



Property Rights and Planning*

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1. INTRODUCTION

The central issue in land use planning is land use. The goal is to attain the optimum use of land as spaces for activities and channels for communications.¹ How, then, is land use determined? The answer is, primarily by the land owner, arising from property rights in land.² Furthermore, planning provisions are still often referred to as restricting the right of owners to do what they want with their land. A discussion of the relationship between property rights and planning is warranted.

'Rights' here means legal rights. 'Legal rights' implies a civilized society with a government. In the English legal system and the legal systems of countries that have adopted the common law system, these rights arise primarily from custom, legislation, or the court decisions of the common law. In law, rights and duties define what people can and cannot do. Remedies are provided to ensure that the rights and duties are observed. In land law, they define the relationships between people and land, and between persons in relation to land. Governments, expressly or tacitly, have in the past promoted, and continue to promote the private ownership of land by ensuring that the

legal system is in an appropriate form for it to flourish.

The essence of the idea of property is *exclusiveness* - that a person can have the right to something to the exclusion of all others. As applied to land, it is believed, in support of private individual land ownership, that the selfish orientation of human nature will lead to more efficient land use than land held in common; and that there will be more incentive to effect improvements to the land, including necessary buildings (the right to erect buildings and effect other improvements being an important part of the use right).

Originally, property rights in land were protected by private, common law: land law, and the law of torts in respect of trespass and nuisance. Later, legislation such as building and health bylaws, and town planning acts and schemes, started being used to regulate land use, and these had the effect of determining, in part, what property rights an owner had. They also introduced criminal type remedies and these brought property rights into the domain of public law. Although public law involves public authorities, and often promotes public interest, it is just as concerned with promoting individual interests. Such law is generally enforced by public authorities - an advantage to a large section of the community - but to some extent can be enforced by individuals, and individuals still retain their traditional remedies for enforcing their property rights.

1 The terminology of McLoughlin (1969) p 34, derived from Chapin (1965).

2 As explained shortly below, there are two rather different aspects of property rights in land: the rights to hold and dispose of land, and the rights to use and enjoy. Sometimes the former, but mainly the latter will be the subject of discussion.

In what follows, firstly the philosophy of property rights will be discussed. Much of the literature on property and property rights discusses philosophical issues and these have had a significant influence on planning. The other aspect dealt with is the 'mechanics' of property rights in land, that is, how they work.

2. PHILOSOPHICAL AND POLITICAL INFLUENCES

The English-speaking countries have inherited the British tradition, related to the influence of the powerful land owners, of considering private ownership of land, and the owner's right to determine the use of land, of the utmost importance. Some public ownership has always been accepted as necessary, but any move by the public sector to acquire more land, or to regulate land use, has and will be greeted with suspicion and opposition. These attitudes are reflected in the actions and decisions of the political and legal systems. Not necessarily undesirably, the history of land use planning reflects the need to fully justify inroads into these attitudes, and to develop and manage planning systems that are a compromise between them and the reasons for land use planning. The degree to which these attitudes influence action varies from country to country, as can be seen in differences in the various planning systems.³

The basic, much argued, philosophical question then is: to what extent should the choice of land use, in all its ramifications, be left to the individual land owner? To avoid making a nonsense of the concept of private ownership of land, it is agreed that the owner should have a reasonable amount of choice. But within that, there is still the issue of whether, on the one hand, the owner should have a liberal right to decide on almost any land use, or whether, on the other hand,

3 The greatest restrictions on private property owners seem to have occurred in Great Britain; restrictions seem hardest to impose in the United States; and New Zealand, Australia, and Canada are in between. Looking at this issue more broadly, most planners will agree that the form of a city, say, will be rather different if the public authorities impose fairly strict ideas of future of form, rather than let the private sector make the decisions within a looser framework.

government should have significant involvement in that decision. The question of how much freedom of choice has to be weighed against other philosophical and practical considerations. There is always room for more or less of any attribute. Philosophy provides a moral basis for allocating property rights in land.⁴

Immediately prior to the introduction of land use planning an owner had wide powers of deciding on use, the principal legal restrictions being the law of nuisance - protecting others from the creation of harmful and unjustifiable nuisances; and, in urban areas at least, health and building bylaws. Land use was determined by persons owning land, inheriting land, or acquiring ownership of land in the market place, and deciding on the use their land should be put to. Another option was, of course, acquiring land with an existing use they wished to continue. But land use planning is concerned primarily with land use (services and facilities are almost invariably *ancillary to* land use although some *do* involve land use), and its very existence implies that land use decisions cannot be left entirely to the private land owner. A greater input of public policy is required into the use of land than is the case with the common law, *laissez faire*, approach.

