

RESEARCH ARTICLE

Putting the country in English and Welsh town *and* country planning law

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Abstract

The Town and Country Planning Act 1932 (TCPA 1932) was the first planning Act in English law to include country within the legal scope of town planning. This transformed the scope of town planning, legally enabling planning and land administration on a local, regional and national level. Despite this, the TCPA 1932 has been overlooked by legal scholars, who mark the origins of modern planning with the Town and Country Planning Act 1947. This paper celebrates the legacies of the TCPA 1932, namely the inclusion of rural areas within planning legislation, and the centralised role of local authorities in effectuating planning practice, demonstrating how these principles continue to shape planning legislation into the present.

Keywords: environmental law; administrative law; planning law; legal history

Introduction

Town and country planning law in England and Wales has a well-documented history,¹ yet what has gathered little attention from legal scholars is where the ‘country’ in town *and* country planning came from, and what was meant by the inclusion of ‘country’ within the scope of domestic planning law. Part of this silence could be explicable through how planning law is perceived in legal scholarship, with most legal accounts hallmarking the Town and Country Planning Act 1947 as the start of modern planning law.² This approach omits the first titular use of town *and* country in legislation, with the Town and Country Planning Act 1932 (TCPA 1932) being largely overlooked by planning law scholarship.

This paper is a celebration of the TCPA 1932 and the largely unwritten legacy it left in determining the scope of modern planning law in England and Wales.³ This legacy is two-fold, first, the TCPA 1932 was

¹G Cherry *Urban Change and Planning* (Oxford: Alden Press, 1972); G Cherry *The Evolution of British Town Planning: A History of Town Planning in the United Kingdom during the 20th Century and of the Royal Town Planning Institute 1914–1974* (Cambridge: Leonard Hill Books, 1974); H Meller ‘Imagining culture and the city in planning history: some reflections on the public and private’ (2008) 24(1) *Planning Perspectives* 99; H Meller *Towns, Plans and Society in Modern Britain* (Cambridge: Cambridge University Press, 1997); A Sutcliffe (ed) *British Town Planning: The Formative Years* (New York: St Martin’s Press, 1981).

²This is contrasted to the historical accounts noted in n 1 above, with legal scholarship emphasising planning law’s development post-1947. See P McAuslan *The Ideologies of Planning Law* (Oxford: Pergamon Press, 1980); V Moore *A Practical Approach to Planning Law* (Oxford: Oxford University Press, 13th edn, 2014).

³The original statutory context of the TCPA 1932 was to provide a framework for planning in both England and Wales, with the titular use of ‘town and country’ being applied to subsequent legislation, notably in 1947 and 1990. Following on from the Government of Wales Act 2006 and the Wales Act 2017, planning became a devolved matter, with aspects of the TCPA 1947 and TCPA 1990 having an alternate statutory effect in Wales. This paper discusses England and Wales in tandem, to reflect the

the first instance in which planning legislation integrated issues of rural and urban land management into a single legal framework. This has subsequently become a presumption within English and Welsh planning law, as reflected in the continued titular use of town *and* country in subsequent planning legislation, including the TCPA 1990, which is one of the primary pieces of planning legislation today.⁴

The second legacy of the TCPA 1932 is the central role that local authorities play in carrying out the legal activities of planning, as can be seen in subsequent planning legislation including: the Town and Country Planning Act (TCPA) of 1947 and the 1990 Act of the same name; or more recently in the Levelling-up and Regeneration Act 2023. For the purposes of this paper, local authority is used broadly to refer to the different local bodies created under the Local Government Acts, which have the statutory powers to carry out local administrative tasks.⁵ This celebration of the TCPA 1932 is thus important both in understanding planning law's rich legal past, but also in facilitating critically aware discourses about the nature of town and country planning law looking forwards. In particular, it allows more complete consideration of the nature of the legal relationship between rural and urban areas, as well as the distribution of power between local and national bodies in considering that relationship.

In celebrating the TCPA 1932, this paper proceeds in five sections. First, I consider the relevance of the TCPA 1932 to modern planning law, substantiating the claim that the 1932 Act left a largely unwritten legacy that needs to be understood to critically engage with the modern scope of English and Welsh planning law. Secondly, I consider the contextual background to the TCPA 1932, outlining how ideas of urban, and later rural, land management were given statutory effect through the language of planning in so-titled planning legislation. Thirdly, I consider the specific circumstances in which the TCPA 1932 was enacted. Finally, I turn to the two legacies left by the 1932 Act: the integration of rural and urban land management into a single statutory framework; and the role of local government bodies in giving effect to that framework. It is through the consideration of this history, I argue, that the inclusion of 'country' within town and country planning law can be fully understood and its continued use within legislation considered.

1. Why celebrate the Town and Country Planning Act 1932?

Before I begin, it is important to address the elephant in the piece. Why would the generalist legal scholar care about planning law? And, secondly, why would they care about a piece of planning legislation that is 93 years old? As noted recently, 'town and country planning law is often overlooked' seen as 'peripheral to the academic study of ... law'.⁶ This is an interesting proposition given the central role that planning law plays in facilitating the public administration of land.⁷ One need look no further than the reference matter at the start of a textbook on environmental law, administrative law, or land law to see the effects

shared nature of the legacy of the TCPA 1932 in the two jurisdictions, with requirements about local government and integrated land management being continued features of planning law in both England and Wales.

⁴The TCPA 1990 now exists alongside legislation like the Planning and Compulsory Purchase Act 2004, the Planning Act 2008, the Localism Act 2011, and the Levelling-up and Regeneration Act 2023, as well as the recently proposed Planning and Infrastructure Bill 2024–2025.

⁵Local government and local authority are terms which are used interchangeably across the legislation discussed in this piece. There is no singular definition of a local government or local authority due to their wide-ranging historical origins: see E Jenks *An Outline of English Local Government* (Yorkshire: Methuan & Co, 1894). In the context of this paper local authorities are understood as the two-tier system of local bodies established under the Local Government Acts 1888, 1894, and 1929. These two tiers consist of rural and urban district councils as the lower tier and then county councils and county boroughs as the upper tier. Throughout this period the upper tier acquires increased possible statutory oversight of the district councils.

⁶R Ogden-Jones 'Policies, places and practices: why environmental law scholars should care about the Levelling-up and Regeneration Act 2023' (2024) 36(3) *Journal of Environmental Law* 445 at 445.

⁷Public administration is difficult to define but is used here to refer to the public powers of government with such powers being any legal duty of a public body which 'relate to the people as a whole'. See C Harlow and R Rawlings *Law and Administration* (Cambridge: Cambridge University Press, 4th edn, 2022) p 4; OED 'public (adj.), sense 2.a' (OED, June 2024); J Beckett and HO Koenig *Public Administration and Law* (Abingdon: Routledge, 2015) p ix.

that the long arm of planning has had in shaping both legislation and case law since the early twentieth century.⁸ To care about planning law then, is to care about the legal interplay between public administration and land, considering the specific legal effects of this in shaping wider aspects of public law and land law. Thinking more widely, planning legislation also reflects how the law attempts to quantify places, providing an insight into the relationship law has with the physical world. Planning legislation then, due to its far-reaching nature, can help in understanding the possibilities of legislation more generally.

This still doesn't address why a 93-year-old Act is pivotal to the appreciation of planning law. There is, of course, inherent value in studying the history of law on its own terms and much scholarship is dedicated to developing a rich account of the legal past for the purpose of understanding the 'contingency of the classical legal authorities'.⁹ Whilst I do believe that this is also true in understanding the legal history of planning, there is perhaps a more pertinent explanation for why the TCPA 1932 is still important.

