

Thesis: An Economic Analysis of Town Planning Institutions

Course: MSC in economics (1 year)

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Main Question: What are the fundamental economic trade-offs experienced in different planning systems and how do these influence planning outcomes?

Abstract

This thesis will look at the profession of Town Planning from an economic perspective utilising New Institutional Economics (NIE) to focus on how different institutions and structures bring about trade-offs. As planning systems have considerable influence over property rights (the ability to affect one's own lands) and over transaction costs by intervening in land markets, they are strongly contested with doubts being expressed over their rationale and existence. The key planning instrument is the land-use plan which aspires to steer development and infrastructure of an area and achieve social benefits. The level of detail and binding nature of land use plans are important considerations as interests involved in land markets are affected by decisions made in the planning system. The dimensions of flexibility, negotiation possibilities, public participation, co-ordination and enforcement incur differences in development outcomes and in controlling externalities. The planning systems as found in the UK, the Netherlands and Houston in the US are chosen to due to the differences in terms of expectations of what their planning systems should achieve outcomes and how it should occur. The 3 different systems were found to have different results according to these dimensions result in different trade-offs and outcomes with flexibility and co-ordination playing large roles. It is significant that all 3 planning systems gone through recent reforms to correct some the negative aspects that different emphasises on the dimensions has caused.

Key Questions:

- What is the rational for the existence of town planning institutions?
- What are the major transaction costs and role of property rights within planning systems?
- How do each of the planning system deal with flexibility and certainty in planning systems and being bound to land use plans in the long run?
- How are the different planning systems capable of dealing with externalities, complex information with a multitude of actors and public participation

SECTION 1

1.1 Introduction

This thesis looks at 3 different planning systems as in the UK, the Netherlands and Houston, Texas in the USA. These were chosen due to their differing characteristics in relation to flexibility in decision making, emphasis on land use plans, use of co-ordination in combating externalities, public participation and the scale of decision making. Development in each the cases studies are influenced by their planning institutions which have been place in their modern form since post World War 2. This has resulted in different outcomes to the extent that the physical development of Houston is very unlike that found in the Netherlands and the UK due to the different emphasises placed on the importance of the difference characteristics. This can be seen through the differences in terms of urban form, density, transport etc which impacts upon control of externalities, quality of life and freedom to develop one's own lands. This informs the intention which is to look at the different economic trade-offs experienced in different planning systems according to how they implement town planning and the influence on planning outcomes.

The Netherlands serves as an illustration of a system that is very strict on implementing land use plans while the UK places greater emphasis on deciding on planning applications on a flexible case by case basis which have the option of considering relevant land use plans. Although Houston is a municipality (albeit free from interference) within the USA, it serves as a useful counterpoint due to its emphasis on market led town planning and more specifically its non-zoning tradition, i.e. specific locations are not designated for a particular land use such as residential or industrial. Institutional analysis, via the principles of New Institutional Economics (NIE), in particular the use of transaction costs and property rights, are used to inform the analysis and findings. It is intended that this will highlight the benefits and costs of the different planning systems and allow for judgements to be made on the trade offs of the different planning systems.

Town planning can be defined as an attempt to manage or control the physical development of an area. *Land use plans* are documents that try to ensure that land is used efficiently in the future and usually contain maps and written policy. Town planning objectives are geographically based and aims to provide well located development in order to encourage production minimise externalities and maximise welfare (Webster 2005).

The *first section* looks at the debate over the rationality of planning institutions and the related economic theory. Afterwards in *section 2*, the concepts of transaction costs and property rights are explored in greater deal as well as the role of social behaviour and integrity of the system (probity). In *section 3*, land use plans are investigated along with the factors of co-ordination, negotiation, public participation as well as enforcement issues that affect how a planning system operates. Following on in *section 4* are 3 case studies, in order to gain insight into outcomes and trade-offs brought about by the different characteristics of the 3 planning systems. Finally in *section 5*, there will be a discussion and conclusion of the main findings.

1.2 Characteristics and objectives of Town Planning

The rationale for public intervention in town planning in economic terms lies in resolving externalities and co-ordination problems that occur frequently in land use markets. There are many externalities that are in the remit of planning institutions with the most notable being externalities associated with transport, pollution and viability of services that are closely associated with the different development forms. In developed countries, land use planning is usually seen as an extension of social and environmental policy for ordering land, resources, facilities and services to ensure that land is used efficiently for the benefit of the wider economy and population (Buitelaar 2010). A land use plan usually consists of written policy and zoning maps which sets out the future intentions of the planning authority and act as a development blueprint. The typical zoning designations involve projecting for the next 5-10 years where residential, commercial, industrial development or a mixture of land uses should be located, taking into account, current and future

infrastructure and services. A location may be refused for development due to incompatibility with a land use plan.

This form of town planning is common although there is significant differences most notably where development control does not depend on the land use plans. This means that land use plans may only be a *consideration* and not strictly binding for development in a specific area. Houston is notable for not using an active zoning system at city level, instead relying on a city wide rules and private actors to fulfil many planning duties. This is not the case in the other two case studies (the Netherlands and the UK) where these functions are carried out by the public sector actors.

Town planning functions include providing the information needed for informed market choice through provision of land use plans that set out long-range population, economic, and land-use projections in an appropriate manner. By delivering future information, consistency and certainty, persons involved in the land markets can protect their investments from the harmful side effects of neighbouring activities (Buitelaar 2010). In Houston this role is minimised by the local government who do provide basic support infrastructure such as roads and electricity but otherwise depend on private developers and actors to steer development, subject to city wide ordinances.

In addition, achieving planning objectives can be supported by taxes from local, regional or national level. An example would be the UK having a greenfield taxes to discourage development on previously undeveloped lands while the Netherlands has subsidies to incentivise development in desired locations. The extent of harmony between using these instruments (i.e. taxes or subsidies) are important to providing an efficient planning system and minimising externalities. It is difficult to define what constitutes an efficient system but an example is control of industry in dense urban areas to stimulate agglomeration outcomes through providing co-ordination, support services and infrastructure (Burdett & Sudjic 2007:62). Other planning objectives involve social outcomes such as equity, integration and amenities, i.e. correcting the excesses of the market and countering the power incumbent asset owners have in the development of an area.

Consistent in town planning and economic literature is the difficulty of measuring planning success in economic terms particularly with intangible aims such as the "common good" and social welfare. Considerations of social objectives are important as town planning functions affect the welfare of people via regulations and land use plans (Cheshire 2004:620). Planners are usually tasked with fulfilling social and environmental aims with even non-human actors and future generations being considered (Klosterman 1985:6).

Modern planning objectives have evolved from the post World War 2 reconstruction needs which saw the emergence of public sector actors such as town planning institutions. However in the late 1970s town planning became increasingly considered as a burden to individual freedoms and the functioning of free market economy for land markets (Webster 2005). Greater flexibility and the loosening of rigid planning rules were brought in to encourage the town planning system to be more in line with market pressures, i.e. less restrictions on land development (Tasun-Kok 2008:187). Since then, planning perspectives have also incorporated more participation and environmental concerns as well as aiming to be more responsive to economic and social trends.

The question of flexibility in a planning system is one which causes a significant amount of discussion and will be explored in *section 3*. Discretionary refers to a planning system that evaluates planning application on a case by case basis (on its own merits). This in contrast to a *codified* plan which places greater weight on certainty, rules and long term land use plans as the basis for planning decisions (Webster 2005).

1.3 Economic theory in relation to town planning issues

Externalities occur where the effects of production and consumption are not taken into account in the process of market exchange. Thus competitive markets may engage in actions that do not reflect their costs, e.g. pollution emitted from motor vehicles (Klosterman 1985:5). The typical solution is to introduce a tax to internalise costs from external effects to those who are responsible, i.e. equalise the internal costs to the cost of external damage (Vatn 2010:1245). Traditionally planning either bans or allows development with no allowance for a more fluid approach. However, negotiation has

recently become a means of extracting of planning gain from proposed developments. This can accommodate variable planning payments for certain outcomes and bring in more flexibility. Although there are likely to be problems when a polluting land use pre-dates planning regulations, negotiation is likely to be more efficient than inflexible regulations or land use plans that bans a polluting land use outright (Webster 2005). However potential obstacles to efficiencies within an unrestricted land market exist where there is imperfect knowledge or where one party has a greater degree of power in transaction. An example is someone with access to expertise and capital being more likely to receive a planning outcome in their favour. Political pressure can also cause inefficiencies via interests competing for an arbitrary decision in their favour via lobbying (Paavola & Adger 2002:1).

There are distinct market difficulties with public goods being assigned property rights or restrictions, e.g. a public park which may have high social benefits that cannot be easily monetised and thus be underprovided. There are also clear incentives for public actors to free-ride where public goods are provided, resulting in under-provision and over-exploitation (Klosterman 1985: 3-4). When one's land investment produces (and is impacted by) externalities confined to local neighbourhoods, private agreements should be sufficient to manage the dependencies. However, land uses have the characteristic of being highly interdependent and having externalities that extend beyond the area.

Regarding the question of why society chooses zoning or not, Lai (2005) in his review of institutional economics suggests that it is due to public choice, i.e. a means to reduce the transaction costs of competition for resources. North (1990) believes that institutions who fail to reduce costs in the long run will be replaced by more efficient alternatives. If the operation costs of an institution are not offset by the benefits of sustaining the institution, it will be eliminated as a result of public choice (North 1990 & Corkindale 1997:4). Countering land market negative externalities has caused many countries to devise public based solutions such as building regulations, public acquisition and a co-ordination approach, many of which have been sustained for the last 60 years.

Pigou (1932) suggests that public control of certain private decisions to co-ordinate private decisions can result in superior social outcomes. This is countered by Coase (1960) who states that only limited government intervention is needed to improve welfare, primarily

through facilitating negotiation. This would involve aiding buying and selling development permits to orient private actor's choices towards socially shared goals, i.e. externalities are controlled through private negotiation instead of a public planning system. The main role of the government would be to facilitate efficient bargaining solutions by establishing a clear system of property rights (Webster 1998: 64). Coase (1960) notes in a world of zero transaction costs public policy intervention are unwarranted as public intervention itself incurs transaction costs particularly in relation to complex co-ordination issues. However in reality there are transaction costs tied to the private negotiation between the actors and identifying where externalities are generated. The existence of private transaction costs as well as externalities means that socially beneficial outcomes may not occur. This can act as a rationale for public actors to intervene and internalize the costs Dawkins (2000:508).

