3.6 stated that “All major business and retailing

development schemes in excess of 200 square metres will be expected to provide one or more of the following planning advantages”(City of Cambridge, Environment Committee, 1989). Eight planning advantages were then listed, which were : special advantages in the form of buildings, open space, pedestrian access, and other facilities for the public; improvement of public transport; recreation, open space and other community facilities needed to meet demands arising from employees; pedestrian traffic management; relevant social and community facilities such as day care facilities; housing to meet the needs of additional employees, with emphasis on accessible low cost housing; off-street parking facilities and contributions to “park and ride”; and employment and training. Policy 3.7 stated that “All housing development involving more than 20 residential dwelling units will be expected to provide one third in the form of low cost”... and “community and recreation facilities arising from the development to meet the social needs arising from the scheme and the surrounding area.”

A good statement of Cambridge’s positive attitude toward developer contributions, put forward during Mr. Popper’s regime, was contained in a brief prepared by the City Council’s Environment Committee in 1989 related to applications for residential development at 245-295 Milton Road. Under the heading “Advantages Required,” the brief stated:

This is a very substantial development by any standards, with correspondingly large financial benefits to the original land owners. While it is accepted that some of the profit from the sale of the land will go to provide improved athletics facilities for the University, it is also reasonable to seek tangible planning advantages for the community, especially in view of the high density of development being pursued (Cambridge City Council, Environment Committee, June 1989, 4).

Mr. Popper’s tenure as Chief Planning Officer of Cambridge was short-lived, however. In January 1990, he abruptly resigned from the position, and for the last two months of the study period the Chief Planning Officer position was once again vacant.

One final factor might be noted to help explain why the number of contributions obtained by Cambridge was not greater. A number of major planning permissions granted in Cambridge during the study period involved sites owned by Cambridgeshire County Council, which were intended for sale to private developers. For example, a number of major commercial planning permissions were granted for office developments on county-owned land at Castle Hill. A major residential planning permission was also granted for development of 105 housing units on county-owned land at the site of the former Netherall School. No agreements were signed for any of these major permissions. The fact that these sites were owned by the county, and were being sold for profit, meant that the County could recoup betterment directly, without having to resort to the indirect method of signing agreements. Moreover, because these were “deemed consents,” the City Council had no leverage to require that an agreement be signed containing contributions on its own behalf.

South Cambridgeshire held to a consistently restrictive view regarding how agreements should be used. According to Chris Taylor, South Cambridgeshire's District Solicitor, the District only asked developers for contributions to improvements which it felt could be fully justified as being directly related to, and necessary for, the development to go forward (Taylor,1991a,int.). South Cambridgeshire District Council "never asked for a contribution which it didn't succeed in getting" (Taylor, Ibid.). This assertion probably says more about the modest nature of the District's requests for contributions than it does about the District's prowess in pushing developers for contributions. South Cambridgeshire was particularly conscious of the need to avoid asking for contributions which might encourage the planning authority to approve developments which should be refused planning permission. "If it's a bad proposal it will be refused"(Taylor,1991a,int.).

Planning officials in South Cambridgeshire felt no need for a formal local policy on the use of agreements during most of the study period, because they were comfortable operating within what they viewed as the narrow constraints imposed by Circular 22/83. "We at the planning authority take a very strict interpretation of Circular 22/83" (Miles,1991, int.).

East Cambridgeshire District Council

According to the Director of Planning, very little development activity was taking place in East Cambridgeshire in the early 1980's. "It was stagnant here. But by 1987-88 development was outpacing the ability of the District and the County to provide community facilities ... Our shift in approach has been provoked by perception of things like mobile classrooms stacked up in school yards" (Archer,1991a, int.).

Public response to the growing pressure of development was split along geographic lines.

In the southern half of the District, where the most rapid development occurred, residents became increasingly fed-up with new development, and wanted to see more restraint on development. But in the northern half of the District, where less development occurred, residents saw new development as being positive, and as a way to secure community benefits from developers (Archer, Ibid.).

Over the course of the study period, the local authority became increasingly aware of the way that developer-led contributions could undermine local planning policies. The following two case examples were cited by the District Solicitor:

In Chippenham, there was a policy of constraint on development, but nevertheless an application was made on 30 June,1989 by a long-time landowner seeking permission to build 24 houses. The proposed development was in conflict with

established planning policy, but the developer offered to donate land to the parish council and to construct a new village hall. The parish council were in favour of granting permission under those terms. The resolution of the Planning Committee to grant permission was made in 1989...

The village of Pymoor had a lovely cricket field. The Parish Council had built a clubhouse next to the field, but didn't own the cricket field. The owner of the land needed money, and applied for permission to build 8 bungalows. The Council might have turned him down, but the landowner could still make some money by selling the land for agriculture, and the Village would have lost its cricket field. As a result, even though the application was contrary to planning policy for the area, we negotiated an agreement with the landowner, wherein he agreed to donate the cricket field, and extra land for a soccer pitch, in exchange for planning permission for 8 bungalows. The owner also agreed to pay £8000 for future maintenance of the playing fields (Kratz, 1991,int.).

These experiences made the district's Director of Planning extremely aware of the way in which offers of contributions could distort planning decisions. "I see two potential abuses of planning gain negotiation. It is an abuse if planners allow the offer of a contribution to secure planning permission in an area where development would otherwise have been refused. The second abuse is when planners threaten refusal in an area allocated for development" (Archer,1991a,int.).

During the early years of the study period, the negotiation of developer contributions in East Cambridgeshire was largely ad hoc, and proceeded in the absence of a formally stated policy. The Planning Department would assess the impacts of individual developments when applications were submitted, and advise the District Solicitor as to what kinds of contributions should be sought in an agreement. Meanwhile, however, the Planning Department was working toward developing a formal, plan-based approach to the negotiation of contributions.

In 1988 the District released the Ely Local Plan, after 4 years of work. An important feature of the plan was that it called for fees to be assessed against developers so that the District could acquire land for a new school. The site to be acquired for the school was shown in the plan, as was the area designated for new residential development. Proposed fees varied in proportion to the scale and impact of development. For example, proposed fees were adjusted according to unit size. "We would apply low charges against small, one-bedroom units, and larger fees against larger units" (Kratz,1991,int.). It should be emphasised that the district still retained its flexibility to negotiate with developers. "The proposed fee is not a strict requirement, but a starting point for negotiations. We negotiate the fee" (Kratz,Ibid.). The Ely Local Plan also called for developers receiving planning permission to finance other infrastructure improvements, such as a link road to relieve traffic around the city centre, and foul sewerage improvements.

The preparation of draft Village Local Plans in February and March 1989 moved the District further along toward the adoption of planning policies requiring contributions as a condition for obtaining planning permission in certain areas. In February, 1989, the Public Consultation Draft of the Mepal Village Plan was issued. Mepal suffered from serious infrastructure deficiencies-- such as an overloaded sewage treatment plant, and inadequate drainage. Given these infrastructure limitations, all but small-scale, piecemeal development in the Village was impossible. On the other hand, without more significant development in the Village, it was likely that the village school would have to be closed. Residents in Mepal wanted to keep their village school, as well as have improvements to the village sewerage and drainage infrastructure, but saw no guarantee of public funds for the improvement of such facilities. As a result, citizens in the village supported the preparation of a local plan calling for:

...the release of one or more areas of land for moderate scale, but rapid housing estate development. This would promote development(s) of sufficient size to make practical the levying and collection of private developer contributions towards the cost of improvements to facilities overloaded by additional development (East Cambs. D.C.,1989a).

A similar willingness to offer planning permission in exchange for developer contributions was expressed in the consultation draft of the Little Thetford Village Plan of March, 1989. Under the previous structure plan, Little Thetford had been restricted to only a limited amount of infill development. But the new Structure Plan submitted to the Secretary of State in May 1987 allowed the District to designate "limited rural growth settlements," in which up to an additional 200 houses might be permitted. Citizens in Little Thetford saw new development as a way of obtaining improvements to the village school and other public facilities. The draft Village Plan designated an initial 8 acre site for housing development, and identified other areas which might be subsequently released as well. However, in allocating such land for development, the plan clearly recognised that developers granted planning permission would be expected to make certain contributions.

It is felt that it would be fair, if there is to be new development, for there to be compensating benefits to the village. These can be secured through requirements for financial contributions to be made for specific purposes before the granting of planning permission. Normal candidates for such benefits include improvements to sewerage, the sewage treatment works and the water supply, and could be extended to include improvements to the school, road access and recreational facilities (East Cambs. D.C.,1989b).

In July 1989, East Cambridgeshire District Council issued a policy document entitled *Housing for Locals* expanding the benefits the District hoped to secure from developers to include the provision of affordable housing for existing residents. In the

document the Council stated that “as an exception to the normal settlement policies applying throughout East Cambridgeshire the local planning authority may grant planning permission for residential developments which provide low cost housing in perpetuity for local people who are unable to compete in the open market”(East Cambs. D.C.,1989b, 3). The policy statement made it clear that the District intended to use planning agreements to assure permanent benefits from grants from planning permissions made as exceptions under the policy. This way of using agreements to encourage affordable housing was subsequently adopted as national policy, in the aftermath of the study period (see Chapter Eight).

Fenland District Council

Throughout the 1985-1990 period, Fenland District Council did not have a formal written policy on how agreements would be used, or under what circumstances developers might be asked for contributions. According to a District planner who was interviewed, “Relative to other districts in Cambridgeshire, Fenland has been much less aggressive in seeking developer contributions” (Furnell,1991,int.). Fenland District Council’s attitude toward development was distinctly positive. “If someone knocks on the door, we try to please them... The Council has not wanted to put up barriers to investment by developers”(Ibid.).

Huntingdonshire District Council

Huntingdonshire was the fastest growing district in Cambridgeshire during the 1980’s, and with a buoyant property market was in a strong position to extract contributions from developers. But Huntingdonshire was reluctant to do so. “Huntingdonshire has followed a fairly cautious approach regarding developer contributions” (Potter, 1991, int.).

The Planning Department in Huntingdonshire took a very restrained view of what it should seek from developers, and refused to accept contributions if it meant approving applications which they felt were contrary to planning policy simply because they offered contributions.

On several occasions substantial offers of contributions were made. But we felt that the developments were not approvable in planning terms, and they were denied. In one case, along the northern side of St. Neots, a developer offered to make a major contribution to the Council. Parish Councilors were influenced by this offer of a contribution, and wanted to approve the scheme, but we felt it was contrary to planning policy, and prevailed” (Potter, Ibid.).

Peterborough City Council

During the study period, a large proportion of the development that occurred in Peterborough took place within the New Town area, and was carried out under the direction of the Peterborough Development Corporation (PDC). New development was actively promoted by the PDC, and there was a strong presumption in favour of development. Developments approved by the PDC within the designated New Town Area were deemed to have planning consent, and did not require the specific approval of the City's planning authority. The planning department at the City Council was relatively weak, and played a minor role in controlling development.

During the years that it was in existence, the PDC had little need to make use of Section 52 agreements. Government funding was provided to the Corporation for infrastructure and public facilities, so that developer contributions for infrastructure and public facilities were generally not needed or expected. The Corporation could control the nature of development, and recover costs, through land leases and land disposition agreements.

As government funding for the PDC became tighter in later years, the Corporation increasingly relied upon developers and landowners to pay for the cost of amenities and public improvements. Still, however, the PDC did not find it necessary to use Section 52 Agreements.

The Corporation sometimes apportioned the cost of developing park land to adjacent developments. The added cost of developing the park land was essentially added on to the sale price of the land. In other cases the Development Corporation issued development briefs inviting development of specific areas, and saying that as a condition of development a park should be provided in such and such a location (Brown, 1990 int.).

Because of its special powers, the PDC was able to sell land with planning permission, thereby allowing it to collect not only the betterment directly, without need of Section 52 Agreements. In three and a half years, between 1985 and the middle of 1988, the PDC collected £125 million from the disposal of properties (Bendixson, 1988, 217). In this way, the PDC, and in turn the Treasury, was able to recoup not only the betterment created by planning permission, but also the additional value created through publicly-funded infrastructure investment.

In August 1988 the Secretary of State issued an Order calling for the dissolution of the PDC. Remaining property under the control of the PDC was transferred to the Commission for New Towns (CNT), effective 1 October, 1988, whose charge it was to manage and ultimately dispose of the remaining assets. With the dissolution of the PDC,

the City's Planning Department assumed greater responsibility for planning and development control in the City. One indication of this new burden of planning was that the staff of the planning department grew from 45 to 73 between 1988 and 1990 (Lee,1990, int.). It took some time for the City's Planning Department to gear up, and to become accustomed to using agreements as a way of managing development. Prior to 1988, only one Section 52 agreement was signed in Peterborough, and that was in relation to a planning application submitted by Cambridgeshire County Council. Ten of the 12 agreements signed in Peterborough were signed in the last 8 months of the 63 month study period. Had the PDC been dissolved earlier, more agreements with contributions undoubtedly would have been signed in Peterborough during the study period.

Throughout the study period, the City Council had no official policy regarding the negotiation of developer contributions, and "was slow to catch on to negotiating developer contributions"(Wilkins,1990,int.). Offers of contributions from developers were not aggressively sought, and when offers were made they were not necessarily accepted. For example, the City Council denied planning permission for a 50 unit housing development at Gloucester Square, even though the developer offered to contribute to upgrading a children's playground facility (Lee,1990 int.). However, after the demise of the PDC, the City's Planning Department began to take a much more active interest in planning agreements. One factor which led the Council to take a more positive stance toward negotiating contributions was the Council's growing difficulty in financing the public costs associated with accommodating the continued rapid pace of development. "Peterborough has traditionally welcomed growth, but there is beginning to be resistance to development for financial reasons"(Brown,1990, int.).

Analysis of Non-Contributory Provisions in Agreements, by District

As noted previously, one of the major factors which propelled the increased use of agreements was the increased use of agreements for purposes other than obtaining contributions. In the following section, the types and frequencies of non-contributory purposes of agreements are analysed in detail. Tables 7.13 through 7.18 present a detailed breakdown of the number of times various non-contributory provisions were included in agreements in each of the six districts. Examination of this data suggests that there was considerable variation in the ways and extent to which the various districts used agreements for non-contributory purposes.

Provisions regulating the phasing of development were included 59 times in agreements, most commonly in Fenland (23 agreements). Phasing requirements were also heavily relied on in East Cambridgeshire (in 10 of 13 agreements). Other districts achieved the same purpose without signing agreements, by attaching conditions to grants of planning

permission. Huntingdonshire District Council used negative conditions (i.e. “no occupancy until highway improvements have been completed”) in ways that reduced its need to use agreements to regulate phasing (Potter,1991,int.).

Table 7.13: Non-Contributory Purposes in Agreements-- Cambridge

<u>Purpose</u>	<u>Residential</u>	<u>Commercial</u>	<u>Total</u>
Specify Use	3	10	13
Extinguish Existing Use	0	5	5
Restrict Occupancy	11	2	13
Minimise Adverse Impacts	1	3	4
Rehabilitate/Improve/Preserve	1	1	2
Set Deadline/Timetable	0	2	2
Phase Development	1	1	2
Limit development	0	1	1
Revise Terms of Previous Agreement	0	0	0
Waive Right to Claim Compensation	0	1	1
Give Notice to Local Authority	0	0	0
Pay Legal Costs	1	2	3
Total	18	28	46

Table 7.14: Non-Contributory Purposes in Agreements-- South Cambridgeshire

<u>Purpose</u>	<u>Residential</u>	<u>Commercial</u>	<u>Total</u>
Specify Use	19	23	42
Extinguish Existing Use	0	0	0
Restrict Occupancy	9	7	16
Minimise Adverse Impacts	0	4	4
Rehabilitate/Improve/Preserve	0	5	5
Set Deadline/Timetable	1	3	4
Phase Development	3	3	6
Limit development	1	6	7
Revise Terms of Previous Agreement	1	1	2
Waive Right to Claim Compensation	0	0	0
Give Notice to Local Authority	0	2	2
Pay Legal Costs	19	19	38
Total	53	73	126

Table 7.15: Non-Contributory Purposes in Agreements-- East Cambridgeshire

<u>Purpose</u>	<u>Residential</u>	<u>Commercial</u>	<u>Total</u>
Specify Use	3	4	7
Extinguish Existing Use	1	0	1
Restrict Occupancy	1	1	2
Minimise Adverse Impacts	0	0	0
Rehabilitate/Improve/Preserve	2	1	3
Set Deadline/Timetable	0	3	3
Phase Development	6	4	10
Limit development	2	0	2
Revise Terms of Previous Agreement	0	0	0
Waive Right to Claim Compensation	1	4	5
Give Notice to Local Authority	0	1	1
Pay Legal Costs	1	0	1
Total	17	18	35

Table 7.16: Non-Contributory Purposes in Agreements-- Fenland

<u>Purpose</u>	<u>Residential</u>	<u>Commercial</u>	<u>Total</u>
Specify Use	3	3	6
Extinguish Existing Use	1	4	5
Restrict Occupancy	19	0	19
Minimise Adverse Impacts	1	1	2
Rehabilitate/Improve/Preserve	8	1	9
Set Deadline/Timetable	2	3	5
Phase Development	22	1	23
Limit development	4	0	4
Revise Terms of Previous Agreement	2	0	2
Waive Right to Claim Compensation	0	0	0
Give Notice to Local Authority	0	0	0
Pay Legal Costs	60	15	75
Total	122	28	150

Table 7.17: Non-Contributory Purposes in Agreements-- Huntingdonshire

<u>Purpose</u>	<u>Residential</u>	<u>Commercial</u>	<u>Total</u>
Specify Use	23	6	29
Extinguish Existing Use	0	1	1
Restrict Occupancy	24	1	25
Minimise Adverse Impacts	0	0	0
Rehabilitate/Improve/Preserve	2	0	2
Set Deadline/Timetable	2	3	5
Phase Development	7	6	13
Limit development	1	3	4
Revise Terms of Previous Agreement	4	3	7
Waive Right to Claim Compensation	0	0	0
Give Notice to Local Authority	0	0	0
Pay Legal Costs	0	0	0
Total	63	23	86

Table 7.18: Non-Contributory Purposes in Agreements-- Peterborough

<u>Purpose</u>	<u>Residential</u>	<u>Commercial</u>	<u>Total</u>
Specify Use	2	0	2
Extinguish Existing Use	1	0	1
Restrict Occupancy	1	0	1
Minimise Adverse Impacts	1	0	1
Rehabilitate/Improve/Preserve	0	0	0
Set Deadline/Timetable	0	0	0
Phase Development	3	2	5
Limit development	0	0	0
Revise Terms of Previous Agreement	0	0	0
Waive Right to Claim Compensation	0	0	0
Give Notice to Local Authority	0	1	1
Pay Legal Costs	0	0	0
Total	8	3	11

Seventy-six agreements in Cambridgeshire included provisions restricting occupancy. Huntingdonshire used agreements to restrict occupancy more often than any other districts, and 23 of the 25 occupancy restrictions it inserted in agreements were directed toward restricting occupancy of rural dwellings to persons employed in local agriculture. Fenland used agreements to restrict occupancy 19 times: ten restricted occupancy of rural dwellings to persons employed in agriculture; eight agreements assured that units were occupied by elderly persons. South Cambridgeshire inserted occupancy

restrictions in agreements 16 times, most frequently for rural dwellings, elderly housing and family annexes, upon the recommendation of its district solicitor. In the opinion of its district solicitor, legal agreements offered greater assurance of enforceability than conditions, because “conditions are legally enforceable only for a period of four years” (Taylor,1991,int.).

All our family annex agreements are 'conditionable', but we now insist on an agreement. If it were a condition, we couldn't enforce the provision beyond four years. To violate the terms of permission would not be lawful after four years, but we couldn't take enforcement action against it if it were simply a condition (Taylor,1991a,int.).

On the other hand, East Cambridgeshire used an agreement to restrict residential occupancy only once. When asked how East Cambridgeshire regulated occupancy of farm dwellings, the District Solicitor answered that “agricultural occupancy we would treat as a condition” (Kratz,1991,int.).

A case in Cambridge illustrates why local authorities tended to turn away from conditions to agreements. Throughout the 1980's, and during the study period, the City of Cambridge was content to impose its Local User Requirement (restricting the types of business which could occupy new commercial developments) through a condition attached to planning permissions, rather than through agreements. Thus when the planning authority in Cambridge granted planning permission to Magdalene College in 1986, a condition was attached restricting occupancy of the space to businesses which met the Local User requirement. An agreement accompanying the permission was also signed, but it related to the construction of public conveniences in the development, and did not include the Local User requirement. The City felt it was unnecessary to include the Local User requirement in the agreement. Magdalene College went forward with the development, but subsequently filed an appeal with the Secretary of State against the Local User restriction as a condition. In November,1990 the Secretary of State ordered that the local occupancy condition attached to the permission be removed, so as to allow the space to be occupied as general office space, rather than solely for research and development. According to Acting Director, Deputy Planning Director, “We could probably have attached the local user requirement as part of the agreement signed for the development, but it never occurred to us that it would be necessary” (Turner,1991, int.). This decision by the Secretary of State was perceived as a major blow to Cambridge planning policy, and the Local User requirement, because numerous other commercial permissions granted in the City had been granted subject to the same condition. Because of this loss on appeal, Cambridge's LPA decided that henceforth it would try to negotiate the Local User requirement through agreements, rather than imposing it as a condition (Ibid.).

Certain districts almost always charged applicants for the cost of preparing legal agreements, while others almost always did not charge. Huntingdonshire never charged applicants for the cost of preparing any of its 75 legal agreements. Peterborough also never charged. East Cambridgeshire only charged for legal costs once, and Cambridge did in only a few instances. On the other hand, Fenland almost always charged for legal costs, and South Cambridgeshire assessed legal costs in more than half of its agreements.

Comparison of Districts-- Non-Contributory Purposes Per Agreement

Tables 7.19 and 7.20 summarise data on non-contributory uses of agreements, calculating the number of *non-contributory provisions per agreement* by district, and for Cambridgeshire as a whole.

Table 7.19: Non-Contributory Provisions Per Agreement--Residential Agreements

<u>District</u>	<u>Agreements</u>	<u>Non.-Contrib. Prov.</u>	<u>Non.-Contrib./Agree</u>
Cambridge	22	18	0.82
South Cambs.	37	53	1.43
E. Cambs.	8	17	2.13
Fenland	67	122	1.82
Huntingdon	62	63	1.02
Peterborough	10	8	0.80
County Total	206	281	1.36

Table 7.20: Non-Contributory Provisions Per Agreement-- Commercial Agreements

<u>District</u>	<u>Agreements</u>	<u>Non.-Contrib. Prov.</u>	<u>Non.-Contrib./ Agree.</u>
Cambridge	23	28	1.22
South Cambs.	30	73	2.43
E. Cambs.	5	18	3.60
Fenland	15	28	1.87
Huntingdon	13	23	1.77
Peterborough	2	3	1.50
County Total	88	173	1.97

As shown in Tables 7.19 and 7.20, commercial agreements signed in the Cambridgeshire as a whole contained 1.97 non-contributory provisions per agreement, while residential agreements contained 1.36 non-contributory provisions per agreement. This data confirms what was previously suggested in Chapter Six-- that although LPAs were less inclined to require contributions from commercial developers than from

residential developers, they were *more* inclined to include non-contributory provisions in commercial agreements than in residential agreements. Among the six districts, East Cambridgeshire made by far the most frequent use of non-contributory provisions in agreements. Fenland made above average use of non-contributory provisions in its residential agreements, and South Cambridgeshire made above average use of non-contributory provisions in its commercial agreements. Agreements in Cambridge and Peterborough, the two most urban districts, contained the fewest non-contributory provisions per agreement.

Geographic Distribution

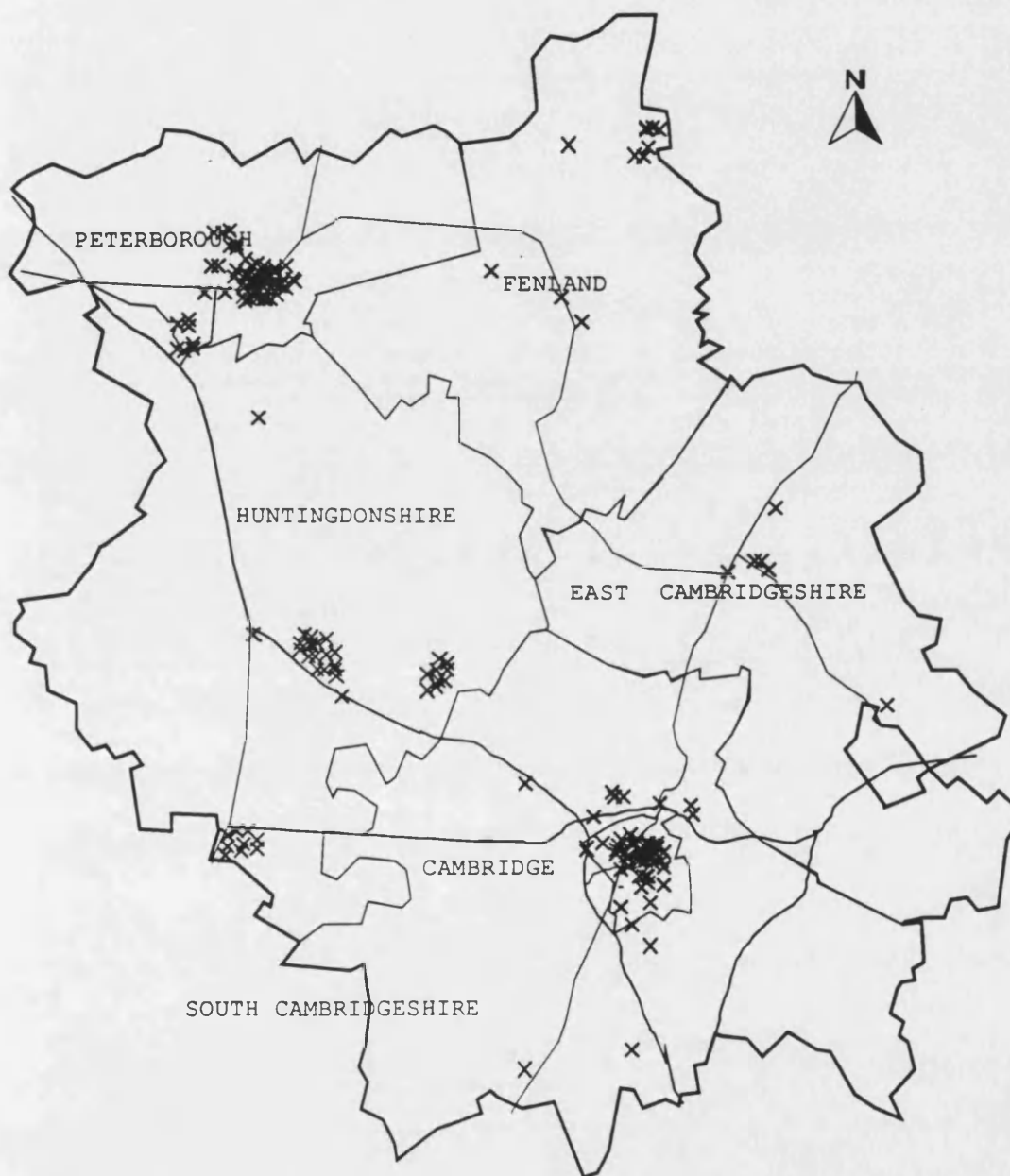
Major commercial permissions without agreements were concentrated, to a remarkable extent, in a handful of growth centres: Cambridge, Peterborough, St. Ives, St. Neots, and to a lesser extent in Wisbech (see Figure 7.01). Many of these areas where large numbers of permissions were granted without agreements had relatively few permissions with agreements. As shown in Figure 7.02, the one main area where commercial agreements were concentrated was along the northern fringe of Cambridge.³ There was also a small concentration of commercial projects with agreements in the northeast corner of the county, where Wisbech is located. Otherwise, commercial permissions with agreements tended to be geographically dispersed. Comparing Figures 7.01 and 7.02, it can be seen that, although large numbers of major commercial developments were approved in Peterborough and Huntingdonshire, remarkably few major commercial permissions in those districts were subject to agreements.

Major residential projects which received permission *without agreements* were somewhat more widely dispersed than comparable commercial permissions without agreements (see Figure 7.03, and compare to Figure 7.01). Nevertheless, major residential permissions *with agreements* tended to concentrate in a few specific areas-- with the largest numbers clustered along the northern and eastern fringes of Cambridge (see Figure 7.04). There were also multiple residential permissions with agreements in St. Neots, Godmanchester and Eynesbury, and Sawtry (in Huntingdonshire) and in Manea and Wisbech (in Fenland). In some areas, concentrations of permissions with agreements occurred in areas where large numbers of other major permissions without agreements had also been granted. However it is also noteworthy that clusters of major residential permissions with agreements also occurred in areas where few if any major permissions without agreements had been granted.

³ Because of the large number of permissions granted in a few areas, such as the northern and eastern fringe of Cambridge, it was necessary in a number of the Figures to shift project symbols slightly to allow the number of permissions to be discernible.