Prior to the TCPA 1932, Town Planning Acts focused on urban issues such as sanitation and housing, with rural land management being broadly entrusted to private landowners.¹⁰ The TCPA 1932 changed this, providing for the first time for the planning of urban and rural spaces as primarily coordinated by local authorities. Yet in the present it is these two legal presumptions that are causing particular challenges for the legal regulation of space, namely whether issues like the environmental crisis and the housing crisis are too diametrically opposed to be coordinated in tandem, as town *and* country legislation would suppose. Second to this, are local authorities the best public bodies to address this?

These tensions can most recently be evidenced in the Levelling-up and Regeneration Act 2023, which struggled to grapple simultaneously with providing robust protection for the environment, as statutorily required under section 20 of the Environment Act 2021,¹¹ whilst also addressing the levelling-up objectives which the Act sought to implement, as outlined in section 1 of the Act.¹² This can be seen particularly in Part VI of the 2023 Act, which introduced a new form of environmental impact assessment that allows for greater flexibility for the purposes of balancing developments against environmental protection.¹³ This can leave one wondering whether town *and* country can continue to be compatible within English and Welsh planning legislation, a question being increasingly considered in discourse on urban and rural land use.¹⁴

⁸See L Fisher et al *Environmental Law: Text, Cases and Materials* (Oxford: Oxford University Press, 2nd edn, 2019) p 641. Legislation includes the Housing Acts, Countryside and Rights of Way Act 2000, National Parks and Access to the Countryside Act 1949, and elements of the Law of Property Act 1925. Cases include *R v Local Government Board, ex p Arlidge* [1915] AC 120 (HL); *R (HS2 Action Alliance Ltd) v Secretary of State for Transport* [2014] UKSC 3; *Tesco Stores Ltd v Secretary of State for the Environment and West Oxfordshire District Council* [1995] 2 All ER 636 and *R (on the application of Friends of the Earth Ltd and Others) v Heathrow Airport Ltd* [2020] UKSC 52.

⁹J Getzler 'Brian Simpson's empiricism' (2012) 3(2) *Transnational Legal Theory* 127 at 130.

¹⁰B Pontin 'Environmental law-making public opinion in Victorian Britain: the cross-currents of Bentham's and Coleridge's ideas' (2014) 34(4) *Oxford Journal of Legal Studies* 759; P Marren *England's National Nature Reserves* (English Nature, 1994) pp 7–11; J Sheail *Nature in Trust* (Glasgow: Blackie and Son Ltd, 1976) pp 45–55.

¹¹This is reflected in ss 95, 98, 143 and Sch 7 which require policies under the Act to adapt to the challenges of climate change, alongside s 156, which requires the non-regression of environmental protection.

¹²The current statement of levelling-up objectives is outlined in the 'Statement of levelling-Up Missions' (26th February 2024) which at the time of writing had not been reviewed following the election of the new government (early 2025). The statement of 12 policies includes housing, transport, and education. This regime may be partially replaced by the Planning and Infrastructure Bill 2024–2025.

¹³Department of Levelling-up, Housing and Communities 'Environmental Outcomes Report: a new approach to environmental assessment' (17 March 2023). See also Ogden-Jones, above n 6, at 449–451.

¹⁴See G Harrison and B Clifford "'The field of grain is gone; it's now a Tesco Superstore': representations of "urban" and "rural" within historical and contemporary discourses opposing urban expansion in England' (2015) 31(4) *Planning Perspectives* 58; B Dockerill and J Sturzaker 'Green belts and urban containment: the Merseyside experience' (2020) 35(4) *Planning Perspectives* 583; W Upton 'What is the purpose of planning policy? Reflections on the revised National Planning Policy Framework 2018' (2019) 31(1) *Journal of Environmental Law* 135; A Layard 'Planning and environment at a crossroads' (2002) 14(3) *Journal of Environmental Law* 401.

In a recent article, Elizabeth Fisher adopted a passage from the fiction author Ursula Le Guin. Le Guin, quoting from the introduction to Howard A Norman's collection of narrative poems from the Swampy Cree Native Americans, said:

He goes backward, looks forward. The porcupine consciously goes backward in order to speculate safely on the future, allowing him to look out at his enemy or the new day. To the Cree, it's an instructive act of self-preservation.¹⁵

Fisher went on to highlight the importance of legally going backwards when determining 'how law can contribute the cognitive resources for an "inhabitable future"'.¹⁶

Thus, perhaps the elephant in this piece is more of a porcupine. In asking where the 'country' came from in town and country planning, my intention is to demonstrate why town and country were placed within the same legal framework, considering specifically the legal circumstances that led to this inclusion. In doing so, it becomes possible to look forwards in the modern context and properly consider whether these legacies of a forgotten Act are still embodying the conceptual ideals which underpin planning as expressed in modern law. It is from this position that combined town and county land administration, as carried out by local authorities, is able to be properly critiqued. Thus, whilst I do not intend to draw any conclusions here about the adequacy of modern planning law, my intention is that this discussion of the TCPA 1932 will play a role in shaping discourses around current and future planning laws and the relationship between rural and urban spaces more generally.

2. Setting the scene: early planning in the English and Welsh context

In an essay exploring the etymology of 'planning', Tony King suggested there is a relationship between the intention of a word and its rise to use in common vocabulary.¹⁷ He argued that the concept of planning was born out of the combined intentions of individual property development, 'suburban expansion', and state intervention.¹⁸ Given the breadth of these intentions, it is perhaps unsurprising that ideas of spatial planning in English law existed long before planning itself became a legal concept.¹⁹

It was during the nineteenth century, however, following the rapid expansion of urban towns as a consequence of industrialisation, that the requirement 'to plan' was given increased legal effect, facilitating the coordination of different competing uses for limited urban space.²⁰ This can be evidenced in legislation like section 10 of the Public Health Act 1848, which required local authorities to use plans as part of the legal process for implementing sanitation reform. Alternatively, sections 4–6 of the Housing of the Working Classes Act 1890 required local authorities, who sought to improve working-class

¹⁵U Le Guin 'A non-Euclidean view of California as a cold place to be' in *Dreams Must Explain Themselves* (London: Gollancz, 2018) pp 109–110 as cited in E Fisher "Going backward, looking forward": an essay on how to think about law reform in ecologically precarious times' (2022) 30 *New Zealand Universities Law Review* 111 at 114.

¹⁶*Ibid.*, at 115.

¹⁷T King "Town planning": a note on the origins and use of the term' (1982) 4(2) *Planning History Bulletin* 15.

¹⁸*Ibid.*

¹⁹TJ Barnes 'The prerogative and environmental control of London building in the early seventeenth century: the lost opportunity' (1970) 58(6) *California Law Review* 1332; note also Statute of Bridges 1530, 22 Hen 8 c 5; the Statute of Sewers 1531, 23 Henry 8 c 5; and the Streets, London and Westminster Act 1662, 14 Cha 2 c 2.

²⁰In this context industrialisation encompasses 'the development of industries in a country or region on a wide scale': OED, 'industrialization (n.)' (OED, July 2023). See also A Briggs *A Social History of England* (Book Club Associates, 1983) pp 196–200. Urbanisation, the process of areas becoming increasingly populous and developed, can be seen as the primary land-based socio-economic effect of industrialisation: G Cherry *Cities and Plans: The Shaping of Urban Britain in the Nineteenth and Twentieth Centuries* (London: Edward Arnold, 1988) pp 16–48; A Offer *Property and Politics 1870–1914* (Cambridge: Cambridge University Press, 1981) pp 221–283; S Webb and B Webb *English Local Government: Statutory Authorities for Special Purposes* (London: Longman, 1922) p 236; J Burchardt *Paradise Lost: Rural Idyll and Social Change in England since 1800* (London: Bloomsbury Academic, 2021).

housing, to produce plans of work which detailed the location, object, and expense of the proposed improvement. Despite this increased statutory reliance upon concepts of plan-making to facilitate urban land use coordination, the idea of planning as a specific legal activity remained absent from the legislation, and it would be anachronistic to regard these earlier examples as ‘planning’ law.