Property rights are an important aspect of NIE and reflect the balance between the state and the individual in ownership of land. According to Coase, the main objective of planning institutions should be to facilitate exchange between property owners and other interested actors. The prevailing situation in town planning does not reflect this as one still requires development permission from the planning authorities instead of bargaining among interested parties (Cheshire 2006:627). In Houston, although there is no zoning regime or formal planning authority one must still comply with an extensive ordinances and private deeds leading to the situation of being bound by strict planning laws despite the freedom rhetoric. Property rights for the use of land are also affected by the extent of public participation, co-ordination consideration and negotiation possibilities.

According to Webster (2005) the arguments for restricting town planning are based on not hindering entrepreneurial initiative, impeding innovation, and imposing unnecessary burdens on the economy. Town planning transaction costs occur in the form of negotiating, deliberating, consulting, making plans, regulating and enforcing. A typical occurrence is that many the planning processes incur large delays for private actors thus helping Houston to justify its anti-regulation stance. However, this neglects issues such as externalities, socially desirable outcomes and irrational behaviour with likelihood of desirable public goods being underprovided as private actors have no incentive to provide them.

1.4 Arguments for and against Planning Institutions

The arguments for planning come from the need for the government to promote the collective public interest when controlling the land markets, i.e. achieving social benefits. Regulation of land use can also be a method of providing valued public goods (such as parks and playgrounds) which would not exist without public interference despite their public desirability. Planning is also supposed to combat the negative external effects of individual and group action where private decision makers are not held to account for the consequences of their actions (Egbu et al 2008:122). There are also concerns about competitive markets being able to deal with future goods and meeting complex social needs which can be hindered by lack of information or bounded rationality (Mercier 2009: 157).

The main consequence of having planning institutions is the distortion to land markets e.g. costs to interested actors in terms of time, administrative bottlenecks and restriction of land uses. There are also interested parties who gain from the existing planning system by favouring a tightly regulated and restrictive land use planning regime to protect their property values. Those who lose out in the existing operation of the present planning system include certain interests such as consumers of residential development as land prices in areas zoned “residential” for example will face higher bids (Egbu et al 2008:125). There are also problems with how an arbitrary decision in land zoning can produce a situation where the market price of land can rise by many multiples depending on zoning decisions.

Planning is a complex field which contends with a multitude of independent autonomous individuals, households and firms making decisions and the need to co-ordinate them efficiently (Webster 2005:457). Likewise, town planners cannot be expected to be perfectly informed about all the variables associated with zoning and long term land use plans. Where bad planning policy is implemented, the recovery rate from such failure may be slower and harder to recover from (ibid 2005:469). In the public-sector context, planning based actors face weaker incentives to economise than do private-sector actors. Probity means honesty or as Williamson (1999: 317) puts it “the loyalty and rectitude with which transaction are discharged”. This is a problem in that there may be perverse incentives for town planners in delivering efficient public services due to preoccupation with higher status, being open to lobbying or accepting of bribes for making certain decisions. These

are activities which act against the performance of the planning system with resources being expended in market capturing (Dawkins 2000:511).

SECTION 2

2.1 Introduction.

In this section, there will be an in-depth look at transaction costs and property rights both of which impact upon planning policies. As noted in *section 1*, planning institutions are expected to reduce transaction costs in a land development sense in terms of uncertainty and to steer the development in a more efficient manner. Behavioural aspects are also considered as town planning affects human behaviour with most land use plans having social aspects. The final part of this section looks at two particular characteristics of the planning system which helps motivate the behaviour of actors within the planning system. The first is *probity* which can be defined as integrity and impartiality and is a big factor on the credibility of the planning system. Afterwards the issue of *asset specificity* is taken up which is a major consideration of how actors will engage with the planning system.

2.2 Transaction Costs

Central within NIE is the concept of transaction costs which are typically overlooked in traditional economics. Costs in the conventional sense are concerned with production costs e.g. costs of directly building a house (Lai 2005:8). In town planning terms, transaction costs go beyond “production” costs such as planning fees and expenses taking into account delays, establishing terms for the transaction, conducting negotiations, drawing up contracts and ensuring compliance (Lai, 1994:84). However, as suggested earlier, the emergence and perseverance of planning institutions indicates that the costs saved by these institutions are greater than the transaction costs associated with them (Alexander 2001). If such costs are not more than offset by the benefits of sustaining the institution, it will be eliminated as a result of public choice (North 1990 & Lai 2005:11).

In creating a plan, *ex-ante* transaction costs include all costs gathering information about the value of resources affected by a proposed land use plan as well as bargaining and securing agreements, i.e. action undertaken before the final version of the plan is agreed. Institutions cannot be designed perfectly *ex-ante* as unexpected interdependencies will occur after the plan is passed which is particularly problematic in the Netherlands where land use plans are strongly binding. Williamson (1985) refers to *ex post* planning transaction costs (after the land use plan is adopted) as costs that relate to enforcement, re-negotiation of contract, and dispute settlements. These occur due to all contracts being incomplete as a consequence of incomplete information and unexpected contingencies.

Ideally, all those affected by the plan could be brought together to costlessly assign ownership rights to all valuable entities with fully specified and binding agreements. This can result in an efficient outcome without the need for public intervention. However, this is not a realistic assumption due to limited cognitive ability, self-interest not to disclose, the costs of obtaining information and the adjustment costs, i.e. transaction costs (Paavola & Adger 2002:3). Transaction costs also increase with larger numbers of participants, asymmetries in the level of information, the likelihood of opportunism and the level of uncertainty about future markets (Dawkins 2000:508).

Studies have shown that transaction cost considerations impact the extent of political control that local politicians are likely to exert over land use plans (Dawkins 514:2000). When it is perceived that a land use plan adequately reflects the future land use interests of the community, politicians might delegate implementation to land use planners. On the other hand, when future land use preferences are heterogeneous or changing as in a rapidly growing community, they may maintain direct political control over future land use decisions for flexible response to changing climates. It is interesting to consider this in light of the very different control systems of the UK which has of discretion and political interference, the Netherlands which is plan-led and Houston which is form-based code and private deeds and involves private actors in regulation.

A stronger case for public intervention is positively correlated with higher transaction costs being incurred in private land market deals, i.e. more incomplete contracts, non-existent markets and dealing with externalities at higher scales (Cerin 2006:212). This needs to be

weighed against an over-restrictive land use policy potential impeding efficient economic development transactions and constitute an even worse outcome. Badly thought out regulatory barriers to urban expansion as in the UK and Houston has resulted in sprawling development patterns due to a lack of co-ordination. Developers leapfrogged over restrictive jurisdictions to more permissive planning jurisdictions, causing an outcome worse than having no planning system at all (Dawkins 2000:516). These effects could have been minimised by public-led initiatives to co-ordinate the timing and relationship to other land use plans.

Sprawl in terms of both residential and commercial development in non-urban sites has undesirable outcomes in terms of car dependency, duplication of services and aesthetics especially in the blurring of urban and rural. Houston is known as an example of an “edgeless city” i.e. low density dispersal of people and jobs into the surround region (Burdett & Sudjic 2007:92). The Netherlands is renowned for having co-operation at national, regional and local levels as well as co-ordinating financial incentives (property taxes and location-based grants) to stop such outcomes (Needham & Faludi 1999).

2.2 Property Rights

The property rights perspective recognises the contribution of the state in devising laws and regulations to stimulate private transactions and protect private property as well as enabling competitive markets to internalise effects (Lai 2005). Efficient property rights can be extended to agents being residual claimants over the resources they influence and being incentivised to deploy their resources efficiently in the attainment of desired planning goals (Webster 2005:465). Planning institutions are charged with enabling better outcomes for these agents by facilitating a bargaining process (Yu 2000:302). The exchange of rights between property-owners is characterised by significant transaction costs which as stated earlier provides one the main justifications for the existence of the planning system. Another problem arises from the market emphasis on competition as it promotes individualism and self interest which is hard to reconcile with planning objectives that stress public interest or community sentiments (Lai 2005:14).

In planning institutions, property rights can be defined as a “set of formal rules that defines the right to use land and co-ordinate changes in land use on a particular site” (Buitelaar 2004:2544). Agreement about property rights relate to the costs of consumption e.g. traffic jams on public roads resulting from the costs of inefficiently ordered space. It is the contention of Webster (2005) that where attributes are not scarce, it may be more efficient to leave them in the public domain for equity and efficiency reasons. Adopting a system of strict and private property rights in these instances could result in higher transaction costs associated with enforcement and the loss of social benefits. However most public based goods and services in cities have a habit of becoming congested, e.g. traffic congestion causing externalities in the form of queuing, disputes, pollution and inconvenient trip behaviour (Webster 2005:485).

If property rights could be assigned efficiently and without restrictions, planning institutions would not be needed to regulate externalities. Supply and demand mechanisms could instead establish the conditions of efficient equilibrium by the buying and selling of property rights (Micelli 2002:144). This is more flexible than the yes/no situation of town planning institutions banning certain land uses outright. Coulson & Ferrario (2007:592) affirm that the use of land use rights in a more market-based manner would result in more efficient property and land markets. However the creation of a previously non-existent markets, i.e. a flexible property rights system that has a supply and demand equilibrium, is a difficult operation with significant requirements in communication and training (Webster 2005:464). In these circumstances, it may be preferable to impose blunt regulations as the effectiveness of the property rights markets is not assured (Micelli 2002:152).