This is particularly so for urban areas, where some services and facilities have to be provided by government if some minimally acceptable environmental standard is to be achieved. Thus an urban area cannot develop solely as a result of private sector decision making. Theoretically, it may be possible to have a minimal form of land use planning where public services, facilities, and land uses are provided in response to the decisions of private land owners, but as a matter of practical government, this has never been

4 The predominant philosophical issue discussed in the literature is the idea of property and private property generally. There has been much writing on this, and is what many books on "Property" deal with, for example *Property: Its Rights and Duties*; and Macpherson (1978). These help to provide the basis for a philosophical approach to property rights in land.

seriously considered. Amongst other things, it would be a very inefficient use of resources.

Therefore, land use planning has meant governments becoming involved in decisions for the use of privately owned land, beyond nuisance and bylaws,⁵ which from the liberal starting point is seen as a restriction on the private use right. This is a philosophical position. It is clear that in a civilized society government has to determine the basic use rights that will be accorded private land owners, so the debate should be as to *what* rights should be so accorded (including, broadly, whether the right should be a general right to choose land use, or whether the rights should be more specific, where some of the choices have already been made), and as to where the starting point should be in thinking about the matter. As a matter of customary *modus operandi*, governments of western democracies *do* start from the point that the private owner has the right to decide how land is used, and then consider what limitations and modifications of that right are necessary. But it is also a fact that quite specific determinations of use rights are now made by government. Accordingly, it is becoming an anachronism to see land use regulation as a restriction of private property rights rather than as a positive way of rationally and fairly determining them.

As mentioned below, government may have the right to the compulsory acquisition of land “for public uses or to put some policy into effect.” There are a wide range of public uses from the traditional roads, public reserves, and land for public utilities, through the provision of civic amenities, to small or large scale public land development projects, the ultimate being new towns, as in Britain and elsewhere. In all of those cases the public

5 Usually in a jurisdiction there is a principal planning statute, and perhaps one or two closely related acts such as for subdivisional approval and public works. This is what is normally in mind here. But there can be other legislation affecting property rights in land in various ways passed from time to time, for example walkways legislation which may enable public rights of use to be created over private land.

authority determines the purposes for which the land will be used. As owner of the land it can decide what it will do with it, and from the planning point of view, either the developer *is* the planning authority, or the new town authorities are authorized to determine land use – obviously rather different from determining land use by regulating a myriad of private owners. Subsequently, in a new town, land could be sold to private owners and be subject to the usual regulation, or retained in public ownership with use regulated through leasehold covenants, tenancy agreements, or the like. The two philosophical issues here are firstly whether compulsory acquisition is acceptable in all of these cases (sometimes the land *is* acquired in the market place); and secondly whether government should be involved in the large-scale, direct determination of land use. That was certainly accepted in Britain after the Second World War, because it was thought that this was an important way to tackle overcrowding in the major urban areas, and that this approach could only be taken by the public sector.⁶

While on this question notice that often central government will not allow itself to be bound by the planning act. This is usually because planning is in local government hands and central government will not allow itself to be told what to do by local government. Sometimes central government will allow itself to be bound in respect of certain uses, for example housing, or may try to observe planning provisions as a matter of courtesy. This aspect, then, is perhaps more a matter of practicalities than philosophy, although there are the questions of fairness and of keeping limits on the exercise of governmental powers.

6 There are examples of private new towns, such as in the United States, which have served the community well, but they were not to achieve the broad objectives sought in the new town programs – rather just for urban fringe development. In the Antipodes, Canberra is the outstanding example of a public ‘new town.’ Capital cities seem to be a popular subject for whole or partial new-town type development – Washington, New Delhi, Brasilia, etc.