Instead, a legal activity of planning was first proposed in England by Birmingham City Councillor John Nettlefold, who adopted the term from the German *planung*, which referred to a zoning model for urban layout.²¹ Similarly, philanthropist Thomas Horsfall first used ‘town plan’ in a 1904 speech in Manchester on ‘eliminating slum housing’.²² In both instances, the language of planning was used to denote a desire to control urban layout as a mechanism for improving the urban environment, particularly in the context of providing adequate housing.²³ This proximity between planning and housing was also reflected statutorily, with the first instance of planning legislation in England and Wales being the Housing, Town Planning, etc Act 1909.

The 1909 Act followed on from legislation like the Housing of the Working Classes Act 1890, using the language of planning to provide further statutory controls over the development of urban dwellings. The 1909 Act set out to ‘amend the law relating to the housing of the working classes’ (amending the Housing of the Working Classes Act 1890); to ‘provide for the making of town planning schemes’; and ‘make further provision with respect to the appointment and duties of county medical officers of health and to provide for the establishment of public health and housing committees of county councils’.²⁴

The three parts of the Act reflected these objectives, with Part II on ‘Town Planning’ being notably shorter than the housing provisions contained within Parts I and III. Indeed, the legislation was more a housing Act, than a statutory fulfilment of the ideas of planning as proposed by Horsfall and Nettlefold, with the legislation framing the activity of planning as a legal mechanism for securing housing development.²⁵ This was similar to the use of plan-making in sections 4–6 of the Housing of the Working Classes Act 1890.²⁶ This legal approach to planning was in part a socio-political response to poor quality urban housing, with the Liberal Party promising to end urban overcrowding and unsanitary conditions in their 1906 election manifesto.²⁷ The 1909 Act was thus seen to represent an ‘epoch in the social legislation’ in Britain, by utilising the statutory language of planning to formulate a legislative response which regulated urban housing development by introducing controls over urban land use.²⁸

This can be evidenced in considering the specific statutory provisions of the 1909 Act. Section 54, for example, empowered local authorities to create town planning schemes, framing them similarly to housing schemes under section 4 of the 1890 Act, as a statutory process for securing proper sanitation

²¹A Sutcliffe *Towards the Planned City: Germany, Britain, the United States and France 1780–1914* (Birmingham: Blackwell, 1981) p 72.

²²King, above n 17, at 15; J Reynolds ‘Thomas Coglean Horsfall and the town planning movement in England’ (1952) 23(1) *The Town Planning Review* 52.

²³The relationship between coordinated urban spaces and improved urban environments had been experimented with since the mid-nineteenth century, with model village and town projects showing the benefits of well-organised urban design. Ebenezer Howard’s Garden City movement promoted similar aims. See W Ashworth *The Genesis of Modern British Town Planning: A Study in Economic and Social History of the Nineteenth and Twentieth Centuries* (Abingdon: Routledge & Paul, 1954) pp 120–121; J Bryson and P Lowe ‘Storytelling and history construction: rereading George Cadbury’s Bournville Model Village’ (2002) 28(1) *Journal for Historical Geography* 21; Port Sunlight Village Trust ‘Port Sunlight conservation management plan 2018–2028’ (PSVT, 2017); E Howard *To-morrow: A Peaceful Path to Real Reform* (first published 1898, republished as *Garden Cities of To-morrow* (London: Swan Sonnenschein & Co, 1902)).

²⁴The Housing, Town Planning, etc Act 1909, ‘Introduction’.

²⁵P Booth and M Huxley ‘1909 and all that: reflections on the Housing, Town Planning Act 1909’ (2012) 27(2) *Planning Perspectives* 267 at 275; John Burns MP expressed the housing focus of the Bill during debate, ‘[the Bill] enables local authorities to provide new houses for the working classes’: Hansard HC Deb, vol 734, col 3, 5 April 1909.

²⁶Booth and Huxley, above n 25, at 268.

²⁷WMRC (Liberal Publication Department, 1906) ‘Leaflets published by the Liberal Publication Department for the General Election of 1906’.

²⁸C Leach *The Housing, Town Planning, &c Act 1909* (London: The Local Government Press Company, 1911) p 3.

and providing adequate housing.²⁹ As the section set out, planning schemes had ‘the general object of securing proper sanitary conditions, amenity, and convenience in connexion with the laying out and use of the land, and of any neighbouring lands’. This process was closely tied to the slum clearance provisions in Part I of the Act, with section 6 requiring that housing should be laid out with suitable space for ‘public streets and roads’. Local authorities were similarly empowered under section 10 to obtain orders for removing ‘unfit dwellings’, with section 57 enabling local authorities to use planning schemes to remove or improve existing buildings. To link back to King’s etymology, the legal intention of planning here was the provision of housing, not a more general legal control of land use as it is now understood to be.³⁰

This understanding of town planning prevailed throughout the First World War, with planning legislation being central in meeting the housing objectives of post-war reconstruction. In particular, the Minister for Reconstruction, Christopher Addison, viewed effective planning law as fundamental in achieving the government’s pledge to provide 500,000 new homes for those returning from war.³¹ This intention was, in part, manifested in the Housing and Town Planning Act 1919.

The 1919 Act consolidated the provisions of the 1909 Act together with those from the Housing of the Working Classes Act 1890. The Act followed broadly the same structure as the 1909 Act, with Part I of the 1919 Act similarly providing for the redevelopment of slum housing. Section 1 created a legal obligation on local authorities to prepare housing schemes, which were proposals that detailed the required number of houses within an area, alongside the location, size, and number of houses to be constructed per acre. These housing schemes became an important aspect of urban housing administration because they legally obligated local authorities to plan housing, thus better securing low-density developments and promoting higher quality housing.³² The compulsory nature of section 1 also marked a legal shift in how the process of plan-making was conceived, transforming the plans produced by these schemes into an obligatory function of local authority administration. Local authorities themselves were, however, accountable to the centralised Local Government Board (LGB), a department in Whitehall tasked with supervising local authorities.³³ In the context of the 1919 Act the LGB and later the Ministry of Health had broad supervisory powers, and as summarised in section 1(3) could review all housing schemes. Thus, whilst the legal purpose of planning was still closely tied to housing construction, the process of plan-making was given increased legal status under the 1919 Act.

The 1919 Act also saw a more discrete legal understanding of planning emerge as an activity concerned with the spatial organisation of urban areas. Whilst this was still closely linked to the provision of housing, the Act began to frame planning as a separate type of legal control from housing development, which could allow public administrators to determine how different portions of urban land were used. This can be seen in Part II of the Act, ‘Town Planning’, which set out the specific legal functions of planning as a legal process for controlling urban land use. Of note was section 42, which made the production of a planning scheme compulsory for local authorities governing areas of 20,000 inhabitants or more. This required local authorities to plan local land use by producing a scheme which designated land as either under development or likely to be built upon, namely for residential or industrial purposes. As with housing schemes, these would then be reviewed by the LGB and later the Ministry of Health.