Webster believes that the division of rights between the state and private property owners is an evolutionary process by which society attempts to discover a mix that works most efficiently i.e. delivering desired outcomes at least cost.(2005: 475). This is evident with recent planning reforms occurring in all 3 planning jurisdictions to correct for problems evident in their planning systems and the current set up of property rights to correct for existing flaws in their planning system. The Netherlands has moved towards a more coercive role at national level as well as recognising negotiation more as a planning tool. Britain on the other hand is moving towards streamlining their planning system as well as

having stronger regional level planning. Houston (from 1999) for the first time begun to treat lands in the vicinity differently according to location, i.e. areas in the central city zone are subject to different city ordinances than municipality locations outside this location.

2.3 Bounded rationality and behavioural changes.

NIE acknowledges an uncertain future and other limitations in the decision-making process where individuals are content to be satisfiers rather than optimisers. Barriers to rationale behaviour include lack of information, bounded rationality (limited cognition) and short term focus (Rafiqi 2009:383). Private agents and town planners are often forced to discard a large amount of information and not always reaching optimal solutions due to information limitations. There is also allowance for ethics, rights and other aspects which may not be necessarily aligned with self interest (Paavola & Adger 2002:16).

Also important are the motivations that influence choices that affect the collective interest. Rafiqi (2009) analysed the decision-making process undertaken by consumers, in order to understand the rules and habits that have influences on public behaviour. By examining alternative government policies and strategies that might lift barriers to consumers making efficient decisions, the author found that advertising and demonstration programmes may enable to institutions to make important contributions to changing habits (Rafiqi 2009:385). Social pressure is another approach to encourage private actors to behave in accordance with social expectations. However, the ability and reliance of social pressure to steer activities by private individuals in increasingly uncertain compared to 30 to 40 years ago as noted by Quian (2010).

In a cognitive sense, planning changes are likely to be perceived as disruptive and costly (Bleischwitz 2003:459). The use of formal institutions to enlighten informal beliefs can strengthen support (or ability to challenge) planning policy which is being put forward in the collective interest. The Netherlands is notable for fulfilling many of these aspects and gaining public support by promoting concepts such as avoiding development in the “Green Heart” which is a protected nature region (Needham & Faludi 1999). In contrast, these campaigns in Houston were led by private actors who embellished the truth in their own

interest. The UK while promoting participation presumes the local council acts on behalf of local interests, thus neglecting the need for public support.

New planning schemes launched by planning authorities' can cause uncertainty to the firms where there is a tendency for more focus on costs to the businesses than the benefits. An example would be a proposed pedestrianisation of an urban street where retailers are concerned despite evidence pointing to its benefits. By positioning this as a positive advantage not just for businesses but also amongst the wider public, planning schemes can improve the probability of success (Dequech 2006:473). An important aspect here is the emphasis on public consensus and consultation with private stakeholders about the impact of proposed plans or regulations. Such tasks in land markets can better achieved by public actors leading the process instead of private actors engaging in their own interests, i.e. engaging in a Coasian transaction.

Social behaviour is also influenced by how comprehensible planning land use plans and regulations are to non planning experts. Planning documents according to Webster (2005) should be clear, accessible and easy to understand as one of the key rationales for planning is achieving public orientated goals. A complex planning system needing significant interpretation can detach the system from the people it is supposed to serve and cause reliance on planning experts. This can have the effect of causing disillusionment of planning and undermine public approval for planning policies. To ensure this does not happen, planning policies should be geared to lift some of the penetration barriers to rationality. This can enable private actors to have less focus on their own short term interest and shift focus to broader societal and long term issues (Rafiqui 2009:385). Although optimal planning arrangements are desirable to all, the means for achieving and identifying these are disputed but it can be aided by having clear planning laws and land use plans.

Porter and Van der Linde (1995) put forward a win-win situation that utilises the theories of property rights, transactions costs and institutions to establish unexploited positive externalities and create incentives for new opportunities. Policies that increase opportunities tend to be more effective than those that restrict them (Kudlak 2008:217-8). Porter and Van der Linde (1995) state that it is vital that regulators serve as enlighteners and highlight where economic opportunities could exist for better urban performance

improve outcomes. Once again strong public support emerges as being necessary to create private incentives for encouraging actors to act in a way that improves performance instead of planning for outcomes in isolation.

2.4 Asset Specificity and Land Investments

Asset specificity means that payoffs from investments depend on upon the relationship with other interacting parts (e.g. infrastructure) and if investments can be adjusted for more highly valued uses (Sager 2006:236). Land investments can become “locked in” to the market for a future period of time as land investments are highly durable, take a long time to build and are costly to demolish. This causes difficulties in exercising “exit” options and relocating assets should future rental opportunities fail to emerge (Dawkins 2000:512). This is further exacerbated by planning institutions placing constraints and restrictions on land markets. However, a plan led system with strong legal certainty as in the Netherlands should in theory offer more certainty about the future.

Where there are recurrent planning transactions, particularly in relation to local scale (where local information is important) and asset specificity there is the problem of hold-up risk if an incumbent party has an advantage. Although the two parties would be able to work most efficiently by cooperating fully, they do not, as the incumbent does not want to relinquish bargaining power and profits (Webster 2009:482). An information advantage also allows one party to act opportunistically and demand rent leading to cost inflation. Egbu (2008) showed that market-altering policies tend to be demanded by those parties who have invested in land specific asset using to their own benefit. As these parties have a stake in the outcome of planning policies, land use plan measures are influenced to provide benefits to the owners of these assets who may have inside knowledge, lobbying means and power at their disposal (Egbu et al 2008:132).

2.5 Probity

One characteristic that is important to planning institutions and transaction costs and property rights is “probity” (Williamson 1999:46). As noted previously probity refers to

honesty, integrity and uprightness. Manipulation and principal-agent problems are expected when both opportunism and asymmetric information are present. This is the case as land-use planning is susceptible to threats, manipulation, and information asymmetry (Sager 2006:225). A planning institution's relationship with "external" partners such as land developers often involve sensitive negotiations in pursuit of mutual gain. Suspicion of any opportunism in relation to planning might drive the planning institution into a costly monitoring scheme (Sager 2006:234).

In relation to private actors being compared to public sector actors, there are a range of fundamental differences such as low-powered incentives (less economic incentives for achievements) and more extensive rules and procedures to be met in the public sector. In addition, privatised markets react more quickly to changes in relative prices (Williamson 1999). It is argued by Williamson (1999) that features of lower-powered incentives, rules and regulations and greater job security (which are perceived to cause inefficiencies) are "deliberately crafted" to give the desired governance result particularly in relation to the pursuit of social goals. A private planning system is seen as being less likely to be impartial and more likely to serve group interests that engage in 'rent-seeking' behaviour, i.e. transferring as much wealth as possible to themselves (Lai 2005:12).

SECTION 3

3.1 Introduction for section 3

This section will look at the process of land use planning and the main issues that arise in creation and implementation of land use plans particularly in how they will affect future decisions in land markets, the extent of their powers and interaction with voter preferences. Furthermore there will be a look at several of the key variables that are used to distinguish and compare the between the 3 different planning systems. These are public participation, flexibility, scale of planning, co-ordination and enforcement.

3.2 Land Use Planning

Land use plans anticipate future growth and set out where future development should be located. The spatial scale is important with regional plans being more reliant on codified knowledge (i.e. prescriptive rules for aggregate areas) and being less spatially defined than local level plans (Webster 2009:482). By creating expectations about future land use, land use plans reduce incentives for pre-emptive and socially inefficient patterns of land use due to stating where expected development and associated services will occur. Therefore the land investments that do occur, should be more productive and generate long-term income flows as opposed to just gaining speculative private development rights and/or acquiring short-term profits in the absence of land use plans (Dawkins 2000:515). An example is transport, essential services and amenities being organised before having residential development is finished. This is a key planning function in the Netherlands unlike Houston, where private developers can create residential developments without the need to meet legal requirements for supporting services and infrastructure to be in place beforehand.

Politicians might not rely on a predetermined plan to make future regulatory approval decisions when future land use preferences are difficult to predict, thus adopting plans that are largely ignored. This can be seen in the British planning system where the rules that govern what gets built are only partially found laid out in plans. In this instance, development proposals will require a higher degree of local knowledge and tend to favour those who have access to local and institutional stakeholders, thus creating greater uncertainty as other factors outside the land use plan come into play (Webster 2005). This is in contrast to the concise local and regional plans complemented by national policy as in the Netherlands where great care is taken to ensure all applications are treated equally and based on the land use plans. As planning in Houston is largely driven by private interests there have been concerns over favouritism being shown to certain interests (Fisher 1989).

It is arguable that blunt land use planning instruments such as city wide ordinances or neighbourhood level covenants (as used in Houston) constrain consumer choice and lead to an over-consumption of land. Instead of allowing residential development on a case by case basis as in the UK, one must comply with city wide regulations, for example each house must have a minimum lot size of 5,000 square feet. This has caused a sub-optimal

combination of capital and land to be employed in housing and construction, leading to a loss of consumer welfare and economic efficiency due to low density as well as to excessive land consumption (Cheshire 2006:622). Likewise, Houston's strong rules on provision for car spaces means that 70% of land in the central business district is used for cars as parking places and roads (Burdett & Sudjic 2007:69). The strict nature of the Netherlands's national planning policy is compensated by having many land use plans that set out development for many small locations but that still conform to national plans.

In the absence of publicly provided land use plans, it is anticipated that private interests would step in and provide some planning functions (Moroni 2008). As a result of spill-over problems, private bargaining solutions can be anticipated to provide some planning functions but as noted previously externalities and co-ordination may be overlooked (Webster 2005). The cost of privately provided land use control are also more likely to be subject to hold ups and cost-inflation due to opportunistic re-negotiation and market capturing by interests not coinciding with public interests (Keefer & Knacker 2003:702).

3.3 Public participation

Public participation can be problematic in terms of transaction costs as additional transaction costs emerge from organising participation and resolving conflicts. According to Webster (2005:459) the more local the planning issue, the greater the interest in participation, but also the scope for conflict and escalating costs. Over emphasis in local matters can generate costly processes of engagement as well as too little interest in strategic issues. Higher transaction costs come from the number of stakeholders, conflicts between them and appeal possibilities (Cheshire 2006:625).

