

Conformance and performance in Taiwan and England: pragmatism in approach?

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Abstract

There are two distinct planning systems: the discretionary system, such as that of the United Kingdom and the zoning system, typical of Taiwan and Europe. Askew and Chao (2012) have previously compared Taiwanese and English planning systems with regard to advertisement controls, using the conformance and performance models of planning (Steele and Ruming, 2012).

Rivolin (2012) and Buitelaar (2010) submit that these distinctions are being broken down across Europe. There is a view that the UK discretionary system (performance) is flexible, whilst the European (and Taiwanese) conformance model, offers certainty to developers, albeit very rigid. This inflexibility might result in development occurring outside the legal plan (Buitelaar, 2010), and probably means that the Dutch planning system does not provide the legal certainty it purports to do. The discretion of the UK system is becoming more attractive to countries with a conformance system, and vice-versa. In Taiwan, the zoning system prevails in urban areas. However, in rural areas, the system is more discretionary (Chen and Shih, 2010). In the UK, developers are suggesting that the allocation of land in a local plan, for, say, housing, should remove the need for further planning permissions – in other words, to create a legally binding plan (UK Treasury, 2014).

In comparing planning systems, there appears to be more similarity than there was. Whilst Rivolin (2012) considers that the mixture of systems is not good for Europe, can it be shown to be a useable and pragmatic option for Taiwan and the UK?

1. Introduction

Planning systems and regulatory regimes are extremely important in guiding land use and shaping cityscapes in every country. There are two distinct planning systems: the discretionary system of the United Kingdom and the zoning system of most the rest of the world, including Taiwan. Within these two systems, there are different approaches, many of which have emerged due to a rise in market economics and neoliberalism, including development-led and plan-led practices (Janssen-Jansen & Woltjer, 2010; Salet, 2006; Balz & Zonneveld & Nadin, 2014) which are adapted by different governments and result in very different planning approaches and outcomes.

But the purpose of this paper is to consider the application of discretionary and zoning systems, and the extent to which the two main approaches are being used side by side. Both

have their pros and cons in terms of development efficiency, flexibility and interpretation of how the planning system should fulfil its duty. As urban planning is considered as an applied science expected to evolve with time and needs, there are many hybrid attempts to mix two systems in the Europe and Asia. Even regarding the UK's long standing discretionary system, there are discussions about its suitability to encourage and manage development – especially since the system has assumed new levels of complexity in its regulations and legal processes for plan and policy making.

In the UK, developers are pressurising the government (for example, ref) to move towards a hybrid system whereby once land has been designated for development in an adopted local plan, then planning permission should not be sought again – rather the designation should confer permission for the principle of development. Such demands are highly controversial and represent a real change away from usual practices in the UK.

In addition, it is believed that further research will expose the dilemmas over flexibility and certainty in other countries, such as USA, Canada and Australia, where similar discussions are taking place (Booth, 1996).

These two approaches to planning are often considered to be opposites in the regulation of development, and are referred to as *performance* and *conformance* models, the former offering much flexibility, whilst the latter offers more certainty (Steele and Ruming, 2012).

The following table outlines the main differences between the two models:

Performance (England)	Conformance (Taiwan)
Discretionary	Legally binding /zoning plan
Flexibility	Considerable detail
No certainty	Regulatory certainty
Policy base: primary material consideration is a statutory development plan	Rigid, based on zoning and building codes
Decisions based on a set of criteria/performance indicators	Decisions have to conform to codes and zones
Not land use based (necessarily)	Property rights important
Decisions built up through legal cases	Efficiency, accountability, transparency
Regulations devised nationally/centrally(England); applied locally	Regulations devised locally.
The point of decision is after an application for development is made	The point of decision is when the zoning plan is legally accepted

Table 1: Performance and conformance models (adapted from Steele and Ruming, 2012).