Local authorities were, however, slow to propose town planning schemes, showing the general process of town planning to be a secondary concern of the Act when compared to the provision of housing, which

²⁹ Although the court did hold that ‘building’ in s 46 of the Act (Part II) did not just refer to housing but any building: *Jackson v Knutsford Urban District Council* [1914] 2 Ch 686.

³⁰ King, above n 17, at 15.

³¹ This was called the ‘homes for heroes’ campaign. See LF Orbach *Homes for Heroes: A Study of the Evolution of British Public Housing, 1915–1921* (London: Seeley, Service & Co, 1977); M Swenarton *Homes Fit for Heroes: The Politics and Architecture of Early State Housing in Britain* (Oxford: Routledge, 2018).

³² Housing and Town Planning Act 1919, s 1(1).

³³ The Local Government Board was established under the Local Government Board Act 1871 and was succeeded by the Ministry of Health in 1919. See C Bellamy *Administering Central-Local Relations 1871–1919. The Local Government Board in its Fiscal and Cultural Context* (Manchester: Manchester University Press, 1988) pp 10–11.

local authorities quickly engaged with.³⁴ To set this into context, as Gordon Cherry noted, only 94 schemes, as submitted by 50 local authorities, had been actioned by 1932, despite over 740 authorities being obligated under section 42 and section 47 to produce a planning scheme.³⁵ By comparison, nearly half of the 500,000 houses promised were built between 1919 and 1924, as supported by provisions in Part I of the 1919 Act.³⁶ This suggestion that the 1919 Act encouraged housing development more than urban planning is also evidenced in the case law, with local authorities opting to enact section 1 housing schemes, instead of town planning schemes under section 42. One explanation for this was that local authorities had a statutory right to recuperate costs for effectuating a housing scheme in a way which was not possible for costs under a planning scheme. In *Arlidge v Tottenham Urban District Council*,³⁷ and *Paddington Borough Council v Finucane*,³⁸ local authorities relied upon section 28 to recover costs for works planned within a housing scheme. The 1919 Act did not confer the same powers with respect to town planning schemes under section 42.

It is in considering the relationship between planning and housing that a third piece of planning legislation needs to be acknowledged as part of the contextualisation of the TCPA 1932. The Town Planning Act 1925 was the first piece of planning legislation which separated out housing regulation from urban planning, empowering local authorities to produce town planning schemes for the purpose of laying out the use of urban land. By comparison, housing schemes were encompassed in separate legislation, namely the Wheatley Act 1924,³⁹ and the Housing Act 1925.

The Town Planning Act 1925 simplified the legal process for creating planning schemes when compared to the 1909 and 1919 Acts, with section 1 setting out what the purpose of a planning scheme would be. In particular, section 1 established that a planning scheme could encompass any land to be used for development purposes, and existed to ensure such land had proper sanitary conditions, amenities (including open spaces), and a considered layout. This was a notable expansion in the scope of planning law compared to planning schemes under Part II of the 1919 Act, reflecting the changed status of planning as a discrete legal activity.⁴⁰

The scope of section 1 was, however, still limited, with 'development' in section 1 only referring to the construction of buildings. This meant local authorities had minimal powers to control non-construction-based forms of land use and development regulation was the primary focus of the Act. This limitation was further apparent in the guidelines produced by the Ministry of Health in 1928, which detailed model clauses for use in planning schemes.⁴¹ Of the 44 model clauses recommended, over half referred explicitly to construction, a further 10 clauses related indirectly to the development of housing.⁴² Thus, whilst planning had become a discrete legal activity under the Town Planning Act 1925, the scope of this activity was relatively limited, with the legal processes of planning being confined to urban construction.

In light of this, it was only weeks after the enactment of the Town Planning Act 1925 Act that the question of planning law once again sparked debate.⁴³ During one Prime Minister's Statement in 1925, Liberal MP Trevelyan Thompson emphasised that only 70 local authorities had submitted schemes for slum clearance since the 1919 Act, suggesting the town planning had introduced unnecessary legal processes

³⁴This was in part due to the analogous Housing (Additional Powers) Act 1919 which created additional acquisition powers in the context of housing: *R v Tribunal of Appeal under the Housing Act, 1919* [1920] 3 KB 334.

³⁵Cherry (1974), above n 1, p 86.

³⁶S Pepper and P Richmond 'Homes unfit for heroes: the slum problem in London and Neville Chamberlain's Unhealthy Areas Committee 1919–1921' (2009) 80(2) *Town Planning Review* 142 at 165.

³⁷[1922] 2 KB 719.

³⁸[1928] Ch 567.

³⁹Housing (Financial Provisions) Act 1924.

⁴⁰Whilst the Housing, Town Planning, etc Act 1909, Sch 4 addressed some of these issues, they could only be included in a planning scheme if the LGB gave special orders for those considerations to be made.

⁴¹TNA/TS27/738 Ministry of Health Town Planning 'Model Clauses for use in the Preparation of Schemes' (HMSO, 1928).

⁴²Ibid.

⁴³Hansard HC Deb, vol 189, cols 1838–1845, 18 December 1925.

which had slowed the development of urban housing.⁴⁴ The uptake in planning schemes had been equally poor, with only 267 urban authorities having operational schemes in 1926.⁴⁵ To set this into context, 289 authorities had not even begun to draft planning schemes⁴⁶ despite section 42 of the 1919 Act making planning schemes mandatory.

This slow uptake in producing planning schemes also created legal issues because a scheme could only be regarded as an encumbrance on a property once it had received final approval from the Minister. This meant that although a local authority may have passed a resolution to include a development within a planning scheme, the effect this had on the property rights of the owner was unclear until the scheme was made operational by the Ministry.

This issue was discussed in *Re Forsey and Hollebone's Contract*⁴⁷ where it was held that the inclusion of a property within a resolution under the Town Planning Act 1925 was not an incumbrance on the property for the purposes of sale. Instead, the encumbrance began when the resolution became a scheme, marking when the local authority assumed development control of the land under section 7 of the legislation.⁴⁸ This created ambiguity about if and when a planning scheme became legally enforceable, leading to further delays in the scheme drafting process. Similar delays did not exist for housing schemes, with the Wheatley Act 1924 and the Housing Act 1925 giving increased financial support to local authorities enacting schemes, expediting the process.⁴⁹ Thus, if planning were to be a discrete legal activity, then it needed the legal processes to ensure its effective operation. It was in this context that the legal provisions which became the TCPA 1932 were first proposed, shaping the nature of what planning law was in a way which continues to influence planning law in the present day.

3. Enacting the TCPA 1932

The 'Town and Country Planning Bill: Memorandum and notes on clauses' was presented by the Minister of Health to Parliament in 1931. The Memorandum set out the scope of the proposed legislation, stating:

The general objective of the Bill is to extend the planning powers of local authorities to built areas and to rural areas. At present their powers are (with minor exceptions) confined to land which is in the course of development or appears likely to be used for building purposes. Provisions are also included for facilitating the making of regional planning schemes ... for checking sporadic and ribbon development; for enabling local authorities to obtain the whole betterment relating to a scheme.⁵⁰

As this passage shows, what became the TCPA 1932 had a much broader scope than the preceding legislation, providing a new statutory framework for planning. Of particular note was how the new Act extended planning law to include all forms of land use in both urban and rural areas, with rural areas being previously excluded from planning law.⁵¹ The Act also introduced new legal mechanisms for regional planning by increasing the role of local authorities as the main public bodies empowered to carry out the legal activity of planning.⁵²

The idea of planning as a mechanism for administering both urban and rural land use, with such administration being carried out by local authorities, are two concepts first introduced by the TCPA 1932

⁴⁴Ibid, cols 1841–1845.