Other difficulties occur where one can submit an objection to a planning proposal, indigenous industry can use this mechanism to block, hinder or delay prospective competitors. Transaction costs are also associated with the simplicity of interpretation of laws and the degree of certainty in land use plans. Well designed codes should not require much knowledge to comprehend nor should they act as deterrence towards public participation. As can be seen when contrasting the US and the Netherlands, information

towards planning matters is very important towards influencing public opinion with a key factor being who is providing the information and if it is an objective actor.

3.4 Flexibility in the Planning System

According to North (2005) beliefs and institutions are ongoing responses to varying levels of uncertainty, i.e. uncertainty is the source of institutional formation. The aim is to reduce uncertainty in a constantly changing world where agents have imperfect perception (Rafiqui 2009:340). Town planning is an enormously complex field which must take into account the interaction of a multiple actors so a plan cannot account for all contingencies which calls into question how can one can attempt binding plans for 5 or 10 years into the future. Even the Netherlands uses tools to bypass this problem through exemptions and land use plans that follow developments, not the other way around (Buitelaar 2010). Moroni (2007) believes that more flexible rules and actions are needed to deal with complex contemporary systems especially in large urban areas. He asserts that planning authorities should not be bound to predictability, as this restricts the informal examination of plans and allows changes to land-use plans Moroni (2007:156). The apparent problems of fixed plans can be somewhat resolved by having freedom to deal with unexpected interdependencies, or having negotiation as a tool to achieve desirable exemptions. However for “normal” development applications having a land use plan in place serves to provide certainty and may offer a superior outcome than in market-led circumstances.

3.5 Negotiation in the Planning System

Where the choice of one individual affects another agent there is the option of resolution in a private manner through bargaining (Paavola & Adger 2002:3). Bargaining negotiations and agreements are not likely to be fully specified in planning and be open to asymmetric information or power issues as per the earlier discussion in *section 2*. In the case of numerous agents and interdependence, it is argued that regulation entails lower transaction costs than private property rights (Alexander 2001). Negotiated developer exactions are found in planning systems which give the planning institutions power to negotiate planning

gain, i.e. legally binding conditions or payment on an area of land in return for allowing a development to occur (Webster 2005:469). The ability to negotiate terms for planning permissions and not being bound by plans is important for capturing public value and dealing with unanticipated developments. Group size or information asymmetry negatively affects the ability for private negotiation (Cerin 2006:212).

In high-demand areas for planning permits or permission, planning institutions can use negotiation as leverage to secure desirable developments that are not provided by the market e.g. affordable housing or parks. Important negotiation characteristics are clarity over rights, certainty, transparency fairness and impartiality in the planning system (Webster 2005:470). Off-site payments or benefits in kind payments for items unrelated to the development is a problematic issue in the negotiation process as are costs, uncertainty and lack of transparency which may undermine public confidence.

3.6 Co-ordination

Planning institutions aim to solve co-ordination problems in geographical decision making (Paavola & Adger 2002:5). There have been calls to abandon avoid an incrementalist (ad-hoc) approach of considering developments in isolation and instead concentrate on more holistic solutions e.g. take into account health, environment, existing infrastructure etc. The “new urban” strand of planning aspires to co-ordinate to create dense, transit-oriented development corridors, with a mix of residential, commercial, and leisure uses to produce a healthier and more efficient urban environment (Mercier 2009:159). However these types of projects require much time to bring about benefits which lessen political (and public) support although they would be a source of certainty for development planning in the long term. In general, developments in the UK and the Netherlands unlike Houston have been driven by additional environmental and social considerations not just economic forces. In Houston transportation, environmental matters, health, and social equity were not considered in an integrated way resulting in significant and many negative differences in terms of land use, energy consumption, and externalities.

3.7 Scale of Planning

Closely linked to co-ordination issue is the scale at which planning should take place. Typically there are 3 levels of planning, (1) the national level which is the entire country, (2) the regional level which applies to a sub-country or regional level and (3) local which at a sub-regional or town level. The Dutch system uses a strong interrelated 3 level system where the regional and local levels take their cue from national level. In the UK, the situation is different with the national level providing guidance policy which is not obligatory for the local level to follow. Houston has considerable freedom with Texas granting a high degree of freedom on the basis that each jurisdiction should have autonomy.

Higher spatial scales of town planning (central or regional) can impose information costs such as reliance on more aggregate information which can introduce inefficiencies to the planning system. (Webster 2005: 459). Central level solutions also suffer from sheer complexity and the use of inappropriate planning instruments (Kudlak 2008:215). Despite this, there is a strong case for strategic planning at regional levels due to infrastructure and externalities considerations which can be better dealt with at higher jurisdictions than detailed individual or local areas (Webster 2005:473).

Booth (2007:130) believes that advantages of town planning controls at a national level include delivering better town co-ordination outcomes, less business delays, greater certainty; and lower business costs. Indeed a national system of development control would realise greater benefits by reducing the pressure on state and city governments to continue planning deregulation in the competition for development capital (ibid 2007:130). Another advantage is for national governments to determine contested applications directly, as it would avoid local considerations and promote national considerations more.

3.8 Enforcement

Planning control regulations require formal sanctions such as the threat of penalties like the deprivation of property rights: fines, demolition and the threat of imprisonment (Webster 2009:486). Monitoring and enforcement of planning decisions is difficult due to costs and

the political difficulty of imposing high individual private costs to achieve a marginal social gain thinly spread over many communities (where there may be ambivalence). This can undermine a planning system as institutions generally derive their effectiveness from sanctions with legal status (Webster 2005:469). The informal sanctions of loss of face and social disapproval are no longer seen as being strong enough (Yu et al: 2000).

The UK and the Netherlands have an enforcement system that is driven and monitored by public officials while Houston's enforcement system is passed onto the city policy authority following monitoring and complaints by private actors. Private monitoring could be desirable as a mean of upholding the planning system and avoiding the need to wait for public authorities to act. However, in the instance of Houston the extent of detail requiring compliance at a neighbourhood level passes power onto individual private actors who do not face costs of acting against others. This can result in an over-zealous planning system particularly when combined with the many existing regulations.

SECTION 4

Introduction and overview of section 4.

In the following section, the 3 planning jurisdictions are contrasted on the characteristics of their planning system to determine the trade offs in performance as per the dimensions of co-ordination, flexibility, public participation, negotiation and scale as in *section 3*. The first case study, the Netherlands has a strong plan led system based on an active land policy at a municipality level with guidance from the national and regional levels. This is different to the UK which has a more flexible development control system allowing greater room for negotiation. The 3rd example is Houston which grants considerable autonomy to the private sector in allowing for private deeds for housing estates and plans at a "super neighbourhood level" (larger sub-ordinate level) which is combined with a strict city ordinance system. Due to the unique characteristics of Houston, particular attention will be paid to homeowner and super neighbourhood levels of planning which are where private actors can negotiate and participate in planning.

4.1 DUTCH PLANNING SYSTEM

4.1.1 Characteristics of Dutch Planning System

Dutch planning culture is characterised by a comprehensive and integrated land-use management planning system which aims to limit conflicting land uses and internalising external effects (Buitelaar 2010:985). Dutch municipalities have strong steering ambitions as their land-use plans ensures that development occurs according to municipal wishes while having regard to national level planning policy. The municipal land-use plan is treated as a contract that translates the agreements between stakeholders into legally binding rules meaning nothing can be developed not in accordance with the local land use plan (Faludi 2005). It also means any development application meeting land use plan compliance cannot be refused. Common explanations for high toleration of government interference is the dense population of over 400 per km² (compared to 241 for the UK and 28 for the US) and the need for protection from the sea.(Van Der Valk 2002:202).

Post World War II, an interventionist planning system was put in place consisting of proactive planning, housing grants, strong public land acquisition powers and consensus-building (Evers et al 2000:7). Growth was closely pegged to the needs of the indigenous population in order to accommodate and control the impacts of growth (Van Der Valk 2002:209). An example of strong planning control in the Netherlands is the urban conglomeration known as the Randstad, (consisting of Amsterdam, Rotterdam and Utrecht) circling an open countryside known as “the Green Heart”. It was determined in the 1960s that the Randstad should accommodate all generated growth within its own boundaries, while the Green Heart should be protected against unsuitable development (Needham & Faludi 1999: 483).

4.1.2 Achieving Planning Objectives in the Netherlands

The Netherlands has a 3-tier planning system consisting of (1) municipal or local level, (2) regional level and (3) national level (Evers et all 2001:8). Dutch national policy guidelines

specify that a city region should contain all the workplaces, services and other facilities that the people living there need. Non-urban locations are required to provide access for recreation, restrict noise and be environmentally sensitive (Needham & Faludi 1999: 482). Municipalities have a large amount of activity in land markets stemming from development process where the municipality acquires and services land, then selling it on to developers at cost price (Needham & Faludi 1999:489). Regional governments are involved with testing, and approving local plans and co-ordinating intra-local projects. However, a particular problem was fitting in regional projects with binding local land use plans. Recent reforms has strengthened regional ability to put forward proposals and preparation of strategic plans i.e. being more proactive and overcoming legal difficulties associated with regional projects (Janssen & Woltjer 2010:909).

National spatial planning placed steers development through detailed land use plans and targeted grants to designated growth areas. This approach has achieved an orderly pattern of development with the growth centres surpassing their population targets and fulfilling objectives (Evers et al 2001). However, this has not been without problems, thus necessitating reforms in 2008 targeting difficulties in the planning system, primarily a more flexible direction to planning and more use of negotiation (Nadin & Stead 2008:43).

4.1.3 Tools to achieve Planning Objectives

Integrated methods to achieving land use objectives include a uniform municipal tax base, restrictive building policy and government investment programmes. The degree of public control over land was high with around 80% of all land coming into development going through the relevant municipality, thus reducing land speculation (Faludi 1992: 98). Recent planning reform and objectives have considerably reduced the proportion of subsidised housing with private actors being able to buy and develop land more and more (Priemus 1998:319). Likewise, public finance problems led to the reforming of public housing grants, which was unintentionally benefiting those on relatively high incomes (Evers et al 2001:17). A lump-sum grant system towards land development where a planning authority

or municipality receives a set amount of monies was brought in, ending the original uncontrolled and uncapped open-ended assistance.