Figure 7.01

Major Commercial Permissions Without Agreements



x Permission Without Agreements

Scale 1 : 400,000

Figure 7.02

Major Commercial Permissions
Subject to Agreements

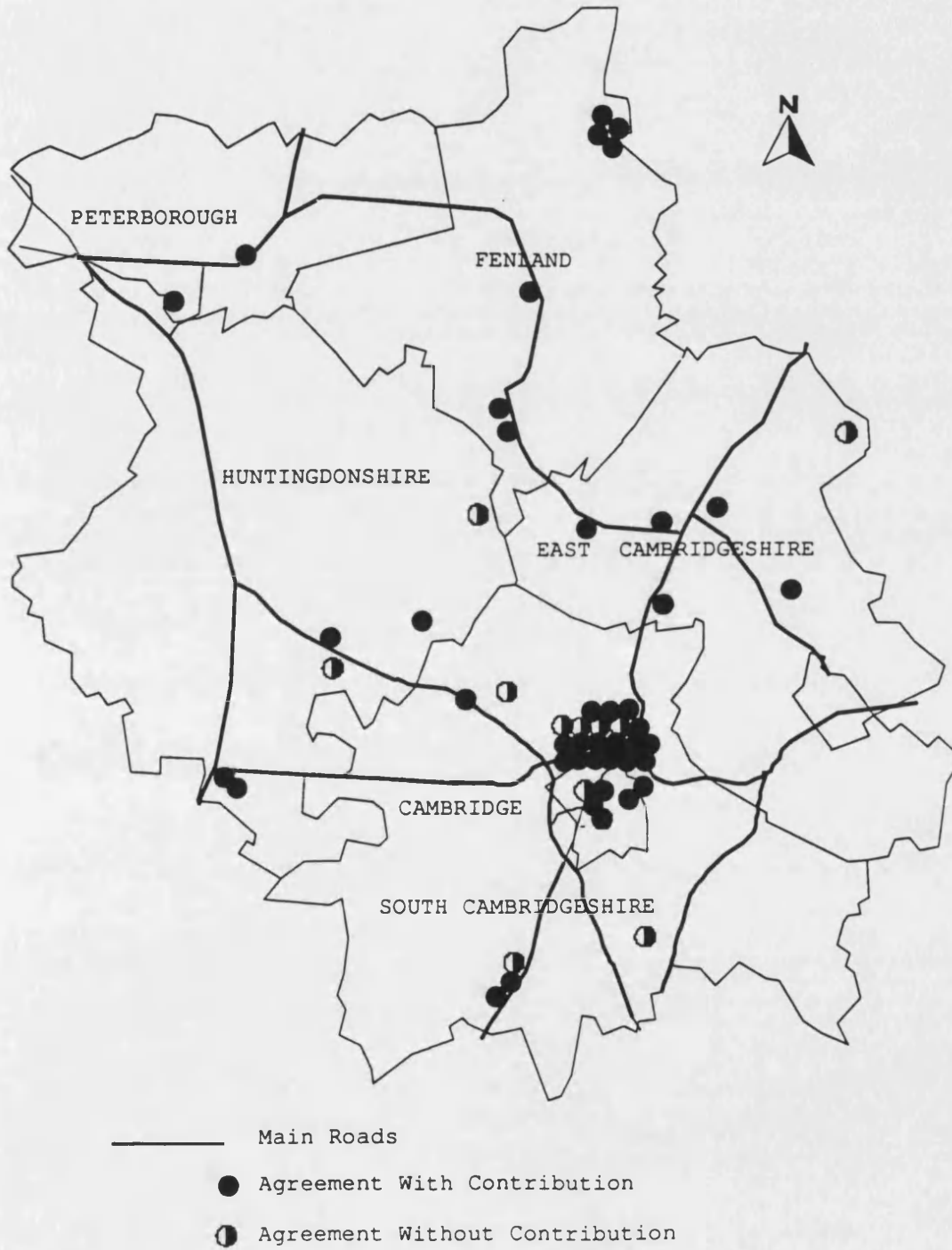
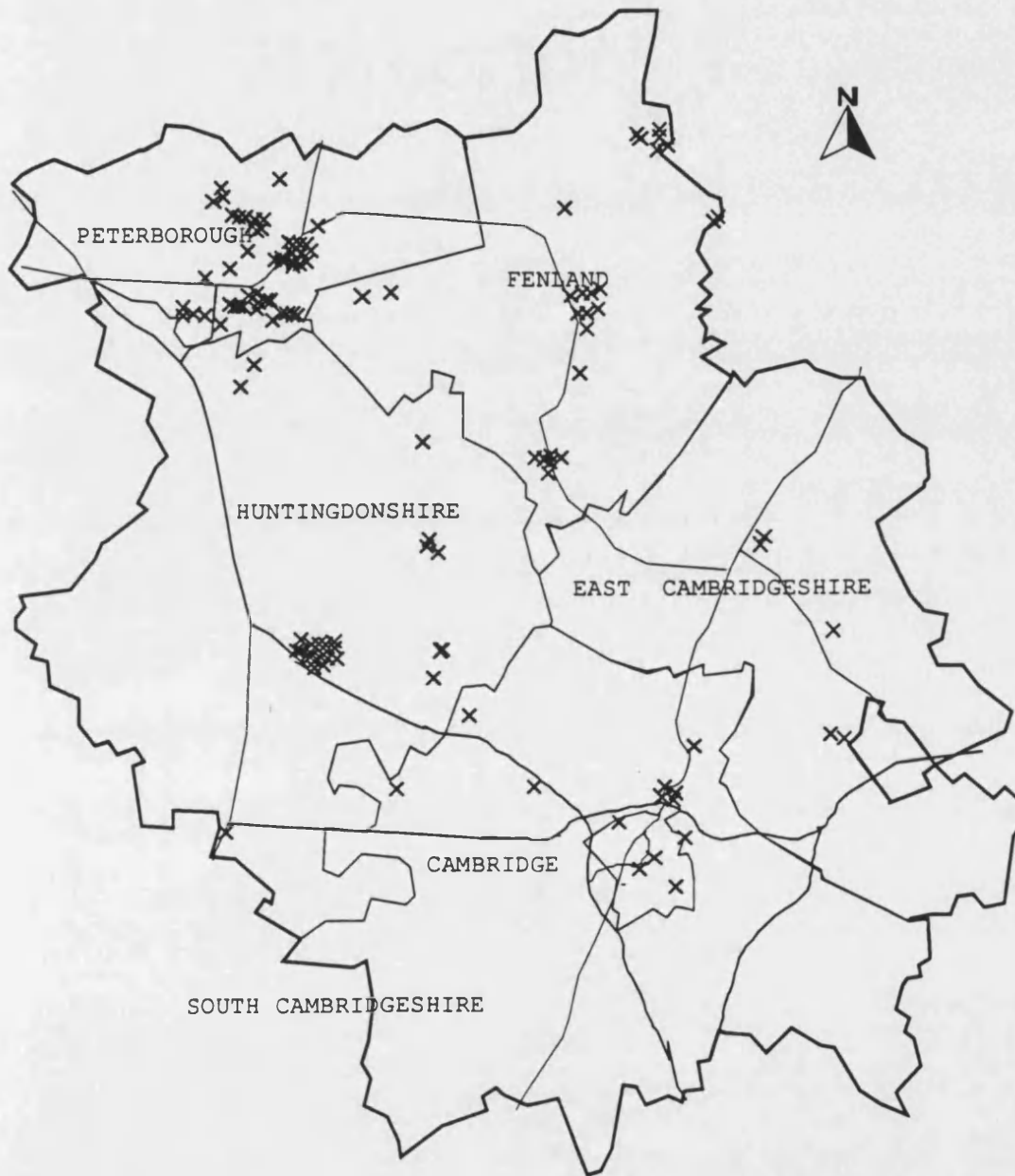


Figure 7.03

Major Residential Permissions Without Agreements

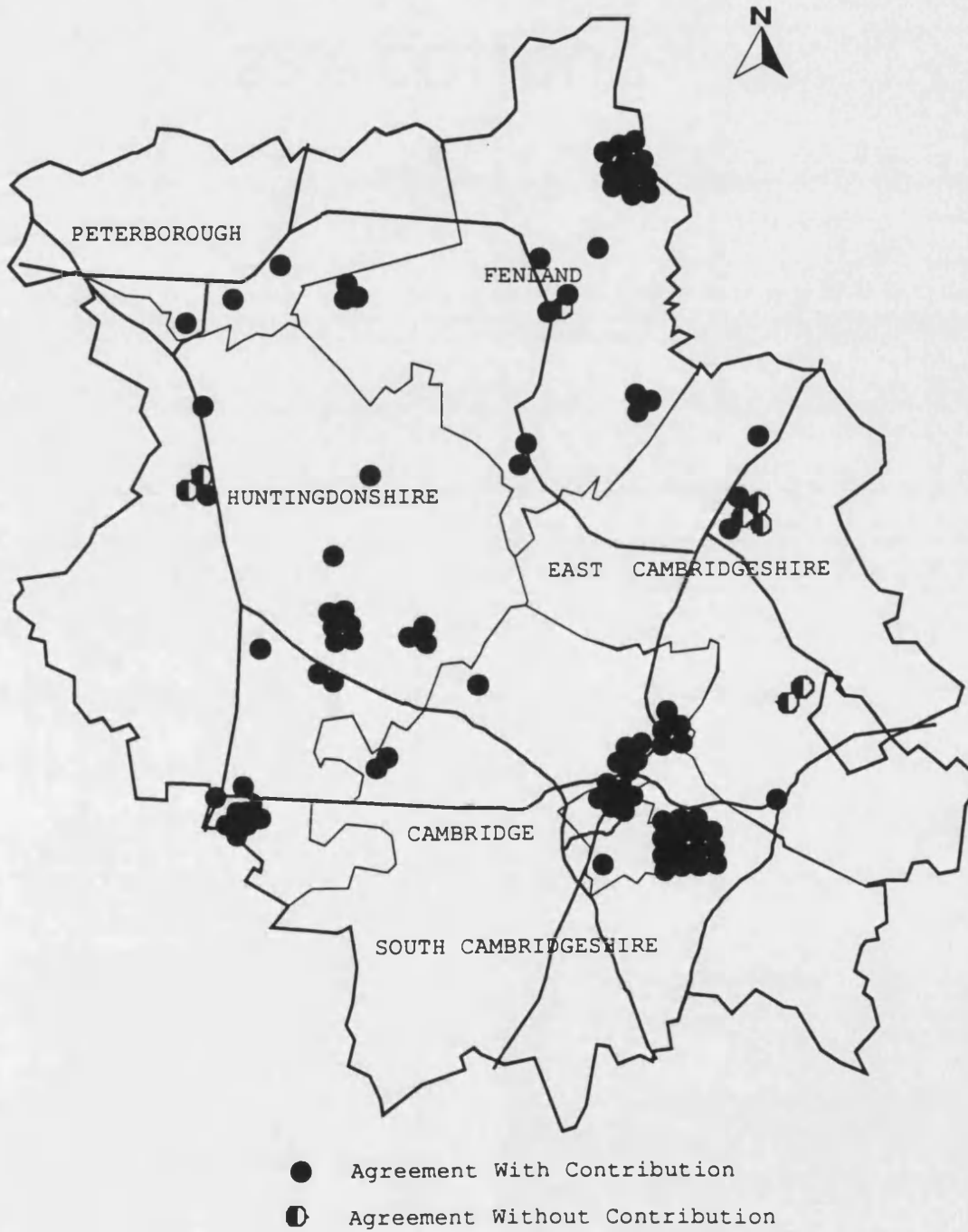


x Permission Without Agreement

Scale 1 : 400,000

Figure 7.04

Major Residential Permissions
Subject to Agreements



Scale 1 : 400,000

Public Expenditure on Roads and Locations of Major Developments

Figures 7.05 and 7.06 plot the locations of major residential and commercial permissions granted *with agreements* during the study period, in relation to publicly-funded road improvements completed between 1979 and 1990. These figures show that agreements were frequently concentrated in areas which had benefited from publicly-funded road improvements. This finding appears to suggest that local authorities used agreements in an attempt to recoup the betterment created by public investment in highways. However no evidence was found to indicate that local authorities had this in mind when they signed agreements. As shown in Figures 7.07 and 7.08, major permissions *without agreements* were also concentrated in close proximity to major publicly funded road improvements. The fact that so many major planning permissions were granted without agreements in locations which benefited from publicly-funded road improvements suggests that local planning authorities were not primarily motivated by a desire to capture betterment. When contributions were obtained in relation to development sites near publicly funded roads, the contributions were not payments for windfall gains received by landowners, but rather for infrastructure improvements which were essential for development to proceed. For example, when an agreement was signed for the Cambridge Science Park in 1984 (in close proximity to the publicly funded A45 Cambridge Bypass and A10 interchange) a contribution was obtained, but it was for necessary drainage improvements and not for road improvements. It therefore appears that planning authorities in Cambridgeshire were more interested in encouraging major developments to locate efficiently in relation to publicly funded infrastructure, than they were in attempting to capture the betterment (which in practice would have penalised developments which located in proximity to publicly-funded highways). Indeed, if the goal of the planning system was to cause new development to locate in areas best served by highway infrastructure, then it is clear from Figures 7.05 - 7.08 that it succeeded.

Figure 7.05

Major Residential Permissions Subject to Agreements
In Relation to Government-funded Roads

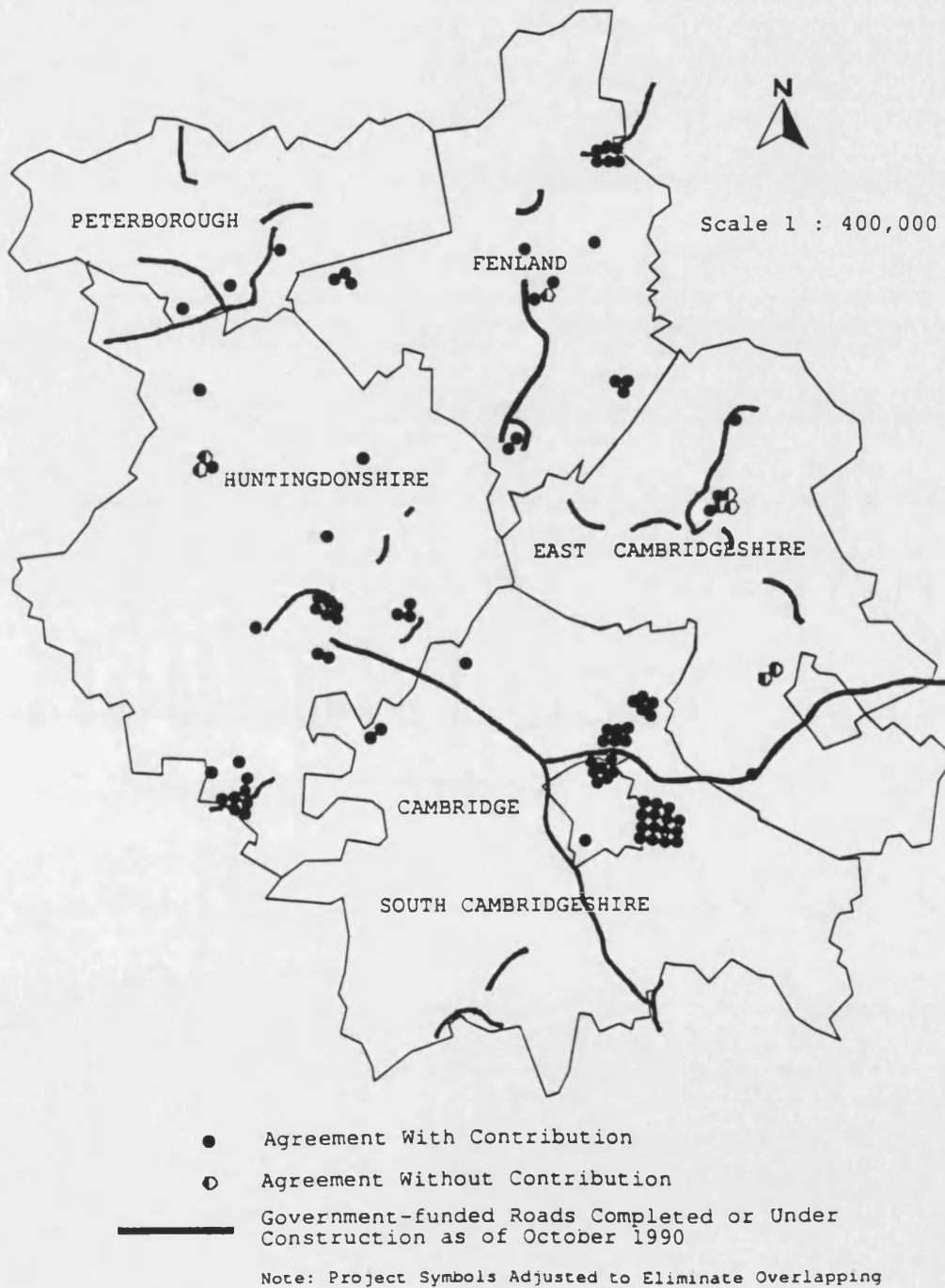


Figure 7.06

Major Commercial Permissions Subject to Agreements
In Relation to Government-funded Roads

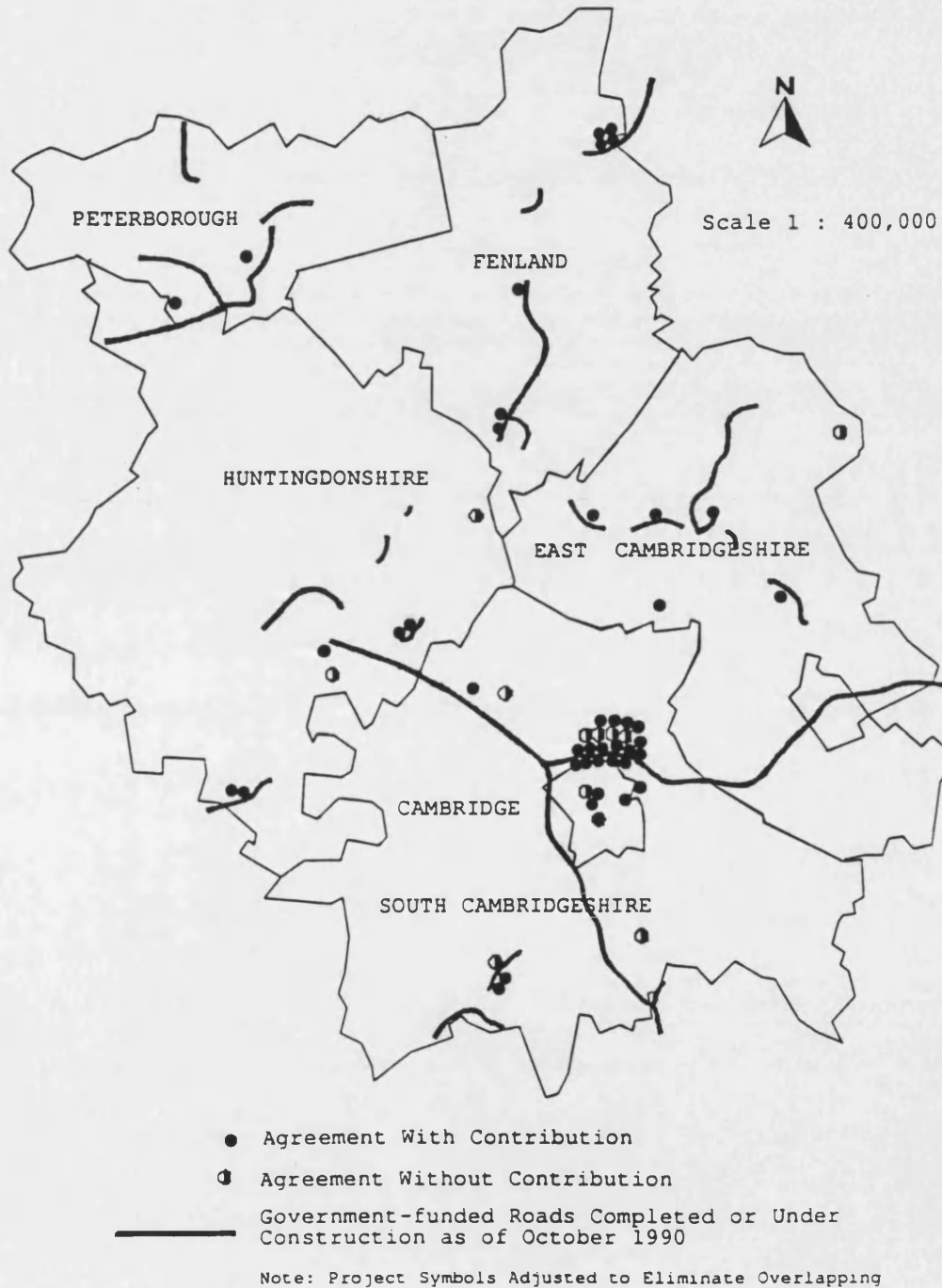
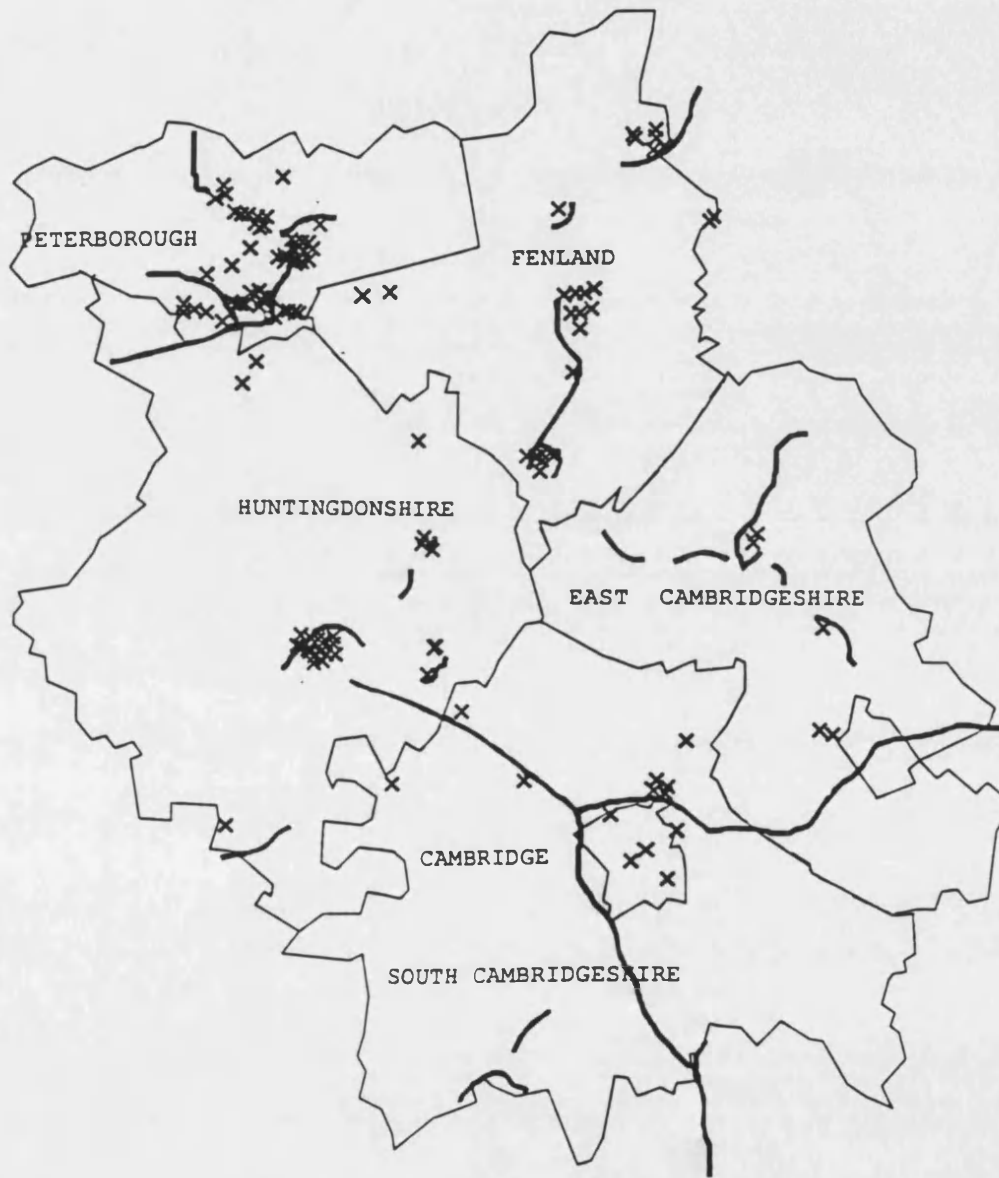


Figure 7.07

Major Residential Permissions Without Agreements
In Relation to Government-funded Roads



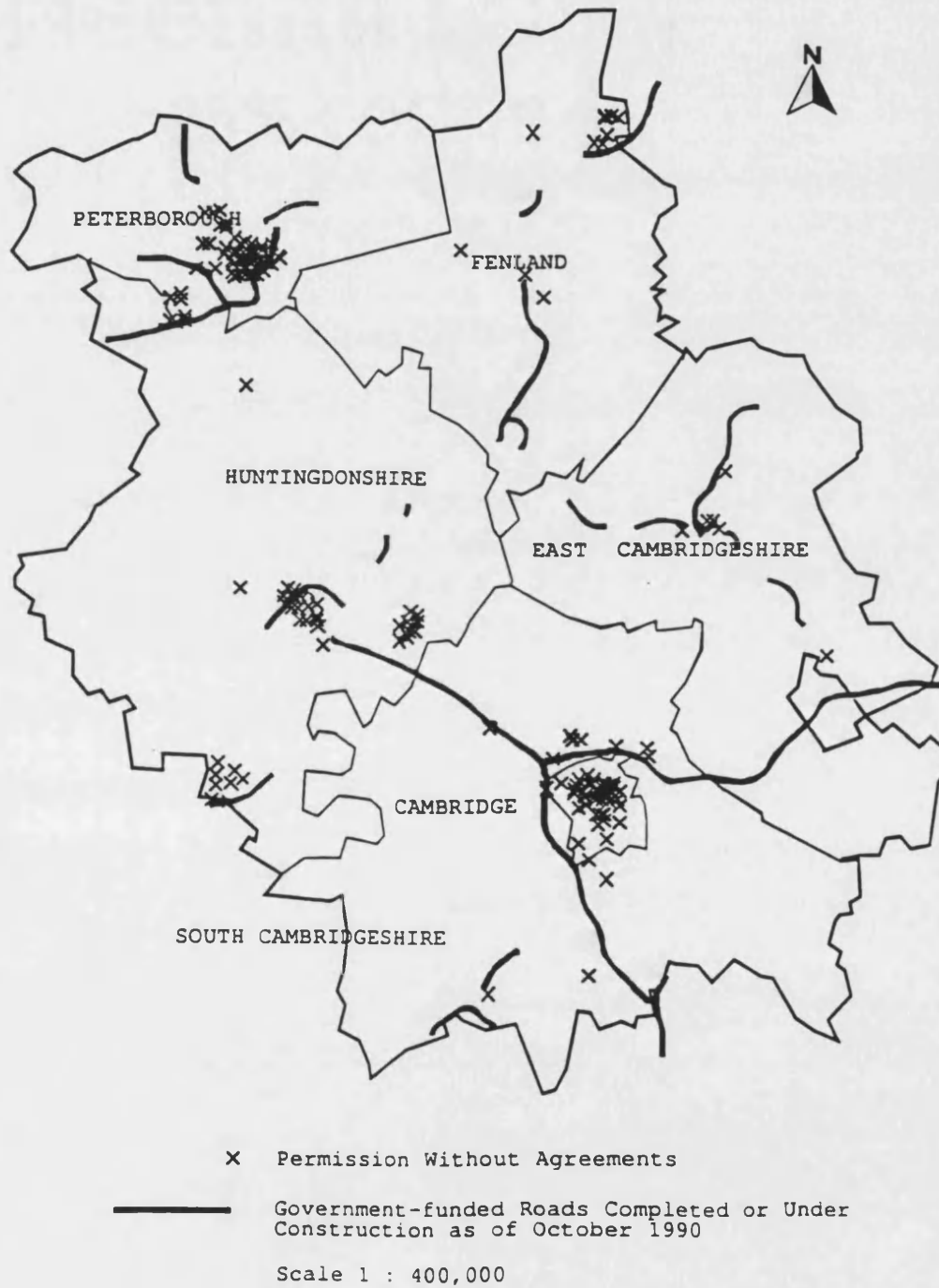
x Permission for Major Project Without Agreement

— Government-funded Roads Completed 1979-1990
Or Under Construction October 1990

Scale 1 : 400,000

Figure 7.08

Major Commercial Permissions Without Agreements
In Relation to Government-funded Roads



Water Infrastructure Contributions

From 1974 until September 1989, when the regional water authorities were privatised, the ability of Anglian Water Authority (AWA) to respond to demands of new development for new infrastructure investment was limited by central government restrictions on capital spending and borrowing. The government set an External Financing Limit on the amount the authority could borrow from the Treasury. The ability to pass costs on to consumers in the form of higher water fees was also restrained by government-set limits on water charges. As development accelerated in the 1980's, the Authority found it increasingly difficult to meet the burgeoning demand for infrastructure in Cambridgeshire.

By 1985 the Authority was experiencing increasing difficulty in providing new infrastructure to meet the demands of development. There was a major backlog problem-- not enough capacity to meet the demand. Assisting new development became less of a priority (Morrod,1991a, int.).

Given the pressures it was facing in providing infrastructure in a region experiencing rapid development, AWA was not anxious to encourage development in areas which had inadequate water infrastructure (Morrod,1991a,int.). Instead, it preferred "to allow small and incremental development in those towns which [had] adequate capacity" (Rural Development Commission,1991, 31). When applications were made to develop in areas with inadequate infrastructure capacity, AWA often filed infrastructure objections, and hoped that the applications would be turned down by the local planning authority. AWA did not go out of its way to encourage the signing of agreements to enable development in under-served areas. From the authority's viewpoint, allowing developers to enter into agreements enabling new development to occur in areas with inadequate infrastructure capacity was a favour to the developers who entered into such agreements (Morrod,1991a, int.). If the LPA nevertheless chose to grant planning permission, the authority then sought contributions to finance the new infrastructure.

When AWA filed infrastructure objections to planning pending applications, disagreements sometimes arose between local planning authorities and AWA. Local planning authorities had the final say regarding the granting of planning permission. They could ignore AWA's infrastructure objections altogether, and grant planning permission without condition, and without requiring contributions. Or they could agree to grant planning permission subject to a satisfactory agreement containing contributions for surface and foul water sewers.

Some local authorities in Cambridgeshire were more likely to uphold AWA's infrastructure objections than others (Morrod,1991c, int.). Huntingdonshire was most

likely to support AWA's objections, and South Cambridgeshire was likely to support AWA's objections when it came to large projects (Ibid.). According to the Director of Planning of Huntingdonshire, his District had a generally cooperative relationship with AWA. Indeed, almost two-thirds of all the contributions which Huntingdonshire negotiated in agreements were contributions for foul sewers, sewage treatment, sewage pumping stations, or surface drainage improvements. The only disagreements Huntingdonshire apparently had with AWA were over whether small projects should be required to make contributions. "In the case of some small projects, AWA requested developer contributions which we felt were too much in relation to the scale of development. Our general break-off in the past was approximately 30 units. Below that we tended not to use agreements" (Potter, 1991, int.).

East Cambridgeshire was much less cooperative with AWA, and was much less likely to support AWA's infrastructure objections (Morrod, Ibid.). According to East Cambridgeshire's Planning Director,

On countless occasions we have been at loggerheads [with Anglian Water]. Our response to Anglian Water Authority has been to ask 'Who's planning the area, us or the water authority?' ... We have been particularly reluctant to force developers of small projects to make contributions to Anglian Water (Archer, 1991a, int.).

Fenland District Council also reported that it had frequent disagreements with AWA regarding requests by AWA that developers contribute for water infrastructure improvements.

Anglian Water often raised objections to applications for planning permission, particularly in Chatteris... and threatened that if developments there were approved serious problems would result. The members of the Planning Authority often ignored these warnings. They felt it was Anglian Water's responsibility to provide the infrastructure, and to pay for it somehow (Furnell, 1991, int.)

One reason why Fenland and East Cambridgeshire were particularly unwilling to force developers to pay for water infrastructure improvements was that they felt that AWA had not made sufficient infrastructure investments in their Districts, and had instead directed a disproportionate share of its capital expenditure to faster growing areas. Not only did they resent the lack of past infrastructure investment by AWA in areas allocated for development in local plans, but they felt that forcing developers to make contributions as a condition for developing in those areas (when developments in more prosperous, better-served areas were not required to make contributions) was fundamentally unfair in that it effectively discouraged and penalised development in their districts.

One other factor which possibly had a significant effect on the extent of contributions obtained in cases where the local authority agreed to uphold AWA's

infrastructure objections. Cambridge, Huntingdonshire, Peterborough and Fenland had “agency agreements” with AWA, which meant that those four local authorities acted as agents for AWA in negotiating developer contributions. In those four districts with agency agreements, the extent of contributions obtained for water-related infrastructure was determined by the district authority rather than by AWA, and contributions asked for from developers may have fallen short of what AWA would have insisted upon had it been negotiating on its own behalf. South Cambridgeshire and East Cambridgeshire, on the other hand, had no agency agreements with AWA. In those two districts AWA did its own negotiating, and decided what level of contributions was acceptable.

As this discussion has highlighted, there was often significant tension between local planning authorities and AWA over whether or not private developer contributions for water-related infrastructure should be required and, if so, over the extent of private contribution which should be sought. This tension undoubtedly affected the willingness and enthusiasm of local planning authorities in seeking developer contributions. The privatisation of AWA in 1989 probably intensified these conflicts, and may have made local authorities even less enthusiastic about forcing developers to make infrastructure contributions to a private, profit-making corporation.

Had district authorities been responsible for the provision of water infrastructure, as they were prior to 1974, offers of water infrastructure contributions might have been perceived as more beneficial, and local authorities might have been more inclined to grant planning permission. However, because local authorities had little to gain themselves from negotiating contributions for water-related infrastructure on behalf of AWA, offers of contributions for water infrastructure held little sway with LPA’s, and certainly did not cause them to grant permissions for developments which they otherwise felt inclined to refuse. In fact, instances were identified where developers signed agreements offering contributions, and yet planning permission was denied. For example, an applicant who sought residential planning permission to develop 71 acres of land in Eynesbury, Huntingdonshire signed an agreement with AWA promising contributions for drainage and sewerage infrastructure. Nevertheless the district planning authority refused planning permission on 25 March, 1988.

Different Approaches to Negotiating Agreements

To some extent, variations in local authority practice reflected the differing styles, attitudes and preferences of individual chief planning officers. The shifts in policy in Cambridge that paralleled changes in the position of Chief Planning Officer (CPO), underscore that point. As noted earlier in this Chapter, the City of Cambridge Planning Department experienced a number of changes of leadership during the study period. After

the City's long-established CPO died in January 1988, the Department was headed by an interim CPO for a year, and then by a new CPO who was appointed in January 1989. This new CPO was strongly in favour of negotiating agreements, and took the lead role in attempting to negotiate contributions from developers. Under the new CPO, the City Council's approach toward negotiating agreements became much more consistent and aggressive. However this new CPO held the position for only a year, and was ultimately replaced by yet another CPO, who appeared much less interested in the negotiation of agreements and contributions. In the words of this new CPO, the negotiation of planning gain "muddies the water. I therefore tend to think that it might be better to simply judge applications on their merits" (Studdert,1992, int.). Instead of taking an active role in negotiating agreements, this new CPO delegated responsibility for the negotiation of agreements to others in the Department.

In Fenland, responsibility for negotiating agreements was dispersed within the planning department. Any one of 6 planners might be involved in negotiating an agreement, depending on where the project was located (there were three area teams) and which planner was responsible for that particular case. Nevertheless, staff planners, who might negotiate only a small number of agreements in a given year, were given no specific training in negotiating agreements (Furnell,1992, int.). In the case of large development schemes the Head of Development Control would also be involved. In Fenland, the District Solicitor was only minimally involved in the negotiation process, and in fact for a considerable portion of the study period, the District Solicitor position in Fenland was vacant, and the district relied on an outside firm of solicitors to draft many of its agreements.

Some districts made a conscious attempt to maintain responsibility for negotiating agreements within the planning department, as opposed to delegating responsibility to district solicitors. For example, in Huntingdonshire, the Planning Department took the lead role in negotiating agreements, and the Legal Department played merely a back-up technical role.

Either I myself [the Director of Planning], or the Assistant Director of Planning will lead the negotiations. We take the negotiations to the point where a general understanding has been reached with the developer. At that point we take the application to the Planning Committee to gain approval in principle. We may at that point need to go back to the developer to renegotiate or clarify certain points. Once the agreement has been approved in principle, the application goes to the Solicitor to draw up a draft agreement... It is important for negotiations to be driven by an understanding of the planning context in which the application is being reviewed. We try to keep the discussions with developers centered in the Planning Department (Potter,1991,int.).

However, in other local authorities, planners and planning departments were less involved in negotiating agreements, and district solicitors and legal departments took over. In South Cambridgeshire, the District Solicitor played the major role in negotiating agreements, and the planning department had limited influence on the detailed content of agreements. In East Cambridgeshire, the Planning Department was largely excluded from the process of negotiating developer contributions. "It has been the Chief Executive's... view that payments extracted from developers should be separated from planning concerns" (Archer,1991,int.). The Planning Department's perceived role in East Cambridgeshire was to assess whether or not a particular application should be approved, and if so what facilities and infrastructure would need to be provided. But after that it was left to the District Solicitor to negotiate the actual agreement and contributions. According to the District Solicitor, "I negotiate most agreements. If it is a big application, it would be me and the Chief Executive" (Kratz,1991,int.). The Director of Planning expressed satisfaction with the arrangement. "I don't want to get involved in discussion in the Planning Committee on matters of pounds and pence. We want to deal strictly with planning matters..."(Archer,1991,int.).