In an earlier paper, Askew and Chao (2012) compared different approaches to advertising control in the UK and Taiwan, and applied this model. It was important then to see if the two different systems produced the desired outcomes of planning – in particular with regard to sustainability and place-making. In Taiwan and England, both systems are rooted in very different cultures, but in both, planning outcomes are underpinned by very similar objectives. These might be, for example, sustainability, good design, historic conservation, or economic

prosperity. So the research tried to answer how do regulatory regimes contribute to this? Despite such diversity, are the outcomes similar? Furthermore, what can each country learn from the other? These questions can be applied to development and planning systems more generally.

In both Taiwan and UK, there is a history of more than a century of planning. In Taiwan, the first planning commission was established in 1897; in the UK, the first act to deal with town planning was 1909. In both, planning is a highly politicised activity, which often attracts negative opinion when controls are implemented (Chen and Shih, 2010). There is an emergent lack of trust in government (Askew, 2006); and in Taiwan too, many communities distrust their local and central governments. For example, there were many protests in 2014 in Taiwan about trade agreements with China and then later, as the movement gained support, the opening of a new nuclear power station in Taiwan, when the so called ‘Sunshine Movement’ occupied the parliament for several weeks (Bloomberg, 2015). Enforcement is controversial, especially in Taiwan, although the UK has a well-established enforcement system, which underpins the very nature of development control. Illegal building in rural and urban areas in Taiwan is prevalent. In both countries, economic development is of utmost importance - lengthy planning processes are seen as delays to vital investment. Adams and Watkins (2014) argue that good planning contributes to economic development, rather than detracting from it, and this message is a vital one for planners to make to governments where planning is under attack.

It is this attack on the values of planning that has prompted many to question whether or not the systems are working properly. Such assaults do not necessarily refer to the public interest in their criticism on planning, but demonstrate a desire for an unregulated approach, which allows a market more freedom to proceed with development, it maintains is vital in the interests of economic growth.

How does this play out in Taiwan and the UK?

2. Taiwan

Taiwan has had a very early start of mixing these two systems in the 1970s when the Regional Planning Act (RPA) enacted in 1975. These apply differently to urban and rural areas. The RPA set up a clear rule for a discretionary system in rural areas, which occupy approximate 80 per cent of the land in the whole country. Any new development occurring in rural areas has to involve different levels of planning permission procedures depending on the context and scale of the development project. It serves a clear purpose to guide developments allocated to urban areas where zoning plans are laid out deliberately, and it aims to sustain the natural environment as usual for as long as possible. (Chen and Shih, 2010) However, the good intention has failed due to the poor enforcement and conflict which occur between property rights and development rights. One such example of this is in the Ali Mountain area, where indigenous peoples have strong property rights, and have actively engaged in making their own plans. (see for example, research project on reservoir planning by NCKU, 2013).

As in the urban area, although the plan-led zoning system has provided certainty to developers, the delay of the every 3-5 year review procedure usually results in the criticism of an out-dated plan, let alone the well-known flaws of rigidity and inflexibility. Hence, attempts have been made such as introducing the idea of “floating zoning” and “overlay zoning” in the Tainan Science-based Industrial Park Special District in 2009 in order to bring flexibility to the current conformance systems. (Chung & Hsu, 2013) Nevertheless, introducing flexibility also brought up the debates of lacking principles and worries of challenging the entire statutory system. It is obvious that how to achieve the delicate yet controversial balance between the conformance and performance is the difficult task for planners in both Taiwan and England. Hence, this paper will start with discussing the role and functions of planning system in the future world in react with foreseeable challenges i.e. climate change followed by debating the need for mixture of two systems from property right perspectives.

3. Taiwan: the future challenges and the changing role of the planning system

There is no doubt that no matter under what system, the planning system should regulate the development and seek to optimize the public interest. Planning involves making decisions about the future of cities, towns and countryside. It also includes considering the sustainable needs of future communities. The role of planning system also should include control safeguard, guidance provision and protection of the character and amenity of certain areas for the benefit of the public as a whole. Hence, because of the comprehensiveness and multi-function of planning system, it is always expected to deliver a scenario that could please everyone or balance most interests of public and individuals. Nevertheless, the role of planning system per se has contradicted with the value theory. For instance, the zoning plan-led system is always considered questionable from the property right perspectives. The concept of sustainability in the 1990s had brought the dilemma between environment-led planning and demand-led planning to the surface. (Owens, 1994) It was then that the role of planning system has started to be challenged by new circumstances constantly and seek for more tools to deal with the ever-changing environment.