Stronger regional roles has aided national government aims with more effective co-operation between municipalities on a regional level meaning greater cross-subsidisation (incomes from profitable sites to offsetting losses elsewhere) and a stronger mechanism to deal with externalities (Needham & Faludi 1999:488). The National Planning Strategy has moved from a restrictive planning discourse with Vink and Van Der Burg (2006: 43) noting that there is more focus on development as the strategy “seeks to tie in with social trends, rather than combating them”. The number of planning rules and regulations imposed by central government has been reduced (Nadin & Stead 2008:42). The adjustments are intended to realise planning efficiency gains in terms of speed, effectiveness and co-ordination (Needham 2005:336).

Legal certainty concerns the degree to which property owners are certain of their defined rights and the predictability of government actions in respect of these rights. There is little room for unconstrained individual political judgement or discretion (Janssen & Woltjer 2010:908). Decisions are carefully prepared by public servants with much emphasis on observing proper procedures to limit political input (ibid 2010:909).

4.1.4 Public Participation

Planning interventions are subject to prior assessment with stakeholders being consulted at an early stage of the planning procedure of plan making. Property developers exert a strong influence on the content of a plan due the strong role in planning played by landowners’ property rights in Dutch law (Nadin & Stead 2008). The rights to use a particular piece of land in a certain way are firmly established and difficult to change, leading to extensive legal procedures for project developers but with strengthened certainty once the land use rights are set (Buitelaar 2004). Legal procedures for adopting a plan are very detailed and slow moving resulting in conflicting land use claims causing serious delays in the adoption of land use plans.

4.1.5 Negotiation

The potential to negotiate planning gain in relation to planning applications or proposals is limited in the Netherlands. In practice few contracts are negotiated between local government and private developers regarding development projects on an informal or 'voluntary' basis as land use plans must be complied with (Janssen & Woltjer 2010:908). With the new 2008 Planning Act, there is more room for planning authorities to impose conditions on planning permissions such as financial contributions or relevant obligations.

Planning obligations can bring about desirable developments, even if these developments do not match an existing development plan. They can strengthen the monetary and negotiating position of planning institutions. Outcomes can include the redistribution of profits from lucrative land uses towards public land use facilities (positive externalities) and compensation of affected communities (negative externalities).

4.1.6 Reality of Planning in the Dutch System

A study carried out by Buitelaar (2010) calls into question certainty in Dutch planning finding that municipalities granted 50% of their building permits on the basis of exemptions. In addition, it turns out that plans often followed developments with land use plans (Buitelaar 2010:988). Despite causing problems and being contrary to the ideal of planning of certainty, obsolete plans (out of date land use plans) offer municipalities the opportunity of negotiating development proposals in an indirect way. Having the exclusive authority to revise, adjust or divert obsolete plans allows municipalities to impose conditions e.g. social housing or public spaces (Van Der Valk 2002). This practice offers benefits (and even certainty) for local authorities although at the expense of the certainty that land owners and third-parties experience.

The planning task is further complicated by multiple relationships with other functions such as environmental planning, transportation planning and the planning of water management. An additional handicap is the huge number of plans, with the 216 municipalities having an

average of 91 land-use plans per municipality in addition to slow and complex procedures in adopting them (ibid 2010:987). To bring a more formal and transparent negotiation process, the 2008 planning act positions the land-use plan in an (even) more central position with proper sanctions being imposed on obsolescence (plans older than 10 years) and less possibilities for exemption. Buitelaar (2010:988) shows that obsolescence and the use of exemptions have decreased since the new acts.

4.1.7 Tradeoffs within the Dutch planning System.

Detailed land use plans can become quickly outdated due to focus on rules for current land use, irrespective of changes, with even revisions being difficult especially with the need for public consultation (Van Der Valk 2002:205). Exemptions helped reinforce the degree of out datedness or obsolescence of these plans. Empirical research among 73 Dutch municipalities showed that only 30% of land-use plans were younger than 10 years even though they are supposed to exist for 10 years (Buitelaar 2010:985). This is worrying given that obsolete plans maintain their legal status with all applications receiving permission if there is compliance with the land-use plan although as noted there are now stricter legal obligations to keep plans up to date and lessening the use of exemptions.

However, Dutch spatial planning can be argued as being successful with national urbanisation policy exceeding targets in the designated growth centres as well as the rejuvenation of old urban centres. Van Der Valk speculates that the absence of such a strong plan-led spatial planning would have had negative effects on the quality of life (2002:206). In an uncontrolled planning scenario, he found that most of the western and central areas, including the Greenheart would have been covered by low-density housing, commercial sites and roads causing tremendous costs for urban servicing and future stresses on services like water. Faludi also found that the Randstad would not have been a highly valued living and working environment if externalities like congestion and unsuitable development had not been controlled (1992:93). Indeed strict controls have led to the Netherlands becoming renowned for cycling (60% of inhabitants in Amsterdam cycle to work) and having an excellent public transport system (Oortwijn 2008).

4.1.8 Conclusion

Dutch town planning is regarded as a system that values legal certainty over flexibility and having a standardised and non-discrete way of dealing with applications. However, Dutch spatial planners are found to be pragmatic, aiming to achieve certain goals by applying rules and exemptions in a flexible manner (Buitelaar 2010:985). For this reason, Needham (2007) casts serious doubts on legal certainty within Dutch spatial planning as many developments deviate from the legally binding land-use plan.

The new act has brought in stricter sanctions when a land-use plan has not been revised on time. In addition, the number of exemptions and the possibilities to apply them have been reduced (Buitelaar 2010:983). Adjustments to planning procedures are recent, but early indications are positive and have helped to make the planning system more robust in relation to the expectations about the economic, social and environmental dynamics. Having consideration for co-ordination and of how the scales interact means that the Netherlands is well equipped to deal with externalities. Overall the planning system has been relatively successful in controlling the effects of both positive and negative externalities on local, regional and nation-wide scales especially with recent reforms.

4.2 BRITISH PLANNING SYSTEM CASE STUDY

4.2.1 Characteristics of the British Planning System.

British planning institutions focuses on controlling land use in the public interest and operating a “development control” system, i.e. land development can only proceed with permission from the local municipality (Janssen & Woltjer 2010:911). The British planning approach does not place complete emphasis on land use plan as development permission is only partially encoded in land use plans. The idea is for better flexibility to changing circumstances and market trends (Gielen & Tasan-Kok 2010: 1098). Britain’s planning acts requires local authorities to “have regard” to not only the land use plan, but also to other “material considerations” and evaluate every planning application on its own merits which

is quite a discretionary approach to development control (Healy & Viger 1999). Local planning authorities have significant autonomy in interpreting the policy framework on individual development proposal decisions (Booth 2007:138).

4.2.2 Achieving Objectives in the British Planning System.

A discretion-based approach emerged from recognition that increasing complexity of the tasks confronting modern administrations in land use decisions could not be simply dealt through the elaboration of rules (Webster 2005). Having this type of system avoids the problem of binding land use plans that cannot deal with post plan contingencies and helps reduce ex-post transaction costs of plans. Constraints to town planning discretion in the UK are policy, plans and legal advice, political judgements and professional planning advice (Booth 2007:141). This can be contrasted with the ‘regulatory’ planning systems of the Netherlands. Common law places heavy emphasis on procedural justice with an emphasis on remedies and reasonableness instead of being a system of legal rules. This focus on individual rights and responsibilities causes difficulties in accepting the need for intervention in the public interest (ibid 2007:141).

4.2.3. Tools to achieve Planning Objectives

Local level planning institutions in the UK regulate development through the ability to grant planning permission. They are responsible for planning documents covering geographical issues in their jurisdiction. Recent reforms require local authorities to prepare proposal maps, strategy descriptions, and monitoring reports known as Local Development Frameworks (LDFs) into an all-encompassing document replacing a previously fragmented complex system (Janssen & Woltjer 2010:912). A LDF is intended to be a short, focused, and strategic providing private actors with greater certainty and clarity. In addition, local authorities can draw up indicative site specific land use plans to inform applicants about planning intentions in advance of LDF publications as a means of reducing the intrinsic uncertainty caused by discretion (Gielen & Tasan-Kok 2010: 1110).

At the national level, there are no spatial plans that provide a comprehensive land-use plan for the UK, unlike the Netherlands. Instead there are general policy documents which serve as instruments at government level to guide town planning intentions, such as transport, environmental or housing for strategic and consistency purposes (Janssen & Woltjer 2010:912). Politicians have power as the planning minister can over-rule any decision in the “national interest”. These helps reflect the changing political priorities between different governments and ministers without a need for long complex legislative changes as occurs in the Netherlands (Jones 1997:147).

The UK has had problems with town planning practice particularly at the regional level. In the late 1980s, problems with this “regional gap” between local and national planning action saw a system of regional planning being established. Regional Planning Guidance (RPG) documents were set up to provide a regional framework for local development plans to take account of national guidelines and regional concerns and put forward what should influence on local development plans (Healy & Vigar 1999:154).

4.2.4 Participation in the British System

Participation in Britain provides only limited opportunities for widening participation in spatial policy development as plan-making practices are largely controlled by planning officers and long-established stakeholders (Healy & Vigar 1999:160). Planning legislation regards the local planning authority as acting on behalf of third parties in the planning area, with ministerial power representing nationally dispersed third party interests (Webster 2005). There are involvements of third party interests in certain planning processes such as local inquiries, examining a proposed land use plan and consulting neighbouring land users over particular applications. However, the process leaves out many less organised stakeholders, particularly local environment and community development groups. Public inquiries can be daunting for such groups and are adversarial based, which may not best for strategic and integrated planning discussions (Healy & Vigar 1999:165). Proposed changes to planning law in 2004 involved consideration of third party rights to object on individual applications and allowing the presentation of alternatives but these were ultimately denied

on the grounds that the costs of such changes would outweigh the benefits to society (Webster 2005:473)

4.2.5 Negotiation in the English System

As national and regional guidance and local policy instruments are not legally binding there are possibilities for negotiated agreements though this is confined to local level and is restricted. Low certainty about the future building possibilities reinforces the negotiation powers of planning authorities and furthermore public-value capturing (Gielen & Tasan-Kok 2010: 1112). Local government agencies have the option of attaching conditions to planning permits provided there is a reasonable link to the project for which planning permission is required and if they serve land-use planning objectives (Janssen & Woltjer 2010:913). It is essentially a process of formally negotiated agreements, prior to the development application, resulting in a written agreement stating planning obligations for the developer (Booth 2007). Planning obligations offer ‘public gains’ for capturing betterment or providing benefits to the affected communities.