3. THE MECHANICS OF PROPERTY RIGHTS IN LAND

3.1. Classification of Property Rights in Land

A broad classification of property rights in land is into the rights to hold (or possess), use, enjoy, and dispose of land.⁷ It is useful to pair these off into 'hold and dispose' and 'use and enjoy.' Corresponding to these pairings are the issues of who can and does hold land; and what an owner can decide to do with a piece of land. Each pair refers to significantly different aspects of property rights in land, and different considerations apply to each. Historically, land law (a considerable body of law) and the tort of trespass dealt with the 'hold and dispose' aspect. At common law, 'use and enjoy' was dealt with merely under the tort of nuisance.⁸

4. SUBDIVISION

This is an important preliminary issue. It is relevant both to 'hold and dispose' and 'use and enjoy.' In changing social and economic conditions, and with urbanization, instead of a small number of large land holdings, more and more people became landowners, often of relatively small parcels. If myriad persons are to own land, it becomes important to know who owns what land. Hence the first step in this direction was the development of the practice of subdividing using the skill of the land surveyor. Systems were also needed for recording the ownership of the individual plots. In England a rather cumbersome "Deeds" system is used, but dealing with land was considerably facilitated by the introduction of registration of titles systems

7 These, and what are embraced by them, are sometimes called the 'bundle of rights.' Other classifications are also used. For example Honoré (1961) refers to six rights: to possess, to use, to manage, to the income, to the capital, to security; to two incidents: of transmissibility and of the absence of term; and to the prohibition of harmful use, and liability to execution.

8 As mentioned below. This emphasis corresponds to the attitude of the early days when an owner could do what he wished with his land so long as he did not harm anyone else. It was later government regulation of land use that brought the rights to use and enjoy into prominence.

such as the Torrens system, for example, into South Australia and New Zealand.

As well as enabling plots of land to be accurately identified, survey and subdivision acquired added significance later when lot size and design, the proposed use of the lots, and the process of approving subdivisions became important aspects of planning – in fact, the importance of this in determining the form of development and the use of land has probably been underestimated. This may be partly because at first, and for some time, subdivision approval was dealt with under legislation and processes separate from planning. But it was often the first occasion on which a development proposal was considered by the authority. In the history of land use control legislation, you can see the gradual merging of subdivision control and planning generally.

5. THE RIGHTS TO HOLD AND DISPOSE OF

These rights enable land to be held in public or private ownership. Obviously, whether a piece of land is public or private makes a huge difference to how land use planning sets about its business. If there is no private ownership of land, land use will be determined by government (subject to it possibly delegating some of that power). With private ownership, land use planners deal with private land owners. There will always be a certain mix at any point in time, and this may change with public (possibly compulsory) acquisition of private land, or by privatization of public land.

Planning largely has to accept the status quo, but can have policies and proposals that involve change into public ownership (eg public works, recreation land, newtowns, public housing projects); or into private (making public land available for private development). The often controversial nature of such proposals or action reflect the different attitudes of different people to public or private ownership, and this is also reflected in the machinery available for the same, for example statutory restrictions on

the purposes for which private land can be publicly acquired.⁹

As well as guaranteeing security of tenure, the rights to hold and dispose of land, together with the right at large to acquire land, ensure that private ownership of land is possible, and also that a market in land is possible. The principal detraction from that is government's right to compulsorily acquire land, for example land needed for public uses or to put some (planning?) policy into effect. All jurisdictions reserve this right - usually referred to as compulsory acquisition, resumption, or eminent domain - and private ownership is never absolute. Usually all land is originally owned by the state, and private ownership is granted by the state with eminent domain reserved. Much land remains in state ownership, but in urban areas in particular it is mostly privately owned. Of course, this historical explanation of compulsory taking is not of much interest to the typical land owner who thinks of his or her right to hold as absolute and compulsory acquisition as a gross interference with it.

The other pair, the rights to use and enjoy, are the area of principal concern to land use planners, and a discussion of them follows.

6. THE RIGHTS TO USE AND ENJOY.

"Enjoy" is broader than "use." It is an expression little discussed in the literature and seems to cover forms of enjoyment other than physical use, like receiving rents from leased land, or just holding land and obtaining increments in value. "Use" by someone in possession covers *passive* enjoyment, although the discussion of "use" more often relates to development, the owner's interest being in what they can do with the land (possibly involving a change in nature or intensity) rather than how it affects others. *Use* is what persons are commonly thought to do with land, so the use right does present

itself as the significant one to think about. Use is the common form of enjoyment, and if the owner is not using the land, someone to whom the right has been assigned, for example a lessee, may be.