To this day, although Taiwan had an early start to practise both discretionary and zoning systems in rural and urban areas separately for 30 years, how to balance the need for developments and threats of climate change has triggered some further changes in the current planning systems. Taiwan is a small island with total land coverage of 36000 km² at the Pacific Rim. It was ranked as the number one country of high risk to natural disaster by the World Bank in 2005 with more than 73 per cent of its total area exposed to three or more hazards. (Dilley et al., 2005) (Table 1) Considering the high risk of natural disasters, more rigid controls and enforcements over developments in the mountain and environmental sensitive areas are urged in the rural planning system due to the large land coverage. Hence, starting with the amendment of the Regional Planning Act in 2000 after the notorious 911 earthquake attack in 1998, each city and county has had to propose a plan-led regional plan with clear regulations, instructions development capacity cap for future developments happened in both rural and urban areas. So far, almost 22 cities/counties in Taiwan have

finished their regional plans with much stronger control over the potential developments on one hand, and introduced some discretionary guidance such as urban design guidance in the urban area to provide necessary flexibility for individual cases on the other hand. The table shows the vulnerability of Taiwan in relation to other nations.

Table 1 Countries most exposed to multiple hazards in 2005

a) Three or more hazards (top 15 based on land area)

Country	Percent of Total Area Exposed	Percent of Population Exposed	Max. Number of Hazards	Country	Percent of Total Area Exposed	Percent of Population Exposed	Max. Number of Hazards
Taiwan, China	73.1	73.1	4	Vietnam	8.2	5.1	3
Costa Rica	36.8	41.1	4	Solomon Islands	7.0	4.9	3
Vanuatu	28.8	20.5	3	Nepal	5.3	2.6	3
Philippines	22.3	36.4	5	El Salvador	5.1	5.2	3
Guatemala	21.3	40.8	5	Tajikistan	5.0	1.0	3
Ecuador	13.9	23.9	5	Panama	4.4	2.9	3
Chile	12.9	54.0	4	Nicaragua	3.0	22.2	3
Japan	10.5	15.3	4				

Source: Dille, M., Chen, R.S., Deichmann, U., Lerner-Lam, A.L., Arnold, M., Agwe, J., Buys, P., Kjekstad, O., Lyon, B., Yetman, G., (2005) Nature Disaster Hotspots- A Global Risk Analysis, The World Bank Hazard Management Unit, Washington, D.C.

Also, several new changes made in the long-delayed National Planning Act (draft) not only re-organize the future planning system to be more strategic and performance-oriented in order to respond to issues such as climate change, sustainability, healthy, and environmental justice but also recognize the concept of ‘dual planning theory’. (Sager, 2013) It embraces the importance of social factors in the planning process. The latest vision of the National Planning Act (draft) clearly regulated the need for more public participation in the planning decision making process. By acknowledging the necessity of a bottom-up approach in the formal planning procedure, the Taiwan government is trying to offer a more conceptual tool that is less value-laden and normative in the current zoning systems. By doing so, the attempts are to break the distinct divide between zoning land use plan in the urban area and discretionary planning permission system in the rural area used to practice in Taiwan in the past 30 years. Of course, given the nature of civil law system in Taiwan, the legal-binding planning and land use control will still play dominant role in the future to provide a stable control base.

4. United Kingdom¹

In the United Kingdom, there have been numerous changes to the planning system in the past twenty years. The basis of the UK planning system is the 1947 Town and Country Planning Act which remains the basis for all legislation, despite numerous changes to details since

¹ The UK has four devolved nations, each of which has a planning system that contains different details, with separately named statutes. However, the principle of discretion in the planning prevails, so where legislation is discussed, it is that legislation for England.

then. Importantly, the pioneering act nationalised development rights, and introduced the requirement for planning permission for all development. Each development was to be considered on its merits, with primary consideration given to policy or any statutory development plan prepared by the planning authority. The absence of plans in the local area would result in decisions being made based upon national policy statements, government statements in parliament, emergent policy at whatever level, and other material considerations, arising out of consultation with a variety of bodies, including environmental bodies and communities.