Despite attempts towards formality and standard procedures, informal consultations were found to be ad-hoc i.e. lacking consistency and being concealed from the public eye (Janssen & Woltjer 2010:914). This has caused concerns that planning permissions are effectively bought and sold with local planning authorities demanding payments or provision of facilities. Other problems included length of delays to developers and that the detail of negotiations between local authorities and developers are covered by commercial confidentiality thus blocking transparency. Crow found that 80% of cases involving the completion of one such agreement took 12 months or more of negotiations (1999:358). However, negotiations if carried out correctly can still offer a means of overcoming a fundamental problem of flexibility in the planning system and better market mechanisms while still controlling co-ordination and externality issues.

4.2.6. Trade-offs within the British Planning System

A discretionary planning system as practised in the UK has several advantages. It has encouraged planning decision-making that acknowledges the appropriateness of forms of development for the place. It also gives formal recognition to the political nature of decisions about the way in which land is used and managed, i.e. it is responsive and flexible. Successful discretion depends upon the maturity of local administration and the emergence of ways in which discretionary decision-making can be transparent. British municipalities prefer not to provide strict certainty in order to leave some room for negotiation or for contingencies that may occur (Gielen & Tasan-Kok 2010).

At the same time, the British planning system has given rise to distinct weaknesses. The practice of deriving general concepts from practice, which in turn may be applied to future cases runs the risk of obscuring rather than exposing spatial planning objectives (Booth 2007:143). To take one example the vague concept “public amenity” is used frequently as a consideration in deciding planning applications. It covers aesthetic values, environmental protection and the rights of people against neighbourly activities. Moroni suggests flexible planning systems are unpredictable and unstable as each case must be judged individually and cannot be predicted in advance which increases transaction costs (2007:146–7). This implies that the British system is too open to the state administration’s discretion especially with political involvement. Another consequence of discretion it can lead to an unequal treatment of interest groups (Buitelaar 2010:984).

4.2.7. Conclusion

In principle, British land use plans do not offer much certainty about future development possibilities as planning authorities do not require that land use plans be closely adhered to. Having the option to regard to land use plans as mere considerations gives local planning authorities discretionary power to decide each case on its own merits. In evaluating planning applications or attaching planning conditions, planning authorities may refer to such broad principles such as “proper planning” as they interpret them and depart from planning guidance although it may affect project co-ordination and participation abilities (Gielen &

Tasan-Kok 2010:1110). The instrument of planning gain is still being debated in the UK as it is difficult to apply in a consistent manner but as noted before it can offer a more flexible mechanism to decide on planning applications rather than a more. The British planning system still has problems in dealing strategic issues that require significant land-use planning above the local level despite efforts towards more integrated planning and an expanded regional planning role.

(3) HOUSTON PLANNING SYSTEM

4.3.1 Characteristics of the Houston's planning system

The third case study offers a unique example of a planning system where there is no zoning. Houston is the only major city in North America with no formal zoning code which has come about due to the pursuit of a free market philosophy. Lacking zoning means that residential, commercial, and industrial zones are not legally separated. Instead Houston's development policies and plans are made by private interests such as home ownership associations and super-neighbourhood (neighbourhood-level) actors. Land use zoning is regarded as a violation of private property by most Houstonians and receives negative labelling such as “exclusionary” zoning (Allmendinger & White 1999:962). Land-use planning in the US is largely a local matter and lacks the centralised control characteristic of UK (at least in policy guidance terms) or Dutch planning.

Houston (the 4th largest US city) has experienced recent high economic growth apparently due to lack of control over development (Qian 2010:34). However, during the past three decades, Houston has adopted more planning tools and involved more diverse organisations in land management and regulations. The municipal land use regulations are exercised through city wide ordinances which for example set minimum lot (area) sizes, minimum parking requirements, setbacks from the street and block sizes. Houston is less densely populated than most other cities of a similar size, with 1297 persons per sq. km being less than half of even Los Angeles (3030 per km²) (Lewyn 2005:617).

One force driving this style of urban development is that business and political leaders are interested in supporting an unregulated business environment. Even social projects such as public housing routinely encounter stiff opposition (Buitelaar 2010:1061). Apart from some public based functions such as limited daily urban needs, transportation and infrastructure, land use planning is initiated, developed, and monitored by the private sector (Quian 2010:31). When creating housing estates, the developers of such projects set up the initial homeowner organisation and put in place private deed restrictions. These dictate how further amendments and developments in the immediate area should be controlled in the future although these are constrained by the city wide ordinances.

4.3.2 Achieving Planning Objections in Houston.

An example of powerful interests affecting planning in Houston is the chamber of commerce which typically draws its leaders from the largest corporations in the city. This organisation plays a major role in planning policy by affecting Houston land use specifications through access, lobbying and information provision to policy makers i.e. land planning commission. Initiation of planning policy by private groups means that public debate is a low-conflict, consensus style politics dependent on elite support with little access to planning channels (Fisher 1989:149). Alternative visions or public representations are hindered by the absence of public arenas to discuss such issues. This also affects the social behaviour aspects as private interests are unlikely to be objective or act in the social interest particularly in relation to externality aspects.

Houston facilitates the private sector by investing in large urban infrastructure projects and by refraining from restricting the private sector via planning regulation (Neuman 2003:30). Civil society organisations in Houston are important in land-use issues due to relatively low levels of leadership and intervention by the public sector (Qian 2010:39). However to characterise Houston as a fundamentally unplanned city is difficult, as other tools are used to achieve what zoning would, including city level ordinances and private deed restrictions (Smith 2008). City level ordinances are planning laws applied at city level and are for the most part applied uniformly although there have been recent changes. Private deed

restrictions or covenants are where local property owners have the possibility of operating in the forms of homeowner associations and formulating their own development control regulations at a local neighbourhood region, e.g. a single housing estate. The main constraint to self-regulation comes from the city's planning commission who make major decisions such as waste locations and review ordinances for land development regulations such as street width (Qian 2010).

Recent surveys have found that citizens are in favour of balancing development with quality of life, even if land use regulation is necessary to improve the situation (Berg 2008). Despite this several attempts to implement zoning were rejected by voters because opponents of zoning were able to convince certain cohorts that zoning would work against them (Qian 2010). According to Hajer the majority of the people in Houston want much of the content zoning, i.e. a certain degree of control over development, but do not like the packaging (1995:49). The introduction of the existing ordinances system was deemed necessary due to a lack of zoning and possible only because it was not explicitly associated with zoning (Buitelaar 2009:1061).

4.3.3 Tools to achieve Planning objectives

City ordinances do not prohibit any particular use of land but makes judgements about many development form issues such as setbacks, building heights and density (Leywn 2005). It is a method of regulating development to achieve a specific urban or suburban form and not for individual locations. The rules for specific land uses are development type specific and affect the whole jurisdiction with development permission being allowed as long as the requirements are met (Buitelaar 2009). Therefore legal certainty in Houston is high as the code of ordinances and private deeds clearly state what and what is not allowed and the granting of permission is less dependent on other factors such as what other relevant stakeholders are doing and co-ordinating with long term plans.

Unlike the other case studies, densities and lot sizes are not controlled by zoning for *specific* locations within each area (Buitelaar 2009:1057). This allows prospective developers to feel certainty about proposals and the details, but not conflicting land uses

and externalities. This form of planning also saves in terms of transaction costs on a case by case considerations as well as not requiring compliance with a multitude of land use plans. However, in the case of Houston, apart from large blocks in the city's central business district, high density urbanity has essentially being deemed illegal. Single use zoning occurs for example through covenants in residential areas that bar commercial uses (Levin 2009:14). Despite the anti-regulation rhetoric, this style has resulted in the existence of prescriptive land-use restrictions on every piece of Houston property with Boddy (2009) noting that Houston has an unusually large number of planning rules.

4.3.4 Homeowners Associations Role (Neighbourhood Level).

Houston has a long history of homeowners' association activity which are private organisations that create rules in the form of regulations (or covenants) (Pena 2002). A homeowners' association is usually created by a developer before the community is built. They act to curb the effects of the lack of zoning by planning institutions, thus shifting the burden from the public to the private sector (Berry, 2001). For the city government of Houston, homeowners' associations reduce costs and partly take on local planning responsibilities although they use civil lawsuits for enforcement, i.e. involving public policing mechanisms if planning laws are violated (Qian 2010:37).

In contrast to the land ordinances, homeowner association planning controls are more geographically based, relevant to the local level. These regulations exist in the form of governing documents that can go beyond typical land use controls in addressing specific matters such as parking, sign posting, exterior colours, landscaping, architectural standards etc (ibid 2010:38). This helps to explain the existence of some many restrictive private deeds despite general emphasis on individual liberties (Smith 2008).

The private land use control system has weaknesses in terms of consistency, vulnerability to neighbourhood socio-economic status, and special interests favouritism (Qian 2010: 37). The social consequences mean that the costs generated from growth are transferred to poor sectors of society (Vojnovic 2003:614). As subdivisions have grown older and expire, significant negative land use externalities have emerged e.g. heavy commercial and

industrial existing beside family residences. The lack of control by local government and over focus on private deeds has led to conflicts between neighbourhoods and property developers about the negative impacts of developments, urban sprawl and remedying the deterioration of existing development (Buitelaar 2010:988). The focus on neighbourhood level and property prices mean that co-ordination and strategic aspects of land use planning are likely to be neglected.