The delegation of responsibility for negotiating agreements to solicitors might have been expected to have led to a more legalistic and restrained approach to negotiating contributions. However, there is no consistent evidence that planners were more aggressive in negotiating contributions than district solicitors, or that who did the negotiating necessarily affected the rate at which contributions were obtained. In Huntingdonshire, where negotiation of agreements was firmly centered in the planning department, few contributions were obtained. In South Cambridgeshire, the District Solicitor played a major role in negotiating agreements, and relatively few contributions were obtained. But, in East Cambridgeshire, responsibility for negotiating agreements was centered with the District Solicitor, and a large number of contributions were obtained.

Explaining Negotiativeness

Local authorities varied considerably in the extent to which they used agreements to obtain contributions. Table 7.21 ranks the six districts in Cambridgeshire in terms of the total number of contributions per agreement they obtained. The fact that local practice in using agreements varied so much is, in fact, an important finding of this research. Most of the literature on planning agreements has seemed to assume that local planning authorities have behaved alike, or that it has been primarily Labour authorities that have aggressively sought to obtain contributions from developers. A failure to appreciate the variety of local behavior patterns has, in turn, blinded researchers to the importance of trying to identify

and understand some of the factors and conditions which have affected local planning authority behavior. The following section considers and discusses factors and variables which might possibly explain, or be associated with, these observed differences in success in obtaining contributions.

Table 7.21: Total Contributions Per Agreement, by District, in Rank Order

	<u>Agree. Signed</u>	<u># Contributions</u>	<u>Contrib./Agree</u>
East Cambridgeshire	13	50	3.85
Peterborough	12	21	1.75
Fenland	82	133	1.62
Cambridge	45	53	1.18
South Cambridgeshire	67	68	1.01
Huntingdonshire	75	49	.65

Development Pressure

In undertaking this research, it was expected that local authorities which experienced the greatest development pressure would have the greatest success in negotiating contributions from developers. Among the six local authorities in Cambridgeshire, East Cambridgeshire and South Cambridgeshire experienced the greatest development pressure (see Chapter Five, Table 5.10). If development pressure were the key factor to signing of agreements with contributions, then East Cambridgeshire and South Cambridgeshire should have obtained the largest number of contributions per agreement. East Cambridgeshire did in fact obtain the largest number of contributions per agreement (3.85), which seems to partially confirm the hypothesis that development pressure is positively associated with contributions. Fenland, which was experiencing above average development pressure was also fairly successful in obtaining contributions. However South Cambridgeshire, which experienced greater development pressure than all districts with the exception of East Cambridgeshire, obtained the second smallest number of contributions per agreement (1.01). Thus, it appears that the presence of strong development pressure did not assure that local authorities would seek to obtain large numbers of contributions.

Planning Constraint

In undertaking this research it was also expected that local authorities which exerted the greatest constraint on development, and which refused the highest proportion of planning applications, would have the greatest success in obtaining contributions. As

shown previously in Chapter Five (Table 5.12), Cambridge and South Cambridgeshire exerted the greatest constraint on development. While approval rates for major commercial developments ranged from 81% to 91% in the other 4 local authorities, Cambridge and South Cambridgeshire approved only 61% and 73% of all commercial planning applications respectively. Cambridge and South Cambridgeshire exerted even greater constraint on major residential applications, approving only 49% and 59% respectively.

If planning constraint were positively associated with the negotiation of contributions, then Cambridge and South Cambridgeshire should have negotiated the largest number of contributions per agreement. However, the data seems to suggest a *negative* association. Local authorities in Cambridgeshire which exerted the greatest constraint on development (Cambridge and South Cambridgeshire) secured relatively few contributions per agreement. Districts which exerted relatively little constraint on development (Peterborough, Fenland, and East Cambridgeshire) tended to obtain the largest number of contributions per agreement.

Urban Versus Rural Authorities

The data compiled in Cambridgeshire indicates that rural districts, with the lowest population densities, such as East Cambridgeshire (.9 persons per hectare) and Fenland (1.4 persons per hectare) tended to make greater use of agreements to obtain contributions than more highly urbanised local authorities such as Cambridge (25.3 persons per hectare) and Peterborough (4.7 persons per hectare).

Surprisingly, Cambridge-- the most densely developed district in the county, where land values were highest-- was relatively unsuccessful in obtaining contributions. The following remarks by the Cambridge Chief Planning Officer, made with regard to the negotiation of affordable housing contributions, are indicative of the problem which Cambridge faced.

Prospects for obtaining contributions for affordable housing are limited in Cambridge. The best opportunities for securing commitments for affordable housing are at large green-field sites, but there are few of those in Cambridge. Most sites for housing in the City are small. In cases where the City has tried to get commitments of affordable housing, it has usually had to up the allowed density (Studdert, 1992, int.).

One explanation for this finding might be that gains in land value resulting from planning permission and infrastructure investment were *proportionately* greater in rural areas than in more urban locations (where land values were higher to start with), and that developers in rural areas were therefore more willing and able to offer contributions to

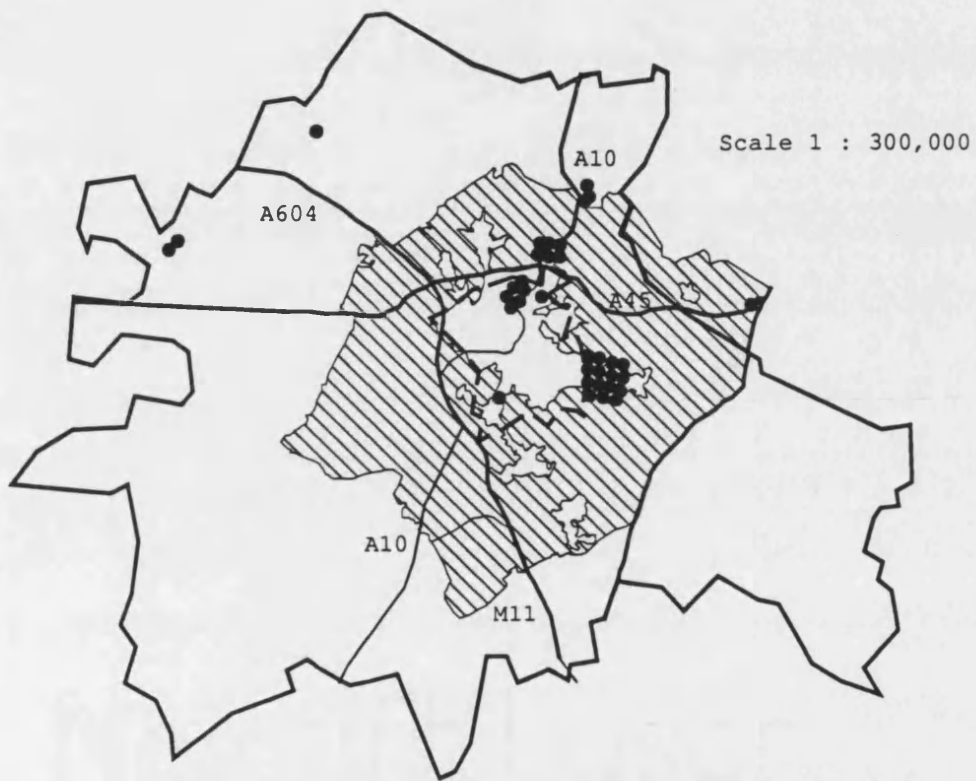
enable their developments to proceed. Also, infrastructure improvements were more often required in rural districts to enable development to occur than was the case in urban districts.

The tendency of agreements to be negotiated for sites on the periphery of developed areas, rather than for more centrally located sites, is clearly evident even within the Cambridge Sub Area. As shown in Figure 7.09, permissions for major residential projects in the Cambridge Sub-Area which were subject to agreements tended to gravitate toward the periphery of Cambridge. The largest concentration major residential permissions subject to agreements was just outside the easterly border of Cambridge, with a secondary concentration just north of the City. Figure 7.10 provides a closer and more accurate mapping of the locations of major residential permissions with and without agreements.

Agreements for major commercial projects had a similar tendency to be applied to sites along the periphery of Cambridge. As shown in Figure 7.11, the largest concentration of major commercial permissions with agreements was along the northern fringe of Cambridge. Figure 7.12 provides a closer look at the locations of major commercial permissions inside the Cambridge Green Belt, with and without agreements. It shows that the largest concentration of major commercial permissions subject to agreements was in the vicinity of the Cambridge Northern Fringe, in the very area where land was removed from the Cambridge Green Belt between 1984 and 1989 (see Chapter Five).

Figure 7.09

Cambridge Sub-Area: Major Residential Permissions
Subject to Agreements



● Agreement With Contribution

▨ Green Belt

Note: In areas of clusters of permissions,
project symbols adjusted to eliminate overlapping

Figure 7.10

Major Residential Permissions With and Without Agreements
Cambridge City and Fringe*

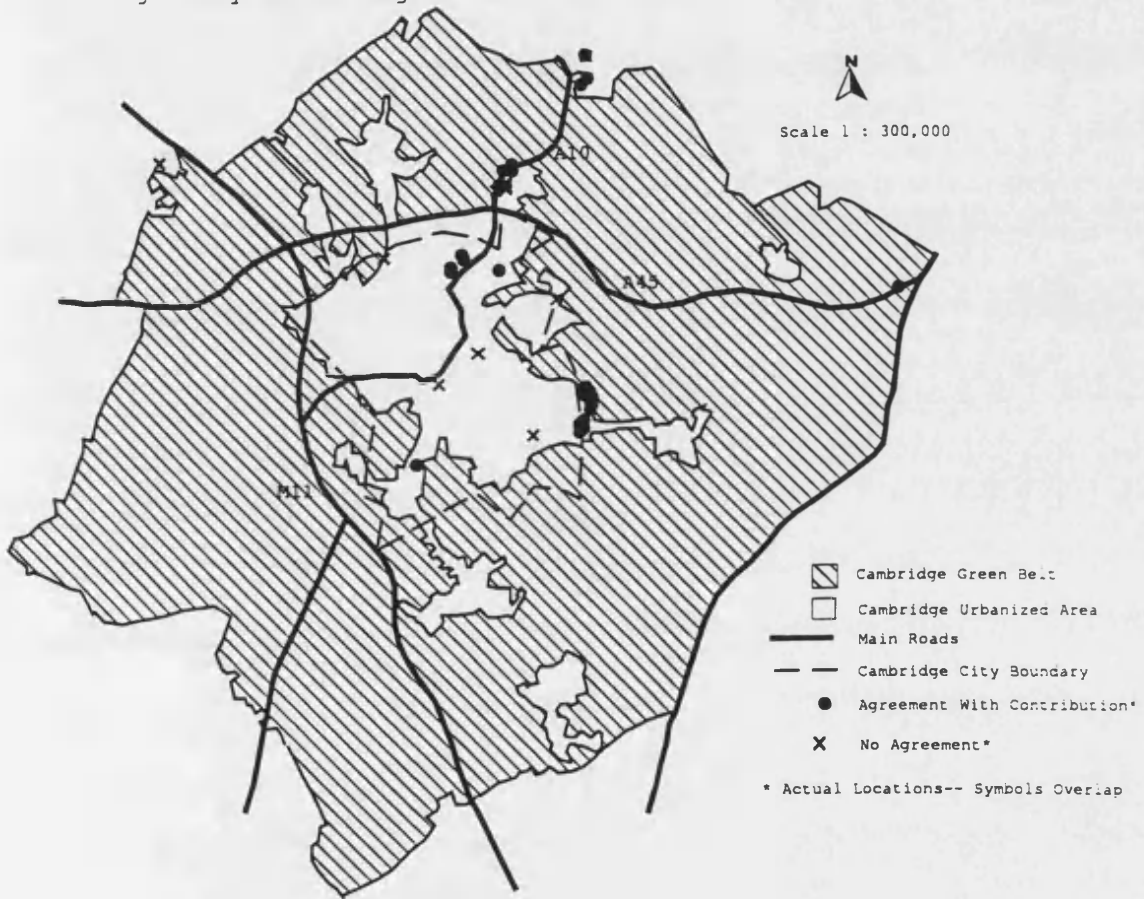
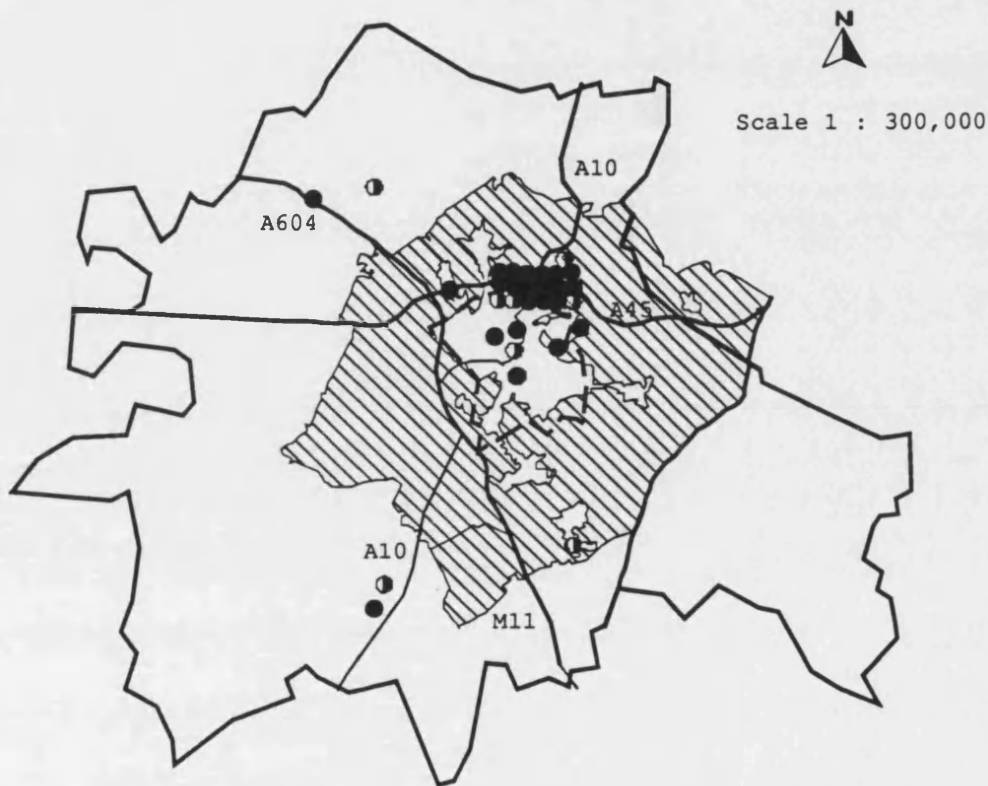


Figure 7.11

Cambridge Sub-Area: Major Commercial Permissions
Subject to Agreements



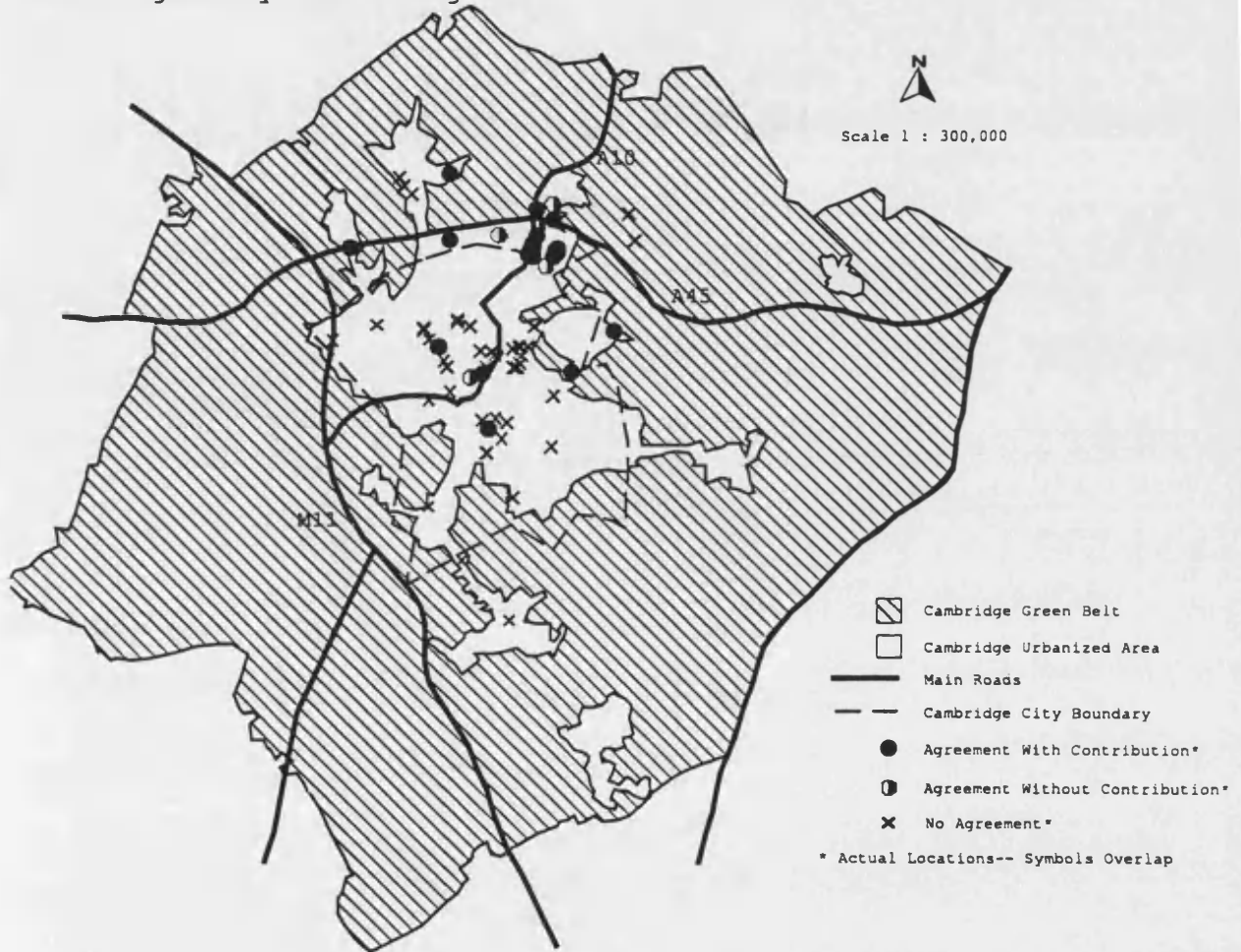
- Agreement With Contribution
- ⊙ Agreement Without Contribution

Note: In areas of clusters of permissions,
project symbols adjusted to eliminate overlapping

▨ Green Belt

Figure 7.12

Major Commercial Permissions With and Without Agreements
Cambridge City and Fringe*



Rates of Growth and Expected Growth

There was a modest correlation between the rate at which local authorities grew between 1980 and 1990, and their success in obtaining developer contributions. Cambridge grew the least (in fact it lost population during the decade), and fared poorly in obtaining contributions. East Cambridgeshire and Fenland, which experienced considerable growth during the decade, were active in using agreements to obtain contributions. However, any clear association between growth and use of agreements is contradicted by experience in Huntingdonshire, which grew the *most* of any district in the County between 1980 and 1990, with a 22,000 (18%) increase in population, but which made the *least* use of agreements to obtain contributions of any district in the County.

The level of growth that a local authority *expected in the future*, and whether that growth was anticipated to be greater or less than in the past, does appear to have had a strong impact on local authority attitudes toward seeking developer contributions. South Cambridgeshire, which was to a great extent protected from growth by strong County Structure Plan policies of constraint, could afford to take to a fairly restrained view of agreements and contributions. On the other hand, localities which were expected to accommodate an increased and disproportionate share of development in the coming decade, were likely to shift their policies in the direction of seeking greater developer contributions. That was clearly the case in East Cambridgeshire, which was expected to absorb a disproportionate amount of county development between 1990 and 2001.

...[T]here is a need to ensure that the provision of community facilities and infrastructure keeps pace with the rapid rate of development. The Structure Plan, recently approved by the Secretary of State for the Environment, provides for an increase of 63,000 dwellings (25%) in the housing stock for the County between 1986 and 2001. In East Cambridgeshire the increase is 7,250 (31%). This period of expansion coincides with a time when local councils are finding it increasingly difficult to provide the capital resources required to keep support services and community facilities in balance with the growing population... The Councils have [therefore] resolved to adopt clear principles for the provision of new services and facilities, and for the division of responsibility between service providers and developers seeking planning permission (Memorandum Director of Corporate Planning, Cambridgeshire County Council, to C.C.C. Policy Committee, 22 October 1990).

Political Affiliation of Local Authorities

Labour-dominated local councils such as those in Cambridge and Peterborough tended to be most philosophically disposed toward seeking developer contributions. Their willingness to assert demands for contributions can be interpreted as an expression of the

traditional perception that obtaining contributions through agreements was a way of capturing betterment. Conservative districts such as South Cambridgeshire and Huntingdonshire were extremely reluctant to use agreements to obtain contributions. And yet political affiliation was not necessarily a good predictor of local authority behavior in using agreements. Labour councils may have verbally expressed a greater willingness to seek contributions, but they were not necessarily more successful than Conservative districts in obtaining significant contributions. In fact, it was East Cambridgeshire District, a Conservative local authority, which took the lead in formulating and pushing for aggressive policies for seeking developer contributions through agreements, and which over the course of the study period showed the most success in negotiating a wide range of developer contributions. Moreover, Fenland District Council, another Conservative district, signed a remarkably large number of agreements with contributions, particularly with respect to new residential developments.

Appeals

Local authorities which were experiencing the greatest development pressure tended to have the most permissions granted on appeal (see Tables 7.22 and 7.23). Of the 108 commercial projects which received planning permission on appeal in Cambridgeshire between 1982 and 1990, 41 (38%) were in Cambridge. In 1986 alone, 13 commercial projects in Cambridge were granted planning permission on appeal. Of the 547 housing permissions which were granted on appeal in Cambridgeshire, 196 (36%) were in South Cambridgeshire, and 124 (23%) were in Huntingdonshire. Although increased development pressure presumably should have strengthened the bargaining position of certain local planning authorities, that power was considerably undermined through the ability of developers to circumvent local planning authorities by obtaining planning permission on appeal.

Appeals had a particularly chilling effect on local planning authorities which tried to extract contributions from developers. If a local planning authority pushed developers too hard for contributions, it could expect to have to devote an increasing amount of staff time and resources to defending itself in appeal proceedings, adding further stress on staff. Faced with the need to deal with mounting numbers of applications, local planning authorities inevitably became more cautious in turning down planning applications which they felt were likely to be taken to appeal. As the odds of losing on appeal increased during the study period, there was clearly an incentive for local planning authorities to grant permission, subject to an agreement containing at least some kind of contributions (however small)-- since if the developer appealed and won, its leverage to secure contributions would be even further diminished.

Appeals had a direct effect not only on the number of agreements which were signed, but also on the content of many planning agreements. In a number of instances, contributory agreements were signed *after* permission had been granted on appeal. In such instances where local planning authorities lost on appeal, they were in a weak position to extract contributions. Any contributions agreed to following successful appeals were probably the minimum necessary to overcome infrastructure deficiencies and other planning objects. For example, a developer applied for planning permission to develop a 4.73 hectare business park along the St. Ives bypass. The Huntingdonshire local planning authority initially turned down the planning application, but the applicant appealed the refusal and won. The Secretary of State directed that planning permission be granted, and the district council in turn granted permission subject only to an agreement requiring that the developer contribute to Anglian Water Authority to expand the sewage treatment works.

Table 7.22: Housing Permissions Granted on Appeal, 1982-1990, by District

<u>Year</u>	<u>Cambridge</u>	<u>E. Cambs.</u>	<u>Fenland</u>	<u>Hunt.</u>	<u>Pete.</u>	<u>S. Cambs.</u>	<u>Total</u>
1982	1	2	3	5	0	14	25
1983	3	8	3	10	2	11	37
1984	0	6	1	7	0	16	30
1985	8	10	1	8	4	20	51
1986	5	9	3	9	4	25	55
1987	10	11	8	11	2	35	77
1988	17	9	9	22	2	20	79
1989	11	25	11	39	9	38	133
1990	7	14	5	13	4	17	60
Total	62	94	44	124	27	196	547

Table 7.23: Commercial Permissions Granted on Appeal, 1982-1990, by District

<u>Year</u>	<u>Cambridge</u>	<u>E. Cambs.</u>	<u>Fenland</u>	<u>Hunt.</u>	<u>Pete.</u>	<u>S. Cambs.</u>	<u>Total</u>
1982	0	0	0	1	0	2	3
1983	1	0	0	3	3	0	7
1984	2	0	1	1	3	1	8
1985	4	0	0	1	3	4	12
1986	13	1	2	1	8	3	28
1987	6	1	1	3	2	2	15
1988	10	1	1	2	1	1	16
1989	4	0	0	5	0	0	9
1990	1	1	0	3	0	5	10
Total	41	4	5	20	20	18	108

A total of 15 agreements with contributions were signed *after* successful appeals by developers-- 12 of which were for commercial projects (see Table 7.24). Six (6) of the 32 agreements signed for *major* commercial projects in the County, were signed after the Secretary of State had granted planning permission on appeal.

Table 7.24: Agreements Signed for Developments Granted on Appeal, by District

	<u>Residential</u>	<u>Commercial</u>
Cambridge	1	4
East Cambridgeshire	0	1
Fenland	1	0
Huntingdonshire	1	3
Peterborough	0	1
South Cambridgeshire	0	3
Total	3	12

Attitudes toward Development

Most of what has been written about the negotiation of planning gain in Britain has created the impression that local authorities used agreements in ways which were detrimental to the interests of developments, and which impeded development. If local authorities used agreements with the intent of impeding development, then it might be reasonable to expect some correlation between a local authority's *attitude toward development* and the extent to which it burdened developers with required contributions. Local authorities which viewed development most negatively might be expected to extract the *highest* number of contributions per agreement. On the other hand, local authorities which saw development as most desirable, might be expected extract the *fewest* contributions per agreement from developers. The fact that local authorities in Cambridgeshire tended to secure fewer contributions from major commercial developments than from major residential developments seems to lend support to the notion that local authority attitudes toward development were important in shaping how they approached the negotiation of contributions. Throughout most of the study period, major commercial development was encouraged in at least four of the six districts in Cambridgeshire (excluding Cambridge and South Cambridgeshire) as a way of creating employment benefits-- which probably explains why fewer contributions were obtained from commercial developments than from residential developments.

Based on interviews with planners and district solicitors at the various districts in Cambridgeshire, I was able to form a subjective judgment regarding how local officials *felt* about development. Planners and the solicitor in South Cambridgeshire

appeared to hold the most consistently negative attitude toward development. In South Cambridgeshire, large-scale development was almost always seen as undesirable. When I asked South Cambridgeshire's District Solicitor which of the competing major shopping centre proposals the District Council favoured the most, he responded by rephrasing my question so as to identify the proposal that the District "disliked the least" (Taylor, 1991b, int.). The City of Cambridge also appeared to have a negative attitude toward new development, with the exception of high technology and science-based industries, relocations of firms doing business with Cambridge-based firms, and expansions of local industries. At the other end of the spectrum, Fenland and East Cambridgeshire District Councils appeared to have had the most positive attitudes toward development and were most inclined to want to encourage major development. This positive attitude toward development was perhaps in large part a reflection of the fact that development in these two districts had lagged behind development in other districts. Peterborough City Council also seemed to have a positive attitude toward development, but not as naively positive as Fenland and East Cambridgeshire. The fact that Peterborough had experienced such explosive growth since the 1970's, and was continuing to experience steady growth, meant that planners there were somewhat less inclined to always believe that more development would necessarily make conditions in the district better.

These subjective impressions of local authority attitudes toward development find some confirmation in data compiled by CIPFA comparing the amounts of money district authorities in Cambridgeshire spent per 1000 population on economic development and promotion (see Table 7.25). South Cambridgeshire spent no money whatsoever on economic development and promotion. Cambridge and Huntingdonshire spent the highest amounts of money per 1000 population, but in fact generated more income from such activities than they spent. In other words, in Cambridge and Huntingdonshire net expenditure on economic development and promotion was actually negative. The Districts with the greatest net expenditure on economic development and promotion were actually Fenland (£1552 per 1000 population), East Cambridgeshire (£1291 per 1000) and Peterborough (£790 per 1000).

Local authority attitudes *did* have an effect on local authority use of agreements, but in the opposite direction from what was expected. South Cambridgeshire, which was eager to stop development, was reluctant to seek contributions. By not entering into agreements with developers to help make their proposed developments more palatable, and by not going out of its way to help developers to overcome planning and infrastructure objections, South Cambridgeshire actually succeeded in further discouraging development. Fenland and East Cambridgeshire, which were eager to encourage development, were not at all hesitant to ask developers for contributions, particularly when such contributions were necessary and beneficial to development.

Table 7.25: Net Expenditure Per 1000 Population on Economic Development and Promotion (£)

Year	Cambridge			East Cambridgeshire			Fenland		
	Expenditure	Income	Net Expend.	Expenditure	Income	Net Expend.	Expenditure	Income	Net Expend.
1985-86	6721	9690	-2969	1813	541	1272	3992	2095	1897
1986-87	7289	11227	-3938	2561	964	1597	3858	2018	1840
1987-88	15440	20440	-5000	2722	1856	1066	3437	1942	1495
1988-89	17510	29007	-11497	3291	2062	1229	3341	2258	1082
1989-90	17040	27535	-10495	Data Not Available			3797	2351	1446
Average/Year	12800	19580	-6780	2597	1356	1291	3685	2133	1552

Year	Huntingdonshire			Peterborough			South Cambridgeshire		
	Expenditure	Income	Net Expend.	Expenditure	Income	Net Expend.	Expenditure	Income	Net Expend.
1985-86	2000	4125	-2125	2146	1958	188	0	0	0
1986-87	2027	4121	-2095	1954	1415	539	0	0	0
1987-88	2875	4624	-1748	1591	51	1540	0	0	0
1988-89	2777	5847	-3070	1748	2223	-475	0	0	0
1989-90	1596	6687	-5091	2230	72	2159	0	0	0
Average/Year	2255	5081	-2826	1934	1144	790	0	0	0

* 1 April - 30 March of following year

Source: CIPFA Planning and Development Statistics, Actuals

CHAPTER 8: THE AFTERMATH

As shown in Chapters Six and Seven, local authorities in Cambridgeshire secured surprisingly few offers of contributions in agreements between 1985 and 1990, despite economic conditions which were highly favourable to the negotiation of contributions. The failure to obtain contributions appears to have been largely self-imposed. Especially during the early years of the study period, local planning authorities simply did not try very hard to obtain contributions-- because official county and local policies legitimising efforts to obtain contributions were not in place. Local planning authorities were unwilling to solicit contributions until such official policies were in place. Moreover, in localities targeted in the County Structure Plan for severe constraint, local planning authorities were far more inclined to refuse planning applications than they were to accept offers of contributions.

The purpose of this chapter is to show how public policy and practice related to agreements evolved in the two year period following the end of the study period (between 1 April 1990 and 31 March 1992). The chapter first describes central government legislation and advice which took effect in the summer of 1991, and which altered the rules and guidelines for negotiating agreements. The chapter then examines county and local policies on agreements which were drafted and approved, or proposed for adoption in local plans in the aftermath of the study period.

Revised Government Advice and Policy on Agreements

Two government documents issued in the spring and summer of 1991 promised to have a considerable bearing on local use of agreements. The first of these documents, issued in May 1991, was *Planning and Affordable Housing* (DoE Circular 7/91). During the 1980's, the government adhered to the position that it was improper for local authorities to attempt to shift their statutory duty to provide affordable housing onto private developers. However, Circular 7/91 suggested that LPAs might, under certain circumstances, shift that responsibility onto private developers. The Circular asserted that "planning authorities may reasonably seek to negotiate with developers for the inclusion of an element of affordable housing..., and may include policies in local plans indicating their intention to do so"(DoE Circular 7/91, 1). Circular 7/91 was striking in a number of ways. It explicitly accepted the notion that local authorities should be enabled to negotiate *exceptions* to restrictive local development control policies, in return for obtaining

commitments to provide affordable housing. For example, the Circular suggested that limited development in the Green Belt, within existing settlements, might be allowed in exchange for commitments of affordable housing. In other words, the Circular authorised local planning authorities to take account of contributions for affordable housing in granting permissions which otherwise would not have been approvable. Thus, the position expressed in Circular 7/91 was at odds with previous policy statements which had insisted that offers of contributions should not be allowed to make unacceptable developments acceptable. Moreover, by stating that “such sites [for affordable housing] should not normally be so identified in the plan,” the government appeared to abandon its insistence, repeated in a number of previous circulars, that developers needed to be provided with greater certainty in the development control process. The rationale for not specifically designating such sites for housing development in advance was that “Any provision for such rural affordable housing should be regarded as additional to the provision in the development plan for general housing demand. This is because the sites for exception use in rural areas would not normally be released for general housing” (Ibid.). The guidelines put forward in Circular 7/91 were subsequently refined and articulated as national policy in the 1992 revision of PPG2 *Land for Housing*.