In 2004, the UK introduced a system of spatial planning (Nadin, 2007), but application of an integrated system that came so obviously from Europe proved difficult to implement in the UK. Whilst this promoted a strategic planning approach, it did not suggest that European zoning systems should be part of a new approach to planning in the UK. The complexity which accompanied its roll out was the beginning of further changes in the planning system, and led eventually to two major events in the history of planning in the UK. The first was the Conservative Party's manifesto for the 2010 election, known as 'Open Source Planning', which promised de-regulation of the planning system. The second was the abolition of the regional level of planning in England, which was introduced through the Localism Act 2011, which also promoted neighbourhood planning. In fact, simplifying regulation is a common aim of all governments of all political persuasion (Baldwin, 2005; Baldwin, Cave and Lodge, 2011), most recently exemplified by the current UK government in its attempts to reduce regulation. This has largely been led by the UK Treasury, which perpetuates the idea that over-regulated environments and planning in general delay investment and delay economic recovery.

In fact, despite this effort and the words of successive government, de-regulation has not been achieved and what has occurred has been a considerable complication of the planning system in all the devolved nations, who continue to make changes to the system and to their statutes. Regulations are highly centralised in the UK, and in recent years, they have become in part impenetrable, with strong requirements for specific and expert knowledge in the private and public sectors to interpret them. However what these two events have achieved is a further dissatisfaction with planning in the UK, opening the way for developers to question the very nature of the planning system itself. They seek a more liberal system which in they assume will speed up the delivery of decisions on development and permits.

One issue for the UK planning system is the statute which grants development to minor developments. This is known as the permitted development regime, granted under a statute of 1995 called the General Permitted Development Order. This order, which has been amended many times since 1995, was looked at in 2008 under a government commissioned investigation, known as the Killian-Prety Report, which was charged with simplifying the regime of permitted development. Recommendations were made to the permitted development rights (PDR) to supposedly simplify them. These particularly referred to householder rights for minor developments such as home extensions, garden sheds, garages

etc. Many planners and householders at the time of the change said they were more complicated than before.

A further layer of complexity was introduced which invited a half way house between seeking planning permission and having the rights to develop. This system is known as the 'prior approval' system and it particularly applied to agricultural developments in the countryside and, more significantly, to mobile phone masts. The relaxation of permits was to encourage the roll out of mobile technology to improve business and communications. Such changes required considerable amounts of paperwork, but there was a perception that planning permission was not needed, so it created bad feeling amongst communities and a good feeling amongst the industry, who thought they were avoiding the bureaucratic procedures.

Although experts told the government that the prior approval system did not work, (Askew, 2006), many more uses of land have been brought into this system, which is very complex and requires complicated procedures. One such use is a relaxation in 2014 of the change of use from offices to residential use, as the government considers that this might assist in the housing shortage by allowing the use of out-dated office space for housing. It is causing a decline in vital office space in some areas, such as in Central London for example, where 13,000 new housing units have been provided, but with a vacancy rate of just 4.9% in London, there is a shortage of commercial office space.

In addition, to the housing issue, the application to build a fifth terminal at London Heathrow Airport took several years for a decision to be made. This gave planning permission a very poor reputation and it was said that the planning system was holding up important economic development and growth. In reality of course, it was the political situation that was holding up development as no government wanted to be associated with granting permission for controversial applications such as an expansion of an airport, or the erection of a nuclear power station. As a result of this caution, a vast amount of assessments are required by local authorities when a planning application is submitted, resulting in time delays, but its contribution the final decision is doubtful.

The issue of housing is creating more problems in the UK. It is said that approximately 250,000 new houses per annum are needed to catch up on the gap created by the lack of affordable, public housing built since 1980 (Shelter, 2013; JFR, 2014)). The main issue for London is affordable housing, with prices rising above levels ever known, for example in Kensington and Chelsea the average house price is £1.2million (data.london, 2014) while the national average is just £178,000 (Land Registry, 2015). So the major question for government and local authorities is where to build houses, particularly in London, where land values have risen by 47% in the past five years, and only 2.3% in the rest of the UK (Knight Frank, 2014).