Therefore, concentrating on the right to use, it has always been a function of the legal system part of government through property rights in land to determine what it will be, although this has changed from a "hands off" to a "hands on" approach. As a practical, behavioural matter the 'right to use' means the right to determine the use of the particular piece of land owned (including erecting buildings and effecting other improvements), and to put that determination into effect, on a continuing basis.

As a preliminary point, modifying or determining property rights is not the only way of implementing land use planning. For example, taxes and subsidies may be used to encourage private owners to modify their land use decisions. An absence of services and facilities, intentionally withheld, may make development impractical or unattractive. But specifically determining the right to use to some extent has become part of planning, and it is impossible to visualize land use planning without *some* involvement in determining the right to use land. Usually, there is a *substantial* involvement.

In the new land use planning and land use regulation regime, as well as it being more restrictive, land use rights are now more specific. There is no doubt that owners' ranges of choice have been narrowed, but their certainty has probably been increased, provided the use rules are not too frequently changed or departed from. (In the old regime, how would owners know whether they are likely to be sued in nuisance by a neighbour? How would they know what uses might be established on neighbouring properties?) In fact, *how* they make their choices has changed with zoning. Instead of buying pieces of land and deciding to put them to a certain use, prospective owners buy pieces of land,

⁹ An historical study of the relevant legislation will show how this issue is a bit of a political football. It has also been mentioned above as a philosophical question.

suitable in terms of zoning as well as other characteristics for the use they wish to carry out. Provided there is a good range of suitably zoned land to choose from, this method is probably, overall, more beneficial to the owner than the method it replaced.

As mentioned above, what gets most attention is the owner's right to actively continue, develop, or change the use of a piece of land. But most owners not only want to positively pursue their use rights, particularly to continue an existing use, but also, perhaps primarily, want not to be negatively affected (that is, not to be prevented from or limited in continuing to enjoy their land use) by how others use their land. Therefore, more certainty as to neighbouring land uses - something that should be achieved if zoning is being used properly - is for many persons a more important aspect of property rights in land than choice and certainty in developing or changing a use. Freedom, for them, is freedom to continue their existing uses without interference.

In another perspective, the more specific right to use, emphasizing restriction as much as authorization, also involves the *duty*, in relation to other land owners and users, or the public generally, to use land only in accordance with the use rights. Although owners have the right to enjoy the use of their land, by virtue of the restrictions on land use they also have a duty to allow other owners to use their land in accordance with the use rights, there now being more emphasis on them being reciprocal rather than unilateral.

Incidentally, the public at large can have rights to use land. Some publicly owned land, such as roads and public reserves, is customarily available to the public generally, although in other cases government, perhaps in the name of the Crown, will exercise its property rights like a private owner and prohibit or restrict general entry onto it by the public. As regards privately owned land, there are devices for enabling some public use, in particular the

easement in gross which may for example allow the public to use part of some private land as a right-of-way.

Public authorities also have an interest in property rights being properly exercised. For example, they can expect demands on services to be in accordance with the permitted uses, and not to be excessive due to illegal use (in return, an owner using land in accordance with a permitted use can expect not to be interfered with by a public authority). As a land owner, Government or the Crown, with its powers and immunities, partly follows normal rules, but is in a special position because it can directly use its powers to uphold its occupation and use of land, and can exercise its prerogative not to be bound by ordinary rules of law.¹⁰

As a slight digression, notice how the macro and micro aspects of land use planning have developed. Although it is primarily concerned with the broad arrangement of uses, services, and facilities in an area, it has also become deeply involved in regulating the micro relationships between uses on adjoining or nearby land to minimize incompatibility and detrimental effects. You can see how both aspects are reflected in the use rights under a planning scheme, the micro issues perhaps mainly accounting for the detail sometimes necessary. A similar issue is the way planning provisions may benefit or affect the public in general on the one hand, or specific land owners on the other.