The second important piece of legislation issued during this period was the Planning and Compensation Act, the final terms of which were published in August 1991 (DoE Circulars 14/91 and 16/91). The Act introduced a change in terminology, referring to “planning obligations,” rather than to “planning gain,” or “developer contributions.” Much more importantly, however, the Act provided developers with a new avenue for obtaining planning permission, without having to enter into an agreement with a local authority. The Act continued to “allow developers to enter into a planning obligation ... as at present via an agreement with the local planning authority” (DoE Circular 16/91, Annex A). However, the Act also provided that “obligations may now be created *other than by agreement* (italics added) between the parties” (Ibid.), by the developer making a “unilateral undertaking.” Such an “undertaking” would normally be made when a planning application was being heard on appeal, after a developer had failed to reach agreement with a local authority over the nature and extent of obligations that the developer should assume. Developers who felt that they were being asked to make excessive contributions, could “submit with their section 78 appeal a unilateral undertaking dealing with the matters *they* (italics added) consider necessary to render their applications acceptable” (*Planning and Environmental Law Bulletin*, 1991, 22). Planning permission could then be granted on

appeal “on the strength of the developer’s entering into the planning obligation voluntarily” (Redman,1991, 204). The terms of the undertaking would then be made enforceable against and by the local authority by means of an agreement.

At the time of this writing, it is difficult to predict how widespread the use of this provision will be, and the extent to which it might adversely effect the ability of local authorities to secure developer contributions. In defending the “unilateral undertakings” provision in hearings held prior to its adoption, Minister for Housing and Planning, Sir George Young argued that “The provision is a safety value that can be used when recalcitrant local authorities obstruct otherwise sensible developments” (*Encyclopedia of Planning Law and Practice*, Monthly Bulletin,1991/5, 2). Young thus appeared to imply that the unilateral undertaking provision would only be used in extreme cases. However, if invoked on a widespread basis, the “unilateral undertakings” provision would virtually do away with agreements (Jackson,1991,lect.)-- giving central government the power to not only grant planning permission on appeal, but also to determine what obligations will be imposed on developers, without the consent of local planning authorities.

A provision which could have been included in the Act, and which would have strengthened the ability of local authorities to negotiate contributions from developers, would have been a provision restricting the practice of “twin-tracking” -- the filing of duplicate applications for the same development, allowing the applicant to pursue an appeal to the Secretary of State on the one hand, while continuing to negotiate with the local authority on the other. As noted in Chapter Seven, the practice of “twin-tracking” was quite common in Cambridgeshire. In a consultation letter distributed by the Department of Environment on 6 March,1991, the DoE invited comments on a provision which would have allowed local authorities to “decline to determine a planning application while a similar proposal was the subject of an appeal to the Secretary of State.” The DoE acknowledged that the practice of twin-tracking was wasteful of the resources of local authorities and the Planning Inspectorate, requiring them to review applications which often came to no effect. However, the Department also believed that “twin-tracking” had the advantage of providing an “incentive for local planning authorities to determine applications quickly, lest the proposal be decided instead by the Secretary of State” (DoE,1991d, 6). This latter point of view appears to have won out in the end, inasmuch as the Planning and Compensation Act contained no provisions restricting “twin-tracking.” As in the past, the government appeared to be primarily motivated by a desire to try to limit the extent to which developers might be made to pay for public improvements associated with their developments.

Evolving Local Policies

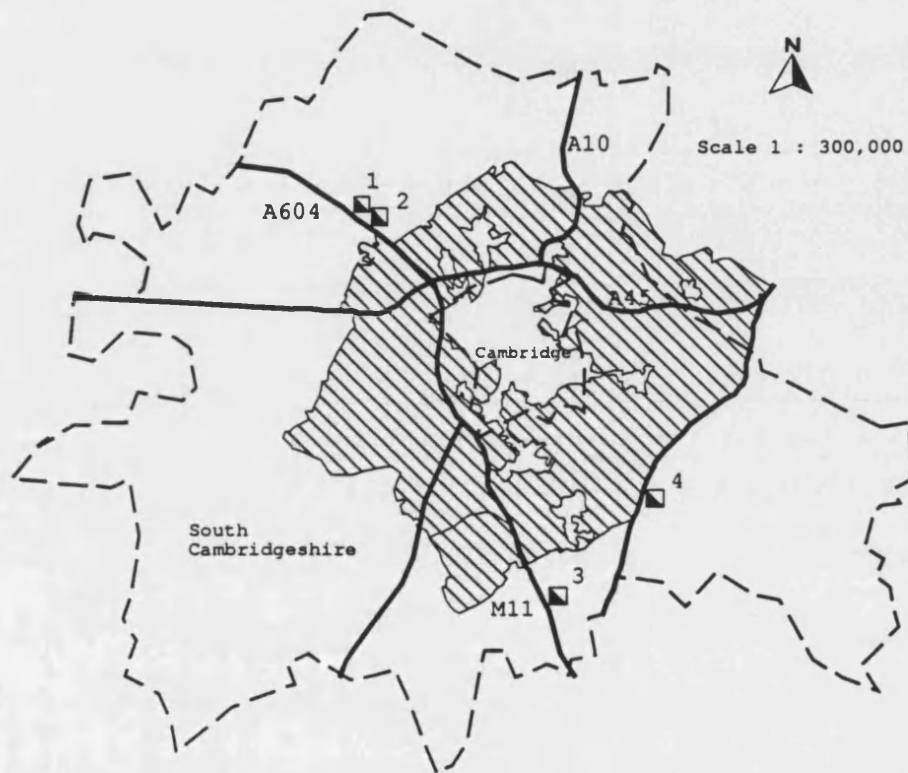
In the months following the end of the study period, local authorities in Cambridgeshire moved to seek a wider range of contributions from developers, and to set more explicit requirements for developer contributions. The evolution of local policy toward seeking greater developer contributions for public infrastructure and facilities was particularly noticeable at the County Council level. In March 1991, the County Council sent a memorandum to each district in the County, called "Schedule of Service Requirements," outlining in detail the types of infrastructure improvements-- from schools and roads to fire hydrants, etc.-- which local authorities should seek to obtain from developers when granting permission in specific areas. The "Schedule of Service Requirements" placed particular emphasis on obtaining contributions for infrastructure and facilities which would otherwise have to be funded and provided by the County.

By the time competing out-of-town shopping centre proposals came under review in 1991, the County Highway Authority had adopted a fairly strict policy with respect to requiring developers to pay the cost of needed off-site road improvements. Policy 20/30 of the 1989 Structure Plan called for a major out-of-town shopping centre to be developed in the Cambridge Sub-Area. Four proposals for out-of-town shopping centre schemes were submitted in response to this Structure Plan policy -- all of them for sites located in South Cambridgeshire. One of the proposed sites was at Duxford, two were at Bar Hill, and one was at Four Went Ways (see Figure 8.01). Each of the out-of-town shopping centre proposals called for the development of a half million square feet of commercial space -- equivalent to a third of the existing floorspace in the City Centre of Cambridge-- plus 4500 car parking spaces (*The Independent*, 18 November, 1991, 3). Given its scale, the shopping centre development was expected to have a major impact on traffic. The Highway Authority projected that the out-of-town shopping centre, wherever it was located, would generate 9300 vehicle trips per day each way.

The position of the County Highway Authority was that "Any out-of-town shopping centre that is approved will *have* to agree to make substantial contributions toward improving roads in the area to a sufficient level to handle the increased traffic" (Boddy, 1991, int.). For each of the four proposed shopping centres, the County Highway Authority prepared an extensive programme of off-site road improvements that the developer would be expected to fund. For example, if the proposed shopping centre were located in Bar Hill, the developer was expected to pay for upgrading the A604 between

Figure 8.01

Competing Development Proposals for Out-Of-Town Shopping Centre



Proposed Locations Under Review in 1991

- 1 River Spring
- 2 Slate Hall
- 3 Duxford
- 4 Four Wentways

———— Main Roads
- - - - - District Boundaries
▨ Cambridge Green Belt

Girton and Bar Hill, possibly involving the construction of an adjacent collector/distributor road (Figure 8.02, #10). If the centre were located on the site in Four Went Ways, the developer was expected to pay for dualling the A1307 between the A11 and the Southern Relief Road at an estimated cost of £3-4 million (Figure 8.02, #12). In specifying the road improvements that would be necessary to accommodate each of the proposed centres, the County Highway Authority took the position that these improvements were non-negotiable. "We have simply said, if this project is given planning permission, this is what they will have to do" (Boddy, Ibid.). Of course, it should be noted that the contributions required of developers were far from onerous, but were beneficial and necessary to the very success of any of the proposed out-of-town shopping centres.⁴

The County Highway Authority became increasingly disposed to encourage developer-funded road improvements in relation to other proposed developments as well. In areas where a road scheme was felt to be desirable in terms of County traffic circulation, a landowner or developer could hope to obtain a planning permission which otherwise would have been denied by offering to pay all or most of the cost of constructing a public road. For example, to make a major development scheme potentially acceptable, landowners in Wisbech proposed to build a western bypass around Wisbech, two miles in length, including a bridge over the River Nene (see Figure 8.02, #4). The County Highway Authority's response to this proposal was generally favorable. "This is not really a priority project in terms of County Highway priorities. But the County Highway Authority has said that if the developer will pay for the entire road he would be enabling his development to get planning permission" (Bruce, 1991, int.). During 1990 and 1991, additional developer-funded bypasses were considered by the Highway Authority in relation to pending major development applications in and around Ramsey, Longstanton and Willingham, Whittlesey, Papworth Everard, and the Stanground area of Peterborough (see Figure 8.02, #1, 2, 3, 6, 8 and 9). To assist such developer-funded schemes, the County Highway Authority set aside of roughly £300,000 in its 1990 budget, and £500,000 in 1991 budget, to "top-up" developer-funded road projects in instances where there was a shortfall of private funds (Bruce, 1991, int.).

⁴ As of October, 1991, South Cambridgeshire District Council had negotiated Section 106 agreements for all four of the competing out-of-town shopping schemes, and the County Highway Authority was in the final stages of completing and signing Section 278 agreements with each of the developers (Taylor, 1991b, int.).

Figure 8.02

Developer-Funded Roadworks
Under Consideration 1990-91



An increased emphasis on obtaining developer contributions, including contributions for off-site improvements, was also evident in the local plans and policy statements prepared by individual districts after the study period. For example, the Consultation Draft of the Cambridge Local Plan, issued in September 1991, contained a statement on "Planning Benefits," and a "Schedule of Planning Benefits To Be Considered" which listed specific developer-funded benefits and improvements which the City planned to seek from different types of development. The benefits sought by the City were not the same throughout the city, but rather varied from area to area, depending on the needs of particular areas. "These needs vary from one area to another and so different types of planning benefits will be appropriate to different developments" (Cambridge City Council, 1991, 170). While providing applicants with lists of suggested benefits ahead of time, Cambridge also made it clear, however, that it reserved the right to seek other planning benefits in the future.

While it [the Schedule of Planning Benefits] reflects needs and opportunities at the time of writing the Plan it is not seen as being definitive. The Council reserves the right to consider other benefits in the light of changing circumstances. The Schedule is only a summary which will require interpretation in the light of each application (Ibid.).

Types of benefits listed in the Schedule included: support for public transport, including land for improvements; extra support for park and ride over and above standard commuted payments; link road improvements; open space; and affordable housing.

During most of the study period, South Cambridgeshire had no formal local policy on the use of agreements, being content to operate within a strict interpretation of Circular 22/83. However, in the process of preparing a District Local Plan, South Cambridgeshire's Planning Department drafted policies intended to allow the District to use agreements to achieve two specific local planning objectives-- the provision of affordable housing and the provision of recreation facilities. These policies were included in the draft District Local Plan which was put on deposit in December 1989.

To achieve the provision of affordable housing, two specific policies were proposed. In areas where new housing development was completely prohibited, it was proposed that new housing developments of up to 8 units might be permitted, subject to an agreement stipulating that 100% of the housing would be affordable. Secondly, in villages where infill developments of up to 8 units were allowed, it was proposed that developments of up to 15 housing units might be approved, provided that an agreement

was signed assuring that 30% of the units would be low cost. It should be noted that the way in which South Cambridgeshire proposed to use agreements to achieve affordable housing predated, and anticipated the issuance of DoE Circular 7/91 on Affordable Housing.

The new South Cambridgeshire District Local Plan also contained proposed policies which called for developer contributions for the improvement of recreation facilities. For each particular area where new residential development was allowed, the plan specified the contributions for recreation which would be sought. For example, with regard to the Village of Caldecote, which was defined as a Rural Growth Village, the plan stated that:

The Authority, either through the use of conditions following the granting of planning permission or through Section 52 Agreements, will seek financial contributions from developers... to provide for 17 acres of formal/informal recreational provision to the east of Bucket Hill and New Barns Plantations (South Cambs. D.C.,1989, Part 2, 28).

The requirements for developer-funded recreation facilities adopted by South Cambridgeshire were particularly demanding for the New Settlements which were proposed for sites in South Cambridgeshire:

Preference will be given to schemes which provide *above* (italics added) the minimum requirements... and which would therefore benefit surrounding communities.

The District Council considers that the following provision is essential:

- a.) community sports hall (minimum 32m x 17m x 7m high)
- b.) covered swimming pool
- c.) golf course (9 holes, minimum 50-70 acres) and associated driving range
- d.) indoor bowls facility (minimum 36m x 20m)
- e.) outdoor bowls green (minimum 37m x 37m)
- f.) squash courts (2)
- g.) outdoor playing fields (football,hockey,cricket, rugby) -- minimum 45 acres
- h.) multi purpose floodlit games area comprising 2 macadam surfaced tennis courts and synthetic grassed area of 36m x 24m (South Cambs. D.C., 1989, Part 1, 43-44).

During the study period Huntingdonshire extracted fewer contributions from developers than any other district, despite a strong property market which placed the district in a strong bargaining position. Planners in Huntingdonshire were simply not inclined to seek contributions from developers. Nevertheless, the statement on developer

contributions and agreements incorporated in Huntingdonshire's Deposit Local Plan in June 1990 suggests that the district's thinking about developer contributions had undergone significant change. Huntingdonshire's Deposit Local Plan listed specific public facility and infrastructure improvements, area by area, to which developers would be expected to contribute. For example, the Local Plan stated that the existing primary school in Ramsey St. Mary's was inadequate to meet the demands of new development, and that therefore developers would be expected to contribute toward expanding the primary school. As the District's Director of Planning put it, "I still feel uneasy about contributions for schools. I and the members have tended to feel that such facilities should be provided by the responsible public authorities. It is only recently that Huntingdonshire has made requests that developers contribute for schools" (Potter, 1991, int.).

The Draft Consultation Document of the Peterborough Local Plan, issued in May, 1990, included the following policy statement:

Where appropriate, planning permission will normally only be granted for residential development if provision is secured, either as part of the development proposal or through means of a separate legal agreement, for all necessary community requirements including education, recreation, health, welfare, community and local shopping facilities, sewers, drains and a transport infrastructure. Where a planning application is made for part of what is ultimately planned to become a larger residential development, the local planning authority will require a contribution towards the necessary community requirements which will arise from the completed development (Peterborough City Council, 1990).

A parallel policy statement was drafted to apply to commercial and industrial development.

No commuted sum contributions for parking were negotiated in Peterborough during the study period. However, when interviewed in November 1990, Peterborough's Chief Planning Officer reported that the City Council was in the process of adopting policies on commuted car parking payments, requiring "contributions" of £6000 per space for off-site parking (Lee, 1990, int.). He also reported that the Council was drafting policies which would require developer contributions for the provision of open space. The Planning Department believed that 9.6 acres of open space per 1000 population was a reasonable standard, and that developers should either set aside that amount of land on-site, and transfer the improved open space to the local authority, or contribute the value of the open space that they might have provided on-site, so that the City could assemble and improve tracts of parkland off-site (Brown, 1990, int.). In the Village of Eye (east of Peterborough Centre), which the 1989 Structure Plan targeted to receive 500 additional

housing units, planners hoped to convince developers to make a cash contribution, equivalent to the value of on-site land which otherwise would have been donated, so that the Council could buy surrounding agricultural land and establish a “proper-sized park”(Brown, 1992,int.). The City Council also hoped to secure commuted sum payments from the developers toward the cost of maintaining publicly dedicated open space.

Rather than wait for a development proposal to be submitted for a large site, and then attempt to negotiate an agreement in response to that proposal, the Peterborough Planning Department took a pro-active stance toward seeking contributions by issuing a brief in May 1990 inviting development proposals for the 70 acre Park Farm site. The brief outlined not only the mix and scale of development that the City wished to occur on the site, but also the contributions the City wanted to receive if planning permission were to be granted. According to the brief, planning permission would only be granted if the applicant entered into a Section 52 agreement with the Highway Authority to contribute half of the cost of building a bypass highway, estimated at approximately £1.6 million. Other contributions asked for were: land for a school and a new community building; two 2 acre sites to be used by the City or a registered housing association for low cost rented accommodation; 3.75 acres for playing fields; and 15.7 acres of informal parkland and amenity open space, distributed throughout the site.

The shift toward formal and explicit requirements for developers was particularly evident in the Draft Local Plan prepared by East Cambridgeshire. The Appendix to its Draft Local Plan, which was issued in February, 1991, stated that “all new public infrastructure and open space cost needed as a direct consequence of proposed developments will be sought from the developer at no cost to the public purse,” and that contributions would be sought for “off-site facilities on land not covered by the planning permission...where there is a direct relationship between the two.” The Draft Local Plan also stated that planning permissions for significant developments (of 30 or more houses) would be subject to commitments in agreements that between 10% and 40% of the units would be provided for low income and special needs groups.

As a follow-up to its Draft Local Plan, in September 1991, East Cambridgeshire released a concise but comprehensive document entitled “Service Implications of Development Proposals.” The purpose of this document was to outline the status of infrastructure and public facility needs in areas allocated for development in the local plan, and to let developers know the kinds of contributions they would be expected to offer when applying for planning permission in specific areas. “We feel that we need to give

developers a clearer indication of the costs they may be required to contribute toward”(Archer,1991,int.). Contributions asked for from developers varied, depending on the specific facility needs and deficiencies in specific areas. Developers were asked to contribute for schools in areas where there was a need for schools. For example, in Soham, where land was allocated for the development of 175 dwellings, it was stated that “Extensions to primary and secondary schools will be needed to accommodate additional pupils generated by this development. Education capacity to support the whole site is expected to cost some £550,000. Developers are expected to make contributions to cover these costs”(East Cambs. D.C.,1991b, 15). However, contributions for schools were not asked for in areas where there was sufficient school capacity to meet the needs of projected development.

By setting out the types of contributions which the district felt were most needed and beneficial, East Cambridgeshire sought to seize the initiative -- to avoid having to respond to what developers might choose to offer, and to place developers in the position of responding to *its* agenda of needs. “What we don’t want is for the negotiation of contributions to be developer-led... We wanted to avoid situations where developers might make offers of ‘goodies’ in an attempt to make unacceptable developments acceptable”(Kratz,1991,int.).

During the five year study period which ended 31 March,1990, local authorities rarely sought contributions from commercial developers. The prevailing view was that “... it was not justified to ask commercial developers to make contributions toward community facilities, recreation and housing” (Ibid.). However by September 1991 East Cambridgeshire’s policies regarding commercial developers had changed. “We now feel that we ought to be asking commercial developers to make contributions for open space improvements and housing somewhere in the District” (Ibid.). Not a single agreement was signed in Huntingdonshire between 1 January, 1985 and 31 March, 1990 calling upon a commercial developer to contribute to the improvement of a public road. However, in 1990, Huntingdonshire entered into an agreement granting permission for a Tesco superstore in exchange for a £400,000 contribution for the improvement of a roadway intersection a considerable distance from the proposed development. The district also negotiated another major off-site roadway contribution from a commercial developer, this one for £350,000, in February 1991.

The formal policy statement on “Community Benefit and Planning Agreements” included in Fenland’s Draft Local Plan, issued in April 1991, was the least specific and

least demanding of all the statements drafted by districts in Cambridgeshire. It stated that "Where appropriate the District Council will seek to secure, through planning agreements, the provision of ... benefits in association with major proposals," and went on to list essential on-site and off-site services, highway improvements and car parking, community, education and recreational facilities, and environmental improvements (Fenland D.C.,1991a, 87).

Policy statements adopted in the aftermath of the study period increased the legitimacy of negotiating contributions, but at the same time narrowed the scope of potential contributions by specifying the types of contributions which would be sought and accepted. At the same time, the increased specificity of local plans provided a much clearer policy framework for developers regarding planning applications which were likely to be approved or denied. Taken together, these developments placed the negotiation of agreements in a plan-led context, and reduced the possibility that unsolicited offers of contributions might yield exceptions to established policy.

Growing Parallels to American Methods of Developer Finance

In the aftermath of the study period, LPAs incorporated and utilized a number of approaches which were similar to American methods of developer finance described in Chapter Two. In preparing its Local Plan, East Cambridgeshire District Council considered allocating additional land around the village of Littleport (population approximately 6000) for residential development. All of the land around the village was owned by a single landowner. The LPA was inclined to recommend that this land be allocated for residential development, but before it did so it negotiated with the landowner for contributions which could address public needs in the Village. The planning authority told the landowner that it would recommend the land be allocated in the local plan for the development of an additional 500 houses, if the landowner agreed to donate over 23 acres free of charge-- 5.5 acres for a primary school, and 18 acres for playing fields and a sports hall (Kratz,1992,int.). An agreement specifying these contributions was signed in January 1991. This approach to the negotiation of contributions was innovative, in that the District took the initiative in seeking contributions, *before* a specific planning application was submitted. It was also similar to the approach of the Boston Redevelopment Authority, which used its influence over rezoning applications (for Planned Development Area zoning) as a basis for negotiating Cooperation Agreements with aspiring developers. (See Chapter

Two-- "Negotiated Development and Legal Agreements.")

Most noticeable, however, was that LPAs in Cambridgeshire became increasingly inclined to impose charges on developers in agreements which were remarkably similar to American impact fees. In an agreement negotiated in 1991, East Cambridgeshire imposed a fee which was based on a calculation of the average per unit cost of providing public facilities and services. A memorandum prepared by the District Solicitor in January 1991 called for the following per unit costs to be imposed related to the proposed residential development:

Contribution to primary education	£1250
Contribution to secondary education	£1800
Contribution towards library facilities	£ 150
Contribution towards facilities for frail elderly	£ 100
Contribution towards fire and emergency services	£ 100
Contribution towards police facilities	£ 80
Contribution towards "Rural Management" facilities (countryside, footpaths, archeology, etc.)	£ 58
Contribution towards community based facilities	£ 500
<hr/>	
Total Fee	£4038

Another agreement signed in East Cambridgeshire in 1991 required that the developer of a 100 house development make a £300,000 contributions toward the cost of educational facilities. This total charge was arrived at by imposing a set fee against each housing unit in the development. The fee for each one-bedroom units was £12; the fee for each two-bedroom units was £1,262; and the fee for each unit with three or more bedrooms was £3,062.

In another case which mirrored American methods of calculating impact fees for highway improvements, an agreement was signed in Cambridge in August 1991 calling upon the developer of the Cambridge Business Park to contribute £500,000 to the County Council for off-site road improvements. The contribution was based on a comprehensive traffic study, conducted by the County Highway Authority, which forecast the traffic impacts resulting from additional development at the Business Park, and then calculated the proportionate share of the cost of needed highway improvements attributable to the Park.

The New Settlements-- An Expanded View of Developer Obligations

Beginning in 1990, local authorities in South Cambridgeshire, East Cambridgeshire and Peterborough, and the County Council began the process of evaluating proposals for New Settlements submitted in response to 1989 Cambridgeshire Structure Plan. The County Council strongly encouraged the affected local authorities to negotiate agreements for each proposed New Settlement, and to seek a wide range of contributions. The County Council's position was that "developers should contribute to a wide range of community facilities" (Vigor,1991,int.).

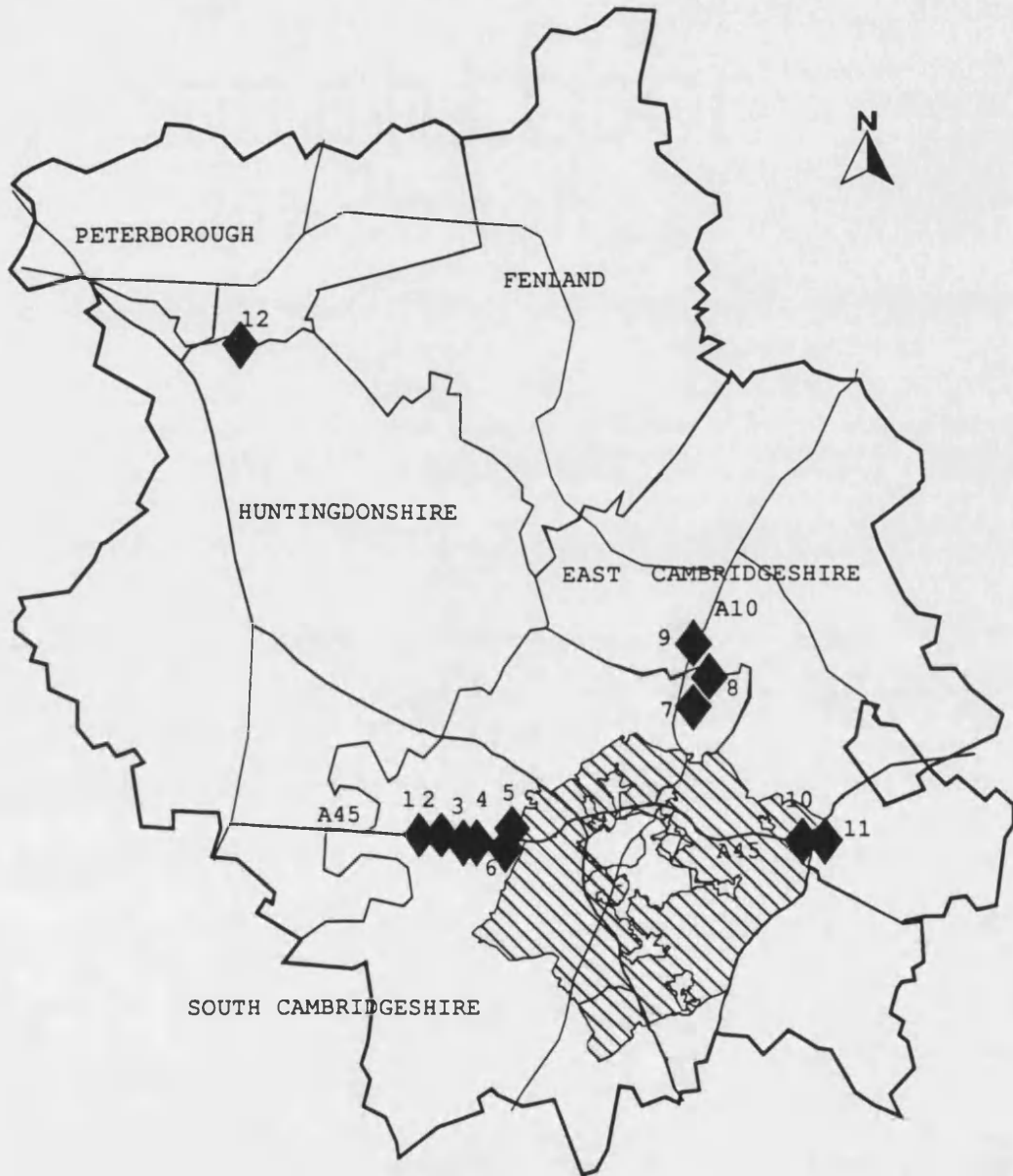
The Cambridge New Settlements

The Cambridgeshire Structure Plan called for two New Settlements to be developed outside Cambridge. Given the considerable pressure for development in and around Cambridge, and the high degree of planning constraint exerted in the Cambridge Sub-Area, developer interest in being selected to build one or both of the Cambridge New Settlements was keen. The potential economic gains to be reaped from designation were substantial. "The price of the agricultural land in question is a mere £2000 an acre in its raw and muddy state. With planning permission for a new village, it suddenly becomes worth about £600,000 per acre"(*The Sunday Times*,14 January, 1990). Eleven competing New Settlement proposals were submitted (see Figure 8.03). Six of the proposed New Settlements were in South Cambridgeshire and five were located in East Cambridgeshire. Given the large number of proposals, and the economic stakes involved, the situation was tailor-made for a "beauty contest" in which applicants attempted to outbid each other in terms of offering planning gain.

Local officials in East Cambridgeshire were much more positively inclined to accept the New Settlements than were officials at South Cambridgeshire. As negotiations on the New Settlements proceeded, the planning authority and district solicitor in South Cambridgeshire appeared to take the position that both of the New Settlements should be located in East Cambridgeshire-- arguing that putting the New Settlements in East Cambridgeshire was more desirable because they would be farther away from the City of Cambridge. South Cambridgeshire's lukewarm attitude toward accepting a New Settlement was reflected in a disinclination to negotiate beneficial contributions. South Cambridgeshire was, in fact, reluctant to accept significant contributions which might have

Figure 8.03

Proposed New Settlements



- | | |
|---------------------|-------------------|
| 1 Swansley Wood | 7 Denny |
| 2 Belham Hill | 8 Waterfenton |
| 3 Great Common Farm | 9 Westmere |
| 4 Bourn Airfield | 10 Allington |
| 5 Scotland Park | 11 Hare Park |
| 6 Highfields | 12 South Township |

Scale 1 : 400,000

some area-wide benefit. For example, Consortium Developments offered to build a major new road link in conjunction with the development of their proposed New Settlement called "Westmere" (see Figure 8.02, #5). South Cambridgeshire Council's response to this offer was that developer-funding of the new road, which would have regional traffic benefits, could not be justified under the terms of Circular 22/83 (Miles, 1990, int.). County planning officials, on the other hand, felt that the promised contribution for a road link was a very positive feature of the Westmere New Settlement proposal-- making that proposal especially worthy (Vigor, 1991, int.).

East Cambridgeshire's willingness to accept the New Settlements, and the growing prospect that both of the Cambridge New Settlements might be located in East Cambridgeshire, was, in fact, a major factor which pushed East Cambridgeshire District Council to adopt formal policies requiring developer contributions. As the District Solicitor in East Cambridgeshire put it, "The penny dropped when the New Settlements came along, and when we had to enter into serious negotiations with developers related to real agreements. There was no formal touchstone for negotiating such agreements. Everything up until that point had been ad hoc" (Kratz, 1991, int.).

Most of the New Settlement developers appeared to be quite willing to enter into substantive negotiations with District Councils regarding provisions to be included in agreements, and most were willing to agree to major contributions. Solicitors and planners who were interviewed in 1991 reported that verbal agreements had been reached with almost all of the developers, and they expressed confidence that agreements would eventually be signed with all but one of the developers. Only the developers of the proposed Scotland Park New Settlement expressed strong objections to the contributions sought by the County Council. The Scotland Park developers took the position that they would be willing to contribute a site for a primary school, but would *not* agree to pay money toward the costs of an off-site secondary school which would serve the development (Vigor, 1991, int.). The refusal of the developers of Scotland Park to agree to this contribution led the County Structure Plan Officer to regard this New Settlement proposal as unapprovable. In his words, "the presence or absence of developer contributions for such facilities will be a 'material consideration'" when choosing among the competing New Settlement proposals (Ibid.).

Despite the positive expectations of local and county planning officials that agreements would be signed with all but one of the New Settlement developers, only one New Settlement agreement was signed in the two years which followed the end of the

study period. (One New Settlement agreement was signed during the study period.) That agreement was signed in August 1990 between South Cambridgeshire District Council and Erostin, developers of the proposed Waterfenton New Settlement. The Waterfenton agreement called for the following contributions:

- donate a five acre site for a primary school to the County Council;**
- construct a primary school, or have the County Council construct the school and pay the tender cost plus £100,000 plus 15% for professional fees;**
- donate a .33 acre site for a library and caller service close to the school, and pay £240,000 for the construction of the library and caller service;**
- donate a site for a fire station to the County Council;**
- donate 37.5 acres of fully-serviced land free of cost for the construction of sheltered housing, shared equity housing, rented housing, and permanent low cost housing for sale or rent, land to be transferred to the County Council or any nominee of the Council;**
- provide a public nature reserve of not less than 10 acres;**
- construct a day care centre of 2500 square feet for the frail and elderly, on donated land -- or alternatively pay £300,000 to the County Council towards the provision of the complex, including car parking;**
- pay £200,000 to the County Council for the improvement of fire services to the area;**
- pay £75,000 as a commuted lump sum towards the cost of maintaining community facilities;**
- pay up to £2.4 million for the expansion of secondary education facilities to serve the settlement (subject to a downward adjustment on the basis of £8000 per pupil to take account of any unused capacity at an appropriate secondary school);**
- provide free transportation to primary and secondary school children for a period of up to three years, until new primary and secondary schools in the settlement are completed and in use;**
- pay a commuted lump sum of £1.5 million for the maintenance of public open space, planted areas and landscaping.**

It should be noted that a large proportion of the contributions obtained in the Waterfenton agreement were for facilities and services which were the responsibility of the County Council. The only contribution which benefited the District Council itself was the contribution of a commuted lump sum for the maintenance of public open space.