⁴⁵Hansard HC Deb, vol 191, col 62, 11 February 1926.

⁴⁶Ibid.

⁴⁷[1927] 2 Ch 379 (HC).

⁴⁸Ibid, at 384–386.

⁴⁹Housing Act 1925, s 6.

⁵⁰TS27/738, above n 41; (April 1931) 'Ministry of Health, Town and Country Planning Bill: Memorandum on Notes and Clauses'.

⁵¹TCPA 1932, s 1.

⁵²Ibid, ss 3–5. This was assisted by the expansion of local authority powers under the Local Government Act 1929, which gave county councils increased oversight of rural district councils.

that still occupy a central role within modern planning law. It is thus important to consider why the 1932 Act departed from the limited legal framework of the earlier Planning Acts, creating a wide sphere of town and country planning law. This can be considered through a closer exploration of how agricultural land and rural spaces were legally perceived prior to the enactment of the TCPA 1932.

(a) *The agricultural countryside*

The nature of agricultural policy changed during the early twentieth century and, as Gail Savage noted, the Ministry of Agriculture and Fisheries during the inter-war period increasingly introduced policies which promoted rural social reform.⁵³ This new 'social reforming' approach to agricultural policy influenced the drafting of the TCPA 1932 and the incorporation of rural areas into planning law. Beyond this, increased intervention in agricultural practice created the possibility for local authorities to have greater control over rural land use.

The Agriculture Act 1920 (continuing from the wartime Corn Production Act 1917) began this shift towards socially minded agricultural policy. Although the Act was repealed in 1921, it changed the relationship between farming and state intervention. In particular, section 2 of the Act guaranteed farmers fixed prices for wheat and oats, creating set wages for agricultural workers. Section 4 complemented this control by establishing local agriculture committees which could directly influence which crops were grown, introducing a new form of localised land use control into agricultural practice.⁵⁴

In the context of expanding the scope of planning legislation, the influence of the Agriculture Act 1920 and its repeal were twofold. First, the Act showed that rural affairs management could be planned within the scope of public administration, a point which had previously been contentious, with landowners resisting interference with their property rights.⁵⁵ Second, upon the repeal of the Act, agricultural wages fell by 40% with many tenant and mortgaged farmers struggling to pay land rents, leading to a decline in the quality of rural housing.⁵⁶

The Housing and Town Planning Acts, however, discussed in the second part of this paper above, were limited to urban areas, with rural housing not being included as a potential land use in section 1 housing schemes under the 1919 Act. This in part was due to many rural properties existing as tied properties, meaning they were tied to the employment of the labourer by the estate owner.⁵⁷ Closure orders, under section 28(1) of the 1919 Act could not be issued on rural cottages because 'owner' in the context of the Act meant, in instances of tenure, the person receiving the rack-rent. The relationship between the employee and the employer in tied cottages fell outside of the landlord-tenant relationship provided for in the legislation. This issue was exaggerated because rural district councils themselves were not empowered under the 1919 Act to carry out town planning or introduce section 1 housing schemes. Whilst rural and urban district councils were similar forms of local authority under the Local Government Acts, other pieces of statute, such as the planning Acts, primarily focused on empowering urban district councils, leaving rural districts and county councils unable to implement many statutory regimes.

The difficulties in agricultural areas were initially addressed apathetically, with Prime Minister Bonar Law suggesting in 1923 that interference in agricultural affairs went beyond the perceived role of

⁵³G Savage 'Friend to the worker: social policy at the Ministry of Agriculture between the wars' (1987) 19(2) *Albion: Journal of British Studies* 193 at 193. This was in part due to the formal establishment of the Ministry in 1919 under the Ministry of Agriculture and Fisheries Act 1919, which replaced the previous Board of Agriculture and Fisheries. The Ministry had more direct control over rural affairs compared to the Board, who were often competing for power with local governance bodies: *R v Bedfordshire County Council* [1920] 2 KB 465.

⁵⁴See A Howkins *The Death of Rural England: A Social History of the Countryside since 1900* (Abingdon: Routledge, 2003) pp 45–46.

⁵⁵AF Wilt *Food for War: Agriculture and Rearmament in Britain before the Second World War* (Oxford: Oxford University Press, 2001) pp 18–19.

⁵⁶See R Lawton 'Rural depopulation in nineteenth century England' in DR Mills (ed) *English Rural Communities* (London: Palgrave, 1973).

⁵⁷Savage, above n 53, at 198.

government. This meant rural areas continued to be excluded from planning and housing legislation under the Planning and Housing Acts enacted in 1925.⁵⁸

Neville Chamberlain's Agricultural Report in 1929, however, transformed how agricultural land was understood, better enabling the legal administration of that land.⁵⁹ The Report suggested that the current stop-gap approach to agricultural policy was inadequate. The only way to save the agricultural industry would be through a complete restructure. In reframing agriculture away from private farming and instead as a fundamental facet of the national economy, Chamberlain overcame Bonar Law's concerns about the scope of government power, allowing for legal interference with agricultural land. Chamberlain's model developed the role of local agricultural boards, established under the Agriculture Act 1920, making agricultural land management primarily the responsibility of local bodies, with some oversight from the Ministry of Agriculture and Fisheries.

Chamberlain himself had a background in town planning, being actively involved in the implementation of early planning provisions in Birmingham, during his tenure as mayor of the city.⁶⁰ In proposing that planning and agricultural policy were akin, Chamberlain transformed the countryside into something capable of being spatially organised and subject to plan-making. Chamberlain's proposals received cross-party support, resulting in the Agricultural Land (Utilisation) Act 1931. Section 1 of the Act empowered the Minister to acquire and recondition land and sections 5–7 allowed local authorities to designate rural land as small holdings or allotments. Section 12 also granted county councils powers similar to urban district councils with respect to housing reform, extending the legal processes of plan-making to rural areas and allowing for the redevelopment of tied cottages.⁶¹ Rural district councils were, however, still excluded from these powers, having to seek the support of the county council to engage in redevelopment. All of this had to be done in conjunction with a rural plan for the local area, as produced by the respective local authority. This further expanded the legal scope of planning by making rural areas subject to plan-making.

The evolution of agricultural policy during this period transformed how rural places were legally understood, opening them up to the possibility of planning and local authority administration. The question thus emerged whether to include rural areas and the agricultural countryside in specific planning legislation. This would then provide the statutory basis for considering agriculture in controlling different forms of land use. Although there was apprehension that the inclusion of rural areas would result in 'overplanning',⁶² for many there was a growing sense that agricultural planning needed a statutory base within the growing sphere of planning law to provide a substantive legal framework of land use controls.⁶³

(b) Protecting rural spaces

The inclusion of rural areas in the TCPA 1932 also statutorily reflected the broader objectives of town planning, with a cultural objection to urban sprawl becoming increasingly prominent due to the impact it was having on the aesthetic value of the countryside.⁶⁴ It was hoped that in expanding the legal activity of planning to also include rural areas, there would be stronger statutory protections for the natural environment.⁶⁵

⁵⁸Howkins, above n 54, p 50.

⁵⁹A Fenton Cooper *British Agricultural Policy 1912–1936* (Manchester: Manchester University Press, 1989) pp 94–97.

⁶⁰Cherry (1974), above n 1, p 60.

⁶¹Agricultural Land (Utilisation) Act 1931, s 12.

⁶²There was a sense that too much planning would be more restrictive than helpful. See Hansard HC Deb, vol 261, col 78, 2 February 1932 on the conversion of agricultural land into development land in Welwyn Garden City.