And so back to the production of plans. Prior to the Localism Act of 2011, regional spatial strategies allocated housing target numbers for each region and local plans had to comply with the housing figures and allocate sufficient land accordingly. House builders offered

even higher figures than local authority predictions stated and there were long and drawn out discussions about housing requirements for each area. The government knew that this was unpopular with local communities and also with house builders who wanted a more liberal regime for obtaining planning permission for houses. In particular, they wanted to build on green field sites, where possible. The 1997 – 2010 government had a strong policy that at least 60% of all new housing had to be on brown field land, and this is more expensive to develop.

In 2011, the new government introduced the idea that there would be local plans and neighbourhood plans and that each local authority must produce 5 year housing land supply. In the absence of this controversial decision, the government would deliberate on the applications for housing, based upon its own very general policies contained within the National Planning Policy Framework, which is brief and very general. It is difficult to not comply with it, it is so lacking in detail. This has been a gift to house builders who do not want to negotiate with local authorities if they can go straight to government for a decision. The government has also given the rights to neighbourhoods to create their own plans under the Localism Act, under the hope that communities might allocate land and welcome housing in their area. So far, this has not happened. Out of thousands of potential neighbourhood plans, only 140 have been made.

In addition, where land has been allocated for housing (successfully through an adopted statutory local plan), the house builders have argued that there is no necessity to go through the procedure for applying for planning permission under the discretionary rules. They argue that the designated land should in effect, grant planning permission in principle, and all they would then have to do would be to submit for details of design, siting, massing, access etc. They are arguing, in effect, for a sort of zoning system in certain circumstances in the UK.

So far, this has been resisted, as it would change the entire way in which planning permission is granted for development in the UK. It would not allow for changes in circumstances; local plans might be out of date; the house builders might continue to sit on and bank land until the market is right. Further calls for this system massively underestimate the inflexibility of the zoning system. The fact is that the main difference between the zoning and the discretionary system is the point at which the decision is made. Where it takes a very long time to determine a planning application, it takes potentially longer to produce the legally binding zoning plan, and an inordinately long time to amend it when situations change. The table of performance and conformance illustrates when this can happen (see above).

5. To mix or not to mix, that's the question.

It is clear that both the Taiwan system, statutory zoning plan system and the UK system, discretionary planning system, are trying to adapt some essences or tools from the other planning system for different reasons with same goal of a more efficient and adaptive planning performance. The real argument that we are raising here is how far could each system go pragmatically. For the zoning system, how to set up performance standards without losing the refined and clear-cut planning instruction would be the greatest challenge.

For the discretionary system, how to provide a set of regulations that are realistic yet preserving flexibility and keep the nature of policy-oriented system is still debatable. As Mastop and Faludi's (1997) concern, it is very difficult to evaluate strategic plans. In a plan-led system, conformance between a plan and final outcomes is the ultimate test of effectiveness. However, for development-led system, it would be more difficult to foresee the overall effectiveness even with the policy goal set up in the beginning. Especially both Taiwan and the UK are islands that face the unpredictable climate change environment more than those continental countries.

The other question we want to raise is could all these changes really help to serve a better town and country planning function for future needs?

6. Conclusions and next stages of research

The next stage of the research will look further into some detailed case studies of where the two systems have been used in both countries. The research will also study some other countries where the debate rages – Canada and Australia perhaps, where zoning is being questioned as an efficient method of meeting the flexibility that development demands. Furthermore, in the UK, enforcement plays an important role in the management of development and in Taiwan, property rights are important, but less so in England, where development rights have been nationalised since 1947. Rights of the individual might assume greater importance in Taiwan where the public interest is not emphasised in the way it is in England. In examining these complex regulations, it might be concluded that the performance versus conformance model of planning might not be as clear cut as suggested in some of the literature. Certainty or flexibility cannot be dismissed as the preserve of one system over another – each offers a mixture of the two, and further research will examine this in relation to Taiwan and England

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