The Peterborough New Settlement

An application for Outline Permission for the New Settlement in Peterborough was submitted in December 1989. Peterborough's Planning Department analysed the likely impacts and demands that the New Settlement would impose on Peterborough, and attempted to negotiate a planning agreement containing a package of contributions to mitigate those impacts. A major planning concern in Peterborough was that the traffic generated by the New Settlement would exceed the capacity of the existing roadway network, and would lead to serious traffic congestion in the City Centre. Thus, the first priority of the City Council was to negotiate contributions for off-site road and transportation improvements. A second priority of the City Council was to secure a major commitment to provide affordable housing.

Relative to South Cambridgeshire and East Cambridgeshire, however, Peterborough was in a weak bargaining position to secure contributions, inasmuch as there was only one New Settlement proposal on the table to review, and therefore no competitive pressures. Also, because the site for the Peterborough New Settlement had been specifically chosen and designated by the Secretary of State, there was a strong presumption that planning permission for the Peterborough New Settlement would not be denied. The scope for obtaining developer contributions was further limited by the derelict state of the land, and the need for major expenditures simply to bring the site to a condition where it could be built upon. After decades of clay extraction, the site was scarred by deep clay pits; the City Council estimated that it could cost approximately £75,000 per acre to reclaim the land to the point that it would be developable (Brown, 1990, int.), thus considerably reducing the developers profit margin and ability to fund planning gain.

In March 1991, the County sent a memorandum to the City Council asking it to seek the following contributions in relation to the Southern Township New Settlement:

- four primary schools- 420 places in each
- one secondary school
- one library
- three day care centres for frail elderly
- a children's centre
- one police station
- improvements to Stanground Fire Station

The City Council also received a late request from the County Highway Authority asking that it consider the possibility of having the developers pay for establishing a second railway station to serve the Southern Township. The new railway station, if built, would benefit the district as a whole, as well as the proposed development, by serving as a parkway station for commuters to London. A firm of consulting engineers and economists was employed jointly by the County Council, Peterborough City Council, and the developers to study the feasibility of the proposed new station, provisionally known as "Peterborough Parkway." Their study concluded that "more than 2500 new railway travelers would use the station every day, as well as more than 1000 travelers who currently use the city centre station" (*M11 Corridor Review*, November 1991,6). As a result of the study, and protracted negotiations, an amended application was made in June, 1991, which included the provision of a second Peterborough railway station (*Ibid.*). On 25 September, 1991 Peterborough City Council voted to grant outline planning consent, "conditional on the signing of an agreement covering what the developers will be expected to provide in the way of community facilities, schools, and land for low-cost housing" (*Ibid.*). As of October 1991, the planning agreement had not been signed, but the developers had verbally agreed to above-mentioned contributions, and in addition had agreed that 15% of the New Settlements housing units would be "affordable rental units," and another 15% would be "near market" (lower profit) units (Brown,1991, int.).

The Fate of the New Settlements

Although verbal agreements had supposedly been reached with all but one of the New Settlement developers by the fall of 1991, only two New Settlement developers had actually signed by that time. The weakened state of the property market in 1990 and 1991

certainly was one factor which discouraged developers from signing agreements. However, another factor which probably also encouraged developers to hold off signing agreements was the “unilateral undertakings” provision included in the 1991 Planning and Compensation Act. Given the increasingly aggressive stance of the County Council in seeking developer contributions, New Settlement developers who had not signed agreements may have concluded that they stood a better chance of achieving favourable terms of agreement by dealing directly with the Secretary of State.

The new Planning and Compensation Bill, by allowing for ‘unilateral undertakings,’ removed the incentive for developers to agree to what the local authorities were asking for... They may be hoping that the Secretary of State will call in the application, and not require that an agreement be reached with the local authority. Under such circumstances, developers may be free to offer what they like (Baldwin, 1991, int.).

As matters turned out, *all* of the Cambridge New Settlement planning applications were called in by the Secretary of State, and *all* of them were refused planning permission.⁵ What led the Secretary of State to reject all the New Settlement applications can only be speculated about. The officially stated reason for rejecting the A10 New Settlements was that “none of the developers were prepared to meet DoT demands for a grade-separated junction upon dualling of the A20 or, if earlier, upon completion of the first 500 dwellings,” which would have cost an estimated £5 million (*Planning / U.K.*, 20 December, 1991). However, given the wide-ranging contributions negotiated by local authorities and the County Council from the New Settlement developers, and the reluctance of the government in the past to force developers and land owners into making major contributions unwillingly, it is difficult to believe that the New Settlement proposals were rejected because the developers offered *too little*. Quite to the contrary, by almost any standard, the contributions negotiated from the two New Settlement developers who did sign agreements, and the contributions which could have been negotiated from the remaining developers, were precedent-setting. The gains which were negotiated were so extraordinary that, had they been approved, they likely would have encouraged local authorities elsewhere to be much more ambitious in seeking contributions from developers. It was probably that prospect, more than any other, which worried the government most-- given its ambivalence about imposing costs on developers and landowners.

⁵ The Secretary of State’s rejection of the A10 New Settlements came in December 1991; the A45 New Settlement proposals were rejected in March 1992.

The Water Infrastructure Charge

Under the provisions of the Water Act of 1989, all new developments which received planning permission on or after 1 April, 1990 were required to pay a one-time “infrastructure charge.” This infrastructure charge was in addition to the “connection fee” which regional water authorities previously charged, and was levied to pay the capital costs of expanding the water and sewer systems to meet the increased demands of new users. The infrastructure charge represented a new way of funding the capital costs of expanding water and sewer infrastructure in Britain.

Two separate infrastructure charges were imposed-- a charge for sewer infrastructure, and a charge for water infrastructure. During the fiscal year which began 1 April 1990, developers in Cambridgeshire were required to pay a sewer infrastructure charge of £597, plus a water infrastructure charge of £479, for each housing unit they produced. Thus, for each housing unit built, a developer had to pay £1076. In the following year beginning 1 April 1991, the infrastructure charge was increased to £1132 per housing unit (£629 for sewer infrastructure and £503 for water infrastructure). Commercial and industrial developments paid “a multiple of the standard charge based on the number of water fittings within the development compared with what could be expected in an ordinary house or flat” (Housebuilders Federation Monthly Newsletter, Appendix, April 1991). The same infrastructure charge imposed throughout the Anglian Water Authority Region, covering over 27,500 sq. km (see again Figure 5.08).

As an alternative to negotiated contributions, the infrastructure charge appeared to offer developers certain advantages. It provided them with a high degree of certainty. It also eliminated delays normally involved when agreements had to be negotiated. However, the infrastructure charge also had a number of disadvantages. Developers had to pay the infrastructure charge even when their developments were located in areas where infrastructure capacity was adequate. Also, once the infrastructure charge was adopted, developers no longer had the option of meeting their obligations by offering to *construct* the improvements themselves at the time of development. Nor could they offer to donate land in lieu of cash payments. Once the infrastructure charge was adopted, the only way that developers could meet their obligations was by making cash payments to the water authority. Perhaps an even more undesirable feature of the infrastructure charge, from the point of view of developers, was that even when the infrastructure charge was paid, there was still no guarantee that the infrastructure improvements needed for a particular

development would be completed in a timely manner. Indeed, one of the major advantages of agreements to developers was that they assured that improvements necessary for developments would be completed when needed.

It was generally assumed that the adoption of the infrastructure charge would eliminate the need for signing agreements with water authorities involving contributions for sewer and drainage infrastructure. However, data obtained from the Director of Finance for Anglian Water Authority shows that after the infrastructure charge was imposed developers still often found it necessary to make additional payments and "contributions" to Anglian Water Authority. As shown in Table 8.01, between 1 April, 1989 and 31 March, 1990 (the year prior to the infrastructure charge) developers paid a total of £7.1 million in requisitions and other contributions. Between 1 April 1990 and 31 March 1991, developers paid Anglian Water Authority £7.8 million in requisitions and other contributions, plus £17.5 million in infrastructure charges.

Table 8.01 : Grants and Contributions Collected by Anglian Water Authority, 1989/90 - 1990/91

	<u>1989/90*</u> (£ m)	<u>1990/91*</u> (£ m)
<u>Grants</u>		
Rural Water and Sewerage Scheme	1.6	1.6
ERDF/IDA	0.2	---
<u>Contributions (from developers)</u>		
Water Requisitions (lump sum payments)	1.7	1.8
Sewer Requisitions	0.8	3.0
Other Contributions	4.6	3.0
Infrastructure Charges	---	17.5
Total	<u>8.9</u>	<u>26.8</u>

* 1 April - 31 March of following year
Source: P. Howarth, Letter, 15 July 1991

A comparably detailed accounting of developer contributions paid to Anglian Water Authority for the period prior to 1989/90 could not be obtained. Nevertheless, the amount

that developers paid in contributions can be roughly estimated from data published in Anglian Water Authority's annual reports. The middle column of Table 8.02 shows the total value of "grants and contributions" received by Anglian Water Authority, as reported in its annual reports. The last column shows the *estimated* value of *cash* contributions. This figure was arrived at by assuming that AWA received approximately the same amount of grant money each year between 1984/85 and 1988/89 as it did in 1989/90 and 1990/91 (i.e. £1.7 million). Cash contributions shown for 1989/90 and 1990/91 are *actual* figures, derived from Table 8.01.

Table 8.02: Grants and Contributions Received by Anglian Water Authority, 1984-1991

Year*	Grants + Contributions As Reported by AWA <u>Annual Reports (£m)</u>	Cash Contributions from Developers (£m)
1984/85	10.3	8.6 (Estimated)
1985/86	8.3	6.6 (Estimated)
1986/87	6.5	4.8 (Estimated)
1987/88	21.8	20.1 (Estimated)
1988/89	7.8	6.1 (Estimated)
1989/90	8.9	7.1 (Actual)
1990/91**	26.8	25.2 (Actual)

* 1 April to 31 March of following year

** First year of Infrastructure Charge

Available evidence suggests that charges imposed on developers by AWA when the infrastructure charge was imposed in 1990 were greater than what developers agreed to contribute in previous years when agreements were negotiated. Since the infrastructure charge is collected when buildings are completed, the total amount paid by developers in infrastructure charges should vary in direct proportion to the pace of development activity. To simplify the analysis, let us assume that changes in residential development activity were generally descriptive of the changing pace of *all* development activity in Cambridgeshire between 1984 and 1991. Table 8.03 presents data showing the number of housing units completed in Cambridgeshire between 1984 and 1991. From this data I have computed a ratio describing the changing pace of development activity in Cambridgeshire between 1984 and 1991, with 1990 (the first year of the infrastructure charge) as the base year.

Table 8.03: House Completions in Cambridgeshire, 1984-1991

<u>Year</u>	<u>House Completions</u>	<u>Ratio</u>
1984	5381	1.19
1985	5303	1.17
1986	4892	1.08
1987	6083	1.35
1988	6588	1.46
1989	5706	1.26
1990	4516	1.00
1991	3499	.77

Source: Cambridgeshire County Council

Since we know from Table 8.01 how much developers *actually* paid in infrastructure charges in 1990/91, we can use the index of development activity shown in Table 8.03 to estimate what developers *would have paid* each year between 1984 and 1989, had the infrastructure charge been imposed.

Table 8.04: Estimated Infrastructure Charges Developers Would Have Paid to Anglian Water Authority, 1984-1989

<u>Year</u>	<u>Est. Infra. Payments</u>
1984	£ 29,988,000
1985	£ 29,484,000
1986	£ 27,216,000
1987	£ 34,020,000
1988	£ 36,792,000
1989	£ 31,752,000
<hr/>	
1990/91(Actual)	£25,200,000

As shown in Table 8.04, the amount that developers paid in infrastructure charges in 1990/91 was less than they *would have paid* in any of the prior years, had a similar infrastructure been imposed. Moreover, comparing Tables 8.04 to Table 8.02, we find that in five out of six years between 1984 and 1989, developers would have paid more, had the infrastructure charge been imposed, than they actually paid when contributions were negotiated. Only in 1987-88 did developers make cash contributions which were greater

than they would have paid in infrastructure charges.

It must be remembered, however, that the amount of money collected in cash by AWA from developers represented only *part* of the total value of developer contributions. As shown in Chapter Six, developers were most likely to negotiate agreements which allowed them to construct improvements themselves, and/or to donate land, so as to avoid having to make cash contributions. In Cambridgeshire during the 1985-1990 study period, there were 86 contributions in agreements offering to *construct* sewer and drainage infrastructure improvements, and 42 contributions agreeing to *pay* for sewer and drainage infrastructure improvements. In other words, developers were *twice* as likely to agree to construct water-related infrastructure improvements as they were to pay money to AWA for those improvements. Let us therefore assume that the *value* of improvements constructed by developers was *twice* the value of their cash contributions. Table 8.05 shows the estimated total value of developer contributions to AWA, assuming that works constructed by developers were twice the value of cash contributions. Comparing Table 8.05 and Table 8.04, it still appears that developers paid *less* to AWA between 1984 and 1990, when contributions were negotiated, than they *would have paid* had the infrastructure charge been imposed during that period. In the six years prior to the introduction of the water infrastructure charge, it is estimated that developers paid a total of approximately £159.9 million, an average of approximately £26.5 million per year. Had the infrastructure charge been imposed during those years, developers would have paid a total of £189.2 million, or roughly £31.5 million per year.

Table 8.05: Estimated Total Value of Developer Contributions Received by Anglian Water Authority, 1984-1991

<u>Year*</u>	<u>Estimated Cash Contributions (£m)</u>	<u>Estimated Value of Constructed Improvements (£m)</u>	<u>Estimated Total Value of Dev. Contributions (Cash + Constructed Imp.)</u>
1984/85	8.6	17.2	£25,800,000
1985/86	6.6	13.2	£19,800,000
1986/87	4.8	9.6	£14,400,000
1987/88	20.1	40.2	£60,300,000
1988/89	6.1	12.2	£18,000,003
1989/90	7.1	14.2	£21,300,000
1990/91(Actual)	25.2	-----	£25,200,000

* 1 April to 31 March of following year

Summary Remarks

LPA's in Cambridgeshire were slow to warm to the idea of negotiating contributions from developers. It was not until 1990 and 1991 that LPA's appeared to fully embrace the validity of bargaining for contributions. LPA's increased willingness to negotiate contributions took effect only after the scope for negotiating contributions had been effectively defined and limited within a firm planning policy framework of county and local plans.

By the time LPA's reached the point of being willing to bargain with developers for contributions, the boom was over, and market conditions for negotiating contributions had turned distinctly unfavourable. At the same time, new provisions introduced into the Planning and Compensation Act, allowing developers to make "unilateral undertakings," further undermined the bargaining position of LPA's. The policy shift of LPA's toward a willingness to negotiate was characterised by new and emerging forms of practice which made British developer finance more similar to the American model. In the new policy framework which evolved in the aftermath of the study period, for example, there was a growing emphasis on obtaining *cash* payments, rather than allowing developers to construct improvements themselves. (American developer finance has tended to emphasise cash payments, while one of the major features of agreements during the study period had been its flexibility in allowing developers to save costs by constructing improvements themselves.) There was also a tendency to incorporate specific American methods of developer finance. South Cambridgeshire's proposed local plan policy to allow new developments of 15 units of housing in areas officially limited to 8 units, in exchange for receiving a commitment of affordable housing, was remarkably similar to the U.S. technique of "incentive zoning," previously described in Chapter Two. LPA's also put forward preset standards for developer contributions in their local plans-- for schools, public facilities, open space, parking, etc.-- calculated on a per unit basis. And effective 1 April, 1990, regional water authorities were able to impose a mandatory infrastructure charge-- a practice which mirrored the prescriptive, average-cost based approach typified by American-style impact fees.

CHAPTER NINE: CONCLUSIONS

Empirical research I conducted in Cambridgeshire sheds light on a number of the research questions and issues discussed earlier in this thesis. Indeed, what I found in Cambridgeshire calls into question some widely held assumptions about negotiated agreements. However, before summarising the findings of this research, two caveats are in order. First, local authorities in Cambridgeshire may not necessarily have acted in a manner similar to other local authorities in Britain. Cambridgeshire was chosen as the study area, not because it was typical of other regions, but because economic conditions in the region were exceptionally positive, and therefore highly favourable for the negotiation of developer contributions. One factor which may have led local authorities in Cambridgeshire to think and behave differently was the expectation that much of the future growth in the county would be accommodated within three large, privately developed New Settlements. Although the New Settlement idea did not become official policy until the 1990 Structure Plan, the proposed content of the structure plan was under discussion as early as 1986 and 1987, and therefore may have made Cambridgeshire LPAs particularly attentive to planning policy. I must depend on other researchers to conduct similar research in other areas, to provide a comparative framework for interpreting the representativeness of my findings.

Also, it is at least conceivable that contributions offered by developers in agreements did not account for all the payments from developers to local authorities, and that some number of payments to local authorities may have been made *outside* the framework of legally-recorded Section 52 agreements. As noted in Chapter Seven, at least one cash payment of £200,000 was identified which was made without being referenced in a Section 52 agreement. This payment was made after permission was granted on appeal, and had no influence on the granting of permission. Nevertheless, the very fact that this payment was made without being noted in the Section 52 agreement raises the possibility that other developer payments may have been made “on the side” or “under the table.” On the other hand, to conjecture about such payments is to venture away from the study of Section 52 agreements. There are, after all, possibilities for corruption and favouritism throughout the planning process, and not simply in the negotiation of agreements. If payments *were* made to LPAs outside of formally signed agreements, that is really a different subject of study altogether.

Having raised these caveats, this chapter summarises the important findings of the Cambridgeshire research, and draws comparisons where appropriate to findings from U.S. research. The advantages and disadvantages of the British approach of negotiated agreements are reviewed and compared to those of mandatory, fixed fees, as popularised by American-style impact fees. The chapter concludes by proposing a new perspective for

evaluating alternative methods of developer finance.

Attitudes

British and American attitudes towards developer finance have differed significantly, due in large degree to differing perceptions of its *incidence*. In Britain, it has been widely assumed that costs of contributions in agreements have almost always been passed back to landowners. American perceptions of developer finance stand this conventional British view on its head. In the U.S., the major criticism of developer finance has been that it has *increased* the price of new homes. In other words, in the U.S. it is widely believed that fees ostensibly paid by developers have in fact been passed forward to new residents. Recent empirical research conducted in the U.S. has appeared to support this view.

By training and temperament, most planners in Cambridgeshire appeared to prefer the application of rules. In this regard, they resembled American planners, who for the most part have preferred to impose fixed and predetermined requirements rather than to negotiate agreements. Planners in Cambridgeshire had little experience in negotiating agreements prior to 1985, and none of the planners in any of the planning departments had special training in negotiation. Furthermore, it took time for planners to gain experience and confidence in using agreements.

LPAs in Cambridgeshire did not try very hard to secure contributions from developers between 1985 and 1990. They were especially reluctant to seek contributions for off-site improvements, even if such off-site improvements could be justified as functionally related to proposed developments. Local governments in the U.S. have been much more willing to try to make developers pay for off-site improvements functionally related to their developments.

One might normally have expected LPAs to welcome unsolicited offers of contributions from developers. However, planners in Cambridgeshire were not always happy when unsolicited offers of contributions were made. During the study period, developers were often more willing to offer contributions than planners were to accept them. Unsolicited offers of contributions sometimes led parish councilors and planning committee members to lobby in support of planning applications which the planners felt should be refused permission (Archer, 1991a,int.). Planners wished to retain control of determining what contributions would be sought, and to avoid situations where the contributions in agreements were determined by developers and politicians. The increased specificity of local plans and policies related to contributions adopted after the study period represented an attempt by planners to minimise the unpredictability associated with negotiating contributions. Having firm and specific policies in place, indicating what types

of contributions would be sought in specific areas allowed local authorities to take the initiative in making requests for contributions, and reduced the likelihood that unsolicited offers of contributions could influence the process of granting or denying planning permission.

Local authorities which made the greatest use of agreements to obtain contributions had a generally *positive* attitude toward development, and had adopted planning policies which sought to *encourage* development. Local authorities which made the least use of agreements to obtain contributions tended to have a more *negative* attitude toward development, and were more committed to policies of constraint.

Differences in attitudes of local authorities toward imposing obligations on developers were not easily explained by political affiliation. Although it was expected that Labour local authorities might be more ideologically interested in imposing costs and obligations on developers, in fact some Conservative districts were more inclined to negotiate contributions than were Labour district authorities. By the end of the study period, the Conservative County Council had become particularly enthusiastic about negotiating developer contributions.

Toward the end of the study period, LPAs in Cambridgeshire began to draft district-wide local plans which included policy statements which promised to widen opportunities for negotiating developer contributions. Local authority attitudes toward using agreements to obtain contributions became more positive over time. The government's dissolution of the Peterborough Development Corporation, and reduced government funding for infrastructure investment in Peterborough, led that district authority to adopt a more positive attitude toward negotiating contributions.

Process

Because planners took so little pleasure in negotiating agreements, they were often willing to relinquish responsibility for negotiating agreements to solicitors. In Cambridge, South Cambridgeshire, and East Cambridgeshire, solicitors played a key role in negotiating agreements. The negotiation of agreements, rather than enhancing the power and influence of planners and planning authorities, to a considerable degree enhanced the importance of solicitors in the planning and development control process. The increased role of solicitors, in turn, helped to keep the negotiation of contributions within moderate and acceptable bounds. Not surprisingly, district solicitors adhered to a highly legalistic view of agreements, and made sure that contributions obtained in agreements were within guidelines of established government policy.

The bargaining position of local authorities in seeking to negotiate contributions was undermined by various strategies and tactics used by developers. Through the practice

of "twin-tracking" -- i.e. submitting parallel applications for the same development-- applicants could file an appeal on one application after 60 days, while keeping a duplicate application on file with the LPA. This practice allowed developers to put pressure on LPAs to grant permissions subject to modest contributions, lest they run the risk of having planning permission granted on appeal with no contributions whatsoever. Developers also frequently followed a practice I call "ratcheting." They would file an application for a relatively small-scale development, and once permission for that was locked in they would submit a new application seeking permission for larger scale of development. Developers frequently repeated this process over and over. (See Unex case in Appendix Two-- Selected Agreements.) In this way, a developer could limit his potential exposure for contributions to the marginal difference in project sizes, and avoid being required to offer contributions based on the full size and impact of the proposed development. It should be noted that the practice of "ratcheting" would offer no advantage to developers in the U.S. The size of the impact fee paid by a U.S. developer is determined by the amount of development that is undertaken, and each successive addition of development is subject to the same fee schedule.

One question which attracted considerable attention during the 1980's was whether LPAs forced developers into offering contributions by delaying action on pending planning applications. In fact, over the course of the 1980's the percentage of all planning decisions issued by LPAs in Cambridgeshire within eight weeks fell steadily and dramatically. One factor which undoubtedly contributed to increased delay was the fact that local planning authorities were overwhelmed by a large volume of planning applications. However, at least some of the increased delay was also probably due to the increased use of agreements. When developers in Cambridgeshire received planning permission for their projects *without agreements*, planning decisions were issued in an average of 127 days for residential projects and 147 days for commercial projects. It took developers who signed *agreements with contributions* an average of 318 days to obtain planning permission -- and 337 days for commercial projects. Thus, the signing of agreements with contributions added approximately 190 days to the time required to obtain planning permission.

Nevertheless, the data in Cambridgeshire contradicts the hypothesis that local authorities used delay to compel developers to offer contributions. For developers who signed agreements *without contributions*, the average time to obtain planning permission was 291 days for residential projects, and 320 days for commercial projects. Thus, *agreements with contributions* took an average of only 17-27 days longer to negotiate than *agreements without contributions*. Given the fact that developers were already having to wait approximately 300 days or more to sign agreements, it is doubtful that this small additional delay played a role in forcing developers to offer contributions. The evidence suggests that delays associated with the signing of agreements were not tactically related to

attempts at obtaining contributions, but were solely the result of the administrative process of preparing agreements.

Delays due to agreements were most burdensome when they affected applications for very small developments -- such as additions of accessory housing units, etc. It took an average of 289 days (for residential projects) and 345 days (for commercial projects) to sign agreements for *minor* developments which *did not* involve contributions. In most cases, the purposes accomplished by such non-contributory agreements for small projects could just as easily have been accomplished through the use of conditions. These delays could have been significantly reduced had the government allowed local authorities greater freedom in using conditions to achieve non-contributory development control objectives.

Although it is clearly desirable to reduce delays in processing applications for small projects, it does not appear that delays in processing agreements for large projects posed a serious obstacle to development. From an American perspective, eight weeks is a very short time for local planning authorities to review and issue decisions on large and complex projects. In the U.S., when all is said and done, it often takes developers at least six months to a year to obtain all necessary planning approvals-- and in many cases much longer, due to the need to obtain different approvals and permits. If a proposed development does not conform to current zoning, a zoning change is required, and rezoning land can take six months to a year. Even in cases where a proposed development is allowed under zoning, "sub-division approval" is normally required for a developer to lay out a new road and to create new frontage lots. Such sub-division approval can take six months to a year. In the State of Massachusetts, for example, planning boards are required by law to hold a public hearing on any subdivision application, and must advertise the hearing, notifying owners of all abutting properties. A period of two months between the time an application is received and the time of the public hearing is not unusual. After the public hearing, the planning board has 90 days in which to render its decision. However extensions to the 90 day deadline are frequently mutually agreed to by the applicant and the LPA to allow for additional information to be submitted. Once the planning board issues its decision, there is another 20-day delay before the decision can be recorded, called the "appeal period," during which time third parties can lodge appeals. (In the U.S., third parties and abutters are able to appeal the granting of planning permission and/or subdivision approval.) If an appeal is lodged, the decision of the local planning authority can be delayed for another year or more. Thus, in the United States, where the development control system presumably confers a comparatively high level of certainty, it frequently takes a year or more for developers to obtain all necessary approvals. For large scale projects, and projects in environmentally sensitive areas, additional environmental permit requirements may be imposed, further increasing the time required to obtain permission to build. In some states, the time required to obtain approval may be longer

still. Lowry and Kim (1991, 3) report that in Hawaii, "It often takes six to seven years to acquire necessary planning, zoning, and site development approvals necessary to convert developable agricultural land into suburban housing."

When interviewed in connection with this research, planners working for Boroughs in Greater London expressed the view that delay in processing planning applications could be used as a means of forcing developers to agree to terms sought by the local authority. However, as noted in Chapter Five, conditions in London are very different from those which prevail outside London. Within London, land values tend to be extremely high, and it can cost developers a great deal to hold choice sites while applying for planning permission. Under such circumstances, there may be considerable financial pressure on a developer to try to terminate protracted negotiations by offering a contribution. However, it costs developers much less to purchase options on sites in rural areas outside Greater London, and the cost of holding rural land is insignificant compared to total project cost (P. Evans, 1991, int.). Indeed, at the end of the day, delays of the magnitude identified in this research (318-337 days) probably made very little difference to large developers undertaking large developments in rural districts. Moreover, the fact that a large proportion of planning agreements in Cambridgeshire were signed at the outline permission stage (often by long-time landowners whose main interest was apparently in selling the property to someone else), suggests that delay in issuing permissions with agreements did not constitute a serious burden for major development projects. A large proportion of planning applications are simply "valuation exercises" (Studdert, 1992, int.). In such cases, development is likely to take a long time to materialise, even if planning permission is granted without delay.

One last comment needs to be made regarding the issue of delay. It has sometimes been erroneously assumed that developers are always in a hurry to obtain planning permissions. When land values rise, as they did in the mid-1980's, developers will be eager to obtain planning permission, and will bemoan any delays which they regard as unnecessary. However, when land values are falling, developers are usually very happy when decisions on their applications are delayed-- because purchase agreements typically require that purchases be completed once decision notices are issued. Market values of sites in Cambridgeshire and East Anglia in 1991 were one-third to one-half below what they were in 1988 (Blincoe, 1991, int.; Brown, 1990, int.). As a result, many developers in 1991 found themselves holding options to purchase properties at prices which could no longer be justified in the property market. Under such circumstances, developers were in no hurry to receive decision letters from planning authorities.

Outcomes

Only 2% of permissions granted in Cambridgeshire between 1 January, 1985 and 31 March, 1990 were accompanied by Section 52 or related agreements. Moreover, less than half of all agreements involved any kind of contribution, so that only 1% of all permissions involved agreements with contributions. In approximately half of all agreements the local authority even paid the cost of preparing the agreement.

The most frequently cited reasons for signing *non-contributory* agreements were, in order of importance: to specify use; to restrict occupancy; and to control the phasing of development. Restrictions on occupancy were most frequently imposed in rural districts to maintain and encourage rural agriculture, requiring that occupants of farm dwellings be principally employed in local agriculture.

The number of agreements which were signed in Cambridgeshire increased every year from 1985 through 1990. Only 23 agreements were signed in Cambridgeshire in 1985; 101 agreements were signed in 1989. However, this steady annual increase in the number of signed agreements concealed a significant shift in the proportion of contributory and non-contributory agreements. After the end of 1988, as the property market weakened, and as planning applications fell, there was a sharp drop in the number of agreements with contributions. Meanwhile, the number of agreements signed without contributions continued to increase.

Only 17% of all contributions negotiated from developers during the study period involved payments of money. Seventy-five per cent of all developer contributions in agreements involved offers to construct public facilities and improvements, or to donate land or easements for such facilities and improvements, rather than offers of cash payments. Even when contributions were large, they tended to represent only a small proportion of total development cost.

It was not possible to obtain data on the value of improvements constructed by developers, or of the land and easements donated to local authorities. However data presented in Chapter Eight suggests that developers probably paid less in negotiated contributions to Anglian Water Authority than they would have paid in infrastructure charges, had the mandatory water infrastructure charge been imposed earlier. Over time, developers will probably pay more under a system of mandatory, fixed fees than under a system of negotiated contributions. This conclusion seems to mirror U.S. findings, presented in Chapter Four, that developers tend to benefit when allowed to negotiate with planners and public authorities.

Contributions tended to be negotiated mostly from developers of relatively large projects. The average size of residential projects with agreements *with contributions* was 121 units. The average added floor area of commercial projects with agreements *with*

contributions was 9,165 square metres. When agreements were signed *without contributions*, projects sizes tended to be much smaller. The average size of residential projects for which agreements were signed *without contributions* was only 8 units. The average added floor area of commercial projects with agreements *without contributions* was 1,453 square metres. Because agreements were negotiated for projects of above average size, the percentage of all newly permitted development subject to agreements was substantially greater than the percentage of planning permissions subject to agreements. Twenty-seven percent of new housing units granted permission during the study period were subject to agreements; ten percent of all newly permitted commercial floor area was subject to agreements.

As the data above suggests, LPAs in Cambridgeshire were more likely to negotiate agreements for *residential* developments than for *commercial* developments. They were also more likely to negotiate *contributions* from residential developments than from commercial developments. Seventy-eight percent of all contributions were negotiated from *residential* developers, and only 22% from *commercial* developers. Residential agreements contained an average of 1.42 contributions, while commercial agreements contained an average of only .92 contributions. On the other hand, there was a somewhat greater tendency to impose non-contributory provisions on commercial developers (1.97 per agreement) than on residential developers (1.36 per agreement). The primary reason for signing agreements with commercial developers was to limit the scale and negative effects of development, and not to obtain contributions.

The most commonly offered contributions in Cambridgeshire were for sewer and highway improvements. These infrastructure contributions were almost always directly related to, and beneficial to developers. Sewer and drainage improvements paid for by developers were invariably necessary for development to proceed. Highway improvements paid for by developers were almost always either within, or immediately adjacent to proposed developments.

As noted earlier in the discussion of "Attitudes," contributions were often *offered* by developers without being asked for by LPAs. Some of the largest contributions obtained by local authorities (See Appendix Two-- Selected Agreements: Tesco case in South Cambridgeshire and Elean Business Park case in East Cambridgeshire) were made voluntarily *after* planning permission for major developments had already been granted. Nevertheless, offers of contributions, over and above what was required for development to proceed, did not assure approval of planning applications. A significant number of cases were identified where applicants made unsolicited offers of contributions, and nevertheless their applications for planning permission were turned down.

Detailed examination of the content of agreements signed in Cambridgeshire between 1985 and 1990 revealed that the negotiation of agreements on a case by case basis

had a number of advantages for developers. It was a way to overcome infrastructure objections which otherwise might have forced local planning authorities to turn down applications for development. Agreements gave developers assurance that needed infrastructure and facility improvements would be completed in time, often by a specified date, or else money paid by the developer would be returned with interest. Agreements allowed developers to avoid cash contributions by offering to do the construction of needed improvements themselves, a solution which usually cost the developer much less, and again meant that improvements would be done on time. Finally, offers of contributions created local goodwill for projects-- a definite commercial advantage to developers.

One final point needs to be emphasised about the offers of contributions which were contained in agreements. Contributions were rarely paid at the time agreements were signed. Rather, contributions offered in agreements were usually payable only *if and when* construction of the project commenced. Some contributions were payable only *after* the project was completed. (In the U.S. a similar practice was followed; impact fees were generally not paid until a permit was applied for and obtained either for construction or occupancy.) Thus, developers in Britain took little risk in signing agreements, and incurred little cost in advance of development. If they chose not to implement the planning permission within the specified time period (usually three to five years), then the contributions were not made at all. Once the permissions which occasioned the signing of agreements lapsed, so too did the agreements themselves, and the process of negotiation could start all over again, on a clean slate.