⁶³Hansard HL Deb, vol 85, col 260, 28 June 1932.

⁶⁴See C Williams-Ellis *England and the Octopus* (originally published 1928, London: CPRE, 1996); Burchadt, above n 20; W Morris 'Arts and socialism' in M Morris *The Collected Works of William Morris* (London: Longman, Green and Co, 1910–1915) pp XXIII, 192; R Williams *The Country and the City* (first published 1973, London: Penguin Vintage Classics 2016).

⁶⁵P Abercrombie 'The preservation of rural England' (1926) 12(1) *The Town Planning Review* 5.

Prior to the TCPA 1932, the legislative focus of planning was rooted in urban plan-making, which habituated the issue of urban sprawl by reinforcing the centrality of urban areas in overcoming issues like overcrowding and housing quality.⁶⁶ This led many rural areas to be subsumed into neighbouring towns and cities, as urban areas expanded further into the countryside.⁶⁷ As a result, local authorities, using their planning powers under section 1 and section 42 of the 1919 Act, allowed for developments at the ever-growing boundaries of their urban district, proposing local Acts to expand their local authority boundaries to encompass these new developments.⁶⁸ Consequently, major cities had developed sprawling suburbs with large populations.⁶⁹ It was feared that without some form of control such expansion would continue because local authorities lacked the legal controls to plan for anything other than urban development.⁷⁰ This made it increasingly difficult to determine where an urban space finished and the countryside began. Not only was this a social problem but also a legal one because it made the determination of local authority boundaries, and thus the regions provided for by legislation (primarily urban areas of a certain size, under section 46 of the 1919 Act), difficult to determine.

A key example of this issue can be seen in the parliamentary and legislative discussion around ribbon developments and the emerging idea of the Green Belt. Ribbon developments refer to the development of property alongside a road or highway, which usually connected two urban areas. Once a ribbon development had begun, it could easily become urban sprawl, leading the once separate towns to touch, creating both practical and administrative difficulties, through the amalgamation of once separate spaces.⁷¹

Attempts were made to limit such development but these were often unsuccessful, as can be seen in 1930 on the issue of open spaces in Greater London. It was during these discussions that the idea of a 'Green Belt' was first formally proposed. The term was used to express frustrations over the lack of legal power that local authorities had to designate a peripheral green space, marking the perimeter of their urban area.⁷² This showed an acute awareness of the difficulties in determining the boundaries between urban areas and the countryside within the existing legal scope of planning. This led professional planners, notably Patrick Abercrombie, to comment that the 'clumsy' statutory language of 'town planning' within the legislation failed to acknowledge the need for 'rural planning'.⁷³ Relying on the examples of Oxford and Bath, Abercrombie argued for the possibility of planning legislation as a mechanism for 'preserving the existing character ... and features of a locality'.⁷⁴

The desire to preserve rural areas was also supported by those seeking to improve public access to the countryside, with social concerns about urban overcrowding and poor-quality housing elevating the societal value of 'open spaces'.⁷⁵ Whilst this interest manifested in different ways,⁷⁶ perhaps most notable in the context of the TCPA 1932, was the publication of the First Report on National Parks in 1931.⁷⁷ The

⁶⁶Ashworth, above n 23, p 172.

⁶⁷TNA/HLG8/99 (5 December 1921) 'Borough Extensions'; Ministry of Health 'Report on Procedure for the Extension of Boroughs' (Cmd, 1113).

⁶⁸Ibid (5 May 1922) 'Leeds and Bradford Extension Areas'; 'Leeds and Bradford Borough Extension' Hansard HC Deb, vol 133, cols 377–379, 3 November 1920.

⁶⁹T Sharp *Town and Countryside* (Oxford: Oxford University Press, 1931) p 166.

⁷⁰Ibid, p 169.

⁷¹Hansard HC Deb, vol 235, cols 1794–1796, 21 February 1930.

⁷²Hansard HC Deb, vol 227, col 18, 17 April 1929.

⁷³Abercrombie, above n 65, at 38.

⁷⁴As facilitated under the Bath Corporation Act 1925, s 28; or the South and East Oxford planning sub-committee, Abercrombie, above n 65, at 32. See also A Crossley and CR Elrington (eds) *A History of the County of Oxford: The City of Oxford*, Vol IV (British History Online, 1979).

⁷⁵D Hardy *From Garden Cities to New Towns: Campaigning for Town and Country Planning 1899–1946* (Abingdon: Routledge, 1991) p 24. W Morris 'Arts and socialism' in Morris, above n 64, p 192. See also Williams, above n 64; M Norman *Saving the People's Forest: Open Spaces, Enclosure and Popular Protest in Mid-Victorian London* (Hertfordshire: University of Hertfordshire Press, 2021).

⁷⁶Sheail, above n 10; Pontin, above n 10; D Stamp *Nature Conservation in Britain* (Glasgow: Collins, 1969); D Evans *A History of Nature Conservation in Britain* (Abingdon: Routledge, 1992) 72.

⁷⁷The National Park Committee 'The Report of the National Park Committee' (Cmd 3851, 1931).

Report considered specifically the question of whether it would be possible to create national parks in the United Kingdom, proposing a legal framework that later helped shape the National Parks and Access to the Countryside Act 1949. For our purposes here, however, the Report was particularly noteworthy in emphasising the specific role that planning could play in ensuring the preservation of and public access to rural spaces, as part of fulfilling the public's greater amenity interest in land.

Part III of the Report dedicated considerable attention to town planning procedures, outlining their existing scope and potential application to national parks.⁷⁸ The Report set out:

The preservation of the natural beauties of large areas of national importance would involve, as a speaker at the National Conference, 1929, for the Preservation of the Countryside, pointed out, a power to control the whole area so that no development could take place unless approved by the proper Authority. The necessity here contemplated could probably be met in a large proportion of cases by a planning scheme in which the future development of the areas would be regulated.⁷⁹

What is interesting here is the presumption that planning, even in its form under the 1925 Act, would be the right legal framework through which national parks could be created, providing rural areas were incorporated into planning law.

The Report continued by suggesting a series of reforms to the existing planning system, including granting local authorities' broad powers to control different forms of land use. This would be accompanied by an ability to establish regional committees for collaborative planning, as was already the case in Greater London.⁸⁰ It can thus be suggested that the expansion of planning, as recommended by the Report, was influential in framing both the countryside provisions and the scope of local authority power under the TCPA 1932.

This can be further evidenced in the debates preceding the 1932 Act. The National Park Report concluded by emphasising the importance of 'the preservation of the natural beauties of the country', describing the difficult task of 'national authorities' in convincing others of the importance of this aim amidst 'short sighted pursuits' of development.⁸¹ This rhetoric was similarly mirrored by Arthur Greenwood in presenting the Town and Country Planning Bill before Parliament for its second reading in 1931. Greenwood stated, 'desecration threatens today not merely the towns but the countryside of England, with all that quiet beauty to which all of us are attached'.⁸² It was against these various contextual considerations of rural land management and local authority power that the TCPA 1932 was enacted, transforming the nature of planning law in a way that continues to shape modern planning law.

4. The primary effects of the TCPA 1932

As planning historian Gordon Cherry has suggested, the enactment of the TCPA 1932 had a 'particularly protracted history'.⁸³ Initially proposed by the second Labour Government in 1929 as complimentary legislation to the Housing Act 1930, the fall of the government in the 1931 election similarly led to the fall of the Town and Country Planning Bill.⁸⁴ Significant pressure on the subsequently appointed National Government saw the reintroduction of the Bill, albeit inclusive of notable amendments aimed at placating the wider and more-conservative expectations of the new government.⁸⁵

⁷⁸Ibid, pp 12–20.