7. EXPRESSING USE RIGHTS

Another issue is how a use right will be expressed. It may be expressed in terms of what the owners should not do, in which case they can do everything else; or in terms of what they can do, in which case they cannot do anything else. However, they may be given a choice of a range of permitted uses, which may give an adequate freedom of choice, and limitations are compensated for by the

¹⁰ For example, the Crown is not bound by a statute such as a land use planning act, unless the statute specifically says it is.

benefit of certainty. Obviously, zoning is in mind here. In the case of a typical residential zone there is another factor – the owner may not need or want much freedom of choice. *The* permitted use gives the owner all he or she wants. So long as there are adequate amounts of land suitably zoned available, choosing a site is the only choice needed.¹¹

However, it may not be practical or desirable for all uses or activities to be authorized to be undertaken as of right, as with a permitted activity. The zoning method envisages that there will be activities, or a group of activities, that can satisfactorily be allowed to exist together in a zone without any enquiry except as to whether they are of the type permitted. In other cases, the one-off, somewhat different type of activity has to be considered as it arises to see whether it is suitable for the zone. It may be an activity that generates detrimental effects and requires conditions tailored for the situation to enable it to fit in. Or the unusual activities are not common enough to enable the idea of a zone of like uses to congregate, to be put into effect. There is also the problem of providing enough zones for all the less common activities¹². Often it is impossible to foresee every use/activity for which there may be a demand, or where someone might want to locate it. For all these reasons some uses have to be authorized *ad hoc*.

In relation to zoning, various devices may be used – discretionary activities, non-complying activities, waivers and dispensations, and so on, or a broad resource management approach. There is also English development control where zoning is discarded and virtually all new uses /activities are authorized *ad hoc*, although development plans firm up the options somewhat. In all of these cases of

11 This is not to say that a range of types of residential zones cannot or should not be provided for, but the point is that it may not be necessary to provide choice *within* a zone.

12 Of course, if an unusual use *is* compatible with the other uses in the zone it may be included amongst the predominant uses if the need for it is foreseen.

ad hoc decision making, the decision making process becomes important. It needs to be open,¹³ and with an opportunity for all interested parties to participate. A multi-tiered decision making structure with rights of appeal will probably be needed as a further check on fairness, impartiality, etc.

The significance of all this *ad hocery* for use rights in land is that they are not determined until some official decision is final. They are possibly gradually firmed up – development plans and lists of discretionary activities in a district plan narrow the range of possibilities down initially – but other proposed uses/activities are unusual or unexpected and can only be dealt with completely *ad hoc*.

As far as the merits of this is concerned, the issue is sometimes discussed as certainty *versus* flexibility. These two values have to be traded off against each other, and any particular system represents the best trade-off that can be reached. An important aspect of *certainty*, though, is its relationship to freedom of choice. People want to be free to make choices that they know they will be able to carry out.¹⁴ A developer may use a device such as an option to buy land subject to getting consent for the desired use, because of the uncertainty involved in committing to a purchase before that. *Flexibility* is desirable

13 To avoid particular individuals being favoured, throwing the system open to corruption, unfairness, or nepotism, the law prefers provisions to be of general application, so that anyone can benefit from them, and so that they are not made with any particular individual in mind. Zoning goes some way to meeting this requirement when properly used, but there are still problems such as zoning changes and drawing zone boundaries. When this principle cannot be applied, an open process is one of the best compensations. On the question of corruption, the relationship between that and the exercise of a discretion is frequently illustrated in practice.

14 Notice that this issue can be a little confusing because whilst some person's idea of freedom is to be able to buy a piece of land knowing what he or she will be able to do with it and proceed to do that, another sees it as being able to do what *they* want, whether authorized or not – perhaps the essence of the problem of certainty v. flexibility. On this issue see Dunham (1964).

particularly to encourage innovation, originality, and variety. From a property rights point of view, a disadvantage of flexibility is not being able to readily ascertain what your rights are or are likely to be.¹⁵ Also, it may be expensive and time-consuming to acquire the necessary rights. All of this detracts from the philosophy of rights and duties, as the ability to find out what they are is an important element. All that can be said in summary, then, is that in this respect the nature of land use and land use planning makes it impossible to attain a perfect system of property rights as far as the use right is concerned, but it can only strive for the best possible solution. This is no worse than the common law, *laissez faire*, situation (incidentally, the law of nuisance remains in force though of less significance), but if you are going to set up an elaborate system of use rights, there is an obligation to make it as certain as possible, and also to provide for matters that cannot be dealt with in this way. The issue will always be controversial, because there will always be some people who want more certainty, and some who want more flexibility.

8. SOME CONCLUSIONS

The principal conclusion, therefore, is that the old idea of an owner being able to do what he wants with his land has gone by the board. Instead, the right to use is determined in and by the planning process. On the initial introduction of land use planning to an area, owners' rights to use are affected – from virtually whatever they wish to what the system or scheme provides. Their main protection is for the plan provisions to be, as far as possible, fair and reasonable and supportable on good planning grounds. One common safety valve was the existing use right – the owner may carry on using the land in the way he has in the past, but his right to change that is now determined by the planning provisions.