In the U.S., local governments have had a strong incentive to impose charges on developers. Impact fees and exactions, and other forms of developer finance, have been exclusively administered by units of local government which have collected and retained the payments for their own use. In Cambridgeshire, the situation was very different. The division of planning responsibilities between district councils and the county council in Cambridgeshire, and the extent to which infrastructure responsibilities were assumed by regional authorities, served to moderate LPA requests for contributions. Most of the contributions negotiated by LPAs went to the County Council or Anglian Water Authority. Such contributions to regional authorities did not necessarily result in beneficial *local* improvements, and in any case were not of direct benefit to the district authority. Therefore, LPAs were probably not as motivated to maximise those contributions. The only contributions which were directly collected and retained by district authorities were for roads, schools, sewers and drainage facilities, sewage treatment plants and pumping stations-- and those represented only a very small share of all contributions. In parts of the country with unitary authorities (such as in Greater London), where infrastructure responsibilities are not split between different tiers of local government, LPAs might possibly feel a greater incentive to negotiate the best contributions possible. Following a

similar line of thinking, if central government were to reorganise the structure of local government, eliminating the second tier of local government (such as counties) and creating a system composed entirely of unitary local authorities, that could give the remaining local authorities a somewhat greater incentive to negotiate contributions.

The presence of strong development pressure did not assure that local authorities would seek or obtain large numbers of contributions. Nor did success in negotiating contributions depend on the exercise of severe planning constraint. District authorities which exerted the greatest constraint on development tended to negotiate the fewest contributions. Fenland extracted a high number of contributions despite the fact that it exerted a low level of constraint on planning applications, and had a 22 year supply of land with planning permission.

Local authorities which expected to grow the most in the coming decade, and which were being called upon to absorb an increased share of the county's growth between 1990 and 2000, tended to be more favourably disposed toward negotiating agreements involving contributions than districts which expected to absorb little new growth. On the other hand, local authorities which had the benefit of a high degree of protection from development under the County Structure Plan, and which did not expect much growth in the coming decade, were much more reluctant to negotiate beneficial contributions from developers.

Based on previous research, it was expected that the negotiation of contributions might cause developers to increase the density of their developments. Some support for this hypothesis was provided in interviews with Cambridge planning officials, who reported that it was only possible to obtain contributions for social housing by allowing developers to increase the density of their developments. However, data compiled for the county as a whole pointed in a different direction. Rural authorities, such as East Cambridgeshire and Fenland, made greater use of agreements to secure contributions than the more highly urbanised districts of Cambridge and Peterborough. The data suggests that conditions for negotiating contributions may be strongest, *not in urban areas where land values are the highest, but in non-urban areas*, where property values and rents are lower, but where the prospects for significant gains in property value as a result of development may be proportionately greater. Reinforcing this conclusion is the fact that major developments which were subject to agreements with contributions occupied *larger sites* and were *less dense* than those approved without agreements. These findings appear consistent with American experience. Local governments in the U.S. which have made the most aggressive use of impact fees have been primarily *suburban* and *rural* communities on the fringes of developing urban areas. In such areas, the density of development would tend, by its very nature, to be lower than in more centrally located urban areas. Severe impact fees and exactions have rarely been imposed in central cities. Linkage payments required in the cities of San Francisco and Boston were exceptional cases, made possible by an

extraordinary explosion of property values and development pressure for downtown office buildings in those cities during a compressed period of the 1980's.

Consistency of Agreements With County and Local Plans

Economists who have written about planning gain have theorised that the negotiation of contributions should make local authorities more willing to approve developments. A potential danger inherent in planning gain negotiation, they argue, is that local authorities, lured by offers of major contributions, might approve too much development. However, findings in Cambridgeshire appear to contradict this theory. LPAs increased their rate of refusal of planning applications during the period 1985-1988, even as they negotiated more agreements with contributions. In the words of the Chief Planning Officer for Cambridge, "Politically there is a lot of support in principle for negotiating planning gain from developers... But members are often so opposed to development that they are unwilling to negotiate gains in relation to them." (Studdert,1992,int.) The negotiation of planning gain contributions might conceivably have induced local authorities to grant planning permission, but only if the gains secured through agreements were significant enough to overcome the perceived disadvantages and costs of accepting development. As has been emphasised previously, local authorities felt constrained in negotiating contributions. Thus, there was little reason to soften local planning objections to unwanted developments.

It was expected, based on claims made in the literature on planning gain, that field research would reveal numerous instances where developers obtained exceptions to established planning policies by offering sizable contributions. Additionally, it was expected that the greatest contributions would be obtained for permissions most at variance with established plans and policies. However, research in Cambridgeshire produced little evidence that LPAs negotiated contributions in exchange for granting permissions for developments at variance with local plans and policies. Offers of contributions in Cambridgeshire did not cause local planning authorities to abandon policies of tight constraint, and there was a pattern of seeking to negotiate agreements which were consistent with established plans and policies. In a handful of cases, which were confined to the City of Cambridge, developers were permitted to build projects larger and more dense than they would otherwise have been permitted to build. However these permissions represented only minor departures from established policy.

LPAs went to considerable lengths to justify their use of agreements in terms of established plans and policies. Confirmation of this finding can be found in the fact that LPAs in Cambridgeshire were reluctant to use agreements to achieve specified new purposes until official policy statements on agreements were formalised and adopted as part of the local plan preparation process. It was only *after* local authorities had adopted revised policies

in their draft local plans, that they appeared to be prepared to seek a wider range of contributions. For example, East Cambridgeshire and South Cambridgeshire did not obtain developer contributions for affordable housing until *after* they had adopted official policy statements authorising such contributions. East Cambridgeshire adopted its policy on affordable housing contributions in 1989; South Cambridgeshire's policy was adopted in 1991.

Local planning authorities in Cambridgeshire were more concerned about managing and controlling growth, and about achieving local and county planning objectives, than they were about obtaining contributions. The fact that contributions were negotiated by non-unitary local authorities on behalf of regional authorities meant that there was little reason for local authorities to waive established planning policies in return for contributions. The Cambridgeshire Structure Plan sought to deflect development away from Cambridge, and to disperse it to secondary centres in the northern half of the county. Agreements were thus used by East Cambridgeshire and Fenland to enable and encourage development, while South Cambridgeshire and Cambridge used agreements to impose restrictions on new development, and to limit possibilities for future expansion. Huntingdonshire and Fenland District Councils used agreements to regulate the occupancy of dwellings in rural agricultural areas to favour persons employed in agriculture. Cambridge used agreements to assure the provision of housing for elderly and low income residents, and to enforce its "local user" requirement related to new commercial and industrial development. Thus, agreements provided a flexible tool for achieving development outcomes which were locally appropriate and compatible with the overall broad-brush outlines of the structure plan.

Planners in both Britain and the U.S. have tended to adopt a negative attitude toward negotiating with developers, and the literature on planning gain is full of charges that negotiation undermines the proper exercise of planning and development control. Most professional planners are currently working without having had any training to develop their skills in negotiation. The findings of my research indicate that the negotiation of agreements can be a positive and appropriate tool for local planning authorities to achieve established planning and development control objectives, particularly in the context of a region-wide strategic plan. In short, the negative connotations placed on negotiation by planners and proponents of strong planning appear to be without foundation. Indeed, it would seem altogether appropriate and desirable that *greater* emphasis be placed on training planners in the art and process of negotiation. Without such training, the effectiveness of planning and development control may be undermined, and the planners' role may be further encroached upon by lawyers, who have already assumed an increasingly important role in development control as a result of the increased use of legal agreements.

Was Betterment Collected?

The question related to planning gain negotiation which provoked the greatest debate in Britain during the 1980's was whether or not local authorities attempted to use agreements to collect betterment. This question appeared particularly relevant in Cambridgeshire, where land values and the potential for the realisation of development gains were so substantially enhanced by targeted public infrastructure investment. In addition to the government funding made available for the development of the Peterborough New Town, substantial government expenditure was also invested in the county in rail and highway improvements. Additional government-funded highway improvements were anticipated for 1990-1993. These recent and planned government investments in infrastructure, and in support of development, played a significant role in increasing land values and development gains in Cambridgeshire. Another public action which created the potential for windfall development gain was the removal of a large tract of land in the Cambridge Northern Fringe from the Green Belt, and the allocation of this land for business park development.

Initial evidence obtained in Cambridgeshire showed that agreements were frequently negotiated early in the development process, at a time when costs of developer contributions were most easily be passed back to landowners. While *outline* permissions constituted only 37% of all residential permissions, 69% of all residential agreements were signed at the *outline* stage. And while only 10% of all commercial permissions granted during the study period were *outline* permissions, 48% of all commercial agreements (nearly five times as large a percentage) were signed at the *outline* stage. In addition, agreements were often signed by long-time landowners, or by developers who had contracts with landowners to purchase their property. These findings seemed consistent with the view that charges imposed on developers in agreements were being passed back to landowners.

Nevertheless, very little evidence was found that local authorities were motivated by a desire to collect betterment, and not much betterment appears to have been collected. Hundreds of valuable planning permissions for major projects were granted without any contributions being obtained whatsoever. Large numbers of major projects granted permission without agreements were located on sites whose value and development potential had been greatly enhanced by publicly-funded highway improvements. Payments were never extracted from developers to pay back public authorities for already completed public works. Also, no special attempt was made to collect betterment from major developments granted permission on land removed from the Cambridge Green Belt.

There was little apparent relationship between the value of planning permissions and the presence or extent of contributions. Districts in Cambridgeshire did not use valuers in negotiating agreements. The amount that developers contributed tended to be based on the *cost* of the required improvement, rather than on the *value* of the permission. Developers

were usually allowed to construct the improvements themselves rather than to make cash contributions.

Local authorities in Cambridgeshire usually only sought contributions when there was an actual infrastructure need, and the improvements for which contributions were made were almost always specified in agreements. In the U.S., on the other hand, impact fees have been much less directly linked to the need for, and construction of specific improvements. U.S. developers have been assessed standard impact fees, whether or not the improvements on which the fees were based were needed in the particular areas where their developments were located.

Reade (1987) has argued that town and country planning in Britain has failed to deal explicitly with the problem of betterment, and the distributional effects of planning and development control. The same criticism could also be leveled in relation to windfall gains created by government investments in highway improvements. As pointed out earlier in this thesis, land values are enhanced not only by the act of granting planning permission, but also by public investments in infrastructure (such as highways). However, is it realistic to expect planners, and local planning authorities, whose primary orientation, by training and temperament, has been to achieve a prescribed pattern of development, to do so while at the same time recouping the betterment created in the process? Planners and planning authorities, in fact, face a thorny problem of policy. An appropriate objective of urban and regional planning is to achieve greater coordination between development and infrastructure. Permitting development in areas where betterment has been created by public highway investments may be entirely consistent with established planning policies. And yet, to aggressively seek contributions from developments benefiting from public highway investment-- to impose a special price for development in such areas-- may actually *discourage* development in areas where it makes the most sense for new development to occur. Findings in Cambridgeshire suggest that planners and LPAs generally ignored the factor of betterment when negotiating agreements and contributions. Indeed, to succeed in managing development in line with regional planning objectives, LPAs compromised on efforts to obtain major contributions through negotiation, even in cases where the collection of betterment was probably most justified. These findings suggests that full resolution of the problem of betterment, if it comes, must probably come at a much higher level, and not through the negotiation of agreements by district planning authorities.

Developer Finance and the Property Market

Contributions in Cambridgeshire generally rose and fell in line with changes in development pressure. Contributions increased significantly between 1985 and 1988, as planning applications rose. When planning applications fell after 1988, so too did the

number of agreements with contributions. At first glance the data seems to suggest that prospects for negotiating contributions were market-sensitive, and that developers were most willing to offer contributions during a rising property market, but were less willing to do so during a period of declining demand. However, the data is not conclusive on this point. The contributions obtained by LPAs, even during the period of most intense development pressure, were fairly basic and minimal. Given the restraint shown by LPAs in seeking contributions, it would probably be a mistake to assume that the rise in contributions documented between 1985 and 1988 was wholly attributable to rising market conditions. Instead, it appears that LPAs were becoming more comfortable with the process, and therefore more willing to negotiate contributions. Similarly, the decline in contributions which occurred in 1989 and the beginning of 1990 cannot be wholly ascribed to a deteriorating property market. Even in 1989, LPAs asked for relatively little that was onerous to developers. The number of agreements with contributions negotiated from developers in 1989 and 1990 probably fell for the simple reason that developers and landowners were submitting significantly fewer planning applications.

Local planning authority attitudes, policies and practices were fundamentally out of synchrony with the property market. Interviews with chief planning officers and planning staff indicate that planners did not adapt quickly or easily to the challenges and opportunities of using agreements to obtain contributions from developers. The hiring of John Popper as Cambridge's Chief Planning Officer in January, 1989 signified that the City Council was ready to adopt an aggressive approach in negotiating contributions from developers. Ironically, "John Popper arrived at Cambridge at the end of the boom-- a little too late to seize on the opportunity" (Studdert,1992,int.).

During the period 1985 through 1988, when the property market was most buoyant, and when developers were undoubtedly most willing and able to offer contributions, local planning authorities were operating without official county and local policies on contributions, and were reluctant to seek contributions in the absence of such official policies. It wasn't until 1989 and 1990 that the County Council and East Cambridgeshire District Council put forward formal policies calling for a wider range of developer contributions. However, by that time the property market had weakened considerably, and prospects for obtaining contributions from applicants had greatly diminished.

If local authorities had been serious about making developers pay they should have made their greatest effort in negotiating offers of contributions when pressure for development was *increasing*. To realise such contributions, district authorities also had to be willing to grant planning permissions. However LPAs in Cambridgeshire appeared to shy away from such self-interested behavior. When development pressure increased, LPAs increased their rate of refusal of planning applications-- thereby giving up on the

opportunity to secure contributions applicants might have been willing to agree to at the time. It was only after the property market had peaked, and after planning applications had plummeted, that LPAs reversed themselves and began approving a larger percentage of planning permissions. However, by this time the bargaining position of LPAs to entice offers of contributions was extremely weak.

The imposition of the mandatory water and sewer infrastructure charge in April 1990 could not have come at a worse time in terms of the property market cycle. The infrastructure charge was imposed in 1990, at a time when the property market was already weakening, and developers were required to pay a fee which, for most of them, was greater than they had paid when water-related contributions were negotiated. Once the mandatory infrastructure charge was imposed, developers had even less financial leeway to satisfy local authority requests for contributions. Imposition of the water infrastructure charge probably also had an effect on the property market cycle itself. Coming at a time when the property market was in decline, the water infrastructure charge probably added further discouragement to new development, and very possibly intensified the severity of the downturn in the property market which took place between 1990 and 1992.

The Institutional Context-- U.K. Versus U.S.

As noted in Chapter One, planning and development control in Britain in the 1980's gradually changed in ways which made it more "American." Government advice to LPAs that there should be a "presumption in favour of development" was one sign of this shift toward American-style development control. Another sign of the convergence of British and American planning was that LPAs were required, for the first time, to prepare district-wide plans. These plans were expected to be much more specific than in the past about the types of development which would, or would not, be allowed in specific areas. Thus, development control in Britain was becoming more predictable, and was acquiring characteristics previously associated with American style zoning.

Nevertheless, the political and institutional context in Britain has remained very different from that in the U.S. For example, in the U.S. water and sewer charges have traditionally been levied proportionate to the level of water use by means of metering. Equally significant, in recent years there has been a marked tendency for water charges in the U.S. to incorporate a provision for capital cost recovery. Rates charged for water use are now commonly set high enough to pay for needed future capital improvements. Nationwide in 1990, almost 75 percent of public capital spending on environmental infrastructure in the U.S. was raised from user fees (Apogee Research, 1990, 13). In addition to reducing the need for increased taxation, user fees have reduced the need to impose additional charges on developers. In Britain, on the other hand, there has been

much stronger adherence to the notion that infrastructure should be publicly financed by government tax revenues, and a reluctance to adopt alternative methods of capital finance. There has been resistance, for example, to metering water use, and to assessing charges proportionate to water use. Water users in Britain have instead been charged a flat rate for water service, and there has been no provision for capital cost recovery in charges billed to water users.

In the U.S., local governments were effectively *encouraged* by the federal government, under the banner of the New Federalism, to develop new revenue sources, and were given remarkably wide latitude to collect payments from developers. In Britain, the political and institutional climate during the study period was hostile to giving local authorities the freedom to negotiate the best deals possible. As the development boom intensified, and as LPAs in Cambridgeshire became more inclined to negotiate contributions, developers found that they could increasingly bypass LPAs, and obtain planning permission on appeal from the Secretary of State. The ability of developers to obtain planning permissions on appeal significantly weakened the bargaining position of LPAs. Five hundred and forty-seven (547) residential planning applications, and 108 commercial planning applications were approved in Cambridgeshire on appeal between 1982 and 1990, with the peak number of permissions granted on appeal coming during the 1985-1990 study period. It is also important to note that at least 15 agreements (approximately 15% of the 103 agreements signed for major developments during the study period) were signed *after* the Secretary of State had ordered that planning permission be granted on appeal. Once permission had been granted on appeal, the LPA had little leverage to force applicants to make unwanted contributions.

Differences between the systems of government finance in Britain and the U.S. reinforced different perspectives on the issue of betterment, and different attitudes toward developer finance. Seventy-five per cent of all local government tax revenue in the U.S. in 1984 came from the property tax (Aronson and Hilley, 1986). Moreover, because the property tax in the U.S. has been locally administered and locally collected, official property valuations have been kept current, and the property tax has served as an effective way for local governments to recoup betterment. Thus, there has been little need in the U.S. to look to developer finance as a means for recouping gains in property value. Instead, developer finance has been viewed simply and straightforwardly as a way of supplementing the revenues available to local governments. It is interesting to note that when property taxes were cut in half in California by Proposition 13, local governments in that state became active in devising other ways to capture gains in land value-- such as by making use of special assessments, tax increment financing, and negotiated agreements.

In Britain, the property tax has been a relatively unimportant source of government tax revenue. Adoption of the "Community Charge" in 1989 made the property tax even

less important as a source of government revenue. Furthermore, because the property tax has been centrally administered, and because the central government has failed to up-date property valuations on a regular basis, the property tax in Britain has not effectively captured betterment. If the property tax were a more important source of government revenue in Britain, and if property valuations were regularly updated so as to reflect current market value, there would probably be less concern and debate regarding the need to collect betterment.

Negotiated Agreements Versus Mandatory Fixed Fees

Due to perceived problems and abuses associated with negotiated agreements in the 1980's, British planners, researchers, lawyers and local authority officials have begun to look with increasing favour on the American approach of imposing mandatory, fixed fees. By the early 1990's, LPAs had become more willing to seek cash payments for off-site infrastructure improvements, and there was a tendency to calibrate desired (or required) cash contributions on a per unit basis-- very much as has been done in the U.S.-- thereby making such payments more predictable.

Increased interest in American-style developer finance was also apparent at the national level. Based on legislation passed in 1989, regional water authorities began imposing and collecting a mandatory infrastructure charge which was remarkably similar to an American-style impact fee, as of 1 April 1990. Richard Wakeford and John Delafons were granted leaves from the Department of Environment to study American approaches to development control and development finance. Wakeford's detailed study of American development control drew parallels between developer finance in Britain and the U.S. And the report of John Delafons, issued in 1990, expressed a remarkably positive view of development impact fees:

Negotiated agreements... are often complex and time-consuming, and are practicable only in the case of relatively large-scale developments. It would hardly be possible to enter into negotiations over every application for new development. Therefore a system of standard contributions is necessary if the process is to operate in an equitable and consistent manner (Delafons,1990, 122).

Mandatory, fixed fees are certainly simpler, less costly, and less time-consuming to administer than the negotiation of agreements, and they provide developers with a high degree of certainty and predictability. Because the same fees are applied to every similar project, there is the appearance of equal treatment. But are American-style impact fees preferable to the traditional British approach of negotiated agreements? In localities with the strongest property markets, where home prices and rents are highest, fees imposed on developers may be easily absorbed. However, those same fees, imposed in areas with

weaker markets, will represent a much higher percentage of total development cost and will therefore be much less easily absorbed by developers. Thus, the imposition of equal fees over areas of uneven market strength could exacerbate problems of uneven development.

While market conditions change over time, fixed fees set by local authorities are likely to stay fixed, and fees which do not appear onerous at the point of adoption might make development economically unfeasible under poorer market conditions. This problem is important to emphasise, given the propensity of governments, as noted by Weiss (1991), to lag behind property markets when making decisions. Applying Weiss' logic to the problem of developer finance, it is probable that high fees will tend to be imposed on developers, not when the property market is strengthening, but rather *after* the property market has begun to decline. That certainly appears to have been the case with the water infrastructure charge, which took effect in 1990, well after the development boom had peaked, and at a time of falling property values.

Although fixed fees have the appearance of equal treatment, there is an inherent element of unfairness. Not all developments are equally profitable. Fixed fees will represent a higher proportion of development cost for low cost housing units than for high cost units, and may thus operate to discourage the provision of low cost housing. Also, fees imposed on developers are almost always based on the *average* cost of providing infrastructure in support of new development, whereas actual marginal costs will vary from site to site. Unless steps are taken to refine the system of fees, and to develop various tiers of fees, as was done in San Diego (See Chapter Two), some developers will pay more than the actual cost of infrastructure needed for their developments, while others will pay less.

What would happen if American style mandatory charges were imposed on developers in Britain? The first result is that developers in Britain would probably end up paying much *more* toward the cost of infrastructure and public facilities than they did under negotiated agreements. As shown in Chapter Eight, once the mandatory water infrastructure charge was imposed, developers paid *more* for water-related infrastructure than they did under negotiated agreements. Although British developers have complained about negotiated agreements, they may like mandatory fixed fees even less. Indeed, mandatory fees, if and when fully applied in the British institutional context, may prove much more onerous in Britain than they have in the U.S. Given central government opposition to allowing local governments to increase their independence, and the highly centralised institutional and governmental context in Britain, it seems unlikely that local authorities will be allowed to set their own fee levels, or to collect and spend the revenues raised from such mandatory fees. Fees are likely to be set at much higher levels, and may be unrelated to local market conditions. Also, fees paid by developers may not necessarily be targeted for local infrastructure improvements beneficial to their developments.

In the U.S., local governments have been responsible for setting the fees that have

been imposed within their boundaries. They have imposed the fees, and in turn have been responsible for constructing improvements with the funds collected. In 1982, there were 82,290 local government units in the U.S. (Aronson and Hilley, 1986, 10). Although the U.S. is a larger country than Britain, local government units in the U.S. tend to be geographically *smaller* than in Britain. Thus, when developers have paid fees, they have usually derived some direct benefit as a result of improvements being constructed. The fact that developer finance has been localised in the U.S. has tended to make impact fees beneficial to developers. Moreover, because local governments in the U.S. have been so dependent on local property tax revenues, and have had to compete with one another for tax-enhancing development, they have had to set fees which are realistic and justifiable in terms of the market. If they impose charges which are not supported by the market, developers will very likely take their projects to nearby localities where charges and requirements are more reasonable. Thus, fees imposed on U.S. developers have tended to be remarkably market sensitive.

Policy makers in Britain appear not to have fully appreciated the market sensitivity of American impact fees, and have therefore taken too literally the argument that "impact fees... are supposed to vary solely with costs. (Nicholas, 1992, 517). American practitioners and proponents of impact fees, in their eagerness to gain legal acceptance of impact fees, have argued that impact fees have been *cost-based*, but in making that argument they have stretched a point. Indeed, to argue that *cost* has been the sole basis of variation of impact fees in the U.S. is to seriously misrepresent and misinterpret American experience.

Evaluating Developer Finance

Having compared British versus American approaches to development finance in the 1980's, and researched how agreements were used in Cambridgeshire, it is possible to formulate answers to the three broad questions which were asked in Chapter One. How can and should local governments finance public infrastructure costs? To what extent should developers pay for public costs? And what method, or methods of developer finance make the most sense in terms of equity and efficiency, and in terms of achieving the objectives of planning and development control?

One way of paying for infrastructure would be to make greater use of user fees, with provisions for capital cost recovery. This approach, widely used in the U.S., has provided a convenient way of financing public improvements, and for pricing public services. The advantage of user fees is that those who benefit most from a proposed facility pay the most. On the other hand, this method of finance has the disadvantage of being much more regressive than other methods of finance.

Another way of paying for infrastructure would be to adopt the recent American practice of imposing mandatory fixed fees, or impact fees, on developers of new developments. These charges would assess new developments their proportionate share of infrastructure costs, including charges for required off-site infrastructure and facilities. Impact fees can potentially generate significant amounts of revenue for public authorities. However, a number of shortcomings and problems have been identified related to such fees. Impact fees can be, and often are, applied inequitably, and under certain circumstances may unfairly shift costs from existing residents onto new residents. They may also lead to unwanted distortions of development, by sending the wrong message to developers regarding where they should develop land. If the same fee is applied over a large geographic area, developers have no economic incentive to site projects efficiently in relation to public infrastructure, where public costs of infrastructure provision are lowest. Another shortcoming of fixed fees is that they are usually not sustainable in declining or slow-growing communities. They tend to be used, not to *lead* development into areas where planning authorities hope development will occur, but to *respond* to private development pressures in areas already experiencing rapid growth. Impact fees have also often been imposed in response to growth pressures in an attempt to slow down and discourage development.

Instead of turning to user fees and impact fees, consideration could be given to methods of infrastructure finance which involve the recoupment of betterment. The failure of three previous attempts to tax betterment at the national level suggests that adoption of an across-the-board tax on betterment is not a likely option. However, British policy makers might take a closer look at the property tax as an indirect way of recouping betterment. "The rates," as they are called in Britain, have admittedly been politically unpopular, and few British politicians have been willing to endorse their increased use. Even in the U.S., the property tax has come under growing criticism, and has been the prime target of the "taxpayers revolt." Nevertheless, the property tax has many advantages as a revenue source. It can be efficiently administered, and can provide a steady and reliable source of public revenue. Also, the property tax is much less regressive than sales taxes, VAT, and user fees. Greater reliance on the property tax, and more efficient administration, could provide a way of funding public infrastructure costs in Britain, and at the same time provide a convenient and indirect way of recouping publicly-created betterment. Indeed, I would argue that greater reliance on the property tax is necessary in Britain, if for no other reason than to give local authorities some financial incentive and reward to accept developments with major impacts and costs. With so little revenue raised from the property tax, and with such heavy dependence on central government funding, local governments in Britain have had more to gain from turning down development applications than from permitting new development.

The development of publicly-financed New Towns-- as exemplified by Peterborough New Town in Cambridgeshire-- provides another possible model for financing infrastructure through recoupment. Despite the successes of the New Town programme, there appears to be little current political support in Britain for the government to play such a dominant role over the private sector in shaping development. However, as an alternative to government-led development, the government could encourage the development of privately-financed New Settlements through the structure plan process, and shift much of the infrastructure and public facility costs related to those New Settlements onto private developers. As described in Chapters Five and Eight, this approach was attempted on an ambitious scale in Cambridgeshire, and might have succeeded, had it not been for the Secretary of State's rejection of all of the proposed New Settlements in and around Cambridge. Betterment might also be selectively negotiated from developers of large scale developments, such as proposed business parks and out-of-town shopping centres, which have obtained windfall gains as a result of identifiable public actions-- such as the release of Green Belt land for development, and the construction of limited access highways and interchanges providing preferred access to selected locations. Research in Cambridgeshire found that local authorities were reluctant to seek contributions for off-site improvements from major developments. Clearly, however, the negotiation of extraordinary contributions from developments which have received extraordinary benefits-- such as from public investments in highways, and/or from the removal of land from the Green Belt-- could be justified in terms of policy. To do so would represent a British application of the American approach of "benefit recapture"-- as represented by incentive zoning and density bonuses-- granting developments special benefits and in return imposing special obligations.

To what extent should developers pay for public costs? This research has not provided a precise answer. However, a comparison of British versus American experience suggests developers in Britain can and should be expected to pay *more* toward the public costs of development than they have in the past. In the U.S., in a political and economic context in which little thought has been given to the collection of betterment, developers have increasingly been expected to pay for public costs related to the impacts of their developments-- and have been remarkably willing to do so. The imposition of costs on developers for improvements related to their developments has not represented the collection of betterment. Rather, the imposition of such charges has enhanced the value of proposed developments. To use Alan Evans' terminology, the payments extracted from developers were "beneficial," not "onerous," and tended to enhance the value of developers' projects. If impact fees increase the cost of completed developments, as has been suggested by American research on the incidence of impact fees, they increase the *value* of those developments as well.

But what is the best way of having developers pay? Negotiating agreements may produce less total revenue than imposing impact fees and exactions. The ability to negotiate contributions will also probably vary considerably over time, due to the cyclical nature of the property market. However, the negotiation of contributions nevertheless appears to be a fair and defensible way of obtaining finance for public improvements. Negotiated agreements are certainly a potentially more accurate way to gauge benefits and apportion costs than U.S. style special assessments. With special assessments, property owners are assessed costs not only *in advance* of public improvements being made, but also before proposals are received for more intensive development. It is assumed that all adjoining properties will benefit, and costs are allocated according to some standard formula. But not all properties may realise equal benefit from the proposed improvements. For example, all properties fronting on a road might be assessed for the cost of widening the road. However, some businesses may generate a large volume of additional business because of the increased road capacity, and may expand, while others may generate much less additional business. Benefits which are likely to accrue as a result of proposed infrastructure improvements are, in fact, difficult to predict in advance. On the other hand, negotiating developer contributions *at the point when a developer is proposing to develop or change the use of land* provides a more accurate basis for gauging the benefit that a given property is likely to derive, and for determining in turn what a fair contribution toward the cost of the project might be.

Perceptions regarding the negotiation of agreements in Britain and development impact fees in the U.S. appear to have been based on inaccurate and overly simplistic assumptions. In the U.S., the assumption has been that development impact fees have been based primarily, if not exclusively, on the *cost* of providing facilities and infrastructure in support of development. However, the amounts that local governments have charged developers have probably been determined to a large degree by other factors, such as the strength of local property markets, the level of development pressure, and rates of growth. In Britain, it has been widely assumed that negotiated agreements have been based on the value of planning permission, and has been motivated by the desire of LPAs to recoup betterment. However, that characterisation, too, appears to have been misleading. LPAs in Cambridgeshire systematically ignored the *value* of planning permission, sought contributions only in contexts where infrastructure improvements were necessary for development, and based contributions largely on the *cost* of required improvements. Agreements were not used to impose barriers to development, but rather to enable and encourage development in areas where it might otherwise not have occurred. Claims that local authorities frequently used agreements to force developers into making exorbitant contributions were far off the mark. The major value of negotiated agreements was not so much as a source of revenue, but as a flexible means for managing and guiding growth,

consistent with established planning policies.

Keogh (1985,226) has observed that “much of the existing debate [about planning gain] is deficient because it takes no clear position on what planning is supposed to achieve.” It might be equally fair to re-phrase Keogh’s observation by stating that the debate about planning gain has been deficient because of the lack of agreement as to what the negotiation of agreements is supposed to achieve. Is the major reason for negotiating contributions to recoup betterment? Is the purpose of negotiating contributions to raise needed money for public infrastructure improvements? Is it to encourage development? Or is the purpose of negotiation to achieve a beneficial pattern of development as described in land use plans and policies? If the primary purpose of negotiating contributions is to manage growth and development, then the most important question is not whether betterment was collected, or how much was collected from developers, but whether and how the negotiation of agreements and contributions advanced and related to established planning objectives and policies.

Developer Finance and Growth Management

Most of what has been written to-date in Britain on planning agreements has judged local authority use of agreements without reference to the specific goals and objectives that local planning authorities in particular regions were attempting to achieve. The research which was conducted in Cambridgeshire demonstrates the importance of geographically focused research, and of analysing local authority use of agreements with reference to operative plans and policies. The negotiation of agreements in Cambridgeshire took place within the context of the Cambridgeshire Structure Plan. The presence of that strategic plan, and the role of the County Council in monitoring local compliance with the plan, served to keep the negotiation of agreements focused on the fulfillment of broad regional planning objectives. In this planning context, the negotiation of contributions was not as much a revenue source as a tool for managing growth, and for achieving established planning objectives. The same cannot necessarily be said about locally administered impact fees and exactions in the U.S.

Developer finance in the U.S. has been pursued first and foremost as a source of revenue for local governments. Moreover, the adoption and implementation of developer finance in the U.S. has almost always been carried out by local government units without reference to regional planning objectives. In large portions of the U.S., regional strategic plans are either non-existent, or very weak. Even in areas where regional planning agencies do operate, their ability to influence local planning and development control has been extremely limited. Local governments in the U.S. have therefore expanded their use of developer finance without considering how such actions might affect regional patterns of

growth and development. Planning purposes advanced through developer finance have usually been so local as to be self-serving. One lesson which U.S. researchers can draw from the Cambridgeshire research is the importance of evaluating developer finance as a tool for *regional* rather than simply *local* growth management.

A disproportionate share of the research conducted in the U.S. on developer finance has been carried out at the local level to analyse the *incidence* of impact fees and exactions. Most of the debate in Britain over the negotiation of agreements has centered on the question of whether developers have been forced to pay *betterment*. But an equally, if not more important question for planners and policy makers in both countries relates to effects of developer finance on patterns of development and on the ability of planning authorities to achieve desirable patterns of settlement and growth.

Planners and government officials in the U.S. have an imperfect understanding of the inter-relationships between developer finance, rates of growth and property markets cycles. How have alternative methods of developer finance affected patterns of growth and development in areas with different market strengths? To what extent has the level of fees imposed in different communities correlated with the strength of local property markets, and how have fees changed over time in relation to the property market cycle? Many local governments have adopted impact fees out of a desire to slow down the rate of growth. But did the adoption of impact fees actually lead to slower growth? Or did the collection of fees support and encourage greater development? Further research is clearly needed in the U.S. to document the relationship between impact fees and growth patterns.