⁷⁹Ibid, p 12.

⁸⁰The Greater London Regional Planning Committee, formed in 1927, was empowered explicitly through byelaws of the London Borough Council to regionally plan: D Thomas 'London's green belt: the evolution of an idea' (1963) 129(1) *The Geographical Journal* 14.

⁸¹Ibid, at 43.

⁸²Hansard HC Deb, vol 251, col 193, 15 April 1931.

⁸³Cherry (1974), above n 1, p 89.

⁸⁴Ibid, p 74.

⁸⁵Hansard HC Deb, vol 259, col 249, 12 November 1931.

In addition to this, the delay in enactment led the TCPA 1932 to be the first planning legislation passed independently of any associated housing legislation or provisions therein. Although it was hoped by the Government in 1930 that the Town and Country Planning Bill and the Housing Act 1930 would ‘pass through the house at the same time’, making them siblings, the prolonged enactment of the TCPA 1932 separated that Act from the Housing Act. This meant that parliamentary debates on the TCPA 1932 considered planning as a sole issue, proposing reforms which promoted the objectives of plan-making and spatial organisation, not the concurrence of those activities on resolving the housing shortage.⁸⁶

In light of this, the TCPA 1932 can be regarded as the first planning legislation which considered explicitly what role planning could play as a discrete legal activity within British land administration. It did this through expanding the legal scope of planning legislation to empower local authorities to regulate all forms of land use (not just development, as under the 1925 Act) in both rural and urban areas. These two concepts became fundamental aspects of subsequent planning legislation. Thus, to consider the legacy of the TCPA 1932 in expanding the scope of planning law in this way, these provisions need to be examined.

(a) Putting the country in town and country planning

Following the different contextual motivations discussed in the previous section, the TCPA 1932 integrated rural areas into planning law in a variety of ways. Section 1 of the Act began by granting local authorities the power to include ‘rural portions’ of land within planning schemes, thus extending the legal scope of planning to these landscapes which had previously been excluded from the urban focus of earlier planning legislation. This was complemented by Section 6 of the Act, which set out a new framework for the preparation and adoption of planning schemes, better suited towards the combined planning of both urban and rural areas. Section 6 determined that schemes could encompass ‘any land within, or in the neighbourhood of, the district of the authority’. This enabled local authorities to designate different portions of land for different purposes under the same planning scheme, regardless of where that land was within their administrative district. This designation could be for development, to maintain an existing land use, or to preserve land as non-developable. In each instance the intention was that a single planning scheme would be a complete reflection of the desired spatial organisation within a locality, as opposed to a scheme for designating development sites. This was furthered in sections 7–9, which provided additional detail on the specific functioning and operation of schemes.

This shift towards integrated rural and urban planning can be further considered in examining how the scope of planning schemes changed under the TCPA 1932. Section 16 introduced a more robust procedure through which local authorities could control land use. Where land had been designated non-developable under a planning scheme, there was a statutory obligation that anyone seeking to then develop that land had to apply for an order allowing an exemption to the scheme. Local authorities were able to refuse orders where they regarded them to be either injurious to the amenity of the locality (section 16(2)(b)) or by nature inappropriate (section 16(2)(a)). Although this was a slightly reduced measure, when compared to the wide-ranging general planning control which came into existence following the Town and Country Planning Act 1947, it showed a marked shift in the legal nature of planning as a mechanism through which local authorities had broad permissive powers to regulate local land use, especially in more rural portions of their administrative boundaries.

This is similarly demonstrated in the case law which upheld the discretion of local authorities to introduce permanent restrictions on development. The case of *R v East Kesteven Rural District Council, ex p Sleaford & District White City Sports Stadium Co*⁸⁷ examined the powers of the Minister of Town and Country Planning in hearing appeals of local authorities’ decisions under section 10(5) of the TCPA 1932. The case held that the local authority, and in turn the Minister, were entitled to refuse permission

⁸⁶Minister of Health (Arthur Greenwood), Hansard HC Deb, vol 237, col 77, 10 April 1930.

⁸⁷[1947] 1 All ER 310 (HC).

for the development of rural land. The Court explained that the decision by the authority that there was an ‘over-riding need to preserve agricultural land from use in non-essential developments’, was within the scope of its powers under the 1932 Act. The case demonstrates how the extension of planning law to include the countryside actively changed how land was being engaged with, enabling the administration of land outside of the context of development.

Local authorities also had specific powers with respect to the countryside, enabling them to consider urban and rural areas in tandem in producing a planning scheme. Section 26 empowered local authorities to compulsorily acquire green spaces as part of a planning scheme, empowering them to maintain a character of openness within their area.⁸⁸ Many urban councils then used this power to gradually purchase a green periphery around their urban area, securing a ‘Green Belt’. For example, the South Lancashire and North Cheshire Advisory Committee relied on these provisions extensively, obtaining permission from the Ministry and the Treasury Solicitor to use section 10(6) to secure a series of playing fields and recreation grounds around the perimeter of Manchester. It was intended that this, coupled with other planning controls, would create a ‘Green Belt’ around the city.⁸⁹

(b) Redefining local authority power in relation to planning

As already demonstrated in the discussion of the extension of planning to rural areas, local authorities were given far greater powers under the TCPA 1932, when compared to previous planning legislation. This had the effect of making local authorities primarily responsible for all planning activity in England and Wales, a principle which has shaped planning law since this legislation.

A difficulty which emerged under the early Town Planning Acts was that the ability of local authorities to plan was often tied to the administrative boundaries which determined their jurisdiction. This created difficulties for local authorities in administering land at the border of their jurisdiction, especially where this border fell between an urban and rural area. The TCPA 1932 changed this by providing a statutory process through which local authorities could collaboratively plan whole areas, producing locally determined policies for land utilisation and management. Moreover, these plans no longer needed central approval from the LGB or the Ministry of Health. Instead, the Ministry issued circulars which expressed the broad policy of government in relation to planning. Local authorities could then choose how, if at all, the recommendations of the circulars were incorporated.

Section 2 of the TCPA 1932 defined what constituted an authority for purposes of creating a planning scheme, extending what was meant by an authority to include all forms of district council, as well as county councils. Furthermore section 2(2), allowed smaller districts to relinquish their statutory planning powers to an associated county council or county borough, who often had more resources and personnel to dedicate to planning activity.

Section 3 then allowed for the creation of joint committees between two or more local authorities of any nature, enabling them to prepare a collaborative planning scheme which covered both rural and urban areas. Beyond this, joint committees had the power to delegate and levy different parts of a planning scheme in proportion to the different expertise and resources that different authorities had.⁹⁰ This had the effect of encouraging more authorities to enter into joint planning schemes due to the reduced financial risk in doing so.

Furthermore, sections 6–9 of the TCPA 1932 enabled the creation of regional schemes, which empowered local authorities to plan across both urban and rural districts within a particular geographic

⁸⁸Note that the provision for open spaces under s 26 of the 1925 Act [Q1] was limited to urban areas: TNA/HLG 95/18 (1931–1932) ‘Planning Schemes submitted to the Ministry of Health’.

⁸⁹TNA/HLG 93/35 (21 June 1945) ‘Manchester and District Green Belt’.