4.3.5 Super neighbourhoods (sub-Houston level)

Super neighbourhood organisations are another private-based solution of which 88 exist in the Houston municipality and are a planning sub-unit above homeowner associations but below city level. They are geographically designated areas where residents, civic organisations, institutions, and businesses work together to identify, plan, and set priorities to address the needs of their community, i.e. a private strategic land use component (Qian 2010). Important duties include deed restriction laws, land assemblage, and civic improvements to infrastructure and public space related projects (Buitelaar 2009:1057). Each neighbourhood plan involves many meetings between residents and city staff to determine regulations for individual plots of land uses and is intended not to be overridden by private developers within the area without residents' approval.

Super neighbourhood organisations also influence density and are usually against "overdevelopment" which is perceived to be a threat against property values. However decisions taken by super neighbourhood organisations can be overruled by the Houston planning commission (Qian 2010:38). The super neighbourhood concept reflects a planning process that does not have effective co-ordination or address the diversity of citizen visions as these organisations tend to be led by those with the biggest assets. In line with the expectations of asset specifications, those with the biggest investments work to steer planning regulations to favour their investments.

Another problem is that even if public amenities with social benefits such as green space and parks are deemed desirable by these associations, it is uncertain how it can be achieved. There are even fears about actively participating in this process in order to avoid opening

the potential for any high-density development to “slip through” (Fisher 1989:147). Super neighbourhoods also tend to concentrate on short-term revitalisation efforts and protecting property values, thus neglecting longer-term visionary plans and other super neighbourhood plans and the wider city.

4.3.6 Reality of Planning Within Houston

The ordinances were amended in 1999 to divide the city (for the first time) into an urban zone allowing higher density residential development than in the suburban zone of the Houston municipality. The same year also saw the loosening of minimum lot size requirements (e.g. 5,000 square feet of land for a single house) which impacted upon lower and middle income groups and was far more restrictive than other US cities (Lewyn 2005:618). Though this law was eventually changed to allow higher residential densities within the urban zone, this only affects 25% of Houston’s homeowners, leaving the rest need to comply with the previous building regulation regimes (Smith 2008).

This division was too blunt meaning that some small suburban neighbourhood areas are treated as urban, while built up areas outside the urban zone are regarded as suburban. Moreover, within both designated areas, ordinances still largely favour suburban-style development. Proposed urban projects with sustainability objectives have required special "variances" or exemptions from Houston’s planning commission as many elements of these projects are illegal under the city wide ordinances (Lewyn 2005). One such sustainable project that was blocked, a mixed use 23-story development had the potential to be a real improvement to the area and a showcase for a new urban form (Smith 2008).

4.3.7 Trade-offs within Houston's Planning System

Houston’s public service rhetoric which argues for limited government intervention, low taxes and low expenditure on public welfare, is unafraid to show a disinterest in social and environmental programmes. Supporters of such a system expect that the lack of interest will be compensated by pro-growth urban policies, i.e. considerable investments as a result

and that there should be self-reliance and individualism (Qian 2010:34). The city government aims to achieve the entrepreneurial spirit of the private sector in the public realm in order to offer superior planning solutions over government performance (low cost, increased flexibility and faster responses) as the market forces and individual preferences should dictate development, not the planners or politicians.

On the negative side, Houston's planning system has resulted in a number of costs being passed onto certain population cohorts as well as the non-internalisation of negative externalities at a city level. The support of pro-growth urban policies has been selectively targeted towards certain areas, while ignoring others, i.e. low income or minority groups. Lower income neighbourhoods were found to be weaker in terms of regulations compared to richer areas (Qian 2010:39). This and the lack of zoning restrictions is attributed for incidents such as 300-plus toxic waste sites being located dangerously close to residential areas during the 1980s. Houston has few neighbourhood parks and public spaces due to developers controlling the private deed systems within the super neighbourhoods system as well as considerable car dependency (Lewyn 2005).

Generic land-use regulations instead of location-specific has resulted in Houston developing according to car-based, cheap energy and suburban principles which may leave the city vulnerable to future potential commodity shortages such as oil. Along with massive parking lots, these codes affect density by taking up space making the city less compact and more auto-dependent (Lewyn 2005:623). Houston's street design rules also make life awkward for pedestrians and more geared towards motorists. The city wide ordinance restrictions have pushed development farther from the city's core and decreased the viability of mass transit, thus promoting a form of urban design that conforms to sprawl. During the 1980s the highest rate of growth in Houston's population occurred in areas 25 and 30 miles from the core area. The population in the central area has decreased significantly from 535,000 to 442,000 since 1960 to 2008 (Smith 2008).

4.3.8 Conclusion

Public-sector initiated planning policies in Houston are limited in comparison with the planning jurisdictions of the Netherlands and the UK. Zoning is seen by many inhabitants of Houston as an interventionist instrument where the transaction costs of such a structure outweighs the benefits (Buitelaar 2009:1055). The strategic planning aspects of land use control are not likely to be taken up by homeowners associations or super neighbourhood scheme with focus being directed towards preserving property values (Qian 2010:39).

Each neighbourhood in Houston can be viewed as an economic actor, competing with others in seeking to optimise their objectives in land use and urban development which makes it difficult to deal with externalities across super neighbourhoods. There is also a problem in that certain community or individuals may not have the connections to private bodies in power and be excluded. In terms of the overall welfare outcomes, this can lead to sub-optimal market conditions in relation to the cities efficiency and quality of life. Despite allowing for private involvement in planning functions in Houston, this has sacrificed co-ordination, strategic functions and even inappropriate restrictions.

SECTION 5 – DISCUSSION AND CONCLUSION

5.1 Discussion

Land-use control takes many forms; Britain, despite having land use plans and national planning guidance mostly takes each planning application on its individual merits. This is in contrast to the Dutch system which clearly states what is needed for planning permission via land use plans. The form taken in Houston is different with strict city ordinances and private deeds replacing comparable planning institutions.

Conventional land controls like land use plans is justified by planners for social welfare improvements and alleviating market failures such as negative externalities like unsuitable waste treatment in a residential area. In fulfilling social planning aspirations town planners aim to resolve the problem of interdependence between individual actions, benefits and costs versus social benefits and costs. Town planning intervention is also rationalised by

the provision of public goods which are undersupplied by the market i.e. public parks or cycling facilities. Using public actors to provide public goods allows for overlooking of self-interest and a wider range of social and environmental considerations. As noted in *section 1.2* there can be costs associated with public interference especially in hindering private enterprise and delaying projects.

Ideally competitive markets could be relied upon to co-ordinate and incentivise the actions of individuals in a way that supplies the ideal social and economic outcomes. However, the appeal of allowing planning transactions to occur according to stronger market principles is difficult due large numbers of interacting agents, different levels of influence and information asymmetry. The ability to codify knowledge i.e. making town planning explicit and clear to all is important since tacit knowledge gives an information advantage to an incumbent as seen in *section 2.4*.

As seen from the different outcomes associated with the case studies, Houston has developed according to a more market led approach which has caused significant costs on its inhabitants in the form of commuting, distance from services and vulnerability to further crises. Taking Holland at the other end, strong public intervention was found to have brought about positive outcomes. While not all public intervention attempts are successful in countering market failures in private land transactions, the Netherlands represents an example of where it has been done successfully with recent reforms tackling inherent weakness such as over-use of exemptions and obsolete land use plans.

Public support is necessary to create private incentives to encouraging actors to act in a way that improves planning performance instead of planning for outcomes in isolation (Cerin 2006: 224). Lifting barriers to consumers making efficient decisions, education and demonstration programmes can enable institutions make important contributions to changing habits (Rafiqui 2009:385). To have a complex planning system which needs significant interpretation can serve to detach the system from the people it is supposed to serve and cause reliance on experts whether they are planners or lawyers which is problematic in the Netherlands given the number of land use plans. This can have the knock-on effect of causing disillusionment of planning and undermine public approval for planning policies. The Netherlands combats this problem by consensual planning and

public education measures of why actions are taken to restrict development on say the Greenheart policy and in looking receive a public endorsement.

Working towards private actors having less focus on their own short term interests can shift focus to broader societal issues such as having less traffic or parks (Rafiqui 2009:385). Although superior or optimal developments are desirable goals to all, the means for achieving these are disputed but it can be aided by having clear and transparent planning law and land use plans. Despite the negative connotations associated with town planning such as beaucracy, inhibiting markets and previous failures as noted by North (1990) its continued existence can be seen as proof of its beneficial nature. The Houston planning approach involves neglect of social and environmental aspects and has been more favourable towards powerful interests. Zoning is seen by many inhabitants of Houston as an interventionist instrument where the costs outweigh the benefits.

The extent to which political and economic interests affect planning in Houston and the UK is unthinkable in the Netherlands. These powerful actors are seen as “mere” participatory stakeholders in the Netherlands, not the main power brokers who can make or break land use plans. The Dutch planning bureaucracy operates (for the most part) independently of the political arena, which facilitates the development of a planning doctrine based on professional norms (Evers et al 2000:16). However, private interests and political forces are often incorporated into the official political and planning processes and have a stake in the ongoing implementation. This approach to public participation places planning as being pro-active where the community have a stake and role in the long term development of their region. This is not the case in England and Houston where what is known as “not in my backyard” (NIMBYism) is the main rationale for public participation, i.e. blocking development. In Houston there’s is considerable effort on hindering anything that could affect property values. Although there was a will to pursue facilities with positive externalities in Houston , it is uncertain on how this can be achieved or funded (Gielen & Tasan-Kok 2010:1100).

In terms of negotiation as a planning tool, the UK emerges as a better example of utilising it to extract the highest gains on behalf of the public and minimising negative externalities although there are still issues as uncovered in *section 4.3.5*. This is due to a more

formalised negotiation system and not being strongly bound to land use plans. Recent changes have improved the Dutch planning system by allowing greater room for negotiation while at the same time tightening the use of exemptions. Negotiation for planning gain is not carried out by public actors in Houston where the utmost regard is given to the ordinances and private deeds in controlling the urban form. It is desirable that interested parties participate in a negotiation but it is also important that objective public actors are utilised to secure a better representation of all interests. This compares against private negotiation which prioritises externalities from an individualistic perspective.