The imposition of fixed fees (infrastructure charges) may exert complex and varied effects on patterns and densities of development, depending on the planning context. In some contexts, requirements of developer finance may lead to more dense and more compact development. On the other hand, experience in Florida has shown that adopting developer finance requirements may encourage development to "sprawl." There is a risk that requiring developers to pay a mandatory infrastructure charge may establish an implied contract between payers and public authorities-- creating an obligation on the part of infrastructure authorities to extend facilities into areas they otherwise might not have chosen to service.

Research in the U.S. on the effects of impact fees and exactions on patterns of development may be useful guidance to British policy makers considering wider application of fixed fees within the British context. However, it is also important that additional research examining the growth effects of fixed fees (infrastructure charges) be conducted in Britain, because such fees, when applied in the British context, may have a different effect on patterns of development than they have in the U.S. The localised use of impact fees in the U.S. has evolved into a diverse, dynamic, and constantly changing system of development finance. Within the much more highly centralised institutional structure of

Britain, development impact fees could work very differently-- creating a static set of charges incapable of responding to unequal needs and changing circumstances.

The way in which the water infrastructure charge was administered in Britain after 1 April 1990 provides an indication of how American style impact fees are likely to be misapplied in Britain. When the water infrastructure charge took effect, mandatory fixed fees were established in each of the 10 regional water authorities. Within the vast AWA Service Area, a single uniform infrastructure charge was imposed, based on an overall calculation of the *average* cost of providing infrastructure to serve new development over the entire area-- even though the marginal cost of providing water infrastructure obviously varied enormously in different locations of the region. Not only did this approach to developer finance fail to provide an incentive for developers to locate their projects efficiently in relation to available water infrastructure, it also failed to take account of major differences in the strength of the property market within the region.

A major goal of the Cambridgeshire structure plan, as noted earlier, was to achieve a more dispersed pattern of development than would have taken place under unrestrained market conditions, and to discourage development from concentrating in and around Cambridge. However, the uniform water infrastructure charge imposed over the whole of the Anglian Water Authority region will probably undermine those structure plan goals. In Cambridge, where property prices were highest, the water infrastructure charge will represent a relatively low proportion of total development cost. In Fenland and East Cambridgeshire-- where property prices are lower and where the Cambridgeshire Structure plan hopes to encourage more development to take place-- the water infrastructure charge will represent a relatively high proportion of development cost, and will thereby discourage development.

Centrally-imposed high infrastructure charges in Britain may serve to further depress development in areas with weak property markets, and encourage development to concentrate in centres with stronger property markets where the charges are more easily absorbed by developers. At the same time, the imposition of a single fixed fee, irrespective of the marginal cost of providing infrastructure to different areas, may, in effect, encourage development in areas where the cost of infrastructure provision is highest.

In both the U.S. and Britain, there is a need for further geographically- focused research to evaluate the effects of alternative methods of developer finance on patterns of development, and on the achievement of regional planning and growth management objectives. The research which was conducted in Cambridgeshire has provided a starting point for this research, and a baseline for comparison for future investigators.

LIST OF INTERVIEWS

(When referenced in the text of the thesis, quotations and other material obtained from interviews are identified by the abbreviation "int.")

Department of Environment

Bach, Michael, Director of Planning Services: 7 March, 1991
Donald, Graham: 28 November, 1989
Horsman, Richard: 28 November, 1989
Kobylka, Winston, London Regional Office: 14 November, 1991
Martin, Patrick, Directorate of Rural Affairs, Water Division: 17 June, 1991

Anglian Water Authority

Howarth, Peter, Director of Finance: 3 June, 1991
Morrod, Michael: 6 February, 1991a; 4 March, 1991b; 29 April, 1991c
Young, David, Financial Planning Manager: 3 June, 1991

National Rivers Authority

Brian Elsdon, Planning Engineer: 15 May, 1991

Cambridgeshire Local Authorities

Cambridgeshire County Council:

Baldwin, Kathy, Principal Planning Officer for Monitoring and Liaison, Office of Corporate Planning: 5 November, 1991
Barnes, Geoff, Transportation Department: 15 February, 1991
Boddy, David, Transportation Department: 5 March, 1991a; 1 November, 1991b
Bruce, Geoff, Transportation Department: 1 March, 1991
Onslow, John, Transportation Department: 26 November, 1990
Vigor, Mark, Structure Plan Officer, Office of Corporate Planning: 11 June, 1990; 5 March, 1991

Cambridge City Council:

Lane, Cliff, Principal Planner: 23 February, 1989
Popper, John, Chief Planning Officer: 2 February, 1990
Studdert, Peter W., Chief Planning Officer: 13 April, 1992
Turner, David: Deputy Planning Director: 27 March, 1991
Winterbottom, Trevor, City Solicitor: 2 May, 1990a; 4 October, 1990b; 2 April, 1992

East Cambridgeshire District Council:

Archer, David, Senior Planning Officer: 8 May, 1991a; 1 November, 1991b
Kratz, Phillip R., District Solicitor: 30 September, 1991
Lennon, F., Planner: 11 March, 1991
McCurdy, Nigel, Area Planning Officer: 20 February, 1991

Fenland District Council:

Furnell, Tim, Head of Development Control Section: 30 April, 1991; 7 April, 1992
Watson, Trevor, Planner: 14 November, 1991

Huntingdonshire District Council:

Heads, Eric, Chief Technical Officer: 13 May, 1991
Potter, David, Director of Planning: 3 May, 1991
Lindsey, Sheila, Planner: 14 November, 1991
Meeting with entire Planning Department Staff: 27 June, 1991

Peterborough City Council:

Brown, Robert, Development Planner: 24 October, 1990; 30 October, 1991; 1 April, 1992
Lee, Peter, Chief Planning Officer: 20 November, 1990
Williams, Jackie, Planner: 24 October, 1990

South Cambridgeshire District Council

Belcham, Jeremy, Area Planning Officer: 26 November, 1991
Hanlon, Garth, Senior Planning Officer, Local Plans: 14 November, 1991
Miles, Keith, Principal Development Plan Officer: 30 November, 1990
Monk, Michael, Planner: 14 November, 1991
Taylor, Chris, District Solicitor: 15 February, 1991a; 18 October, 1991b; 10 April, 1992

Other Interviews -- United Kingdom

Barlow, James, Centre for Urban and Regional Research, University of Sussex,
Brighton: 6 February, 1990; 1 October, 1991
Bennett, Andrew, Executive Director, Consortium Developments, London: 30 January,
1990
Blincoe, William F., Crest Strategic Projects Limited, Weybridge: 10 July, 1991
Bryce, Andrew J., Attorney, Cameron Markby Hewitt, London: 31 January, 1990
Coates, David, National Land Coordinator, Housebuilders Federation, London:
24 November, 1989; 23 June, 1991
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APPENDIX ONE: **British Development Control Versus Traditional U.S. Zoning**

Definition of "Development" Requiring Permission

U.K.: Restrictive definition

U.S.: Permissive definition (a property owner can put up fences, cut down trees, demolish buildings, dig cellar holes, etc.-- all without planning permission, and without a building permit as well.)

Degree of Control over Development

U.K.: No development without permission.

U.S.: A great deal of development allowed "by right" without needing to obtain specific planning permission. Every property must be zoned for some type of development. It is not possible to zone a property for "no development." Court rulings have established the principle that overly restrictive zoning constitutes a "taking" of private property, and that owners of properties affected by such restrictive zoning must receive "just compensation."

Specificity of Plans

U.K.: Structure and local plans set out strategic planning policies, and set targets for development to be accommodated. However these plans are not site specific, and do not commit the local planning authority to approve specific developments on specific sites. Planning applications are reviewed on a case by case basis. There is no zoning ordinance to provide an advance indication of what uses might be allowed, or what scale or density of development might be allowed on a specific site. In the absence of such specific guidelines, there is ample scope for negotiation with applicants regarding the content of development applications.

U.S.: Traditional zoning in the U.S. is site specific. For each site and area, the zoning ordinance will usually indicate what types of uses will be allowed, and the allowed physical limits of development (set-backs, height, floor area ratio, etc.). This prescriptive approach to development control leaves little opportunity for negotiation, or for modifying requirements based on a consideration of conditions unique to a particular site.

Flexibility / Discretion Exercised by Local Planning Authority

U.K.: Extreme flexibility. Planning authorities not bound to base planning decisions solely on the local plan. Rather, planning authorities are specifically authorised by the Town and Country Planning Act of 1971 to consider any considerations which they judge to be “material” to the application.

U.S.: Zoning has tended to be prescriptive, and has afforded planners little, if any, discretion to modify zoning requirements to fit specific cases, or to consider and regulate aspects of development not covered by the ordinance. The legal test for obtaining a “variance” is difficult to meet in most cases. Planners have been able to “hide behind rules.”

Predictability / Certainty

U.K.: Past decisions regarding similar properties are not necessarily a guide to what the decision will be in a subsequent case. Every case is judged on its own merits. The “Rule of Man”-- with a high degree of uncertainty.

U.S.: The “Rule of Law.” Equal justice, but not necessarily *fair* justice (Jowell,1977). Exceptions to zoning requirements rarely granted. Previous decisions set an important precedent. As a result, the system provides applicants with a fairly high degree of certainty.

Bargaining and Negotiation

U.K.: The discretionary nature of planning decisions creates an opportunity for bargaining and negotiation between developers and local authorities. Developers are tempted to want to negotiate with local authorities as a way of reducing uncertainty.

U.S.: Zoning requirements have traditionally been *non-negotiable*.

Predominant Development Pattern

U.K.: Containment of development; clear delineation between city and country. (Example: City of Cambridge, surrounded by Cambridge Green Belt)

U.S.: “Sprawl”

Degree to Which Land Values Are Determined by Planning Decisions

- U.K.:** Because of the discretionary nature of the British planning system, and the tendency to limit the supply of land for development, decisions on planning applications in Britain have a major and direct impact on underlying land values. Grants of planning permission typically produce windfall profits for certain lucky landowners, while preventing owners of adjacent properties from realising similar benefit. In sharp contrast to the American approach, it is not necessary that owners of properties in the same general area be treated equally, or that they receive the same level of benefit from land use regulation.
- U.S.:** Land values tend to be determined by zoning, rather than by specific grants of planning permission. The value which a property commands *assumes* that the property can be developed in some economically rewarding way. The price of land therefore reflects not just the value of current uses, but also a degree of "hope value."

Land Cost as a Proportion of Total Development Cost

U.K.: Very High

U.S.: Low

(The high price of land of in the U.K. is not simply due to the fact that there is less land in England than in the U.S.; rather the high cost of land is in large part reinforced by the British system of planning and development control, which has restricted the supply of land with planning permission, and in turn has conferred very high land values on sites which manage to obtain planning permission.)

Degree to Which Planning Leads or Follows the Market

- U.K.:** Planning applications are frequently denied in areas where private developers might otherwise have wanted to build; at the same time, development is often encouraged in areas where development might otherwise not have occurred had developers had a choice.
- U.S.:** Development patterns generally shaped by market forces.

Supply of Developable Land Relative to Market Demand

- U.K.:** Planning authorities seek to maintain a limited supply of land with planning permission. Additional land approved for development only as needed.
- U.S.:** Much more land available for development than is actually needed for development at any one time.

Trends-- The Direction of Change

U.K.: British development control is moving in the direction of American-style development control:

District-wide local plans now required for the first time. Plans becoming increasingly specific, and in turn providing greater certainty.

Government directives that there should be a “presumption in favour of development,” and that local planning authorities should maintain a five-year supply of land for development, have had the effect of loosening somewhat the degree of constraint on development.

Revisions to *Use Classes Order*, and the creation of the new B-1 Class including office, light industrial and high technology uses in a single use class, has given property owners the ability to change commercial uses by right, without obtaining specific permission.

Indications of increased interest in American-style impact fees, as an alternative to negotiated agreements with contributions.

U.S.: There is a clear trend toward tighter development control in the U.S. There are also signs in parts of the country of an increased willingness to adopt more flexible development controls, in place of traditional, rigid zoning ordinances (“performance standards, point systems, etc.).

Increased environmental concerns, and the need to mitigate environmental impacts of development, has necessitated a more flexible site by site approach to development review

Less development “by right” --more development by “special permit”

Increased exercise of discretion by local planning authorities

Development is becoming more uncertain and difficult.

Increased opportunities for negotiation

APPENDIX TWO :
SELECTED AGREEMENTS SIGNED IN CAMBRIDGESHIRE,
1985-1990

Cambridge Sub-Area: Cambridge City Council and South Cambridgeshire District Council

Cambridge Business Park / City of Cambridge

In September 1982, the City's planning authority granted two outline planning permissions to Pine Developments for an industrial estate which eventually became known as the Cambridge Business Park. No planning agreement was signed related to these first two outline permissions. Two additional full planning permissions were subsequently issued in February 1984 permitting the erection of warehouse/industrial units and a computer research and development production building. Again, no agreement was signed. It was not until November 1984, *after* these two full permissions had been granted, that a Section 52 agreement was signed which called for contributions to take surface water drainage off the site. The amount of the contribution set in the agreement was £5000 per impermeable acre. No other contributions for development-related infrastructure or other public facilities were sought by the City.

During the early phases of development, Cambridge City authorities seemed content with the terms contained in the of the 1984 agreement. Between 29 January, 1986 and 30 November, 1988, three additional agreements were signed related to final applications for specific developments at the Cambridge Business Park. Each of these agreements was modeled exactly on the original 1984 agreement, and called for drainage contributions of £5000 per impermeable acre. However, as development of the site proceeded, the planning authority became more dissatisfied, particularly regarding the growing traffic impacts of the Cambridge Business Park. On 27 January, 1989, an application was filed requesting final planning permission to build 2605 square metres of new B-1 space. At the same time, the applicants submitted an application seeking permission to develop the remainder of the site with an additional 20,000 square metres of business space. The Planning Committee did not to approve these additional applications because it was concerned that the proposed additional development would contribute to a further worsening of traffic congestion on Milton Road. Traffic counts, and calculations of traffic likely to be generated by developments which had already been approved but were yet to be built, showed that the intersections serving the Cambridge Business Park were "at capacity" (Winterbottom, 1990b, int.). A memorandum to the Chief Planning Officer from the City Engineer dated 23 October 1989 stated "I consider we have very good grounds for

refusing the application... unless a significant contribution is made to the proposed road network." The Chief Planning Officer sought to negotiate a new agreement containing a major contribution for improvements to alleviate traffic congestion on Milton Road, but the applicant resisted agreeing to the contributions. Almost two and a half years passed from the time the application was submitted, during which time no action was taken. Eventually an agreement was signed on 30 August 1991 in which the developer agreed to contribute £500,000 to the County Council for highway improvements which were specifically described in the Agreement.

Cambridge Science Park/ South Cambridgeshire

An agreement was signed in June 1988 for Phase 5 of the Cambridge Science Park, covering approximately 20 acres of land along the northern fringe of Cambridge. No contribution was secured in connection with this agreement. Rather, the purpose of the agreement was to restrict occupancy of the Science Park to firms primarily in research and development. In the agreement, the College assured that it would "not knowingly permit the said land or any buildings to be erected thereon to be used for any purpose other than the purpose appropriate to a science park... "-- namely firms involved in 'scientific research' or light industrial production of a kind which is dependent on regular consultation with scientific staff or facilities or the university or of local scientific institutions."

Permission for the first phase of the science park (30 acres) was granted to Trinity College in 1972. At the time, it was one of the first dedicated science parks in Britain (Breheny,Hart,1989). Sixteen years later, when the College applied for permission for Phase 5, the Science Park had grown to cover approximately 112 acres, housing 65 firms which employed 2170 people (Cambridge Publications, December 1987, 5). As development of the Science Park proceeded, traffic on roads leading to and from the park intensified. "Because it was one of the first, if not *the* first science park, the local planning authority, as well as the County Highway Authority, had no idea how much traffic such a park would generate. No one knew that it would end up generating 3 times more traffic per square foot than a Sainsbury's store" (Barnes,1991,int.). By February 1991, there was over 900,000 square feet of commercial space at the park, with 86 firms employing over 3000 people (Chartered Surveyor Weekly, 21 March 1991), and traffic tie-ups and congestion at the junction and access road to the Science Park had become a constant and notorious occurrence. When fully developed, there could be as much as 1.4 million square feet of floorspace at the Cambridge Science Park, further worsening the problem of congestion at the Park entrance. Indeed, the failure of the local authority to ask for, and the failure of the developer to offer, a major contribution for highway access improvements to the Park, in retrospect, is now probably regretted by both the authority and Trinity College.

Trinity College certainly was in an excellent position to have offered a contribution. The land on which the Science Park was developed had been owned by the College and its predecessors since 1443 (Breheny, Hart, 1989). Moreover, the value of the land for development had been greatly enhanced by two major public actions. First, the value of the site for development was enhanced as a result of the construction of the A45 Cambridge Northern Bypass. This dual carriageway, with its four-way interchange at the A10, opened in December 1978, and provided the science park with excellent vehicular access. Secondly, the College directly benefited as a result of the release of its land from the Cambridge Green Belt. In 1984, land which was later developed by the College as Phase 4 of the Science Park, was removed from the Green Belt (See Figure 7.01). Then in 1989, additional land owned by the College was removed from the Green Belt by the Secretary of State, and it was this land which became the subject of the Phase 5 application. Despite these windfall gains which befell the College as a result of the release of this land from the Green Belt, no additional contribution was negotiated in connection with the Phase 5 permission.

St. John's Innovation Park / Cambridge and South Cambridgeshire

This case highlights how two adjoining local planning authorities used legal agreements in different ways, reflecting different local planning policies and attitudes toward development. The 22.5 acre site of the proposed Innovation Park, which became known as the "tear-drop site" because of its shape, was located in boundary between Cambridge and South Cambridgeshire, in the Cambridge Northern Fringe. Approximately one-third of the property was located in Cambridge, and two-thirds of the site in South Cambridgeshire. Thus, in order to develop the site it was necessary for the Masters, Fellows and Scholars of St. John the Evangelist College, of Cambridge University, to submit planning applications to both the City of Cambridge and South Cambridgeshire District Council.

Cambridge City Council was positively inclined to approve the Innovation Park application. Prior to the application, the City had adopted the Milton Road Policy, which specifically allocated the land in question for research and development (Winterbottom, 1990a, int.). The City granted planning permission for approximately 14,700 square metres of space on the 7.5 acres of land within Cambridge, subject to a planning agreement signed on 3 November 1986. In the agreement, the College agreed to contribute £18,700 toward the cost of constructing a ditch to accommodate surface water drainage from the site, and to contribute a further £29,200 for additional drainage improvements-- an amount which was calculated based on a formula of £5000 per impermeable acre.

South Cambridgeshire District Council, on the other hand, opposed the application to develop that portion of the site within its jurisdiction (Miles, 1990, int.; Taylor, 1991b, int.). According to South Cambridgeshire District Council, the land which the College wished to

develop was in the Green Belt, and it therefore refused planning permission. The College appealed the refusal to the Secretary of State. Fearing that it was likely that it would lose on appeal, South Cambridgeshire District Council decided to make the best of what it viewed as a bad situation by entering into an agreement limiting development on the portion of the site located in South Cambridgeshire (Miles,1990,int.). South Cambridgeshire was correct in fearing that it would probably lose on appeal. The land the College sought to develop for its Innovation Park was officially removed from the Cambridge Green Belt by the Secretary of State in 1989.

The agreement signed on 16 December,1987 limited the amount of floorspace that could be built in South Cambridgeshire to 12% of the total site area. The agreement also included a provision restricting occupancy to firms in research and development, or otherwise related to the university. No contribution was obtained by South Cambridgeshire for drainage improvements or road improvements. South Cambridgeshire *did not* use its opposition to the development as leverage to secure offers of additional developer contributions.

Barwell Machine and Rubber Company / South Cambridgeshire

In March 1989, South Cambridgeshire granted permission for a local company to relocate its machine and rubber factory to a new site within the District, and a complicated agreement in conjunction with the permission was signed. Only relatively minor contributions were extracted from the firm, despite the fact that "no other firm could have gotten the planning permission that they got" (Miles,1991,int.). In the view of the planning authority, the existing location of the firm was undesirable, because the firm's massive lorries ran through the village of Swavesley. The LPA therefore wished to facilitate and encourage the relocation of the factory to a more remote site where it would have less of an impact. "It was considered to be a planning gain simply to get the factory out of the center of the village"(Ibid.). Provisions were included in the agreement requiring Barwells to move within a specified time, and extinguishing the right to use the original factory site for industrial use after that date. As further inducement to complete the relocation of the factory, the permission and accompanying agreement granted the firm permission to develop its original factory site, which it planned to vacate, for housing. There was no requirement in the agreement that any social housing units be included on the site. It was envisioned that all of the new housing would be private.

The most significant contribution obtained by the South Cambridgeshire in this agreement was the donation of four acres of land so that an existing adjoining public recreation area could be expanded. According to the District Council, the amount of land which Barwell was asked to donate was greater than it would otherwise have been asked to set aside for recreation as part of its development. On the other hand, to balance off this

burden, the firm "received permission to develop more housing [approximately 20 - 30 more units] on its site than it otherwise would have been able to..." (Ibid.).

Marshall Engineering Ltd./ Cambridge and South Cambridgeshire

Marshall's Engineering proposed to build a new hanger to service jumbo and Tri-Star jets on a site at Cambridge Airport, on the boundary between South Cambridgeshire and Cambridge. Because of the scale of the proposed structure (800 feet long, 300 feet wide, and 90 feet high), the planning application generated considerable publicity as well as local opposition. Although the proposed site for the hanger was entirely in South Cambridgeshire, planners in the City of Cambridge were concerned that the proposed new hanger would have a negative effect on an adjoining Council Estate in Cambridge (Lane,1990,int.). The City hoped to press for a major package of contributions from the firm, such as for social housing. Additional planning concern arose from the fact that aircraft would have to be moved between the new hanger and the airfield, across a heavily used road. Before the application could be dealt with at the local level, the application was called in by the Secretary of State. The Inspector who heard the case ruled that permission should be granted, subject to an agreement dealing with certain limited concerns, such as traffic control. An agreement was signed between Marshall's and South Cambridgeshire District Council requiring the applicant to install a traffic signal at the point where aircraft would need to cross the existing road, and to maintain the traffic signal thereafter. The agreement further specified that the duration of aircraft crossing phases "shall not exceed two minutes" and that , "save for prior written consent of the Highway Authority, aircraft crossings would not occur between from 0730 to 0900, from 1200 to 1400, and from 1630 to 1830."

Tesco Stores / South Cambridgeshire

In November 1987, Tesco Stores applied to South Cambridgeshire District Council for planning permission to build a 50,000 square foot supermarket, 3 unit shops, a petrol filling station and associated car parking on Cambridge Road in Milton. The planning authority was opposed to the application, because the land had been allocated for housing development in a local plan, and because of the proximity of the proposed development site to nearby housing. During the application process, Tesco's offered to sign an agreement including a variety of contributions: for the construction of a new roundabout; for the realignment of Cambridge Road in the vicinity of the roundabout; for the construction of a new footpath between a bus stop and the development; for mounding and landscaping to mitigate the impacts of the development on nearby housing; and for construction of a new surface water drainage systems to divert a public drain running through the property (as well as a commuted sum payment for the future repair and maintenance of the drain). The

estimated total value of all these contributions was approximately £300,000

(Johnson,1991,int.)

In addition to these contributions, Tesco offered to contribute £200,000 to the District for the cost of developing playing fields and soccer pitches serving the adjoining residential area. Nevertheless, the planning authority remained opposed to the application, and refused planning permission. In the opinion of the developer, "the people on the parish council were simply against the project, and no amount of planning gain would have changed their point of view..."(Johnson,1991,int.).

Tesco appealed to the Secretary of State, who instructed that permission should be granted, subject to an agreement. Having lost on appeal, the District was in no position to require the developer to make the £200,000 contribution for playing fields promised earlier. Moreover, District planners were reluctant to specify such a contribution in a planning agreement, because they felt it was inconsistent with the guidelines of Circular 22/83. "There was no logical connection between shopping and the need for recreation facilities"(Miles,1991,int.). As a result, the planning agreement was signed *without* specifying the contribution of £200,000. Nevertheless, Tesco made the contribution anyway. No mention of it was made in the Section 52 agreement, however. The contribution was made to the Parish Council, rather than to the District Council. "Tesco was aware that the village was against them" and decided to contribute the £200,000 to create goodwill in the community-- it was commercial decision" (Miles,1991, int.). "The Secretary of State granted planning permission on appeal, and there was no requirement that we pay the £200,000. The payment was *after the fact* -- we didn't have to do it"(Johnson,1991,int.).

The total contribution offered by Tesco in relation to this project, amounting to approximately £500,000, was among the highest offered by any developer in Cambridgeshire during the study period. However, the total value of contributions still only represented less than 5% of the total development cost of the project (Johnson,1991,int.).

Marks and Spencer Expansion / Cambridge

The application of Marks and Spencer seeking permission to build 4000 square metres of retail space at 6-11 Market Street in the center of Cambridge resulted in the signing of an agreement, but not one involving major contributions. The planning authority opposed the application because the proposal called for the demolition of the Victoria Cinema, a listed building. The developer appealed the refusal of permission to the Secretary of State, who approved the requested application on 24 June 1987. Having received permission for 4000 square metres, Marks and Spencer then submitted a new planning application seeking permission to bring the total development to 4472 square metres. Given that permission had already been granted permitting 4000 square metres of

retail space, and that the new application in effect sought to add only 472 square metres of additional floor space, the City Council did not have much leverage to negotiate significant contributions. An agreement was negotiated restricting truck loading and deliveries to specified locations, and to specified, limited hours.

Unex Investment Co. Office Development / Cambridge

The application of Unex Investment Company to build a large office complex in Cambridge was a major test of the ability of the local planning authority in Cambridge to enforce County Structure Plan and local planning policies discouraging new office development in Cambridge. The case also revealed the limited ability of a local planning authority to obtain significant developer contributions even when established planning policy was on its side.

Over the course a number of years, Unex submitted successive planning applications, seeking permission for a successively larger and larger office complex on the site. The first application which was submitted requested permission to build an office building containing 39,750 square feet of space. This application was approved by the City. A subsequent application for a 43,300 square foot office building was also approved. No planning agreements were signed in connection with these permissions. However these permissions were not implemented. Between 1985 and 1986 Unex submitted 6 additional applications for the site-- two for 72,800 square feet, and four for 84,500 square feet. The City Council turned down all of these applications. "Local residents of the area... were extremely opposed to the development, and argued that the development would have an adverse impact on a nearby Victorian estate, a listed building" (McElroy,1991,int.).

Unex appealed the refusals of its planning applications to the Secretary of State. The Secretary of State dismissed all of the appeals on 10 April 1987, but Unex appealed the dismissals to the High Court. The High Court quashed the four applications for 84,500 square feet, but ordered that the applications for 72,800 square feet be reheard. In the meantime, Unex submitted yet another application seeking permission for a 72,800 square foot building, plus 231 car parking spaces. The Inspector for the Secretary of State who held the inquiry into the 3 new planning applications at the Guildhall in July 1988 ruled on 11 August, 1988 that outline permission should be granted for all three applications.

It was only at this late point in the process that the City of Cambridge began to try to negotiate a planning agreement with Unex. The fact that Unex was assured the right to develop a 72,800 square foot building on the site, meant that the Council had relatively little leverage to negotiate contributions from Unex. However, the City felt that the scale of the development, and the additional traffic it was likely to generate, required that the road

and intersection adjoining the development be widened. The only apparent leverage which the City had to negotiate contributions for these road improvements was to possibly allow the development to become larger than 72,800 square feet.

An agreement was signed in October, 1988 granting permission for an office development of 84,500 square feet, but in turn requiring the applicant to dedicate a 3 metre wide strip of the property fronting on Hills Road to enable the Highway Authority to widen and improve the Hills Road/Brooklands Avenue junction. The total area of land donated was approximately 270 square metres.

A second agreement was signed in September, 1989, granting Unex permission to add an additional 8051 square feet of space to the development-- raising the total amount of floor area to 92,551 square feet, but also requiring that the new space be devoted to conference and training space, a creche, a restaurant/canteen, squash courts, and a gym.

The Chief Planning Officer, who had just arrived on the scene... felt that the building with the car park should be topped off with an additional floor, to make it visually more appropriate and attractive at the gateway to the city. Most of what was asked for was asked for aesthetic reasons (McElroy, 1991, int.).

Although the September 1989 agreement restricted the use of 8051 square feet of space, the City failed in its attempt to negotiate public access and use of the added space. The City asked that the conference space added in the building be open to the public in the evening, but Unex refused (Ibid.). The City also wanted the car parking to be able to be used as public parking at night, but Unex refused (Ibid.)

Quayside Development, Thompson's Lane / Cambridge

In this case, a developer was agreed to provide and improve public amenities, in return for receiving planning permission for a larger scale development than would otherwise have been permitted.

The Masters and Fellows of Magdalene College proposed to redevelop a highly visible site adjoining the River Cam, which included a number of derelict buildings. The Chief Planning Officer's response to the proposal was positive, and the Planning Department sought to cooperate with the developer so as to improve the townscape (Winterbottom, 1990a, int.). The City was in a strong position to negotiate an agreement with the developer, because of planning policies restricting the scale of development in core areas of the city. The City also owned land needed for the redevelopment to proceed. In the end, however, the City made only limited requests for contributions. In the agreement that was signed in February 1986, the College agreed to construct and maintain a walkway along the river which was open and accessible to the public, and to construct specified "public conveniences" (public rest rooms, accessible to handicapped persons) in the complex

fronting on the walkway. The City, in turn, granted Magdalene College permission to build a total of 8750 square metres of office and retail space and car parking -- which was "more development than was specifically provided for under planning policies" (Turner,1991,int.).

Milton Road Housing Development / Cambridge

A number of major agreements were signed related to proposed developments on a 16 hectare site on Milton Road in Cambridge. An application for outline planning permission was submitted by Cambridge University seeking permission to develop biotechnology science units on 10 acres of the site, and housing on another 28 acres. An agreement was signed for this permission in July 1987, specifying that the University would contribute £193,356 (65% of the total estimated cost) toward a joint-funded scheme to construct off-site surface and foul water sewers. This promised contribution by the University allowed the City and Anglian Water to bring forward the construction of a sewer interceptor, whose construction would otherwise have been delayed for a number of years. "Without that joint-funded scheme, there would have been an embargo on new development in the northern part of the city" (Winterbottom,1990a, int.). The agreement also required that 1.5 acres of the site be set aside as open space, and that a 20 metre-wide green belt at the rear of Birch Close be maintained. Lastly, there was a unique non-contributory provision in the agreement. The property had been the site of scientific research into anthrax disease between 1941-45, and a number of animal carcasses infected with the disease were buried on the land. Areas where animals were buried were identified in the legal agreement, and the agreement stipulated that these areas had to be capped with concrete slabs and permanently restricted against future development and/or disturbance.

The University subsequently dropped its plans for developing the biotechnology science units, and submitted revised applications seeking permission to develop the entire site for housing. Five planning agreements were subsequently signed, which revised and superseded the terms of the original agreement of July 1987. The first of these agreements was signed in December 1987, and granted permission for the development of 69 units of social housing on .9 Ha. by a housing association. Although social housing was not mentioned in the original planning agreement, the provision of social housing was an important planning objective of the City, and the developer's willingness to allocate land to this desired use appears to have been a major reason why the City was so cooperative with the developers. In a subsequent agreement, the Council released the applicant from the covenant contained in the original agreement regarding the transfer of 1.5 acres of open space. The amount of open space the developer was required to improve and transfer to the Council was reduced from 1.5 acres to .5 acres, and in return the developer agreed to pay a commuted sum of £4513 for maintenance of the landscaped open space.

Hayster Drive Housing Development / Cambridge

In this case, the applicant sought permission to develop a 10.2 acre site on the edge of the Green Belt. The agreement which was signed in December 1987 granted permission for the development of 40 houses on 3.5 acres, but in exchange called for the balance of the site to be donated to the City Council and County Council. Two acres were to be donated for a school, 3.22 acres were to be donated for public open space, and an additional 1.5 acres were to be donated as a playing field available for dual use by the school and community residents. In addition to these substantial donations, the applicant pledged to make best efforts to construct a highway giving access to the development, which would also provide access to the school site. Finally, the applicant pledged to make best efforts to construct a foul and surface water system to serve the development, which would also serve the school.

Clay Farm, Trumpington / Cambridge

An 11.8 acre site at Clay Farm in Trumpington, believed by Cambridge County Council to be located in the Green Belt, received planning permission for 112 housing units, subject to an agreement requiring a major contribution for social housing. The agreement specified that one-third of the housing units should be low cost housing units. Other units in the development were required to be set aside for "shared ownership"-- with homebuyers buying 60% of their homes, and with the remaining 40% held over as an interest-free mortgage (payable at the time of sale). Sale and occupancy of the shared-ownership units was restricted to persons who were legal residents of Cambridge, who worked in Cambridge, or who had an offer of permanent employment in Cambridge. Also, the agreement required the applicant to set aside land for open space, to landscape and improve the open space and transfer the land to the Council, and to pay a commuted sum for its maintenance. Finally, the applicant agreed to pay for the construction of foul sewers and surface water drainage improvements, and to pay for the expansion of sewage treatment works in the area.