⁹⁰There was discussion in the drafting of the Bill about whether joint committees could be formed with non-local government bodies. Early drafts of s 25(1), for example, allowed the Office of Works to be incorporated into a joint committee where Crown land was likely to be included in a planning scheme: TNA 27/737 (10 February 1931) A letter from Stuart King, Treasury Solicitor, sent during the drafting of the 1932 Act.

area. Not only did this re-envision the legal process of spatial organisation, but it also facilitated the administration of land in the context of its own physical features, not the administrative boundaries imposed therein. This process of planning land in light of its physical attributes can be understood as an early form of eco-regionalism, which is in the present considered an important principle in enabling planning legislation to be used for environmental protection. Indeed, the 1932 Act saw early attempts to regionally plan spaces which later became national parks. This can be illustrated in considering the geographic location of the Peak District.

Prior to the TCPA 1932, what became the Peak District National Park existed across 25 different local authorities, with different authorities having different statutory abilities to engage in planning. Following on from the 1932 Act, however, the different local authorities in the region formed an advisory joint committee, under section 3 of the TCPA 1932, to coordinate their independent planning schemes. The committee balanced the preservation of the Peaks' physical landscape with planning the urban towns which bordered them, assisting each local authority in determining different forms of land use during the production of their scheme.⁹¹ This process of local administration is not dissimilar to how the region came to be subsequently administered through the National Parks and Access to Countryside Act 1949 and the Environment Act 1995.

These reforms marked a notable shift in how local authorities could engage in planning practice, making them pivotal in the implementation of planning law. The centrality of local authorities was not without its criticism though, with one MP suggesting that the expansion of local authority powers would create a 'Frankenstein'⁹² which could never be controlled. The shift allowed for a reconceptualisation of the role of planning law, making local authorities primarily responsible for its implementation.

5. Considering the legacies of the TCPA 1932

The reconceptualisation of planning law which occurred under TCPA 1932 has continued to inform planning legislation into the present, with local authorities continuing to play a primary role in managing different forms of land utilisation in both urban and rural areas. This can be evidenced in considering some of the subsequent planning legislation, namely the TCPA 1947, the TCPA 1990, and the Levelling-up and Regeneration Act 2023. Whilst this selection of statutes does not reflect all of the planning legislation that has been enacted since 1932, it provides an opportunity to consider the continued legacy of the Act.

(a) The legacy of combined urban and rural land management

Following on from the TCPA 1932, the elements of 'town' and 'country' have been a prominent feature in planning legislation. Even outside of the titular use of the words, both the TCPA 1947 and TCPA 1990 gave substantial statutory treatment to aspects of both town and country in determining a legislative framework for planning. The TCPA 1947, for example, is famed for creating a general restriction on land use, with section 12 of the Act requiring specific 'planning permission' in order to develop. As part of this, under section 5, local authorities were required to produce development plans which 'defined the sites of proposed roads, public or other buildings' as well as 'parks, pleasure grounds, nature reserves, and open spaces'. This replicated the language used in section 1 of the TCPA 1932 which extended planning schemes to encompass any form of rural or urban land use. Similar language was used to frame development plans under section 12 of the TCPA 1990, which required that developments and all other forms of land use should be included within a plan.

⁹¹MERL/SR CPRE 1/102/56 (1951) 'The Peak District National Park: proposals for the enlargement of the Park' 1.

⁹²Hansard HC Deb, vol 261, col 56, 2 February 1932.

The TCPA 1947 also granted specific powers which related to rural land use. For example, in section 33, the amenity value of open spaces was protected against development, with a local authority being empowered to serve notice on the owner to remove the issue injuring the amenity. Alternatively, the original section 241 of the TCPA 1990 integrated provisions from other legislation into the planning legal framework, particularly regarding the maintenance of commons and open spaces in securing land for development.⁹³ This is similarly demonstrated in section 87 of the 1990 Act, which exempts land under the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1981 from being included within a simplified planning zone. Simplified planning zones, in section 82 of the 1990 Act, are a demarcated area where the requirements for planning permission are pre-agreed, with the zones often being used to better facilitate development. These provisions thus show the possibilities for balancing rural and urban land use within one planning system.

The consideration of both town and country is also prevalent in planning legislation lacking that same titular term. The Levelling-up and Regeneration Act 2023, for example, enacted a broad scheme of planning reforms which affected multiple pieces of existing legislation.⁹⁴ In doing so, the Act provided for a series of circumstances that would have previously fallen within the town and country dichotomy. For example, section 245 of the Act amended protected landscape legislation, namely the National Parks and Access to the Countryside Act 1949, providing greater emphasis to the conservation provisions within that legislation. Alternatively, under section 143, on community land auction receipts, the Levelling-up and Regeneration Act 2023 framed open spaces as a type of infrastructure, alongside affordable housing and transport facilities. This approach is itself reflective of the categorisation of open spaces as a plannable form of land use under the TCPA 1932.

My argument here is not that these Acts manage all aspects of town and country, nor is it that they necessarily do so effectively. Instead, it is to demonstrate, through a selection of provisions, the continued sense that planning legislation considers *all* forms of land use, regardless of where those forms are situated. This ability was one first created by the TCPA 1932, and thus its legacy on modern planning law is inherently apparent.

(b) The centrality of local authorities

The idea of locality is also important here, with subsequent planning legislation maintaining the central role of local authorities in implementing planning statutes, as first given full effect under the TCPA 1932. In section 5 of the TCPA 1947 local authorities were given the primary responsibility for creating development plans, a fact that continued to be true under section 12 of the TCPA 1990. Over time, the degree of centralised oversight of these plans has been varied with the introduction of National Policy Statements, National Planning Policy Frameworks, Welsh devolution, or most recently National Development Management Policies under section 94 of the Levelling-up and Regeneration Act 2023. Despite this, it is still the ultimate responsibility of a local authority to devise a development plan, either alone or collaboratively, for all land uses within a locality, a power which first emerged under section 6 of the TCPA 1932.

This central role of local authorities is similarly demonstrated in planning permission which was first given full statutory effect in section 12 of the TCPA 1947. Legislation like section 58 of the TCPA 1990 maintains that local authorities are still the primary decision-makers for planning decisions, with the central government having only specific oversight of certain forms of development and an appeals function in determining specific planning applications.

⁹³For example, the National Parks and Access to the Countryside Act 1949, the Law of Property Act 1925, s 193, and the Countryside Act 1981.

⁹⁴Ogden-Jones, above n 6, at 447.

Conclusion

Outside of the Planning Acts discussed above, planning statutes have been introduced that begin to separate out the issues once categorised as ‘town’ and ‘country’. The Planning Act 2008, for example, is primarily concerned with national infrastructure, focusing its attention on planning a facet of development. Alternatively, the Environment Act 2021 created a new framework for environmental protection outside of the context of a planning Act. Yet even in these examples the shared effects of town and country planning continue to be prevalent. Section 98 of the Environment Act 2021, for example, requires biodiversity gain to be considered within the granting of planning permission. Conversely, in the Planning Act 2008, Schedule 6, paragraph 5, local authorities have the power to revoke or change development consent where it affects the amenity of the land. Indeed, it seems it is difficult to find legislation concerned with rural or urban land management that is not shaped by principles first established in the TCPA 1932.

Although often overlooked, the TCPA 1932 left an important legacy in English law, establishing principles that shape planning legislation into the present. Thus, to return to the idea of the porcupine in this piece, there is an inherent importance in going backwards to the TCPA 1932, in order to understand the key principles which shape planning law in the present. In particular, the TCPA 1932 created the first legislative framework for combined urban and rural land management, vesting the power to carry out such planning in local authorities. As issues surrounding urban and rural land use become increasingly prominent, my hope is that this paper provokes consideration of why town and country were ever brought into the same statutory conversation. From here, it then becomes possible to look forward and consider whether this conversation should continue.