15 Also, and more importantly for many people, it means uncertainty as to what might happen on neighbouring land.

Anyone who buys land after the planning provisions are in place¹⁶ (the common situation nowadays) can ascertain what property rights he or she is acquiring, although only up to a point. As just mentioned, the use right is 'deficient' in respect of certainty. Adding to what was said, there is the matter of plan or provision/rule changes. In that case it can truly be said that owners' valuable property rights are being affected. Fortunately, in growth situations changes usually mean an increase in value, but if not the question of compensation arises (which, however, as a technical issue has never been satisfactorily resolved).¹⁷ Remember also the property rights of persons who merely want to passively enjoy them and are affected or potentially affected by someone else's development. The points about uncertainty from the use determination process or from change apply just as importantly to them.

As far as the right to hold and dispose of land is concerned, this has not been affected substantially by planning except for the taking of land for planning purposes. Urbanization has increased the demand for land for public purposes and this will have detracted from the right to hold and dispose for some owners. This is recognized by the payment of compensation, although not necessarily adequately. Fair market value is the usual standard, but this does not take account of the cost of a forced sale and removal, fair market value being determined by the actions of willing sellers.¹⁸

16 Not forgetting that there will probably be interim powers of control while the scheme is being prepared – usually, of necessity, of a somewhat arbitrary nature.

17 Notice that the distinction between the rights to hold and dispose, and the rights to use and enjoy, is highlighted in the conceptually different compensation for the taking of land (mentioned in the next paragraph), and compensation for the loss of use rights. Of course, the value of a piece of land reflects the use rights attached to it, but the difference is between having your land taken in entirety, and just losing some of your use rights.

18 Illustrated by an attempt to deal with the problem to some extent in The Public Works Act 1981, ss 72-76, "Additional Compensation."

9. PRIVATELY DETERMINED PROPERTY RIGHTS

Thus far the discourse has been about the determination of property rights in land by government. But Government (in the broad sense covering the judiciary as well as the legislature, the executive, and the administration), through law, may empower private persons to make property rights arrangements amongst themselves, within and not contrary to the general law (especially planning plans). For example, restrictive covenants are an arrangement¹⁹ between certain property owners whereby one owner agrees not to exercise his or her use rights in certain ways (or to exercise them in certain ways, although, strictly, restrictive covenants should be negative) for the benefit of the other owner or owners (or there may be mutual obligations and benefits). For example, not to build a building over a certain height, or to use the land only for certain purposes. Originally, the restrictive covenant was between two parcels of land, the dominant tenement and the servient tenement. Later the "Building Scheme" approach was developed under which all parcels of land part of a single comprehensive subdivision could be subject to and benefit from certain specified restrictive covenants.²⁰

As another example, under a lease or licence, in some cases involving a partial assignment of the rights to hold and dispose, owners may allow some third party to exercise some of their use rights, probably in return for a payment. The other property rights are retained by the owner, all this being spelt out in the lease or licence. With generous provisions, a lessee can be put in a position approaching that of an owner. Other arrangements are recognized by the law, and altogether there are various ways the

19 Arising from common law, but possibly also recognized by statute.

20 See, for example, Delafons (1969) pp 85ff. The relationship between these private arrangements and planning schemes seems to be that the former cannot override the latter, and that there cannot be any detraction from the provisions of the scheme to the detriment of third parties.

property rights may be split up and distributed amongst more than one separate person.

10. FINAL SUMMARY AND CONCLUSION

Property rights in land consist of the rights to hold and dispose of land, and the rights to use and enjoy land. The rights to hold and dispose are not seriously affected by plan provisions (except for a proposal involving compulsory acquisition), but the rights to use and enjoy are. At common law, a land owner had the right to determine the use of his or her land. Most land is privately owned (especially in urban areas) and land use is therefore determined primarily by private land owners through the exercise of their use rights. But because land use planning deals principally with land use, it must deal with property rights in land. It not only deals with them but usually goes a long way in determining what they are. Determining land use is now a joint exercise between land owners and the planning authority. A conception of land use planning as determining property rights in land, especially the use right, will, it is believed, help the land use planner to carry out his or her functions.

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