However the agreement which was negotiated for land at Clay Farm came to no effect. Although the planning agreement was signed on 5 December, 1988 specifying the above described contributions, the application was called in by the Secretary of State and the agreement was overturned (Winterbottom, 1990b, int.). The Secretary of State was unwilling to allow an agreement to stand which required that one-third of the units be reserved for social housing. The ruling of the Secretary of State in this case is ironic in light of later policy advice issued by the Government (Circular 7/91), which in effect encouraged local authorities to do the very thing that Cambridge was seeking to do at Clay Farm. (For

additional discussion of the provisions of Circular 7/91, see Chapter Eight.)

Land north and south of Fulbourn Old Drift, Cherry Hinton/ South Cambridgeshire

When Pembroke College of the University of Cambridge received permission for large-scale residential development in the Fulbourn Old Drift area, an agreement was signed imposing certain obligations on the applicant. The contributions obtained in this and subsequent agreements signed for various phases of residential development in this area, were the most significant and far-reaching that South Cambridgeshire extracted from residential developers during the study period. The agreement required the developer to set aside and donate land as for a school (3 acres), to lay out and landscape sizeable areas of open space, including 13 acres of playing fields, and to construct a network of cycleways and footpaths. The agreement also stated that the applicant was responsible for constructing all necessary on-site and off-site sewers and sewer-related works. Finally the agreement required the developer to build a perimeter road in a specified alignment, spanning tracks owned by British Rail, and linking residential areas to the north and south of the railroad tracks. The road specified in the agreement was essential to the development of the site, but was also viewed by the planning authority as offering some benefit in terms of over-all District traffic circulation.

Barnwell Road Commercial Development / Cambridge

The planning agreement signed for a major commercial development on Barnwell Drive in Cambridge appears to contain the most significant package of contributions of any agreement signed in Cambridgeshire during the study period. As part of the agreement, the City agreed to grant permission for a total of 92,550 square feet of space-- a 24,750 square foot automobile showroom, workshops and ancillary space, plus 67,800 square feet of B-1 space. In return the applicant agreed to pay a commuted sum of £175,000 toward the cost of providing a play area, neighborhood sports/community facility, and a creche in nearby wards. In addition, the developer agreed to sell a separate parcel of land to the City for £350,000 so that social housing could be built on it. In initial negotiations, the Council had sought to get the applicant to donate the land at no cost; in response, the applicant offered to sell the land for £450,000. The £350,000 sum specified in the agreement was thus a compromise sum arrived at through negotiation.

Upon closer analysis, however, questions must be raised as to whether the "contributions" specified in this agreement were "contributions" at all. The planning agreement was negotiated, and the planning permission was issued, in connection with the sale of City Council-owned land for commercial development. Indeed, negotiations were

initiated not by the submission of a planning application, but when the City Council issued a brief inviting purchase offers and development proposals for the property with the goal of trying to achieve the greatest receipt of capital (Winterbottom,1990a, int.).

Rather than receiving a cash payment for the land it was selling, the City preferred -- for financial reasons-- to receive payment in the form of "contributions." If the City had received the purchase price of the property in the form of cash, it would have been counted by the central government, and would have reduced the amount of government funding the City Council received. However, receiving payment in the form of contributions avoided this problem. The so-called "contributions" received in connection with Barnwell Avenue were simply a different way of receiving proceeds from the sale of land.

Even in agreeing to buy land for housing for £350,000, as specified in the agreement, the City Council stood to reap a healthy profit from the overall land deal. "[T]he capital allocation [of £350,000] can be met out of the premiums received on the Barnwell frontage site which is still about £1.5 million above the originally envisioned sum"(Cambridge City Council Property Panel memo, 7 November,1989).

Nuffield Road Housing Development / Cambridge

An agreement signed for a major housing development on Nuffield Road also contained promises of a number of significant contributions, but once again these "contributions" must be understood in context. As in the preceding case of Barnwell Drive, the site in question was owned by the City Council. The City Council issued a brief inviting development proposals for the land, and negotiated terms for the sale of the land in conjunction with drafting a planning agreement. A major goal of the City was to encourage the building of social housing on the site, and it was therefore willing to subsidise its development. It also wished to have the developer pay for public facilities and amenities related to the development, rather than receiving money from the sale of the land, and then having to spend that money on public improvements. "The City used the agreement to write down the value of the land. The District in effect paid for the social housing with its own resources, but without having to make a cash expenditure. It represented a novel use of an agreement for social housing" (Winterbottom,1990a, int.).

In addition to specifying that development on the site was limited to social housing, the agreement specified that the applicant would: construct an off-site all-weather multi-purpose sports facility, in a location chosen by the Council, at a cost of £45,000; set aside 3 acres of the 12 acre site as open space; construct landscaping and other improvements on the land at a cost of not more than £37,355, and then transfer the land and improvements to the Council; construct a toddlers play area; pay commuted sums of £12,235 and £29,460 respectively for the cost of maintaining the toddlers play area and all-weather multi-purpose

sports pitch; construct a land drainage scheme, extending approximately 1/2 mile, and pay a commuted sum of £7,530 for inspecting, maintaining and repairing the drainage system; construct a sewage pumping station and transfer it upon completion to Anglian Water Authority; and construct various junction improvements.

These "contributions" obtained from Granta Housing Society for the Nuffield Road site were greater and more far-ranging than were typically obtained in relation to conventional planning applications submitted by private developers. But when viewed in context, it can be seen that they were really not "contributions" at all, but were rather a way of receiving value from land which was being sold by the Council.

East Cambridgeshire District Council

Hare Park New Settlement

The agreement signed for Hare Park, on February 13, 1990, with Charles Church Developments Plc. was the only Section 52 agreement signed for a New Settlement during the study period. The New Settlement covered an area of 776 acres, and was to be comprised of 3000 housing units on 270 acres of land, a 50 acre business park, hotel, local centre, and associated facilities. In exchange for obtaining planning permission, the developer agreed: to construct all necessary water-related infrastructure and roads; to contribute £4 million for road improvements to the A45 and other specified off-site highway improvements; to set aside 223 acres of the site as a "country park"; to donate 11 acres of land for schools, and pay £4,800,000 to the County Council towards the expansion and/or improvement of secondary school facilities; to donate land for a police station and fire station if required, and multi-use community facilities (indoor sports facilities, day centre, library, health centre, ecumenical centre, and associated car parking); to pay £1,150,000 to the Council for its future expenses with regard to maintaining facilities serving the New Settlement; to contribute £1.5 million to the County for public transport improvements; and to provide 225 units of low cost housing by disposing of the freehold at below market cost.

Multiple Permissions for Petrol Filling Stations

Six commercial agreements were signed in East Cambridgeshire during the study period, four of which were for applications to develop petrol filling stations, and associated motels and restaurants, along rural County roads and bypass highways. Two of the agreements related to sites on the Soham bypass; the others were for sites on the Witchford bypass and in Stretham. Three agreements required the applicants to construct turning lanes and related road improvements providing safe vehicular access to the proposed

developments. Two of the agreements required the applicant to construct surface water drainage improvements. No other contributions were extracted.

Ely Town Centre Redevelopment

An agreement was signed in December 1989 in connection with a grant of permission for a major retail development with associated car parking on a 10 acre site in the center of Ely. The developer, Burton Property Trust, agreed to contribute £100,000 toward refurbishment of market buildings, and to pay £449,000 toward the cost of repaving roads and constructing pedestrian improvements in the Market Square. The developer also agreed to contribute £20,000 toward provision of a community centre and citizen advice bureau. This particular agreement was not implemented. A new planning application was submitted by a new applicant (Waitrose), and a new agreement was signed on 12 April, 1990, just after the end of the study period, which basically contained the same offers of contributions previously negotiated from the prior applicant.

Business Park/ Mepal Airfield, Sutton

Planning permission was given on 28 June 1988 for a 52 acre industrial estate, called Elean Business Park, at Mepal Airfield in Sutton. This planning permission was granted *without* an agreement. However, *after* receiving planning permission the developers came to the conclusion that changes and improvements to the County road on which it was located would improve prospects for marketing and developing the site. The developers therefore approached the District Council and County Highway Authority proposing to pay 100% of the cost of constructing improvements to the adjacent County Road (B1381), including a new roundabout. An agreement was signed on 30 March, 1990, calling for the developer to construct the various highway improvements called for in the agreement, which were valued at £350,000.

Fenland District Council

The most significant contributions obtained from a commercial developer in Fenland during the study period were obtained in an agreement signed in March 1990 for a large-scale commercial development (hotel, restaurant, petrol station, B1 office space, B2 general industry, and B8 storage and distribution space) on a 12.8 hectare site on Cromwell Road in Wisbech. In the agreement, the applicant agreed to construct an off-site surface water drainage scheme, and to contribute financially to the upgrading of off-site sewage treatment works, and a sewage pumping station. The developer also agreed to design and construct road improvements-- to widen adjacent roads, to construct a new right turning lane, and to provide lighting the full site frontage along Cromwell Road-- and to enter into a Section 278 agreement with the Secretary of State for Transport for all works affecting roads under his jurisdiction. Finally, the applicant agreed to sell 3 acres of the site to the District Council "at historic land cost" for the purposes of an Innovation Centre.

March Concrete Products received outline planning permission in 1988 for an 18 acre residential development, subject to an agreement requiring the applicant to reconstruct and improve two access roads leading to the site which were in poor condition. A resident of the area, commenting on the proposed agreement, expressed the view that the developers improvement of this road would add an average of £5000 to the value of the properties being developed.

An agreement was signed in April 1989 in Fenland which required the developer of a 10 acre site in Leverington to construct improvements to the public road, and to pay £12,000 to the District for the installation of traffic lights at a nearby junction. This payment was index-linked, and was payable within 14 days of completion of the development.

The developer of a 2.2 hectare residential development in Manea, Fenland signed an agreement in January 1990 agreeing to convey land free of charge to the District Council for public open space, and to pay £10,000 to enable the Council to provide children's play equipment on the site. The agreement committed the district to complete the installation of the play equipment before not more than 25% of the units were completed and occupied.

An agreement was signed in February 1990 granting permission for 49 sheltered housing units in Fenland, but also requiring that occupancy of the units be restricted to persons 55 years of age or more, that the units be leased at affordable rents (which were defined in the agreement), and that mini bus service be provided to and from March town centre four times weekly for residents of the development on a non-profit making basis.

Huntingdonshire District Council

Five agreements were signed in Huntingdonshire with commercial developers who agreed to make commuted sum payments for parking. Huntingdonshire was in fact the only District in the County to obtain commuted sum parking payments. The District did not use a uniform fee in assessing parking costs to developers in different areas. Rather, the amounts assessed varied considerably, depending presumably on the amount of parking required by particular commercial uses, and the variable cost of providing additional parking in different locations. For example, a developer adding 325 square metres of office space to an existing building in Huntingdon agreed to pay £26,250. A developer adding 626 square metres to a commercial property in St. Ives agreed to pay £18,750. An applicant who received permission to add 151 square metres of space to an existing residence, to accommodate a catering business, agreed to pay £16,800. And an applicant who obtained permission to convert an 1057 square metre building and add 287 square metres of floor area for retail and office use agreed to pay £31,875.

An agreement was signed in November 1989 granting permission for a fireworks factory to relocate from a site in a developed area to a site along the A45 in Kimbolton. The agreement did not extract any contribution. Rather, the agreement specified that use of the site where the fireworks factory was located at the time of the agreement had to be discontinued permanently once the new factory was completed on the new site.

An agreement was signed in December 1989 in response to an application for approval of Reserved Matters related to the development of a 13 hectare business park. The agreement limited the amount of floor space on the site to no more than 26,250 square metres, and set a limit on the height of buildings. The agreement also required that implementation of the permission was conditional on the applicant completing construction of a lorry parking area in accordance with previous outline permission.

The most significant contributions obtained from a residential developer in Huntingdonshire during the study period was obtained *after* the District had refused the developer's planning application. A developer applied for permission to build 31 units of housing on 4.6 acres in the village of Grafham, and made unsolicited offers of contributions. The developer offered to relocate the village playing field, to build a pavilion with changing rooms, and to devote 6 of the units in the development for occupancy by elderly persons. Despite these offers of contributions, the planning authority refused to grant permission. The applicant appealed the refusal and was upheld on appeal by a DoE Inspector, who took account of the offer of contributions, and cited them as a reason for approval (Potter,1991,int.). An agreement was signed following the appeal decision, in July,1989, incorporating the developer's initial offers of contributions.

Peterborough City Council

East of England Showground, Peterborough

The most extensive contributions obtained by Peterborough during the study period were contained in an agreement signed in July 1989 for a proposed major development at the East of England Showground. Two planning applications were submitted simultaneously by the East of England Agricultural Society, the long-time owner of the land. One application proposed to build up to 350 units of housing on 27 acres of land, and the other proposed to build a business park on 16.2 acres of adjoining land. In granting permission for these major developments, the City Council signed an agreement in which the applicant agreed: to build a new two lane carriageway; to pay £500,000 to the County Highway Authority for other roadway improvements; and to construct footpaths and cycleways, including a footbridge over Orton Parkway. Further the Society agreed that, prior to implementing the development, it would pay the Council £235,000 as a contribution toward the provision by the Council of an all-weather sports pitch. However, soon after the agreement was signed it became clear that the deal would probably have to be renegotiated. It was learned that the site could not be developed as proposed without a ransom strip being included, which was owned by the Commission of New Towns. Under British Law, the owner of the ransom strip could claim to be compensated for up to half of the added value of the site. As a result of this ransom situation, the Agricultural Society had to revise plans for the proposed development, showing a different means of access to the site. In the meantime, another complication arose as well. The £500,000 contribution toward roadway improvements was expected to be matched by a roughly equal transport supplementary grant from the Department of Transport. However, that supplementary transport grant was turned down, and by 1991 the ability to complete the roadway improvements as laid out in the agreement was in doubt. Under the terms of the agreement, if the developer's funds were not used within 6 months for the highway improvements specified in the agreement, then the funds had to be returned to the applicant, with interest.

Two years after the agreement had been signed, development of the Showgrounds site still had not gone forward, and the gains negotiated in the agreement had not been realised. The passage of time added a further complication relative to the 1989 agreement. The funding which the City Council negotiated for the all-weather sports pitch was not indexed, so that by 1991 the amount promised by the developer for the construction of the facility was no longer adequate. Planners at the City Council considered the option of trying to renegotiate the agreement to obtain the extra margin of funds needed for the sports facility, but felt that success in renegotiating the agreement was unlikely, given the fact that land values had significantly declined in the intervening two years.

The agreement signed for the East of England Showground site highlights the difficulty of negotiating agreements for complex projects. It also serves to underscore the fact that contributions promised in agreements often do not materialise.

APPENDIX THREE:

DATA ON CONTRIBUTIONS, BY DISTRICT--

Number of agreements with contributions for specific purposes

Number of contributions (forms of contributions) for specific purposes

**APPENDIX 3.1:
FORMS OF CONTRIBUTIONS-- CAMBRIDGE**

	Agreements With Contrib.	Pay	Construct	Construct With Joint-Funding	Donate Land
Residential Projects					
Foul Sewer	6	1	5	2	0
Sewage Treatment	1	1	0	0	0
Sewage Pumping Sta.	2	1	2	0	0
Surface Drainage	6	1	6	2	0
Roads	2	0	2	0	0
Footpaths/Cycleways	0	0	0	0	0
Rec./O.S./Amenity	5	0	4	0	5
School	1	0	0	0	1
Other Public Bldgs.	0	0	0	0	0
Housing	4	0	4	0	0
Parking	1	0	1	0	0
Public Transport	0	0	0	0	0
Miscellaneous	0	0	0	0	0
Sub-total	28	4	24	4	6
Commercial Projects					
Foul Sewer	0	0	0	0	0
Sewage Treatment	0	0	0	0	0
Sewage Pumping Sta.	0	0	0	0	0
Surface Drainage	4	4	0	0	0
Roads	3	0	2	0	2
Footpaths/Cycleways	1	0	1	0	1
Rec./O.S./Amenity	2	1	1	0	0
School	0	0	0	0	0
Other Public Bldgs.	4	1	3	0	0
Housing	1	0	0	0	0
Parking	0	0	0	0	0
Public Transport	0	0	0	0	0
Miscellaneous	0	0	0	0	0
Sub-total	15	6	7	0	3
TOTAL	43	10	31	4	9

APPENDIX 3.1 cont.: Cambridge

	Donate Easement	Sell Land	Maintain	Comm. Sum Maintenance	Comm. Sum Parking	Sell/Lease Below Market Cost	Total Contrib.
Residential Projects							
Foul Sewer	0	0	0	0	0	0	8
Sewage Treatment	0	0	0	0	0	0	1
Sewage Pumping Sta.	2	0	0	0	0	0	5
Surface Drainage	1	0	0	0	0	0	10
Roads	0	0	0	0	0	0	2
Footpaths/Cycleways	0	0	0	0	0	0	0
Rec./O.S./Amenity	0	0	2	2	0	0	13
School	0	0	0	0	0	0	1
Other Public Bldgs.	0	0	0	0	0	0	0
Housing	0	0	0	0	0	0	4
Parking	0	0	0	0	0	0	1
Public Transport	0	0	0	0	0	0	0
Miscellaneous	0	0	0	0	0	0	0
Sub-total	3	0	2	2	0	0	45
Commercial Projects							
Foul Sewer	0	0	0	0	0	0	0
Sewage Treatment	0	0	0	0	0	0	0
Sewage Pumping Sta.	0	0	0	0	0	0	0
Surface Drainage	0	0	0	0	0	0	4
Roads	0	0	0	0	0	0	4
Footpaths/Cycleways	0	0	0	0	0	0	2
Rec./O.S./Amenity	0	0	0	0	0	0	2
School	0	0	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0	0	4
Housing	0	1	0	0	0	0	1
Parking	0	0	0	0	0	0	0
Public Transport	0	0	0	0	0	0	0
Miscellaneous	0	0	0	0	0	0	0
Sub-total	0	1	0	0	0	0	17
TOTAL	3	1	2	2	0	0	62

APPENDIX 3.2:

FORMS OF CONTRIBUTIONS-- EAST CAMBRIDGESHIRE

	Agreements With Contrib.	Pay	Construct	Construct With Joint-Funding	Donate Land
Residential*					
Foul Sewer	5	1	5	0	1
Sewage Treatment	1	0	1	0	1
Sewage Pumping Sta.	1	0	1	0	1
Surface Drainage	5	1	5	0	1
Roads	2	1	2	0	1
Footpaths/Cycleways	1	0	1	0	1
Rec./O.S./Amenity	3	0	1	0	3
School	3	1	0	0	3
Other Public Bldgs.	1	0	0	0	1
Housing	3	0	1	0	0
Parking	0	0	0	0	0
Public Transport	1	1	0	0	0
Miscellaneous	0	0	0	0	0
Sub-total*	26	5	17	0	13
* Hare Park classified as residential					
Commercial Projects					
Foul Sewer	0	0	0	0	0
Sewage Treatment	0	0	0	0	0
Sewage Pumping Sta.	0	0	0	0	0
Surface Drainage	0	0	0	0	0
Roads	4	1	3	0	0
Footpaths/Cycleways	0	0	0	0	0
Rec./O.S./Amenity	0	0	0	0	0
School	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0
Housing	0	0	0	0	0
Parking	0	0	0	0	0
Public Transport	0	0	0	0	0
Miscellaneous	1	1	0	0	0
Sub-total	5	2	3	0	0
TOTAL	31	7	20	0	13

APPENDIX 3.2 cont.: East Cambridgeshire

	Donate Easement	Sell Land	Maintain	Comm. Sum Maintenance	Comm. Sum Parking	Sell/Lease Below Market Cost	Total Contrib.
Residential							
Foul Sewer	0	0	0	0	0	0	7
Sewage Treatment	0	0	0	0	0	0	2
Sewage Pumping Sta.	0	0	0	0	0	0	2
Surface Drainage	0	0	0	0	0	0	7
Roads	0	0	0	0	0	0	4
Footpaths/Cycleways	0	0	0	0	0	0	2
Rec./O.S./Amenity	0	2	1	1	0	0	8
School	0	2	0	0	0	0	6
Other Public Bldgs.	0	0	0	0	0	0	2
Housing	0	3	0	0	0	1	4
Parking	0	0	0	0	0	0	0
Public Transport	0	0	0	0	0	0	1
Miscellaneous	0	0	0	0	0	0	0
Sub-total	0	7	1	1	0	1	45
Commercial Projects							
Foul Sewer	0	0	0	0	0	0	0
Sewage Treatment	0	0	0	0	0	0	0
Sewage Pumping Sta.	0	0	0	0	0	0	0
Surface Drainage	0	0	0	0	0	0	0
Roads	0	0	0	0	0	0	4
Footpaths/Cycleways	0	0	0	0	0	0	0
Rec./O.S./Amenity	0	0	0	0	0	0	0
School	0	0	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0	0	0
Housing	0	0	0	0	0	0	0
Parking	0	0	0	0	0	0	0
Public Transport	0	0	0	0	0	0	0
Miscellaneous	0	0	0	0	0	0	1
Sub-total	0	0	0	0	0	0	5
TOTAL	0	7	1	1	0	1	50

APPENDIX 3.3:

FORMS OF CONTRIBUTIONS-- FENLAND

	Agreements		Construct	Construct With	Donate
	With Contrib.	Pay		Joint-Funding	Land
Residential Projects					
Foul Sewer	7	3	4	0	0
Sewage Treatment	8	5	3	0	0
Sewage Pumping Sta.	0	0	0	0	0
Surface Drainage	17	0	17	0	0
Roads	24	1	24	0	0
Footpaths/Cycleways	18	0	18	0	18
Rec./O.S./Amenity	6	1	5	0	2
School	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0
Housing	1	0	0	0	0
Parking	1	0	1	0	1
Public Transport	1	0	0	0	0
Miscellaneous	0	0	0	0	0
Sub-total	83	10	72	0	21
Commercial Projects					
Foul Sewer	3	0	3	0	0
Sewage Treatment	1	0	1	0	0
Sewage Pumping Sta.	1	1	0	0	0
Surface Drainage	3	0	3	0	0
Roads	6	0	6	0	0
Footpaths/Cycleways	4	0	4	0	4
Rec./O.S./Amenity	1	0	1	0	0
School	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0
Housing	0	0	0	0	0
Parking	0	0	0	0	0
Public Transport	0	0	0	0	0
Miscellaneous	1	0	0	0	0
Sub-total	20	1	18	0	4
TOTAL	103	11	90	0	25

APPENDIX 3.3 cont.: Fenland

	Donate Easement	Sell Land	Maintain	Comm. Sum Maintenance	Comm. Sum Parking	Sell/Lease Below Market Cost	Total Contrib.
Residential Projects							
Foul Sewer	0	0	0	1	0	0	8
Sewage Treatment	0	0	0	1	0	0	9
Sewage Pumping Sta.	0	0	0	0	0	0	0
Surface Drainage	0	0	0	1	0	0	18
Roads	0	0	0	0	0	0	25
Footpaths/Cycleways	0	0	0	0	0	0	36
Rec./O.S./Amenity	0	0	1	0	0	0	9
School	0	0	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0	0	0
Housing	0	0	0	0	0	1	1
Parking	0	0	0	0	0	0	2
Public Transport	0	0	0	0	0	1	1
Miscellaneous	0	0	0	0	0	0	0
Sub-total	0	0	1	3	0	2	109
Commercial Projects							
Foul Sewer	0	0	0	0	0	0	3
Sewage Treatment	0	0	0	0	0	0	1
Sewage Pumping Sta.	0	0	0	0	0	0	1
Surface Drainage	0	0	0	0	0	0	3
Roads	0	0	0	0	0	0	6
Footpaths/Cycleways	0	0	0	0	0	0	8
Rec./O.S./Amenity	0	0	0	0	0	0	1
School	0	0	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0	0	0
Housing	0	0	0	0	0	0	0
Parking	0	0	0	0	0	0	0
Public Transport	0	0	0	0	0	0	0
Miscellaneous	0	1	0	0	0	0	1
Sub-total	0	1	0	0	0	0	24
TOTAL	0	1	1	3	0	2	133

**APPENDIX 3.4:
FORMS OF CONTRIBUTIONS-- HUNTINGDONSHIRE**

	Agreements With Contrib.	Pay	Construct	Construct With Joint-Funding	Donate Land
Residential					
Foul Sewer	10	3	7	1	0
Sewage Treatment	8	8	0	0	0
Sewage Pumping Sta.	4	4	0	0	0
Surface Drainage	6	0	6	0	0
Roads	0	0	0	0	0
Footpaths/Cycleways	0	0	0	0	0
Rec./O.S./Amenity	5	0	5	0	1
School	0	0	0	0	0
Other Public Bldgs.	1	0	1	0	1
Housing	1	0	1	0	0
Parking	0	0	0	0	0
Public Transport	0	0	0	0	0
Miscellaneous	1	0	1	0	0
Sub-total	36	15	21	1	2
Commercial					
Foul Sewer	0	0	0	0	0
Sewage Treatment	1	1	0	0	0
Sewage Pumping Sta.	0	0	0	0	0
Surface Drainage	0	0	0	0	0
Roads	0	0	0	0	0
Footpaths/Cycleways	0	0	0	0	0
Rec./O.S./Amenity	1	0	1	0	1
School	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0
Housing	0	0	0	0	0
Parking	5	0	0	0	0
Public Transport	0	0	0	0	0
Miscellaneous	0	0	0	0	0
Sub-total	7	1	1	0	1
TOTAL	43	16	22	1	3

APPENDIX 3.4 cont.: Huntingdonshire

	Donate Easement	Sell Land	Maintain	Comm. Sum Maintenance	Comm. Sum Parking	Sell/Lease Below Market Cost	Total Contrib.
Residential							
Foul Sewer	0	0	0	0	0	0	11
Sewage Treatment	0	0	0	0	0	0	8
Sewage Pumping Sta.	0	0	0	0	0	0	4
Surface Drainage	0	0	1	0	0	0	7
Roads	0	0	0	0	0	0	0
Footpaths/Cycleways	0	0	0	0	0	0	0
Rec./O.S./Amenity	0	0	0	0	0	0	6
School	0	0	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0	1	3
Housing	0	0	0	0	0	0	1
Parking	0	0	0	0	0	0	0
Public Transport	0	0	0	0	0	0	0
Miscellaneous	0	0	0	0	0	0	1
Sub-total	0	0	1	0	0	1	41
Commercial							
Foul Sewer	0	0	0	0	0	0	0
Sewage Treatment	0	0	0	0	0	0	1
Sewage Pumping Sta.	0	0	0	0	0	0	0
Surface Drainage	0	0	0	0	0	0	0
Roads	0	0	0	0	0	0	0
Footpaths/Cycleways	0	0	0	0	0	0	0
Rec./O.S./Amenity	0	0	0	0	0	0	2
School	0	0	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0	0	0
Housing	0	0	0	0	0	0	0
Parking	0	0	0	0	5	0	5
Public Transport	0	0	0	0	0	0	0
Miscellaneous	0	0	0	0	0	0	0
TOTAL	0	0	0	0	5	0	8
TOTAL	0	0	1	0	5	1	49

**APPENDIX 3.5:
FORMS OF CONTRIBUTIONS-- PETERBOROUGH**

	Agreements With Contrib.	Pay	Construct	Construct With Joint-Funding	Donate Land
Residential Projects					
Foul Sewer	1	0	1	0	0
Sewage Treatment	0	0	0	0	0
Sewage Pumping Sta.	1	1	0	0	0
Surface Drainage	2	0	2	0	0
Roads	1	1	0	0	0
Footpaths/Cycleways	2	0	2	0	2
Rec./O.S./Amenity	3	1	2	0	0
School	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0
Housing	1	0	0	0	0
Parking	0	0	0	0	0
Public Transport	0	0	0	0	0
Miscellaneous	0	0	0	0	0
Sub-total	11	3	7	0	2
Commercial Projects					
Foul Sewer	0	0	0	0	0
Sewage Treatment	0	0	0	0	0
Sewage Pumping Sta.	0	0	0	0	0
Surface Drainage	0	0	0	0	0
Roads	1	1	1	0	0
Footpaths/Cycleways	1	0	1	0	1
Rec./O.S./Amenity	2	1	0	0	0
School	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0
Housing	0	0	0	0	0
Parking	0	0	0	0	0
Public Transport	0	0	0	0	0
Miscellaneous	0	0	0	0	0
Sub-total	4	2	2	0	1
TOTAL	15	5	9	0	3

APPENDIX 3.5 cont.: Peterborough

	Donate Easement	Sell Land	Maintain	Comm. Sum Maintenance	Comm. Sum Parking	Sell/Lease Below Market Cost	Total Contrib.
Residential Projects							
Foul Sewer	0	0	0	0	0	0	1
Sewage Treatment	0	0	0	0	0	0	0
Sewage Pumping Sta.	0	0	0	0	0	0	1
Surface Drainage	0	0	0	0	0	0	2
Roads	0	0	0	0	0	0	1
Footpaths/Cycleways	0	2	0	0	0	0	6
Rec./O.S./Amenity	0	0	0	0	0	0	3
School	0	0	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0	0	0
Housing	0	0	0	0	0	1	1
Parking	0	0	0	0	0	0	0
Public Transport	0	0	0	0	0	0	0
Miscellaneous	0	0	0	0	0	0	0
Sub-total	0	2	0	0	0	1	15
Commercial Projects							
Foul Sewer	0	0	0	0	0	0	0
Sewage Treatment	0	0	0	0	0	0	0
Sewage Pumping Sta.	0	0	0	0	0	0	0
Surface Drainage	0	0	0	0	0	0	0
Roads	0	0	0	0	0	0	2
Footpaths/Cycleways	0	0	0	0	0	0	2
Rec./O.S./Amenity	0	0	1	0	0	0	2
School	0	0	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0	0	0
Housing	0	0	0	0	0	0	0
Parking	0	0	0	0	0	0	0
Public Transport	0	0	0	0	0	0	0
Miscellaneous	0	0	0	0	0	0	0
Sub-total	0	0	1	0	0	0	6
TOTAL	0	2	1	0	0	1	21

**APPENDIX 3.6:
FORMS OF CONTRIBUTIONS-- SOUTH CAMBRIDGESHIRE**

	Agreements		Construct	Construct With	Donate
	With Contrib.	Pay		Joint-Funding	Land
Residential Projects					
Foul Sewer	2	0	2	0	0
Sewage Treatment	1	1	0	0	0
Sewage Pumping Sta.	1	1	0	0	0
Surface Drainage	6	2	4	0	0
Roads	4	0	4	0	0
Footpaths/Cycleways	6	0	6	0	6
Rec./O.S./Amenity	5	0	5	0	4
School	3	0	0	0	3
Other Public Bldgs.	0	0	0	0	0
Housing	0	0	0	0	0
Parking	0	0	0	0	0
Public Transport	0	0	0	0	0
Miscellaneous	0	0	0	0	0
Sub-total	28	4	21	0	13
Commercial Projects					
Foul Sewer	1	0	1	0	0
Sewage Treatment	0	0	0	0	0
Sewage Pumping Sta.	0	0	0	0	0
Surface Drainage	5	2	3	0	0
Roads	6	0	6	0	1
Footpaths/Cycleways	3	0	3	0	3
Rec./O.S./Amenity	1	0*	1	0	1
School	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0
Housing	0	0	0	0	0
Parking	0	0	0	0	0
Public Transport	0	0	0	0	0
Miscellaneous	0	0	0	0	0
Sub-total	16	2	14	0	5
TOTAL	44	6	35	0	18

* Contribution of £200,000 by Tesco not mentioned in agreement, not counted in table

APPENDIX 3.6.: South Cambs. cont.

	Donate Easement	Sell Land	Maintain	Comm. Sum Maintenance	Comm. Sum Parking	Sell/Lease Below Market Cost	Total Contrib.
Residential Projects							
Foul Sewer	0	0	0	0	0	0	2
Sewage Treatment	0	0	0	0	0	0	1
Sewage Pumping Sta.	0	0	0	0	0	0	1
Surface Drainage	1	0	1	1	0	0	9
Roads	0	0	0	0	0	0	4
Footpaths/Cycleways	0	0	0	0	0	0	12
Rec./O.S./Amenity	1	0	1	2	0	0	13
School	0	0	0	0	0	0	3
Other Public Bldgs.	0	0	0	0	0	0	0
Housing	0	0	0	0	0	0	0
Parking	0	0	0	0	0	0	0
Public Transport	0	0	0	0	0	0	0
Miscellaneous	0	0	0	0	0	0	0
Sub-total	2	0	2	3	0	0	45
Commercial Projects							
Foul Sewer	0	0	0	0	0	0	1
Sewage Treatment	0	0	0	0	0	0	0
Sewage Pumping Sta.	0	0	0	0	0	0	0
Surface Drainage	0	0	0	1	0	0	6
Roads	0	0	1	0	0	0	8
Footpaths/Cycleways	0	0	0	0	0	0	6
Rec./O.S./Amenity	0	0	0	0	0	0	2
School	0	0	0	0	0	0	0
Other Public Bldgs.	0	0	0	0	0	0	0
Housing	0	0	0	0	0	0	0
Parking	0	0	0	0	0	0	0
Public Transport	0	0	0	0	0	0	0
Miscellaneous	0	0	0	0	0	0	0
Sub-total	0	0	1	1	0	0	23
TOTAL	2	0	3	4	0	0	68