All land use plans aim towards achieving a better allocation of resources and co-ordination e.g. co-ordinate development decisions and externalities in a way that improves the built environment (Webster 2005:475). The Dutch planning doctrine relies heavily on plans with maps and visual devices with national level serving not just as references, but as crucial elements in policy (Evers et al 2001:20). Obsolescence and the use of exemptions diminishes both steered ability and (legal) certainty for property rights. Town planners also face bounded rationality in predicting any community's needs for allocation and designation of land uses given the extent of and number of interacting actors in the land markets. However, the plan led system has served the Netherlands well due to a special need for disciplined planning which has resulted in an integrated transport and land use system as a result of the very high density.

Certainty depends on the degree of binding of land-use plans on planning applications. Predictability and stability for land-use planning are important for people intending on making large investments in the built environment. Binding plans can result in tangible and defined public benefits, especially if binding agreements are between those who supply the plan (planning institutions) and those are affected by the plan (landowners). This can be enhanced by reliable initial agreements and punishment of those who attempt to renege on initial commitments, thereby reducing ex post transaction costs. However, it is clear that public authorities do not want to be bound to the principle of absolute predictability in planning matters even in the Netherlands. Discretion and flexibility can have pragmatic advantages as more certainty leads to the loss of the ability to negotiate.

Britain, with a weaker approach to certainty in land use plans, has the problem of actors not perceiving policy commitments in these plans to be credible. This can cause politicians and other private actors to engage in post plan opportunism (Dawkins 2000:512). Houston, contrary to its stance of liberty, is strict on demanding compliance with a large number of city and neighbourhood regulations put in place or affected by private interests. As noted earlier, having private interests involved in formulating planning rules is likely to lead to overlooking of negative externalities and strategic inefficiencies (Tasan-Kok 2008:189).

It does take a long time for bad planning policies to be dropped, with inefficiencies in the planning tending to be “institutionalised” leading to excessive hidden costs such as market inefficiencies, an example being the suburban led development in Houston. This is also true of the other extreme with systematic and comprehensive plan making impose high costs in terms of outdated plans, despite the desire for certainty on behalf of land developers (Gielen & Tasan-Kok 2010: 1130). However, overall it was found that private actors benefit from the certainty offered by development plans and setting out of future infrastructure developments which provides information about intentions in the future (Mercier 2009:154). Knowledge of future land market opportunities are established in advance implying that private landowners compete for a share of the existing market for land uses rather than speculating for future market opportunities (Dawkins 2000: 513).

Another key interest area is how project or higher level decision making (above level local) can be used with binding local spatial plans. In the UK, project-oriented decision making is less heavily regulated as larger, regional projects do not have to be recorded in any land-use plan. Planning permission can be obtained without being defined in any land-use planning document and be even implemented in non-conformance to the local plan. In contrast the Netherlands requires a clear, positive allocation in the affected local land-use and regional plan which can be a cumbersome and painstaking process. The Planning Commission in Houston takes the lead when making major decisions with little cross neighbourhood co-operation occurring which cuts down on transaction costs but has had unfortunate consequences like the previously mentioned dump scandals.

Looking at the 3 case studies, the Netherlands emerges as having the strongest solution of trying to balance what scale planning should occur by having local, regional and national

level plans as interdependent parts that relate strongly to each other. It is particularly useful having planning relevant financial incentives such as housing subsidies being set at a national level in order to avoid intra-cities competition. This scale allows for more effective restrictions on development outside the city region. The UK and Houston do not have such national level controls in place and effectively allow developments to move where less restrictive planning regulations prevail. As noted previously, this can be expected to lead to sub-optimal conditions such as suburban sprawl.

The steering function in Houston is much smaller as ordinances are independent of location. To state that zoning is a straightforward solution for Houston is difficult, as the introduction of zoning would present problems but a more rational city-wide control over the uses of land is desirable as indicated by public surveys. One potential solution could be to adjusting city ordinances to achieve appropriate urban solutions and non-urban solutions and improving the 1999 differentiation of locations which was not sufficient.

Recent changes in all 3 systems support the perspective that institutions evolve by trial and error over time. In the Netherlands and the UK this has involved rationalising services and improving clarity to the public, which has been an improvement with the Netherlands in particular becoming more flexible. The UK has also improved its ability to tackle externality problems at a regional level as evident by the strengthening of powers and improved planning co-ordination ability.

Section 5.2 – Conclusions

This section will give an overview of the main findings from this thesis. One of the main agendas is to uncover the main trade-offs in the different planning systems as informed by the following variables:

Flexibility encompasses **certainty** and the problem of balancing the advantages of discretion against the credibility of a planning system and its future-based land use plans. One cannot simply state that one form is better than the other instead there a number of factors which must be weighted e.g. the certainty given to asset owners against unexpected

contingencies. The British and Dutch planning systems were found to be flexible to different degrees despite the Netherlands placing much emphasis on certainty in land use plans. While Houston does allow exemptions, regulations are for the most part rigorously applied. This has the outcome of exacerbating unintended consequences of planning with the sheer amount of regulations at both city and neighbourhood level in Houston.

In regard to certainty, discretionary development control should be theoretically more efficient than codified (strict and certain) planning control since decisions are made with up to date information and specific circumstances. However there are trades off within a more discretionary system such as higher administrative costs of planning (since every decision is unique). The greater the discretion in the system, the less certainty about a private individuals property rights. Ultimately one could say that these factors trade off more efficient individual decisions with less efficiency in the system (Webster: 2005 483). Discretion also trades against longer term strategy and greater policy co-ordination.

Without some form of certainty particularly in planning procedures, land-use planning can lose its legitimacy and be abandoned or weakened by favouring certain interests. In the case of bad land use planning effects Needham (2007:189) believes that these can be corrected by the principles of responsible government. This should allow for possibility of a trade-off between the ambitions for land-use planning on one hand and on the other hand, the wish that planning should follow the rule of law. The Netherlands most closely resembles this ideal of planning. It might not be possible to realise those ambitions by private law rules as in Houston, nor by public laws applied in an arbitrary manner without open debate as occurs in Britain due to the principle of common law.

Consistency corresponds to rules being followed when the plan is being made and approved (the right to object, public participation and to go to appeal) meaning better certainty for those affected. This (procedural) certainty, when planning permits are processed is more evident in the Dutch example compared to the UK. The need for flexibility can be accommodated by protecting the interests of the applicant by requiring that the decision to grant the permit be subject to strict procedural rules or predictability to protect against subjective land use concepts such as “collective interest”. This refers to the idea that actions

taken by a public authority are in the public interest if they are taken according to procedures which are accepted by everybody.

Negotiating is directly related to notion of flexibility as it can help improve the yes or no nature of the planning system. If negotiation is carried out correctly, town planning can offer a means of overcoming the problem of bringing in market mechanisms while still controlling co-ordination and externality issues. In relation to negotiation, there are problems with probity, clarity and public interest. Negotiation in town planning should be carried out in a transparent, fair and formal manner. An efficient planning system is one that is flexible but firm and impartial (actions and decisions apply to all people equally) and working to allocate fairly and clearly contested resources.

Participation enables a planning system to be legitimate and credible for its populace, as there should be some form of interaction between the experts who operate the planning system and private actors. Houston while giving a large role to private actors who even steered some planning functions, was found to be exclusionary with the best organised (higher income) groups being the main beneficiaries of a planning system they help steer. Private actors in the UK see public participation as a way to block proposed developments rather than as a manifestation of public interest in how their area will develop as in the Netherlands, i.e. participate in formulating a strategy.

Underpinning successful participation are consistency and fairness, which were evident in the different systems. This was a notable problem in Houston with the public perception of that large business interests getting favouritism particularly in terms of receiving exemptions with lobbying also being a feature of Houston's planning system. There is a similar problem in the UK with a public perception of planning permission being easier for those "in the know" having access to planners or councillors in an informal context and knowing the system better in regard to formal negotiations.

Co-ordination corresponds closely to the externality issue and obviously scale. One of the core rationales for having planning in the first place is to provide a better co-ordination of spatial systems. Houston was found to be lacking with little consideration being given to consequences of allowing and indeed favouring a system for suburban sprawl. The

Netherlands and the UK took another approach of trying to counter externalities by considering implications from many perspectives such as transport, environment and social perspectives. A stronger sense of co-ordination can improve planning efficiency by improving strategy aspects on how it relates to other aspects such as how tax policy can affect the location pattern of industrial and residential settlements.

Scale poses difficulties and interacts with important planning variables such as externalities, co-ordination and information. Over-centralisation can result in blunt “one size fits all” solutions being applied in the Houston example (despite the attempts to involve neighbourhood actors) with the UK representing a more localised solution although planning policy advice is centralised. With an enormous amount of time and effort, a compromise can be found as in the Netherlands where each of 3 main planning levels must closely relate to each other.

The extent of information and plan quality has implications with more information meaning better but more delayed plans. The Netherlands by having national, regional and local plans overcomes one of the main tradeoffs between appropriate planning policies for a localised area and fitting in with national strategies, i.e. controlling externalities from a higher level. This does impose significant transaction costs such as trying to work with a multitude of binding land use plans and complexity but there are significant benefits associated with this holistic viewpoint as exemplified by the Netherlands in terms of a well controlled urban development and preservation of green areas.

Underlying a planning system is **enforcement** is a crucial part of the planning system which was found to not receive much attention in the theoretical literature. The only major point was that ensuring compliancy by private means as in Houston with strict rules can cause a planning system to be over-occupied with regulation. At the same time enforcement is needed for a credible planning system to exist.

To state that one planning system is superior to another is not possible, instead it depends on the weight that one places on the different trade-offs between the 3 planning systems. The Dutch system represents the most powerful way of dealing with externalities which is complimented by a strong educational system, an arena for discussion and inclusiveness to

support the amount of public intervention in the land markets. It is the same type of intrusion which would make it an unacceptable trade off to majority of Houstonians who espouse liberty and self reliance in a low tax culture. One could state that a preference can be dependent on the desirability looking at the outcomes of the different locations with the Netherlands representing a high density solution with a high provision of public services, Houston representing a suburban solution with limited public services and Britain somewhere in between.

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